



Samarah: Jurnal Hukum Keluarga dan Hukum Islam
Volume 5 No. 1. January-June 2021
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167
DOI: 10.22373/sjkh.v5i1.9161

The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia

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Abstract: This study examines the legal standing of waqf for non-Muslims contributing to the increase of waqf assets in Indonesia. It turns out that raising waqf funds can be accessed from non-Muslim funds that sympathize with the economic value of Islamic philanthropy. Waqf is a deed that is part goodness of Islam and has a socioeconomic dimension. The essence of waqf is to hold the core of waqf and develop the outcome, so that waqf assets do not just disappear. The form of waqf is exciting and has great benefits so that not only a Muslim who is interested in waqf, many non-Muslims also contribute through donations. However, scholars differ in opinions about non-Muslim waqf laws; besides that, the waqf law also does not mention the specificity of waqf only for Muslims. This research is qualitative research through a normative juridical approach through literature in analyzing the data obtained. So, the difference in opinion of the *madzhab* scholars is essentially allowing non-Muslim endowments if it is not intended for religious facilities such as mosques.

Keywords: Waqf assets, non-muslims, madhhab.

Abstrak: Penelitian ini bertujuan mengkaji kedudukan hukum wakaf bagi non-muslim yang ikut berkontribusi dalam peningkatan aset wakaf di Indonesia. Karena ternyata peluang penghimpunan dana wakaf dapat diakses dari dana non-muslim yang bersimpati pada nilai ekonomi filantropi Islam. Wakaf merupakan ibadah yang menjadi bagian dari nilai kebaikan Islam serta memiliki dimensi sosial ekonomi. Esensi wakaf yaitu menahan inti wakaf dan mengembangkan hasilnya sehingga harta wakaf tidak hilang begitu saja, karena bentuk wakaf yang menarik dan memiliki manfaat yang besar sehingga bukan hanya seorang muslim yang tertarik dalam berwakaf, tidak sedikit non muslim pun ikut berderma melalui wakaf. Ulama berbeda pendapat tentang hukum wakaf non muslim, selain itu dalam UU wakaf pun tidak menyebutkan kekhususan wakaf hanya untuk muslim saja. Penelitian ini penelitian kualitatif melalui pendekatan yuridis normatif melalui studi kepustakaan dalam menganalisis data yang didapat. Sehingga perbedaan pendapat ulama

|| Submitted: March 09, 2021 || Accepted: June 09, 2021 || Published: June 30, 2021

madzhab tersebut intinya membolehkan wakaf non muslim selama tidak diperuntukan untuk sarana ibadah seperti masjid.

Kata Kunci: Aset wakaf, non-muslim, madzhab.

Introduction

The waqf (endowment) practice in Indonesia has gone through several periods; until now, waqf has become part of the *tabarru* contract (gratuitous contract), which has begun to be widely highlighted given the many benefits and potentials in Indonesia. This phenomenon can be seen from the many new instruments that have emerged in the development of the Islamic economy sector in Indonesia, which are associated with waqf both in substance and in terms, such as cash waqf linked sukuk, Islamic insurance benefit waqf, and micro waqf banks, one of which is a non-Muslim donor.

On January 25, 2021, the Indonesian government launched the National Money Waqf Movement (GWNNU) program, which can be invested in the form of sharia investment. This movement is an effort to socialize the increase in waqf assets in Indonesia.

In the history of Islam, waqf has proven its role in several civilizational advances such as in the education, social, economic, cultural, and religious sectors. For example, in Medina, there are hotels and mosques which resulted from the development of Uthman bin Affan's wells waqf assets which were about 1400 years old. During the Ottoman period in Turkey, most of the planted land came from waqf assets; it was estimated for about 75%.¹

In addition, waqf has provided much access for academics to conduct research and education, which also helps them reducing dependence on financial assistance from the government. For example, in Egypt in the early 19th century, agricultural land waqf assets reached 1/3 of all existing agricultural land. Similarly, waqf assets are also in urban areas, economic centers, education, and health sectors. One of the developments of productive waqf results that significantly influences the education sector is al-Azhar University in Egypt.² Al-Azhar is evidence of well-managed waqf which finances its operational activities, especially education for years independently, so it does not rely on government assistance or payments from students. Al-Azhar even provides scholarships to students from all over the

¹Khoirul Abror, "Dinamika Perwakafan dalam Pemikiran Hukum Islam, Peraturan Perundang-Undangan di Indonesia dan Negara-Negara Muslim." *Al-'Adalah: Jurnal Hukum Islam* 12, No. 2 (2014).

