



## **Waqf Exchange in Four Mazhabs of Jurisprudence: A Case Study of Infrastructure Projects in Indonesia**

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### **Abstract**

The infrastructure development program planned by the Joko Widodo administration in several regions, especially in Purbalingga and Tegal, displaced several waqf lands. This study analyzes the process of waqf exchange in the project from the perspective of the four madhhabs. This research uses a comparative approach by comparing several opinions of the scholars of the fiqh schools of thought on waqf swaps on the same side and, at the same time, also explaining the different sides. What is interesting in the discussion is the solution offered by replacing the waqf land with other land, even though Waqf has a primary principle in its administration, namely, the principle of Waqf must remain eternal (*ta'bid al-asl*). The theory of benefit becomes an analytical tool for developing a mindset regarding waqf exchange. This research yields the following conclusions. First, waqf management can change according to the public interest as long as the purpose of the Waqf is still to the expectations of the Waqf. Second, waqf exchange is the best solution when there is no other way, as long as the replacement is at least the previous Waqf.

**Keywords:** Waqf; Waqf Replacement; Waqf Jurisprudence

## 1. Introduction

Islamic teachings encourage its adherents to become valuable people by implementing good deeds. Among the pious deeds that Muslims can implement is Waqf.<sup>1</sup> Waqf has nuances of spiritual purity and social piety by relying on achieving community social solidarity while strengthening community financial resources.<sup>2</sup> From the perspective of sharia objectives, Waqf is seen as a benefit-oriented charity.<sup>3</sup> This can be seen in one of the conditions: waqf goods must have aspects of benefit and benefit from their physical form.<sup>4</sup>

At the implementation level, Waqf can be realized with the main principle, namely retaining ownership, in the sense that the principal of the Waqf must remain eternal (*ta'bid al-asl*) and the benefits of the Waqf generally apply, of course, as long as the principal of the Waqf still exists.<sup>5</sup> In principle, waqf assets are optimized for the benefit and good of the people.<sup>6</sup> However, as time passed, it was discovered that some waqf items were not considered adequate in their usefulness, resulting in them being neglected, damaged, and even lost.<sup>7</sup> In addition, infrastructure development policies under the leadership of President Joko Widodo often encourage land relocation, including the waqf principle.<sup>8</sup>

Regarding this problem, the jurists have their own opinions, all of which boil down to a solution to make the Waqf productive again and restore its position. One of the solutions being sought is to allow waqf swaps, often known as ruislag, namely the exchange of waqf land in exchange for another land of

<sup>1</sup> Liesma Maywarni Siregar dan Puguh Setiawan, "Wakaf sebagai Ibadah Sosial Berkelanjutan," t.t.

<sup>2</sup> Musyfikah Ilyas, "Istibdal Harta Benda Wakaf Perspektif Hukum Islam," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 3, no. 2 (2016): 138–50.

<sup>3</sup> Liesma Maywarni Siregar dan Puguh Setiawan, "Wakaf sebagai ibadah sosial berkelanjutan," *Tajdid: Majalah Ilmu Pengetahuan Dan Pemikiran Keagamaan* 23, no. 2 (2020), <https://www.academia.edu/download/96280475/pdf.pdf>.

<sup>4</sup> "Efektifitas Pengelolaan Wakaf Produktif Bagi Kesejahteraan Sosial di Indonesia | UNES Law Review," diakses 28 Desember 2023, <https://review-unes.com/index.php/law/article/view/578>.

<sup>5</sup> Nur Rachmat Arifin, Ridan Muhtadi, dan Abd Aziz, "Manajemen Istibdal Atas Aset Wakaf Sebagai Pembangunan Ekonomi," *Filantropi: Jurnal Manajemen Zakat dan Wakaf* 1, no. 2 (2020): 193–216.

<sup>6</sup> Muhammad Zulfikar Yusuf, "Optimalisasi Wakaf Tanah Perspektif Istibdal (Studi Pada Harta Wakaf Pimpinan Daerah Muhammadiyah Kota Yogyakarta)," *Jurnal Magister Ekonomi Syariah* 1, no. 1 (2022): 63–73.

<sup>7</sup> Tiswarni Tiswarni, "Istibdal Wakaf Sebagai Solusi Pendayagunaan Benda Wakaf Masa Post Covid-19: Analisis Pendapat Ulama Mazhab," *Muqaranah* 7, no. 1 (2023): 11–24.

