

The Instinbāth of Money Waqf Based on the Perspective of Imam Al-Shāfi'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-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).

Keywords: Instinbāth; money; waqf; property

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I. INTRODUCTION

The source of wakaf 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-Mukhtalāf". 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 fuqahāter there are several verses of the Qur'an which contains waqf gestures, such as the following details:

Suratal-Baqarah verse: 215.

سَأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلَّوَالِدَيْنِ وَالْأَقْرَبِينَ وَالْيَتَامَىٰ وَالْمَسْكِينِ
وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

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) Surat al-Baqarah verse: 254.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِمَّا رَزَقْنَاكُمْ مِنْ قَبْلِ أَنْ يَأْتِيَكُمْ يَوْمٌ لَا بَيْعَ فِيهِ وَلَا خُلَّةٌ وَلَا شَفَاعَةٌ وَالْكَافِرُونَ هُمُ الظَّالِمُونَ.

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-Ashl* (from Arabic) details its meaning with two different editorials: first "Ma Kana 'Alayhi Mu'tamiduh" (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-Ashl 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-Waqf" (not often encountered the notion of cash waqf). so if the discussion is about the meaning of wakaf al-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 devine study is in the phrase "*wakqf*" alone, it implicitly retains its relationship to the notion of "cash *waqf*". This is related because the cash is he plays as one of the elements of *waqf* (*al-mawqūf* 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 wakaf originating from Arabic (*al-Waqf* "is not a cash *waqf*") according to the language in a number of literature of the Jurisprudence books such as al-'Azīz, Mughni al-Muhtaj, *Tuhfah al-Muhtaj*, *al-Muhalla*, the book explains that the meaning of *al-Waqf* in lughat (language) is taken from the Arabic language, namely: الحبس (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 *termy* 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 wakaf itself. The details of the understanding of al-Waqf are:

Muhammad Syarbaini (one of the *Shafi'iyyah* scholars) defines *waqf* as:

حبس مال يمكن الانتفاع به مع بقاء عينه بقطع التصرف فرفقته علم مصرف مباح موجود¹

"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 *waqfis* separated from the control of *waqf* (*waqf*), 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 wakaf scholars interpreted: "Withholding objects whose status still belongs to the *wakf* (waqf), 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* (*wāqif*), even the *wāqif* 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 *catalan the waqf* (*wāqif*) 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 "cash *waqf*", 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 wakaf jurisprudence), where the arguments serve as an object for the *instinbāth* law *waqf* money both the perspective of Imam *al-Shafi'ima* and Imam *Abu Hanifah* with their respective *ijtihad* patterns. Both lead to the provisions of the binding *waqf* (*fiqh* substance consisting of conditions and get along).

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 'Alaih*) in the form of the Qur'an, Hadith, ijmak, Qiyas. Maupun arguments that are still disputed (*al- Adillah al-Mukhkatalāf*) such as *al-'Urf*, *al-Istihsān*, *al-Maslahah*, *Sadal-Dzāri'yah* and others, which serve as the object of *Istidlālan Instinbāth* in declaring the money waqf law.

2. Aspects of Jurisprudence

It includes the terms and pillars of waqf of course also reviewed the perspective of Imam al-Shafi'imaupun Imam Abu Hanifah. The type is an *Instinbāth* comparative study and the provisions of the endowment waqf of Imam al-Shafi'ima and Imam Abu Hanifa, which aims to discover the similarities and differences of the concept of *idiql*, *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 *Istidlālan 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 Izaw waqf* money according to Imam *al-Shafi'I* 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

