

## **CASH WAQF IN CONTEMPORARY ISLAMIC LAW PERSPECTIVE**

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### **Abstract**

*Cash waqf is new though in Islamic Social Finance and still debatable. Several Islamic scholars agree and disagree in many reasons base on Islamic laws (fiqh). In this paper aim to describe Islamic Scholars view in Islamic law from classic to modern perspective in order to understand knowledge to take explanation of some reasons in Islamic law (istinbath). This writing uses literature approach, by using some sources from classic and modern books, journal and another suitable sources then make analyzing from another scholars. The advantage of this paper will open the new view of cash waqf not only Islamic law perspective but also the impact to economic development in Islamic society. More over in Indonesia, the most muslim population of the world. The writer do hope there is sustainable action from nation policy and stake holder to follow up this new reason make economic mover become Islamic social welfare. Beside of that next research is required to accomplish it.*

**Keywords:** *Cash Waqf; Islamic Law; Contemporary.*

### **Abstrak**

Wakaf Tunai (uang) merupakan hal yang masih dalam perdebatan. Beberapa ulama sebagian ada yang membolehkan dan sebagian yang lain tidak membolehkannya. Para ulama yang tidak membolehkan dengan alasan wakaf uang tidak bersifat abadi atau kekal seperti halnya tanah, bangunan dan benda tidak bergerak lainnya. Kelompok disini diwakili oleh madzab Syafi'i. Kemudian para ulama yang membolehkan wakaf uang yaitu ulama madzab Maliki, Abdullah Al-Anshar dan Ibnu Taimiyah, alasan membolehkan wakaf uang karena sifat dari keumuman dalil sehingga bisa masuk dalam katagori wakaf juga. Di samping itu terpenting barangnya masih ada dan bisa diambil manfaatnya. Berdasar pada pendapat para ulama yang membolehkan wakaf uang dan melihat kebutuhannya di era modern seperti saat ini maka, wakaf uang bukan hal yang perlu diperdebatkan lagi. Bahkan memberi kontribusi penting untuk kemaslahatan umat, dengan cara difungsikan ke arah lebih

produktif. Dengan memanfaatkan hasilnya dan menjaga wakaf uang pokoknya, dan metode pengambilan hukum yang demikian disebut dengan Intiqa'i.

**Keywords:** Wakaf Tunai; Madzab fiqh; Perspective Kontemporer.

## **INTRODUCTION**

Cash waqf or cash waqf is a new thing in Indonesia. But it is already known by Muslim countries in the world (Rozalinda, 2016: 321). This means that the existence of cash waqf has become a concern for Muslims because of its role which is considered quite important in participating in developing global finance. Even so, his important contribution to the modern era does not mean he is free from controversy among past and present scholars about his legal position. Objective situations and conditions related to these problems require a juridical logical response that is extracted from both sources. Efforts to dig (istinbath) also require strict conditions and earnest effort (Saiban, 2019: vii), meaning that not everyone can do it. Requires depth of knowledge and various tools.

Ijtihad in this modern era is a necessity for Muslims, considering the many social-social problems that require the establishment of current laws that cannot be resolved by the classical literature of previous scholars, or have been discussed with different results, so it is necessary to make a decision. firm after comparing with various existing opinions. In this case, there are several approaches to establishing Islamic law according to Yusuf Qardhawi, namely; insyai, Intiqai, or a combination of the two (Saiban, 2019: 104).

## **RESEARCH METHODS**

The method used in this paper is a literature review. That is by digging up information through several good references from books, classic books, journals, and several other relevant sources about cash waqf. After describing some literature based on the subject, the next step is to provide a conceptual analysis from various sources and the author's analysis. Such a method is called Intiqa'i, namely by collecting the opinions of previous scholars and their arguments from several kinds of literature, then comparing and choosing opinions that are following current conditions (Saiban, 2019: 108). The hope is that it will become a

productive and developing academic discussion material, not only theoretical but at the implementation level.

