The Instinbāth of Money Waqf Based on the Perspective of Imam Al-Shaāfi'y

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Abstract: The legality of the waqf practice is from the Qur'an and the Hadith, hence the existence of waqf practice as one of the recommended actions (circumcision) in Islam has been agreed upon and not to be the issue contested by the Fuqahā. Al-Shaāfi'y shares the forms of giving to three kinds which can be done while still alive and after his death. One of them is the gift given in the lifetime that can occur without needing to qabadh (act of acceptance) or qabuildari the recipient. It is this gift which is then called or termed al-Shaāfi'y as "al-Shadaqāt al-Muharamātal-Mawqūfah" (gift in the form of waqf).

Keywords: Instinbāth; money; waqf; property

I. INTRODUCTION

The source of waqf law when examined in depth can be ascertained essentially referring to a number of legal arguments that exist in the details of the Islamic legal arguments, whether consisting of "al-Adillah al-Muttafaq 'Alaih, or from" al-Adillah al- Mukhktalāf". Among the main sources of reference of the teachings of waqf which are often found in the Jurisprudence literature according to some fuqahā is the Qur'an, and the hadiths, although the Qur'an does not mention the waqf as firmly as zakat, but according to the fuqahā there are several verses of the Qur'an which contains waqf gestures, such as the following details:

Suratul-Baqarah verse: 215.

سَالُوْتُكَ مَا يُنفِيُّونَ ۛ فَلَمَّا أنَّ الْفَضَّلَ مِنْ خَيْرٍ فَلَوْلأَنْ أَفْضَلَلَ بِهِ رَحْمَتُ اللَّهِ عَلَيْهِمْ

Meaning: "They ask you what they will earn, answer: what you give to your mother, father, orphan, poor, and those who are in the streets, and what policies do you do, then surely Allah is all knowing ". (al-Baqarah [1]: 215)

(2) Suratul-Baqarah verse: 254.

يَبْقِيَ الَّذِينَ أَمَنَّا أوُلِّدُوا مَا رَزَقْنَاهُمْ مِنْ قَبْلُ أَنْ يُؤْمِنُوا بِهِمْ لَا يَبْنُوْنَ ل寒冬َرةَ وَلَا شَفَاعةَ وَالَّذِينَ حَمَالُونَ مَنْ طَالِبُونَ

Meaning: people of faith believe and spend a portion of the provision that we have given unto you before that day comes that day there shall be no more trade and no friendship any more, and there is no more intercession and that heathen is the dhimim.". (al-Baqarah [1]: 254)

So far, the legality of the waqf practice is from the Qur'an and the Hadith, hence the existence of waqf practice as one of the recommended actions (circumcision) in Islam has been agreed upon and not to be the issue contested by the Fuqahā. In the book al-Furūq al-Lughawiyah the word al-Asl (from Arabic) details its meaning with two different editorials: first "Ma Kana 'Alayhi Mu'tamidah" (something which is used as a handle), the second "MaBudi" a Minh (something that is used as a basis or capital), then when exemplified by al-Asl in human beings can mean land "because of the basic creation of man from the ground.

II. THEORETICAL REVIEW

To find an understanding in the discussion of waqf, what is commonly encountered is the definition of the word or phrase "waqf" itself, which comes from the Arabic language, "al-Waqq" (not often encountered the notion of cash waqf), so if the discussion is about the meaning of waqf, of course its existence is no longer alien and often found in a number of books and books of jurisprudence. Even by the fuqahā in explaining the
lafadh's understanding embraces the linguistic aspect and is consistent with their respective perspectives. However, although the often-found divine study is in the phrase "wakaf" alone, it implicitly retains its relationship to the notion of "cash waqf". This is related because the cash is what it plays as one of the elements of waqf (allowing or objects that are represented). Therefore, the following before the author discusses the meaning of cash waqf first discuss a little understanding of waqf that is commonly understood community, as follows.