Primary data is data directly related to the proposition or source of law, and related to the *Istidlāl and Instinbath* methods of law both the perspective of Imam *al-Shafi'i*, Imam Abu Hanifa and MUI. Books and books as their primary data are as follows: *Al-Umm*, Juz: VII, *Al-Um*, Juz: VMuhammad Bin Idris al-Shafi'y; Book of *Al-Risālah* by Muhammad Bin Idris al-Shafi'y; Book of *Mukhtashar al-Muzany Fi Furū'i al-Shafi*, *iyah*, reef of the senior disciple of *al-Shafi'y* that Ismail bin Yahya *al-Muzani*; Book of *Mukhtashar al-Buwaythiy rock Joseph Yusuf ibn Yahya al-Buwaythi*; The primary data from the perspective of Imam Abu Hanifa is like: the book of *Al-Hidāyah Syarh Bidāyah al-Mubtadī coral from Imam Abu Hanifah's senior muslim Abi Hasan'Ali Ibn Abi Bakar la-Margyanānī al-Hanfi*; *Book of Al-Mabsūth*, Juz: 12 articles from *Shaykh Shamsuddi al-Syarkhashi*; *Book of Fath al-Qadīr*, Juz: VI, by *Kamāluddin Ibn al-Hammāmal-Hanafi*; *Kitab al-Mukhtār al-Syarh al-Tanwir al-Abshār*, essay from *Muhammad 'Ala al-Din Ibn' Ali*; *Kitab al-Bahrur al-Ra'iq Syarh Kanzu al-Daqā'iq*, Juz V, by *Ibn Najim Al-Mishri Al-Hanafi*, and others. While the references from the science of *usulullah* are like: *Kitab al-Muwāfaqat Fi Ushul al-Ahkam*, Juz. II, by *Abu Ishaq Bin Ibrahim al-Syathibi.*, *Al-Risalah* by *Muhammad bin Idris al-Syafi'i.*, *The Book of Ushulal-Fiqh al-Islam*, Juz. II, by *Wahbah Zuhaili*, *Book of Fatwa of Majelis Ulama*, Ministry of Religious Affairs (Direktarot General of Islamic Community Guidance and Hajj Implementation), *Fatwa-Fatwa Book of Indonesian Council of Ulama: A Study of Indonesian Islamic Law Thought*, INIS XVII Series, by *Mohammad Atho Mundzhar.*, *Law of waqf in Indonesia*, written by *Abdul Halim.*, *Book of Certificate of Endowment Cash of Islamic Financial Instrument Innovation*, by *MA Mannan.*, *The Book of Al-'Aziz* by *Abdul Karim Bin Muhammad Bin Abdul Karim al-Rāfi'iy*, *Kitabal-Majmu 'by Mahyiddin al-Nawawy*, *Book of Tuhfah al-Muhtaj*, by *Ibnu Hajar AL-Haitamy*, *Raudhah al-Thalibīnwa 'Umdahal-Mufīn*, the work of *Imam al-Nawawy*, *Mughnī al-Muhtaj*, the work of *Muhammad KhatibSyarbaini*, and others.

b. Secondary Data

As a supporting data source of this research, the Strategy Book for the Development of Cash Waqf in Indonesia, Ed: Fourth Revision, (Directorate of *waqf*Empowerment) Ministry of Religion of the Republic of Indonesia. Islam: A Method of the Law and Purpose of Islamic Law and Methods of Testing Its Truth in the Islamic Legal System According to *Ibnu Taymiah*, written by *Juhaya S. Praja*, and others.

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 *Istidlāldan Instinbāth* of the law of money *waqf*, will then be processed and analyzed using the UshulFiqh approach through reasoning of *al-Ta'līyah*, *Bayaniyah*, or *loghawiyah* and *istishlahiyah* childbirth and set law money *waqf*. Approach-*Ta'līyahini* is an important part in the discovery of *Shār'iah'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 (*nasnya*). The approach-bayan analysis includes the notions of *al-tabayun* and *al-Tabyīn*: namely the process of seeking clarity (*al-Dhuhr*) and giving an explanation (*al-Izhār*); understanding (*al-fahm*) and understanding communication (*al-ifhām*); the acquisition of meaning (*al-talaqqi*) and the delivery of meaning (*al-Tablīgh*). 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 fiqh (the results of *ijtihad al-Syafi'y*) by focusing more on the understanding and law of money *waqf*. 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 Fuqahāal-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:

قال الشافعي:

الصدقات المحرّمة ما لم يوفّات، هو العطية التي تنتمى كمالاً لمُعطيها ونأنيق قبضها المُعطى، التما كما إذا أخرجها الكلام من المُعطي لها جائزة اعلماً أعطى، لم يكن للمُعطي أن يملك ما خرج منها في الكلام ميو جها أبداً.