<sup>8</sup> Muhammad Jamaludin, "Indonesia Investment Authority sebagai SWF Indonesia Untuk Meningkatkan Investasi Asing di Indonesia," *AL-ADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 1, no. 2 (2023): 283–301.

equal value and value with the approval of the government so that the benefits of the Waqf continue to run as per the original purpose of the Waqf.<sup>9</sup> However, when there is a transfer of waqf assets based on public interest and benefit, it does not conflict with the provisions of Islamic law, and the waqf assets can be replaced with something of equal value.<sup>10</sup>

Expressly, waqf exchange (*istibdal al-waqf*), according to the Hanafiyah school of thought, is permitted if there are two reasons, namely the existence of requirements from the wakif at the time of the waqf pledge and the existence of emergency conditions or considerations of benefit.<sup>11</sup> Meanwhile, the Malikiyah school of thought tends to prohibit exchanging Waqf in two cases, namely, the waqf goods being exchanged in the form of mosques and in the form of land which has many uses, unless it is due to an emergency and based on public benefit (*al-Masalih al-'Ammah*).<sup>12</sup> The Syafi'iyyah school of thought has a view that narrows or makes it challenging to exchange Waqf to preserve the waqf goods and their use.<sup>13</sup> However, some opinions of Shafi'iyyah scholars state that it is permissible to exchange Waqf, and other views still prohibit it when the land or land that was donated no longer has and provides benefits.<sup>14</sup> Then, the Hanbali school of thought tends to allow the exchange of Waqf, with the caveat that the waqf items must remain as the original purpose of the Waqf.<sup>15</sup>

The difference in views of the Islamic school of thought scholars lies in changes in the condition of waqf goods. The existence of benefit considerations is still the leading indicator for ulama in deciding the law of waqf exchange. As is the rule of *al-ijtihadu la yunqadu bi al-ijtihadi*, each opinion of the ulama considers the needs and demands of the times. This is because the ijihad of one ulama is

<sup>9</sup> Atep Waluya, "Istibdal Wakaf Dalam Pandangan Fukaha Klasik Dan Kontemporer," *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 1, no. 2 (2018): 58–75.

<sup>10</sup> Ali Salama Mahasna dan Nani Almuin, "Analisis Hukum Tukar Guling Tanah Wakaf," *Al-Awqaf. Jurnal Wakaf Dan Ekonomi Islam* 12, no. 1 (2019): 86–104.

<sup>11</sup> Matlaul Irfan, "Pandangan Empat Mazhab Terhadap Keputusan Untuk Menjual Dan Tukar Guling Harta Wakaf," *Al-Rasyad* 2, No. 01 (2023): 61–71.

<sup>12</sup> M. Syukron, "Istibdal Wakaf Dalam Perspektif Fuqaha Dan Relevansinya Terhadap Undang-Undang Wakaf," *Sosio Akademika* 13, no. 1 (2023): 88–105.

<sup>13</sup> Teguh Baihaqi, "Pandangan Hukum Islam terhadap Tanah Wakaf yang Dialihfungsikan Menurut Ulama Madzhab dan Perundang-undangan Wakaf di Indonesia" (PhD Thesis, UIN Sultan Maulana Hasanuddin Banten, 2022), <http://repository.uinbanten.ac.id/9942/>.

<sup>14</sup> Luqman Hj Abdullah, "Istibdal Harta Wakaf Dari Perspektif Mazhab Syafi'e," *Jurnal Fiqh* 7 (2010): 71–82.

<sup>15</sup> Waluya, "Istibdal Wakaf Dalam Pandangan Fukaha Klasik Dan Kontemporer."

appropriate for its application in one place but may not be applicable in another. In Islam, these differences are necessary, but the most crucial point of emphasis is how waqt assets can continue to be helpful for the benefit of the people for the original purpose for which the assets were donated.

Based on the ideas above, this research focuses on the basic patterns of views of fiqh scholars regarding the waqt exchange policy in society. The case of toll road infrastructure as project policy, particularly the Pejagan - Pemalang toll road project and the Jenderal Besar Soedirman Airport project in Purbalingga., this research explores the concept of *maslahah* in detecting more muscular demands for greater priority. This research is based on the following two things. First, this research explores several opinions of Islamic jurisprudence scholars, which are then compared to provide answers to the problem of waqt swapping. Second, this research analyzes previous research on waqt exchange by comparing results in Tegal and Purbalingga to produce research integration. This research attempts to revive the role of Waqt in community life and clarify the position of Waqt in society. In addition, efforts are made to preserve the function of Waqt to remain functional. Third, it seeks to explain the legal construction of waqt exchange according to the jurisprudence perspective of four schools of thought and several statutory regulations. Fourth, explore several studies or research that have been carried out regarding the waqt swap case and its implementation.