The meaning of waqaf originating from Arabic (al-Waqa) is not a cash waqf) according to the language in a number of literature of the Jurisprudence books such as al-'Aziz, Mughni al-Muhtaj, Tuhaf al-Muhtaj, al-Muhalla, the book explains that the meaning of al-Waqa in lughat (language) is taken from the Arabic language, namely: the muqāf (detained or immovable), because the main subject of the study is on the substance of waqf (the provisions of waqf) which can be understood through the study of waqf definition which is termiyah. The definition of waqf according to the definition of waqf there is a diversity form of formulation definition proposed by the fuqahā', differences in the definition of al-Waqf definition is certainly influenced by the difference of way of view of the rules or rules and rules on the practice waqaf. The details of the understanding of al-Waqa are:

Muhammad Syarbaini (one of the Shafiiyah scholars) defines waqf as:

"Withholding property that allows benefits to it, as well as its eternal substance (not vanishing after it has been used) by not taking legal action on it (not selling, giving or bequeathing), to distribute its benefits to existing and allowed places (targets) Islam".

The above understanding implies that the wealth of wafis separated from the control of waqf (wafq), and the waqf property must be eternal after being utilized, and the target of its utilization should be utilized on something that is allowed by the Religion. In the Hanafiyyah clan waqaf scholars interpreted: "Withholding objects whose status still belongs to the waktf (wafq), whilst the wherewithal is a benefit for good both now and in the future". Based on the definition of this waqf, the ownership of waqf property cannot be separated from waqf (wafq), even the waqf justified pull it back and may sell it. So the essence of waqf here is just "donate the benefits only". In the school of scholars Malikiyyah waqf interpreted: "Make the benefits of objects owned, whether in the form of rent or the results to be submitted to the rightful person, by submitting a term in accordance with the will of the waqf". With the catalan the waqf (waqf) holds the object from the use of ownership, but permits the utilization of its result for a good cause, but the benefit of the material is naturally present while it becomes the possession of the wāqif. The law according to Maliki is a certain force, and therefore it is not permissible to be an eternal waqf (forever).

The notion of cash waqf, referring to the Arabic Language Dictionary is termed al-nuqūd as plural of the root meaning cash or cash. Furthermore, in the lafadh "cash waqf" or also known as the popular term today "cashwaqf", although the term is also a form of translation into the Indonesian language from the basic source of Arabic (waqf al-nuqūd), but shows the difference because consists of two syllables "waqf" and "cash" (al-waqf and al-nuqūd). Side gap differences in the use of a term will influence the form or description of the explanation of the meaning in accordance with the object of understanding of the term. So the following is the understanding of cash waqf as we see the Department of Religion's explanation that defining cash waqf is: "waqf carried out by a person, group of people, and legal entity or institution in the form of cash". From the description of the meaning of "cash waqf" it can be seen from the side of the difference with the meaning of "waqf". This means that when compared with the meaning of "waqf" there is a difference in the scope of understanding its scope (cash waqf), and also it is limited to the mawqūf aspect of describing the material of waqf in cash only. While in the definition of "waqf" the mawqūf aspect is not limited to cash only. Furthermore, if it is based on the definition of cash waqf, the meaningful understanding of the definition will be limited to cash only (not including other securities). More - moreover if it is based on tracing the basic notions of cash itself, namely: "a legal instrument of exchange or a standard of value (unit of calculation) that is valid, made of paper, gold, silver, metal printed by the government of a country".

III. METHODS OF THE RESEARCH

3.1 Types of Research Data

This research is a legal waqf fatwa research study, which collaborated between the study of fiqh and jurisprudence. The targets of the study are: First against the source of the law (the legal argument for the money waqaf jurisprudence), where the arguments serve as an object for the instinbath lawwaqf money both the perspective of Imam al-Shafi’i and Imam Abu Hanifah with their respective ijthad patterns. Both lead to the provisions of the binding waqf (fiqh substance consisting of conditions and get along).

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Therefore, this study is related to three aspects, namely:

1. **Ushul aspect**
   
   Jurisprudence which examines the source of wakaf law which has been agreed by the scholars of the Jurisprudence (al-Adillah al-Muttafaq ‘Ailaī) in the form of the Qur’an, Hadith, ijmak, Qiyas. Maupun arguments that are still disputed (al- Adillah al-Mukhtkalālī) such as al-‘Urf, al-Istihsān, al-Maslahah, Sadal-Dzāriʿyah and others, which serve as the object of Istidlāldan Instinbāth in declaring the money waqf law.

