

## **Law Review of Islamic Law Regarding Waqf Through Money (Study by the Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency)**

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### **Abstract**

Waqf items in the Al-Huda Kepuhbener Foundation, Kedungrejo, Tanjunganom, Nganjuk must be permanent or eternal to fulfill the waqf requirements based on the nature of the items even though the waqf in this foundation is cash-based. The aim of this research is to describe the practice of cash waqf and to describe the Islamic legal review of cash waqf at the Al-Huda Kepuhbener Foundation, Kedungrejo, Tanjunganom, Nganjuk. With descriptive qualitative research, The results of this research show that the practice of waqf through money at the A-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency, is by waqf in the form of money which will later be replaced with land area. So, money is here as an equalizer. Waqf through money is a form of waqf that is permitted in Islamic law, and the Al-Huda Kepuhbener Education Foundation has implemented waqf through money appropriately and in accordance with the principles of Islamic law. And this is confirmed by the views of the schools of thought regarding waqf through money, namely the Hanafi school, the Hanbali school, the Maliki school of thought allows waqf through money, but among some scholars who follow the Shafi'i school of thought, they do not allow waqf through money. It is hoped that this research can contribute to the development of waqf through cash and can become a reference for waqf institutions in managing waqf well and in accordance with the principles of Islamic law.

**Keywords:**

Money Waqf, Islamic Law, Equality of Land and Money

**Introduction**

This research is motivated by the practice of waqf through money among the community. Waqf is an important aspect of Muslim life because it provides sustainable benefits for society. Waqf is a permanent gift of property for benevolent purposes and public benefit. In Islam, waqf has enormous worship value, because waqf is a form of charity that can continue to provide benefits to humanity throughout life.<sup>1</sup>

Waqf itself comes from the Arabic word Waqafa which has an etymological meaning stay in place, stop, stand, or hold back.<sup>2</sup> Meanwhile, the definition of Waqafa in terminology is that waqif assets are donated to people who have the right to use the waqif assets, and the status of the waqif's assets passes to the person who manages the waqf.

In the Qur'an there is a verse relating to waqf, which is found in QS Ali Imran: 92 which reads:

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

*"You will not gain virtue until you invest some of the wealth you love. And whatever you spend, of that, Allah is All-Knowing."*<sup>3</sup>

The verses in the Qur'an above include verses of a global nature that encourage Muslims to set aside some of their wealth or good fortune for the public good, to encourage Muslims to invest and give alms. Waqf is part of eternal alms where good deeds continue to flow.<sup>4</sup> Waqf is included in the definition of infaq which is mentioned by Allah in the Qur'an 60 times.<sup>5</sup>

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<sup>1</sup>Ali, M. (2019). Waqf from the perspective of Islamic law. EL-QUDS: Journal of Islamic Studies, 3(2), 213-226.

<sup>2</sup>Suhrawandi K. Lubis, et al., "Waqf & Empowerment of the People", (Jakarta: Sinargrafia,, 2010), 3.

<sup>3</sup>Ibid, p. 49.

<sup>4</sup>Sudirman Hasan, MONEY WAKAF Perspective of Fiqh, Positive Law and Management, (Malang: UIN-MALIKI PRESS, 2011), P. 25.

<sup>5</sup>Tim EI-Madani, "PROCEDURES FOR DISTRIBUTION OF INHERITANCES AND ARRANGEMENT OF WAKAF", (Yoogyakarta: Medpress Digital. 2014). P. 102.

Besides In the Al-Qur'an, positive law also regulates waqf and even has a special law, namely Law Number 41 of 2004 which was ratified by the President on October 27 2004.<sup>6</sup>

Cleric Fiqh explaining the meaning of waqf, among others, the Hanafi School believes that waqf is holding the property of the person who is waqf (Waqif) and giving the benefits for good. However, according to the Hanafi School, donating assets does not mean giving up absolute ownership rights, but the waqif can take the waqf assets as he pleases and is even allowed to buy and sell them. The definition of waqf put forward by the Maliki School is that the benefits of the Waqif's assets, whether in the form of rent or proceeds, are given to those entitled to receive them over a period of time according to the Waqif's wishes. In contrast to the two opinions above, the Syafi'i School of thought states that the meaning of waqf is to retain assets that can be used for their benefit while the goods remain physically intact and the status of the goods is lost upon ownership of the Waqif, and used for something that is permitted.<sup>7</sup>

Understanding in waqf, each school of thought has its own opinion, just as waqf through money has different points of view from one school to another, of course for different reasons. A school of thought is an opinion or view of a priest regarding the laws that apply in religion.

