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ISTIBDAL WAQF ACCORDING TO IMAM IBN TAYMIYYAH AND IMAM AN- NAWAWI: A DEBATE ON THE SUBSTITUTION OF WAQF PROPERTY

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Abstract This article aims to explore the differences of opinion between Imam Ibn Taimiyah and Imam an-Nawawi on the legal status of waqf istibdal practice. The research method used is qualitative research with a tarjih analysis approach, which describes how the legal status of istibdal waqf by comparing two scholarly opinions, namely Imam Ibn Taimiyah and Imam an-Nawawi, then choosing which opinion is the strongest. The data sources used are secondary data sources, namely Kitab Majmu' Fatawa by Imam Ibn Taimiyah and Kitab Raudhatul Thalibin by Imam an-Nawawi, as well as books and articles based on OJS (Open Journal System). Data processing techniques are carried out by processing library materials (library research). Techniques in analyzing data analyzed by exploratory descriptive analysis using reduction, display, and verification techniques. The results of this study found that: first, Imam Ibn Taimiyah allowed the practice of istibal waqf by using the Hadith from 'Aisha ra, Hadith from Umar bin Khattab ra, Hadith from Abu Daud and atsar from the practice of waqf Ali bin Abi Talib to Hassan and Hussein, while Imam an-Nawawi prohibited the practice by using the Hadith from Ibn Umar. Secondly, the difference of opinion between the two Imams is rooted in differences in evidence and methods of istinbath. Ibn Taymiyyah based his view on maslahah or general benefit. Meanwhile, an-Nawawi uses the sad al-dzari'ah method, which aims to prevent potential losses or deviations from the original purpose of waqf. Third, after researchers analyzed both opinions and their arguments and methods, the opinion that is stronger and more relevant to be applied in society is the opinion of Imam Ibn Taimiyah.

Keywords: *Imam Ibn Taimiyah, Imam an-Nawawi, Istibdal Wakaf*

INTRODUCTION

Amid rapid modernization and improvement of public facilities, the practice of waqf istibdal-the process of replacing, transferring, or selling waqf assets-is now common in our society (Paiz 2008). Unfortunately, not all istibdal actions are

carried out with care and consideration of the ethics and sharia rules that should be upheld. As a result, we are beginning to see cases where mosques that were once endowed as centres of worship are moved from their original locations and even demolished

without notice or permission from the original waqif (Suhendra and Hadi 2016). In some cases, mosques or waqf wells that were originally functioning well are altered for aesthetic reasons or the development of new facilities without any emergency requiring it. If these actions are left unchecked, the waqf trust, which should be the eternal wealth of the ummah, is in danger of losing its historical and spiritual value (Asni, Mahamud, and Sulong 2020).

The differing views among scholars on the ruling of *istibdal* further complicate the situation. Imam Ibn Taimiyah, for example, allows for *istibdal* if there is a greater *maslahah* for the people. For him, if a waqf asset can no longer provide optimal benefits to the community, then the act of *istibdal* is allowed to ensure that the asset still has maximum benefits. In Ibn Taimiyah's view, the main purpose of waqf is the wider benefit, even if it means changing the shape or location of the waqf object so that it can be more beneficial to the community. However, unlike Ibn Taimiyah, Imam an-Nawawi of the Shafi'i school of thought has a much more restrictive view. Imam an-Nawawi strictly forbids the act of *istibdal*, including in situations where waqf assets are replaced with goods of the same or similar value. According to him, the purpose of waqf is to maintain the authenticity and continuity of the waqf object as mandated by the waqif unless the object is destroyed or can no longer function properly. For Imam an-Nawawi, preserving the authenticity of waqf assets is a form of respect for the waqif's intention and that will not be contested.

This difference indicates a major dilemma in modern waqf management (Hariyanto and Zaki 2019). On the one hand, there is a need for flexibility in the face of the times so that waqf assets can provide relevant benefits to the people today. On the other hand, there is a concern that unrestricted *istibdal* measures could erode the waqf object's spiritual value, authenticity, and identity. The big question that every waqf administrator must answer is how we balance flexibility and adherence to the mandate (Hasbullah, Yusoff, and Zakaria 2019). Suppose the practice of *istibdal* is carried out without clear guidelines and limitations. In that case, it is feared that waqf assets will be

distorted and lose their distinctive character as 'perpetual assets' that are mandated for the benefit of the people (Ilyas 2016).

Therefore, understanding the sharia principles underlying *istibdal* is very important. Through this research, it is hoped that a middle ground can be found between the two scholars' views so that *istibdal* can be implemented wisely and does not deviate from the main purpose of waqf. In this way, waqf assets can continue to function optimally according to the needs of modern society, without losing their essence as eternal assets that are preserved in value, authenticity, and purpose for future generations.