2. **Aspects of Jurisprudence**
   It includes the terms of terms and pillars of waqf of course also reviewed the perspective of Imam al-Shafiʿi'maupun Imam Abu Hanifah. The type is an Instinbāth comparative study and the provisions of the endowment waqf of Imam al-Shafiʿi'maupun Imam Abu Hanifah, which aims to discover the similarities and differences of the concept of idāq, instinbāth and the substance of jurisprudence of waqf. So considering the object of this study is the collaboration of the intersection between instinbāth law on the argument or its source with its legal consequences, this research is a literature study (Library Research) conducted by studying the literature of books and books relating to the pattern Istidlāl, Istinbath against the jurisprudence of fiqh and fiqh substance. So this study is a qualitative descriptive research using Bayani Comparative analysis method.

3.2 **Subject or Theme**

   The subject of research is a special literature on the concepts of Instinbāth (the excavation of waqf money based on its source), for the birth of a provision of jurisprudence laws and its substance in terms of terms, pillars and other provisions. The sources of law or postulate that serve as the subject of research on Istidlāldan Instinbāth of money waqf law among others is the Qur’an as Suratal-Baqarah verse: 215., verse: 254., hadith narrated by Bukhari from Ibn Umar RA, Al-Ijma ’al-‘Istihsan, al-Mashlahah al-Mursalah, and al-‘Urf. Thus the formalization of the waqf money law passes through the path of Istidlāl, which is the selection and selection stage of the proposed proposition to be the source of the money waqf law, and the Instinbāth (excavation of waqf money based on its source).

3.3 **Data Sources**

   Sources of data used in this study as based on the subject of this study is the literature describing the pattern Istidlāl and instinbāth lwaz waqf money according to Imam al-Shafiʿī and Imam Abu Hanifah and its implications to the MUI fatwa about money waqf. Therefore the primary data source and secondary data that the author uses as a reference in this study can be detailed as follows

a. **Primary Data**


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b. Secondary Data


3.4 Techniques of Analysis Data

After the collection of library data regarding the workings of Imam al-Shafi‘i, Imam Abu Hanifa concerning the pattern or method of Is tidqildan Instinbath of the law of money waqf, will then be processed and analyzed using the UshulFiqh approach through reasoning of al-Ta'iliiyah, Bayaniyah, or loghawiyyah and istishlahiyah childbirth and set law money waqf. Approach-Ta'iliiyahini is an important part in the discovery of Shari‘ah’s law, because this method is an attempt to find a law in a case where there is no legal text, where the existing legal text is expanded in scope so that it can cover cases with no legal text (nasnyah). The approach-bayan analysis includes the notions of al-tabayun and al-Tabyin: namely the process of seeking clarity (al-Dhuhr) and giving an explanation (al-Izhär); understanding (al-fahm) and understanding communication (al-ifhám); the acquisition of meaning (al-talaqqi) and the delivery of meaning (al-Talífgh). In the development of the law which is also known as the term hermeneutic which means interpreting, interpreting or translating and also acting as an interpreter.

IV. DISCUSSION

In the sub-chapter of this discussion, it will be explained about the substance of the fiqih (the results of ijihad al-Syafi‘y) by focusing more on the understanding and law of money waqaf. The details of the explanation are as follows:

4.1 Definition of money waqf

Concerning the notion of endowment waqf Imam al-Shafi‘i’s before it was further developed by his followers (the Fuqahā‘-Shafi‘yyah), can be seen in the book al-Um. Al-Shafi‘y shares the forms of giving to three kinds which can be done while still alive and after his death. One of them is the gift given in the lifetime that can occur without needing to qabadh (act of acceptance) or qabūldari the recipient. It is this gift which is then called or termed al-Sha’fi‘y as "al-Shadaqāt al-Muharramātal-Mawqūfah" (gift in the form of waqf). The details of the explanation as written in the book al-Um are as follows:

الإيضاح

الصدقات الحرّة والمحفظات، هو العبءة التي تحتضنها المُعطى، وهو مَعْطى، نأشقه المطلوب، مما يكون خليقاً للمُعطى. آل الشافعی: "الصدقات الحرّة والمحفظات. إسْرَاعَةَ الدَّخُولِ والعَيْلَةِ".

