

Temporary Waqf in the Framework of Maqa'lid Shariah: A Study on Contemporary Social Needs Under Covid 19

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Abstract: This study examines the issue of temporary waqf in the light of Maqa'lid Shariah; it provides an extensive overview of juristic opinions of Islamic legal schools *Mad'hib*; along with the scrutiny of their arguments, legal interpretations, and use of principles of Islamic jurisprudence *Usul Fiqh*, legal maxims, and objectives of waqf. The contribution of the current research resides in the new understanding of the juristic debates of Muslim scholars, with a special attention in the implications of Maqa'lid Shariah. This study uses comparative method to expose the different opinions within the Muslim scholars' debate. The results of this research point to a strong preference of the validity of temporary waqf, based on an extensive examination of textual evidences, interpretation of legal evidences, use of *Usul Fiqh*, consideration of the intent of waqf in Islam and a serious consideration on the implications of the universal Maqa'lid of Shariah. This research addresses a number of new social needs cases *Nawazil* that emerged under Covid 19. Cases related to temporary waqf of benefits and services such as the waqf of human efforts. In addition to new cases related to temporary waqf of movables *Manqulat* and unmovable *Aqarat* such as temporary waqf of graveyard, temporary waqf of infirmary and convalescence home as well as other examples of temporary cash waqf that help answering special social needs under Covid 19.

Key words: Temporary waqf, Covid 19, Maqasid Shariah, waqf of benefits and services, cash waqf.

1. Introduction

Waqf through history has played a great role in the socio-economic life of the Muslim civilization. In contemporary time, many efforts are put to revive this sector after its various sufferings especially after the independence of many Muslim countries. In addition, Waqf has played a role in poverty alleviation as it helps providing various needs for various type of needy people, such as orphan, widow. Furthermore, Waqf helped in the field of science and research. However, the literature of Waqf showed that most of Muslim schools of law opts to stipulate the perpetual nature of Waqf disadvantaging temporary Waqf. This underestimation of temporary Waqf seems to

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need re-investigation because of the modern new nature of wealth and emergence of contemporary needs. In addition to contemporary needs, there are special needs that arise with the various calamities that societies faces. Covid 19 is having an impact on many social and economic aspects of the world, as it is imposing hard financial time on many classes of societies. To help dealing with the social and economic side effects of Covid 19, Islamic system of Zakat and Waqf can provide serious help to diminish the impact of Covid 19 on people. This paper investigates the various ways in which temporary Waqf can provide sustenance in this time of Covid 19. However, before displaying these various aspects, it is necessary to scrutinize the classical literature concerning the temporary Waqf to weight the evidences of the Muslim scholars and to select the opinion that most fits the Maqasid of Shariha and the intent of Waqf.

Problem Statement

There are Fiqh issues of Waqf that are taking for grant, however when re-investigated, researches display very unpredictable findings. Issued such as the substitution of Waqf, the maxims that reads the stipulation of the Waqif as like those of the Lawgiver, and temporary Waqf. Covid 19 is imposing pressure to re-investigate the validity of temporary Waqf and to evaluate the evidences of the various schools of law. Especially in terms of temporary Waqf of utilities, human efforts, temporary time benevolence, services such as transporting foods, medication and other needed things to those under quarantine. In addition, to it is necessary to re-investigate the validity of temporary Waqf of real estate, which has reality especially in time of calamities such as Covid 19. There are people who are not willing to totally give their properties; however, they are disposed to permanently help those in need. Such as to temporary give as Waqf their houses for the affected poor, vagabond or others. In addition, people can be willing to temporary give as Waqf some of the properties to use as clinic or palace to provide health services. In addition, new people are entering the circle of poor class, because of the economic impact of Covid 19. Many people lost their jobs; others witnessed the ruin of their business, while other reduced the number of workers, which leads to

unemployment high. This provoked another aspect of homelessness where many find themselves not able to pay their rent.

This paper aimed to tackle the social and economic problems caused by Covid 19 by introducing temporary Waqf as an efficient tool to help people overcome health and economic crises they are living under Covid 19.

Methodology

This paper used inductive method to surround the various existing opinions within the Muslim schools of law, as well as it helps precisely find out the evidences of those opinions. In addition, this paper used comparative method to compare the evidences of the schools' opinions in the light of Maqasid Shariah and intents of Waqf. Furthermore, this paper applied the findings of the research to the current needs that arose with the Covid 19.