The discussion of *istibdal* waqf is a polemic that until now scholars and scholars have colored the object of this study, several dimensions have been discussed such as; First, the concept and understanding of the community;; (Hariyanto and Zaki 2019), (Bahari and Aziz 2019), (Azzahro 2022), (Ilyas 2016), (Abdullah 2010) Second, the rules and regulations of waqf *istibdal*; (Rohman et al. 2020), (Hisham, Jasiran, and Jusoff 2013), (Pertwi, Ryandono, and Rofiah 2019). Third, practice and case studies; (Mohsin and Razak 2019), (Mohamad, Yusoff, and Nordin 2021), (Afifudin Mohammed Noor, Ismail, and Bakar 2021), (Ismail et al. 2023), (Afiffudin Mohammed Noor, Ismail, and Bakar 2017), (Ramadhan 2017). This research complements the dimensions of several previous studies, namely understanding the concept of *istibdal* waqf, only what is novelty in this research is comparing two scholarly opinions, namely Imam Ibn Taimiyah and Imam an-Nawawi about the legal status of *istibdal* waqf.

This study aims to clarify the legal status of the act of *istibdal* waqf by exploring the arguments and legal *istinbath* methods used by Imam Ibn Taimiyah and Imam an-Nawawi. Then analyze which opinion is the strongest and easily accepted by the community.

METHODS

The research method used is qualitative research with a *tarjih* analysis approach, which describes how the legal status of *istibdal* waqf by comparing two

scholarly opinions, namely Imam Ibn Taimiyah and Imam an-Nawawi, then choosing which opinion is the strongest. The data sources used are secondary data sources, namely Kitab Majmu' Fatawa by Imam Ibn Taimiyah and Kitab Raudhatul Thalibin by Imam an-Nawawi, as well as books and articles based on OJS (Open Journal System). Data processing techniques are carried out by processing library materials (library research). Techniques in analyzing data analyzed by exploratory descriptive analysis using reduction, display, and verification techniques..

DISCUSSION

Opinions of Imam Ibn Taymiyyah and Imam an-Nawawi on the Legal Status of Waqf Istibdal

In the opinion of Imam Ibn Taymiyyah, istibdal waqf, which is replacing the object of waqf by selling it and then replacing it with something more beneficial to the people, is permissible under certain conditions. Ibn Taymiyyah emphasizes that this permissibility is not due to a compelling emergency (dharury), but rather because of the greater maslahah or benefit that can result from the replacement. The main principle is that if a change or replacement of the waqf object can bring more significant benefits to society, then this is considered by the main purpose of waqf, which is to provide sustainable benefits to the people. Imam Ibn Taymiyyah explains his opinion in Majmu' Fatawa (Taimiyah 1982):

لا ضرورة إلى بيع الوقف، وإنما يباع للمصلحة الرَّاجحة و
لحجة الموقوف عليهم إلى كمال المنفعة، لا لضرورة تبيح
المحظورات، فإنه يجوز بيعه لكامل المنفعة وإن لم يكونوا
مضطرين ولو كان بيعه لا يجوز لأنه حرام، لم يجوز بيعه
لضرورة ولا غيرها.

Translation:

There is no emergency in the case of selling waqf but rather it is a strong maslahah for the needs of the waqf towards a more perfect benefit. Thus, it is not a matter of emergency that permits the forbidden. Indeed, for the sake of the perfection of the benefits of the waqf asset, selling it is permissible even if it is not necessary. If selling waqf property is prohibited because it is forbidden, it is still not

permissible to sell it in an emergency or under any circumstance

In the context of waqf management, a situation where the waqf object is considered less than optimal or no longer relevant to the needs of society often raises challenges. To answer this challenge, some contemporary scholars and thinkers argue that selling or replacing the waqf object with something more suitable can be considered sharia compliant. This approach is based on the principle that waqf aims to benefit the people, so maintaining the relevance and usefulness of waqf becomes a top priority.

Replacing a waqf object through sale or conversion to a new, more functional asset is permissible on the condition that the move is based on urgent needs or considerations of greater benefit. For example, suppose the waqf object in the form of land or building no longer supports the community's needs, for example, due to its less strategic location or inadequate facilities. In that case, selling and replacing it with other more useful assets can be done. In this case, the main objective of waqf, which is to provide long-term benefits to the community, remains the main basis for every decision.

This approach allows waqf to remain relevant in changing social and economic dynamics. By paying attention to the evolving needs of society, waqf managers can ensure that waqf assets continue to make an optimal contribution to the welfare of the people. Ibrahim (2018: 290) emphasizes that the replacement of waqf objects must be done sincerely to achieve greater benefits so that the essence of waqf as a sustainable social instrument is maintained.

This approach also demonstrates the flexibility of Islamic sharia, which always considers humanitarian aspects and practical needs without neglecting the main principles governing waqf. Thus, policies such as istibdal become an important tool to maintain the relevance and sustainability of waqf as one of the main pillars of the Islamic economic system.

