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The Withdrawal of Waqf Assets *v1* in Religious Court Decision Number 1755/Pdt.G/2021/Pa.Sda *v2* According to the Hanafi and Syafi'i Schools

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Abstract

Waqf withdrawal is one of many cases of real-life waqf disputes, including the transfer of waqf functions, abandoned waqf, and so on. Many factors cause waqf disputes, such as what happened in the Religious Court Decision Number 1755/Pdt.G/2021/Pa.Sda, where a waqf withdraws the property that has been waqf because the nazir uses the waqf property in a way that does not follow the agreed waqf pledge. The comparison of opinions between the madhhab of Imam Shafi'i and Imam Abu Hanifah regarding the law of waqf withdrawal is also debated. The research was conducted to understand the positive law in Indonesia regarding the withdrawal of waqf, focusing on the mechanism of waqf withdrawal and the views of the two madzhabs. This study uses a normative juridical approach and descriptive legislation, with secondary data from literature studies. The results of the study show that the withdrawal of waqf by the waqf in its lawsuit in the Supreme Court Decision Number 1755/Pdt.G/2021/Pa. Sda was approved because the nadzir had violated the waqf pledge following Article 45 Paragraph 1 of Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law. No. 41 of 2004 concerning Waqf. Imam Shafi'i and Imam Abu Hanifah have different views on waqf, with Imam Shafi'i considering waqf as the liberation of property from waqf ownership and Imam Abu Hanifah interpreting it as the detention of property for the benefit of righteous charity.

Keywords: *Withdrawal Asset, Waqf, Nadzir, Religious Court.*

Introduction

Waqf is considered as an Islamic economic system that has an important role in developing the welfare of societies. Waqf is a tool of Islamic economics that is unique and distinctive as a goal and is not possessed by other economic systems. Non-Muslim societies may have a concept but it tends to be a legacy or expenditure, different from Waqf. In particular, Waqf means Zakat tools that aim to continue meeting needs and increasing the welfare of society. Waqf is a unique charitable tool, based on the function of the elements of politics, namely righteousness, kindness, and brotherhood. The main feature of Waqf is that when Waqf is paid, there is a shift in private ownership towards returning to Allah Almighty, which can then provide sustainable benefits to society forever. Through private benefit and social benefit. The main goal is how to find an alternative financing solution to improve the welfare of society for all Indonesians that complements the current financing system so that poverty can be

alleviated. In fact, the endowment that occurs in people's lives has not been fully implemented in an organized and effective manner, so that in various cases the endowment is not properly done or abandoned or transferred to third parties in an illegal manner. Likewise, what happened in Sidoarjo, which was stipulated in the decision of the Supreme Court of the Republic of Indonesia No. 1755 / Pdt.G / 2021 / PA.Sda, where the plaintiff, who is 70 years old, is a retired Muslim civil servant (PNS) with a bachelor's degree as a donor who donated rice fields with an area of 1,200 square meters on the date May 4, 2021, received this endowment by the defendant, who is 78 years old. He is a Muslim, and a retiree from the religious department. It is alleged that this violated the mandate that was agreed upon in the endowment covenant to convert the defendant's endowment land into a small market, namely Indomarit. What should be donated is for the education and development facilities of the Baiturrahman Mosque. So that the plaintiff has presented the donated land to be withdrawn because it was not in accordance with the endowment that was agreed upon between the plaintiff and the defendant.

Literature Review

Court decisions have 3 types of force, which are the force of obligating the parties concerned to implement the decision, the force of proof because the judge's decision is taken in writing, so its nature can be trusted, and thus it can be used as evidence for appeal and so on, and the force of execution is the force required to implement the law, compulsorily if it is not implemented voluntarily, because the decision opens with a sentence for the sake of justice based on faith in the One God. (M. Nastir Asnawi, 2014) A judge's decision is a statement by a judge to a state official in the Supreme Court or as a judicial officer in the District Court and Supreme Court who performs the duties of the judiciary and who is given the authority to resolve disputes. In other words, a judge's decision is a statement made by a judge in his capacity as a government official authorized to resolve a case or dispute. (Suparyo, 2019) Proof is the process by which a court can accept a claim, so the plaintiff must prove what is stated in the claim unless the legal party continues to explicitly admit the truth of the fact. If all the evidence is presented and the arguments presented are proven correct based on the judge's opinion, the claim is accepted. On the other hand, if the judge finds that the arguments cannot be proven, the plaintiff's claim is dismissed. (Gatot Supramono, 2014) The primary importance of a judge of a court is to receive, examine and decide every case brought before him. Judges may not refuse to try cases on the grounds of the absence or ambiguity of the law, but judges must investigate. (Sudikno Mertpkusumo, 1998) However, if the legal regulations are not appropriate to the problems in a case, the judge will look for the law from other legal sources. (Abintoro Prakoso, 2015).

