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Understanding The Contextualization Of Waqaf In Classical Fiqh And National Legislation

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Abstract. Having a basis in classical fiqh, waqaf is one of the important tools in the socio-economic progress of Muslims. Contextualisation of waqaf is seen from the perspective of classical fiqh and Indonesian national legislation. The principles of waqaf as well as the legislation governing the implementation of waqaf in Indonesia are discussed in the classical fiqh texts. This analysis was conducted using a qualitative approach. The study shows that although the interpretation and implementation of waqaf in the classical and modern era are different, there is a common goal to improve the welfare of society. In addition, optimising waqaf's potential as a tool for economic empowerment is essential to integrate national rules and fiqh principles. It is hoped that this research will help build waqaf policies that are more in line with the needs of today's society.

Keywords: Waqaf, Classical Fiqh, Legislation, Contextualisation, Socio-Economic

1. Introduction

Islamic law recognises various kinds of transactions or ways of obtaining property rights. Types of transactions such as sale and purchase, exchange, infaq, sadaqah, gifts, wills, waqf, inheritance, grants, and zakat are examples of these methods. Due to the merits of waqf, it is a form of worship activity that is highly recommended for Muslims. Even if the waqif has passed away, the water will continue to flow. Waqf has been a tool in its history. maliyah, which is a teaching classified as sharia, which is considered sacred and holy, but the understanding and action of waqf is included in the field of fiqh (endeavours of a humanitarian nature); therefore, it is easy to understand that the practice and implementation of this waqf is closely related to the circumstances and needs of the community in each Muslim country, including Indonesia.

Due to the importance of the position of waqf, scholars have established the elements and conditions for the implementation of waqf. On the other hand, waqf in Indonesia has also been regulated in legislation through a process that led to Government Regulation No. 28/1977 on Land Trust being made in 1977. The third book of the Compilation of Islamic Law on the Perwakafan of Owned Land and Law No. 41 of 2004 relating to waqf. Waqf law is closely related to both Islamic and national laws of the country. Islamic law provides the basis for the implementation of waqf, with its conditions and pillars. On the other hand, national law or national law regulates the implementation of waqf. Positive about state waqf is the rules applied to manage and develop waqf in a sustainable manner to achieve the goal of economic empowerment. religion to realise a prosperous, just and prosperous society. Problem formulation: How is the idea of What is the legal basis of waqf? In fiqh, what are the issues related to waqf? How is waqf conducted according to Law No. 41 of 2004? Writing Objectives: Gaining an understanding of the basic concept of waqf, Knowing the legal basis of waqf, understanding the problems of waqf in fiqh, and knowing waqf in accordance with the laws that have been mentioned.

2. Methods

This research is a type of literature research, so the information used comes from library sources, such as books, encyclopedias, magazines, journals, newspapers, and journals. The approach of this research is descriptive, analytical, and critical. Therefore, the author can provide an understanding of Waqf in Classical Fiqh and National Law. In this study, the author utilised two sources of data relevant to this research, namely primary data sources and optimal secondary data sources. The primary source of this research.

3. Results and Discussion

3.1. Basic Concept of Waqaf

Waqf comes from the Arabic word al-waqf, a masdar form of the Arabic word *'Waqafa-Yaqifu-Waqfan'*, and is also synonymous with the Arabic word al-habs, a masdar form of the Arabic word '*Habasa-Yahbisu-Habsan'*, which means to hold. The term waqf in Arabic can mean whatever is being waqfed (Almauquf Bih) or used in the sense of waqf as an institution under Egyptian law. In Indonesia, the term Waqf can mean something that is endowed or an institution.(Pulungan, 2020) By definition, waqf means 'to hold property that can be utilised and used for good without consuming or continuing the object (Ainnya) and used for good.'(Al-Alabij, 1989) However, in fiqh, the definition of waqf means owning property that can be used for the purpose of worship and transferring the property for the purpose of approaching Allah with the desire to gain Allah's pleasure,(Baznas, 2019).

