

TRANSFORMATION OF THE CONVENTIONAL WAQF SYSTEM INTO CASH WAQF USING AN ONLINE SYSTEM IN INDONESIA & MALAYSIA

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ABSTRACT

Waqf is a kind of charity whose rewards will flow even if the person who fulfills it has died. The benefits of the donated assets will still benefit the wider community, even if the waqif has died. When waqf is in the form of land and buildings, now you can donate online. Online waqf is a way of giving waqf by utilizing technology and the internet. The type given is cash waqf in the form of funds collected to build various public facilities and places of worship. Later, the funds that have been collected will be used to be distributed to charity projects and social activities that provide long-term benefits for the wider community, such as building mosques, orphanages, schools, hospitals, and so on. Distribution can be done on platforms that provide waqf facilities with payment methods via electronic transfer or online payment. So what is the law on online waqf? Most scholars believe the law is permissible. This is because in waqf, consent does not always have to be done directly. This means that the waqf remains valid, whether the consent and qabul are carried out face to face between the waqif and the nadzhir (waqf manager), or not in person. Most importantly, waqf must have a written agreement so as not to cause problems in the future. This is because waqf is long-term, even until the waqif dies. The waqf method is carried out by transferring a certain amount of funds to the waqf manager. After waqf, you will receive written evidence in the form of a waqf certificate issued by the waqf institution. Online waqf is one way of giving waqf that makes it easy for waqifs and nadzhir. Transactions can be done quickly without having to visit the waqf institution. As a result, digital waqf is said to be very economical in terms of costs and time. Apart from that, there are several advantages of doing online waqf, including: Wider Reach, More Efficient and Transparent, Ease of Choosing Waqf Programs and Wider Distribution

A. INTRODUCTION

In the Islamic economic system, cash *waqf*¹ is recognized as having a faster impact than the type of *waqf* for concrete objects, due to the

1 'Aisyah Radiah Binti Haji Gani., Perkembangan Wakaf Di Negara Brunei Darussalam, Jurnal KUPUSB. And see Al-Hadi, Abu Azam Upaya Pemberdayaan Tanah Wakaf Produktif Bagi Kesejahteraan Ummat, *Jurnal Islamica*, Vol. 4, No. 1, September 2009.

flexibility of this type of *waqf* in responding to existing environmental conditions. The effectiveness of this instrument for the economy really depends on the role of the state in its use. So that currently, careful planning is needed by the government in order to implement it in the economy, both in terms of regulatory readiness in the form of laws and institutional readiness that is integrative with other economic institutions².

Regarding cash *waqf* in Indonesia, Dr Uswatun Hasanah, Head of the Research and Development (R&D) Division of the Indonesian *Waqf* Board, stated that currently there are no longer any problems with this form of *waqf*. According to him, on May 11 2002, the Fatwa Commission of the Indonesian Ulema Council determined that "Cash *waqf* (*Waqf al-Nuqud*) is a *waqf* made by a person, group, institution or legal entity in the form of cash. Cash *waqf* is also included in the definition of securities. The law of cash *waqf* is *Jawaz* (permissible)." Cash *waqf* can only be used for things that are permissible according to sharia. Meanwhile, the principal value of cash *waqf* must be guaranteed to be preserved, it cannot be sold, given away, or inherited³.

As a productive *waqf*, cash *waqf* has many advantages in this modern era. Cash *waqf* can be an alternative investment financing in the real sector which is currently needed in Indonesia. Mustafa Edwin Nasution said that cash *waqf* has various fund mobilization instruments. Apart from that, it can expand the source base of funds significantly because the nominal amount is much lower and varied compared to *waqf* for physical assets such as land and buildings. Cash *waqf* is easy to manage and develop into a productive *waqf* because it has many alternative investment placements, both in domestic and global financial portfolios⁴.

Several important things that have been breakthroughs in the development of *waqf* since the enactment of Law Number 41 of 2004 concerning *waqf*, which was then followed by the issuance of PP Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 are (1). The formation of the Indonesian *Waqf* Board, the main objective is so that national *waqf* can progress and develop. (2). It is recognized that *waqf* for movable objects, including cash *waqf* (money). (3). Management of *waqf* assets is carried out productively so that the benefit of the community can be achieved.

