

JOIN: JOURNAL OF SOCIAL SCIENCE

<https://ejournal.mellbaou.com/index.php/join/index>

Open Access

Cite this article: Steven P. DenBaars. 2024 Waqf Law is Relevant in Responding to the Challenges of the Times regarding the Law of Selling Waqf Goods. Join: Journal of Social Science. 78-90

Received: December, 2023

Accepted: February, 2024

Keywords:

Fathul Mu'in, Syaikh Zainuddin bin Abdul Aziz Al Malibari, Fiqh Waqf

Author for correspondence:

Steven P. DenBaars

e-mail: stevenp.denbaars111@gmail.com

Published by:

GLOBAL SOCIETY
PUBLISHING

Waqf Law is Relevant in Responding to the Challenges of the Times regarding the Law of Selling Waqf Goods

Steven P. DenBaars

University of California, Santa Barbara, United States

This research aims to provide a deeper understanding and offer solutions to the statements in the book. The research method used is qualitative research with a normative legal approach or literature research. Contextual analysis is carried out to understand and analyze in depth the contents of the book "Fathul Mu'in". The results of the review showed that the sale of waqf items in the book was not allowed, even if the items had been damaged. This finding confirms the importance of understanding the views of texts in various literatures and includes postulates and opinions of other scholars to provide solutions to problems that often arise in today's society. Shaykh Ahmad Zainuddin Al-Malibari is based on the law of the Ash-Shafi'i madhhab and prioritizes opinions that are in line with it in waqf law. However, the proposal of fiqh states that every matter must be adapted to its purpose. This approach is in line with the hadith which states that every deed depends on its intention. Some scholars also argue that the important thing is to preserve the good old and take the new better. Problem solving in religion basically aims for the benefit of religion and people in general.

© 2024 The Authors. Published by Global Society Publishing under the terms of the Creative Commons Attribution License <http://creativecommons.org/licenses/by/4.0/>, which permits unrestricted use, provided the original author and source are credited.

1. Waqf Definition

Waqf comes from the Arabic *al-waqf* mashdar form of وَقَفَ - وَقْفًا. *Al-waqf* said mean *al-habs* mashdar form of حَبَسَ - يَحْبِسُ - حَبْسًا means to hold back (Putra & Ali, 2021) . *Al-Waqfan* said in Arabic contains several meanings:

الْوَقْفُ بِمَعْنَى التَّحْبِيسِ وَالتَّنْزِيلِ

"Holding , *holding assets to be donated, not transferred*" (Kasdi , 2016)

Lafa dz *waqf* (prevention), *tahbis* (arrest), *tasbil* (donation for fee sabilillah) has the same meaning. Waqf according to the language is to refrain from doing, spending. In Arabic it is said " *waqaftu* ". *kadzaa* ", and the meaning is that I hold it back (Zuhaili, 2011) .

Islamic social economic instrument and is a highly recommended act of worship. The important role of waqf in the development of social and economic life in society can be seen in supporting various vital life issues (Budiman, 2016) .

According to the Shari'a , waqf is holding basic assets and distributing the fruits. This means retaining wealth and distributing (using, spending) its benefits in the way of Allah (Al-Faifi, 2013) .

2. Biography Sheikh Zainuddin Al- Malibari and About the Book of Fathul Muin

a. Biography Sheikh Zainuddin Al- Malibari

Sheikh Zainuddin bin 'Abdul 'Aziz bin Zainuddin bn 'Ali Al Malibari Al Fannani Ash Syafi'i or who is often known as Sheikh Zainuddin al-Malibari was born in Malibar (Malabar), South India. The year of his birth cannot be known for certain.

His father, Sheikh Abdul Aziz, was a famous scholar who also had works known in the Islamic world. His works include the book *Irsyadul Alba* ' and *Maslakul Adzkiya* ' , both of which are based on the book *Hidayatul Adzkiya* ' , written by his own father, Shaykh Zainuddin bin Ali, known by the nickname " Zainuddin Al Awwal " .

