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DEFINITIONS GIVEN TO THE WAQF IN THE WORK "HIDAYA" BY BURHONIDDIN MARGINANI

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Introduction

1. What is Waqf?

In Arabic, the word "Waqf" is a patron of the verb "waqofa" (وقف) which means "forbid", "stop". This word was also used in the above mentioned meanings in the Quran (See Surah Soffat, 24; Surah An'am, 30, for more detail). In the early periods of Islamic history, the words "Habs" ((حَبس (Khalil ibn Ahmad, n.d., p. 150; Jawhari, 1987, p. 915), "Hubs" (حُبس) (plural "احباس") (The hadith لا حبس عن فرائضالله is an example of this) or "Sadaqa" (صدقة) (Rageb Esfahani, 1997, pp. 480-481) were used to express the Waqf institution (Furat, n.d., p. 62). The plural of the word "waqafa" "(وقف) is "awqaf" (اوقاف) and "wuquf" (وقوف). The word "Waqf" means "property that was donated" (Ibn Manzur, n.d., pp. 969-970). In some hadiths of Prophet Muhammad (peace and blessings of Allaah be upon him), the word of "Habs" was used instead of the Waqf (Bukhari, n.d.; Muslim, n.d.). Since the third century BC, the Waqf began to be used in today's meaning (see Hennigan, 2004, p. 50, for more detail). Either Waqf or Habs is the same organization.

In the work of "Hidaya" by Burhoniddin Marginani, the Waqf is described as follows:

الوقف لغة هو الحبس، يقول: وقفت الدابة وأوقفتها بمعنى - the Waqf is "to keep" according to lexicology. As we have seen, he used the word "Habs" in the interpretation of the word Waqf (Marginani, n.d., p. 391).

Imam Shafi'i and Imam Malik, as well as representatives of the denominations of these mentors, also used the word "Habs" in the meaning of the Waqf (Shafi'i, 1393, pp. 51-58; Imam Malik, 1323, pp. 98-111).

There are also sourses where the word "Sadaqa" is used instead of the Waqf. 'Sadaqa" is something that is given to the poor for the sake of Allah, which means the properties that are donated in the hope of finding reward (Shafi'i, 1393, pp. 51-58). The meaning

From past to present, societies have established institutions in order to meet the needs of social assistance. The currently established social assistance institutions have been implemented through Waqf in Islamic Society since its inception. The fact that

Donation of one's property for public needs and use of the needy class was an important part of solving social problems.

After the expansion of Waqf institution, separate chapters were allocated in the Fiqh books about it, special organizations were established to control the work of Waqf. In this way, the Waqf institution became increasingly popular.

In turn, there are some differences in Fiqh on the issue of Waqf. These differences were formed mainly on the basis of the definitions given to Waqf and the conditions laid down.

of the word "Waqf" came from by conjuncture of such adjectives as forbidden to bind (muharrama), made eternal (mu'abbada) or continuing (jariya) (Shafi'i, 1393, pp. 51-58).

In many sources of the Hanafi, the term "Waqf" was widely used from the beginning, and in some cases the term "Waqf and Sadaqa" was used (Kasani, 1974, p. 217). In the description to the Waqf given by Marginani, we also reviewed an example of this.

The Waqf, as a legal institution, is defined as follows: the Waqf is the ownership deprivation of a property that can be used on a permanent basis and the income from it for the sake of Allah's consent to charity for good deeds.

In this case, the property is at the disposal of the benefactor and becomes the property of God (or community). The management of this property is conducted according to the terms and general principles of the Waqf (Kubaysiy, 1977, pp. 75-78).

As for the meaning of the word Waqf, scholars put forward different ideas. Below we will look through them one by one.

حَبْسِ الْمَمْلُوكِ عَنْ التَّمْلِيكِ مِنْ الْغَيْر – prohibition of owning someone's property for another (Sarakhsi, n.d., p. 27). Apparently, Sarakhsiy also used the word "Habs" to interprete the word "Waqf" in his work "Mabsut".