Al-Shafi'y said: "al-Shadaqāt al-Muharramātal-Mawqūfah is a gift contained *luzūm* contract (does not require to *qabadh* (acts of acceptance or *qabūlof* of the recipients), where after saying it, lost its ownership status and no longer allowed the giver to pull it back in any way for ever ". From the explanation above, in the opinion of the author, it can be described implicitly as an accurate deviation of the essence of the practice of endowments. This is because the definition is destroyed in the *istinbātal-Shāfi'y* basis which in principle must contain the essential messages of the *waqf* itself, namely: first the existence of the *luzūm* contract (without the need for the *qabūl* acceptance of the *waqf* recipient or *mawqūf 'alaih*); Both grant of *waqf* can remove the ownership status from the *waqf*, and cannot recall it as:

حيثما لم يكن الانتفاع بهم معبقاء عينه يقطع التصرف فغير قبته علم مصر فمباح موجود

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 (*lafadhyumkinu al-intifā' ma'a baqāi*), 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* that 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

Qalyūbi wa 'amīrah as below: According to Jalaludin al-Mahalli, waqf should consist of four main elements, namely: wāqif (muqūf), mawqūf 'alaih (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 Syafi'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'iyah scholars view cannot be eternal when used. Basing on the meaning of waqf also for example ulama al-Shafi'yyah set one of the conditions that must exist in mawqūf (waqf objects) is "baqā'ainiha" (can be guaranteed wholeness of substance or object after exploited). Also according to Syafi'iyah scholars the waqf object must be "dawām al-intifā "" (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-Shāfi'y 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'amalah. This is as explained by *al-Shafi'in* in his book *al-Umm*, which is as follows:

قال الشافعي: حبس أصل المال أن يخرج مالك المال من ملكه بالشرط إلى أن يصير المال محبوساً، لا يكون لمالكه يبيعه، ولا أن يرجع إليه بحال²

Al-Shafi'y said: "The detention of wealth (*al-Habsu*) is to release a treasure from possession, by making it a " *mahbūs* "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-Shafi'y embodied in the book of Fath al-Qadīr:

وإذا صحَّ الوقف (أى لزم) خرج عن ملك الواقف، ولأنه بلزوم خرج عن ملك الواقف، وبلا ملك لا يتمكّن من البيع³

"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 *Mawqūf* (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 *mahbūs*(no longer sold, grabbed and worn). So the essence of the meaning of the *mahbūs* treasures is to want to the condition of something the treasure must have the elements of eternity 'ain 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 'ain'. Something that is lost is essentially after quoting the results that the benefits are illegally represented. This is as explained by al-Shafi'y.

قال الشافعي: ولا يجوز أن تحبس الدنانير والدراهم، وكلّ مالم يكن فيه منفعة بعلة إلا بإتقلاب عينه مثل الدنانير والدراهم لا يكون لها منفعة إلا بأجارة، وإذا إتجر بها انقلب عينها⁴.

Al-Shafi'y said: it is not permissible to endorse *dinar* and *dirham* currencies, and everything that can be used only by exchanging 'ain' is like the use of *dinars* and *dirhams* by means of trading which can automatically eliminate 'ain it. So basically money in the view of *Shafi'iyah* should not be represented. The reason is because "*mā lā yantafi'u illā bi al-itlāf la 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 'ain') after being used like food. A similar explanation is also made by the followers of al-Shafi'id in the book of *Raudhah al-Thālibīnkarya al-Nawawi, Kitāb al-'Azīz by al-Rāfi'i, kitābal-Hawī al-Kabīr, al-Mawardi* detailing it as follows:

⁵Meaning: "dirham and dinar must not be represented because they وقف الدرهم والدنانير لايجوز وقفها لإستهلاكها، فكان كاطعام. Muhammad Marsufi explains: "it is not permissible to donate money (a substitute for the price of a lost wakaf), 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'alah*. Muhammad *al-Ramli* 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 *aqad* 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 Hajar al-Haitami* 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 *istinbāth* Imam *al-Shāfi'y* is: first *istinbāth al-Lafdhiy* in which Al-Sha'fi'y understands to the existence of a suggestion that is circumscribed in performing al-Shadaqātal-Mawqūfah (*waqf*), through (*lafadh al-ibāhah*) which *Ibn Umar*. both *istinbāth al-Ma'āny*, through the approach of *Isyārah al-Nāsh*, *dilālah al-Nāsh*, and *Iqtidhā 'al-Nāsh* (analysis of meaning) which shows to his *luzūm' aqadmuamalah 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).