The development of information and communication technology has produced the concept of *waqf* management via the internet, known as "online *waqf*". *Waqf* management using an online system is a *waqf* where transactions are carried out online (interconnecting network) by anyone and anywhere. Supervision of management and distribution can be done through website access as the institution or institution managing the *waqf*. Then the management of *waqf* of course raises new problems, namely not

2 Maharsi, Sri., Pengaruh Perkembangan Teknologi Informasi Terhadap Bidang Akuntansi Manajemen, *Jurnal Akuntansi dan Keuangan*, Vol. 2, No. 2, November 2000

3 Zainal Abidin Ahmad., *Dasar-dasar Ekonomi Islam*, Jakarta: Bulan Bintang, 1979

4 Afdawaiza., *Terbentuknya Akad dalam Hukum Perjanjian Islam*, Al Mawarid Edisi XVIII, 2008. Abu Zahrah, *Mudharat fi al-Waqf*, Beirut: Dar al-Fikr al- 'Arabi, 1971. p. 59 see to As-Syarbini, *Mughni al-Muhtaj*, Kairo: Musthafa Halabi, Juz II, tt.

meeting physically and not knowing the legal agreement, there are no witnesses, so that the process of *waqf* pledge becomes legally unclear⁵. In this article the author tries to describe cash *waqf* using an online system along with advances in technology and information that are impossible to stop and Islam as *rahmatan lil 'alamin*.

B. RESEARCH METHODS

This research is a quantitative analysis research which aims to capture the values or views represented by sharia experts and practitioners regarding the issue of digital-based cash waqf in Indonesia. The analytical tool used is the Analytical Hierarchy Process (AHP) method. The research object is the target of the research. The object of this research consists of five aspects, namely the regulator, *Nazir*, system, sharia and society aspects. The subjects in this research are experts or specialists from both academics and practitioners who practice or study the collection of cash waqf, especially online⁶. Data collection in this research was in the form of a questionnaire or questionnaire regarding the five aspects which was carried out to experts. Research design or research design is basically a strategy for obtaining data used to test hypotheses including determining the selection of subjects, where the information or data will be obtained, the techniques used to collect data, the procedures followed for collection and the treatment that will be carried out (specifically for experimental research). In this research, descriptive research is used, where descriptive research is research that attempts to describe and interpret something, for example existing conditions or relationships, developing opinions, ongoing processes, consequences or effects that occur, or ongoing trends.

C. RESULTS AND DISCUSSION

1. RUKUN AND CONDITIONS OF MONEY WAQF

Waqf is declared valid if the terms and conditions have been fulfilled. There are 4 types of pillars of *waqf* according to fiqh, namely (1) *Waqif* (the person who donates). (2) *Mauquf bih* (endowed assets). (3) *Mauquf 'alaih* (the party entrusted with the *waqf*). (4) *Shighat* or *iqrar* (statement or pledge of *waqif* as a will to donate)⁷. Meanwhile, the conditions for the validity of cash *waqf* include:

- a. *Waqf* must be eternal (eternal) and continuous.
- b. *Waqf* must be made in cash, without depending on the occurrence of an event in the future. Because the declaration of *waqf* results in the release of property rights immediately after the *waqif* declares his *waqf*. The purpose of the *waqf* must be clear, meaning that the *waqf* should be stated clearly and clearly to whom the assets are being

5 *Ibid.*

6 Budi, Iman Setya, Revitalisasi Wakaf sebagai Penggerak Ekonomi Masyarakat, *Al-Iqtishadiyah Jurnal Ekonomi Syariah dan Hukum Ekonomi Syariah*, Vol. II, No. II. June 2015

7 Yuliafitri, Indri dan Arie Indra Rivaldi., Pengaruh Penerapan Prinsip-Prinsip Good Governance dan Promosi terhadap Penerimaan Wakaf Tunai (pada Lembaga Pengelola Wakaf di Indonesia). *Jurnal InFestasi*, Vol. 13, No. 1, June 2017;

donated.

- c. *Waqf* is something that must be implemented without any conditions of *khiyar*. This means that it is permissible to cancel or continue the *waqf* that has been declared, because the *waqf* statement is valid in cash forever.

