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Types of Waqf from the Perspective of Fiqh and Regulation in Indonesia

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Abstract: *This study examines the various forms of waqf from the perspective of Islamic jurisprudence and Indonesian legislation. The research stems from the general understanding that waqf only involves immovable assets such as land and buildings. The purpose of this study is to analyze the expansion of waqf objects to include movable assets such as cash, precious metals, securities, vehicles, and intellectual property rights, and to review their validity according to the Four Madhhabs* ***a****nd Indonesian law. The research employs a qualitative library method, analyzing primary sources such as legislation and fiqh books, and secondary sources from academic journals and literature. The results indicate that most of the Four Madhhabs, Hanafi****,*** *Maliki, Shafi'i, and Hanbali, permit movable waqf as long as it provides lasting benefits and complies with sharia principles. The study concludes that the legal framework established through Law Number 41 of 2004 and its implementing regulations strengthens waqf as a productive economic instrument for community welfare and sustainable development.*

Keyword: *waqf, Immovable property, Four madhhabs*

INTRODUCTION

In Islamic teachings, an attitude of mutual assistance between Muslims is commanded by Allah SWT, with the aim of creating an attitude of mutual love between Muslims. One charity that can bridge the gap between people who have excess assets and those who need assets for the benefit of the people is through a waqf. As for the implementation of waqf, Muslims adhere to the legal basis for implementing waqf, namely the Qur'an, Surah Al Baqarah, verse 261, Surah Ali Imran, Verse 92, Surah Al Hajj, Verse 77 and the hadith of the Prophet Muhammad SAW which was narrated by

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Imam Muslim as follows: "If a person dies, then his deeds are terminated except for three things (namely): almsgiving, knowledge that is used, or the prayer of a pious child." (HR. Muslim). One of the good deeds that Muslims can do based on this hadith is by giving a waqf.

Waqf is an alternative to the people's economy that has been implemented since the time of the Prophet Muhammad. Two histories explain who was the first to implement the waqf law. The first was Rasulullah SAW, who donated land on which to build a mosque in Quba. The second was Umar bin Khattab, who donated his land in Khaibar, which contained a date palm garden, and the benefits of the date palm garden were donated (donated) to the people. The example of Umar bin Khattab's waqf is the background for productive waqf today (Ulum et al., 2024).

Historically, a waqf is an Islamic social institution that functions to distribute wealth for the public good and the welfare of the community. For centuries, the public's understanding of waqf was often limited to immovable property such as land for mosques, madrasas, and tombs (Mujakir & Hidayatullah, 2022). This understanding aligns with classical Middle Eastern customs, where waqf primarily utilizes agricultural land and buildings.

However, the development of the Islamic economic system has encouraged the expansion of waqf objects. (Zahara, 2019). The public's understanding of waqf, which was often limited to immovable property such as land for mosques, madrasas, and graves, was subsequently changed by the government. Through the creation of regulations in Law Number 41 of 2004 concerning Waqf, the Indonesian government emphasized that waqf assets can be either movable or immovable (Arif, 2025).

It can be further explained that the waqf of movable property has now become a productive economic instrument in social development. (Rafiqi, 2018). The movable objects referred to include money, precious metals, securities, vehicles, machinery, or industrial equipment that is not attached to land, intellectual property rights, lease rights, and other movable objects (Fahmi Fikri & Noor, 2012)This condition illustrates a paradigm shift from "consumptive waqf" to productive waqf that is oriented towards community empowerment (Manan, 2016).

Based on this description, this study aims to address the legal provisions for waqf on movable property. This study is reviewed from a sharia perspective and applicable laws and regulations, taking into account its utility value and long-term benefits.

METHOD

This study uses a qualitative research method with library research analysis. Qualitative research is about questioning pre-existing variables (which are taken for granted), but also about making new distinctions about any phenomenon, for example, by creating new concepts, including the identification of new variables. (Aspers & Corte, 2019). Zed in (Sari & Asmendri, 2020) Qualitative research is divided into two. First, there is field research, where a literature search is the initial step in preparing a research framework that aims to obtain information on similar research and deepen theoretical studies. Second, there is library research, which is a research activity carried out by collecting information and data with the help of various materials available in the library, such as reference books, results of previous similar research, articles, notes, and various journals related to the problem to be solved. Research is carried out systematically to collect, process, and conclude data using certain methods/techniques to find answers to the problems faced. (Sari & Asmendri, 2020).