## **DISCUSSION**

### **Waqf Concept**

Waqf linguistically comes from the word al-waqfu which means al-habsu (hold). In terms of syara' in general, waqf is a kind of gift whose implementation is carried out by retaining the original (ownership) (tahbisul ashli), then making the benefits generally accepted (Sabiq, 1983:378). What is meant by tahbisul ashli is to hold the waqf goods so that they are not inherited, sold, donated, pawned, rented, and the like. Meanwhile, the way to use it is to use it according to the will of the waqf giver (wakif) without compensation (Ministry of Religion, 2007: 1).

However, fiqh experts at the level of a more detailed understanding of waqf disagree with each other. So that they are also different in viewing the nature of waqf itself, both in terms of the aspect of time continuity (pledge), the essence of the waqf (waqf object), and the pattern of empowerment and utilization of waqf property. For this reason, the views of the scholars related to these discourses will be described as follows:

a. Imam Abu Hanifa

Waqf is holding an object that according to law, remains the property of the wakif to use its benefits for virtue. Based on that definition, the ownership of waqf property cannot be separated from the wakif, in fact, he is justified in withdrawing it and he may sell it. If the wakif dies, the property becomes an inheritance for his heirs. So what arises from waqf is only "contributing benefits". Therefore, the Hanafi school defines waqf as: "Not taking an action on an object, which has a permanent status as property, by giving its benefits to a benevolent party (social), both now and in the future".

b. Imam Malik

The Maliki school believes that the waqf does not release the waqf property from the ownership of the wakif, but the waqf prevents the wakif from taking actions that can release his ownership of

the property to others and the wakif is obliged to donate the benefits and may not withdraw the waqf. The act of the wakif makes the benefits of his property to be used by the mauquf bih (waqf recipient), even though what he has is in the form of wages, or makes the proceeds to be used as waqf money. Waqf is done by saying waqf lafadz for a certain period according to the wishes of the owner. In other words, the owner of the property withholds the object from possessive use but allows the use of the result for good purposes. namely, the giving of the benefits of the object fairly while the object remains the property of the wakif. Waqf is valid for a certain period, and therefore should not be required as an eternal waqf (forever).

c. Imam Shafi'i and Ahmad bin Hambal

Syafi'i and Ahmad argue that waqf is the release of the waqf property from the ownership of the wakif, after the completion of the waqf procedure. Wakif may not do anything to the property as waqf, such as treatment of the owner by transferring his ownership to another, either by exchanging or not. If the wakif dies, the assets that are donated cannot be inherited by his heirs. The wakif distributes the benefits of the assets he has waqf to the mauquf 'alaih (who is given the waqf) as binding alms, where the wakif cannot prohibit the distribution of his donations. If the wakif forbids it, then Qadli has the right to force him to give it to the mauquf 'alaih. Therefore, the Shafi'i school defines waqf as: "Not doing action on an object, which has the status of belonging to Allah SWT.

d. Imamiyyah

The other schools are the same as the third school, but differ in terms of ownership of the waqf object, namely it belongs to the mauquf 'alaih (who is given the waqf), even though the mauquf 'alaih is not entitled to take any action on the waqf object, either selling it or donating it (Ministry of Religion, 2007: 2-4).

According to Syauqi (2014), Waqf in Indonesia has been regulated in laws and regulations that specifically regulate waqf, namely

Government Regulation No. 28 of 1977 concerning Waqf of Owned Land and Government Regulation no. 1 of 1978 concerning Regulations for Implementing Waqf, and Government Regulation No. 28 of 1977 concerning the Endowment of Land owned and the Compilation of Islamic Law Book III on the Law of Waqf. In this government regulation, only the waqf of the owned land is regulated. However, along with the development of the legislation, it is no longer able to accommodate developments in society, especially those concerning waqf. Banks also do not want to accept land or other assets which are waqf assets to be used as collateral. Because waqf property is not property,

Waqf is no longer synonymous with land designated for educational institutions, tombs, places of worship, or others, but waqf can also be used as a source of strength to realize the welfare of the people and move sectors of potential economic empowerment. The greater and the variety of waqf assets that can be managed by nadzir professionally with proper management, the benefits obtained from waqf management will be wider in use so that in turn it can strengthen the role of waqf in improving the economy and welfare of the people (Hazami, 2016:173- 203).

