

LEGAL BASIS OF THE INSTITUTION OF WAQF IN ISLAMIC LAW

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Abstract

Waqf is defined as property and money allocated by individuals for the permanent implementation of social services. The origin of the institution of waqf in the history of Islamic law dates back to the early days of Islam. Muhammad (s.a.v) is an example of doing good to people, giving alms and donation. The first waqf in the history of Islamic law also belongs to our Prophet. As the religion of Islam expanded regionally and economically, the institution of waqf also improved. Initially, it operated as a separate institution, but later established waqf offices for centralization. The waqf, which reached its greatest peak in the golden age of Islam, was emerging as a science that needs to be studied separately. The subject of waqf is included in general jurisprudence books, as well as separate books on waqf. These books of jurisprudence are the legal sources of the waqf institute after the Holy Qur'an and Hadith. This article provides detailed information about the science of waqf and its institute in Islam.

Key words: Islamic law, waqf institute, Qur'an, Sunnah, Ijma, Hilal ibn Yahya's work of "Ahkām al-waqf", Hassaf Hanafi's work of "Ahkām al-waqf".

Introduction

The formation of waqf ownership dates back to the early days of Islam. Also, in Islam, the waqf is based on the Qur'an, the Sunnah and the Ijma. The virtues of giving alms are mentioned in Surat al-Baqara, Ali Imran, Nisa, Maida, Tawba, Ibrahim, Mu'minun, Qasas, Rum, Sajda, Fatir, Hadid, Mujadala, Munafiqun, Taghabun, Muzzammil, Layl, and the number of such verses is about 25.

The verse in the Qur'an that is directly related to waqf is as follows: "You will never attain goodness unless you spend from what you love. And Allah knows what you spend". Many commentators associate this verse with waqf.

Qurtubi's "Collection of Qur'anic Rulings" (القرآن لأحكام الجامع) commentary and Jassos's "Qur'anic Rulings" (القرآن أحكام) interpretation are one example of them.

Charity is also encouraged in the hadiths, which are the second source of Islam. In addition to the hadiths mentioned above on the subject of waqf and charity, we cite the following hadith: Abu Talha (595-656) when the above-mentioned verse (Surah Al 'Imran, 92) was revealed, "Our Lord wants us to spend our wealth for his pleasure. O Messenger of Allah, I want to donate my favorite garden, Bayruha, for the sake of Allah". When the Prophet (s.a.v) recommended giving the garden to his closest relatives, he divided it among his cousins and some other relatives.

According to famous companion Abu Hurayra's legend (599-676), Muhammad (s.a.v) said: "When a person dies, his deeds are cut off from him. Only three things: charity current ("sadaqa jariya"), beneficial knowledge, or a righteous child who prays for it (will not be cut off) 1". It is possible to include a waqf in the "sadaqa jariya", that is, "continuous sadaqa" mentioned in the hadith. Sources say that the first written record of the waqf's property was made by the Companion Umar. The hadith narrated by Abu Dawud Ibn Umar is as follows: "Mu'ayyib wrote: 'Abdullah ibn Arqam witnessed: Bismillahir Rahmanir Rahim. This is thing bequeathed to 'Umar Amir al-Mu'minin, a servant of Allah. If anything happens to him, Samg, Sorma ibn Akwa and his slave and his wife of one hundred share in Khaybar and the places in the valley that Muhammad (s.a.v) gave him for food will look at the end of Hafsa's life. Then he looks wisely from his family. It is not sold, it is not bought, it is given to the beggar, the deprived, the relatives by its decision. Because he is in charge, there is no problem if he gives it to someone or buys a slave."

The above hadith contains the rules for documenting a waqf relationship in writing. From this it is clear that in the presence of witnesses, the property being done waqf and the place where it is located, the name of the person appointed to manage the waqf and the names of witnesses must be recorded in the waqf document. The issue of assigning a salary to the head of the waqf should also be included in this document. This rule has been followed in many cases in waqf

