

THE IMPLEMENTATION OF CASH WAQF IN THE PESANTREN OF AL-AMIEN PRENDUAN SUMENEP REGENCY OF MADURA

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Abstract:

Cash *waqf* still becomes the frame in the ulama' debate, especially in Hanafiyyah and Syâfi'iyah schools. Therefore, it requires deeper insight either empirically from the field or theoretically in Islamic law analysis through *aqwâl al-'ulamâ'*, so that the concept and the legal basis of its management and development can be known. This paper discusses about productive *waqf* and the uniqueness of the application of management of cash *waqf* in a *pesantren* (Islamic boarding school). Besides, the standardisation of the law applied in the implementation of the cash *waqf* which encompasses: al-Qur'an, Hadits, *fiqh* rules, and *aqwâl al-'ulamâ'* needs to be analyzed to find out a conclusion of the implementation status. In the implementation, there are many unique things which are interesting to analyze, namely the use of the institution fund which is oriented to develop cash *waqf* and the existence of *waqf* board which becomes the highest decision maker. It means that the highest leader is no longer on the foundation but on the *waqf* board because all of the *pesantren's* assets become *waqf* property, even the body and everything valuable to them are made as *waqf* assets.

Key Words:

Cash *Waqf*, *Pesantren*, *Waqf* Assets, *Aqwâl al-'Ulamâ'*

Abstrak:

Cash waqf atau biasa disebut dengan wakaf tunai ini masih menjadi bingkai dalam perdebatan ulama, lebih-lebih dari golongan Hanafiyyah dan Syâfi'iyah. Oleh karenanya, ia perlu digali informasi baik secara empiris di lapangan maupun secara teoritis dalam kajian hukum Islam melalui *aqwâl al-'ulamâ'* sehingga dapat diketahui konsep dan dasar hukum yang dipakai dalam pengelolaan dan pengembangannya. Tulisan ini membahas wakaf produktif dan keunikan pelaksanaan manajemen wakaf tunai di pesantren. Di

samping itu, standarisasi hukum yang digunakan dalam implementasi perwakafan tunai ini (*cash waqf*) yang meliputi: al-Qur`ân, Hadits, kaidah fiqhiyah, kaidah ushuliyah, dan *aqwâl al-`ulamâ* perlu dikaji untuk menemukan kesimpulan status pelaksanaannya. Dalam implementasinya, beberapa hal unik yang menarik untuk dikaji, yaitu penggunaan dana lembaga yang diorientasikan untuk mengembangkan wakaf tunai. Eksistensi badan wakaf yang menjadi penentu kebijakan tertinggi, artinya pimpinan tertinggi tidak lagi dipegang oleh yayasan, melainkan badan wakaf karena semua aset pesantren dijadikan sebagai harta wakaf, bahkan badan dan sesuatu yang bermanfaat dari diri mereka dijadikan sebagai aset wakaf.

Kata-kata Kunci:

Wakaf Tunai, Pesantren, Aset Wakaf, *Aqwâl al-`Ulamâ'*

Introduction

Waqf is one of Islamic teachings which, on the one hand, serve as worship to God and on the other hand, it has social function. *Waqf* is a manifestation of faith in God.¹ Therefore, in terms of its function as worship, *waqf* is expected to be a provision for *wâqif* (people who give the *waqf*) in the hereafter as a form of good deeds in which the rewards can be expected continuously. While the social function of *waqf* is that it is one of attempts in order to empower the economy of the people.

Waqf is a form of worship through sacrifice of the wealth we have for the benefit of humanity, society and religion that has been arranged by sharia. There is stipulation of *waqf* in general in Q.S. Ali Imron 3:92. *Waqf* has been obliged and practiced since the time of Prophet Muhammad.² *Waqf* has been obliged and practiced since the time of Prophet Muhammad.³ It can be concluded from the opinion of al-Syâfi`î that the generation before Islam does not recognize the notion of *al-habs* (*waqf*).

¹ Sayyid Sabiq, *Fiqh al-Sunnah*, Vol III, (Beirut: Dâr al-Fikr, 1983), 378.

² Suparman Usman, *Hukum Perwakafan di Indonesia*, (Jakarta: Darul Ulum Press, 1999), 2.

³ Muḥammad ibn Idrîs al-Syâfi`î, *al-Umm*, Juz III, (Berut: Dâr al-Fikr, 1983), 13.

Basically, there are several reasons why it is interesting to discuss about *waqf*. *First*, although the ownership of *waqf* is belong to the *ummah* (with ascribed to God), there are many parties who want to take *waqf* property in all possible ways. *Second*, there are many *waqf* properties in Indonesia but there is still no significant correlation with the empowerment that can be experienced by the public. *Third*, there has been a classical thinking which tends to be a conservative one in a society that believes that *waqf* is a form of a good deed that expects nothing in return. Therefore, they ignore the administrative aspect because it is assumed that such thing would reduce the sincerity which in turn reduces the reward. *Fourth*, while in other places *waqf* has been understood in a modern way, for example through the implementation of cash *waqf*, some people understanding of *waqf* is so limited that it effects on the effectiveness of *waqf* itself.⁴

Utilization of *waqf* cannot be separated from the mission of Islam which is for the happiness and welfare of society (*rahmatan lil 'âlamîn*). Such orientation could not be achieved if *waqf* is not properly managed. Good management of *waqf* should be done in various ways to the success of *waqf* in order to assist economic and educational empowerment of the people. Community needs to be educated about *waqf*. It is because people often understand that *waqf* are limited to coverage a stationary object only, for example. The majority of people's practice of *waqf* is on land and buildings. The practice of *waqf* refers to a hadith about `Umar who donated land in Khaybar.⁵

⁴Ahmad Rofiq, *Fiqh Kontekstual dari Normatif ke Pemaknaan* (Yogyakarta:Pustaka Pelajar, 2004), 318-319.

⁵ Hadits is narrated by Ibn Umar on his request for the Prophet's instructions on a piece of a good land in Khaybar:

عن ابن عمر رضی اللہ عنہما قال: أصاب عمر أرضاً بخيبر فأتى النبي صلى الله عليه وسلم يستأمر فيها فقال: يا رسول الله إني أصبت أرضاً بخيبر لم أصب مالا قط هو أنفس عندي منه فما تأمر به؟ فقال له رسول الله صلى الله عليه وسلم، إن شئت حبست أصلها وتصدق بها فتصدق بها عمر أما لا تباع ولا توهب ولا تورث. قال وتصدق بها في الفقراء في القرى و في الرقاب و في سبيل الله وابن السبيل والضيف لا جناح على من وليها أن يأكل منها بالمعروف ويطعم غير متمول (رواه مسلم)

(Ibn `Umar said that 'Umar bin Khaththab got a piece of land in Khaybar. Then, He faced the Prophet to take advice on the use of such property." O Messenger of Allah," he said." I have got a piece of land in Khaybar and I had never received this sort of good thing. What is your advice to me about the land? "He replied:" If you like, hold the land and donate it (its profit) to charity. Then, Umar did it (donated the land), it was not sold, not inherited, nor granted. Ibnu

Meanwhile, in the theoretical and practical aspect of *waqf*, it could also cover a moving object.

