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Waqf Law is Relevant in Responding to the Challenges of the Age Regarding the Law of Selling Waqf Goods: Study of the Book of Fathul Mu'in by Syaih Zainuddin Bin Abdul Aziz Al-Malibari

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Waqf Law is Relevant in Responding to the Challenges of the Age Regarding the Law of Selling Waqf Goods: Study of the Book of Fathul Mu'in by Syaikh Zainuddin Bin Abdul Aziz Al-Malibari

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Abstract

This study 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 library research. Contextual analysis was carried out to understand and analyze in depth the contents of the book "Fathul Mu'in". The results of the review show that the sale of waqf goods in the book is not permissible, even though the goods are damaged. This finding emphasizes the importance of understanding the views of texts in various literature and including the arguments and opinions of other scholars to provide solutions to problems that often arise in today's society. Syekh Ahmad Zainuddin Al-Malibari is based on the law of the Ash-Shafi'i school of thought and prioritizes opinions that are in line with him in waqf law. However, the suggestion of fiqh states that every case must be adjusted to its purpose. This approach is in line with the hadith which states that every action depends on the intention. Some scholars also argue that the important thing is to preserve the old, which is good and take the new, which is better. Problem solving in religion basically aims for the benefit of religion and people in general. Some scholars also argue that the important thing is to preserve the old, which is good and take the new, which is better. Problem solving in religion basically aims for the benefit of religion and people in general. Some scholars also argue that the important thing is to preserve the old, which is good and take the new, which is better. Problem solving in religion basically aims for the benefit of religion and people in general.

Keywords: Waqf Law, Fathul Mu'in, Shaykh Zainuddin bin Abdul Aziz Al Malibari, Fiqh of Waqf Ministry of Religion

1. Introduction

Waqf as one of the Islamic legal institutions, has an important role in ensuring the management and utilization of property designated for the public interest. Waqf comes from the Arabic al-waqf, the mashdar form of وَقَفَ - يَقِفُ - وَقْفًا . The word al-waqf has the same meaning as al-habs, the mashdar form of حَبَسَ - يَحْبِسُ - حَبْسًا means to hold back (Putra & Ali, 2021). The word al-Waqfan in Arabic has several meanings:

الْوَقْفُ بِمَعْنَى التَّحْبِيسِ وَالتَّسْبِيلِ

“Withholding, withholding assets for waqf, not transferred” (Kasdi, 2016).

Lafadz waqf (prevention), tahbis (detention), tasbil (donation for fi sabillillah) have the same meaning. Waqf according to language is holding back from doing, spending. In Arabic it is said "waqafu kadzaa", and it means I endured it (Zuhaili, 2011).

Waqf is an Islamic social economic instrument and is a highly recommended charity. The important role of waqf in the development of social and economic life of society, can be seen in supporting various vital issues of life (Budiman, 2016). According to shari'at, waqf is holding the main assets and flowing the fruit. That is, withholding wealth and mentasharuf (using, spending) its benefits in the way of Allah (Al-Faifi, 2013).

The concept of waqf has existed since the time of Rasulullah Muhammad SAW and continues to develop along with the development of society and the times. However, in facing

the challenges of an increasingly complex era, it is necessary to have an in-depth understanding of waqf law and how to overcome problems that arise, including in the legal context of selling waqf goods. In this regard, the Book of Fathul Mu'in by Shaykh Zainuddin bin Abdul Aziz al-Malibari is an important reference in understanding waqf law, including the law on selling waqf goods. This book is one of the works of prominent scholars who discuss various aspects of Islamic law, including waqf law, which is an important source for scholars and practitioners of Islamic law.

However, along with the times and the increasingly complex demands of society's needs, there are various challenges faced in the legal context of selling waqf goods. For example, changes in the procedures for managing and using waqf assets, the possibility of selling waqf goods to obtain the needed funds, as well as protecting the rights of the parties involved in the transaction. Therefore, research on waqf law, especially in the context of selling waqf goods, is relevant in responding to the challenges of the times we are facing. A study of the Fathul Mu'in Book can provide a more comprehensive understanding of the views of previous scholars in overcoming legal issues selling waqf goods, as well as providing a basis and guideline for making decisions that are fair and in accordance with the principles of Islamic law. This study aims to analyze the relevance of waqf law, especially in the legal context of selling waqf goods, in responding to the challenges of the times, using the Book of Fathul Mu'in by Shaykh Zainuddin bin Abdul Aziz al-Malibari as the main reference.

