

**ISTIBDAL WAQF RELEVANCE ON DEVELOPMENT OF WAQF
IN INDONESIA**

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Abstract

This study aims to describe madzhab Hambali's perspective on waqf istibdal, in which there are many opinions among the scholars regarding the ability to implement istibdal on waqf goods. The differences of opinion among fiqh scholars in responding to the dynamics of waqf, the laws related to waqf and their management procedures are important to discuss, because they will have an impact on the formulation of policies that will be taken in the future. And discuss about waqf istibdal relevance on development of waqf in Indonesia by madzhab Hambali's perspective. This research uses descriptive-qualitative research with the library research method. The results of this study indicate that waqf istibdal is allowed in the perspective of madzhab Hambali and it is very relevant to the development of waqf in Indonesia.

Keywords: *Waqf, Istibdāl, the Development, Madzhab Syafi'i.*

1. INTRODUCTION

There are two kinds of worship in Islam, namely *mahdah* and *ghairu mahdah*. Mahdah worship is pure worship which is only a direct relationship between the servant and Allah, such as ablution, tayamum, prayer, fasting, and so on. Meanwhile, *ghairu mahdah* is worship that is not only a relationship between the servant and Allah, but also with other servants, such as waqf, sacrifice, almsgiving, aqiqah, and so on.

It was narrated from Abi Hurairah radiyallahu 'anhu, that Rasulullah SAW said: "*From Abu Hurairah radliyallahu 'anhu that Rasulullah SAW. Said: "When a person dies, his deeds will be cut off except from three things: almsgiving, a useful knowledge, or a pious child who prays for him."* (HR. Muslim). Some of the scholars translate almsgiving Jariyah as waqf, because none of the other alms continue to flow but directly possess the substance and its benefits, even though it is included in the hadith, it is very rare. Thus translating alms in the hadith with the main meaning of waqf. (Abdul Aziz, 2010)

Waqf is an Islamic philanthropy that needs to be empowered for the benefit of the ummah. In the history of Islamic development, waqf has played an important role in

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supporting the establishment of mosques, Islamic boarding schools, majelis taklim schools, hospitals, orphanages and educational institutions and other Islamic social institutions. The donated property can be in the form of land or other property. Juhaya S.Praja explained that objects that can be donated are not only property, but also other property, fixed objects called *al-'aqr* or moving objects called *al-masya'*. Ibn Hajar al-Asqalani called fixed or immovable objects with the term *ghayr al-manqulat* and moving objects as *al-manqulat*. (M. Athoillah, 2014)

Waqf is one of the demands of Islamic teachings concerning social life in the context of *ijtimā'iyah* worship (social worship), because waqf is a form of social worship that can be used for the benefit of other people or humans in general, then the object of waqf must be permanent in nature, such as land, buildings and so on. The principle of immortality that exists in waqf so that many scholars view that waqf is an act of *sadaqah jāriyah* whose rewards continue to flow even though waqif has died, while the property is still useful. Waqf is also a very important part of Islamic law. It has a relationship between spiritual life and the socio-economic sector of the Muslim community. Waqf besides having *'ubudiyah* divine in dimension, it also functions as a social community. Waqf is a manifestation of a person's strong sense of faith and a high sense of solidarity with fellow human beings. Waqf is the glue of the "*hablumminallah wa hablum minannas*" relationship, a vertical relationship to God and a horizontal relationship to fellow human beings.

The practice of waqf, both immovable objects and moving object waqf has been widely practiced by the companions of the Prophet, even according to Mundzir Qohaf, waqf in the Islamic era began at the same time as Muhammad SAW's prophetic period began in Medina. The Prophet built the Quba mosque as the first waqf, then he built the Prophet's Mosque on the land that the Prophet bought from the orphan Bani Najjar for eight hundred dirhams. (Athoillah, 2014)