The data used in this study were drawn from two sources: primary data sources in the form of Law No. 41 of 2004 concerning waqf and books on Islamic jurisprudence (Fiqh) in the Shafi'i school of thought. Secondary sources included articles and journals. Data collection from these two sources involved several steps, starting with documenting the data, then classifying it according to the order of discussion, and ending with interpretation to answer several key questions addressed in this study.

RESULTS AND DISCUSSION

The word "Wakaf" or "Waqf" comes from the Arabic word (waqafa). The root word (waqafa) means to hold, stop, stay in place, or remain standing. The word (waqafa/yaqifu/waqfan) has the same meaning as "Habas-Yahbisu-Tahbisan". The word

al-waqf in Arabic has several meanings, namely to hold, to retain property for waqf, and not to transfer ownership (Latifah & Jamal, 2019).

A. Legal Basis of Waqf

Legal Basis of Waqf in the Qur'an:

Surah Al Baqarah Verse 261

مَّثَلُ ٱلَّذِينَ يُنفِقُونَ أَمۡوَٰلَهُمۡ فِي سَبِيلِ ٱللَّهِ كَمَثَلِ حَبَّةٍ أَنۢبَتَتۡ سَبۡعَ سَنَابِلَ فِي كُلِّ سُنۢبُلَةٖ مِّاْئَةُ حَبَّةٖۗ وَٱللَّهُ يُضَٰعِفُ لِمَن يَشَآءُ وَٱللَّهُ وَٰسِعٌ عَلِيمٌ

The parable of (the income spent by) those who spend their wealth in the way of Allah is similar to a seed that grows seven spikes, in each spike a hundred seeds. Allah multiplies (rewards) for whom He wills. And Allah is All-Encompassing (His bounty) and All-Knowing.

Surah Ali Imran Verse 92

لَن تَنَالُواْ ٱلۡبِرَّ حَتَّىٰ تُنفِقُواْ مِمَّا تُحِبُّونَۚ وَمَا تُنفِقُواْ مِن شَيۡءٖ فَإِنَّ ٱللَّهَ بِهِۦ عَلِيمٞ

You will never reach (perfect) virtue until you spend some of the wealth you love. And whatever you earn, Allah knows it.

Surah Al Hajj Verse 77

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ ٱرۡكَعُواْ وَٱسۡجُدُواْ وَٱعۡبُدُواْ رَبَّكُمۡ وَٱفۡعَلُواْ ٱلۡخَيۡرَ لَعَلَّكُمۡ تُفۡلِحُونَ

O you who believe, bow down, prostrate yourself, worship your Lord and do good deeds, so that you may be victorious.

B. Legal Basis of Waqf from the Hadith of the Prophet Muhammad SAW

"From Ibn Umar ra, said: "That a friend of Umar ra, obtained a plot of land in Khaibar, then Umar ra, went to Rasulullah SAW to ask for guidance, Umar said: "O Rasulullah SAW, I got a plot of land in Khaibar, I haven't got such good wealth, so what do you order me to do?" Rasulullah SAW. said: "If you like it, you keep (basically) the land, and you give it (the results) in charity, not selling it, not giving it away, and not inheriting it. Ibn Umar said: "Umar gave it (the results of managing the land) to the poor, relatives, servants, sabilillah, Ibnu sabil, and guests. "And it is not prohibited for those who manage (nazhir) waqf to eat from the proceeds in a good (appropriate) manner or to feed other people without the intention of accumulating wealth" (HR. Muslim)."

C. Definition of Waqf

Based on the phenomenon of waqf, fiqh experts have different opinions on defining waqf. Several definitions of waqf, according to fiqh experts, are as follows:

a. Zainuddin in (Wahib, 2019) Explains that the Waqf, according to Abu Hanifah. Waqf, according to Abu Hanifah and some scholars of the Hanafi school: "Retaining an object whose status remains the property of the waqif (the person who donates his property), and donating the benefits of the object for the path of goodness."