As mentioned earlier, waqf means owning property and using the proceeds according to the laws of Allah. This is the etymological or linguistic sense. The purpose of waqf is to stop seeking profit and replace it with righteous deeds. It stops everything that was originally permitted to sell, grant, and trade property, but was not permitted only for religious reasons, not to fulfil the needs of the waqif or other individuals.

The classical fiqh books contain many definitions of waqf. It is important to understand their respective opinions. In his book Fiqh As-Sunnah, Sayyid Sabiq writes, in simple yet profound language, 'Habasul Ahlul Maal wa tasybilusshamarah fi sabilillah, which means safeguarding the source of wealth and endowing the proceeds to use it for the cause of God. The words Habs and tashbiil, meaning waqf, are used by Sayydi Sabiq. have tasbilussamarah and wealth, or endow the proceeds. The book *Al-Ahwalus Syakhsiyah* says, Muhammad Mughnoiyah states that waqf is a form of sacrifice that entails preserving the original property and generating money in a beneficial way. Waqf is a type of gift in shara' terms that is done by withholding (ownership) of the original (*Tahbisul Ashli)* and making its benefits public. What is meant by *Tahbisul Ashli* is to restrain the item that is endowed from being inherited, sold, or given to another person. pawned, leased, granted, and so on. However, the way to use it is in accordance with the wishes of the waqf.(Medias, 2017) According to the compilation of Islamic law, article 215, paragraph (1), waqf is a legal act of a person or group of people or legal entities who take part of their assets and institutionalise them in perpetuity for the benefit of worship or other public purposes in accordance with Islamic religious beliefs. It is permissible for the waqif to withdraw and sell the waqf property, as Abu Hanifah's definition states that ‘waqf is the holding of an object which, according to the law, remains the property of the waqif in order to use its benefits for good.’

After the waqif dies, the property will be passed on to his heirs. Therefore, waqf only involves ‘donating benefits’. Hence, in the Hanafiyah school of thought, waqf is defined as ‘not performing an action on an object, which retains its status as property, by donating its benefits’ to a benevolent (social) cause, either now or in the future.

3.2 Legal Basis of Waqaf

Some of the arguments that underlie waqf worship include verses of the Qur'an and hadiths of the Prophet SAW, such as:

1. **Legal Basis of Waqf in the Qur'an**

Allah's Word Q.S Al-Hajj (22:77):

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوا ارْكَعُوْا وَاسْجُدُوْا وَاعْبُدُوْا رَبَّكُمْ وَافْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُوْنَ ۩

Meaning: *O you who believe, bow down, prostrate yourselves, worship your Lord, and do good that you may be fortunate.* (Q.S Al-Hajj: 77)

Allah's Word Q.S Al-Baqarah (2:267):

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْٓا اَنْفِقُوْا مِنْ طَيِّبٰتِ مَا كَسَبْتُمْ وَمِمَّآ اَخْرَجْنَا لَكُمْ مِّنَ الْاَرْضِ ۗ وَلَا تَيَمَّمُوا الْخَبِيْثَ مِنْهُ تُنْفِقُوْنَ وَلَسْتُمْ
بِاٰخِذِيْهِ اِلَّآ اَنْ تُغْمِضُوْا فِيْهِ ۗ وَاعْلَمُوْٓا اَنَّ اللّٰهَ غَنِيٌّ حَمِيْدٌ

Meaning: *O you who believe, give away some of the good of your labour and some of what We bring forth from the earth for you. Do not choose that which is bad for you to give away, when you do not want to take it, except by straining your eyes against it. Know that Allah is All-Rich, All-Praised* (Q.S Al-Baqarah:267).

Since waqf is a form of charity, the above verse encourages people to spend or donate their money.