² A Faishal Haq, "Wakaf Kontemporer dari Teori ke Aplikasi," *Jurnal Maliyah* 2, No. 2, (2012). Muhammad Kasdi, "Peran Wakaf Produktif dalam Pengembangan Pendidikan," *Quality: Jurnal Pendidikan Islam* 3, No. 2 (2015).

world, including Indonesia. Another well-known institution for developing waqf in the education sector, especially in Indonesia, is the Gontor Islamic Boarding School.

Based on BWI data (Indonesian Waqf Agency), Indonesia's potential for waqf assets reaches 2000 trillion with a waqf land area of 420 thousand hectares. The potential for cash waqf is 118 trillion Rupiah. In addition, data from the Ministry of Religion of Indonesia explains that the amount of waqf land reaches 161,579 hectares. The area of waqf assets spread over 366,595 locations, and it is the largest waqf asset in the world. This enormous waqf asset could be a golden opportunity if managed and empowered productively, especially if it can continue to grow in quantity and quality of management and empowerment.

However, until recently, the amount of cash waqf fundraising in Indonesia collected by national scale waqf institutions has not yet reached this potential figure. For example, based on data from the Ministry of Religion in 2018,³ the realization of cash waqf recorded from 2011 to 2018, an average of only IDR 31.9 billion per year. In addition, data on the waqf in each *nadzhir* (the party who administer and manage waqf asset) has not been integrated nationally.

The amount of waqf assets in Indonesia in total is inevitable considering the extensive natural and human resources in Indonesia, so ideally, it is directly proportional to the quality of the empowerment of the waqf. In addition, the increase in the number of waqf assets can continue to grow because of 2 things: the waqf object can be both movable or immovable objects, and in term of *wakif* (waqf donor), it can not only be done by Muslims, but there are opportunities for non-Muslims even with the terms and conditions set by the ulema.

Considering that many people want to donate part of their wealth, the benefits of the donated assets continue to flow without being exhausted in quantity and form. Therefore, not only a Muslim who wants to waqf their wealth and but also some non-Muslims. They donate and mention the term waqf in the donation and deposit it to an Islamic waqf management institution (*nadzir*). Even the World Islamic Economic Forum chairman, Tun Musa Hitam, said that waqf could be a bridge between Muslims and non-Muslims.⁴

In Law no. 41 of 2004 concerning waqf or Waqf Law, it is not clearly stated that the conditions for *wakif* or the person who does endowment must

³www.siwakkemenag.go.id, 2018.

⁴www.dakwatuna.com, 2017.

be a Muslim.⁵ However, for non-Muslim *wakif*, ulema has different opinions, the difference is between the Hanafi school of thought (*Mazhab*) and the Maliki school.

Even in Article 8 of the Waqf Law, it is stated that individual waqf is people who meet the requirements of being an adult, sane, healthy, not hindered from carrying out legal actions, and the rightful owner of waqf property. Based on this article, there is an opportunity for waqf managers (*nadzir*) to receive waqf from non-Muslims as an effort to increase the number of waqf assets for the benefit of the people, especially in Indonesia.

The research method used in this paper is a qualitative research method, through a normative juridical approach that collects various sources related to waqf, namely Law no. 41 of 2004 concerning Waqf and Government Regulation No. 42 of 2006 concerning the Implementation of Law no. 41 of 2004. The primary legal materials used are the Qur'an, Al-hadith, compilations of Islamic law, books, journals, and related literature that are relevant to the theme of the position of waqf for non-Muslims to increase waqf assets in Indonesia.

The study uses a library research method data processing. Literature sources are used to analyze this waqf research problem. Besides, in analyzing the data, the method of legal interpretation and the theory of *maslahah* in filling the legal vacuum also play a role in analyzing the theme of writing this non-Muslim waqf.

Based on those reasons, the authors are interested in discussing a topic on non-Muslim waqf with the title "The Legal Position of Waqf for Non-Muslims in Efforts to Increase Waqf Assets in Indonesia."

From literature related to the theme of non-Muslim waqf, it was only found research related to non-Muslim waqf in the context of micro waqf banks, waqf in non-Muslim countries, and the study of Wahbah Zuhaili's thoughts regarding non-Muslim waqf.⁶ This shows that the writing non-Muslim waqf in increasing waqf assets in Indonesia is different from existing studies.

