

Temporary Waqf as a Study of Fiqh Muamalah (Juridical Thoughts and Possibility of Its Implementation)

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Abstract: *Based on data from the Indonesian Waqf Board (BWT), Indonesia has a waqf potential of IDR 180 trillion per year. However, waqf in Indonesia has not been fully managed effectively, in many cases there are abandoned waqf objects that are not maintained. To reduce the abandonment of waqf assets, the discourse of waqf fiqh has developed with the discussion of temporary waqf. The question that arises is what is the opinion of the fiqh scholars about temporary waqf, especially the scholars of the four madzhab; Shafi'i, Hanbali, Hanafi and Maliki? Then how is the possibility of implementing the temporary waqf? This research is a combination of normative and empirical, using a qualitative approach, by researching the law on temporary waqf, supported by empirical data. Primary data is obtained from field research, in the form of interviews with the Head of the Waqf and Land Institute of the Nabdlatul Ulama Regional Board of Yogyakarta Special Region. Secondary data is obtained from fiqh books, articles and regulations in Indonesia regarding temporary waqf. Shafi'iyah and Hanabilah scholars such as As-Shirāzi and Ibn Qudamah rejected the practice of temporary waqf. On the other hand, the Hanafiyah and Malikiyah allow temporary waqf. Nabdlatul Ulama officially recognises four schools of fiqh: Hanafi, Maliki, Shafi'i, and Hanbali, so there is a possibility that temporary waqf can be implemented by Nabdlatul Ulama because Hanafiyah and Malikiyah permit temporary waqf.*

Keywords: *Fiqh Muamalah; Possibility of Implementing Temporary Waqf; Temporary Waqf*

Introduction

Waqf has proven to play a major role in the development of Islamic civilisation. The al-Azhar University in Cairo is the result of waqf since 970 AD. Al-Azhar University was originally founded by Caliph al-Muiz Lidinillah (953-975 AD), making it older than Oxford (1096 AD) and Cambridge (1209 AD). Al-Azhar developed into an institution of higher learning, its first academic activities taking place in 975 AD with the blessing of caliph al-Aziz (975-996 AD). Profits from the management of al-Azhar waqf were used to build hospitals, provide student scholarships, and pay lecturers and staff. Therefore,

al-Azhar waqf has played a role in alleviating poverty, helping to provide various needs for orphans, widows and developing science.¹

Waqf still has great potential to grow in the future. Indonesia for example, has a waqf potential of IDR 180 trillion per year.² Based on data from the Charities Aid Foundation (CAF) in 2021, for the last 5 years Indonesia has been the first country in the World Giving Index. This shows that Indonesia has tremendous potential in the development of philanthropy. Waqf is included in philanthropy, which comes from the words (*philos*) love and (*anthropos*) human, so it can be interpreted that waqf must provide love or benefits to as many people as possible. Despite the great potential, however, Indonesia has not fully managed waqf effectively, in many cases there are waqf objects that have not been properly managed until they are abandoned.³ Solutions and careful planning are needed to build a better waqf ecosystem.

The definition of waqf in general is to hold back the principal of an asset to be used for public benefit.⁴ The development of fiqh discourse recognises temporary waqf, temporary waqf can be an effective solution to increase the number of waqf fundraising collections, as the waqif does not permanently release ownership of their property. Waqifs can stop waqf after the end of the waqf period and get their property back. In understanding the concept of temporary waqf, this article will also present the scholars opinions on the permissibility of temporary waqf.

This paper will explain the importance of understanding the concept of temporary waqf in this modern age, where everything is faced with uncertainty. Temporary waqf is one of the solutions to

¹ Rachid Aouidad, "Temporary Waqf in the Framework of Maqā'id Shari'ah: A Study on Contemporary Social Needs Under Covid 19," *Journal of Islamic and Humanities Studies* 1, no. 3 (2021). p. 136

² www.bwi.go.id, "Website Resmi Badan Wakaf Indonesia (BWI)," 2022. date accessed 7 Juli 2022.

³ Muhammad Ash Shiddiqy, "Nazhir Capacity Analysis and Cooperation in Productive Waqf Management," *Az-Zarqa Jurnal Hukum Bisnis Islam* 14, no. 1 (June 2022). p. 112

⁴ Winch Herlena and Abdul Mujib, "Strategi Penghimpunan, Pengelolaan Dan Penyaluran Wakaf Tunai," *Az-Zarqa Jurnal Hukum Bisnis Islam* 13, no. 2 (December 2021). p. 270.

overcome the situation where people have the desire to donate and at the same time do not want to lose the assets that they may need in the future.