relations. However, there have been cases of oral does waqf in history, which have sometimes led to misunderstandings between the heirs of the waqf and the founders of the waqf. In the formation of the institution of waqf, first Muhammad (s.a.v.), then the companions and followers were initiators. As a result of the development of the institute of waqf, books on jurisprudence (fiqh) have separate chapters on the issue of waqf. The jurisprudential issues related to the waqf are mainly described in separate chapters in the books of furu 'al-fiqh. But there are also special books written on the subject. An example of such a book is Mawlana Yusuf ibn Husayn Karmasti's "Kitāb al-Waqf" (كتاب الوقف). This book has forty-two chapters and issues. Moreover, Sheikh Imam Hilal ibn Yahya Basri (d. hijri 245) and Hassaf Hanafi also have a book called "Ahkām al-Waqf" (أحكام الوقف - The Rules of Waqf). These two books are popular. Several other scholars also have books on the subject. Hilal ibn Yahya ibn Salama ar-Ray's book, "Ahkām al-Waqf" (أحكام الوقف - The Rules of Waqf), is the most important and oldest book on the subject of waqf. The book deals with the subject of waqf on the basis of the Hanafi school. The subject of the waqf is covered in both method and furu', this method is not found in any of the books previously classified. Hilal Basri and Hassaf Hanafi's book "Ahkām al-Waqf" became famous in his time as the "Waqf of Hilal and Hassaf." Each subsequent book on the subject of the waqf is based on these two works. Hilal al-Basri's book, "Ahkām al-Waqf", begins with the ruling of Imam Abu Hanifa on the waqf. It is stated that if the waqf / almsgiver dies at that time, the property becomes an inheritance and becomes a waqf, if it accounts for one-third (or less) of the total property, otherwise there is a need to adjust to this ratio. If the founder (owner of waqf) is alive, it is noted that the judge must intervene in the separation of property from the property of the founder. Also, the different views of Imam Abu Yusuf and Imam Muhammad on this subject are mentioned.

The interrelationship of the subject of waqf and inheritance is found in all books of jurisprudence and fatwas. The reason for this is that if a person binds his property to death or makes a waqf on his death, that waqf becomes a will. According to the principles of Islamic law, a will is valid for 1/3 of the total property owned by the owner. If a person does waqf his property in connection with his death, or does waqf it on his deathbed, the ratio of that property to the total property is checked. If it is in the ratio of 1/3 or less¹, this will is unconditionally fulfilled. But if it is more than that, there are two different ways to do it: only one-third should

be done waqf and the rest returned to the heirs, or the heirs should voluntarily relinquish their rights. If it is assumed that the founder has other property, it is expected until it is clear, even if it is believed that the frog has heirs, again it is expected until it is clear and no final verdict is given.

In the book “Ahkām al-Waqf”, written by Hilal al-Basri, we found it necessary to cite this ruling regarding waqf, inheritance and will as an example: “If he dies before he gives alms, all his property will be inherited. If zakat is obligatory on a person and he dies without making a will, the heirs will not have to pay it. Even if it is their atonement, their vows. It is not obligatory for the heirs to carry it out unless they have bequeathed it.”² Also included in the book are issues related to making one's home a mosque / caravanserai / cemetery and using it oneself; If the property is in need of repair, what should be done if the house or land is not donated to a needy person or a group of people , the waqf of the contributing land, the waqf of the sick person, what to do if a child becomes poor and in need of that property after waqf to the poor, and, when some or all of them reject it when it is done waqf to a people, and when it is done waqf to relatives and neighbors, such as how to behave among them, whether rich or poor and many issues related to these are covered.

The book is written in a question-and-answer style in the fatwa genre and is distinguished by its simple style and excellent answers to specific questions. In our opinion, the translation of this scientifically rich work by scientists or researchers of our country and its analysis as an object of research will serve to further enrich the scientific and theoretical knowledge of the waqf.

Another book on waqf is “Waqf”⁴ (كتاب الوقف) by Husamiddin Umar ibn Abdulaziz ibn Māza Bukhari (hijri 483-536). Husamiddin Bukhari was one of the teachers of Burhaniddin Marginoni, the author of "Hidaya". Author's commentaries are famous to the work "Adab al-Quzah" (Judge's Etiquette - أدب القضاة) of Hassaf, the books of major and minor “Fatawas” (والكبرى الصغرى الفتاوى), and the three commentaries on the “al-Jaami al-Kabir” (The Major Collection - الجامع الكبير) and the “al-Jaami al-Saghir” (The Minor Collection - الجامع الصغير) of Shaybani.

The copy of “Kitāb al-Waqf” (the Book of Waqf - كتاب الوقف) written by Husamiddin Bukhari, which we used in our research, was studied by Abdullah Nazir Ahmad Muza. Some of the topics

covered in the book are the words referring to the waqf, the issue of waqf ownership, and if the waqf document mentions that he did waqf his property, what to do if you are not told that you are poor, as well as issues related to the waqf of the land, the condition that the need for repair and improvement is covered by the income of the land, the use of the waqf for himself, the waqf of part of the property to his son and his son, son and his descendants, in addition, a waqf for a certain period of time, trustworthiness, testimony, witnessing the waqf itself, stipulating that the waqf should not be given to the relatives as a waqf to the rich, selling and exchanging, waqf during illness, waqf of property to the poor during health, and the presence of the poor among his relatives, how a rich relative and a person with a poor child should donate their property to the poor, and the waqf of a land with fruit palms which was issues are also covered in this book.