Meaning: "Withholding property that allows benefits to it, as well as its eternal substance (not disappearing at all) by no longer carrying out legal actions muamalah to him (not being sold and others), for the benefit to be distributed to the existing place (target) allowed Religion.

In connection with the definition of waqf mentioned above, if observed is the one which becomes jāmi‘ (the generality of it) is found in lafadhmāl (all kinds of forms of property) which have value in the view of religion. Whereas the māni ‘element (the scope of its scope) is contained in the sentence (lafadhayumkinu al-intifā’ ma’a baqā‘), that is, although the type of waqf property can vary in form, it must have the following characteristics: it can be useful, the second remains essentially after exploited (eternal ‘her). Thus, technically the two definitions clearly appear to fulfill the conditions for the formation of a diagnostic formula for a problem. Furthermore, according to the writer's opinion, there is another object of study (which is conceived by the definition of waqf), which must also be investigated in order to find the substance of the discussion of waqf which has to do with the study of cash waqf. Basically when observed intact on the whole understanding, there are four basic elements that are often termed waqf. This explanation the author understands from the explanation explained by Jalaluddin al-Mahalli quotes in
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Qalyūbī wa ‘amīrah as below: According to Jalaludin al-Mahalli, waqf should consist of four main elements, namely: wāqif (muqūf), mawqūf 'ala’ih (wakaf targets), and waqf (waqf editors) " Among the four elements, in the mawqūf aspect (the waqf material in the aforementioned waqf definition "māl yumkin al intifā ‘") is the focus of the study here, this is because the mawqūf object is closely related to the study of cash waqf (which also as one of the mawqūf). So the point here is that the understanding of waqf according to Sya’ī’iyah is also one of the reasons or reasons, more likely that the teachings of waqf in Indonesia are understood by the public in fixed property such as buildings of mosques, schools, pesantren and others. While the teachings of waqf on moving objects such as cash or other securities, understood from that sense that the Shafi’iyyah scholars view cannot be eternal when used. Basing on the meaning of waqf also for example ulama al-Shaf‘iyyah set one of the conditions that must exist in mawqūf (waqf objects) is "baqā‘ī‘a‘in‘iha" (can be guaranteed wholeness of substance or object after exploited). Also according to Sya’ī’iyyah scholars the waqf object must be "dawā‘m al-intifī‘" (durable). So mawqūf is required to be a thing that has an eternal element because it also sees the essence of the self, or the integrity of the object can be assured after its utilization.

4.2 Waqf Money Law

Legality of money waqf law according to al-Shaf‘ī’ is not permissible, because it violates the essence of the meaning of al-Habsudan the muamalah waqf contract, which focuses on the existence of two main points, namely:

a. Require the existence of forgiveness ownership from all tigers actions of mua’amanah. This is as explained by al-Shaf‘i in his book al-Umm, which is as follows:

“إِنْ أَنْفَكَ مَالًا مَّنْ مَنْ تَذَكُّرُ وَهُدْيُهُ مُحْيِي، وَلَا أَنْ يَرِجُعَ هِيَا بَحْرًا

Al-Shaf‘i said: "The detention of wealth (al-Habsu) is to release a treasure from possession, by making it a" makhbūs "treasure (no longer owned by its owner, therefore no longer to be traded, and should not be recalled in any way. A similar explanation is expressed by the followers of al-Shaf‘i embodied in the book of Fath al-Qadīr:

وَإِذَا صَحَّ الْوَقْفَ (أَيْ أَذْرَمْ) خَرَجَ عَنْ مَلْكِ الْوَقْفَ، وَلَنَأَنْ يَنْبَغِيُّ مَرْحُومٍ خَرَجَ عَنْ مَلْكِ الْوَقْفَ، وَلَا مَلَّك

... لا يَمْكُنُ مِنَ الْبَيعِ

"If the waqf has taken place or the viewpoint is valid (the aqad is luzūm), then it can eliminate its ownership status from the waqf, and the effect of the luzūmal-’aqd is the first Mawqīf (the represented object) will be lost from endowments; furthermore the loss of ownership is definitely a waqf or anyone else no longer has the right on the waqf ‘s bar to sell it or in the form of any other muamalan.