Waqf has a very strategic role for the development of the Muslim community at all times, both regarding health, education and welfare issues. Because, the essence of human life at all times involves these three aspects. It is a pillar of human development because it contains an important element that cannot be left behind, the element of funding (finance), an important factor in today's life. (UU. 41: 2004, 2). As a financial source that is not risky for the recipient. The existence of waqf is increasingly needed both now and in the future, such as the need for building mosques, prayer rooms, madrasas, majlis taklim, organizational buildings, Islamic financial institutions, schools, campuses, hospitals, and other facilities. In short, everything will be successful if it is supported by funding through waqf. Considering that the nature of waqf is very heavy, the reward of waqf is very large, as a good deed whose rewards will not stop all the time, even though the waqif has died. The heavier the deeds performed, the greater the reward that will be received. Likewise, the lighter the worship is done, the smaller the reward will be. However, it is unfortunate that the developments that have been achieved so far are still focused on the fields of worship, education and health alone, while the economic fields

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which are the pillars of modern life have not been widely touched. This fact is unfortunate that the impact was very large, including the effect on the beliefs of the people. (Nuruddin, 2015)

The current practice of waqf in society is not yet fully orderly and efficient. One proof of this is that among the assets of waqf are not well maintained, abandoned, and even turned into the hands of third parties by means of unlawful means. Abandonment and transfer of waqf objects to third parties occurs due to negligence or inability of nazir to manage and develop waqf property, the attitude of the public who does not care about or do not understand the status of waqf assets which should be protected as a medium to achieve general welfare in accordance with the objectives, functions, and the allocation of waqf. (Mubarok, 2008)

As time goes by, along with the development and spread of Islam to various regions and communities, as well as the birth of a cosmopolitan Islamic society, waqf has also undergone dynamic developments, inviting understanding and opinions about waqf and its dynamic management as well. So among the fiqh scholars there were differences of opinion in responding to the dynamics of waqf and the laws related to waqf and the procedures for its management. Some of these differences are substantial and some are practical. (Tholhah, 2009) Can waqf goods in the form of plantations that are no longer productive can be exchanged with other more productive plantation lands, or can they be sold and bought other waqf goods that can benefit *mauquf 'alaih*? Can the damaged and unused land and mosque buildings be exchanged with other land in other places in the midst of the Muslim community who use it for congregations or for Friday prayers?

In an academic context, the discussion of jurists about waqf is very deep and detailed and the principles of fiqh that are used are also various which are based on various hadiths about waqf. In the Hambali school of thought, this discussion focuses on the issue of utilization and methods of developing waqf assets in accordance with the legal principles adhered to. What is dominant in the Hambali school of thought is that it opens up a lot of space to see more creative mechanisms in the development of waqf assets but it must be carried out very strictly and carefully. Therefore, to understand the perspective of the Hambali school of thought about *istibdal*, it is necessary to first explore the main principles contained in the law of waqf law in this school.

2. LITERATURE STUDY

2.1 Definition of *Istibdal*

The problem of exchanging waqf objects in wakaf fiqh is called "*al-istibdāl*", or "*al-ibdal*". *Al-istibdāl*, is defined as the sale of waqf objects to buy other objects as a substitute for waqf. There are also those who mean that *al-istibdāl* is removing the waqf status from an object and replacing it with another object. *Al-ibdal*, is defined as the replacement of waqf objects with other waqf objects, whether they are of the same use or not, such as exchanging waqf in the form of agricultural land with other objects in the form of land for buildings. There are also opinions that interpret *al-istibdāl* and *al-ibdal* (Tholhah, 2009)

The word *istibdal* is derived from the word *badal* which means to change or change. While *ibdal* and *istibdal* intend to change something by taking something else (al-Shuwayri, 1995). In short, waqf *istibdal* means to change property waqf and replace it with other properties such as selling the original one and buying new property (Abu Zahrah, 1971). The study of scientific views on *istibdal* found that there were many differences of opinion among the scholars.

Istibdal (change request). The jurisprudence scholars use the word *istibdal*, while what is desired is to sell waqf goods both yards or movable goods for money, or to buy goods with money to be donated in exchange for goods sold or bartering waqf goods for other goods. However, another tradition emerged from writers since the past that used *istibdal* to mean the purchase of goods with money to be donated, *ibdal* for the meaning of selling waqf goods for money, *tabadul* or *badal* for the meaning of bartering (Wahbah, Az-Zuhaili).

