

## Productive Waqf with Money (Cash Waqf) In the View of the Acehese Dayah Scholars <sup>1</sup>

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### Abstrak

Kajian ini fokus mengeksplorasi pandangan ulama dayah di Aceh dan dinamika yang melatari terjadinya perbedaan pandangan mereka tentang wakaf uang tunai (*cash waqf*) yang mulai populer di masyarakat Indonesia. Didesain dalam bentuk penelitian kualitatif, data penelitian dikumpulkan melalui wawancara mendalam dengan 8 orang ulama dayah terkemuka di Aceh, yang dipilih secara *purposive*. Delapan orang ulama yang dijadikan sebagai informan kunci penelitian ini adalah ulama kharismatik yang selalu dijadikan masyarakat Aceh sebagai kiblat fatwa hukum. Data juga dikumpulkan melalui observasi secara berulang-ulang ke lokasi penelitian dan studi dokumen yang berkaitan dengan topik yang sedang diteliti. Hasil penelitian menunjukkan bahwa ulama dayah di Aceh memiliki pandangan yang berbeda-beda dalam mendaratkan hukum pembolehan wakaf uang tunai (*cash waqf*). Perbedaan tersebut terjadi karena masing-masing ulama memiliki cara pandang yang berbeda-beda dalam memahami sumber hukum wakaf, baik dari segi teks dan juga konteksnya. Pada akhirnya, kajian ini berargumen bahwa pandangan ulama dayah tentang wakaf tunai yang selama ini sifatnya sangat tekstual, harus digeser kepada kontekstual, agar pelaksanaan wakaf tunai terlaksana dengan baik sebagai upaya penyejahteraan masyarakat Aceh.

### Abstract

This study focuses on exploring the views of the dayah scholars in Aceh and the dynamics behind their different views on cash waqf which are becoming popular in Indonesian society. Designed in the form of a qualitative research, research data were collected through in-depth interviews with 8 prominent dayah scholars in Aceh, who were selected purposively. The eight scholars who were used as key informants for this research were charismatic scholars who were always used by the people of Aceh as the

<sup>1</sup> This article is sourced from a doctoral dissertation research program for Islamic Law students at the State Islamic University of North Sumatra in 2022.

mecca of legal fatwas. Data were also collected through repeated observations to research sites and document studies related to the topic being researched. The results of the study show that the dayah scholars in Aceh have different views in executing the law allowing cash waqf. This difference occurs because each scholar has a different perspective in understanding the source of waqf law, both in terms of text and context. In the end, this study argues that the view of the dayah scholars regarding cash waqf which has been very textual in nature, must be shifted to contextual, so that the implementation of cash waqf is carried out properly as an effort to improve the welfare of the Acehnese people. This research is designed in the form of qualitative descriptive research with a legal approach.<sup>2</sup> Research with a legal approach aims to analyze and describe legal principles systematically so that it is known the cause of the emergence of a legal product that appears in society.<sup>3</sup> In this case, it is focused on examining the views of the dayah scholars in Aceh on the law of productive waqf with cash (cash waqf), which is still under debate

## I. Introduction

This article explores the dynamics of the views of the dayah scholars in Aceh regarding productive waqf using money, because the discourse of waqf with money is a debate that continues to be raised among dayah scholars in Aceh because they are not familiar. The discourse on productive waqf with cash or what is termed cash waqf occurs because waqf has been interpreted conservatively as inanimate objects such as land and buildings.<sup>4</sup> The two arguments that started this study indicate that productive waqf with cash is a new study in the development of waqf in Indonesia so that it is not yet familiar among scholars. In reality, Indonesian society in general are more familiar with the term waqf with immovable objects such as land which are mostly intended for building mosques, prayer rooms (mushalla), and other facilities. Naturally,

<sup>2</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009), p. 10

<[https://books.google.co.id/books?hl=id&lr=&id=y\\_QrEAAAQBAJ&oi=fnd&pg=PA1&dq=buku+metodologi+penelitian+hukum+islam&ots=ZSAGJ4fQbW&sig=Uqt1mJuhA2fFIMGZVSfSbU7iBeY&redir\\_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false](https://books.google.co.id/books?hl=id&lr=&id=y_QrEAAAQBAJ&oi=fnd&pg=PA1&dq=buku+metodologi+penelitian+hukum+islam&ots=ZSAGJ4fQbW&sig=Uqt1mJuhA2fFIMGZVSfSbU7iBeY&redir_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false)> [accessed 2 September 2022].

<sup>3</sup> Sulaiman Tripa, *Diskursus Metode Dalam Penelitian Hukum* (Banda Aceh: Bandar Publishing, 2019), p. 65 <[https://books.google.co.id/books?hl=id&lr=&id=qCi-DwAAQBAJ&oi=fnd&pg=PR3&dq=buku+metodologi+penelitian+hukum+islam&ots=xqVReBxV5t&sig=YI\\_09cLoqKmLplczdsot3RvYWQM&redir\\_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false](https://books.google.co.id/books?hl=id&lr=&id=qCi-DwAAQBAJ&oi=fnd&pg=PR3&dq=buku+metodologi+penelitian+hukum+islam&ots=xqVReBxV5t&sig=YI_09cLoqKmLplczdsot3RvYWQM&redir_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false)> [accessed 2 September 2022].

<sup>4</sup> Abu Azam Al-Hadi, 'Upaya Pemberdayaan Tanah Wakaf Produktif Bagi Kesejahteraan Ummat', *Islamica: Jurnal Studi Keislaman*, 4.1 (2009), 95–107 <<https://doi.org/10.15642/ISLAMICA.2009.4.1.95-107>>.

this condition triggers different views in landing the law of productive waqf with cash.

