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**THE EMERGENCE AND DEVELOPMENT OF WAQF FOUNDATION IN
THE HISTORY OF ISLAMIC LAW**

Abstract: Waqf is defined as property and money allocated by individuals for the permanent implementation of social services.

Key words: development, Islamic law, waqf.

The emergence of the waqf foundation in the history of Islamic law dates back to the early days of Islam. Muhammad (PBUH) was an example in doing good to the people by giving alms. The first waqf in the history of Islamic law also belongs to our Prophet. As Islam expanded regionally and economically, the waqf foundation also improved. Initially, it operated as a separate institution, but later centralized and waqf offices were established. The waqf, which reached its greatest peak in the golden age of Islam, was gradually being plundered by greedy rulers. When the Muslim world collapsed and almost all countries were colonized, the waqfs were also purposefully and systematically destroyed. Despite the fact that in many countries today the activity of the waqf institute is widely established, it has not yet reached its previously developed peak.

Keywords: Islamic law, waqf institute, waqf document, waqf office, waqf supervisor.

The emergence of the waqf foundation in the history of Islamic law dates back to the early days of Islam. Muhammad (PBUH) was an example in doing good to the people by giving alms. This is evidenced by the fact that there are special chapters in the books of Siyarat to mention his deeds of charity.[1]

Islamic scholars have different views on the first waqf to be made. Some scholars from the emigrants stated that the first waqf in Islam was Umar's waqf. The Ansar narrated that “the first alm in Islam is the alm of the Prophet (peace and blessings of Allaah be upon him. As evidence, they narrated from 'Umar ibn Shibh’s narration. “We asked for the first waqf in Islam. The emigrants said, 'Umar's charity.' The Ansar said, "The charity of the Messenger of Allah.”[2]

According to Ibn 'Umar narrated by Ibn Khuzaymah, the first sadaqa in Islam is the sadaqa of Umar ibn Khattab. Umar said to the Messenger of Allah, "I have property and I want to give it as charity." The Messenger of Allah, said, "Make the original a waqf (habs) and give the fruit as charity. Umar wrote down it.[3]

According to Muhammad ibn Ka'b narrated by Ibn Sa'd, “The first waqf in Islam is the waqf that the Messenger of Allah (PBUH) did when Muhayriq died. Muhayriq said, "If anything happens to me, my property belongs to the Messenger of Allah, may Allah bless him and grant him peace." The Messenger of Allah, took the property and gave alms. This happened many years before Umar's waqf. That is why Khasaf, in his book “Waqfs”, narrated from Salih ibn Ja'far from Musur, from Rifa, and from Ibn Ka'b, that the first waqf in Islam are the waqfs of the Messenger of Allah. When the Messenger of Allah returned from Khaybar in the seventh year of the Hijra, he gave alms in the eighth year of the Hijrah.[4]

Foundations of the Messenger of Allah in Madinah:

1. *Property of Muhoyriq, a Companion of Jewish descent, in Madinah.* Khasaf says in a narration from Abu Ka'b al-Qarzi, during the time of the Messenger of Allah, there were seven walls in Madinah that were waqfed. They were Awaf, Sofia, Dulol, Masiyb, Barakih, Hisni, Umm Ibrahim (Ibrahim, the son of the Messenger of Allah). [5]. *The lands of Khaybar and Fadak and some villages of the city.* Imom ibn Shibx Xasil says in a narration from ibn Xorija, when the Messenger of Allah conquered

Khaybar, the Jews wished him well and in return gave him Fadak. He sent Haram ibn Muhayyis and took it.

Supervisor of the waqfs of the Messenger of Allah. The Prophet (peace and blessings of Allaah be upon him) appointed Abu Rafi as governor to manage his waqf. Abu Rafi took enough from the waqf for himself and his family for a year and spent the rest for the Muslims. It is narrated in Imam Bukhari's book Al-Jame 'as-Sahih that Ali controlled some of the Messenger of Allah's property.

