

ISSN 2656-1654

al-Mawarid

JURNAL SYARI'AH & HUKUM

JSYH

Vol. 1 (1) FEB. 2019



PROGRAM STUDI HUKUM KELUARGA (AHWAL SYAKHSHIYAH)
FAKULTAS ILMU AGAMA ISLAM
UNIVERSITAS ISLAM INDONESIA

JSYH

Vol. 1 (1) FEBRUARI 2019

ISSN : 2656-1654

e-ISSN : 2656-193X

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al-Mawarid: Jurnal Syari'ah dan Hukum is a peer-reviewed journal published two times a year (February and August) by Department of Ahwal Syakhshiyah, Faculty of Islamic Studies, Universitas Islam Indonesia, Yogyakarta, Indonesia. Formerly, first published in 1993,

al-Mawarid was initially published as *Al-Mawarid: Jurnal Hukum Islam*, an Indonesian bi-annual journal on Islamic Law. Since 2019, to enlarge its scope, this journal transforms its name to *al-Mawarid: Jurnal Syari'ah dan Hukum*. *al-Mawarid* warmly welcomes graduate students, academicians, and practitioners to analytically discuss and deeply explore new issues in relation to the improvement of syari'ah and law challenges and beyond.

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Editorial

Seiring dengan perkembangan zaman, umat tidak akan pernah lepas dengan problematika yang menjamur akibat perubahan realita social. Dewasa ini, realita social dianggap sebagai factor yang cukup dominan dan strategis digunakan dalam proses pembentukan hukum. Tidak sedikit bahkan hampir setiap produk hukum Islam merupakan hasil kontemplasi dan interaksi dengan lingkungan, masyarakat, geografis, politik dan aspek-aspek lain yang mengitarinya. Syari`at atau hukum Islam adalah segala sesuatu yang Allah Swt. syari`atkan kepada hambanya mencakup perkara keyakinan, peribadatan, akhlak, muamalah, serta aturan hidup untuk mengatur hubungan antara manusia dengan Allah Swt. dan sesama manusia agar memperoleh kebahagiaan di dunia dan akhirat. Definisi di atas merefleksikan bahwa perkembangan hukum Islam tidak dapat dipisahkan dari dimensi ruang baik horizontal maupun vertikal dan waktu yang selalu melingkupinya. Sehingga syari`at atau hukum Islam senantiasa responsif dalam menjawab problematika kekinian bersama-sama dengan hukum nasional yang ada di Indonesia.

Pada hakikatnya ada keterkaitan antara hukum Islam dengan hukum nasional di Indonesia yang belum banyak diketahui khalayak ramai. Jimly Asshiddiqie menuturkan bahwa tidak akan ditemukan istilah hukum dalam bahasa Indonesia kecuali mendapat pengaruh dari bahasa Arab karena secara etimologi 'hukum' diambil dari kata 'al-hukmu' yang secara implisit menunjukkan adanya pengaruh tradisi hukum Islam ke dalam hukum nasional.

Sejarah mencatat bahwa khalifah kedua yaitu Umar bin Khattab pernah melakukan sebuah ijtihad yang sangat memperhitungkan kondisi social kemasyarakatan ketika akan menentukan eksekusi hukuman potong tangan kepada pelaku pencurian. Beliau tidak serta merta mengambil eksekusi potong tangan karena kasus pencurian tersebut dilakukan dalam kondisi paceklik dan pertimbangan-pertimbangan lain seperti ketidakjelasan motif pencurian sebagaimana kaidah umum yang diriwayatkan oleh Ibn Abbas bahwa Rasulullah bersabda "Idra'û al-hudûd bi al-syubuhât." yang artinya tinggalkanlah sanksi sebab adanya syubhat. Selain dari kisah di atas, masih banyak lagi contoh relevansi hukum dengan realita social dengan berbagai konteks yang menyertainya tanpa menafikan keabsahan teks-teks ilahiyah.

Pada tulisan yang berjudul Semangat Kebangsaan Kiai Pesantren: Analisa Gagasan dan Spirit Kemerdekaan KH. Bisri Mustofa dalam Tafsir Al-Ibriz, Muhadi Zainuddin dan Miqdam Makfi menuangkan gagasan cemerlang tentang nasionalisme dan perjuangan melalui sebuah karya tafsir. Selain itu tulisan ini mengangkat tentang biografi Kiai Bisri Mustofa yang merupakan refleksi tentang bagaimana perjuangan tentang cinta tanah air, nasionalisme, hubbul wathan, bergerak secara sinergi. Nuansa perjuangan begitu melekat pada diri beliau karena beliau adalah pejuang yang ikut turun ke

medan tempur melawan kolonialisme. Disamping itu, gagasan tentang nasionalisme juga beliau aktualisasikan dalam karya-karya beliau. Upaya dan kegigihan KH. Bisri Mustofa dalam menjelaskan ayat-ayat ilahiyah beliau tuangkan dengan menggunakan Bahasa Arab Pegon (Arab-Jawa) sehingga makna-maknanya mudah dicerna dan difahami dengan baik oleh masyarakat Jawa. Hal ini menjelaskan bahwa beliau menggunakan pendekatan social-antropologi untuk menanamkan nilai-nilai kebangsaan dari Al-Qur'an yang sarat akan nash-nash hukum.