The first thing to understand is that waqf is derived from Arabic, namely from the word *waqafa - yaqif - waqfan* which means to be restrained, silent, or keep standing.<sup>5</sup> Wahbah Az Zuhaily interprets waqf with the meaning of withholding doing or withholding spending.<sup>6</sup> The meaning of waqf which is adapted by Az Zuhaily from the Imams of the Madhab, in principle explains that waqf is property that is held and What is taken from the property is the benefit of that property. Thus, waqf is understood as property that is eternal and can be managed and taken advantage of for the benefit. In other words, the property becomes the main capital or source in generating benefits. According to Antonio, waqf is property that is used for benefits such as development, agricultural land, helping Islamic educational institutions and so on.<sup>7</sup>

Antonio's understanding of waqf shows that ideally waqf should be managed productively. Thus, it can be understood that productive waqf is waqf of property that is taken advantage of to generate profits.<sup>8</sup> In line with this view, productive waqf is waqf of property, whether in the form of money, immovable objects that are managed properly so that they can become sources of income that can be used for other productivity.

The implementation of waqf is based on several verses contained in the Qur'an, as mentioned in surah al Haj verse 77, surah Ali Imran verse 92 and surah Al Baqarah 261. These verses in principle become guidelines for Fiqh scholars to develop waqf law. However, due to the lack of verses that explain waqf, the scholars are more *ijtihad* in deciding the law of waqf.<sup>9</sup> Certainly legal determination based on *ijtihad* is not always accepted by all parties, because *ijtihad* as a legal basis comes from the thoughts of the scholars after they analyze existing legal sources.<sup>10</sup> So naturally, if there is a difference of opinion in looking

<sup>5</sup> M Attamimy and others, *Dinamika Perwakafan Di Indonesia Dan Berbagai Belahan Dunia* (Jakarta: Kementerian Agama RI Direktorat Pemberdayaan Zakat dan Wakaf, 2017), p. 7.

<sup>6</sup> Wahbah Az Zuhaily, *Fiqh Al Islam Wa Adillatuhu*, trans. by Abdul Hayyie al Kattani, Jilid 10 (Jakarta: Gema Insani Press, 2011), p.7599.

<sup>7</sup> M. Syafii Antonio, *Cash Waqf Dan Anggaran Pendidikan* (Jakarta: Bimas dan Haji Departemen Agama Republik Indonesia, 2004), p.212.

<sup>8</sup> Silviana Rini, Dian Kusuma Wardhani, and Ashlihah, *Wakaf Produktif*, ed. by Nailly El Muna (Jombang - Jawa Timur: Lembaga Penelitian dan Pengabdian Masyarakat (LPPM) Universitas KH. A. Wahab Hasbullah, 2022), p.18 <[https://books.google.co.id/books?hl=id&lr=&id=\\_6t-EAAAQBAJ&oi=fnd&pg=PA19&dq=buku+wakaf+produktif&ots=ba2e3tpU1C&sig=JtReD-kmqstFgQwx9E5\\_mPPY-qs&redir\\_esc=y#v=onepage&q=buku+wakaf+produktif&f=false](https://books.google.co.id/books?hl=id&lr=&id=_6t-EAAAQBAJ&oi=fnd&pg=PA19&dq=buku+wakaf+produktif&ots=ba2e3tpU1C&sig=JtReD-kmqstFgQwx9E5_mPPY-qs&redir_esc=y#v=onepage&q=buku+wakaf+produktif&f=false)> [accessed 2 September 2022].

<sup>9</sup> Khusaeri Khusaeri, 'Wakaf Produktif', *Al-A'raf: Jurnal Pemikiran Islam Dan Filsafat*, XII.1 (2015), 77-95 <<https://doi.org/https://doi.org/10.22515/ajpif.v12i1.1185>>.

<sup>10</sup> Siska Lis Sulistiani, Eva Misfah Bayuni, and Muhammad Yunus, 'Analisis Hukum Islam Terhadap Pengembangan Wakaf Berbasis Sukuk Untuk Pemberdayaan Tanah Yang Tidak Produktif Di Indonesia',

at the issue of waqf law. Especially those relating to productive waqf using cash are still a debatable issue among scholars.

The differences in the views of scholars in viewing the law of productive waqf with cash also contributed to the stagnation of waqf management. A fanatical understanding of religion that is oriented to one particular school of thought (madzhab), strengthens the traditional-oriented view so that it does not consider the permissibility of productive waqf with cash. In fact, the study of fiqh will continue to experience dynamics in accordance with the demands of the development of human problems. Likewise, the study of waqf will experience relevant developments according to the development context.<sup>11</sup> The occurrence of differences of opinion among scholars in responding to productive waqf is caused by an understanding of the text and also the context. Understanding of the text, because there are scholars who see the arguments for waqf as *qat'iy* and *zhanny*.<sup>12</sup> The differences in the views of scholars in the management of waqf also occurred at the beginning of the formation of the Darul Ulum waqf institution which was the first waqf institution in North India. The formation of waqf institutions is debated by contemporary scholars and traditional scholars because they see the waqf from the understanding of the text and also the strong influence of colonialism. The impact of these differing views resulted in the stagnation of waqf management.<sup>13</sup>

Apart from the differences in the views of scholars regarding productive waqf, when viewed from the perspective of its usefulness, productive waqf actually has a fairly broad benefit. Productive waqf is very much in accordance with *maqashidus sharia* and the benefit of the people. This condition is a consideration for the companions of the Prophet Muhammad to manage productive waqf for the benefit of the people.<sup>14</sup> Indeed, this benefit is very important to be rethought by scholars, so that they no longer argue at the level of waqf law which is conventional *an sich*. Productive waqf has a very potential role in improving people's welfare. The maximum empowerment of productive waqf can be used as a strategy to overcome the problem of poverty. Prasetia and Huda reported that the empowerment of productive waqf, which is developing very

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*Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 18.2 (2018), 175–92

<<https://doi.org/10.18326/ijtihad.v18i2.175-192>>.

<sup>11</sup>Sulistiani, Bayuni, and Yunus.

<sup>12</sup>Nor Mohammad Abdoeh, 'Tinjauan Maqāshid Syari'ah Terhadap Pandangan Scholars Mengenai Ruislagh', *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam*, 3.1 (2020), 67–88

<<https://doi.org/10.30659/JUA.V3I1.7345>>.

<sup>13</sup>M. K. Naseef and R. Santhosh, 'Waqf and Authority Dynamics: Reconfigurations of a Pious Institution in Colonial Malabar, South India', *Society and Culture in South Asia*, 8.1 (2022), 51–71

<<https://doi.org/10.1177/23938617211046163>>.