The waqfs established by the Companions during the time of the Prophet (peace and blessings of Allaah be upon him). According to Khisaf in his book "Waqfs", Muhammad ibn Ka'b narrated by Ibn Sa'd said: "I do not know anyone among the emigrants and Ansar Companions who were the people of Badr who did not establish a waqf. Those properties will not be sold, inherited or gifted.[6]

The waqfs established by the Companions are as follows:

1.The waqf of Umar. We described it above. [7]2. The waqf of Usman. We can learn about this from the following narration. When Usman was besieged in his house, he said to the besiegers: "I address you in the name of Allah. You know, when the Messenger of Allah (PBUH) came to Madinah, there was no well except the well of Ruma. The Messenger of Allah, said: "**Whoever buys it in return for his wealth and whose bucket is like the bucket of the Muslims, he will achieve better conditions on the Day of Resurrection.**" I bought it for my own money. But you keep me from drinking it. " 3.The waqf of Abu Talha. 1.The waqf of Holid ibn Valid. It is narrated fom Abu Hurayra. The Messenger of Allah sent Umar to give alms. People said that Ibn Jamil, Khalid ibn Walid and Abbas ibn Abu Talib were not given it. The Messenger of Allah said: "**Because Ibn Jamil was first poor and then Allah and His Messenger made him rich, he will be resisted. As for Khalid, you are wronging Khalid because he founded his shield and prepared it in the way of Allah. Abbas ibn Abdulmuttalib is the uncle of the Messenger of Allah. It is charity for me. And**

again like that. Then said again: **Umar, did you not realize that one's uncle is like his father?** ” 5. The waqf of Zubayr. According to a narration from Hisham’s father, Zubayr gave one floor of his house as alm provided that they are not sold or inherited for their sons, and and for their daughters to live without harm and and on the condition that if they marry, they have no right to it. 6. The waqf of Anas. It is narrated in Bayhaqi's book “Sunan” that Anas waqwed a house in Madinah. When he performed Hajj, he would pass through Madinah and spend the night in that house. 7. The waqf of Fotima bintu Rasululloh. According to Bayhaqi, Fatima waqfed her wealth to the descendants of Hashim and the descendants of Muttalib.

It is narrated in more detail in the following narration: Hamidi says: Abu Bakr dedicated his house to his sons, and the area near 'Umar Marwa to his sons. Uthman dedicated the Ruma well in Madinah to his son, Ali waqfed his lands in Yanbu to his son, Zubayr endowed his house in in Mekkah to his son, his house in Egypt to his son.

Waqfs during the Caliphate. During the caliphate, the number of foundations dedicated to various fields increased. Here are some examples of them.

1. Mosques. During the time of the caliphs, the waqfs of the mosques reached its peak. At that time, mosques belonged to caliphs and emirs, who were the imams of these mosques. During the time of Umar, the number of mosques increased. Umar ordered the construction of mosques in various cities. Sa'd ibn Abu Waqqas ordered the establishment of the Kufa Mosque. 'Umar, on the other hand, began to expand the Masjid al-Haram, bought some of the surrounding houses, and incorporated them into Masjid al-Haram. Usman also expanded the Masjid al-Haram, bought many of the surrounding houses, and incorporated it. Ali also built many mosques in different regions.

2. Public waqfs. The Companions established public waqfs during the caliphate. The largest of these are houses, fields, arms for war, animals and property, wells and waterways. The waqf of the houses was especially popular. The largest arable lands are

the ones established by Umar, Usman, Ali and Zubayr ibn Awam. As for the Arms' waqf, it is mentioned in the above hadith that Khalid ibn Walid founded his shield. 'Umar also provided the necessary equipment for the battle in the way of Allah. The most famous of the wells donated is the Ruma well. 'Umar also ordered Sa'd ibn Abu Waqqas to dig a river for the people of Kufa, and Abu Musa al-Ash'ari to dig a river for the people of Basra during his tenure as governor of Basra.

The state of the waqfs at the end of the time of the Companions.

According to many opinions, waqfs, especially generational waqfs, were an excuse to deprive girls of their share. In particular, it is narrated that 'A'ishah rejected the generational waqf and said: "I liken the alms of today's people only to the one mentioned in this verse of Allah: "They say that what is in the bellies of these animals is lawful for our men and impure for our women. If he is dead, they are partners with him. Allah will punish them for their attributes. Surely He is Wise, Knowing"[8] By Allah, a man gives a large amount of alms to his daughter. You will see in that girl the blessing of her charity. Then you look at that man's other daughter and you see poverty in her, because that man forbade her from giving alms."

Caliph Umar ibn Abdul Aziz emphasized the importance of rejecting people's alms, which forbade women. But that man died before he could do it

Imam Malik said: Umar ibn Abdul Aziz 's determination to reject alms that did not take girls into account proved that his alms were given to both boys and girls.