4.1 Maslahah in Istibdal Waqf

The maslahah performance is an important indicator of Islamic law. This is supported by the majority of the ulama mazhab consisting of Malikiyyah, Syafi'iyah and Hanabilah (Asni, 2016). Based on al-Ghazali (1997), maslahah is defined as obtaining, maintaining, developing and maintaining benefits and rejecting harm, damage and vanity. Maslahah aims to maintain sharia, which includes five things, namely preserving religion, life, intellectuality, descent and wealth. Therefore, all available means to preserve the benefits of the five things are considered maslahah, while any means that function otherwise are considered mafsadah. Recognition of maslahah and mafsadah must be in line with Sharia authorities (Asni and Sulong, 2017). According to al-Shatibi (1997), there are three levels of maslahah in order of priority, namely *daruriyyat* - something that is really needed or basic needs, *hajiyyat* -complementary needs, and *tahsiniyat* - secondary needs.

According to Shulthoni and Saad (2018), it is proven that waqf is a form of religious use for Muslims to accommodate current needs. However, in certain circumstances, the benefits cannot be sustained except through *istibdal* methods. Therefore, the application of *istibdal* is a mechanism or method to obtain or maintain benefits, as well as to expand benefits according to the times. Otherwise, the property will be abandoned and uneconomical (Hisham et al., 2013). Furthermore, *istibdal* authorization is a way of maintaining and prioritizing public benefits over individual benefits (Sirat et al., 2016). Therefore, every property waqf manager must be aware of the sustainability of the benefits rather than the corporal (mawquf) aspect as a corporelement of waqf that has no value if the benefits are destroyed.

4.2 The Principles of Waqf Object

Apart from the main principles, there are also several other principles related to the object of waqf. The hadith about Umar who asked the Prophet for advice when he got land in Khaibar refers to waqf goods in the form of land (immovable property). Therefore, scholars agree on the permissibility of waqf in the form of land or other

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immovable property, on the basis of this very clear hadith (Abdullah, 2010).

Furthermore, regarding movable waqf items, according to Imam Syafi'i, it is permissible to donate movable goods, on the basis of the hadith which states that Rasulullah SAW once donated weapons of war and armor to Khalid bin Walid. According to the Syafi'iyah scholars, although the hadith only mentions weapons of war and armor, it is permissible to donate other movable objects, such as books, clothes, the Koran, and so on, by accusing weapons of war and the armor. With the use of qiyas by Syafi'iyah scholars in this case, making the types of assets that can be donated become wider and more numerous, provided that the movable property that is waited is permanent, not damaged or used up. That is, it is not permissible to donate movable items such as food, drinks, candles, fragrances and so on, which take advantage of them by using them which depletes their substances (Abdullah, 2010).

The majority of scholars other than Hanafiyyah agree on the permissibility of waqf for items that can be moved absolutely, such as mosque tools. For example lamps and mats, various kinds of weapons, clothes, furniture, both items that are donated independently, are referred to by the texts, or are applied in tradition, or follow others such as yards. This is because the majority of scholars do not require a perpetual time for the validity of waqf. Therefore, waqf is valid, either permanently or temporarily, for charities or families. Hanafiyyah circles do not allow waqf items that can be moved. According to them, items that can be moved are buildings, plants, unless they follow the yard, or in texts such as weapons and horses, or apply in traditions, such as book waqf, mushaf, axes, pickaxes, pots, corpses and clothes. corpses, dinars, dirhams, items that can be weighed, goods that can be weighed, boats with merchandise. These items can be donated because the community has practiced them (Wahbah, Az-Zuhaili)

The Syafi'iyah scholars require that the objects that are donated must be clear and concrete, not covered by debt collateral, become full wakif property that can be transacted in buying and selling and the like, have benefits, and provide long-term benefits. Thus, it is illegal to use waqf for the benefits of goods without the object, such as the benefits of the goods being leased or the benefits of the goods that are inherited or the waqf that is still being covered. Waqf is not valid for goods that have no benefits and benefits, such as waqf aniing, pigs, wild animals, wild birds that are not suitable for hunting. It is illegal to donate goods that cannot always be used, such as food, beverages (in the form of drinks, not water in general), candles, perfume, because the benefit of food is in its consumption (Wahbah, Az-Zuhaili).