The function and role of judges in proceedings is therefore divided into the following:

1. Searching for and finding the formal truth

2. The truth is established based on the reasons and facts presented by the parties during the conference process. (Teguh Syuhada, 2021)

Judges also use civil sources in their related decisions. The source of law is the origin of civil law, or the place where civil law is found. The origin refers to the date of its creation and formation, while the place refers to the place where the formulas were published, found

and read. The source in the historical sense is the place where civil law was created by the Dutch colonial government and compiled in the Burgelijk Wetbook (BW). Based on the rules of the 1945 Constitution, it is declared that biological weapons remain in force as long as they are replaced by a new law based on the 1945 Constitution. (Yulia 2015)

It has been previously shown that Waqf in language means confinement, but in Sharia it means confining money that can be used while its essence remains, by cutting off the disposal of a neck to an existing permissible expenditure, and it is pluralized as Waqf and Awqaf. Waqf is one of the laws of Allah Almighty that urged His servants in the context of His urging and praise to give charity and spend money in the ways of righteousness and goodness. Allah Almighty said: "You will not attain righteousness until you spend from that which you love." And Allah Almighty said: "And whatever good you send forth for yourselves, you will find it with Allah; it is better." It is a wide door for good deeds and ongoing charity until Allah inherits the earth and those on it. Throughout history, Islamic Waqfs have played a prominent role in developing societies and effective and influential social movement that aims to preserve people, provide livelihoods, support society and preserve homes. The problems that occur when the Waqf donates his land to be used as a charitable field as a means of education and a place of worship are handed over to the supervisor in his capacity as the director of the Waqf. However, the supervisors turned it around, and as a result the land was rented as a small market, which is why the endowment withdrew the donated land by presenting it to the court to return it to its original condition.

Jurists differ in defining Waqf and its conditions, as they differ in looking at Waqf itself. Waqf means using the Waqf thing, and there is no Sharia that Waqf may not be sold, donated or inherited, but scholars have differed, some of them permit it and some of them forbid it. (Ritonga Raja et.al, 2022) According to Imam Al-Shafi'i, possession from which the material benefits of the thing can be taken is always through establishing the right to dispose of the thing. From this understanding it is said that withholding money is never permissible in Waqf, and it is required for the donated thing to be long-term, and not to run out quickly. (Imam Suhadi, 2022) And since the basis of Waqf itself is eternal, the donated thing must be left in this state. Al-Shafi'i, may God be pleased with him, said: Some people disagreed with us regarding the charity Waqfs and said: It is not permissible under any circumstances. He said: Muhammad, may God bless him and grant him peace, came with the generalization of withholding, and Shuraih said: There is no withholding from the obligations of God Almighty (Mushnaf bin abi Syubaih, 2015).

Research Method

The study was conducted to understand positive law in Indonesia related to waqf withdrawal, with a focus on the waqf withdrawal mechanism and the views of the two schools of thought. This study uses a normative legal approach and descriptive legislation, with secondary data from literature studies. After collecting the data, the next stage is the analysis of the data used by the researcher, which is deductive and comparative.

a) Defining a legal problem: This includes identifying the legal issue that will be analyzed from the data collected, and identifying the legal questions.

b) Understanding court decisions: This includes considering the judicial decisions related to the issue under study.

c) Conclusion: Based on the analysis conducted, a conclusion is drawn about the issue under study.

Result and Discussion

A. Analysis of the judge's decision about withdrawal waqf Asset according to Decision No. 1755 / Pdt. G / 2021 / PA.Sda.

The space is a function that carries great responsibility in implementing the law in a country. In a sense, judges are the final arbiter of law in any country. Therefore, if the morals of judges in a country are weak or poor, the authority of law in that country will be weak or declining. (Supriyadi, 2018) Judges who embody the law must ensure a sense of justice for all who seek justice through the legal process, and ensure that the sense of justice is limited to the judge's standards such as accountability, moral integrity, transparency, and oversight. (Ahmad Kamil, 2017) The requirement of integration is the idea that judges should decide cases in a manner that is coherent with the law, and prefer interpretations of the law to be more like a single moral vision. (Diah Imaningrum, 2019)

