

## **The Contextual of Waqf in Philosophy of Islamic Law Based on the Qur'an and Hadith**

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**Abstract:** *The Islamic law is the command of God revealed to the Prophet Muhammad. Islamic legal thought can be a discussion about the purpose of Islamic law (al-ahkaammaqaashid). Islam gives comprehensive guidance to human life covering all aspects of life towards the achievement of happiness, physical, spiritual, social, individual and the world hereafter. The philosophy of Islamic law is the rule, principle, Mabda' rules which are used to control the Islamic community. These rules can be in the forms of the verses the Qur'an, Hadith, or can be the opinions of the Prophet's friends and tabi'in, and may also be the opinion developed at a time in the life of the community of Muslims or Islam. In the history of Islam, endowments known since the time of the Prophet Muhammad as endowments were prescribed after the Prophet Muhammad was in Medina.*

**Keywords:** *Islamic legal philosophy; the Qur'an and Hadith; waqf*

### **INTRODUCTION**

Islamic law is the command of God revealed to the Prophet Muhammad SAW. Islamic law is a divine system that preceded the Islamic state and is not preceded by him, to control the Muslim community and is not controlled by it. So, in solitude, man is still bound to the law, the law relating to the creator of human and natural

environment. Man ordered to do good not only to human beings but also to God and all creation.<sup>1</sup>

Islamic sacred law is a set of religious rules, commandments of God that govern the behavior of Muslim life in all its aspects. This law consists of the same laws regarding worship

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<sup>1</sup> Abdul Halim Barkatullah. 2011. "Hukum dan Moral (Studi Kajian Hukum Positif dan Hukum Islam)". Jurnal Cita Hukum, Volume 5 Nomor 1, Juni 2013, ISSN2085-6644, page 39.

and ritual. Islamic law is the representation of Islamic thought, the most typical manifestation of the worldview of Islam, and the essence of Islam itself.<sup>2</sup> Islamic law also regulates the property in Islam called *mal*. *Mal* (property) are grouped into immovable and movable property.<sup>3</sup>

Term assets, or *al-mal* in *Al-Qur'an* and *Sunnah* are not limited in scope to a specific meaning, so that the meaning of *al-Mal* is very broad and always evolving. Property criteria according to experts *iqh* consist of: First, have an element of economic value. Second, the benefits or services obtained from an object. Economic value and benefits to property criteria determined by *urf* (custom) that occur in society.<sup>4</sup> *As-Suyuti* found *Mal* term only for goods that have economic value, can be bought and sold, and subject to pay compensation for that damage or eliminate it. Thus a dependency status *al-mal* is located in the economic (*al-qimah*) an article by *urf*.<sup>5</sup> The level of the *al-qimah* in the property depending on the size of the benefits of an item. Factor the benefits of being a benchmark in determining the economic value of an item. Then the benefit of an object is the object of all types of property.<sup>6</sup>

Property in Islam has several positions. First, the property is deemed to be entrusted mandate, or defamation. Second, the property is used not only for the good cause harm to the owner; the *Qur'an* says that some property is positioned as the enemy (*'aduww*). Third, the property is

located as jewelry (adultery) and equipment (eye) life.<sup>7</sup>

Owned property can be stored, used for the benefit of individuals, families, and can also be used for the benefit of worship. In Islam surrender property belonging to the importance of the liturgy is the endowment. According *Jaih* endowments *Jihad* is part of the worship of material (*Aliyah*) in Islam, so the concept of *waqf* property in relation to the concept of Islam.<sup>8</sup>

The action of charity/*waqf* is an offering property in the path of God's nature is religious and sacred, very great reward according to the teachings of Islam because he is endowed charitable souls still flowing though *waqif* has died.<sup>9</sup> This is based on the teachings of its provisions is *taqarrub* or nearness to Allah SWT, which is to get yourself a favor and expect His pleasure, this act of dedicating property is more important and far greater reward than charity, usually, because of the nature of things is endowed act permanent and even reward is greater.<sup>10</sup>

In Indonesia, the practice of *waqf* has been made since the teachings of Islam in and develop, among Indonesian Muslims endowments received considerable attention, as well as from the Government of the Republic of Indonesia who feel the importance of issues such endowments. According to the Islamic *waqf* deeds done by people who are Muslims (Muslims), *waqf* is a religious virtue someone who handed his possessions in the public

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2 Joseph Schacht. 2010. *Pengantar Hukum Islam*. Bandung: Penerbit Nuansa, page 21.