Several articles on temporary waqf were found. Research article by Rachid Aouidad, (2021), *Temporary Waqf in the Framework of Maqā'id Shari'ah: A Study on Contemporary Social Needs Under Covid 19*, this study discusses the social needs that arise due to the Covid 19 pandemic disaster, such social needs as temporary recovery houses, temporary isolation houses. Muhammad Ainul Hakim bin Muhammad Khalil, et al, (2020), *Temporary Waqf and Zakat as a Financial Aid for al-Gharimin during Covid-19 Pandemic in Malaysia*, the researcher suggested that the State Islamic Religious Council implement temporary waqf widely because it has significant potential as a future economic support mechanism, especially in the face of difficult conditions.⁵ Faliq Asraf Jafri, (2019), *Temporary Waqf Model for Islamic Private Retirement Scheme in Malaysia - A Proposal*, this study explains that states are slowly recognising temporary waqf because it can maximise the potential of waqf by expanding its benefits and can overcome the problem of lack of liquidity in managing and maintaining waqf assets.⁶

Rosidin, et al, (2020), *Individual and Household Economic Recovery After the Covid-19 Through Temporary Waqf Program*, this article explains a form of waqf that has enormous potential in the current situation is temporary waqf as an alternative solution to restore the economy after the Covid-19 pandemic. Muhammad Ainul Hakim bin Muhammad Khalil, et al, (2020), *Advantages of Temporary Waqf in Combating Covid-19 Pandemic in Malaysia*, this article explains the permissibility of temporary waqf and researchers claim that the application of temporary waqf can expand the field and benefits of waqf.⁷ These studies give us an understanding that temporary waqf is

⁵ Muhammad Ainul Hakim bin Muhammad Khalil et al., "Temporary Waqf and Zakat as a Financial Aid for Al-Gharimin during Covid-19 Pandemic in Malaysia," *Journal of Fatwa Management and Research* 22 (2020). p. 36.

⁶ Faliq Asraf Jafri, "Temporary Waqf Model for Islamic Private Retirement Scheme in Malaysia - A Proposal," *Journal of Islamic Finance* 8, no. 1 (2019).

⁷ Muhammad Ainul Hakim bin Muhammad Khalil et al., "Advantages of Temporary Waqf in Combating Covid-19 Pandemic in Malaysia," *INSLA E-Proceedings* 3, no. 1 (2020). p. 168.

very useful in fighting the Covid-19 pandemic in Malaysia. Thus, temporary waqf is important to be studied, researched and applied in Indonesia.

In the *az-Zarqa* journal, the author found several articles on waqf, articles from the research of Winceh Herlena and Abdul Mujib, (2021), *Strategi Penghimpunan, Pengelolaan dan Penyaluran Wakaf Tunai*, the results of this study indicate that the strategy of collecting, managing and distributing cash waqf at BMT BIF has two ways. First, internal collection includes directors, managers, employees and members. Second, external collection includes the general public, recitation, brochures, social media. Cash waqf management strategy by investing in Baitul Tanwil Bina Ihsanul Fikri. While the distribution of cash waqf for orphanages and Al-Amin boarding schools, entrepreneurial boarding schools, assisted villages, and other social activities. Muhammad Ash Shiddiqy, (2022), *Nazhir Capacity Analysis and Cooperation in Productive Waqf Management*, this article explains the importance of special standardisation for nazir to manage waqf assets. The relationship between the above article and the author's article is in the similarity of the topic of discussion, namely about waqf. If the previous article describes the collection, management and distribution of waqf, then the author will focus more on temporary waqf as a study of fiqh muamalah and how it is applied.

The problem today is that waqf is only land, mosques and other immovable assets. With the limited assets of waqf limiting the level of usefulness of waqf, to increase the benefits of waqf, it is necessary to diversify the types of waqf. In Malaysia, for example, some states have expanded the definition of waqf to include cash waqf and temporary waqf to expand the benefits of waqf and increase the liquidity of waqf, and even recognise waqf in the form of intangible objects such as intellectual property rights. Some of the states in Malaysia that have allowed the implementation of temporary waqf are; Johor, Federal Territory of Kuala Lumpur, Terengganu and Sarawak.

