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Cash Wakf Implementation Viewed From Bi Al-Urfi Ijtihad Methodology

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ABSTRAK

Penelitian ini bertujuan untuk implementasi wakaf tunai ditinjau dari metodologi ijtihad Istihsan Bi Al-Urfi. Hal ini berkaitan dengan fenomena masih ada yang meragukan boleh tidaknya wakaf tunai (cash waqf). Metode penelitian yang digunakan adalah kualitatif analisis. Teknik pengumpulan data yang digunakan dalam tulisan ini adalah studi pustaka dan pengamatan. Teknis analisis data yang digunakan adalah dengan menggunakan pendekatan kualitatif analisis yaitu dengan cara memaparkan berbagai dalil mengenai hukum wakaf tunai dari berbagai metodologi ijtihad para ulama fiqh. Dari hasil penelitian yang dilakukan penulis menyimpulkan bahwa bahwa Mahzab Hanafi juga membolehkan wakaf tunai sebagai pengecualian, atas dasar istihsan bi al-urf (adat kebiasaan), karena sudah banyak dilakukan masyarakat. Cara melakukan wakaf tunai menurut mahzab Hanafi adalah menjadikannya modal usaha dengan cara mudharabah sedang keuntungannya disedekahkan kepada pihak wakaf. Menurut al Bakri, mahzab Syafi'I tidak membolehkan wakaf tunai, karena dinar dan dirham (uang) akan lenyap ketika dibayarkan sehingga tidak ada lagi wujudnya. Namun sebagian pengikut mahzab syafi'I membolehkan wakaf tunai. Dan pendapat ulama mengenai obyek wakaf memperlihatkan bahwa syarat-syarat benda wakaf (harus benda, bermanfaat, tidak sekali pakai, tidak haram zatnya dan harus milik wakif secara sempurna).

Kata kunci : Wakaf Tunai, Metodologi Ijtihad, Istihsan Bi Al-Urfi

Abstract

This study aims to implement cash waqf in terms of the Istihsan Bi Al-Urfi ijthad methodology. This is related to the phenomenon that there are still those who doubt the permissibility of cash waqf (cash waqf). The research method used is qualitative analysis. The data collection technique used in this paper is literature study and observation. The technical analysis of the data used is by using a qualitative analysis approach, namely by explaining various arguments regarding the law of cash waqf from various ijthad methodologies of fiqh scholars. From the results of the research conducted, the authors conclude that the Hanafi School also allows waqf as a conclusion, on the basis of what has been done (custom), many people have done. The way of doing cash waqf according to the Hanafi school is the modality of the mudharabah method while the profits are donated to the waqf. According to al Bakri, the Shafi'i school does not allow cash waqf, because dinars and dirhams (money) will be discontinued. However, some followers of the Shafi'i school allow cash waqf. And the opinion of scholars regarding the object of waqf explains that the conditions for waqf objects (must be objects, useful, not disposable, not unlawful in substance and must belong to the wakif perfectly).

Keyword: *Cash Waqf, Ijthad Methodology, Istihsan Bi Al-Urfi*

1. INTRODUCTION

In empowering the people's economy, one of the sharia economic institutions that plays a very important role is waqf. Waqf is one of the wealth redistribution mechanisms, and the waqf mechanism contains elements of investment and savings (Saving). In addition, waqf assets can help a country's economic activities, whether used as a source of development capital or otherwise.

Based on data from the Ministry of Religion's Waqf Information System (SIWAK) accessed on September 29, 2021, the potential for land waqf in Indonesia has reached a total of 414,829 locations with an area of 55,259.87 hectares. Then, according to the Indonesian Waqf Agency (BWI) the potential for cash waqf in Indonesia reaches IDR 180 trillion per year. However, the large potential of the waqf cannot be optimized properly.

As a religious institution related to wealth, waqf does not only have religious functions but also social functions. This is a statement of solid faith and a high sense of solidarity among human beings. Therefore, waqf is one of the efforts to establish and maintain a relationship with Allah and relationships with humans. In its function as worship, it is hoped that it will become a provision for the life of the wakif in the next day. This is a form of charity whose rewards will continue to flow as long as the waqf property is utilized.

There are three goodness that are specifically stated as deeds whose value never ends even though the person who did them is dead. First, giving sadaqah jariyah that can be used by many people; second, teach knowledge that can be utilized by others; and third. Educate pious children who always pray for their parents, as stated in the hadith of Rasulullah SAW.