From the conditions mentioned above, there is debate among school scholars about the element of "eternity". This debate arose, especially between the Shafi'i and Hanafi schools on the one hand and the Maliki school of thought on the other. Imam Syafi'i places greater emphasis on *waqf* on fixed assets (fixed assets)⁸ and makes it a valid condition for *waqf*. Meanwhile, Imam Maliki emphasizes the meaning of "eternity" in the nature of the goods donated, both fixed assets and movable assets. Meanwhile, the pillars of *waqf* are basically in agreement as mentioned above, except for Imam Hanafi who is of the opinion that there is only one pillar of *waqf*, namely *shighat*. *Shighat* here are words that show the meaning of *waqf*. For example, someone said, "My land is donated forever to poor people."⁹

Seeing this reality, *waqf shighat* is a mistake among the ulama. Therefore, according to Islamic law rules¹⁰, the government can determine the terms of the pledge through the Minister of Religion. Compilation of Islamic Law Article 223 paragraph (4) states that the implementation of the pledge, as well as the making of the *waqf* pledge deed, is considered valid if it is attended and witnessed by at least two witnesses. This provision ensures that endowments are strengthened by evidence in the form of testimony. In terms of fiqh, this testimony can strengthen a law. In the provisions of the Shafi'i school of thought, testimony for matters relating to property requires at least one witness to be sworn in. It can also be with one man and two women¹¹.

2. Implementation Of Money *Waqf* With An Online System

Since the beginning, discussions about *waqf* have often been directed towards *waqf* for immovable objects such as land, buildings,

8 Alimuddin., Aplikasi Pembaharuan Hukum dalam Teori Socio Legal Studies, Dirjen Badan Peradilan, www.badilag.net, accessed at 26 December 2018. (IIUM Malaysia) see <https://act.id/news/detail/wakaf-tunai/uang>, accessed at March 2024 (IIUM Malaysia) and <https://wakafkuburansinergifoundation.wordpress.com/tag/pengertian-wakaf/>, accessed at March 2024 (IIUM Malaysia)

9 Nasution Mustafa Edwin dan Uswatun Hasanah (ed)., *Wakaf Tunai Inovasi Finansial Islam (Peluang dan Tantangan dalam Mewujudkan Kesejahteraan Umat)*, Jakarta: Program Studi Timur Tengah dan Islam Universitas Indonesia, 2006. page. 22. Also see Romli SA., *Muqaranah Mazahib Fil Ushul*, Jakarta : Gaya Media Pratama, 1999. page.76

10 Mohdar, Yanlua., March 2012, *Legalitas Hukum Islam dalam Hukum Nasional*, <http://yanluamohdar2010.blogspot.com>, diakses 25 Februari 2019, Selasa, 06.03 WIB Peran BWI dalam Pengembangan Wakaf Indonesia <http://sigitsoebroto.blogspot.com/2009/06/peran-bwi-Di> downloaded at 20 September 2023.

11 Dahlan, Rahmat., Faktor-faktor yang Memengaruhi Presepsi Nazhir terhadap Wakaf Uang, *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah*, Vol. 6, No. 2, 2015

trees for their fruit and wells for their water, while *waqf* for movable objects has only emerged recently. Among the movable property *waqf* that has been widely discussed recently is the *waqf* known as cash *waqf*. Cash *waqf* is translated as cash *waqf*, but if you look at the object of the *waqf*, namely money, it would be more appropriate to call cash *waqf*. Cash *Waqf* is a *waqf* made by a person, group of people, or institution or legal entity in the form of cash. The emergence of the idea of cash *waqf* is indeed surprising because it is contrary to the perception of Muslims that has been formed over many years. Cash *waqf* is not a fixed asset in the form of immovable objects such as land, but rather a current asset. The MUI defines *waqf* as "holding assets that can be utilized without the object or principal being lost, by not taking legal action against the object (selling, giving or bequeathing) to be distributed (the proceeds) to something that is *mubah* (not haram)".¹²

Even though throughout Islamic history, *waqf* has played a very important role in the development of Muslim society, we also encounter various realities that not only do *waqf* administrators show impressive progress, but also show abuses. Mismanagement often occurs. Therefore, good management strategies need to be created to achieve the objectives of establishing *waqf*. *Waqf* should be managed well and invested in various types of investments, so that the results can be used for the benefit of the community at large. The management is handed over to *Nazir*, both from the government and from the community.