4.3 Aspects of Status Change

Imam Ahmad bin Hanbal in the book al-Musnad narrated a hadith about waqf, namely: "Has told us Yahya from Ubaidullah has reported to me Nafi 'from Ibn Umar, that Umar radliyallahu Ta'ala' anhu brought a war horse, then Umar gave it to Rasulullah sallallahu 'alaihi wasallam was used by someone. Then Umar got the news that what he had been waiting for was being sold. So he asked the Prophet sallallahu 'alaihi wasallam if he could buy it back. He then replied: "Don't buy it and take back your alms.

"Having told us Yahya bin Ghailan told us Risydin had told me 'Amru Ibnul Harith

that Taubah bin Namr had told him, that Abu' Ufair bin Sari 'had told him, that a man asked Ibn' Amru bin Al ' Ash said: "an orphan is in my care and I donate to him a slave girl, then the orphan dies and I am his heir." So Abdullah bin 'Amru said: "I will report to you something that I have heard from Rasulullah Sallallahu' Aliahi Wasallam, Umarbin Khaththab once gave a horse in the way of Allah then he found the friend who was represented by the horse to sell the horse, then Umar wanted to buy it back. he asked Rasulullah Sallallahu 'Aliahi Wasallam, and the Prophet forbade him saying: "If you have given alms, let him pass".

The first hadith above tells about the sale of waqf goods in the form of horses, where when Umar got the news that the horse that had been donated was being sold, he then asked the Prophet, is it okay if the horse he had donated was bought back, the Prophet replied: "Don't you buy it. and take back your alms ", which means that Umar is not allowed to pull back the horse that he has donated even by buying it. However, in this hadith what was forbidden by the Prophet was Umar's intention to withdraw the waqf property that had been donated, while for the waqf horse that was sold by someone who used the horse did not get a prohibition from the Prophet.

While the second hadith tells of a man asking Ibn 'Amru bin al-'Ash, about an orphan who was donated (donated) to him a slave girl, where the orphan was in the man's care, then the orphan died. and the man became the heir, Abdullah bin Amru told the man about the first hadith, that it is forbidden to withdraw the waqf property that has been donated, even though in this hadith the waqf giver becomes the inheritor of the waqf property that he previously endowed. .

Ibn Qudamah, one of the Hanabilah scholars in the book al-Muqni 'conveyed the following: "We took the argument from one of the narrations, that Umar bin Khattab wrote a letter to Sa'ad bin Abi Waqqash when the baitul mall in Kufa was stolen, "Move the mosque which is located in the area of Tamarin (where the owner of dates).Then, make the baitul mall in the position of the Qibla direction. Thus, the mosque will continue to have people praying". The incident was known by the other friends, and they did not disagree at all so it was the ijma' (consensus) of the friends. According to al-Maimuni, it is obligatory to sell or move waqf property because the guardian has to do something for the benefit. According to Shaykh Taqiyuddin, waqf property can be bought and sold or transferred if there is a need and replaced with the same property, if there is no need it is also permissible, but replaced with better assets".

From the events in the hadith narrated by Imam Ahmad bin Hanbal in the book al-Musnad and Ijam 'friend conveyed by Ibn Qudamah in the book al-Muqni' above, Imam Ahmad bin Hanbal and the Ulama Hanabilah allow changes in waqf property, either with how to be transferred, exchanged, or sold. Because in the hadith, the Prophet only forbade Umar to take back the horse he had donated and did not prohibit someone who had sold his wakanan horse. And in the Ijma 'friend, from what Umar bin Khattab did to the mosque was an incident whose purpose was for the benefit of the Ummah, namely maintaining the security of the baitul mall in Kufa, moving the mosque for the benefit

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of goods other than the mosque (baitul mal). , let alone moving the mosque or changing its status for the benefit of the mosque itself. This incident was witnessed by the friends, so that it became an indication that the friends agreed with what Umar was doing, and it was concluded by Imam Ahmad bin Hanbal that this was an ijma 'or consensus from the friends.

3. RESEARCH METHODOLOGY

This research is a qualitative descriptive study. Descriptive research according to Whitney (in Nazir, 1988: 63) is research to find facts with the right interpretation. Studying problems in society, the manner of society and certain situations, including the relationship between activities, attitudes, views and ongoing processes and the effects of a phenomenon. The purpose of this research is to create descriptions, descriptions or paintings in a systematic, factual and accurate manner regarding the facts, characteristics and relationships between the phenomena being investigated.