3 *Ibid.*

4 Nabilah Akrom. Kedudukan Harta Dalam Islam. Sumber: *Bahagia Hakiki Muslim Sejati, blogdetik.com, weblog*, diakses tanggal 4 Oktober 2015, page 1.

5 *Ibid.*

6 *Ibid.*

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7 *Jaih Mubarak*. 2008, *Wakaf Produktif*, Bandung: Simbiosis Rekatama Media, page 10.

8 *Ibid.*

9 *Abied*. Tinjauan Tentang Perwakafan di Indonesia. 30 Oktober 2009. Sumber: *blogabied*, diakses tanggal 5 Oktober 2015, page 1.

10 *Ibid.*

interest/community that can be exploited and used for the benefit of charity. The Property that can be endowed movable and immovable. The fact that objects are objects that can waqf durable and permanent. Land is one thing that meets these requirements.

Waqf of land/donated land should belong to the people of waqf, this land is the property of the then institutionalized forever for the sake of worship. According to Mahmud Syaltut in *Jaih Jihad in Islam* that the property is positioned as the media or device that is very important to have all the terms (happiness, health, power and success) of human life.<sup>11</sup>

The Waqf is a very important part of Islamic law, have a rapport between spiritual life and the socio-economic field the Muslim community. The Waqf is not only *ubudiyah* divine dimension, as well as social functioning.<sup>12</sup> Religious endowment is a manifestation of a strong sense of faith and solidarity towards fellow human beings. Waqaf as adhesive relationship, "*hablum minallah, wa hablum minannas*", vertical relationship to God and the horizontal relationship to other human beings. Position as a religious endowment savings expected as the wakif as a provision in the Hereafter.<sup>13</sup>

The action of Waqf deed separation of property owned by wakif, by doing the splits then the property is legally become detached from its original owner control and the institutionalization forever for the purpose of worship or other public purposes.<sup>14</sup> These

objects are not only separated from the control of the owner but also out of world trade so that it no longer can be the object of a legal act, then it has gained charitable objects as the subject of the legal position.<sup>15</sup>

## ANALYSIS AND DISCUSSION

The terminology of "Philosophy" is derived from a Greek word *Philosoaia* which means love of wisdom. *Philoshoia* word is absorbed into Arabic into philosophy which means *Hubbub al-wisdom* that is the love of wisdom, because it is in the Indonesian language often used the word philosophy.<sup>16</sup> People who philosophize called philosophers, that is, those who love wisdom. Wisdom in Arabic is called wisdom, wise people called judges. The Philosopher in the sense of people who love wisdom do not judge but *Muhibb* called al-wisdom (lovers of wisdom).<sup>17</sup>

In terminological philosophy (philosophy) as "life principle or establishment" is a basic guideline for human attitudes and behavior in everyday life.<sup>18</sup> Philosophy (philosophy) is the founding principle or truth has been received and it is believed, to be used as a basic grounding in solving life's problems. Attitude and way of life of a person is a relection of his philosophy.<sup>19</sup>

The religious sense given here is limited understanding of religion in divine religions received through revelation dari heavens and

11 Jaih Mubarak. *Op. cit.* page 10-11.

12 Abdul Halim. 2005. *Hukum Perwakafan di Indonesia*. Jakarta: Ciputat Press, page 2.

13 *Ibid*, page 3.

14 Abdurrahman. 1994. *Masalah Perwakafan Tanah Milik Dan Kedudukan Tanah Wakaf Di Negara Kita*. Edisi Revisi. Bandung: PT Citra Aditya Bakti, page 125.

15 *Ibid*.

