I-Philanthropy
A Research Journal On Management Of Zakat And Waqf
P- ISSN : 2809-0659
E- ISSN : 2808-7607

Transfer Of Functions And Transfer Of Status Of Wakaf Property

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Abstract: This study discusses the conversion and transfer of waqf assets as an important dynamic in waqf management in the context of Islamic law and national regulations in Indonesia. The conversion of waqf assets refers to changes in the use of waqf assets to make them more productive and in line with the interests of the community, while the transfer of status refers to changes in the legal status of waqf assets, including exchanges or transfers of ownership under strict conditions. The research uses a qualitative approach with normative and empirical legal methods through the study of legal documents and in-depth interviews with nadzir and related officials. The results of the study show that the conversion and transfer of waqf assets are strictly regulated in Islamic law and legislation, with priority given to maintaining the sustainability of waqf benefits and involving the approval of the competent institutions so as not to harm the interests of the community. In conclusion, the conversion and transfer of waqf assets require clear rules and supervision so that their implementation can be carried out in accordance with sharia principles and the objectives of waqf.

Keywords: Institutions; Nazhir; Priorities

Pendahuluan

Islam teaches that wealth is not entirely the property of individuals, but that true ownership of wealth belongs to Allah SWT, with whom humans are entrusted solely to manage it. Humans act as God's representatives, obligated to manage and utilize wealth according to His provisions.[1] Waqf is a form of wealth management that not only provides benefits and advantages for many people, but also becomes a continuous charity whose rewards will continue to flow to the person who donates it[2].

The dynamics of waqf show great potential as an instrument for economic empowerment and social welfare of the people[3]. 3The potential of waqf lies not only in the

[1] Anwar Junaidi and Sinta Novita Sari, “Ekonomi Dalam Perspektif Islam (Studi Peran Dalam Peningkatan Sumber Daya Manusia Dan Ekonomi Pembangunan Islam),” *Innovative: Journal of Social Science Research* 2, no. 2 (2022): 136–44, https://j-innovative.org/index.php/Innovative/article/view/276.

[2] Ahmad Syaifudin, “Analisis Komparatif Alih Fungsi Objek Wakaf Dalam Perspektif Mazhab Syafi’i Dan Mazhab Hambali,” *Isti’dal: Jurnal Studi Hukum Islam* 8, no. 2 (2021): 262–85, https://doi.org/https://doi.org/10.34001/istidal.v8i2.2711.

[3] 3Vito Dasrianto, Elva Mahmudi, and Arminsyah, "Transfer of Waqf Assets from the Perspective of Islamic Law and Waqf Law in Indonesia,"Al-Hadi Scientific Journal9, no. 1 (2023): 1–12, https://doi.org/https://doi.org/10.54248/alhadi.v9i1.4800.

value of the assets donated, but also in its ability to drive sustainable economic development. Waqf assets managed with a productive approach can serve as socioeconomic capital supporting sectors such as agriculture, trade, education, health, and the empowerment of Small and Medium Enterprises (SMEs), thereby strengthening the role of waqf in community development[4].

The concept of productive waqf, which emphasizes the management of waqf assets with the aim of generating a surplus, is increasingly relevant amidst the social and economic challenges faced by many communities. The appropriate funds can be used to finance various social programs which ultimately contribute to improving the standard of living of underprivileged communities and creating new job opportunities[5]. 5Waqf, which is long-term and cannot be traded, will provide a guarantee of stability that makes it a superior tool in the economic development of the community[6].

The management and utilization of waqf in Indonesia has been comprehensively regulated in Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006[7].This positive law is an important legal basis that regulates the principles, forms, implementation, and supervision of waqf to ensure that it remains in accordance with sharia principles and state provisions. Despite the regulations being in place, productive waqf practices in Indonesia still face issues that hinder the full optimization of their benefits[8].

The transfer of function and status of waqf assets is a crucial issue that receives attention in the study of sharia law and positive law[9]. The challenge faced is that many waqf assets have not been utilized optimally due to weak management, the limited number of professional nazhirs and low public literacy regarding productive waqf[10]. Re-

[4] 4Muhammad Agil et al., "Minimizing Risk and Maximizing Profit: Risk Management Strategies in Productive Waqf Management,"Al-Muraqabah: Journal of Management and Sharia Business03,no.2(2023):156–75, https://doi.org/https://doi.org/10.30762/almuraqabah.v3i2.1055.