Importance of the Research

The finding of this research provides the intellectual community with a new insight into the temporary Waqf and its Shariah rulings and condition. In addition, it helps the academicians to develop the use of temporary Waqf on other aspects. Furthermore, the findings of this research provide Islamic finance with a new tool to develop further their interest if integrating Waqf within the Islamic finance. In the other side, this research provide societies with practical ideas to help facing the economic and health calamities of Covid 19. In addition, it provides authorities with a platform to use in confronting the various side effects on their population.

Debate on the Perpetuity Nature of Waqf

In general, Muslim jurists' definition of an issue reveals some aspects of their opinion on specific details of that issue. This is very clear in the definition of Waqf. Hanafi jurists for example disagree among them in defining Waqf due to their disagreement on two issues. First, is Waqf contract binding or not and second concerns the ownership of the Waqf property after its dedication as Waqf. In addition, Maliki school of law provides a definition that shows their opinion allowing temporary Waqf and allowing the Waqf of benefits. Both of temporary Waqf and Waqf of benefits are

for great relevance on helping people facing the impacts of Covid 19. Al-Sawi, a Maliki jurist defines Waqf as “giving the rent or the product of a property benefit to a beneficiary for a duration fixed by the Waqif¹”.

Al-Sawi summarizes the settled opinions of Imam Malik in both the temporary Waqf as well as in the Waqf of benefits. In this way, according to the Maliki school of law, the ownership still belong to the Waqif, however, he stopped any kind of disposition over his property as owner and in the same time he dedicates the yield and income of the property to specific beneficiaries. In addition, Al-Dardir another Maliki jurist explicitly says:”... perpetuity is not a condition, Waqf can be for a specific time after that it returns to the owner...²”. However, Maliki jurists put an exception for some properties such as Mosque. As a leading figure in the Hanfi school of law, Abu Yusuf adopts the Maliki opinion in allowing temporary Waqf as reported by Al-Sarakhsi and Ibn al-Humam³.

In the other side, Hanafi, Shafii and Hanbali discussed the issue of perpetuity of Waqf in the condition of Waqf. Ibn Nujaym while discussing the conditions of Waqf he said:” The tenth condition, it should not be temporary⁴”. In addition, Ibn Nujaym reported that Al-Khasaf nullified any king of Waqf for a day or a month on the argument of non-perpetuity⁵. Even though we have mentioned that Abu Yusuf hold the same opinion of Maliki jurists that allows temporary Waqf, Ibn Abidin reports another narration of Abu Yusuf where he adheres to the well-known opinion of the Hanafi school and he disallowed temporary Waqf⁶. Al-Sharbini a Shafii jurist also fixed the four conditions of waqf according to his school of law. He put the perpetuity of Waqf as

¹ Abu al-Abas al-Sawi. *Bulghat al-Salik li Aqrab al-Masalik*. Beirut : Dar al-Kutub al-Ilmiyah, 1995. Vol 4, p 10.

² Ahmad al-Dardir. *Hashiyat al-Dusuqi ala al-Sharh al-Kabir*. Egypt: Dar Ihya al-Kutub al-Arabi, Vol 4, 87. See also, Muhamad al-Khrashi. *Sharh Mukhtasar Khalil*. Beirut: Dar al-Fikr, nd. Vol 8, 92. Al-Hatab al-Rini. *Mawahib al-Jalil Sharh Mukhtasar Khalil*. Beirut: Dar al-Fikr, nd. Vol 6, 21.

³ Mohamed ibn Ahmad al-Sarakhsi. *Al-Mabsut*. Beirut: Dar al-Marifah, 1993. Vol 12, 41. Al-Kamal ibn al-Huma. *Fath al-Qadir*. Beirut: Dar al-Fikr. Vol 6. 470.

⁴ Ibn Nujaym. *Al-Bahr al-Raiq Sharh Kanz al-Daqaiq*. Vol 5, 213. See also, Mohamed ibn Ahmad al-Sarakhsi. *Al-Mabsut*. Beirut: Dar al-Marifah, 1993. Vol 12, 41.

⁵ Ibn Nujaym, *Ibd*.

⁶ Muhamad Amin Ibn Abidin. *Rad al-Muhtar ala al-Dur al-Mukhtar*. Beirut: Dar al-Fikr, 1992. Vol 4, 349.

the first condition⁷. Al-Nawawi another Shafii scholar explicitly argued for the perpetuity of the Waqf and the invalidity of a temporary one⁸. However, Al-Nawawi in another book titled *Rawdat al-Talibin* report another option within the Shafii school that ends to validate a temporary Waqf⁹. Ibn Surayj also selects this second opinion¹⁰.

