

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Tommy Pratama¹, Syahmirwan², Achmad Nasrul Waton Ar Rosyit³

¹UIN Sultan Syarif Kasim Riau, Indonesia

²Arizona State University, America

³Tebing Tinggi District Religious Affairs Office, Indonesia

Coresspondent: mr.tommypratama@gmail.com¹

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ABSTRACT: Waqf is a form of worship and is also one of the pillars of the Islamic economy which has the potential to improve community welfare and overcome the problem of poverty. One of the laws governing waqf in Indonesia is Law No. 41 of 2004. Futures Waqf is an innovation in modern Islamic economics, aligning Islamic economic principles with contemporary developments. This research provides an understanding of the evolution of Islamic economics and efforts to encourage the implementation of Islamic economic principles in ever-changing global dynamics. In this research the author uses a qualitative method with a normative juridical approach. This law is the basis that waqf can be forever and can also have a term. This is very different from what is regulated by Islamic waqf law which tends to be less directed towards economic empowerment of the people and is only used for religious activities such as building mosques, prayer rooms, schools and cemeteries. This evaluation provides an in-depth impact on how the effectiveness of this regulation can increase the economic benefits of Term Waqf, encourage sustainable economic growth, and support the achievement of sharia economic development goals in Indonesia.

Keywords: term waqf, waqf law, Islamic Economy.



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INTRODUCTION

Islamic teachings encourage its people to achieve a happy life, both in this world and in the hereafter, by implementing all the rules that have been set by Allah SWT, both in the form of commands and prohibitions. Not all behavior and customs before being sent by the Prophet Muhammad SAW are bad and ugly, but the culture of the Arab nation which is in accordance with the values of the Islamic religion is accommodated and upgraded into Islamic teachings so that it is more orderly and has religious value. The social practice that occurred before the coming of the Prophet Muhammad was donating something from one person to another for the common good or from one person to the whole family. This culture was later recognized by Islam as the law of waqf.

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In the study of Islamic economics, waqf has become an important instrument as an effort to solve social problems and poverty with the hope of being able to eradicate poverty and empower the people's economy. Poverty is a multidimensional problem related to inability to access economically, socio-culturally, politically and participate in society. Waqf as one of the Islamic philanthropic (generosity) activities through good management and development of waqf has the potential to create a productive society.

There are many laws that regulate waqf in Indonesia, including Law Number 5 of 1960 concerning Basic Agrarian Laws (UUPA), Government Regulation Number 28 of 1977 concerning Waqf of Owned Land, then followed up with Regulation of the Minister of Religion of the Republic of Indonesia Number 1 1978 concerning the implementation of PP Number 28 of 1977, as well as RI Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI). In the end, to create legal order and administration of waqf in Indonesia, the Government with the approval of the House of Representatives on 27 October 2004 ratified and enforced Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf.

Law Number 41 of 2004 concerning Waqf defines waqf as "Legal acts *wakif* to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia."

It is explicitly stated that waqf objects can be used forever or for a certain period of time. Therefore, this Law is the legal basis which stipulates that waqf is divided into two forms, the first is waqf *mu'abbat* (term) and the second is waqf *Mu'abbad* (forever). So based on this, term waqf becomes formally legal and has a strong legal basis (Ab Rahman & Amanullah, 2017; M. Abdullah, 2018; binti Raja Adnan et al., 2020; Mohammad, 2018). This is very different from what is regulated by waqf law (Hafandi & Handayati, 2021; Hazna, 2021; Sari, n.d.; Yasin et al., 2023a) in Islam, and in practice almost all waqf objects in Indonesia tend to be less directed towards economic empowerment. people and is only used for physical or consumptive purposes such as building mosques, prayer rooms, schools and cemeteries, foundations and so on.

The development of waqf in Indonesia, which is still not well socialized, can be seen through data from the Indonesian Ministry of Religion which shows that the management of waqf land in Indonesia is still not directed towards economic empowerment because most of the land waqf is still in the form of direct (consumptive) waqf. This can be seen in Figure 1 which shows that the use of waqf land is still dominated by mosques (43.51%), prayer rooms (27.90%), cemeteries (4.35%), schools (10.77%), Islamic boarding schools (4.10%), and other social services (9.37%). %, what's worse is that of the total 57,263.69 hectares (ha) of waqf land, only 57.42% is certified. However, with the enactment of Law Number 41 of 2004 concerning Waqf, people's understanding of waqf, which was previously limited to immovable objects so that their use tended to be consumptive, began to develop through waqf for movable objects whose use was productive.

Seeing the facts that are happening in Indonesia, it is important to carry out in-depth research regarding term waqf (A. Abdullah & Meera, 2018). So in this research the author will analyze the Strategic Role of Article 6 of Law No. 41 of 2004 in the Management of Term Waqf : A Progressive Review of Islamic Economic Reform. This research uses qualitative methods with a normative juridical approach. Theoretically, this research aims to increase scientific insight regarding the concept of waqf in Islamic law, especially term waqf, and practically it is hoped that it can become a reference for society, academics and the government.

METHOD

In this research the author uses a qualitative method with a normative juridical approach.

RESULT AND DISCUSSION

WAKAF IN ISLAMIC LAW AND POSITIVE LAW

The word waqf comes from Arabic "*al-habsu*" which derive from *habasa-yabbisu-habasan* which means to keep people away from something or to imprison. Then this word evolved into "*of course*" which means donating wealth to Allah SWT. The word waqf itself comes from the Arabic word *naqafa-yaqifu-naqifan* which means stop or stand. Meanwhile, waqf according to the term *advice* is to keep property that may be taken advantage of without consuming or damaging it and used for good.

Mundzir Qahaf defines waqf as "holding assets, either eternally or temporarily, from all forms of personal action, such as selling and giving waqf or other things, for the purpose of using it or its results repeatedly for general or special purposes, in accordance with the objectives required by Wakif and within the limits of sharia law.