Definition of Waqf and Its Legal Basis

The word waqf comes from Arabic, '*waqafa-yaqifu-waqfan*' and '*awqafa-yuqifu-iqafan*' which means standstill, silent, holding, or stopping. Another similar word that is often used is *habasa-yahbisu tahbisan* which

⁵ Siska Lis Sulistiani, *Hukum Perdata Islam di Indonesia*, Jakarta: Sinar Grafika. 2018, p. 114.

⁶Fitra Rizal, "Wakaf Non Muslim dan Wakaf Uang Menurut Pandangan Wahbah Zuhaili." *Jurnal Al-Intaj* 5, No. 2 (2019).

means something detained or prevented, meaning that the benefits or essence of property are extracted in Allah's way (for good deeds) without consuming the property itself.⁷ In this context, the word waqf indicates that it cannot be inherited, donated, and sold, and the benefits can repeatedly be extracting.

Terminology, waqf means an act of holding an asset from transferring or using, to utilize the result yielded from the asset for the shariah-compliant project. However, some of the Hanafi schools view waqf as an attempt to use some of Allah's wealth and donate it to others. In contemporary legal language, waqf means giving, carried out at the heirs' will, to get closer to Allah SWT. Waqf is also defined as property dedicated to various purposes both for worship as well as for humanity. Waqf is once in forever, or irrevocable assets by someone as a manifestation of religious observance.⁸

Based on the Waqf Law, waqf is a legal act of *wakif* to separate or hand over part of his property to be used perpetually or for a specific time under his interests for worship and public welfare according to sharia.

In Article 1 paragraph (1) PP No. 42 of 2006, it is stated, "Waqf is a legal act of *wakif* to separate and hand over part of his property to be used forever or for a certain time in accordance with his interests for worship and public welfare according to the Sharia." From the understanding in the Waqf Law, it is stated that the period of waqf can be made within a certain period.

This is different from Article 215 of the Compilation of Islamic Law (KHI), which states "a legal act of a person or group of people or a legal entity that separates part of his property to institutionalize it forever for worship or other public purposes in accordance with Islamic teachings."

The different definition between the waqf law and KHI is in the time; the waqf law does not mention the word forever as stated in the KHI. So, according to waqf law, waqf does not have to be eternal. It can also be done within a certain period. Therefore, it is possible to develop the waqf in the future, and the most important thing is to maximize the results of the waqf object without reducing the value and form of the waqf object itself. Thus, waqf aims to provide benefits to people who are entitled to and used in the Sharia-compliant projects, not only for the benefit of worship but also for the general welfare. This influences the variety of waqf practices in various countries dynamically.

As the legal basis for waqf, Qur'an does not explicitly mention about waqf. Instead, the scholars use general verses of the Qur'an as the basis of

⁷Siska Lis Sulistiani, *Pembaruan Hukum Wakaf di Indonesia*, Bandung: Refika Aditama, 2017, p. 8.

⁸M. A. Mannan, *Sertifikat Wakaf Tunai Sebuah Inovasi Instrumen Keuangan Islam*, Jakarta: PKTTI-UI. 2001, p. 29.

waqf in Islam. Such as the verses related to almsgiving, donation, disbursement, and charity. The scholars interpret that waqf is included in the scope of the other verse.⁹ The verses of the Qur'an related to the waqf are as follows:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا أَرْكَعُوا وَأَسْجُدُوا وَعَبَدُوا رَبَّكُمْ وَأَفْعَلُوا الْخَيْرَ لَعَلَّكُمْ
تُفْلِحُونَ ﴿٧٧﴾

“O you who have believed, bow and prostrate and worship your Lord and do good - that you may succeed.” (QS. Al-Haj: 77)

In his *Tafsir* (interpretation), Al-Qurtubi interprets the word 'al-birra' or do good as a suggestion from Allah SWT for humans to do all good deeds, including endowing his property. This verse is one of the verses that underlies the Islamic law of waqf.¹⁰

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ ۚ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ﴿٩٢﴾

“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”. (QS. Ali Imran [3]: 92).