Imam an-Nawawi, a great scholar of the Shafi'i school of thought, believes that the practice of istibdal - replacing or changing the form of waqf assets - is not allowed in Islam. He explains this in his book, Raudhatul Thalibin, where he strongly rejects any form

of substitution, whether replacing waqf assets with identical goods or other goods of equal value. According to an-Nawawi, this action contradicts the purpose and spirit of the waqf concept itself, which is to maintain the trust of the waqf giver for the purpose determined from the beginning. Imam an-Nawawi explains in his book *Raudhatul Thalibin* (An-Nawawi 1992):

ذهب الشافعية و مذهب المالكية في منع الإستبدال ولو خرب الموقوف، غير أنهم أجازوا نقل الأنقاض و المخلفات المستهلكة، التي انعدمت قيمتها ينقلها إلى و قفيه أخرى مشابهة لها، فقالوا: البئر الموقوفة إذا خربت يصرف نقضها إلى بئر أخرى أو حوض لا إلى مسجد يزاعي غرض الواقف ما أمكن

Translation:

The Mazhab al-Shafi'iyah and Maalikiyyah prohibit *istبدال* even if the property is fixed, other than that they say it must be exchangeable if the property is damaged or the place collapses when it is no longer used. So, they argued: an existing well, if it is demolished, should be replaced by another well, or a pond, not a mosque, in order to preserve the purpose of a waqf of fixed property.

According to Imam an-Nawawi, waqf has unique characteristics as a form of giving that prioritizes the permanent continuation of benefits. Therefore, he argues that waqf assets must remain in their original state and form to maintain the essence and trust inherent in waqf. This means that any form of replacement, alteration, or sale of waqf assets is considered contrary to the basic principle of waqf, which is to maintain the sustainable benefits in accordance with the waqif's original intention.

In an-Nawawi's view, maintaining the integrity of waqf assets is not only a matter of preserving the physical assets, but also ensuring that the noble purpose of the waqif—that is, providing long-term benefits to the community—can continue to be carried out without being distorted. When waqf assets are altered, for example by selling them or replacing them with other assets, he believes that it has the potential to eliminate the value of sustainability and disrupt the essence of the waqf concept itself. In an-Nawawi's perspective, Waqf is more than just an ordinary gift; it is a form of benefit assignment that must be preserved in its

original form as part of the mandate carried out by the waqf manager.

Furthermore, an-Nawawi emphasized that changing waqf assets means violating the trust the waqif has pledged. This trust is sacred and must not be violated, as it is the core of the concept of waqf in Islam. In this context, he was concerned that the permissibility of changing or selling waqf assets could open up opportunities for misuse or actions not by the original purpose of waqf. Therefore, maintaining the integrity of the waqf asset becomes an absolute necessity to ensure that the benefits of waqf continue without interruption or deviation.

Thus, an-Nawawi's opinion is rooted in the principle of prudence in managing waqf, focusing on maintaining the waqif's trust and original intention. This view reflects a commitment to protecting the sustainability of the social benefits of waqf as a form of worship that has a major impact on the ummah.

By maintaining the original form of waqf, an-Nawawi wanted to ensure that waqf truly becomes a sustainable charity, not just a temporary gift, but a long-term trust whose benefits continue to last for the people or community that receives it. This view, for an-Nawawi, not only preserves the physical form of waqf assets, but also maintains the integrity of the purpose and blessings intended by the waqif, so that the trust is maintained within the limits justified by sharia.

Causes of Dissent

1. *Istidlal*

Some of the arguments used by Imam Ibn Taymiyyah include:

a. Hadis of Aisyah ra

حَدَّثَنَا بَيَانُ بْنُ عَمْرٍو: حَدَّثَنَا يَزِيدُ: حَدَّثَنَا جَرِيرٌ بْنُ حَازِمٍ: حَدَّثَنَا يَزِيدُ بْنُ رُوْمَانَ، عَنْ عُرْوَةَ، عَنْ عَائِشَةَ رَضِيَ اللهُ عَنْهَا: أَنَّ النَّبِيَّ ﷺ قَالَ لَهَا: (يَا عَائِشَةُ، لَوْ لَا أَنَّ قَوْمَكَ حَدِيثٌ عَهْدٍ بِجَاهِلِيَّةٍ، لَأَمَرْتُ بِالنَّبِيِّتِ فَهَيْمٍ، فَأَدَخَلْتُ فِيهِ مَا أُخْرِجَ مِنْهُ، وَالزَّقْنَةُ بِالْأَرْضِ، وَجَعَلْتُ لَهُ بَابَيْنِ: بَابًا شَرَفِيًّا وَبَابًا عَرَبِيًّا، فَبَلَّغْتُ بِهِ أَسَاسَ إِبْرَاهِيمَ). فَذَلِكَ الَّذِي حَمَلَ ابْنُ الزُّبَيْرِ رَضِيَ اللهُ عَنْهُمَا عَلَى هَدْمِهِ

Translation:

Bayan bin 'Amr narrated to us: Yazid narrated to us: Jarir bin Hazim narrated to us: Yazid bin Ruman narrated to us from 'Urwah, from 'Aishah (may Allah be pleased with

her): The Prophet (peace and blessings of Allaah be upon him) said to her: "O 'Ā'ishah, if your people were not near the time of ignorance, I would have ordered the Ka'bah to be demolished. Then I would put in whatever was taken out of the Ka'bah, make it level with the ground, and make two doors for it: the east and west. So that with that I have restored it on the foundation of Prophet Abraham." This is what prompted Ibnuz Zubayr (may Allah be pleased with him) to dismantle it

The Hadith narrating the Prophet Muhammad's desire to remodel the Kaaba back to its original form as built by Prophet Ibrahim (peace be upon him) has a deep relevance to the concept of waqf istibdal, which is the practice of replacing or exchanging waqf assets with other assets that are considered more beneficial or more in line with the purpose of waqf. In the hadith, although the Prophet Muhammad did not make any changes due to the social conditions of the Quraish people who had just left the period of ignorance, his intention contained some important principles related to the waqf istibdal (Taimiyah 1982).

Pertama, niat Nabi untuk mengembalikan Ka'bah ke bentuk aslinya menggambarkan upaya untuk mempertahankan tujuan awal dan fungsi pokok dari suatu objek wakaf. Seperti halnya Ka'bah yang awalnya dibangun oleh Nabi Ibrahim dengan bentuk tertentu, prinsip ini menekankan bahwa perubahan pada wakaf harus sejalan dengan tujuan awal dari wakif (pemberi wakaf) agar tetap sesuai dengan niat mereka dalam beramal.

Kedua, niat Nabi Muhammad untuk menambah pintu pada Ka'bah mencerminkan prinsip optimalisasi manfaat wakaf, yakni mengupayakan agar lebih banyak orang bisa mengakses dan memanfaatkan fasilitas wakaf tersebut. Dalam konteks istibdal wakaf, ini mengajarkan bahwa penukaran atau penggantian wakaf sebaiknya dilakukan jika memang dapat memperluas kemanfaatannya bagi masyarakat.

First, the Prophet's intention to restore the Kaaba to its original form illustrates the effort to maintain a waqf object's original purpose and primary function. Just as

Prophet Ibrahim originally built the Kaaba in a particular form, this principle emphasizes that changes to a waqf should align with the waqf's original purpose (waqf donor) to remain true to their intentions in giving.

Secondly, Prophet Muhammad's intention to add doors to the Kaaba reflects the principle of optimizing the benefits of waqf, i.e. seeking to enable more people to access and utilize the waqf facilities. In the context of waqf istibdal, this teaches that the exchange or replacement of waqf should be done if it can expand its benefits for the community.

Thirdly, the Prophet's wisdom in considering the social impact and stability of the Quraish society teaches that the alteration or replacement of waqf should be done with due regard to social conditions and the public good. This underscores the importance of caution in deciding on the istibdal of waqf so as not to cause unrest or instability in the community served by the waqf.

b. Hadis of Ibn Umar

حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ قَالَ حَدَّثَنَا يَعْقُوبُ بْنُ إِبرَاهِيمَ بْنِ سَعْدٍ قَالَ حَدَّثَنِي أَبِي عَنْ صَالِحِ بْنِ كَيْسَانَ قَالَ حَدَّثَنَا نَافِعٌ أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ أَخْبَرَهُ أَنَّ الْمَسْجِدَ كَانَ عَلَى عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَبْنِيًّا بِاللِّينِ وَسَقْفُهُ الْجَرِيدُ وَعُمْدُهُ خَشَبُ النَّخْلِ فَلَمْ يَزِدْ فِيهِ أَبُو بَكْرٍ شَيْئًا وَزَادَ فِيهِ عُمَرُ وَبِنَاءَهُ عَلَى بُنْيَانِهِ فِي عَهْدِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِاللِّينِ وَالْجَرِيدِ وَأَعَادَ عُمَرُ خَشَبًا ثُمَّ غَيَّرَهُ عُثْمَانُ فَرَادَ فِيهِ زِيَادَةً كَثِيرَةً وَبَنَى جِدَارَهُ بِالْحِجَارَةِ الْمَنْفُوشَةِ وَالْقَصَّةِ وَجَعَلَ عُمَرُ مِنْ حِجَارَةِ مَنْفُوشَةٍ وَسَقْفَهُ بِالسَّاجِ

Translation:

'Ali ibn 'Abdullah narrated to us ['Ali ibn 'Abdullah] said, 'Ya'qub ibn Ibrahim ibn Sa'd narrated to me [my father] from [Shalih ibn Kaisan] said, 'Nafi' narrated to us that ['Abdullah ibn 'Umar] told him that during the time of the Messenger of Allah (peace and blessings of Allah be upon him) the mosque was built using hardened clay (bricks). The roof was made of leaves and the poles of date palms. During his time Abu Bakr did not give any additional renovations, then during the time of Umar bin Al Khaththab he gave additional renovations, Umar renovated with bricks and date palm branches according to the form that existed at the time of the Messenger of Allah (peace and blessings of Allah be upon

him). He replaced the main pillar with wood. Then at the time of Uthman he made many changes and renovations, the walls of the mosque he built from carved stone and limestone. Then the pillars were made of carved stone, and the roof was made of selected logs.