Fiqh experts have different views in defining waqf according to terms, resulting in differences in viewing the nature of waqf itself. The following is the opinion of jurisprudence experts in defining waqf:

1. Waqf according to Imam Abu Hanifah is "holding property under the auspices of the owner accompanied by giving benefits as alms for goodness".
2. Waqf according to Imam Malik is "providing the benefit of something, within the time limit of its existence, at the same time as the endowment of something to its owner, even if it is only an estimate". So the waqf does not release the waqf property from the Wakif's ownership, but the waqf prevents the Wakif from taking actions that can release its ownership of the property to others and the Wakif is obliged to donate its benefits and cannot withdraw its waqf.
3. Waqf according to Imam Syafi'i is "not doing something on something that has the status of belonging to Allah SWT by donating its benefits with a (social) virtue".

The following is the definition of waqf based on the legal provisions in force in Indonesia:

1. Government Regulation Number 28 of 1977.

Waqf is "a legal act of a person or legal entity that separates part of its assets in the form of land and institutionalizes it forever for the purposes of worship or other public purposes in accordance with Islamic teachings."

2. Presidential Instruction Number 1 of 1991.

Waqf is "a legal act of a person or a group of people or a legal entity that separates part of its property and institutionalizes it forever for the benefit of worship and other needs in accordance with Islamic teachings".

3. Law No. 41 of 2004 Article 1 paragraph 1.

Waqf is "a person or group of people (wakif) to separate and/or hand over part of their property to be used forever or for a certain period of time according to their interests for the purposes of worship and/or general welfare according to the Shari'a".

4. Government Regulation No. 42 of 2006.

Waqf is "a person or group of people (wakif) to separate and/or hand over part of their property to be used forever or for a certain period of time according to their interests for the purposes of worship and/or general welfare according to the Shari'a".

Legal Basis of Waqf

The legalization of waqf in Islam is based on the Qur'an and hadith. There are several verses of the Qur'an that form the basis of waqf law (Guelida et al., 2022a; Jahar, 2019; Sebyar et al., 2023; Single, n.d.), including the following:

1. Surat Al-Hajj Verse 77:

O you who have believed, bow down and prostrate and worship your Lord and do good that you may succeed.

Meaning: O you who believe, bow down, prostrate yourself, worship your Lord and do good deeds, so that you will be victorious.

2. Surat An-Nahl Verse 97:

Whoever does righteousness, whether male or female, and is a believer - We will surely give him a good life and give them their reward according to the best of what they were Colorful

Meaning: Whoever does righteous deeds, whether male or female, is a believer, We will surely give him a good life and We will reward them with a better reward than what they have done.

3. Surat Ali Imran Verse 92

You will not attain righteousness until you spend of what you love. And whatever thing you spend, God is All-Knowing of it.

Meaning: you will never reach (perfect) virtue, before you spend a portion of the property you love. and whatever you spend then Allah knows it.

4. Surat Al-Baqarah 261:

The example of those who spend their wealth in the path of God is that of a grain that has sprouted seven ears, and in each ear there are a hundred seeds. And God provides. He pardons whom He wills. And God is All-Encompassing, All-Knowing.

It means: the parable of those who spend their wealth in the way of God is similar to a grain of seed that grows seven grains, on each grain a hundred seeds. Allah multiplies (the reward) for whom He wills. and Allah is All-Wide (His bounty) and All-Knowing.

There are several hadiths that form the basis of waqf law (Hakimah et al., 2022a; Sari, n.d.; *Suparman Usman. Indonesian Waqf Law*, n.d.; Yasin et al., 2023b), including the following:

1. Hadith narrated by Abu Hurairah r.a:

On the authority of Abu Hurairah, may God be pleased with him, he said: The Messenger of God, may God's prayers and peace be upon him, said: If the son of Adam dies, his work comes to an end except for three: ongoing charity, knowledge that is beneficial, or a righteous child who prays for him.

It means: from Abu Hurairah r.a, Prophet Muhammad SAW said: "If the son of Adam dies, then his deeds are cut off except for three things; Jariyah charity, beneficial knowledge and the prayers of righteous children." (HR. Muslim, Abu Daud, Tirmizi, An-Nasai, Bukhari in the book Al-Adabul Mufrad, from Abu Hurairah).

2. Hadith narrated by Ibn Umar r.a:

On the authority of Ibn Omar, he said: Omar, may God be pleased with him, afflicted a land with goodness, so he came to the Prophet, may God's prayers and peace be upon him, to take comfort in it and said: O Messenger of God, I have afflicted a land with goodness. I have never acquired wealth that was dearer to me than it. He said: {If you wish, you can withhold its principal. And resulted in it}. He said: So Omar gave it in charity: its original value cannot be sold, nor bequeathed, nor given away, so he gave it in charity to the poor, to relatives, to the slaves, to curse God, and to his son. The way, and the guest, there is no blame on the one who is in charge of eating from each of them in a reasonable manner, and feeding a friend who is not wealthy. Money. Agreed upon, and the pronouncement is Muslim. And in a narration by Al-Bukhari: The root of it is to be given in charity: it is not to be sold or given as a gift, but its fruit should be spent.

It means: from Ibn Umar r.a., he said, "Once Umar bin Khattab acquired a piece of land in Khaibar, so he went to the Messenger of God SAW to ask for guidance on how to manage it. Umar said, O Messenger of Allah, I have acquired a piece of land in Khaibar and did not acquire wealth, but the land is more valuable than the wealth. Therefore, what do you command me with the land? Then the Messenger of Allah, peace and blessings be upon him, replied, O Umar, if you want, then protect the land and you can give the proceeds in charity. Ibnu Umar said, "Then Umar donated the produce of the land, on the condition that the land could not be sold, bought, inherited, or gifted. He said, "Umar ra gave charity to the poor, relatives, slaves, fisabilillah, Ibnu Sabil, and guests. In addition, the person who takes care of it can eat part of the produce in a good way and can feed his friends."

