

REFORMULATION OF ALLAH'S OWNERSHIP ON WAQF (THEORETICAL ANALYSIS TOWARD SYĀFI' SCHOOL)

Fathurrohman Ghozalie

Islamic Court of Banjarmasin
Jalan Gatot Subroto No.8, Kota Banjarmasin, Kalimantan Selatan
e-mail: fathurrohmanghozalie@yahoo.co.id

Amir Muallim

Islamic Science Faculty of Universitas Islam Indonesia
Jalan Kaliurang leman Regency, Daerah Istimewa Yogyakarta
e-mail: 834210101@uii.ac.id

Sidik Tono

Islamic Science Faculty of Universitas Islam Indonesia
Jalan Kaliurang leman Regency, Daerah Istimewa Yogyakarta
e-mail: 854210102@uii.ac.id

Abstrak: Wakaf adalah perbuatan seseorang yang menahan sebagian hartanya dan mensedekahkan manfaat harta tersebut. Perwakafan di Indonesia pada umumnya mengikuti pendapat mazhab Syafi'i yang mengatakan bahwa harta wakaf menjadi milik Allah. Paham tersebut tidak sesuai dengan ketentuan tentang kepemilikan dalam Islam yang menetapkan bahwa setiap benda yang ada di muka bumi harus dimiliki oleh manusia kecuali ditentukan lain oleh syariat. Penelitian ini adalah penelitian hukum Islam normatif dengan pendekatan teori kepemilikan dalam Islam dan teori kemaslahatan. Penelitian ini menemukan bahwa kepemilikan Allah atas harta wakaf perlu direformulasi supaya sesuai dengan ketentuan tentang kepemilikan dalam Islam dan supaya bermaslahat bagi kehidupan manusia. Reformulasi tersebut ialah dengan menetapkan badan hukum sebagai pemilik harta wakaf karena badan hukum dapat merepresentasikan kepemilikan Allah.

Kata kunci: Reformulasi, Kepemilikan, Harta wakaf, Kemaslahatan

Abstract: Waqf is the act of someone who holds some of his property and gives the benefits of the property. Waqf in Indonesia generally follows the opinion of the Shafi'i school that said the waqf property belongs to Allah. This opinion is not right in the Islamic ownership perspective which said that every property must be owned by humans unless it is specified by the Shari'a. This research is normative Islamic law research with the theory of ownership in Islam and the *maslaha* theory. This research found that Allah's ownership of waqf property needs to be reformulated to equate it to the theory of ownership in Islam and to be useful for human life. This reformulation is by establishing the legal entity as the owner of the waqf property because the legal entity can represent God's ownership.

Keywords: Reformulation; Ownership; Waqf; *Maslaha*

INTRODUCTION

Waqf is a popular mustahab worship among the Indonesian Muslim community, and according to Taufiq Hamami, the way of waqf for the Muslim community in Indonesia generally is influenced by Imam Shāfi'i¹, who argues that the ownership of waqf is transferred to Allah *Ta'ala*, apart from human ownership². This definition seems relative, as the result, it shows *nāẓir* as the owner of the waqf, which creating Law No. 41 of 2004 concerning Waqf (next referred to the Waqf Law) as the prevention of waqf abuse by *nāẓir* such as being used for personal or being passed down to descendants³, even though Umar has emphasized that *nāẓir* should not act as the owner of the waqf property by saying “*gaira mutamawwilin fih*”⁴ (not considering the self as the owner of waqf).

This explanation shows the importance of reformulating Allah's ownership of waqf, so the waqf can be

protected from harmful actions such as deviation by *nāẓirs*, abandonment, and other problems related to waqf, therefore this study is intended to show how to reformulate Allah's ownership of waqf.