Waqfs in the Umayyad period. During the Umayyad period, waqfs spread throughout the newly conquered lands - Egypt, Damascus and other regions. This was due to the expansion of the conquered territories and the proliferation of waqf areas. During this period, the activities of waqfs were not limited to supporting the poor and needy, but also the construction of many scientific institutions (dor al-ulum), the allocation of funds for scholars, and the construction of mosques and charitable houses. As a result of people's serious attention to waqfs, commissions were set up to oversee

and improve and develop waqfs. While waqfs were initially managed by the founders or their appointed representatives, now as a result of the increase in the number and type of waqfs, some agencies began to focus on waqfs. In Baghdad and other areas, judges supervised waqfs and held accountable waqf supervisors (mutawalli), who would correct or dismiss any wards if they were found to have any deficiencies or dissatisfaction with the maintenance and protection of waqfs.

Tawba ibn Nimr ibn Hawmil Hadrami (d. 120 A.D.), who was a judge in Egypt during the time of Hisham ibn Abdul Malik, said: "The owner of these alms is only the poor and needy. So I have to hold on these alms to protect them from deception and inheritance." Tawba ibn Nimr, who was very careful about waqfs, established an independent administration for waqfs, which was separated from other administrations under the supervision of a judge, during his lifetime.[9] This administration was the first to control the waqfs not only in Egypt but in the entire Islamic world. At that time, it was customary for waqfs to operate under the supervision of judges.[10]

Waqfs during the Abbasid period. During the Abbasid period, the waqf system further developed. Then the waqfs were not limited to the poor, the needy and the educated, libraries were established and funded, hospitals were built to provide free services to the sick, and housing was built for the poor and needy. Also during this period, a chief was appointed for the office of waqfs and he was called the head of waqfs (sadr al-wuquf). He exercised control over all the waqfs and appointed his own officers to carry out this work. During the reign of the Abbasid Caliph Ma'mun, his judge in Egypt, Lahiyya ibn Abbas Hadrami, supervised the waqfs. Kindi says of him: "The best thing Lahiyya did during his governorship was to rule over all the foundations of Egypt. There was not a single foundation left that he did not judge, sometimes on the basis of a document, and sometimes with the confession of the founders. He said, "I asked Allah to guide me to those (waqfs). There was not a single waqf among the waqfs that I did not judge and did not update its evidence and documents. During the reign of

the Abbasid Caliph Ma'mun, Lahiyya ibn Abbas Hadrami, his judge in Egypt, supervised the waqfs. Kindi says about him: "The best thing Lahiya did during his governorship was to rule over all the waqfs of Egypt. There was no waqfs left that he did not judge, sometimes on the basis of a document, and sometimes with the confession of the founders. He said, "I asked Allah to guide me to those (waqfs). There was not a single waqf among the waqfs that I did not judge and did not update its evidence and documents." [11] This period was the first stage in the establishment of a separate independent waqf administration from the judiciary. [12]

Waqfs were always supported by Abbasid caliphs. Ibn Kathir, in his book "Bidaya va Nihaya", mentions the events of 631 AH, in which the construction of a madrasah in Baghdad, which had begun to be built by the Caliph Al-Mustansir Billah, was completed. Such a madrasa had never existed. Madrasah education was in accordance with the four sects, 62 faqihs in each category, four assistants, a teacher of each sect, a hadith teacher, two reciters, 20 listeners, a medical teacher and 10 Muslims engaged in medicine, a special educational institution for orphans available. There was enough bread, meat, halva and enough food for everyone. [13]

Waqfs during the weakening of the Abbasid state. When the Abbasid state weakened, several independent states emerged in Egypt and Damascus. We will consider the development of waqfs in these states one by one.

The Fatimid state in Egypt. Waqfs continued to multiply and develop even in the Fatimid state. During this period, there was also an independent administration for waqfs. This department coordinated the activities of the waqfs made by the common people or high-ranking officials, controlled their expenses, and supervised the observance of the conditions of the founder. [14] Also, during the Fatimid period, some rulers, especially Al-Hakim bi-Amrillah, paid great attention to waqfs, especially the construction of mosques and charitable institutions. Salih Talai ibn Zurayk, one of the Fatimid ministers, also established many waqfs in his time. [15]

The Ayyubid state in Egypt. The number of waqfs also increased during the Ayyubid period. The padishahs of this state allocated special funds for waqfs. As an example, the righteous king Nuriddin Mahmud ibn Zanki (d. 569) ordered the construction of a large number of madrasas and khanaqahs in each region and endowed them with many properties. He built the Dar al-Hadith in Damascus and endowed many properties to those who worked in it. Padishah Nuriddin Mahmud ibn Zankiy was the padishah who founded the first hadith institute (dor al-hadith) in the history of Islam. He also built educational institutions for orphans and allocated large sums of money for orphans and their education there, as well as built mosques and donated property for the reciters of the Qur'an there.