In interpreting the words of the Prophet narrated by Abu Daud, al-Tarmidzi and Al-nasa'I, the scholars agree that what is meant by "shadaqah jariyah" in this hadith is waqf assets. It is in this context that a lot of waqf assets were found left behind by the Prophet and his companions which are still well preserved to this day.

Waqf can be one of the solutions to alleviate poverty. Some of our brothers and sisters who are economically weak can be helped by giving them capital, for example by giving part

of the proceeds from the development of productive waqf assets. The growth of well-managed waqf is expected to be an important element that contributes to efforts to reduce social inequality, alleviate poverty and increase post-pandemic community welfare so that it contributes more to the development of national economic resilience.

But in its development there is the implementation of waqf with "cash". Cash waqf (cash waqf/ waqf al nuqud) is a waqf made by a person, group of people or an institution or legal entity in the form of cash. Cash waqf, is there still doubt whether cash waqf is permissible or not? Is there a legal basis both in the Qur'an and Hadith? And what do the scholars think about cash waqf?.

Therefore in this discussion we will discuss how the basis of cash waqf is in the view of the Qur'an, Hadith, and the opinions of the scholars. It is hoped that the existing Islamic economic system, especially through cash waqf, can make a positive contribution to solving the national economy.

2. LITERATURE REVIEW

Cash Waqf

In language, the word waqf comes from Arabic: Al Waqf means the property being donated; Al-Habs means the treasure is held, Al-Mana means it is blocked. In terms of syara': Waqf means someone who surrenders his property (property that can be used without physical losses) to the user of the waqf from the beginning of the waqf property to the end solely because of Allah S.W.T.

According to Wahbah Zuhaili, although there are differences in interpretation, it is agreed that the meaning of waqf is to retain the substance of an object and use the results or withhold the substance and give the benefits (Al-Zuhaili, 1985). The difference of opinion of the fiqh scholars in defining waqf is caused by the way of interpretation in looking at the nature of waqf. The difference in views can be described as follows:

According to Abu Hanifah "Waqf is holding an object which, according to law, still belongs to the waqf in order to use its benefits for good". Based on this definition, the ownership of waqf assets cannot be separated from the waqif, in fact he is justified in withdrawing it and he may sell it. If the wakif dies, the property becomes an inheritance for his heirs. So what arises from waqf is only "contributing benefits". Because of that the Hanafiyah school of thought defines "waqf is not taking an action on an object, which has a permanent status as property, by giving its benefits to a benevolent (social) party, both now and in the future". The Maliki school is of the opinion that the waqf does not release the waqf's property from the ownership of the wakif, but the waqf prevents the wakif from taking actions that can release his ownership of the property to others and the wakif is obliged to give charity the benefits and may not withdraw his property to be used by mustahiq (recipient of waqf). even though what he owns is in the form of wages, or makes the proceeds usable as endowments of money. Waqf is done by reciting the lafadz waqf for a certain period according to the wishes of the owner.

In other words, the owner of the property restrains the object from being used in an ownership manner, but allows the proceeds to be used for benevolent purposes, namely the benefit of the object in a reasonable manner while the object remains the property of the waqif. The endowment is valid for a certain period, and therefore may not be required as a perpetual waqf. Madzhab Syafi'iyah, Hanbaliyah and some Hanafiyah. This school is of the opinion that waqf is utilizing assets to benefit from them by maintaining the essence of the object and severing the right of wakif to utilize these assets. The waqif may not do anything to

the waqf property. Changing the ownership status of someone's property, then donating it belongs to Allah. If the waqif dies, the donated property cannot be inherited by the heirs. The waqif distributes the benefits of the property that is donated to the mauquf 'alaih (person who is given the waqf) as a binding alms, where the waqif cannot prohibit distributing the donation. If the wakif prohibits it, then the qadhi has the right to force it to give it to mauquf 'alaih. Therefore this school defines waqf as not taking action on an object, which has the status of belonging to Allah SWT, by giving its benefits to a (social) virtue.

Waqf is declared valid if the pillars and conditions have been fulfilled. The pillars of waqf according to fiqh are 4 (four) types, namely (1) waqif (person who donates endowment), (2) Mauquf'alaih (party entrusted with waqf), (3) Mauquf (treasury donated), (4) Shighat or iqrar (statement or pledge of wakif as a will to donate).

