



Transfer of Function of Waqf Land Analysis of Law Number 41 of 2004

Thuwaiba¹, Muhammad Habiburrahman², Cici Isma Putri²

¹International Islamic University Malaysia

²STAI Balaiselasa YPPTI Pesisir Selatan, Sumatera Barat, Indonesia

✉ muhsinthuwaiba77@gmail.com*

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Abstract

This article was written based on the discovery that there was waqf land that was originally built as a prayer room. The waqf land was located on a hill. However, the prayer room that had been built was demolished by the waqf's grandson and moved to another location. A house was built on the site of the demolished prayer room. The author used qualitative research methods, employing descriptive methods. The data collection tools were observation, interviews, and documentation. Since this study analyzed the transfer of waqf land functions based on Law No. 41 of 2004, the author used a normative legal and empirical legal approach in this paper. From the research findings, it can be concluded that first, the views of the surrounding community regarding the conversion of waqf land indicate that some members of the community are unaware of the laws governing waqf land. This suggests that the community's understanding of waqf land is still limited, as evidenced by some members of the community converting the function of waqf land. Second, the waqf land was originally built as a mosque. The location of the endowment land is on a hill, but the mosque that had been built was demolished by the endower's grandchild and relocated to another place. The site of the demolished mosque was then built into a house by the endower's grandchild. Third, an analysis of Law No. 41 of 2004 on the conversion of the function of waqf land states that waqf land that has been donated as waqf is prohibited from being changed in status or transferred in any form except through an exchange intended for public interest in accordance with the general spatial plan outlined in Law No. 41 of 2004 on Waqf, Articles 1 and 2.

INTRODUCTION

Transferring land ownership in the form of waqf, which is a form of worship and is prescribed by Islamic law, is valid when the waqif has transferred his property (Abas, 2021; Ramadhani et al., 2024). Once property has been donated as waqf, the waqf donor no longer has ownership rights, as ownership has been transferred to Allah and does not become the property of the recipient either. However, the waqf donor may still derive benefits from it (Engkizar et al., 2021).

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The description of waqf activities in the past can be clearly seen since the early days of the spread and development of Islam in Indonesia. In the early days of the spread and development of Islam in Indonesia, waqf was only intended for the construction of facilities to support da'wah activities in the form of places of worship (Putra et al., 2023; Zulfa & Arif, 2020). At that time, wakaf activities in society were focused on the form of wakaf and buildings, such as the construction of mosques, musholla, sanggar, schools, Islamic boarding schools, *madrasah*, foundations, orphanages, and cemeteries. This form of wakaf activity persisted for a very long time and was relatively consistent across all regions of Indonesia.

Islam is a major religion in Indonesia and has many followers. Islam has several institutions that are expected to help achieve social welfare, one of which is the waqf institution (Cahyani & Awaluddin, 2022; Rahmalina et al., 2023; Yasniwati, 2023). Wakaf, grammatically speaking, means to hold back or stop, which in this context refers to holding back certain assets that may be used for charitable purposes with the intention of drawing closer to Allah SWT, and which may not be sold, bought, or given away.

Waqf is a legal act by a waqif to separate and transfer part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare in accordance with sharia (Hidayat et al., 2023; Lubis, 2020; Zuhirsyan, 2020). Waqf in Islam falls under the category of social worship, which is sunnah. The practice of waqf is a great deed because its rewards do not cease or end when the person dies; rather, the rewards of waqf continue to flow and are still accepted by the waqf even after his death. Waqf is one form of worship that promises continuous rewards. Wakaf is also one of the social institutions or structures of Islam that contains socio-economic values (Abdullah, 2020; Erizal, 2020; Safiudin, 2022).

METHODS

This research is qualitative research related to social reality, producing data in the form of written or oral accounts from the community being observed. This research uses a qualitative approach with field research in the form of case studies and descriptive methods, namely descriptive research is not intended to test specific hypotheses but only to describe what is about a variable, phenomenon, or condition (Engkizar et al., 2022). Thus, the descriptive research in this study will describe and discuss unrecorded research, namely the practice of land use conversion in endowment land analysis under Law No. 41 of 2004. The type of research in this study is of a legal-empirical nature, which refers to written rules or other secondary materials, to observe or implement them through field research conducted sociologically and through interviews, thereby gaining clarity about the subject being studied.

RESULT AND DISCUSSION

Wakaf is a word derived from Arabic, namely **وَكْفَى**, which means to hold back, stop, or restrain. In Indonesian, the word **وَكْفَى** is commonly pronounced as wakaf, and this pronunciation is used in Indonesian legislation. According to the term, wakaf is holding back assets that can be used for benefit without consuming or transferring the assets themselves and using them for good causes. Meanwhile, the definition of wakaf in terminology is the retention of ownership of property that can be utilized without altering the substance of any actions taken on it, and redirecting the benefits of such property for one of the acts of worship as a means of drawing closer to Allah with the intention of seeking His pleasure (Rizka et al., 2024). According to Islamic law, wakaf is

“*habsul ashli wa tasbiluts tsamrab*” (retaining the principal and releasing the fruit). This means retaining the property and distributing its benefits in the way of Allah.