This research is important because research about waqf in Indonesia mostly of waqf management, such as the research conducted by Muslihun⁵ whose findings were donated lands in Lombok could be productive because of the perspective of the *Kiai* was changed toward waqf management. Also, research conducted by Nur Ahmad Ghojali⁶ found that waqf management at Yogyakarta Jogokariyan mosque had optimized its management so that there was no problem with Allah's ownership of waqf. The research in Indonesia is different from the research in some Islamic countries like the Middle East and East Africa where the research on Allah's ownership of waqf has

¹Taufiq Hamami, *Pervakafan Tanah Dalam Politik Hukum Agraria Nasional*, edition. I, (Jakarta: Tatanusa, 2003), p. 62.

²Wahbah az-Zuhaili, *Al Fiqh al Islāmy wa Adillatuh*, volume VIII, ed. III, (Damasqus: Dar al Fikr, 1989), p. 170.

³Departemen Agama, *Proses Labirnya Undang-Undang No. 41 Tahun 2004 Tentang Wakaf*, (Jakarta: Department of Waqf Director General for Guidance of the Islamic Community, 2006), p. 41-42.

⁴Abū 'Abdullāh Muḥammad bin Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Ed. I, (Beirut: Dār Ibnī Kaṣīr, 2002), p. 675.

⁵Muslihun, “MENUJU WAKAF PRODUKTIF (Studi Pergeseran dan Perubahan Pemahaman Tuan Guru tentang Wakaf di Lombok)”, *Dissertation*, Semarang: State Islamic University of Semarang, 2012.

⁶Nur Ahmad Ghojali, “Pengelolaan Wakaf Progresif Mesjid Jogokariyan Yogyakarta”, *Disertasi*, Yogyakarta: State Islamic University of Sunan Kalijaga, 2019.

researched to its laws⁷. In Jordan, Oman, Saudi Arabia, and Morocco, the laws had created legal entities as the only place for giving waqf.

METHOD

This research was prescriptive Islamic law research, which is also called normative Islamic law research.⁸ It was because this research was intended to analyze Allah's ownership of waqf according to Syāfi'i School. The data were collected from secondary law sources including research, fiqh books in Syāfi'i School, either Arabic or Bahasa. Then, the data were analyzed based on ownership theory in Islam and *maslaha* theory.

RESULTS AND DISCUSSION

The difference between *Sadaqa* and waqf was in the purpose of the object. While *Sadaqa* was giving up an object to those who have the right to receive it, waqf was giving a beneficial object which met several criteria:

- a) The objects must be productive.
- b) The objects could not be taken over to others in any ways except if the

objects stopped being productive, because the main definition of waqf was holding an object to stop the ownership of the objects to others.⁹

- c) The objects should be able to stay for a long time.

Therefore, related to those criteria, the unproductive objects could not be properties of waqf even if the objects could stay for a long time.

According to the *jumbur* of scholars, the basis of waqf law is contained in the Qur'an and the hadith of the Prophet as follows

Islamic theologians mentioned the waqf law basis contained in the Qur'an and hadiths of Prophet Mohammad as the followings:

- a. Āli Imrān verse 92 :

لن تتالوا البر حتى تنفقوا مما تحبون

“You will never achieve righteousness until you donate some of what you cherish.”

According to Ibn Kašīr, that verse was sharia for waqf, proven by the hadith narrated by al-Bukhāri and Muslim. After the verse was revealed by Allah, Abū Ṭalḥah, who had a garden called Bairuḥā located in the front of the Nabawi

⁷“Wakaf”, Jurnal *Menafatf*, vol. 25, February 2012, info@menafatf.org, p. 7

⁸Syamsul Anwar, *Pemikiran Usul Fikih al-Gazālī (450-550/1058-1111)*, Ed. I, (Yogyakarta: Suara Muhammadiyah, 2015), p. 280-281

⁹Wahbah az-Zuhaili, p. 152

mosque, came to the Prophet Mohammad to give the garden as Sadaqa to Allah (as waqf), then the Prophet Mohammad told him to share the yield to his own relatives.¹⁰

b. Hadith from Abu Huraira:

حدثنا يحيى بن أيوب وقتيبة (يعنى ابن سعيد) وابن حجر قالوا : حدثنا إسماعيل (هو ابن جعفر) عن العلاء عن أبيه عن أبي هريرة أن رسول الله صلى الله عليه وسلم قال : إذا مات الإنسان انقطع عمله إلا من ثلاثة : صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له¹¹