According to the MUI fatwa, cash waqf (cash waqf or waqf al-nuqud) is a movable object waqf which is specified in the form of money. Cash waqf is waqf made by a person, group of people, institution or legal entity in the form of cash, including in the sense that money is securities. Cash waqf is a form of productive waqf with the mechanism of investing waqf funds and channeling the results of the principal capital invested. Comparing it with land waqf, for example, land waqf is only enjoyed by the people who live around the waqf property. Meanwhile, the poor live in various places, so a new source of funding is needed that is not bound by place and time. Because money is flexible and knows no boundaries in the distribution area. Hanafi madhhab scholars allow dinars and dirhams to be seen as good by Muslims, so in the sight of Allah is good, and what is seen as bad by Muslims, then the sight of Allah is bad. Only this school of thought explicitly allows the practice of cash waqf as an implication of explicitly allowing waqf of movable objects.

Hanafi madzhab scholars allow dinar and dirham cash waqf as an exception on the basis of istihsan bi al-'urf, based on the atsar Abdullah ibn Mas'ud ra: "what is seen as good by Muslims, in the sight of Allah is good, and what is seen as bad by Muslims, the sight of Allah is bad." Only this school of thought explicitly allows the practice of cash waqf as an implication of explicitly allowing waqf of movable objects.

Istihsan Bi Al-Urfi

According to al-Sarakhsi etymologically (language) Istihsan means:

"Trying to get the best to follow for a problem that is calculated to be carried out" (Al-Sarakhsi, 1997).

Meanwhile, according to Muhammad al-Said Ali Ab-dur Rabuh, Istihsan in the sense of language means: "Considering that something is good" (Abu-Rabuh, 1980).

As for Istihsan according to the meaning of the term, as stated by Abu al-Hasan al-Karkhi, an ushul scholar from the Hanafi school of thought as follows:

"Istihsan is the transfer of a mujtahid and the matter of determining the law in whichever is substantially similar to what has been determined because there are stronger reasons that require the transfer".

Then, al-Sarakhsi also mentioned the following:

"Istihsan is leaving qiyas and using something stronger than it, because there is an argument that wants it and is more suitable for realizing human benefit" (Al-Sarakhsi, 1997).

In line with al-Sarakhsi above, Abdul Wahab Khalaf also mentioned that what is meant by Istihsan is:

"Istihsan is the move of a mujtahid from clear qiyas provisions to vague (hidden) qiyas provisions, or from kulliy (general) provisions to special legal provisions, because according to the mujtahid's view it is a stronger argument (reason) that requires displacement referred to" (Khalaf, 1990).

Meanwhile, according to Imam al-Bazdawi, as quoted by Abdul Karim Zaidan that what is meant by Istihsan is:

"Istihsan is moving from having to use one qiyas to another qiyas provision that is stronger or specializing qiyas provisions with stronger arguments." (Zaidan, 1971).

Based on the definition above, it turns out that Istihsan revolves around three things, namely:

1. Istihsan is a change or deviation from the stipulation and application of a law that has been stipulated for other provisions on a problem, because there are strong reasons that require the change. This understanding can be seen in the definition put forward by Abu al-Hasan al-Karkhi.

2. The term is to move or leave to. clear qiyas provisions to vague (hidden) qiyas provisions, because there are strong reasons that require it. This understanding can be seen in the views of al-Sarakhsi, Abdul Wahab Khalaf, and al-Bazdawi.

3. Leaving the kulliy provisions and practicing special provisions as an exception to the kulliy provisions, or specializing qiyas because there is a strong argument.

According to Muhammad al-Said All Abdul Rabuh what is meant by Istihsan bi al-urfi is a deviation or diversion of a different (contrary) legal determination with the provisions of qiyas, due to the existence of 'urf which is commonly practiced and is well known in people's lives. This type of istihsan is very widely used in various societal tasaruf which violate the provisions of qiyas or general rules that apply (Abu-Rabuh, 1980).

3. METHOD

The method in this research is qualitative analysis. The type of data used in this paper is qualitative data consisting of primary data and secondary data, which come from theories from various literature and data from results that have been presented from an institution. The data collection technique used in this paper is literature study and observation. The data analysis technique used is to use a qualitative analysis approach, namely by explaining various arguments regarding the law of cash waqf from various ijihad methodologies of fiqh scholars.