Allah's Word Q.S Al-Imran (3:92):

لَنْ تَنَالُوا الْبِرَّ حَتّٰى تُنْفِقُوْا مِمَّا تُحِبُّوْنَ ۗ وَمَا تُنْفِقُوْا مِنْ شَيْءٍ فَاِنَّ اللّٰهَ بِهٖ عَلِيْمٌ

Meaning: *You will never attain (complete) virtue until you spend some of the wealth you love. Whatever you spend, Allah knows best.* Q.S Ali-Imran: 92)

Scholars base this waqf issue on the ruling of the Prophetic Sunnah, in addition to the above verses that encourage people to spend or donate their money to help others. Many of the Prophet's traditions can be found among the books of hadith. set as the standard in this waqf. The Qur'an shows that Allah SWT regulates and upholds waqf. which is a way of drawing closer to God in a wrong way. Waqf was unknown to the people of Jahiliah. However, the Prophet called for waqf because he loved the poor.

2. **Legal Basis of Waqaf in Al-Hadith**

Hadith narrated by Imam Muslim

عن ابي هريرة رضي الله عنه ان رسول الله صلى الله عليه و سلم قال : اذا مات الانسان اتقطع عمله الا من ثلاث صدقة جارية او علم ينتفع بها او ولد صله يد عولها (رواه الترمذى)

Meaning: *'Abi Hurairah (may Allah be pleased with him) reported that the Messenger of Allah (SAW) said: 'When a person dies, his deeds are cut off, except for three things: sadaqah jariyah, useful knowledge and a righteous child who prays for his parents*.' (H R. Muslim)

A person's deeds cease after his death except for three things: charity, useful knowledge, or righteous children who pray for him. According to the above Hadith, a deceased person's deeds cannot be renewed except for these three things, as they are derived from his descendants: the children he has and his Jariyah charity. Commentary on Sadaqah Jariyah There is a chapter on waqf in the Hadith. This is because scholars interpret sadaqah jariyah as the same as waqf.

3.3 Waqf Problems in Fiqh

In Indonesia, there are many waqf assets, including religious, social, and other facilities. However, not many of these waqf assets have formal legal certificates, due to several factors in society. In Indonesia, the problem of waqf is caused by several factors including: First, the Indonesian people's understanding of fiqh classics in waqf matters, such as the belief that waqf is only owned by Allah, which cannot be changed or disturbed. Thus, people understand that recommending a social function beyond mahdhoh worship. (Arifin, 2015) Waqf land is generally land. Because it is often not managed properly, many problems arise related to waqf land, including waqf land that is not or has not been certified, waqf land that is still being sued by some families, and waqf land that is sold by the party assigned to oversee it, including doing ruislag, or swap, unfair and asymmetrical waqf land conflicts between the foundation and some, embezzlement and reduction of the area of waqf land of the family who gave the waqf land, as well as abandoned or neglected waqf land. Among them are the problems of waqf (Muntaqo, 2015)*:*

First, lack of socialisation

The majority of people do not understand the law of waqf properly, both in terms of the conditions and pillars of waqf, as well as its shari'ah purpose. Understanding the pillars of waqf for the community is very important, because by understanding them, the community can find out who can do waqf, what, and how waqf is prescribed, everything that can be waqfed, for what purpose and to whom the waqf is given, how to do waqf, and who can be appointed as nadzir. The public's understanding of consumptive waqf makes the nadzir chosen by the waqif also have time to look after and maintain the mosque. As a result, waqifs give less consideration to the nadzir's ability to improve the mosque so that it becomes the centre of cultural activities of the ummah. As a result, waqf today is only intended to fulfil the needs of worship and If you look at the history of waqf, not many aim to improve the community's economy. waqf in the past, as the Prophet Muhammad and his companions did in mosques and places of learning, there are many garden waqf that generate money for those who need it.