Yahyā bin Ayyūb, Qutaibah (that is Ibn Saīd) and Ibn Ḥajr narrated a hadith to us, they said: Ismāīl (Ibn Jafar) narrated a hadith to from Al-Alā' from his father from Abu Huraira who reported: The Messenger of Allah, peace, and blessings be upon him, said, "When the human being dies, his deeds end except for three: ongoing charity, beneficial knowledge, or a righteous child who prays for him." Sahih Muslim.

This hadith showed that the continuous Sadaqa was a human act with unstoppable reward and the continuous

Sadaqa could only be done by holding those belongings.¹²

c. Hadith about Umar's Waqf :

حدثنا قتيبة بن سعيد حدثنا محمد بن عبد الله الأنصاري حدثنا ابن عون قال أنبأنا نافع عن ابن عمر رضى الله عنهما : أن عمر بن الخطاب أصاب أرضا بخيبر فأتى النبي صلى الله عليه وسلم يستأمره فيها فقال: يا رسول الله إنى أصبت أرضا بخيبر لم أصب مالا قط أنفس عندي منه فما تأمر به ؟ قال: إن شئت حبست أصلها وتصدقت بها. قال: فتصدق بها عمر أنه لا يباع ولا يوهب ولا يورث وتصدق بها فى الفقراء وفى القربى وفى الرقاب وفى سبيل الله وابن السبيل والضيف ولا جناح على من وليها أن يأكل منها بالمعروف و يطعم غير متمول فيه.¹³

Qutaibah bin Saīd narrated a hadith to us, Mohammad bin Abdillāh al-Anṣārī narrated a hadith to us, Ibnu Aun narrated a hadith to us, he said: Nāfi reported a hadith to us from Ibn Umar *radīallāhu 'anbuma* who narrated: Umar bin al Khaṭṭāb got some land in Khaibar, and he went to the Prophet to consult him about it saying, Umar said: "O Allah's Apostle I got some land in Khaibar better than

¹⁰Ismā'īl bin 'Umar bin Kaṣīr, *Tafsīr al-Qur'ān al-'Azīm*, vol. 2, Ed. II, (Ar-Riyād: Dār Ṭayyibah, 1999), p. 73

¹¹Muslim bin al-Hajjāj, *Ṣaḥīḥ Muslim*, juz. I, Ed. I, (Al-Riyād: Dār Ṭayyibah, 2006), p. 770

¹²Muḥammad 'Abīd 'Abdullāh al-Kabīsī, *Aḥkām al-Waqf fī asy-Syari'ah al-Islāmiyyah*, juz I, (Bagdād: Maṭba'ah al-Irsyād, 1977), p. 96

¹³Abū 'Abdullāh Muḥammad bin Ismā'īl al-Bukhārī, *op.cit*, p. 675.

which I have never had, what do you suggest that I do with it?”. The Prophet said. “If you like you can give the land as endowment and give its fruits in charity.” So Umar gave it in charity as an endowment on the condition that would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the kith and kin, for freeing slaves, for Allah’s Cause, to the travelers and guests; and that there would be no harm if the guardian of the endowment ate from it according to his need with good intention, and fed others without storing it for the future.”

According to Imām asy-Syāfi’i, the waqf property must be from someone’s possession because if it had been a waqf, the *wakif* could not have the waqf property somehow and permanently.¹⁴ Moreover, Imām an-Nawāwi mentioned that keeping the benefit and originality of the property by avoiding all kinds of transfer could be a self-approach to Allah.¹⁵

¹⁴Muhammad bin Idris asy-Syāfi’i, *Al-Um*, juz 5, ed. I, (T.tp: Dār al-Wafā, 2001), p. 105