There are 3 requirements for cash *waqf* management, namely professionalism, transparent and accountable. Apart from the 3 requirements that cash *waqf* managers must have, they also have the following criteria¹³:

- a. Have good access to potential *waqif* candidates.
- b. Have the ability to invest *waqf* funds.
- c. Able to distribute results/profits from *waqf* fund investments.
- d. Have the ability to record/book all matters relating to the beneficiary, for example accounts and their designation.
- e. Cash *waqf* management institutions should be trusted by the public and their performance controlled in accordance with the rules and regulations that apply to public fund management institutions.

Management of cash *waqf* with an online system uses an internet basis by a *Waqf* Center institution. In this institution cash *waqf* is managed by investing *waqf* funds for various programs, including¹⁴:

- a. *Waqf* money is a program for the benefit of the people.

12 Abdul Ghofur Al-Anshori., *Hukum dan Praktek Perwakafan di Indonesia*, Yogyakarta:Pilar Media, 2004, page. 32. Also see Achmad Djunaidi dan Thobieb Al Ansyhari., *Menuju Era Wakaf Produktif, Sebuah Upaya Progresif untuk Kesejahteraan Umat*, Jakarta: Mitra Abadi Pres, page. 76

13 Compilation of Islamic Law, Book III on Waqf. See to Muhammad bin Ahmad bin 'Umar al-Syathiri, *Syarah al-Yaqut al-Nafis*, Jeddah : Dar al-Minhaj, 2007. page.65

14 *Ibid.*

- b. *Waqf* money for the endowment fund program for mosque operations.
- c. *Waqf* money for program to establish Al-Qur'an interpretation headquarters.

In implementing cash *waqf* using an online system, it is explained by **Center *Waqf* Institution** as follows :

a. Program Selection

The program selection is intended so that the *waqif* has a choice in donating his money. This relates to the type of allocation desired by the *waqif* so that later the proceeds from the cash *waqf* are allocated in accordance with the aims and functions of the *waqf*. As explained in Law No. 41 of 2004. In the context of the objectives and functions of *waqf*, *waqf* assets can only be intended for¹⁵:

- 1)Worship facilities and activities.
- 2)Educational and health facilities and activities.
- 3)Assistance to the poor, abandoned children, orphans, student scholarships.
- 4)Progress and improvement of the people's economy, and or
- 5)Promotion of other general welfare that does not conflict with sharia and statutory regulations.

The programs to choose from include:

First, cash *waqf* program for the benefit of the people, this program is intended for the benefit of the people by focusing on five things, namely housing, education, health, economics and other social problems.

Second, cash *waqf*, mosque operational endowment fund program, this program aims to allocate funds and make mosque programs a success that are experiencing problems in terms of procuring mosque operational funds.

Third, cash *waqf* program for establishing Al-Qur'an interpretation headquarters. This program allocates cash *waqf* funds for the construction of an Al-Qur'an interpretation headquarters as a forum for guidance in understanding Al-Qur'an interpretation with land management referring to the balance between the knowledge of interpretation and the economic independence of program participants. And it aims to build a movement to understand the Qur'an nationally, increase the number of teachers who are experts in exegesis who are also given the ability to build a family economic base as capital for a prosperous survival, able to appreciate the values of the Qur'an and its guidance in everyday life. day, both personally and in social life, and to realize the insight that the Qur'an is not just a ritual guide but more than that, namely as a guide to life¹⁶.

15 *Op.cit.*

16 Hilmi, Hasbullah, "Dinamika Pengelolaan Wakaf Uang: Studi Sosio-Legal Perilaku

b. Choosing a *Waqf* Program Model

The choice of this program model only applies to cash *waqf* for the community benefit program which is divided into two things, monthly cash *waqf* for the community benefit program and cash *waqf* for the community benefit program all at once. The monthly cash *waqf* program model¹⁷ is a cash *waqf* program where payments are made regularly every month with the applicable provisions and the nominal amount of *waqf* money determined by the *waqif* with a one-time *waqf* pledge. Meanwhile, the lump sum cash *waqf* program model is a cash *waqf* program where payments are made all at once or in one payment with the applicable provisions and the nominal value of the *waqf* money determined by the *waqif*.¹⁸

1) Selecting a Bank Account

Selection of a bank account as a means of sending *waqf* money where the bank account has been established in the name of the *waqf* institution (Nazhir) in accordance with the determined amount.