## 2. Literature Review

This article raises the case of Waqt swapping implemented in the Central Java region, especially Tegal and Purbalingga. Looking at the theme of this research, previously, there have been those who have written about waqt swaps, such as Fathoni Muhtar.<sup>16</sup> He said that there are different views regarding the permissibility of exchanging waqt assets with others in the study of Islamic law. However, he noted permissibility is stated in Indonesian waqt laws and regulations. Furthermore, M. Syukron<sup>17</sup> emphasized that the differences in views among ulama regarding the exchange of waqt rolls are in the context of the benefits and benefits that result. If waqt assets cannot be used anymore because

<sup>16</sup> Fathoni Muhtar dan Fikro Shulkhu Aziz, "Istibdal Harta Benda Wakaf Perspektif Maslahah Mursalah," *Jurnal Pendidikan Tambusai* 6, no. 2 (2022): 16345–52.

<sup>17</sup> Syukron, "Istibdal Wakaf Dalam Perspektif Fuqaha Dan Relevansinya Terhadap Undang-Undang Wakaf."

they are damaged, or if they are maintained, they will cause danger. Then, the ulama says that exchanging them for other assets is permissible. Likewise, Matlaul Irfan<sup>18</sup> stated that if a waqf object loses its usefulness due to a specific condition or situation, and even if its existence is considered to cause danger in that place, the community can take the initiative to exchange waqf assets with others through procedures. Next, Ali Salama Mahasna<sup>19</sup> wrote regarding the analysis of waqf swaps. According to him, based on contemporary fatwas, exchanging waqf land objects because of necessity, exchanging waqf land for toll roads for reasons of widening the road or being evicted altogether, or so on so that these waqf land assets are replaced with land assets in other locations or even placed in the country. In the same vein, Atep Hendang Waluya<sup>20</sup> discussed that sometimes, in practice, waqf assets do not receive enough attention, so over time, their usefulness is lost; for the benefit of waqf assets, it was decided to have a waqf swap provision. From some of the literature above, this research tries to analyze differences of opinion between the four schools of thought by looking for common ground. Then it is drawn as an analysis of the practice of swapping that occurred in projects in Tegal and Purbalingga. Thus, several previous studies have not mentioned the focus of this research.

### 3. Method

This type of research is qualitative, where the results obtained emphasize meaning rather than generalization. Meanwhile, this research is categorized into library research, where the research process relies on library research. Meanwhile, the approach used is a comparative approach, referring to the comparative pattern of several opinions of religious sects regarding *istibdal al-waqf* while exploring the legal regulations in Indonesia. Then, a comparison is made between one opinion and another. This comparison was carried out based on the legal *istinbat* method of each school of thought's opinion.

Next, an analysis of the elements of similarity and differences of opinion was carried out using the *tarjih* method. The research data collection method emphasizes discussing the content of written or printed information from

<sup>18</sup> Matlaul Irfan, "Pandangan Empat Mazhab Terhadap Keputusan Untuk Menjual Dan Tukar Guling Harta Wakaf," *Al-Rasyad* 2, no. 01 (2023): 61–71.

<sup>19</sup> Mahasna dan Almuin, "Analisis Hukum Tukar Guling Tanah Wakaf."

<sup>20</sup> Waluya, "Istibdal Wakaf Dalam Pandangan Fukaha Klasik Dan Kontemporer."

several existing sources. Furthermore, two analytical methods are used in the analysis: first, normative-deductive; This method attempts to explain the basic principles of scholarly opinion in general originating from the jurisprudence of the four schools of thought. Second, empirical-inductive; This method is to examine the reality of problems that occur in society, as described in previous research results. The second method is also implemented according to waqf regulations in Indonesia.

#### 4. Result and Discussion

##### Waqf in the Islamic Scientific Treasures

Generally, Waqf is included in Islamic teachings, which include spiritual and material categories.<sup>21</sup> Waqf can realize prosperity and fulfill the needs of some of the affected communities. Waqf assets can be sought as long-term investment capital to realize benefits and benefits.<sup>22</sup> At a spiritual level, Waqf is classified as a charity that can draw closer to Allah through gratitude for the assets the wakif owns. Waqf can be implemented to change the usefulness of assets from consumer behavior into profitable investment capital.<sup>23</sup>

Based on the definition, etymologically, Waqf is expressed as *waqfu ash-syai'*, which means holding something.<sup>24</sup> Meanwhile, according to the term, the word waqf is defined as restraining the use and delivery of assets, which has implications for the use or use of the results for charitable purposes as long as the goods are still in existence.<sup>25</sup>

Based on this understanding, the emphasis of Waqf is in the following things. First, assets should be held so they are not used personally but for public

<sup>21</sup> Ridwan. "Wakaf Dan Pembangunan Ekonomi. Ziswaf: jurnal zakat dan wakaF," diakses 1 Januari 2024, <https://journal.iainkudus.ac.id/index.php/Ziswaf/article/view/3034>.