¹⁵Al-Imām ‘Abdu ar-Raūf bin Tāji al-‘Ārifin al-Manāwi asy-Syāfi’i, *Taisir al-Wuquf ‘alā Gawāmiḍi Ahkāmī al-Wuquf*, juz I, Ed. I, (Ar-Riyād: Maktabah Nizār Muṣṭafā al-Bāz, 1998), p. 17

¹⁶Abū ‘Abdullāh Muḥammad bin Ismā’il al-Bukhārī, *op.cit.*, p. 675

¹⁷Muhammad bin Idris asy-Syāfi’i, *op.cit.*, p. 109

The definition of waqf mentioned by Imām asy-Shāfi’i was based on the Prophet’s order to Umar to keep the property and give the yield without ordering Umar to hand over the yield to the recipient of the waqf.¹⁶ Moreover, according to the narration that reached Imām asy-Shāfi’i, Umar was still managing his own waqf until he died, as well as □Ali bin Abī Ṭālib and Fāṭimah.¹⁷ Imām ash-Shāfi’i also had qiyas on a waqf and the liberation of a slave. A person who said he would liberate a slave was perfectly extricating the slave without any acceptance only by the statement, and the slave’s owner and others could no longer have the slave.¹⁸

Some scholars from the Shafi’i school such as Zakariyyā bin Moḥammad bin Aḥmad bin Zakariyyā al-Anṣārī¹⁹, Aḥmad Zainuddīn bin Abdi al-Azīz²⁰, and asy-Syarbīni, said that the ownership of waqf was transferred to Allah releasing human ownership. Then, the waqf properties were neither the property of

¹⁸*Ibid.*, p. 105

¹⁹Zakariyyā bin Muḥammad bin Aḥmad bin Zakariyyā al-Anṣārī, *Fathu al-Wabbāb*, juz 1, Ed. I, (Beirut: Dār al-Kutub al-□Ilmiyyah, 1998), p. 444

²⁰Aḥmad Zainuddīn bin ‘Abdi al-‘Azīz al-Ma’bari al-Malībārī al-Fannāni al-Syāfi’i, *Fathu al-Mu’in*, ed. I, (Beirut: Dār Ibnī Hazm, 2004), p. 411

the *wakif* nor the property of the recipient of the waqf, while the provided benefit of the waqf belongs to the recipient of the endowment.²¹

The opinion about the waqf transferred to Allah's ownership was not only based on the Shāfi'i school but also comes from Abū Yūsuf and Muḥammad who are Abū Ḥanīfah's friends and students. They mentioned that waqf such as mosque released the human's ownership as mosques. Therefore, the ownership of waqf was lost and became the property of Allah, and it could not be sold, given, inherited, and other transferred actions' of ownership of the waqf property.²²

The theorems from the groups who said that waqf ownership was released from *waqif* to Allah were:

1. Hadith narrated by al-Bukhāri from Ibn Umar when Umar asked for the guidance from the Prophet about his willingness to endow the land called šamag, The Prophet *ṣallallāhu 'alabi wa sallama* said: If you like you can give the land as endowment and give its fruits in

charity. It would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the kith and kin, for freeing slaves.²³ According to this hadith, The Prophet asked Umar to give the land as endowment not the yield, give the property means releasing the ownership of the property both for Umar and others but Allah, because a person who give endowment expected the blessing from Allah.²⁴

2. Waqf was commonly defined as something essentially needed by *waqif* due to permanent reward and Allah had provided a way for it, as a hadith narrated by al-Tirmizī:

حدثنا علي بن حجر قال: أخبرنا إسماعيل بن جعفر عن العلاء بن عبد الرحمن عن أبيه عن أبي هريرة أن رسول الله صلى الله عليه وسلم قال: إذا مات الإنسان انقطع عمله إلا من ثلاث: صدقة جارية وعلم ينتفع به وولد صالح يدعو له.²⁵

Abu Hurairah reported that *Rasulullah ṣallallāhu 'alaihi wa sallam* said: "When the

²¹Syamsuddīn Muḥammad bin al-Khaṭīb al-Syarbīnī, *Mugni al-Muḥtāj Ila Ma'rifati Aljāzi al-Minhāj*, juz. II, Ed. I, (Beirut: Dār al-Ma'rifah, 1997), p. 502.

