

The Evolution and Development of *Waqf* Institution in a Secular State: The Philippine Case

Evolusi dan Pembangunan Institusi *Waqf* di Negara Sekular Kes Negara Filipina

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Abstract

The relationship between state and Islamic institutions in secular society is a relatively new research area, complicated by the arguably secular worldview of mainstream development theory and practice. However, the establishment of *waqf* (pl. *awqaf*; sing. *waqf*) institutions or inalienable Muslim endowments in the Philippines can be traced back prior to colonialism in the Philippines. The *waqf* or endowment is deemed part of the Islamic law introduced and interwoven to the old folk's traditions in the Philippines. The study analyzes the history and legal position of *waqf* institution and its implication towards the transformation of Muslim communities in the Philippines. The study evaluates the effectiveness of the remedies and solutions in addressing the challenges and problems of *awqaf* properties in Lanao del Sur, Philippines. The study is exploratory by its nature. The researcher opts to utilize qualitative method of gathering data. The flexibility and objectivity of the method allows the researcher to appreciate well-grounded descriptions and explanations of unforeseen thought, and their implications for the management and development of *waqf* in the Philippines. *Waqf* literatures in the Philippines have cursorily addressed the impact of government policies on the target population in the Autonomous Region in Muslim Mindanao (ARMM) and the grassroots response to the development of Islamic institutions, particularly *awqaf* properties. This research recommends the promulgation of a meaningful legal framework that guarantees the establishment of credible *waqf*-based model in management and financing which will then provide a strong support in the establishment of health clinic, Islamic religious centers and educational institutions.

Keywords: Islamic Institution, Philippine, Waqf, Legal Framework, Muslim Community.

Abstrak

Hubungan antara institusi negeri dan institusi Islam dalam masyarakat sekular adalah kawasan penyelidikan yang agak baru, yang rumit oleh pandangan teori dan praktik pembangunan dunia sekular. Walau bagaimanapun, penubuhan institusi waqf

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atau endowmen Islam yang tidak dapat dielakkan di Filipina dapat dikesan kepada sebelum penjajahan Filipina. Waqf atau endowmen dianggap sebahagian daripada undang-undang Islam yang diperkenalkan dan ditangani dengan tradisi rakyat lama di Filipina. Kajian ini menganalisis sejarah dan kedudukan hukum institusi waqf dan implikasinya terhadap transformasi masyarakat Islam di Filipina. Kajian ini menilai keberkesanan remedi dan penyelesaian dalam menangani cabaran dan masalah harta awqaf di Lanao del Sur, Filipina. Kajian ini bersifat terbuka. Penyelidik memilih untuk menggunakan kaedah kualitatif untuk mengumpul data. Fleksibilitas dan objektiviti kaedah membolehkan penyelidik menghayati penerangan dan penjelasan yang mendalam tentang pemikiran yang tidak diduga, dan implikasinya untuk pengurusan dan pembangunan waqf di Filipina. Literatur Waqf di Filipina telah menangani kesan dasar kerajaan terhadap populasi sasaran di Wilayah Autonomi di Mindanao Muslim (ARMM) dan respon akar umbi terhadap pembangunan institusi Islam, khususnya harta awqaf. Penyelidikan ini mencadangkan pengisytiharan rangka kerja undang-undang yang menjamin penubuhan model berasaskan wakaf yang berwibawa dalam pengurusan dan pembiayaan yang kemudiannya akan memberikan sokongan yang kuat dalam pembentukan klinik kesihatan, pusat agama Islam dan institusi pendidikan.

Kata Kunci: Institusi Islam, Filipina, Waqf, Rangka-kerja Undang-undang, Masyarakat Islam.

Introduction

The transformation of Philippine legal system has brought an indelible mark in the history of Islam in the Philippines. Muslim reformers and scholars viewed that the reconciliation between Philippine laws and Islamic law as specified in the provisions of the Presidential Decree No. 1083 otherwise known as the Code of Muslim Personal Laws of the Philippine and the recognition of the *Shari'ah* courts as the "core" or the heart of Islamic legal reform in the Philippines. The dialogue between Islam and the Philippine law had found legal expressions to accommodate the aspirations of Muslim minorities in the South. For instance, the drafters of the Muslim Code under the supervision of government have been mandated to incorporate the principle of *takhayyur* and thus conceded the practicality of the four schools of Islamic law in the Philippines, despite of the predominant influence of Shaṭī'ī School in the country. Under the Muslim Code, the administration of *waqf* is confined to testamentary *waqf* whereby Muslims are given the rights to administer *awqaf* based on Muslim customary practices and belief. However, under the secular body of law, *waqf* establishments are subject to the Philippine Corporation Law while the Philippines Civil Code governs the property rights, both laws are the legacies of American and Spanish laws respectively.

Given the organic growth of *waqf* institutions in a secular Muslim minority state, there would have existed general terminological and definitional debate on the meaning of charity, gift, bequest, inheritance, and transfers made during one's final death-sickness.¹ Contemporary references to *waqf* in the Philippines are relatively small number of documents, which are often fragmentary or specific to individual institutions. Over the past few years, *waqf* was customarily understood from its perpetual characteristics: that once a real property, personal property and intellectual property are dedicated as *waqf*, it remains as property of Allah (s.w.t.). The absence of Muslim experts in the field of Islamic finance, economy and Islamic banking has deferred the efficiency of *waqf* in generating economic growth of Muslim communities in the Philippines. However, it is socially implied that the subject of the *waqf* is adapted to local tastes and economic conditions while retaining and perpetuating certain universal of *waqf* properties.

In Islam, development is geared towards the growth and advancement of man; the purification of his soul and body, the improvement of his intellectual and behavioral standards. Man and his environment are not regarded as machines of productivity in the pursuit of development. Man as a trustee views development from the milieu of his societal and moral obligations. Despite of his natural tendency to wealth and possessions,² he is constantly reminded of his moral obligations³ in fulfilling the necessities of life.⁴ During the time of the Prophet (peace be upon him), wealth derived from *waqf* was basically donation from his companions intended for the general well-being of the *Ummah*. The donated properties, whether movable or immovable, were utilized for charitable purposes.

Muslim countries have no doubt, been blessed with many resources, which are essential commodities for the world's market and economy. More often than not, mismanagement of wealth in the Muslim

¹ Peter C. Hennigan, *The Birth of a Legal Institution: The Formation of the Waqf in Third-Century A.H. Hanafi Legal Discourse*, (Boston: Brill, 2003), p. 70.

² Al-Qur'an, 3: 14.

³ Muhammad al-Buraey, *Management and Administration in Islam*, (Dahran, Saudi Arabia: King Fahd University of Petroleum and Minerals, 1990), 127.

