

## Comparative Analyses of Maliki and Hanbali Thought on Waqf Istibdāl

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### Abstract

This article aims to describe and Analyze dissent from Maliki and Hanbali on the practice of *istibdāl* endowments and endowment empowerment adopted by Act No. 41 of 2004. Type this research is the *library* which is based on data management obtained from several kinds of literature. This research approach uses a normative approach. This study indicates that there are differences in the views of the Maliki School and the Hambali School related to the practice of *istibdāl* waqf. In this *paper*, the opinion of the Maliki School distinguishes two categories in the practice of *istibdāl* waqf, namely movable waqf property and immovable waqf property. Movable waqf property is allowed to practice *istibdāl* waqf because the movable waqf property can no longer be used. At the same time, the waqf property that does not move is not allowed to practice *istibdāl* except with emergencies such as the expansion of masjid, cemeteries, and public roads, unlike the case with the Hambali School, which does not distinguish movable waqf property or immovable waqf property. This school prioritizes the benefits of the waqf. If the community can no longer use it, it is permissible to practice *istibdāl* following its terms and conditions. Moreover, the ability to practice *istibdāl* waqf in the Hambali School is quite relevant to conditions in Indonesia, following Law Number 41 of 2004 concerning waqf, which both aim to optimize the benefits of waqf and empowering waqf assets.

### Keywords:

**Comparative Analysis; Waqf Istibdāl; the Maliki School; the Hanbali School.**

### Abstrak

Artikel ini bertujuan untuk mendeskripsikan dan menganalisis perbedaan pendapat dari Mazhab Maliki dan Mazhab Hambali tentang praktik *istibdāl* wakaf serta pemberdayaan wakaf yang disesuaikan dengan Undang-Undang Nomor 41 Tahun 2004. Jenis penelitian adalah kepustakaan (*library research*) yang berpedoman terhadap pengolahan data yang didapatkan dari beberapa literatur. Pendekatan penelitian ini menggunakan pendekatan normatif. Hasil penelitian ini menunjukkan bahwa, terdapat perbedaan pada pandangan Mazhab Maliki dan Mazhab Hambali terkait dengan praktik *istibdāl* wakaf. dalam penulisan ini pendapat Mazhab Maliki membedakan dua kategori dalam melakukan praktik *istibdāl* wakaf yakni harta benda wakaf yang bergerak dan harta benda wakaf yang tidak bergerak. harta benda wakaf yang bergerak dibolehkan melakukan praktik *istibdāl* wakaf dengan syarat harta benda wakaf yang bergerak itu sudah tidak dapat dimanfaatkan lagi. Sedangkan harta benda wakaf yang tidak bergerak tidak diperbolehkan melakukan praktik *istibdāl* kecuali dengan keadaan darurat diantaranya perluasan masjid, kuburan dan jalanan umum. Berbeda halnya dengan Mazhab Hambali yang tidak membedakan harta benda wakaf bergerak ataupun harta benda wakaf yang tidak bergerak. Mazhab ini lebih mengedepankan kemanfaatan wakaf tersebut, jika sudah tidak dapat digunakan oleh masyarakat maka dibolehkan melakukan praktik *istibdāl* sesuai dengan syarat dan

ketentuannya. Serta kebolehan dalam melakukan praktik *istibdal* wakaf pada Mazhab Hambali ini cukup relevan dengan kondisi di Indonesia, yang sesuai dengan Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf yang sama-sama memiliki tujuan untuk mengoptimalkan kemanfaatan wakaf dan pemberdayaan harta benda wakaf

**Kata Kunci:**

**Analisis Perbandingan; Istibdāl Wakaf; Mazhab Maliki; Mazhab Hanbali.**

## Introduction

Waqf is a one of social Worship Islamic Religious existing ones, such endowments in the recommended for Muslims, because it will always flow reward for *wakif* (people who berwakaf) concerned if it had died.<sup>1</sup> As narrated in the hadith of the Prophet as follows::

حَدَّثَنَا يَحْيَى بْنُ أَبِي أُيُوبَ وَفُتَيْبَةُ يَعْنِي ابْنَ سَعِيدٍ وَابْنُ حُجْرٍ قَالُوا حَدَّثَنَا إِسْمَاعِيلُ هُوَ ابْنُ جَعْفَرٍ عَنِ الْعَلَاءِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ أَوْ عِلْمٍ يُنْتَفَعُ بِهِ أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

Meaning:

*“Yahya bin Ayyub and Qutaibah -namely Ibn Sa'id- and Ibn Hujr narrated to us; have told us Isma'il - namely Ibn Ja'far- of Al 'Ala' from his father from Abu Hurayrah, that the Prophet sallallaahu 'alaihi wasallam said: "All human charity that will not cut except for three cases, namely shadaqah jariyah, helpful knowledge and pious children who always pray for their parents.” (HR Muslim No.3085)<sup>2</sup>*

During its development, waqf could only be understood in the form of its benefits, such places of worship, for example, in the form of mosques or prayer rooms. Changes that occur in the most basic waqf have been made during the development of Islam in Medina. At that time, waqf varied greatly, both in terms of the form of a goal and its object, and changed its orientation, both from purely religious purposes to the community's needs. The Islamic community began to realize the importance of waqf to realize the legacy of waqf that still existed and developed it into productive waqf, improving the management pattern and administration system. However, with time running, many of the problems that occur in waqf, whether or not to replace the property, may object to endowments, especially in Indonesia, where most of the population is Muslim, guided by the Law. No. 41 of 2004 and the complications of Islamic Law in Indonesia are still being

<sup>1</sup>Kementerian Agama, *Perkembangan Wakaf di Indonesia* (Jakarta: Direktorat Pemberdayaan Wakaf, 2006), pp. 1.

<sup>2</sup>Syeh Imam Muhyidin Zakariyah Yahya bin Syaraf , *Kitab Shahih Muslim* (Book1; Damaskus Syiria, 2010), pp. 3085.

debated following the rules used as guidelines by each follower of the fiqhi school related to replacing waqf assets in Islamic fiqh stated that *Istibdāl*. *Istibdāl* is an item that is used as a substitute for the original waqf that has been sold.<sup>3</sup> The capacity of mujtahid scholars has stringent requirements, while the problems faced by humans are increasingly complex.<sup>4</sup>

The authenticity of the practice of *Istibdāl waqf* contains problems among the fuqaha. Some of them support it with various considerations, but some oppose its implementation. Whether or not it is permissible to replace waqf goods, the Maliki school of Law allows it by distinguishing between movable and immovable waqf goods. However, according to the opinion of the Maliki School, movable objects are allowed to be traded if the waqf object has no benefit. Unlike the case with immovable waqf objects, the Maliki school does not allow immovable Waqf objects to be traded by explicitly prohibiting it except in a very emergency. Meanwhile, the Hambali School allows the practice of *istibdāl*.

## Literature Review

### Definition of Waqf

The word waqf comes from the Arabic language, namely *al-waqf*, which means to hold or *al-habs* (hold). The word *al-waqf* is a masdar form of a noun formed from the word *waqf*. The word *al-waqf* is a form of *masdar* or a noun formed from the word *waqf*. In comparison, the word *al-habs* comes from the word *habasa*. The word *waqf*, also found in Indonesian, comes from an Arabic word: *waqofah-yaqifu-waqfan*, which follows *wazan fa'ala, yaf'ilu, fa'lan*, which means to stop, prevent, restrain, and remain to stand.<sup>5</sup>

Waqf is also interpreted in Arabic as *habs*, which means holding back wealth and using the results in the way of Allah. The meaning here is that it stops its benefits and is replaced for good deeds according to the purpose of the waqf itself. Stop all activities that were allowed initially for property ( *'ain* ), such as selling, donating, inheriting, transacting it. Then after being made waqf property, the property is only for religious purposes, not for the needs of *the waqif* or other *individuals*.<sup>6</sup>

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<sup>3</sup>Muhammad Abid Abdullah Al-Kabisi, *Fiqhi Waqaf*, (Jakarta: IMan, 2003), pp. 349.

<sup>4</sup>Muammar Muhammad Bakry, "Pengembangan Karakter Toleran Dalam Problematika Iktilaf Mazhab Fikih", *Al Ulum* 14, no. 1 (Juni 2014), pp. 186. <http://scholar.google.com/jurnal/muammar/muhammad/bakry/23p3> (Diakses 29 Januari 2021)

<sup>5</sup>Ahmad Warson Al Munawir, *Kamus Al Munawwir Arab-Indonesia Terlengkap* (Yogyakarta: Pustaka Progressif, 1997), pp.1576.

<sup>6</sup>Abdul Halim, *Hukum Perwakafan Di Indonesia* (Jakarta: Ciputat Press, 2005), pp. 8.