وَهُوَ حَبْسُ الْعَيْنِ عَلَى مِلْكِ الْوَاقِفِ وَالتَّصَدّقُ بِالْمَنْفَعة (Ihtiyar, n.d., p. 40). The definition given to the word "Waqf" in "Ihtiyor" also repeats the existing method in the above-mentioned sources, and the word "Habs" is also used for interpretation.

مال به حبس مع بقاء في عينه يُمْكِنُ الإنْتِفاعُ بقطع التصَرف رقبته عَلَى مَصْرِفٍ مُبَاح - Discontinuing use of a property that is usable and terminating its use is called "Habs" (Zakariya Muhammad Ansari, 1418, p. 440). Zakariya Ansari also noted that the Waqf was "Habs".

In the work "Hidaya" by Burhoniddin Marginani the following definitions were given by Abu Hanifa to the word Waqf: "keeping it in the Waqf and donating it as it is in the Ariya" (Marginani, n.d., p. 391). Ariya is to give naf as a property without any basis. Ariya is given for temporary use of things. For example, a rich man says to a poor man, "I gave you this tree to use for a year as an ariya". The treatment of Ariya is a meritorious work (Sheikh Mohammed Sadiq Muhammad Yusuf, 2008, p. 206). Abu Hanifa also used the word "Habs" in the interpretation of the word "Waqf".

2. Methods

Necessity (Luzum)

After the mention of Abu Hanifa's description to the Waqf in the work "Hidaya", The rules related to the Waqf began being applied and the text continues as follows: "Then it was said: the interest is unclear, and the charity of unclear thing will not be reliable. According to Abu Hanifa, the Waqf is not permissible at all. It was also said in "Mabsut". However, it is permissible in Abu Hanifa's opinion, it is ghayru lazim (not necessary), only as in Ariya (Marginani, n.d., p. 391).

This phrase in the "Hidaya", that is, according to Abu Hanifa's quote that the Waqf is not permissible at all, but in fact, the Waqf is lazim (necessary) in the opinion of Imam Abu Hanifa, is interpreted as follows: "Abu Hanifa said that "it is not permissible". Kozikxon said, "Some people, looking at the appearance of this text, said that the Waqf is not permissible in the opinion of Abu Hanifa. This is not true. The Waqf is permissible according to the "Hadith" and companions' opinion. Only Imam Abu Yusuf, Imam Muhammad and all the faqihs (except Abu Hanifa) said that it should be" (Marginani, n.d., p. 392).

"Hidaya" continues as follows: And in the opinion of the two imams, the Waqf is the possession of Allah. The property of the Waqf will be transferred to the possession of Allah and, in this way, by giving to the people the benefit out of the possession of the person. Therefore the Waqf will never be sold, will not be given as a present and will not be inherited. The word Waqf is suitable for both views. And the tardjih is according to the evidence" (Marginani, n.d., p. 392). Tardjeh means to look up one of two proofs in the terminology of fiqh (see Sheikh Muhammad Sodiq Muhammad Yusuf, 2010, pp. 566–568, for more detail).

After the preference in "Hidaya" was connected to the evidence, the evidence of the Imams was also mentioned. Below we will review these facts in detail.

The evidence of the two imams is the following Hadith:

When Omar (let him stay in Paradise) wanted to donate his garden named Samgh, our Prophet (peace

and blessings of Allah be upon him) said to him: "give it in its original form, provided that it is not for sale, inheritance and gift" (Bukhari, n.d.; Muslim, n.d., p. 41; Abu Dawud, n.d., p. 42; Termiziy, n.d.; Ibn Moja, n.d.; Nasoi, n.d.).

And the evidence of Imam Abu Hanifa is the following Hadith:

"The messenger of Allah (may peace and blessings of Allah be upon him) said: "there is no prohibition in Allah's (inheritance) faraiz".

Another evidence of Imam Abu Hanifa is the following Hadith:

"Mohammed (peace and blessings of Allah be upon him) ordered the sale of Waqf".

In conclusion, Imam Abu Hanifa said that the property will be left to its owner and the benefit will be given to charity, Imam Abu Yusuf and Imam Muhammad suggested that the property will be held in the property of Allah and the benefit will be given to charity.