2) Select Form

Filling out the form is addressed to the *waqif* as identity data for sending *waqf* money through the columns specified on the *waqf* management website (Nazhir). This data also serves as a sign of the pledge to hand over cash *waqf*.

3) Receipt of *Waqf*

After filling in the cash *waqf* willingness form and having transferred the cash *waqf* to the specified account, the *waqif* receives a receipt for the cash *waqf* by looking at the name of the *waqf* sender on the list of *waqf* names on the website.

Thus, according to the author, it can be concluded that *waqf* management must be carried out professionally by fulfilling the criteria as explained above, so that the results of the *waqf* can be optimized properly. Technically, the implementation of cash *waqf* by utilizing information technology online is easy to implement, because the *waqif* does not need to come to the relevant institution, he simply opens access to the institution and transfers the cash *waqf* to a predetermined account, just like cash *waqf* in general¹⁹. This convenience ultimately gave rise to new problems, namely the *waqif*

Pengelolaan Wakaf Uang Pasca Pemberlakuan Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf, *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 12, No. 2, 2012;

17 <http://akitiano.blogspot.com/2009/12/tata-cara-wakaf-danpendaftaran-wakaf.html>

18 *Fatwa Majelis Ulama Indonesia tentang Wakaf Uang* tertanggal 11 Mei 2002/28 Shafar 1423. Firdaus, *Fiqih Wakaf*, Direktorat Pemberdayaan Wakaf dan Direktorat Jenderal Bimbingan Masyarakat Islam Depag RI, Jakarta 2007. See to Government Regulation No. 42 of 2006 on the Implementation of Law No. 41 of 2004 on Waqf and Hamka Haq, Al-Syathibi, *Aspek Teologis Konsep Masalah dalam Kitab Al-Muwafaqat*, Jakarta: Penerbit Erlangga, 2007. page. 42

19 *Ibid.*

and nazhir not meeting physically, the legal agreement not being known, and the absence of witnesses which made the pledge process legally unclear.

3. Analysis Of Money *Waqf* With Online System

a. *Waqf* in *Muamalah*

Waqf management in Indonesia has experienced three major periods of *waqf* management, namely: The first is the traditional period where *waqf* was intended for physical development such as mosques, Islamic boarding schools and cemeteries so that the social contribution was not yet felt. The second is the semi-professional period where *waqf* is managed productively but not yet carried out optimally, for example the construction of mosques plus shop buildings and meeting halls for weddings, seminars and so on. The third is the professional period which is marked by productively empowering the community's *waqf* potential which includes aspects of management, human resources, business partnership patterns, forms of *waqf* objects which are starting to develop more, such as money, shares and other securities.²⁰

Judging from several verses of the Qur'an and the Prophet's hadith that touch on *waqf*, it seems unclear. Therefore, very few *waqf* laws are determined based on these two sources. So the teachings of *waqf* are placed in the area of *ijtihadi*, not *ta'abudi*, especially those related to management aspects, types of *waqf*, allocation requirements and so on.

Therefore, when a law (Islamic teachings) enters the area of *ijtihadi*, it is flexible, open to new interpretations, dynamic, futuristic (oriented towards the future), so that, viewed from the aspect of *waqf* teachings alone, *waqf* is a The potential is large enough to be developed according to the needs of the times. Moreover, the teachings of *waqf* are part of *muamalah*. The features of *muamalah* teachings in Islam include:

- 1) The basic principle in matters of *muamalah* is to realize the benefit of humanity, by paying attention and considering the various situations and conditions that surround humans themselves. The management of each type of *muamalah* upholds the principles of justice, honesty, helping each other, not making things difficult and like each other.
- 2) That various types of *muamalah* are legally permissible until arguments are found that prohibit it. This means. As long as there is no argument that prohibits a *muamalah* type of creation, then *muamalah* is permissible.

20 Jauhar Faradis., *Analisis Strategi Penghimpunan Wakaf Uang Tunai (Studi Kasus Badan Wakaf Uang Tunai Majelis Ulama Indonesia)*, Yogyakarta: Universitas Gajah Mada, 2010. Also see: Kharul Umam dan H.A.Ahyar Aminudin, *Ushul Fiqih II*, Bandung: Pustaka Setia, 1989. page. 66

Fiqh scholars divide the types of *muamalah* into two things, the first is the type of *muamalah* whose laws are directly designated by the text by providing certain limitations, because Allah knows that it is difficult for humans to find the ultimate truth in issues like this. Even though they know this, their desires dominate the truth. Among the *muamalah* issues that are directly determined by Allah, for example, issues of inheritance, divorce rates, *'iddah*, *khulu'*, reconciliation, the prohibition of wine, the prohibition of pork and the prohibition of usury.