Legally, Supreme Court No. 1755/Pdt.G/ 2021PA.Sda./ is analyzed from its date, it can be said that the subject of the dispute has become the property listed in Book C No. 127 Parcel 11 Third Class Area 1200m2 in the name of Kasim Basamed. Historically, the subject of the plaintiff is that the subject of the intended is the Gogol rice fields with an area of 1200m2, where the eastern and western borders are rice fields, while the north and south are village roads. The chronology of the lawsuit begins when the landowner decided to donate the land of the Gogol rice field in the Sidoarjo area, which is written in Book Letter C No. 127 Parcel 11 Third Class with an area of 1200m2 in the name of Kasim B. Therefore, the landowner on Saturday, October 24, 2020, stopped the mortgage on the land owned by Nazir, who is the head of Nahdlatul Ulama in Tulangan. In the Waqf Pledge, the donor and the donor agreed that the land would be donated as stated in Waqf No. 2 for the purposes of (educational facilities and development of Baiturrahman Mosque). A contract was made between the donor and the donor to resolve the issue but it did not work. Therefore, the donor filed a lawsuit to cancel the Waqf before the Sidoarjo Religious Court. The letter 2/W2/340/IX/2020 issued by the Religious Affairs Office has several errors and missing data. The signature section states that the Religious Affairs Office of Wonwayo Subdistrict is signed, but it is affixed with the seal of the Religious Affairs Office of Tulangan Subdistrict, Sidoarjo District. Due to the errors from the mortgage administration, the instrument had to be prepared and signed by the official who issued the Waqf mortgage instrument at the Religious Affairs Office of Tulangan Subdistrict. However, in this case, it was stated that the plaintiff and the defendant went to the official to issue the Waqf mortgage instrument at the Religious Affairs Office of Wonwayo Subdistrict, which is a problem. The official who is the mortgage deed of the waqf and who has the authority to mortgage the waqf because according to Article 45 paragraph 1 of the Government Regulation of the Republic of Indonesia No. 42 of 2006 on the implementation of the law Law No. 41 of 2004 on the waqf, that said "Nazhir is obliged to manage and develop waqf assets in accordance with the designation stated in the Waqf Pledge Deed".

The Law No. 41 of 2004 on the waqf although the facts indicate that the plaintiff donated his land as written in Book C No. 127 Parcel 11 Third Degree with an area of 1200 m2 in the name of Kasim B. Samad, so there is confusion in the records of the area of

the land donated by the plaintiff. 2/W2/340/IX/2020 does not meet the elements of Article 34 of the Government Regulation of the Republic of Indonesia No. 42 of 2006 on the implementation of the law No. 2/W2/340/IX/2020 does not meet the elements of Article 32 Paragraph 4 of the Government Regulation of the Republic of Indonesia No. 42 of 2006 on the Implementation of Law No. 41 of 2004 on Waqf. As stipulated in Law No. 41 of 2004 on Waqf, Chapter Four Changes Waqf Property Article 40, it is prohibited to use the donated Waqf funds as collateral, confiscate, donate, sell, inherit, exchange, and transfer in the form of transfer other rights. As well as Law No. 41 of 2004 on Waqf Chapter Five Management and Development of Waqf Assets Article 42 The denouncer is obligated to manage and grow the Waqf assets in accordance with the purpose and function for which they were prepared.

However, the fact is that the defendant did not use the Waqf properly Educational Institution and Development of Baiturrahman Mosque. What was agreed upon.And this after analyzing the history of the Waqf land. In A, the plaintiff had relinquished the property, but after discovering that the harbinger had not used it according to the agreed upon waqf covenant, the plaintiff wanted to withdraw the waqf land. Thus, according to the analysis made, the judge's decision approved the plaintiff's entire claim. Waqf land rights are waqf based on the type of ownership including fixed or immovable objects as stipulated in Article 16 paragraph 2 letter A of Law No. 42 of 2004 on waqf, it is donated is the land rights whether registered or not, waqf grants related to the land can also be donated along with buildings, plants or other objects on the land as well as ownership rights of residential units. If the land is waqf for a period of time in perpetuity, there must be a release of the rights from the right holder. In addition, it is also required that the right to the waqf land be under the control of the waqif or legally owned by it, free from seizure, issues and disputes and not secured. (Agung Supriyadi, 2020)

Similarly, the usufruct of the waqf land cannot be limited to a period of time, as long as the usufruct is in accordance with the will of the founder. The use of the waqf land ends if the waqf land is no longer used or its use is no longer compatible with the benefits stated in the principles of waqf. In principle, it is not permissible to take the land that was donated for the purpose of building public facilities, because the founder exercised his rights with the intention of obtaining it for the purpose of worship. (Asymuni, et,al. 1986)