About his death him , the scholars experienced difference opinion . KH Sirajuddin 'Abbas in *Tobaqotussafi'iyyah* take notes his death 972 H. *Pentahqiq* book *Nihayatuzzain* published by Dar Polar Al Islamiyyah , Habib ' Alwi Abu Bakar Muhammad As Saqqof write year died 987 H /

1579 AD.

Because it's different expert history determine the time of death , Sheikh's student Ibn Hajar Al Haitami that is clear as has been written Sheikh Nuruddin Marbu Al Banjari Al Makki in his book Ma'lumatu Tuhimmuka , year his death is at the beginning 10th century H. Sheikh Zainuddin Al Malibari buried on the outskirts of Fannon City , India, next to the Great Fannon Mosque .

Zainuddin al- Malaibari start his education with Study sciences base to his father and mother . Then he wander to area Ponnann For Study to his uncle , that is Sheikh Abdul Aziz who teaches at the Jami' Mosque in the area the . He No only look for science in his country . He also wanders to other countries for demand knowledge . He go to Arabian Peninsula and Hijaz for look for knowledge at a time perform [the Hajj](#) and Umrah. He settled there _ for 10 years and studied to several great scholars in Mecca and Medina.

b. General Overview of the Book of Fathul Muin

Book of Fathul Mu'in is a book compiled by scholars from Malabar, South India, namely Sheikh Zanuddin bin Abdul Aziz Al- Malibary . He is a famous scholar as a charismatic cleric who has reason critical in religious field . Besides than experts _ fiqh , he was a direct student from Sheikh Ibn Hajar Al- Haitamy This also known as an expert scholar in field Sufism , history and literature .

Book of Fathul Mu'in is an explanatory book or lecture books against the book that is still is works from Sheikh Zainuddin Abdul Aziz, namely the book Qurratul 'Ain Fii important Dien . Based on speech Sheikh Zainuddin in his book sermon , he compile this book simply hope God bless for the benefit of many people . By desire hopefully this book to be reason he get place worthy return in the afterlife later , that is, His paradise .

Besides that , he also said that this book is a book that contains is studies the choice that refers to the books of holding fruit the works of great scholars . Among them is from the books written by his teacher that is Ibnu Hajar Al- Haitamy , also the books of essays Wajhuddin Abdurrohman Bin Ziyad Al- Zubaidi , Sheikhul Islam Zakariya Al- Anshory , Imam Ahmad Al- MujZaddi Al- Zubaidi , as well as from other scholars who are Muhaqqiq Muta'akhir .

Book of Fathul Mu'in is the work of al - 'Allamah Zaynuddin al- Malibari , a student of Shaykh al-Islam Ibn. The famous Hajar al - Haytami which is lectures or description to the book Qurrah al - 'Ayn Fi Muhimmat al- Din, which is the book of works he own _

Book of Fathul Muin is a fiqh book madhhab Syafi'i who made reference

main in problem fiqh among al - Syafi'iyyah scholars who are muta - akkhirin discussion knowledge jurisprudence that discusses various problem jurisprudence in madhhab Shafi'iyyah in it contains Chapters as well Fashal . In fact equipped with sub-sub discussion in the form of tatimmah , Qaidah Muhimmah , Far'u , Muhimmah , Faidah , as well as Khatimah .

3. Opinions Syeh Zainuddin Al Malibari (the controversial one) about waqf in the book of Fathul Muin

(وَلَا يُبَاعُ مَوْقُوفٌ وَإِنْ حَرَبَ) فَلَوْ انْهَدَمَ مَسْجِدٌ وَتَعَذَّرَتْ إِعَادَتُهُ : لَمْ يُبَيْعْ ، وَلَا يَغُودُ مِلْكًا بِحَالٍ لِإِمْكَانِ الصَّلَاةِ وَالْإِعْتِكَافِ فِي أَرْضِهِ أَوْ جَفَّ الشَّجَرُ الْمَوْقُوفُ أَوْ قُلْعُهُ رِيحٌ لَمْ يَبْطُلِ الْوَقْفُ ، فَلَا يُبَاعُ وَلَا يَرْهَبُ ، بَلْ يَنْتَفِعُ الْمَوْقُوفُ عَلَيْهِ وَلَوْ بِجَعْلِهِ أَبْوَابًا ، إِنْ لَمْ يُمْكِنَ إِجَارَتُهُ حَشَبًا بِحَالِهِ فَإِنْ تَعَذَّرَ الْإِنْتِفَاعُ بِهِ إِلَّا بِاسْتِهْلَاكِهِ : كَأَنْ صَارَ لَا يَنْتَفِعُ بِهِ إِلَّا بِالْإِخْرَاقِ : انْقَطَعَ الْوَقْفُ أَيِ وَمِلْكُهُ الْمَوْقُوفُ عَلَيْهِ حِينَئِذٍ عَلَى الْمُعْتَمِدِ فَيَنْتَفِعُ بِعَيْنِهِ وَلَا يَسْنِعُهُ