Rizal Maulana dalam jurnal ini menulis Kompleksitas Masyarakat Indonesia Kontemporer (Agama, Sosial-Individu dan Ekonomi Budaya) yang sangat kental membahas problematika masyarakat Indonesia modern dari berbagai perspektif. Salah satu yang menarik adalah Sementara kita mempunyai tugas mempromosikan kelestarian budaya asli, tradisi-tradisi lama bertemu dengan kreatifitas baru setiap harinya di kota-kota dunia, memelihara identitas dan keanekaragaman. Dialog antar budaya adalah salah satu tantangan terbesar umat manusia, dan kreatifitas dikenal sebagai sumber yang tidak pernah berhenti mengilhami masyarakat dan ekonomi.

Selanjutnya tulisan Ahmad Fathurrahman yang berjudul Penyelesaian Tuntutan Ganti Rugi Dalam Sengketa Akad Mudharabah Pada Pengadilan Agama berupaya memberikan komparasi secara seimbang antara konsep ganti rugi yang ditawarkan oleh hukum Islam dan hukum perdata. Tulisan ini merupakan kajian terhadap putusan kasus pada Pengadilan Agama (PA) Nomor 463/Pdt.G/2011/PA.Btl Jo. 63/Pdt.G/2011/PTA.Yk Jo. 2/Pdt.Eks/2012/PA.Btl Adapun penentuan ukuran ganti rugi menurut hukum perdata tidak lepas dari peranan hakim dalam penentuan nominal atau ukurannya. Kemudian awal kalkulasi ganti rugi dimulai saat debitur melakukan wan-prestasi. Sedangkan menurut hukum Islam besaran ganti rugi ditentukan berdasarkan kesepakatan (at-taqdir al-ittifaqi) dan penggantian ganti rugi di lakukan oleh hakim (al-taqdir al-qadai) yang mengacu pada ijtihad dan pendapatnya.

Kemudian tulisan Fatemah Ahmad dan Arif Ali yang berjudul al-Hukûk al-Asâsiyah Li dhawi al-I`âqah fi al-Syarî`ah al-Islâmiyyah (Hak-hak Dasar Yang Dimiliki Oleh Penyandang Cacat (Disabilitas) menurut Syari`at Islam) mencoba mengelaborasi hak-hak yang bersifat fundamental yang melekat pada individu disabilitas. Penulis ingin memaparkan bahwa Islam menjunjung tinggi harkat dan martabat kaum disabilitas, sehingga hal ini dapat membuktikan bahwa syariat Islam sangat dinamis dan rahmatan lil`alamin.

Kajian ini mencoba untuk mengklarifikasi al-Hukûk al-Asâsiyah yaitu hak-hak yang mutlak ada yang diperoleh sebagai manusia dan ditandai sebagai salah satu pilar yang tidak dapat disentuh dan dilanggar dan merupakan prasyarat untuk mewujudkan hak-hak manusia lainnya. Adapun hak-hak asasi yang diperjuangkan seperti hak untuk hidup, memperoleh martabat, kesetaraan, keadilan, pendidikan, pekerjaan dan privasi. Hasil terpenting dari penelitian ini adalah bahwa: Islam menjaga

nilai-nilai kemanusiaan dan martabat orang cacat dan melarang segala bentuk kekerasan atau penelantaran hak. Hal ini dimaksudkan agar mereka dapat hidup dengan baik, nyaman serta dapat berintegrasi dan berinteraksi dengan orang lain di dalam masyarakat secara normal tanpa ada tekanan, penghinaan atau dipermalukan.