There is no doubt that this book research will play an important role in further enriching the research on the topic of waqfs in our country. Above, we have reviewed books on Islamic law directly devoted to the subject of waqf. Let us now consider some of the sources of jurisprudence in *Mā Warā' an-Nahr* (Transoxiana) and the views on the subject of waqf contained in it. The most important of the jurisprudential sources of *Mā Warā' an-Nahr* (Transoxiana) of the X-XIII centuries is the book "Asl" by Shamsul-aimma Sarakhsi, known as "Mabsut".

It is worth noting that this chapter deals with the waqf chapter more deeply than the books written at that time. Some other jurisprudential sources written during this period are Alauddin Kasani's "Badai as-sanai" and Burhaniddin Marghinani's "Hidoya". In the next, exactly, the second chapter of our dissertation, the topic of waqf is analyzed on the basis of *Mā Warā' an-Nahr* (Transoxiana) Hanafi jurisprudential sources of the X-XIII centuries. Shamsul-aimma Sarakhsi's "Mabsut", Alouddin Kasani's "Badai' as-sanai", and Burhaniddin Marghinani's "Hidoya" cover the waqf in more detail in this chapter.

Among the books written in the genre of fatwas are "Fatawa Qazikhan" and "Al-Fatāwā al-Hindiyyah". These books contain fatwas on all subjects, and in both of them a special place is given to the chapter on waqf. In particular, the book "Al-Fatāwā al-Hindiyyah" perfectly describes the issues of waqf. In this source, the waqf of a person who has renounced his religion, waqf of leased or mortgaged property, waqf of his share in undistributed property, use of waqf income, in particular, places where it is permissible and not to spend, its sale, exchange,

waqf income among eligible persons distribution, what to do when some of the deserving die, and , and the issue of claims and testimony in the waqf, i.e. the re-claim of the waqf property by the waqf, the role of witnesses in this regard, issues related to the waqf document, confiscation of waqf property, waqf of public places such as mosques and cemeteries, its income in other ways spending and similar issues have played a major role. The fatwas narrated in "Al-Fatāwā al-Hindiyyah" contain examples from many fatwa books for comparison. Among them are "Al-Fatāwā al-Ghiyāsiyyah", "Wāqī'at Husamiyya", "Al-Fatāwā al-Nasafiyyah", "Zakhira", "Al-fusul al-Imadiyya", "Tatarkhaniyya", "Hassaf and Qazikhan". All these books of fatwas are based on the works of the Hanafi school, that is, they further developed and enriched the teachings of this school.

In "Al-Fatāwā al-Hindiyya", we cite as an example some of the fatwas claiming the property of the waqf and the position of the witnesses in this regard. Someone came to the governor "I am the uncle of the previous governor. I have in my hand the charity of the son of so-and-so. He made it a waqf for a certain congregation". If there is no successor to the waqf, and no one else knows about the waqf except his confession, then his word is accepted. If he is the heir of the waqf, if they claim that the property is an inheritance left to them, the land will not be waqf, it will be inherited.

If the heirs claim that the property is a waqf made for themselves, then for their descendants, then for the poor, then in this case, too, the word of the heirs is taken into account. Here is another example: when a person says about the land he owns, "This land was given to him by someone," and the heirs say, "No, he gave it to us, to our descendants, and then to the poor," it is natural to disagree. In this case, the governor examines the register, and if he does not find any record of such a waqf, he makes a judgment, according to the heirs. Such a ruling is a ruling made when a person comes and confesses that the land of the waqf is not in the hands of trustees.

If the lands of the waqf are in the hands of trustees and have previously been recorded in the register, the word of the heirs will not be accepted. The same is said in the "Zakhirah". "Fatāwā al-Fazli" states that the waqf document (waqf) in the hands of the owner of the waqf states that "most of the income of this waqf will be spent on the poor and other poor living in the waqf." all the needy are treated as one party. The dead are left out of this count.

That person's share is distributed among others. If none of the poor who were alive at the time of the waqf was left, it will be given to the poor of that neighborhood at that time. In this case, the poor of this neighborhood will be equal to the other poor. The same is said in the "Zakhira". It is stated in Hassaf's "Waqf": If a man does waqf a husband and says, "I have done waqf a certain husband," and the waqf is not known and famous, and the waqf says, the land will be endowed.

If a person who has established a waqf claims that a field there does not belong to the waqf, and that land is known and disclosed, and the field is within that land, then that field is also considered to belong to the waqf. Or if the donated land is known to the trusting neighbors in the area and the field is also part of that land, it will belong to the field waqf. If not, then the word of the founder is followed.

We have mentioned above the Qur'an and the books of Hadith and jurisprudence, which are the source and legal basis of waqf relations, and we have given some examples. It should be noted that the books of jurisprudence mentioned, whether it is a separate book on the subject of waqf or general jurisprudence books, should be studied by researchers today. Because each of them is an important source of Islamic law.

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