2. Research methods

This study used qualitative research methods. According to (Sugiyono, 2018) the qualitative research method is a research method based on philosophy that is used to research scientific conditions (experiments) where researchers as instruments, data collection techniques and qualitative analysis put more emphasis on meaning. The data collection technique was carried out by means of a literature study. The data obtained is sourced from Google Scholar. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and drawing conclusions.

3. Results and Discussion

Biography of Sheikh Zainuddin Al-Malibari and Around the Book of Fathul Mu'in

a. Biography of Sheikh Zainuddin Al-Malibari

Sheikh Zainuddin bin 'Abdul 'Aziz bin Zainuddin bn 'Ali Al Malibari Al Fannani Asy Syafi'i or who is often called by the nickname Sheikh Zainuddin al-Malibari was born in Malibar (Malabar), South India. The year of his birth cannot be known with certainty.

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

About his death, the scholars experienced differences of opinion. KH Sirajuddin 'Abbas in *Tobaqotussafi'iyyah* records his death in 972 H. Pentahqiq the *Nihayatuzzain* book published by Dar Pole Al Islamiyyah, Habib 'Alwi Abu Bakar Muhammad As Saqqof wrote the year of his death 987 H / 1579 AD.

Due to differences in historians determining the time of his death, this student of Sheikh Ibn Hajar Al Haitami, what is clear as written by Sheikh Nuruddin Marbu Al Banjari Al Makki in his book *Ma'lumatu Tuhimmuka*, the year of his death was in the early 10th century H. Sheikh Zainuddin Al Malibari was buried on the outskirts of the City of Fannon, India, next to the Great Mosque of Fannon.

Zainuddin al-Malaibari started his education by learning basic sciences from his father and mother. Then he traveled to the Ponnan area to study with his uncle, Shaykh Abdul Aziz, who taught at the Jami' Mosque in the area. He did not only seek knowledge in his country. He also traveled to other countries to study. He went to the Arabian Peninsula and the Hijaz to seek knowledge as well as fulfill itworshippilgrimageand umrah. He lived there for 10 years and studied with several great scholars in Mecca and Medina.

b. Overview of the Book of Fathul Muin

The Book of Fathul Mu'in is a book compiled by a scholar from Malabar, South India, namely Sheikh Zanuddin bin Abdul Aziz Al-Malibary. He is a scholar known as a charismatic scholar who has critical reasoning in the field of religion. Apart from being a fiqh expert, he, who is a direct student of Sheikh Ibn Hajar Al-Haitamy, is also known as a scholar who is an expert in tasawwuf, history, and literature.

The Book of Fathul Mu'in is an explanatory book or book of syarah towards a book which is still the work of Sheikh Zainuddin Abdul Aziz, namely the book Quratul 'Ain Fii Muhimmatu Dien. Based on the narrative of Sheikh Zainuddin in his book sermon, he compiled this book solely hoping to please Allah for the benefit of many people. With the hope that this book will be the cause for him to get a proper place to return to in the afterlife, namely His paradise paradise.

In addition, he also said that this book is a book whose contents are selected studies that refer to the handbooks of the works of great scholars. Among them are books written by his teacher, namely Ibn Hajar Al-Haitamy, also books written by Wajhuddin Abdurohman Bin Ziyad Al-Zubaidi, Syaikhul Islam Zakariya Al-Anshory, Imam Ahmad Al-MujZaddi Al-Zubaidi, as well as from other scholars who is Muhaqqiq Muta'akhir.

The book 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 a syarah or commentary on the book Qurrah al-'Ayn Fi Muhimmat al-Din, which is his own book.

The Book of Fathul Mu'in is a book of fiqh of the Shafi'i school which is the main reference in fiqh issues among al-Syafi'iyah scholars who are muta-akhirin which is a discussion of fiqh science which discusses various problems of fiqh in the Syafi'iyah school which contains Chapters and Fashal . It is even equipped with sub-sub-discussions in the form of tatimmah, Qaidah Muhimmah, Far'u, Muhimmah, Faidah, and Khatimah.

The opinion of Sheikh Zainuddin Al Malibari (which is controversial) about waqf in the book Fathul Muin.