<sup>14</sup>Suryani Suryani and Yunal Isra, 'Wakaf Produktif (Cash Waqf) Dalam Perspektif Hukum Islam Dan Maqasid Al-Shari'ah', *Walisono: Jurnal Penelitian Sosial Keagamaan*, 24.1 (2016), 17–36

<<https://doi.org/10.21580/ws.24.1.680>>.

rapidly in Turkey, has contributed to the transformation and independence of society.<sup>15</sup> This fact shows the large contribution of waqf in the welfare of society. Through the productive waqf management, the distribution of wealth will be supported more broadly, so that the budget deficit can be overcome.<sup>16</sup> That is why it is very important to continuously socialize productive waqf, because productive waqf is not as popular as other waqf, such as waqf of grave land, mosque land and so on.<sup>17</sup>

Several studies related to productive waqf have been previously presented by a number of scholars from different perspectives. For example, a study conducted by Faqih highlighted the importance of managing productive waqf with modern management strategies in developing the community's economy, so that they are free from poverty and dependence.<sup>18</sup> Makhrus discussed the importance of socializing productive waqf as an Islamic social institution that can be used for the welfare of society.<sup>19</sup> Sulistiani examines the importance of developing innovative sukuk-based waqf in Indonesia, so that waqf with less potential can be empowered for the benefit of the people.<sup>20</sup> Listiawati describes the impact of the lack of knowledge of the people of Palembang City about productive waqf causing less productive waqf management.<sup>21</sup> Suryani and Isra studied the importance of synergizing the productive waqf movement from the perspective of *maqasid al shari'ah* and Indonesian positive law, so that they can support government programs in the welfare of the community.<sup>22</sup> Aden Rosadi examines the importance of accountable management of productive zakat in accordance with Law No. 41 of 2004 concerning Waqf, because productive waqf aims to improve the welfare of the community.<sup>23</sup>

<sup>15</sup> Yusi Septa Prasetia and Miftahul Huda, 'Relevansi Tatakelola Wakaf Turki Terhadap Pengembangan Wakaf Produktif Di Indonesia', *Justicia Islamica*, 14.2 (2017), 174–84 <<https://doi.org/10.21154/justicia.v14i2.1231>>.

<sup>16</sup> Muhammad Syukri Salleh, 'Contemporary Vision of Poverty and Islamic Strategy for Poverty Alleviation', *SAGE Open*, 7.2 (2017), 1–8 <<https://doi.org/10.1177/2158244017697153>>.

<sup>17</sup> M Makhrus, Safitri Mukarromah, and Istianah Istianah, 'Optimalisasi Edukasi Wakaf Produktif Dalam Mendorong Kesejahteraan Masyarakat', *Dimas: Jurnal Pemikiran Agama Untuk Pemberdayaan*, 21.1 (2021), 1–20 <<https://doi.org/10.21580/dms.2021.211.7989>>.

<sup>18</sup> Aunur Rohim Faqih, 'Pengembangan Hukum Wakaf Produktif Untuk Mengatasi Kemiskinan Dan Ketergantungan', *Jurnal Hukum IUS QUIA IUSTUM*, 12.30 (2005), 288–302 <<https://doi.org/10.20885/iustum.vol12.iss30.art10>>.

<sup>19</sup> Makhrus, Mukarromah, and Istianah.

<sup>20</sup> Sulistiani, Bayuni, and Yunus.

<sup>21</sup> Listiawati Listiawati, 'Analisis Pemahaman Masyarakat Kota Palembang Tentang Wakaf Produktif Dan Uang', *I-Finance: A Research Journal on Islamic Finance*, 4.1 (2018), 44–63 <<https://doi.org/10.19109/ifinance.v4i1.2300>>.

<sup>22</sup> Suryani and Isra.

<sup>23</sup> Aden Rosadi, Deden Effendi, and Busro Busro, 'The Development of Waqf Management Throught Waqf Act in Indonesia (Note on Republic of Indonesia Act Number 41 of 2004 Regarding Waqf)',

The majority of the studies that have been mentioned, generally discuss the management of productive waqf so that it can be maximized as an effort to support the welfare of the people. Of course, the study as mentioned above seems to ignore other important aspects that are also very important in the context of the development of cash waqf in Indonesia, especially when it is associated with the Acehese people who practice Islamic law. Another important aspect in question is related to the law. This is important to display, because the dayah scholars in Aceh have different views on the law of cash waqf, even though they are both Syafi'i scholars. This is where the importance of this study is shown, so that it will be more clearly to see the things that underlie these different views. Thus, this study is divided into two parts. The first section describes the phenomenon of waqf in Aceh to its management, and in the next section discusses the different views of the dayah scholars in Aceh in viewing cash waqf.

## 2. Research Method

This research is designed in the form of qualitative descriptive research with a legal approach.<sup>24</sup> Research with a legal approach aims to analyze and describe legal principles systematically so that it is known the cause of the emergence of a legal product that appears in society.<sup>25</sup> In this case, it is focused on examining the views of the dayah scholars in Aceh on the law of productive waqf with cash (cash waqf), which is still under debate.

Data collection was carried out by in-depth interviewing eight dayah scholars in Aceh. Eight scholars were selected purposively with predetermined criteria, namely; First, acting as a leader of the dayah. Second, prominent and influential scholars in Aceh and have been used by the community as the mecca of legal fatwas in Aceh. Interviews were conducted using a question guide developed in accordance with the dynamics of data in the field. The results of the interviews were noted and recorded using digital recording devices such as mobile phones and tape recorders. In addition to in-depth interviews, data was also collected through repeated observations at the research location, so that real data were obtained about cases of waqf practices carried out using money in Aceh. Data were also collected through documentation related to the research topic.

*Madania: Jurnal Kajian Keislaman*, 22.1 (2018), 1–18

<<https://doi.org/10.29300/MADANIA.V22I1.881>>.

