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Editorial Office: Faculty of Law, Universitas Sriwijaya, Jalan Srijaya Negara, Palembang, 30139, Indonesia.

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The Implementation of *al-'Urf* in Waqf Mosques, Madrasas and Graves in Indonesian Tradition

Article	Abstract
<p>Keywords: Al-'Urf; Waqf; Mosques; Madrasas; Graves</p> <p>Artikel History</p> <p>DOI:</p>	<p>Beside from the waqf that is given by individuals to a close relative, which is known as expert waqf, in Indonesia there is also waqf which is carried out collectively, or what is known as waqf <i>khairi</i>. Waqf <i>Khairi</i> in the form of mosques, madrasas, and graves in Indonesian Language is <i>makam</i>, known as '3M waqf'. Even though it looks very classic and traditional, this 3M waqf is clear evidence that Islam in Indonesia is built and developed through waqf worship. As the results of the latest data collection in 2021 by the Directorate of Zakat and Waqf Empowerment of the Ministry of Religion of the Republic of Indonesia, it is known that the percentage of waqf land in Indonesia is for the purposes of religious facilities, 44.26% for mosques, and 28.27% for mushalla, 10.68% for madrasas, 5.61% for boarding school, and 4.45% for graves (<i>makam</i>). This paper examines the tradition of waqf in Indonesian society for the benefit of mosques, madrasas, and graves (<i>makam</i>). By using the historical approach method of Islam in Indonesia, awareness and spirit of waqf in Indonesian society, and using an analytical and conceptual approach. <i>Al-'Urf</i> is one of the legal propositions in establishing Islamic law. This legal proposition is used as a method of legal <i>istinbath</i> regarding the tradition of waqf, management procedures, and the allocation of waqf, especially for people in Indonesia. So that the results of this study can become a consideration for stakeholders in Indonesia in developing strategies for strengthening and empowering 3M's donated land so that it can sustainably create benefits and benefits for the people of Indonesia, because essentially, this kind of waqf in the form of 3M's is what is commonly found in Indonesian society.</p>

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Dikomentari [A2]:
Dear Reviewer...Al 'Urf means as one of the *legal argument* (dalil hukum) in Islamic Law. The terminology 'Urf is not the same as Tradition. 'Urf in this title is the formation of Islamic law which originates from the habits of the people. Because all 'urf is adat, and not all adat is 'urf.

Dikomentari [A3]: Is the implementation of the proposed waqf in line with the applicable law?

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INTRODUCTION

As the opinion expressed by Koesoma Atmadja,¹ that before Islam entered Indonesia, there were already social institutions such as waqf known as *Huma Serang* in the Bedouin community in Cibeo, South Banten, *Tanah Preman* in Lombok. However, after Islam came to Indonesia, the waqf institution brought by Islam grew and developed in society. This waqf institution is known as "Vrome Stichtingen" which was well known in society before the arrival

¹ Mohammad Daud Ali, *Sistem Ekonomi Islam, Zakat Dan Wakaf* (Jakarta: UII Press, 1988).

of Islam to Indonesia.² The acceptance of waqf into customary law is one of the acceptance of customary law that comes from religion (godsdienstig bestanddeel van het adatrecht).³ The classic or traditional waqf is identical in the form of a mushalla or *langgar* mosque, an educational madrasa, and a burial ground (grave). As was the practice found in the people of Serang, West Java in 1904, the practice of waqf was in the form of mosque waqf, grave waqf, *lajim* waqf, and *dzuriyat* waqf.⁴

This paper will elaborate the issue of waqf *khairi*, which is waqf intended for the benefit of the people. Due to the implementative and traditional point of view of waqf, this waqf is the oldest and most commonly found in the social life of Indonesian society.⁵ So there is no need to change anymore, but it needs to be considered and empowered so that what is meant by the law and wisdom of waqf in Islam and the will in the Waqf Law in Indonesia.

Waqf Ahli

Abu Zahrah explained that a waqif may donate his belongings for his family, relatives, and his beloved offspring. Family and close relatives who become *mauquf 'alaihi* in the context of waqf deeds are called Waqf *Ahli*.⁶ Waqf *Ahli* means waqf addressed to certain people, regardless of whether they are rich or poor, sick or healthy, and old or young.

Based on the objectives, waqf can be divided into 3 (three) types, namely social waqf, family waqf (*dzurri*) and combined waqf (*musytarak*). As for the time limit for its use, waqf is divided into 2 types, namely perpetual waqf and temporary waqf. Based on its economic substance, waqf is divided into 2 types, namely direct waqf and productive waqf. In general, Jaih Mubarak argues that waqf can be divided into two: (1) ~~Waqf Ahli~~^{expert (family) waqf}, namely waqf whose purpose is to help the family of the party who donates; and (2) ~~Waqf khairi~~ (general) ~~waqf~~, namely waqf whose purpose is to benefit the general public.⁷

Apart from the waqf given by individuals, in Indonesia there are also mutual endowment⁸ in the form of mosques, madrasas, mushalla, orphanages, hospitals, bridges and so on. The trick

² Ter Haar Bzn, *Beginselen En Stelsel Van Het Adatrecht* (Jakarta: Pradnya Paramita, 1986).

³ Ali Rido, *Badan Hukum Dan Keudukan Badan Hukum Perseroan Perkumpulan Koperasi Dan Wakaf* (Bandung: Alumni, 1977).

⁴ *Waqf lajim* is a garden or plantation land whose income (from plantation products) is used for the benefit of the village. *Waqf dzurriyat* is a plot of land whose income is mostly for the benefit of the offspring of *waqf* (commonly known as expert *waqf*). Djajadiningrat said the problems that arise with the donated land for mosques are because the land has been neglected for years. The giver (wakif) donates land and hands over to the managers (nazhir) of the *waqf* and the community to build a mosque. Amelia Fauzia, *Filantropi Islam: Sejarah Dan Kontestasi Masyarakat Sipil Dan Negara Di Indonesia* (Yogyakarta: Gading Publishing, 2016).

⁵ Hilman Latief, *Melayani Umat: Filantropi Islam Dan Ideologi Kesejahteraan Kaum Modernis* (Jakarta: PT. Gramedia Pustaka Utama, 2010).

⁶ Muhammad Abu Zahrah, *Muhadharat Fi Al Waqfi* (Cairo: Dar Al-Fikr, s.a, n.d.). Furthermore, Abu Zahrah explained that some writers on the history of ancient Egyptian legislation discovered the essence or substance of *waqf*. Where, they found in the form of a contract (*hibah*) between someone against their eldest child, then required the eldest child to share the proceeds of the gifted asset management to his other siblings. This means that the assets handed over are not allowed to be sold or used for other uses.

⁷ Jaih Mubarak, *Wakaf Produktif* (Bandung: Simbiosis Rekatama Media, 2008). Furthermore, Jaih Mubarak explained that during the reign of the Mamluk dynasty in Egypt, *waqf* developed in 3 types, namely (1) *ahbas*, (2) *awqaf hukmiyah*, (3) *awqaf Ahliyah*. See also in M. A. Mannan, *Cash Waqf Certificate: An Innovation of Islamic Financial Instruments*, (Jakarta: CIBER and PKKT-UI, 2001), 33

⁸ Bung Karno once said that if *Pancasila* is squeezed it will become *Trisila*, and if it is squeezed again it will become *Ekasila*, and if it continues to be squeezed it will become '*gotong-royong* (mutual cooperation)'. This

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is to form a committee to collect funds and after the funds have been collected, community members work together to contribute energy for the construction of the intended waqf. In the construction of a mosque or hospital, for example, the donated assets can also be seen in material donations or if it is in the form of money, the committee uses the money to purchase building materials. This culture of mutual cooperation⁹ in Indonesian society colors representation in Indonesia.¹⁰

Waqf *Khairi*

This type of waqf is a waqf that is widely used in Indonesia. This waqf is generally intended for the benefit and good (*khairi*) of society. Research conducted by the Indonesian Waqf Board Research Team in 2016 explained that there are still many people's opinions that the distribution of waqf assets for the benefit of economic empowerment has the potential to create many conflicts. For people who live in this opinion, waqf is a form of worship to the divine which is sacred. If the original intention was for this worship then led to conflict and disturbed the devotion of worship, then from the beginning, the allocation of waqf assets should have been directly conveyed to mosques or mushalla. In fact, as an example of waqf which was first practiced during the time of the Prophet, it was plantation waqf which led to productive waqf. Furthermore, the Research Team is of the opinion that plantation waqf or other productive waqf has not yet become a trend because economic development is separate from developments in the religious field.¹¹

In accordance with the principles of Law Number 41 of 2004 which does not separate between waqf Ahli which manages and uses limited waqf property for relatives (heirs) and waqf *khairi*. This means that the regulation regarding waqf applies to both *khairi* and *ahli* endowments. The allocation of waqf for *Mauquf 'alaih* is not intended for personal use but for the general welfare of fellow relatives from generation to generation. Thus, various information contained in 'Akta Ikrar Wakaf (AIW)' as important documents in the management of waqf can be an important reference for all parties.¹²

As for cash waqf, it is not known with certainty since when the money waqf began to be practiced. The tradition of waqf departs from the values and principles that live in the community in customary law and Islamic law, and in 2004 it has become the norm for upholding and implementing the cash waqf_ in Indonesia.¹³ ~~The development of waqf in other forms, such as use of Cash Waqf Linked Sukuk (CWLS), Green sukuk, which are intended to contribute to financing government procurement programs in one sector in the renewable energy sector. Such as energy efficiency, to reduce disaster risk, handling industrial waste, with~~

gotong-royong is the nature of the original life of the Indonesian people. This means that in order to ensure the sustainability of the Republic of Indonesia until the end of time, the Indonesian people must develop and live in a *gotong-royong*. Sayidiman Suryohadiprojo, *Budaya Gotong Royong Dan Masa Depan Bangsa* (Jakarta: Kompas Media, 2016).

