

The Legal Basis for the Ownership of the Waqf Property in the Book “Hidayah” by Marghinani

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Abstract--- *In the IX-XIII centuries, Movarounnahr became one of the most important centers of development of jurisprudence, where thousands of faqihs worked. Our compatriot Burhoniddin Marghinani has a special place among Movarounnahr jurists. As a great representative of the Hanafi School, he made a great contribution to the development of jurisprudence.*

Burhoniddin Marghinani's work “Hidayah” is the main textbook, manual, program in all madrassas and dorulfuns of the Muslim world. State and religious leaders, public figures, scholars and scholars used the work of Burhoniddin Marghinani and relied on him.

From history to the present day, societies have established institutions to meet the needs of social assistance among themselves. The social assistance institutions established today have been implemented in Islamic society through its foundations since its earliest days. As the waqf institution expanded, special jurisprudence books were classified about it, and separate chapters were devoted to the subject of the waqf in each general jurisprudence book.

In the tenth and thirteenth centuries, the science of jurisprudence was particularly advanced, during which many works on jurisprudence were written. One of such books is “Hidayah” by Burhoniddin Marghinani. The waqf chapter of the book deals with various topics related to waqf ownership, in particular, the disposal of waqf property, waqf agreement, bequest of property waqf, and transfer of waqf property to the trustee, undivided, divisible and indivisible, waqf of shared property.

Keywords--- *Fiqh, Waqf, Burhoniddin Marghinani's Work "Hidayah", Waqf Giver, Trustee (Waqf Affairs), Waqf User, Waqf Agreement, Will.*

I. TERMS OF FOUNDATION

In the work “Hidayah”, the relevant provisions on the issue of ownership of the Waqf property include issues within the terms of the Waqf. The conditions which are put on the Waqf recipient are the following: he should be intelligent, conscious (reasonable) and should have reached puberty. And the conditions for the ownership of the Waqf are as follows: a) to be a property that can be used and is permissible (mutaqavvim). B) to be clear. C) to be the Waqf recipient's own property. The scholars of Islamic law have the same view that if the Waqf property is not the property of the beneficiary, the Waqf will not be authentic. G) be an independently allocated (ifroz) property. It is a condition to be allocated exclusively for the Waqfs, such as a synagogue, hospital, cemetery and library, which can only be used originally. The foundation of a contribution from a land that is not used in its original form, but whose income is used, is permissible according to most Islamic lawyers, and it will not be necessary to allocate it separately. It remains to be said that the Waqf is obliged to have real estate (gayrimanqul), since there is a condition

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for eternity in the Waqf. But within these three conditions in the Hanafi sect, permission was granted to this: a) subjecting to Real Estate. B) there is a verse or Hadith (nas) about it. C) be taomul.

Topics of the foundation covered in the work “Hidayah” by Burhoniddin Marghinani.

II. THE MAIN PART

The Principle of Necessity (Luzum)

Issues related to the ownership of the Waqf in the work “Hidayah” are as follows: 1. The lexical and stylistic meaning of the word Waqf. 2. Whether or not the Waqf property comes out of the ownership of the Waqf (voqif), whether the Waqf is compulsory or not. 3. The judgment of bequeathing property to the foundation. 4. It is necessary or not necessary to transfer the property of the Waqf to its trustee. 5. Donate to the Waqf of undistributed, divisible and indivisible, share property. 6. It is permissible or not permissible to connect the foundation with a period or purpose. 7. Judgments related to the Waqf of movable and immovable properties. 8. The fact that the Waqf property is not sold, donated and left as an inheritance. 9. Judgments on ensuring the suitability of the foundation property. 10. To make a Waqf for oneself and to put a condition that he should be mutavalli. 11. Replacement of the property of the Waqf.

Imam Abu Hanifa and the two imams described different views on the issue of the withdrawal from the ownership of the Waqf. In the eyes of Imam Abu Hanifa, the right of ownership over the Waqf property cannot be revoked without the governor making a judgment or linking the Waqf to his death. For example, I would say that when I die, my property will be given as a Waqf to someone. And in the sight of Imam Abu Yusuf, the Waqf property with comes out of the ownership of the Waqf by only saying. According to Imam Muhammad, the right of ownership does not end until the founder appoints a trustee to the foundation and hand over the property to him.

