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## The Implementation of Waqf as 'Urf in Indonesia

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| Article   | Abstract  |
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| <p><b>Keywords:</b><br/><i>Al- 'Urf; Grave; Islamic Schools; Islamic Tradition; Mosque; 3M's Waqf.</i></p> <p><b>Article History</b><br/>Received: Feb 16, 2021;<br/>Reviewed: Jul 2, 2021;<br/>Accepted: Jul 25, 2021;<br/>Published: Jul 31, 2021.</p> <p><b>DOI:</b><br/>10.28946/slrev.Vol5.Iss2.1126.pp287-299</p> | <p>As a tradition that has been practised for a long time, waqf or endowment is clear evidence that Muslims in Indonesia are developing through this worship. However, what if the waqf is in the form of a mosque, Islamic school, and grave (3M's waqf). It is an unusual thing in the contemporary Islamic tradition, but its existence persists. Meanwhile, 'Urf as one of the legal propositions in establishing Islamic law has known the concept and has been practised for generations in suburban areas where most of the population is Muslim. This tradition is then accommodated in Law Number 41 of 2004 concerning endowment, which contains land endowment and endowment organiser (<i>nazhir</i>). This paper examines the tradition of endowment in Indonesian society to benefit mosques, Islamic schools, and graves. By using the historical and analytical-conceptual approaches, this paper will analyse waqf in these three forms. The results of this study can be taken into consideration by stakeholders in developing strategies for strengthening and empowering 3M's donated land to create benefits for the Indonesian since 3M's endowment is commonly found in Indonesian society.</p> |

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### INTRODUCTION

In addition to *Waqf* (Endowment) that is given by individuals to a close relative, which is known as *Waqf ahli* (*Family Endowment*), in Indonesia there is also Islamic Endowment which is carried out collectively, or what is known as waqf *khairi* (*Charity Endowment*). Charity Endowment in the form of *Musholla* (mosques), *Madrasah* (Islamic schools), and *Makam* (graves) which is known as '3Ms endowment'. Even though it looks very classic and traditional, 3Ms endowment is clear evidence that Islam in Indonesia is built and developed through endowment worship.

As the opinion expressed by Koesoma Atmadja cited in Abdurrahman,<sup>1</sup> that before Islam came to Indonesia, there were already social institutions such as *Huma Serang* in the Bedouin community in Cibeo, South Banten, *Tanah Preman* in Lombok. However, after Islam came to Indonesia, the endowment institution brought by Islam grew and developed in society. This endowment institution is known as "*Vrome Stichtingen*", which was well known in society before the arrival of Islam to Indonesia.<sup>2</sup> The acceptance of endowment into customary law is one acceptance of customary law that comes from religion (*godsdiensstig bestanddeel van het adatrecht*).<sup>3</sup> The classic or traditional endowment is identical in the form of a mosque, a school, and a grave. As was the practice found in the people of Serang, West Java, in 1904, the practice of endowment was in the form of a mosque, grave, charity endowment, and Family endowment.<sup>4</sup>

This paper will elaborate on the issue of charity endowment, which is intended to benefit the people. Due to many distributions and most of the land endowment is managed by individual endowment organizers. Furthermore, there are still frequent conflicts over property endowment caused by various factors, including the legal status of land endowment and substitute individual endowment organizers that have not been registered.

In addition, from the implementation and traditional point of view of endowment, this endowment is the oldest and most commonly found in the social life of Indonesian society.<sup>5</sup> So there is no need to change anymore, but it needs to be considered and empowered. So, the law and wisdom of endowment in Islam and the intention of endowment Law in Indonesia can be achieved.

## RESEARCH METHOD

This research is normative legal research using historical and analytical-conceptual approaches, especially for endowment law. The study of *al-'urf* in Islamic law is intended to examine the Indonesian endowment system and the government policies regarding endowment. This research also paying attention to tradition or habits developed in society, such as allocation and management of endowment assets since *al-'urf* is one way to determine the law by using legal arguments.

## ANALYSIS AND DISCUSSION

### Family Endowment

Abu Zahrah explained that *a waqif* (endowment giver) might donate his belongings to his family, relatives, and beloved offspring. Family and close relatives who become *mauquf 'alaihi*

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<sup>1</sup> Abdurrahman, *Masalah Perwakafan Tanah Milik Dan Kedudukan Tanah Wakaf Di Negara Kita* (Bandung: Alumni, 1979). See also Mohammad Daud Ali, *Sistem Ekonomi Islam, Zakat Dan Wakaf* (Jakarta: UII Press, 1988), 79.