Most scholars agree that the practice of waqf existed at the time of the Prophet Muhammad, this is contained in the hadith when Umar bin Khattab got a piece of land as a waqf asset in Khaibar,¹¹ as follows:

عن ابن عمر رضي الله عنهما : أن عمر بن الخطاب أصاب أرضا بخيبر فأتى النبي صلى الله عليه و سلم 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 وتصدق بها .) قال فتصدق بها عمر أنه لا يباع ولا يوهب ولا يورث وتصدق بها في الفقراء وفي القربى وفي الرقاب وفي سبيل الله وابن السبيل والضيف لا جناح على من وليها أن يأكل منها بالمعروف ويطعم غير متمول . قال فحدثت به ابن سيرين فقال غير متأثر مالا

From Ibn Umar r.a., 'Umar bin Khattab got a plot of land in Khaibar, then he came to the Prophet to ask for his instructions about the land. He said: O Messenger of Allah, I have acquired a piece of land in

⁹ Abdul Halim, *Hukum Perwakafan di Indonesia*, Tangerang: Ciputat Press, 2005, p. 49.

¹⁰ Abdul Ghofur, *Hukum dan Praktik Perwakafan di Indonesia*, Yogyakarta: Pilar Media, 2006, p. 19.

¹¹ Syaikh Muhammad bin Shalih Al-Usman, *Panduan Wakaf, Hibah, dan Wasiat Menurut al-Qur'an dan as-Sunnah*, Jakarta: Pustaka Imam Syafi'i, 2008.

Khaibar which I have never had a treasure more valuable than it. What are your instructions regarding the treasure? The Messenger of Allah said: If you want, you can withhold the substance (institutionalize the object) and donate its benefits. [Ibn Umar further] reported: So, Umar gave the land to charity on the condition that it may not be sold, donated, or inherited. Ibn Umar said: Umar gave it to the poor, relatives, slaves, a person who work/fight or study on the path of Allah, and guests. It is also not forbidden for people who manage the waqf land (take care) to earn from the land as long as it is proper or without intending to accumulate wealth. [HR Bukhari].

From the hadith, several things can be understood related to waqf, including the core of waqf, namely the main assets and its benefits, the ownership status, the consequences of managing waqf assets, the mechanism of waqf assets, which cannot be sold, granted, and inherited. In addition, the waqf manager has the right to earn from the waqf assets as long as it is not excessive and does not intend to take over ownership. The waqf asset is movable and immovable objects, recently cash waqf is planned, and the time of waqf can be eternal and temporary.¹²

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ مِنْ صَدَقَةٍ جَارِيَةٍ وَعِلْمٍ يُنْتَفَعُ بِهِ وَوَالِدٍ صَالِحٍ يَدْعُو لَهُ

On the authority of Abu Hurairah r.a., that the Messenger of Allah said: When a man dies, his deeds are cut off except for three things: recurring charity (shadaqah jariyah), knowledge by which people are benefited, or a pious child who prays for him. [HR. Muslim].

The word '*sadaqah jariyah*' in the hadith is meant to include waqf charity. In waqf, the core of the assets is permanent, while the benefits of the assets that are donated can continue to flow and provide benefits to those who need it, so that the *wakif* still gets a reward for his *sadaqah jariyah* even though the *donor* has died.¹³

The legal basis for waqf in Indonesia includes Law no. 41 of 2004 concerning waqf, which is the basis for empowering the management and development of waqf in Indonesia. However, from the existing regulations, it is not clearly stated that the opportunity for waqf is only for Muslims, but there are opportunities for waqf among non-Muslims, and based on Article 2 of the Waqf Law, the provisions on this matter are referred to the Sharia.

In addition, the basis for waqf in Indonesia is contained in PP No. 42 of 2006 concerning Waqf, Compilation of Islamic Law, BWI Regulations, and

¹²Ali Amin Isfandiar, "Tinjauan Fiqh Muamalat dan Hukum Nasional tentang Wakaf di Indonesia," *Journal of Islamic Economical Lariba II*, No.1 (2008), p..57.

¹³Syamsul Anwar, *Studi Hukum Islam Kontemporer*, Jakarta: RM Books, 2007, p. 79.

other regulations. In addition, The Indonesian Ulema Council (MUI) fatwa (legal opinion) in 2002 related to cash waqf was the initial momentum to the empowerment of waqf potential in Indonesia.¹⁴

Waqf Legal Provisions

In the study of waqf law, waqf is valid if it has fulfilled the pillars and conditions. According to AAOIFI, there are four pillars of waqf,¹⁵ as agreed by the majority of ulema: *Wakif* (Donor), *Mauquf 'alaih* (The receiver), *Mauquf* (Wealth/Property), *Sighat* (a statement to endow the property).¹⁶

Article 6 of the Waqf Law states that waqf can be implemented by fulfilling the waqf elements, as follows: *Wakif* (Donor), Waqf manager, Asset/property/wealth, Statement, Allotment of waqf property, Waqf Period.