In the Hanafi denomination, a fatwa was issued to the follower of Imam Abu Yusuf and Imam Muhammad (Sheikh Muhammad Sodiq Muhammad Yusuf, 2008, p. 308).

Referring to the only aspect approved by all the scribes, with particular reference to the different aspects of the descriptions given to the Waqf, it follows that "تحبيس الأصل، وتسبيل المنفعة", that is, "keeping the original and spending the benefit (in Allah's way)". The concept of luzum (necessary) is a controversial issue for Imam Abu Hanifa and the two imams. As we have seen above, the Imam Abu Hanifa mentioned that there is no Luzum in the Waqf, while the two imams stated that there is.

In Islamic law, Luzum is interpreted as follows:

Luzum is mandatory form of Aqd and is a condition that can not be done with the desire of only one of the parties.

The mood of ghayru-lazim (non-compliance) of the Aqd will be possible in two forms:

1. Failure to have a binding nature of the Aqd subject to the original.

2. Non-binding according to the purpose and organization of the Aqd (Apaydin, n.d., p. 260).

Zarqo classified nine deals and two deals that are subject to the original as annexed to it, but in some cases not subject to it, into three separate groups. The first group includes deals that should be ideal for both parties – iydo, iora, shirkat (mushoraka), mudoraba, rahn and kafolat. Iydo is the wnership transfer of one property to another without permission (Erdogan, 2005, p. 228). And iora is the fullness of one commodity that benefits one property to another (Erdogan, 2005, p. 219).

The second group includes deals that are not subject to the original, but are subject in some cases – wakalah, tahkim, wasiyyat and hiba. The tahkim is the plaintiff and the person against whom the lawsuit is filed may accept someone as the judge with their consent to settle the dispute (Erdogan, 2005, p. 536). According to the third group, only in some cases, deals that are not actually lazim, which are included in Iara and Muzaraa. Zarqo, mentioned also an Estesna Aqd that is not considered a necessity according to the Hanafi denomination (Zarqo, 1968, pp. 523–533). Estesna is to demand from the craftsman to prepare something in a certain term (Sheikh Mohammed Sadiq Muhammad Yusuf, 2008, p. 144). Among the Aqds mentioned above, there is no Waqf. However, both in the Hanafi denomination and in the remaining three denomination, it is accepted that the Waqf should be lazim. However, as mentioned above, the Imam Abu Hanifa issued a decree about the needs of Waqf by comparing the Waqf to the Iora.

3. Results and Discussion

The issue of the luzum (necessity) of Waqf

The issue of the luzum (necessity) of Waqf includes the issue of whether or not the rights of cancellation, sale, grant or inheritance by that person or his heirs of the Waqf realized by a person can be withdrawn. This issue is not mainly caused by the donating person, but by his heirs, and as a result, the Waqfs can disappear at once, which is often encountered in the relations of the Waqf.

We will come up with narrations on the subject:

A. Hazrati Ali, Abdullah ibn Mas'ud and Ibrahim Nahai said: this is from Ibn Abu Shaiba's "Musannaf" and is about Ali raziyallahu Anhu: "لا حبس عن فرائض اللهضلا ما كان من سلاح أو كراع" - "there is no prohibition from Allah's decrees, if there is weapons and armor, it is another subject" (Ibn Abu Shaibah, n.d., p. 250). This hadith, which Imam Abu Hanifa cited as evidence of non-necessity of the Waqf, refers to the right of heirs.