Second, Management

Today, he manages a large number of waqf assets that have been neglected, some even lost. One of the causes is that Muslims generally only endow land and school buildings, while waqifs and nadzirs give little consideration to the operational costs of schools, and there is a lack of professional nadzirs. It has not done much to empower the economy of the Indonesian people because Waqf is not managed effectively. A new paradigm in waqf management will solve this problem. must be implemented. Waqf should be managed productively using contemporary management.

Third, Waqf Objects and Nadzir Commitment

The fiqh scholars use general Quranic verses and hadith in their opinions on waqf objects. They point out that the requirements for waqf objects are not specifically supported by the hadith; they must be useful, non-disposable, non-haram substances, and fully owned by the waqif. Since waqf property is not developed, the determination of the requirements for waqf objects is a very important area of ijtihadi of the Nadzir.(Naim, 2018) All properties must be maintained, preserved, and, if possible, developed. A nadzir is responsible for managing waqf property, safeguarding it, and developing it in accordance with its function, purpose, and designation, as well as safeguarding the benefits of the wealth given to those entitled to take it. The nadzir must also safeguard the waqf property, and the waqf depends on the ability of the nadzir. Based on his heavy responsibilities, the Nadzir is also entitled to the proceeds from the development of waqf.

One of the purposes of appointing a nadzir is to ensure that waqf assets are maintained and managed properly, so that they do not go to waste. The nadzir can be an individual, organisation, or legal entity. Article 10 stipulates that only those who fulfil the following criteria can be appointed as nadzir: a) Indonesian citizen; b) Muslim; c) Adult; d) Trustworthy; e) Physically and mentally capable; and f) Unhindered from performing legal acts. Article 11 of the Waqf Law explains the responsibilities of the nadzir, namely: a) managing waqf property; b) managing and developing waqf property in accordance with its purpose, function, and designation; c) monitoring and protecting waqf property; and d) reporting the implementation of responsibilities to the Indonesian Waqf Board.

Fourth, Weak Control System

It is very important to conduct supervision. For decades, waqf in Indonesia has been poorly supervised. Thus, many waqf assets were neglected and some were even lost. In countries where waqf is already developed, the supervision component is a very important part, especially if the waqf is goods or money moving in a different direction. Thus, waqf institutions must be prepared to be audited. Supervision of the During the time of Bani Umayyah, the 7th century and the first half, waqf management had actually begun. 8th century, the task was to protect waqf proceeds from misuse by the nadzir.(Kamariah, Sukman, 2021) In fiqh, waqf has several benefits, such as: 1) Not limited by a certain time, because waqf is valid forever, not for a certain time; 2) The purpose of waqf must be clear; 3) It must be implemented immediately after it is declared by the donor; and 4) Waqf must be carried out without khiyar (cancelling or continuing the declared waqf). One of the most common problems in practice is the number of land waqfs that are not followed up with the creation of a waqf pledge deed.

In Indonesia, many waqfs are done religiously or based on mutual trust. In the end, this condition makes the waqf land have no legal basis, so that in the future, the issue of waqf land ownership will be handled. difficulties, especially in terms of proof. Another thing that often becomes a problem in practice In Indonesia, waqf land is controlled by the wakif's heirs after they ask for it back. for generations by Nadzir, whose use deviates from the convention of waqf.(Komariah, 2014)

3.4 Law No.14 Year 2004 on Waqaf

In Law No. 41 of 2004, the Indonesian Ulema Council (MUI) stipulated that waqf can be in the form of movable objects such as money and precious metals. To perform the task of waqf Additional devices are required in accordance with Regulation No. 41 of 2004 Government and Minister of Religious Affairs regulations regarding cash waqf, as well as the motivation of the Indonesian Waqf Board (BWI), which is responsible for the management of waqf assets.(Pulungan, 2020) According to Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, Article 16 Paragraphs (1) to (3), waqf objects (waqf objects) consist of two groups: waqf of movable objects and waqf of immovable objects.Syafiq states that immovable objects include: 1) land rights according to the provisions of the applicable laws and regulations, whether registered or not; 2) buildings or parts of buildings standing on land; 3) plants and other objects related to land; and 4) appropriate land ownership in accordance with applicable legal regulations. However, movable objects include: 1) Money; 2) Precious metals; 3) Securities; 4) Vehicles; 5) Intellectual property rights; 6) Leasehold rights; 7) Other movable objects in accordance with the provisions of Sharia and applicable laws and regulations (Naim, 2018).