<sup>2</sup> Ter Haar Bzn, *Beginselen En Stelsel Van Het Adatrecht* (Jakarta: Pradnya Paramita, 1986).

<sup>3</sup> Ali Rido, *Badan Hukum Dan Keudukan Badan Hukum Perseroan Perkumpulan Koperasi Dan Wakaf* (Bandung: Alumni, 1977).

<sup>4</sup> *Waqf lajim* is a garden or plantation land whose income (from plantation products) is used to benefit the village. *Waqf dzurriyat* is a plot of land whose income is mainly for the benefit of the offspring of endowment (commonly known as an expert endowment). Djajadiningrat said the problems that arise with the donated land for mosques are because the land has been neglected for years. The endowment giver donates land and hands it over to the *nazhir* (endowment organizer) and the community to build a mosque. Amelia Fauzia, *Filantropi Islam: Sejarah Dan Kontestasi Masyarakat Sipil Dan Negara Di Indonesia* (Yogyakarta: Gading Publishing, 2016).

<sup>5</sup> Hilman Latief, *Melayani Umat: Filantropi Islam Dan Ideologi Kesejahteraan Kaum Modernis* (Jakarta: PT. Gramedia Pustaka Utama, 2010).

(endowment recipient) in endowment deeds are called a family endowment.<sup>6</sup> Family endowment means endowment addressed to certain people, regardless of whether they are rich or poor, sick or healthy, and old or young.

Based on the objectives, an endowment can be divided into three, namely social endowment, family endowment and *musytarak* (combined endowment). As for the time limit for its use, the endowment is divided into two, namely perpetual and temporary endowment. Based on its economic substance, the endowment is divided into two, namely natural and productive endowment. In general, Jaih Mubarak argues that endowment can be divided into two: (1) Family endowment, endowment aimed to help the family of the party who donates; and (2) Charity endowment, which is aimed to give beneficiary to the general public.<sup>7</sup>

Apart from the endowment given by individuals, in Indonesia, there are also mutual endowments<sup>8</sup> in the form of mosques, Islamic schools, orphanages, hospitals, bridges. By forming a committee to collect funds and after it has been collected, community members work together to contribute vigour to construct the intended endowment. In the construction of a mosque or hospital, for example, the donated assets can also be seen in material donations. If it is in the form of money, the committee uses the money to purchase materials. This culture of mutual cooperation<sup>9</sup> in Indonesian society colours endowment system in Indonesia.<sup>10</sup>

### Charity Endowment

This type of endowment is widely used in Indonesia. This endowment is generally intended for the benefit and goodness of society. Research conducted by the Indonesian Waqf Board Research Team in 2016 explained that there are still many people's opinions that the distribution of endowment assets for the benefit of economic empowerment has the potential to create many conflicts. For people who live in this opinion, an endowment is a form of worship to the divine, which is sacred. The former intention was for worship, which then led to conflict and disturbed the devotion of worship. Then from the beginning, the allocation of endowment assets should be directly conveyed to mosques. In fact, the first practised endowment during the time of the Prophet was endowment in the form of a plantation, which led to a productive endowment. Furthermore, the Research Team conclude that plantation endowment or other productive endowment has not become a trend yet since economic development is separate from developments of the religious field.<sup>11</sup>

Under the principles of Law Number 41 of 2004, It does not separate between family endowment, limited only for relatives, and charity endowment. It means that the regulation regarding

<sup>6</sup> Muhammad Abu Zahrah, *Muhadharat fi al Waqfi* (Cairo: Dar Al-Fikr, s.a, n.d.). Furthermore, Abu Zahrah explained that some writers on the history of ancient Egyptian legislation discovered the essence or substance of endowment. They found in the form of a contract (*hibah*) between someone against their eldest child, then required the eldest child to share the proceeds of the gifted asset management to his other siblings. This means that the assets handed over are not allowed to be sold or used for other uses.

<sup>7</sup> Jaih Mubarak, *Wakaf Produktif* (Bandung: Simbiosis Rekatama Media, 2008). See also in M. A. Mannan, *Cash Waqf Certificate: An Innovation of Islamic Financial Instruments*, (Jakarta: CIBER and PKKT-UI, 2001), 33.

<sup>8</sup> Bung Karno once said that if *Pancasila* is squeezed, it will become *Trisila*, and if it is squeezed again, it will become *Ekasila*, and if it continues to be squeezed, it will become '*gotong-royong* (mutual cooperation)'. This mutual cooperation is the nature of the original life of the Indonesian people. It means that to ensure the sustainability of the Republic of Indonesia, Indonesian people must develop and live in mutual cooperation. Sayidiman Suryohadiprojo, *Budaya Gotong Royong Dan Masa Depan Bangsa* (Jakarta: Kompas Media, 2016).