REFERENCES

- [1]. Al-Qur'an al-Karim
- [2]. Abi Yusuf, *Ikhtilāf Abi Hanifah Wa Ibn Abi Layla*, (Mesir: Ihyāul Maārif, 1357. H
- [3]. Abi Hasan 'Ali Ibn Abi Bakar la-Margyanānī al-Hanfi, *Al-Hidāyah Syarh Bidāyah al-Mubtadī*, juz: IV, (Idārah al-Qur'an Wa al-'Ulūm al-Islāmiyyah, tt.
- [4]. Abu Hamid al-Ghazālī, *Al-Mustasyfā fī 'Ilm al-Ushūl*, Beirut; Dār al-Kutūb al-Ilmiyyah, 1993.
- [5]. Aby Halal al-Hasan bin Abdullah, *al-Furūq al-Lughawiyah*, (Dār al-Kutub al-'Amaliyah, Bayrūt Libanon: 1971.
- [6]. Ali Bin Muhammad Syarif Jarjani, *al-Ta'rīfāt*, Cet. I, Maktabah Libanon: Bayrūt 1985.
- [7]. A.Rahman I.Doi, *Penjelasan Lengkap Hukum-Hukum Allah*, Cet: I, Jakarta: Grafindo Persada, 2002.
- [8]. Al-Sayuthi. *Tafsīr al-Jalālayn*, Juz: I, (*al-Haramain*, Indonesia, tt), h.
- [9]. Al-Syaukani, *Nail al-Authār* Jid. VI, (Beirut: Dār al-Fikr., t.t.
- [10]. Budi Handrianto, *50 Tokoh Islam Liberal Indonesia*, Cet. II, Jakarta, Hujjah Press: 2007.
- [11]. Cik Hasan, *Model Penelitian Fikih Paradigma Penelitian dan Fiqh Penelitian*, Ed. I, Cet. I, Bogor: Kencana Prana Media, 2003
- [12]. Departemen Agama, *Pedoman Pengelolaan Wakaf Tunai*, Cet: IV, (Jakarta: Direktorat Pemberdayaan Wakaf, 2007
- [13]. Firdaus, *Ushul Fiqh Metode Mengkaji Dan Memahami Hukum Islam Secara Konferehensif*, Cet:I, Jakarta: Zikra Hakim, 2004.
- [14]. Hery Sucipto. *Ensiklopedi Tokoh Islam*, Cet. I, (*Dari Abu Bakar sampai Nashr dan al- Qardhawi*), Jakarta: PT Mizan Pustaka, Cet. 2003
- [15]. Helmi karim, *Fiqh Mu'amalah* cet: III, (Jakarta: Raja Grafindo persada, 2002.
- [16]. Huda dkk, *Investasi Pada Pasar Modal Syariah*, Cet. I, Jakarta: Kencana Perdana Media Group, 2007.
- [17]. Ibnu Mandzur, *Lisaan Al- 'Arab Jilid I*, Kairo: Darul Ma'arif, tt
- [18]. Ibn Qudamah, *Rawdhatal-NādhirinwaJunnah al-Manādhir*, Cet: I, Dār al-Kitāb al-'Arabi, Beirut, 1981.
- [19]. Ibn Najim Al-Mishri Al-Hanafi, *aL-Bahru al-Rā'iq al-Syarh al-Kanzu al-Daqā'iq*, Juz: V, (Beirut: Dar Al