<sup>22</sup> Athifah Idnan Tsabitha Aidin, "Wakaf Dan Pembangunan Ekonomi," 2022, <https://osf.io/s56ne/> download.

<sup>23</sup> "Wakaf: Tinjauan Fiqh, Dasar Hukum, Dan Implementasinya Di Indonesia | Al-Kharaj : Jurnal Ekonomi, Keuangan & Bisnis Syariah," 22 April 2021, <https://journal.laaroiba.ac.id/index.php/alkharaj/article/view/307>.

<sup>24</sup> Abdurrohman Kasdi, "Fiqh Wakaf: Dari Wakaf Klasik Hingga Wakaf Produktif" (Idea Press, 2021), <http://repository.iainkudus.ac.id/10963/1/fiqih%20wakaf%20Dari%20Wakaf%20Klasik%20Hingga%20Wakaf%20Produktif%20Dr.%20H.%20Abdurrohman%20Kasdi%2C%20Lc.%2C%20M.Si..pdf>.

<sup>25</sup> Muhamad Nafik Hadi Ryandono dan Bashlul Hazami, "Peran Dan Implementasi Waqaf Dalam Peningkatan Kesejahteraan Masyarakat," *Inferensi: Jurnal Penelitian Sosial Keagamaan* 10, no. 1 (1 Juni 2016): 239–64, <https://doi.org/10.18326/infs13.v10i1.239-264>.

purposes. Second, waqf assets include fixed and immovable assets and movable assets. They are third, preserving assets and maintaining their integrity so that they can be used directly or the benefits and results can be taken on an ongoing basis. Fourth, Waqf covers all forms of goodness, such as religious, social, etc. Fifth, Waqf is implemented based on the wishes of the wakif. Sixth, Waqf can benefit directly from responsible management.

In the jurisprudence study, Waqf can be considered valid if it meets the following three conditions. First, the goods donated must be in the form of goods that can be utilized without losing the physical form of the goods. On the other hand, the usefulness of goods is intended for things that are permissible and have a specific purpose. In terms of the benefits of goods, there are no special conditions regarding the benefits that can be immediately felt. Still, the benefits that will come are also said to be valid. Second, Waqf must be given to the first and second recipients without interruption and will always exist. Third, Waqf is not implemented on something that is forbidden according to sharia'. This provides an understanding that, in general, Waqf is not required to show the worship's purpose clearly. The most important thing is that there are no elements of immortality. In addition, Waqf must not be limited by time and not tied to anything. Likewise, Waqf must be implemented following what the wakif requires for the waqf items.

In historical developments, the existence of Waqf was already underway during the time of the Prophet, with developments for society then.<sup>26</sup> Meanwhile, several of the Prophet's companions practiced waqf law for the benefit of the people, in addition to practicing Q.S. Ali Imran 92, which states that a person will get perfect goodness after he spends his wealth.<sup>27</sup> Likewise, in Indonesia, Waqf was implemented in the early days of the spread of Islam to support da'wah activities in the form of places of worship and other propagation facilities.<sup>28</sup> So, the existence of Waqf is essentially not only to address immediate needs but is expected to act as a sub-system of the Baitul Mal institution. If managed professionally, Waqf can become a potential source of national and state

<sup>26</sup> Choirun Nissa, "Sejarah, Dasar Hukum Dan Macam-Macam Wakaf," *Tazkiya* 18, no. 02 (2017): 205–19.

<sup>27</sup> Abdurrohman Kasdi, "Fiqih Wakaf: Dari Wakaf Klasik Hingga Wakaf Produktif" (Idea Press, 2021), <http://repository.iainkudus.ac.id/>

<sup>28</sup> Ahmad Faisal, "Perkembangan Wakaf Di Indonesia (Postivisasi Hukum Wakaf)," *EKSYA: Jurnal Ekonomi Syariah* 2, no. 1 (2021): 76–93.

development funds.<sup>29</sup> Waqf is believed to be an alternative that has the potential to bring prosperity to the people because the assets can be used for the public interest.<sup>30</sup> For this reason, this great potential must be supported by competent parties so that waqf assets do not collapse and do not function as they should.