⁴ The concept of Guidance of Natural Inspiration (*Hidāyah al-Ilhām al-Fiṭrī*) indicates that most human activities and deeds in this material world are motivated, inspired, directed and guided by the necessity of their nature (*al-fītrah*).

communities is a widespread practice.⁵ Whether the poor in the society get their fair share of the wealth is a question that is worth researching. Muslim societies need to address ways to resolve backwardness through the introduction of feasible development programs. Certainly, *waqf* can play a major role towards this direction provided its properties and funds are properly utilized and managed in accordance with the motive of law. In Islam, "... the true test of the validity of a *waqf* was in its declared object, not in the undeclared motives of the founder, if any."⁶

The Historical Genesis of *Waqf* in the Philippines

The *waqf* or endowment is deemed part of the Islamic law introduced and interwoven to the old folk's traditions in the Philippines. The history of *waqf* institutions can be traced back prior to colonialism in the Philippines. The early people in the Southern part of the archipelago have from the beginning governed by their own customs and traditions that have been handed down to them from generation to generation. They used to build shades, water system, and lodging houses for visitors, especially travelers as their charity. They were made to understand the concept behind *waqf*, that covers all the activities and works that lead to happiness in both worlds. In other words, benevolent people built and created the charitable institutions using their private properties and *waqf* willingly without any compulsion in the way of God.

Muslims generally regard the system of *waqf* in the Philippine as unique, and it has no comparison to any religious or secular legal system that was introduced by foreign invaders. Its prominence in the reconstruction of legal, social and economic growth of Muslim communities has never been denied. The form of *waqf* typically provides land for building mosques, *madāris*, Muslim cemetery, water system, schools, dormitories and other charitable institutions.⁷ *Waqf* performs the func-

⁵ Mushtak Parker, 'Muslim Countries do not Manage Wealth Properly,' *Arab News*, May 10, 2010, 1.

⁶ George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West*, (Edinburgh: Edinburgh University Press, 1981), 39.

⁷ Alizaman D. Gamon, "Development and Management of *Waqf* in the Philippines," (Unpublished research, International Institute of Islamic Thought and Civilization, International Islamic University Malaysia, 1999), 1.

tions of Islamic education, research, health, religious and social services and other functions, which cannot be performed by a Christian government to its Muslim minority. *Waqf* funds become the only financial source for both madrasah teachers and scholars that provided them with secure means of livelihood, and gave them the freedom to engage in research and produce considerable scholarly outputs that contribute to the development of the Muslim cultural and scientific activities in the Philippines.

During the Spanish colonial era the survival of Islam in the Philippines was endured and developed by the mosques and *madāris* built by the *datus* and chiefs as *waqf* in their respective places. The mosques constituted the center of the Muslims' socio-political institution. In early times, Muslim's contributions were in the form of *zakat*, *sadaqah* and *fiṭrah* which were used to maintain and upkeep the mosques, madrasah and similar holy places.⁸ But some of these mosques and other Islamic institutions were destroyed and desecrated by the Spaniards based on their anti-Islamic campaign agenda against the Muslims in the Philippines. The colonial policy against Islam was instigated by the Spanish religious order.

The American administration did not partake in the administration and development of the mosques, *madāris* and other Islamic institutions due to the American Constitutional tradition of the separation of the church and the state. Despite the benign policy of freedom of religion that they granted to the Muslims, there was not a single legislative enactment for the setting up of a government instrumentality that is specifically designed to administer the *waqf* properties in accordance with the Islamic law, and as modified by the Muslim customs that were prevailing in the Philippines. The Americans had failed to appreciate Muslims' land law particularly, the *waqf* land. In addition, the contribution of the *waqf* for the furtherance of religious purposes was not appreciated as it diametrically opposed to secular land law. In the absence of reciprocal settlement on the disputes of land law and *waqf* administration, Muslims were deeply offended when their lands and buildings were seized although they were supposedly protected by the *waqf* law. Therefore, the administration and maintenance of the mosques and *madāris* shifted unto the

⁸ Musib Buat, "Management and Development of *Awqāf* Properties in the Philippines," *Management and Development of Awqāf Properties* (Jeddah: Institute of Research and Training Institute, Islamic Development Bank, 4-17 August 1984), 3.

shoulders of the Muslim community and its success became dependent upon the commitments of individuals. But the American occupation had important effects on the Moro *waqf* lands. The colonial administration set up the Moro's land reservations scheme through the proclamation of the American Governor-General in the Philippines. These reservations were made on traditional ancestral domain of the Muslims.⁹

The institution *waqf* and its modernization have not been fully appreciated by Filipino historians and economists, particularly, during the post-independence. The government agenda for land reform in the South, which is often derived from economic materialism, had eventually resulted into land disputes and unequal opportunity for the Muslims.¹⁰ The influx of Christian Filipinos to parts of Mindanao, Muslims' land reservation through the *waqf* program was successfully occupied and developed by the Christian settlers through the government's legal machination. The migrations of more than 200 thousand Christians to Cotabato region in the past forty years reduced what was once a Muslim majority province to a minority of 30 percent.¹¹ Many of the Muslim traditional areas had been occupied by a thousand of pardoned criminals and ex-Communists under the sponsorship of the government development plan. The government initiated to develop the lands occupied by the Christians but not the Muslim lands that remain unproductive. Thus, land disputes became more frequent between the Muslims and the Christians. Land disputes and discrimination against the Muslims became some of the causes of the Mindanao conflict.

The *waqf* system prior to the government settlement program in Mindanao has provided a myriad of essential services such as health, education and others to the people of Mindanao. Had the government recognized *waqf* institutions for meeting the financial needs of the people, there would have been a substantial reduction in the government expenditure for the Muslims in Autonomous Region of Muslim Mindanao (ARMM). Such economic activity if properly managed would eventually lower the need for government borrowing. This reduction in borrowing "... would curb the crowding effect and lead to a reduction in the rate of interest, consequently, reining in a basic impediment to private invest-

⁹ Ibid., 7.

¹⁰ Ibid., 5.

¹¹ Cesar A. Majul, *The Contemporary Muslim Movement in the Philippines*, (Manila: Saint Mary's Publication, 1978), 30.

ment and growth.”¹² Murat Cizakca observes that *waqf* system is an important economic tool for Islamic macroeconomics to reduce or eliminate interest in the economic transaction of the Muslim Ummah.¹³

The *waqf* property in the Philippines is not regulated and managed within the purview of the Philippine laws that deals with land and property. This means that there is no law that regulates, manages or develops *awqaf* properties. The Muslim communities in the Philippines possess property, which falls within the definition of *waqf* with important contributions to the development of Islam in the Philippines.¹⁴ Muslims are fully aware that the *waqf* is beneficial in alleviating the economic status of the poor, orphans and others. Thus, hundreds of mosques and *madāris* have been built throughout the country with the donations of funds from other Muslim countries and Islamic organizations. The law on *waqf* was repudiated by the government to be a part of the Muslim Personal Laws as mandated in the P.D. 1083. Since then the Muslims have been forced to improve the performance of their religious duties and intentions, by adopting the national system that is closely related to the principles of Islamic law.