⁹ Latief, *Melayani Umat: Filantropi Islam Dan Ideologi Kesejahteraan Kaum Modernis*.

¹⁰ ALi, *Sistem Ekonomi Islam, Zakat Dan Wakaf*.

¹¹ Indonesian Waqf Board, *Fenomena Wakaf Produktif*, (Jakarta: Indonesian Waqf Board, 2016), 3.

¹² Elucidation of Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf.

¹³ Ulya Kencana, *Hukum Wakaf Indonesia: Sejarah, Landasan Hukum dan Perbandingan antara Hukum Barat, Adat dan Islam*, (Malang: Setara Press, 2017), 126.

~~the aim of realizing sustainable government programs, 'Sustainable Development Goals' (SDGs).¹⁴~~

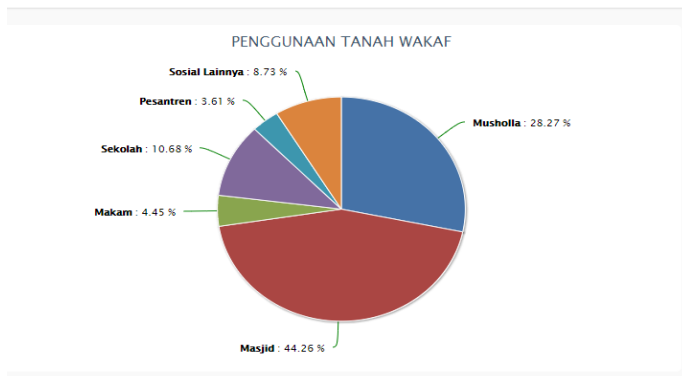
ANALYSIS AND DISCUSSION

Total Distribution of Waqf Assets in the form of Land in Indonesia

When observe at the data on the distribution of donated land in the Sumatera region, the province of Nanggroe Aceh Darussalam (NAD) is in first place (16,095 waqf lands), then Lampung province is in second place (13,192 waqf lands) as an area that has a lot of waqf land. Java Region, Central Java Province is in the first place (102,409 waqf lands), and West Java Province is in second place (76,231 waqf lands). Furthermore, West Nusa Tenggara (NTB) is in the first place (9,572 donated land), then South Kalimantan is in the second (8,261 waqf land).¹⁵

The facts in the community show that most of the waqf land managed by Individual Nazhirs uses a classical pattern and is used for the designation of mosques, mushalla, madrasas, and graves (*makam*). Ahmad Azhar Basyir argues that even though the waqf institution is an institution that originates from the Islamic religion, it is as if a mutual agreement has been made between legal experts that the waqf institution is a problem in Indonesian Customary Law, because the acceptance of waqf institutions comes from a habit in the association community life.¹⁶

Waqf land has a multi-dimensional function in supporting the welfare, development and progress of society. In the Figure below, the author presents the classification of the allocation of waqf land for three waqf functions throughout Indonesia.



¹⁴ ~~Ivan Rahmat Santoso, "Green Sukuk and Sustainable Economic Development Goals: Mitigating Climate Change in Indonesia", *Global Journal al-Thaqafah*, Vol 10 Issue 1 July (2020), 18-26.~~

¹⁵ Data is obtained from the official website of the Directorate of Zakat and Waqf Empowerment, Directorate General of Islamic Community Guidance at the Ministry of Religion of the Republic of Indonesia, http://siwak.kemenag.go.id/tabel_total_tanah_wakaf.php, accessed on 02 March 2021.

¹⁶ Ahmad Azhar Basyir, *Hukum Islam tentang Wakaf, Ijarah-Syirkah*, (Jakarta: Al-Ma'arif, 1977), 13.

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Title

Picture 1.¹⁷
Classification and Percentage of Allocation of Waqf Land
throughout Indonesia

Waqf Practices and Some of the Establishment of Waqf-based Social Institutions during the Colonial Period

Since 1905 (Bijblad 1905: 6196) there have been several products of waqf legislation issued by the Dutch East Indies Government. This regulation concerns the donation of land designated for mosques and other places of worship. However, these Circular Letters did not work as they should.¹⁸ As for the era of Japanese rule, there were no statutory regulations regarding waqf. So that the legal products formed by the Dutch East Indies continued to apply until Indonesia's independence, which was confirmed by the Transitional Article in the 1945 Indonesian Constitution.

The early days of the development of waqf can be traced back to the 12th century to the 14th century AD, when Sufi teachers penetrated Islam into the archipelago. The strongest evidence can be traced from the role of Walisongo when introducing and spreading Islam to the palace environment, the guardians usually started by establishing Islamic boarding schools and mosques in the sultanate (palace). This pattern was carried out by Syekh Maulana Malik Ibrahim in 1419 AD, and Sunan Ampel in 1467 AD, which was then followed by other Wali Songo¹⁹ figures. Mosques and Islamic boarding schools²⁰, apart from being the arrows for the spread of Islam, are also known as the first waqf institutions to become the new seeds for the development of Islamic philanthropy in the next period.²¹

As with the formation of the *Surau* in the Minangkabau region of West Sumatra, the *surau* is usually located on matrilineal land, *ulayat* land (land used communally) provided by the *nagari*, or on waqf land given by villagers.²² This period *surau* also functions as an economic base that lasts from time to time. The *surau* complex is not only for the center of Islamic teaching, but to some extent also as a community that fulfills its own needs, complete with rice

¹⁷ The official website of the Directorate of Zakat and Waqf Empowerment, Directorate General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia, <http://siwak.kemenag.go.id/index.php>, accessed January 10, 2021.

¹⁸ Mohammad Daud Ali, *Sistem Ekonomi Islam Zakat dan Wakaf*, 78.

¹⁹ The Demak Mosque, which was built by Wali Songo, at that time also functioned as a center for the development of Islamic culture and politics, especially in Java. During this period, there were three institutions that were formed with the aim of supporting and strengthening the existence of the Islamic kingdom in Java, namely: (1) the palace as the center of royal political power; (2) mosques and heritage as religious centers; and (3) the market as a trading center. See M. Luthfi Malik, *Etos Kerja, Pasar, dan Masjid: Transformasi Sosial-Keagamaan dalam Mobilitas Ekonomi Kemasyarakatan*, (Jakarta: LP3ES, 2013), 16.

²⁰ Omar Amin Hoesin wrote that the use of mosques simultaneously for the benefit of schools (educational institutions) has been known and has become a habit of Muslims in other parts of the world since time immemorial. He termed it a 'mosque school'. Where someone chooses to stay quiet in the mosque to study and learn from experts, without worrying about lack of food. Because people are 'being' will come to deliver food to the mosque. One example is the Grand Mosque in Damascus and the Harun Al-Rasyid mosque in Baghdad, apart from functioning as a place of worship, the mosque building is also used for lecture rooms for various faculties, especially the study of religious sciences. See Omar Amin Hoesin, *Kultur Islam*, (Jakarta: Bulan Bintang, 1981), 59.

²¹ Yulia Mirwati, *Wakaf Tanah Ulayat dalam Dinamika Hukum Indonesia*, (Jakarta: Rajawali Pers, 2016), 20.

²² Azyumardi Azra, *Surau: Pendidikan Islam Tradisional dalam Transisi dan Modernisasi*, 64.

fields, fields, gardens, and *lapau*. However, it should be noted that with this level of self-sufficiency, the *surau* can maintain close relations with the *nagari* population around them. On *hari pakan* (weekly markets), students usually go to the village with backpacks to collect food and other necessities from the villagers. This is also not uncommon, as the villagers themselves often come to the *surau* bringing groceries in *pedati* or *bendi*. Religiously, this is useful in supporting the *surau* and according to *adat*, it is a social obligation. In exchange, the *surau* people provide religious knowledge and perform religious rituals in the *nagari* for them.²³

In the West Java region, Amelia Fauzia explained that not all the construction of mosques came from waqf funds, but also obtained from zakat funds.²⁴ This can be seen in the explanation of the Regent of Serang, in 1904, who reported that the practice of waqf consists of four types, namely mosque waqf, grave waqf, *waqf lajim*, and *waqf dzuriyat*. Mosque waqf is a plot of land for the construction of a mosque or anything related to religion, Wakif donated land and handed it over to the *nazhir* of waqf and the community for the construction of a mosque. Thus, the construction of mosques will depend on almsgiving and other smaller endowments. ~~and~~ Grave waqf to be used as a grave. Waqf *Lajim* waqf is a garden or plantation land whose income (from plantation products) is used for the benefit of the village. Waqf *dzuriyat* is a plot of land whose income is mostly for the benefit of the offspring of waqf givers (commonly known as waqf *ahli*). ~~Djajadiningrat said the problems that arise with the donated land for mosques are because the land has been neglected for years. Wakif donated land and handed it over to the *nazhir* of waqf and the community for the construction of a mosque. Thus, the construction of mosques will depend on almsgiving and other smaller endowments.~~²⁵

As Rachmat Djatnika's research quoted by Amelia Fauzia on the number of waqf lands registered during the Dutch East Indies, explains the following: 79 new waqf in 1880-1850, 224 in 1850-1900, 168 in 1901-1910, 254 in years 1911-1920, 383 in 1921-1930, and 495 in 1931-1940. During the 140 years of Dutch East Indies rule, the number of waqf increased by 5 times. The use of land waqf is intended for mosques, Islamic boarding schools, madrasas, graves (*makam*), and agriculture. The number of waqf assets has continued to increase since the second half of the nineteenth century onwards.²⁶

In the East Java region until 1971 there was a significant increase in the number of waqf lands, although afterwards it slowed down. This increase in the number of new waqf was due to agrarian reform in 1960. Many landlords gave their land for waqf rather than allowing the land to be forcibly taken by the State or farmers. Thus, agrarian reform inadvertently provided benefits for Islamic institutions such as pesantren, for example the Pesantren Gontor, obtaining 240 ha of rice paddy waqf at that time. The spirit of giving to the Indonesian people was visible before the Indonesian State gained its independence. Amelia Fauzia explained that the philanthropic institution activities initiated by the community at that time was intended to show efforts to defend the State and achieve national independence. There are 3 (three) concrete evidences that describe the form of the initiative, namely: 1) the contribution of the Acehnese people to the

²³ *Ibid*, 62.