<sup>24</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009), p. 10

<[https://books.google.co.id/books?hl=id&lr=&id=y\\_QrEAAAQBAJ&oi=fnd&pg=PA1&dq=buku+metodologi+penelitian+hukum+islam&ots=ZSAGJ4fQbW&sig=Uqt1mJuhA2fFIMGZVSfSbU7iBeY&redir\\_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false](https://books.google.co.id/books?hl=id&lr=&id=y_QrEAAAQBAJ&oi=fnd&pg=PA1&dq=buku+metodologi+penelitian+hukum+islam&ots=ZSAGJ4fQbW&sig=Uqt1mJuhA2fFIMGZVSfSbU7iBeY&redir_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false)> [accessed 2 September 2022].

<sup>25</sup> Sulaiman Tripa, *Diskursus Metode Dalam Penelitian Hukum* (Banda Aceh: Bandar Publishing, 2019),

p. 65 <[https://books.google.co.id/books?hl=id&lr=&id=qCi-DwAAQBAJ&oi=fnd&pg=PR3&dq=buku+metodologi+penelitian+hukum+islam&ots=xqVReBxV5t&sig=YI\\_09cLoqKmLplczdot3RvYWQM&redir\\_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false](https://books.google.co.id/books?hl=id&lr=&id=qCi-DwAAQBAJ&oi=fnd&pg=PR3&dq=buku+metodologi+penelitian+hukum+islam&ots=xqVReBxV5t&sig=YI_09cLoqKmLplczdot3RvYWQM&redir_esc=y#v=onepage&q=buku+metodologi+penelitian+hukum+islam&f=false)> [accessed 2 September 2022].

All of the data that have been collected, both interview data, observations and documents were analyzed using the Miles and Huberman analysis technique starting from data reduction, presentation, and conclusion drawing.<sup>26</sup> After the analysis is done, the next step is to describe or analyze the data in depth (thick description).

### 3. Results and Discussion

#### 3.1. The phenomenon of waqf in Aceh

The phenomenon of waqf in Aceh tends to be carried out by the community by donating inanimate assets, such as land intended to build mosques, grave lands and so on. This tendency occurs because so far waqf is understood in a traditional way. That is, waqf known to the public so far is waqf with immovable objects. This condition is colored by the fiqh thought of Acehese scholars, which are generally very textual.

Based on the National Waqf Index (NWI) released by the Indonesian Waqf Agency, Aceh in 2020 is the best province in waqf management with an NWI value of 0.36 (good category). But in 2021 Aceh was reported to experience a decline in terms of waqf management. In 2020, the area of waqf land in Aceh that is certified by the BPN is 13,981 plots. Land area will decrease in 2021 to 1,157.33 plots.<sup>27</sup> This fact indicates a decline in regulations, processes and also the waqf system in Aceh. In fact, from the observations made, there are a number of communities waqf that cannot be managed properly by the Nazir who has been appointed to manage the waqf that has been mandated by the waqf.

In Aceh, there are many waqf found, but they have not been managed productively. The unproductive management of waqf in Aceh is due to the fact that the community is very rigid in interpreting the waqf. As reported by Azharsyah Ibrahim, for example, that based on 2010 data, the number of waqf lands in Aceh is 27,416 plots or the equivalent of 1,333,233,627.26 M<sup>2</sup>. Almost all of the waqf land is not managed productively, because the nazir waqf is very rigid in interpreting the concept of waqf. The Nazirs understood that waqf should only be used in accordance with the mandate of the waqf.<sup>28</sup>

Seeing the number of waqf that cannot be utilized, the idea of productive waqf emerged. As described by Asep Saepudin Jahar, that the large number of unproductive waqf in Indonesia has encouraged the Indonesian Waqf Board (IWB) to issue regulations for productive waqf with cash (cash waqf). This policy

<sup>26</sup>Matthew B Miles, Michael Huberman A, and Johnny Saldana, *Qualitative Data Analysis; A Methode Sourcebook*, Fourth (United States of America: SAGE Publications India Pvt. Ltd, 2020), p. 21–25.

<sup>27</sup>Raditya Sukmana and others, *Laporan Indeks Wakaf Nasional 2021*, ed. by Nurka'ib (Jakarta: Badan Wakaf Indonesia, 2022), p. 53–55.

<sup>28</sup>Azharsyah Ibrahim, 'Stagnansi Perwakafan Di Aceh: Analisis Faktor Penyebab', *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial*, 16.2 (2017), 371–88  
<<https://doi.org/10.22373/JMS.V16I2.1750>>.

is supported by Article 16 of Law Number 41 of 2004 concerning waqf and also the 2006 Law concerning the implementation of productive waqf with cash (cash waqf).<sup>29</sup> Although the cash waqf has been regulated in law, and in terms of its benefits it looks more flexible, but cash waqf is not necessarily accepted by the public. Especially for the people of Aceh who are very strict in understanding the law of waqf based on the Shafi'i madzhab, the implementation of cash waqf is carried out well. This happens, because the waqf paradigm that is understood so far is an immovable object, such as a piece of land. This condition is also what causes differences in the views of the dayah scholars in Aceh in deciding the cash waqf law.

### 3.2. The Dynamics of the Views of the Dayah Scholars on Cash Waqf

In formal juridical terms, cash waqf was stipulated through the fatwa of the Indonesian Ulemas Council (Indonesian: MUI) on May 11, 2002. In Law Number 41 of 2004 concerning Waqf, it is clear that its implementation is regulated. Based on the law, it is explained that one type of object that can be waqf is money. Thus, on this basis it is clear that cash waqf is permissible.<sup>30</sup> The reason for allowing cash waqf is because it is seen as being able to encourage the growth of the people's economy.<sup>31</sup> The study of waqf develops dynamically, no longer limited to immovable objects *an sich*, but extends to the discussion of cash waqf with money. This condition is driven by the role of the scholars who are increasingly aware that productive waqf using cash has the potential to empower the people. Cash waqf with money, is a solution to make waqf more productive, because money is not only a medium of exchange, but also as a commodity that is indispensable in meeting other needs. The rationale for allowing cash waqf with cash is based on the views of Imam Hanafi and Imam Maliki who have already thought about this. Likewise, in some parts of the Shafi'i school of thought (madzhab), they began to do the same thing, after Imam al-Mawardi explained the problem in the book of *al-Hawil Kabir*.<sup>32</sup>

Even though there is a legal basis that allows waqf in cash, for the dayah scholars in Aceh, this issue is still debatable. Cash waqf has become a debate

<sup>29</sup> Asep Saepudin Jahar, 'Bureaucratizing Sharia in Modern Indonesia: The Case of Zakat, Waqf and Family Law', *Studia Islamika*, 26.2 (2019), 207–45 <<https://doi.org/10.15408/SDI.V26I2.7797>>.