The Hadith narrating the stages of the renovation of the Prophet's Mosque by the caliphs after the Prophet Muhammad (peace be upon him) provides a clear example of the application of the concept of *istibdāl waqf* in Islamic history. During the Prophet's time, the Prophet's Mosque was built using simple materials, such as clay, leaves, and date palm trunks as pillars. Caliph Abu Bakr chose not to make any renovations, maintaining the original form of the mosque as it was built during the Prophet's time. However, when leadership passed to Umar bin Al Khaththab, renovations were made with adjustments to materials, such as replacing clay with bricks and date palm branches, and the main pillars with stronger wood. This renovation retained the basic form of the mosque as it existed during the Prophet's time, but with the addition of sturdier materials to increase its durability and function.

During Uthman bin Affan, the Prophet's Mosque underwent more significant changes. The mosque's walls were built using carved stone and limestone, the pillars were replaced with carved stone materials, and the roof was made from selected logs. This renovation process reflects the principle of *istibdāl waqf*, where repairs and development of waqf facilities are carried out to strengthen the structure and increase the benefits of the mosque as a centre of worship and social activities.

c. Hadis of Abu Daud

قال أحمد في رواية أبي داود: إذا كان في المسجد خشبتان لهما قيمة جاز بيعهما و صرف ثمنهما عليه (رواه أحمد)

Translation:

In Abu Dawud's narration, Imam Ahmad said, "If there are two logs in the mosque that have a market value, they may be sold and the proceeds given to the mosque

d. Atsar

روي عن أبي يوسف أنه قال: لا بأس باستبدال الوقف لما روي عن علي بن طالب أنه وقف على الحسن و الحسين رضي الله عنهما. فلما خرج إلى صفين قال: إن نأت بهم الدار فبيعوها و أقسموا ثمنها بينهم, ولم يكن شرط البيع في أصل الوقف

Translation:

It was narrated from Abū Yūsuf that he said: "There is nothing wrong with *istibdāl waqf*", as it was narrated from Alī ibn Abī Thālib (may Allah be pleased with him) that he gave waqf to Hassān and Husseīn (may Allah be pleased with them). When Alī returned from Şiffīn, he said: "If you (Hassān and Husseīn) have moved away from the house then sell it and distribute the proceeds to them", and there is no previous condition of sale on the waqf principal

The evidence used by Imam an-Nawawi includes:

a. Hadis dari Ibnu Umar

1) وقف عمر رضي الله عنه - أرضاً أصابها بخيبر بأمره - صلى الله عليه وسلم - وشرط فيها شروطاً منها أنه لا يُباع أصلها ولا يورث ولا يوهب وأن من وليها يأكل منها بالمعروف أو يطعم صديقاً غير متمول فيه (رواه الشيخان)

Translation:

Companion Umar donated the land that he got during the battle of Khaibar on the orders of the Prophet. Umar stipulated a number of conditions, including that it should not be sold, that it should not be inherited, that it should not be given away, and that the person who takes care of it may eat from it properly or feed his relatives with a reasonable amount." (HR. al-Bukhari dan Muslim)

2) حَدَّثَنَا قُتَيْبَةُ بْنُ سَعِيدٍ حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْأَنْصَارِيُّ حَدَّثَنَا ابْنُ عَوْنٍ قَالَ أَنْبَأَنِي نَافِعٌ عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَصَابَ أَرْضًا بِخَيْبَرَ فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمُرُهُ فِيهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ فَمَا تَأْمُرُ بِهِ قَالَ إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا قَالَ فَتَصَدَّقْ بِهَا عُمْرُ أَتَى لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ وَتَصَدَّقْ بِهَا فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ وَالضُّعْفَى لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ وَيُطْعِمَ غَيْرَ مُتَمَوِّلٍ قَالَ فَحَدَّثْتُ بِهِ ابْنَ سَبْرِينَ فَقَالَ غَيْرَ مُتَمَوِّلٍ مَالًا (رواه البخاري)

Translation:

Qutaibah ibn Sa'id told us Muhammad ibn 'Abdullah Al Anshariy told us Ibn

'Aun said Nafi' told me from Ibn 'Umar (may Allah be pleased with him) that 'Umar ibn Al Khaththab (may Allah be pleased with him) received a share of land in Khaibar and he went to the Prophet (peace and blessings of Allah be upon him) to ask his opinion about it, saying: "O Messenger of Allah, I received land in Khaibar which I have never received anything more valuable than that. So what do you command about this land?" So he said: "If you wish, you may keep the trees, and then you may give in charity from the fruit." Ibn 'Umar (may Allah be pleased with him) said: "So 'Umar gave it in charity, and he did not sell it, give it away, or bequeath it, but he gave it in charity to the poor, his relatives, to free slaves, fii sabilillah, ibnu sabil, and to entertain guests. And there is no sin on the one in charge of it to eat from it properly and feed others, not to hoard it. The narrator said: "Then I narrated this hadeeth to Ibn Sirin, who said: "ghoiru muta'atstsal maalan means not taking the orphan's wealth in order to combine it with his own (HR. Bukhari)

The land waqf undertaken by Companion Umar bin Khattab on the advice of the Prophet Muhammad (peace and blessings of Allah be upon him) in Khaibar is an exemplary example of the use of wealth for the benefit of the general public. This waqf has a number of specific provisions that emphasize the intention that the benefits of the land be sustainable and oriented towards the benefit of the people. First, waqf land cannot be sold, which means that the main asset (the base) must remain intact and cannot be permanently transferred. This shows the importance of maintaining the land as a source of benefit.

Second, waqf land cannot be inherited, indicating that its ownership cannot be transferred to heirs and must remain in its waqf function for the wider community. Thirdly, this land cannot be donated either, so it cannot be given to other parties for free, maintaining its function as a waqf asset that is only intended for its designated purposes.

Finally, the person appointed to take care of the land has the flexibility to utilize it on a reasonable scale, including the right to fulfill their daily needs or give the proceeds to

relatives in reasonable amounts. This provision demonstrates adaptive management, allowing the caretaker to fulfill their needs without compromising their commitment to the land's primary function as a waqf.

3) عن ابن عمر أنه قال: قال رسول الله صلى الله عليه و سلم: أنه لا يباع ولا يوهب ولا يورث (رواه متفق عليه)

Translation:

From Ibn Umar ra, Rasulullah SAW said: (the object of) waqf cannot be sold, donated and cannot be inherited (HR. Muttafaq Alaih)

The Hadith of Ibn 'Umar (radhiyallahu 'anhuma), narrated with muttafaq alaih validity (agreed upon by Bukhari and Muslim), provides important guidance on the management of waqf assets in Islam based on the decree of the Messenger of Allah (sallallahu 'alaihi wa sallam). In this hadith, the Prophet emphasizes that waqf objects cannot be sold, donated, or inherited. This prohibition indicates a special protection for waqf assets, ensuring that they continue to be used in accordance with the purpose set by the waqif, which is for the public good or continuous worship.

The prohibition on selling waqf assets prevents the transfer of ownership or use for private interests, which can reduce the benefits of waqf to society. The prohibition on granting waqf assets ensures that they are not given away for free to a particular individual or party so that they continue to function as a sustainable benefit to the wider community. In addition, the prohibition on inheritance emphasizes that waqf assets will not become part of a personal inheritance, but should continue to function as a perpetual donation for social or religious purposes.

Overall, these three prohibitions demonstrate a strong commitment to maintaining the integrity and purpose of waqf assets so that their benefits continue to flow to the people. This principle is in line with the values of Islamic law that preserve the specificity of waqf and encourage its utilization by the waqif's original intention for the welfare of the community or specific religious purposes, thus making it a sustainable form of charity.

The fundamental difference in legal views between Imam Ibn Taymiyyah and Imam an-Nawawi regarding waqf istibdal

(replacement or exchange of waqf assets) lies in the evidence used by each in determining the permissibility or prohibition of istibdal. Imam Ibn Taymiyyah argues that waqf istibdal is permissible if the purpose is to gain greater benefits for the people. In support of his view, he refers to several arguments, including traditions from 'Aisha, Ibn 'Umar, and Abu Daud, as well as the practice of great companions such as 'Umar ibn al-Khattab and 'Ali ibn Abi Talib in managing waqf. These arguments are used to show that changes in waqf management are acceptable if they are oriented towards increasing the benefits of the waqf.

On the other hand, Imam an-Nawawi, a renowned Shafi'i scholar, thinks that waqf istibdal is prohibited. He based his view on three traditions from Ibn Umar that imply caution in managing waqf assets. In Imam an-Nawawi's view, this prohibition is necessary to preserve the integrity and original purpose of the waqf and ensure that the waqf assets remain where they are not sold, inherited, and mortgaged. According to him, once the waqf is handed over to the nazir (waqf manager), the full ownership of the waqf has transferred to Allah SWT, and the nazir acts as a manager for the benefit of the people without changing the original form or value of the waqf.

Conceptually, these two views reflect different approaches in viewing the essence of waqf: Ibn Taymiyyah considers the benefit aspect more. At the same time, an-Nawawi emphasizes caution and adherence to the original principle of waqf, namely that the object of waqf belongs to Allah SWT and must be maintained without any change in the form or value set by the waqf.