16 Juhaya S Praja. 1995. *Filsafat Hukum Islam*. Bandung: Pusat Penerbitan Universitas LPPM Universitas Islam Bandung, page 1-2..

17 *Ibid*, page 2.

18 Suhadi. 1999. *Filsafat Hukum*. Yogya-karta: Universitas Gadjah Mada, page 6.

19 *Ibid*.

brought down by the apostles of God.<sup>20</sup> Religion is a form of divine order which directs them with intelligence with their own choice of the divine order of the world to the goodness of life and happiness in the hereafter.<sup>21</sup> Criteria in a religion: 1. Religion is a system that comes from heaven (God); 2. The purpose of religion is to direct and guide the human mind; 1. The basis of religion is freedom of choice; 2. Religion revelations bring good life in this world and the hereafter.<sup>22</sup>

The word Islam is derived from the root word semantics *salima* means surrender, submission and survived. Islam means surrender to God, and to surrender to Him then he gained salvation and peace. In terms of surrender, then all God's creatures, mountains, oceans, air, water, light is essentially Islam, in the sense of submission and surrender to his Creator, on the laws that have been established and applied to himself, as the laws.<sup>23</sup>

When discussing relations with Islamic philosophy, then once the majority of Islamic scholars that fanatics have been hostile to philosophy. But the real teachings of Islam that sublime faith advocated to build a base on the basis of rationality. Islam always encourages to use the mind (intellect). The Qur'an reminds once commanded people to use the five senses and the mind that God gave him.<sup>24</sup> The Muslim philosophers call to align with the philosophy of religion, as indeed between the two is absolutely

no contradiction. Ibn Rushd found philosophizing is a religious obligation for Muslims, "wisdom (philosophy) is a close friend and brother of Shari'ah (religion)."<sup>25</sup> The most special feature of Islamic philosophy is that the overall he is a directed effort to compromise between philosophy and religion.<sup>26</sup>

According to Tengku Muhammad Hasbi Ash Shiddieqy, philosophy of Islamic law is any rule, principle or *Mabda'* or rules that are used to control the Islamic community, whether it is the creed of verses of the Qur'an, or the hadith, or the opinion of friends and *tabi'in*, or a view that has evolved at a time in the life of Muslims.<sup>27</sup> Joints law, legal principles, points of law (legal sources), the rules of law which is the foundation of Islamic law.<sup>28</sup> Philosophy of Islamic law asking the questions: what is the nature of Islamic law, the nature of justice; nature of the law makers, legal purposes, because people have to obey Islamic law, and so on.<sup>29</sup>

In Islamic law provisions that object of *waqf* is to be used for virtue that God approves. In submitting charitable objects, *wakif* can utter or write *waqf* purposes, in accordance with the goals he wanted so that it can be beneficial *waqf* property forever for virtue that can be enjoyed by many people and have positive benefits. At the time you look at the origin of the word *waqf*, the word *waqf* endowment or from Arabic *Waqafa*. The Origin of the word *Waqafa* means withhold or stop or in a place or standing. The Word of *Waqafa*-*Yaqifu*-*Waqfan* synonymous with *Habasa*-*Yahbisu* Orders.

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20 Fu'ad Farid Isma'il & Abdul Hamid Mutawalli. 2012. *Cara Mudah Belajar Filsafat (Barat dan Islam)*. Yogyakarta: IRCiSoD, page 27.

21 *Ibid*, page 28.

22 *Ibid*.

23 Musa Asy'arie. 2010, *Filsafat Islam: Sunnah Nabi dalam Berpikir*, Yogyakarta: LESFI, page 5.

24 Fu'ad Farid Isma'il & Abdul Hamid Mutawalli. *Op.cit*, page 31.

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25 *Ibid*.

26 *Ibid*. page 32.

27 Tengku Muhammad Hasbi Ash Shiddieqy. 2001. *Falsafah Hukum Islam*. Semarang: PT. Pustaka Rizki Putera, page 23.

28 *Ibid*, page 24.