The Syafi'i Madzhab is one of the four madzhab most widely followed in Indonesia, including in Nganjuk Regency.<sup>8</sup> However, there are different views regarding waqf through money.

Regarding waqf through money, according to the Syafi'i School of thought, waqf through money is something that is not permitted, on the grounds that the substance of the money is impermanent or not eternal.

The Shafi'i school of thought has a fairly strict view regarding the use of money in waqf. According to this school of thought, money is not a type of asset that can be

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<sup>6</sup>Sudirman Hasan, "MONEY WAKAF Perspective of Fiqh, Positive Law, and Management", (Malang: UIN-MALIKI PRESS, 2011), P. 31.

<sup>7</sup>Suhrawandi K. Lubis, et al., "Waqf & Empowerment of the People", (Jakarta: Sinargrafia,, 2010), H 4-5.

<sup>8</sup>Hafidhuddin, Didin. "Philosophical Study of Legal Aspects of Waqf." *Al-Mawarid: Journal of Science and Technology*, vol. 15, no. 1, 2019, pp. 51-64.

donated directly, but must be used as a tool to purchase goods or property which is then donated.<sup>9</sup>

This opinion is based on several hadiths and principles in Islamic law which regulate the use of property in waqf worship. The Syafi'i school of thought believes that the assets donated must have a fixed value and not change. Therefore, money, as a type of asset that easily changes value, cannot be used as a form of direct waqf.<sup>10</sup>

Even though the majority of people in Nganjuk Regency adhere to the Syafi'i school of thought, this is not an obstacle to carrying out waqf. Muslims who wish to carry out waqf can consult with Islamic legal experts or ulama to ensure that the form of waqf carried out is in accordance with Islamic law and in accordance with the opinions of the school they adhere to.<sup>11</sup>

One form of waqf implementation is the establishment of a foundation that operates in the education sector. The Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency, is an example of a foundation that practices waqf through money. As in research at the Al Huda Kepuhbener Foundation, this foundation is in the Nganjuk area and the majority of Al-Waqif (people who give donations) belong to the Shafi'i school of thought. They practice waqf through money in the Al-Huda Foundation. This is contrary to the rules put forward by the Syafi'i School.

The implementation used is where the foundation buys land from a land seller (Heirs of the late Mbah Taman), then the foundation (nadzir) markets to the general public (waqif candidates) to donate land on a per meter basis with an affordable value and the waqif pays in proportion to the number of meters to be donated. The agreement is still carried out in the form of a land waqf, even though the Waqif gives it in the form of money. This land is in the form of a plot, with the price per Ru is Rp. 2,000,000. then the 70 Ru land was divided into 70 plots.

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<sup>9</sup>Hanafi, Muhammad. "Cash Waqf from an Islamic Legal Perspective." *Insight: Scientific Journal of Religion and Socio-Culture*, vol. 4, no. 2, 2019, pp. 215-232.

<sup>10</sup>Abdul Qadir, M. "Cash Waqf Law and Contemporary Problems." *Ijtihad: Journal of Islamic Law and Humanitarian Discourse*, vol. 19, no. 2, 2019, pp. 196-214.

<sup>11</sup>Arifin, Muhammad. "Use of Money in Waqf According to Sharia Perspective and Its Implications for Social Infrastructure Development." *Syi'ar Scientific Journal*, vol. 18, no. 1, 2020, pp. 57-73.

The foundation makes a positive contribution in improving the quality of education in the region and the foundation also pays special attention to empowering local communities, by holding skills development and character building programs.

Apart from providing benefits to the surrounding community, educational foundations established on the basis of waqf also have sustainable benefits. This is because the foundation's funding source is permanent, so the foundation can continue to operate and provide benefits to society even though it has been established for a long time.<sup>12</sup>

However, even though it has great benefits, the implementation of waqf in the form of an educational foundation also has challenges that need to be overcome. One of these challenges is the problem of managing and maintaining waqf assets. Waqf assets such as buildings and land must be managed and maintained properly so that they continue to function well and provide benefits to the community. Apart from that, the management and maintenance of waqf assets must also be carried out in a transparent and accountable manner, so that there is no misuse of waqf funds.<sup>13</sup>

In order to overcome these challenges, efforts need to be made to increase public awareness of the importance of waqf and its management. Apart from that, educational foundations established on the basis of waqf also need to have professional and transparent management, following the principles of good governance. This will help ensure that waqf assets can be managed and maintained properly, so that they can continue to provide benefits to society in a sustainable manner.<sup>14</sup>

Concept applied committee This is a solution for society, for anyone who can make waqf. In accordance with the slogan of this foundation in implementing this waqf, namely "Charity Continues to Flow, Anyone Can". This is one of the unique things about previous research.