(وَلَا يُبَاعُ مَوْقُوفٌ (وَإِنْ حَرَبَ) فَلَوْ انْهَدَمَ مَسْجِدٌ وَتَعَدَّرَتْ إِعَادَتُهُ : لَمْ يُبَيْعْ ، وَلَا يَعُودُ مِلْكًا بِحَالٍ لِإِمْكَانِ الصَّلَاةِ وَالْإِعْتِكَافِ فِي أَرْضِهِ أَوْ جَفَّ الشَّجَرُ الْمَوْقُوفُ أَوْ قَلَعُهُ رِيحٌ لَمْ يَبْطُلِ الْوَقْفُ ، فَلَا يُبَاعُ وَلَا يُرْهَبُ ، بَلْ يَنْتَفِعُ الْمَوْقُوفُ عَلَيْهِ وَلَوْ بَجَعْلِهِ أَبْوَابًا ، إِنْ لَمْ يُمَكِّنْهُ إِجَارَتُهُ حَشَبًا بِحَالِهِ فَإِنْ تَعَدَّرَ الْإِنْتِفَاعُ بِهِ إِلَّا بِاسْتِهْلَاكِهِ : كَأَنْ صَارَ لَا يَنْتَفِعُ بِهِ إِلَّا بِالْإِحْرَاقِ : انْقَطَعَ الْوَقْفُ أَيَّ وَيَمْلِكُهُ الْمَوْقُوفُ عَلَيْهِ حِينَئِذٍ عَلَى الْمُعْتَمَدِ فَيَنْتَفِعُ بِعَيْنِهِ وَلَا يَبِيعُهُ

Meaning: And waqf goods may not be sold even if they are damaged. If a mosque collapses and it is too late to rebuild it, then its belongings can still be occupied by prayers and i'tikaf. Or if a tree that is waqf dies dry or is knocked down by the wind, then the waqf does not become void, therefore it cannot be sold or donated. But the Mauquf Alaih used it even though by

making a door, if it is not possible to rent it out in the form of wood as it is. If it can be reused except by destroying it as it can only be made of firewood then the waqf is cut off, in the sense that Mauquf alaihi then owns it. According to the mu'tamad opinion, he can use the object but may not sell it.

Waqf Legal Basis Sunnah of the Prophet.

From Abu Hurairah radhiyallahu 'anhu, he said that Rasulullah shallallahu 'alaihi wa sallam said,

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ مِنْ صَدَقَةٍ جَارِيَةٍ أَوْ عِلْمٍ يُنْتَفَعُ بِهِ أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

"If someone dies, then his deeds will be cut off except for three things (namely): charity, knowledge that is used, or the prayer of pious children" (HR. Muslim no. 1631) (Al Hajjaj, 2001)

As for the interpretation of the word Sadaqah Jariyah in this hadith, the scholars interpreted Sadaqah Jariyah as waqf. In addition to the hadith above, which is understood indirectly by the issue of waqf, there is a hadith of the Prophet which explicitly alludes to 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 يَبَاعُ أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ فِي الْفُقَرَاءِ وَالْقُرْبَى وَالرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ

Meaning: Having told us [Musaddad] has told us [Yazid bin Zurai'] has told us [Ibnu 'Aun] from [Nafi'] from [Ibnu 'Umar radiyallahu 'anhuma] said; 'Umar got a treasure in the form of land in Khaibar then he went to the Prophet sallallahu 'alaihi wasallam and said: "I got a treasure and I have never got a treasure that is more valuable than it. How can you order me about it?" He said: "If you want, you take care of the trees and then you give alms (results) of it". So 'Umar gave it, where he didn't sell the trees, he didn't donate it and he didn't inherit it, (but he gave his wealth away) to the needy, relatives, to free slaves, fii sabilillah (in the way of Allah), to entertain guests and ibn sabil. And it is not a sin for those who take care of it to eat from it in a way that is ma'ruf (correct) and to feed their friends as long as it is not for the purpose of hoarding it.[Hadith Bukhari]"(Nurseha et al., 2020)

Judging from several verses of the Qur'an and Hadith, the Prophet who alluded to waqf did not seem too firm, therefore very few laws were determined based on these two sources, so that the teachings of waqf were placed and categorized in areas that are ijthadi in nature, not ta'abbudi. Nonetheless, the few verses of the Qur'an and Sunnah can serve as a guide for Islamic jurisprudence(Sabiq, 2021).