Waqf According to Law No. 41 of 2004

Waqf according to Article 1 Paragraph 1 of Law Number 41 of 2004 concerning waqf. Waqf is "a person or group of people (wakif) to separate and/or hand over part of their property to be used forever or for a certain period of time according to their interests for the purposes of worship and/or general welfare according to the Shari'a".

Article 1 of Law Number 41 of 2004 also contains various definitions of all matters relating to waqf, including: Waqif is "a party who donates his property". The waqf pledge is "a statement of the Waqif's will expressed orally and/in writing to Nadzir to donate his property". Nadzir is "the party who receives waqf assets from the Waqif to be managed and developed according to their intended use." Waqf assets are "properties that have long durability and/long term benefits and have economic value according to sharia which are donated by the Waqif". The Waqf Pledge Deed Making Officer (PPAIW) is an "authorized official appointed by the minister to make the Waqf

Pledge Deed". The Indonesian Waqf Board is "an independent institution for the development of waqf in Indonesia".

The various types of waqf based on the period of time they last are divided into two, namely: waqf *Mu'abbad* (forever) and waqf *mu'qqat* (with a certain period of time).

In the Compilation of Islamic Law, Book III, it is explained in Article 215 Paragraph 1: "Wakf is the legal act of a person or group of people or legal entity separating part of their property and institutionalizing it forever (*Mu'abbad*) for the purposes of worship or other public purposes in accordance with Islamic teachings." Meanwhile, Law Number 41 of 2004 explains that waqf is permitted by *Mu'abbad* or *mu'qqat*. This is in accordance with Article 1 Paragraph 1 of Law Number 41 of 2004, namely: "Wakf is the legal action of the Wakif to separate and/or hand over part of his property to be used forever (*Mu'abbad*) or a certain period of time (*mu'qqat*) according to its interests for the needs of worship and/or general welfare according to Sharia."

IMPLEMENTATION OF WAKAF IN INDONESIA

Waqf is divided into several types based on the purpose, time limit, and use of the goods.

1. There are three types of waqf based on their objectives:

- a) Social waqf for the good of society (*good*); namely if the aim of the waqf is for the public;
- b) family waqf (*dzurri*); that is, if the purpose of the waqf is to benefit the wakif, his family, his descendants, and certain people, regardless of whether they are rich or poor, sick or healthy, old or young;
- c) Combined waqf (*musytarak*) namely if the purpose of the waqf is for the public and the family together.

2. The various types of waqf based on time are divided into two types:

- a) Perpetual waqf, namely if the waqf is goods that are eternal, such as land and buildings with land, or movable goods that are determined by the wakif as eternal and productive waqf, where part of the proceeds are distributed according to the purpose of the waqf, while the rest is used for the costs of maintaining the waqf and replacing damage;
- b) Temporary waqf is if the goods donated are goods that are easily damaged when used without providing conditions for replacing the damaged parts.

Temporary waqf can also be caused by the wakif's wishes which set a time limit when donating his goods.

3. The various types of waqf based on their use are divided into two:

- a) Productive waqf, namely waqf that is managed for productive activities and the results are used for the public interest. Namely waqf which is managed for productive activities that produce economic value and the results are then given in accordance with the objectives of the waqf, such as waqf for agriculture, fisheries, plantations, shophouses, and so on;
- b) Consumptive waqf, namely waqf that is not used for productive activities. Namely waqf whose principal goods are directly used according to the purpose of the waqf, such as mosque waqf

which is intended for prayer, schools for teaching and learning activities, hospitals for treating sick people and so on.

Pillars and Conditions of Waqf

Waqf is considered valid when the pillars and conditions have been met. The following will explain the principles and conditions in waqf:

1. Pillar of waqf

There are 4 pillars of waqf:

- a. *Waqif* (person who gives waqf);
- b. *Forgive me* (goods or things donated);
- c. *Manquf'alaih* (party given waqf/ waqf allocation);
- d. *Sighat* (statement or pledge of waqf as a desire to donate part of the assets).

2. Waqf conditions

From the pillars of the waqf, each has its own conditions that must be met for the sake of the implementation of the waqf, the conditions are as follows:

- a. *Waqif* (the person who donates). In this case, the conditions for waqif are independence, sound mind, puberty (adult), not under guardianship. Because the waqif is the perfect owner of the property donated, waqf can only be done if the land is the perfect owner of the waqif.
- b. *Forgive me* (goods or assets donated). In waqf, to be considered valid it must fulfill several conditions as follows:
 - 1) Waqf assets have value (they have a price). What this means is that in practice the property can be valuable if it is owned by someone, and can be used under any circumstances;
 - 2) The form of waqf assets is clear. This means that it is known with certainty when the object is donated, so that it will not cause disputes;
 - 3) Waqf assets are the property of the waqif;
 - 4) The waqf property is in the form of immovable things, such as land, or things adapted to the existing waqf.
- c. *Manquf 'alaih* (waqf allocation). Waqf must be used within the limits permitted by Islamic Sharia, because basically waqf is a charity that aims to bring people closer to God. To avoid misuse of waqf, waqifs need to emphasize the purpose of their waqf. Is the property donated to help one's own family as a family waqf, or for the poor, etc., or for public purposes whose aim is clearly good?
- d. *Sighat* (lafadz) or waqf statement can be expressed in writing, verbally or with a gesture whose meaning can be understood. Written or oral statements can be used to express waqf by anyone, while gestures are only for people who cannot use written or oral methods. Of course,

the statement with this signal must be truly understood by the waqf recipient in order to avoid disputes in the future.

