Governance and accountability in *awqaf* institutions

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Abstract

Along with the revival of *waqf* (plural *awqaf*) institution, the attention to the call for good governance and best practices of *waqf* has emerged. It is widely agreed that the best practice of good governance should be adopted as it is one of the critical success factors for revitalizing *awqaf* institutions (Kahf, 2007; Cajee, 2007). As far as *waqf* study is concerned, there is no existing study on *waqf* governance. This is probably because the conception of governance was used exclusively in the commercial sectors. As a matter of fact, governance in charitable and not-for profit organizations is much related to demonstrating accountability to stakeholders.

Reaching a sound discussion of governance and accountability therefore hinges on having a sound understanding of the concept of accountability. However, defining accountability in *awqaf* context might be elusive as it is placed in religious setting and involves various stakeholders with different interests. Yet some authors believed that the concept of Islamic dual accountability is appropriate to explain the accountability concept in *awqaf* (Hisham, 2006; Ihsan, 2007). Nevertheless there is no further study undertaken to operationalize Islamic accountability in *awqaf* institutions.

The aim of this paper is to explore the major themes that form the basis of discussion on governance and accountability in *awqaf*. This paper comes up with some ideas relating to governance framework of *awaqf* which can demonstrate Islamic accountability.

Key words: *Awqaf, Governance, Islamic accountability*

1. Introduction

The institution of *waqf* (plural *awqaf*) in Islam is one of the principle means to alleviate the poverty problem in the society besides *zakat* (compulsory charity) and *sadaqah* (optional charity). It is believed that *waqf* can be an effective system for poverty eradication by improving non-income aspect such as health, education etc. as well as increasing access to physical facilities, resources and employment (Sadeq, 2002). Unlike other charities which get spent in consumption, *waqf* is unique where the corpus of *waqf* should be remained as capital. This is in line with Kahf (2003) who is widely cited in defining *waqf* as "[h]olding certain property and preserving it for the confined benefit of philanthropy and prohibiting any use or disposition of it outside its specific objective". In nature, *waqf* is categorized as public sector but non-governmental (Kahf, 2007). In addition to this, the establishment of *waqf* is very simple whereby the deceleration by the founder is considered enough to create a *waqf* (Rashid, 2008). *Waqf* therefore had become part of Muslim's life and the best endowment system in the past.

It was the colonization of Muslim lands which had brought the declination of *waqf* for centuries. Many *waqf* assets were taken over by the colonial governments (Rashid, 2008). Colonization had also given consequence to moral degradation of the *mutawalli*[4] which led to the mismanagement of *waqf*. Not surprising therefore *waqf* assets were misused or even lost. Rashid (2008) notes that there are many cases in Muslim countries where *waqf* assets were occupied illegally.

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[4] Those who are administering *awqaf*. Sometimes is also called nazheer.

Fortunately, it has been witnessed in the last few years that the revitalization of *waqf* institution has been on agenda of Muslim communities around the world. There is an awareness of *waqf* revitalization which emerged amongst Muslim countries. The governments of Muslim countries have realized the need for *waqf* revival in order to create a better society. In addition to this, plenty international *waqf* conferences[5] which were held by Islamic Development Bank (IDB) through its subsidiary organ the Islamic Research and Training Institute (IRTI) indicates a growing interest and awareness in *waqf* institutions as one of the tools for community development (Cajee, 2008).

Along with the revival of this historic institution, the attention to the call for good governance and best practices of *waqf* has emerged. It is widely agreed that the best practice of good governance should be adopted as it is one of the critical success factors for revitalizing *awqaf* institutions (Kahf, 2007; Cajee, 2007; Ihsan, Ayedh and Shahul, 2006). However, as far as *waqf* literature is concerned, there is no existing study on *waqf* governance. It is only in the last few years the governance issue in not-for profit and charitable sectors being promoted (Hyndman and McDonnell, 2009). Speckbacher (2008) aggress that research on governance mechanism in the nonprofit sectors is relatively underdeveloped. Apparently, the discussion about governance in charitable and not-for profit organizations is much related to demonstrating accountability to stakeholders (Stone and Ostrower, 2007; Hyndman and McDonnell, 2009). It is therefore, a better understanding about accountability in *awqaf* in very important in this regard.