Based on the pillars and conditions mentioned above, there is a clear difference between the pillars determined by most Islamic scholars and the Waqf Law. The difference is that there is a waqf allocation and a period that must be determined and exists when a person endows his property, but these two pillars are accommodated from various opinions of *fiqh* scholars who based their opinion on the conditions of Indonesia. In addition, the inclusion of *nadzir* as a pillar of waqf in the Waqf Law shows the vital role of *nadzir* in empowering waqf, especially in Indonesia.

Regarding the conditions of *wakif* in the pillars of waqf, in this discussion of non-Muslim waqf, the definition of *wakif* is focused on a person who gives waqf. Based on Article 8 of the Waqf Law, an individual *wakif* must meet several requirements including: adult (mature), soundness of mind, healthy, not hindered from carrying out legal actions, and the legal owner of the waqf property.

Meanwhile, Article 217 paragraph (1) of the KHI states that Indonesian legal entities and people who are matured, sane, not prevented by law from taking legal actions, able to endow their property on their own free will by taking into account the applied provisions of the Law. The Waqf Law and Book III of the KHI concerning waqf do not mention the word Muslim as a condition for *wakif* so that it becomes an opportunity for non-Muslim *wakif* to donate or endows their property for waqf.¹⁷

As a historical review, in the Waqf Law dated September 13, 2004, the Working Committee for the Discussion of the Waqf Bill consisting of the

¹⁴Fahmi Medias, "Wakaf Produktif," *Journal of Islamic Economi Lariba IV*, No.1 (2010), p. 75.

¹⁵Hay'ah Muhasibah Wal Muraja'ah Lilmu'assasaah Al-Maalayah Al-Islamiyyah. *Al-Ma'ayir asy-Syar'iyah*, Jeddah: AAOIFI, 2009.

¹⁶Departemen Agama, *Fiqh Wakaf*, Jakarta: Dirjen Bimas Islam, 2013, p. 21.

¹⁷Siska Lis Sulistiani, *Hukum Perdata Islam di Indonesia*, p. 114.

Government and the Indonesian House of Representatives agreed to abolish the "Muslim" requirement as *wakif*. The abolition of the word 'Muslim' as a condition for wakif aims to avoid a paradox, because, in Islamic history and Hadith, that waqf given by non-Muslim is valid and accepted. However, the waqf given by non-Muslim *wakifs* should be directed to matters related to the benefit of the people, not for places of worship. These rules do not include special criteria for Muslims who are only allowed to waqf their wealth.¹⁸

However, the requirements for waqf managers (*nadzir*) are different, in Article 219 KHI it is clearly stated that the waqf managers (*nadzir*) must be Muslims. Some of the requirements for *nadzir* in paragraph 1 of Article 219 KHI are: a. Indonesian citizens; b. Muslim; c. mature (adult); d. physically and mentally healthy; e. not under custody; f. resides in the sub-district where the waqf asset is located. This shows that the opportunity to collect waqf from non-Muslims in the community is wide open in order to increase waqf assets in Indonesia. This is different from the requirements for waqf managers which must be more selective because it is related to the development and empowerment of waqf assets themselves.

The Status of Non-Muslim *Wakif* in Waqf According to *Fiqh*

Linguistically, *wakif* is a person who does a waqf, the word is a form of *isim fail* from the word *waqafa*. According to Wahbah Zuhayli, the requirement for wakif is to have legal skills or *kamalul ahliyah* (legally competent) in spending his wealth (*tasharruf al-mal*). *Wakif* must also have the ability to fully act (*ahliyah al-ada al-kamalah*), among these competences include 4 criteria:¹⁹ Independent, Soundness of mind, Adult (mature), Not under wardship or custody, according to Baijuri, the right of wardship includes two things, people who are in debt and people who are seriously ill.²⁰ From this, it is not indicated that the waqf must be a Muslim.

In addition, according to al-Kabisi, being an adult as a requirement for wakif is to prevent a guardian of a child to endow the assets of a child under his guardianship, even if permitted by a judge. According to the statement, there are no special requirements for wakif regarding their beliefs or religion.