2. Istinbath Method

The explanation of the differences in legal istinbath methods between Imam Ibn Taymiyyah and Imam an-Nawawi in the context of waqf istibdal provides a deeper understanding of their respective approaches to the principles of benefit and prudence in Islamic law.

Imam Ibn Taymiyyah emphasized the concept of *maslahah mursalah*, which is a public good that is not directly regulated by the text of the Quran and hadith. He bases the permissibility of istibdal waqf on the hadith

and *atsar* of the companions, as well as the concept of *maslahah*, which means usefulness or goodness, to realize the maximum purpose of waqf. Ibn Taymiyyah argues that if the waqf asset can no longer be utilized, doing istibdal is the right way so that the waqf can still fulfill its purpose for the people. He considered that the benefits of waqf are more important than maintaining its original form, so selling or exchanging waqf objects that are no longer useful is a wise solution. In his view, waqf is not only related to its object but also to the benefits it provides for the benefit of the people.

In contrast, Imam an-Nawawi is more inclined to the principle of prudence (*ihtiyat*) in assessing the permissibility of waqf istibdal. Although the evidence used does not directly prohibit istibdal, he chooses to tend to prohibit it because he considers the potential abuse that can occur if waqf is traded. An-Nawawi uses the *sad al-dzari'ah* method (preventing harm or bad possibilities) to protect the waqf principle's integrity as Allah SWT's property. His concern about the possibility of misuse or practices that benefit the manager (*nazhir*) is the main reason for the prohibition against istibdal. For him, maintaining the original form and value of the waqf is a way of maintaining the integrity of the waqf institution and preventing deviations from the Shari'ah.

This difference in approach reflects how Ibn Taymiyyah and an-Nawawi viewed the purpose of waqf in Islam. Ibn Taymiyyah focuses on achieving benefits, while an-Nawawi emphasizes protecting waqf's validity and original purpose. These two approaches illustrate the diversity in legal istinbath methods: Ibn Taymiyyah with a pragmatic approach that emphasizes benefit, and an-Nawawi with a preventive approach that seeks to maintain the sanctity of the principle of waqf by Islamic law.

Analysis of the Opinions of Imam Ibn Taimiyah and Imam an-Nawawi on the Legal Status of Waqf Istibdal

After the researchers collected and filtered data from various primary and secondary sources and understood the views of Imam Ibn Taimiyah and Imam an-Nawawi on the law of istibdal waqf, it was finally

concluded that Imam Ibn Taimiyah's view that allows *istibdal waqf* for the benefit of the people and the common good is stronger. Ibn Taimiyah's opinion is based on several solid reasons. First, from the point of view of the evidence, Ibn Taimiyah used very clear and unequivocal evidence, both from *hadith* and *atsar*, which stated the permissibility of *istibdal*. He sees that these proofs strongly indicate that *istibdal* is possible and *shar'i* valid in certain situations.

Furthermore, Ibn Taimiyah's method of legal *istinbath* places the principle of *mashlahah* or public benefit as the main key in the permissibility of *istibdal waqf*. For him, the main purpose of *waqf* is to benefit the people. Therefore, if *waqf* assets are no longer functioning properly or optimally, replacing them with new, more productive assets is justified and in line with the main principles of Islamic law. In this regard, Ibn Taymiyyah emphasized that the benefit of the people should be the main focus of *waqf* management.

Ibn Taimiyah's view is also very relevant to the conditions in Indonesia, where *waqf istibdal* can play an important role in maintaining the productivity of *waqf* objects that are not optimal or even damaged. With the practice of *istibdal*, *waqf* objects that are not functioning well can be replaced by more productive assets so that the benefits for the people can be maintained and even increased. The condition of Indonesian society that requires an increase in the productivity of *waqf* assets makes this view more relevant to be applied, provided that *waqf* management is carried out carefully and thoughtfully.

The permissibility of *waqf istibdal* cannot be separated from the strict conditions that must be met. The replacement of *waqf* objects must be done with great care, and special attention should be paid to the relationship between the *nazir* (*waqf* manager) and the *waqif* (*waqf* donor). Although the *waqf* assets once handed over fully belong to Allah and are intended for the people, it is important to maintain communication and harmony between the *nazir* and the *waqif*. In practice, the *nazir* should inform the *waqif* about the condition of the *waqf* object that is no longer productive and the intention to conduct *istibdal*. Thus,

the *waqif's* original intention is still respected, and good Muslim relations are maintained.

In this context, the author argues that *istibdal waqf* should only be done when there is a very urgent need or under emergency conditions (*dharuriyyah*). In Arabic, "emergency" refers to an urgent need or difficulty justifies an action or decision that would not normally be taken under normal conditions. Therefore, the replacement of a *waqf* object should not be done only based on additional or secondary reasons that are not urgent. If an emergency necessitates the replacement of a *waqf* object, for example because it is damaged or no longer serves the purpose of the *waqf*, then *istibdal* can be carried out while still communicating this intention to the *waqif*.