This paper aims at exploring the major themes that form the basis of discussion on governance and accountability in *awqaf*. In doing so, the existing studies on accountability and governance in charitable and not-for profit organizations are reviewed. In addition to this, the theoretical underpinnings relating to Islamic accountability and governance are also examined. This paper comes up with some ideas relating to governance framework of *awaqf* which can demonstrate Islamic accountability.

2. Governance perspective in nonprofit and charitable organizations

The term "governance" was derived from the Latin word *gubernare*, literally meaning to "direct", "rule" or "guide" (Hyndman and McDonnell, 2009). In the broad sense, governance refers to the relationship between the governors and the governed at the basis the decision making by individuals to those in authority (Lewis, 2005). According to Iqbal and Lewis (2009), the conception of governance has been used in various contexts such as monetary governance (the making of monetary policy), economic governance (to ensure the smooth of market economy), public governance (ensuring efficiency in the public sectors) and corporate governance (ensuring the effective functioning of market and enterprises).

Although governance is a very prominent concept, the definitions of governance are hardly found in the nonprofit research literature (Stone and Ostrower, 2007). The reason is probably because the conception of governance was exclusively used in the commercial and public sectors. So far, the conception of nonprofit governance overlaps with public governance. However, Stone and Ostrower (2007) argue that there should be a clear - cut between these two conceptions as the governance system in nonprofit sectors comprises board of directors.

There could be two possible methods to develop governance conception in nonprofit sectors. First, as the governance system in nonprofit encompasses board of directors, the perspective of governance from business sectors can be adapted (Hyndman and McDonnell, 2009). In this sense, the paradigm of principal-agent theory might be relevant. Apparently, the principal- agent theory suggests that the suppliers of finance to corporation need to assure themselves of getting return on their investment. However, it is inapplicable for nonprofit and charitable sectors where the donors do not expect any financial return from what they have donated. Therefore, Hyndman and McDonnell conclude that the "return" could be viewed as the money being spent for the purpose of donation. In other words, the dimension of governance is to demonstrate accountability of boards to their donors.

Secondly, public governance literatures can strengthen nonprofit governance (Stone and Ostrower, 2007). Public governance entails formal and informal relationships which exist inside and outside public hierarchies. Stone and Ostrower believe that nonprofit sectors also emphasize formal and informal power relationships. They assert that nonprofit governance involves the relationships between board and staff. In addition to this, the composition of board; its responsibility and effectiveness are the issues in nonprofit governance. Stone and Ostrower further underline governance in nonprofit organizations is the province of boards of directors and its relationships with organizational level control, accountability and managing resource dependencies. Similarly, Hyndman and

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[5] Recently, there were a number of *waqf* conferences held by IRTI i.e. in Singapore (2007), Bangladesh (2007), South Africa (2007), Dubai (2008), Iran (2008) and some other countries.

McDonnell (2009) state that governance is the methods by which the organizations are accountable. In other words, governance is the operationalization of accountability. It is therefore, the conception about accountability should be clear in the first place.

From managerial perspective, Sinclair (1995) defines accountability as the requirement to those with delegated authority to be answerable for producing outputs or the use of resources to achieve certain ends. Cutt and Murray (2000) believe that formal definition of accountability presumes the existence of at least two parties, one who allocates responsibility and one who accepts it with undertaking to report on, account for, the manner in which it has been discharged. In the charitable sectors contexts, Cordery and Morley (2005) argue that the trustee should demonstrate accountability to various groups of stakeholders such as donors, government, beneficiaries and public at large.

Although the above conception of government and accountability (from hereafter is referred to as conventional governance and accountability) seem appropriate for *awqaf*, they fail to demonstrate accountability in Islamic perspective for some reasons. The discourse about accountability and governance from Islamic perspective will be discussed in the following section.

3. The Qur'anic principles of accountability and good governance

This section will be preceded by discussion about accountability in Islam. Accountability is a central theme in Islam since the accountability to Allāh and the community is paramount to a Muslim's faith Lewis (2006). Askary and Clarke (1997) asserted that the word *hisab* which is interrelated with account and accountable is repeated more than eight times in different verses in the Qur'an.