Beberapa naskah atau tulisan di atas mungkin belum bisa mendeskripsikan secara sempurna dan ideal tentang pengaruh realita social dalam melahirkan produk-produk hukum baik hukum Islam maupun hukum nasional. Oleh karena itu, redaksi berharap hal ini dapat memberikan manfaat dalam memantik munculnya pemikir-pemikir di bidang hukum secara holistic. (Redaksi 2019)

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Islamic Law Studies on the Use of Infak Fund for Land Waqf

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ARTICLE INFO

Article history:

Received: August 1, 2018

Accepted: December 21, 2018

Published: February 20, 2019

ISSN: 2656-1654

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e-ISSN: 2656-193X

ABSTRACT

A mosque is a device of worship and a means of gathering the first community founded by the Prophet. At the time of the Prophet Muhammad the mosque had become the center of activity and information. In this activity, it certainly requires funds to run well. One of the sources of the mosque's funding is Infak. Infak is related to the alms of sunnah given for religious activities or for the public interest. One of the mosques that uses Infak funds to purchase land that will later be used as waqf land, namely Adz-Dhikra Mosque. The research intends to conduct research on mosque infak for the purchase of land which will later be used as waqf land, and one of the mosques that uses Infak funds to purchase land is Adz-Dhikra mosque whose formulation is how the contract, the waqif, and the endowments The type of research used is field research and literature study. This research is located at Adz-Dzikra Mosque, Jirak Hamlet, Bokoharjo Village, Prambanan Sub-District, Sleman Regency. Data collection technique was by interview and literature study. The results of this study indicate that in purchasing waqf land at the Adz-Dhikra Mosque is using Infak fund, which is collected from the surrounding community. In the Islamic Islamic law, it is illegal, but it is legally administered by the Law.

Key words: Infak, Waqf.

INTRODUCTION

One of the most important elements in the structure of an Islamic society is mosque which mainly functions as place of worship. Additionally, mosque can also be used as a center of activities for people living around it. Religious celebrations, discussions, religious studies, preaches, and Quran learnings can be held here. In the history of Islam, mosque plays an important role in social to military activities.¹ Religious activities which centers in mosque sometimes can cause problems, like, costly activities and insufficient facilities and infrastructures. Developing the mosque becomes an urgent activity and needs to be a shared responsibility. Therefore, there is a unique system named *infak* (charity giving) and *shodaqoh* (alms giving) as a form of donation for developing mosque. It is believed that one who donates in Allah's way, the Almighty will return his/her wealth in doubled, as followed.

Say, "Indeed, my Lord extends provision for whom He wills of His servants and restricts [it] for him. But

*whatever thing you spend [in His cause] - He will compensate it; and He is the best of providers."*²

Infak, according to Muhammad (1982), is spending a part of one's wealth for a greater good. It is a spending that someone made and it is different from *zakah*, which is a spending mandatorily made from Allah and the Prophet.³ Hasbi Ash-Shiddiqiey mentions that *infak* is a spending of wealth when there is necessity based on particular need and benefit.⁴ H. Nurkthoh Arfawie Kurde asserts that *infak* is a charity made by a Muslim based on *taqarrub* (seeking closeness to God), solely asks for Allah's blessing and can be done by giving *infak* during Ramadan, to school, or to mosque.⁵

From the aforementioned explanation, it can be concluded that *infak* is not only given due to obligation, but also based on particular need and benefit for a greater good, as mentioned in the following verse.

"Those who spend their wealth in the way of Allah and then do not follow up what they have spent with reminders [of it] or [other] injury will have their

¹ Miftahul Huda. 2016. "Konfigurasi Infak Sedekah, Konfigurasi Infak, sedekah, zakat dan Wakaf untuk Kemendirian Umat", jurnal ilmu syariah. Vol. 13, No. 1, (Oktober 2017).hal. 1.

² QS. As-Saba (34): 39

³ Sahri Muhammad, "Pengembangan Zakat dan Infak dalam Usaha Meningkatkan Kesejahteraan Masyarakat". Malang: Yayasan Pusat Studi "Avicenna, 1982.

⁴ Abdul Kholiq, "Syafa'at, Potensi Zakat, Infak shodaqoh, Badan Amil Zakat Nasional (BAZNAS) di Kabupaten Banyuwangi", *Jurnal Peneleitian Sosial Keagamaan*.Vol 9.No.1. (Juni 2015).

⁵ Nukthoh Arfawie Kurde. Memungkut zakat & Infak Profesi. (Yogyakarta: Pustaka Pelajar). 2005.

reward with their Lord, and there will be no fear concerning them, nor will they grieve."⁶

Additionally, another verse explains similarly.

*"And what prevents their expenditures from being accepted from them but that they have disbelieved in Allah and in His Messenger and that they come not to prayer except while they are lazy and that they do not spend except while they are unwilling."*⁷

Currently, the management of *infak* and *shodaqoh* in the society is similar to the management of *zakah* and *waqf* which is considered traditional, conservative, and unethical. In fact, *infak* and *shodaqoh* with professional and productive management can give a long-lasting impact to the society.⁸ Additionally, *infak* fund can be a primary financial source in a way to manage and develop the mosque itself. One of the financial functions is expansion as in Adz-Dzikra mosque in Jirak Hamlet, Bokoharjo Village, Prambanan Sub-District, Sleman Regency in 2016. The mosque administrators managed its *infak* fund for the purpose of mosque expansion, so that more people can use the mosque for prayer. Land bought by the *infak* will be in form of *waqf*.

