



Analysis of the Phenomenon of the Transfer of Waqaf Assets in Muslim Societies

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Abstract

This research was motivated by discovering waqf land originally built with a prayer room (mushalla). The position of this waqf land is on a hill. However, the prayer room that had been built there was dismantled by the wakif's descendants and moved to another location. The location of the prayer room which was demolished was then used to build a house. This research aims to analyze the transition of the function of waqf land according to Law Number 41 of 2004. This research uses qualitative research methods with a descriptive approach. Data sources include direct interviews, observation, and documentation. The author uses a normative juridical and empirical juridical approach in analyzing the transition of the function of waqf land by Law Number 41 of 2004. Based on the results of this research analysis, the results showed that first, the public's view of the transfer of waqf land shows that some people still do not know the laws governing waqf land. This is proven by the existence of several individuals who have transferred the function of waqf land. Second, the waqf land originally had a prayer room on it and was located on a hill. The prayer room was dismantled by the wakif's grandchildren and reused elsewhere. The location of the prayer room which was demolished was then used by the wakif's grandchildren to build a house. Third, an analysis of Law Number 41 of 2004 concerning the Transfer of Waqf Land shows that the status of waqf land that has been allocated is prohibited from being changed or transferred in any form except for exchange for the public interest by the spatial planning contained in Law Number 41 of 2004 concerning Waqf Articles 1 and 2.

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INTRODUCTION

The transfer of ownership rights to land in the form of waqf is an act of worship and obligatory, waqf becomes valid when the wakif has handed over his property (Komariah, 2014; Suryamah & Lita, 2021; Mauliyani, 2023; Siddiq, 2023; Nuridha & Khamim, 2024). Assets donated as waqf cause the wakif to no longer have ownership rights, because the ownership has been transferred to Allah SWT and does not belong to the recipient, but the wakif can still benefit from it (Ramadhani & Septriani, 2016; Aqbar et al., 2022; Muhit et al., 2022; Anas, 2023).

The practice of waqf activities in the past was visible from 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 such as places of worship (Agustianto, 2019; Alif, 2020). At that time, waqf activities in society were only oriented towards waqf in the form of buildings such as the construction of mosques, prayer rooms, studios, schools, Islamic boarding schools, madrasas, foundations, orphanages, and cemeteries (Sasanty, 2016). This kind of waqf activity has been going on for a relatively long time throughout Indonesia (Siregar, 2012; Zainal, 2016; Mukhlisin & Hamidah, 2017; Lestari, 2018).

Islam, as a major religion in Indonesia with many adherents, has several institutions that are expected to help achieve community welfare, one of which is the waqf institution (Munadliroh et al., 2021; Maesaroh & Nuryitmawan, 2023). Grammatically, waqf has the meaning of holding or stopping, which essentially means holding certain assets that can be used for charitable purposes to get closer to Allah SWT. These assets may not be sold or transferred as gifts (Iqbal, 2020).

Waqf is a legal act carried out by the wakif (donor) to separate and transfer part of his assets to be used indefinitely or for a certain period according to his interests, for religious purposes, or general welfare according to sharia (Amin et al., 2023). In Islam, waqf is included in the category of sunnah (praiseworthy) public worship (Yustisia, 2018; Salmawati, 2019; Anjelina et al., 2020). The act of waqf is important because the rewards do not cease or stop even after the person concerned dies. The benefits of waqf will continue to flow and be received by the waqif even after his death. Waqf is a form of charity that promises sustainable rewards. It is also an Islamic social institution that includes socio-economic values (Hajar, 2018).

METHODS

This research uses a qualitative approach with field research characterized by case studies and descriptive methods (Sugiyono, 2018; Hayatunnisa & Iswandi, 2023; Poya et al., 2023). Descriptive research is not intended to test a particular hypothesis but only to describe what exists about a variable, phenomenon, or condition. This means the state of the phenomenon that existed at the time the research was conducted. Therefore, descriptive research in this study will describe and discuss unrecorded research (Betteridge, 2015). Specifically focusing on the practice of changing the function of waqf land: analysis of Law no. 41 of 2004. This research uses an empirical juridical approach, namely referring to written regulations or other secondary materials, to examine their implementation through field research conducted using sociological methods and interviews (Sari & Asmendri, 2020). This approach aims to obtain clarity about the subject under study. Regarding the practice of changing the function of waqf land: analysis of Law Number 41 of 2004.

RESULT AND DISCUSSION

Waqf is a word that comes from Arabic, namely وَكْفَى which means to hold, stop or withhold. In terms of terminology, waqf means holding assets whose benefits

can be utilized without consuming or passing on their essence and used for benevolent purposes (Yunus et al., 2018; Ahmadan, 2020).