The Meaning, Nature and Basis of *Waqf* under the Islamic Law

The word *waqf* (plural *awqaf*) is an Arabic word derived from the word *waqafa* which means stopping or detaining a thing. According to the Ṣāhibayn (Abū Yūsuf and Muḥammad), *waqf* is the detention of a thing in the implied ownership of Almighty Allah in such a manner that its profits may revert or be applied for the benefit of mankind.¹⁵ Under the Islamic legal terminology, *waqf* has been defined primarily as to protect a thing, so that it does not become the property of a third person; it signifies the appropriation or dedication of property to charitable purposes.¹⁶ The Qur'an does not provide any specific provision on *waqf* except those several verses (*āyāt*) where Muslims are strongly encouraged to give charity. The Qur'ān says: "Those who (in charity) spend of their

¹² Murat Cizakca, *Islam, Capitalism and Finance: Origins, Evolution and the Future*, (Cherttenham, U.K.: Edward Elgar, 2011), 115.

¹³ Ibid., 116.

¹⁴ Mohamed Ariff, *The Islamic voluntary sector in Southeast Asia: Islamic and economic development of Southeast Asia*, (Singapore: Social Issued in Southeast Asia, Institute of Southeast Asian Studies, 1992), 44.

¹⁵ ‘Alī Ameer, *Student Handbook of Muslim Law*, (Calcutta: n.p., 1892), 85.

¹⁶ T. P. Hughes, *Dictionary of Islam*, (Lahore: Premier Book House, n.d.), 23.

goods by night and by day, in secret and in public, have their reward with their Lord: On them shall be no fear, nor shall they grieve."¹⁷ In another verse the Qur'ān says, "And establish regular prayer and give regular charity; and loan to Allah a beautiful loan, And whatever good you send forth for your souls, you shall find in Allah's presence-ye better and greater in reward. And seek ye the Grace of Allah: for Allah is Oft-forgiving, most Merciful."¹⁸ Although, the Qur'ān is silent upon the subject of *waqf*, there is distinctive Sunnah evidence that the Prophet was concerned with this institution. In other words, the origin of *waqf* rests upon the *Hadīth* narrated in the following words: "Abū Hurairah (Allah be pleased with him) reported Allah's messenger (SAW) as saying: When a man dies, his acts come to an end, but three; recurring charity (*sadaqah al-jāriyah*), or knowledge (by which people benefit), or a pious offspring, who prays for him."¹⁹ With this, the institution of *waqf* has always been in the conscience of the Muslims. They used to give charity both movable or immovable properties, and they will strive to perform this act of devotion to seek perpetual benefit in this world and the hereafter.

When did the *waqf* begin in the history of Islam? There are differences of opinions regarding its origin. Whatever might have been the case, legitimate report points to the tradition of 'Umar as the first *waqf* institution in Islam.²⁰ It was narrated by Ibn 'Umar that during the time of the Prophet (peace be upon him), 'Umar gave in charity some of his property, a garden of date-palms called Thamgh. 'Umar said, "O Allah's Messenger! I have some property which I prize highly and I want to give it in charity." The Prophet (peace upon him) said, "Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity." So 'Umar gave it in charity, and it was for Allah's cause, the emancipation of slaves, for the poor, for guests, for travelers and for kinsmen. The person acting as its administrator

¹⁷ Al-Qur'ān, 2:274.

¹⁸ Al-Qur'ān, 73:20.

¹⁹ Imām Muslim ibn Hajjal al-Qushayrī, *Ṣaḥīḥ Muslim* trans. 'Abdul Ḥamīd Siddiqī, 3 vols., (Lahore:

Sh. Muḥammad Ashraf, 1981), 1: 867.

²⁰ Al-Khātib, Muḥammad al-Shabānī, *Muḡnī al-Muḡtaḡ* 2 vols., (Cairo, n.p.,1958), 2:36.

could eat from it reasonably and fairly, and could let a friend of his eat from it provided he had no intention of becoming wealthy by its means.²¹

The purpose underlying *waqf* legitimacy is to open wide the doors of general good-will in order to attract positive tendencies among good Muslims for the common interest. In the case of the *waqf* founders or contributors, their purpose could be qurbah (the performance of a good work pleasing to Allah hoping for His reward) while at the same time benefiting the needy Muslims. The purpose of the law that authorizes *waqf* as argued by ‘Abdulrahmān “... is to enable the *wāqif* or donor to secure spiritual advancement in the life to come and also to get popularity in this life in the same way as the gifts and bequests, but in a higher degree.”²² It also provides material security for themselves and their relatives, as in the case of *waqf al-ahlī* (family endowment).²³ With this, *waqf* has become one of the most important parts of the Islamic laws, for it remains interwoven with the entire religious life and social economy of Muslims.²⁴ It is closely connected with religion than other legal matters.

We have indicated that there are two types of *waqf* under the Islamic law. The *waqf al-khayrī* (public *waqf*) is an endowment that provides the remainder and current income for religious or public purposes such as schools, colleges, hospitals, orphanages and other charitable institutions. The *waqf al-ahlī* (family *waqf*) is endowed exclusively for the benefit of the founder, the members of his family, the descendants and later revolves for the benefit of broader welfare purposes. The difference between the two is that the *waqf al-khayrī* immediately benefits religious institutions or pious causes, such as providing bread to the poor, whereas a *waqf al-ahlī* allows the donor and the heirs to benefit from the income of the *waqf* while living.²⁵ Both types are governed by the following important rules of the *Shari‘ah*: 1) The founder should have an unrestricted legal ownership in the object of the endowment; 2) It must be made in perpetuity; 3) The *waqf* is concerned with real estate of permanent na-

²¹ Imām Muḥammad ibn Isma‘īl al-Bukhārī, *Ṣaḥīḥ Al-Bukhārī* (summarized), trans. Muḥammad Muḥsin Khan (Riyadh: Dār-us-Salām Publications, 1996), 576-577.

²² Cited in George Makdisi, *The Rise of Colleges*. 39.

²³ Hassan ‘Abdullāh al-Amīn, "Waqf in Islamic Jurisprudence," *Management and Development of Awqāf properties* (Jeddah: Institute of Research and Training Institute, Islamic Development Bank, 4-17 August 1984), 17.

²⁴ Ameer ‘Alī, *Muhammadan Law*, Tagore Law Lectures 1884, 4th ed., 2 vols., (Calcutta: n.p., 1912), 1: 193.