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<sup>12</sup>Hidayat, R. (2017). Productive waqf and the role of foundations in developing productive waqf. *Journal of Wills*, 2(2), 157-174.

<sup>13</sup>Azmi, N. (2021). Legal problems in managing productive waqf. *Journal of Islamic Law*, 15(1), 1-18.

<sup>14</sup>Marwah, N. (2019). Productive waqf: legal review and implementation in Indonesia. *Journal of Law and Justice*, 8(2), 197-218.

Based on what has been outlined above, it has shown that there is a gap that occurs, namely the incompatibility of the waqf provisions according to the Syafi'i school of thought with existing practices at the Al-Huda Foundation, where this foundation is in the Shafi'i school of thought environment.

### **Method**

In this research, the researcher used descriptive qualitative research and this legal research used a non-docrinal/empirical approach, namely unwritten positive legal research regarding the behavior of community members in the fabric of social life.<sup>15</sup> Legal research is not enough with explanations from a normative angle (rules only), but it is better to understand the social situations and conditions where the law is practiced, including how society, institutional groups, certain institutions apply the law in their daily lives. Therefore, researchers need to conduct legal research empirically. So, it can be concluded that the meaning of empirical legal research is legal research that examines the implementation of law in real life for individuals, groups, communities and certain institutions with an emphasis on personal or group behavior, organizations or legal institutions in relation to implementation or enactment. law.<sup>16</sup>

The reason why researchers apply empirical legal research is because this research goes directly to the research location to obtain information about the reasons why the waqf committee uses money as a waqf medium and the location is at the Al Huda Foundation, Kepuhbener Hamlet, Kedungrejo Village, Tanjunganom District, Nganjuk Regency

### **Waqf Practices at the Al-Huda Kepuhbener Foundation, Kedungrejo, Tanjunganom, Nganjuk**

The Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency has carried out waqf practices in line with Islamic law. The practice of waqf is carried out through the provision of educational and social facilities

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<sup>15</sup>Ani Purwati, *Legal Research Methods Theory & Practice* (Surabaya: CV. Jakad Media Publishing, 2020), 20.

<sup>16</sup>Muhaimin, *Legal Research Methodology* (West Nusa Tenggara: Mataram University Press, 2020), 83

that are beneficial to the community, including educational facilities such as schools, as well as social facilities such as mosques. This is in line with the principles of waqf mentioned in the Al-Qur'an surah Al-Baqarah verse 177 which emphasizes that waqf is a pious deed that will bring goodness to the person making the waqf and be beneficial to the wider community.<sup>17</sup>

In its waqf practices, the Al-Huda Kepuhbener Foundation has paid attention to several important aspects of Islamic law, such as ensuring that the assets donated must be free from usury, haram and maysir, as well as paying attention to aspects of the sustainability of the waqf program being carried out.<sup>18</sup>This is in line with the principles of Islamic law regarding waqf, as regulated in Law Number 41 of 2004 concerning Waqf.<sup>19</sup>

However, further efforts are needed to increase socialization and education regarding the importance of waqf and ways to conduct waqf in accordance with Islamic law so that the public understands and cares more about the waqf programs carried out by foundations. Apart from that, foundations also need to pay attention to the sustainability aspect of the waqf program which is carried out by collaborating with social institutions or the government to obtain better support and accessibility.<sup>20</sup>In an effort to improve the quality of waqf management, a waqf management institution or nadzir certainly requires widespread and even socialization regarding the development of the waqf program.

The waqf process that takes place at the Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency, begins with the first party (seller) selling the land to the second party (buyer) here who becomes the second party, namely the foundation. After this transaction occurs, the second party (the waqf committee) offers this waqf to the Waqifs.

The money received by Nadzir (Al-Huda Foundation) will later be converted into immovable objects, namely land. Previously, there had been a disagreement between

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<sup>17</sup>Al-Qur'an and its translation Al-Aliyy (Bandung: CV Publisher Diponegoro, 2014), 21.