In this research, the researchers aim to study *infak* fund and its management into *waqf* objects in Adz-Dzikra mosque. The research tries to find out the underlining Islamic law on the use of *infak* for land *waqf*, *wakif* (giver) and *nadhzir* (beneficiary), and the process of *waqf* to be considered qualified as land *waqf*.

Samsul (2016) in his paper *Optimilasi Infak Masjid untuk Pendampingan Pemeberdayakan Keluarga Berbasis Masjid di Kecamatan Bonomulyo, Kabupaten Malang* states that *infak* can reach its maximum values, not merely for common mosque maintenance. Other forms of empowerment are to promote community's welfare, to purchase production tools, to provide scholarships, etc. The aforementioned funding is a form of community's concern to *dhuafa* (less-fortunate ones) and unemployed people, as well as an effort to make them more empowered. The results of the study show that the assisted communities:

- can recognize problems that occurred around them, explore various experiences as friends, teachers, or neighbors.
- can improve their social awareness, especially on economic problem, as

⁶ QS 2 (Al-Baqarah') : 262

⁷ QS 9 (Al-Taubah ') : 54

⁸ Subandi. 2015."Manajemen zakat, Infak dan Shodaqoh (ZIS) Produktif (ZIS Berbasis

Kewirausahaan di Laziznu kota metro tahun 2015)", Jurnal Kajian agama. Vol 1, No.1 (Oktober 2017), hal.146

well as providing solution and acting as a good problem solver both for him/herself and others who conduct consultation to the assisted communities.

- can formulate various material needs and supports as a good assistance in the community. The supports can be in the aspects of *zakah*, *infak* and *shodaqoh* (ZIS) management, as well as various laws on ZIS, like, the law of collecting and distributing ZIS.
- expect that the program will not only be concluded on providing training and formation of BMT ZIS (Islamic-based microfinance model which manages ZIS), but also followed by an assistance in which the board will turn into a professional ZIS management institution.⁹

Supriyadi (2017) in his paper entitled *Pemberdayaan Ekonomi Berbasis Masjid (Studi Kritis Pasal 53, 54, dan 55 PP. Nomor 14 Tahun 2014 Tentang Pelaksanaan UU Nomor 23 Tahun 2011 Tentang Pengelolaan Zakat)* concludes that Law No. 23/2011 on

zakah management gives a good chance for every mosque to be a center of community empowerment. Through UPZ (*Unit Pengumpul Zakat/Zakah* Collecting Unit) in BAZNAS (*Badan Amil Zakat Nasional/The National Zakat Board*), mosque will be the place to collect *zakah*, charity, and alms giving from the its worshipers. Therefore, the fund can be used to improve the life of surrounding society.¹⁰ He argues that *infak* given to a certain mosque can be a source of revolving capital lent to *mustahik* (*zakah* beneficiary). This capital can be lent without interest and mainly used trust-based collateral. By using this system, UPZ has taught its *mustahik* that he/she is entitled to return the fund in the future. Mustahik needs to make sure that his/her business runs well and manages the flow of the lent fund. In the long run, *zakah*, charity, and alms giving managed by UPZ can decrease poverty and improve the life of surrounding society.

INFAK FOR WAQF

It is understandable that *infak* fund (charity fund given for mosque) can be used for various purposes in the mosque, like, religious

⁹ Samsul Ma'arif I.A.(2016), "Optimisasi Infak Masjid untuk Pendampingan Pemeberdayaan Keluarga Berbasis Masjid di Kecamatan Bonomulyo Kabupaten Malang".Jurnal Pendidikan dan Peranata Islam, Vol.7, No.2 (Oktober 2017).hal. 174

¹⁰ Ahmad Supriyadi. 2017. "Pemberdayaan Ekonomi Berbasis Masjid (Studi Kritis Pasal 53, 54, dan 55 PP. Nomor 14 Tahun 2014 Tentang Pelaksanaan UU Nomor 23 Tahun 2011 Tentang Pengelolaan Zakat)". Jurnal An-Nisbah, Vol. 03. N0.02. (Oktober 2017).