The two types of *muamalah* are not directly appointed by the text, but are left entirely to the results of the *ijtihad* of the *ulama*, in accordance with the creations of experts in order to meet the needs of humanity throughout all places and times, and also in accordance with the situation and conditions of society itself. For the field of *muamalah* like this, Islamic sharia only puts forward basic rules, criteria and general principles that are in line with *maqashid as-syari'ah*, namely for the benefit of all mankind²¹.

Apart from the above, a very extensive discussion in fiqh books is about "*shighat waqf*" *Waqf* which is carried out online, of course also has *sighat*, only it is done without having to be in one assembly. *Shighat waqf* are all words, writings or gestures from people who have agreed to express their wishes and explain what they want. Like the statement of the contract agreement in the *muamalah* (transaction) which is an expression of the parties entering into the contract in the form of an agreement and a confession. "*Ijab and kabul*" represents permission (agreement) which describes the agreement and willingness of both parties regarding the rights and obligations arising from the contract²².

Shighat status (statement), in general, is one of the pillars of *waqf*. *Waqf* is invalid without *shighat*. Every *shighat* contains a consent, and may also contain a consent. However, *waqf shighat* only requires an agreement from the *waqif* without requiring a grant from the *mauquf 'alaih*. Likewise, granting is not a condition for the validity of the *waqf* and is also not a condition for the right to receive the benefits of *waqf* assets²³.

The *shighat* of the *waqf* contract, whether verbal or written, is different from the *shighat* of the contract in *muamalah*. This difference is clearly visible because the *shighat* of the *waqf* contract does not require a consent from the recipient of the *waqf*, whereas in the *shighat* of the *muamalah* contract (transaction) a consent is

21 Kasdi, Abdurrahman., Potensi Ekonomi Dalam Pengelolaan Wakaf Uang di Indonesia, *Equilibrium: Jurnal (Online)*, Vol. 2, No. 1, June 2014

22 Muhammad Syafi'i Antonio., *Bank Syari'ah sebagai Pengelola Dana Wakaf*, (paper in Workshop Internasional, "*Pemberdayaan Ekonomi Umat Melalui Wakaf Produktif*" in Wisma Haji Batam, 7-8 January 2002 see to Nasrun Haroen, *Fiqh Muamalah*, Jakarta: Gaya Media Pratama, 2000. page. 76

23 *Ibid.*

required. In the definition of a *waqf* contract, it is a *tabarru'* contract in which the transaction is carried out unilaterally and is valid as a contract that does not require a consent from the *waqf* recipient. The definition of a contract here is a form of legal act (*tasharruf*) which results in the necessity of structuring what is expressed in the will of the legal act by the interested party, even if the statement is one-sided.

The *fuqaha* scholars state that one of the conditions for a contract is that it must be carried out in one contract assembly. The place and time where the two parties are at the time of negotiations which start from the moment the consent is proposed and last as long as they remain focused on the issue of negotiating the agreement and ends with them turning away from the negotiations, this is what is called the contract assembly. As a consequence of this contract assembly theory, *khiyar qabul*, *khiyar withdrawal (khiyar ar-ruju)* and *khiyar assembly (khiyar al-majelis)* were born²⁴.

The unity of the contract should not be understood rigidly within the dimensions of space and time. On the other hand, the concept of assembly unity needs to be developed in line with the development and progress of the times. The unity of the assembly is not meant to mean the unity of place and time, because this would be difficult to apply in the realities of contemporary life, where transactions can occur through communication tools that place the parties not in the same place. However, what is meant by the unity of the contract assembly is the unity of time, not the unity of physical place, where the contracting parties still focus on the agreement being made.