For example, in the waqf land in Grogol Village, Tulangan District, Sidoarjo, East Java, which was withdrawn by the plaintiff founder, as a result of the defendant's misuse of the waqf land that was not compatible with the waqf pledge, it should be. It was used for educational facilities and the development of the Baiturrahman Mosque, but the waqf was leased to a small market (Indomarit) and the small market is being built. Therefore, after a long process of withdrawing the waqf land, it was decided to accept the plaintiff's claim in its entirety. We declare that the Land Endowment Undertaking signed by the Plaintiff, Defendant and First Defendant dated October 20, 2020/07 Rabi` al-Awwal 1442 AH is null and void and has no legal binding force. It is stated that the letter number: WT.2/W2/340/IX/2020 issued by the Religious Affairs Office of Wonowayo District, Sidoarjo Regency (2nd co-defendant) or the Religious Affairs Office of Tulangan District, Sidoarjo (1st co-defendant) is declared null and void and has no legal binding force.

B. Analysis of Withdrawal Waqf Asset from the perspective of the Shafi'i and Abu Hanifa schools of thought

1. Taking waqf land according to the doctrine of Imam Abu Hanifah

In the case of Waqf, Imam Abu Hanifa believes that the Waqf remains the property of the founder and can be confiscated. Thus, the property remains the property of the Waqf, and only the results and benefits are used for the needs of the Waqf. However, Imam Abu Hanifa made an exception for the Waqf of mosques, as the Waqf is determined by a decision of the court or the court, and it is not permissible to take the Waqf. Imam Abu Hanifa explained that the Waqf does not mean separating the property from its owner. In this way, it is permissible to return and take the gift, and it can even be sold in this way, because Imam Abu Hanifa believes that the Waqf is like a loan, and of course the owner still owns the property and can claim and sell. And he returns it whenever he wants. (Adib Bin Muhammad Mahdief, 2006)

In the book Fath al-Qadir by Ibn Hammam, he explains Abu Hanifa's opinion on withdrawing endowment funds, saying: Abu Hanifa said: The owner of the endowment does not withdraw from the endowment unless the judge rules it or makes it conditional on his death, saying, "If I die, my house has been endowed for such-and-such." (Ibnu Hamam Al Hanafii, 2003) In Islamic law, according to Abu Hanifa, it is: Detaining the property for the ownership of the endowment and giving away the benefit in charity is like a loan. (Ibnu Hamam Al Hanafii, 2003) In the book Jawharat al-Munira, it is mentioned: The ownership of the endowment does not withdraw from the endowment according to Abu Hanifa unless the judge rules it. (Az-Zubaidy, 2006)

Imam Abu Hanifa, the endowment is one of the forms of charity that do not entail specific consequences and can be withdrawn or cancelled, and it is considered like a "loan" that does not become obligatory (binding). This transaction will be cancelled in the event of his death, and this endowment can be inherited as specified in the "loan" law. The above statement expresses the opinion of Abu Hanifa that when a person donates part of his money, the money of the founder remains the property of the founder, and only the interest is donated, so the founder has the right to withdraw the money at any time, and the founder has the right to transfer the money he donated. (Shodikin Ahmad, et.al, 2017) Imam Abu Hanifa understood his ijtihad on the basis of opinion, as mentioned above, and it is often called the opinion of the people or the Imam of rationality. The main foundations of Imam Abu Hanifa in applying the law are: the Qur'an, the Hadith, consensus, analogy, preference, customs, and the tradition of society.(Romley S.A, 1999) Imam Malik mentions that Imam Abu Hanifa is logical and his proof in the matter is full of rational arguments. It is emphasized on the principles of rational jurisprudence according to Imam Abu Hanifa on the basis of:

a. Providing comfort in worship and dealing.
b. Protection from infidels and guests
c. Giving freedom to do as much as you can.
d. Preserving human freedom and humanity.
e. Preserving the dignity and glory of the leader through obeying him.

Therefore, it can be said that Imam Abu Hanifa uses the method of Istihsan as a legal deduction for him, which gives priority to the objectives of Sharia as a legal goal. However, its existence has become a matter of controversy among jurists, so that some scholars refuse to use this method as an argument for Islamic law. Among those who rejected this is Imam Al-Shafi'i. At the same time, the Istihsan used by Imam Abu Hanifa is not an Istihsan that contradicts the

text or analogy, but it is part of the analogy, because Imam Abu Hanifa did not use the principle of analogy because it contradicts the interest of society that is valued by Sharia, consensus or the text, so Imam Abu Hanifa decided on Istihsan.(Irwansyah, et.al. 2022)