Meaning: And *waqaf* goods cannot be sold even if they have been damaged. When a mosque collapses and there is an excuse to rebuild it, then the items can still be occupied prayer and *i'tikaf*. Or if a *waqf* tree dies dry or is blown down by the wind, then the *waqf* does not become invalid because it cannot be sold or donated. But taken advantage of by the *Mauquf alaihi* even with the way the door is made, if it is not possible to rent it in the form of wood as it is. If it can be used again except by destroying it as it can only be made into firewood, then the *waqf* is cut off, in the sense that it is then owned by *Mauquf alaihi*. According to the final opinion , he can take advantage of the thing but cannot sell it.

3. Basic Law of Waqf

Sunnah Rasulullah.

From Abu Hurairah (may Allah be pleased with him), he said that the Messenger of Allah (peace and blessings of Allaah be upon him) said,

ذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ مِنْ صَدَقَةٍ جَارِيَةٍ وَعِلْمٍ يُنْتَفَعُ بِهِ وَوَلَدٍ صَالِحٍ يَدْعُو لَهُ

"If a person dies, then his practice is terminated except for three things (namely): *Jariyah* charity , knowledge that is utilized, or the prayer of a pious child " (HR. Muslim no. 1631) "(Al Hajjaj, 2001)

As for the interpretation of the word *Sadaqah Jariyah* In this hadith, the scholars interpret *sadaqah Jariyah* is a *waqf*. Apart from the hadith above, which is understood indirectly as a *waqf* issue, there is a hadith

of the Prophet Muhammad who expressly touches on the recommendation of waqf worship, namely the Prophet's order to Umar to donate his land in Khaibar .

Bukhari Hadith Number 2565

حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ حَدَّثَنَا ابْنُ عَوْنٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ أَصَابَ عُمَرُ بِخَيْبَرَ أَرْضًا فَأَتَى 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 يُبَاغِ 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

Meaning : Has told us [Musaddad] has told us [Yazid bin Zurai '] has told us [Ibn ' Aun] from [Nafi'] from [Ibn 'Umar radiallahu ' anhumaa] said; 'Umar obtained property in the form of land in Khaibar then he went to the Prophet sallallaahu 'alaihi wasallam and said: "I have obtained property and I have never obtained property more valuable than it. How do you order me about it?" He said: "If you want, you take care of the trees and then you donate (the results) . " So 'Umar gave his sadaqah , where he did not sell the trees, nor did he give them away nor did he bequeath them, (but he gave his wealth) to the poor, relatives,. to free slaves, fii sabilillah (in the way of Allah), to entertain guests and Ibn Sabil. And it is not a sin for the person who takes care of it to eat from it in a virtuous (right) way and to feed his friends as long as it is not for the purpose of hoarding it. [Bukhari Hadith] ”(Nurseha et al., 2020)

Seen from several verses of the Qur'an and Hadith, the Prophet who touched on waqf does not appear to be very strict, therefore there are very few laws that are established based on these two sources, so that the teaching of waqf is placed and categorized in the area of *ijtihad*, not *piety* _ Despite this, the Qur'anic verse and the little Sunnah can be a guide for Islamic jurisprudents (Sabiq, 2021) .

4. Sale of Waqf Objects According to Islamic Law

The opinions of the jurists are so many and conflicting on this issue that there are many ikkhthilafs in waqf matters. Among them, there are those who prohibit the sale of waqf altogether, there are also those who allow it in some cases, and there are still others who are passive and do not provide laws. There are so many opinions that each faqih contradicts his own opinion in one book, for example he expresses an opinion on buying and selling which is different from his opinion on the issue of waqf sales. There are also those who oppose their opinion in one sentence, and say something at the end and then say something that contradicts it at the

end (Mughniyah, 2009) .

Ibn Taymiyah said, "As for replacing something that was vowed and donated with something better than it, as is related to replacing animals sacrifices , and this is divided into two types: first, replacement is necessary, for example if its function will be lost, like a horse donated for war, if it cannot be used in war then the horse can be sold and the proceeds from the sale are used to buy a replacement, second , replacement is because of greater benefit. important.