Prophet Muhammad used the word *al-habs* in showing the meaning of waqf, so what is meant by waqf is to hold, or *al-habs* is something that holds property whose benefits are intended for the virtues recommended by religion.<sup>7</sup>

Meanwhile, there are several meanings of waqf, including as conveyed by Imam Abu Hanifah and followers of Imam Malik, waqf is holding fixed objects as the property of the *wakif* by providing benefits for virtue at that time. Syafi'iyah scholars, such as Imam Nawawi, define waqf as holding back assets that can be used not for themselves, with the object still there, and can be used for good and draw closer to the almighty.<sup>8</sup> Scholars Ham baliyah, Ibn Qudaamah, in *the book Al-Mughni al-Kabir Syarah* defines endowments that hold property (land) and give fruit yields can be in the waqf.<sup>9</sup>

### Legal Basis of Waqf

The arguments on which waqf is prescribed are based on knowledge of the texts of the Qur'an and As-Sunnapp. The Qur'an does not explicitly explain the teachings of the waqf, not even a single verse of the Qur'an that mentions the word "*waqf*"<sup>10</sup> Thus, because the waqf is a form of virtue through possessions, several verses command humans always to do good for the good of society. Allah said in QS Al-Baqarah/2: 267

يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ ۖ وَلَا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِأَخِيذِيهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ ۗ وَاعْلَمُوا أَنَّ اللَّهَ غَنِيٌّ حَمِيدٌ

Meaning:

*"O you who believe, spend some of the results of your good deeds and some of what we put out for you from the earth. Please do not choose the one that is rushed for you to take out, even though you do not want to take it but by squinting (reluctantly) towards it."*<sup>11</sup>

Allah said in QS Ali-Imran/3: 92.

<sup>7</sup>Departemen Agama RI, *Wakaf Tunai Dalam Perspektif Hukum Islam* (Jakarta: Departemen Agama RI, 2005), pp. 14.

<sup>8</sup>Muhammad Abid Abdullah Al-Kabisi, *Hukum wakaf Kajian Kontemporer Pertama dan Terlengkap tentang Fungsi dan Pengelolaan Wakaf serta Penyelesaian atas Sengketa Wakaf* (Jakarta: IIMaN, 2004) pp. 40.

<sup>9</sup>Abdurrahman bin Abu Umar Muhammad bin Ahmad bin Qudamah Al-Muqaddisi, *Al-Mughni ma'a Al-Syarah Al-Kabir*, trans. Dr. M. Syarafuddin Khatib, dkk, *Al Mughni* (BookVII; Jakarta, Pustaka Azam, 2007), h .789.

<sup>10</sup>Achmad, dkk., *Menuju Era Wakaf Produktif* (Ver. 1; Jakarta: Mitra Abdi Press, 2005) pp. 58.

<sup>11</sup> Kementrian Agama RI, *Al-Qur'an dan Terjemahannya*, pp. 45.

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ يَوْمَ تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

Meaning:

“You will not get good (better) until you spend some of the wealth you love, and whatever you spend, then Allah knows it.”<sup>12</sup> .

## Result and Discussion

### The views of the Maliki School and the Hambali School on Istibdāl Waqf

Imam Malik is one of the school's scholars who do not allow the practice of *Istibdal* waqf on immovable property on the basis that the immovable waqf property has eternity in it. This sect divides the two states in practice *istibdal* such as: if the form of the mosque, Maliki mem be suitable to replace the mosque to the ground mosques and if it is a property that is worth then it should not sell it or replace it, except for emergencies such as the expansion of the Grand Mosque, public roads, and cemeteries. Unlike the case with waqf property that moves in carrying out *istibdal* practice, it is permissible to look at the existing *benefits* because, according to him, movable waqf property does not have eternity in it. Examples of movable property are Animals, Cars, Money, and so fort.

Imam Malik said that waqf is allowed to be sold in three conditions, namely: First, when the waqf requires that the waqf be sold so that these conditions can be followed. Second, if the waqf item is a type of movable waqf item and no longer fulfills the purpose of the waqf, the selling price can be used for similar or commensurate items with the waqf item. The three immovable goods may be sold to expand mosques, roads, and graves. Meanwhile, for purposes other than that, it may not be sold, even until the item is damaged and does not function.<sup>13</sup>

One of the objectives of the stipulation of waqf is to perpetuate the benefits of waqf property forever for worship, and other community needs following Islamic teachings. With this in mind, the Maliki school of thought does not allow the practice of *istibdal* on immovable waqf property in the form of mosques and so on because the waqf has moved to Allah and the damaged place can still be used for prayer. Imam Malik does not allow the existence of *istibdal* waqf because they have to consider the permanence of the waqf object. That way, if the waqf property can still be used and the immovable waqf property has been damaged but has some

<sup>12</sup> Kementrian Agama RI, *Al-Qur'an dan Terjemahannya*, pp. 62.