## Swapping Waqf Rolls in Legislative Regulations in Indonesia

Several statutory regulations cover the implementation of Waqf in Indonesia. First, Government Regulation Number 28 of 1977. Second, the Compilation of Islamic Law (KHI). Third, Waqf Law Number 41 of 2004. Fourth, Indonesian Waqf Regulation Number 4 of 2010 concerning Guidelines for Management and Development of Waqf Assets. Some of these regulations are essentially a form of transformation of jurisprudence into public law to protect waqf assets that develop in society.

Law Number 41 of 2004 concerning Waqf opened a new paradigm for Waqf in Indonesia because Waqf is no longer solely a matter of worship but rather a religious institution that indicates the community's economic development. This law has regulations for the implementation and management of Waqf. This is the government's appreciation for Islamic philanthropy with the hope that waqf management can develop in line with the dynamics of societal change. Therefore, the government is trying to focus on structuring waqf administration, which provides legal certainty for waqifs, nazir, and *mauquf'alaik*, and encouraging the utilization of unproductive waqf assets to be efficient and successful.<sup>31</sup>

Article 22 of Law Number 41 of 2004 concerning Waqf states that waqf assets can be used for the following things. First, waqf assets are used as a means and activity of worship. Second, waqf assets are used as educational and health facilities and activities. Third, waqf assets include assistance to people experiencing poverty, abandoned children, orphans, and scholarships—fourth, progress and improvement of the people's economy. Fifth, waqf assets are used

<sup>29</sup> Rahmat Dahlan, "Analisis Kelembagaan Badan Wakaf Indonesia," *ESENSI: Jurnal Bisnis dan Manajemen* 6, no. 1 (2016): 113–24.

<sup>30</sup> Tina Arfah, "The Role Of Wakaf In Realizing People's Welfare," *AL-ITTIFAQ: Jurnal Ekonomi Syariah* 3, no. 1 (2023): 14–26.

<sup>31</sup> Nurhidayani, Muaidy Yasin, Dan Busaini Busaini, "Pengelolaan Dan Pemanfaatan Wakaf Tanah Dan Bangunan," *Maqdis: Jurnal Kajian Ekonomi Islam* 2, no. 2 (23 November 2017): 163–75, <https://doi.org/10.15548/maqdis.v2i2.126>.

to advance other general welfare in line with sharia principles and statutory regulations.<sup>32</sup>

Furthermore, apart from the above considerations, permission to exchange waqf assets can only be granted if the following things are met. Firstly, the exchange property has a valid certificate or proof of ownership following the Laws and Regulations. Second, the value and benefits of the exchange assets are at least the same as the original waqf assets. Third, the value and benefits of exchange assets are determined by the regent/mayor based on the recommendation of an assessment team whose members consist of the district/city regional government, Regency/city land office, district/city Indonesian Ulema Council (MUI); Regency/city Religious Affairs Department Office; Nadzir of the waqf land concerned.

Meanwhile, Article 50 states that the value and benefits of exchange assets are calculated as follows. First, the exchange property has a Tax Object Sales Value (NJOP) equal to the NJOP of the waqf property. Second, the exchange property is located strategically and is easy to develop. If it is required that the transfer of waqf land be used for public purposes following the general spatial planning plan (RUTR) as a legal basis for the government, regional government, and community in spatial planning. This is intended to create a national regional space that is safe, comfortable, productive, and sustainable based on the insight of the Archipelago and National Resilience with the following objectives.<sup>33</sup> First is the realization of harmony between natural and artificial environments. Second, integration in the use of natural resources and artificial resources can be realized by paying attention to human resources. Third, the realization of protecting the function of space and preventing negative impacts on the environment due to the use of space.

<sup>32</sup> H. Nur Khoirin dan Rosman Pangestu, "Rekayasa Hukum Dalam Penggantian Obyek Wakaf (Studi Kasus Tukar Guling Tanah Wakaf Untuk Proyek Jalan Tol Semarang-Demak)," diakses 2 Januari 2024, <https://eprints.walisongo.ac.id/id/eprint/19626/>.

<sup>33</sup> Mushaddad Hasbullah, Sofia Hayati Yusoff, dan Mohamad Zaharuddin Zakaria, "Istibdal harta wakaf: kajian ringkas terhadap peranan dalam mengembangkan produk wakaf," *Journal of Fatwa Management and Research*, 2019, <https://oarep.usim.edu.my/jspui/handle/123456789/4544>.