<sup>18</sup>Shaykh Abdullah bin Jibrin, *Fatawa Fiqhiyah Muasirah*, vol. 1 (Riyadh: Darul Imam Ahmad, 2004), 301-302.

<sup>19</sup>Law Number 41 of 2004 concerning Waqf.

<sup>20</sup>Shaykh Abdul Aziz bin Baz, *Majmu' Fatawa wa Maqalat Mutanawwi'ah*, vol. 16 (Riyadh: Darul Imam Ahmad, 1996), 196.

the Waqif and Nadzir, so the foundation fulfilled the waqf practice requirements by being transparent on the part of Nadzir.<sup>21</sup>

In this context, the Al-Huda Kepuhbener Foundation has made a positive contribution to improving the quality of life of the community through its endowment program. The waqf program carried out is a form of effort to provide support and increase educational and social accessibility in society. Therefore, waqf practices carried out by foundations need to continue to be optimized so that they can provide greater benefits to society.

The legality of waqf in Indonesia is regulated in Law Number 41 of 2004 concerning Waqf. Waqf must be carried out with a waqf deed made by a notary or authorized official. The waqf deed must include the identity of the waqf giver, the object of the waqf, the benefits obtained from the object of the waqf, and the intended management of the waqf proceeds.

Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Ngajuk Regency, the legality of the waqf can be strengthened through several steps, namely:

- a. Making a waqf deed To legally bind the waqf object, it is necessary to make a waqf deed by a notary or authorized official. The waqf deed must contain the identity of the waqf giver, the object of the waqf, the benefits obtained from the object of the waqf, and the intended management of the waqf proceeds.
- b. Submitting a request for waqf confirmation. After the waqf deed is made, the foundation can submit a request for waqf confirmation to the Ministry of Religion or the local Religious Court. The application must be accompanied by a waqf deed and other required documents.
- c. Obtaining a waqf certificate If the application for waqf confirmation is approved, the foundation will obtain a waqf certificate which shows that the waqf object is valid and has been recognized by the government.

In conclusion, the waqf practices carried out by the Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency are in line

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<sup>21</sup>Foundation Waqf Committee, Interview conducted by the Author at his residence in Kedungrejo Village, May 16 2023.



with the principles of Islamic law regarding waqf. The Foundation has paid attention to aspects of the cleanliness of waqf assets from the nature of usury, haram and maysir as well as paying attention to aspects of the sustainability of the waqf program. However, further efforts are still needed to increase socialization and education regarding the importance of waqf and ways to conduct waqf in accordance with Islamic law so that the public understands and cares more about the waqf programs carried out by foundations. Apart from that, the legality of the waqf at the Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency, can be strengthened and its legal validity guaranteed.

### **An Analysis of Islamic Law Regarding Waqf Through Money at the Al-Huda Kepuhbener Foundation, Kedungrejo, Tanjunganom, Nganjuk.**

Four schools of thought have an opinion on waqf through money, the Maliki, Hanbali, Hanafi schools allow waqf through money, while the Syafi'i school does not allow waqf through money.

Cleric Hanafiyah allows waqf of movable objects as long as it has become a *urf* (custom) among the community, such as donating books, mushaf and money. In the matter of cash waqf, Hanafiyah scholars require that there must be a conversion of the objects donated if there is concern that there is an indeterminacy in the substance of the objects. The method is to replace the object with an immovable object which allows the benefits of the object to last. This is where the Hanafiyah scholars believe that it is permissible to donate dinars and dirhams through replacement (*istibdal*) with immovable objects so that the benefits are eternal.<sup>22</sup> Muhammad ibn Abdullah al-Ansyari, a student of Zufar, as quoted by Ibn Abidin in *Rad al-Mukhtar*, stated that it was permissible to give waqf with money, such as dinars and dirhams. This cash waqf is done by investing it in the form of *mudharabah* and the profits are donated to *Mauquf Alaih*.<sup>23</sup>

The Maliki school of thought believes that waqf does not give up one's assets endowed from the waqif's ownership, but the waqif prevents the waqif from taking

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<sup>22</sup>Muhammad Abbu Zahrah, *Muhadharat Fi al-Waqf*, (Beirut: Dar al-Fikr al-Arabi, 1971), p. 104.