The technique of obtaining information through purposive sampling technique (information retrieval based on objectives). While the data collection technique is done by documentation and literature study. The data in this study will be analyzed qualitatively. Qualitative research is a procedure that produces descriptive data in the form of written or spoken words or observed behavior.

Qualitative data analysis requires researchers to carry out activities simultaneously by collecting data, interpreting data and writing research reports. (Creswell, 2009). Thus data analysis is not carried out separately from data collection, but is an activity carried out jointly. During data collection, researchers move interactively in 3 components of analysis, namely data reduction, data presentation and final conclusions / verification (Sutopo, 2002)

4. RESULT AND DISCUSSION

4.1 Change in the Status of Waqf Assets UU No. 41 of 2004

In UU No. 41 of 2004 waqf assets that have been donated are prohibited from being used as collateral, confiscated, granted, sold, inherited, exchanged or transferred in other forms of transfer of rights. However, the provisions referred to are exempted if the waqf assets that have been donated are used for the public interest in accordance with the general spatial planning (RUTR) based on the provisions of the prevailing laws and regulations and do not conflict with Sharia, the implementation can only be done after obtaining written permission from the Minister. with the approval of the Indonesian Waqf Board. Waqf assets whose status has been changed must be exchanged for assets whose benefits and exchange rate are at least the same as the original waqf assets, provisions regarding changes in the status of assets shall be further regulated by Government Regulation

4.2 Waqf Regulations in Indonesia

Waqf is *sadaqah Jariah* (sustainable charity) that provides sustainable rewards to givers and long-lasting benefits for the public (Mahamood, 2007). A waqf is not merely a form of worship but the distribution of wealth which has an important role in increasing

the economic development and social equality of a country. Expanding the meaning of waqf in the current situation has received attention in several Muslim countries.

Waqf is one of the Islamic financial institutions which historically has contributed greatly to the development of a country, especially infrastructure development. Professional management of waqf and awareness of the Muslim community to distribute waqf are two important factors that support the success of waqf in supporting various sectors of the economy. However, in the economies of contemporary Islamic countries, the significant role of waqf in state development is still not maximized.

From the institutional side, based on the results of the FGD, up to 2018 there were 192 recorded institutions that obtained BWI permits to manage cash waqf funds, including 15 Islamic Financial Institutions Managing Cash Waqf (LKS-PWU). In addition to institutional nazir, 66% of nazir in Indonesia are individual nazir, while the other 16% are organizational nazir and the remaining 18% are legally incorporated nazir. Of these, only 16% worked full time. More than that, from an institutional point of view, BWI as a regulator also plays a dual role, namely being an organization / institution that manages waqf funds.

Although Indonesia is listed as the country with the largest Muslim population in the world, the realization of its waqf funds is still low. Based on the records of the Indonesian Waqf Board (BWI), the realization of the collection of waqf funds up to 2017 is still at Rp. 199 billion. This amount consists of contributions from the central BWI, regional BWIs and collections from other waqf fund management institutions. The largest collection is obtained from institutions / institutions in the form of foundations. Most of these foundations also manage other Islamic social funds such as zakat, donations and alms. Meanwhile, the accumulation of waqf for immovable objects is currently quite high. As of 2016, donated land in Indonesia reached 435,768 plots of land with an area of 4.2 million hectares, of which about 66% already have a waqf certificate. However, BWI stated that the potential for Indonesian waqf actually reached IDR 180 trillion. Meanwhile, according to some experts, the potential for cash waqf in Indonesia can also reach IDR 3 trillion per year Nasution (2005).

Many countries in the world have made reforms in legislation related to the welfare of the wider community, including in several countries where the majority of the population is Muslim, one of which is Indonesia. In this case the Indonesian government has enacted Law no. 41 of 2004 concerning waqf.

Meanwhile, the definition of waqf according to the Waqf Law No. 41 of 2004 wakaf is a waqif legal act to separate and / or give up 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 syari'ah.