<sup>30</sup> Mohammad Nuh, *Himpunan Peraturan Perundang-Undangan Tentang Wakaf*, Edisi ke-4 (Jakarta: Badan Wakaf Indonesia, 2018), p. 10.

<sup>31</sup> Sudirman Sudirman and Nanda Lailatul Arofah, 'Manajemen Wakaf Uang Di Masjid At-Taqwa Kota Batu Dan Masjid Sabilillah Kota Malang Dalam Perspektif Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf', *De Jure: Jurnal Hukum Dan Syar'iah*, 8.1 (2016), 24–37 <<https://doi.org/10.18860/J-FSH.V8I1.3727>>.

<sup>32</sup> Abdul Kadir, 'Wakaf Tunai Sebagai Instrument Dalam Peningkatan Ekonomi Umat', *Syariah: Jurnal Hukum Dan Pemikiran*, 16.2 (2017), 145–60 <<https://doi.org/10.18592/SY.V16I2.1435>>.



among the dayah scholars in Aceh, because each has a different perspective, so that some expressly do not allow it, and some allow it with considerations. The consideration in question is, for example, seeing the benefit side, because of the analogy with other forms. The dynamics of legal decision-making among scholars cannot be separated from the way a scholar interprets and understands a text that is used as a source of law.<sup>33</sup> The emergence of different views in deciding one law, is also motivated by sociological conditions, because Islamic law itself flows in the culture of a society that continues to develop. As has been initiated by Hasbi ash-Shiddieqy to bring up to Indonesian Fiqh. The geneology of Indonesian fiqh is the Hasbi ash-Shiddieqy's thoughts, which emerged on the basis of consideration of social and political realities. According to Hasbi, Islamic law must contribute in answering new problems that arise in the Indonesian context.<sup>34</sup>

Based on the biographical data of interviews conducted with 15 dayah scholars in Aceh, the dynamics of the differences in the views of the scholars in determining the law of waqf with cash are very clear. There are scholars who allow it and some who expressly do not allow it. As explained by Abu H. Usman Ali, known as Abu Kuta Krueng, a prominent and influential dayah scholars in Aceh, expressed his view firmly, that waqf with cash is not allowed. This view is based on the opinion of Imam Shafi'i. As expressed in an excerpt from the interview;

I tend to say that waqf using cash is not allowed. The reason is, because waqf with money is contrary to the existing waqf rules as regulated in the Shafi'i madzhab. However, I do not argue that there is a high possibility that there are other madzhab that allow this.<sup>35</sup>

Abu Tumin, who is also a charismatic Acehnese scholar, leader of the dayah in Blang Bladeh, Bireuen Regency, also expressed his views on cash waqf with money. Abu Tumin also firmly refused to allow cash waqf. The reason refers to the view of Imam Shafi'i which does not require cash waqf with money in his books. As conveyed through an interview excerpt;

The books of fiqh in the Shafi'i madzhab have required that waqf should only be done if the *i'en* (object) is permanent when its benefits are taken. Meanwhile, if there are people who want waqf in the form of cash, it is not legal. Why is that, because money is not eternal in its *i'en* (thing). The money will run out when the benefits are taken. Therefore, waqf in the form of cash is not allowed.<sup>36</sup>

<sup>33</sup> Nanang Abdillah, 'Madzhab Dan Faktor Penyebab Terjadinya Perbedaan', *Fikroh: Jurnal Pemikiran Dan Pendidikan Islam*, 8.1 (2014), 20–38 <<https://doi.org/10.37812/FIKROH.V8I1.20>>.

<sup>34</sup> Moh Mukri, 'Dinamika Pemikiran Fikih Madzhab Indonesia (Perspektif Sejarah Sosial)', *Analisis: Jurnal Studi Keislaman*, 11.2 (2011), 189–218 <<https://doi.org/10.24042/AJSK.V11I2.608>>.

<sup>35</sup> Hasil Wawancara Dengan H. Usman Ali (Abu Kuta Krueng) Di Dayah Darul Munawwarah, Kuta Krueng, Kabupaten Pidie Jaya Aceh, Tanggal 3 Mei, 2021.

<sup>36</sup> Hasil Wawancara Dengan Abu H. Muhammad Amin (Abu Tumin) Di Dayah Blang Bladeh Kabupaten Bireuen Aceh, Tanggal 18 Juli, 2021.

H. Ismail Abdullah Caleu, who is one of the charismatic scholars in Aceh and at the same time a leader of the dayah in the Tungkop area of Pidie Regency, also strengthened the prohibition of cash waqf with money. Abdullah Caleu expressly did not allow it because it contradicted the explanations already mentioned in the books of the Shafi'i school of thought (madzhab), as expressed in an excerpt from the interview;

There is absolutely no way for us to allow cash waqf. Because if it is allowed, we have violated the provisions that already exist and are written in the treasures of the Shafi'iyah books. In several Shafi'iyah books it is explained that waqf assets cannot be traded, cannot be donated and cannot be inherited. So how do we allow waqf with money? So, it is very wrong and contrary to the rules of fiqh in the Shafi'i madzhab. Cash waqf is difficult to implement because of the paradox with fiqh rules.<sup>37</sup>

The reason based on the fact that waqf with money is not found in the classical fiqh studies of Imam Shafi'i, is also an argument that strengthens the views of scholars not to tolerate the permissibility of cash waqf with money. This was stated firmly by Abu H. Abdullah Ibrahim in an interview excerpt;