- Ma'rifah, t.t.
- [20]. Imam Muslim, *ShahehMuslim*, Juz: VIII, Cet: I, Beirut: Dar al-Ihya, 1997
- [21]. Ismail bin Yahya al-Muzani, *Mukhtashar al-Muzany Fi Furū'i al-Syāfi,iyyah*, (Beirut Libanon: Dār al-Kitāb al 'alamiyyah, tt
- [22]. Iyadh bin Nami Al -Silmy, *Ushul al-Fiqh Alladzi La Yasa' al-faqih al-Jahlahu*, Riyadh: Maktabah Al-Mamlakat Al-Arabiya, t.t.
- [23]. Imam Bukhari, *Sahih Bukhari*, Juz: VIII, Cet II, (Beirut: Dār al- Ihya Attauras al-‘Arabiyyah,1981.
- [24]. Jalaluddin al-mahally, *Qalyuby wa 'Amirah*, Juz: III, Karya Insan Indonesia, tt
- [25]. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Cet.I, Jakarta, Balai Pustaka: 1983.
- [26]. Muhammad Marsufi, *Hasyiah al-Bujairimī*, Juz: III, (Libanon, Dār al- Fukad, tt.
- [27]. Muhammad al-Ramli, *Nihāyah al-Muhtāj*,(Libanon: Dār al-Fukad, 1997
- [28]. MahmudSyaltut,*Al-Fatāwa*.(Kairo: Oaral-Syuruq,tt
- [29]. Moch.Ali Al-Shabunie, *Pengantar Ilmu-Ilmu Al-Quran*,Bandung: Remaja RosdaKarya Offset: 1996
- [30]. Mukhtar Yahya dan Fatchur Rahman, *Dasar-Dasar Pembinaan Hukum Fiqh Islam*, Cet. I, Bandung: Alma'arif, 1986
- [31]. Muhyar Fanani, *Ilmu Ushul Fiqh di Mata Filsafat Ilmu*, Cet. I, Walisongo Press: Semarang, 200
- [32]. Muhammad Abū Zahrah, *Ushūl al-Fiqh*, Beirut; Dār al-Fikr, 1957.
- [33]. Muhammad Amin al-Syahir, *Raddu al-Mukhtār*, Juz IV, Cet: I, Dār al-fukad,1979
- [34]. Nasrun Haroen, *Ushul Fiqh I*, (Jakarta: Logos Wacana Ilmu, 1997.
- [35]. Nasrun Rusli, *Konsep Ijtihad Asy-Syaukani Relevansinya bagi Pembaruan Hukum Islam di Indonesia*,Jakarta: Logos Wacana Ilmu, 1997.
- [36]. Nur Kholis,*Pengantar Studi Al-Qur'an dan Hadits*,Depok Sleman Yogyakarta:Penerbit TERAS,2008
- [37]. Rachmat Syafe'i, *Ilmu Ushul Fiqih*, Cet. II, Bandung: Pustaka Setia, 2010
- [38]. RamliSA,*Muqāranahal-MadzāhibilUshūl*,CetI,(Jakarta:GayaMediaPratama,1999.
- [39]. Syach Ahmad Farij, *60 Biografi Ulama Salaf*, Cet. IV, Jakarta: Pustaka al-Kautsar, 2008.
- [40]. Syaikh M. Hasan al-Jamal, *Biografi 10 Imam Besar*, Cet.1, Jakarta: Pustaka al-Kautsar, 2004
- [41]. Sudarwin Danin, *Menjadi Peneliti Kualitatif*, Cet. II, (Bandung: Pustaka Setia, 2002.
- [42]. SardarZiauddin, *Penelitian Kuantitatif dan Kualitatif*, Bandung; Mizan, 1996.
- [43]. Sri Suyana, *Dinamika Peran Ulama Aceh*, Cet. I, (Banda Aceh, A-Raniry Press: 2008
- [44]. Siti Mujiatun, "Jual Beli dalam Perspektif Islam; Salam dan Istishna dalam Jurnal Riset Akuntansi Dan Bisnis Volume 13 No.2 Tahun 2013.
- [45]. Tjasmijanto dan Rozidyanti, (penerjemah), *Sertifikat Wakaf Tunai Sebuah Inovasi Instrumen Keuangan Islam*, (karya M.A. Mannan), (Jakarta: CIBER- PKTTI-UI, 2001
- [46]. T.M Hasbi Ash Shiddieqy, *Pokok-Pokok Pegangan Imam Mazhab Dalam Membina Hukum Islam*, Jakarta: Bulan Bintang, tt.
- [47]. Uswatun Hasanah, *Wakaf Produktif Untuk Kesejahteraan dalam Perspektif Hukum Islam di Indonesia*. (Jakarta: Naskah Pidato Pengukuhan Guru Besar di Universitas Indonesia, 6 April 2009
- [48]. Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, Cet. I, Dar al-Fikr, 1986
- [49]. Wahbah Zuhayli, *al-Fiqh al-Islam wa Adillatuh*, Juz: VIII, Dar al-Fikr, tt
- [50]. Yusuf al-Qardhawi, *Ijtihad Dalam Syari'at Islam*, Jakarta: Bulan bintang, 1987
- [51]. Yusuf bin Yahya al-Buwaythi, *Mukhtashar al-Buwaythiy*, (al-Madīnat al-Munawwarah: al-Mamlakat al-'arabiyyah al-Su'udiyah), 1431.H.
- [52]. Zakari al-Anshari, *Syarqawi 'al-Tahrīr*, Juz. III. (Surabaya: Al-Hidayah, tt

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