Ibn Qudama reports that the sound view in Ibn Hanbali school does not accept a temporary Waqf¹¹. Ibn Qudamah goes far to say that there is no disagreement within the Hanbali school of law to stipulate the perpetuity of the Waqf¹². However, al-Mardawi reports a disagreement within the Hanbali school and shows that it is not a matter of total agreement to disallow temporary Waqf as Ibn Qudamah claimed¹³.

Evidences for the Perpetuity of Waqf

The majority of scholars argue for their view on the stipulated condition of perpetuity with the well-known narration of Umar Ibn al-Khtab on Waqf. Abd Allah Ibn Umar reported that his father Umar Ibn al-Khatbb obtained a lot of land in Khaybar and asked the Prophet (pbuh) for advice. He said: "Apostle of the Almighty, I obtained a land in Khaybar. I never obtained a property more precious to me than this. What do you advise me? He said: "If you want, you can bequeath it and give it as a charity; provided that it should not be sold, bought, given as a gift or inherited." He said: "Then Umar gave it as charity for the poor, relatives, slaves, wayfarers and guests. There is no harm for the person responsible for it to feed himself or a friend from it but for free¹⁴". In a narration:" Waqf as long as the heaven and the earth¹⁵".

⁷ Al-Sharbini . *Mughni al-Muhtaj*. Vol 3. 353. See also, Zakariyah al-Ansari. *Asna al-Matalib Fi Sharh Rawdat al-Talib*. Beiru: Dar al-Kutub al-Ilmiyah, 2000. Vol 2, 463.

⁸ Abu Zakariyah al-Nawawi. *Al-Majmu Sharh al-Muhadab*. Matbat al-Munayrihay. Vol 10, 335.

⁹ Abu Zakariyah al-Nawawi. *Rawdat al-Talibin*. Beirut: Al-Maktab al-Islami, 1991. Vol 5, 325.

¹⁰ Ali Al-Mawardi. *Al-Hawi al-Kabir*. Beirut: Dar al-Kutub al-Ilmiyah, 1999. Vol 8, 521.

¹¹ Ibn Qudamah al-Maqdisi. *Al-Mughni*. Vol 6, 96. See also, Mansur al-Bahuti. *Sharh Muntaha al-Iradat*. Beirut: Alam al-Kutub, 1993. Vol 2, 425.

¹² Ibn Qudamah al-Maqdisi. *Al-Mughni*. *Ibd*.

¹³ Ala al-Din al-Mardawi. *Al-Insaf fi Marifat al-khilaf*. Dar Ihya al-Turath al-Arabi, 2nd ed. Vol 8, 28.

¹⁴ Muhamad Al-Bukhari, *al-Jami al-Sahih*. Egypt: Dar Tawq al-Najah, 1st edn, 1422 AH, chapter of conditions, condition in waqf, 2737. Muslim ibn al-Hajjaj, *al-Musnad al-Sahih* (Beirut: Dar al-Jil, 1 st edn, 1434 AH), 1632.

¹⁵ Al-Tusi. *Al-Mustakhray ala al-Tirmidi*. 1289, and he said: "it is said that this narration is sound and good". Al-Shawkani claims that it is a sound narration. See *al-Fath al-Rabani*. Vol 8, 4024.

Al-Ayni declares that the statement Waqf as long as the heaven and the earth is a clear one to stipulate perpetuity in the contract of Waqf¹⁶. In addition, this group of Muslim jurists consider the word Habs as meaning perpetuity¹⁷. Also, the statement “it should not be sold, bought, given as a gift or inherited.” Seems to be clear to lean perpetual act of charity. Furthermore, they use analogy upon freeing slave and Hibah where the person cannot take it back¹⁸. Moreover, as mentioned by Al-Qurtubi, there seem to be a practical consensus among the companions. Where no one among the companions took back what he declared as Waqf¹⁹.

Evidences for Temporary Waqf

The first evidence for the jurists who allow temporary Waqf is to invert the proof to the opponent. They argue that as long as the prophet pbuh said bequeath the property, so it means whether for perpetuity or temporary. More explicitly, they argue that as long as the perpetual Waqf is valid so is the temporary one²⁰. In addition, they argue that if a person can dedicate his property forever, so he can dedicate part of his property for part of time²¹. Furthermore, the rule is that the Lawgiver provides flexible rulings concerning acts of charity and benevolence²². Moreover, we can argue with the intent of Waqf and Maqasid Shariah to support this opinion. Waqf is a charitable act aiming for hereafter rewards and aiming to help people. In addition, that Waqf is not purely an act of worship, rather it combines between the side of worship and the sense of reasonable meaning. Abu Yusuf argues that Waqf is in reality passing the ownership of usufruct to another party, so as long as it is permissible to pass it forever it is more likely to allow its passing to other party momentary²³.