4.3 Law Istinbath of Hambali School

The scholars of the Hambali school of thought include fuqaha who allow istibdal waqf on the basis of fairly rational considerations. Madzhab Hambali can be classified into fuqaha which agrees with the statement that waqf does not include an order that is ta'abbudiy (which cannot be rationalized), but is more ta'aqquliy (which can be

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rationalized) and whose ultimate goal is to benefit the people.

The previous description has shown that the law of istibdal origin of waqf assets is not permitted except for an emergency condition and for a benefit in the context of maintaining the sustainability of the benefits of the waqf assets continuously as this is the essence of waqf so that it is referred to as shadaqah Jariah. The basis for the consideration of istibdal by the Hambali school of thought is the existence of an emergency condition and for the benefit of the benefit, because the law of origin of istibdal is haram unless there are emergency reasons and reasons for maintaining the purpose of the waqf itself. Therefore, Islamic jurists set various legal requirements so that this practice is not abused in its implementation.

It is clear that the method of legal istinbat used by the scholars of the Hambali school of permitting the sale or replacement of waqf property (istibdal) is due to considerations of benefit to provide benefits of wakaf assets which are no longer useful. However, although the Hambali school of thought allows istibdal waqf, they still limit the istibdal mechanism of the waqf property. The limitations imposed by Hambaliyah scholars are:

- a. That the sale of waqf assets in the form of the Hambali Madzhab mosque allows it based on ijma 'which was carried out by a friend of Umar bin Khatab who had moved the mosque, as previously explained. However, the Hambali Madzhab allows the istibdal waqf of the mosque when it is in an emergency or the mosque has been abandoned by the community.
- b. For waqf assets other than mosques, Madzhab Hambali is of the opinion that it is permissible to do wakaf assets as long as the benefits of the waqf assets cannot be used and if the assets can still be utilized, then according to the Hambali School of Religion it cannot be donated.
- c. If the assets of waqf have been sold, the proceeds from the sale may be bought for anything (other waqf goods, of a kind or not), as long as the purchased assets are beneficial for the public interest, because the basic principle in waqf is the optimal use of the assets for the public interest.
- d. If the property of waqf is in the form of an animal, but can no longer be used and then sold and the proceeds from the sale are not sufficient to buy another animal of the same type and quality, then it is permissible to buy another animal that is not of the same type and not of the same quality as the available money, so that it can still be waqf recipients use.

In addition, Madzhab Hambali also limits the subject or perpetrator who commits the donation of waqf property, in other words it does not allow the istibdal of waqf property to be carried out by just anyone. Here the Hambali school only allows the sale of waqf to be carried out by the judge if it is for the benefit or benefit of the public. Meanwhile, the waqf that is allocated by individuals of the Hambali school of thought is that only Nadzires are allowed to sell their waqf assets, which of course must first obtain permission from the judge.

From this analysis, the aspect of benefit that is prioritized by the Hambali school of law in taking the law is permissible istibdal of waqf assets rather than having to maintain the permanence of waqf assets, especially waqf assets which are no longer useful. In

ushul fiqh, consideration of the aspect of benefit is commonly known as *maslahah mursalah* and some scholars agree that it is used as a legal basis in determining Islamic law. *Mashlahah* is a beneficial action that has been directed by shari '(Allah) to His servants for the sake of maintaining and safeguarding his religion, soul, mind, offspring and property. *Maslahah* is also defined as getting benefits and rejecting harm.

The consideration of the Hambali school of thought regarding the ability of *istibdal* of waqf objects is based on the purpose of the existence of waqf to get benefits from the assets donated and not from the waqf objects. So when the wakaf property cannot be used for some reason, it will remove the essence of the waqf itself. Actions of this kind are the same as giving rise to harm and redundancy of assets or objects that can actually be used.

With the existence of *istibdal* waqf it will provide more benefit and benefit to the community. *Istibdal* does not necessarily eliminate the physical property of waqf, but only changes the type and appearance of the waqf property which is more useful. As the opinion of the Hambali school of thought allows the sale of waqf assets, but the proceeds from the sale must be bought back more useful waqf assets.