According to Article 62 of Law Number 41 of 2004 concerning Waqf, the settlement of waqf disputes must basically be carried out through deliberation for consensus. If the deliberation does not succeed in resolving the dispute, the dispute can be resolved through mediation, arbitration, or court. It is further explained that mediation means resolving a dispute with the help of a third party agreed upon by the disputing parties. If mediation does not succeed in resolving the dispute, it can be taken to a sharia arbitration body. If the sharia arbitration body is also unsuccessful in resolving the dispute, it can be brought to a religious court or a simple court.(Komariah, 2014) The draft of Law No. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 shows the product of the development of waqf fiqh. One of the products of the development of waqf fiqh is: 1) Waqf of movable objects such as money, shares, and other securities. Article 28 of Law No. 41/2004 The legal source is the MUI Fatwa on Cash Waqf dated 28 Shafar 1423 H/11 May 2002 AD. 2) Fees for the nadzir. Article 12 of Law No. 41 of 2004 states that the nadzir can receive a reward from the net proceeds of the management and development of waqf property of 10% as long as it carries out the duties mentioned in Article 11. 3) Waqf for a certain period of time. Article 1 paragraph (1) states that waqf must be carried out within a certain period of time.

Administrative sanctions and criminal provisions Article 67 of Law No. 41/2004 states that if a person intentionally pledges, grants, bequeaths, or transfers waqf assets that have been endowed as mentioned in Article 40 or without the permission of the waqf authority, exchanges waqf assets that have been endowed as mentioned in Article 41 with other waqf assets, he will be punished with a minimum imprisonment of 5 (five) years and/or a fine of 500 million rupiah.

3.5 Comparison and Contextualisation of the Two Approaches

Comparison and contextualisation in these two approaches are divided into three parts, namely: (A.M. Saefuddin, 2018)

a. Similarity of Purpose: Waqf is intended as a means of charity that benefits society in the long term by classical Fiqh and national legislation.

b. Different Asset Approaches: In Classical Fiqh, Waqf favours assets that have a permanent nature. However, national legislation has made the types of waqf assets more flexible and opened up opportunities for productive waqf in line with modern economics .
c. Contextualisation in Management: While Classical Fiqh relies on trust and social ties between Waqif and Nazir, National Legislation emphasises supervision, responsibility and professionalism in Waqaf management .

Waqf can now be used to boost sectors such as education, health, and economic empowerment, which have a direct impact on people's welfare. By being incorporated into national legislation, waqaf can become an individual charity as well as a useful resource for broader socio-economic development. All this is done with due regard to the primary purpose of waqaf in Islam, which is as a charity that benefits the ummah in a sustainable manner originally .

4. Conclusions

According to the conclusion of the journal 'Understanding the Contextualisation of Waqaf in Classical Fiqh and National Legislation', waqaf has an important role in Islamic tradition and serves as a tool to achieve social justice and community welfare. By studying classical fiqh, we can understand the basic values underpinning the practice of waqaf, which focuses not only on the aspects of worship but also on its benefits for community development. To ensure that these principles can be effectively applied in the modern social and economic context, it is imperative to contextualise waqaf within the national legal framework.

In addition, religious institutions and the government should work together to incorporate waqaf into national legislation. This will enable the management of waqaf assets to become clearer and more monitorable. To achieve these goals, it is crucial to increase public knowledge about the benefits of waqaf and to innovate in its management. Therefore, waqaf can serve as a tool that not only maintains tradition but also helps adapt and benefit sustainable development in the modern era.

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