<sup>23</sup>Ibn Abidin, *Rad al-Mukhtar Ala Dar Al-Mukhtar Syarah Tanwir al-Abshar*, (Beirut: Dar Al-Kutub Al-Ilmiah, 1994), p. 555-556.

actions that could release his ownership of the property to others and the waqif is obliged to give away the benefits and cannot withdraw his waqf. The act of waqif makes the benefits of his assets to be used by the mustahiq (waqf recipient), even though what he has is in the form of wages, or makes the results so that they can be used as a cash waqf (cash waqf). Waqf is done by saying lafadz for a certain period according to the owner's wishes. In other words, the owner of the property withholds the object from being used as ownership, but allows the proceeds to be used for good purposes, namely providing reasonable benefits to the object while the object remains the property of the waqif.<sup>24</sup> Thus, according to the Maliki Madzhab, cash waqf is permissible provided that the results can bring benefits to humans.

It is the Hanafi group that allows waqf in the form of money. Likewise, Ibn Qudamah in the book *al-Mughni* allows waqf in the form of movable objects including money. Thus, it can be understood that cash waqf is legally permissible, because the purpose of waqf itself is to retain the principal and spread the benefits from it, and cash waqf in question is not the substance of the money but its value, so that it can be replaced with other money as long as the value is the same. The Hanabilah group even allows selling movable objects and immovable objects which can be exchanged for other objects as waqf if there are reasons that allow it.<sup>25</sup> For example, a fan donated to a mosque, if one has one        If it is damaged and cannot be used anymore, it may be sold and the proceeds from the sale can be bought for more other goods useful for the common good.

Shafi'iyah scholars, such as al-Nawawi, in *al-Majmu' Syarah al-Muhadzab* argue that it is permissible to donate movable objects, such as animals, in addition to objects non-moving, like the ground. However, they stated that they were not allowed to donate dinars and dirhams because the dinars and dirhams would disappear if they were spent and it would be difficult to preserve their substance.

Different from other scholars, Abu Sur is a scholar from the Shafi'iyah circle allow dinar and dirham waqf. However, this opinion was rejected by Al-Mawardi,

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<sup>24</sup>HA Khumedi Ja'far, "Analysis of Madzhab Imams' opinions regarding cash waqf and its implementation in Indonesia", Faculty of Sharia UIN Raden Intan Lampung, p. 137.

<sup>25</sup>HA Khumedi Ja'far, "Analysis of Madzhab Imams' opinions regarding cash waqf and its implementation in Indonesia", Faculty of Sharia UIN Raden Intan Lampung, p. 138.

stating that dinars and dirhams cannot be exchanged and their use is not long-lasting. Therefore, this object cannot be donated.<sup>26</sup>

Ibn Qudamah in Mughni's book explains that generally the jurists and scholars do not allow cash waqf (dinar and dirham) because the money will disappear when it is spent so that it no longer exists. Besides that, money cannot be rented out because renting out money will change the function of money as a price standard. Likewise food and drink. Because waqf is holding the principal assets and giving the proceeds (benefits) in charity, anything that is lost along with the benefits is not valid as a waqf.<sup>27</sup>

From the analysis above it can be concluded that although the four madzabs have different views, what is different is that waqif and nadzir fulfill the pillars and requirements of waqf in Islamic law and the benefits of the donated assets can be utilized continuously.

### Conclusion

The practice of waqf through money at the A-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency, is that the foundation buys land from the land owner, then this foundation offers waqf to prospective waqifs in the form of plots of land. After that, the money the foundation receives from the Waqif will later be replaced with land area, and the money is the equivalent of land with money. Meanwhile, an analysis of Islamic law regarding waqf through money in Al-Huda Kepuhbener Foundation, Kedungrejo Village, Tanjunganom District, Nganjuk Regency has been fulfilled, seen from the perspective of the harmony and conditions of waqf as well as clarity in waqf so that waqf in this foundation is allowed. This is in accordance with the views of the Hanafi school, Hanbali school, and Maliki school which allow waqf through money. Meanwhile, one school of thought that does not allow waqf through money is the Syafi'i school of thought, because this school of thought believes that money does not have eternal properties, so the existence of money cannot be maintained in its integrity.

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<sup>26</sup>Imam Abi Zakari Muhyiddin Ibn Terms Al-Nawawi, *al-Jamu' Syarah al Muhazzab*, Juz. 16, (Beirut: Dar Al-Fikri, 1997), p. 229

<sup>27</sup>Shaykh al-Imam al-Alamah Mauqifuddin Abi Muhammad Abdullah Ibn Ahmad Ibn Qudamah, *al-Mughni*, Juz. 6 (Beirut: Dar al- Ilmiah, ), p. 235.

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