In general, the conditions for a valid consent agreement, both verbally and in writing, are:

- 1) Shighat must be munjaza (occur immediately/completely). The meaning is that the shighat shows the occurrence and implementation of the waqf immediately after the shighat of ijab is said or written;
- 2) Shighat is not followed by vanity (fake) conditions. What this means is conditions that tarnish or injure the basis of the waqf or negate its law, namely customary and eternal;
- 3) Shighat is not subject to a specific time limit, in other words, the waqf is forever. Waqf is shadaqah which is prescribed for eternity, if it is limited in time it means it is contrary to the sharia and therefore the law is invalid;
- 4) It does not contain any meaning of revoking waqf that has already been made.

Apart from the conditions and pillars that must be fulfilled, in waqf as mentioned above, the presence of the nazir as the party entrusted with managing the waqf assets is very important. Even though the mujtahids did not make nazir one of the pillars of the waqf, the ulama agreed that the wakif must appoint waqf nazir, both individual and institutional. The appointment of a waqf nazir aims to ensure that waqf assets are maintained and maintained, so that waqf assets are not wasted.

The elements of waqf

In Article 6, namely: waqif (giver of waqf); nadzir (recipient of waqf); waqf property; waqf pledge; Allocation of waqf property and waqf period.

In Article 7 it is explained that Waqif includes: individuals, organizations and legal entities. Meanwhile, the requirements for individual waqif as referred to in Article 7 letter (a) are that you can only make waqif if you are: an adult; common sense; not be prevented from carrying out legal actions; and the legal owner of waqf property.

The organization's waqif as intended in Article 7 letter (b) can only carry out waqf if it fulfills the organization's requirements for donating waqf assets belonging to the organization in accordance with the articles of association of the organization concerned. Waqif legal entities as referred to in Article 7 letter (c) can only carry out waqf if they fulfill the requirements for legal entities to donate waqf assets belonging to legal entities in accordance with the articles of association of the legal entity concerned.

In Article 9 it is explained that nadzir includes: individuals; organization; or legal entity.

Meanwhile, Article 10 explains that: individuals as referred to in Article 9 letter (a) can only become Nadzir if they fulfill the following requirements: Indonesian citizens; Muslim; mature; trust; physically and spiritually capable; and not be prevented from carrying out legal actions

The organization as intended in Article 9 letter (b) can only become nadzir if it meets the requirements: the management of the organization concerned meets the requirements for individual nadzir as intended in paragraph (1); and organizations operating in the social, educational, social and/religious fields of Islam.

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Pratama, Syahmirwan and Ar Rosyit

The legal entity as intended in Article 9 letter (c) can only become nadzir if it meets the following requirements: an Indonesian legal entity formed in accordance with applicable laws and regulations; and the legal entity concerned operates in the social, educational, community and/Islamic religious sectors.

In Article 11 it is explained that the nadzir has the following duties:

- a. Administering waqf assets;
- b. Manage and develop waqf assets in accordance with their objectives, functions and designation;
- c. Supervise and protect waqf property;

Reporting the implementation of duties to the Indonesian Waqf Board. As stated in Article 12, namely in carrying out the duties as intended in Article 11, Nadzir can receive compensation from the net proceeds from the management and development of waqf assets whose amount does not exceed 10% (ten percent).

Waqf property can only be waqf if it is legally owned and controlled by the Waqif, that is found in Article 15 and in Article 16 there is the following information:

Waqf property consists of: immovable property; and Things move.

Immovable objects as intended in Paragraph (1) letter a include:

- a. Land rights are in accordance with the provisions of applicable laws and regulations
both those who have and those who have not yet registered;
- b. Buildings or parts of buildings standing on land as intended in letter a;
- c. Plants and other things related to land;
- d. Ownership rights to apartment units are in accordance with the provisions of statutory regulations
invitations that take place;

Immovable property other than in accordance with the provisions of Shariah and applicable laws and regulations.

Movable objects as intended in Paragraph (1) letter b are assets that cannot be used up due to consumption, including:

- a. Money;
- b. Precious metal;
- c. Securities;
- d. Vehicle;
- e. Intellectual property rights;
- f. Rent rights; and

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Pratama, Syahmirwan and Ar Rosyit

- g. Other movable objects in accordance with Sharia provisions and applicable laws and regulations.

In Article 17 it is stated that: The waqif pledge is carried out by the Waqif to Nadzir in the presence of PPAIW witnessed by 2 (two) witnesses. The waqf pledge as referred to in Paragraph (1) is stated orally and/in writing and stated in the Waqf Pledge Deed by PPAIW. In the event that the Waqif cannot declare the Waqf Pledge verbally or is unable to attend the implementation of the Waqf Pledge for reasons justified by law, he can appoint a proxy strengthened by 2 (two) witnesses. Regulated in Article 18.

Meanwhile, Article 19 explains that in order to carry out the waqf pledge, the Waqif or his proxy submits letters and/proof of ownership of waqf assets to PPAIW. Witnesses in the waqf pledge must fulfill the following requirements. This is in accordance with the provisions of Article 20:

- a. Mature;
- b. Muslim;
- c. Be reasonable; And
- d. Not being prevented from carrying out legal actions. Article 21 explains that the waqf pledge is stated in the waqf pledge deed.

The Waqf Pledge Deed as intended in Paragraph (1) contains at least:

- a. Waqif's name and identity;
- b. Nadzir's name and identity;
- c. Data and description of waqf property;
- d. Allocation of waqf property; and
- e. Waqf period Further provisions regarding the waqf pledge deed as intended in Paragraph (2) are regulated by government regulations.