¹⁶ Al-Ayni. Umdat al-Qari Sharh Sahih al-Bukhari. Vol 14, 68. Ibn Hajar al-Asqalani. Ftah al-Bari Sharh sahih al-Bukhari. Vol 5, 403.

¹⁷ Ibn Nujaym. Al-Bahr al-Raiq. Ibid. Ibn Hajr al-Haythami. Tuhfat al-Muhtaj. Vol 6, 252.

¹⁸ Al-Mawardi, al-Hawi. Ibid.

¹⁹ Abu Abd Allah Al-Qurtubi. Al-Jami li Ahkam al-Quran. AL-Riyad : Alam al-Kutub, 2003. Vol 6, 339.

²⁰ Muhamad Al-Shaybani. Sharh al-Siyar al-Kabir. Beirut: Dar al-Kutub al-Ilmiyah, 1998. Vol 5, 285.

²¹ Al-Mawardi. Ibid. vol 8, 521.

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²³ Muhamad Al-Shaybani. Sharh al-Siyar. Vol 5, 285.

Discussion and the Selected Opinion

According to the above discussion, it becomes clear that the narration of Umar does not deal with the issue of Waqf perpetuity. It is most likely an advice for him. This means that it is not an evidence on the issue under investigation. In addition, the acts of the companions are not discussing the temporary Waqf. These records only show that the companions preferred to dedicate their Waqf for perpetuity, however, there is no report that they prohibited the temporary form.

The evidences of the group that allows temporary Waqf are safe from any counter argument, as it is the opinion that fulfill the intent of Waqf in its socio-economic purpose. In addition, allowing temporary Waqf help enacting the Maqasid of Shariah in urging for social solidarity, as it fulfill the Maqasid in terms of opening doors for seeking high rewards in the hereafter²⁴.

Types of Waqf**Waqf of Real Estate**

Muslim jurists agree that real estate are subject of Waqf as reported by Imam Tirmidi and other jurists²⁵. Muslim jurist based their agreement on the above mentioned narration of Umar's Waqf of Khaibar.

Waqf of Moveable

Waqf of moveable is subject of disagreement among the Muslim schools of law.

While the majority of schools of law Maliki²⁶, Shafii²⁷ and Hanbali²⁸ allow the Waqf of moveable, Hanafi jurists disagree hold an opposite opinion²⁹. However,

²⁴ Al-Sarakhsi. Al-Mabsut. Vol 12, 81.

²⁵ AL-Tirmidi. Sunan. Vol 3, 652. See al-Sharbini. Mughni al-Muhtaj. Vol 2, 377. Al-Ramli. Nihayat al-Muhtaj. Vol 5, 362. Ibn Qudamah. Al-Mughni. Vol 6, 36. Al-Khurashi. Sharh Mukhtasar Khalil. Vol 7, 79.

²⁶ Al-xatab, MawĒhib al-Jalil, vol.7, 229-230. Al-Qarafi, al-Dhakhirah, vol.6, 312-313. Al-Dasuqi, vol.5, 455-456.

²⁷ Abu Hamad al-Ghazali, al-Wasit, vol.4, 239. Al-Haythami, Tuhfat al-Muhtaj, vol.2, 479.

²⁸ Ibn Qudamah, al-Mughni, vol.8, 231. Ibn Muflih, al-Furu (Beirut: Al-Risalah, 2003). Vol. 7, 332-333. Al-Bahuti, Sharh Muntaha al-Iradat, vol.4, 335.

Hanafi jurists put exceptions where they allow moveable Waqf. First, when the moveable is attached to the immovable such as trees and wells that are parts of the immovable Waqf property³⁰. Second, Hanafi argue that the customs of people have an impact of the validity of moveable Waqf, and as long as people agree to dedicate certain moveable as Waqf, the Waqf then is valid³¹.

Waqf of Usufruct

The disagreement on temporary Waqf engender a conflict on the validity of usufruct Waqf. Maliki school of law allow the Waqf of usufructs and utilities because of their view on temporary Waqf³². According to al-Shatibi, utility is that what bring benefit to people not to the matter itself³³. From a financial point of view, the Majority of Muslim jurists consider the financial value of utilities³⁴. According to Muslim jurists, utilities are two categories. First, the utility of subject matter and second the utility of human being³⁵. In addition, while discussing the Waqf of utilities, Maliki jurists discuss the utility of an owned property as well as the utility of non-owned property³⁶. According to Maliki jurists the important thing is the ownership of the utility itself, for this Khalil declares in this Mukhtasar that the Waqf is valid even if the ownership is through lease contract³⁷. In this way, the Maliki school of law open doors for next types of Waqf whether, benefits and even rights such as intellectual ones³⁸.