²²Alā'uddīn Abūbakr bin Mas'ūd al-Kāsānī al-Ḥanafī, *Badā'i'u aṣ-Ṣanā'i'u fi Tartibi al-Syarā'i*, juz. VIII, ed. II, (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003), p. 385.

²³Abū 'Abdullāh Muḥammad bin Ismā'īl al-Bukhāri, *op.cit.*, p. 684

²⁴Muhammad 'Abid 'Abdillah al-Kabīsi, p. 213-214

²⁵Abū 'Īsa Muḥammad bin 'Īsa al-Tirmizī, *Al-Jami' al-Kabir*, jilid III, ed. I, (Beirut: Dār al-Garb al-Islāmi, 1996), p. 53 .

human being dies, his deeds end except for three: ongoing charity, beneficial knowledge, or a righteous child who prays for him.”

This hadith showed that to get the permanent reward through *jāriyah* ṣadaqa was only by *lāzim* waqf.

3. *Qiyās* to a mosque or freeing a slave, according to *ijma'*, was *lāzim* dan the ownership was released to Allah because it could not be sold, given, or inherited, either for waqf.²⁶ Muhammad Ābid Abdillah al-Kabisi also mentioned that the waqf of a mosque was also releasing the ownership of *waqif* and others because the property was kept to get closer to Allah, either for waqf.²⁷

Shafi'i school's theorem about The Prophet asked Umar to give the land as endowment and give the yield (fruits) was different from al-Bukhari's narration that The Prophet asked Umar to keep the land and give the yield. The difference occurred because there was a possibility in the way of narrations from *sanad* to other *sanad* narrated based on individual's understanding because of both from Nāfi from Ibn Umar. This possibility happened

because of oral narration following The Prophet's prohibition for writing the hadith in the hadith as narrated by Sahih Muslim, The Prophet said “Whoever took from me (hadith from Rasulullah) other than the Qur'an and wrote it down, let him erase it. Do not tell a lie against me for whoever tells a lie against me,”– Hammām narrated: I thought *Rasullah* said: “intentionally, then he will surely enter the Hell-fire.”²⁸ and the weakness of the oral system was whatever transferred from the first listener to next listener just based on the first (and next) listeners' understanding because according to Russel&Russel (1959), listening was an act of hearing deeply and intentionally. Furthermore, the essence of listening was hearing and understanding the content.²⁹

An accurate way to handle this difference was to return it to the substance of the waqf itself, in which the scholars of the school agreed that waqf was keeping an object from any transaction and giving the yields for good³⁰, consequently based on the substance of the waqf it could be said that there was a possibility that the hadith was

²⁶Alā'uddīn Abūbākr bin Mas'ūd al-Kāsāni al-Hanafī, p. 389-390

²⁷Muhammad Ābid 'Abdillāh al-Kabīsi, *op.cit.*, p. 214

²⁸Muslim bin al-Hajjāj, *op.cit.*, juz. III, p. 1366

²⁹“Pengertian, fungsi, tujuan, peran dan proses menyimak”, retrieved from itbasartika91.blogspot.com/2011/04/pengertian-fungsi-tujuan-peran-dan.html. on Saturday, April 20th, 2019, at 12.10 WITA

³⁰Wahbah az-Zuhaili, *op.cit.*, juz VIII, p. 152-155

incorrectly conveyed in a *sanad* in the hadith that the Prophet told Umar to give his property as an endowment. Logically, this possibility could be strengthened because if the endowment was an object, it was impossible to give the yield, yet he Prophet's instructions in the two hadiths were to give the yields, moreover, by giving the object it was difficult to distinguish between waqf and sadaqa even though according to Imam Syāfi'I, Umar still kept his waqf property in Khaibar and according to al-Bukhari's narration after Umar died, the waqf property was kept by his son.³¹

The Shāfi'i school's school point of view about waqf was in contrast to the theory of ownership in Islam which stated that based on its nature, a property must belong to humans unless there was a prohibition, and generally, a property was an intended social *muamalah* such as buying and selling, renting, *syirkah*, wills, and others³². Moreover, according to Abdu al-Samī' al-Miṣri, human ownership was derivative ownership, not an absolute ownership³³. Wahbah az-Zuhaili said that based on Sharia, a right was not a genuine

right, it was only a God's gift given to someone for the public's good³⁴.