According to the author, waqf is the act of withholding property that can be used for benefit, but not for oneself, while the property remains in one's possession and its benefits are used for good for a certain period of time or forever in order to draw closer to Allah. In the compilation of Islamic law, Article 215(1) explains that waqf is a legal act by an individual, group of individuals, or legal entity that separates a portion of their property and establishes it permanently for the purpose of worship or other public needs in accordance with Islamic teachings. Scholars differ in their interpretations of the term wakaf, as they refer to the Imams of the schools of thought, such as Abu Hanifah, Syafi'i, and other Imams, resulting in diverse definitions (Engkizar et al., 2024).

First, according to the Syafi'i school of thought. Scholars of the Shafi'i school of thought define waqf in various ways, including: i) Imam Nawawi, from the Shafi'i school of thought, defines waqf as: “holding property that can be used for benefit, not for oneself, while the property remains intact, and its benefits are used for good and to draw closer to Allah.” This definition is cited by Al-Munawi in his book, *Al-Taisir*. ii) Al-Syarbini Al-Khatib and Ramli Al-Kabir define waqf as: “holding property that can be used for its benefits while ensuring the safety of the property and severing the ownership of the property from its owner for permissible purposes”. iii) Sheikh Syihabuddin Al-Qalyubi defines it as: “holding property for use in permissible matters while preserving the integrity of the property.” From the above definitions, it can be explained that although scholars differ in their interpretations of the meaning of waqf, there are common points in each definition. That is, waqf property that is held can be used by others while maintaining its original form and relinquishing ownership.

Second, the Hanafi school of thought. Abu Hanifah and his followers differ in their definition of waqf. As further explained by Abdul Azis Dahlan in his book, Abu Hanifah defines waqf as: holding the material possessions of the person making the waqf and donating the benefits for charity. Imam Abu Hanifah viewed the wakaf contract as non-binding, meaning that the person who made the wakaf could revoke it and the original owner could sell it. Thus, for Imam Abu Hanifah, making a wakaf did not mean relinquishing ownership rights completely. The following are definitions from several scholars of the Abu Hanifah school of thought: i) Imam Syarkhasi defined it as: *Habsul mamluk 'an al-tamluk min al-ghair*, “withholding property from the reach (ownership) of others. The meaning of this definition is that the property that has been endowed remains the property of the waqif and does not transfer ownership to others, but the waqif may not utilize this property for his own interests, such as selling it, giving it as a gift, or using it as collateral, ii) Abu Yusuf and Muhammad bin Hasan Asy-Syaibani define waqf as: withholding the legal actions of the waqf donor regarding the property that has been endowed with the aim of utilizing it for the public good and virtue in order to draw closer to Allah, while the property remains intact.

The two scholars of the above schools of thought have similarities in defining waqf, namely that waqf property that is held can be used by others while maintaining its original form (Perdana & Salma Barlinti, 2023; Asri et al., 2020). Government Regulation No. 28 of 1977 states that waqf is a legal act by an individual or legal entity to permanently separate a portion of their assets in the form of land ownership and institutions for the benefit or needs of other communities in accordance with Islamic teachings (Kaputra et al., 2021).

Waqf in the Compilation of Islamic Law is a legal act by an individual, group of individuals, or legal entity to permanently separate a portion of their property and assets for the purpose of worship or other public needs in accordance with Islamic teachings (Aris & Sabir, 2020; Atika & Rofiq, 2022; Ma'ruf Hidayat, 2022). The Waqf Law No. 41 of 2004 and Government Regulation No. 42 of 2006 state that waqf is a legal act by the waqif to separate or transfer a portion of their property to be utilized permanently or for a specific period of time in accordance with their interests for the purposes of worship or public welfare in accordance with sharia (Engkizar et al., 2025).

CONCLUSION

The local community's view on the transfer of waqf land is that some people are not yet aware of the laws governing waqf land. This indicates that the community's understanding of waqf land is still lacking, as evidenced by the fact that some people have changed the function of waqf land. The factor behind the transfer of waqf land is that the waqf land was originally used to build a mosque. The location of the endowment land is on a hill. However, the mosque that had been built was demolished by the endower's grandchild and relocated to another site. The remains of the demolished mosque were then used to build a house by the endower's grandchild. An analysis of Law No. 41 of 2004 regarding the change in the function of waqf land in the village, states that waqf land that has been donated as waqf is prohibited from being changed in status or transferred in any form except through an exchange intended for public interest in accordance with the general spatial plan outlined in the Law No. 41 of 2004 on Waqf, Articles 1 and 2.

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