In contrast, Muslim jurists from other schools of law did have a negative opinion on the Utility Waqf, where some of them declared the invalidity of the contract of Waqf of utility. It seems that the issue is not only with the perpetuity of the Waqf. The main problem within the Hanafi school of law seems to be whether the utilities are a kind of

²⁹ Ibn Abbidin, al-Hashiyah, vol.9, 552. Hilal, al-Isaf, 12. Al-Kasani, Bada'i al-Sana'i, vol.5, 220. Al-Marghinani, al-Hidayah, vol.3, 17-18.

³⁰ Ibn Abbidin, al-Hashiyah, vol.9, 552.

³¹ Ibd.

³² Al-Dardir. Ibd.

³³ Abu Ishaq al-Shatib. alMuwafaqat. Beirut : Dar al-Marifah. Vol1, 166.

³⁴ Mustafah al-Zarqa. Al-Madkhal al-Fiqhi al-Am. Beirut: Dar al-Fikr. Vol 3, 207.

³⁵ Shawqi Ahmad Duniya. Majalat Waqfiyah Jadidah. Paper presented for the second Waqf Conference in Arabia Saudia, 1426 AH.

³⁶ Muhamad al-Dusuqi. Hashiyat al-Dusuqi al-al-Sharh al-Kabir. Egypt: Dar Ihya al-Kutub al-Arabiayah. Vol 4, 760.

³⁷ Ibd.

³⁸ Shawqi Ahmad Duniya. Ibd.

wealth or no. Hanafi jurists do not consider utilities as kind of wealth only in special cases³⁹. However, the majority of Muslim jurists consider that utilities are kind of wealth and this is the view of Maliki⁴⁰, Shafii⁴¹ and Hanbali⁴². Most explicit evidence for the majority of Muslim jurists is the narration of Sahl Ibn Sad al-Saidi that the prophet peace be upon him made teaching Quran to a woman as her dowry⁴³. It is clear that teaching verses of Quran is a pure utility and not a tangible subject matter.

The Sharia validates the ownership of utilities and the following are some cases. First by means of lease contract. Lease contract is as defined by Muslim jurists the ownership of a utility according to stipulations⁴⁴. In addition, Muslim jurists hold a consensus that a person by the contract of leasing own the utility of the subject matter during the time of contract as he owns the⁴⁵.

Second, the ownership of utility by means of Hibah. Hibah is unilateral contract, as it is benevolent in nature. In a Hibah the donor transfers the ownership of an asset without conditions or recompose⁴⁶.

Thirdly, a person can transfer the ownership of an utility by Ariyah contract. Ariyah is the gratuitous transfer of usufruct or utility of a property⁴⁷. However, there is a disagreement among Muslim jurists concerning what an Ariyah really offers. According to Maliki jurists⁴⁸ the Ariyah allows the ownership of the usufruct and utility of the asset. It is also the view of the majority of Hanafi⁴⁹ jurists. In the opposite, Shafi and Hanbali jurists see that the Ariyah provides only a permission to use the property without owning its utility⁵⁰.

³⁹ Al-Sarkhsi. Ibid. vol 11, 79.

⁴⁰ Al-Dusuki. Ibid. vol 3, 442. Ibn Rushd. Bidayat al-Mujtahid. Vol 2, 251.

⁴¹ Al-Sharbini. Mughn al-Muhtaj. Vol 2, 286. Zakariya al-Ansari. Fath al-Wahab. Vol 1, 399.

⁴² Al-Bahuti. Sharh Muntaha al-Iradat. Vol 2, 248. Ibn Qudamah. Al-Mughni. Vol 5, 169. Ibn Qudamah. Al-Kafi. Vol 2, 142.

⁴³ Al-Bukhari. Sahih al-Bukhari. Vol 3, 241. Muslim. Sahih Muslim. Vol 2, 1041.

⁴⁴ Al-Zaylai. Ibid. Vol 5, 105. Alish. Sharh Munah al-Jalil. Vol 3, 735. Al-Ramli. Nihayat al-Muhtaj. Vol 5, 261. Al-Mardawi. Al-Insaf. Vol 6, 3.

⁴⁵ Al-Sharbini. Mughni al-Muhtaj. Vol 2, 334. Ibn Qudamah. Al-Mughni. Vol 6, 13.

⁴⁶ Al-Bahuti. Kashf al-Qina. Vol 4, 298.

⁴⁷ Ibn Abidin. Ibid. Vol 5, 677. Al-Bahuti. Ibid. vol 2, 331.