Waqf of moving objects has happened in the early days of Islam. It is narrated by Abû Hurayrah:⁶

من احتبس فرسا في سبيل الله إيماناً واحتساباً فإن شعبه وروثه وبوله في ميزانه حسنات (رواه البخارى)

"People who hold (donating) horse in the path of Allah, because faith (in God) and expecting reward (from Allah), then the food, feces and urine of it in the assessment of Allah contains goodness".

Waqf means handing anything good in which its benefit is for the welfare of many people. The essence of *waqf* is to restrain the thing given for *waqf* and utilize the results or services of it. What is important is that the possessions or objects given for *waqf* are not depleted or damaged after being used once or twice.

Currently, one of the development and management of *waqf* which is popular and in great demand is cash *waqf*. In Indonesia, the implementation of professional development and management method of *waqf* is relatively rare. This was proved by the fact that conventional management is still prevalent, although this concept has become a discourse amongst classical scholars. Al-Zuhrî (d. 124 H), for example, as mentioned by al-Bukhârî (d. 252 H) stated that giving dinar and dirham as endowment is allowed. This is done by making the dinar and dirham as capital of business (trade) then distribute and utilize its advantages for the benefit of the people.⁷ Wahbah al-Zuhaylî stated, to donating money (*waqf*) according to the Hanafî, is by making venture capital in the form of *mudhârabah* or *mubâda'ah*, and the profits are given for charity.⁸

Umar said, "Umar donate it to the needy, relatives, slave, *sabililla* (those who are in the way of God), *Ibnu Sabil* (traveler) and guests. There is no sin for someone who takes care the properties to take some of these treasures appropriately or feed with the treasure on condition that he does not intend to seek riches". See Muḥammad bin 'Alî al-Syawkânî, *Nayl al-Awṭhâr* (Beirut: Dâr al-Kutub al-Ilmiyah, 1995), 23.

⁶ Rofi'q, *Fiqh Kontekstual*, 327. See also Aḥmad ibn 'Ali al-'Asqalânî, *Fath̃ al-Bârî*, (Beirut: Dâr al-Fikr, n.t.), 145.

⁷ *Ibid.*, 328.

⁸ Wahbah al-Zuhaylî, *al-Fiqh al-Islâmî wa Adillatuhu*, Juz X, (Beirut: Dâr al Fikr, 1997), 761.

With regards to the aforementioned explanation, this article describes the practice of *waqf* in al-Amien boarding school located in Sumenep Madura. The process of *waqf* conducted at the boarding school is through fund raising from donors either parents of students or 'aghniyâ' (the rich) and then make it as *waqf*. It is interesting to study scientifically the process of *waqf* in the *pesantren* (Islamic boarding school) as well as the status of the *waqf* contract. It is because of the methods used in collecting the funds for endowments, termed *shadaqah wâjibah*. The status of the *waqf* process must be analyzed whether it can be categorized as a cash *waqf* or not. The practice of *waqf* in the Pesantren of al-Amien is regarded as representative object of study because it lasts a long time and contributes significantly to the development and progression of the pesantren.

The Meaning of Wakaf

Etymologically, endowment (*waqf*) in Arabic has the meaning of *al-habs*, which is to retain⁹ and prevent.¹⁰ Meanwhile, one of definition of *waqf* in the terminology of fiqh, is:

حبس الأصل وتسبيل الثمرة أي حبس المال وصرف منافعه في سبيل الله

"*Waqf is to retain an object and use the result, meaning to hold objects and use the results in the way of Allah*"¹¹

The vast majority of Islamic scholars define *waqf* as activities of withholding treasures which have a benefit by letting 'ayn (a form of it existence) remains eternally and not transfer the ownership to the relatives or to other parties.¹² Properties that have been donated as *waqf* can not be made as commodities for any transaction for their usage has been tied only for the purpose of a goodness benefit in God's way.

⁹ Muḥammad bin Ismâ'îl al Kahlânî, *Subul al-Salâm*, (Beirut: Dâr al-Fikr, n.t.), 87. For example, by saying i am donating this, it means i have held the rights on this good. See Zayn al-Dîn bin `Abd al-`Azîz al-Malibârî, *Fath̃ al-Mu'în bi Syarḥ Qurrah al-'Ayn* (Surabaya: al-Hidayah, n.t.), 87. It can also be interpreted as a form of detain, restrain or stop the act of law. See Dewan Redaksi Ensiklopedi, *Ensiklopedi Islam*, (Jakarta: PT. Ikhtiar Baru Van Hoeve, 1997), 168.

¹⁰ A. Faisal Haq and A. Saiful Anam, *Hukum Wakaf dan Perwakafan di Indonesia*, (Pasuruan: PT. Garoeda Buana Indah, 1994), 1.

¹¹ Sabiq, *Fiqh al-Sunnah*, 378.

¹² Helmi Karim, *Fiqh Muamalah*, (Jakarta: PT. Raja Grafindo Persada, 2002), 102.

To make it clearer, the followings are some opinions about the definition of *waqf*¹³ proposed by scholar schools:

a. **Al-Hanafi**¹⁴

حبس العين على حكم ملك الواقف والتصدق بالمنفعة على جهة الخير

"*Waqf is to retain an object which under the law remains the property of the waqif and provide benefits for goodness*".¹⁵

b. **Al-Hanbali**¹⁶

تجسس مالك مطلق التصرف ماله المنتفع به مع بقاء عينه بقطع تصرف

الواقف

"*Waqf is to restrain the freedom of property owners to spend their useful wealth and keep it intact by cutting the entitlement to waqf*".¹⁷

c. **Al-Mâliki**¹⁸

¹³ Basically, the different opinion is related to the object given as *waqf*. What should be noted is: *First*, the property of *waqf* is held by the waqif so that it cannot be inherited and the ownership cannot be transferred, but is maintained in order that the property is still the property of the owner who is the waqif. *Second*, to take benefit of the *waqf* property is allowed or authorized by the owner (*wâqif*), whether it is material or non-material benefit. *Third*, the willingness to take benefit of the *waqf* property by recipients of *waqf* was a virtue to help, whether based on religious motivation or worldly motivation. *Fourth*, because the purpose of *waqf* is to take benefits, the *waqf* property must be something that brings benefit. See Karim, *Fiqh Muamalah*, 102.