The imam Abu Hanifa described the Waqf as “keeping the property under the ownership of the foundation and giving the benefit of it like in Oria” based on his views. In “Hidayah” it is noted that the Waqf should not be mandatory (subject to) according to of Abu Hanifa. And the two imams said that the Waqf holds the Waqf in the judgment of Allah, that the property in it will be transferred to the possession of Allah out of the possession of the foundation and that the benefit will be given to his people. According to them, the Waqf will be mandatory in this case, that is, it will not be sold, donated and left as an inheritance.

Abu Hanifa and the Evidence of the Two Imams

The evidence of Imam Abu Yusuf and Imam Muhammad When Umar (let him be in paradise) wanted to donate his garden named Samg, our Prophet (let him be in paradise) he said to him: "give it original charity, provided that it is not given as for sale, inheritance and gift".

The evidence of Abu Hanifa is that “property is not forbidden from distribution among heirs” and Shurayh's “Muhammad (let him be in paradise) they ordered the sale of the goods that were donated during the time of ignorance”. Because the ownership of the goods belongs to his owners. It can be used in planting, building houses and other works.

As we have seen, the beneficiary has the authority to spend property products for the expenses of the Waqf, only when he gives alms for the benefit of this property. In this respect, it looks like a debt (oriya). For the owner of the foundation to be able to carry out such a disposition, it is necessary that the property be at his disposal. Therefore, during the life of the Waqf, it is impossible to transfer the property from his possession to the possession of another. Because this does not correspond to Sharia norms. Service animal (soiba) can also be cited as an example (in the period of ignorance, for example, there was a kind of custom in the style of saying, “let the camel be soiba, if this patient is cured”).

Linking the Waqf with Death

Another law source says: “the ownership of the Waqf does not end without the governor making a decision or linking the Waqf to his death”. In “Hidayah” it is noted that the part of this view on the decision of the governor is authentic. Because this is to make a judgment on a matter in which it is possible to make an Ijtihad. And when the property of the Waqf is linked to the death of the Waqf owner, according to authentic vision, it does not come out of its possession.

Only the Waqf provides the products of the property to charity on an ongoing basis. This is a lasting (binding) place as it has testified that the interests of a property will be given eternal charity. In this case, the goal from the governor is the original Authorized Person of this work. On the issue of the decision of the person taken as an arbitrator, the Fiqh Scholars expressed different opinions.

About making a Waqf in death disease Tahawi said: “it is like making a testament for after death”. In the sight of Imam Abu Hanifa, however, in such a case the Waqf will not be eternal, and in the eyes of the two imams it will be eternal, only this judgment is valid for one third of the total property. That is, the ownership of the Waqf should be equal to one third of the total inherited property.

And in the case of a Waqf in a state of Health, the entire property of the Waqf is covered. In this regard, both imams have the same view when it comes to the exit of ownership of the Waqf. Only the Imam Abu Yusuf believes that the question of the founder is enough to make a Waqf like Imam Shafi'i, while Imam Muhammad also stipulates that the Waqf property should be handed over to the trustee. In the commentary of “Hidayah” it is said that the Waqf that is related to Allah as a reason for this is dedicated to Allah alone in the hands of a competent person, because it is said that it is impossible to find the property directly to him. Granting to the representative is therefore also important, in this way, the Waqf property will receive such attention as zakot and charity, which must be given to people.

In “Hidayah”, according to the views and evidence of fiqh scholars, the fatwa on whether or not the Waqf property remains under the ownership of the Waqf is stated: “Despite the disagreements of the Imams, when the Waqf is accepted as authentic (in “Hidayah” it is called “mustahaq”), the Waqf ceases to be the property of the addressee.