For example, a mosque if another mosque is built to replace it because it can better serve the local population than the first mosque and the first mosque is sold. This and similar allocations are permissible according to Ahmad and other ulama'. Ahmad argued that Umar bin Khatabra moved the old Kufa Mosque to another place, and that the old place was used as a market for date traders, this was a replacement for the mosque area . As for replacing the building with another building, Umar ra and Ustman ra built the Rasulullah saw mosque , different from the original building and added to it (Sabiq, 2009) .

The Imams in responding to the law on the sale of waqf objects, they have different opinions, including:

1. Opinion according to Imam Hanafi

Hanafi madhhab , as quoted by Abu Zuhra in *al - Waqfu* , they allow the replacement of all waqfs, both specific and general, except for mosques. And that they mention three conditions for that, first, if the endowment stipulates it in the contract. Second , if the waqf can no longer be used, third, if replacement will bring greater benefits and more revenue, while there are no conditions from the waqf that prohibit the sale (Irfan, 2023)

difference also applies to the mosque floor, mats and lamps if they are no longer needed. According to Abu Yusuf in one report, the items were moved to another mosque. According to Muhammad, it is returned to its owner if it has outlived its usefulness, which is what is meant by people waqf in general (Ezril, 2018) .

Hanafiyah ulama is eternal benefit and benefit, which accompanies the practice of selling during the sale to maintain the preservation and utilization of waqf goods, so that the conditions for the eternity of the waqf are fulfilled and do not violate the Shari'a . So what is meant by eternity here is not just about the form of the goods, but in terms of their ongoing benefits.

2. Imam Malik's opinion

Malikiyyah ulama themselves have different opinions about selling or exchanging waqf assets. The majority of Malikiyah ulama' regarding the sale of waqf assets from any aspect , some allow the sale of replacing

waqf assets that are no longer useful with waqf assets that are much better, but with three conditions, first, if the waqf requires a sale when donating, then these conditions must be followed. . Second , if the waqf goods are movable goods and they no longer provide benefits in accordance with the purpose of the waqf, then they are sold and the price is distributed to something similar to the waqf. Third, waqf land may be sold for the expansion of mosques that must be carried out, as well as roads or cemeteries . Apart from this, waqf may not be sold even if the land has been damaged and does not provide benefits (Hartono, 2017) .

3. Opinion of Imam Shafi'i .

Syafi'i School prohibits sale and succession absolutely, even if it is a special waqf, such as a waqf to a descendant, although there are a thousand and one reasons that demand it. They only allow waqf recipients to use the specific waqf until it is exhausted if there is a demand for it, such as a dry tree that no longer bears fruit, then the waqf recipients can cut down the tree and use it as fuel for themselves, and they cannot sell it and cannot replace it (Irfan, 2023) .

Syafi'iyyah said, if the mosque collapses, is damaged , pray there it was cut off and it was difficult to restore it to its original condition , or it couldn't be used at all because the country was in ruins Poranda , for example, a mosque does not belong to anyone , and cannot be managed at all in the form of buying and selling, or so on because, if ownership has been lost because it is the right of Allah, the ownership cannot return to someone else because of damage . Just as if someone frees a slave and then becomes ill for years, the slave will no longer be his former parent. The management of the waqf proceeds is by donating them to the nearest mosque. It cannot be expected that the mosque will be returned to its original function, if it cannot be saved (Rizki, 2020) .

4. Hambali's opinion .

If the waqf collapses and its benefits are lost, such as a house that collapses or the land is damaged and becomes dead again (unable to be worked on) and cannot be repaired, or the mosque has been abandoned by the villagers and has become a place that is not used for prayer or has become too small to accommodate residents and is not possible. expanded, or everything has been torn apart and it is impossible to repair any part of the waqf goods except by selling some of the waqf goods unless selling some of the waqf goods, unless selling some of them to repair other parts. If it is not possible to derive even the slightest benefit from the waqf goods, the waqf is sold.

If the waqf is sold then whatever is purchased at the sale price and can be returned to the recipient of the waqf is legal, whether it is waqf goods or other types. Because the meaning is that the benefit is not the type,

but the benefit of waqf goods is given for the benefit which is a priority , because it is not permissible to change the recipient of the waqf while there is a possibility to maintain it. As it is not permissible to change the waqf by selling it while there is a possibility to use it .