B. The Narratives of Ibn Abbas.

"لَما نرلتْ سُورَةُ النّسْاءِ قَالَ رَسُولُ اللهِ صلّى اللهُ عَلَيْهِ وَسَلّمَ: لَا حَبْسَ بَعْدَ سُورَةِ النّسْاء"

When the surah of Al-nisa (the contribution of heritage) was revealed, our Prophet (peace and blessings of Allah be upon him) said: "There are no hubs after the surah of Al-Niso" (Tabaroni, n.d., p. 365; Darakutni, n.d., p. 119; Bayhaki, n.d.a, p. 365). Another narrator of that person is in the form of "لا حبس عن فرائض الله" - "there is no prohibition from the Allah's decrees". First of all, it should be noted that this hadith is not considered a trustworthy Hadith. In Bayhaki's work "As-Sunan as-Saghiyr", this hadith is said to be "weak" and this hadith is not supported by evidence:

وحديث ابن عباس مرفوعا «لا حبس عن فرائئ الله» مداره على ابن لهيعة وهوضعيف لا يحتج به وانما يعرف من قول شريح

Doraqutniy also mentioned that this hadith was narrated by Ibn Lahiy`a (see Nawawi, p. 403, for more detail) and his brother and both of them were weak (لا حبس عن فرائض الله عز و جل لم سنده غبر بن لهيعة عن اخيه وهمضاعيفان). (Darakutni, n.d., p. 378).

In the above narration from Ali (r.a.), Abdullah ibn Mas'ud and Ibrahim Nahai, there is no such quality.

Ibn Hazm said about this hadith in his work "Al-Muhallo": "This hadith is the subject, and Ibn Lahiy'a is a person like "La khayra fiyhi". And so is his brother". Narration can be explained as follows: The Surah of Nisa or part of it is revealed after Uhud. The Companions of the Prophet (peace and blessings of Allah be upon him) made the Waqf after the Eid and after the revelation of the verses of inheritance in the Surah of Nisa, and messenger of Allah (PBUH) was aware of this. This is a process that has passed from generation to generation. If this information was true, the Habs/Waqf would have had to be haram until the death of the messenger of Allah (PBUH) (Ibn Hazm, n.d., p. 177).

But as we have seen in several examples, the work of the Waqf of his property also continued in the lives of the messenger of Allah (PBUH), and there wasn't any attempt to stop it either afterwards.

C. Narratives of Qazi Shurayh. Following the narration from Ibn Abbas (PBUH), the narrations told by the famous judge of Kufa, Qazi Shurayh, caused controversy on this topic. The first narration told by Qazi Shurayh is the following Hadith Sharif:

"جاء محمد ببيع الحبيس" - Muhammad (peace and blessings of Allah be upon him) commanded to sell the Habs (Al-Hassof, n.d., p. 110; Hilal, n.d., p. 5).

Another narration that comes in this context is the following Hadith:

"جاء محمد بطلاق الحبيس" - Muhammad (PBUH) issued a decree on the release of the Waqf (Bayhaqi mentioned that these hadiths are related to Bahira and Saiba. see Bayhaki, n.d.b, p. 163, fore more detail).

From these two narratives, it is understood that the messenger of Allah (peace and blessings of Allaah be upon him) abolished the previously existing ban. The narration, about a question asked Shurayh, who was told by Ato Ibn Musayyab, is important in terms of exactly which Waqf the ban was removed.

The narration is as follows:

قال حدثنا ابراهيم بن يعقوب بن عطاء قال قال أخبرنا محمد رضي الله عنه اخبرنا المسيب الآخر من ولده على جعل رجل فقال سألنا شريحا داره عليه فقال انما حبسًا فالآخر اقضي ولسْت افتى فاعدت المسألة sie فرائض الله حبس

we asked Shurayh to grant his house for his one child, not for the other child as a donation.

"I am a judge, not a mufti" he said. I asked the matter again from him. "There is no Habs in Allah's good deeds" he said (Tahawi, 1994; Hilal, 1355, p. 5; Sarakhsi, n.d., p. 90).

The issue in this case is about the fact that a person can only make the Waqf of a property to only one child. In this case, the other children remain on the sidelines. Shurayh used the same verse about inheritance in this situation. The narrated from Ibn Abbas is also related to the fact that the Surah of Nisa is about inheritance.