Judging from the definition above, it is very clear that the *shighat* contract carried out in the sense of the unity of the assembly is a contract in the form of an agreement and a consent, because the agreement can only be part of the contract if it meets directly with the agreement. When consent and acceptance meet, a legal agreement occurs between the two parties. Meanwhile, in the *waqf* contract, which is a *tabarru'* contract, which is valid as a contract that does not require a consent from the recipient of the *waqf*, it does not require the existence of a unified assembly in the contract, because in the *waqf* contract there is no need for a consent. An agreement in the *waqf* contract will occur if the *waqf* recipient receives the *waqf* contained in the *shighat* of the *waqf waqf* contract. For example, the *waqif* donates his money and when the *waqf* recipient has received the *waqf* money, an agreement is reached in the *waqf* contract. As has been explained, *waqf* can occur when the pillars have been fulfilled. And witnesses are not a pillar or a condition of *waqf*. So a *waqf* contract that is not attended by witnesses is considered valid according to the Shari'a provided that the pillars of *waqf* are fulfilled.

Thus, according to the author, it can be concluded that a *waqf*

24 *Ibid.*

contract is valid according to the Shari'a if it fulfills the pillars and conditions of the *waqf* with the provisions that the *waqf* assets are maintained (not destroyed) after the benefits are taken and are for permissible use (not prohibited by the Shari'ah) and are intended to obtain pleasure. from Allah SWT.

b. Use of the Online System in the *Waqf* Pledge Agreement

Exploring the use of online systems in *waqf* pledges is included in the scope of discussion of Islamic legal epistemology. In this discussion, legal propositions are the basis for Islamic jurists in establishing legal provisions that are applied practically by a person or society. Therefore, to discuss the use of online systems in *waqf* pledges, we use sharia propositions, namely:

1) Nash's Theorem

Regarding the topic of discussion regarding the use of online systems in *waqf* pledges, no text from the Qur'an was found that explicitly explains this. Moreover, online systems are historical or policy products that are closely tied to the dimensions of space and time. However, if we trace the contents of the Qur'an, there are verses that implicitly indicate the need for action that leads to the benefit and public order in the form of administering a contract or at least it can be used as a basis for justifying the policy that is taking place. Among these verses is surah al-Anbiya 21: 107.

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

Wahbah al Zuhayly explained that the meaning of mercy is any action aimed at the public benefit. If Allah sent a Messenger by bringing in laws that do not bring benefit to humans, then for what?

Another verse of Surah Al Baqarah 2: 282.

The message value contained in this verse is the writing or recording of *muamalah* contracts (especially time-limited contracts). If transactions are for a certain period of time, such as debts and receivables and leases, the Qur'an recommends that they be recorded, especially for contracts that are valid for an unlimited period of time, such as *waqf*.

It is very interesting that the Koran talks about writing in a transaction when human civilization was not yet familiar with this pattern. This shows that recording a contract occupies a strategic position in the *muamalah* relationship. If there is no verse found in the Koran that explicitly explains the use of an online system in *waqf* pledge agreements, neither does the hadith discuss this matter.

From this, the understanding can be drawn that the implementation of cash *waqf* using an online system is an embodiment of the message value contained in the Koran as a means to complete transaction activities in the form of *waqf*

pledges.

2) *Al maslahah al mursalah*

The second proposition that can be used to analyze the position of using the online system in the *waqf* pledge is *al-maslahah al-mursalah*. It is a method of determining law based on universal benefit as the goal of sharia', without being based directly on the text or meaning of a particular text. If there are certain texts that support it in terms of meaning, it means it becomes *qiyas*. Meanwhile, if there is a text that textually rejects it directly, it means it is invalid. 18

Contemporary *ushul fiqh* expert, Abdul Wahab Khalab groups the propositions into two, namely: First, propositions that are *mustaqil* (independent, free and not bound by other propositions such as the Koran and Sunnah. Second, propositions that are *la yakun mustaqillan* (not independent, bound and require other propositions such as *Qiyas*, *Istihsan*, and *Maslahah Mursalah*). To explore the legal substance and position of the use of the online system in the *waqf* pledge, the argument used is the second argument which has the characteristic of *la yakun mustaqillan* because implicitly the argument that is *mustaqil* is not found.

The discussion of the use of online systems in terms of their legal character is included in the legal framework of *fiqh*, due to the absence of text arguments that clearly regulate these matters. So, to determine the law on the use of online systems, it must be through legal formulation that departs from postulates that are *dzanni al dalalah*. As formulated by Abd al-Wahab Khallaf; *Nash dzanni al dalalah* is a pronouncement that indicates a meaning, but that meaning contains possibility so that it can be interpreted and turned away from that meaning to another meaning.