<sup>13</sup> Muhammad Jawad Mughniyah, *Al-fiqhi 'ala Al-Madzahib Al-khamzah* trans. Maykur A.B., dan Afif Muhammad, *Fiqh Lima Madzab* (Ver. XXIV; Jakarta: Lentera, 2009), pp. 670.

benefits, according to him, it is not permissible to sell or replace the immovable waqf property. Nevertheless, if it is to expand the mosque, street, or cemetery, it is permissible to practice *istibdal*.

Meanwhile, according to the Hambali school of *thought*, this *istibdal* practice does not distinguish between immovable waqf property and movable waqf property because, according to him, waqf property, if it has no benefit to the community, it can be exchanged or traded ( *istibdal* ). According to the Hanbali school of thought, if the object being waqf is damaged, and its benefits can no longer be produced, such as a house that collapses, land that is destroyed and returns to a dead land and cannot be managed, or a mosque that is abandoned by its inhabitants so that the mosque is in a place that is no longer available. The whole part of the mosque is divided into several parts, so that it is impossible to rebuild, and it is also impossible to build part of the mosque except by selling it or replacing it, which the community can use. However, if the mosque can no longer be used in its entirety, then the entire mosque must be sold.<sup>14</sup> His view regarding the practice of *istibdal* waqf does look different from other schools. It is because the focus of his goal is to realize and maintain eternal waqf objects. The fundamental reason, in this case, is that when the preservation of the waqf by perpetuating the waqf property cannot be carried out, then the benefits of the waqf object will become an essential object in its eternity.

In addition, although *istibdal* waqf is allowed. The Hambali school still provides limitations in licensing to carry out the practice of *istibdal* waqf. This school limits the practice of *istibdal* waqf, provided that the waqf property is in an emergency and can consider the benefits to the community.

From the explanation above, it can be seen that the two schools of thought have significant differences in the practice of *istibdal* waqf, wherein the Maliki school of thought distinguishes two parts, namely movable waqf property and immovable waqf property. In descending order, the immovable waqf property is not allowed to practice *istibdal* except in very emergencies such as the expansion of the mosque, used to build roads and graves. Meanwhile, movable waqf objects in the Maliki school of thought allow them to practice *istibdal*, according to which movable property does not have eternity in it. According to him, unlike the case with the Hambali School, which allows doing *istibdal* practice and does not distinguish whether it is movable waqf objects or immovable waqf objects, according to him, if

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<sup>14</sup>Abdurrahman bin Abu Umar Muhammad bin Ahmad bin Qudamah Al-Muqaddisi, *Al-Mughni ma'a Al-Syarh Al-Kabir*, trans. Dr. M. Syarafuddin Khatab, dkk, *Al Mughni* (BookVII; Jakarta, Pustaka Azam, 2007), h .825.

there is no benefit to the general public, the waqf property must be sold or replaced with something more useful.

### Istinbat of the Hambali School and the Maliki School of Law Concerning the Istibdāl of Waqf

The Hambali school can be classified to scholars who agree with the statement that waqf does not include orders that are *ta'abbudiy* (cannot be rationalized), but are more *ta'aqquliy* (can be rationalized) with the ultimate goal of being able to provide a benefit to the Ummapp.

The previous explanation has provided an understanding that the original Law of *istibdāl* practice in waqf assets is a waqf object that cannot be allowed if its condition still provides benefits to the community except in emergency conditions and for a benefit in maintaining the sustainability of the benefits of waqf sustainably as it is known that property waqf is *shadaqah jariapp*.

As *istinbat* Law in the practice of *istibdāl* waqf used by the Hambali School of Ijma' Friends as follows:

الدَّلِيلُ الْأَوَّلُ: مَا رُوِيَ مِنْ أَنَّ عُمَرَ بْنَ الْخَطَّابِ - رَضِيَ اللَّهُ عَنْهُ - نَقَلَ مَسْجِدَ الْكُوفَةِ الْقَدِيمِ إِلَى  
مَكَانٍ آخَرَ،  
وَصَارَ الْأَوَّلُ سَوْقًا لِلتَّمْرَيْنِ، فَهَذَا إِبْدَالٌ لِعَرَصَةِ الْمَسْجِدِ

Meaning:

"It was narrated that Umar bin Khatab once wrote a message to Sa'ad Abi Waqqash "Move the mosque located in the Tamarin area and make it Baitul Mall facing the Qibla."<sup>15</sup>

In the case of legal *istinbat* used by the Hambali School related to waqf *istibdāl*, it is permissible to consider the benefit for the benefit of the community if the waqf property can no longer be used. However, although the Hambali School allows doing *istibdāl* waqf, this school limits the mechanism. Among the limitations used by the Hanbali School are as follows:

- a. That *istibdāl* waqf in the Hambali School of Mosques is allowed based on the *consensus* of friends who have moved the mosque. However, the Hambali School allows the practice of *Istibdāl* if it is in an emergency or the mosque is no longer in use by the community.

<sup>15</sup>Abdurrahman bin Abu Umar Muhammad bin Ahmad bin Qudamah Al-Muqaddisi, *Al-Mughni ma'a Al-Syarh Al-Kabir*, trans. Dr. M. Syarafuddin Khatab, dkk, *Al Mughni* (BookVII; Jakarta, Pustaka Azam, 2007), pp. 827.

- b. That if the waqf property is not a mosque, the Hambali School is of the view that the practice of *istibdal* waqf property is permissible but on the condition that the waqf property is no longer able to provide benefits to the community and if the waqf property can still be used then the Slavi school does not allow doing waqf *istibdal*.
- c. That the waqf property has been sold, then the proceeds from the sale can be used or bought anything (other waqf objects, similar or not), provided that the waqf property can be used for the public interest.
- d. If the waqf property is in the form of animals, but it can no longer be used, then it is sold, and the proceeds from the sale are not sufficient to buy other animals of the same type and quality. Then it is permissible for other animals that are not of the same type and not of the same quality according to the money obtained from the sale so that the recipient of the waqf can utilize them.

From the analysis above, there are aspects of benefit that Imam Ahmad prioritizes in taking Law in the permissibility of doing *istibdal* waqf practices, especially waqf assets that can no longer be used and have no benefit to the general public. In ushul fiqhi, consideration of the benefit aspect is usually called *maslahah mursalah*, and the majority of scholars agree to serve as the legal basis for establishing Islamic Law. *Maslahah* is a valuable act directed by the Shari'ah (God) towards His servants to maintain and maintain religion, soul, mind, lineage, and property. *Mashlahah* can be interpreted as *benefiting* and rejecting harm. So that using this waqf *istibdal* practice will provide more benefit to the community. In *istibdal*, waqf does not necessarily abort the physical property of the waqf but is only limited to replacing the type and object that can be used again by the community. As in the provisions of the rules of Islamic fiqhi that can be used as a reference for the Hambali School as follows:

الضَّرُّ وَرَأَتْ تُبَيِّحُ الْمَحْظُورَاتِ

Meaning:

*“the disadvantages allow things that have been forbidden”*

This rule has become a benchmark or basis for scholars in conducting ijthihad related to Islamic Law. Thus, what has been done by Mazhab Hambali regarding the permissibility of waqf *istibdal* can be accepted with reason and has a solid and clear foundation.



as the view of the Maliki School, which uses legal istinbat as follows:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ أَصَابَ عُمَرُ بِحَيْبَرَ أَرْضًا فَآتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ  
أَصَبْتُ أَرْضًا لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ مِنْهُ فَكَيْفَ تَأْمُرُنِي بِهِ قَالَ إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا  
وَتَصَدَّقْتَ بِهَا فَتَصَدَّقَ عُمَرُ أَنَّهُ لَا يَبَاعُ أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ فِي الْفُقَرَاءِ وَالْقُرْبَى وَالرِّقَابِ وَفِي  
سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ أَوْ يُطْعِمَ  
صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ.<sup>16</sup>

Meaning:

*"It was narrated from Ibn 'Umar RA that Umar Ibn Khattab obtained land (garden) in Khaibar, then he came to the Prophet SAW, saying, "O Messenger of Allah, I have obtained land that has never been better for me than the land, so what? what you ordered (me) about it?". The Prophet (SAW) replied, "If you want, you hold on to it, and you give charity (results)." Ibn Umar said, "So Umar gave the land (by requiring) that the land was not sold, not donated and not inherited, namely to the poor, relatives, riqab (servants), sabilillah, guests and ibn sabil. It is not sinful for the person who eats from the land (produced) appropriately or feeds a friend without making it property." (Narrated by Al-Bukhari)*