Isfahani says, "If I had listed his waqfs and alms in every city, the book would have been long, so I did not mention it." [16]

Sultan Salahuddin also paid serious attention to waqfs. When the Crusaders invaded Egypt in 564 AH, he founded the city of Bulbays to free the Muslims captured by them. This waqf continued until all Muslims were liberated. Salahuddin's waqfs covered all charitable activities in the country. As the attention of the padishahs to the waqfs and the development of the waqfs continued, corruption began to flourish in the waqfs during the reign of King Kamil. The reason for this was the occupation of the office of waqfs by some groups. As a result, the waqfs fell into disrepair. One of the manifestations of corruption in waqfs during the Ayyubid period was the transfer of land belonging to waqfs to tenants for large sums of money.

Waqfs in the Mamluk period. During the Mamluk period, the number and size of waqfs continued to increase. In many parts of Egypt and Syria, large tracts of land were endowed. These waqfs reduced the burden of the state on salaries for imams and payments to mosques. Gradually, the waqfs became so rich that in 649 AH, the state borrowed money from the waqf for its own needs. [17]

The Mamluks also set aside a large number of waqfs for the preservation and protection of the two harems. Road improvement, safety, repairs, etc. are examples of this. The benefit was that there were a large number and large volumes of waqfs that were spent only for two harems. According to some modern historical research sources on the Mamluk period, there are important waqf documents about these donated lands, which are kept in a special manuscript section. These documents, which are part of a set of Shari'ah documents, record the waqfs made by padishahs, emirs, and others for spending on holy places.[18]

Historical records from the period of the Mamluk rule in Egypt show that the waqfs developed to such an extent that the rulers wanted to own the rule of the waqfs. Some weak scholars and judges assisted them in this matter and issued fatwas to take the waqfs of the former padishahs. Sometimes the governors did not discuss with faqihs and judges and did what they wanted.[19]

According to Muqrizi, Nasir Muhammad ibn Qalawun wanted to take over half of the waqfs of the mosque, which numbered 130,000 fidons, but he was fired without doing so.[20] Abu Zahra says: These events took place in the seventh, eighth and subsequent centuries, and as a result, the waqfs were looted and divided.[21]

Due to such incidents, some scholars began to deny the waqfs during this period, for example Izz ibn Abdus-Salam and Imam al-Nawawi.

Waqf institute, which was legally formed from the second half of the third century AH, continued to develop during the Seljuk and Ottoman periods. During these periods, all services were provided, directly or indirectly, by waqfs. In parallel with the development of Seljuk rule, the waqf institute also continued to develop. Numerous mosques and madrassas were opened. The number of social assistance institutions increased. Hospitals proliferated at an unprecedented rate, each of which had large waqf properties, and doctors received their salaries from these waqfs.[22]

During the Ottoman period, urban planning was carried out by a complete foundation system.[23] Neither financial support from the state, nor taxes from the people were collected in the implementation of urban planning works.[24] In education, medicine, social assistance, urban planning, water supply and all other areas, waqfs reached a high level of service without state support and fees from the people.

When we talk about the ancient waqfs of Central Asia, which are still known to us, we can first mention two waqfs of the second half of the XII century in Samarkand by the ruler of the Karakhanids Ibrahim Tamgachkhan.[25] In fact, during the Karakhanid period, there were several dozen madrassas in Samarkand and Bukhara. These madrassas built by the rulers, their relatives, and members of the upper classes, were provided with waqf property for financial support. In addition to madrassas, there is also information about the waqf properties belonging to mosques and cemeteries. One of the main features of waqf ownership during this period was the charitable waqfs set aside by the rulers and the upper classes. The large waqfs formed in the post-Mongol period belong mainly to the generational waqfs. This tradition reached its peak during the Timurids, on the example of the waqf properties founded by Khoja Ahror.

As we have seen above, in Muslim societies, waqfs have developed at an unprecedented rate and have always lightened the burden of the state. Although they lamed in development during the Mongol invasion, they quickly revived and regained its former prestige. As a result of the colonization of Muslim societies, these waqfs were purposefully and systematically weakened and destroyed. Unfortunately, most countries with a high level of waqf culture and economic potential have not yet to regain their previous level.

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