In Article 22 it is explained that in order to achieve the objectives and functions of waqf, waqf assets can only be intended for:

- a. Suggestions and worship activities;
- b. Educational and health facilities and activities;
- c. Assistance to the poor, abandoned children, orphans, student scholarships; And
- d. Promotion of other general welfare that does not conflict with sharia and statutory regulations.

JURIDICAL ANALYSIS OF TERM WAQF ACCORDING TO ARTICLE 6 OF LAW NUMBER 41 OF 2004

Term waqf in Law Number 41 of 2004 comes to provide convenience, with term waqf a person does not lose their assets, besides this law allows waqf for a period of time in accordance with the contract/pledge agreed upon by the wakif.

The permanent conditions for waqf in Indonesia were included in Government Regulation Number 28 of 1977 concerning the Endowment of Owned Land and the Compilation of Islamic Law. Both of them stated explicitly that waqf must be valid forever. However, this provision has changed to state that waqf may be carried out for a certain period of time and may also be valid forever after the enactment of Law Number 41 of 2004 concerning waqf.

The basic consideration for the birth of Law Number 41 of 2004 concerning Waqf is that waqf institutions are religious institutions that have potential and economic benefits, so they need to be managed effectively and efficiently for the purposes of worship for the sake of general welfare. Apart from that, waqf is also a legal act that has been around for a long time and has been implemented in society, the regulation of which is incomplete and is still scattered in various laws and regulations. So, in an effort to realize the concept of productive waqf, this waqf law (Bintarto et al., 2022; Guelida et al., 2022b; Hakimah et al., 2022b; Lita, 2018) was born.

There are differences of opinion among scholars regarding term waqf, as follows:

1. Opinion of Imam Shafi'i

Imam al-Shafi'i's statement about not allowing waqf with a certain period of time can be seen in his book *al-Umm* in the chapter entitled *al-Ibbas*. It is explained that the property that has been waqf causes the wakif to no longer have ownership rights, because its ownership has been transferred to Allah SWT and does not belong to the recipient of the waqf (*excuse me*), but the wakif can still take advantage of it. According to Imam Syafi'i, waqf is binding and therefore cannot be withdrawn or traded, mortgaged or inherited by the Wakif.

2. Imam Abu Hanifah's opinion

According to Abu Hanifah, objects that have been donated still belong to the party who donated them because the waqf contract (transaction) includes *anot necessary* (does not result in a transfer of ownership of waqf objects), except: waqf for mosques; waqf determined by a judge's decision; testamentary waqf; and waqf for graves (graveyards).

3. The opinion of Imam Ahmad bin Hanbal

According to the Hambali School textually. Imam Ahmad is of the opinion that someone donates his inheritance to his sibling's children. Then the house became his. Waqf is permanent when it meets the requirements. Then ownership must change hands to the person who was given the waqf. Waqf passes into the possession of Allah, because it is given for the purpose of worship.

4. Imam Malik's opinion

According to Imam Malik, ownership of the assets that have been donated remains with the waqf giver. This can be understood from the definition of waqf put forward by Ahmad al-Dardir in his book *Al-Syarh al-Saghir*. Waqf is the act of the wakif making the benefits of his assets for use by the wakif *mustahiq* (waqf recipient). even though what he has is in the form of wages or making the

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Pratama, Syahmirwan and Ar Rosyit

results so that they can be used, such as donating money by saying waqf iafaz for a certain period according to the owner's wishes.

Analysis of Article 6 of Law Number 41 of 2004

The provisions regarding waqf in the Compilation of Islamic Law, most of the articles are similar to those regulated in Government Regulation Number 28 of 1977 concerning Waqf of Owned Land, only that Government Regulation Number 28 of 1977 is limited to waqf of owned land whereas in the KHI it contains about waqf in general. Waqf contained in the Compilation of Islamic Law is not limited to owned land, but includes movable and immovable objects that have durability beyond single use and have value according to Islamic law. Then in Article 215 Paragraph 4, it is required that waqf assets have long durability and value so that the waqf objects can be used for a long period of time, not just for one use.

Meanwhile, Law Number 41 of 2004 concerning waqf still accommodates the opinions of Imam Malik and Imam Abu Hanifah, in terms of ownership the law recognizes the existence of waqf for a certain period of time. This shows that waqf does not have to be in nature *muabbad*. Therefore, Law Number 41 concerning Waqf justifies the existence of waqf contracts in the nature of waqf *not necessary* (does not cause a transfer of ownership of waqf objects) which is considered the same *asal-Ariyah* (loan).

Imam Maliki interprets "eternity" more in terms of the condition of the items donated, whether they are fixed or movable objects. For permanent objects such as land, the element of immortality is fulfilled because the land can be used as long as there are no landslides or natural disasters that destroy the physical nature of the land, as is the case with mosques or schools. In contrast to Imam Syafi'i, Imam Malik expanded the scale of waqf to include other movable goods such as waqf for cow's milk or waqf for the fruit of certain plants. The substances are cows and trees, while the benefits are milk and fruit.

According to the Maliki school of thought, the "eternity" of the age of waqf objects is relative depending on the average age of the objects donated. The methodology applied by the Maliki school of thought has opened up wide opportunities to provide waqf in any type of object, including the most liquid object, namely cash (cash). *cash waqf*) which can be used to support the productive empowerment of waqf potential.

Based on this, Imam Malik's opinion is considered very relevant to the spirit of productive empowerment of waqf which was promulgated on October 27 2004. Productive empowerment of waqf does not mean eliminating the eternal nature of waqf itself as is feared by some ulama, especially cash waqf, but In fact, it will provide eternal benefits as taught by the Prophet Muhammad SAW, without losing the eternal substance of the object. The advantage of temporary waqf is that the waqf owner can withdraw his waqf assets when needed and this can be done at any time. The drawback is that the recipient of the waqf only seems to have business use rights and not property rights.