[5] Mursal et al., "The Role of Waqf in Realizing Social Welfare: A Perspective from Islamic Economic Interpretation,"El-Kahfi Journal05, no. 01 (2024): 103–11, https://doi.org/https://doi.org/10.58958/elkahfi.v5i01.234.

[6] Rialisasi and A. Kumedi Ja'far, "Analysis of the Sale and Purchase of Waqf Property from an Islamic Law Perspective," Falah: Journal of Islamic Economics7, no. 2 (2024): 1–12, https://doi.org/https://doi.org/10.55510/fjhes.v7i2.467.

[7] Nuridin and Yusup Hidayat, "Analysis of the Implementation of Waqf Law Number 41 of 2004 on the Role of Nazhir in Waqf Management: A Study,"Unes Law Review6, no. 3 (2024): 7968–79, https://doi.org/https://doi.org/10.31933/unesrev.v6i3.

[8] 8Asep Lukman Daris Salam and Aris Surya Lesmana, "Waqf Governance from the Perspective of Islamic Law and Law Number 41 of 2004,"Journal of Islamic Student Thought2, no. 1 (2024): 46–58, https://doi.org/https://doi.org/10.51729/student.21639.

[9]Dasrianto, Mahmudi, and Arminsyah, "Transfer of Waqf Assets from the Perspective of Islamic Law and Waqf Law in Indonesia."

[10] Rizki Dwi Anggraini, Nur Diana Dewi, and Muhammad Rofiq, "Optimizing the Potential of Waqf in Indonesia: Challenges and the Role of Digitalization in Strengthening the Benefits of Waqf for the Community,"Journal of Islamic Business Management Studies (JIBMS)5, no. 1 (2024): 60–67, https:// doi.org/https://doi.org/10.51875/jibms.v5i1.292.

search findings Lulu Sylviane (2023) emphasized that the lack of professionalism of nazhir is the main factor that hinders the optimization of productive waqf[11].

In addition, the practice of changing the function and status of waqf assets, which should be carried out strictly and conditionally as regulated in Article 43 of Law Number 41 of 2004, is often carried out without following official procedures and ignoring the principle of public interest[12]. In cases of land conversion to state land, problems often arise between the waqf agreement and government interests. Repeatedly, land acquisition for development is resolved through unilateral court decisions, creating legal uncertainty and harming the community under the guise of social function[13]. The above phenomenon reflects that productive waqf still faces serious challenges in society. Therefore, addressing this issue requires increasing public literacy on waqf law and strengthening the oversight system for nazhir (Islamic trustees) to ensure that waqf assets are managed in accordance with Sharia principles and applicable laws and regulations. Therefore, a more in-depth study of the transfer of function and status of waqf assets is necessary.

Literature Review

Conversion of waqf assets is the process of shifting the use of waqf assets from their original function to another function deemed more beneficial and in line with the public interest. This process often occurs when waqf assets, such as waqf land, are no longer functioning or cannot be utilized optimally according to the waqif's original purpose. For example, waqf land originally designated as a mosque but later becomes unproductive can be converted to another, more beneficial use without diminishing the essence of the waqf's value[14]. The Islamic legal perspective, particularly the Shafi'i school, permits the conversion of waqf assets as long as it does not alter the original form of the waqf object and does not remove its identity. This conversion must result in a more strategic and productive waqf asset for the benefit of religion and the Muslim community[15].

The transfer of waqf property status refers to a change in the legal status of waqf property, such as a change of ownership or an exchange for other property. Law No. 41 of 2004 concerning Waqf in Indonesia stipulates that changes in the status of waqf property can only be made under strict conditions and procedures, including

[11]Lulu Sylvianie, “Nazhir's Skills in Managing Productive Waqf in Indonesia,” Ulumuddin: Journal of Islamic Sciences13, no. 2 (2023): 199–220, https://doi.org/https://doi.org/10.47200/ulumuddin.v13i2.1773.

[12] 12M Wildan Firdaus and Neneng Nuhasanah, "Analysis of Islamic Law and Waqf Law No. 41 of 2004 Regarding the Transfer of Waqf Assets at PC Persis Pangalengan,"Journal of Islamic Family Law Research1, no. 1 (2021): 11–15, https://doi.org/https://doi.org/10.29313/jrhki.v1i1.83.