²⁴ Nowadays, the majority of waqf for mosques depending on alms donations for the operational needs of the mosque. Alms are an alternative to the construction and operational costs of mosques, besides not being burdensome, alms are not synonymous with wealth, and are in accordance with the local economy and communal culture. Amelia Fauzia, *Filantropi Islam: Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia*, ~~111-123~~ 123.

²⁵ Amelia Fauzia, *Filantropi Islam: Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia*, 123 *Ibid*.

²⁶ *Ibid*, 126.

Dikomentari [A6]: what does this post mean??

Dikomentari [A7]: Agree. Deleted. Because the discussion extends from the theme of paper

Dikomentari [A8]: explain the procedure for waqf taken from zakat funds?

Dikomentari [A9]: Already explained in the footnote 24

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State. In the form of the purchase of the first Indonesian-owned aircraft; 2) The establishment of the Indonesian Red Cross Organization (PMI) as a form of awareness of national political identity; and 3) the establishment of the Republic Waqf foundation (Stichting Wakaf Republik) which is a modern Islamic charity organization founded on August 17, 1948.²⁷

The practice of giving alike to waqf was practiced before Islam came to Indonesia, such as huma serang in Banten. Huma serang are fields that are managed collectively every year and the results are used for common interests. In Lombok, pareman land as state land is exempt from landrente tax and the proceeds are handed over to villages, subaks and temples for common interests. Likewise, perdikan land in East Java, a gift from the king to a person or group who has contributed and cannot be traded.

In the literature on the history of Indonesian law, there are many Orientalist figures since the time of the Dutch East Indies who conducted research and observations on the implementation of Islamic law in Indonesia for a long period of time. One of these figures was Hurgronje, who made observations of 'pesantren' educational institutions in West Java, Central Java and Aceh.²⁸ The enthusiasm and motivation for giving in the form of zakat and waqf to the community at that time had the consequence of making mosques and Islamic boarding schools belong to communities independent of the government.²⁹

The results of Horikoshi's research say that the mosque is one of the places that scholars work on to serve rural communities in Indonesia. In addition to serving in the mosque, ulama also serve in madrassas, in Islamic boarding schools and in schools with a class system. This is because every Muslim, both villagers, santri and ulama, performs the five daily prayers and the general tabligh is held at the madrasa. Mosques and madrassas are at the institutional heart of rural Islamic societies.³⁰

The mosque is an original product and one of the characteristics of Islamic civilization. The term mosque itself, which etymologically means a place of prostration, has developed terminologically into an architectural object built to gather Muslims with the aim of performing the five prayers in congregation, teaching, discussing and studying Islam, feeding the poor, and other related activities with worship. Therefore, the existence of a mosque is a very important physical manifestation at the core of Islamic teachings.³¹ Horikoshi described how the Indonesian Islamic community at that time functioned mosques. They perform full worship at the mosque in congregation while reinforcing their commitment to the community.³² In 2008, a discourse was launched on the idea of maximizing the use of mosques apart from being a place of worship and spreading *da'wah*. Mosques also functioned as the basis for the economic development of Muslims in the form of "mosques incorporated" oriented towards the development of "economic business networks".³³

²⁷ *Ibid.*, 1868.

²⁸ Karel A Steenbrink *Pesantren Madrasah Sekolah: Pendidikan Islam dalam Kurun Modern*, (Jakarta: Dharma Aksara Perkasa, 1986), 10.

²⁹ Amelia Fauzia, *Filantropi Islam: Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia*, 122.

³⁰ Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, (Jakarta: P3M, 1987), 115.

³¹ Yulia Eka Putrie, "Rethinking Monumentality in Contemporary Mosque Architecture," in *Contemporary Architecture of Islamic Societies between Globalization and Tradition*, ed. Nangkula Utaberta and Yulia Eka Putrie, (Malang: CIAS & UIN Maliki Press, 2013), 33.

³² Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, 116.

³³ M. Luthfi Malik, *Etos Kerja, Pasar, dan Masjid: Transformasi Sosial-Keagamaan dalam Mobilitas Ekonomi Kemasyarakatan*, 17.

Dikomentari [A13]: explained

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As for the madrasa³⁴, it functions as a place for parents and children to learn religious sciences and get direct training from scholars. Sometimes madrasas are also used by students to recite and study nature, learn Arabic and listen to lectures from scholars and *kyai*. The most important function of the madrasa for scholars is to communicate with the ummah and to cultivate knowledge and *aqidah* for the common people through the recitation congregation.³⁵ Unlike the pesantren education system, this institution is very specialized and aims to train students to have independent abilities. The students usually live in dormitories, occupy one small room and are filled with between three and five *santri*, sometimes even up to ten *santri*. Each student is free of charge for lodging and education received from the ulama.³⁶

In Tanah Melayu, the development of an educational institution in the form of a madrasa began in the 13th century along with the development of Islam which was manifested in the form of a mosque or mosque which also functioned as a place to study.³⁷ In the Java Island region, some of the madrasas in Java are closer to the Dutch-style school system; some are more influenced by the development of Islamic education reforms in the Middle East; and partly a convergence between the pesantren education system and the modern madrasa or school system.³⁸ As it is known that Islamic organizations such as Nahdatul Ulama (NU), Muhammadiyah, Persatuan Islam (Persis) and Al-washliyah have a long history of processing waqf. In the NU environment, for example, there are many Islamic boarding schools, madrasas,

³⁴ In the early history of the formation of madrasas by Islamic leaders, madrasas were a new milestone in the implementation of Islamic education. Madrasa institutions emerged in the fourth century Hijriyah. Ahmad Syalabi argues that the development of a mosque to a madrasa occurs directly, not using an intermediary institution. The development of madrasas can be said to be a logical consequence of the increasing number of recitation activities in mosques whose main function is a place of worship. In order not to disturb the peace of worship at the mosque, educational activities have been made in a special place known as a madrasa. It can be understood that there are multi-motivations that underlie the birth of madrasah, namely in addition to religious motivation and economic motivation because it is related to employment, as well as political motivation. With the establishment of madrasas, Islamic education entered a new period, namely "education becomes a function for the State, and schools are symbolized for the purpose of sectarian education and political indoctrination. Physically, madrasas in medieval Islam were basically mosque buildings added with special locales for education (*i'twan*) and lodging (*pemondokan*). In addition, madrasas reflect a transformation in administration and management. In contrast to mosques, madrasas have led to a more professional education management system. Madrasahs have certain regulations regarding almost all components of education. For example, if in a mosque a person can be free and independent in choosing a teacher or *halaqah*, that can no longer be done in a madrasa. Madrasahs differentiate the level and duties of teachers between *mudarris* (teachers), *mu'id* (assistants), and *aw'adz* (tutors). In addition, madrasahs recognize the existence of *nazhir* or wali who have responsibility for madrasah activities, and they are selected from people who are experts in their fields. As for Indonesia, the writers on the history of Indonesian Islamic education agree that there were the first madrasahs that were established during the period of growth, especially in the Sumatra and Java regions. Mahmud Yunus included madrasahs in this period of growth, including Adabiah School (1990) and Diniyah School Labai al-Yunusiy (1915) in West Sumatra, Nahdlatul Ulama Madrasah in East Java, Yogyakarta Muhammadiyah Madrasah, Tasywiq Thullab Madrasah in Central Java, Madrasah Persatuan Muslim Ummah in West Java, Madrasah Jam'iyat Kheir in Jakarta, Madrasah Amiriah Islamiah in Sulawesi, and Madrasah Assulthaniyyah in Kalimantan. Maksum, *Madrasah: Sejarah dan Perkembangannya*, (Jakarta: Logos Wacana Ilmu, 1999), 58 - 67, and 98.

³⁵ Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, 116.

³⁶ *Ibid.*, 120.

³⁷ Ahmad Dzulfahmi Muhamad & Mohammad Redzuan Othman, "Pengislahan Sistem Pendidikan Islam di Tanah Melayu: Paranan Mudir Madrasah Al-Mashoor Al-Islamiah Pulau Pinang, 1916-1957", *Journal of Al-Tamaddun*, Vol. 15 (1), (2020), 133-145.

³⁸ Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, 120.

mosques, prayer rooms and religious institutions with waqf status, especially land and buildings.³⁹

Another case with Islamic boarding schools⁴⁰, the results of observations made by Hurgronje found that most of the students who frequently visited Islamic boarding schools or Islamic boarding schools in Java, *surau* in Central Sumatra, or *rangkang* in Aceh, were the embryos of teachers of religious scholars and scholars, who underestimated instead of wanting the position, or those whose parents assign a value based on a certain understanding based on religious orders.⁴¹

Some pesantren receive regular income from their status as a **perdikan** area⁴² or from waqf. When students enter or leave the pesantren, at harvest time or at the end of fasting, they or their parents often give gifts to the kyai, likewise zakat is often paid to the kyai. Very often it is found that the humble kyai have to make a living by farming or trading. Additional income from education is often insufficient to pay for the management of the education it carries.⁴³

Al-'Urf Method in Practice of Waqf

The term *al-'Urf* is known to have various meanings. In the Al-Munjid Dictionary, *al-'urf* syar'ie means '*maa ja'alahu' ulamaau syar'i mabna al-ahkaam*' (habit / *adat* syar'i is what jurists use as a legal basis or foundation).⁴⁴ In the science of *Ushul Fiqh*, *al-'urf* has two different meanings, namely *al-'urf* which is both called *al-'urf as-shahih* and *al-'urf* which is damaged is called *al-'urf al-fasid*. One of the basic principles of jurisprudence relating to customs or habits is *al-'adah muhakkamah* which means '*Adat* (can be taken into consideration) in the stipulation of law'.⁴⁵

³⁹ Direktorat Pemberdayaan Wakaf, *Proses Lahirnya Undang-Undang Wakaf*, 86.