As for non-Muslims who did waqf in history, it is associated with the law of giving from non-Muslims to Muslims in general. This is based on the event narrated by Ali bin Abi Talib that the Prophet Muhammad had received gifts from several non-Muslim parties such as Kisra and other kings and received gifts from Salman al-Farisi who was not yet a Muslim at that time.

¹⁸Republika, 2004.

¹⁹Asy-Syarbini, *Mughni al-Muhtaj*, Kairo: Mushtafa Halabi. t.th, p. 376.

²⁰Al-Baijuri, *Hasyiyah al-Baijuri*, Beirut: Dar al-Fikr. t.th, p. 44.

However, in another narration, it was stated that the Messenger of Allah forbade receiving gifts from non-Muslims. Nevertheless, this prohibition is considered null and void by the hadith that allows accepting gifts from non-Muslims according to Ibn azm's statement. However, there are also those who interpret this as *makruh* (discouraged). Meanwhile, some other opinions allow this if the position of the Muslims considers it a solution to avoid the strategy of non-Muslims against Muslims or hope that a non-Muslim giver becomes a Muslim.

Regarding the status of whether a Muslim can accept gifts from non-Muslims, the ulema has different opinions. The first opinion is *mubah* or permitted; a Muslim is allowed to accept gifts from non-Muslims. It is based on Qs.al-Mumtahanah: 8, and the hadiths in *Sahih* al-Bukhârî in the chapter on receiving gifts from polytheists, and the consensus of the ulema. Whereas on the second opinion, it is forbidden to accept gifts from non-Muslims. It is based on Qs. At-Taubah: 5, and the hadiths on *Sunan* at-Tirmidzî in the chapter on whether to accept the gifts from the polytheists. From these two opinions, after doing the *tarjîh* (balanced comparison), it can be concluded that the first opinion is *rajih* (stronger) and prioritized to be implemented on the condition that what is given by non-Muslims does not have ties that are against the sharia. It is also essential to pay attention that the gift is produced from something that is considered good by the sharia, there is no intention to insult the Muslims, and it is certain that the gift will not harm the Muslims in the future. However, the law is subject to change if difficulties arise.

Therefore, from this perspective, it is considered permissible if it is associated with a non-Muslim waqf, even if it goes to mosques and the alms given are rewarded in the worldly context. However, there is no reward given in the hereafter. Because no matter how big and charitable, their deeds are still not accepted by Allah. Furthermore, some of the Shafi'i and Hanbali schools of thought think that non-Muslim waqf for the benefit of Muslims is valid, even if the waqf is in the form of a mosque on condition that it is only for the well-being of Muslims. However, if the non-Muslim waqf is intended for the purpose of their deeds and worship, then it is not valid because it is not considered worship according to Islam. Hence the purpose of waqf is only for good deeds, benefits, worshipping, and not for spreading polytheism and encouraging disobedience.²¹

The Shafi'i school of thought argues that the core purpose of waqf is to be closer to Allah without paying attention to the belief (*i'tiqad*) of the

²¹Wahbah al-Zuhayli, *Al-Fiqh Al-Islam wa Adilatuh*, Jakarta: Gema Insani Press. 2011, p. 291.

donor.²² Thus, it contrasts with the Maliki, which only allows non-Muslim waqf for the sake of worldly matters, not as a means of worship. Meanwhile, the Hanafi school permits non-Muslim waqf only if they originate from non-Muslims under *Ahl dhimma* (protected status of non-Muslims under an Islamic state) and have close relations between them and Muslims. This is expressed in the book of *al-Fiqhul Islami wa adillatuh*, as follows:

وَقَالَ الشَّافِعِيُّ وَالْحَنَابِلِيُّ: الْعَبْرَةُ بِكَوْنِ الْوَقْفِ قُرْبَةً فِي نَظَرِ الْإِسْلَامِ. سِوَاءَ أَكَانَ قُرْبَةً فِي
اعْتِقَادِ الْوَاقِفِ أَمْ لَا فَيَصِحُّ وَقَفُّ الْكَافِرِ عَلَى الْمَسْجِدِ؛ لِأَنَّهُ قُرْبَةٌ فِي نَظَرِ الْإِسْلَامِ، وَلَا يَصِحُّ
وَقْفُهُ عَلَى كَنِيسَةٍ أَوْ بَيْتِ نَارٍ وَنَحْوِهِمَا؛ لِأَنَّهُ لَيْسَ قُرْبَةً فِي نَظَرِ الْإِسْلَامِ.