Meanwhile, the definition of waqf in terms of terminology is the retention of ownership rights over someone's property, which can be utilized without changing its essence in any form of action and diverting the benefits of the property for worship to get closer to Allah SWT to seek Allah's pleasure. According to Islamic law, waqf is "*habsul ashli wa tasbiluts tsamrah*" which means holding the principal and giving up the benefits. This means holding property and sharing its benefits in the way of Allah (Farid, 2022).

Waqf is an act of retaining assets whose benefits can be utilized, but not for oneself, while the assets remain the property of the person concerned, and the benefits are used for good purposes within a certain period or indefinitely to get closer to Allah SWT (Mauliyani, 2023). In the compilation of Islamic law, Article 215 paragraph 1 explains that waqf is a legal act of a person or group of people or legal entity who separates part of their assets and dedicates them forever for worship or other public needs by Islamic teachings (Iqlima et al., 2018).

The scholars differ in interpreting waqf in terms of terminology because in defining waqf, the scholars refer to the Imams of the sect such as Abu Hanifah, Syafi'i, and other imams, giving rise to various definitions.

According to the Shafi'i School. According to Syafi'i scholars, waqf has various meanings, among others. First, Imam Nawawi from the Syafi'i school defines waqf as withholding property whose benefits can be used, not for oneself, while the property is still there, and the benefits are used for good purposes and to draw closer to God. This definition is quoted by Al-Munawi in his book, *Al-Taisir*.

Second, Al-Syarbini Al-Khatib and Ramli Al-Kabir define waqf as withholding property that can be benefited by keeping the security of the property and transferring ownership of the property from its owner for lawful purposes. Third, Sheikh Shihabuddin Al-Qalyubi defines waqf as withholding property to be used for halal purposes while maintaining the integrity of the property. Fourth, Ibnu Hajar Al-Haitami and Sheikh Umairah define waqf as withholding property that can be used while maintaining the integrity of the property, by transferring ownership of the property from its owner for lawful purposes.

From the definitions above, it can be explained that although scholars have different opinions in interpreting the meaning of waqf, there are similarities between each of these definitions. This means that the waqf assets owned can be utilized by other people while maintaining their original form and relinquishing ownership.

In the Hanafi School, Abu Hanifah and his followers have different opinions in defining waqf (Nashirun et al., 2022). As explained further by Abdul Azis Dahlan in his book, Abu Hanifah defines waqf as holding the assets of the wakif (donor) and donating the benefits to good deeds. Imam Abu Hanifah views the waqf contract as non-binding, meaning that the wakif (donor) can revoke his waqf and his assets can be sold by the original owner (Salsabila & Abdurrahman, 2021). Thus, according to Imam Abu Hanifah, donating property does not mean giving up ownership completely. The following is the definition of several Hanafi school scholars.

First, Imam Syarkhasi interprets it as *Habsul mamluk'an al-tamluk min al-ghair*, which means withholding property from someone else's property. The purpose of this definition is that the assets donated remain the property of the wakif (donor) and do not transfer ownership to someone else. However, the wakif is not permitted to use the assets for his purposes, for example, to sell, give away, or use as collateral.

Second, Abu Yusuf and Muhammad bin Hasan Al-Shaybani define waqf as carrying out legal actions of wakifs (donors) regarding their waqf assets to use them

for public purposes and generosity to get closer to Allah SWT, while waqf is a waqf whose substance remains intact.

These two schools of thought scholars share the same understanding of waqf, namely that the waqf assets owned can be utilized by other people while maintaining their original form. Waqf is also regulated by law, including: First, Government Regulation Number 28 of 1977. Waqf is a legal act carried out by an individual or legal entity that separates part of its assets, including land ownership and its institutions, forever for the interests or needs of other people according to Islamic teachings.

Second, Waqf in the Compilation of Islamic Law. Waqf is a legal act carried out by an individual a group of people or a legal entity that separates part of its property and its institutions forever for worship or other public purposes according to Islamic teachings. Third, Waqf Law Number 41 of 2004 and Government Regulation Number 42 of 2006. Waqf is a legal act carried out by the *wakif* (donor) to separate and hand over part of his assets to be used indefinitely or for a certain period according to his interests. Religious needs and/or general welfare according to Sharia.

CONCLUSION

Analysis of Law Number 41 of 2004 concerning the conversion of waqf land reveals that waqf land that has been donated is prohibited from changing its status and being transferred in any form except through an exchange intended for the public interest. By the spatial plan as outlined in Law Number 41 of 2004 concerning Waqf Articles 1 and 2. This research is a reference for future researchers in a broader context.

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