⁴⁰ Terminologically, when viewed in terms of form and system, pesantren were adopted from the learning system from India. Prior to the process of spreading Islam in Indonesia, this system was generally used for the education and teaching of Hinduism in Java. After Islam entered and spread in Java, the system was then adopted by Islam. The term pesantren itself, like the Koran, does not come from an Arabic term, but from India. Likewise, the terms *pondok*, *langgar* in Java, *surau* in Minangkabau and *rangkeng* in Aceh are not Arabic terms, but from terms found in India. Apart from adopting the *pesantren* system in India, the similarity in form between Hindu education in India and *pesantren* can be considered as a clue to explain the origin of the *pesantren* education system. See Karel A. Steenbrink, *Pesantren Madrasah Sekolah: Pendidikan Islam dalam Kurun Modern*, 20.

⁴¹ Snouck also discovered the fact that in the Pidie region, before the arrival of the Dutch to Aceh, there were certain places that became learning centers, where many muribs (Acehnese term for "students / santri", from the Arabic language of students) both from the country of Pidie itself. as well as from Aceh studying. These places are Langga, *Langgo*, *Sriwene*, *simpang le leubeue* (*Ayer Labu*) *Tiro*, who later became very famous for having two *teungku* in the place who took an important part in the war against the Dutch, in the past was less famous for the knowledge taught there than the large number of scholars who produced and lived there. See C. Snouck Hurgronje, *Orang Aceh: Ilmu Pengetahuan, Sastra, Permainan, dan Agama*, Yogyakarta: Matabangsa, 2020), 48 – 52.

⁴² Perdikan Land is land given by the ruling Sultan or Raja to its founder because it is considered to have certain services. Perdikan villages are often found in the areas of Demak, Banyumas, Madiun, and Kediri. See Karel A. Steenbrink, Pesantren Madrasah Sekolah: Pendidikan Islam dalam Kurun Modern, 19. This State Policy on Land Status can be seen in Law Number 13 of 1946 concerning the Elimination of Perdikan Villages.

⁴³ Karel A. Steenbrink, *Pesantren Madrasah Sekolah: Pendidikan Islam dalam Kurun Modern, 19*[*ibid.*

⁴⁴ Loius al-Ma'louf, *Al-Munjid: fi al-lughoh wa al-'lam*, 44th edition, (Beirut: Daar al-Masyriq, 2011), 500.

⁴⁵ Jaih Mubarak, *Kaidah Fiqh: Sejarah dan Kaidah Asasi*, Jakarta: RajaGrafindo Persada, 2002), 153.

Dikomentari [A14]: what does this post mean?

Dikomentari [A15]: Explained at footnote 41

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The style of change that prevails in society refers to the reality of society.⁴⁶ Likewise, the use of *al-'urf's* legal arguments in the process of forming a waqf law is related to developing traditions. The history of waqf in Indonesia was first practiced by following the customs of the local community. Local wisdom is an effort to preserve the traditions of pre-Islamic society. According to customary law, waqf is recognized as a legal subject besides humans (natuurlijk person). Legal entities recognized as legal subjects according to customary law include village, ethnicity, country, waqf, foundations, and cooperatives as legal entities.⁴⁷

In the history of waqf management in Indonesia, the majority of waqf assets are managed by traditional *Nazhirs* so that waqf is not productive. So that the history of waqf management in Indonesia does not repeat itself, there needs to be a paradigm shift. Namely, from consumptive management to productive management, and from traditional *Nazhirs* that based solely on trust towards professional *Nazhirs* who were recruited based on expertise in their respective fields. As well as empowering efforts from individual *Nazhirs* to institutional *Nazhirs* so that accountability is easy.⁴⁸

In the context of *ijtihad*, *Al-'urf* is a legal argument used by *mujtahids* in exploring legal certainty about a problem. The normative basis for waqf is not explicitly explained in the Al-Quran or al-Hadith. Therefore, the field of *ijtihad* in the field of waqf is very wide open. The diversity of nomenclature is also due to the absence of the word waqf explicitly in two sources of Islamic law. This means that waqf is included in the area of *ijtihadi*, not *ta'abbudi*, especially with regard to management methods, types of waqf, requirements, designation of waqf, and so on.⁴⁹ Yusuf Al-Qaradhawi stated that in the field of muamalah, the field of *ijtihad* which demands new answers, there are two areas. First, in the economic or financial sector, in this field a series of forms of transactions have emerged which have never been encountered in the past. Second, the field of science or medicine. In this field there are also found various ways of activities that require legal clarity.⁵⁰

The perception that exists in the minds of indigenous Indonesians is that the relinquishment of ownership rights to become waqf is a voluntary act known as the *tabarru'* contract and does not require administrative records. Before Islam came to the country, there was already a social institution which was almost the same as waqf. To mention just an example, it can be stated that the *preman's* land in Lombok and the *Pusako Tinggi* land in Minangkabau. Therefore it can be understood, that the understanding of Indonesian Muslims about waqf is not only based on the Al-Qur'an, hadith books and Jurisprudence books, especially the Shafi'i school of thought, also by custom. Many of the customs of Indonesian society originate from or are influenced by Islamic teachings, including the custom regarding

⁴⁶ Siti Fatimah Salleh, *et. al.*, "Analysis of the Elements of Social Change in the Context of 'Urf in Islamic Law", *Global Journal al-Thaqafah (GJAT)*, Vol 7 Issue 1, (2017), 99-116.

⁴⁷ Ansori, "Kearifan Tradisi Al-Qur'an dalam Proses Enkulturas Budaya Lokal," *Ibda': Jurnal Studi Islam dan Budaya*, Vol. 9, No. 1, January – June, (2011), 89-97.

⁴⁸ Directorate of Zakat and Waqf Empowerment, *Paradigma Baru Wakaf di Indonesia*, (Jakarta: Director General of Islamic Community Guidance at the Ministry of Religion of the Republic of Indonesia, 2013), 52.

⁴⁹ Amir Mu'allim, "Ijtihad Ekonomi dalam Pengelolaan Aset Wakaf", *Jurnal Al-'Adalah*, Vol. 14, No. 2 (2017), 291-310.

⁵⁰ Yusuf Al-Qaradhawi, *Pengantar Kajian Islam [Al-Madkhal li Ma'rifatil Islam]*, translated by Setiawan Budi Utomo, (Jakarta: Pustaka Al-Kautsar, 2013), 140.

waqf. On the other hand, religious institutions originating from Islam are also colored by Indonesian customs, especially by the customary principles of harmony, propriety and harmony in resolving disputes over waqf. Ulama in Indonesia, although they claim to be Syafi'ie, but in understanding the meaning of waqf can also accept other schools of thought, as mentioned above, as well as the influence of the local community.⁵¹ This means that Indonesian culture plays a significant role in providing color and dynamics to the understanding of Indonesian society about waqf and the way of waqf.

CONCLUSION

What is exemplified by Rasulullah SAW. and the Companions of the Rasulullah SAW. is a norm that can be taken as a legal basis for waqf worship in Indonesia both in the past and today. When looking at the tradition of waqf Indonesian society which was originally only for three objects, namely mosques, madrasas, and graves (*makam*), as well as direct appointment of *Nazhirs* which are only based on the factor of character or kinship to a *Nazhir* candidate, which in the words others are known as traditional waqf. So the author argues that due to the value of voluntary worship (voluntary sector) inherent in waqf, as well as the trust that arises in someone to become *Nazhir*, strengthening and empowering 3M waqf land and the existence of *Nazhir* Individuals for 3M waqf need serious attention from stakeholders. Interests, without deleting, eliminating, or replacing the Individual *Nazhir* to become the *Nazhir* of Organizations and/or Legal Entities. Given that nearly 66% of the total waqf land spread across Indonesia is under the management of Individual *Nazhir*.

In the context of the value and allotment of waqf land, traditional waqf does not vary and does not develop rapidly as is the case with current productive waqf which is echoed by social institutions that manage cash waqf. Traditional waqf in Indonesian territory is found only limited to mosques, mushalla, madrasas, and for graves (*makam*). However, it does not mean that the waqf land is underdeveloped and unproductive, which can be caused by the condition of the area of the waqf land itself or due to the inadequate level of economic needs of the local community. So the authors conclude that this situation does not make the waqf land converted to a more productive designation, or replaced by its *nazhir* institutional because it is not creative. In this situation, the argument of *al-'urf's* law is appropriate to be used as a legal basis for refusing the replacement of waqf *nazhir*. Because the 3 allotments of the waqf land are intended for matters that are directly related to the benefit of the people which fall into the category of *hajjiyyat* needs (basic needs). Includes: 1) Apart from being a symbol of Islamic civilization, a mosque is also a center for fostering the ummah both morally, mentally and spiritually; mushalla as a historical witness that religion is rooted in people's lives in the smallest environment, namely the village; 2) madrasas as a symbol of scientific civilization for the advanced generations who are educated and have noble character; and 3) graves (*makam*) as a necessity which is sanctified in religion (organizing the deceased in Islam).