The meaning of the above mentioned hadith means that there is no arrest, that is, prohibition, retention from the heritage of Allah. Within our theme, it comes from the content that no one can deprive his heirs of inheritance by way of the Waqf of his property. In this case, if a person can sell his property in a healthy state to another, make a gift, leave an inheritance, the right question arises as to why it will not be possible to do it through the Waqf. The answer is that wills (wasiyya) and property management during life are different concepts. The "Will" is the possession of property after death (Sheikh Muhammad Sodiq Muhammad Yusuf, 2008, p. 562), that is, the "Will" is the fulfillment of his request after the person died (Sheikh Muhammad Sodiq Muhammad Yusuf, 2008, p. 563). And the property management during life can be carried out in any form, if not tied to death.

The quote "there are no hubs in Faraiz (share in inheritance)" from the narration means that the subject mentioned above is related to after death. That is, the property which is banned is about posthumous disposition.

Regarding the banning of the narrated Habs/ Waqf from Sarakhsiy Shurayh, he first noted that the same narrations were transmitted from Ibn Mas'ud and Ibn Abbas. According to him, these narratives, perhaps, are related to the issue of animals in the time of ignorance by the shafiites, and it is said that the Sharia destroyed these issues. Sarakhsiy noted his own views (Hanafi sect) on the narration: the expression of the OMM of the Nakra, which is in the status of nafy, so that it includes all the ways that lead to the Prohibition of inheritance, only if there is any evidence to the contrary, the situation can change. In this way, he opposed the explanation that the narration put forward by Sarakhsiy Shafi'i in connection with the period of ignorance, and noted that this would include all the Habs/hubs works that would prevent him from taking a share from the inheritance. "Inaya" contains the same opinion, which is the interpretation of Al-Babarti to "Hidaya" (Al-Babarti, n.d., p. 323). In "Inaya" and "Hidaya", it is said that the ban on the sale of the Habs is evil, and that the Prophet Muhammad (PBUH). It is noted that Naskh was made with these commandments

(Al-Babarti, n.d., p. 323; Sarakhsi, n.d., 341). And in the commentary of the phrase "as-Saiba-like" in "Hidaya", Al-Babarti said that Saiba was taken under control and did not leave the property, in this form; without the waqf of his house and his land, a person would not leave his property. It is with Abu Hanifa's bringing evidence to the fatwa about the fact that the Waqf is not obligatory (must)The same theme is mentioned in Kasani's work "Badoi as-Sanayi". The narration told by Shuraykh ءاج دمحم بيبع الحبايس "Muhammad PBUH ordered the sale of habiys" does not leave the property of the founder of the Waqf (Kasani, 1974, p. 139). The explanation given to the Waqf of companions and Muhammad PBUH is in this form of content:

The Waqf of the messenger of Allah are not Waqfs because of the hadiths "We, the prophets, do not leave an inheritance, the properties that remain from us are charity", while the Waqf of the companions are likely to be before the Nuzul of the surah Nisa, while the heirs have confirmed that they were after the death of the Messenger (Kasani, 1974, p. 139).

The fatwa of Abu Hanifa about the non-necessity of the Waqf

Abu Hanifa confessed that he would be done the habs in the property of the waqf (At-Tahawi, 1994, 96). It is noted that he asserted that one's waqf is an agreement that should be as fervent as the iora agreement. Tahawiy and Imam Zufar were said tob had this vision (Sarakhsi, n.d., p. 341; Al-Babarti, n.d., p. 219). The next Hanafi fiqhi scholars used this fatwa of Abu Hanifa as evidence.

a) transport evidence of the fatwa

1) the above-mentioned narration of Shurayh, the famous judge of Kufa, triggered Abu Hanifa to issue a decree on the compulsory/non-necessity of the waqf, in other words, the idea that the property of the waqf should not come out of the property of the founder. Therefore, it is possible to return from the waqf (ruju'), which is also mentioned in tha narratiom Umar PBUH participated can make the circulation of grants, inheritance.