activities, the cost of facilities and infrastructure, and operational costs of the mosque. Hence, *infak* fund is essential for the development of the mosque itself. It is believed that *infak* fund can still be used for wider purposes. *Infak* means giving a certain sum of personal wealth and it does not belong to *zakah*. *Infak* can be obligatory and non-obligatory. The obligatory *infak* covers *zakah*, *kafarat* (exchange), *nadzar* (promise), etc. The non-obligatory *infak* can be a sum of money given to other Muslims who are in poverty, ones who are natural disaster victims, etc. In sharia terminology, *infak* means giving part of one's wealth for a certain cause as it is commanded by Allah.¹¹ According to Yusuf Qardhawi, the Quran mentions that *infak* should be given only a part of one's wealth. The other parts need to be saved and invested to productive sectors.¹² *Infak* needs to be given for a greater good as taught by Islam. It is chiefly given to fund various religious activities. As an example, *infak* is used for buying a piece of land that will further be claimed as land *waqf* and developed into mosque, Islamic hospital, Islamic schools, orphanages, etc. This land can be managed under personal care or under religious organization.

The writers believe that Islam has given a complete guideline in giving *infak*, as mentioned in the following verses.

The example of those who spend their wealth in the way of Allah is like a seed [of grain] which grows seven spikes; in each spike is a hundred grains. And Allah multiplies [His reward] for whom He wills. And Allah is all-Encompassing and Knowing (261). Those who spend their wealth in the way of Allah and then do not follow up what they have spent with reminders [of it] or [other] injury will have their reward with their Lord, and there will be no fear concerning them, nor will they grieve (262).¹³

The abovementioned verses explain on *infak* given as Allah commands. Here, *infak* is illustrated like a seed that produces seven spikes and each grain produces a hundred grains. According to al-Zamakhshary, it looks like a seed grows into a tree. The tree has seven branches and each branch produces a hundred fruits. That is the way Allah doubled the rewards sourced from *infak*.¹⁴

Another command to give *infak* is mentioned in the following hadith.

حَدَّثَنَا عَبْدُ الرَّزَّاقِ قَالَ حَدَّثَنَا مَعْمَرٌ عَنْ هِشَامِ بْنِ عُرْوَةَ عَنْ أَبِيهِ عَنْ زَيْنَبِ ابْنَةِ أَبِي سَلَمَةَ عَنْ أُمِّ سَلَمَةَ أَنَّهَا قَالَتْ يَا رَسُولَ اللَّهِ إِنَّ بَنِي أَبِي سَلَمَةَ فِي حِجْرِي وَلَيْسَ لَهُمْ شَيْءٌ إِلَّا مَا أَنْفَقْتُ عَلَيْهِمْ وَلَكِنْ بَنَاتُهُمْ كَذَا وَلَا كَذَا أَفَلِي أَجْرٍ إِنْ

¹¹ Udin Saripudin. *Filantropi Islam*. hal 170

¹² Ibid., hal 171

¹³ QS. 2(al-Baqarah'): 261-262

¹⁴ Imam Amrusi Jilani. *Solusi al-Qur'an* . hal 344

أَنْفَقْتُ عَلَيْهِمْ فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
أَنْفَقْتُمْ عَلَيْهِمْ فَأَنْفَقْتُ لَكُمْ أَجْرَ مَا أَنْفَقْتُمْ¹⁵

[Meaning: Has told [Abdurrazaq] he said; has told us [Ma'mar] from [Hisham bin Urwah] from [his father] from [Zainab bint Abu Salamah] from [Umm Salamah] that he said; "O Messenger of Allah! Surely the tribe of Abu Salamah is my tribe, they have nothing but what I inflict on them, and I am a person who cannot bear to let them like this and this. Am I getting rewarded for what I inflict on them? The Prophet sallallahu'alaihi wa sallam said: "Inflict unto them, for ye reward for what thou shalt them].

As told by Muslim, Abu Dawud, At-Tirmidzi, Nasa'I, and Ahmad, Islam teaches its believer to constantly provide financial contributions based on virtue, kindness, and sincerity. *Infak* is a noble deed if it is conducted because of Allah. Then, it will be rewarded as it should be.

There are several requirements for *infak* to be considered legitimate. In this research, the requirement that puts into strong consideration is the *infak* giver. He/she has to own a sum of money to be donated. There should not be any pressure because the money should be purely donated in the giver's will. In the case of *infak* in Adz-Dzikra mosque, *infak* fund which turns into *waqf* is aimed for a greater good. Moreover, sharia law allows this arrangement,

as long as it is compatible to Quran and hadith and used for good purposes.