This is due to the fact that if the Waqf property is transferred to the ownership of the person to whom the Waqf was founded, then now it will be possible to sell this property only by disposal, as if it were other goods. Also, the

Waqf property should not have been transferred from it to another on the condition that the foundation belonged to the person to whom the Waqf was made. The look that comes from the text, as mentioned earlier, refers to the two imams.

Waqfs in Dividing and Indivisible Goods of Undistributed Properties

According to Imam Abu Yusuf, it is permissible to donate an undistributed property. Because with the distribution of property, the work on its acceptance will come to an end. Accordingly, since it is not necessary to receive property, it is also not necessary to do the work of distribution, which has its end. However, Imam Muhammad said it would not be permissible to donate an undistributed property. This view is connected with the condition that Imam Muhammad put into the Waqf. According to the person, since it is necessary to receive property, the distribution will also be mandatory.

The disagreement mentioned above refers to goods that can be divided. According to "Hidayah", in indivisible goods, the Waqf is permissible both in the sight of Imam Muhammad and in common. Because this property is also a gift and will be in the judgment of charity given to certain people. But such a property is not a Waqf for a mosque and a cemetery. Because the mosque and the cemetery Foundation under Imam Abu Yusuf will not be realized unless it is the property of an indivisible partnership. The continuation of the partnership will prevent that property will be used for the sake of Allah, while the use of it for other purposes is a very noble deed. It is like a furrow to bury a dead body in the soil for a year, to plant the next year, to pray in it at another time, and to feed the animals in it at another time. And this is a negative deed. Because it can be used and its products can be distributed within the framework of the purpose of the Waqf. If it is known that this property is the property of a partnership after the Waqf has established all of the Waqf properties, then in the sight of Imam Muhammad, the Waqf will be broken as it was in the gift because this partnership existed before. Only if in his illness he makes a Waqf or a gift, then he himself returns from one part of it, or if after his death the heirs want to return two-thirds of the property, then the gift and the foundation will not be broken in the rest of the property, since the partnership arose after it. If it is known that a particular part of the property to which the Waqf can be allocated belongs to someone else, then in this case the Waqf is not broken, since the partnership is not in one indivisible property. Therefore it is also permissible to do a self-reinvesting Waqf of the remaining property. Such will be the judgment of the gift and the charity given to a particular person.

Waqf of the Property for a certain Period of Time

Another issue mentioned in the text of "Hidayah" is that:

"According to Imam Abu Hanifa and Imam Muhammad, the end of the Waqf property will not be realized without the foundation being linked to an eternal term or purpose. In the opinion of Imam Abu Yusuf, the Waqf is permissible even if it is linked to an interim period or purpose, and if it is granted to the poor even after this period or purpose is not remembered".

Imam Abu Hanifa and Imam Muhammad interpret this as follows: the Waqf property is obliged to leave the ownership of the Waqf forever without passing on the private ownership of the people. In the case of the end of the

Waqf goal, this work will not be realized. Therefore, as in the case of sale, the recording of the Waqf, characteristic of a certain period, invalidates it. Even Abu Hanifa and Imam Muhammad rejected him and made him look like a temporary trade, as the attachment of the Waqf to the goal or period led to the fact that it did not completely come out of the ownership of the foundation. In their opinion, linking to time also cancels the Waqf as it cancels the trade.

And Imam Abu Yusuf connects this issue with the aspect of being close to Allah and finding rewards. In his opinion, the purpose of finding rewards for the Waqf can also be realized in this form (linking to a specific period or purpose). Because the reward is sometimes with spending on goals that have an end, and sometimes with goals that have no end. Imam Abu Yusuf acknowledged that the Waqf would be authentic in both cases, taking into account this situation.

Imam Abu Yusuf's condition for eternity has been interpreted differently in a figurative view. According to him, an alliance was made under the condition of Eternity, only it is not necessary to use the word eternity in the sight of Abu Yusuf. This is explained as follows: "the foundation and the words of charity itself express eternity." As already mentioned above, the Waqf which means that the property will go from the ownership of the Waqf to the eternal period, without the transfer of ownership by anyone. Imam Muhammad is obliged to say eternity. Since the Waqf, in his opinion, is to give the benefit of a commodity as a charity, it can be as temporary as it is permanent. Therefore, it is necessary to pronounce this feature strictly, since the expression is not directly referred to infinity.