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⁵¹ Mohammad Daud Ali, *Sistem Ekonomi Islam Zakat dan Wakaf*, 94.

Dikomentari [A16]: please sharpen your conclusions again, because if you look at this article it seems the same as the provisions stipulated in the waqf law, related to productive waqf....

Dikomentari [A17]: Revised

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The Implementation of *al-‘Urf* in Waqf Mosques, Madrasas and Graves in Indonesian Tradition

Ani Yumarni^a, Gemala Dewi^b, Jaih Mubarak^b, Wirdyaningsih^b, and Anna Sardiana^b

^a Doctorate Degree Faculty of Law, University of Indonesia (UI), Jakarta. Corresponding Author: aniyumarni@gmail.com

^b Faculty of Law, University of Indonesia (UI), E-mail: gemalafillah@gmail.com

^b Faculty of Sharia, Sunan Gunung Djati Islamic University, E-mail: jaihmubarak@yahoo.com

^b Faculty of Law, University of Indonesia (UI), E-mail: wirdyaningsih@yahoo.co.id

^b University of Kuala Lumpur, Graduate School of Business, E-mail: anna.sardiana@unikl.edu.my

Article	Abstract
<p>Keywords:</p> <p>Al-‘Urf; Mosques; Graves</p> <p>Waqf; Madrasas;</p> <p>Artikel History</p> <p>.....</p> <p>DOI:</p>	<p>Beside from the waqf that is given by individuals to a close relative, which is known as expert waqf, in Indonesia there is also waqf which is carried out collectively, or what is known as waqf <i>khairi</i>. Waqf <i>Khairi</i> in the form of mosques, madrasas, and graves in Indonesia Language is <i>makam</i>, known as '3M waqf'. Even though it looks very classic and traditional, this 3M waqf is clear evidence that Islam in Indonesia is built and developed through waqf worship. As the results of the latest data collection in 2021 by the Directorate of Zakat and Waqf Empowerment of the Ministry of Religion of the Republic of Indonesia, it is known that the percentage of waqf land in Indonesia is for the purposes of religious facilities, 44.26% for mosques, and 28.27% for mushalla, 10.68% for madrasas, 5.61% for boarding school, and 4.45% for graves (<i>makam</i>).</p> <p>This paper examines the tradition of waqf in Indonesian society for the benefit of mosques, madrasas, and graves (<i>makam</i>). By using the historical approach method of Islam in Indonesia, awareness and spirit of waqf in Indonesian society, and using an analytical and conceptual approach. <i>Al-‘Urf</i> is one of the legal propositions in establishing Islamic law. This legal proposition is used as a method of legal <i>istinbath</i> regarding the tradition of waqf, management procedures, and the allocation of waqf, especially for people in Indonesia. So that the results of this study can become a consideration for stakeholders in Indonesia in developing strategies for strengthening and empowering 3M's donated land so that it can sustainably create benefits and benefits for the people of Indonesia, because essentially, this kind of waqf in the form of 3M's is what is commonly found in Indonesian society.</p>

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INTRODUCTION

As the opinion expressed by Koesoma Atmadja¹, that before Islam entered Indonesia, there were already social institutions such as waqf known as *Huma Serang* in the Bedouin community in Cibeo, South Banten, *Tanah Preman* in Lombok. However, after Islam came to Indonesia, the waqf institution brought by Islam grew and developed in society. This waqf institution is known as "Vrome Stichtingen" which was well known in society before the arrival of Islam to Indonesia.² The acceptance of waqf into customary law is one of the acceptance of customary law that comes from religion (godsdienstig bestanddeel van het adatrecht).³ The classic or traditional waqf is identical in the form of a mushalla or *langgar* mosque, an educational madrasa, and a burial ground (grave). As was the practice found in the people of Serang, West Java in 1904, the practice of waqf was in the form of mosque waqf, grave waqf, *lajim* waqf, and *dzurriyat* waqf.⁴

This paper will elaborate the issue of waqf *khairi*, which is waqf intended for the benefit of the people. Due to the implementative and traditional point of view of waqf, this waqf is the oldest and most commonly found in the social life of Indonesian society.⁵ So there is no need to change anymore, but it needs to be considered and empowered so that what is meant by the law and wisdom of waqf in Islam and the will in the Waqf Law in Indonesia.

Waqf Ahli

Abu Zahrah explained that a waqif may donate his belongings for his family, relatives, and his beloved offspring. Family and close relatives who become *mauquf 'alaihi* in the context of waqf deeds are called Waqf *Ahli*.⁶ Waqf *Ahli* means waqf addressed to certain people, regardless of whether they are rich or poor, sick or healthy, and old or young.

Based on the objectives, waqf can be divided into 3 (three) types, namely social waqf, family waqf (*dzurri*) and combined waqf (*musytarak*). As for the time limit for its use, waqf is divided into 2 types, namely perpetual waqf and temporary waqf. Based on its economic substance, waqf is divided into 2 types, namely direct waqf and productive waqf. In general, Jaih Mubarak argues that waqf can be divided into two: (1) expert (family) waqf, namely waqf

¹ Mohammad Daud Ali, *Sistem Ekonomi Islam, Zakat dan Wakaf*, (Jakarta: UI Press, 1988), 79.

² Ter Haar Bzn, *Beginnselen En Stelsel Van Het Adatrecht*, translated by K. Ng. Soebekti Poesponoto, (Jakarta: Pradnya Paramita, 1986), 136.

³ Ali Rido, *Badan Hukum dan Kedudukan Badan Hukum Perseroan Perkumpulan Koperasi dan Wakaf*, (Bandung: Alumni, 1977), 132.

⁴ *Waqf lajim* is a garden or plantation land whose income (from plantation products) is used for the benefit of the village. *Waqf dzurriyat* is a plot of land whose income is mostly for the benefit of the offspring of *waqf* (commonly known as expert *waqf*). Djajadiningrat said the problems that arise with the donated land for mosques are because the land has been neglected for years. The giver (wakif) donates land and hands over to the managers (nazhir) of the *waqf* and the community to build a mosque. Amelia Fauzia, *Filantropi Islam: Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia*, (Yogyakarta: Gading Publishing, 2016), 123.

⁵ As Hilman Latief views, the practice of donating is commonplace in Indonesian society. In the social history of Muslims, generosity and voluntary movements are two things that have become part of the activities of the ummah. This is evidenced by the various historical remains that exist in society, in the form of social, educational, and health institutions. See Hilman Latief, *Melayani Umat: Filantropi Islam dan Ideologi Kesejahteraan Kaum Modernis*, (Jakarta: PT Gramedia Pustaka Utama, 2010), 65.

⁶ Muhammad Abu Zahrah, *Muhadharat fi al Waqfi*, (Cairo: Dar al-Fikr, s.a.), 5. Furthermore, Abu Zahrah explained that some writers on the history of ancient Egyptian legislation discovered the essence or substance of *waqf*. Where, they found in the form of a contract (*hibah*) between someone against their eldest child, then required the eldest child to share the proceeds of the gifted asset management to his other siblings. This means that the assets handed over are not allowed to be sold or used for other uses.

whose purpose is to help the family of the party who donates; and (2) *khairi* (general) waqf, namely waqf whose purpose is to benefit the general public.⁷

Apart from the waqf given by individuals, in Indonesia there are also mutual endowment⁸s in the form of mosques, madrasas, mushalla, orphanages, hospitals, bridges and so on. The trick is to form a committee to collect funds and after the funds have been collected, community members work together to contribute energy for the construction of the intended waqf. In the construction of a mosque or hospital, for example, the donated assets can also be seen in material donations or if it is in the form of money, the committee uses the money to purchase building materials. This culture of mutual cooperation⁹ in Indonesian society colors representation in Indonesia.¹⁰

Waqf Khairi

This type of waqf is a waqf that is widely used in Indonesia. This waqf is generally intended for the benefit and good (*khairi*) of society. Research conducted by the Indonesian Waqf Board Research Team in 2016 explained that there are still many people's opinions that the distribution of waqf assets for the benefit of economic empowerment has the potential to create many conflicts. For people who live in this opinion, waqf is a form of worship to the divine which is sacred. If the original intention was for this worship then led to conflict and disturbed the devotion of worship, then from the beginning, the allocation of waqf assets should have been directly conveyed to mosques or mushalla. In fact, as an example of waqf which was first practiced during the time of the Prophet, it was plantation waqf which led to productive waqf. Furthermore, the Research Team is of the opinion that plantation waqf or other productive waqf has not yet become a trend because economic development is separate from developments in the religious field.¹¹

In accordance with the principles of Law Number 41 of 2004 which does not separate between waqf Ahli which manages and uses limited waqf property for relatives (heirs) and waqf *khairi*. This means that the regulation regarding waqf applies to both *khairi* and *ahli* endowments. The allocation of waqf for *Mauquf 'alaih* is not intended for personal use but for the general welfare of fellow relatives from generation to generation. Thus, various information contained in 'Akta Ikrar Wakaf (AIW)' as important documents in the management of waqf can be an important reference for all parties.¹²

⁷ Jaih Mubarak, *Wakaf Produktif*, (Bandung: Simbiosis Rekatama Media, 2008), p. 14. Furthermore, Jaih Mubarak explained that during the reign of the Mamluk dynasty in Egypt, *waqf* developed in 3 types, namely (1) *ahbas*, (2) *awqaf hukmiyah*, (3) *awqaf Ahliyah*. See also in M. A. Mannan, *Cash Waqf Certificate: An Innovation of Islamic Financial Instruments*, (Jakarta: CIBER and PKKT-UI, 2001), 33.