#### **A. Cash Waqf**

Cash Waqf is an idea initiated by an economic figure from Bangladesh, MA Mannan. Cash Waqf by definition is a waqf made by a person, group of people, and institutions or legal entities in the form of money. Thus, cash waqf is a form of waqf that is handed over by a wakif to Nazhir in cash. The definition of cash waqf according to the Minister of Religion Regulation (PMA) Number 4 of 2009 concerning Administration of Cash Waqf Registration, article 1 number (1). Cash waqf in PMA is defined as a legal act of wakif to separate and/or hand over part of his money to be used forever or for a certain period of time according to his interests for the purposes of worship and/or general welfare according to sharia. This definition is a specialization of the definition contained in Article 1 number (1) of the Waqf Law. Thus, in short, cash waqf is defined as waqf in the form of money that can be stored principally and

the proceeds are distributed for the benefit of the people (Ministry of Religion, 2007: 7).

Cash waqf includes productive waqf, namely giving in the form of something that can be cultivated or carried out for the benefit of the people (Diana, 2012: 105). Cash waqf is almost the same as other financial instruments such as zakat, infaq, and shodaqoh (ZIS). The difference is that if it can be directly distributed to those who are entitled to receive it, or used as needed for the benefit of the benefit or to those who are entitled to receive it, while cash waqf is permanent, only the proceeds are used for the benefit of religion and the benefit of the people. Cash waqf is more flexible than land or buildings and its distribution knows no boundaries of territory and time (Diana, 2012: 106).

#### **B. Legal Basis of Cash Waqf**

The legal basis for cash waqf is the Qur'an, hadith, ijma' ulama, the same as land waqf. The hadith that is the legal reference for cash waqf is the hadith narrated by Imam Nasa'i:

" From Ibn Umar RA, he said: Umar (bin Khattab) RA, said to the Prophet SAW 'I have a hundred dirhams in Khaibar, I have never got the treasure that I admire most like that, but I want to donate it.'" The Prophet SAW said to Umar RA, "Hold on to the point and make the result alms for sabilillah".

From the hadith above, besides being the basis for waqf, it can also be understood that waqf is not only in the form of land or buildings but can also be in the form of assets in the form of money. Where the results can be used for the benefit of the people and the principal of the property (money) remains in existence, it cannot be traded. Ownership must not be transferred or managed which is the cause of the transfer of ownership, it must be maintained as it is, and can be processed according to the conditions given by the person who is waqf (wakif), as long as there are no deviations and injustices (Mardani, 2012: 105).

There are differences of opinion among fiqh scholars regarding the law of cash waqf. In general, scholars are of the view that the property

that is waqf must be eternal in substance or principal and the form of immovable objects, so that money cannot be waqf because the object is movable. Ibn Abidin argues, that cash waqf is a habit of Roman society, whereas in other countries it does not apply. Therefore, cash waqf is not allowed, as is the Shafi'i school, because dinars and dirhams will disappear when after being paid so that they no longer exist (Diana, 2012: 108). Differences of opinion around the requirements of mauquf (waqf objects). The difference lies in the form of money as a medium of exchange or payment. Is the money preserved or not after waqf.

Jalaluddin al-Mahally allows waqf of immovable objects, such as land as well as movable objects that are allowed to use them. Ibn Qudamah in his book, al-Mughni narrates that most scholars do not allow cash waqf (dinar and dirham). The reason is that money will disappear when paid so that it no longer exists (Rozalinda, 2016: 322). In addition, they also cannot rent out money because it will change the function of the money.