29 Juhaya S Praja. *Op. cit*, page 15.

The word al-Waqf in Arabic contains some sense: Hold, hold treasures for diwakafkan, not dipindahmilikkan.<sup>30</sup> According to the terms, the notion of waqf is a legal act of a person or even a law that separates most of the wealth in the form of lands and instituted for ever for the sake of worship-worship or other public purposes in accordance with the teachings of Islam.<sup>31</sup>

Mazhab Hanai according to Ibn al-Humam, Hanafiyah endowment interprets as resist material things (al-'ayn) wakif owned and menyedekahkan or donating useful to anyone who wants to charitable causes. The definition of charitable waqf explains that position still remains pending or stalled in the hands wakif itself. With a sense, wakif still be diwakafkannya property owners, while the lawsuit occurred only on the merits of the property, not including property assets.<sup>32</sup> According to al-Dasuqi, Maliki (Jurdb) argues, endowments is to make the benefits of a property owned (although ownership by way of lease) to be given to the person entitled to a contract (shighat) within a specified period in accordance with the wishes wakif. The only definition of waqf endowments to determine whether the right people or places only.<sup>33</sup>

From the description above shows the Hanai opinion stating that only those benefits are not endowed endowed wealth assets, and by stating that Maliki may dedicating property within a certain period. In contrast to the fact

that researchers believed waqf endowments act must submit a waqf things at once useful for the purposes of worship forever. This raises the question of researchers because there was a suggestion that it be endowed timed so that needs to be studied more deeply is how the basic philosophy of Islamic law on the matter.

According to Anderson, the fundamental difference between Western law with Islamic Law is the Law of the West, is essentially secular, while Islamic law is essentially religious. Joseph Schacht said Islamic law claim to be on the authority of divinity, and because the science of Islamic law guarantees the stability and sustainability. Islamic law, typical of the holy law, is perhaps the most essential characteristic.<sup>34</sup>

According to Islam role, the law is set on something or destroy something. In language, al-hukm also as an idea of al-qada '(provision) and al-man' (prevention). Scholars of iqh proposal defines the demands of God with regard to the actions of mukalaf, either in the form of demands, election, or make something as a cause, condition, barrier, invalid, void, rukhsah, or 'Azimah.<sup>35</sup>

Thought of Islamic law have been born since the beginning of the history of Muslims due to the Quran and Sunnah urge Apostle (Prophet Muhammad) so that man uses his mind in the face of life issues, especially regarding the fundamental issue, concerning creed or religious beliefs.<sup>36</sup> The verses of the Qur'an clearly ordered that in the face of his teachings should use a mind because only in this way the absolute truth Koran can be assured.<sup>37</sup> Verse of

30 Departemen Agama RI. 2007. *Fiqh Wakaf*. Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam Direktorat Pemberdayaan Wakaf Departemen Agama RI, page 1.

31 Sofyan Hasan. 1999. *Pengantar Hukum Zakat dan Wakaf*. Surabaya: Al-Ikhlash, page 21.

32 Bahrul. Pengertian Wakaf. Sumber: Situs PKES Interaktif, Kantor Berita Ekonomi Syariah, diakses tanggal 10 Oktober 2015, page 1.

33 *Ibid*, page 1-2.

34 Abdul Halim Barkatullah, *Op. cit*, page 38.

35 *Ibid*, page 39.

36 Ahmad Azhar Basyir. 2000. *Pokok-pokok Persoalan Filsafat Hukum Islam*. Edisi Revisi. Yogyakarta: UII Press Yogyakarta, page 5.