Thus, the decision to take Waqf lands becomes a problem and there are different points of view. Imam Al-Shafi'i believes that what has been donated cannot be returned. They argue that when the endowment meets its requirements, it is considered permanent. As Imam Al-Shafi'i said in Rawdat Al-Talibin (An-Nawawi, 1991) about his opinion, A he said: "What is meant by laws is the ruling in a case, whether it is related to matters after death or not, or whether it was delivered or not, or whether the judge ruled on it or not." The opinion that Imam Abu Hanifa started and promoted is that Waqf according to Abu Hanifa is a temporary contract. Therefore, people who donate their assets (Waqf) can take the Waqf and convert it into goods that can be bought, sold, mortgaged, donated, etc. (Asyakhrasy, 1090) In the book Al-Hidayah, this is explained according to the stronger opinion. Waqf is permissible according to Abu Hanifa. However, it remains and has the same status as a loan. In this connection, Abu Hanifa forms his opinion with evidence from a clear or lesser authority. There is some clear evidence that forms the basis of his argument:

1) Abu Bakr al-Naysaiuri, Yunus ibn Abd al-A'la, Sufyan ibn Uyaynah, on the authority of Muhammad and Abdullah, the sons of Abu Bakr and Amr ibn Dinar, on the authority of Bakr ibn Hazim, that Abdullah ibn Zayd ibn Abd Rayyah came to the Messenger of Allah, may Allah bless him and grant him peace, and said: O Messenger of Allah, this garden of mine is a charity, and it is for Allah Almighty and His Messenger. His parents came and said: O Messenger of Allah, it was the basis of our livelihood, so the Messenger of Allah, may Allah bless him and grant him peace, returned it to them, then they died, and their son inherited them after them. This is also mursal, because Abdullah ibn Zayd ibn Abd Rabbih died during the caliphate of Uthman, and Abu Bakr ibn Hazm did not meet him.(Daraquthny, 2001) From this hadith we take the inference that the Messenger of Allah, may Allah bless him and grant him peace, returns to the founder. If the endowment had been endowed forever, the Prophet would not have returned it.
2) It was narrated on the authority of Omar, may God be pleased with him, that which indicates that he had to pay it back. Yunus told us: Ibn Wahb told us that Malik told him, on the authority of Ziyad bin Saad, on the authority of Ibn Shihab, that Omar bin Al-Khattab said: If I had not mentioned my charity to the Messenger of God, may God bless him and grant him peace, or something like that, I would have returned it. (Imam Abu Ja'far At-Thohawiy, 2001). When Omar, may God be pleased with him, said this, it indicated that the fact that he had given the land as a waqf did not prevent him from returning it, and that what prevented him from returning it was that the Messenger of God, may God bless him and grant him peace, ordered him to do something about it, and he left him to fulfill it, so he hated to go back on that, just as Abdullah bin Omar hated to go back on the fasting that he had left him after the death of the Messenger of God, may God bless him and grant him peace, that he had to do, and he had the right not to fast.
3) Suwaid bin Saeed narrated to me, Hafs bin Maysarah narrated to me, on the authority of Al-Arla', on the authority of his father, on the authority of Abu Hurairah, that the Messenger of Allah, may Allah bless him and grant him peace, said: "The

servant says: My wealth, my wealth. He only has three things of his wealth: what he ate and used up, or wore out and wore out, or gave away and acquired.(An-Nawawy,) Everything else is lost, and he leaves it to the people." (Al-Hakim An-Nishapury, 2023)

Abu Bakr bin Ishaq narrated to me, Ibn Abi Maryam informed us, Muhammad bin Jaafar informed us, Al-Ala bin Abdul Rahman informed me with this chain of transmission, similarly. So the Prophet, may God bless him and grant him peace, explained that the inheritance is only lost in the charity that he approved, and that does not happen except after ownership by someone else. (And) Al-Sha'bi was asked about endowment, so he said Muhammad, may God bless him and grant him peace, came with the sale of endowment, so this is a statement that the obligation of endowment was in the law of those before us and that our law is abrogating, for that reason Ibn Mas'ud and Ibn Abbas, may God Almighty be pleased with them, said: I do not endow from the obligations of God. (Imam as-Sarakhsi, Al-Mabsuth)

As for reasonable evidence, the following are three types of evidence that Imam Abu Hanifa uses as the foundations of his arguments:

1. Detaining the property to the ownership of the founder and giving the benefit in charity, is detaining the property to the ownership of God Almighty, and he added in Fath al-Qadir on the words of the author or spending its benefit on whomever he loves, he said: Because the endowment is valid for whomever he loves from the rich without the intention of seeking closeness to God, and even if it is necessary at the end of it to seek closeness as a condition of perpetuity and in that it is like the poor and the interests of the mosque, but it is an endowment before the extinction of the rich without giving in charity, and it may be said: The endowment for the rich is giving in charity with the benefit because charity is for the poor as it is for the rich, even if giving in charity to the rich is a metaphor for a gift according to some of them. (Hafidzu-Din Bin An-Nafsy, 1997)