Movable and Immovable Waqf Properties

As noted in "Hidayah", it is permissible to make Waqf a real estate. Above, in several places, we have considered examples of how many companions have endured Waqfs of real estate belonging to them.

And the issue of real estate was interpreted differently in "Hidayah": "it is not permissible donating such properties that can be transported and that can be changed". The author argued that this view is an absolute opinion of Abu Hanifa.

And the views of the two imams in this regard are different.

According to Imam Abu Yusuf, a person can make a Waqf with animals inside his real estate and those animals with shepherds who are his slaves. Likewise the tools needed for the crop here can be found along with the Land Waqf. That is, the Waqf of movable property it will be possible along with the real estate to which the property belongs. Some cases that are not directly permissible are sometimes indirectly permissible. For example, drinking water sold along with the land, as well as a building made of Waqfs. Imam Muhammad consider the same as Imam Abu Yusuf in this regard. Because, according to Imam Muhammad, the indirect Waqf of some movable property, which can be directly donated, is permissible with Tabaan uvlo, avlavia.

When classified according to the types of property obtained separately, it is noted in "Hidayah" that "it is permissible to donate a horse" in the sight of Imam Muhammad. It is to make a Waqf in the name of Allah. It is said that Imam Abu Yusuf also had such an opinion about this. This sentence is permissible as mentioned.

And by analogy, as we said before, it is not permissible. The pillar is a well-known narration in this regard. One of them is these hadiths of the messenger of Allah (may peace be upon him) "Khalid made their armor and horses a

Waqf in the name of Allah. Talha also gave their armor – according to one legend, their horses-a Waqf in the name of Allah.” The Qur’a is mentioned in this hadith in the meaning of a horse, since the Arabs also fought in camels, the camel is also noted to be as horse in this regard. Weapons are also included in the range of movable properties, which are permissible to be donated, since they are used in combat.

Imam Muhammad further took the scale of movable property, which is permissible to be charitable. According to him, it is also permissible to donate movable properties, such as axes, shovels, saws, funeral coffins and shrouds, cauldrons, and Koran Karim, whose use has become movable, that is, has reached the level of tradition. And Imam Abu Yusuf rejected it. In his opinion, the analogy can only be abandoned on the basis of the verse or Hadith (nass). But in the above hadith, only the name of the horse and gun is mentioned. Therefore, movable properties that can be made by foundations should only be within this scope. And Imam Muhammad said that the analogy was sometimes abandoned on the basis of tradition, as was the case with the exception, and the ax, whose name was mentioned above, contained customs in the cuttings.

It is narrated from Nusayr Ibn Yahya that they founded their books because of the fact that they were in the judgment of the Qur'an.

In “Hidayah” it is said that both the Qur'an and other books have been preserved for the study, teaching and and reading of religion, and that it is permissible for them to be Waqf. It is also stated that the thinkers of many countries have the same opinion with Imam Muhammad. The author also expressed his opinion on this matter: "according to us, the foundation of non-traditional movable property is not permissible”.

In “Hidayah” there is also a place for the views of Imam Shafi'i. This is due to the fact that representatives of the Shafi'i sect also formed the majority in our country in their time. Shafi'i believes that the Waqf of everything that is possible and permissible to sell is permissible if it is stored in the original. Because in terms of availability, it will also be in the judgment of real estate, horses and weapons.

The author explained his view in this regard as follows: “we say that since eternity, which is necessary for the Waqf, does not exist in movable properties, they will also be in the judgment of gold and silver. And real estate is not. At the same time, there is no evidence that contradicts our opinion in either narration or tradition. In this case, it is necessary to stay connected with the original of the analogy. Because the Waqf in real estate is immortalized. Jihad, however, is the highest peak of religion, the purpose of receiving rewards in it is more justified. And the weapons used for jihad and movable properties, except for horses, do not have the same value as those (weapons and horses).