37 *Ibid*, page 6.

the Qur'an which directly involves many legal provisions that ended with evocative mind to understand.<sup>38</sup>

Islamic legal thought can be a discussion about the purpose of Islamic law (al-ahkaam maqaashid). The guidance Islam gave to human life is comprehensive, covering all aspects of life to the achievement of happiness physical, spiritual, social individual and the world hereafter. The rules of Islamic law aims to educate private to have noble personality, uphold justice in society and meet the interests or maintain the essential goodness of life.<sup>39</sup>

Islamic legal thought can also be an effort to understand the deepest meaning contained in the various codes of Islamic law, both concerning the faith, worship, and civilized manners Muamalat in the association who studied more deeply at-tasyri Wisdom or Wisdom ash-Shariah. Understanding the deepest meaning of the rules of Islamic law will be able to establish the implementing provisions of Islamic law based on the awareness that all the rules of Islamic law aims to bring the man to the happiness of living in the world and the hereafter.<sup>40</sup>

The Islam legal thought can also be:<sup>41</sup>

1. Dig the general principles of Islamic law which can serve as guidelines philosophical thought of Islamic law in general.
2. Dig characteristic of Islamic law which will be further rationale regarding its aspects.
3. Enterprises ind joint, namely:
  - a. Islamic law is not burdensome and avoid masakat;

- b. Islamic law maintains the benefit of all mankind;
- c. Islamic law embodies equal justice for all mankind.

4. Excavation value of the primacy of Islamic law in the conduct comparison with other legal systems.

The Philosophy of the Islamic law are to answer questions that are not covered by the laws of science. Philosophy of Islamic law asking the questions: What is the nature of Islamic law; the nature of justice; nature of the law-makers; legal purposes; because people should taan to Islamic law; and so on.<sup>42</sup>

The Philosophy of Islamic law in essence describes the nature (ontological), the source and how to obtain (epistemological) and the objectives of Islamic law (axiological) really can explain every detail of principle, the basis of Islamic law, the manifestation of God's revelation of the reality of behavior and ethics social and especially the grace of God can bring about Islamic law and social institutions.<sup>43</sup>

The Philosophy of Islamic law has two main tasks, duties constructive and critical task. Constructive task of philosophy is to unite the Islamic law rules of shariah in the science building buildings intact. Critical task is to question the rules of shariah science paradigms that have been established so as to allow the development of science in accordance with the rules of shariah demands of the times and society.<sup>44</sup>

The Science rule of shariah has been developed by the expert, which includes three main components of the system as a whole, namely

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38 *Ibid.*

39 *Ibid*, page 45.

40 *Ibid*, page 55-56.

41 *Ibid*, page 56-58.

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42 Juhaya S Praja. *Op. cit*, page 15.

43 Miftahul Huda. 2006. *Filsafat Hukum Islam: Menggali Hakikat, Sumber dan Tujuan Hukum Islam*. Ponorogo: STAIN Ponorogo Press, page iii.

44 Juhaya S Praja. *Op. cit*, page iv.

philosophy, methodology and materials of Islamic law itself. Components philosophy of Islamic law covers theoretical philosophy (al-philosophy al-nazariyyah), practical philosophy (al-philosophy al ‘amaliyyah) and philosophical values (philosophy al-morality).<sup>45</sup> The component of methodology has generated the science of *usul iqh*. The third component which is born of the two previous components has spawned an explanation of the rules or the law of the traffic relations known as *iqh*.<sup>46</sup>

Law or the rules of relationships that include:<sup>47</sup>

1. The rule of law on the relationship between the individual and God, later known as Fiqh of Worship;
2. The rule of law on the relationship between individuals within the family has given birth to what became known in the literature by al-Islam al-shakhsiyyah *ahwa’l* covering law marriage (*munakahat*); inheritance law (*iqh al-mawarits* or science *fara’dl*), endowments, wills, grants and so on;
3. The rule of law on the relationship between individuals in the community or society in the field of civil, engagement (*al’uqu’d*) and material (*al-ma’l*) called *mu’amalat* has spawned Fiqh Muamalat;
4. The rule of law on the relationship between individuals within a society or community and with other groups of individuals in society, both within the local, national, regional and global in various fields (political Islamic law);
5. The rule of law on the relationship between the individual and the individual in relation to society and the state in order to protect

the common interests that gave birth Fiqh Jinayah or criminal law.