CASH WAQF

Cash waqf has long been debated by classical scholars. This debate happens based on the conditions of *mauquf* (waqf object) which closely related to its durability. Safi'iyah scholars, like al-Nawai, in *al-Majmu' Syarah al-Muhadzhab* claims that moving objects (i.e. animal) can be donated for *waqf*, just like non-moving objects (i.e. land). However, these scholars suggested not to donate dinar and dirham, since these currencies are easily spent and hard to eternalize. Abu Sur, another *Safi'iyah al-Mawardi* scholar proposes a perspective in which dinar and dirham cannot be donated since these currencies are short-lived and limited in use. Ibn Qudamah in his book entitled *al-Mughni* explains that alms giver and scholar cannot give cash waqf (dinar and dirham) due to its aforementioned nature. Additionally, the currencies are not suitable for rent because it will modify its basic function. It goes to food and beverages which are given for *waqf*. These materials are perishable; thus, they are not qualified for waqf. Al-Ramli in *Nihayah Mugni al-Muhtaj ila Ma'arifah* and Muhammad al-Khathib al-Syarbini in *Mugni*

¹⁵ Muasasah Ar Risalah. " Kitab Sisa musnad sahabat anshar". Bab Hadits Ummu salamah isteri 66

Nabi shallallahu'alaihi wasallam. Hadits Musnad Ahmad. No 25424.

al-muhtaj ila Ma' rifayah Ma'ani al- Minhaj, mention that waqf is controlling a property and maximizing its use. Therefore, cash waqf is not legitimate.¹⁶

Hanafiyah scholars agree to waqf on moving objects as long as it is considered *urf* (common) in a certain community. The samples of waqf objects are books, *mushhaf* (collection of sheets), and money. In cash waqf, Hanafiyah scholars indicate that there should be *istibat* (conversion) from the waqf objects to avoid inaccurate measurement. One of the solutions is converting the cash waqf into permanent objects. In this case, these scholars see the possibility of donating dinar and dirham to more permanent objects; thus, the benefit will last longer. Muhammad ibn Abdullah al-Ansyari, a student of Zufar, as quoted by Ibn Abidin in *Rad al-Mukhtar* states that waqf can be given in cash, like, in dinar and dirham. The cash waqf is invested in *mudharabah* (mutual cooperation) and the benefit is donated to *mauquf alaih* (waqf beneficiary). Malikiyah scholars state that waqf objects are not only in immobile objects, but also in mobile objects, like, dinar and dirham.¹⁷

Dissenting opinions among *fiqh* scholars on cash waqf indicate that there is a

continuous effort in maximizing the benefits of waqf property. Scholars' debate on the benefits of waqf object is based on a hadith stated *Habasta ashlah wa tashadaqta biha* (keep the assets and donate the benefits). The hadith illustrates that the benefit of waqf objects should be abiding. This scholar's perspective is in-line with the concept of *sedekah jariyah* (charity) which continually gives benefits to the waqf giver; therefore, the waqf objects need to be in permanent objects.¹⁸

In some Muslim majority countries, waqf objects are no longer dominated by or limited to immobile objects, such as, land and building. The objects have grown into non-fixed assets, like, money and securities. Cash waqf has widely accepted in various countries, for example, Turkey, Egypt, India, Pakistan, Singapore, Malaysia, and Indonesia.¹⁹ Institutionally, cash waqf in Indonesia has been started in 2000s with the consideration that cash waqf has more flexibility and greater merits. Thus, the official statement of the Council of Indonesian Ulama has legalized a waqf law in 11 May 2002 that allows cash waqf.²⁰ In Law No. 41/2014 on waqf, cash waqf is specified in ten waqf objects in Verses 28 – 31.²¹ One of the mosques which utilizes

¹⁶ Rozalinda. “Majememen wakaf Produktif”. Cet. 1, (Jakarta: Rajawali pers 2015). hal 33

¹⁷ Ibid. hal 33.

¹⁸ Ibid. hal 34

¹⁹ Ibid. hal 37

²⁰ Ibid. hal 37

²¹ Undang-undang Nomor 41 Tahun 2004 tentang wakaf. Pasal 28-31

cash *waqf* is Adz-Dzikra. This mosque uses its cash *waqf* to buy a piece of land and will be upgraded as land *waqf*. *Infak* given to the mosque can be the funding to buy the land and become land *waqf*. It is legal according to the law for there is a continuous effort to maximize the use of the cash *waqf*. The more the cash, the more extensive the *waqf* giver's benefits.