Thus, the main principle of *waqf istibdal* is to preserve the benefits of *waqf* assets for the people. In this case, the replacement is done under the condition that the new asset purchased has a comparable or better benefit value than the previous *waqf* object. This aims to maintain the principle of *waqf*, which focuses on the public good.

Waqf management has long been a topic of much debate among scholars, covering aspects such as legal status, the substance of *waqf*, the types of goods that can be *waqf*ed, management methods, and the allocation of *waqf* assets. *Waqf* itself is a dynamic phenomenon that evolves. Perceptions and interpretations of *waqf* can change along with social dynamics and shifts in time and place. This is because most of the arguments used in *waqf fiqh* are *ijtihadiah* or the result of *ijtihad*, so their interpretation can vary among *mujtahid* scholars.

In Islam, *waqf* falls under *ta'aqquliyah*, which is worship that can be reasoned and has a clear social purpose, in contrast to *ta'abbudiyah*, which is absolute and does not require logical reasoning. This means that the implementation and management of *waqf* can be adapted to the needs of society as long as it maintains its main purpose, which is to create sustainable benefits for the people. One issue often debated in *waqf* management is the permissibility of *istibdal* or exchange of *waqf* assets.

For some scholars, istibdal is allowed under certain circumstances. They argue that if the waqf is no longer able to provide maximum benefits, such as when the waqf land becomes unproductive or the location of the waqf is no longer strategic, then doing istibdal becomes a valid option to ensure that the waqf assets remain beneficial for the people. In this context, the permissibility of istibdal is often linked to the conditions set by the waqif. If the waqif explicitly authorizes the exchange of waqf assets in certain situations, then istibdal can be carried out without violating the original purpose of the waqf.

On the other hand, scholars also allow istibdal in emergencies or urgent needs. An example is when natural disasters completely damage waqf assets or can no longer be used as intended. In these circumstances, istibdal is seen as a solution to keep the benefits of waqf going, for example by selling the damaged waqf assets and using the proceeds to buy new assets that are more productive or relevant to the needs of the community.

However, there are also scholars who choose a more cautious attitude and tend to prohibit istibdal, except in truly unavoidable circumstances. They argue that waqf property is a trust that must be maintained and preserved in its original condition. This principle is based on the concern that the permissibility of istibdal could open up opportunities for misuse or management that are not by the waqf's original purpose. In their view, istibdal should only be done as a last resort when all other options have been exhausted, and the benefits of the waqf can no longer be preserved in its original form.

In the process of istibdal, it is very important to maintain the conditions set by the waqif. For example, if the waqf asset is damaged so that it cannot be utilized for its intended purpose, it can be sold, and the proceeds used to purchase new assets that align with the waqf's original purpose. This new asset then has the status of a new waqf while maintaining its original essence and benefits. This process ensures that even though the physical form of the waqf asset changes, the main purpose of the waqf is still carried out and the benefits to the community can continue.

CONCLUSION

Imam Ibn Taymiyyah argued that the practice of istibdal waqf is permissible by basing his opinion on several arguments, including the traditions of 'Aisha, 'Umar ibn Khattab, and Abu Daud, which serve as a basis for strengthening the permissibility of istibdal waqf. In addition, Ibn Taymiyyah also referred to the *atsar* or practice of 'Umar ibn Khattab and 'Ali ibn Abi Talib in terms of waqf, including the waqf intended for Hassan and Hussein. On the other hand, Imam an-Nawawi is of the opinion that the practice of istibdal waqf is not allowed. This opinion is supported by three traditions from Ibn 'Umar which, according to an-Nawawi, indicate the prohibition against changing or replacing waqf assets.

The differences in the views of these two scholars arise because of the different methods and basic arguments they use in determining the law of istibdal waqf. Imam Ibn Taymiyyah uses the *maslahah* concept-based method of *istinbath*, prioritizing the traditions and *atsar* of the Prophet's companions that support the permissibility of istibdal. Meanwhile, Imam an-Nawawi uses the *sad al-dzari'ah* method, which focuses on preventing actions that can damage or change the original purpose of waqf, based on three traditions narrated by Ibn Umar.

Imam Ibn Taymiyyah's opinion is considered stronger in this discussion of the law of waqf istibdal, with several reasons supporting his position. First, in terms of evidence, Ibn Taymiyyah considers that the arguments that allow istibdal waqf are very clear and basic, and include hadith and *atsar* that explicitly state the permissibility. Secondly, in the method of legal *istinbath*, Ibn Taymiyyah places the benefit of the people as the main principle on which the permissibility of waqf istibdal is based. He believed that the main purpose of waqf is to maintain the benefits of the people, so if the object of waqf no longer functions optimally, replacing it with a new one is a step in line with the purpose of waqf itself.

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