[13] E.M. Nazaruddin Muhkam Alghifari, "Legal Consequences of Transferring the Function of Waqf Land for Public Interest According to Islamic Law and Positive Law,"Turatsuna: Journal of Islam and Education 03, no. 1 (2021): 1–11.

[14] Harnides, Pengalihfungsian Wakaf Menurut Hukum Islam (Studi Kasus Di Desa Krueng Kalee Kecamatan Pasie Raja, Aceh Selatan). Jurnal Syarah Vol. 10 No. 1 Tahun 2021.

[15] Muhammad Saidi, Alih Fungsi Harta Wakaf dalam Perspektif Fiqh Syāfi’yiyah dan UU No. 41 Tahun 2004. Vol. 6 No. 1 (2017): Jurnal Al-Fikrah.

obtaining permission from the Minister of Religious Affairs and approval from the Indonesian Waqf Board. The exchange of waqf property must be made with property of equal or better value and benefits than the original waqf property.

This status change is permitted under certain conditions, such as for the public interest and in accordance with the regional spatial planning (RUTR), and does not conflict with sharia principles. Several articles emphasize the differences of opinion among scholars regarding the conversion of waqf functions and status, which are mostly based on ijtihad. The fatwa from the Indonesian Ulema Council (MUI) also regulates that waqf objects can be converted or sold if there is an urgent need, with the provision that the proceeds are used as a better replacement waqf. Thus, the conversion of waqf assets is permitted in Islamic law and Indonesian law with the aim of maintaining the benefits of waqf so that it continues and can be developed productively. The conversion of waqf assets is strictly regulated in procedural aspects and replacement value to protect the permanence of the waqf. Scholars' opinions vary, but with the MUI fatwa and government regulations, the implementation of the conversion of waqf assets and status is increasingly clear and directed towards the welfare of the community and the process of conversion of functions and status must involve nadzir, government officials, and base decisions on maslahah (public interest) and not eliminate the value of the waqf itself.

Research Methods

This study uses a qualitative approach with normative legal and empirical legal research types. The normative legal approach is used to examine the legal basis, regulations, and fiqh principles regarding the transfer of function and status of waqf property. The empirical legal approach is used to collect real data in the field regarding the practice of transferring the function and status of waqf property as well as the obstacles and its implementation.

The primary data sources were interviews with waqf administrators, Indonesian Waqf Agency officials, and authorities related to waqf management, and secondary data sources were literature studies from legal documents such as Law No. 41 of 2004 concerning Waqf, MUI fatwas, academic books, scientific articles, journals, and other official sources discussing the conversion and transfer of waqf assets. The collected data were analyzed using qualitative descriptive techniques. Normative legal analysis was conducted by reviewing and interpreting relevant laws and regulations and religious fatwas. Empirical legal analysis presented the results of interviews and observations to understand the implementation and reality in the field.

Results and Discussion

Definition of Function Transfer and Status Transfer of Waqf Assets

The term in jurisprudence for the transfer of the function of waqf objects is known asibdaloristibdal, in the Al-Munawair dictionary,ibdal meaning change andistibdalmeans replacement[16]. Istibdalrefers to the act of selling waqf assets to buy other assets of equal value, whether similar or different waqf assets. Some interpret this asistibdalis the process of removing an asset from waqf status and replacing it with another asset that provides greater benefits or is in accordance with the needs of the community[17]. Conversion of function refers to changing the designation or use of waqf assets from the original purpose established by the waqif (donor of the waqf) to another purpose. Changes to waqf assets are usually made when the assets are no longer used for their original purpose, requiring adjustments to ensure they continue to provide sustainable benefits to the community.

Meanwhile, the transfer of waqf property status refers to a change in the legal status (ownership) or rights to waqf property, such as changing waqf status to ownership through a sale, gift, inheritance, or exchange mechanism. This change can only be made under certain conditions, for example, for the public interest, in accordance with spatial planning and with official permission from the authorities in accordance with statutory provisions[18]. The difference between the change of function and change of status of waqf assets lies in the object and legal aspects, where change of function refers to changes in the use of waqf assets without changing the legal status as a waqf[19]. For example Waqf buildings that originally functioned as madrasas can be converted into health clinics to meet the needs of the community, as long as the changes continue to uphold the principle of public welfare in line with sharia principles.