²⁵ Mary Ann Fay, "Women and *Waqf*: Toward a Reconsideration of Women's Place in the Mamluk Household" *International Journal Middle East Studies*, vol. 29 (1997): 36.

ture; 4) It must have a lawful and clear purpose from the viewpoint of the *Shari'ah*; 5) It is considered as an irrevocable legal transaction; 6) The institution of *waqf* is essentially for the benefit of the larger members of the community; 7) The overall supervision and administration of the *waqf* remain in the hands of the state (the first administrator can be appointed by the founder); and 8) If the founder abandons his Islamic faith, the endowment becomes invalid and it passes to his heirs.²⁶

Legal Status of Muslim *Waqf* in the Philippines

The Muslim *waqf* system in the Philippines must be based on the background information already given thus far. Philippine is a predominantly Christian country. The Muslim minority is governed by a small piece of Islamic laws, but only those that are fundamentally personal in nature. There is no statutory law to regulate the management and administration of the *waqf* properties or institutions.²⁷ The government used to justify its failure to incorporate the law of *waqf* in the Muslim Code purely for the religious nature and thus, it is contrary to the principles of the Constitution of the Philippines. Therefore, reliance on the legislative support to implement the law of *waqf* has become difficult. As a result of this, no constitutional measure has been taken to administer the *awqaf* properties of the Muslims.

In the Philippines, the organization and setting up of welfare and charitable institutions are generally governed by the Philippine Corporation Law on trust properties. This law is based on secular laws which were adopted during the American regime. Functions of administrations of trust assets are covered by various statutory enactments depending upon their nature, purposes and functions.²⁸ The property rights of a person or institutions are governed by the Philippine Civil Code, the reproduction of the Spanish Code. Other relevant provisions on the appointment and powers of trustees can be found in Rule 98 of the Revised Rules of Court. The registration and titling of properties are governed by the Public Land Act. Since the Islamic *waqf* law is not recognized by the government, Muslims have been forced by circumstances to give effect to

²⁶ Muhammad 'Abdul Mannan, "The Institution of *Waqf*: Its Religious and Socio-Economic Roles and Implications," *Waqf in Islamic Jurisprudence, Management and Development of Awqaf properties* (Jeddah: Institute of Research and Training Institute, Islamic Development Bank, 4-17 August 1984): 28-31.

²⁷ Musib Buat, *Awqaf Properties in the Philippines*, 131.

²⁸ *Ibid.*, 104.

the performance of their religious duties and intentions by the adoptions of the above-mentioned laws, which are not contrary to the Muslim law.

The Code of Muslim Personal Laws in the Philippines does not have any provision related to the administration of *awqāf* properties. The government refused to include the proposed chapter on *waqf* and endowment in the Muslim Code which provides for the establishment of the General Muslim Endowment Fund from the donations and contributions made by Muslims to the *Majlis* or Consultative Council, to be used for the construction and repair of mosques, Muslim shrines and cemeteries, which shall be exempted from income and gift taxes, and shall be considered as deductible items within the meaning of the Revised Internal Revenue Code.²⁹ In another article proposed by the Research Staff, the Code also provides for the specific sources of this fund and the purpose for which it is expended, the mode of its accounting, its administrator who will be responsible to the *Majlis*, manner of investment of the funds, and designate bank where it would be deposited.³⁰ The Research Staff explained that they did not propose to go around the constitutional prohibition against appropriation to support or promote any religion (i.e. Islam) because this is purely fund drawn from the Muslim community. This explanation was not accepted as Presidential 1083 was implemented without considering the provisions proposed on *waqf* except 1) the testamentary *waqf* provided under the Law of Succession (Title III Book Three) and 2) the charitable trust property and ancestral lands as classified as communal properties. Under the testamentary *waqf*, the Muslim Code provides: "An endowment for Islamic purposes to take effect after the death of the donor (*waqf bi'l-waṣiyyah*) partakes of the nature of a testamentary."³¹ Therefore, the following rules provided under the Islamic law shall apply:³²

- (i) The testator can make *waqf* of his property through a will of not more than one-third of his property. But he can make *waqf* through will of more than one-third of his property if with the consent of the heirs; otherwise, it becomes ineffective with respect to the property in excess of one-third;

²⁹ Primer on the Proposed Code on the Administration of Muslim Philippine Laws," Research Staff for the Codification of Philippine Muslim Laws" *Mindanao Journal*, iii, nos. 3-4 (January-June, 1977): 300.

³⁰ Ibid.

³¹ *Muslim Code*, Article 104.

³² Tanzil-ul-Rahmān, *A Code of Muslim Personal Law*, vol. 2, (Karachi: Islamic Publishers, 1980): 144.

- (ii) The *waqf* will take effect after the death of the creator of the *waqf*;
- (iii) The testator has the right to amend or revoke his will whenever he likes in his lifetime.

The administration or disposition of charitable trust property and ancestral lands as part of the communal property is expressly provided in the Muslim Code as follows: "1) Except as otherwise provided in the Code, communal property shall be administered or disposed of in accordance with Muslim law, *'adat*, and special provisions of law. 2) Any provision of existing law to the contrary notwithstanding, the trustee of any communal property shall be the person who is in lawful possession thereof, either personally or through an agent. 3) The *Shari'ah* Circuit Court may appoint a trustee of a communal property when there is a dispute as to its custody, possession, or administration. Although, the Muslim Code does not define the properties, it may be said that all properties dedicated to public welfare or places of worship could fit well into the given classification. This is corroborated by the Organic Act for the Autonomous Region in Muslim Mindanao, which provides that, "Ancestral domain refers to all lands and natural resources in the Autonomous Region that have been possessed or occupied by indigenous cultural minorities...and such shall include the following: pasture lands; worship areas; burial grounds; forest and fields; and mineral resources."³³

Those provisions dealing with *waqf* are the essential features of the Muslim Code because there are no other *waqf* laws recognized by the government concerning the Muslim *awqāf* properties to be used for religious, charitable or benevolent purposes. *Waqf* has been accepted as purely private trust from Muslim individuals. It does not support or promote Islam as a religion; otherwise, it will be contrary to the state policy on the separation of church and state. The provisions on *waqf* under Presidential Decree 1083 are merely recognition of the rights of the Muslims to have a free exercise of their religious beliefs and practices.

Charitable institutions have been granted exemption from different taxes imposed by the government. Every institution that is purely for charitable purpose is not subject to corporate tax, income tax, expenditure tax, property purchase tax, stamp duty, fees and duties, customs duties and inheritance tax (recently abolished). It is neither subject to labor

³³ Oga Mapupuno, "The Organic Act for the Autonomous Region in Muslim Mindanao," *Mindanao Law Journal* iv, no. 2 (April 1991): 125.

laws (Workmen's Compensation) nor does it subject to the jurisdiction of the industrial Court as clearly provided in the Republic Act 875, known as the Industrial Peace act.