The Philosophy of Islamic law is the rule, principle, *Mabda* ‘rules are used to control the Islamic community. These rules can be verse the Qur’an, hadith, or can be friends and *tabi’in* opinion. Opinion may develop at a time in the life of Muslims or the Islamic community.<sup>48</sup> Object of study of Islamic law philosophy is that each rule, principles and rules that are used to control and regulate the Islamic community. Philosophy of Islamic law to formulate the values of the best law to be applied to the people.<sup>49</sup>

Object philosophy of Islamic law covers the object of theoretical and practical object. Object theoretical philosophy of Islamic law is the object of study which is the Islamic legal theories that include:<sup>50</sup>

1. Principles of Islamic law;
2. Fundamentals and sources of Islamic law;
3. The purpose of Islamic law;
4. Principles of Islamic law.

Object theoretical philosophy of Islamic law is often called the philosophy of *al tasyri* object. While the practical object or objects of Islamic legal philosophy philosophy *al shari’ah* or *asra’r al-Shari’ah* includes *jawabah* to questions, such as:<sup>51</sup>

1. Why do humans do *muamalah*; and why people should be governed by Islamic law?
2. Why do people have to worship, such as prayer?

45 *Ibid.*

46 *Ibid.*

47 *Ibid.*

48 Asmawi. 2009. *Filsafat Hukum Islam*. Yogyakarta: Teras, page 107.

49 *Ibid.*

50 Juhaya S Praja. *Op. cit*, page 15.

51 *Ibid.* 16.

3. What is the secret or the wisdom contained in the implementation of fasting, pilgrimage and so on?
4. And so on.

In the history of Islam, waqf has been known since the time of the Prophet Muhammad as *waqf* is prescribed after the Prophet was in Medina, in the second year Hijri. There are two a growing opinions among experts of Islamic jurisprudence (*fuqaha'*) about who was first to implement the Shari'a waqf.<sup>52</sup> According to the majority opinion of the scholars said that the first time to carry out charitable endowments is Prophet Muhammad is the Prophet's land to build a mosque.<sup>53</sup> This opinion is based on the hadith narrated by Umar ibn Syabah of 'Amr ibn Sa'd ibn Mu'ad, he said: And narrated from 'Umar ibn Syabah, of Umar bin Sa'd ibn Muad said: "We asked about the initial endowments in Islam?<sup>54</sup> People say immigrants are *waqf* Umar, while those Anzor say is waqf Prophet. "Prophet Muhammad in the third hijri year was donated seven palm fruits farming in Madinah; such as farming of A'raf, Shaiyah, Dalal, Barqah and other farm. According to this opinion of some scholars say that the first time to implement Shari'a Waqf is Umar.<sup>55</sup>

The Qur'an says a Muslim holy book (the holy book of Islam) is meant to him is the word of God (*kalam Allah*) revealed to the Prophet Muhammad. Qur'anic verse numbering 6236 verses talk about faith, sharia, morality and history. As to the special endowments are not found in the Qur'an means word waqf is not

explicitly mentioned in the Qur'an, but its existence was inspired by the verses of the Qur'an and various examples given of the Prophet Muhammad and the Caliph Umar contained in the hadith.<sup>56</sup>

Basic implementation of endowments derived from the Qur'an and hadith, among the arguments relied upon/basic law of waqf in Islam is:<sup>57</sup>

1. Al Quran Surah Al-Hajj verse 77: Meaning: "O you who believe, you bow and prostrate and worship your Lord and did according goodness that you get a victory."
2. Al Quran Surah An-Nahl verse 97: Meaning: "He who does good deeds, both men and women in a state of faith, verily to him will We give a good life and verily We shall give a reply to them with a reward which is better than what they have done".
3. Al Quran Surah Ali Imran verse 92: Meaning: "You never get to virtue (perfect), before you spend some of you love. And whatever you spend, Allah knows".
4. Hadith of the Prophet Muhammad are narrated by Muslim from Abu Hurayrah: If the son of Adam dies, then his deeds, disconnected thereof all except three thing perpetual charity, beneficial knowledge and righteous children who pray. Imam Muslim hadith put this in chapter endowments because the scholars interpret the term perpetual charity with endowments.