In the work of Imam Shafi'i named "Al-Umm", those who considered the narrations from Shurayh from the time of ignorance recorded their connection with Bahira (a she-camel whose milk was spared for the idols and nobody was allowed to milk it), Wasila (a she-camel set free for idols because it has given birth to a she-camel at its first delivery and then again gives birth to a she-camel at its second delivery), Hom (a stallion-camel freed from work for their idols, after it had finished a number of copulations assigned for it, all these animals were liberated in honour of idols as practised by pagan Arabs in the pre-Islamic period), Sa'iba (a she-camel let loose for free pasture for their false gods, e.g. idols, etc., and nothing was allowed to be carried on it), among the habits of the time of ignorance. According to Shafi'i, the Arabs did not know the waqfs they made for charity during the time of ignorance, so it was said that the habs/Waqf should be related to the animals mentioned in verse 103 of Surat "al-Maida":

مَا جَعَلَ اللَّهُ مِن بَحِيرَةٍ وَلاَ سَائِبَةٍ وَلاَ وَصِيلَةٍ وَلاَ حَامٍ وَلَكِنَّ الَّذِينَ كَفَرُواْ يَفْتَرُونَ عَلَى اللَّهِ الْكَذِبَ
وَأَكْثَرُهُمْ لاَ يَعْقِلُونَ

Allah has not instituted things like *Bahirah* (a she-camel whose milk was spared for the idols and nobody was allowed to milk it) or a *Sa'ibah* (a she-camel let loose for free pasture for their false gods, e.g. idols, etc., and nothing was allowed to be carried on it), or a *Wasilah* (a she-camel set free for idols because it has given birth to a she-camel at its first delivery and then again gives birth to a she-camel at its second delivery) or a *Ham* (a stallion-camel freed from work for their idols, after it had finished a number of copulations assigned for it, all these animals were liberated in honour of idols as practised by pagan Arabs in the pre-Islamic period). But those who disbelieve in this is against Allah, and most of them have no understanding.

Shafi'i, thus, attribute this narration to this issue and emphasize the fact that it is not affiliated with the waqf institution. The same points are noted from the Bayhaki in connection with these legends (Bayhaki, n.d. p. 163).

2) Abdullah ibn Zayd (died 32/652) was who gave to the waqf a land belonging to them and his father was dissatisfied with him and complain the messenger (PUBH). The messenger of Allah (PUBH) commanded him to return from the Waqf (ruju). This situation is also explained by the fact that if it were not possible to return from the waqf, The Messenger would not have commanded this (Darakutni, n.d., p. 249). This is a narration mentioned only in "Ikhtiyar" (Bayhaki, n.d., 238). This hadith is mentioned as "mursal (Darakutni, n.d., p. 249), munqati' (Bayhaki, n.d., p. 238)".

3) Omar (PBUH) said that If I didn't tell about my waqf to the prophet, I would return from it (Tahawi, 1994, p. 96). From this narration it becomes known that he had such rights.

Ibn Hajar noted that this is not a document for two reasons:

1) Ruvi Ibn Shihab's Umar (may Allah bless him and grant him peace)'s failure to reach Umar (PBUH);

2) Omar (PBUH)'s condition a ruju before the waqf (Ibn Hajar, 1379, p. 350).

b) clever evidence of the fatwa

Abu Hanifa's clever evidence on this subject is that the waqf is an act that is not as necessary as oriya. In this case, what is transferred to someone else's property by the founder is not the original of the property, but its interests. It is known that the founder has such rights as the appointment of a trustee, the distribution of income. What gives him these rights is his right to property on the waqf. In this aspect, the waqf, as mentioned above, is similar to Oria (Sarakhsi, n.d., p. 241).

Only in two cases the waqf will be necessary (lazim):

a) recording (tasjil)

One of them is the governor's decision as a result of the discussion that the waqf is subject to (Mawsili, 1426, p. 47). The case of "Tasjil" is carried out as follows: if a person wants to return a single Ayn, which is his property, after submitting it to the trustee, and therefore the court between the trustee and the founder begins, the governor, after considering the situation, judges that the waqf is necessary, this situation will be accepted as record (tasjil). In this situation the governor's disagreements with Abu Hanifa, Abu Yusuf and Imam Muhammad must also have regarding this topic.

In this place, in a situation where the judge prefers the fatwa of one of the mujtahids in a matter in which there is disagreement among the mujtahids, his judgment is based on the rule of being authentic (Ijtihad can not be canceled by Ijtihad) (Hilmi&Sungurbey, 1978, p. 39-40).