Sale of Waqf Objects According to Islamic Law

The opinions of the fuqoha are many and contradictory in this matter, there are many deviations in waqf issues. Some of them prohibit the sale of waqf altogether, some allow it in some cases, and some are passive and do not give laws. There are so many opinions that each faqih opposes his own opinion in one book, for example he issues an opinion in buying and selling that differs from his opinion in the matter of selling waqf. There are also those who oppose his opinion in one sentence, and say something at the end and then say something that contradicts him at the end (Mughniyah, 2009).

Ibn Taimiyah said, "As for the replacement of something donated and donated with something better than it, as is related to the replacement of sacrificial animals, and this is divided into two types: first, the replacement is necessary, for example, it will lose its function like a horse donated for war, if it cannot be used in war, then the horse may be sold and the proceeds from the sale are used to buy a replacement, secondly, replacement because the benefit is more important.

For example a mosque if another mosque is built to replace it because it is more able to fulfill the benefit of the local population than the first mosque and the first mosque that was sold. This allocation and the like are permissible according to Ahmad and other scholars'. Ahmad argued that Umar bin Khatabra, moved the old Kufah Mosque to another place, and the old place was used as a market for date traders, this was a replacement for the mosque area. As for the replacement of the building with another building, Umar ra and Ustman ra built the Prophet's Mosque, different from the original building and added it (Sabiq, 2009).

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

Opinion according to Imam Hanafi

Hanafi school, as cited by Abu Zuhran in al-Waqfu, they allow the replacement of all endowments, both special and general, apart from mosques. And that they mentioned three times the conditions for that, first, if the waqf stipulates it in the contract. Second, if the waqf can no longer be used, third, if the replacement will bring greater benefits and more results, while there are no conditions from the waqf prohibiting sales (Irfan, 2023).

This difference also applies to the floor of the mosque, the mats, and the lights when they are no longer needed. According to Abu Yusuf in one history, the items were moved to another mosque. According to Muhammad, it is returned to the owner if it is out of use, which is meant by waqf people in general (Ezril, 2018).

The basis of the policy of the Hanafiyah scholars is eternal benefit and benefit, which accompanies sales practices as long as the sale is to maintain the preservation and utilization of waqf goods, then the perpetuity requirements of waqf are fulfilled and do not violate shari'a. So what is meant by eternity here is not only about the form of goods, but in terms of sustainable benefits.

Opinion of Imam Malik

Malikiyyah scholars themselves have different opinions about selling or exchanging waqf assets. the majority of Malikiyah scholars regarding the sale of waqf assets from any angle, 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 endowing, then these conditions must be followed. Second, if the waqf item is in the form of a transferable object and it no longer brings benefits in accordance with the purpose of the waqf, then it is 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 though the land has been damaged and does not bring any benefits (Hartono, 2017).

Opinion of Imam Shafi'i

Their Shafi'i school forbids absolute sales and replacement, even though special waqf, such as waqf to offspring, even though there are a thousand and one reasons that demand it. They only allow waqf recipients to use special waqf until it runs out if there is a demand for it, such as a dry tree that no longer bears fruit, then the waqf recipient may cut down the tree and make it fuel for themselves, and they are not allowed to sell it and can't replace it (Irfan, 2023).

Syafi'iyah said, if a mosque collapses, is damaged, prayers there are interrupted and it is difficult to retrieve it to its original condition, or it cannot be used at all because the country is in ruins, for example, the mosque does not belong to anyone, and it cannot be managed at all in the form of buying and selling. , or so because, ownership that has been lost because it belongs to Allah, then that ownership cannot return to someone else's because of damage. As if someone frees a slave and then he is chronically ill, the slave is no longer 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 return to its original function, if it cannot be stored (Rizki, 2020).

The opinion of Imam Hanbali

If the waqf collapses and the benefits are lost, such as a house that collapses or the land is damaged and returns dead (unable to be cultivated) and it is impossible to repair it, or the mosque has been abandoned by the villagers and has become a place not used for prayer or it has narrowly accommodated residents and it is impossible expanded, or all of them have been disintegrated and cannot be repaired, not even part of the waqf goods except by selling a part, then if part of the waqf goods is unless you sell a part, then some of it must be sold to repair other parts. If it is not possible to take even the slightest benefit from the waqf item then the waqf is sold.