Temporary waqf includes movable assets including money, so the money from the waqf can be used in financing. This financing waqf helps workers in Malaysia who have been laid off due to the Covid-19 pandemic. In order to maximise the potential of temporary waqf, it requires the role of the government, which consists of the

executive, legislative and judiciary. These three institutions play a role in providing protection, guidance and support for rules relating to temporary waqf to be optimally applied.⁸

Indonesia has issued several regulations on waqf, such as Law No. 41/2004 on Waqf. The content of the law is an explanation of muabbad waqf (forever) and muaqqat waqf (temporary), the existence of waqf objects such as cash waqf and even waqf of intellectual property rights.⁹ Temporary waqf allows the waqif to determine how long his assets will be donated, after the end of the waqf time, it can then be extended with a new contract.¹⁰ Temporary waqf can logically attract people to do waqf, after more waqifs are willing to donate waqf assets, it is possible to maximise the benefits of waqf for the welfare of society.¹¹ Although temporary waqf may attract more waqifs, temporary waqf managers must be prepared with various administrative matters, such as name transfer, which requires time, energy and money.¹²

The question that arises is how do the scholars view the permissibility of temporary waqf, especially the scholars of the four madhhabs namely; Syafi'i, Hanbali, Hanafi and Maliki? Then how is the possibility of implementing temporary waqf?

This research is a combination of normative and empirical, using a qualitative approach method, by studying legal norms and rules regarding temporary waqf, then supported by using empirical

⁸ Rosidin et al., "Individual and Household Economic Recovery After the Covid-19 Through Temporary Waqf Program," *Advances in Social Science, Education and Humanities Research, Proceedings of the 2nd Annual Conference on Social Science and Humanities (ANCOSH 2020)* 542 (2020). p. 278.

⁹ Miftahul Huda, "Tipologi Pemikiran Kyai Pesantren Ponorogo Atas Eksistensi Wakaf Uang Dan Wakaf Berdurasi," *Jurnal Jurusan Syariah Sekolah Tinggi Agama Islam Negeri (STAIN) Ponorogo*, 2010. p. 254.

¹⁰ Pramadyo Argowasiso, "Wakaf Berjangka Waktu Dalam Tinjauan Maqashid Al-Syariah (Study Terhadap Undang-Undang No 41 Tahun 2004)" (IAIN Ponorogo, 2020). p. 2.

¹¹ Nurul Hukmiah, Syahrizal Abbas, and Ilyas Ismail, "Wakaf Dalam Jangka Waktu Tertentu (Suatu Analisis Terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Dan Hukum Islam)," *Jurnal Ilmu Hukum Pascasarjana Universitas Syiah Kuala* 3, no. 1 (2015).

¹² Ardi Setiawan, "Studi Komparatif tentang Batas Waktu Wakaf menurut Muhammadiyah dan Nahdatul Ulama" (UIN Raden Intan Lampung, 2022). p. 76.

data, data collected from primary and secondary sources. Primary sources are obtained from field research, namely information obtained from the Chairman of the Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region as well as information from the Chairman of the Regional Board of Amil Zakat and Sadaqah Nahdlatul Ulama Special Region of Yogyakarta. Secondary sources were obtained through literature research by collecting legal materials from fiqh books as well as theses and articles from various journals on the practice of temporary waqf as well as regulations applicable in Indonesia regarding temporary waqf.

Discussion

The scope of fiqh muamalah is divided into muamalah adabiyah and muamalah maliyah. Muamalah adabiyah is a discussion of moral aspects such as willingness, transparency, honesty, not forced, and stay away from *tadlis*, *gharar*, *rishwah*, and *ikhtikār*.¹³

Muamalah maliyah discusses certain contracts such as trade (*al-bai'*), pawn (*al-rahn*), lease (*al-ijārah*), order (*al-istishnā'*), warranty service (*al-kaḥālah*), debt transfer (*al-hiwālah*), delegation of power (*al-wakālah*), reconciliation (*al-sulh*), co-operation (*al-syirkah*), profit sharing (*al-mudhārabah*), gift (*al-hibah*), agricultural profit sharing (*al-muẓāra'ah*), irrigation profit sharing (*al-musāqah*), safekeeping (*al-wadi'ah*), loan (*al-qardh*) and others.

The object of fiqh muamalah study generally includes a discussion of assets (*al-māl*), property rights (*al-huqūq*), and the law of contract (*al-aqd*). The concept of assets (*al-māl*) includes a discussion of the definition of assets and the classification of assets. Second, the concept of rights (*al-huqūq*), including a discussion of the definition of rights, sources of rights, protection and limitation of rights, and categories of rights. Third, the concept of property rights (*al-milkīyah*), including a discussion of the definition of property rights, sources of ownership, and the types of property rights.