Furthermore, the transfer of property status involves a change in the legal ownership of waqf assets, whereby the assets can be transferred to another party through a mechanism such as sale, donation, or exchange. The process of changing the status has serious legal consequences because it removes the perpetual status of the waqf[20].Therefore, its implementation is only permitted under certain circumstances and

[16] 14Indah Herningrum and Suci Mahabbati, "Review of Islamic Law Regarding the Transfer of the Function of Waqf Assets,"Al-Qisthu: Journal of Legal Studies19, no. 1 (2021): 52–69, https://doi.org/ http://dx.doi.org/10.32694/qst.v19i1.840.

[17] Syaifudin, "Comparative Analysis of the Change of Function of Waqf Objects from the Perspective of the Shafi'i and Hambali Schools."

[18] Tatang Astarudin, "Changes in Status and Allocation of Waqf Land," inWaqf Q&A (Bandung: Member of the Indonesian Waqf Board (BWI), 2022).

[19] Indonesian Waqf Agency Team,Smart Waqf Book(South Jakarta: Indonesian Waqf Board (BWI), 2009).

[20] Astarudin, "Changes in Status and Allocation of Waqf Land."

requires official approval from the Indonesian Waqf Board (BWI) and the Ministry of Religious Affairs of the Republic of Indonesia (Kemenag RI)[21].

Legal Basis for Transfer of Functions and Status Transfer of Waqf Assets

Waqf is a crucial instrument in the Islamic economic system, serving not only as a form of worship but also as a strategic role in social development and community empowerment. The dynamics of development amidst issues of the transfer of function and status of waqf assets have influenced waqf management practices, raising various legal questions from both Sharia and positive law perspectives

1. Change of Function and Change of Status According to Sharia Law

   Islam, as a perfect revealed religion, always provides the widest possible opportunities for its adherents to carry out good and pious deeds. One method of action or charity that is prescribed in the Islamic religion is waqf. The jurists have different opinions regarding whether or not the transfer of functions and status of waqf assets is permissible. According to Imam Syafi'i, land or objects that have been donated may not be changed, exchanged or sold under any circumstances because it will paving the way for the elimination of the purpose of waqf[22]. This view refers to the hadith narrated by Ibn 'Umar which reads:

   "Ibn Umar RA said that Umar bin al-Khattâb got a plot of land in Khaibar. He went to Rasulullah SAW asking for his opinion, "O Rasulallah, I got a plot of land in Khaibar which I have never received more valuable property than that before. So what do you order me to do regarding this matter of wealth?" So Rasulullah SAW said, "If you want, you can keep the principal and give charity from the harvest. However, with the condition that you don't sell the principal (the land), don't give it away, don't inherit it." So Umar ra gave charity with the results to the fuqara, dzawil qurba, slaves, Ibn Sabil and guests. There is nothing wrong if the person who takes care of it eats the results or gives to his friends in a wise manner, but it must not be put into business.."[23]

   The hadith above can be understood to mean that the Prophet SAW explicitly gave Conditions prohibit changing waqf assets that have been donated, selling them, inheriting them, or donating them. Imam Abu Hanifah's view differs, stating that

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[21] Sarmo, "Law on Changes in the Status of Waqf Assets (Case Study of Changes in Ownership Status of Waqf Land in Keniten Village, Kedungbanteng District, Banyumas Regency)," Al-Manahij: Journal of Islamic Legal Studies14, no. 2 (2020): 239–50, https://doi.org/https://doi.org/10.24090/mnh.v14i2.3216.

[22] Faishal Haq,Waqf and Endowment Law in Indonesia, 3rd ed. (Surabaya: PT. Garoeda Buana Indah, 2004).