2. The property is confined to the ownership of the founder, and the benefit is given in charity as a loan. Then it was said: The benefit is non-existent, so giving charity as a non-existent thing is not valid, so the endowment is not permissible at all according to him, and this is what was originally stated, and the most correct is that it is permissible according to him except that it is not binding as a loan. (Abu bakar Al Maroghiny, 1996)

3. The endowment is not obligatory, so people took the apparent meaning of this wording, and said that the endowment is not permissible according to him. We said that he meant that he does not make it binding, but the origin of permissibility is proven according to him.

However, despite Imam Abu Hanifa's emphasis on the non-determination of the endowment, many Hanafi jurists have narrated that the endowment according to Abu Hanifa is estimated by two conditions:

1. The judge decided in the law about the establishment of the endowment. (A-Zuhaily, 1985)
2. The endowment did not permit that, and he meant not to make it binding. As for the principle of permissibility, it is established with him because the founder makes

> it a detainer of the property on his property, spending the benefit to the place he named, so it is like a loan, and the loan is a non-binding gift. That is why he said that if he bequeathed it after his death, it would be binding, like a bequest for the benefit after death. (Asy-Syarkahsy, 1913)

In this case, the endowment remains in preserving the right to inherit it, and that is why they must donate the benefits obtained from it, as long as the benefits exist. It was not possible for them to obtain them, because the will was eternal. The withdrawal of the endowment donor of the assets became a matter of disagreement among scholars, as some of them see that it is forbidden for the donor of the endowment to withdraw the assets of the endowment. The prohibition of the founder withdrawing the assets of the endowment under any circumstances, and this opinion is in agreement with the opinion of Imam Al-Shafi'i and some Shafi'i scholars. Some of them allow the founder to withdraw the assets of the endowment, and this opinion was stated by Imam Abu Hanifa. Both of the sayings of the previous scholars go back to the hadith of the Prophet, may God bless him and grant him peace, narrated by Ibn Omar, may God be pleased with him.

B. Taking Waqf land according to the doctrine of Imam Al-Shafi'i

Al-Shafi'i said: May Allah have mercy on him: The confinement that the Messenger of Allah, may Allah bless him and grant him peace, came with in general terms, and Allah knows best, is what we have described of the bahīrah, the wasīlah, the Ḥām, and the Ṣa'ibah, if they are animals. If someone says: What indicates what you have described? It is said: We do not know of anyone in the pre-Islamic era who confined a house to a child, nor in the way of Allah, nor to the poor, and their confinement was what we have described of the bahīrah, the Ṣa'ibah, the wasīlah, and the Ḥām. So the Messenger of Allah came with its general terms, and Allah knows best, and it was clear in the Book of Allah, the Mighty and Sublime, that it is general. If someone says: It includes what I have described, and includes the generality of every confinement, so is there any report that indicates that this confinement of houses and money is outside of the general confinement? It is said: Yes. Sufyan told us, on the authority of Abdullah bin Omar, on the authority of Nafi', on the authority of Ibn Omar, who said: Omar came to the Prophet, may God bless him and grant him peace, and said: O Messenger of God, I have acquired wealth the likes of which I have never acquired before, and I wanted to draw closer to God Almighty with it. The Messenger of God, may God bless him and grant him peace, said: Keep its principal and make its fruits available.

Al-Shafi'i said: The argument of the one who invalidated the endowed charity is that Shuraih said: (There is no withholding from the obligatory duties of Allah Almighty. There is no argument in it for us or for him; because he says: Shuraih's statement alone is not an argument, and if it were an argument, there would be no withholding from the obligatory duties of Allah Almighty. If he said: How? It is said: We only permitted the endowed mintages if the one who gave them as charity was healthy and had no money. If he was sick, we would not permit them except from a third if he died from that illness, and in neither of the two cases is there a withholding from the obligatory duties of Allah Almighty. (As-Syafi'ie, 1990)

Imam Al-Shafi'i used the method that we know as the deductive method. It is clear that what is called the deductive method is taking the law from the top to the bottom, that is, from the Qur'an, Sunnah, consensus, and analogy to the rules formulated by Imam Al-Shafi'i. (Shodikin Ahmad,) Analogy in the language is the comparison of one thing with the general

thing according to one thing and another thing. (Juhaya S. Praja, 1995) Imam Al-Ghazali explained, so it is necessary to mention an introduction to the definition of analogy and its form (and explaining the meaning of the cause and indication), and explaining Its division, and the alert to the paths of consideration in it. As for its definition, the formulas and expressions differed in it. We are not going to prolong this book, in what is not related to it of great benefit. The expression that defines the desired purpose, is to say: Analogy: is an expression of proving the ruling of the origin in the branch, because they share the reason for the ruling. (Al-Ghazali, 1971).