As mentioned earlier, the conventional conception of accountability has some limitations to demonstrate Islamic accountability. Firstly, according to Al-Safi (1992) man-made definition of accountability is aimed to establish a certain material status for the individual and community. Indeed, accountability in Islam (*taklif*) can be seen as everyone is accountable for their actions on the Day of Judgment. Similarly, Haniffa (2001) takes the view that the ultimate accountability in Islam is to Allāh since all deeds will be counted in the hereafter. Haniffa supported her idea through the following verse of the Holly Qur'an: "To Allāh belongs all that is in the heavens and on earth. Whether you show what is in your minds or conceal it, Allāh will call you to account for it" (Qur'an, Al-Baqarah 2:284).

The second reason why conventional accountability might not be appropriate is because in the western society, fulfilling accountability is regarded as nothing to do with religious matters. Lehman (2004) analyses that the current western societies have neglected the religious dimension in their social systems. While in Islam, rendering an account to discharge accountability is identified as part of *ibadah* (servitude to Allāh) and *amal saleh* (virtuous deeds) in attaining *al-Falah* (benefit for the people in this world and the hereafter (Haniffa, 2001). Due to the conventional accountability does not show accountability to Allāh, Shahul (2000) therefore, comes up with the proposal of dual accountability where as Allāh's *khalifah,*[6] human beings are being accountable for all resources entrusted; besides they should fulfill any contract made among them. Shahul named it Islamic accountability. This conception will lead to some principles of good governance in Islam.

The basis of good governance in Islam is the concept of the absolute unity of God (*tawhid*). Actually *tawhid* is the very foundation of Islam whereby other principles depend on it. Philips (1994) notes that if *tawhid* is not sound, the rest of one's Islam will become pagan rituals. Hence in the context of governance an individual must seek the guidance from the Creator of the universe in fulfilling the obligation to the society. *Tawhid* will lead mankinds to aware that their existence on the earth is as the *khalifah* (vicegerent or representative of God). Therefore, from the principle of *tawhid* and Qur'anic verses Zein et al (2008) derive some good governance principles. The first principle is *amanah* or trust to fulfill. According to Zein et al, *amanah* basically is a contract between God and man since it is mentioned in the Qur'an that God has given the trust to the mankind where the heavens, the earth and mountains refused to accept because they were afraid of the heavy burden (Qur'an 33:72). Moreover the Qur'an has reminded the believers not to betray the *amanah* delegated to them (8:27). The concept *amanah* will determine the individual's relationship with the society. If an individual really understand the concept of *amanah*, the issues regarding the rights and responsibilities can be resolved. The fulfillment of *amanah* would bring to *adalah* (justice). Thus, *adalah* is the second principle in good governance.

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[6] Khalifah : vicegerent

The importance of *adalah* in governance has been revealed in verse 4:58 of the Qur'an. *Adalah* is very crucial because in society there is always potential conflict among the member of the society. Also in the context of manager and staff the conflict could occur. Therefore Islam encourages those who are entrusted *amanah* to deal with people within the concept of justice or *adalah*. However, sometime it is difficult to achieve a just system due to subjective decision of human being. Therefore Qur'an provides guideline how to make decision making i.e. through *shura* or mutual consultation. The following verses of Qur'an have revealed that every decision made should base on consensus:

> "And consult them on affairs (of moment). Then, when thou has taken a decision, put thy trust in Allah" (Al-Imran 3:159).

> "Those who respond to their Lord and establish regular prayer, who (conduct) their affairs by mutual consultation; Who spend out of what We bestow on them for sustenance (Ash *Shura* 42:38)

The spirit of these verses has explained how the decision making process should be conducted. Since Qur'an specifies that the decision making involves more than one party, the leaders must encourage others to participate in the process (Iqbal and Lewis, 2009). The concept of *shura* goes beyond the principle of democracy where *shura* give emphasis on justice, not only for human being but also for the whole environment (Zein, et al, 2008). Moreover, *shura* should always be conducted within the perspective of revelation (Qur'an) and Prophetic guidelines (sunnah).

The aforementioned principles actually had been introduced and practiced by the Prophet and his companions. For sure, there was no such expression in Arabic to represent the word "governance". Khan and Syed (2007) state that *towliat* has similar meaning with governance. While, Sourial (as cited by Lewis, 2005) noted that the word *hakama* might be the closest terminology for governance. Regardless of the terminology, the Prophet had laid down the basis of good governance in the earliest Islamic state. The following example provides the vivid example of good governance in *awqaf* in the earliest Islamic state.