Classification of *Awqāf* Properties

In the Philippines, there are people who believe that *awqāf* properties are mainly dedicated to the benefit of the mosques, *madāris*, and other charitable, pious and religious projects. They contribute to the maintenance of mosques, *madāris* and other Islamic learning centers. Their understanding of the law of *waqf* is limited only to those properties which are classified as *waqf al-khayrī* (public *waqf*).³⁴ In other words, it is the common belief of many Muslims in the Philippines that *awqāf* properties are purely charitable and there is nothing left for the personal use of the founder or his beneficiaries. There are only few people who understood and practiced *waqf al-ahli* in the Philippines. In truth, the administration of *awqāf* properties (whether *waqf al-khayrī* or *waqf al-ahli*) in the modern sense of the term and from the *Shari'ah* point of view is relatively new to Muslim Filipinos.³⁵

Properties which have been used from time immemorial for any purpose that are recognized by Islam as religious, pious or charitable properties even if there is no evidence or expressed dedication is deemed to be *waqf* properties. Properties dedicated for the purpose of a mosque and madrasah are also deemed to be *waqf* properties.

The *awqāf* properties in the Philippines comprise of hospitals, residential and commercial buildings, multi-purpose buildings, shades, cemeteries, travelers' shelters, water supply, mosques, *madāris*, agricultural lands and vast pieces of land reserved for Muslims by the US-Colonial Administration during the pre-independence period on the basis of traditional ancestral domain. The law of Islam recognizes both movable and immovable as endowment. However, in the Philippines, it applies only to immovable properties except from the cash sent as *waqf* from the Middle East countries. The reason for this, is because majority of the Muslim Filipinos adhere to the Shāfi'ī School.

There is no proper survey of the number of *awqāf* properties in the Philippines. The government institutions mentioned above, do not survey them in a standard procedure because their function as custodian of *awqāf* properties is only incidental to their legal functions. In the early

³⁴ Alizaman D. Gamon, 14.

³⁵ Ibid.

fifties, the Commission on National Integration made an attempt to survey the vast *waqf* lands reserved to the Muslims by the US-Administration. However, the Commission did not succeed. This was followed by several agencies that were established by the government. Until now, there is no available data which can be referred to except to the following grant-in-aid fund of the government released by OMA for the reconstruction and rehabilitation of the Muslim centers like mosques and *madāris*:³⁶ 1) For fiscal year 1981, it released a total of 211,118 to 21 cultural centers³⁷ (mosques) and 8 *madāris*. In 1982, it released a total of 2,320,233 to 83 cultural centers, and 28 *madāris*. While in 1983, it released 3,007,750 to 162 Islamic centers or mosques, and *madāris*. Since 1986 to-date, the Autonomous Region of Muslim Mindanao has administered the grant-in-aid funds that were allocated for the Islamic centers within its territorial jurisdiction. There are only 1,569 *madāris* from the Autonomous Region that are registered with the OMA in 1998 which were accredited by the Department of Education and Culture.

As a result of Christian settlement on the Muslims *waqf* land, the Muslims found themselves an oppressed minority and strangers in their own homeland.³⁸ Take the case of the Kapatagan Basin, a Maranao (one of the Muslim tribes in the Philippines) stronghold in the Northwest portion of Lanao. In 1918, there were only two dozens of Christian settlers in that fertile *waqf* land; in 1941, there were 18,000 Christian migrants; and by 1960, there were 93,000 Christians greatly outnumbering the 7,000 Muslim natives.³⁹ During the Mindanao conflict, Muslims were forced to sell their lands to the Christians and the private corporations owned by non-Muslims. It became a problem to the Muslims how to recover those lands, which were inherited from their ancestors as communal tribal patrimony of their own tribe. The National Commission on Muslim Filipinos (NCMF), acted as a custodian of the lands, and other properties that were reserved for the Muslims initiated the project for land recovery in South Cotabato with the endowments from the Ford and Asia Foundations. However, the project failed to recover those lands be-

³⁶ Ibid., 105.

³⁷ Cultural Centers are used instead of mosques because of separation of church and the state. The Philippine Constitution recognizes, respects, and protects the rights of the indigenous cultural communities in preserving and developing their cultures, traditions and institutions.

³⁸ Hamid Barra, 41.

³⁹ Cesar Adib Majul, *Contemporary*, 30-31.

cause of financial restraint and failure to maintain lawyers' fees. With this, the Organic act for the Autonomous Region in Muslim Mindanao (ARMM) provides some measures to protect the ancestral domain in the autonomous regions were taken against any further intrusion by the Christians. In addition to this, other *waqf* lands within the Autonomous region may have been the subject of agrarian reform where the farmers and regular farm workers, may own the land individually or collectively. The Organic Act provides that, "The Regional Assembly shall enact an agrarian reform law suitable to the special circumstances prevailing in the Autonomous Region."⁴⁰

The Muslim Code classified the charitable trust and ancestral land as communal properties or common properties of the Muslim community. Other ancestral properties which are classified as *waqf* or trust lands are ancestral shrines, holy burial places of Muslim heroes and religious teachers. The Office of the Muslim Affairs started developing and putting landmarks on these sites for being part of the Islamic heritage in the Philippines.⁴¹

Management of *Waqf* Institutions

Earlier, we stated that there is no central public agency, which is specifically assigned by the National Government to administer *awqaf* properties in the country. The Muslim communities have been forced by the circumstances to take the initiative to perform their religious duties through self-help projects. This indicates that those foundations, educational institutions and religious organizations with related functions on *waqf* have with no proper management of the *awqaf* properties. In other words, there is no uniform management or administrative control of the *waqf* system in the Philippines.⁴²

In the past, the *awqaf* properties were administered by the *Datu* or *Sultān* of every Muslim village. He was assisted by other appointed *datus*, religious leaders or the *imām* of the district mosque. They took over the administration, management and control of the *awqaf* properties based on the customs and traditions as modified by the Islamic law. They succeeded to consolidate and develop the mosques and *madaāris* as an ideological base of their struggle against the Western colonialism. However, these *datus* and sultans failed to develop the *waqf* lands re-

⁴⁰ Organic Act, Article XI, Sec.8.

⁴¹ Musib Buat,105.

⁴² Alizaman D. Gamon, 18.

served for the Muslims by the American Colonial Administration. The sultans and the *datus*' powers to manage and administer the *awqāf* properties in their own respective districts were no longer recognized by the government based on the constitutional provision that no royal titles are recognized by law.

Today, when the rich individuals established *waqf*, a religious leader or organization is usually chosen as *mutawalli* or administrator. The most prominent religious organization chosen by the founders to administer their *waqf* is the Markāz al-Shabāb al-Muslim fil-Filippīn. This organization is in-charge of many endowments from local and abroad. However, it only administers those endowments which are classified as *waqf al-khayrī* which involves religious or public charity (mosques, *madāris*, hospitals, radio station, pharmacy, multipurpose buildings, etc...). These endowments are administered by the *Awqāf* Division and managed by a number of religious people who are specifically males and the president of the Markāz al-Shabāb appoints one of them as a Chairman of the division. This division has exclusive jurisdiction over *zakaāt* and *waqf*. It is usually for the Chairman to lay down the rules for the administration of a certain endowment if the founder failed to specify the rules to be applied or the rules given by the latter is not in accordance with the Islamic law. It happens sometimes in some cases that the endowments were established with personal motives rather than the desire to gain a spiritual merit. Thus, all the administrative proceedings taken by the division are strictly in accordance with the Islamic teachings and objectives.