Abu Hanifa Khalaf presents an understanding of analogy that the most distant definitions define it as a compromise of a branch with its origins in the reason for a ruling. The definition is only for the process that the analogist carries out, and the equality of the origin and the branch in the reason is not his work, and likewise the intended analogy is to reach the ruling of the branch, the origin and the branch are not equal in the reason. (Abdul Wahab Khalaf, 1956)

Fath al-Rahman Jami defines analogy as the type that does not suit you in Nash with people who have great experience in Nash's life, in addition to that in Nash's world. (Djamil Fathurrahman, 1997) From the above explanation, it can be concluded that analogy is the basis of Islamic law and its methodology that has a solid foundation, whether its source is the Qur'an or the Hadith or the hadiths of friends in solving problems that were not explicitly explained, in the Qur'an and Hadith. The pillars of analogy, as the scholars of jurisprudence have said, are: 1. The origin (suggestion), 2. The branch, 3. The original law, and 4. The cause. Explanation of the rule formulated by Imam Al-Shafi'i:

C. Things are judged by their intentions

With the guide that Imam Al-Shafi'i has established, it is based on:

1. . Allah the Almighty said in the Qur'an, Surah Al-Imrun 145:

   And no soul can die except by Allah's permission at a decreed time. And whoever desires the reward of this world, We give him thereof; and whoever desires the reward of the Hereafter, We give him thereof. And We will reward the grateful (145)

2. The Prophet Muhammad (PBUH) said that Imam Shafi'i used it and he also agreed with Imam Malik, and it is the hadith of the Prophet that was narrated by Ibn Umar, and he also narrated it in another narration on the authority of Qutaybah ibn Sa'id that the endowment cannot be sold, given away, inherited, or withdrawn, i.e. as in the following hadith: Qutaybah ibn Sa'id narrated to us, Muhammad ibn Abdullah al-Ansari narrated to us, Ibn 'Awn narrated to us, Nafi' informed me on the authority of Ibn 'Umar (may Allah be pleased with them both) that 'Umar ibn al-Khattab acquired land in Khaybar and came to the Prophet (PBUH) to purchase it. In it, he said: O Messenger of Allah, I have acquired land in Khaybar, and I have never acquired wealth that is more precious to me than it, so what do you command me to do? He said: If you wish, consider its original value and give it in charity to Umar, stating that it cannot be sold, given as a gift, or inherited, and give it in charity to the poor, to relatives, to free slaves, in the cause of Allah, to the wayfarer, and to the guest. There is no blame on the one who takes charge of it if he eats from it. In a good manner and he is fed without

being wealthy. He said: So I told Ibn Sirin about it and he said: Without being wealthy. (Al-Bukhory, 2002)

Based on this, which is stated in the conditions of Waqf, Imam Shafi'i forbids selling, inheriting or withdrawing the donated land, even if the donor is not properly established. In such circumstances, it is also not permissible to build a small market, nor is it permissible to use the donated land as an educational facility and a mosque to become a small market. This is important to preserve the goal of the donor in donating these things. (Ritonga Raja, et.al, 2022) Imam Shafi'i's reasons are related to the hadith narrated by Ibn Umar regarding land in Khaybar. Imam Shafi'i realized that donating property without selling, inheriting or gifting at that time had been silenced by the Prophet (peace and blessings of Allah be upon him). If the silence of the Messenger of Allah is a hadith of reverence, because the Waqf is valid forever. The Shafi'i school also shows the validity of the Waqf of movable property from two aspects:

1. Permanence is the basic criterion in every form of Waqf. Therefore, any treasure is transient. So eternity is as long as the object continues to exist. Therefore, the Waqf ends if the movable property that was donated perishes. For example, Imam Shirazi believes: You can donate livestock, because it can be used forever. The term "eternity" according to the Shafi'is is relative. The eternity of everything is to the extent that its existence can be utilized. Sarbini al-Khatib said this opinion in his opinion regarding the law of endowment of lands or endowment of plants without land, saying: Eternity is sufficient, until it is nullified after the end of the lease or the lender returns.

2. Endowment does not end with the destruction of movable property, but it must be replaced with other property and the endowment takes the place of the movable property that was destroyed.