Collaborating Imam Malik's opinion with Imam Syafi'i's opinion will be very relevant if applied in people's lives, namely:

- a. Waqf with a certain period of time is not permitted for immovable assets, for example land, buildings or parts of buildings, plants or objects related to land, as well as ownership rights to apartment units so that the management and utilization of waqf assets can be effective without

thinking about the end of the specified waqf period. . In this way, the waqf will receive improved management and increased utilization by the parties of the donated waqf assets which have the status of permanent (forever) objects.

- b. Conditions for the validity of waqf with a certain period of time for movable objects, namely metal, money, securities, vehicles, intellectual property rights, rental rights, and other movable objects in accordance with the provisions of the Sharia and applicable laws and regulations such as manuscripts, scriptures or books. According to Imam Malik, the emergence of waqf for a certain period of time can motivate people to give waqf on the grounds that the assets donated will return to the Wakif within a predetermined period of time. However, to obtain maximum management and utilization results, time limits must be set so that the Wakif is not careless in determining the time of his waqf.

Development of Islamic Economics through Futures Waqf in Indonesia

Indonesia has currently made various efforts to revitalize the potential of existing waqf assets so that they can produce wider benefits that can be felt by the community. Various regulations and rules have been issued by the government to optimize the potential of existing waqf assets. The peak occurred in the birth of Law No. 41 of 2004 concerning Waqf which issued a new breakthrough by issuing various formulations regarding waqf that were different from those currently practiced by Indonesian society. The object of waqf has been expanded from the previous one, the administration and administration of waqf is regulated in such a way that it is more structured. These efforts show that waqf in Indonesia has entered the professional management stage, this step is then termed productive waqf.

Productive waqf is a form of developing the waqf paradigm. Productive waqf is a strategy for managing waqf donations from the people, namely by making these donations productive so that they can produce sustainable benefits. Waqf as a religious, social and economic activity can provide enormous benefits for society, both Muslims and non-Muslims, if waqf assets can be managed productively and optimally. Waqf for social purposes has several objectives, including providing public facilities, facilities and activities for worship, da'wah, education and health. Waqf can also help the poor, neglected children, orphans, develop human resources or provide scholarships. Meanwhile, waqf for economic purposes aims to provide capital, employment opportunities, overcome poverty, improve the economy of the people and reduce the burden on the state.

The development of the Islamic economy(Chokaev, 2015; Gani & Bahari, 2020; Hammami, 2020; Setia, 2018a; Tabash, 2018) through term waqf is an initiative that aims to utilize the potential of waqf to support the economic growth of the people. Waqf as part of Islamic social finance is expected to become a pillar in improving community welfare and eliminating poverty. Indonesia's potential as a country with the largest Muslim population in the world has a huge opportunity to overcome the problem of poverty through the term waqf formula. In term waqf, individuals or institutions make waqf by handing over assets or funds for a certain period of time. The donated assets or funds are then managed professionally so as to produce profits. Through the profits obtained from managing assets or waqf funds, it can be used to support various Islamic economic programs, such as financing capital for micro and small businesses, this can make it easier for the community to obtain financing to run a business, through this pattern, the community will avoid the practice of usury or bank interest considering that currently many people are caught in usury.

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Pratama, Syahmirwan and Ar Rosyit

This practice is important because developing an Islamic economy (Benamraoui, 2021a, 2021b; Chachi, 2021; Daly & Frikha, 2016; Setia, 2018b) must be in accordance with sharia principles. Apart from that, term waqf provides flexibility to the community in empowering their assets. In term waqf, people can determine the allocation of their waqf and also determine the period or duration of the waqf. Through this flexibility, term waqf allows people to donate according to their abilities.

The growth of term waqf in Indonesia still has obstacles that must be overcome immediately. The main obstacle that needs to be overcome is the lack of public understanding and awareness about the practice of term waqf. So it is necessary to carry out more intensive education and outreach efforts to increase public understanding of the benefits and mechanisms of term waqf. In order to support this term waqf program, cooperation is needed between the government, financial institutions and the community to make the term waqf program a success in Indonesia.

Waqf as part of Islamic social finance is expected to become a pillar in improving community welfare and eliminating poverty. In term waqf, individuals or institutions make waqf by handing over assets or funds for a certain period of time. The donated assets or funds are then managed professionally so as to produce profits. The profits obtained from managing assets or waqf funds can be used to support various Islamic economic programs, such as financing capital for micro and small businesses and other community empowerment.

CONCLUSION

Waqf according to Law Number 41 of 2004 concerning Waqf is a "legal act *wakif* to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or general welfare according to sharia." Waqf based on time limits is divided into two types, namely, perpetual waqf and term waqf. What is meant by perpetual waqf is waqf that is forever or eternal in nature and term waqf in article 6 of Law Number 41 of 2004, namely waqf that is permitted for movable objects that are temporary in nature, and the time limit is in accordance with the initially agreed contract.

There are differences of opinion in the application of term waqf in Islamic law, namely between Imam Malik, Imam Abu Hanifah, Imam Syafi'i, and Imam Ahmad bin Hanbal. Imam Malik and Imam Hanafi allow the practice of term waqf because the waqf is valid for a certain period, and therefore should not be required as an eternal waqf (forever). Meanwhile, Imam Syafi'i and Imam Ahmad bin Hanbal do not allow the practice of term waqf because the reason is that waqf really occurs unless the person giving the endowment intends to donate the goods forever and continuously. So, if the person making the donation limits his or her time to a certain period of time, then what he or she does cannot be called a waqf in the correct sense.

REFERENCE

- Augustian. *Productive Waqf for the Welfare of the People*. Jakarta: Niriah, 2008.
- Al-Alabij, Adijani. *Land Endowments in Indonesia in Theory and Practice*. Bandung: Rajawali Press, 1992.
- Al-Dardir, Ahmad. "Syarah Al-Shagir." In 4. Mesir: Mutaba'ah Muhammad Al Sabih, 1985.