4. RESULTS AND DISCUSSION

The waqf system is a concept that is not clearly and explicitly mentioned in the Qur'an or hadith, in contrast to zakat which is clearly stated in the Qur'an. Even so, there are many verses in the Qur'an that invite Muslims to give alms to set aside their excess wealth for activities that are productive for society. Cash waqf in the current era seems very new, so it requires very basic socialization of the public's understanding of cash waqf. The scholars put forward a number of verses that are general in nature which are used as the legal basis for cash waqf including:

First, the Qur'an There are many verses in the Qur'an that can be used as the basis for the permissibility of cash waqf. In the Al-Qur'an letter Al-Hajj (22): 77 Allah SWT says, "...and do good, so that you will be lucky." In this verse Allah SWT commands humans to do

good so that human life is happy. In another verse, al Baqarah (2): 267 Allah SWT says, "... O you who believe! Spend some of the results of your good efforts and some of what We remove from the earth for you" Then in another verse, Ali Imran (3): 92 Allah swt said, "You will not get good, before you spend some of the wealth that you love..." In this verse, Allah SWT orders people to spend (give away) their good wealth. According to experts, these verses of the Koran can be used as a general basis for the existence of waqf institutions, because waqf is one of the good and commendable practices.

Second, Hadith From Abu Hurairah ra, in fact Rasulullah SAW said: "if the child of Adam (human) dies, then his deeds are cut off, except for three cases: Sadaqah jariyah, useful knowledge, and pious children who pray for their parents" (HR Muslim) Scholars interpret the words "shadaqah jariyah" which will continue to flow the reward in the hadith with "waqf". The texts above are clear texts which are specifically used as the main basis for the existence of shari'ah waqf. It was narrated from Ibn Umar r.a that Umar bin Khatab r.a acquired land (garden) in Khaibar, then he came to the Prophet to ask for instructions regarding the land. He said, "O Messenger of Allah, I got land in Khaibar where I have never obtained property that is better for me than that land. What is your order (to me) regarding it? " The Prophet replied, " If you want, you hold back the main thing and you donate (the results) of it. Ibn Umar said, so Umar gave the land in charity, (with the condition that) that the land was not sold, was not donated and was not inherited. He gives alms (the proceeds to fuqara, relatives, riqab (servants, oppressed people), sabilillah, ibnu sabil, and guests. There is no sin on those who manage it to eat from (basil) the land in a ma'ruf (reasonable) manner and feed (to other people) without making it as property." al Nasa'i) 7. After Umar donated his wealth, then this practice was also followed by other companions of the Prophet, namely Abu Talhah who donated his favorite garden, "garden bahira". his descendants who came to Mecca. Uthman donated his wealth in Khaibar. Ali bin Abi Talib donated his fertile land. Muadz bin Jabal donated his house which is popularly known as " Daarul Ansar". Then the implementation of waqf was followed by Anas bin Malik, Abdullah bin Umar, Zubair bin Awwam and Aisyah, the wife of Rasulullah SAW.

The two hadiths that tell about the endowments made by Umar above show that the way to get goodness is to donate part of his wealth, one of which is by means of endowments.

Third, the opinion of Ulama, cash waqf has actually been discussed by previous scholars. There are differences of opinion regarding the law of cash waqf by some scholars. Imam al Bukhari (died 2526 H) revealed that Imam Az Zuhri (died 124 H) was of the opinion that dinars and dirhams (both currencies valid in the Middle East) could be donated as waqf. This method is to make these dinars and dirhams as business capital (trade), then distribute the profits as waqf. Wahbah Az Zuhaili also revealed that the Hanafi school also allows cash waqf as an exception, on the basis of istihsan bi al „urf, because many people have done it. The Hanafi school is indeed of the opinion that laws determined based on 'urf (customs) have the same power as laws determined based on nash (text).

The basis used by the Hanafi school is that the Mutaqaddimin of the Hanafi school of scholars allow dinar and dirham cash waqf as an exception, on the basis of Istihsan bi al-'Urfi, based on Abdullah bin Mas'ud r.a

"What the Muslims see as good, in the sight of Allah is good, and what the Muslims see as bad, in the sight of Allah is also bad."

The way to do cash waqf according to the Hanafi school is to make business capital by way of mudharabah while the profits are donated to the waqf.

Ibn Abidin argues that cash waqf which is said to be a custom that applies in society is a custom that applies in Roman society, while in other countries cash waqf is not a custom. Because of this, Ibn Abidin is of the view that cash waqf is not permissible or invalid. The Shafi'i school also holds the view that cash waqf is not permissible. according to al Bakri, the

Shafi'I school does not allow cash waqf, because dinars and dirhams (money) will disappear when paid so that they no longer exist (Al Bakri).

However, some followers of the Shafi'I school of thought allow cash waqf. Abu Thaur narrated from Imam Syafi'I about the permissibility of endowments with dinars and dirhams (money)" (al-Mawardi, al-Hawi al-Kabir, tahqiq Dr. Mahmud Mathraji, [Beirut: Dar al-Fikr, 1994], juz IX , p. 379)

The difference of opinion above is that the reason for whether or not cash waqf revolves around the form of money. Is the form of money that after being used or paid is still there as before? Is it still maintained? And still be able to turn a profit for a long time?