Temporary waqf is included in the scope of fiqh muamalah, temporary waqf discusses property (*al-māl*). In addition, temporary

¹³ H Syaikh, Ariyadi, and Norwili, *Fikih Muamalah: Memahami Konsep Dan Dialektika Kontemporer*, ed. Rafik Patrajaya, 1st ed. (Yogyakarta: Penerbit K-Media, 2020).

waqf also discusses the concept of property rights (*al-milkiyah*). The debate that exists in the discussion of temporary waqf is about the ownership of waqf property. After the waqf contract, the ownership of the waqf asset is still owned by the waqif or has been released from the waqif.

The al-Munawwir dictionary explains that waqf means to stop or hold.¹⁴ Sayyid Sabiq in his book *Fikih Sunnah* explains that waqf is holding property and then distributing the benefits of that property in the way of Allah:

حبس الاصل وتسبيل الثمرة أي حبس المال و صرف منافعه في سبيل الله¹⁵

Kifāyatul Akhyār by Taqiyuddin Abu Bakr ibn Muhammad al-Husain al-Husna ad-Damsyiq ash-Shafi'i, explains that waqf is the holding back of property so that its benefits can be utilised forever:

حبس مال يمكن الانتفاع به مع بقاء عينه ممنوع من التصرف في عينه¹⁶

The Quran indicates that waqf is prescribed in verse 92 of Surah Ali Imran:

لن تنالوا البر حتى تنفقوا مما تحبون¹⁷ وما تنفقوا من شيء فان الله به عليم

Al-Hadith that explains waqf is the hadith narrated by Ibn Umar when Umar owned a piece of land in Khaibar (around the city of Medina), Umar asked the Prophet what he should do with the land, then the Prophet replied "if you want, waqf the land and give away the profit". Then Umar waqf his land in Khaibar with the meaning that it could not be sold, could not be donated and could not be inherited. Then Ibn Umar said that Umar gave the proceeds of the land to the poor, to support the abandoned, to free slaves and to be used for the benefit of the cause of Allah. A person is willing to take care of waqf land, then that person takes some of the waqf proceeds

¹⁴ Achmad Warson Munawwir and Muhammad Fairuz, *Kamus Al-Munawwir Indonesia-Arab Terlengkap*, ed. KH. Zainal Abidin Munawwir, *Pustaka Progressif*, 1st ed. (Surabaya, 2007). p. 1576.

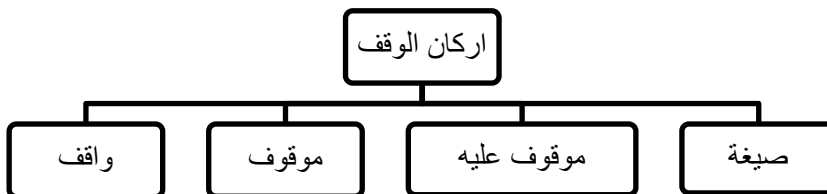
¹⁵ Sayyid Sabiq, *Fiqh Al-Sunnah*, III (Beirut-Lebanon: Dar al-Kitab al-Arabi, 1977). juz. 3. p. 515

¹⁶ Abu Bakar bin Muhammad bin Abdul Mumin bin Hariz bin Mualla al-Husseini al-Husni al-Shafi'i Taqiyuddin, *Kifayatul Akhyar Fi Halli Ghayatil Iktisar*, ed. Ali Abdul Hamid Baltaji dan Muhammad Wahbi Suleiman, I (Damaskus: Dar al-Khair, 1994). p. 303

to feed the family, as long as he does not seek wealth, there is no sin for that person. The hadith narrated by Ibn Umar is:

حدثنا يحيى بن يحيى التميمي، أخبرنا سليم بن أخضر، عن ابن عون، عن نافع، عن ابن عمر، قال: أصاب عمر أرضا بخيبر، فأتى النبي صلى الله عليه وسلم يستأمره فيها، فقال: يا رسول الله، إني أصبت أرضا بخيبر، لم أصب مالا قط هو أنفس عندي منه، فما تأمرني به؟ قال: «إن شئت حبست أصلها، وتصدق بها»، قال: فتصدق بها عمر، أنه لا يباع أصلها، ولا يبتاع، ولا يورث، ولا يوهب، قال: فتصدق عمر في الفقراء، وفي القريبى، وفي الرقاب، وفي سبيل الله، وابن السبيل، والضيف، لا جناح على من وليها أن يأكل منها بالمعروف، أو يطعم صديقا غير متمول فيه¹⁷