¹⁴ The characteristic of Abû Hanîfah in his *ijtihâd* is exploring legal rules of *fiqh* from the Qur'an, and in addition to that, he was also referring to the Hadits. However, he relies only on Hadits which is *mu'tamad shahîh*. He is known as "*Imâm Ahl al-Ra'y*". See 'Abd al-Rahman al-Syarqâwî, *Riwayat Sembilan Imam Fiqh*, transl. al-Hamid al-Husaini (Bandung: Pustaka Hidayah, 2000), 235.

¹⁵ al-Zuhaylî, *Fiqh al-Islâm*, Vol. X, 7599.

¹⁶ Ahmad bin Hanbal is a jurist who strongly defends the straightness of the Islamic faith which is to be distorted by the Mu'tazilah, especially on the positions of the Qur'an as *kalâm Allâh*. He was more inclined to the school of Imam al-Syâfi'î in which there is the influence of the school of Imam al-Layts bin Sa'ad in Egypt. See al-Syarqâwî, *Riwayat Sembilan Imam Fiqh*, pp. 441-442.

¹⁷ Al-Syarbîni, *Mugnî al-Muhtaj ila Ma'rifah Ma'âni al-Alfâdz al-Minhaj*, Juz III (Beirut: Dâr al-Kutub al-Ilmiyah, 1994), 522.

¹⁸ Mâlik bin Anas lived at the time of some great figures such as Ja'far al-Shâdiq, Imam al-Layts (Egypt) and Abû Hanîfah. During his life, he lived and settled in Medina. As an expert in *fiqh*, the method he applies to make legal decisions about things not stated clearly in the Qur'an and Sunnah is by putting priority of the

جعل المالك منفعة مملوكة ولو كان مملوكا بأجرة او جعل غلته كدراهم
لمستحق بصيغة مدة ما يراه المحبس

"The act of making possessions advantageous although in the form of wages or making the result as the money handed over to those entitled to in the form and time determined by *wâqif*".¹⁹

d. **Al-Syâfi'i**²⁰

حبس المال يمكن الإنتفاع به مع بقاء عينه بقطع التصرف في رقبته على
مصرف مباح موجود

"Holding the treasures from which the advantages can be taken while they are still intact on condition that the wakif losses his control over the properties and they are used for something that is allowed by religion".²¹

Basically, *mujtahid* (Islamic scholar) interprets the term *waqf* based on their understanding of the meaning of the hadith which they took as a legal foundation of *waqf*. It can be formulated, based on the understanding of some scholars above, that *waqf* is holding a treasure form which advantages can be taken from and it does not decrease immediately when it is used for something allowed and is intended to worship the God.²²

Not only Islamic scholars, the Indonesian government also shows concern with *waqf* practice through Government Regulation (PP) No. 28 Year 1977 on Land Owned *Waqf*. *Waqf* of lands defined as "a legal act of a person or legal entity that separates the majority of the wealth in the form of lands and institutionalizes it forever for the sake

consensus of the companions before *qiyâs*. He is a scholar who advocated *ijtihâd* with the ability of the mind, so that he is known as "*Rabi'ah al-Ra'y*". See al-Syarqawi, *Riwayat Sembilan Imam Fiqh*, 269-270 & 276.

¹⁹ al-Zuhaylî, *Fiqh al-Islâm*, Vol. X, 7602.

²⁰ Since the beginning of his arrival in Egypt in 199 H., at the age of 50 years, the people in the country calls *ulama* whose full name is Muḥammad ibn Idrîs al-Syâfi'î with the title of "*Qâdlî al-Syarî'ah*", although he never worked as a judge. He died on Thursday night 28th Rajab 204 H at the age of 54 years. See Abdurrahman asy-Syarqawi, *Riwayat Sembilan Imam Fiqh*, 371 & 436.

²¹ Muhammad al-Khatîb al-Syarbînî, *Al-Iqnâ' fî hall al-Alfâdz Abî Sujâ'*, 319, as quoted by Hendi Suhendi, *Fiqh Muamalah*, 239.

²² Haq and Anam, *Hukum Wakaf*, 1.

of worship or other public purposes ". The definition is in accordance with the definition of *waqf* according to Islamic law, especially the schools of al-Syâfi`î embraced by the vast majority of the Indonesian Islamic community.²³

In regard to the word "forever" in a part of the definition of *waqf*, it can be understood broadly as follows:²⁴ (1) *Wâqif* (people who donates for *waqf*) may not give a specific time limit when he hands over his property; (2) *Wâqif* cannot retract the *waqf* property; (3) the property is not immediately destroyed when utilized; (4) If it is the kind of property which can easily damaged or destroyed because of its nature, it does not diminish the meaning and function of "forever".²⁵

Legal Basis of *Waqf*

It is generally accepted that God has obliged *waqf*, encouraged it and made it as one of the ways to get closer to Him. However, al-Qur`ân never talks specifically and expressly about *waqf*. Therefore, because *waqf* is one of the virtues done through donating property, then the scholars understand that the verses of al-Qur`ân that ordered the use of property on virtue, also includes a virtue through *waqf*.²⁶ In this case, the legal basis of *waqf* can be inferred from a few verses, which are:

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ﴿٧٧﴾

Q.S Ali Imron 3:92. Never will you attain the good [reward] until you spend [in the way of Allah] from that which you love. And whatever you spend - indeed, Allah is Knowing of it.

.... وَأَفْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ ﴿٧٧﴾

Q.S al-Hajj 22:77. and do good - that you may succeed.

²³ KN. Sofyan Hasan, *Pengantar Hukum Zakat dan Wakaf*, (Surabaya: al-Ikhlas 1995), 71-72.

²⁴ Adijani al-Alabij, *Perwakafan Tanah di Indoneia dalam Teori dan Praktek*, (Jakarta: CV. Rajawali, 1992), 116-117.

²⁵ For example, a Muslim donating an ambulance as *waqf*, if a few years later the car was damaged and cannot be repaired and used anymore after being used, it does not affect the meaning and function of "forever".

²⁶ Karim, *Fiqh Muamalah*, 103.

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا أَنفِقُوا مِن طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ
الْأَرْضِ ۗ وَلَا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ
وَأَعْلَمُوا أَنَّ اللَّهَ غَنِيٌّ حَمِيدٌ ﴿٢٦٧﴾

Q.S al-Baqarah 2:267. O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth. And do not aim toward the defective therefrom, spending [from that] while you would not take it [yourself] except with closed eyes. And know that Allah is Free of need and Praiseworthy

.... وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ۗ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۗ وَاتَّقُوا اللَّهَ ۗ إِنَّ
اللَّهَ شَدِيدُ الْعِقَابِ ﴿٥﴾

Q.S al-Maidah 5:2. And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty.