Another common opinion expressed Hadiths of the Prophet Muhammad, which

52 Anonim. Sejarah dan Perkembangan Wakaf. *Source: Situs PKES Interaktif, Kantor Berita Ekonomi Syariah*, Kamis, 27 Desember 2007. Accessed November 15, 2015, page 1.

53 *Ibid.*

54 *Ibid.*

55 *Ibid.*

56 Suhrawardi K. Lubis. "et.al." 2010. *Wakaf dan Pemberdayaan Umat*. Jakarta: Kerjasama Sinar Graika dengan UMSU Publisher, page 7-8.

57 Adijani Al-Alabij. 1992. *Perwakafan Tanah di Indonesia*. Jakarta: PT. Rajawali Press, page 24-26.

means: “If a man died, disconnected deeds, but of the three cases, the perpetual alms, or science were used, or godly children” (HR. Muslim). The scholars interpret the words of the Prophet: (صدقة جارية) perpetual alms) to the *waqf*.<sup>58</sup>

Hadith narrated by Five Experts Hadith of Ibn Umar related that Umar acquire a plot of land in Khaibar. He overlooks the Prophet and asked: I have acquired a piece of land in Khaibar which has never been as good as I acquire it, then what would you say to me?<sup>59</sup> Prophet said: If you prefer, you hold it anyway and you use it to charity (make *waqf*). Ibn Umar said: Then Umar giving it, not sell anyway, not inherited and not be given to others, and so on.<sup>60</sup> The Prophet’s sayings: Which means: From Ibn ‘Umar. Said: Umar got a piece of land in Khaibar, and then came to the Prophet to ask for a fatwa on the ground that he said: O Messenger of Allah, I can land in Khaibar and I do not get better stuff for me thereof. Then the Prophet said, if you want to resist the stem and give alms, Ibn Umar said: ‘Giving alms, the stem is not for sale and is not inherited. He gave charity to the poor people relatives, slaves, sabilillah, Pilgrims who run out of stock and for guests. And land agent was allowed to eat the results in a way that is good and he fed his friends by not taking property (HR. Bukhari Muslim).<sup>61</sup>

Besides sura of the Qur’an mentioned above there are two sura which can be used as a basic postulate or *waqf* law having regard to the general intent of the endowment and then match them with the verses of the Qur’an which is the basis of Islamic law which ive are meant to be fulfilled (obligatory) in accordance with the terms associated with it:<sup>62</sup>

1. Qur’an Surah Al-Baqarah verse 261<sup>63</sup>
  - a. Meaning: The parable (income incurred by those who spend their wealth in the way of Allah) is like a seed that grows seven grains, at each point a hundred grains. God multiplies (reward) for whom He wills. And Allah Area (His gift), Knowing.
2. The Qur’an Surah Al-Baqarah verse 267<sup>64</sup>

Meaning: O ye who believe, spend in (in the way of Allah) Most of the results of your efforts are good and some of what we remove from the earth for you. And do not choose the bad things and then you spend out of it, when you are not willing to take it, but with squinted against him, and know that Allah is rich, the Praised.

The Prophet Muhammad was the precursor to the practice of *waqf* based hadeeth narrated by ‘Umar ibn Abi Shaybah than’ Amr ibn Sa’d ibn Mu’az intent: “We asked about the earliest *waqf* in Islam? Ansar said is *waqf* Prophet. (Hadith al-Syaukani history). People do not recognize Jahiliyyah endowment contract that is part of the contract agreement *tabarru’*, then the Prophet introduced it as some special characteristics that do not form on the contract-contract another charity. *Waqf* earliest institution by the Prophet Muhammad is Quba Mosque ‘which based on principle

58 Komunitas Wakaf Indonesia. Memasyarakatkan Wakaf Untuk Kesejahteraan Masyarakat, *Sumber: Situs Komunitas Wakaf Indonesia (Indonesia Waqf Community)*. diakses tanggal 15 November 2015, page 2.

59 *Ibid*.

60 *Ibid*.

61 Abied, *Op. cit*, page 3.

62 Suhrawardi K. Lubis. ”et.al,” *Op.cit*, page 9.

63 *Ibid*, page 10.