Partnership Waqf Properties

We discussed above the issue of the Waqf of non-divisible property, which is divided and indivisible. The Waqf of a property in a partnership can also be put in place with the Waqf of an undistributed property. But when we say property in a partnership, the situation with the current time is understood. In the case of undistributed property, as we have already considered, the issue of distribution can then be voiced either by its heirs after the death of the foundation, or by its rightful owners after it becomes clear that the property is distributed.

The text of “Hidayah” continues as follows: “After the Waqf is realized, it is not permissible to sell it or give it as a property to another. But according to Imam Abu Yusuf, if the Waqf property is a property of a partnership that can be divided, the division of the partner may be required and his division is authentic”. We have already mentioned earlier the reason why it is not permissible to give someone the Waqf property. To divide is permissible, since there is a separation and excretion from each other. In short, the disposition of things that cannot be measured and weighed. And in the Waqf property, the main attention is paid to the ifroz, that is, the separation of the Waqf property. The main goal envisaged in this position is not to trade. In “Hidayah” it is noted that if a person Waqfs his share in the partnership real estate, he himself will decide on the matter of sharing with his partner. Because, in this case, the authority belongs to the Waqf, and in the case of dying, to his guardian. If the Waqf is made after the death of the partner, the sharing is carried out by the guardian of the partner, that is, the deceased, the person authorized. If one of the Waqf of a real estate belonging to him, it can be done in two different ways. 1. sharing is carried out by interaction with the judge. 2. the remaining half of this property interacts with someone to make a purchase, then buys back from him what he sold to him. In “Hidayah”, this issue is explained by the fact that "a person cannot be both a divisor and a share with himself" at the same time.

And when the money in the division is different, it is not permissible if the recipient of the Waqf is given money for the property evasion. But if the funder gives money, it is permissible, and then at the price of the given money the goods will be bought.

The Responsible Person for the Reconstruction of the Waqf Property

Since the Waqf can serve the intended purpose, its suitability for use is one of the most important aspects. In Islamic law, special attention is also paid to this issue.

Even if the Waqf is obliged or not, the Waqf trustee must first bring the Waqf property into a usable state. Because the purpose of the Waqf is an expression from ensuring the continued use of people from the income of the Waqf. And the continued existence of income from the Waqf property, which has not been repaired and is not made suitable for use, is impossible. So the condition of Waqf repair will appear suddenly. That is, at the time when the director (trustee) of the Waqf undertakes this management, he will have both the authority to bring income to the Waqf and to spend it on the certain place, and the duty to repair it.

It can also be explained by the following example that the manager of the Waqf also assumes the maintenance of the Waqf property. The alimony of a Slave, which is given to the service of a person by a Will, will be in the responsibility of that person. If the Waqf is faked, and the foundation does not find them because they are counted according to the name and number, it will spend the closest property of the poor to the income of the Waqf for the maintenance of the Waqf; if the Waqf is made to a particular person, and he rents it, then the costs of the Waqf will be the person to whom the Waqf is made must carry out the expenditure at a sufficient level to maintain the old state of the Waqf. If the Waqf property made to a particular person is in the form of a building, collapsed or destroyed, the costs of bringing it into the state at the time of the Waqf are also carried out on the above conditions. Because the income of the Waqf property is given to the person to whom the Waqf is made, more than that it is not asked. And the income is his right, and without his consent it cannot be used for any other purpose.

Two different views have been put forward on the issue of making the Waqf only for the poor.

According to the first sight, the sentence will also be the same as in the example mentioned above. According to the second sight, even if they do not agree, the income can be applied to increase the yield of the Waqf. In Hidayah, It is noted that the first sight is more authentic. This can be explained as follows: the expenses incurred will be for the mandatory needs necessary for the duration of the Waqf, in excess, that is, in non-essential expenditure, there will be no obligation.