⁸ Bung Karno once said that if *Pancasila* is squeezed it will become *Trisila*, and if it is squeezed again it will become *Ekasila*, and if it continues to be squeezed it will become '*gotong-royong* (mutual cooperation)'. This *gotong-royong* is the nature of the original life of the Indonesian people. This means that in order to ensure the sustainability of the Republic of Indonesia until the end of time, the Indonesian people must develop and live in a *gotong-royong*. Sayidiman Suryohadiprojo, *Budaya Gotong Royong dan Masa Depan Bangsa*, (Jakarta, Kompas Media, 2016), 7.

⁹ Hilman Latief is of the view that the Indonesian people had not used a specific term to describe the donation process. Usually it is only known as *sadaqah* or *infaq*. This is because the term *waqf* itself is understood to be limited to the transfer of assets in the form of land and buildings. See Hilman Latief, *Melayani Umat: Filantropi Islam dan Ideologi Kesejahteraan Kaum Modernis*, 64.

¹⁰ Mohammad Daud Ali, *Sistem Ekonomi Islam, Zakat dan Wakaf*, 96.

¹¹ Indonesian Waqf Board, *Fenomena Wakaf Produktif*, (Jakarta: Indonesian Waqf Board, 2016), 3.

¹² Elucidation of Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf.

As for cash waqf, it is not known with certainty since when the money waqf began to be practiced. The tradition of waqf departs from the values and principles that live in the community in customary law and Islamic law, and in 2004 it has become the norm for upholding and implementing the cash waqf in Indonesia.¹³ The development of waqf in other forms, such as use of Cash Waqf Linked Sukuk (CWLS), Green sukuk, which are intended to contribute to financing government procurement programs in one sector in the renewable energy sector. Such as energy efficiency, to reduce disaster risk, handling industrial waste, with the aim of realizing sustainable government programs, 'Sustainable Development Goals' (SDGs).¹⁴

ANALYSIS AND DISCUSSION

Total Distribution of Waqf Assets in the form of Land in Indonesia

When observe at the data on the distribution of donated land in the Sumatera region, the province of Nanggroe Aceh Darussalam (NAD) is in first place (16,095 waqf lands), then Lampung province is in second place (13,192 waqf lands) as an area that has a lot of waqf land. Java Region, Central Java Province is in the first place (102,409 waqf lands), and West Java Province is in second place (76,231 waqf lands). Furthermore, West Nusa Tenggara (NTB) is in the first place (9,572 donated land), then South Kalimantan is in the second (8,261 waqf land).¹⁵

The facts in the community show that most of the waqf land managed by Individual Nazhirs uses a classical pattern and is used for the designation of mosques, mushalla, madrasas, and graves (*makam*). Ahmad Azhar Basyir argues that even though the waqf institution is an institution that originates from the Islamic religion, it is as if a mutual agreement has been made between legal experts that the waqf institution is a problem in Indonesian Customary Law, because the acceptance of waqf institutions comes from a habit in the association community life.¹⁶

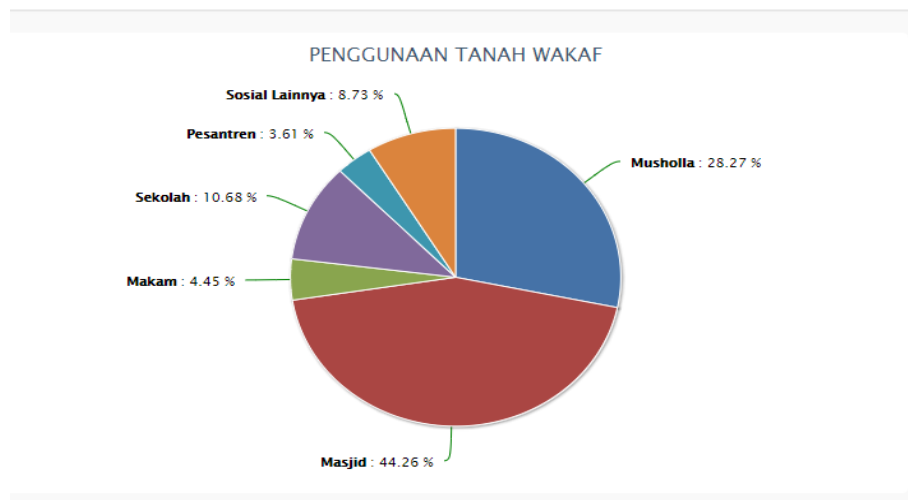
Waqf land has a multi-dimensional function in supporting the welfare, development and progress of society. In the Figure below, the author presents the classification of the allocation of waqf land for three waqf functions throughout Indonesia.

¹³ Ulya Kencana, *Hukum Wakaf Indonesia: Sejarah, Landasan Hukum dan Perbandingan antara Hukum Barat, Adat dan Islam*, (Malang: Setara Press, 2017), 126.

¹⁴ Ivan Rahmat Santoso, "Green Sukuk and Sustainable Economic Development Goals: Mitigating Climate Change in Indonesia", *Global Journal al-Thaqafah*, Vol 10 Issue 1 July (2020), 18-26.

¹⁵ Data is obtained from the official website of the Directorate of Zakat and Waqf Empowerment, Directorate General of Islamic Community Guidance at the Ministry of Religion of the Republic of Indonesia, http://siwak.kemenag.go.id/tabel_total_tanah_wakaf.php, accessed on 02 March 2021.

¹⁶ Ahmad Azhar Basyir, *Hukum Islam tentang Wakaf, Ijarah-Syirkah*, (Jakarta: Al-Ma'arif, 1977), 13.

Picture 1.¹⁷

Classification and Percentage of Allocation of Waqf Land throughout Indonesia

Waqf Practices and Some of the Establishment of Waqf-based Social Institutions during the Colonial Period

Since 1905 (Bijblad 1905: 6196) there have been several products of waqf legislation issued by the Dutch East Indies Government. This regulation concerns the donation of land designated for mosques and other places of worship. However, these Circular Letters did not work as they should.¹⁸ As for the era of Japanese rule, there were no statutory regulations regarding waqf. So that the legal products formed by the Dutch East Indies continued to apply until Indonesia's independence, which was confirmed by the Transitional Article in the 1945 Indonesian Constitution.

The early days of the development of waqf can be traced back to the 12th century to the 14th century AD, when Sufi teachers penetrated Islam into the archipelago. The strongest evidence can be traced from the role of Walisongo when introducing and spreading Islam to the palace environment, the guardians usually started by establishing Islamic boarding schools and mosques in the sultanate (palace). This pattern was carried out by Syekh Maulana Malik Ibrahim in 1419 AD, and Sunan Ampel in 1467 AD, which was then followed by other Wali Songo¹⁹ figures. Mosques and Islamic boarding schools²⁰, apart from being the arrows for the

¹⁷ The official website of the Directorate of Zakat and Waqf Empowerment, Directorate General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia, <http://siwak.kemenag.go.id/index.php>, accessed January 10, 2021.

¹⁸ Mohammad Daud Ali, *Sistem Ekonomi Islam Zakat dan Wakaf*, 78.

¹⁹ The Demak Mosque, which was built by Wali Songo, at that time also functioned as a center for the development of Islamic culture and politics, especially in Java. During this period, there were three institutions that were formed with the aim of supporting and strengthening the existence of the Islamic kingdom in Java, namely: (1) the palace as the center of royal political power; (2) mosques and heritage as religious centers; and (3) the market as a trading center. See M. Luthfi Malik, *Etos Kerja, Pasar, dan Masjid: Transformasi Sosial-Keagamaan dalam Mobilitas Ekonomi Kemasyarakatan*, (Jakarta: LP3ES, 2013), 16.

²⁰ Omar Amin Hoesin wrote that the use of mosques simultaneously for the benefit of schools (educational institutions) has been known and has become a habit of Muslims in other parts of the world since time immemorial.

spread of Islam, are also known as the first waqf institutions to become the new seeds for the development of Islamic philanthropy in the next period.²¹

As with the formation of the *Surau* in the Minangkabau region of West Sumatra, the *surau* is usually located on matrilineal land, *ulayat* land (land used communally) provided by the *nagari*, or on waqf land given by villagers.²² This period *surau* also functions as an economic base that lasts from time to time. The *surau* complex is not only for the center of Islamic teaching, but to some extent also as a community that fulfills its own needs, complete with rice fields, fields, gardens, and *lapau*. However, it should be noted that with this level of self-sufficiency, the *surau* can maintain close relations with the *nagari* population around them. On *hari pakan* (weekly markets), students usually go to the village with backpacks to collect food and other necessities from the villagers. This is also not uncommon, as the villagers themselves often come to the *surau* bringing groceries in *pedati* or *bendi*. Religiously, this is useful in supporting the *surau* and according to *adat*, it is a social obligation. In exchange, the *surau* people provide religious knowledge and perform religious rituals in the *nagari* for them.²³

In the West Java region, Amelia Fauzia explained that not all the construction of mosques came from waqf funds, but also obtained from zakat funds. This can be seen in the explanation of the Regent of Serang, in 1904, who reported that the practice of waqf consists of four types, namely mosque waqf, grave waqf, *waqf lajim*, and *waqf dzuriyat*. Mosque waqf is a plot of land for the construction of a mosque or anything related to religion, and grave waqf to be used as a grave. Waqf *Lajim* waqf is a garden or plantation land whose income (from plantation products) is used for the benefit of the village. Waqf *dzuriyat* is a plot of land whose income is mostly for the benefit of the offspring of waqf givers (commonly known as waqf *ahli*). Djajadiningrat said the problems that arise with the donated land for mosques are because the land has been neglected for years. *Wakif* donated land and handed it over to the *nazhir* of waqf and the community for the construction of a mosque. Thus, the construction of mosques will depend on almsgiving and other smaller endowments.²⁴

As Rachmat Djatnika's research quoted by Amelia Fauzia on the number of waqf lands registered during the Dutch East Indies, explains the following: 79 new waqf in 1880-1850, 224 in 1850-1900, 168 in 1901-1910, 254 in years 1911-1920, 383 in 1921-1930, and 495 in 1931-1940. During the 140 years of Dutch East Indies rule, the number of waqf increased by 5 times. The use of land waqf is intended for mosques, Islamic boarding schools, madrasas, graves (*makam*), and agriculture. The number of waqf assets has continued to increase since the second half of the nineteenth century onwards.²⁵

In the East Java region until 1971 there was a significant increase in the number of waqf lands, although afterwards it slowed down. This increase in the number of new waqf was due to agrarian reform in 1960. Many landlords gave their land for waqf rather than allowing the land to be

He termed it a 'mosque school'. Where someone chooses to stay quiet in the mosque to study and learn from experts, without worrying about lack of food. Because people are 'being' will come to deliver food to the mosque. One example is the Grand Mosque in Damascus and the Harun Al-Rasyid mosque in Baghdad, apart from functioning as a place of worship, the mosque building is also used for lecture rooms for various faculties, especially the study of religious sciences. See Omar Amin Hoesin, *Kultur Islam*, (Jakarta: Bulan Bintang, 1981), 59.