Hanafiyah scholars allow waqf of movable objects as long as it has become a habit ('urf) among the people, such as waqf of books and manuscripts. In this case, the Hanafi scholars require that there must be an istibal (exchange) of the waqf object if it is feared that the substance is not eternal. The trick is to exchange these objects with immovable objects that allow the benefits of these objects to be eternal (Rozalinda, 2016: 322). This is where the Hanafis argue that it is permissible for cash waqf (dinar and dirham) to be replaced with immovable objects so that the benefits are fixed. So the money is exchanged for something (immovable objects) that can provide permanent benefits. Some scholars allow cash or cash waqf if it is intended (exchanged) for jewelry (Sahroni and Karim, 2016:229).

Muhammad Ibn Abdillah al-Ansyari, a student from Zufar, gave a fatwa for waqf with money, such as dinars and dirhams, as well as items that were weighed and measured (eg wheat). This cash waqf is carried out by investing in the form of mudlarabah and the profits are donated to charity, while the food that is donated is sold and the price is rotated with mudlarabah, the results of which will be donated (Rozalinda, 2016:

323). Some scholars argue that cash waqf is permissible but it is intended for receivables from other people (or companies). With the model of receivables to other parties, profits will be obtained in the future, where the form of waqf will remain. Then according to some Malikiyah scholars and Ibn Taimiyah, the law of cash waqf is absolutely permissible (Sahroni and Karim, 2016: 229). Malikiyah scholars argue that waqf objects are not only immovable, movable objects can also be, including dinars. Wahbah Zuhaili argues that cash waqf is permissible but by making it business capital with the mudharabah principle and the profits are handed over to the mauquf alaih, the party who is given the waqf or for the benefit of the people (Rozalinda, 2016: 323).

### **CONTEMPORARY FIQH OPINIONS**

Based on the arguments of various scholars regarding the law of cash waqf (money), the Intiqa'i approach will be used. Intiqa'i is ijihad which is done by collecting the opinions of previous scholars by revealing the arguments used by them and then comparing and choosing opinions that are stronger and more in line with current conditions (Saiban, 2019: 108).

Hasan (2010), corroborated by Suhendi (2010), sees the popularity of cash waqf which was not known in the early days of Islam, so it is not surprising that the discussion of the legal basis of cash waqf is also difficult to find in classical books. Even waqf is only limited to immovable property as understood in classical fiqh. However, over time, cash waqf also gained legal legitimacy. This is also confirmed by the opinion of Malikiyah, Abdullah al-Ansar, and Ibn Taimiyah. At least, the following is an explanation of the source of footing for cash waqf. These sources consist of:

- a. Al-Qur'an Surah Ali Imran verse 92.

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا

مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ﴿٩٢﴾



Meaning: "You will never come to goodness (perfect) until you spend some of the wealth you love and whatever you spend, Allah knows." (Surat Ali Imran: 92)

Al-Qur'an Surah Al-Baqarah verse 261

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ  
أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنبُلَةٍ مِائَةُ حَبَّةٍ وَاللَّهُ يُضَعِفُ  
لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ ﴿٢٦١﴾

Meaning: "The parable of the person who spends in the way of Allah is like a seed that grows seven stalks, on each stalk there are one hundred seeds. Allah will multiply for whom He wills. And God is great. Omniscient. (Surat al-Baqarah: 261).

b. Hadith About Sadaqah Jariyah

عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ:  
إِذَا مَاتَ ابْنُ آدَمَ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثٍ, صَدَقَةٍ  
جَارِيَةٍ, أَوْ عِلْمٍ يُنْتَفَعُ بِهِ, أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

Meaning: "When the child of Adam (human) dies, then his deeds are cut off, except for three things, shadaqah jariyah (Waqf), useful knowledge either by teaching or by work, and pious children who pray for their parents".

c. Hadith About Waqf

Meaning: "It was narrated from Ibn Umar ra that Umar bin Al-Khattab ra obtained land (garden) in Khaibar, then he came to the Prophet SAW to ask for instructions about that

land. He said, 'O Messenger of Allah, I have acquired land in Khaibar which I have never had wealth better for me than this land, what do you command me to do about it? The Prophet (SAW) replied: If you want, you hold on to it and you donate the result" (Narrated by Bukhari) (Sabiq, 1983:380).