⁴⁸ Al-Dusuqi. Ibid. Vol 3, 433. Ibn Juzay. Al-Qawanin al-Fiqhiyah. 245.

⁴⁹ Ibn Abidin. Ibid. vol 5, 677.

⁵⁰ Al-Suyuti. Al-Ashbah wa al-Nadair. 353. Ibn Qudamah. Ibid. vol 5, 354.

Fourthly, the ownership of a utility by means of Umra contract. Ibn Arafh defines this contract: “transferring the ownership of a utility for life time of the donor or the beneficiary without compensation⁵¹”. In this contract, the property will go back to his original owner either in case the beneficiary died, or to his inheritors in case he died⁵².

From the above discussion, it becomes clear that the Shariah opens doors for the transfer of the ownership of utilities and usufructs and establishes it as a valid contract in many cases. Consequently, Maliki jurists and those who allow the Waqf of utilities argue that as long as the owner of utilities can put them in a composition contracts, he can also put them on a benevolent ones such as Waqf. In addition, the real estate Waqf is always in need for human presence and services in order to provide its aims. In the same way these human needed services and presence are among the essential parts of the Waqf⁵³

Cash Waqf

Muslim jurist hold a disagreement on the validity of cash Waqf. The Hanafi⁵⁴ Shafii⁵⁵ and Hanbali⁵⁶ schools of law and the Maliki jurist Ibn al-Hajab⁵⁷ opt for the invalidity of cash Waqf. The second opinion allows the cash Waqf. This is the view of Maliki jurists⁵⁸ and a view in Hanbali⁵⁹ school as well as it is the opinion of some Shafii jurists⁶⁰. In addition, it is the selected opinion of Ibn Taymiyah.

Muslim jurist who allow cash Waqf disagree on the way of its Waqf. According to Imam Malik the cash Waqf is by borrowing the cash and in the future it is taking

⁵¹ Mawahib al-Jalil. Vol 6, 17.

⁵² Ibn Qudama. Al-Mughni. Vol 5, 400.

⁵³ Nujud Qaydum. Al-Waqf al-Muaqat. Majalat Ihya. December 2019. Vol 19, 403-440.

⁵⁴ Al-Mirghinani. Sharh al-Hidayah. Vol 3, 16.

⁵⁵ Mughni al-Muhtaj. Vol 2, 377. Al-Muhadab. Vol 1, 144.

⁵⁶ AL-Mardawi. Al-Insaf. Vol 7, 10. Ibn Qudama. Al-Mughni. Vol 5, 373.

⁵⁷ Al-Khurashi. Ibid. vol 7, 80. Mawahib al-Jalil. Vol 6, 22.

⁵⁸ Al-Khrashi. Ibid. Al-Dardir. Ibid. vol 4, 77.

⁵⁹ Al-Mardawi. Ibid. vol 7, 11.

⁶⁰ Al-Nawawi. Rawdat al-Talibin. Vol 5, 315.

back⁶¹ as it is a narration of Imam Zufr from Hanafi jurists⁶². The second narration of Imam Zurf allows the Mudarabah way of investment⁶³.

There is a third view on how cash Waqf can be. Some Shafii and Hanbali jurists allow cash Waqf if it is used for decoration and used as jewelry.

There are two reasons of the disagreement on the validity of the cash Waqf. First because of the stipulation of Waqf perpetuity and second concerns the Waqf of matters that are consumed by one use.

Cash Waqf is for great importance in contemporary time. First because it provides solution for the expensive feature of real estate⁶⁴. Including other problems with real estate Waqf⁶⁵. Second, cash Waqf can lead to the emergence of great Waqf institution with huge capital and great influence⁶⁶.

Contemporary Applications of Temporary Waqf

Contemporary economic and social conditions are crating countless needs. Accordingly, there is an urgent need to create new forms of Waqf to answer contemporary demands. In this sense, temporary Waqf can help answering huge member of the new social and economic conditions and needs. Waqf in contemporary time can expend to fit tangible, utility or financial right such as copyrights,

The following are some of the new forms of temporary Waqf as cited by Najud⁶⁷:

Tangible temporary Waqf such as:

Waqf of periodic matters for a period. For example a company will dedicate part of its production whether food, or furniture for beneficiaries for a period of time, ten years or more or less. As it can dedicate as Waqf a percentage of its production.

⁶¹ Al-Khrashi. Ibid. vol 7, 80. Al-Dardir. Ibid. vol 4, 77

⁶² Al-Bahr al-Raiq. Vol 5, 219.

⁶³ Al-Bahr al-Raiq. Vol 5, 219.