More specific religious basis of *waqf* can found in the Hadits of the Prophet, which are:

a) It was narrated from Ibnu Umar

أن عمر بن الخطاب اصاب أرضا بخيبر فأتى النبي صلى الله عليه وسلم: يستأمره فيها فقال يا رسول الله إني أصبت أرضا بخيبر لم أصب مالا قط أنفس عندي منه فما تأمر به قال إن شئت حبست أصلها وتصدقت بها قال فتصدق بها عمر إنه لا يوبع ولا يوهب ولا يورث وتصدق بها في الفقراء وفي القربى وفي الرقاب وفي سبيل الله وابن

السبيل والضيف ولا جناح على من وليها أن يأكل منها بالمعروف ويطعم غير متمول

'Umar bin Khattab got some land in Khaybar. Then, He faced the Prophet to take advice on the use of such property." O Messenger of Allah, "he said." I have got a piece of land in Khaibar and I had never received this sort of thing. What is your advice to me about the land? "He replied:" If you like, donate the land as waqf and give the results for charity. "Ibn Umar said:" Umar, then, donated land as waqf the in the sense that the land could no longer be sold, or donated, or inherited , He gave the results of the land to the needy, relatives, people, to free a slave, on the path of Allah, to displaced persons, and for the guests. There is no sin for someone who takes

care the properties to take some of these treasures appropriately or feed with the treasure on condition that he does not intend to seek riches.²⁷

b) It Was Narrated from Anas

كان أبو طلحة أكثر الأنصارى بالمدينة مالا من نخل وكان أحب أمواله إليه بيرحاء وكانت مستقبله المسجد وكان رسول الله صلى الله عليه وسلم يدخلها ويشرب من ماء فيها طيب. قال أنس فلما أنزلت هذه الآية لن تنال البر حتى تنفقوا مما تحبون... قال أبو طلحة إلى رسول الله صلى الله عليه وسلم: يا رسول الله إن الله تبارك وتعالى يقول لن تنال البر حتى تنفقوا مما تحبون... وإن أحب أموالى ألي بيرحاء وإمها صدقة لله وارحو برها وذخرها عند الله وضعها يا رسول الله حيث اراك الله فقال رسول الله صلى الله عليه وسلم بخ ذلك مال رابح ذلك مال رابح وقد سميت ما قلت وإني أرى أن تجعلها في الأقربين فقال أبو طلحة إفعل يا ربول الله فقسما أبو طلحة في أقاربه وبني عمه

Abû Talha was one of the richest anshar (Helpers) in the city of Medina, amongst his wealth was palm groves. The most favorite one was Baihurâ' which was located opposite to the mosque and the Prophet used to go into the garden and drank the clean well water. Anas said: "When the verse lan tanâlul birra (Ali Imron 3:92) ... is revealed, Abû Talha then said to the Prophet, " o Phophet "certainly, Allah says lan tanâlul real birra, my treasures that I love the most is the garden of Baihurâ' and really I donate the garden in the path of Allah, and I hope that it will be my devotion to Him and I leave it to you to use it, o Prophet". The Prophet said: "It would be a great profit, that is profitable treasure, that treasure is profitable. I have heard him, and I think that the treasure should be given to your relatives". Abû Talha said: "I'll do it, o Prophet", then Abû Talha distributed that wealth to his relatives and cousins.

c) It Was Narrated From Abû Hurayrah

أن رسول الله صلى الله عليه وسلم قال: إذا مات الإنسان إنقطع عمله إلا من ثلاث صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له

"The Messenger of Allah had said: " If a man died, all his deeds would finish except three kinds; they are sadaqah jāriyah (charity from which the benefits are perpetually in used), beneficial knowledge, or a pious child who prays for him ".²⁸

²⁷ al-Syawkânî, *Nayl al-Awthâr*, 23.

²⁸ Ibid., 23.

According to scholars, what is meant by sadaqah Jariyah which is narrated by Abû Hurayrah is *waqf*.

ذكر في باب الوقف لأنه فسر العلماء الصدقة الجارية بالوقف

The hadith was mentioned in the chapter of *waqf* for the scholars interpret sadaqah Jariyah as *waqf*.²⁹

وكذا الصدقة الجارية وهي الوقف

Similarly, *shadaqah jariyah* is known as *waqf*.³⁰

Property Donated as *Waqf*

Islamic jurists agree unconditionally on the validity of the *mâl uqar* (real property of estate)³¹ as property that can be given as *waqf* because it is in accordance with the purpose of *waqf*. However, there have been disagreements with regard to *mâl manqûl* (movable property).³² The school of Hanafi states that basically, *waqf* shall consist of the *mâl uqar*, but it is allowed to donate *mâl manqûl* with the following exceptions:³³

- a) The property always accompanies *mâl uqar*, such as buildings and trees;
- b) Something that has been described by texts (quran), such as armor and animals for war;
- c) Something usual, such as books, manuscripts, tool for corpses, dirham (money), scales, measure and so on.

Waqf with cash is regarded as a new concept that emerged in the development of *fiqh*. Therefore, classical scholars have not discussed it perfectly. In the *al-Majmû'* by al-Nawâwî, Mâlik states that:³⁴ (a) it is valid, because something that can be rented out is

²⁹ Al-Kahlanî, *Subul al-Salâm*, 167.

³⁰ al-Syawkânî, *Nayl al-Awthâr*, Juz VI, 23.

³¹ Permanent objects are the objects that may not be moved and changed from its original location to another, such as land.

³² Impermanent or unmovable object is property that may be moved or changed, such as clothes, money, vehicles and others.

³³ Al-Zuhaylî, *Fiqh al-Islâm*, 7610.

³⁴ Abû Zakariya al-Nawâwî, *al-Majmû' Syarh al-Muhadzdzab*, Juz XV (Beirut: Dâr al-Fikr, n.t.), 321.

allowed to be donated as *waqf*. According to them money could be leased; (B) it is not valid, the reason is that money could not be leased. Muḥammad bin `Abd Allah al-Anshârî, a student of Zufar (a companion of Abû Hanîfah) issued a *fatwâ* on the validity of *waqf* in cash of dînar and dirham. As for how to manage the cash *waqf* is to invest those funds using *mudhârabah* (loss and profit sharing) system and the earnings are given to charity.³⁵

Likewise, Ibn Taymiyyah narrated one of the Hanâbilah's opinions which allow giving *waqf* in the form of money. To maintain the continuity of the benefit of *waqf* fund is by investing it in the form of *mudhârabah*.³⁶ Furthermore, Muḥammad ibn Hasan said that it is legitimate to use cash as *waqf*. In order to make it long lasting and sustainable, he proposes to make the *waqf* funds as venture capital in which the profits are given to those in need or to buy things in which the results are given to charity.³⁷