As far as I have studied in a number of fiqh books, especially the Shafi'iyah school of thought, waqf in the form of money is not allowed. Whatever the reason it is absolutely not allowed, because money is not eternal, while the object that must be donated must be eternal.<sup>38</sup>

The views of the four scholars that have been put forward show that cash in principle is not allowed. Each of the scholars who have been stated above, reviewed the law of cash waqf from the perspective of the Shafi'i madzhab. The scholars mentioned understand the meaning of waqf from the Shafi'i books textually and do not interpret it again in context, so that this view does not shift from the original source. This understanding is textual in nature because scholars are more focused on seeing the language presented than the legal objectives which are broader and principal in providing the benefits.<sup>39</sup>

The views of some scholars mentioned above, such as not tolerating the development of waqf law. Waqf is understood to be merely an immovable object as has been practiced by most people so far. This is where some scholars can see a kind of indecision to execute Islamic law that is contributive and up to date in responding to the times. On the other hand, for scholars who understand fiqh as an intellectual product of the past and must be understood dynamically, they

<sup>37</sup> Hasil Wawancara Dengan H. Ismail Abdullah Caleu Di Dayah BUDI Tungkop Kabupaten Pidie Aceh, Tanggal 19 Juni, 2021.

<sup>38</sup> Hasil Wawancara Dengan Abu H. Abdullah Ibrahim Pimpinan Dayah Tanjong Bungong, Kabupaten Pidie Jaya Aceh, Tanggal 13 Mei, 2021.

<sup>39</sup> Hengki Ferdiansyah, *Pemikiran Hukum Islam Jasser Auda*, Edisi II (Tangerang Selatan: Yayasan Pengkajian Hadist el-Bukhori, 2018), p. 117–26.

appear to be more flexible in making legal decisions. That is why, among the Acehese dayah scholars who are oriented to the Syafi'i madzhab, there are also those who allow the implementation of cash waqf. This permission cannot be separated from logical and rational arguments in execute cash waqf law from the perspective of its benefit. Moreover, the consideration of the ability to understand the text and context is also the thing that underlies the flexibility in establishing a law.

For example, the view of Abu Sheikh Hasanoel Bashry HG or who is more familiarly called Abu Mudi. He is the leader of the MUDI Islamic Education Institute Dayah, Samalanga-Aceh Grand Mosque and the leader of the Shafi'i madzhab. Abu Mudi's thinking about cash waqf looks a little looser when compared to other scholars who have been described previously. From the results of interviews conducted with Abu Mudi, it was revealed the reasons for the permissibility of cash waqf with money in the position of Islamic law. As quoted from the interview excerpt;

If we look at it in general terms, the conditions for *maukuf* must be eternal *i'en* (objects). If the money is meant for objects that are in waqf (*maukuf*), of course it is not valid. Unless it is interpreted with other meanings, for example, the value of money to be donated is replaced with objects. For example, there are people who are in need of cement, so money is given to buy cement. Thus, even if we give money, we are actually giving cement to that person. If we take an analogy like that, it's okay. But if it is solely money that is waqf, this is not allowed. However, we should not blame it if there are other madzhab that allow it. We are the ones who consider it.<sup>40</sup>

Based on the information above, Abu Mudi wants to show that the scraping of money with other objects can be used as a solution to answer the controversial issue of cash waqf. This is the same as described by Girindra et al, that cash waqf can be applied by means of mutual funds and converting them into fixed assets.<sup>41</sup> The advantage of cash waqf is that the nominal is very varied and can be reached by all people. Likewise, from the aspect of its use, cash waqf is much easier and more flexible.<sup>42</sup> Thus, when considered in terms of benefits and convenience, cash waqf is much easier when compared to inanimate property waqf, which are relatively larger in number and shape. Cash waqf can be done by everyone at any time, so with these conveniences, it can be collected

<sup>40</sup> Hasil Wawancara Dengan Abu Syekh H. Hasanoel Bashry HG (Abu Mudi) Di Dayah LPI MUDI Mesjid Raya Samalanga Kabupaten Bireuen Aceh, Tanggal 09 Mei, 2021.

<sup>41</sup> Girindra Mega Paksi, Asfi Manzilati, and Marlina Ekawaty, 'Kajian Hukum Dan Implementasi Wakaf Harta Bergerak Di Indonesia: Wakaf Uang Dan Saham', *ISLAMICONOMIC: Jurnal Ekonomi Islam*, 9.2 (2018) <<https://doi.org/10.32678/IJEI.V9I2.94>>.

<sup>42</sup> Mansur Efendi, 'Menakar Progresivitas Hukum Wakaf Dalam Pengembangan Wakaf Uang Di Indonesia', *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, 3.2 (2018), 191–204 <<https://doi.org/10.22515/ALAHKAM.V3I2.1470>>.

in quantity more than waqf with immovable property which can only be done by certain people.

Consideration of the beneficial, is also a reason for Abu H. Ishak Langkawe to allow cash waqf. His view is almost the same as Abu Mudi's view which requires that cash is allowed by first crushing money into goods. As quoted from the results of an interview with Abu Ishak;

If it is directly by waqf cash, of course it is not allowed because the object is impermanent. Cash waqf is allowed if the money is represented to give goods to be waqf. For example, if there is a person who is going to be waqf and he has money, just represent the money to buy what he wants to donate. For example, a plot of land and so on, so that the waqf object has its object when it is used and when its benefits are taken. Of course, that would be more beneficial <sup>43</sup>

Abu Mudi and also Abu Ishak allowed cash waqf with money because they considered the benefit side. Not much different from the view expressed by Tgk. H. Nuruzzahari Yahya or who is often called Waled Nu. He is a charismatic scholars who is very well known among Nahdhatul Scholars (Indonesian: NU) and is also one of the charismatic Acehnese scholarss who are widely used as the mecca of fatwas. In looking at the issue of waqf using cash, Walid Nu is of the opinion that it is permissible. As expressed in an excerpt from the interview;