The pillars of waqf are:¹⁸



Wākif or waqf giver must be sensible, aware, not forced, baligh and not hindered to endow his property. Mauquf or the waqf item must be able to be utilised in the long term, free of disputes, not traded, and not used for other than waqf. Mauquf 'Alaih is the purpose of the waqf, it cannot be for a prohibited purpose such as building a place of worship for disbelievers, because that is considered an aid for disobedience.¹⁹ Sighat waqf or waqf pledge is a one-sided legal action of the waqif, no qabul (acceptance) is required in this case.²⁰

Nāzir or waqf manager, waqf is a tabarru act of worship, so some scholars do not include nāzir in the pillars of waqf. However,

¹⁷ Abu Al-Hussein Muslim, *Shahih Muslim*, ed. Muhammad Fouad Abdel-Baqi (Kairo: Issa al-Halabi and Partners Press, 1955). juz 3. p. 1255. No. Hadits 1632.

¹⁸ A. Dr.. Wahba bin Mustafa Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, IV (Syria, Damaskus: Dar al-Fikr, 1984). juz 10. p. 7606.

¹⁹ Syamsuddin Muhammad bin Ahmad al-Khatib asy-Syarbini asy-Syafi'i, *Al-Iqna' Fi Halli Alfadz' Abi Syuja'* (Beirut-Lebanon: Dar Al-Fikr, 1990). juz 2. p. 362.

²⁰ Zakaria bin Muhammad bin Ahmed bin Zakaria Al-Ansari Al-Ansari, *Fathul Wabbab Bi Syarb Manhaj At Thullab* (Beirut-Lebanon: Dar Al-Fikr, 1994). juz 1. p. 307.

the existence of *nāzir* is still necessary to maintain the purpose and sustainability of *waqf*. If the *waqif* has appointed a *nāzir* who meets the requirements, then it must be approved, if the *waqif* does not propose a *nāzir*, then it is the *qādi* who appoints the *nāzir*.²¹ *Nāzir waqf* must be fair, able to manage *waqf* assets and must be Muslim.

Some of the conditions of *waqf* that must be fulfilled are: it must be clear in its purpose and objectives, executed immediately after the pledge of *waqf* without any delay, *waqf* is done without *khiyār*.²² In Indonesia, *waqf* is done by the *waqif* stating a *waqf* pledge in front of a *waqf* pledge deed official (pejabat pembuat akta ikrar wakaf) witnessed by two witnesses.²³ The content of the *waqf* pledge deed is determined by the Minister of Religious Affairs, and the endowing party submits proof of ownership of the property and a certificate explaining that the property is not involved in a dispute.

Juridical Thoughts of Temporary Waqf

There are differences of opinion between scholars about the time limits of *waqf*, in this article the author will explain the differences of opinion between scholars about time limits in *waqf*:

Syafi'iyah, As-Shirāzi in *al-Muhāḥab fī Fiqh al-Imam ash-Shāfi'i* explains that *waqf* is not limited by time:

لا يجوز إلا على سبيل لا ينقطع ولا يجوز إلى مدة لأنه إخراج مال على وجه القرية فلم
يجز إلى مدة كالعق والصدقة²⁴

It is not permissible to do (*waqf*) except in a way that does not break the *waqf*, because *waqf* is to donate wealth to get closer to Allah, so it cannot be temporary like freeing slaves or charity. The

²¹ Syams Al-Din Muhammad bin Ahmed Al-Khatib Al-Sharbeni Al-Shafi'i Al-Syarbini, *Mughni Al-Muhtaj Ila Marifati Alfadz Al-Minhaj* (Beirut-Lebanon: Dar al-Kutub al-Ilmiyah, 1994). juz 3. p. 552.

²² Ahmad Azhar Basyir, *Hukum Islam Tentang Wakaf, Ijaarob, Syirkah* (Bandung: al-Ma'arif, 1987). p. 11.

²³ KHI, *Himpunan Peraturan Perundang-Undangan Yang Berkaitan Dengan Kompilasi Hukum Islam Dengan Pengertian Dalam Pembahasannya, Perpustakaan Nasional RI : Data Katalog Dalam Terbitan*, vol. 1 (Mahkamah Agung RI, 2011). Pasal 218. Ayat 1.