5. Islamic Law Analysis of the Law on the Sale of Waqf Objects

Islamic law , waqf is a type of gift whose implementation is carried out by retaining (ownership) the origin, then making the benefits generally applicable. What is meant by original ownership is holding the donated item so that it is not inherited, used in the form of sale, gift , pawned, rented, lent. , and the like, while the way to use it is to use it according to the wishes of the waqf giver without compensation (Fitri, 2019) .

Sale of waqf objects according to Islamic law if the object donated is damaged and its benefits cannot be produced, such as a house that collapses, land that is destroyed and returns to dead land and cannot be managed, or a mosque that is abandoned by its inhabitants so that the mosque is in an inappropriate place. is no longer being used for prayer , or the mosque is narrow for the congregation who will perform prayers there and it is impossible to expand it further, or the entire part of the mosque is divided into several parts so that it is impossible to build again, and it is also impossible to build part of the mosque except by selling another part , then part of the mosque may be sold to be used to build a part others , but if the purpose can no longer be used in its entirety, then the whole must be sold (bin Bukhari, 2017) .

The scholars have different opinions regarding the law of buying and selling waqf objects , as follows:

Imam Hanafi is of the opinion that the sale of waqf objects if the waqf is damaged , temporarily, nothing can be used to repair it, nor can it be rented or repaired, and all that remains are ruins such as stones, bricks and wood, then it is legal to sell based on the authority's order, the proceeds of the sale a replacement for the waqf is purchased, if it is not possible to buy it, it is returned to the heirs of the person who donated the waqf if they exist, because the purpose of the waqf is that people can use the waqf goods and so that they are not taken by the people who win (Awal, 2017) .

Imam Maliki believes that the sale of waqf objects is divided into three categories, as follows:

First, the mosque. Mosques cannot be sold at all based on the consensus of the ulama.

Second , the yard. The yard may not be sold even if it is damaged and may not be replaced with another item of the same type, such as

replacing it with something similar that is not damaged . Ruins such as bricks, wood and stone may not be sold, but if it is difficult to return them to the waqf, they may be moved to a similar place.

Third, merchandise, animals, if their usefulness has been lost, such as old horses, worn out clothes , where they can no longer be used, then the waqf goods may be sold and the proceeds from the sale given to similar goods (ELVERA, 2022) .

Imam Syafi'i is of the opinion that the sale of waqf objects is not permitted because the ownership has been lost and is the right of Allah, so the ownership cannot return to someone else because of damage , such as a person who frees a slave and then becomes chronically ill, the slave does not become the property of his former master (Irfan, 2023) . Imam Hambali is of the opinion that the sale of waqf property is allowed when the waqf collapses and its benefits are lost, such as a mosque that collapses, is not fit to support the congregation , then the waqf can be sold to repair other parts. If it is not possible to take the slightest benefit from the waqf goods then all the goods are sold.

Islamic law in responding to the sale of waqf objects has many differences among Islamic school scholars , however, in taking legal istinbat they do not depart from the Qur'an. Hadith only they are different interpretation in making the law.

Imam Syafi'i said that waqf objects should not be sold under any circumstances because this madhhab refers to the Hadith narrated by Bukhori :

حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ حَدَّثَنَا ابْنُ عَوْنٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ أَصَابَ عُمَرُ بِخَيْرٍ أَرْضًا فَأَتَى 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 يَبَاغُ أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ فِي الْفُقَرَاءِ وَالْقُرْبَى وَالرَّقَابِ وَفِي سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ

Meaning : Has told us [Musaddad] has told us [Yazid bin Zurai '] has told us [Ibn ' Aun] from [Nafi'] from [Ibn 'Umar radliallahu ' anhum] said; 'Umar obtained property in the form of land in Khaibar then he went to the Prophet sallallaahu 'alaihi wasallam and said: "I have obtained property and I have never obtained property more valuable than it. How do you order me about it?" He said: "If you want, you take care of the trees and then you donate (the results) . " So 'Umar gave his sadaqah , where he did not sell the trees, nor did he give them away nor did he bequeath them, (but he gave his wealth) to the poor, relatives,. to free slaves, fii sabilillah (in the way of Allah), to entertain guests and Ibn Sabil. And it is not a sin for the person who takes care of it to eat from it

in a virtuous (right) way and to feed his friends as long as it is not for the purpose of hoarding it. (HR. Bukhori)