Basically, the validity of cash *waqf* is emphasized on the benefits as well as the wholeness of the *waqf* property. In other words, a property which remains intact after being used, even if the benefits are already used, is allowed to be a *waqf* property. On the contrary, if the property becomes used up once utilized and can no longer be used, it cannot be a property of *waqf*. In this case, it is recommended to refer back to the interpretation of *fiqh* scholars, thus, there are those who allow cash *waqf* and some are against it. In relation to these issues, Ahmad Azhar Bashir said that *waqf* can be traded financial capital, the most important of these is the security of the financial capital. In addition, to develop a business with a capital from *waqf* fund should pay attention to the provisions of Islamic law.³⁸

Meanwhile, according to Hanafi, *waqf* can be categorized as *mubah* with the argument that *waqf* of infidels is legitimate. It can be also obligatory when it is done due to *nazar* (vows).³⁹ However, the author argues that *waqf* should be categorized as *sunnah* (recommended). It is because the majority of Islamic scholars agree

³⁵ Ibnu Taymiyyah, *Majmu' al-Fatawa* (Beirut: Dâr al-Fikr, n.t.), 234.

³⁶Ibid.

³⁷Juhaya S. Praja, *Perwakafan di Indonesia; Sejarah Pemikiran Hukum dan Perkembangannya*, (Bandung: Yayasan Piara, 1995), 59.

³⁸Ahmad Azhar Basyir, *Hukum Wakaf Ijarah Syirkah* (Bandung: PT al-Ma'arif, 1987), 10.

³⁹al-Zuhaylî, *Fiqh al-Islâmî*, Juz X, 7604.

with the meaning of *waqf* as perpetual *shadaqah* (charity). *Shadaqah* itself is agreed upon by scholars as sunnah which is really recommended to do. Of some verses of al-Qur`ân and Hadith which has been described previously, it can be concluded that the *waqf* is sunnah. *Waqf* is a very noble deed and will be rewarded for doing it, but not burdened with sin for not doing it.

The Concept Cash Waqf

Basically, cash *waqf* has been admitten in the legislation of Indonsian, which is contained in the Law No. 41 of 2004 on Wakaf, Article 16, paragraph (3), which reads: Moving property, referred to paragraph (1) letter b, is a property that is not depleted due to consumption, include: cash, precious metals, securities, vehicles, intellectual property rights, lease rights, and other moving objects in accordance with the stipulations of sharia and legislation in force. In addition, stipulations that are important and need to be considered in the implementation of *waqf* is article 12 concerning the rights of *nâzhir* as manager of *waqf* property, that passage reads: "In carrying out the tasks referred to in Article 11, Nazhir entitled to compensation from the net proceeds for the management and development of *waqf* property in the amount not exceeding 10% (ten percent)".

In general - particularly in Indonesia - *waqf* property that we know is in the form of property or fixed objects such as land and buildings. However, most scholars agree that the cash is legitimate to donate as *waqf*, provided that it can be utilized lasting and sustainable. The general definition of cash *waqf* is to transfer of property rights in the form of cash to *nâzhir* on condition that the results or benefits are used for things that are in accordance with sharia law by not reducing or eliminating the principal amount.

Cash *waqf* can extend the reach of waqif and encourage the increase of *waqf* property productivity. It can also be used to revitalize the assets of *waqf* spreading out widely in some Islamic countries nowadays. For example, in Bangladesh there are 150 593 of *waqf* assets. Cash *waqf* can be used as a means to motivate the public funds

with a wider range of society in the form of productive capital investment as well as revitalize the existing *waqf* assets.⁴⁰

The cash *waqf* can take one of some following forms. *First*, *waqf* agency can allow himself to accept cash *waqf* to fund certain projects and give the results for a particular *waqf* purpose.⁴¹ In this form, the legal entity or company is *nâzhir* on behalf of the cash *waqf* received, which at the same time, the company is also an investor. The *Second* is the form of *waqf* in which the *wâqif* determines himself as an investor. In this case, the cash *waqf* is invested in the form of *wadlî'ah* (deposits) in a particular Islamic bank for profits and the results are shared with the people who are eligible.⁴² The *third* is the form of investment *waqf* which is done by forming a committee of donation and *shadaqah* collector to build a social *waqf*. If the Muslims need a mosque, for example, then a committee is formed to raise funds from philanthropists to build the mosque.⁴³ Funds collected for the construction of the *waqf* project, has become *waqf* legally since they are given to the committee. Thus, after the cash *waqf* is used, it turns into *waqf* of objects.

Other form of cash *waqf* is *waqf* of profit gained without donating the money directly. In practice, this kind of *waqf* takes two following forms: *the first waqf* of the result of something that can be produced up to a certain time limit,⁴⁴ for example someone who has a car park and donates the results as *waqf* every Friday to the poor. This kind of *waqf* could be done for a while or forever. So, there is no doubt that *waqf* implies utilization that occur repeatedly. That is why the meaning of "perpetual *shadaqah*" also encompasses the notion of this kind of *waqf*.

The second is the kind of *waqf* which shares the percentage of *waqf* profit either a part of it or as a whole of the net result only. Sometimes, *waqif* distributes the profit of *waqf* to charity or to the common good. In channeling profits endowment money, *wâqif*

⁴⁰ Dirjen Bimbingan Masyarakat Islam dan Penyelenggaraan Haji, *Pedoman Pengelolaan dan Pengembangan Wakaf* (Jakarta: Dirjen Bimbingan Masyarakat Islam dan Penyelenggaraan Haji, 2003), 108-109.

⁴¹ Mundzir Qahaf, *al Waqf al-Islâmî* (Damaskus: Dâr al-Fikr, 2000), 199-200.

⁴² *Ibid.*, 200.

⁴³ *Ibid.*, 201.

⁴⁴ *Ibid.*, 202.

sometimes channeled to charity or the common good or for the benefit of a certain party or his offsprings or those who fall into the waqif's desired category, so *waqf* does not end due to the absent of those entitled to receive the results of *waqf*.⁴⁵

The model used by earlier scholars is that of al-Zuhri⁴⁶ who states that it is allowed to donate dinar and dirham as *waqf*. It is done by making the dinar or dirham as venture capital and the result is distributed for social interests. What is important is that the property given as *waqf* can be utilized repeatedly and not depleted once utilized. The value of money can be maintained and the results have benefits, one which to realize the purpose of *waqf*.⁴⁷

In this regard, what is significant according to the classical scholars is that the existence of cash *waqf* which has been common in many countries can be confirmed as a legitimate 'urf (costum). Islamic legal principle states *al-'Âdah muhakkamah*, meaning a costum can become the law.⁴⁸

On May 11, 2002 Fatwa Commission of the Indonesian Ulema Council (MUI) has set a fatwa on cash *waqf* as follows:⁴⁹

- a. *Waqf* of money (cash *waqf/waqf al-nuqûd*) is *waqf* done by a person, a group, an institution or legal entity in the form of cash. Termasuk ke dalam pengertian uang adalah surat-surat berharga.
- b. Securities are included in the definition of money.
- c. The legal status of cash *waqf* is *jawâz* (allowed).
- d. Cash *waqf* should only be distributed and used for things that are allowed in *syar'î* (Islamic law)
- e. The principal amount of cash *waqf* should be preserved, may not be sold, or inherited.