THE PRACTICE OF WAQF IN ADZ-DZIKRA MOSQUE, IN JIRAK HAMLET, BOKOHARJO VILLAGE, PRAMBANAN SUB-DISTRICT, SLEMAN REGENCY

Waqf is legitimate when it fulfills particular requirements. *Waqf* has four requirements namely: (1) *waqif* (the giver), (2) *mauquf'alaih* (the beneficiary), (3) *mauquf* (the object), and (4) *shighat* (*waqf* statement). In Islamic law (sharia), these requirements have to be fulfilled in order to legalize the *waqf*. Based on its practice, *waqf* requires two types of *akad* (statement). These statements are the declaration made by giver and beneficiary (*Ijab* and *Qabul*) as commonly practiced in trade, lease, etc.²² In Adz-Dzikra Mosque, the writers also find two kind of statements used, as:

- *Akad* for land buying and selling

The statement is made in accordance with mosque's administrators to buy a piece of land and later, to be used as *waqf*. This type of statement is the bond between land seller and his/her buyer. The process of buying and selling becomes legitimate when the statement is pronounced, as it represents willingness. The statement can be delivered either spoken or written; moreover, it legalizes the transaction. When the buyer and seller cannot directly meet, the statement can still be delivered through mail or correspondence.²³

- *Akad* for land *waqf*

In terms of *waqf* statement, all schools mention that *waqf* requires *tabarru'* (one-side) declaration. It is acceptable when the *waqf* giver declares his/her will without being followed by the beneficiary's acceptance.²⁴

Akad in this case belongs to *tasharuff* (legal action) which leads to the implementation of items stated in the legal action. Al-Kabisi questions the *akad* used in *waqf* led to either *tasharruf* (legal action) that bring

²² Shobirin. 2015. "Jual Beli dalam Pandangan Islam." Jurnal Bisnis dan Manajemen Islam. Vol.3, No.2.(Maret 2018). hal 246

²³ Ibid. hal 247

²⁴ Suchadi. 2012." Eksistensi (Qabul) Penerimaan Dalam Akad Wakaf ". Jurnal Justitia Islamica. Vol.9. No.2. (Maret 2018). hal 37

legal impacts or *al-iqa* (authorization) which has no legal impact.²⁵ He later confirms that *waqf* belongs to *al-iqa* since it focuses on community's empowerment which chiefly leads to serve the needs of the community itself.

Based on the aforementioned explanation, Adz-Dzikra mosque violates the requirements on *waqf* since there is no *waqif* in the process of land *waqf* statement. In this case, mosque administrators bought a piece of land from Ms. Wibi (the land owner) and in the statement, Ms. Wibi became the *waqif*.

Law No. 41/2004 mentions that there are four requirements in *waqf*, namely: (1) *waqif* (the giver can be individual, institution, or corporation); (2) *nadzir* (*waqf* administrators, *mawquf'alayh* (beneficiary)); (3) *waqf* official; and (4) two witnesses.²⁶ The *waqf* pledge, based on Law No. 41/2004,²⁷ is officiated:

- from *waqif* and *nadzir*, in the presence of *waqf* official and two witnesses.
- spoken or written, and then stated in a *waqf* certificate by *waqf* official

Waqf official employs both sharia and state law, especially in Law No. 41/2004 verse

6 in completing the required paperwork. It indicates that the *waqf* process is conducted by mosque administrators with *waqif*, *nadzir*, *mawquf'alayh*, and *sighat*. In this case, the *nadzir* is Adz-Dzikra's administrators. It is considered legal since the administrators have completed the requirement of *waqf*.



Figure 1. Processing *Infak* of Mosque to Land Waqf according to Sharia Law

According to sharia law, *waqf* process requires *waqif*. In Adz-Dzikra's case, the *waqif* is the land owner itself. One of the community members can be appointed as *waqif* decided in a forum. Thus, the requirements of *waqf* according to sharia law can all be fulfilled. The *nadzir* can also be appointed community member or one of Adz-Dzikra's administrators.

FINDINGS AND DISCUSSION

Based on the aforementioned explanation, Adz-Dzikra mosque violates the requirements on *waqf* since there is no *waqif* in the process of land *waqf* statement. In this case, mosque administrators bought a piece of land from Ms. Wibi (the land owner) and in the statement, Ms.

²⁵ Ibid. hal 38

²⁶ Jaih Mubarak. *Wakaf Produktif*. Cet,1. (Bandung: Refika Offset. 2008). Hal 45

²⁷ Ibid. hal 46

Wibi became the *waqif*. Law No. 41/2004 mentions that there are four requirements in waqf, namely: (1) *waqif* (the giver can be individual, institution, or corporation); (2) *nadzir* (*waqf* administrators, *mawquf'alayh* (beneficiary)); (3) *waqf* official; and (4) two witnesses.²⁸

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- from *waqif* and *nadzhir*, in the presence of *waqf* official and two witnesses.
- spoken or written, and then stated in a *waqf* certificate by *waqf* official

Waqf official employs both sharia and Law No. 41/2004 verse 6 in completing the required paperwork. It indicates that the waqf process is conducted by mosque administrators with *waqif*, *nadzir*, *mawquf'alayh*, and *sighat*. In this case, the *nadzhir* is Adz-Dzikra's administrators. It is considered legal since the administrators have completed the requirement of waqf.