B) will

Waqfs made in the form of wills are considered mandatory (must). This situation is realized by the fact that the beneficiary says "after death, my house, my lands will be given such a person/for such work". Waqfs in the form of wills do not need a separate registration,only it is mandatory that they do not exceed 1/3 part. If the waqf is not carried out with 1/3 part of the inheritance property, the same amount is subject to, the rest depends on the confirmation of the heirs (Kasani, 1974, p. 138).

The views of the necessity (luzum) of waqf

The owners who consider that waqf is mandatory, in particular, consider the waqfs of the Prophet (PBUH) and the companions and unseeing the return from them (ruju') as evidence. Also, especially Omar (PBUH.) in the above-mentioned narration, the command "not to be sold, not to be donated and not to leave an inheritance" is evidence of the fact that the ownership of the waqf is out of from the owner of the waqf.

a) Abu Yusuf's views

Abu Yusuf said that the waqf would be necessary by saying "I made a waqf". According to him, the circulation of the waqf is similar to isqot, not iorora. The owner must not have the right to remain in the property of the waqf, as if a slave is released, his master does not have the right to remain in it. Abu Yusuf also expressed respect to the condition of tasjil and said that what is not subject to the waqf should not be subject to the governor's judgment either (Tahawi, 1994, p. 96). When a person named Iso ibn Abon Abu Yusuf came to Baghdad, they were in solidarity with Abu Hanifa on the issue of the sale of waqfs. When he listened to the hadith of Umar by Ismail ibn Ulayya, he had returned from this thoght after listening to it (Mawardi, 1919, p. 511).

b) the views of Imam Muhammad

Imam Muhammad considered waqf as tabarru'. The way out of a property with a way of tarabbu is only with someone finding it. The circulation of the waqf is not carried out without obtaining the property of the waqf (by the trustee or the beneficiary). And the proof of this is Omar's donation his property to Hafsa. It follows that the waqf established such conditions that it is not obliged for the waqf to be authentic, to separate it from other properties (ifroz) (Mawsili, 1426, p. 48).

c. Views of other sects

According to the molic sect, in order for the waqf to be mandatory (must), the above-mentioned registration, that is, the governor's decree does not need, with the waqf itself, the waqf will be mandatory. Maliks associate Shurayh's saying on this subject in Kufa with the fact that he did not come to Medina and saw the waqfs of the messenger of Allah and the companions (Qurtubi, 1408, p. 418).

Shafi'is also thought that once the waqf was realized, it would not be possible to return from it (Mawardi, 1919, p. 512). The views of Imam Shafi'i regarding Shurayh's narration are given above.

The hanbalis believe that it is necessary with the waqf to say a tarabbu that hinders the sale and donation, and the itq as such, that the judgment of the governor in this regard is not necessary (Ibn Muflih, 1997, p. 185).

1. Work carried out for the necessity of the waqf

The debate about whether or not the waqf was binding was not only a legal argument, but also a source of serious controversy. The reason for this can be said that the heirs want to abolish the waqfs made by their fathers and that they have property or that the waqfs have become a way to deprive the girl-children

of inheritance at the end of the companions ' period. Abu Zahra, who wrote the same topic under the name "Inhirafu bi al-waqf an ma'na as-sadaqah", he noted the concerns and sorrows of Miswar ibn Mahramah's waqf the property of Umar.

"You are focusing on kindness and you are intent on it. And I am afraid that there will come people who will not pay attention as well as you pay attention, who will not intend as well as you intend, who will show you as evidence and will be struck by inheritance" (Abu Zahra, 1959, p. 10).

The expression "reclamation from inheritance" in this narration is significant in terms of the fact that the waqf is considered to be an action that can be an excuse for reclamation from inheritance.