⁴⁵ Ibid., 203.

⁴⁶ A narrator of hadits from the group of *tâbi'în* whose full name is Muḥammad bin Muslim bin 'Abd Allâh bin Shihâb al-Zuhri descendants of Quraysyî who resides in Medina and died in 124 H.

⁴⁷ Rofiq, *Fiqh Kontekstual*, 345-346.

⁴⁸ Muḥammad Yâsin bin Isâ al-Fadanî al-Makkî, *al-Fawâid al-Janniyah Syarḥ al-Farâid al-Bahiyah*, (Beirut: Dâr al-Fikr, 1997), 266. See also 'Abd. Hamid Hakim, *al-Sullam*, Juz II, (Jakarta: Sa'adiyah Putera, n.t.), 61.

⁴⁹ Abdul Ghafur Anshori, *Hukum dan Praktik Perwakafan di Indonesia*, (Yogyakarta: Pilar Media, 2005), 93.

The legal basis of cash *waqf*, as mentioned above, is reinforced by the results of research conducted by M.A. Mannan, founder of SIBL (Social Investment Bank Ltd.). He states that the cash *waqf* is known in Islam and can be found in the Ottoman era and in Egypt. In this regard, Turkey has a long history in the management of cash *waqf*.⁵⁰

The History of Waqf in The Pesantren of al-Amien

The origin of the founding of Pondok Pesantren of al-Amien locaten in Prenduan is closely related to the figure of Kiai Suaidi Uzlah, who comes from the Uzlah village. At the end of the 19th century, two children of Kiai Suaidi Uzlah, namely Kiai Mutakallimin and sister, Siti Maria, migrated to the Gemma Village to learn and study the religious sciences to K.H. Syarqawi, a scholar who is 'allahamah (famous for his piety), from Kudus, Central Java. Kiai Syarqawi comes and settles in Gemma at the request of his friend, Kiai Jamal, when they performed *hajj* together in Mecca. Kiai Jamal himself did not have time to return to his homeland after the pilgrimage because of illness and then died in Mecca.⁵¹

Because of the political situation which is uncondusive to his family, Kiai Syarqawi then moved to Gelindingan village. Since then, Kiai Mutakallimin continued the activities of religious teaching for local residents. He then set up a prayer house named *Langgar Joglo*, because the shape of the building is designed like a *joglo*. From the Langgar Joglo he pioneered the establishment of a simple Islamic boarding school (pesantren), which historically can be regarded as the origin of the boarding school of al-Amien Prenduan, as we know today. However, shortly later, on August 2, 1930, Kiai Mutakallimin died and was succeeded by his son, namely Kiai Jauhari Khatib as his father's struggle successor. Kiai Jauhari Khatib nurtured and educated his students for around 20 years with some development, namely he has established the form of institutional level of education, they *al-Washliyah* Islamic elementary schools and *Tarbiyatul Muallimin al-Islamiyah*.

⁵⁰ Ibid., 94.

⁵¹ From interview with the Director of the Pesantren of al-Amien Prenduen, KH Tijani Jauhari on May 3rd 2006.

After he passed away, he was replaced by his son named *Kiai* Idris Jauhari, because his brother, *Kiai* Tijani Jauhari was still pursuing his study in Mecca. Since this period *waqf* began to flourish in al-Amien. It was started by the testament of *Kiai* Jauhari Khatib not to divide the inheritance but donate the property for the pesantren. At this time, the pesantren of al-Amien has already had around 6 Ha obtained from *shadaqah* of *Kiai* Jauhari Khatib and some of his friends and his students. So, *waqf* is begun formally from the testament of *Kiai* Jauhari Khatib as a guardian and founder of the pesantren al-Amien Prenduan to their children not to divide the inheritance and give it as a *waqf* for the pesantren.

The Implementation of *waqf* in the Pesantren of al-Amien Prenduan

As explained above that the beginning of *waqf* in the pesantren of al-Amien Prenduan is since the implementation of *waqf* by the founder and the guardian by not dividing inheritance and donating it to the pesantren which was originally under the foundation of Al Amin and managed by the foundation, so that there is no clear separation between property of the pesantren and personal property of the *Kiai*.

However, since the rule of the pesantren on the foundation changes; the board of which are under the foundation should not take care of *waqf*, thus *waqf* board whose existence is separated was formed and become the highest body in the pesantren. Therefore, the *Waqf* Board is the highest body in which its implementation is submitted to the Assembly *Kiai* and the Assembly of *a'wan*. Although the property was managed by the foundation at that time, the status of all the assets in the pesantren was *waqf* property, except some land and buildings which become *ndalem* (residence of *Kiai*) and it was limited only to the residence. The others are *waqf* property, although not all of them have the certificate or the attestations that the property belonged to the people.

It can be concluded that all the property in the Pesantren of al-Amien Prenduan is *waqf* property. During its development, in terms of managing *waqf*, the pesantren applies contemporary management, such as productive *waqf*, one of which takes the form of cash *waqf*. There have been two forms of *waqf* in the pesantren; namely

conventional *waqf* which is *waqf* of owned land to develop educational facilities. The second form is productive *waqf*, which is to develop the economy of the pesantren with contemporary *waqf* management such as cash *waqf*.

As for *waqf* of land, the pesantren of al-Amien continuesly develops and expands the land, either through direct donation of land from the parents of students, alumni and sympathizers as well as through the sale of the land certificate. Up to now, the area of land obtained from *waqf* in the pesantren reaches 39 Ha. In addition, the pesantren has received donation, both from foreign and within the country. That is why it needs good, strategic and prospective management. The agency in charge of the issues of land expansion is the Bureau of Economic and Facilities which are then implemented by the Executive of the Acquisition and Maintenance of *Waqf* Land (P3TW). So the agency only deals with the issues of *waqf* of land alone.

One of economic development that is done by the pesantren is by running a few businesses that have been initiated, namely: units of telecommunication, building material stores, the unit of home industry, rental service unit, family welfare unit, retails, corporate units of tofu and tempeh, printing unit, transport services unit, crab management unit, investments in companies such as ice plants, gas stations, farms and plantations.