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Pratama, Syahmirwan and Ar Rosyit

- Al-Nasaburi, Abi al-Husaini Muslim bin al-Hujaj al-Qasyiri. "Shahi Muslim." In5. Beirut: Dar al-Kutub al-'Ilmiyah, 1998.
- Dahlan, Zaini. *Qur'an Karim and its meaning translation*. Second, Cet. Yogyakarta: UII Press, 1999.
- Department of Religion of the Republic of Indonesia. *Waqf Fiqh*. Jakarta: Directorate of Waqf Empowerment and Directorate General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia, 2006.
- Kalimah, Siti. "Cash Waqf as a Solution to Poverty Problems in Indonesia." *SALIMIYA: Journal of Islamic Religious Studies* Flight 1, no. 4 (2020). <https://ejournal.iaifa.ac.id/index.php/salimiya>.
- Kasdi, Abdurrohman. *Waqf Fiqh From Classical Waqf to Productive Waqf*. Yogyakarta: Idea Press, 2017.
- Mundzir Qahaf. *Productive Waqf Management*. 1st ed. Jakarta: Khalifa, 2004.
- Praja, Juhaya S. *Endowments in Indonesia*. Bandung: Piara Foundation, 1997.
- Qudamah, Muhammad Ibn. "Al-Mugnii Li Ibn Qudamah." In5. Riyadh: Maktabah al-Ryad al-hadisah, n.d.
- Qusthoniah, and Fiddian Khairudin. "History and Development of Waqf Legislation in Indonesia and Its Applications." *Sharia Journal* Flight 8, no. 1 (2020).
- RI, Department of Religion. *Guidelines for Waqf Management and Development*. Jakarta: Directorate General of Islamic Community Guidance and Hajj Organization, Waqf Empowerment Improvement Project, 2004.
- Rosalinda. *Productive Waqf Management*. Jakarta: Rajawali Press, 2015.
- Said, Salmah, and Andi Muhammad Ali Amiruddin. "Cash Waqf And Community Economic Empowerment." *Al-Mashrafiyah: Journal of Sharia Economics, Finance and Banking* Vol 3, no. 1 (April 27, 2019): 43. <https://doi.org/10.24252/al-mashrafiyah.v3i1.7739>.
- Sari, Devi Kurnia. *Review of Land Endowments According to Law Number 41 of 2004 concerning Waqf in Semarang Regency*. Semarang: Diponegoro University Postgraduate Program Thesis, 2006.
- Sari, Elsa Kartika. *Introduction to Zakat and Waqf Law*. Jakarta: Grasindo, 2007.
- Suhairi. *Productive Waqf Builds Sleeping Giants*. Lampung: Stain Jurai Siwo Metro Lampung, 2004.
- Suparman Usman. *Indonesian Waqf Law*. Jakarta: Radar Jaya Offset, 1999.
- Triwibowo, Ananto. "Application of Good Corporate Governance Principles in Cash Waqf Management at the MUI Yogyakarta Cash Waqf Agency." *Carpet : Journal of Scientific Research* 4, no. 1 (May 14, 2020): 123. <https://doi.org/10.32332/tapis.v4i1.1995>.
- Single, Hadi Setia. *Law Number 41 of 2004 concerning Waqf*. Jakarta: Harvarindo, 2005.
- Ab Rahman, M. F., & Amanullah, M. (2017). The nature of temporary waqf, its ruling and public interest. *Global Journal Al-Thaqafah*, 7(2), 175–1187. <https://doi.org/10.7187/gjat122017-11>
- Abdullah, A., & Meera, A. K. M. (2018). Adopting Al-Hikr long term lease financing for WAQF and state lands in Malaysia to provide affordable public housing. *Al-Shajarah, Special Issue: ISLAMIC BANKING AND FINANCE*, 1–42. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85060040055&partnerID=40&md5=a4bbbe510413ad9ea9510273bb6121f2>