From the Hadith above, it is explained that waqf was prescribed by Allah through the Messenger of Allah, peace be upon him, to Umar ibn al-Khattab . It was Umar who first donated land in Khaibar , which was later recorded as a waqf act in Islamic history, basically waqf is a voluntary act (*tabarru* ') to donate part of the wealth, because the nature of the waqf property is eternal, so this waqf donation is worth *jariyah* (continuous), meaning that the reward will always be received continuously as long as the waqf property is used for public benefit. Madhhab Syafi'i is guided by this hadith because the waqf is eternal, it is not allowed to sell the waqf property because the ownership of the waqf has changed its status , namely God's ownership is no longer ownership wakif of the person who waqf the waqf object.

Different from madhhab Hambali , this school of thought tends to be broader in its response In the case of buying and selling waqf objects, this madhhab allows the sale of waqf objects under the argument of benefit or *maslahah*. *sorry* . *Maslahah* Murlah are benefits that are in accordance with the objectives of Islamic law, and are not supported by a specific source of evidence, either legitimizing or canceling the benefit. If the benefit is supported by a specific source of evidence, then it is included in *qiyas* in the general sense (Firdaus, nd) .

Imam Ahmad in *Al-Mughni's* book *Ibn Qudamah* 's essay explains:

قَالَ احمد في رواية ابي داود اذا كان في المسجد خشيتان لهما قيمة جاز بيعهما و صرفا ثمنهما علي

Meaning: "Imam Ahmad said in the history of Abu Daud, "If inside "There are two pieces of wood in the mosque that have sales value, so both can be sold and the proceeds given to the mosque."

According to the information in the book *Al-Mughni* , Imam Ahmad allowed the sale of waqf objects in the form of leftover wood from the ruins of mosques which could no longer be used by the mosque and the proceeds from the sale had to be returned to the mosque to help build the mosque.

Apart from referring to the information above, Imam Ahmad also refers to the Hadith :

وقد روى الخلال أن عمر بن الخطاب رضي الله عنه كتب إلى سعد لما بلغه أنه قد نقب بيت المال بالكوفة: أن انقل المسجد الذي بالتمارين واجعل بيت المال في قبلة المسجد فإنه لن يزال في المسجد مصل. متفق عليه.

Meaning: "Truly it has been told (Kholal) that Umar wrote a letter to Dad Sa'ad - when the news reached Umar that Sa'ad made a hole in the

Baitul Mal in Kuffah , the letter said, "move the mosque located in Tamarin . Make Baitul Mal in the direction of the mosque's Qibla. In fact, there are still people praying in the mosque ." (Mutafaq ' alaih).

The hadith above explains that this incident was known to friends and no one opposed it. This incident explains that the nature of waqf is substantial , when waqf assets cannot be immortalized or are not useful then they are permitted to sell them.

Another statement was said by Imam al -Nawawi in the book *Mughni al-Muhtaj* , he said:

(وقيل) تباع لتعذر الي انتفاع كما شرطه الوف سبق فيه (والثمن) على هذا حكمه (كقيمة العبد) المتلف على ما سبق فيه.

This means : "There are those who are of the opinion that waqf assets which cannot be utilized in accordance with the conditions set by the waqif (giver of the waqf) may be sold, because they cannot be used in accordance with the conditions set by the waqif (giver of the waqf)"

Based on the istinbat taken by Imam Ahmad and Imam Syafi'i , the author concludes that Imam Ahmad's thinking is broader and Maslahah because when something that no longer brings benefits if it is left alone then that something is unused or wasteful , but according to Imam Ahmad's opinion in his book which explains that waqf objects may be sold when the usefulness has been lost and provided that the proceeds of the sale are returned to the waqf, making it beneficial for the waqf objects and the community because the proceeds from the sale of waqf objects can be used to continue, maintain and preserve the waqf objects, if the waqf cannot be sold and and replaced when waqf objects do not bring benefits and applied today, according to the author, it is less relevant because the current conditions are where economic value, if managed well, will bring benefits. Based on the case above, the sale of damaged waqf objects will bring new benefits to the waqf objects, and this cannot be separated from the aspect of the benefit of the people. Excavation of the *Maslahah base Murlah* This is very suitable when applied in cases of selling waqf objects that are no longer used, damaged or obsolete.