In my opinion, cash waqf is just a name. It aims to further encourage Muslims to like to donate, give zakat and give alms. Such as the existence of zakat that is required from employee salaries or alike, of course if this is a problem, employees will not pay tithes, because if you pay attention to the fatwas of previous scholars, for example Imam Syafi'i, they do not mention salary in the fiqh of zakat. A new fatwa appears after considering the benefits, so that employees have the enthusiasm to donate or give charity, where later the funds from the infaq will be used by the government according to its designation for the benefit. Likewise, waqf using cash, all of that is allowed with consideration of the benefit.<sup>44</sup>

Walid Nu's view in taking the law on the permissibility of cash waqf, is much looser when compared to the dayah scholars mentioned above. Of course, this is greatly influenced by his background, which is not only experienced in seeing the dynamics of Aceh, but this condition is also influenced by his NU. As the administrator of the Aceh Nahdhatul Scholars (NU) organization, Walid Nu certainly cannot be separated from the tradition of taking legal ijtihad with the NU pattern. It is understood that since the NU congress in Bandar Lampung in 1994,

<sup>43</sup> Hasil Wawancara Dengan Abu H. Ishak Langkawe Pimpinan Dayah Baldatul Mubarakah Kembang Tanjung Pidie Aceh, 19 Juni, 2021.

<sup>44</sup> Hasil Wawancara Dengan Tgk. H. Nuruzzahari Yahya (Waled Nu) Di Dayah Ummul Ayman Samalanga Kabupaten Bireuen Aceh, 21 Juli, 2021.

NU in carrying out legal *ijtihad* has greatly appreciated the works of previous scholars, but has paid great attention to the condition of society which continues to develop. That is why the fatwas of scholars under the NU organization seem more flexible.<sup>45</sup>

Another opinion was expressed by Tgk. Muhammad Yusuf A. Wahab (Tu Sop) who is also one of Aceh's charismatic scholars. Tu Sop also looks more flexible in executing an understanding of the ability of cash transfers. As quoted from an interview with Tu Sop.

First of all, to see whether it is permissible or not to waqf with cash, let's see if it is loaded with a political agenda or not? Even so, if the movement continues, we hope that this national money waqf movement is purely an agenda to save the people's economy and can then be re-purposed for the benefit of the people. However, in the treasury of Syafi'iyah fiqh, we do not find provisions that can legitimize the permissibility of waqf in the form of money. Because the rules of waqf are very clear, that what is waqf is an object that does not run out after its benefits are taken.<sup>46</sup>

Based on the information presented above, Tu Sop wants to show us that cash waqf is okay as long as it is not aimed at a political agenda. Cash waqf is allowed if it is done for benefit. At this level, it is clear that productive waqf using cash is actually no longer talking about its substance, but also its benefits. This was initiated by a number of scholars, so that the waqf would not stagnate as an an sich object.

Apart from the dynamics of differing views of the *dayah* scholars in Aceh regarding cash waqf, the most important thing to understand is that fiqh law certainly develops dynamically. Likewise with cash waqf, this problem develops because of the situation that continues to develop. Of course, the changes in waqf law are very important to be addressed, because these changes are closely related to the situation and conditions in which the law applies.<sup>47</sup> Especially for the people of Aceh, the issue of cash waqf is very important to execute properly, because Aceh is a country of Islamic law which certainly cannot be separated from the changing times. This means that Islamic laws must be positioned as an effort to improve the welfare of the community.

<sup>45</sup> Muhammad Ulil Abshor, 'Dinamika Ijtihad Nahdlatul Scholars (Analisis Pergeseran Paradigma Dalam Lembaga Bahtsul Masail NU)', *Millati: Journal of Islamic Studies and Humanities*, 1.2 (2016), 227–42 (pp. 227–42) <<https://doi.org/10.18326/MLT.V1I2.227-242>>.

<sup>46</sup> Hasil Wawancara Dengan Tgk. Muhammad Yusuf A. Wahab (Tu Sop) Pimpinan Dayah Babussalam Al Aziziyah Jeunieb, Kabupaten Bireuen Aceh, Tanggal 21 Juli, 2021.

<sup>47</sup> Muslihun Muslihun, 'Dinamisasi Hukum Islam Di Indonesia Pada Zakat Produktif Dan Wakaf Produktif: Sebuah Studi Perbandingan', *Al-Manahij: Jurnal Kajian Hukum Islam*, 8.2 (2014), 199–216 <<https://doi.org/10.24090/mnh.v8i2.408>>.

As described by Mawardi, that the Acehnese are a religious society whose almost all social interactions are based on the basis of adat and Islamic law.<sup>48</sup> These traditional and Islamic values apply in daily activities so that it looks like the higher the public interest in the fatwas of the scholars.<sup>49</sup> This socio-psychological condition is also what causes the Acehnese people to be very obedient and respectful to the scholars. Obedience to the scholars is reflected in the persistence of the community in following the recitations delivered by the scholars, both in the dayah, in the mosque, and in the study halls. Actually, this fact can be a momentum to change the paradigm of society in executing an understanding of the implementation of cash waqf. However, it is undeniable that the people of Aceh are also divided in looking at the permissibility of cash waqf, because the community follows the views of the scholars who they consider as role models. The views of scholars are the reason for the community to be willing or not willing to carry out cash waqf.

The impact of the occurrence of differences in the views of scholars regarding cash waqf has made it difficult to develop cash waqf in Aceh. As reported by Ferdian, the implementation of cash waqf is still strange to the people of Aceh because it is considered contrary to the Syafi'i madzhab. Likewise, most of the dayah scholars in Aceh refused cash waqf because they felt it was not in accordance with the Shafi'i madzhab.<sup>50</sup> The experience of the Acehnese people, is almost the same as that described in the Palembang community to interpret waqf as limited to immovable objects. As a result, zakat management becomes stagnant and unproductive.<sup>51</sup>

Because the issue of cash waqf is still acute in Aceh, it is very important to provide education for the community so that the optimization of cash waqf can be used as a momentum to improve people's welfare. The meaning of waqf must be expanded, no longer limited to immovable objects. For example, as has been done by the Indonesian government in responding to the economic downturn since the Covid 19 pandemic. The government took a legal policy to establish a land bank in the context of accelerating the national economy after Covid 19.<sup>52</sup> This report is a comparison in viewing legal policy-making decisions that cannot

<sup>48</sup> Mawardi Siregar, 'Manajemen Pembinaan Sumber Daya Da'i Melalui Organisasi Dakwah Di Kota Langsa', *Idarotuna*, 4.1 (2022), 13–26 <<https://doi.org/10.24014/IDAROTUNA.V4I1.16877>>.