Aisha (PBUH) immitated the condition as Verse 139 of Surat al-An'am:

وَقَالُواْ مَا فِي بُطُونِ هَٰذِهِ ٱلۡأَنۡعَٰمِ خَالِصَةٌ لِّذُكُورِنَا وَمُحَرَّمٌ عَلَىٰٓ أَزۡوَٰجِنَاۖ وَإِن يَكُن مَّيۡتَةٗ فَهُمۡ فِيهِ شُرَكَآءُۚ سَيَجۡزِيهِمۡ وَصۡفَهُمۡۚ إِنَّهُۥ حَكِيمٌ عَلِيمٞ

And they say: "What is in the bellies of such and such cattle (milk or foetus) is for our males alone, and forbidden to our females (girls and women), but if it is born dead, then all have shares therein." He will punish them for their attribution (of such false orders to Allah). Verily, He is All-Wise, All-Knower.

The narration about what he immitate the situation has the attention in terms of showing the abuses of that period (Sahnun, n.d., p. 245).

We can see that there were many waqf made to their descendants between the companions and tobeins. Many scholars of Islamic law have noted that such a waqf is possible (Abu Zahra, 1959, p. 222). In Al-Cindy's work titled "History al-Qudat" we can see that even family waqf are widely spread through legends (Abu Zahra, 1959, p. 11). This narration is also important in relation to Ismail ibn Yasu'al-Kindi, who was appointed as the Egyptian judge by Al-Mahdi:

"He was of the opinion like Abu Hanifa that waqfs are not subject to and all its waqf will be abolished when the endowmentorner dies. According to his teacher Abu Hanifa, he worked. The Egyptians don't like it. The Egyptian lawyer Lays ibn Sa'd went to him and said, "I am the claimant on you." "in what matter?" said Ismail ibn Yasu'. He said: "it is about the abolition of Muslim habs'. The messenger of Allah (may peace be upon him) made waqf/habs,

Abu Bakr, Umar, Usman, Ali, Zubayr made habs/ waqf,

Lays also complained about this situation to Khalifa Mahdi (Waki', 1947, p. 236).

From the narratives of Kadi Shurayh and the historical data listed above, it is also possible to find out that from the earliest times of Islam the waqfs were used for the original purpose, as well as the abuse of some children or daughters in the deprivation of inheritance. On the other hand, in the narration about the fatwa Kadi Shurayh gave about the person who donated his property to a child, an attempt to deprive other heirs of the inheritance is clearly visible. In the narration the shares in the inheritance, that is faraiz, are mentioned. Later, this narration became an issue to be explained by the Hanafis when Abu Hanifa merged with the fatwa of the Waqf that was not compulsory. The fatwa of Abu Hanif can also be evaluated from this point of view. Another mentioned above Historical data on Yesu, Tavba b. Numair b and Ismail b indicate that during this period, it is common to beat the contribution of daughter by making waqf for a property to a child or by making a waqf for a son children. In addition, in the example of the document of the estate of the descendant Waqf, which is contained in the work of Shofii al-Umm (Abu Zahra, 1959, p. 222), the children of the daughter were deprived of the waqf (Shafi'i, 1393, p. 59).

Abu Hanifa's fatwa on the non-binding nature of the waqf in this way gives the deprived heirs the opportunity to return from the waqf. A son or daughter deprived of the waqf has the right to return from the waqf or to consent to it after the death of the heir. As already mentioned above, the conditions by Abu Hanifa under which the waqf is compulsory also support this.

4. Conclusions

In conclusion, the narratives made by Qadi Shurayh from our Prophet, together with the fatwa on the non-binding nature of the vaqf by Abu Hanifa, have become an important problem in the continuation of the institutions of the waqf. In our opinion, when these narratives and fatwas are considered together with the relevant situations and the socio-cultural situation of the period, it is understood that the focus is on preventing the heirs, especially the girl children, from being beat by their heritage. In this way, the heirs are given the right to consent to the continuation of the waqf or to return from the waqf and the receipt of their deprivation of inheritance is obtained. However, the fatwa of Abu Hanifa, although aimed at protecting the rights of the heirs, has also become an obstacle for the duration of the waqf. After all, abuse is also committed by heirs. The institutions of the waqf, which are of great importance, are at risk of extinction by the heirs of his heirs years after the death of the founder, because of the relics that the fatwas of Abu Hanifa have fasted.

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