The Markāz al-Shabāb used to develop the endowment by having priorities in implementing the most important project before the others. The Poona Marantao Hospital became the first on the list to be established because of its importance to the Muslim community.⁴³ The hospital was erected in a *waqf* land inherited by the founders from their parents. The hospital is supervised and controlled by the Board of Trustee headed by the Chairman appointed by the Board members. The Chairman is the one responsible for the registration of this institution to the Securities and Exchange Commission as a charitable institution. Such registration is necessary for the exemption of the hospital and all properties indispensable to its operation from all taxes. All of the hospital funds are devoted exclusively to the maintenance of the institution as *waqf*

⁴³ Ibid., 19.

property. It is also devoted to the improvement of the charity wards, which represent two-thirds of the bed capacity of the hospital, aside from the "out-charity patients" who come only for consultation. The salary of the endowment's staffs is another major source of expenditure. The staffs consist of religious functionaries as well as other local doctors, nurses, midwives and other workers. The Markāz al-Shabāb, through its auditor used to inspect annually the proper accounting system of the revenues and expenditures of the hospital kept by the Board of Trustee.⁴⁴

Other endowments under the management of the Markāz al-Shabāb are required through the *Awqaf* Division to be furnished twice a year a statement containing the information as to a) the gross annual income of every endowment; b) the estimate of the annual expenditure; c) the amount set apart for the salary of the officials as trustees and other workers; and d) the full statement of accounts after getting it audited. Through this management, the organization was able to further enhance its contribution to the economic condition of the Muslim community in the Philippines. It also provides social services to the Muslim Ummah.

The administration of the *waqf al-ahli* can be illustrated in the case of the Jāmi'ah al-Filibbīn al-Islāmiyyah (JPI), Jāmi'at Muslim Mindanao (JMM), Jāmi'at Marawi al-Islāmiyyah Foundation (JMIF), the Pascasum College and the Pangarungan Islam College, are private educational institutions founded by prominent families in Marawi City. These educational institutions are populated by Muslim students, but male and female students are separated. These institutions have been made as a *waqf* for the benefit of the founder's family. Under the Philippine laws, family *waqf* is hardly considered as charitable institution because it is not purely or wholly organized for religious and pious purposes, and a part of its net income is intended for the benefit of private individuals. Before, these schools were stock corporations, but recently, they were converted to foundations. Therefore, they are now subject for tax exemption. They have juridical personalities. They can sue and be sued. Each of these institutions has a management board. The major stockholders who are family members run their own respective institutions independently. There is no agency like the Majlis Ugama Islam in Malaysia and Singapore who will advise them on matters relating to Islamic *waqf* (i.e., administration, management and development of the *waqf* institution and issuance of fatwas). Each school is managed by a president who is appointed by the Board of Trustees. The president used to exercise full supervision

⁴⁴ Ibid.

over its revenues and spent it on any of the purposes necessary for the functions of the school. He has also the power to use the *waqf* funds for investment in other sectors. Some of the incomes are exclusively devoted to the salary and the regular payments of teachers and staffs.

These five Islamic schools in Marawi City have contributed to the socio-economic, religious and educational development of the Muslim community. They brought Muslim missionaries to central Mindanao which has resulted in some improvement in the standard of Islamic and Arabic teaching.⁴⁵ Many of the teachers and staffs are Muslims who are highly educated from the different universities in the Philippines and abroad, particularly, from the Middle East. Deserving students received free matriculation fees and books. Those who have earned their degree from these schools have contributed to the improvement of the general quality of Muslim professionals either as government officers, or became as socio-political leaders.

The Development of *Awqāf* Properties

Till now no development projects have been done on the ancestral land, which was recovered from the Christian settlement in Mindanao. However, the NCMF and the Autonomous region have made plans to develop the *awqāf* properties by undertaking the following projects which could generate good return of investment in real estate:⁴⁶

There was proposed multi-purpose Islamic cultural center with restaurants, convention hall for conferences and meetings, hostel for transients and Muslim students, mosque and madrasah and a place for research activities. The maintenance cost of the cultural center will be derived from the profit of the restaurant and the rental of the hostels as well as the conference and meeting rooms.

A plan to build an Islamic hospital with medical school will help the poor Muslims who cannot afford to meet the expensive hospital bills and medical education. Islamic hospital is needed by the Muslim community for the benefit of Muslim mothers to-be, who would like to deliver their babies with the help of women physicians. There is no such hospital in the country to date. The hospital will have its own medical school and other modern facilities required by the hospital. The hospital and the medical school will contribute to the economic development of the Mus-

⁴⁵ Sharom Ahmat & Sharom Siddique, 125.

⁴⁶ Musib Buat, *Awqāf*, 106.

lms in the Philippines. The NCMF will try to seek help from other local and international organizations for the funding of these projects.

The expenditure for a seaweeds processing plant will cost million pesos. The proposed plant will produce seaweeds powder which can be used as component in manufacturing paint, pharmaceutical and gun powder. The project will be beneficial to Muslim farmers and fishermen. It will also help to increase the country's foreign exchange earnings as the markets for seaweeds powder is in-demand for many industrialized countries such as, Japan, U. S. A., Russia and the European countries.

Yellow corn has been considered as a product which will bring a high return on investment. Philippines used to import about 400 tons of yellow corn annually for poultry and livestock feeds. The proposed project will be planted on a 300-hectare agricultural land. Expenditure for this project will amount to four million pesos.

To promote trade among Muslim businessmen, a shopping complex has been proposed on a 1000 square meter land. Hundreds of Muslim traders peddle their goods along rented side streets. Considering the numbers of the Muslim traders, shopping complex will have a good return on investment.

In order to develop the *waqf* properties, the National Commission on Muslim Filipinos (NCMF) has to evaluate other alternative methods of fund raising, such as mortgage to the commercial banks, sell part of the *waqf* lands or to encourage the cash endowments. But mortgaging and selling of *waqf* lands have disadvantages.⁴⁷ Mortgage is an interest bearing loan and the endowment will not benefit from it. If the fund is raised by selling part of the *waqf* lands, the endowment will be decreased, and it will not be beneficial to the Muslim in the Philippines. The best alternative is to raise fund by introducing the cash endowment. Although money, valuables and share cannot be subject of the *waqf*, the Ottoman jurists approved the contrary based on Imām Zufar's ruling that cash endowment was acceptable. According to the jurists there are three principles that constitute the cash *waqf*: the approval of moveable as the basis of a *waqf*; acceptance of cash as a moveable asset; and therefore, approval of cash endowments.⁴⁸ The cash endowment method will succeed by establishing an Islamic Financial Institution with qualified and dedicated personnel.