Thus, the legal istinbat in the hadith above is clear that it cannot be sold, donated, and inherited. It can be seen because the waqf property that has been waqf has lost its own so that the general public can only use it. Imam Malik is cautious in using *istibdāl* waqf, especially on immovable Waqf property, by being used legally. This school does not allow it except in an emergency. As Imam Malik said that the practice of *istibdāl* waqf is permissible in three circumstances as follows:

- a. when the waqf requires that the waqf be sold so that these requirements can be followed. That way, the *nazirs* or judges will follow the conditions stated by the *wakif*.
- b. If the waqf item is a type of movable waqf item and no longer fulfills the purpose of the waqf, the selling price can be used for similar or commensurate items with the waqf item.
- c. Immovable property may be sold to expand mosques, roads, and cemeteries. Meanwhile, for purposes other than that, it cannot be sold, even until the item is damaged and does not function.

<sup>16</sup>Abdullah bin Abdurrahman Alu Bassam, *Shahih Bukhari Muslim* trans. Khatun Suhardi Syarah Hadis Pilihan Bukhari Muslim (Ver. 1; Jakarta: Daarul Falah, 2002), pp. 802.

## The Relevance of the Maliki School of Thought and the Hanbali School of Empowerment of Waqf in Indonesia

In Indonesia, the implementation and management of waqf have been regulated in such a way as stated in the Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf. In fiqhi, there is not much to discuss in detail and full related to waqf. However, if in PP No. 28 of 1977 and the Regulation of the Minister of Religion No. 1 of 1978 regulates the complete mechanism in the Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf. Regarding waqf, it is stated in the Law of the Republic of Indonesia Number 41 of 2004 that the *wakif* who will *donate* the property must meet the PPAIW (Official Waqf Pledge Deed Maker), which is used in making pledges in waqf.

As for Article 45 of the Law of the Republic of Indonesia Number 41 of 2004 concerning waqf including:

1. In maintain and manage waqf objects, *Nazhir* discontinued or replaced with *Nazhir* else if *Nazhir* is:
  - a. Died for individual *nazir*
  - b. Disbanded or disbanded following the provisions of the laws and regulations that apply to *nazhir* organizations or *nazhir* legal entities
  - c. at request
  - d. Sentenced to a criminal sentence by a court that has permanent legal force.

In the Law of the Republic of Indonesia Number 41 of 2004 related to waqf and in the matter of *istibdal* practice, *it is* included in the exception law rules as stated in Chapter IV Article 40 and Article 41 paragraph 1. Although in this waqf initially in Law no. 14 of 2004 prohibits waqf property from being used as follows:

1. Used guarantee
2. confiscated
3. Granted
4. On sale
5. Inherited
6. Exchange or
7. Transferred in the form of other rights transfers.

However, in this case, there are exceptions related to carrying out *istibdal* waqf practices as stipulated in Article 41 paragraph:

- (1) The provisions referred to in Article 40 letter f are excluded if the waqf property that has been waqf is used for the public interest following the general spatial

plan (RUTR) based on the provisions of the prevailing laws and regulations and does not conflict with sharia.

- (2) The implementation of the provisions as referred to in paragraph (1) can only be carried out after obtaining written permission from the minister with the Indonesian Waqf board's approval.
- (3) Waqf assets whose status has been changed due to the exclusion provisions referred to in paragraph (1) must be exchanged for assets whose benefits and exchange value are at least the same as the original waqf assets.
- (4) Provisions regarding changes in the status of waqf assets as referred to in paragraph (1), paragraph (2), and paragraph (3) are further regulated by government regulations.

After observing and analyzing that in the management of waqf in Indonesia, the practice of *Istibdāl* both have a perception of the management and development of waqf property which allows doing *istibdāl* practice between the similarities of the two, namely: First, that both the Hambali School and Law Number 41 of 2004 concerning Waqf allow the practice of *istibdāl*, second, although it is permissible to practice *istibdāl* waqf, basically in Law Number 41 of 2004 concerning waqf and the views of the Hambali School, it is based on the principle of benefit to the community accompanied by an element of prudence. Third, subjects who are allowed to carry out *istibdāl* practice, namely judges or people who manage waqf ( *nazhir* ) and are not allowed to be with just anyone to avoid harm.

## Conclusion

The ability to practice *istibdāl* in the Hambali School is quite relevant to the conditions in Indonesia, where the waqf regulations in Indonesia which have been enshrined in Law Number 41 of 2014 concerning Waqf are following the Hambali School, and both have the aim of optimizing the benefits of waqf and empower waqf property.

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