Another issue in the “Hidayah” refers to the Waqf made to the child. The text is as follows: “If a house is a Waqf for the survival of a child, then the home care is entrusted to the one who has lived.” Because, as mentioned above, the money obtained comes to the evasion of responsibility. In “Hidayah” it is therefore noted that “this is also in the judgment of the alimony of a slave given to the service of a man”. However, in this regard, the question arises whether the user of this home will agree to it or not. “If the person who lives in the House refuses it or is a poor person, the governor rents the house and takes care of the house for rent. After carrying out the care, he gives the house back to the person who donated. In this way, the right of both the Waqf and the person who has the right to live in the House will be protected, and the duration of the Waqf will be ensured. Because if home care is not carried out, then the possibility of living is also lost. And the repair is better not to let go of the fall without repair.

In “Hidayah”, this situation was compared to the status of the owner of the seed in the contract. That is, it does not mean that the owner of the seed agrees to the loss of the right to refuse to give the seed. Because this refusal may have occurred from lack. And since the property of the House does not belong to him, it cannot be rented by the user himself.

The text of “Hidayah” continues as follows: “the governor uses the outdated buildings and equipment of the Waqf in the repair of the Waqf. He will keep them until the need arises, if there is no such need at the time. Once the need arises, he will use it there again.” This event is also to ensure the continuity of the Waqf. But if the equipment cannot be used in its former state, they are sold and the money is spent on the needs of the Waqf. In this way this money will be passed on to replace that appliance. In “Hidayah”, it is emphasized that “this malzama will not be given as among those who are made Waqf”. It is known that the same judgment was adopted, since this equipment belongs to the Waqf property. Users do not have any rights in that equipment. Because they only use the income of the Waqf, and it will not be possible for the Waqf to charge from the equipment that belongs to the original. The author explained this by saying that “the Waqf belongs to Allah.” Therefore, only those who are made a Waqf are given their rights.

Rights of the Waqf Holder over the Waqf Property

We got acquainted with the above issues of making a Waqf for the poor, scholars or their children. Another important issue of the theme of the Waqf is the issue of making a Waqf for himself. It remains to be said that the Waqf made in another way is also one of the questions in the queue that the Waqf can dispose of itself.

In “Hidayah”, first of all, Imam Abu Yusuf's view is mentioned: “It is permissible for the Imam Abu Yusuf to do this if the founder allocates the Waqf's income to himself or if the trustee assumes responsibility.”

Quduri concentrated the fatwas, which divided these two topics into two seasons. The first of them is about the fact that the Waqf assigns (allocates) the income of the Waqf to itself, and the second is about to assume the responsibility of the trustee. And above we saw that in “Hidayah” a small part is allocated to this topic. Also, Marghinani added in his work that “it is not permissible for the first (allocating the income of Waqf to himself) to be named before the Imam Muhammad.”

Some of the scholars of Islamic law believe that these different views come from the condition of finding, receiving and separating the property of the Waqf (Ifroz), while others say that this is a separate issue. According to them, the difference of opinion can be in the following issues: a) a person is both a Waqf holder and a user at the same time. He made a part of his property and after his death he made a condition that a part of his property should be transferred to the poor; B) he made a condition that all property should be transferred to the poor after his death; C) he made a condition that part or all of his property should be transferred to his mother after his death. The views of the scholars of Islamic law on whether or not it is permissible to make a Waqf in this way are of type.

According to one view, it is permissible to have this knowledge when making a Waqf to some or all of the Waqf property, as well as to his servants, to whom the contract of the event was made, if after their death the Waqf was obliged to pass a fax. Another consideration is that this issue is also controversial. About the second sight at “Hidayah” authentic tribe is also this. Because it will be like to impose such a condition on the heirs and slaves as to impose a condition on himself.

Imam Muhammad said that this case is not permissible. The reason Imam Muhammad mentioned can be explained as follows: the Waqf, as mentioned above, is to assign the property in one direction, to do good (tabarru) in this way, provided that it leaves the disposal of its owner. Therefore, if the Waqf holder obliges some or all of its property to belong to it, it makes the foundation “useless”, that is, such a Waqf will not be realized. Because a person cannot give his goods to himself. In this case, the Waqf will be as a condition for itself part of the given charity and/or the area of the mosque where the Waqf was built.