- Abdullah, M. (2018). Waqf, Sustainable Development Goals (SDGs) and maqasid al-shariah. *International Journal of Social Economics*, 45(1), 158–172. <https://doi.org/10.1108/IJSE-10-2016-0295>
- Benamraoui, A. (2021a). The World Economy and Islamic Economics in the Time of COVID-19. *Journal of King Abdulaziz University, Islamic Economics*, 34(1), 67–78. <https://doi.org/10.4197/Islec.34-1.4>
- Benamraoui, A. (2021b). The World Economy and Islamic Economics in the Time of COVID-19. *Journal of King Abdulaziz University, Islamic Economics*, 34(1), 67–78. <https://doi.org/10.4197/Islec.34-1.4>
- Bintarto, M. A. I., Setiawan, Y., Alqarni, M. U., & Hilmi, F. (2022). Zakah and Waqf for Cryptocurrency in Islamic Law. *Al-Istinbath: Jurnal Hukum Islam*, 7(1), 21–38. <https://doi.org/10.29240/jhi.v7i1.4229>
- binti Raja Adnan, R. A., Mutalib Taib, M. A., & Ab. Aziz, M. R. (2020). Insights into the historical management of past waqf-based hospitals. *Islamic Quarterly*, 64(2), 213–240. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85098709130&partnerID=40&md5=8cd0006710305541c4c6cca415ab9de1>
- Chachi, A. (2021). The World Economy and Islamic Economics in the Time of COVID-19: Few Remarks and Observations. *Journal of King Abdulaziz University, Islamic Economics*, 34(1), 125–131. <https://doi.org/10.4197/Islec.34-1.9>
- Chokaev, B. (2015). Islamic finance: opportunities for the Russian economy. *Voprosy Ekonomiki*, 2015(6), 106–127. <https://doi.org/10.32609/0042-8736-2015-6-106-127>
- Daly, S., & Frikha, M. (2016). Islamic Finance: Basic Principles and Contributions in Financing Economic. *Journal of the Knowledge Economy*, 7(2), 496–512. <https://doi.org/10.1007/s13132-014-0222-7>
- Gani, I. M., & Bahari, Z. (2020). Islamic banking's contribution to the Malaysian real economy. *ISRA International Journal of Islamic Finance*, 13(1), 6–25. <https://doi.org/10.1108/IJIF-01-2019-0004>
- Guelida, B., el Aydouni, O., & Ziani, Z. (2022a). THE MOROCCAN WAQF AND THE COMMON-LAW TRUST: A COMPARATIVE STUDY. *UUM Journal of Legal Studies*, 13(1), 283–309. <https://doi.org/10.32890/uumjls2022.13.1.12>
- Guelida, B., el Aydouni, O., & Ziani, Z. (2022b). THE MOROCCAN WAQF AND THE COMMON-LAW TRUST: A COMPARATIVE STUDY. *UUM Journal of Legal Studies*, 13(1), 283–309. <https://doi.org/10.32890/uumjls2022.13.1.12>
- Hafandi, A., & Handayati, P. (2021). Is cash waqf linked sukuk (cwls) less than ideal according to islamic laws? *Estudios de Economia Aplicada*, 39(12). <https://doi.org/10.25115/eea.v39i12.6207>
- Hakimah, A., Marom, R., Musyafah, A. A., & Budiman, A. A. (2022a). The Implementation of Land Waqf Law in Indonesia and Malaysia as a Stage to Land Waqf Law Reform in Indonesia: A Comparative Study. *Law Reform: Jurnal Pembaharuan Hukum*, 18(2), 164–183. <https://doi.org/10.14710/lr.v18i2.46673>

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Pratama, Syahmirwan and Ar Rosyit

- Hakimah, A., Marom, R., Musyafah, A. A., & Budiman, A. A. (2022b). The Implementation of Land Waqf Law in Indonesia and Malaysia as a Stage to Land Waqf Law Reform in Indonesia: A Comparative Study. *Law Reform: Jurnal Pembaharuan Hukum*, 18(2), 164–183. <https://doi.org/10.14710/lr.v18i2.46673>
- Hammami, Y. (2020). Asset pricing in an Islamic economy. *Applied Economics*, 52(29), 3106–3122. <https://doi.org/10.1080/00036846.2019.1706715>
- Hazna, C. A. (2021). Environmental WAQF Under Islamic Law and Indonesia's National Laws (A Case Study Of Hutan Wakaf In ACEH). In *Challenges of Law and Governance in Indonesia in the Disruptive Era II* (pp. 129–147). <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85132463471&partnerID=40&md5=fab80a6269c5fc8bffffc610f6bcb37da>
- Jahar, A. S. (2019). Bureaucratizing sharia in modern Indonesia: The case of zakat, waqf and family law. *Studia Islamika*, 26(2), 207–245. <https://doi.org/10.15408/sdi.v26i2.7797>
- Lita, H. N. (2018). The Construction of Commercial Building on Waqf Land Based on Indonesia Law. *IOP Conference Series: Earth and Environmental Science*, 175(1). <https://doi.org/10.1088/1755-1315/175/1/012199>
- Mohammad, M. T. S. H. (2018). Maqaaaid al-Shari'ah and Waqf: Their effect on Waqf law and economy. *Intellectual Discourse*, 26, 1065–1091. <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85062817072&partnerID=40&md5=0c94edc2ec106fc62c476716205899b2>
- Sari. (n.d.). *Elsa Kartika. Introduction to Zakat and Waqf Law*. Grasindo.
- Sebyar, M. H., Harahap, P. H., & Man, Y. L. (2023). Copyright as a Waqf Object in the Context of Fiqh and Positive Law. *Al-Istinbath: Jurnal Hukum Islam*, 8(1), 269–290. <https://doi.org/10.29240/jhi.v8i1.6696>
- Setia, A. (2018a). Reintegrating the Legal into the Social: Reviving Islamic Transactional Law in the Context of the Civil Economy, with Special Reference to Waqf. *Law and Development Review*, 11(1), 209–250. <https://doi.org/10.1515/ldr-2017-0053>
- Setia, A. (2018b). Reintegrating the Legal into the Social: Reviving Islamic Transactional Law in the Context of the Civil Economy, with Special Reference to Waqf. *Law and Development Review*, 11(1), 209–250. <https://doi.org/10.1515/ldr-2017-0053>
- Single. (n.d.). *Hadi Setia. Law Number 41 of 2004 concerning Waqf*. Harvarindo.
- Suparman Usman. *Indonesian Waqf Law*. (n.d.). Radar Jaya Offset.
- Tabash, M. I. (2018). Islamic financial investments and economic growth evidence from emerging economy, United Arab Emirates. *International Journal of Economics and Business Research*, 15(1), 125–139. <https://doi.org/10.1504/IJEBr.2018.088510>
- Yasin, Y., Helmy, M. I., Ma'yuf, A., & Arwani, A. (2023a). Waqf and sustainable development law: models of waqf institutions in the Kingdom of Saudi Arabia and Indonesia. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23(1), 93–114. <https://doi.org/10.18326/IJTIHAD.V23I1.93-114>

The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal

Pratama, Syahmirwan and Ar Rosyit

Yasin, Y., Helmy, M. I., Ma'yuf, A., & Arwani, A. (2023b). Waqf and sustainable development law: models of waqf institutions in the Kingdom of Saudi Arabia and Indonesia. *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 23(1), 93–114.
<https://doi.org/10.18326/IJTIHAD.V23I1.93-114>