## Replacement of Waqf assets from the perspective of 4 Schools of Jurisprudence

The basic rule of Waqf is that when a waqf object has been handed over to the nazir, then the waqf object has transferred into the people's property so that the people have the absolute right to obtain benefits from the donated object. However, when waqf objects lost the benefits of the original intention when they were first donated due to certain situations or conditions, the community can take the initiative through official agencies to sell or exchange them for other benefits, such as those at the time of the initial waqf agreement. This is a new legal phenomenon because buying and selling waqf objects or exchanging them has no textual reference in the Al-Qur'an and Hadith.<sup>34</sup>

Hanafiyah scholars explain that replacement/exchange (ruislag) is permitted. This policy focuses more on the benefits that accompany this practice. This permission departs from the attitude of tolerance and freedom highly respected by adherents of the Hanafiyah madhhab. According to them, the exchange can be done by anyone, whether the wakif himself, another person or a judge, without looking at the type of property donated, whether it is land that is inhabited (managed), unoccupied (not managed), movable or does not move. The Hanafi school of thought believes that *istibdal* (exchange) of waqf assets, except mosques, is permitted as long as it brings benefits.<sup>35</sup> The implementation may be carried out by the wakif or nazir or judge, both for waqf assets that are still useful or no longer useful, movable waqf assets, or immovable assets.<sup>36</sup> Then, according to Hanafiyah scholars, *istibdal* of waqf assets other than mosques, as explained above, is divided into three categories: First, *Istibdal* of waqf assets is required by the wakif. Second, *istibdal* of waqf assets is not required by the wakif while the condition of waqf assets cannot be used anymore. Third, *istibdal* of waqf assets is not required by the wakif. While the condition of waqf assets can still be utilized and produce results, replacement assets are in better condition.<sup>37</sup>

<sup>34</sup> Matlaul Irfan, "Pandangan Empat Mazhab Terhadap Keputusan Untuk Menjual Dan Tukar Guling Harta Wakaf," *Al-Rasyad* 2, no. 01 (2023): 61–71.

<sup>35</sup> Fahrurroji Fahrurroji, "ISTIBDAL WAKAF: Ketentuan Hukum dan Modelnya," *MISYKAT: Jurnal Ilmu-ilmu Al-Quran, Hadist, Syari'ah dan Tarbiyah* 2, no. 1 (2018): 111.

<sup>36</sup> Ali Mutakin, "Fatwa Inovasi dan Tukar Guling Wakaf: Studi Komparatif Metode Ijtihad Ulama Indonesia dan Mesir," diakses 3 Januari 2024, <https://repository.uinjkt.ac.id/dspace/handle/123456789/57757>.

<sup>37</sup> Aisyah Yasmin Che Mohd Amin dan Mohd Zamro Muda, "Konsep Istibdal Harta Wakaf menurut Perspektif Islam," *BITARA International Journal of Civilizational Studies and Human Sciences* (e-ISSN: 2600-9080) 2, no. 3 (2019): 22–33.

Meanwhile, in general, the Hanbali school of thought believes that it is permissible to change the status of waqf land by selling it, changing its form or nature, moving it to another place, or exchanging it for other objects. They believe that the original law is that selling waqf property is haram, but it is not prohibited to sell it in an emergency to maintain the aims of the Waqf. Suppose there is an *Istibdal* of waqf property due to an emergency. In that case, the money from the sale of the waqf property may be used to purchase any property that provides proceeds for *Mauquf 'alaiah* even though the property is not the same type as the waqf property.<sup>38</sup> According to them, this is permissible because the most important thing is that the results are extensive, not the similarities in the type of replacement property with the waqf property. However, the proceeds must still be used for the benefit for which the first waqf assets were donated.

Meanwhile, the Syafiiyah Ulama is stringent in maintaining waqf assets. Objects belonging to Waqf, primarily related to mosque waqf objects, are firmly maintained even though they are physically no longer helpful. However, some scholars from this school of thought, namely Imam Al-Baghawy, Imam Al-Jurjanie and Imam Al-Rauyanie allow selling these items and buying similar items so they do not go to waste. They believe that *istibdal* (replacement) should be allowed in this case.<sup>39</sup>

Meanwhile, Malikiyah Ulama determines the following three conditions in terms of *istibdal* of waqf objects. First, when pledging his Waqf, the wakif includes the ability to exchange or sell it. Second, waqf objects are movable objects or their condition is no longer following the purpose of the Waqf. Third, waqf objects are needed for public purposes, such as building mosques, roads, etc. On the other hand, in this *Istibdal* issue, Malikiyyah scholars distinguish between the laws of *Istibdal* for movable waqf property, *Istibdal* for immovable waqf property, and *Istibdal* for waqf property in the form of mosques. Specifically, for waqf property in the form of mosques, they agreed that mosque *Istibdal* is prohibited. Meanwhile, most Malikiyyah ulama allow *Istibdal* to be carried out for movable waqf assets with benefit considerations. *Istibdal* of movable waqf assets may be carried out if damaged or not functioning correctly.