As with the concept of *maslahah*, according to Al-Ghazali, it aims to protect five things including religion, soul, descent, property and reason. Of the five aspects, one of the objectives of the *maslahah* is to protect property. When it is related to the opinion of the Hambali school of thought regarding the ability of wakaf property, it is very relevant where the purpose of *istibdal* is to protect property so that it is not damaged and can still be used. Because if waqf assets that are no longer productive are just left alone, it will also damage waqf assets. In addition to considerations of benefit, the Hambali school of thought has other considerations in allowing *istibdal* waqf, which must be in an emergency. This means that in fact the Hambali school of thought is still guided by fiqh that basically waqf cannot be replaced or traded because by the Hambali school this can be done in an emergency, when it is not in an emergency, *istibdal* waqf is not allowed. The basic concept of emergency in the legal *istinbat* carried out by Madzhab Hambali is quite reasonable as in the rule of fiqh that in an emergency a person is allowed to do something that was originally not allowed. As in the principle of fiqh: "*Kemudharatan-kemudharatan* allows things that are prohibited".

These principles are the basis for scholars in conducting *ijtihad* on Islamic law. So that what is done by the Hanbali Madzhab regarding the ability of *istibdal* waqf is quite rational and has a basis. In addition, the opinion of the Hambali School of Religion regarding the ability of *istibdal* waqf if we draw its relevance to the contemporary era, it will be very suitable. We can illustrate this if the waqf assets which then cannot be used for various reasons including disasters or others can no longer be used so that they are only left alone, while on the one hand, waqf assets such as land are increasingly expensive and limited. Then it will be redundant and waste the wealth of waqf and it will cause harm to society.

4.4 The Relevance to the Growth of Waqf in Indonesia

Based on the analysis of the opinion of the Hambali school of thought, it can be

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understood that the Hambali school of thought allows istibdal waqf with the consideration of taking advantage of it. In Indonesia, the implementation and management of waqf has actually been regulated in such a way as is stipulated in Law of the Republic of Indonesia Number 41 of 2004 concerning waqf.

Islamic Fiqh does not discuss the procedures and mechanisms for implementing waqf in complete and detail. However, PP no. 28 of 1977 and Regulation of the Minister of Religion No. 1 of 1978 regulates more complete instructions as well as in the Law of the Republic of Indonesia Number 41 of 2004 concerning waqf. According to Law of the Republic of Indonesia Number 41 of 2004 concerning waqf, parties wishing to donate their land must come before PPAIW to make a pledge of waqf.

Nadzir is obliged to manage and develop waqf property in accordance with its purpose, function and allotment. The management and development of waqf assets by nadzir as referred to in Article 42 is carried out in accordance with sharia principles. The scholars also agree that nadzir is trusted for the waqf property he holds. As a person who has been trusted, he is not responsible for replacing the lost waqf property, if the loss of the item is not due to accidental or negligent factors.

First, the management and development of waqf assets as referred to in paragraph (1) shall be carried out productively. Second, in terms of the management and development of waqf assets as referred to in paragraph (1), a guarantor is required, then a sharia guarantor institution is used. Third, in managing and developing waqf assets, Nadzirs are prohibited from making changes to the allocation of waqf assets except on the basis of a written permission from the Indonesian Waqf Board. Fourth, the permit as referred to in paragraph (1) can only be granted if the waqf property cannot be used in accordance with the allotment stated in the waqf pledge.

In accordance with Article 45 of Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, a nadzir can regenerate or be replaced with provisions, including:

1. In managing and developing waqf property, nadzir is dismissed and replaced with another nadzir if the nadzir concerned:
 - a. Died for an individual nadzir; dissolved or dissolved in accordance with the provisions of laws and regulations applicable to organizational nadzir or legal entity nadzir;
 - b. At his own request;
 - c. Not carrying out their duties as nadzir and / or violating the prohibited provisions in the management and development of waqf assets in accordance with the provisions of the prevailing laws and regulations;
 - d. Sentenced to a criminal sentence by a court that has permanent legal force.
2. Termination and replacement of nadzir as referred to in paragraph (1) shall be carried out by the Indonesian Waqf Board.
3. The management and development of waqf property by other nadzir due to dismissal and replacement of nadzir shall be carried out with due observance of the designated waqf property allocation and the purpose and function of the waqf.