[23] Al-Bukhari,Sahih Al-Bukhari(Ttp: Darel Thuq An-Najah, nd).

changing the function of waqf assets is permissible as long as the purpose is to prevent the possibility of damage to the waqf assets that would end up being wasted, and to uphold the essence of the shari'ah of waqf[24]. Hanafiyah ulama also allow the exchange of waqf objects under three conditions, including:First, if the wakif indicates the ability to exchange during the pledge;second, if the waqf object can no longer be maintained; Andthird, if the object is used as a substitute for waqf it is bigger and more useful[25]. The Indonesian Ulema Council (MUI) issued Fatwa No. 54 of 2014 concerning the Legal Status of Land on which a Mosque is Built, stating that:

a. The status of the land used for the mosque is waqf even though it has not formally obtained a waqf certificate. For this reason, mosque land that does not yet have waqf status must be certified as waqf.
b. The mosque land as referred to in the first point may not be donated, may not be sold, may not be transferred or changed its use.
c. The waqf objects and the status of the mosque's waqf land may not be changed except under certain conditions. These conditions include the permission to exchange waqf objects or waqf istidlal as long as it serves the benefit of maintaining the ongoing benefits of the waqf[26].

Furthermore, this fatwa stipulates that waqf assets may be sold provided there is a need to uphold the waqf's original purpose. The proceeds from the sale must be used to purchase other assets as replacement waqf assets. Furthermore, the conversion of waqf assets is permitted as long as the perceived benefit is more dominant. However, implementation of the provisions in this fatwa requires the approval of the Minister of Religious Affairs and the recommendation of the Indonesian Waqf Board, in accordance with statutory provisions and the considerations of the Indonesian Ulema Council (MUI)[27].

2. Change of Function and Change of Status According to Positive Law

Since the dawn of Islamic civilization, waqf has been a crucial source of capital in supporting religious progress and the welfare of the people. Early waqf regulations

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[24] Wahbah Al-Zuhayli,Al-Fiqh Al-Islamiy Wa Adilatuhu(Beirut: Dar al-fikr, 1989).

[25] Muhammad Saidi, Pagar, and M. Jamil, "Transfer of the Function of Waqf Assets in the Perspective of Syâfi'yiyah Fiqh and Law No. 41 of 2004,"At-Tazakki: Journal of Islamic Education and Humanities Studies2, no. 1 (2018): 100–111, https://doi.org/http://dx.doi.org/10.47006/attazakki.v2i1.1449.

[26] National Sharia Council of the Indonesian Ulema Council, "Fatwa of the Indonesian Ulema Council Number 54 of 2014 Concerning the Legal Status of Land on Which There is a Mosque Building" (Jakarta, 2014).

[27] Lutfi El Falahy, "Change of Function of Waqf Land Reviewed from Islamic Law and Law Number 41 of 2004 Concerning Waqf,"Al Istinbath: Journal of Islamic Law1, no. 2 (2016): 121–40, https://doi.org/https://doi.org/10.29240/jhi.v1i2.117.

in Indonesia referred to Government Regulation No. 28 of 1997 concerning the Endowment of Land and Law No. 5 of 1960 concerning Basic Agrarian Regulations. However, these regulations only addressed immovable waqf assets, which were primarily intended for religious purposes[28].

Law No. 41 of 2004 concerning Waqf was issued, which is more comprehensive, specifically addressing the transfer of function and status of waqf assets that no longer function optimally according to their original purpose. This law, in principle, states that waqf assets are prohibited from being used as collateral, confiscated, donated, sold, inherited, exchanged, or transferred in any other form[29]

However, unless the waqf assets will be used for public purposes in accordance with the General Spatial Planning Plan (RUTR), based on statutory provisions, and as long as they do not conflict with sharia principles, the implementation of provisions regarding the transfer of function and status of waqf assets may only be carried out after obtaining written permission from the Minister of Religious Affairs with the approval of the Indonesian Waqf Board (BWI)[30]. As a follow-up to the waqf law, the government also issued Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, which is divided into 11 chapters and 61 articles which further explain the implementation of the eight articles in the waqf law, namely articles 14, 21, 31, 39, 41, 46, 66, and 68[31].

Factors Causing Changes in Function and Status of Waqf Assets

The transfer of function and status of waqf assets is a phenomenon that occurs due to various factors, both internal and external. Here are some of the causes:

1. Changes in Community Needs are a major factor driving the conversion of waqf assets. Over time, the social and economic needs of the community may change, rendering the original function of the waqf assets no longer relevant or providing optimal benefits. For example, waqf land originally designated as vacant land or for specific activities may no longer meet the needs of the community, which now requires educational or healthcare facilities

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[28] Achmad Djunaidi and Thobieb Al-Asyhar,Towards the Era of Productive Waqf, 4th ed. (Depok: Mumtaz Publishing, 2007).