From this definition, it can be understood that a *dzanni* verse contains more than one meaning, making it possible to interpret it. Because this law results from a process of *ijtihad* which departs from the *dzanni* text, the results are uncertain, relative, not permanent and change or change. The laws in this category are the field of *ijtihad*.

Apart from that, the implications of the laws that occur boil down to the agreement that all laws established by Allah contain benefits, as stated by Al Syatibi that the main aim of enshrining Islamic law for humans is the realization of benefits both worldly and spiritual.

The benefit in question must always be in line with *maqshid al tasyri'* (the will of syara') in relation to the five basic maintenance (*mabadi al khamsah*) namely maintenance of religion, soul, mind, lineage and property, which according to Ibnu Al Subkhi adds one more namely maintaining honor (*hifdzu al*

'iradi). This is the emphasis on the correlation between *maqashid al tasyri'* and the *maslahah* element. To realize the maintenance of these five basic elements, the ulama divided them into categories, namely, *Al maslahah al dlaruriyyah*, *Al maslahah al hajiyah* and *Al maslahah al tahsiniyyah*.

Meanwhile, Jumhur Ulama is of the opinion that *al maslahah al mursalah* can be a proof of *syara'* in the development of law, with various considerations:

- a) The benefits that humans need are always developing and unlimited, so that if the law does not develop along with the development of benefits and is only based on the benefits that are explained by the sharia, then many human benefits will be neglected.
- b) The establishment of *al maslahah al mursalah* as the basis of law is a historical reality of Islamic law which has been practiced by friends, *tabi'in* and *mujtahid* imams. For example, the bookkeeping of the Al-Quran manuscripts was carried out by Abu Bakr, which rules are not contained in the Sharia texts. Likewise, Umar bin Khattab's friend did not enforce the law of cutting off the hand of thieves during the lean season. Shafi'iyah scholars also rely on the *maslahah mursalah* when requiring the law of *qishos* in cases of murder committed by a group of people with one person being the victim. All of these are examples of legal enactments based on *maslahah mursalah* that have been carried out by friends and *tabi'in*.

However, to avoid misuse of legal provisions based on *al maslahah al mursalah*, several conditions have been stipulated:

- a) The problem must be genuine, not an estimate or conjecture, so that the determination of it really brings benefits and avoids harm.
- b) *Maslahah* must be general and comprehensive, not specific to certain people and not specific to a small number of people.
- c) *Maslahah* must be in line with the objectives of the laws aimed at by *syar'i*.
- d) *Maslahah* is not an incorrect *maslahah*, where existing texts do not confirm it, and do not consider it wrong.

Henceforth, in the present era, the development of law that is based on the problem becomes urgent and pressing because human benefit continues to develop and change according to developments in time and conditions. So that the determination of laws based on *maslahah* results in various possibilities; First, one day it can bring benefits to humans. Both at the same time create benefits in certain conditions and bring difficulties in other conditions. And if in certain conditions it is found that there are benefits that contain harm or vice versa, then the guideline is which one has greater benefits (*al amru al a'dham*).

Starting from the existence of a legal vacuum that explains the position of the use of online systems in *waqf* and the urgency of the problem which may result in harm to society, then using a benefit approach, it can be said that the use of online systems in *waqf* is an issue that contains the value of *al maslahah al hajiyyat*. Because the implications of using an online system are needed by someone to make it easier for them to live their lives and eliminate difficulties or hardships in order to donate their money for religious purposes and the public benefit.

D. CONCLUSION

This is a description of cash *waqf* using an online system, which is a legal breakthrough and is much needed by Muslims in Indonesia. Technology and information are so fast, fast and impossible to avoid, Muslims should look for solutions in distributing their *waqf*, without having to be trapped and trapped by the entrenched traditional system. Muslims must respond to this according to the needs and developments of the times so that people who want to donate their assets are not shackled, but can simply do so by accessing the website and transferring via a bank account appointed by the *waqf* manager. *Waqifs* no longer need to bother coming to the *waqf* institution's office. This is based on *al maslahah al mursalah* as a legal basis, the aim of which is in line with *maqasid* as *syari'ah*. May Allah SWT be pleased with our struggle.

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