   With this definition, waqf goods do not have to be separated from the waqf's ownership, and waqf goods do not have to be separated from the waqf's ownership, and waqf goods can be taken back and sold. The most valid reason, according to Abu Hanifah, is that waqf is permissible and not binding like lending and borrowing transactions. If we look closely at the definition of waqf in the Hanafi school of thought, we can conclude that the ownership of waqf objects remains in the hands of the waqf, and only the benefits are donated.

b. Ali Fikri in (Wahib, 2019) According to the Maliki school of thought, waqf is defined as "the transfer of the benefits of an owned object, whether in the form of rent or proceeds, to the rightful owner, with a specified time limit according to the waqif's wishes." This means that the owner of the property retains the property from being spent on himself, but rather uses it for good, while the waqf property remains in the ownership of the waqif. This applies for a specific period of time, so there is no requirement for permanence. According to the Maliki school of thought, waqf does not terminate ownership rights to the waqf object, but only terminates its use.

c. Zakaria Al-Ansari in (Wahib, 2019) explains that Waqf, according to the Shafi'i school of thought, "Retaining assets that can be benefited accompanied by the permanence of the substance of the object, free from the control of the waqif and used for something permitted by religion. Referring to this definition, the Shafi'i school considers that the waqf object has left the ownership of the waqf and become an item that is retained to belong to Allah SWT. Therefore, the waqf is not permitted to use it for himself and must submit its use for the path of good. This definition is also held by two companions

of Imam Hanafi (Abu Yusuf and Muhammad) and is followed by the Hanbali school, which is considered more valid (ashah).

d. Ali Fikri in (Wahib, 2019) Defines Waqf according to the Hambali school of thought as "Restraining the freedom of the owner of the property to spend his property beneficially, accompanied by the permanence of the substance of the object and cutting off all rights of authority over the object, while the benefits are used for good deeds to get closer to Allah."

The definition of waqf in Indonesia is contained in Government Regulation Number 28 of 1997 concerning the Endowment of Land Ownership (Government Regulation of the Republic of Indonesia Number 28 of 1997 concerning the Endowment of Land Ownership, n.d.), Article 1 number (1) which reads: "Waqf is a legal act of a person or legal entity that separates part of their wealth in the form of land ownership and institutionalizes it forever for worship or other public needs in accordance with the teachings of Islam."

D. Various Assets That Can Be Donated

1. Waqf of Immovable Property

Immovable Property (Al-'Iqar) is an object or property that cannot be easily changed or moved from one place to another. Furthermore, Article 16 of Law Number 41 of 2004 concerning Waqf regulates the types of waqf, which include:

(1) Waqf assets consist of: a. immovable objects; and b. moving objects.

(2) Immovable objects as intended in paragraph (1), letter a, include:

a. land rights in accordance with the provisions of applicable laws and regulations, both those that have been registered and those that have not been registered;

b. buildings or parts of buildings standing on land as referred to in letter a;

c. plants and other objects related to the soil;

d. ownership rights to apartment units in accordance with the provisions of applicable laws and regulations;

e. other immovable objects in accordance with Sharia provisions and applicable laws and regulations.

Meanwhile, in Article 17 paragraph (1) of Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf (Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, n.d.), land rights that can be waqf consist of:

a. ownership rights to land, whether registered or not;
b. building use rights, business use rights, or use rights over state land;
c. building use rights or use rights over management rights or ownership rights must obtain written permission from the holder of management rights or ownership rights;
d. ownership rights over apartment units.

2. Waqf of Movable Assets

One of the immovable assets that can be donated is land, which is a source of all kinds of material wealth, as it can derive various benefits. Land must be managed and utilized for the welfare and prosperity of the people, a mandate mandated by the 1945 Constitution of the Republic of Indonesia, as affirmed in Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). A waqf is the legal act of the waqif (the waqif) to separate and hand over a portion of his waqf assets to be used permanently or for a specified period according to his interests for religious purposes and the general welfare according to Sharia.