However, if you look at the currently developing economic system, it is very possible to implement cash waqf. For example, the waqf money is used as business capital as stated by the Hanafi school. Or invested in the form of shares in bona fide companies or deposited in Islamic banking, and the profits can be channeled as waqf proceeds. Cash waqf is invested in the form of stocks or deposits, the form or more precisely the value of money is maintained and generates profits in the long term.

These different views show that waqf is an area that is categorized in the ijtihadi area. That way, the provisions regarding waqf objects that have so far only been known for items such as land, houses can be expanded beyond that. Thoughts about waqf are widely spread in a number of fiqh books. This is because fiqh is part of Islamic teachings that live and develop among Muslim communities in various parts of the world.

Imam Sayid Sabiq explained that both fixed (al-'uqar) and movable (al-manqul) objects such as household equipment, mushahif, books and vehicles may be used as waqf objects. Besides that, any object that may be traded and utilized (while remaining in essence) may also be used as a waqf object. On the other hand, according to Sayid Sabiq, damaged goods and items that cannot be sold due to their substances, such as dogs and pigs, cannot be used as waqf objects (Sabiq, 1983).

Muhamad Musthafa Syalabi explained that there are four conditions for a waqf object: first, the property must be mutaqawwim (allow it to be maintained and used in a certain way); second, the waqf assets can be perfectly known by the wakif and the waqf manager (recipient) when the waqf is pledged; third, the object being donated belongs to the wakif perfectly and can be transferred when the object is pledged for waqf and fourth, the object being donated can be strictly separated without being bound to anything else.

The opinion of scholars regarding waqf objects shows that the conditions for waqf objects (must be objects, useful, not disposable, not haram in substance and must belong to wakif perfectly) are not supported by specific hadiths; and they use verses from the Koran and general hadith. Therefore, the determination of the terms of the waqf object includes the ijtihadi (Mubarak) area.

Regarding the issue of cash waqf, in a study conducted by Prof. Dr. M. A. Mannan, founder of SIBL (Social Investment Bank Ltd.), entitled "Structural Adjustments and Islamic Voluntary Sector with Special Reference to waqf in Bangladesh" (published by the Islamic Development Bank/IDB, Jeddah 1995), stated that cash waqf is known in Islam. It can be found in the Ottoman era and in Egypt. Meanwhile, Turkey has a long history of waqf management (Sham, Pages 2-5).

Meanwhile, the MUI fatwa commission allows cash waqf. The fatwa of the MUI commission was issued on 11 May 2002. The argument is based on the hadith of Ibn Umar (as mentioned above). At that time the MUI commission also made a new definition of waqf, namely:

"Restrain assets that can be utilized without losing the object or the principal, by not taking legal action against the object (selling, giving, or bequeathing it), to distribute (the proceeds) to something that is permissible (not illegal) that exists."

5. CONCLUSION AND SUGGESTION

The waqf system is a concept that is not clearly and explicitly stated in the Qur'an and hadith. In contrast to zakat which is clearly mentioned in the Qur'an. Imam al Bukhari (died 2526 H) revealed that Imam Az Zuhri (died 124 H) was of the opinion that dinars and dirhams (both currencies valid in the Middle East) could be donated as waqf. Which means allowing waqf in the form of money (cash waqf). The Hanafi School also allows cash waqf as an exception, on the basis of istihsan bi al-urfi (customs), because it has been widely practiced by the community.

According to the Hanafi school, the way to carry out cash waqf is to make it business capital by means of mudharabah while the profits are donated to the waqf. According to al Bakri, the Shafi'I school does not allow cash waqf, because dinars and dirhams (money) will disappear when paid so that they no longer exist. However, some followers of the Shafi'I school of thought allow cash waqf. Abu Thaur narrated from Imam Syafi'I about the permissibility of endowments with dinars and dirhams (money). So followers of the Shafi'I school of thought have two opinions, some allow cash waqf, some don't.

The opinion of scholars regarding waqf objects shows that the conditions for waqf objects (must be objects, useful, not disposable, are not haram in substance and must belong to the waqif perfectly). Cash waqf is not supported by specific hadiths, and uses verses from the Koran and general hadiths. Therefore, determining the terms of the waqf object is included in the ijtihadi area.

Indonesian people are still considered to be lacking in understanding the concept of cash waqf and are still fixated on the meaning of traditional waqf which is limited to land. So that socialization is needed to the community.

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