It is through those units of bussiness, the pesantren of al-Amien develops the *waqf* treasures, namely through the development of productive *waqf* earned or gaining the capital from cash *waqf*. One of the sources of these funds are derived from donations of alumni, from sympathizers and parents of students, and obtained from the educational fee of the students (SPP), which is then developed into businesses. The pesantren takes the profits of the businesses to fulfill its needs, such as for construction and teachers' salaries.⁵² However, they are not directly taken from the donations which are collected, from the profits of the businesses. In addition, in terms of the salaries of teachers, the pesantren does not pay salaries the same as salaries of

⁵² In the pesantren of al-Amien, it is termed as food allowance, because in reality the money is just a gift to the teaching staff and other servants which is enough only for the cost of the family meal. As for those who do not have a wife, they have food from the *pesantren* such as rice and side dishes.

employees in general. This is because the motto of the pesantren is *ikhhlâsh al-'amal*.⁵³

So, the pesantren does not directly take the funds collected to meet the needs before they are put into bussiness because they are *waqf* assets. Perhaps, it can be said that *waqf* in the pesantren of al-Amien Prenduan is a kind of a practice or implementation of *waqf* which is unique, in which *wâqif* who has donated some wealth is not aware that he has been giving *waqf* to the pesantren. An example of this is the educational fee of students. Although it has been determined and are required to the students, in essence it is a kind of *waqf* held at the pesantren of al-Amien Prenduan without saying directly that it is one of *waqf* implemented in the pesantren.

Compulsory contributions of students (SPP) become *waqf* property for it is made as capital developed through various businesses that are productive. The funds that are used to develop the pesantren are not from the compulsory contributions (SPP) but from the profits instead. Thus, the status of *waqf* treasures which are managed is *dawâm al-intifâ'*.

It is generally assumed that *waqf* in the pesantren of al-Amien Prenduan confined to the expansion of the land, whereas the system of *waqf* in the pesantren is varied. This is because of terms, such as business unit, which then make the essence of *waqf* implementation becomes vague, while all the properties are *waqf* treasures. There has been even a more familiar phrase amongst stewards, that: "let the treasure that is already visible, we are too *waqf* here, because we give priority to devote our knowledge and sincerity to this pesantren".

Some business units run by the pesantren as the form of the *waqf* management includes telecommunication, building material stores, home industry, rental services, family welfare, the company of tofu and tempeh, printing, transportation, crab processing, ice factories, gas stations, farms and plantations. This business unit is managed by a pesantren cooperative (*kopontren*) and Non Cooperative Enterprises (BUNK). The implementation of *waqf* land is developed and managed by the Executive of Acquisition and Maintenance of Waqf Land (P3TW) which uses the *waqf* maximally as one of the efforts to improve and fulfill the needs of pesantren to facilities and

⁵³ Interview with K.H Syarqawi Dhofir, May 3rd 2006.

infrastructures. One of the efforts is the sale of certificates of *waqf* land that has been going on for approximately three years.

It can be said from aforementioned explanation that all the properties of the pesantren of al-Amien are *waqf*, one of which is in the form of cash *waqf*, namely the *waqf* which comes from the parents of students, alumni and sympathizers who donates some money for the benefit of the pesantren, and the pesantren manages such property from being lost or used up. However, we need to know that the pesantren does not use the collected funds straightaway for the benefit of the pesantren. The funds are distributed and implemented in accordance with the will of the *wâqif*. For example, if they want to give the *waqf* to *Ma'had Tarbiyatul Muallimîn* or *Ma'had Tahfidh al-Qur`ân*, then the funds are supplied to the intended institution.

There are two philosophies in relation to the ownership of the *pesantren*. The first is that "Kiai belong to the pesantren and the pesantren is the property of Kiai". The second is that "Kiai should not hold the money, but he has to know where the money was spent". Due to the terms, Kiai does not participate directly in the management of the property but is responsible for the existence of the money or property. With regard to the highest structural leadership, namely *Waqf* Board carried out by the Assembly of *Kiai* and the Assembly of *A'wan*, it can be concluded that all structural activities in the pesantren of al-Amien is closely related to modern *waqf* management. This is because the highest institution is the *waqf* board itself, so it manages the *waqf* property because *Waqf* Board is the *nâzhir*.

The *Waqf* Board, as the leader in the implementation of *waqf* in the pesantren has a regular forum, namely deliberation forum held every tuesday morning. The meeting is attended by the Assembly of *Kiai* and the Assembly of *A'wân* as well as the parties that are considered important to attend in this forum. Several issues related to the development of *waqf* in al-Amien are discussed in the meeting as well as evaluation, plan of future programs, and problems associated with *waqf* in the pesantren. Then, the results of the meeting are presented in bureaus for further action. In its development, it is sincerity that becomes the basis which is packed with: (1) the way how it is done is the best; (2) can be justified; (3) the absence of manipulation.

Cash Waqf in The Pesantren of Al-Amien

Cash *waqf* is implemented as one of productive *waqf* developed in the pesantren of al-Amien. The practice of the cash *waqf* needs to be examined, whether it fall in the category of cash *waqf* previously discussed, or it is just *waqf* process in general (which is usually done by other pesantren, namely *waqf* of land and gifts or donations from others as an ordinary *shadaqah*).

The practice of *waqf* in the pesantren of al-Amien, uses or utilizes the existing institution funds, both from sympathizers and parents of students to be developed and managed in such a way so as to meet the needs of the pesantren without reducing the institution funds. In addition, the pesantren does not solely put all of the funds to be managed, but always allocates the funds in accordance with what is planned, for example, for the construction of dormitories. Based on the data in the field, the practice of *waqf* in the pesantren of al-Amien is one of the implementation of productive *waqf* management, in the form of cash *waqf* .

The pesantren of al-Amien is one of pesantren in Madura in which the highest leadership position is the *waqf* Board.⁵⁴ All the structural body in the pesantren of al-Amien Prenduan is under the auspices of *waqf* board as *nâzhir*. As a consequence is that all development of the pesantren conducted by the *nâzhir*. In principle, the requirement of *waqf*, especially cash *waqf* is that the money should not be utilized or reduced, but it is to be developed only. This is to keep *dawâm al-intifâ' ma'a baqâ' 'aynihâ* (sustainability of benefits that can be used from the *waqf* without reducing the *waqf* property or *mauqûf `alaih*). This stipulation was implemented in the pesantren of al-Amien Prenduan, and it can be seen from the implementation or utilization of the *waqf*. The pesantren does not use the funds, but developes them first and the results are used for construction and the

⁵⁴ See the organizational structure of the Pesantren of al-Amien, containing *waqf* board which becomes the supreme leader and the most significant one in determining a policy. This body held by Council of *Kiai* (made up of the director and elder *kiai*) in which in carrying out their duties they are assisted by *A'wan Assembly* (composed of young *kiai* who will be the successor of *Kiai* Assembly).

operational costs of the pesantren, including the salaries of teachers and administrators.⁵⁵

The material wholeness (*baqâ' 'aynihâ*) of cash *waqf* lies in its internal value. It is clear that in the pesantren of al-Amien, the *mauqûf alaih* is maintained and developed. The results are utilized for the benefit of the pesantren, which is generally allocated for *da`wah* (religious mission) and education (*li al-da'wa wa li al-tarbiyah*).