⁴⁷ Alizaman D. Gamon, 22.

⁴⁸ Murat Cizakca, *Cash Waqf of Bursa, 1555-1823*, *Journal of the Economic and Social History of the Orient*, (n.p., 1995) vol. 38/Part 3 (August 1995): 315.

***Awqāf* Institutions and the Administrators**

We have already mentioned the fact that the laws on *waqf* were not accepted as part of the law of the land. It was not carried out due to the American Constitutional tradition of separation of church and state. Therefore, the attempts of the Muslim minority in the Philippines to implement the *waqf* institutions in their community have shifted unto the shoulder of several religious groups and organizations.

The Islamic Trust and Development Foundation is one of those private organizations created in Mindanao to improve the socio-economic, moral and spiritual conditions of the Muslims. This foundation aims to rely basically on the resources which the Muslims in the Philippines can provide.⁴⁹ Having known that that *waqf* institution is one of the institutions in Islam which does not function in the Muslim society in the Philippines, the Foundation makes itself as an alternative agency to develop and administer the said institution. The Foundation feels the necessity of reviving its spirit not only as part of the Muslim traditions but as an important institution in Islam.

The Markāz al-Shabāb al-Muslim fil-Filibīn,⁵⁰ is an organization of conservative Muslim religious people of the Lanao provinces. It has become the administrator of *awqāf* properties. This organization established the *Awqāf* Division in the Islamic City of Marawi, Lanao del Sur. This division is supervised by the Markāz al-Shabāb through its Board of trustee. The division administers and holds in trust the donations and contributions made by Muslims to be used for the construction and repair of mosques, *madāris*, orphanage, and other charitable properties for the development of Muslim community. Some of the mosques, *madāris* and other projects by the organization were established in an *awqāf* estates received from an individual or a family or group of Muslims. An example of this is the mosque and hospital in the Municipality of Marantao that was built on the *waqf* lands inherited by one family from its parents. That hospital and other centers of learning were established from of cash and donations sent by the Muslim organizations from the Middle East, e.g. Kuwait, Emirates, Saudi Arabia, Bahrain and others. In addition to this, the organization was able to have their own radio station from those

⁴⁹ Hamid Barra, "The Islamic Trust and Development Foundation," *Al-Haqq*, I, (April-June 1992): 7-10.

⁵⁰ Amiruddīn Sarangani, Interview by Alizaman D. Gamon, "Lilod, Marawi City, Philippines, May 1, 2011.

contributions or donations entrusted to them. It was assured by the organization that whatever profits and income arising from the *waqf* properties are applied to other charitable purposes.

Aside from these two newly founded organizations, there are also other private Muslim foundations and educational institutions organized and recognized by the government as non-joint Stock Corporations with related *waqf* functions, namely:

- a) The Philippine Islamic and Cultural Foundation organized for the purpose of Muslim community and other foreign nationals. The *waqf* funds received by the Foundation from Pakistan and Egypt were used to purchase a land in the middle of Manila's setting up a Cultural Center Complex in Manila to cater for the growing needs of the commercial center district, Quiapo. The property has the Quiapo Grand mosque with a madrasah and a score of Muslim commercial shops and residential houses.
- b) The Islamic Directorate of the Philippines is an Islamic foundation which received a donation from the government of Libya. The fund was used to purchase a six-hectare lot at Tandang Sora, Quezon City for the purpose of constructing a cultural center complex. The foundation failed to provide the said cultural center. However, the *waqf* property has been developed into Muslim housing units with a mosque and a madrasah.
- c) The Arakan Valley Children Welfare Foundation was established to accommodate orphans and to provide free elementary education to poor children. This Foundation started more than ten years ago with a number of orphans. The children are taken care of by the Foundation until they find a suitable employment after their education. The Foundation has envisaged and set out a very ambitious project to expand its role in giving free education to the orphans. This foundation is located in Cotabato which was founded by the late Bai Matabay Piang, a Muslim Filipino educator. She was also the founder of the Mindanao Polytechnic College.⁵¹

⁵¹ Musib Buat, *Awqāf Properties in the Philippines*, 106.

The Role of the Government in Attaining the General Welfare of the Muslim Communities

Although, there are no state-sponsored institutions that can attend to the administration of the *awqaf* properties, there are special institutions purposely created by the Government to attend to the welfare and development needs of the Muslim communities. They are as follows:

The Philippine Amanah Bank

The Philippine Amanah Bank was established under Presidential Decree (P. D.) 264 which was amended in 1974 by P. D. 542. It was established by the Government with an authorized capital of one hundred millions pesos to meet the financial needs of Muslims based on the concept of Islamic banking and finance. The charter provides for setting up of the Muslim development fund which would accrue all profits assigned to dividend for government's share after payment of shareholders' profit other than the former. Aside from that, the Muslim development fund managers expect to receive and administer the contributions coming from Muslim individuals, organizations and institutions in the form of *zakaat*, *fitrah*, *Sadaqah*, and *awqaf* properties.⁵²

National Commission on Muslim Filipinos

The National Commission on Muslim Filipinos (NCMF) was formerly known as Office on Muslim Affairs (OMA). It was created under Presidential Decree 697 on May 28, 1981. It took over the functions of the Office of the Commissioner for Islamic Affairs that was created under the Executive Order No. 549, and the Agency for the Development and Welfare of the Muslims in the Philippines that was created under Executive Order No. 474.

On August 11, 2008, the office on Muslim Affairs was replaced by the National Commission on Muslim Filipinos (NCMF). The NCMF is mandated by the Philippine Government to preserve and develop the culture, traditions, institutions, and well-being of Muslim Filipinos in conformity with the Philippine laws and in consonance with national unity and development.⁵³ The composition of the NCMF is claimed to be more comprehensive than its predecessor since its composition headed by three directors, who were appointed by the President. The seven

⁵² Ibid., 105.

⁵³ Act Creating the National Commission on Muslim Filipinos, Section 4. *Mandate*.

members of the new commission are all Muslims from different ethnic tribes. In addition, the Commission also consists of several specialized Bureaus and Regional Offices headed by all Muslims.

The Commission is under the Office of the President of the Philippines with the purpose of ensuring the integration of the Muslim Filipinos in the mainstream of Filipino society, giving due regard to their beliefs, customs, traditions and institutions.⁵⁴ One of its bureaus, the Bureau of Muslim Cultural Affairs was created to integrate the customs and traditions of the people in the South, as well as preserving the Islamic heritage of the Filipino culture. The Commission is entrusted to advise and assist the President on issues affecting the Muslim communities; to provide legal assistance; to promote and organize the annual hajj; to prescribe rules for the establishment of *awqaf*; to promote and supervise madrasah education system; to provide scholarships and most importantly, as being the primary agency through which Muslims throughout the country can seek Government support and assistance or redress.