And Imam Abu Yusuf (as) rely on the narration of Muhammad (let him be at paradise) about what they eat from their charity. And the purpose of charity in the narration is the Waqf charity. And the benefactor can only eat from his own charity by putting a condition. With this attention, the above-mentioned narration is evidence of the authenticity of this condition. At the same time, the Waqf is to give property to Allah for reward. Therefore, by making some or all of the foundations of the foundation available to him, he will have made his own property belonging to Allah. He will not give his property to himself. This is permissible.

The author, as an example in this regard, stated that the person who built a hotel or irrigation facility would naturally use it himself, and as another example, the person who made a cemetery could also be buried in that cemetery. He pointed out that this state of affairs is the main purpose of the Waqf to receive rewards, to create proximity to Allah (qurbat), which can also be obtained at the expense of the person himself.

The evidence presented on the subject in “Hidayah” is that: the messenger of Allah (may peace and blessings of Allah be upon him) said: "the donation that one has made for himself is charity."

Replacement of the land of the foundation, return from the Waqf or take responsibility for the Waqf's trusteeship condition

Another issue related to the disposition of the Waqf is the theme of the replacement of the land of the foundation. This can be both on the basis of the condition that the replacement endowner has set, and with the dictates the situation. The fact that the Waqf establishes such a condition is linked to the fact that the Waqf wants to give his another land who belongs to her instead of his land. This can happen for reasons that depend on the Waqf recipient himself.

The issue of the condition for the replacement of the land of the Waqf, which is a Waqf, is mentioned in "Hidayah". It is also noted that the imam Abu Yusuf believes that it is permissible for the Waqf to oblige itself to replace the land that was donated at any time with another land. Imam Muhammad said that the foundation made in this case is authentic and that the condition laid down is not authentic. According to Imam Abu Yusuf, in this case both the foundation and the condition will be authentic if the founder adds a condition for himself to return from the Waqf within three days. According to Imam Muhammad, the Waqf will not be authentic.

This difference in views, as noted above, arises from the differentiation of views on the issue of acceptance and presentation. When it comes to the fact that the trustee of the foundation can be made by the Waqf itself, it is in this place that the well Imam Abu Yusuf voiced his thoughts. It is stated in "Hidayah" that the Hilol also supported the opinion of Imam Abu Yusuf on this matter and this is also the case of Zahir Al-mazhab. And in the "Waqf Book" by Hilal, it is said: "Some faqihs say that the task will be his if he makes a condition that the trustworthiness belongs to him. He cannot be a trustee if he does not set a condition".

Scholars of Islamic law put forward the idea that this idea belongs to Imam Muhammad. Because Imam Muhammad also mentioned the submission of the Waqf to the trustees among the conditions of being authentic. And when the Waqf property is transferred to the trustee, it does not have the right of the Waqf to own it.

After the mention of the diversity of views in "Hidayah", the author's own opinion is described. According to him, the trustee himself acquires the quality of the trustee only with the permission of the foundation's addressee. It is a work that cannot be his own trusteeship as long as another person can only be a trustee with the permission of the founder. It remains only to say that the trustworthiness is also his right before all, because he is closer to the Waqf than others. Just as a man who built a mosque, he had the right to taste and care for the mosque and to serve someone to him, or because the one who freed the slave was the closest to him, he was the guardian of the slave himself.

If the Waqf has established the condition that the trusteeship belongs to itself, but there is no reliable person, the governor can take the trusteeship from him in order to protect the rights of the poor. Under the terms of Islamic law, the governor will also be able to exclude the guardian (the one who takes care of the children of the deceased) for the benefit of orphaned children from his duties. If the beneficiary in order to prevent this, both the king and the governor have made a condition that he will not be released from trusteeship, then this condition will be nullified, that is, falsehood, since it contradicts the weapons of the Fiqh. This rule was introduced in order to protect both the Waqf property and the rights of its users.

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