b. Require the object to be makhbūs(no longer sold, grabbed and worn). So the essence of the meaning of the makhbūs treasures is to want to the condition of something the treasure must have the elements of eternity ‘a‘in it, which is not extinct after the results or benefits are taken. While money is defined as any commonly accepted means of exchange. The exchange instrument can be any object that can be accepted by everyone in the community in the process of exchange of goods and services, so when viewed from the basis of the creation of money, or if formerly called dirhams and dinar is with a basic purpose in order to be utilized as a medium of exchange in the transaction society. Then money must not be represented because when using it by exchanging can eliminate the ‘a‘in’. Something that is lost is essentially after quoting the results that the benefits are illegally represented. This is as explained by al-Shaf‘i.

ّبَلْ لَا يَمْكُنُ مِنَ الْبَيعِ إِلاَّ بِالْبِلَاءِ، وَإِذَا أَنْفَكَ مَالًا مَّنْ مَنْ تَذَكُّرُ وَهُدْيُهُ مُحْيِي، وَلَا أَنْ يَرِجُعَ هِيَا بَحْرًا

Al-Shaf‘i said: it is not permissible to endorse dinar and dirham currencies, and everything that can be used only by exchanging ‘a‘in is like the use of dinars and dirhams by means of trading which can automatically eliminate ‘a‘in it. So basically money in the view of Shaf‘iyyah should not be represented. The reason is because "mā lā yantafi‘u ‘illā bi al-ilīf al-yashih al-waqf" (something that is destroyed by after it is used may not be represented) and money will be lost or destroyed (the substance ‘a‘in) after being used like food. A similar explanation is also made by the followers of al-Shafi’i in the book of Raudhah al-Thālibīnkarya al-Nawawi, Kitab al-‘Azīz by al-Rāfī’i, kitabal-Hawi al-Kabīr, al-Mawardi detailing it as follows:

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It is not permissible to donate money (a substitute for the price of a lost waqf), but it is required to replace another waqf that is similar to that of a lost waqf, in order to preserve and maintain the basic intent or purpose of a prophet who expects the reward produced can be continuous and forever, as long as the waqf object is still intact and utilized by mawqūf. Muhammad al-Ramlī compares with the case examples in the pawn. 'If one day a hock item is lost in the hands of a murtahin (the recipient of a pawn), then the murtahin can replace the mortgage with the currency, and the money has been legitimately replaced by the missing pawn item with no need to repeat the editorial agreement'.

V. CONCLUSION

It is different from the law with mawqūf (waqf goods) which, if lost, the money cannot be used as a substitute for a lost waqf object, and there must be a new waqf editor in order to reaffirm after a replacement meets the requirements. Muhammad Syarbaini's explanation is almost similar: 'If a hock item has been lost and the murtahin has received a change of money, then the money is valid as a mortgage without going through a new contract, (the money can be returned to the rahin or Unlike the case of waqf when his mawqūf is lost or destroyed is replaced with money, he is invalid and there should be a new waqf editorial). The side of the difference that requires 'the new aqād is a currency may be used as mortgages, whereas in the rules of money representation it is not permissible to be placed as waqf (mawqūf) goods'. Ibn Hajr al-Haitamī also explained: 'It's just that it is required on the lost waqf objects to be replaced with other similar waqf objects, because illegitimate money is represented. In addition, The pattern of instinbāth Imam Al-Shafi'i is: first instinbāth al-Lajfhiy in which Al-Shafi'i understands to the existence of a suggestion that is circumcised in performing al-Shadaqātal-Mawqūfah (waqf), through (laṣf al-ibāḥah) which Ibn Umar. both instinbāth al-Ma‘āny, through the approach of Isyārah al-Nāsh, dilālah al-Nāsh, and Iqtiḍāh ‘al-Nāsh (analysis of meaning) which shows to his luṣūm aqād mawqūmah waqf (eliminating the status of ownership and rights tasharruf or his muamalah action is a bare that has been in the endowment, on this basis then the cash is not allowed to be represented).

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