⁶⁴ Abd Allah ibn Muslih. Waqf al-Nuqud.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ See; Nujud Qaydum. Al-Waqf al-Muaqat. Majalat Ihya. December 2019. Vol 19, 403-440.

A person can dedicate as Waqf his real estate for just a period of time or periodically for a period or forever. For example a person who needs one of his real estate only in summer he can make Waqf of it for students or poor for example in the rest of time. Alternatively, as it is in Arabia Saudi, some give their real estate as Waqf for students and take it back in time of Haj because of the high rent at time of Haj. Then, he spend the income of time Haj on this real estate.

Waqf of future periodic matters. For example, a person can dedicate as Waqf periodic scientific journals, magazines, or books for a university or school or Mosque or public libraries for the coming ten years.

Temporary cash Waqf. A person may not need an amount of his wealth and he can dedicate it as Waqf for a period. This kind of Waqf gives the opportunity for the rich and the poor to participate in Waqf. This temporary cash Waqf either is invested according to Shariah compliance or is borrowed in other cases. A person can participate on cash Waqf from either his own salary, or the reserve joint stock company. In addition, cash waqf can take the form of Waqf of the whole company with all its liability and benefit for a period of time.

Waqf of Temporary Utility and Services

Temporary Waqf of utilities and services can take different forms according to modern diversification of the economic pool of funds as well as according to the emergence of benefits and revenues that were not known in the past.

First, donating for temporary Waqf the utilities of tangibles, such as the housing utility, transport, electricity, and fax, internet, and phone line benefits. In addition, temporary Waqf of utilities of tangibles means donating the benefits of various devices, equipment used in production and distribution, and education. As well as the benefits of shares, that represent ownership in companies and institutions.

Second, temporary Waqf of human efforts or human utilities. This type of utility provide an opportunity for many persons to donate for Waqf their skills and knowledge. Where people can help needy people to learn, to get health care, or to acquire a craft.

This kind of utilities vary from a handcraft utility to an instinctual one. Another form of the Waqf of human utility is the dedication of time for a benevolent activity.

Thirdly, moral rights as concluded by the International Islamic Fiqh Academy came under number 43 :” Trade name, commercial address, trademark, authorship, invention or innovation: they are special rights of their owners, which in contemporary custom have a financial value to finance people, and these rights are considered legitimate, so it is not permissible to violate them”. In this sense, many people enjoy many new forms of rights that they can dedicate as temporary Waqf. Such as the right of registered scientific discoveries, patents, copyrights, broadcasts rights, the trade name, rights of old manuscripts, right of road and bridge.

Fourthly, temporary Waqf institutions can gather many of the above-cited human utilities where these human utilities can be managed and administrated for better results. For example, schooling Waqf institution that gathers temporary Waqf related to teaching and learning. Other Waqf institution that administrate and mange health care temporary Waqf institution.

The above paragraph displayed some aspects of temporary Waqf as well as utility Waqf. In the following section, this paper displays aspects of temporary Waqf under Covid 19.

Temporary Waqf and its Applications under Covid 19

The several Maliki Jurists’ views and opinions in the various issues of Waqf seem to be the best that can help in Covid 19. Especially their opinion on temporary Waqf and the Waqf of utilities and rights. Individuals and groups such as companies or institutions can proceed in the temporary Waqf as well as in utilities Waqf. Utilities either related to real estate or moveable or related to human efforts.

Waqf of Real Estate under Corona 19

The first thing that matter for Muslims is their daily and weekly prayer. After re-opening Mosques, new instruction come to the way Muslim practice their prayers. Most important is the physical distancing between the rows. This distancing caused a problem of space especially within small mosques and mosque within crowded cities. In this

case, the issues of perpetuity of Mosque come to the stage of discussion. Maliki school of law while allowing temporary Waqf and the Waqf of utilities, consequently, Al-Dardir claims that a person can rent a piece of land or a building to donate it as temporary Waqf for the sake of practicing prayers by the community⁶⁸. This opinion helps Muslim communities all over the world to seek for practical and safe solutions to perform their prayer. In this way, communities or individual can rent spaces or building to donate as temporary Waqf for the sake of performing Islamic prayer. However, once the temporary Waqf is fixed this palce of prayer holds the same Shariah injections of Mosque. Such as the validity of Itikaf, performing salutation, forbidding sale and trade as well as all other Shariah injections concerning mosques. Once the time of Wqaf passes the property turns to its original state.