64 *Ibid*, page 12.

itself by Sire SAW when arrived in Medina in 622 AD on the basis of devotion to God Almighty. This is followed by the Prophet's Mosque waqf six months after coaching Masjid Quba'. It was narrated that the king SAW buy land for construction of the mosque of two orphaned brothers that Sahl and Suhail at 100 dirhams.<sup>65</sup>

Shari'a waqf that has been done by Umar bin Khattab followed by Abu Talha who endowed her beloved garden, orchard "Shapkota". Next followed by the Prophet SAW. Others, like Abu Bakr who endowed a piece of land in Mecca allocated to the descendants who came to Mecca. Uthman donated wealth in Khaibar. Ali bin Abi Talib mewakafkan fertile soil. Mu'ads bin Jabal endowed his house, which is popularly known as "Dar Al-Ansar". Then followed by the implementation of waqf Anas bin Malik, Abdullah bin Umar, Zubair bin Zubair and Aisha the wife of the Prophet Muhammad.<sup>66</sup>

In terms of its purpose can be seen that the waqf deed has a purpose. In Islamic law, the purpose of law in Islam is *maslahah* which means *manfa'ah* (benefit) or human interest. According to Al-Ghazali that *maqasid Shari'ah* is divided into two regions: the problems of the world and the hereafter. *Maqashid* is meant intention or purpose. According to Al-Syathibi, *maqashid* content or purpose of the law is a human benefit. *Maqashid* starting point is that all liabilities (*taklif*) was created in order to realize the benefit of mankind. None of the testimony that has no purpose.<sup>67</sup> According to Abu Zahra that the ultimate goal of Islamic law is of benefit. None good rule of Islamic law in the development of Al-Qur'an and

Sunnah, but there are norms. Content is the core of *maqashid* benefit of the people, which can be seen not as a mere technical but also in an effort to further legal dynamics and development.<sup>68</sup>

Waqf have *maqashid* for charitable acts performed pursuant to the provisions of the Qur'an and hadith of Prophet Muhammad SAW, means that the endowment has a clear legal basis and benefits of ownership are for the benefit of the people (public interest/public). *Wakif* will obtain a benefit because its property is delivered and managed to be beneficial for many people, such as donating the land on which it built a building such as mosques or prayer rooms used for worship or schools built with purpose as a place to study.

## CONCLUSION

The Islamic law is the command of God revealed to the Prophet Muhammad SAW. Islamic law is a divine system that preceded the Islamic state and is not preceded by him, to control the Muslim community and is not controlled by it. Islamic legal thought could be a discussion about the objectives of Islamic law (*al-ahkaam maqaashid*). Islam provides guidance to human life should be comprehensive, covering all aspects towards achieving happiness in life, physical, spiritual, social and individual life and afterlife. Philosophy of Islamic law is the rule, principle, Islam rules are used to control the Muslim community. These rules can be a verse of the Qur'an, hadith, or can be friends and *tabi'* in opinion. Opinion may develop at some time in the lives of Muslims or Islam in society. In the history of Islam, endowments known since the time of the Prophet Muhammad as waqf rule after the Prophet at Medina. Endowment policy implementation sourced from the Qur'an and

65 Anonim, *Wakaf*, Sumber: Situs Wikipedia Ensiklopedia, diakses tanggal 15 November 2015, page 2

66 *Ibid.*

67 Miftahul Huda. *Op. cit*, page 111.

68 *Ibid*, hlm, 113.

hadith: Al Quran Surah Al-Hajj verse 77, Al Quran surah An-Nahl verse 97, Al Quran Surah Ali Imran verse 92, Hadith the Prophet narrated by Muslim from Abu Hurairah, Al-Qur'an Surah Al-Baqarah verse 261, Al-Qur'an Surah Al-Baqarah verse 267. Endowments have maqashid for charitable acts performed pursuant to the provisions of the Qur'an and hadith of Prophet Muhammad SAW, means that the endowment has a clear legal basis and benefits of ownership are for the benefit of the people (public interest/public).

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