²¹ Yulia Mirwati, *Wakaf Tanah Ulayat dalam Dinamika Hukum Indonesia*, (Jakarta: Rajawali Pers, 2016), 20.

²² Azyumardi Azra, *Surau: Pendidikan Islam Tradisional dalam Transisi dan Modernisasi*, 64.

²³ *Ibid.*, 62.

²⁴ Amelia Fauzia, *Filantropi Islam: Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia*, 123.

²⁵ *Ibid.*, 126.

forcibly taken by the State or farmers. Thus, agrarian reform inadvertently provided benefits for Islamic institutions such as pesantren, for example the Pesantren Gontor, obtaining 240 ha of rice paddy waqf at that time. The spirit of giving to the Indonesian people was visible before the Indonesian State gained its independence. Amelia Fauzia explained that the philanthropic institution initiated by the community at that time was intended to show efforts to defend the State and achieve national independence.²⁶

The practice of giving alike to waqf was practiced before Islam came to Indonesia, such as huma serang in Banten. Huma serang are fields that are managed collectively every year and the results are used for common interests. In Lombok, pareman land as state land is exempt from landrente tax and the proceeds are handed over to villages, subaks and temples for common interests. Likewise, perdikan land in East Java, a gift from the king to a person or group who has contributed and cannot be traded.

In the literature on the history of Indonesian law, there are many Orientalist figures since the time of the Dutch East Indies who conducted research and observations on the implementation of Islamic law in Indonesia for a long period of time. One of these figures was Hurgronje, who made observations of 'pesantren' educational institutions in West Java, Central Java and Aceh.²⁷ The enthusiasm and motivation for giving in the form of zakat and waqf to the community at that time had the consequence of making mosques and Islamic boarding schools belong to communities independent of the government.²⁸

The results of Horikoshi's research say that the mosque is one of the places that scholars work on to serve rural communities in Indonesia. In addition to serving in the mosque, ulama also serve in madrassas, in Islamic boarding schools and in schools with a class system. This is because every Muslim, both villagers, santri and ulama, performs the five daily prayers and the general tabligh is held at the madrasa. Mosques and madrassas are at the institutional heart of rural Islamic societies.²⁹

The mosque is an original product and one of the characteristics of Islamic civilization. The term mosque itself, which etymologically means a place of prostration, has developed terminologically into an architectural object built to gather Muslims with the aim of performing the five prayers in congregation, teaching, discussing and studying Islam, feeding the poor, and other related activities with worship. Therefore, the existence of a mosque is a very important physical manifestation at the core of Islamic teachings.³⁰ Horikoshi described how the Indonesian Islamic community at that time functioned mosques. They perform full worship at the mosque in congregation while reinforcing their commitment to the community.³¹

In 2008, a discourse was launched on the idea of maximizing the use of mosques apart from being a place of worship and spreading *da'wah*. Mosques also functioned as the basis for the

²⁶ *Ibid.*, 88.

²⁷ Karel A Steenbrink *Pesantren Madrasah Sekolah: Pendidikan Islam dalam Kurun Modern*, (Jakarta: Dharma Aksara Perkasa, 1986), 10.

²⁸ Amelia Fauzia, *Filantropi Islam: Sejarah dan Kontestasi Masyarakat Sipil dan Negara di Indonesia*, 122.

²⁹ Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, (Jakarta: P3M, 1987), 115.

³⁰ Yulia Eka Putrie, "Rethinking Monumentality in Contemporary Mosque Architecture," in *Contemporary Architecture of Islamic Societies between Globalization and Tradition*, ed. Nangkula Utaberta and Yulia Eka Putrie, (Malang: CIAS & UIN Maliki Press, 2013), 33.

³¹ Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, 116.

economic development of Muslims in the form of "mosques incorporated" oriented towards the development of "economic business networks".³²

As for the madrasa³³, it functions as a place for parents and children to learn religious sciences and get direct training from scholars. Sometimes madrasas are also used by students to recite and study nature, learn Arabic and listen to lectures from scholars and *kyai*. The most important function of the madrasa for scholars is to communicate with the ummah and to cultivate knowledge and *aqidah* for the common people through the recitation congregation.³⁴ Unlike the pesantren education system, this institution is very specialized and aims to train students to have independent abilities. The students usually live in dormitories, occupy one small room and are filled with between three and five *santri*, sometimes even up to ten *santri*. Each student is free of charge for lodging and education received from the ulama.³⁵

In Tanah Melayu, the development of an educational institution in the form of a madrasa began in the 13th century along with the development of Islam which was manifested in the form of a mosque or mosque which also functioned as a place to study.³⁶ In the Java Island region, some of the madrasas in Java are closer to the Dutch-style school system; some are more influenced by the development of Islamic education reforms in the Middle East; and partly a convergence between the pesantren education system and the modern madrasa or school system.³⁷ As it is known that Islamic organizations such as Nahdatul Ulama (NU), Muhammadiyah, Persatuan Islam (Persis) and Al-washliyah have a long history of processing waqf. In the

³² M. Luthfi Malik, *Etos Kerja, Pasar, dan Masjid: Transformasi Sosial-Keagamaan dalam Mobilitas Ekonomi Kemasyarakatan*, 17.

³³ In the early history of the formation of madrasas by Islamic leaders, madrasas were a new milestone in the implementation of Islamic education. Madrasa institutions emerged in the fourth century Hijriyah. Ahmad Syabli argues that the development of a mosque to a madrasa occurs directly, not using an intermediary institution. The development of madrasas can be said to be a logical consequence of the increasing number of recitation activities in mosques whose main function is a place of worship. In order not to disturb the peace of worship at the mosque, educational activities have been made in a special place known as a madrasa. It can be understood that there are multi-motivations that underlie the birth of madrasah, namely in addition to religious motivation and economic motivation because it is related to employment, as well as political motivation. With the establishment of madrasas, Islamic education entered a new period, namely "education becomes a function for the State, and schools are symbolized for the purpose of sectarian education and political indoctrination. Physically, madrasas in medieval Islam were basically mosque buildings added with special locales for education (*iwan*) and lodging (*pemondokan*). In addition, madrasas reflect a transformation in administration and management. In contrast to mosques, madrasas have led to a more professional education management system. Madrasahs have certain regulations regarding almost all components of education. For example, if in a mosque a person can be free and independent in choosing a teacher or *halaqah*, that can no longer be done in a madrasa. Madrasas differentiate the level and duties of teachers between *mudarris* (teachers), *mu'id* (assistants), and *aw'adz* (tutors). In addition, madrasas recognize the existence of *nazhir* or wali who have responsibility for madrasa activities, and they are selected from people who are experts in their fields. As for Indonesia, the writers on the history of Indonesian Islamic education agree that there were the first madrasas that were established during the period of growth, especially in the Sumatra and Java regions. Mahmud Yunus included madrasas in this period of growth, including Adabiah School (1990) and Diniyah School Labai al-Yunusiy (1915) in West Sumatra, Nahdlatul Ulama Madrasah in East Java, Yogyakarta Muhammadiyah Madrasah, Tasywiq Thullab Madrasah in Central Java, Madrasah Persatuan Muslim Ummah in West Java, Madrasah Jam'iyat Kheir in Jakarta, Madrasah Amiriah Islamiah in Sulawesi, and Madrasah Assulthaniyyah in Kalimantan. Maksun, *Madrasah: Sejarah dan Perkembangannya*, (Jakarta: Logos Wacana Ilmu, 1999), 58 - 67, and 98.

³⁴ Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, 116.

³⁵ *Ibid.*, 120.

³⁶ Ahmad Dzulfahmi Muhamad & Mohammad Redzuan Othman, "Pengislahan Sistem Pendidikan Islam di Tanah Melayu: Paranan Mudir Madrasah Al-Mashoor Al-Islamiah Pulau Pinang, 1916-1957", *Journal of Al-Tamaddun*, Vol. 15 (1), (2020), 133-145.

³⁷ Hiroko Horikoshi, *Kyai dan Perubahan Sosial*, 120.