If the waqf is sold, then whatever is purchased at the selling price and can be returned to the beneficiary of the waqf is legally permissible, be it from the type of waqf goods or other types. Because the intention is that the benefits are not types, but the benefits of waqf goods are given for the benefit which is a priority, because it is not permissible to change the beneficiary of the waqf while it is possible to maintain it. As it is not permissible to change waqf by selling it while there is a possibility to use it.

Analysis Islamic Law against the Law of the Sale of Waqf Objects

Waqf according to syara' is a kind of gift whose implementation is carried out by holding (ownership) of origin, then making the benefits generally applicable, what is meant by original ownership is to hold the object being waqf so that it is not inherited, used in the form of sale, gift, mortgaged, rented, loaned , and the like, while the way to use it is to use it according to the will of the waqf giver without reward (Fitri, 2019).

Sales of waqf objects according to Islamic law if the waqf object is damaged and the 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 whose inhabitants are abandoned so that the mosque is in a place that is not is no longer used for prayer, or the mosque is cramped for the congregation who will perform prayers there and it is impossible to expand it further, or the whole 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, part of the mosque may be sold to be used to build another part, but if that intention cannot be used as a whole, then all must be sold (bin Bukhari, 2017).

Scholars in dealing with the law of buying and selling waqf objects have different opinions, as follows:

Imam Hanafi is of the opinion that the sale of waqf objects if the waqf is damaged, temporarily, there is nothing to repair it, it is also impossible to rent or repair it, and all that

remains are ruins such as stones, bricks and wood then it is legal to sell based on the order of the authorities, the proceeds from the sale a replacement for waqf is purchased, if it is impossible to buy it then it is returned to the heirs of the waqf person if they are available, because the purpose of waqf is that people can use the waqf goods and so that they are not taken by those who win (Early, 2017).

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

First, the mosque. Mosques are absolutely not allowed to be sold based on the consensus of the clergy.

Second, the yard. Yards may not be sold even if they are damaged and may not be replaced with other similar items, such as replacing with undamaged ones. Ruins such as bricks, wood, stones may not be sold, but if it is difficult to return them to the waqf goods, they may be moved to such a place.

Third, merchandise, animals, if the benefits have disappeared, for example, horses are old, clothes are worn out, where they cannot be used anymore, then waqf goods may be sold and the proceeds from the sale are given to similar goods (Elvera, 2022).

Imam Syafi'i is of the opinion that the sale of waqf objects is not permissible because the ownership has been lost and becomes the right of Allah, so ownership cannot return to someone because of damage, such as a person who frees a slave and then becomes ill for a long time, the slave does not belong to his former master (Irfan, 2023).

Imam Hambali is of the opinion that the sale of waqf objects is permissible if the waqf collapses and the benefits are lost, for example when a mosque collapses, it cannot accommodate people who are in congregation, then the waqf may be sold to repair other parts. If it is not possible to take even the slightest benefit from the waqf goods then all the goods are sold.

Islamic law in dealing with the sale of waqf objects has many differences among madzhab scholars, but they do not take legal istinbat from the Al-Qur'an Hadith, it's just that they have different interpretations in taking the law.

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

حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ حَدَّثَنَا ابْنُ عَوْنٍ عَنْ نَافِعٍ عَنِ 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 يُبَاعُ 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: Having told us [Musaddad] has told us [Yazid bin Zurai'] has told us [Ibnu 'Aun] from [Nafi'] from [Ibnu 'Umar radiallahu 'anhuma] said; 'Umar got a treasure in the form of land in Khaibar then he went to the Prophet sallallaahu 'alaihi wasallam and said: "I got a treasure and I have never got a treasure that is more valuable than it. How can you order me about it?" He said: "If you want, you take care of the trees and then you give alms (results) of it". So 'Umar gave it, where he didn't sell the trees, he didn't donate it and he didn't inherit it, (but he gave his wealth away) to the needy, relatives, to free slaves, fii sabilillah (in the way of Allah), to entertain guests and ibn sabil. And it is not a sin for those who take care of it to

eat from it in a way that is ma'ruf (correct) and to feed their friends as long as it is not for the purpose of hoarding it. (HR. Bukhari)

From the Hadith above it is explained that waqf was prescribed by Allah through Rasulullah SAW, to Umar ibn al-Khatib. It was Umar who first donated land in Khaibar, which was later recorded as an act of waqf in Islamic history. Basically, waqf is a voluntary act (tabarru') to donate some of the wealth, because the nature of the property being donated has eternal value, so this waqf donation is worth a finger. (continuous), meaning that the reward will always be received on an ongoing basis as long as the waqf property is used for the public interest. The Syafi'i Madzhab is guided by this hadith because waqf is eternal, it is not permissible to sell waqf objects because waqf ownership has changed status, namely God's ownership is no longer the ownership of the wakif of the person who donated the waqf object.