Taqiyuddin an-Nabhani said that basically a wealth was merely belonged to Allah as the owner of everything, as Allah said in An-Nur verse 33 :

.... وَأَتَوْهُم مِّن مَّالِ اللَّهِ الَّذِي آتَاكُمْ....

“...and give them some of Allah's wealth which He has granted you...”

According to that verse, all properties belonged to Allah, but Allah had given the wealth to human derivatively and give the right of ownership to human as said in Al-Hadid verse 7:

آمَنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفَقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ

فِيهِ...

“Believe in Allah and His Messenger, and donate from what He has entrusted you with...”³⁵

According to Ibn Kaṣīr, the meaning of that verse was that Allah gave directions for human to use their belongings in accordance to Allah's order, if human disobeyed, Allah would punish

³¹Abū Abdillāh Muḥammad bin Ismāil al-Bukhārī, *op.cit.*, p. 556

³²Wahbah az-Zuhaili, vol. IV, p. 40

³³Abdu al-Samī' al-Miṣri, *Muqanṣimāt al-Iqtisād al-Islami*, translated by Dimyauddin Djuwaini, Pilar-

Pilar Ekonomi Islam, (Yogyakarta: Pustaka Pelajar, 2006), p. 32

³⁴Wahbah az-Zuhaili, *op.cit.*, juz V, p. 489

³⁵Taqiyuddīn An-Nabhāni, *An-Nizām al-Iqtisādī fī al-Islām*, ed. VI (Beirut: Dār al-Ummah, 2004), p. 67-68.

them for neglecting the duties,³⁶ and based on the theory of ownership in Islam, the right for ownership contained the right for spending their wealth, being productive, and taking the benefit.³⁷ Consequently, humans were compulsory to manage and develop the properties from Allah in accordance with sharia due to avoid uselessness. As the result, it was hard to say that the waqf properties were on Allah ownership because it belonged to Allah, the properties would be abandon due to lack of management, and no theorem said Allah would manage the belongings and there was no theorem that showed gave power to human to manage and develop the properties which belonged to Allah. The explanation showed that based on the theory of ownership in Islam it was impossible for waqf property belonged to Allah because Allah had given the ownership to humans for processing, utilizing, and using all life facilities created by Allah.³⁸

The Shafi'I school's theory was not suitable for *Maslaha* theory, because a *maslaha* was something suit to the

guidance of Allah and His Messenger, and according to Imam Al-Gazali, *maslaha* was maintaining five objectives of Shari'a, as such as religion, soul, mind, descendant, and property. Everything related to those five goals of the Shari'a was *maslaha*, and everything that removed any of it was called damage³⁹. To avoid deviation from the *maslaha*, Muḥammad Saïd Ramaḍān al Būṭi made several criteria to decide something containing *maslaha*: one of *maqāsid* sharia, following Qur'ān, following the sunnah, following qiyās, and protect more important or the same important *maslaha*.⁴⁰

According to *maslaha* theory, the narration about Allah's ownership of waqf property was against the *maqasid* of sharia *ḥifzu ad-dīn* (maintaining religion), for basically the wealth was merely belonged to Allah as the owner of everything, because Allah has designated the property as His property, based on the word of Allah in An-Nur verse 33:

.... وَأَتَوْهُمْ مِنْ مَالِ اللَّهِ الَّذِي آتَيْكُمْ....

³⁶Ismā'il bin Umar bin Kašīr, *op.cit.*, vol 8, p. 11.

³⁷Wahbah az-Zuhaili, *op.cit.*, juz IV, p. 19.