[29] President of the Republic of Indonesia, "Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf" (Jakarta, 2004).

[30] Salam and Lesmana, "Waqf Governance from the Perspective of Islamic Law and Law Number 41 of 2004."

[31] President of the Republic of Indonesia, "Government Regulation Number 42 of 2006 Concerning Waqf" (Jakarta, 2006).

[32].Therefore, to maintain optimal waqf benefits, the transfer of waqf assets can be carried out under conditions and procedures that comply with Islamic law and legislation. This is also supported by the Islamic principle of welfare, which prioritizes the benefit of the wider community[33].

2. Unproductive Waqf Assets that no longer provide the benefits they were intended for are another reason for the conversion of waqf assets. For example, dry and barren waqf land or damaged and poorly maintained buildings will reduce the waqf's value to the community. This situation indicates that the management of static or defunct waqf assets needs to be revitalized to ensure they provide sustainable benefits. Changing the function or even changing the status of waqf assets can be a solution to revive the potential of these assets through more productive use that meets current needs. Revitalizing unproductive waqf assets also requires professional and sound management to ensure waqf assets can grow and provide optimal benefits.

   The lack of professionalism of nazhir (Islamic trustees) in managing waqf assets often results in them being neglected or underutilized. Therefore, improving the capacity of nazhir (Islamic trustees) and implementing modern management is crucial to address this issue and ensure that waqf assets contribute to the economic empowerment of the community[34].
3. Development for the Public Interest The conversion of waqf assets is also often carried out for the greater public interest, such as the construction of social, educational, or health facilities that can provide broad benefits to the community. In the context of Indonesian positive law, the conversion of waqf assets for the public interest is permitted as long as it does not conflict with sharia principles and applicable laws and regulations. This is stipulated in Law No. 41 of 2004 concerning Waqf and the Indonesian Waqf Board Regulation, which governs the procedures for exchanging or changing the status of waqf assets for the benefit of the community[35].
4. Lack of Supervision and Weak Administration Weak supervision and administration are significant factors that cause the transfer of waqf assets to occur without proper procedures or even misuse of waqf assets. Lack of public understanding of the importance of waqf registration and the lack of profes-

[32] Dasrianto, Mahmudi, and Arminsyah, "Transfer of Waqf Assets from the Perspective of Islamic Law and Waqf Law in Indonesia." 32Amsanul Amri and Rodhatul Wardhani, "Transfer

[33] Amsanul Amri and Rodhatul Wardhani, "Transfer of Function of Waqf Land Assets: Analysis of Law No. 41 of 2004 and the KHI,"Tahqiqa Journal: Scientific Journal of Islamic Legal Thought 12, no. 2 (2018): 148–61.

[34] Nuridin and Hidayat, "Analysis of the Implementation of Waqf Law Number 41 of 2004 on the Role of Nazhir in Waqf Management: A Study." 35Rialisasi and Ja'far, "Analysis of the Sale and Purchase of Waqf Property

[35] 34Nuridin and Hidayat, "Analysis of the Implementation of Waqf Law Number 41 of 2004 on the Role of Nazhir in Waqf Management: A Study."

sionalism of nazhir (managers) in waqf management contribute to suboptimal management, including unauthorized transfers. Weak oversight has resulted in many waqf assets being neglected, lost, or illegally transferred[36].

Procedures for Changing the Function and Status of Waqf Assets

The mechanism for changing the function and status of waqf assets is regulated in Article 51 of Law Number 41 of 2004 concerning Waqf, which states:

1. Nazhir submits an exchange request to the Minister through the local District Religious Affairs Office by explaining the reasons for the change in status/exchange;
2. The Head of the District KUA forwards the application to the Regency/City Department of Religion Office;
3. The Head of the Regency/City Department of Religion Office, after receiving the application, forms a team with the composition and purpose as in Article 49 paragraph (4),and then the local regent/mayor issues a Decree;
4. The Head of the Regency/City Department of Religion Office forwards the application, accompanied by the results of the team's assessment, to the Head of the Provincial Department of Religion Regional Office and then forwards the application to the Minister; and
5. After obtaining written approval from the Minister, the exchange can be carried out and the results must be reported by the Nazhir to the land office and/or related agency for further registration.