In contrast to the Hambali school, this school tends to be broader in addressing the issue of buying and selling waqf objects, this school allows the sale of waqf objects with the argument that it is beneficial or maslahah mursalah. Maslahah mursalah are maslahahs that are in accordance with the objectives of Islamic law, and are not supported by specific sources of argument, either legitimizing or canceling these benefits. If maslahah is supported by specific sources of argument, then it is included in qiyas in a general sense (Paradise, nd).

Imam Ahmad in the book Al-Mughni by Ibn Qudamah explains:

قَالَ أَحْمَدُ فِي رِوَايَةِ أَبِي دَاوُدَ إِذَا كَانَ فِي الْمَسْجِدِ خَشْبَتَانِ لِهَمَا قِيَمَةٌ جَازَ بَيْعُهُمَا وَصَرَفَا ثَمَنَهُمَا عَلَيْهِ

Meaning: "Imam Ahmad said to the history of Abu Daud, "If in the mosque there are two logs that have a sale value, then both of them may be sold and the proceeds will be given to the mosque".

According to the information in Al-Mughni's book, Imam Ahmad allowed the sale of waqf objects in the form of wood left over from the ruins of the mosque which the mosques could no longer use 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 referred to the Hadith:

وَقَدْ رَوَى الْخَلَالُ أَنَّ عُمَرَ بْنَ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ كَتَبَ إِلَى سَعْدٍ لَمَّا بَلَغَهُ أَنَّهُ قَدْ نَقَبَ بَيْتَ الْمَالِ بِالْكُوفَةِ: أَنْ يُنْقَلَ الْمَسْجِدَ الَّذِي بِالْتَمَارِيِّنَ وَاجْعَلَ بَيْتَ الْمَالِ فِي قِبْلَةِ الْمَسْجِدِ فَإِنَّهُ لَنْ يَزَالَ فِي الْمَسْجِدِ مُصَلٍّ. مُتَّفَقٌ عَلَيْهِ.

Meaning: "Really told (Kholal) that Umar wrote a letter to Sa'ad - when the news reached Umar that Sa'ad made a hole in the Baitul Mal in Kuffah, the contents of the letter said, "move the mosque which is located in Tamarin. Make Baitul Mal in the direction of the Qibla of the mosque. In fact, in the mosque there are still people who pray." (Mutafaq 'alaih).

The hadith above explains that this incident was known to friends and no one opposed it, this event explains that the nature of waqf is substantial, if the waqf property cannot be enshrined or is not useful then it is permissible to sell it.

Another statement was stated 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.

Meaning: "There are those who argue that waqf assets that cannot be utilized in accordance with the conditions set by the waqif (waqaf giver) may be sold, because they cannot be utilized in accordance with the conditions set by the waqif (waqaf giver)"

If waqf cannot be sold and replaced when the waqf object does not bring benefits and is applied today according to the author it is less relevant because the current condition is that economic value if managed properly will bring benefits. Based on the case above, the sale of damaged waqf objects will bring new benefits to waqf objects, and this is inseparable from the aspect of benefit for the people. This basic excavation of Maslahah Mursalahah is very suitable when applied to cases of selling waqf objects that are no longer used, damaged or that are obsolete.

4. Conclusion

From the description above the writer concludes that: (1) The practice of selling waqf objects that are no longer useful based on the compilation of Islamic law and the Waqf Law, Nadhir the manager of waqf objects may sell waqf objects that are no longer able to bring benefits, this is according to the opinion of Imam Hambali who allows selling waqf objects on condition that the waqf cannot bring benefits and proceeds from the sale of waqf must return to the waqf, must comply with the provisions of Law Number 41 of 2004 article 41 paragraph 2. (2) A review of Islamic law on the law on the sale of waqf objects shows that the law on the sale of waqf objects in Islam is still in conflict or conflict between one Imam and another Imam. Imam Shafi'i, Maliki, Hanafi do not allow the sale of waqf objects because waqf is eternal and eternal, while Imam Hambali allows the sale of waqf objects on the basis of benefit.

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