Several statements by scholars regarding the validity of the waqf of immovable and movable assets are as follows:

a) Imam Abu Hanifah, and based on the narration of Imam Ahmad, stated that waqf for movable objects is invalid.
b) The Maliki, Shafi'i, and the Hanbali schools of thought, which are well-known among scholars, state that there is no difference between immovable and movable objects in waqf. All of them declare them valid in waqf.
c) The opinion of Abu Yusuf from the Hanafi school of thought states that the only movable objects that are included in the category of legitimate waqf are weapons and animals (horses and donkeys).

d) Meanwhile, the opinion of Muhammad Ibn al-Hasan al-Syaybani from the Hanafi school states that the waqf of movable objects is valid based on the customs of waqf in a place.

Musthafa Ahmad al-Zarqa in (Irawati, 2004) States that the waqf of movable property is divided into two categories:

1) Movable property that is donated follows immovable property, which includes: the donating of an area containing agricultural equipment, animals, and buildings, or the donating of a building containing various equipment, or the donating of land containing various crops. This type of donating is valid from the perspective of donating both immovable and movable property. Similarly, donating weapons and armor is valid according to the Sunnah.
2) Movable property that is donated independently. Movable property endowments in this category are intended to be items that can be used independently, such as books and mushhabs, equipment for washing the dead, ambulances, or anything that can be used for the development of science.

E. Regulations Concerning Waqf of Movable Assets in Indonesia

1. Law Number 41 of 2004 concerning Waqf

Law Number 41 of 2004 concerning Waqf is a very important legal basis for the implementation and management of waqf in Indonesia (Nuridin & Hidayat, 2024). With this regulation, waqf can be implemented in a more systematic and organized manner, thus providing greater benefits to the community. However, challenges in the implementation and management of movable property waqf, as well as the need for better public education, require greater attention so that waqf can become a more effective instrument in improving the welfare of the community.

Law No. 41 of 2004 concerning waqf, Article 16, paragraph (3) explains that movable waqf assets that can be used as mawquf bih (property donated by an individual as one of the pillars of waqf) are as follows:

a) Cash waqf is often called cash waqf. The practice carried out in this cash waqf is to use money as the main capital for the business by means of mudlarabah or mubadla'ah, while the profits are donated to the waqf (Hartanto & Sup, 2021).

More specifically, the definition of cash waqf in the context of regulations in Indonesia is a waqf in the form of movable assets (Law No. 41/2004 concerning waqf, article 16, paragraph 3) in rupiah currency (PP no. 42/2006 concerning waqf, article 22, paragraph 1) through a government-appointed Islamic financial institution (Wakf Law, article 28) that issues a Cash Waqf certificate (Wakf Law, article 29). The management and development of cash waqf assets can only be done through investment in LKS products and/or Islamic financial instruments (Wakf PP, article 8, paragraph 2) which are guaranteed for their integrity by the Deposit Insurance Corporation (Wakf PP, article 8, paragraph 4) or the Sharia Insurance Institution (Wakf PP, article 8, paragraph 5).

b) Precious metals. Precious metals such as gold and silver have valuable selling power. If this precious metal becomes the object of a waqf, then the resulting potential can be beneficial for the community (Rahmah, 2021). The practice of waqf of precious metals is similar to cash waqf. This is feasible given that precious metals were once used as a medium of exchange, in the form of dinars and dirhams. Therefore, investing in precious metals would benefit the Muslim economy if packaged within a waqf transaction.

c) Securities. Securities in this case refer to shares. A share is a piece of paper that serves as proof of partial ownership of a company. Shares represent participation, ownership, or a legal entity in a company. A share is a piece of paper that states that the owner of the share also owns a portion of the rights in the company, regardless of the amount.

d) Vehicles. Vehicles are a means of transportation, whether by land, sea, or air. These vehicles can be objects of waqf because, in principle, they have long-lasting benefits. Vehicles are generally intended for socio-religious purposes.

e) Intellectual property rights. The term intellectual property rights is a translation of Intellectual Property Rights (hereinafter referred to as IPR), which is described as property rights arising from human intellectual abilities. Intellectual property rights waqf is included in the category of productive waqf, namely assets used for production purposes, whether in the fields of agriculture, industry, trade, and services, whose benefits are not directly from the waqf object, but from the net profits

from the development of the waqf, which are given to entitled people in accordance with the purpose of the waqf..