6. Conclusion

From the description above writer take conclusion that :

Practice sale object existing waqf _ No beneficial based on compilation law Islam and the Waqf Law , Nadhir manager object waqf can sell

object existing waqf _ No can bring expediency , p This in accordance based on Imam Hambali 's opinion is permissible sell object waqf with condition waqf the No Can bring benefits and results sale waqf must returning to waqf , must in accordance with provision Constitution Number 41 of 2004 article 41 paragraph 2

Survey Islamic law against law sales thing waqf that law sales thing waqf in Islam still disagreement or opposite between Imams one with other Imams. Imam Shafi'i , Maliki, Hanafi do not enable sales thing waqf because waqf nature eternal and eternal , while Imam Hambali enable sales thing waqf by base benefits .

7. References

- Al- Faifi , SSAY (2013). Summary Sayyid Sabiq 's Sunnah Jurisprudence . Al- Kautsar Library .
- Al Hajjaj , AIAH (2001). Muslim Sahih Muslim. Cairo: Bye Ibn Al Haitam .
- Awal, MA (2017). Basics of Islamic Community Development : Analysis Participatory Action Research and Civic Theory .
- bin Bukhari, HA (2017). Fact Eligible converts _ Receive Zakat Analysis Opinions Ibnu Qudamah and Opinion of Imam Nawawi. UIN Ar-Raniry Banda Aceh.
- Budiman, AA (2016). Stakeholder participation in Endowment (Study Case at Home Sick Roemani , Sultan Agung Waqf Foundation , and Semarang Grand Mosque). Al- Ahkam , 26(1), 1-28.
- ELVERA, R. (2022). COMPARATIVE STUDY OF MONEY WAQF ACCORDING TO IBNU TAIMIYAH AND AL-MAWARDI. UIN Saifuddin zuhri .
- Ezril , E. (2018). Accountancy Management Waqf Productive in Ibadurrahman Nazir Waqf Institution (LNW) Plantation Business Thorn . IQTISHADUNA: Journal Our Economic Science, 7(1), 111-130.
- Firdaus, A. (nd). Right Hadhanah For Children Who Are Not Yet Mumayyiz (Analysis Decision No. 184/ pdt . G/2011/PA. Dpk).
- Fitri , MS (2019). Analysis Internal Judge's Consideration Determination Guardian Adhal at the Semarang Religious Court . Law Journal , 1.
- Hartono, B. (2017). BUYING AND BUYING WAKAF CEMETERY LAND FROM THE PERSPECTIVE OF ISLAMIC LAW (Study in Pekon Pajajaran Subdistrict West Kotaagung , Tanggamus Regency). UIN Raden Intan Lampung.

- Irfan, M. (2023). THE VIEWS OF FOUR MAZHABS ON THE DECISION TO SELL AND EXCHANGE WAKAF PROPERTIES. *Al- Rashad* , 2(01), 61-71.
- Kasdi , A. (2016). Nadzir's role In Development Waqf . *ZISWAF: Journal of Zakat and Waqf* , 1(2), 1-14.
- Mughniyah , J. (2009). Mohammed. Imam Ja'far 's Fiqh Sadiq . Print : I: Jakarta: Publisher Lantern .
- Nurseha , M., Shobron , S., & Ali, M. (2020). Character Education Values In the Book of Al- Adab Al- Mufrad The work of Al-Imam Abu Abdillah Muhammad Ibn Ismail Al-Bukhari. *Prophetics : Journal Islamic Studies* , 20(2), 154-167.
- Putra, TW, & Ali, MZ (2021). Analysis Management and Utilization Asset Waqf in the Village Mappala , District Rappocini , Makassar City. *Management of Zakat and Waqf Journal (MAZAWA)*, 3(1), 63-76.
- Rizki , RD (2020). OPERATIONAL STANDARDS FOR USE OF MONEY WAQF PROCEDURES IN DAARUT WAQF TAUHIID, SUKASARI, BANDUNG. Faculty of Islamic Religion, Muhammadiyah University, Jakarta.
- Sabiq , S. (2009). Fiqh Sunnah - Volume 4. Cakrawala Publishing.
- Sabiq , S. (2021). Fiqh Sunnah - Volume 1 (Vol. 5). Horizon Publishing.
- Zuhaili , WA (2011). Islamic Jurisprudence Wa Adillatuhu . paint I. Jakarta: Echo Insani & Darul Think .