³⁸Abdu as-Samī' al-Miṣri, *op.cit.*, p. 24 – 26.

³⁹Abū Ḥāmid Muḥammad bin Muḥammad al-Gazālī, *Al-Mustaṣfa Min 'Ulūmi al-Uṣūl*, Juz. I, (Beirut: Al-Maktabah Al-Aṣriyyah, tt), p. 313 .

⁴⁰Muḥammad Saïd Ramaḍān al Būṭi, *Ḍawābi al-Maṣlahah fī al-Syari'ah al-Islāmiyyah*, ed. VI, (Beirut: Muassasah al-Risālah, 2001),, p. 110-217 .

“...and give them some of Allah’s wealth
which He has granted you...”

An-Nur verse 33 mentioned that property only belonged to Allah, but Allah had given the wealth and rights to humans derivatively as also mentioned in Al-Hadid verse 7:

آمَنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ
فِيهِ...

“Believe in Allah and His Messenger, and donate from what He has entrusted you with...”⁴¹

In the opinion of Ibn Kašīr, the meaning of the verse was Allah gave an order for humans to use their assets following Allah's orders, if humans violated the orders, Allah would punish them for disobeying the obligation to use assets.⁴²

As believed in the provisions of the Shari'a, Allah's ownership of waqf must be reformulated due to maintaining the above provisions (*hifzu ad-din*). The reformulation was by making the ownership of the waqf property to humans.

In the theory of ownership in Islam, there were two types of people who could become legal subjects to own property, called as *syakhṣun ṭabi'i*, who was an ordinary person and *syakhṣun ma'navi / i'tibāri*, which was a particular foundation handling all Muslims' property without chosen, such as a *bait al-māl* or a country⁴³. Furthermore, according to □Abdu al-Qādir, *syakhṣun ma'navi / i'tibāri* was a personality given by law to a group of people or a certain number of assets, and that personality was given for a special purpose for a group of people or assets. The person separated from the others who were united in the group, the new person could get obligations and ownership rights⁴⁴. The definition of *syakhṣun ma'navi / i'tibāri* indicated that a legal entity was included in *syakhṣun ma'navi / i'tibāri* besides *bait al-māl* or a country.

A juridical person was a non-human legal entity or any organization (association, etc.) authorized by law (company, foundation, institution, etc.)⁴⁵. As defined in the Legal Dictionary, a

⁴¹Taqiyuddīn An-Nabhāni, *op.cit.*, p. 67-68.

⁴²Ismāil bin Umar bin Kašīr, *op.cit.*, vol. 8, p. 11.

⁴³Abdu al-Ḥamīd Maḥmūd al-Ba'la, *Al-Milkiyyah wa Dawabituhā fi al-Islām*. Ābidīn, Egypt: Maktabah Wahbah, tt., p. 86-87.

⁴⁴Abdu al-Qādir, “Asy-Syakhṣiyyah al-Itibāriyyah Li al-Waqfi wa Ašaruhā fi Ḥimāyatihi”, *Al-Ijtihād*,

No. 02, 2012, Adrār (Aljazair) Law and Economics Faculty of At-Takwīn al-Mutawāšil University, p. 94.

⁴⁵Ministry of Education and Culture Affair of the Republic of Indonesia, *Kamus Besar Bahasa Indonesia*,

juridical person was an organization that existed by law, needed and called as a legal entity. Therefore, it was also called an artificial person or made by humans, or a person in law, or legal person/*rechtspersoon*⁴⁶. According to Ridwan Khairandy, the term 'person' in law consists of an individual called as human (*natuurlijke person*) and a juridical person (*persona moralis*, legal person, legal entity, *rechtspersoon*), both were legal subjects, so they were able to have legal rights and obligations⁴⁷.