²⁴ Abu Ishaq Ibrahim bin Ali bin Yusuf al-Fairuzzabadi al-Syairozi, *Al-Muhadḥab Fi Fiqhil Imam Asy Syafi'i / Imam Asy Syairozi* (Beirut-Lebanon: Dar al-Kutub al-Ilmiyya, 1995). juz 2. p. 324.

hadith of Ibn 'Umar as the basis of the first waqf law contains three important sentences, namely; holding the origin, not selling, not giving or inheriting. The sentence indicates the meaning of ta'bīd (forever), so the prophet's command with the sentence "withhold" shows that waqf cannot be carried out except forever.

Hanabilah, Ibn Qudamah al-Hanbali in his book *al-Mughni* writes about waqf:

مع بقاء أصلها، وهذا معنى الوقف²⁵

Waqf is to establish its origin, waqf basically removes ownership, any removal of ownership is not valid if there is a time limit, just like buying and selling is also not valid if it is not for eternity.

Hanafiyah, Imam Abu Hanifah argues that the ownership of waqf property is not removed from the waqif, so the waqif can take back the waqf property:

التعريف الوقف - لأبي حنيفة - وهو حبس العين على حكم ملك الواقف، والتصديق بالمنفعة على جهة الخير. وبناء عليه لا يلزم زوال الموقوف عن ملك الواقف ويصح له الرجوع عنه، ويجوز بيعه²⁶

The definition of waqf according to Abu Hanifah is to hold the waqf principal that legally still belongs to the waqif, then donate the benefits of waqf in the way of goodness. Thus, it is not necessary to remove the ownership of waqf property from a waqif, so it is permissible for the waqif to withdraw the waqf property or sell it.

More detailed on the limitations of waqf is the opinion of Abu Yusuf, a student of Imam Abu Hanifah, who made concessions by removing the requirement of ta'bīd in waqf. The waqf contract is not broken just because there is a requirement to return the waqf property.

في أمر الوقف فلا يشترط التأبيد واشتراط العود إلى الورثة عند زوال حاجة الموقوف عليه لا يفوت موجب العقد عنده²⁷

²⁵ Muwaffaq al-Din Abu Muhammad Abdullah bin Ahmad bin Muhammad bin Qudamah al-Maqdisi al-Jama'ili al-Dimashqi al-Salihi al-Hanbali, *Al-Mughni*, ed. Dr. Abdul-Fattah Muhammad al-Hilu Dr. Abdullah bin Abdul-Mohsen al-Turki, III (Riyadh-Arab Saudi: Dar Alam al-Kutub, 1997). juz 4. p. 195.

²⁶ Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatubu*. juz 10. p. 7599.

Abu Yusuf did not include ta'bīd as a condition of waqf, because the waqf contract will not be damaged by the condition of returning the waqf object to the inheritors. Abu Yusuf argued that if what is meant by waqf is to draw closer to Allah, then waqf may be implemented temporarily and may also be implemented forever.

المقصود هو التقرب إلى الله تعالى والتقرب تارة يكون في الصرف إلى جهة يتوهم انقطاعها وتارة بالصرف إلى جهة لا يتوهم انقطاعها²⁸

Malikiyah, The Malikiyah have an opinion about waqf, that waqf is utilising an object owned by the waqif according to the time specified by the waqif, so that the waqif still retains ownership of the waqf property.

الوقف عند المالكية لا يقطع حق الملكية في العين الموقوفة، وإنما يقطع حق التصرف فيها. واستدلوا على بقاء الملك في العين الموقوفة بحديث عمر المتقدم، حيث قال له الرسول عليه الصلاة والسلام: «إن شئت حبّست أصلها، وتصدقت بها» ففيه إشارة للتصدق بالغلة، مع بقاء ملكية الموقوف على ذمة الواقف، ومنع أي تصرف تملكي فيه للغير، بدليل فهم عمر: «على ألا تباع، ولا توهب، ولا تورث»²⁹

Waqf according to the Malikiyah does not remove the ownership of the waqif's property, but it does remove the right to benefit from it. The Malikiyah concluded the waqif's ownership rights based on the hadith about Umar, when the Prophet said to Umar: "If you want, hold the principle, and give the proceeds in charity." There is an explanation for the charity of the produce, with the ownership of the waqf property in the hands of the waqif. As well as the prohibition of transferring ownership of the waqf to another person, based on Umar's understanding that waqf: may not be sold, may not be given away, and may not be inherited.