f) Leasehold rights. Leasehold or benefit rights are assets that will be donated in the form of material rights or benefits owned by someone other than the owner of the item. Because the benefits of the item owned by the lessee are not permanent, if someone has the benefit of an item for a certain period of time, either through rent or because the benefit was given by the owner of the item, then they may donate the benefits of the item as long as the use period remains.

g) Other movable assets in accordance with Sharia provisions and applicable laws and regulations. As explained in Article 16, letter g, other movable assets in accordance with Sharia and applicable regulations include mushafs, books, and religious texts (Irawati, 2004).

h) Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf (*Peraturan Pemerintah Republik Indonesia Nomor 42 Tahun 2006 Tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf*, n.d.), regulates, among other things:

i) Article 15 Types of waqf assets include:
   a. immovable property;
   b. movable property other than money; and
   c. movable property in the form of money.

Number 19:

(1) Objects are classified as movable because of their movable or transferable nature or because of statutory provisions.

(2) Movable objects are divided into those that can be consumed and those that cannot be consumed through use.

(3) Movable objects that can be consumed through use cannot be endowed, except for water and fuel oil, which have a continuous supply.

(4) Movable objects that cannot be consumed through use can be endowed, subject to the provisions of Sharia principles.

Article 21: Movable objects other than money, according to statutory regulations, can be donated as long as they do not conflict with Sharia principles, as follows:

a. securities in the form of: 1. shares; 2. Government Bonds; 3. bonds in general; and/or 4. other securities that can be valued in money.
b. Intellectual Property Rights in the form of: 1. copyrights; 2. trademark rights; 3. patents; 4. industrial design rights; 5. trade secret rights; 6. integrated circuit rights; 7. plant variety protection rights; and/or 8. other rights.
c. rights to other movable assets in the form of: 1. lease rights, usufruct rights, and usufruct rights over movable assets; or 2. obligations, claims for amounts of money that can be collected on movable assets.

2. The Compilation of Islamic Law, Book III, is stated in Articles 215 to 229, which regulate matters such as the Pillars and legal conditions for waqf (wakif, mauquf bih, mauquf 'alaih, Sighat), Prohibition on selling or transferring waqf assets, and Provisions for waqf management in accordance with Islamic sharia. This is different from Article 41 of the Waqf Law, which, in principle, cannot transfer waqf assets, which provides limited exceptions through the istibdal mechanism (Yusup et al., 2023).
3. Regulation of the Minister of Religion of the Republic of Indonesia Number 73 of 2013 concerning Procedures for Endowment of Immovable Objects and Movable Objects Other Than Money, among other things, regulates administrative procedures and registration of endowments other than money, such as vehicles, precious metals, securities, or intellectual property rights.
4. Indonesian Waqf Board Regulation Number 2 of 2010 Concerning Procedures for Registration of Cash Waqf Nazhir

CONCLUSION

Waqf is a crucial instrument in Islamic teachings, serving social and economic functions for the welfare of the community. Initially, waqf was identified solely with immovable assets such as land and buildings. However, over time and with societal needs, this understanding has expanded. Based on Law No. 41 of 2004 concerning Waqf and Government Regulation No. 42 of 2006, waqf in Indonesia now includes movable assets

such as money, precious metals, securities, vehicles, intellectual property rights, and leasehold rights. This understanding aligns with the views of most scholars from the Maliki, Shafi'i, and Hanbali schools, who permit waqf of movable assets as long as they provide sustainable benefits and do not conflict with Sharia principles. Through more comprehensive legal regulations, the government is striving to make waqf a productive economic instrument, not merely a consumptive charity. Through various regulations such as Law No. 41 of 2004, Government Regulation No. 42 of 2006, the Compilation of Islamic Law, PMA No. According to Law No. 73 of 2013 and BWI Regulation No. 2 of 2010, waqf in Indonesia is expected to be managed professionally, transparently, and effectively for the benefit of the community. Waqf is not only a form of worship with spiritual value, but also has a strategic function in empowering the community's economy and sustainable development.

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