NU environment, for example, there are many Islamic boarding schools, madrasas, mosques, prayer rooms and religious institutions with waqf status, especially land and buildings.³⁸

Another case with Islamic boarding schools³⁹, the results of observations made by Hurgronje found that most of the students who frequently visited Islamic boarding schools or Islamic boarding schools in Java, *surau* in Central Sumatra, or *rangkang* in Aceh, were the embryos of teachers of religious scholars and scholars, who underestimated instead of wanting the position, or those whose parents assign a value based on a certain understanding based on religious orders.⁴⁰

Some pesantren receive regular income from their status as a perdikan area or from waqf. When students enter or leave the pesantren, at harvest time or at the end of fasting, they or their parents often give gifts to the kyai, likewise zakat is often paid to the kyai. Very often it is found that the humble kyai have to make a living by farming or trading. Additional income from education is often insufficient to pay for the management of the education it carries.⁴¹

***Al-'Urf* Method in Practice of Waqf**

The term *al-'Urf* is known to have various meanings. In the Al-Munjid Dictionary, *al-'urf* syar'ie means '*maa ja'alahu' ulamaau syar'i mabna al-ahkaam*' (habit / *adat* syar'i is what jurists use as a legal basis or foundation).⁴² In the science of *Ushul Fiqh*, *al-'urf* has two different meanings, namely *al-'urf* which is both called *al-'urf as-shahih* and *al-'urf* which is damaged is called *al-'urf al-fasid*. One of the basic principles of jurisprudence relating to customs or habits is *al-'adah muhakkamah* which means '*Adat* (can be taken into consideration) in the stipulation of law'.⁴³

The style of change that prevails in society refers to the reality of society.⁴⁴ Likewise, the use of *al-'urf*'s legal arguments in the process of forming a waqf law is related to developing traditions. The history of waqf in Indonesia was first practiced by following the customs of the local community. Local wisdom is an effort to preserve the traditions of pre-Islamic society. According to customary law, waqf is recognized as a legal subject besides humans (natuurlijk

³⁸ Direktorat Pemberdayaan Wakaf, *Proses Lahirnya Undang-Undang Wakaf*, 86.

³⁹ Terminologically, when viewed in terms of form and system, pesantren were adopted from the learning system from India. Prior to the process of spreading Islam in Indonesia, this system was generally used for the education and teaching of Hinduism in Java. After Islam entered and spread in Java, the system was then adopted by Islam. The term pesantren itself, like the Koran, does not come from an Arabic term, but from India. Likewise, the terms *pondok*, *langgar* in Java, *surau* in Minangkabau and *rangkeng* in Aceh are not Arabic terms, but from terms found in India. Apart from adopting the *pesantren* system in India, the similarity in form between Hindu education in India and *pesantren* can be considered as a clue to explain the origin of the *pesantren* education system. See Karel A. Steenbrink, *Pesantren Madrasah Sekolah: Pendidikan Islam dalam Kurun Modern*, 20.

⁴⁰ Snouck also discovered the fact that in the Pidie region, before the arrival of the Dutch to Aceh, there were certain places that became learning centers, where many muribs (Acehnese term for "students / santri", from the Arabic language of students) both from the country of Pidie itself. as well as from Aceh studying. These places are Langga, *Langgo*, *Sriwene*, *simpang le leubeue* (*Ayer Labu*) *Tiro*, who later became very famous for having two *teungku* in the place who took an important part in the war against the Dutch, in the past was less famous for the knowledge taught there than the large number of scholars who produced and lived there. See C. Snouck Hurgronje, *Orang Aceh: Ilmu Pengetahuan, Sastra, Permainan, dan Agama*, Yogyakarta: Matabangsa, 2020), 48 – 52.

⁴¹ Karel A. Steenbrink, *Pesantren Madrasah Sekolah: Pendidikan Islam dalam Kurun Modern*, 19.

⁴² Loius al-Ma'louf, *Al-Munjid: fi al-lughoh wa al-a'lam*, 44th edition, (Beirut: Daar al-Masyriq, 2011), 500.

⁴³ Jaih Mubarak, *Kaidah Fiqh: Sejarah dan Kaidah Asasi*, Jakarta: RajaGrafindo Persada, 2002), 153.

⁴⁴ Siti Fatimah Salleh, *et. al.*, "Analysis of the Elements of Social Change in the Context of 'Urf in Islamic Law'", *Global Journal al-Thaqafah (GJAT)*, Vol 7 Issue 1, (2017), 99-116.

person). Legal entities recognized as legal subjects according to customary law include village, ethnicity, country, waqf, foundations, and cooperatives as legal entities.⁴⁵

In the history of waqf management in Indonesia, the majority of waqf assets are managed by traditional *Nazhirs* so that waqf is not productive. So that the history of waqf management in Indonesia does not repeat itself, there needs to be a paradigm shift. Namely, from consumptive management to productive management, and from traditional *Nazhirs* that based solely on trust towards professional *Nazhirs* who were recruited based on expertise in their respective fields. As well as empowering efforts from individual *Nazhirs* to institutional *Nazhirs* so that accountability is easy.⁴⁶

In the context of *ijtihad*, *Al-'urf* is a legal argument used by *mujtahids* in exploring legal certainty about a problem. The normative basis for waqf is not explicitly explained in the Al-Quran or al-Hadith. Therefore, the field of *ijtihad* in the field of waqf is very wide open. The diversity of nomenclature is also due to the absence of the word waqf explicitly in two sources of Islamic law. This means that waqf is included in the area of *ijtihadi*, not *ta'abbudi*, especially with regard to management methods, types of waqf, requirements, designation of waqf, and so on.⁴⁷ Yusuf Al-Qaradhawi stated that in the field of muamalah, the field of *ijtihad* which demands new answers, there are two areas. First, in the economic or financial sector, in this field a series of forms of transactions have emerged which have never been encountered in the past. Second, the field of science or medicine. In this field there are also found various ways of activities that require legal clarity.⁴⁸

The perception that exists in the minds of indigenous Indonesians is that the relinquishment of ownership rights to become waqf is a voluntary act known as the *tabarru'* contract and does not require administrative records. Before Islam came to the country, there was already a social institution which was almost the same as waqf. To mention just an example, it can be stated that the *preman's* land in Lombok and the *Pusako Tinggi* land in Minangkabau. Therefore it can be understood, that the understanding of Indonesian Muslims about waqf is not only based on the Al-Qur'an, hadith books and Jurisprudence books, especially the Shafi'i school of thought, also by custom. Many of the customs of Indonesian society originate from or are influenced by Islamic teachings, including the custom regarding waqf. On the other hand, religious institutions originating from Islam are also colored by Indonesian customs, especially by the customary principles of harmony, propriety and harmony in resolving disputes over waqf. Ulama in Indonesia, although they claim to be Syafi'ie, but in understanding the meaning of waqf can also accept other schools of thought, as mentioned above, as well as the influence of the local community.⁴⁹ This means that Indonesian culture plays a significant role in providing color and dynamics to the understanding of Indonesian society about waqf and the way of waqf.

⁴⁵ Ansori, "Kearifan Tradisi Al-Qur'an dalam Proses Enkulturasasi Budaya Lokal," *Ibda': Jurnal Studi Islam dan Budaya*, Vol. 9, No. 1, January – June, (2011), 89-97.

⁴⁶ Directorate of Zakat and Waqf Empowerment, *Paradigma Baru Wakaf di Indonesia*, (Jakarta: Director General of Islamic Community Guidance at the Ministry of Religion of the Republic of Indonesia, 2013), 52.

⁴⁷ Amir Mu'allim, "Ijtihad Ekonomi dalam Pengelolaan Aset Wakaf", *Jurnal Al-'Adalah*, Vol. 14, No. 2 (2017), 291-310.

⁴⁸ Yusuf Al-Qaradhawi, *Pengantar Kajian Islam [Al-Madkhal li Ma'rifatil Islam]*, translated by Setiawan Budi Utomo, (Jakarta: Pustaka Al-Kautsar, 2013), 140.

⁴⁹ Mohammad Daud Ali, *Sistem Ekonomi Islam Zakat dan Wakaf*, 94.

CONCLUSION

What is exemplified by Rasulullah SAW. and the Companions of the Rasulullah SAW. is a norm that can be taken as a legal basis for waqf worship in Indonesia both in the past and today. When looking at the tradition of waqf Indonesian society which was originally only for three objects, namely mosques, madrasas, and graves (*makam*), as well as direct appointment of *Nazhirs* which are only based on the factor of character or kinship to a *Nazhir* candidate, which in the words others are known as traditional waqf. So the author argues that due to the value of voluntary worship (voluntary sector) inherent in waqf, as well as the trust that arises in someone to become *Nazhir*, strengthening and empowering 3M waqf land and the existence of *Nazhir* Individuals for 3M waqf need serious attention from stakeholders. Interests, without deleting, eliminating, or replacing the Individual *Nazhir* to become the *Nazhir* of Organizations and / or Legal Entities. Given that nearly 66% of the total waqf land spread across Indonesia is under the management of Individual *Nazhir*.

In the context of the value and allotment of waqf land, traditional waqf does not vary and does not develop rapidly as is the case with current productive waqf which is echoed by social institutions that manage cash waqf. Traditional waqf in Indonesian territory is found only limited to mosques, mushalla, madrasas, and for graves (*makam*). However, it does not mean that the waqf land is underdeveloped and unproductive, which can be caused by the condition of the area of the waqf land itself or due to the inadequate level of economic needs of the local community. So the authors conclude that this situation does not make the waqf land converted to a more productive designation, or replaced by its *nazhir* institutional because it is not creative. In this situation, the argument of *al-'urf's* law is appropriate to be used as a legal basis for refusing the replacement of waqf *nazhir*. Because the 3 allotments of the waqf land are intended for matters that are directly related to the benefit of the people which fall into the category of *hajjiyyat* needs (basic needs). Includes: 1) Apart from being a symbol of Islamic civilization, a mosque is also a center for fostering the ummah both morally, mentally and spiritually; mushalla as a historical witness that religion is rooted in people's lives in the smallest environment, namely the village; 2) madrasas as a symbol of scientific civilization for the advanced generations who are educated and have noble character; and 3) graves (*makam*) as a necessity which is sanctified in religion (organizing the deceased in Islam).

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