4. The earliest *waqf* foundation and the dimension of good governance

Before discussing the dimension of good governance in the earliest *awqaf*, it is most essential to understand the origin of this institution. Gil (1998) argues that learning about the earliest of *waqf* will help in getting a better understanding of this contemporary institution. Cizkaca (1997) is of the same view where he believes that institutional reform of *awqaf* must be preceded by having thorough understanding of *waqf* in the historical dimension.

Apparently, there was no clear stipulation with regard to *waqf* practice to be found in the Qur'an. It was indeed through the Prophetic tradition (hadith) the technique of giving away a property being suggested (Rashid, 2002; Jahar, 2006). Although there is a debate among scholars and historians as to where the origin of charitable endowments come from (Mohammad, 1983; Cizkaca, 1997), a prominent endowment by Umar ibn al-Khattab was regarded as the first foundation of *waqf* institution (van Leeuwen, 1999). This fact was supported by the following hadith which was narrated by Ibn Umar:

> Ibn Umar reported: Umar acquired a land at Khaibar. He came to Allah's Apostle (may peace be upon him) and sought his advice in regard to it. He said: Allah's Messenger, I have acquired land in Khaibar. I have never acquired property more valuable for me than this, so what do you command me to do with it? Thereupon he (Allah's Apostle) said: If you like, you may keep the corpus intact and give its produce as Sadaqa. So Umar gave it as Sadaqa declaring that property must not be sold or inherited or given away as gift. And Umar devoted it to the poor, to the nearest kin, and to the emancipation of slaves, aired in the way of Allah and guests. There is no sin for one, who administers it if he eats something from it in a reasonable manner, or if he feeds his friends and does not hoard up goods (for himself) (Muslim,Shahih Muslim, undated).

Although in the aforementioned hadith the Prophet (peace be upon him) used the word "sadaqa" instead of '*waqf*', actually the both words can be used in the same sense which refer to perpetual immobilization the property for pious purpose (Gil, 1998). In addition, the words *boniyad* and *habs* are used extensively in Iran and North Africa respectively to describe this activity (Cizkaca, 1997). Despite there are slightly variations in terms of names, the above hadith has clearly defined what *waqf* is.

With reverence to the abovementioned hadith, *waqf* property is not addressed for personal enjoyment but rather for the needs of the poor, travelers and fighters for the sake of Allah. Simple interpretation of this hadith is the *Ummah* is beneficiary and the stakeholders of *awqaf* (Gil, 1998). In addition, it is only the revenue of *waqf* can be distributed to the beneficiaries, while the corpus cannot be sold, transferred or inherited. It implies that *waqf* trustee should ensure that *waqf* property is managed productively. Otherwise the corpus will diminish and cannot fulfill the objective of *waqf*.

Regarding *waqf* management, Abu Yusuf, one of Hanafi jurists concluded that the founder can appoint himself as the trustee of *mutawalli*. This opinion is justified by the fact that Umar distributed the revenue of *waqf* himself during his lifetime (van Leeuwen, 1999). While for his successor, Umar appointed his daughter, Hasfa to manage *waqf* assets. Hanafi School interpreted that as long as there is qualified relative of wāqif can be appointed to handle *waqf*, a stranger should not be appointed as a *mutawalli* (Khan and Syed, 2007). Moreover, it is mentioned in the hadith that *mutawalli* can benefit from *waqf* revenue as long as it is not enriching himself.

It is indeed the principle of good governance and accountability had been applied by the Prophet in *waqf* management. Although *waqf* history does not specifically highlight these issues, Iqbal and Lewis (2009) believe that good governance and accountability had become the basic principle in every single activity of the earliest Muslim society. One of the principles of good governance which can found in *waqf* of Umar is *shura* or consultation (Zein, Al-Hasan and Zakaullah, 2008) i.e. when Umar consulted the Prophet (pbuh) the best way to endow his assets. This tradition had been followed by other Prophet's companions when they wished to create *waqf* (van Leeuwen, 1999).

When the Prophet (pbuh) allowed the one who administer *waqf* assets to benefit from *waqf* revenue, in condition as long as not enriching himself, it relates to the principles of *adalah* or justice in good governance (Zein et al 2006). It is true that *mutawalli* manages *waqf* assets to serve the needs of the *ummah*. But leave him alone unpaid will be unfair. Therefore, the *mutawallis* deserve for some remuneration.