The difference of opinion of the fiqh scholars above, regarding whether or not cash waqf is permissible, shows the continuous efforts of the scholars to always try to respond to the times, by prioritizing the interests of the people. The debate about eternal or eternal regarding the form of waqf goods cannot be separated from the understanding of the scholars of the hadith of the Prophet SAW narrated by Ibn Umar RA, *habasta aslaha wa tashaddata laha* (hold the main thing and give the results) (Rozalinda, 2016: 323). Containing the meaning that the waqf is the benefit of the object and the object is durable (does not disappear when used). If you look at the opinion of the scholars that waqf goods must be eternal and last a long time, it cannot be separated from the perspective (paradigm) that waqf goods are a form of *shadaqah jariyah* whose reward will always flow, like the hadith mentioned above, as long as the item exists. Of course, the wakif will hope that the waqf object will remain eternal.

According to Imam Turmudzi, this hadith that explains the practice of waqf in Islam is the basis for the consensus of all scholars who agree that waqf is a *sunnah* (Sahroni and Karim, 2016: 231). Then the following texts, (mentioned above), explain that waqf is *sunnah* without distinguishing the type and form of waqf. So the cash waqf that is part of the waqf is included in the *sunnah*.

Based on this Malikiyah opinion, the general rules of waqf above also apply to cash waqf. So money should not be spent or spent, given to charity or *infaq*, but money must be an eternal item- like immovable waqf wealth, such as land, social-educational buildings, and mosques. For money to carry out its function as waqf property so that its benefits can be used, the money must be invested in safe forms of business or

the risk of loss is minimal and generates profits regularly so that the benefits continue to be simultaneous. Sustainability is like the use of land and buildings that provide continuous benefits.

In this modern era, cash waqf can be said to be strategic, if you look at the development of increasingly advanced financial investments, such as sharia capital, sharia securities, and other sharia investments which of course must guarantee according to the provisions as waqf above and provide benefits for the benefit of the people. Basically, cash waqf (cash waqf) provides opportunities for the creation of an investment in the fields of religion, education, and social services (Djakfar, 2014: 135). Highly recommended through a modern and professional mechanism through banking institutions. The idea of cash waqf, initiated by Abdul Mannan, is actually to provide opportunities for anyone, especially the rich to donate some of their wealth for the benefit of religion and society.

To realize this idea, according to M. Abdul Mannan (Djakfar, 2014:138), four main agendas need to be carried out. First, the formation and mobilization of cash waqf funds on a global scale. Second, the formation of Islamic social organizations. Third, the globalization of Islamic social activities. Fourth, strategic and visionary social investment planning. To implement this idea, good and professional planning and management are needed and the scale is even state and even transnational. Of course, this is not easy to realize, it needs systematic and continuous efforts. Although the level is still national, the modernization movement for productive waqf has begun in Indonesia. Through the Indonesian Waqf Board (BWI) and other Islamic social institutions.

Indonesia is one of the countries that have quite a lot of waqf assets, but most of them have not been managed productively. In general, waqf property in Indonesia is in the form of land and its designations include mosques, prayer rooms, schools, madrasas, tombs, and others related to places of worship. Observing the wealth of waqf that we have, we can actually empower it more optimally. In addition, the potential for cash waqf is also very promising, because waqf in this