<sup>49</sup> Mawardi Siregar, 'Partisipasi Organisasi Keagamaan Dalam Penyiaran Dakwah Islam Di Kota Langsa', *Al-Hikmah Media Dakwah, Komunikasi, Sosial Dan Kebudayaan*, 12.2 (2021), 78–90 <<https://doi.org/10.32505/HIKMAH.V12I2.3438>>.

<sup>50</sup> Fariz Ferdian, 'Undang-Undang No. 41 Tahun 2004 Tentang Wakaf Tunai (Kajian Pemikiran Scholars Dayah Aceh Utara)', *Tadabbur: Jurnal Peradaban Islam*, 2.2 (2020), 349–56 <<https://doi.org/10.22373/TADABBUR.V2I2.28>>.

<sup>51</sup> Listiawati.

<sup>52</sup> Vincensia E P Sari, Serlly Waileruny, and Graceyana Jennifer, 'Land Banking Establishment as the First Step Acceleration for Post COVID-19 Pandemic Investment', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 21.1 (2022) <<https://doi.org/10.31941/PJ.V21I1.1982>>.

be separated from the side of benefit considerations. However, what needs to be understood is that in establishing a legal decision, one must remain obedient to the rules, or not deny the previous laws. So, the legal development instrument is still based on the original source by considering the benefit. Here then, Islamic law will be more contributive in answering the problems that arise in the present context that may not have happened when the previous scholars were still alive. So, the task of the scholars now is to translate the law according to the present context, without being deprived of its original meaning.

Thus, in explaining cash waqf to the public, the benefit must also be taken into consideration to instill it into the community, because there are also Dayah scholars in Aceh who are of the Syafi'i madzhab allowing cash waqf. This argument becomes important, because the fiqh paradigm which has been conventional so far has also triggered stagnation in the implementation of cash waqf. As reported by Ferdian, that the low level of participation of the Acehese people in the implementation of cash waqf, because it is influenced by religious beliefs that refer to the opinion of charismatic scholars of the Shafi'i madzhab.<sup>53</sup>

Based on the explanation above, it can be understood that the implementation of productive waqf with cash in Aceh has not been optimal. The difference between the scholars in executing cash waqf laws contributes to the low public interest in waqf with cash. The occurrence of differences in the determination of law is caused by differences in understanding legal texts from the original sources and also the methodology chosen in deciding a law.<sup>54</sup> Parallel to this view, the legal development orientation of the text must be shifted to context, because a legal approach based solely on the text is not sufficient to respond to changes that continue to develop. That is why, Hasbi As Shiddiqy as quoted by Hasan, said that the era that continues to develop is very important to understand in formulating legal claims that are oriented to the benefit. In that way, Islamic law can be actualized in providing a sense of justice, benefits and the creation of community welfare.<sup>55</sup>

#### 4. Conclusion

Based on the study that has been described, it can be concluded that the practice of waqf in Aceh, especially cash waqf, is faced with quite complicated problems. The complexity of the issue of cash waqf implementation in Aceh is inseparable from the understanding of scholars who still rely on past legal products, without being willing to elaborate in the context of the times. This

<sup>53</sup> Ferdian.

<sup>54</sup> Abdul Wahab Khallaf, *Sejarah Pembentukan Dan Perkembangan Hukum Islam*, trans. by Wajidi Sayadi (Jakarta: Rajagrafindo Persada, 2002), p.92.

<sup>55</sup> Noorhaidi Hasan, 'Meretas Involusi Kajian Hukum Islam Di Indonesia: Pengalaman Fakultas Syariah Dan Hukum UIN Sunan Kalijaga Yogyakarta', *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, 46.2 (2012), 385–402 <<https://doi.org/http://dx.doi.org/10.14421/ajish.2012.46.2.%25p>>.

situation was then strengthened by an understanding that is traditional and conventional in executing cash waqf law. The impact is very broad, especially in encouraging the enthusiasm and desire of the community to waqf using cash, because people tend to be more obedient to the fatwas of scholars who in fact belong to the Shafi'i madzhab. The waqf law, which has been ratified, is not strong enough to be a pressure in growing people's desire for cash waqf with money. On that basis, it is very important to carry out continuous socialization so that people are more aware that cash waqf can be made more productive to support the welfare of the community.

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### **Interview result**

*Results of Interview with Abu H. Abdullah Ibrahim, Leader of Dayah Tanjong Bungong, Pidie Jaya District, Aceh, May 13, 2021*

*Results of Interview with Abu H. Ishak Langkawe Leader of Dayah Baldatul Mubarakah Kembang Tanjung Pidie Aceh, June 19, 2021*

*Results of Interview with Abu H. Muhammad Amin (Abu Tumin) in Dayah Blang Bladeh, Bireuen Aceh Regency, July 18, 2021*

*Results of Interview with Abu Sheikh H. Hasanoel Bashry HG (Abu Mudi) at Dayah LPI MUDI Samalanga Grand Mosque, Bireuen Aceh Regency, May 09, 2021*

*Results of Interview with H. Ismail Abdullah Caleu at Dayah BUDI Tungkop, Pidie Aceh Regency, June 19, 2021*

*Results of Interview with H. Usman Ali (Abu Kuta Krueng) at Dayah Darul Munawwarah, Kuta Krueng, Pidie Jaya Regency Aceh, May 3, 2021*

*Results of Interviews With Tgk. H. Nuruzzahari Yahya (Waled Nu) at Dayah Ummul Ayman Samalanga, Bireuen Regency, Aceh, July 21, 2021*

*Results of Interviews With Tgk. Muhammad Yusuf A. Wahab (Tu Sop) Leader of Dayah Babussalam Al Aziziyah Jeunieb, Bireuen Aceh Regency, July 21, 2021*

### **Jurnal**

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