Another principle of good governance is *amanah* or responsibility (Zein et al, 2008). Perhaps this principle had motivated Umar to distribute *waqf* revenue during his life time and appointed his daughter as his successor. Umar wanted to ensure that the objective of *waqf* can be achieved. Moreover, this evidence also indicates that accountability had become the basis of *waqf* of Umar. Zein et al note that *amanah* is the basis of accountability.

The historical record of *waqf* of Umar indicates that the principles of good governance and accountability had been applied in managing *waqf*. Of course *waqf* foundation at that time was very basic and simple. But one should bear in mind; the foundation of Umar has become the basis example of *waqf* institution today. In the following section we will discuss the building blocks of Islamic governance in *awqaf* institutions which can discharge accountability.

5. The framework of Islamic governance for *awqaf*

Having discussed the conception of accountability and basic principles of good good governance in Islam, now we turn to elaborate how these could be applied to the *waqf* context today. The basic principles of good governance such as *amanah*, *adalah* and *shura* can be interpreted into the basic building blocks of Islamic governance namely institution of *shura*, monitoring institution and *shariah* audit (Iqbal and Lewis, 2009).

Shura as a principle and institution is meant to meet the Islamic moral value decision making (Abdul Rahim, 1998). Since Qur'an specifies that the decision making involves more than one party (3:159), the leaders must encourage others to participate in the process (Iqbal and Lewis, 2009). In the context of *awqaf*, it can refer to the board of trustees[7]. It should be noted that *mutawalli* is responsible to various stakeholders. Hisham (2006) and Ihsan (2007) identify the stakeholders of *waqf* as wāqif, *waqf* board, regulator, beneficiaries, and community in large. It might be difficult to invite all elements of the stakeholders on board in order to ask their participation in decision making. However there could be an alternative to achieve the objective of *shura* in *awqaf*. The member of board of trustee should consist of the representative of the major group *waqf* stakeholders. Cajee (2007) identifies wāqif, *mutawalli*, regulator and beneficiaries as the major stakeholders of *awqaf*. Hence, *shura* involves the elections or consultations to select representatives to discuss and formulate policy on the ummah's behalf (Iqabal and Lewis, 2009). According to Askari and Taghavi (as cited by Iqbal and Lewis, 2009), a system of governance

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[7] There are two types of *waqf* i.e. *waqf* ahli (family *waqf*) and *waqf* khairi (public *waqf*), but the discussion here is limited to *waqf* khairi. The context of board of trustees might not be appropriate for *waqf* ahli as it is only involved several people in certain family.

with pluralistic governing body will enable the *ummah* to prevent particular person or group from the seizing control over the community.

In order to ensure that *mutawalli* has managed *waqf* properly, the monitoring institution should be erected. In the economic matters this institution is represented by hisbah institution (Iqbal and Lewis, 2009). During the Prophet (pbuh) time, institution of hisbah had significant role in controlling trade and economic practices. Probably, the same institution for *waqf* is qadi or judges (Khan and Syed, 2007). Yayla (2007) notes that the institution of qadi had played significant role in monitoring waqf during the Ottoman Empire. At that time, *waqf* was under direct supervision and inspection of the qadi both politically and economically as qadi was the representative of the Sultan. According to Khan and Syed, qadi has the authority to appoint, monitor or even replace the *mutawalli* if he found that *mutawalli* mismanaged *waqf* property. However, qadi cannot remove *mutawalli* merely on the complaint of beneficiaries, unless there is a proof of breach of trust.

Another institution for good governance is *shariah* supervisory process and *shariah* audit. It was mentioned before that *mutawalli* is accountable to Allah and human beings. The metaphysical nature of accountability to Allāh does not imply that it has nothing to do with reporting. Cutt and Murray (2000) state that, in nature, accountability manifests itself as information through management information systems and associated methods of analysis and evaluation. It is true that all deeds are recorded by the Angels and account to Allāh (Al-Qu'ran Qaf 50:17-18). But the accountability to Allāh (*Hablun min Allāh*) is interrelated accountability to human beings (*hablun min An-nas*) (Hassan, 1995 as quoted by Abdul Rahim, 2003). Therefore, in this sense a clear reporting from *mutawalli* will enable the user to see how compliant he is to the *shariah* rules in managing the *waqf* assets. To convince the stakeholders about *shariah* compliance of *waqf* management, *shariah* advisory services and *shariah* auditing should be in place.