Spirit of Function Transfer and Status Transfer of Waqf Assets for the Benefit of the Ummah

The transfer of function and status of waqf assets is a strategic effort to maintain the relevance and sustainability of waqf benefits in meeting the evolving needs of the community. Although the basic principles of waqf emphasize permanence and the impermissibility of transferring waqf assets, under certain circumstances, changes in function or status can be justified for the benefit of the community[37].

The maqāṣid al-syari'ah view, as explained by Jasser Auda, considers the permissibility of changing the function of waqf assets if the change brings greater benefits to society. This approach emphasizes the flexibility of Islamic law in responding to social dynamics and the needs of the community, as long as it does not conflict with sharia principles[38].

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[36] Hamzah, “The Role of Nazir in Developing Productive Waqf.”

[37] Nuridin and Hidayat, “Analysis of the Implementation of Waqf Law Number 41 of 2004 on the Role of Nazhir in Waqf Management: A Study.”

[38] Jarman Arroisi, "Implementation of Cash Waqf Distribution to Support Small and Medium Enterprises at the Cash Waqf Agency & Cash Waqf Agency of the Indonesian Ulema Council (MUI) Yogyakarta,"Journal of Islamic Law Studies and Research3, no. No. 11 (2015): 49–66, https://doi.org/10.30659/jua.v3i1.7554.

Law Number 41 of 2004 concerning Waqf in Indonesia also accommodates the possibility of changing the function and status of waqf assets, provided that the changes are made in the public interest and in accordance with the General Spatial Planning Plan (RUTR). Furthermore, these changes must obtain written permission from the Minister of Religion with the approval of the Indonesian Waqf Board (BWI)[39].

In practice, changing the function and status of waqf assets can be a solution to optimize the use of waqf assets that are no longer productive or that do not meet current community needs. For example, waqf land originally designated for the construction of a mosque in a depopulated area can be converted into educational or healthcare facilities that are more needed by the community[40]. Thus, the purpose of transferring the function and status of waqf assets is to ensure that waqf assets continue to provide maximum benefits to the community, in accordance with sharia principles and applicable legal provisions. This aligns with the primary purpose of waqf as an instrument for achieving the welfare and well-being of the community.

Conclusion

Based on the description in the previous chapter, the following conclusions can be drawn:

1. Conversion of waqf assets is a change in the allocation or use of waqf assets without changing their legal status as waqf, while conversion of status refers to a change in ownership rights of waqf assets that results in the asset being removed from waqf status. Both have different legal and procedural dimensions but are interrelated in the context of productive waqf management.
2. The Islamic legal basis for the transfer of function and status of waqf assets refers to the MUI Fatwa in the 2009 Ulama Ijtima' which permits the exchange of waqf assets if necessary for greater benefit, provided the replacement value is equal or better. Meanwhile, Indonesian positive law is regulated in Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 as its implementing regulations.
3. Factors that encourage the change in function and status of waqf assets include changes in community needs, the condition of waqf assets that are no longer productive, development interests for the public good, weak supervision, and limited capacity of nadzir institutions.
4. The procedures for implementing the transfer of function and status of waqf assets are carried out through an administrative mechanism involving several stages, namely the submission of an application by the nazhir to the Ministry of Religious Affairs, accompanied by technical considerations and recommendations from the Indonesian Waqf Board (BWI), and followed up with the issuance

[39] Sarmo, "Law on Changes in the Status of Waqf Assets (Case Study of Changes in Ownership Status of Waqf Land in Keniten Village, Kedungbanteng District, Banyumas Regency)."

[40] Syaifudin, "Comparative Analysis of the Change of Function of Waqf Objects from the Perspective of the Shafi'i and Hambali Schools."

of a written permit by the Minister of Religious Affairs. The implementation of these changes must be based on considerations of public interest and must not conflict with sharia principles and laws and regulations.

5. The essence and spirit of permitting the conversion of waqf assets and their status lies in maintaining the beneficial value and social relevance of waqf to the needs of the community. Therefore, any changes must be based on the principles of public welfare, accountability, and remain within the framework of Islamic law and applicable laws and regulations.

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