form does not involve the ownership of large amounts of wealth. Although money has a nature that can reduce its value over time, but due to its flexible nature and the support of an adequate legal umbrella, cash waqf can be used as an instrument for developing productive waqf in the future (Muis and Maqsalah, 2020:121). Moreover, according to the fatwa, contemporary scholars provide cash waqf space productively. This will certainly make a major contribution to the development and welfare of Muslims in various sectors in Indonesia, especially to people who are in dire need. So it doesn't just depend on taxes whose results and use are still not as expected. BWI noted that the potential for cash waqf in Indonesia reached 180 trillion. Then from the amount of Rp. 180 trillion, as much as Rp. 400 billion has been realized. Meanwhile, in 2019, BWI targets the realization of cash waqf to reach Rp 800 billion (Lubis, 2020: 45). There are still many opportunities to explore cash waqf in Indonesia. With the development of many modern and reliable Islamic social financial institutions, the hope of Indonesia being independent of halal sources of funds will one day be realized. both from waqf, infaq, shodaqoh, and zakat of course. Amen.

That direction needs the collaboration of awqaf and financial institutions. To a large extent, this section discusses awqaf in relation to economic development. First, a waqf is an instrument that ensures the sustainability of the economic sector, which is in line with the SDGs, introduced in 2015 by the United Nations and general economic development. The utilization of a waqf is very flexible relative to that of zakah. For zakah, beneficiaries are already fixed, as is taught in the Islamic religion, but the beneficiaries of a waqf can be anyone (more general). Zakah and awqaf are complementary in supporting economic development and awqaf in the form of land, building, and cash certainly create more jobs. second, awareness of the waqf should be another important point to consider and requires a proper socialization program to ensure the sustainability of the waqf itself. Empirically, abundant idle waqf land exists, and various attempts have been made regarding making such land productive. Therefore, universities need to create innovative waqf socialization programs that can have massive effects

through various available alternatives, such as social media and newspaper. (Sukmana, 2020: 5).

## **CONCLUSION AND RECOMMENDATION**

Waqf is worship that is recommended in Islam which is sunnah based on the hadith of the Prophet SAW narrated by Ibn Mas'ud. But its existence is very noble because it has an impact on the benefit of Muslims. The waqf is known in the form of immovable goods, such as land, social and educational buildings, and mosques. While cash waqf is a matter that is still under debate. Some scholars have allowed it and some have not allowed it. The scholars do not allow it on the grounds that cash waqf is not eternal or eternal like land, buildings, and other immovable objects. The group here is represented by the Shafi'i school. Then the scholars who allow cash waqf, namely the Maliki school of thought, Abdullah Al-Ansar and Ibn Taimiyah, the reason for allowing cash waqf is because of the nature of the generality of the arguments so that it can be included in the category of waqf as well. In addition, the most important thing is that the goods are still there and can be taken advantage of.

Based on the opinion of the scholars who allow cash waqf and see its needs in the modern era like today, cash waqf is not something that needs to be debated. It even makes an important contribution to the benefit of the people, by functioning in a more productive direction. By utilizing the results and maintaining the main cash waqf. This method of taking the law is called *Intiqā'i*, namely by collecting the opinions of previous scholars and their arguments, then comparing and choosing opinions that are in accordance with current conditions. Therefore, this approach is also known as the contemporary law-making method and is supplemented by the views of Islamic economists. Wallahu a'lam bi al-Shawab.

The potential of awqaf is so large and gives an advantage to a nation more than Indonesian Muslims. It will help various sectors, such as education, social, economic, and health that couldn't be enough taken over by the government. In spite of this awqaf, the movement should be pushed many times and sustainability for all Muslim people from low

level until up education, low up to high workers, socialization to Muslims everywhere and every time. Therefore awqaf institution management must be modern, accountable, credible, and professional to get, save, manage and distribute it as well. Besides of government hope helpful awqaf program, as accessibility and facility to optimal direction. Awqaf is successful so can help the government program in social and development programs. Regarding the recent issues related to SDGs, almost all 17 indicators of the SDGs can be contributed to by awqaf. Therefore, awqaf should be treated as a mainstream financial instrument for SDGs. Governments should create policies that ask nazhir/mutawalli (fund managers) to obligately utilize all of the idle waqf lands that they manage with proper supervision from experts for the purpose of schools, medical clinics, and others through, for example, Build Operating Transfers ( BOTs) (Sukmana:2020).

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