Possibility of Implementing Temporary Waqf

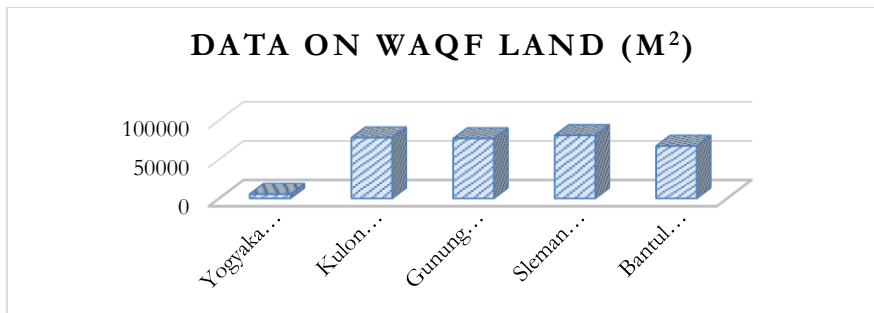
The implementation of temporary waqf will be studied from the perspective of the Head of the Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region.

²⁷ Muhammad bin Ahmed bin Abi Sahel Syams Al-Imaam Al-Syarkhasi, *Al-Mabsuth* (Beirut-Lebanon: Dar Al-Ma`rifah, 1993). juz 12. p. 47.

²⁸ Al-Syarkhasi. juz 12. p. 41

²⁹ Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*. juz 10. p. 7602.

Based on PWNU DIY Decree No. 047/PW/A-II/V/2022, the Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region for 2022-2027 is chaired by H. Wiratno, SE, MM. His first strategic step after taking office was to optimise certification and develop the potential of waqf assets. This waqf institution already has a website, which serves to convey information on waqf assets to the public, this is important to create a transparent and accountable institution.



The waqf land data above is as of 25 May 2022, it will continue to grow because a lot of data is still in the process of being recorded, not yet uploaded on the website.³⁰ In addition to land waqf, LWP PWNU DIY has also collected cash waqf, until January 2022 it was recorded that cash waqf had been collected amounting to IDR 310,657,000. Cash waqf management has been running by depositing the waqf principal in Islamic financial institutions, then utilising the proceeds from the waqf principal for the public interest in the fields of education, health and economic empowerment of the people.

There is a new policy in Nahdlatul Ulama Yogyakarta Special Region related to cash waqf *nāzir*, where the cash waqf *nāzir* which was previously held by the Waqf and Land Institute of Nahdlatul Ulama Yogyakarta Special Region (LWP PWNU DIY) is now delegated to the Lembaga Amil Zakat, Infaq and Sedekah Nahdlatul Ulama Yogyakarta Special Region (LAZISNU DIY), the cash waqf handover was carried out on 5 January 2022. A strategic step that has

³⁰ H. Wiratno, Chairman of the Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region, "Interview on 25 May 2022" (n.d.).

been achieved is the cooperation with the Regency Government in Yogyakarta. As well as cooperation with the Regional Office of the Ministry of Religious Affairs in Yogyakarta to sign an MoU related to the collection and distribution of cash waqf.³¹

In addition to information related to land waqf and cash waqf, the author also explores information related to temporary waqf. How is the possibility of implementing temporary waqf in the DIY Nahdlatul Ulama Waqf Institution. The author was informed that there are many challenges to be faced in socialising and implementing temporary waqf among Nahdliyin. It is common knowledge that in terms of Jurisprudence, the majority of NU members follow the Syafi'i school of thought. Scholars of the Shafi'i school such as As-Shirāzi firmly reject the practice of temporary waqf, the reason being that the prophet used the phrase "to hold" in the hadith about Umar narrated by Ibn Umar.

Among the scholars who allow temporary waqf are Imam Abu Hanifah and Abu Yusuf, who explained that waqf is "holding" property that legally still belongs to the waqif and it is permissible for the waqif to withdraw the waqf property or sell it. The Maliki school also argues that waqf only stops the right to utilise the property, not stopping the ownership rights of the waqif over the waqf property.

Nahdlatul Ulama, based on the decision of the XXVII Congress in Situbondo in 1984, has officially recognised four mazhabs; Syafi'i, Hanbali, Hanafi and Maliki in the field of fiqh. The recognition of the four mazhabs of fiqh by Nahdlatul Ulama should make it easier for waqf institutions to promote and implement the practice of temporary waqf among Nahdliyin, because there are two mazhabs of fiqh that allow the practice of temporary waqf, namely the Hanafi mazhab and the Maliki mazhab.³²

The Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region also does not ignore that temporary waqf has been mentioned in Law Number 41 of 2004

³¹ Mambaul Bahri, Chairman of Lembaga Amil Zakat Infak dan Sedekah Nahdlatul Ulama Yogyakarta Special Region, "Interview on 26 May 2022," (n.d.).