CONCLUSIONS

To sum up, Adz-Dzikra administrators uses several methods in collecting funding for buying land, such as:

1. conducting socialization to the community around Adz-Dzikra mosque that the mosque requires fund to buy a piece of land.
2. conducting a big gathering to crowd-fund the buying.
3. informing other communities through social media, like, Facebook, BlackBerry Messenger, and WhatsApp.
4. giving out brochures and leaflets to other Muslims about the fund collecting that Adz-Dzikra conducts.
5. offering *waqf* certificate (Rp 1,000,000 per square meter) to potential *waqif* or the *waqif* him/herself can decide the area that he/she wants to fund.

Additionally, Adz-Dzikra administrators invited an official from Religious Office Affairs of Prambanan Sub-district to officiate the *waqf* statement. However, based on the Religious Office Affairs' guideline, *waqf* statement should be uttered in front of *waqf* official. With so many donors involved in the process, the community and officials from Religious Office Affairs of Prambanan Sub-district agree to choose one of the community members to be the *waqif*. The chosen *waqif* is

²⁸ Jaih Mubarak. 'Wakaf Produktif' Cet.1. (Bandung: Refika Offset. 2008). Hal 45

²⁹ Ibid. hal 46

Ms. Wibi, the land owner and the *nadzir* is Adz-Dzikra administrators.

According to sharia law, the *waqf* process conducted by Adz-Dzikra administrators violates the requirements on waqf. The law mentions that *waqf* can only be conducted by full authorization from the property's owner. In the case of Adz-Dzikra mosque, the mosque's administrators bought the land with an *akad* for land buying and selling. It will be legitimate when the *waqif* is a representative of the community. According to Law No. 41/2004 on *Waqf*, the *waqf* process in Adz-Dzikra mosque is considered legitimate because *all* the requirements have been fulfilled. Verse 6 of the Law specifically mentions that a waqf process needs to involve *wakif*, *mauquf bih*, *mauquf 'alaih*, and *sighat*. The nadzir will be Adz-Dzikra administrators.

SUGGESTIONS

The writers would like to propose some suggestions, as:

- the mosque's administrators need to make sure that the building process of Adz-Dzikra mosque is in accordance with sharia and more specifically, in-line with the community's needs.

the people who donate to Adz-Dzikra need to make sure that they give the cash donation wholeheartedly since the donation they made

will be returned seven hundred times by the Almighty.

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IJMES TRANSLITERATION SYSTEM FOR ARABIC, PERSIAN, AND TURKISH

CONSONANTS

A = Arabic, P = Persian, OT = Ottoman Turkish, MT = Modern Turkish

	A	P	OT	MT		A	P	OT	MT		A	P	OT	MT
ء	ʾ	ʾ	ʾ	—	ز	z	z	z	z	ك	k	k or g	k or ñ	k or n
ب	b	b	b	b or p	ژ	—	zh	j	j				or y	or y
پ	—	p	p	p	س	s	s	s	s				or ğ	or ğ
ت	t	t	t	t	ش	sh	sh	ş	ş	گ	—	g	g	g
ث	th	s	s	s	ص	ş	ş	ş	s	ل	l	l	l	l
ج	j	j	c	c	ض	ḍ	ẓ	ẓ	z	م	m	m	m	m
ح	—	ch	ç	ç	ط	ṭ	ṭ	ṭ	t	ن	n	n	n	n
خ	h	h	h	h	ظ	ẓ	ẓ	ẓ	z	ه	h	h	h ¹	h ¹
ك	kh	kh	h	h	ع	ʿ	ʿ	ʿ	—	و	w	v or u	v	v
د	d	d	d	d	غ	gh	gh	g or ğ	g or ğ	ي	y	y	y	y
ذ	dh	z	z	z	ف	f	f	f	f	ة	a ²			
ر	r	r	r	r	ق	q	q	q	k	ال	3			

¹ When h is not final. ² In construct state: at. ³ For the article, al- and -l-.

VOWELS

ARABIC AND PERSIAN			OTTOMAN AND MODERN TURKISH	
Long	or	اَ ā	ā	{ words of Arabic and Persian origin only
	و	ū	ū	
	ي	ī	ī	
Doubled	اَيَّ	iy (final form ī)	iy (final form ī)	
	اُوو	uww (final form ū)	uvv	
Diphthongs	اَو	au or aw	ev	
	اَي	ai or ay	ey	
Short	اَ	a	a or e	
	اِ	u	u or ü / o or ö	
	اِ	i	i or i	

For Ottoman Turkish, authors may either transliterate or use the modern Turkish orthography.