Its *awqaf* related functions is to act as custodian or administrator of immovable *awqaf* properties and other properties reserved by the government for Muslims for the reconstruction and rehabilitation of Islamic centers including mosques and madrasah.

Office of the Autonomous Region in Muslim Mindanao (ARMM)

The Office of the Autonomous Region was created not only for political purpose but also to address the aspirations of the Muslims in the Philippines. The Regional Assembly is endowed with the power to support and encourage the establishment of banks in accordance with the principles of the Islamic banking system.⁵⁵ To achieve the education policy of the Autonomous Region, appropriate regional laws shall be enacted for the strengthening and development of the madrasah system of education in the Autonomous Region.⁵⁶ The Office of the Autonomous Region has been recognized to undertake measures to protect the ancestral domain and the ancestral lands (in the nature of *waqf*) of indigenous cultural communities subject to the Constitution and national policies.⁵⁷

⁵⁴ Musib Buat, *Management of Awqaf Properties in the Philippines*, 104.

⁵⁵ Organic Act, R. A. No. 6734, Article XIII, Section 21.

⁵⁶ *Ibid.*, Article XV, Section 8-9.

⁵⁷ *Ibid.*, Article XI, Section 1.

Aside from the above-mentioned institutions, the Department of Education and Culture created the Fund Assistance to Private Education (FAPE) which assists in the promotion of private education. The FAPE has been engaged in the advancement of research and education through the Government support and from endowments abroad. It is also involved in the current program for the accreditation of the Arabic and Islamic schools with the cooperation of the National Commission on Muslim Filipinos (NCMF).⁵⁸

Conclusion

The development and administration of *waqf* in the Philippines has a chequered record. Despite the non-recognition of the Islamic *waqf* law, the *waqf* institution had contributed to the cause of Islam in the Philippines and against the cultural invasion of the Spanish and American colonialism through the support of mosques and activities such as holding religious meetings and dialogues. It also helped the recovery of Islamic culture, values and injunction.

The development of *waqf* in the Philippines is strikingly different with the position of other legal institutions in the country. The *waqf* institution helps further the cause of Islamic education and research through the establishment of *madāris* and Muslim integrated schools. Due to the support of the *waqf* fund in promoting the Islamic education and research, there was a significant development of the Islamic law and jurisprudence in a non-Islamic state like Philippines. However, the development and administration of *waqf* has its own shortcomings. As mentioned earlier, there is no specific provision of law regulating the management and development of Muslim *awqāf* properties in the Philippines. There is no special government office to manage the *awqāf* properties of the Muslim community. There are numerous departments established by the Government such as the Department of Health, Department of Social Welfares, and other public offices running their respective programs in the whole country which are generally intended for all citizens.

The statutory laws which regulate organizations and the welfare of charitable institutions in the Philippines are applicable to all creeds. In other words, there is no difference between the Muslim and Christian trusts under the Philippine laws. Thus, the *waqf al-khayrī* which is purely created for charitable, religious and pious purposes is not subject to any

⁵⁸ Musib Buat, 104

taxes imposed by the Government. This is not so, in the case of *waqf al-ahlī* which is created only for the benefit of the members of the founder's family unless approved by the Security Exchange Commission as a foundation. Without such approval, the *waqf al-ahlī* does not fall within the definition of charitable institution provided under the Philippine laws. An institution formed under the *waqf al-ahlī* is classified as Stock Corporation and the income can be subject to all taxes.

It can be concluded also that the development of the *waqf* in the Philippines is slow and the administration is far backward. Some of the *waqf* properties have not been developed in the form of profiting project or output to overcome the economic backwardness of Muslim Filipinos. The main reasons that impede this development are:

- 1.) Majority of the Muslim Filipinos do not understand the importance of *waqf* in the society;
- 2.) the 'ulamā' failed to impart to the people through seminars, conferences and training the significance of the *waqf* and its contribution to the Muslim Ummah;
- 3.) lack of loans that can be used as capital without interest (*ribā'*);
- 4.) lack of officials, who are qualified and dedicated in developing the *waqf* properties;
- 5.) lack of technical assistance from any private or government institutions.

Thus, only few Muslims, especially the rich are willing to give their lands and properties as *waqf*. Other *awqāf* properties are being developed and managed by some individuals, private institutions and religious organizations as trustees. All *awqāf* properties under the management of the Markāz al-Shabāb are *waqf al-khayrī*, and they are administered in accordance with the Islamic law. There are only few *awqāf* properties which can be classified as *waqf al-ahlī* in the Philippines. It seems that family *waqf* has not been properly encouraged and spread out by the 'ulamā'. According to some of them, family *waqf* should have never been allowed because some of the *mutawallis* or administrators are ignorant of the Islamic law, while others are unscrupulous in spending the funds of the family *waqf*.

Policy Recommendation

With these findings, the following recommendations may make it possible to develop the management of the *awqāf* properties in the Philippines:

- 1.) The Muslim political and religious leaders should take a step again to make a resolution to the national government for the creation of a statutory body like a *Waqf* Board to oversee and supervise the management of the *awqāf* properties in the country for Muslims' education and economic development.
- 2.) If the national government does not allow it, at least, the Mindanao Autonomous Region, through the Regional Assembly will make a legislative enactment for the creation of the *Waqf* Board or *Waqf* Consultative Council. Proposal for the recognition of Muslim *waqf* is possible because the *waqf* is the alienation of income produced in perpetuity to benefit, although not always immediately, a religious or pious cause. All the endowments whether public or family *waqfs*, should be put under the jurisdiction of the *Shari'ah* courts. The *Shari'ah* judges have the right and the responsibility to inspect the *waqf* and not to be left with the different private organizations in view of the potential corruptibility of the members and officials.
- 3.) The '*ulamā*' and the religious organizations should set up an advisory services and to a conduct series of lectures and seminars on the *waqf* laws for the benefit of the *waqf* founders and *mutawallis* for proper management and preservation of the *awqāf*, for the maximization of their socio-economic returns.
- 4.) Publication of the *waqf* books in different Muslim ethnical languages. It is important for all Muslims to know that dedicating their properties for charitable purposes will contribute to the socio-economic, educational and cultural fields of the Muslim societies.
- 5.) Resolution for the integration of the *madāris* or Muslim schools into the Philippine system of education. Doing so, every madrasah can be more developed and the Muslim system of education can also be used in all that are areas predominantly by Muslims.
- 6.) To support the Government grant-in-aid funds to the National Commission of Muslim Filipinos and the Autonomous Region of Muslim Mindanao for the rehabilitation and reconstruction of the *madāris* and mosques that were destroyed by

the Christians and the Government armies during the Mindanao conflict.

- 7.) Once the *waqf* is socially acknowledged for its role in eradicating poverty and maintaining Islamic institutions, the Philippine Amanah Bank must introduce new product to manage the contributions of Muslim government employees, businessmen and private individuals to be used for other *awqāf* projects.

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