"The Shafi'i and Hanbali schools of thought believe that the purpose of waqf is as a means of *qurbah* (getting closer to Allah), which is in line with the Islamic view, whatever the beliefs of the donor. Therefore, there is a legal basis in non-Muslim waqf for mosques because, in the view of Islam, it constitutes a form of *qurbah*. On the other hand, it is not valid to waqf for a church, a temple worshipping fire, or any other similar places because it is not considered a *qurbah* in the Islamic view."

This is different from the opinion of the Hanafi and the Maliki school, which argues that the waqf from non-Muslims is invalid. However, regarding non-Muslim waqf, several ulemas have different opinions regarding its legal standing. One of them is the Hanafi School which provides opportunities for non-Muslim to endow their wealth for waqf if it meets the requirements set by the Hanafi school. In addition, any action that can provide benefits for all can be considered as a valid waqf and such an act is universal that does not conflict with the teachings of any religion. Because donating wealth for the benefit of people is a good deed and *taqarrub* (to get close to Allah) in Islamic law, whether from a Muslim or a non-Muslim.²³

The Hanafi school of thought also argues that waqf for mosques is permissible only if it is from Muslims. Because spending funds for mosques is an act of *taqarrub* and in Islamic law, it is specifically for Muslims. For non-Muslims, such actions are not permissible because such actions are not intended by them to be *taqarrub*. Therefore, if there is a non-Muslim (Christian) who donates a piece of land for a mosque and the Muslims pray in it for years, then the landowner has the right to tear down the mosque at any time and use the land as he wishes. Likewise, the heirs of the *waqif* may share the land between them as part of the inheritance, like any other property, because the waqf is invalid.²⁴

²² Wahbah al-Zuhayli, *Al-Fiqh Al-Islam...*, p. 291.

²³ Muhammad Abid Abdullah Al-Kabisi, *Hukum Wakaf*, Jakarta: Dompot Dhuafa Republika dan Liman, 2004, p. 296.

²⁴ Muhammad Abid Abdullah Al-Kabisi, *Hukum Wakaf*, p. 296.

On the other hand, according to the Maliki school of thought, waqf from Muslim is permissible to all Islamic symbols and public social institutions. The Maliki school also explains about non-Muslim waqf intended for mosques and Islamic symbols. Imam Maliki states that non-Muslims' waqf is considered invalid if the waqf is used to fund the construction of a mosque.²⁵

According to the conference of ulemas in Saudi, it is permissible for Muslims to accept help or donation from non-Muslim on the condition that it is purely financial and no harmful consequences or deception for Muslims, nor is there any purpose of insulting Muslims. This can be based on the actions of the Prophet Muhammad who came to the Bani Naḍir, the Mu'âhid Jews (who made a peace agreement with the Muslims) to ask for their help paying the *diyat* (fines) of their relatives, Ibn al-ḥaḍram. Moreover, according to Muḥammad Khalid, it is permissible to accept waqf from non-Muslim. However, it must be ensured that these non-Muslims are known and not from the *kafir*(infidel) *ḥarbî*, and the waqf asset is not prohibited by sharia and intended for polytheism and immorality.

Therefore, this shows that there is a win-win solution. It is permissible or valid to accept a waqf from non-Muslims as long as the non-Muslim is a known (familiar to the community) non-Muslim figure. Besides, it must be clear that the non-Muslim has no intention of fighting against Islam and is not intended for polytheism or disobedience. Most importantly, the purpose of the waqf is for the benefit of Muslims.

Analysis of the Legal Position of Waqf for Non-Muslims to Increase Waqf Assets in Indonesia

Islam regulates aspects of *aqidah* (belief/creed), sharia, and *muamalah* (an aspect of lives apart from worshipping ritual), as for interacting between fellow human beings, it is permissible, especially the relationship between Muslims and non-Muslims if they are not hostile to Islam, both individually and in communities. Especially in Indonesia, a country with cultural and religious diversity can potentially have significant human resources.