There are three basic principles that should be emphasized when trying to apply the principle of productive *waqf*. *First*, the allocation of funds must be seen in the frame of "integrated project", instead of a separate fee. This is to dispel the assumption that the *waqf* fund will be depleted when used, for example, for salaries, wages of construction workers, whereas *waqf* property should be everlasting. The *Second* is the principle of *nâzhir* welfare. This is because the *nâzhir* is not positioned as a professional, they do not manage *waqf* property with good management and so they tend to be unprofessional. Therefore, it is the time to make *nâzhir* as a profession that gives hope of prosperity, not only in the hereafter, but also in this world. The *third* is the principles of transparency and accountability in which the *waqf* board and the institutions it helped must report the fund management process to the people annually.⁵⁶ The *pesantren* of al-Amien has already implemented the principles, except the one that makes *Nâzhir* as a profession that gives hope of prosperity. It is associated with the basic principles of the attitude of the pesantren stakeholders, namely *ikhâlâs al-'amal*; without ulterior motives.

From the description of the legal basis as referred to in the foregoing discussion, it can be concluded that the *pesantren* of al-Amien Prenduan relies heavily on the *waqf* implementation system, one of which uses productive *waqf* or cash *waqf*. This conclusion is based on several reasons, namely:

First, that the highest leadership in the pesantren of al-Amien is *waqf* board which is fully carried out by the Assembly of *Kiai*

⁵⁵ Utilization of *waqf* for the sake of development is done when there is no certain grant for the development. If there is an aid that is devoted to a specific purpose, it is not utilized for a construction because, the principle applied by the *pesantren* is utilization of a grant in accordance with the purpose of the *wâqif* (donator)

⁵⁶ See Syeichul Hadi Purnomo, *Antologi Kajian Islam*, (Surabaya: Pascasarjana IAIN Sunan Ampel Press, 2003), 116.

assisted by the *A'wan* Assembly. So that the system used in the pesantren management is the management of *waqf* with capital development system.

Second, the pesantren of al-Amien has fulfilled the requirement of cash *waqf* implementation system, which does not eliminate the initial capital, but continue to develop and use the proceeds for the benefit of the pesantren. In this case, *dawâm al-intifâ'*, as one of the requirement, has been fulfilled. This state is out of the debate of Islamic scholars.

Third, the *waqf* board that manages *waqf* as well as supervises the implementation of *waqf*, at the level of practice (in the management of *waqf* property) is fully carried out by the Bureau of Economics who has several business units which are ready to develop. This is continuously developed coupled with the goal of expanding the network economy, so that the pesantren no longer depends on external funds. The positive impact of the effort is the constructions of facilities and infrastructure which are not delayed when the needed funds are not obtained.

Fourth, capital raised by the *pesantren* of al-Amien is derived from wealthy philanthropists, sympathizers, and parents, which is collected through a variety of ways, either compulsory or voluntary contribution, or requested funds. Indeed, in the implementation of *waqf*, there is no contract which is explicitly mentioned at the time when the money is given; that the money will be used as capital by the *pesantren* to run a business from which the results would be used for the benefit of the pesantren, or specifically, there is no a specific contract of cash *waqf*. Normatively, it does not go through the proper principle. However, there are principles of sharia rules that can be used as arguments;

Here is the principle that can be used as arguments of the above steps, namely:

من العقود ما لا يفتقر إلى الإيجاب والقبول لفظاً

*There are parts of the contract that does not require ijab and qabul (the consent) in wording.*⁵⁷

⁵⁷ Jalâl al-Dîn al-Suyûthî, *al-Asybah wa al-Nazhâir fi Qawâid wa furû' Fiqh al-Syâfi'i*, (Beirut: Dâr al-Fikr, n.t.), 352.

It can be understood from the rule that not all of the contract must be made explicit, but with an understanding of the parties concerned about what will be done in the contract, and then it is allowed. Words can be removed or are not required when the act (الفاعل) is used. This rule has a condition, that is something under contract must be returned to the 'urf (custom of particular local). In the pesantren of al-Amien, this sort of thing has been understood by the person who hands over his property. They have already known how the property will be used by the pesantren of al-Amien because there is annual report that can be accounted for. The trust of the public to the pesantren becomes stronger and stronger due to the report.

Other rule that reinforces the above principle is:⁵⁸

العبرة في العقود للمقاصد والمعاني لا للألفاظ والمباني

Ibrah (words) in the contract are for the objectives and the meaning, not for the words and forms

The meaning of this rule is that what is important in a contract is intention, not the words and form of the words. In other words, the contract has not to be spoken, but it may be legitimate to understand what it means. In addition, the position of the pesantren who uses the funds can be assumed as a representative of the owner of the funds with the rights as the owners.

Conclusion

There are two types of *waqf* practice in the pesantren of al-Amien Prenduan; waq of land and cash *waqf* with the development of productive *waqf* system. In terms of land *waqf*, the pesantren of al-Amien manages to raise funds to buy a land which is then donated as *waqf* or to sell the certificates of the *waqf* land. With regard to the cash *waqf*, the pesantren of al-Amien collects funds both donations from sympathizers and from the parents of students - even mandatory contribution of students - to be managed and developed through productive *waqf* system and management. The most importantly in the implementation of *waqf*, the pesantren of al-Amien Prenduan does not use the collected funds for the purposes of financing the pesantren's needs, but rather, it uses the results.

⁵⁸ See al-Makkî, *Al-Fawâid al-Janniyah*, 256.

The status of cash *waqf* held at the pesantren of al-Amien Prenduan are fall into the category of the existing cash *waqf* in general. This is because the implementation has met the legal requirements, for example *dawâm al-intifâ'* (the advantage can be taken continuously) and administered by a *waqf* board (have to have a *waqf* board). In addition, the highest structure in the pesantren of al-Amien is the *Waqf* Board which is held by the Assembly of Kiai, so all its economic management applies *waqf* management, particularly the productive *waqf*. As the final conclusion, the *waqf* process in the pesantren of al-Amien, one of which is cash *waqf*, is based on al-Qur`ân, Hadith, opinions of scholars with all the arguments and comparisons as well as some relevant rules.

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