Second, inefficient number of hospitals, dispensary and clinics became a nightmare under Covid 19. Governments put their best to help stopping this crisis; however, the problem needs more efforts and more civil parts to take action. Thus, temporary Waqf can help in handling this crisis where it allows the use of spaces, private buildings, private houses and residences as place of health care for only a period. Whether the Waqif donates it for the whole period of Covid 19 or for shorter than this such as in case of emergency when the pic of the pandemic is high. For example, a person can donate for two months for example part of his residence, villas and other properties that can turn to health care places. In addition, owners can donate temporary suitable place to isolate affected people by the Covid 19⁶⁹.

Thirdly, more than four millions and half death over the world caused by Covid 19. Muslims' religion honor human even after death, for this reason Islam orders special type of funeral. Graveyards also are still witnessing problems of places in accordance with the rise of number of death. In this case, temporary Waqf can provide societies with serious help to face this problem. According to the majority of Muslim jurists, it is possible once the mortuary remains do not longer exist and are totally perished to

⁶⁸ Al-Dardir. *Al-Sharh al-Saghir*. Vol 4, 98.

⁶⁹ Abu Al-Khair Nashat. *Mada Mashruiyat al-Waqf al-Muaqat*. *Majalat al-dirasat al-Islamiyah Banin Aswan*. N: 3, 2020.

exhuming those graves. This process allows to re-burial other corpses⁷⁰. However, those jurists from the three schools of law do not allow temporary Waqf and in the same time, Maliki jurists who allow temporary Waqf do not allow the exhuming graves as they do not allow temporary Waqf of graves⁷¹. This issue needs a Fatwa from contemporary scholars. However, this is my own proposition to the issue as it is not an official Fatwa. In Usul Fiqh there is a well-known issue of making a third opinion after the precedents scholars generation disagreed into two opinions. Despite the deepness of this issue in Usul Fiqh, there is an opinion that claims that if the third opinion does contradict the two precedent opinions in all aspect, then it is acceptable. If we apply this view then, it can be said that a person can donate a piece of land as temporary Waqf as grave, with the condition that this period is enough that the remains of the dead persons are totally perished. This is a proposition that can only adopted by those who adopt the Usul Fiqh opinion in making the third opinion without breaching the precedent opinions.

Fourthly, temporary Waqf of tangibles under Covid 19 can take various forms, as it is one of the most helpful tools to overcome the many aspect of social calamities. People lost their jobs, companies closed, other fired and socially people find themselves in difficult times. Factories can donate for a period their food and drink product as they can donate in the same way part of their weekly, monthly or any period product. In addition, factories of cloths in the same way may help needy people under Covid 19 by donating for a period their productions or part of it. Temporary Waqf can meet other needs that are currently under Covid 19 increasing accordingly.

Fifth, cash Waqf for period can help solving various needs of people under Covid 19. All types of cash Waqf can help directly persons, hospitals health care, or any other needs under Covid 19.

Temporary Waqf of Moveable under Covid 19

Under the current situation of Covid 19, many moveable properties and wealth can help people surmounting their calamities caused by the virus.

⁷⁰ Al-Zailai. Tabyin al-Haqaiq. Vol 1, 246. Al-Nawawi. Al-Majmu. Vol 5, 303. Al-Bahuti. Kashf al-Qina. Vol 2, 144.

⁷¹ Alish. Munah al-Jalil. Vol 1, 512.

First, the temporary Waqf of medical tools such as respirators, hospital beds, masks, and sanitizers. In addition, temporary Waqf of moveable extends to preparing operating rooms; equipping ambulances and isolating rooms. Furthermore, this form of temporary Waqf can extend to means of transport-to-transport urgent needs for people suffering from Covid 19.

Temporary Waqf of Utilities and Services

As selected above temporary Waqf of utilities and services is allowed. Under Covid 19, many forms of such temporary Waqf can help improving the situation of people. People can donate for a period the utility of all types of tools, instruments and medical devices to help all kind of health care.

In addition, the human services in Covid 19 are for great importance to overcome the various difficulties caused by the corona virus. Accordingly, all professionals, doctors, technicians, handcrafts, engineers and all sort of expertise can temporary donate their services to help in any appropriate fields in Covid 19.

Conclusion

This paper revealed the great importance of temporary Waqf in the current calamity of Covid 19 that the entire world is suffering from its impacts. Temporary Waqf extends to include all sort of real estate, moveable, tangible and utilities and human services. All those aspect help the current social and economic crises caused by Covid 19. There will be better results of temporary Waqf under Covid 19 if Muslim societies and communities invest on it on group. This paper shows that contemporary Muslim scholars can practice Ijtihad to solve some difficult cases.

Recommendations

We urge Muslim governments to reintegrate the Waqf as an essential tool for the socio-economic life of citizens and to reinforce the culture of Waqf. As we urge wealthy people to rethink about the various ways of Waqf that can really help answering urgent needs of people under Covid 19

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