Human resources are one of the crucial factors in increasing waqf assets in Indonesia. It can be done by increasing waqf literacy in the community and expanding the waqf collection targets' scope. This is very important considering that non-Muslims in Indonesia are quite significant and have great economic potential. This is strengthened by the fact that in some areas in Indonesia, the non-Muslim population is the majority. This should be

²⁵Departemen Agama, *Fiqih Wakaf*, Jakarta: Dirjen Bimas Islam, 2013. Departemen Agama Republik Indonesia, *Wakaf For Beginners*, Jakarta: Dirjen Bimas Islam, 2009, p. 113.

an opportunity to develop the potential of waqf assets in several regions in Indonesia. For example, based on BPS (Statistics Indonesia) data in 2019, areas with most religions other than Islam include several cities and provinces in Eastern Indonesia such as Bali, Irian Jaya, Papua, and so on.

From the two opinions of the Hanafi and Maliki schools of thought, non-Muslim waqf which is intended for other than worship activities (mosques) or for the benefit of humans, in general, is allowed. Even the Shafi'i, which the people in Indonesia predominantly adopt, allows waqf from non-Muslims if it is not for polytheism and disobedience.²⁶

In addition, according to Article 216 of the KHI and Article 5 of the Waqf Law, waqf's function is to create infrastructure for the public interest to achieve mutual prosperity, both for worship and *muamalah*. Thus, people living below the poverty line can be helped by waqf.²⁷

Given the absence of special regulation governing non-Muslim waqf in the Waqf Law, the legal vacuum refers back to the *fiqh* of waqf. Due to differences of opinion among ulemas, it is then referred to the *ijtihad* in deciding the context of Indonesian waqf according to the value of *maslahat* (benefits), as a legal consideration.

Therefore, in the context of cash waqf, it must be deposited through a Sharia Bank called the Islamic Financial Institution Recipient of Cash Waqf (LKS-PWU) in which non-Muslim customers can become donors in fundraising cash waqf in 23 Islamic banks as LKS- PWU.

Policies related to the expansion of waqf segmentation can be strengthened with the encouragement of all parties, especially policymakers. The government is often referred to as policymakers, stakeholders, or *ashhabul mashlahah*. *Ashhabul mashlahah* is assigning the role of waqf institutions and policymakers to strengthen each other to benefit, especially in the development of Islamic philanthropy, one of which is waqf. According to the following *fiqh* rules:

تَصَرَّفُ الْإِمَامُ عَلَى الرِّعِيَةِ مَنُوطٌ بِالْمَصْلَحَةِ

"An action (regulation) by the government, aimed at ensuring the interests and benefits of the people."

The legal vacuum or, more precisely, the vacuum of laws or regulations could happen due to the dynamic development of waqf in Indonesia. So, it becomes an opportunity for *ijtihad* for waqf lawmakers in Indonesia, as well as waqf managers to open opportunities for *wakif* targets in waqf fund

²⁶Munawar Khalil, *Biografi Empat Serangkai Imam Mazhab*, Jakarta: Bulan Bintang, 1990.

²⁷Siska Lis Sulistiani, *Hukum Perdata Islam di Indonesia*, p. 119.

collection in Indonesia. Moreover, the collected waqf funds can also be used to finance other immovable waqf assets such as land and building whose management has not been optimized due to funding constraints.

For example, in the establishment of a Micro Waqf Bank (BWM), it receives funds from non-Muslim parties as a component of its capital by making it a waqf fund, even though the BWM is not a waqf institution but a sharia microfinance institution. This is based on the opinion of the Shafi'i school of thought which allows receiving the funds from non-Muslims if it has a worldly benefit or religious and do not attract *shar'iyah mafsadah* (harmful). Many Muslims work in private companies whose owners are non-Muslims, so their daily livelihoods depend on the company's salary, this is permissible as long as it does not affect aspect that is prohibited in sharia.

Conclusion

Waqf is part of a social contract with more flexibility than zakat (alms-giving), grants and *sadaqah* (donation). In the Indonesian context, waqf has a high potential to be continuously improved both in terms of quantity and quality, due to a large number of natural and human resources available. The waqf potential can be explored not only for Muslim but also for non-Muslim, especially for socio-economic facilities which are a priority in the development of waqf assets because its benefits can be accessed by all parties. Based on the findings of this research, the proposed suggestions focus on the preparation of the waqf bill which is incomplete as of 2019. So, in collecting waqf funds, *wakif* should not only be limited to Muslims, but is opened so that waqf social funds from non-Muslims can be accessed for the advancement of waqf in Indonesia.

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