³² H. Wiratno, Chairman of the Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region, "Interview on 25 May 2022" (n.d.).

concerning Waqf. It is explained that waqf is a legal action of a waqif to separate part of his property to be utilised forever or for a certain period of time based on sharia provisions. This understanding is almost the same as the views of the Hanafiyah and Malikiyah scholars who argue that waqf objects have not yet lost their ownership from the waqif and may be withdrawn.³³

Temporary waqf offers co-operation in the management of wealth assets. For example, a person owns a lot of vacant land, not all of which can be handled, causing the land to become unproductive. Temporary waqf offers a solution to land management, temporarily endowed for 10 years. After the end of the waqf, the landowner will receive the benefits of productive land. The landowner also receives charity for his waqf for 10 years where the profits from the waqf are used for social purposes.

The disadvantage of temporary waqf is that some administrative matters will become more complicated. For example, the change of waqf manager, which should only be changed once when waqf is muabbad, will change more than once when implementing temporary waqf. Waqf institutions must also be prepared with the administrative consequences arising from the practice of temporary waqf.

The Indonesian Waqf Board also has an opinion on temporary waqf. BWI allows the practice of temporary waqf, but it requires a guarantee of the principal assets of the waqf. The guarantee is useful to protect the waqf assets from possible damage, so that the waqf assets do not decrease and retain their value until the end of the time limit. With the importance of waqf assets not decreasing, temporary waqf can only be done through investments that are safe and distributed in a trustworthy and accountable manner.

The Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region observes that temporary waqf is one of the solutions to increase the amount of waqf and increase the number of waqifs significantly. Today, many people think twice about endowing their wealth, due to economic uncertainty. Since 2019, the world has been faced with the Covid-19

³³ Ibid.

Pandemic, which has had a tremendous impact on people around the world. In addition to the health impact of covid-19 there is also an economic impact, the economy in all countries is under pressure and heading towards uncertainty. In early 2022, there was a war in Eastern Europe, between Russia and Ukraine, causing an increase in the price of gas, oil and wheat, 40% of the world's wheat needs come from that country. Temporary waqf today is an effective solution for people who want to endow their assets, while at the same time not losing ownership of the waqf assets.

Conclusion

Temporary waqf is still a matter of debate among jurists. Shafi'iyah and Hanabilah scholars such as As-Shirāzi and Ibn Qudamah rejected the practice of temporary waqf, arguing that the prophet used the phrase "hold its principle" when Umar bin Khattab asked for advice about his land in Khaibar. While scholars who allow temporary waqf are Hanafiyah and Malikiyah scholars, they argue that waqf is "holding" property that legally still belongs to the waqif, waqf only cuts off the right to use the property, not cutting off ownership rights to the property that is waqfed. So far, the majority of NU people follow the Syafi'i school of jurisprudence, even in pesantren where many Syafi'i school of jurisprudence books are studied. It is a challenge for waqf institutions to implement temporary waqf among nahdliyin, because the Syafi'i school of Islamic jurisprudence explicitly rejects temporary waqf. Despite the majority of NU members practising the Syafi'i school of fiqh, Nahdlatul Ulama has officially recognised four mazhabs of fiqh: Hanafi, Maliki, Syafi'i and Hanbali. The recognition of these four schools of fiqh should make it easier for waqf institutions to implement temporary waqf among Nahdliyin, based on the Hanafi and Maliki schools of thought that allow temporary waqf.

The Waqf and Land Institute of the Nahdlatul Ulama Regional Board of Yogyakarta Special Region has analysed the opinions of the mazhab scholars regarding temporary waqf. However, as a waqf institution located in Indonesia, the activities of the institution should be based on the prevailing regulations in Indonesia. Law Number 41 of 2004 concerning Waqf explains that waqf can be utilised forever or within a certain period of time, so that existing regulations in Indonesia have supported the implementation of

temporary waqf. The Indonesian Waqf Board also allows temporary waqf, provided that there is a guarantee of waqf assets that serves to protect waqf assets from possible damage. Temporary waqf is a strategic step to significantly increase the number of waqifs. Today, people will think twice about doing waqf, due to the economic uncertainty since the Covid-19 Pandemic. The unending war in Eastern Europe has made people prefer to store their wealth in case of an economic crisis. Temporary waqf is an effective solution for people who want to endow their assets while at the same time do not want to lose the ownership rights of the waqf assets, only temporarily losing the right to benefit from the assets that have been endowed.

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