The relationship of basic the building blocks of good governance and the principles can be drawn into the following figure:
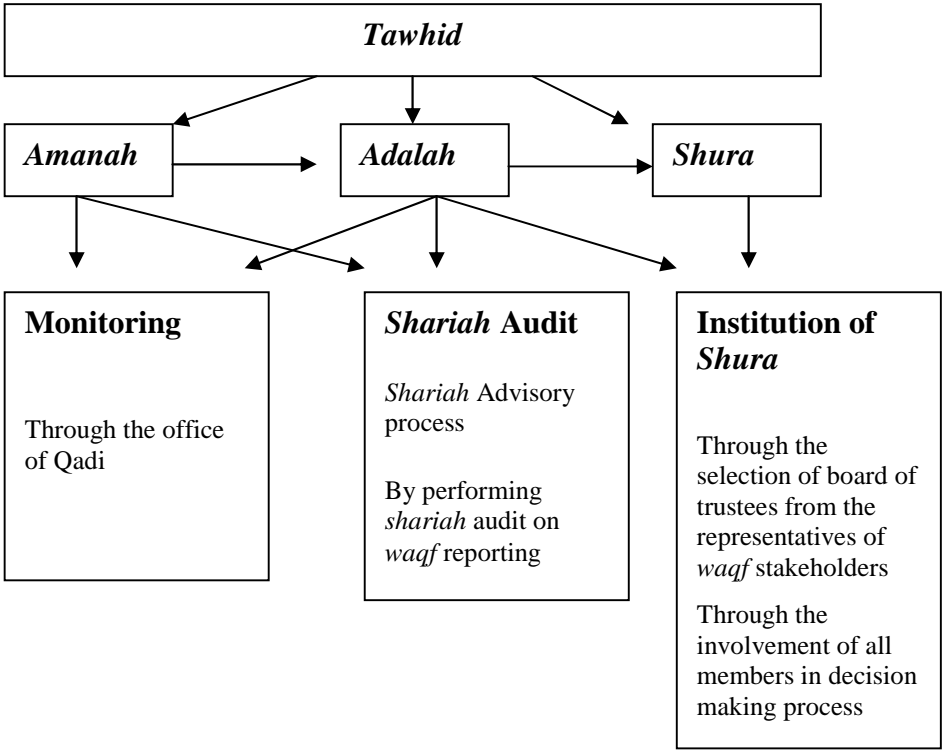
Figur: The framework of *waqf* governance

The *waqf* governance framework also explains how to discharge dual accountability. The application of concept *shura*, *adalah* and *amanah* in good governance will assist the *mutawalli* to fulfill accountability to Allah as all these principles are from revelation. In addition, accountability to Allah can be discharged through the fulfillment of all Allāh's commands and avoidance of His prohibitions (which is guided by Qur'an and hadith). For instance, in managing *waqf* assets, *mutawalli* cannot violate *shariah* rules. While at the same time, *mutawalli* should show his accountability to the *Ummah* in fulfilling *waqf* objective as wāqif whishes. Besides, *mutawalli* has to ensure that *waqf* will contribute to the betterment of Muslim society.

6. Conclusion

There is a consensus among scholars that the good governance should be adopted for *waqf* as it is one of the critical success factors for revitalizing *awqaf* institutions. Although the conception of conventional governance seems appropriate for *waqf*, it fails to demonstrate Islamic accountability. Hence the basic principle of governance and accountability from Islamic perspective has been discussed in this paper. Actually the cornerstone of good governance in Islam had been laid down by the Prophet (pbuh) and his companions in the earlier Islamic state. Good governance and accountability had become the basic principle in every single activity of the earliest Muslim society. Some basic principles of good governance derived from Qur'an are *amanah*, *adalah* and *shura*. From these principles, the framework of Islamic good governance can be built as institution of *shura*, monitoring institution and *shariah* advisory and audit. The application of the framework into *waqf* institutions can discharge dual accountability of *mutawalli* i.e. accountability to Allah and the society. A further study can be conducted to investigate as to how the Islamic good governance has been practiced by *awqaf* institutions.

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