In the Law of the Republic of Indonesia Number 41 of 2004 concerning waqf, the issue of istibdal is included in the law of exemption (*al-hukmu al-istitsna'i*). As mentioned in Chapter IV Article 40 and 41 paragraph (1). Although basically in Law

no. 41 of 2004 concerning waqf prohibits waqf assets for:

1. Made a guarantee;
2. Confiscated;
3. Be granted;
4. Sold;
5. Be inherited;
6. Exchanged; or
7. Transferred in the form of other transfer of rights.

However, there are exceptions related to the sale of waqf assets as referred to in Article 41 paragraph:

1. The provision as referred to in Article 40 letter f is exempted if the waqf assets that have been donated are used for public interest in accordance with the general spatial planning (RUTR) based on the provisions of the prevailing laws and regulations and do not conflict with sharia.
2. The implementation of the provisions as referred to in paragraph (1) can only be carried out after obtaining written permission from the Minister with the approval of the Indonesian Waqf Board.
3. Waqf assets whose status has been changed due to the exemption provisions as referred to in paragraph (1) must be exchanged for assets whose benefits and exchange rates are at least the same as the original waqf assets.
4. Provisions regarding changes in the status of waqf assets as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be further regulated by a Government Regulation.

From the provisions listed starting from Articles 40 and 41 above, it can be seen that there is a principle of permissibility to sell or replace (istibdal) waqf assets. However, it must be accompanied by caution in exchanging waqf goods, and still emphasizing efforts to maintain the immortality of waqf items as long as their conditions are still normal. But on the other hand, it has also opened the emergency door even though it is not genuine (making problems easier).

Taking into account the contents of the laws and regulations (Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf), it can be concluded that the law also allows for the sale or replacement (istibdal) of waqf assets. However, in the Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf there is also a precautionary principle in the process of selling or replacing (istibdal) the assets of waqf.

UU number 41 of 2004 article 42 and article 43 regulates the management of waqf that nadzir is obliged to manage and develop waqf property in accordance with the purpose, function and allocation of the waqf Furthermore, the Law determines the principles in the management of waqf, with one of the points being the second point that waqf must be carried out productively, besides that in the fourth point it is explained that for waqf that is neglected or originating from abroad, the management and development of assets Waqf objects from individual foreign citizens, or foreign organizations and foreign legal entities on a national or international scale, as well as abandoned waqf

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assets, can be made by Indonesian waqf bodies.

From the clause of Law Number 41, it can be explained that there is an obligation to manage waqf productively and there is no need for waqf to be neglected. One of the ways to manage waqf assets in order to remain productive is by means of waqf assets that have been neglected or that are no longer productive and replaced with more productive waqf assets so that the waqf can still provide benefits to the community.

After the explanation regarding the management of waqf, especially in Indonesia, which is stated in the Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, it is substantially the same as what was conveyed by the Hambali school of thought. Broadly speaking, both of them have the same perception of the management of waqf assets, especially the problem of istibdal waqf, namely: first, both in the Hambali school of thought and in the Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf in Indonesia it allows the sale or istibdal replacement of waqf assets. Second, although istibdal waqf is allowed, in practice it must be based on the principle of benefit and accompanied by an element of caution. Third, the subjects who are only allowed to do istibdal on waqf property are judges or nadzir and should not be done by just anyone to avoid mudharat.

5. CONCLUSION

Hambali school allows istibdal waqf based on emergency conditions and the principle of benefit such as loss of function and benefits of the waqf property. According to the Hambali school, the ability of istibdal waqf has a consequence that if the waqf property has been sold, the proceeds from the sale must be bought back the waqf property which of course has a beneficial value for the public interest considering the basic principle in waqf is the use of assets for the public interest. The Hambali school only allows the sale of waqf to be carried out by the judge if it is for the benefit or benefit of the public. While waqf that is intended by individuals is only the nadzir party who is allowed to sell the waqf property which of course must obtain permission from the judge first.

The ability of istibdal waqf according to the Hambali school is quite relevant to the existing conditions in Indonesia, where this opinion is in accordance with several waqf regulations in Indonesia as stipulated in Law Number 41 of 2014 concerning waqf which is permitted under the terms of the law. certain that has been set. The ability of istibdal waqf by Madzhab Hambali with Law Number 41 of 2014 concerning waqf basically has the same goal, namely to optimize the benefits and empowerment of waqf assets.

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