Sarbini al-Khatib said: It is most likely that you are allowed to sell the endowed mosque carpet if it is damaged, and the wooden box if it is broken or damaged, and it cannot be utilized unless it is burned so that it does not disappear or disappear. Not occupying space without any benefit or selling it at a low price for the endowment is better than just disappearing. This does not mean that the endowment property has been sold, because it is only a part of it. This opinion, as stated by two great scholars, Muhammad and Abu Yusuf. Accordingly, the most followed, the price of the sale is used for the benefit of the mosque. Al-Rafi'i said that the borrowing price for buying and selling a carpet is one type of carpet and not another type, and he also said: Following the intention of the donor. Al-Shirazi said about this issue: If it is said that it is permissible to sell it. Determining the price is determining the value taken from the destroyed endowment, or buying from that price a number of assets to donate them.[1] Another reason put forward by Imam Al-Shafi'i is that the endowment also includes the contract of innocence, i.e. transferring the ownership rights that were originally under the control of the owner to another party without any replacement, payment or exchange. If its pillars and conditions are met, and the existence of the endowment is confirmed, then the endowment is valid, and the powers that were previously with the endower are transferred to his rights. The endower can no longer withdraw his endowment, and thus he no longer has authority over the movable rights.

From this interpretation of the endowment, Imam Al-Shafi'i determines that the endowment is the money from which a benefit is taken, and its material is eternal, by establishing the right to dispose of it. This is the origin of the opinion of the Shafi'i school of thought regarding the permissibility of donating movable and immovable property, with the condition of the eternity of these funds. (Al-Kabisi, 2004). Hence, it can be concluded that Imam Shafi'i's opinion that a waqf for a specific period can only be perpetual and cannot be withdrawn is based on reasons for the legal certainty of the owners of the waqf so that the assets of the waqf can be used freely and without time constraints. Imam Shafi'i's inability to make a waqf for a specific period is based on the hadith of Ibn Umar which contains the phrase "It is not sold or exchanged. It is not given as a gift (it cannot be inherited) and it is not inherited (it cannot be donated). In other words, the waqf is perpetual (forever) as the assets of the waqf are no longer the property of the waqf donor but rather belong to Allah Almighty. When the wealth is waqfed, the ownership of the waqf is legally transferred from the donor (the person who is waqfing) to the entity or purpose designated for the waqf. This means that the wealth is no longer owned by the donor, but rather it is the ownership of the waqf itself or the ownership of the charitable purpose that has been designated, such as a mosque, school, hospital or other institution that has been waqfed for the benefit of the public or for social good. This is the main principle of Waqf law which ensures that the wealth endowed is no longer owned by an individual personally, but is used for the benefit of the public or for the public good in accordance with the specific purpose of the Waqf.

Conclusion

Analysis of the judge's decision to withdraw the Waqf land related to Decision No. 1755 /Pdt.G/2019/PA.Sda based on the legal facts in the judge's view of Article 40 of Law No. 42 of 2004 on Waqf, as in Book J. 127 Plot 11 Third Degree with an area of 1200 m2 in the name of Qasim Basmad was misused and was originally used as an educational and development institution for the Bait Al-Rahman Mosque and was rented by Al-Nadhir to become a mini-market. This is the reason behind the judge's decision to grant the Waqf claim to the plaintiff. Therefore, the Waqf land mortgage signed by the parties concerned is considered null and void, and Waqf mortgage No.: WT.2/W2/340/IX/2020 is considered invalid or at least has no binding legal force. In this Waqf, there is a difference of opinion regarding the doctrine of Imam Shafi'i and the doctrine of Imam Abu Hanifa. Imam Shafi'i said: Waqf is the money donated by the founder. The founder is not allowed to do anything with the donated money, and it is not allowed to withdraw it, exchange it, sell it or use it as a gift. As for Imam Abu Hanifa, it is to keep the original asset in the ownership of the Waqf, and it can be referred to as a loan (lending and borrowing) for the purpose of good deeds. The law of withdrawing donated land according to Imam Shafi'i is found in the book of Al-Umm as well as the book of purchase and sacrifice, preventing the founder from requesting what was donated or returning it. At the same time, Imam Abu Hanifa in the book of Fath Al-Qadir does not lose the ownership of his assets due to the Waqf unless there is a judge's decision or before his death, and he says that when I die I will donate my house. On this basis, Imam Abu Hanifa believes that the money is still the property of the founder, but the interest is what he donated, so that it can be taken at any time. However, the Waqf was taken due to misuse that is not

commensurate with the land that was donated. Then the plaintiff has the right to withdraw the Waqf land that was donated under Law No. 41 of 2004 regarding Waqf.

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