<sup>38</sup> Siti Fatimah Azzahro, "Istibdal Waqf: Sentiment Analysis," *The Economic Review of Pesantren* 1, no. 1 (2022), <https://www.journals.smartsight.id/index.php/ERP/article/view/199>.

<sup>39</sup> Fahrurroji, *Tukar Guling Tanah Wakaf: Menurut Fikih dan Peraturan Perundang-undangan* (Pustaka Mandiri, 2016).

Then, the Istibdal of Waqf property does not move other than to the mosque. If the waqf property is still helpful or productive, most Malikiyah scholars prohibit Istibdal. However, there are exceptions, namely emergency conditions in the public interest. In such situations, Istibdal is permitted because if forbidden, it will cause significant problems for the general public. Meanwhile, some Malikiyah scholars also allow Istibdal of immovable waqf assets that are no longer useful or no longer produce a return.

From this, it can be concluded that the opinions of the Imams of the School regarding the exchange of waqf land differ. This is indeed a certainty because the Sharia arguments are not *qath'i*.<sup>40</sup> However, in the end, it is permissible to exchange waqf land, although various requirements vary from each school of thought. These requirements and differences are due to considering many things, all of which will lead to *maslahah*. Henceforth, at least an understanding can be taken that swapping over waqf land cannot be carried out haphazardly.<sup>41</sup> In this case, you must consider the exchange's terms, conditions and feasibility test. From the explanation above, the author also concludes that differences exist in the issue of exchanging things from the *Mauquf* (property) side where differences occur between school imams if the *mauquf* is a mosque.

### Implementation of Waqf Swapping in Tegal and Purbalingga Regions

This research takes the case of implementing waqf swaps in Tegal and Purbalingga. More specifically, the exchange of land (*ruislag*) for waqf land on the Pejagan-Pemalang Toll Road project in Tegal Regency was due to the General Spatial Planning (RUTR) for the Central Java Province for 2009-2029, which is contained in article 20 paragraph 6-point d, namely the development plan toll road along the West Java-Pejagan-Pemalang-Batang-Semarang border. In its implementation, in the Tegal Regency area, 9 (nine) parcels of waqf land were affected by the exchange process (*ruislag*).

Of the nine plots of waqf land affected by the exchange process (*ruislag*), there are two places of worship, two places of education, and 5 five places for other social welfare. In the development of the waqf land exchange (*ruislag*)

<sup>40</sup> Ariyadi Ariyadi, "Metodologi Istinbath Hukum Prof. Dr. Wahbah az Zuhaili: Methodology of the Istinbath of Law Prof. Dr. Wahbah az Zuhaili," *Jurnal Hadratul Madaniyah* 4, no. 1 (2017): 32-39.

<sup>41</sup> Syamsurizal Abas, "Tukar Guling Tanah Wakaf dan Penarikan Kembali Harta Benda Wakaf," *Al-Mizan (e-Journal)* 17, no. 2 (2021): 255-66.

process, there were obstacles in finding replacement land for the waqf land. For this reason, the Directorate General of Highways agreed with Nadzir. Based on the assessment team's recommendation, given these conditions, they decided to move the waqf land to the toll road area purchased by the developer (which had been released), which was not used as a toll road because of its size. There is still some leftover, so it can still be used as replacement land for waqf land. Indirectly, this means that replacement land belongs to residents and has been acquired by the developer.

The strategic location of the replacement land, land area, and market price are considerations when determining the replacement land for the waqf land. Everything attached to the waqf land affected by the exchange process (ruislag) will receive a replacement fee. We can see this from the compensation value proposed and agreed upon by the developer and Nadzir.<sup>42</sup> It is also necessary to discuss the agreement between the developer and Nadzir based on the considerations and recommendations of the Assessment Team from the Regional Government of Tegal Regency to place the location of the replacement land in an unused toll road area. After obtaining written permission from the Minister of Religion, the exchange can be carried out, and the results reported by Nadzir to the Tegal Regency National Land Agency (BPN) Office for further registration through the land registration process for transfer of rights.