Based upon the definition of a juridical person, a juridical person was an organization with rights and obligations for having actions like humans, wealth, and sued and suing in the court, it was an artificial person to create an organization with status, position and authority like humans.⁴⁸

In accord with the definition of *syakhṣun ma'nawi/i'tibāri* in the ownership theory in Islam, the position of *syakhṣun ma'nawi/i'tibāri* could be as a representation of Allah's ownership, because □Ali Muḥyi ad-dīn al-Qarahdāgi

argued that Allah's ownership showed public's ownership not personal,⁴⁹ also public's ownership was a number of people or groups without owners,⁵⁰ □Abdu as-Samī□ al-Miṣri mentioned public's ownership was wealth in essential needs for human life.⁵¹

This explanation showed that reformulation of Allah's ownership of waqf was the ownership of *syakhṣun ma'nawi / i'tibāri* or legal entities in line with the provisions of the Sharia, hence that *ḥifẓu ad-dīn* could be maintained for *maslaha* of the waqf.

Another *maslaha* obtained by the reformulation was *ḥifẓu al-māl* (maintaining the property), because the existence of this juridical person would be able to maintain waqf from *nāẓir's* irregularities due to *nāẓir's* actions towards the waqf could be monitored by the juridical person, as well as if the waqf was abandoned as the consequence of no funding, the juridical person was responsible for finding the funds,

⁴⁶Rocky Marbun, et al. *Kamus Hukum Lengkap*, ed. I, (Jakarta: Visimedia, 2012), p. 30

⁴⁷Ridwan Khairandy, *Perseroan Terbatas: Doktrin, Peraturan Perundang-Undangan, dan Yurisprudensi*, ed. II (revision), (Yogyakarta: Total Media, 2009), p. 4
⁴⁸*Ibid.*

⁴⁹Ali Muḥyi ad-dīn al-Qarahdāgi, *Asy-Syakhṣiyyah al-Ma'nawiyah aw aẓ-Zimmaḥ al-Māliyah li al-Waqf*, retrieved from www.qaradaghi.com/chapterDetails.aspx?ID:58/ on Friday, May 29th, 2020 at 09.25 Wita

⁵⁰Abdu al-Ḥamīd Maḥmūd al-Ba'la, *op.cit.*, p. 90

⁵¹Abdu as-Samī al-Miṣri, *op.cit.*, p. 68.

including the *nāzir's* wages while managing the waqf.

The existence of a juridical person as the owner of a waqf represented the ownership of Allah had positive impacts of waqf management. Because good and professional management of waqf required accurate management, it was essential to follow management rules including:

- a. **Forecasting** was the activity to predict, project, or analyze all possibility before a plan.
- b. **Planning** was to determine the objectives, policies, procedures, budgets, and programs from an organization.
- c. **Organizing** was all management activities to categorized people based on duties, functions, authorities, and responsibilities due to make all activities beneficial and effective to reach the determined objectives.
- d. **Coordinating** was a management function for all activities to avoid chaos, disagreement, emptiness by connecting, relating, coordinating subordinates' duties, thus there was guided cooperation for obtaining common goals.

- e. **Motivating** was to give inspiration, spirit, and encouragement to subordinates due to their volunteering activities in accordance with the superior's wish.
- f. **Controlling** was to give evaluation and correction for right subordinates' guidelines to get the planned objectives.
- g. **Reporting** was to report the development and results or to give description of all things related to duties and functions to higher officials.⁵²

Rules management above would be functioned by the existence of a juridical person and *nāzir* could not supervise and report; consequently, the reformulation of Allah's ownership of waqf using the representation of a juridical person must be done to maintain the waqf as the nature of waqf in Islam.

CONCLUSION

Allah's ownership of waqf is needed reformulation due to maintaining the management of waqf in the right way based on faith to Allah for providing *maslaha* in accordance with sharia of the

⁵²M. Anang Firmansyah and Budi W. Mahardhika, *Pengantar Manajemen*, Ed. I, (Yogyakarta: DEEPUBLISH, 2018), p. 10-14.

waqf. Reformulation of Allah's ownership of waqf is by determining a juridical person as both the owner of the waqf and representation of Allah's ownership due to professional and *maslaha* management.

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- Law and Economics Faculty of
At-Takwīn al-Mutawāṣil
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