The allocation of waqf land in exchange must be adjusted to the allocation of the waqf land being exchanged.<sup>43</sup> The determination of the location of the exchange land has also been considered by the Regional Government Balance Assessment Team of Tegal Regency, which consists of elements from the Ministry of Religion, Regional Government, National Land Agency (BPN), Indonesian Ulema Council (MUI) and Nadzir of waqf land through consideration of land and building prices in the NJOP by comparing the original waqf land with the exchange land, the market price.

Meanwhile, the land acquisition for the Jendral Soedirman Airport project in Purbalingga resulted in the Ikhya Ulumuddin Mushala being affected and requiring it to be replaced. Compensation and exchange for waqf land is one

<sup>42</sup> Tiswarni, "Istibdal Wakaf Sebagai Solusi Pendayagunaan Benda Wakaf Masa Post Covid-19."

<sup>43</sup> Bambang Hardiyanto, "Kajian Yuridis Pelaksanaan Tukar Guling Tanah Wakaf Akibat Pengadaan Tanah Untuk Pembangunan Jalan Tol Solo-Semarang (Studi Di Kabupaten Boyolali)," *Dinamika Hukum* 9, no. 3 (2018), [https://ejurnal.unisri.ac.id/index.php/Dinamika\\_Hukum/article/view/4299](https://ejurnal.unisri.ac.id/index.php/Dinamika_Hukum/article/view/4299).

solution so that people receive compensation commensurate with the land they own. Then the Naz}ir Organizations, the Indonesian Ulema Council (MUI) Purbalingga Regency, the Indonesian Waqf Board (BWI) Purbalingga Regency, the National Land Agency (BPN) decided from the results of joint deliberations and assessments to rebuild the Ikhya Ulumuddin Prayer Room in Penican Village, Kemangkon District, Regency Purbalingga. The waqf land is measured and assessed by an assessment team (Indonesian Waqf Board, Indonesian Ulema Council, Naz}ir, Purbalingga Regency National Land Agency, Purbalingga Regency Government). Next, deliberations are held with the relevant parties to formulate a replacement location. Of course, the results of the deliberations and assessments will be made into an official report as one of the requirements for submission to the Ministry of Religion later.

Thus, exchanging Waqf in Tegal Regency and Purbalingga Regency has been considered appropriate in various aspects. First, in terms of administration, it has followed the flow regulated by statutory regulations. Second, based on the benefit level, it has fulfilled the benefit, which has even reached the stage of dharuriyah maslahah because if there is no exchange, it could result in harm due to the toll road project. Third, the various views of the madhhab imams are followed, and the principle of the Waqf remains as valuable as the initial contract.

## 5. Conclusion

The waqf exchange process resulting from the Pejagan-Pemalang Toll Road Project in Tegal Regency falls into the category of situations where the wakif did not declare the right to sell or exchange waqf assets in the previous Waqf sighat and also did not give that right to another person or entity. However, later it turned out that the benefits or proceeds from the Waqf could no longer be taken due to the project. The solution to the problem in this situation is the ability to exchange or sell when conditions are very urgent. After all, prioritizing benefits is better than maintaining sustainable principles.

Likewise, the exchange process that took place in Purbalingga went through existing procedures, both following existing regulations and through deliberations. All of this was done to achieve mutual benefit both for the developer of the Jendral Besar Soedirman Airport project and Naz}ir Organization. So that the waqf land can later be used properly and more productively.

Meanwhile, the legal status of waqf exchange from the perspective of 4 schools of Islamic jurisprudence is detailed as follows. Hanafiyah scholars emphasize that exchanging Waqf is permitted. This policy focuses more on the benefits that accompany this practice. This permission departs from the attitude of tolerance and freedom highly respected by adherents of the Hanafiyah madhhab. Malikiyah scholars, in terms of istibdal (replacement) of waqf objects, determine the following three conditions. 1) When the wakif pledges his Waqf, he includes the ability to exchange or sell it. 2) the waqf object is a movable object, or its condition is no longer following the purpose of the Waqf. 3) waqf objects are needed for public purposes. The Syafi'i school of thought has a firm stance compared to other schools of thought, giving the impression that they prohibit the istibdal of waqf property. This is done to protect the preservation of waqf assets or prevent misuse in its implementation. However, as a Syafiyyah, it is permissible to exchange waqf land because the replacement waqf land produces more beneficial results than before. Hanbali madhhab scholars believe it is acceptable to change the status of waqf land by selling it, changing its form or nature, moving it to another place, or exchanging it for another object.

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