<sup>9</sup> Latief, *Melayani Umat: Filantropi Islam Dan Ideologi Kesejahteraan Kaum Modernis*.

<sup>10</sup> Mohammad Daud Ali, *Sistem Ekonomi Islam, Zakat Dan Wakaf* (Jakarta: UII Press, 1988).

<sup>11</sup> Indonesia Waqf Board, *Fenomena Wakaf Produktif* (Jakarta: Indonesia Waqf Board, 2016).

endowment applies to both charity and family endowments. The allocation of endowment for its recipient is not intended for personal use but the general welfare of fellow relatives from generation to generation. Thus, various information is contained in 'Akta Ikrar Wakaf (AIW) (Endowment Pledge Deed)' as essential documents in endowment management and an essential reference for all parties.<sup>12</sup>

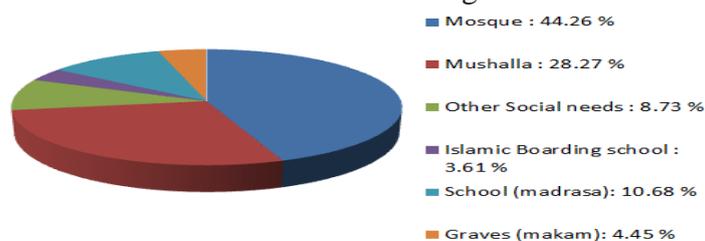
As for cash endowment, it is uncertain when the money endowment began to be practised. The tradition of endowment begins from the values and principles that existed in the community in customary law and Islamic law, in 2004, it has become the norm for upholding and implementing the cash endowment in Indonesia.<sup>13</sup>

### Total Distribution of Endowment Assets in the form of Land in Indonesia

The result of observation data on the distribution of donated land in the Sumatera, the province of Nanggroe Aceh Darussalam (NAD) is in the first place (16,095 endowment lands), then followed by Lampung (13,192 endowment lands). Java Region, Central Java Province is in the first place (102,409 endowment lands), followed by West Java (76,231 endowment lands). Furthermore, West Nusa Tenggara (NTB) is in the first place (9,572 endowment lands), then South Kalimantan is in the second (8,261 endowment lands).<sup>14</sup>

It is shown that most of the land endowment managed by Individual endowment organizers uses a classical pattern and is used for the designation of mosques, Islamic schools, and graves. Ahmad Azhar Basyir argues that even though the endowment institution is an institution that originates from the Islamic religion, a mutual agreement has been made between legal experts that the endowment institution that refers to Indonesian Customary Law because the acceptance of endowment institutions comes from a habit in the association community life.<sup>15</sup>

Land endowment has a multi-dimensional function in supporting the welfare, development and progress of society. In the Figure below, the author presents the classification of the allocation of endowment land for three endowment functions throughout Indonesia.



**Figure 1.** Classification and Percentage of Allocation of Endowment Land throughout Indonesia<sup>16</sup>

<sup>12</sup> Elucidation of Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Endowment.

<sup>13</sup> Ulya Kencana, *Hukum Wakaf Indonesia - Sejarah Landasan Hukum Dan Perbandingan Antara Hukum Barat, Adat Dan Islam* (Malang: Setara Press, 2017).

<sup>14</sup> Data is obtained from the Directorate of Zakat and Waqf Empowerment and Directorate General of Islamic Community Guidance at the Ministry of Religion of the Republic of Indonesia websites, [http://siwak.kemenag.go.id/tabel\\_total\\_tanah\\_wakaf.php](http://siwak.kemenag.go.id/tabel_total_tanah_wakaf.php), accessed on March 02 2021.

<sup>15</sup> Ahmad Azhar Basyir, *Hukum Islam Tentang Wakaf, Ijarah-Syirkah* (Jakarta: Al-Ma'arif, 1977).

<sup>16</sup> The official website of the Directorate of Zakat and Waqf Empowerment, Directorate General of Islamic Community Guidance, Ministry of Religion of the Republic of Indonesia, <http://siwak.kemenag.go.id/index.php>, accessed January 10, 2021.

Based on figure 1, it is understood that the designation of endowment land in Indonesia is still dominated by the needs of religious facilities, educational facilities, and public funerals. At the same time, some endowment organizers have started to develop endowment assets to be more productive. So, it is essential to involve stakeholders, namely the regency and local Ministry of Religion Affairs, and the local and district BWI Representative to carry out intensive control and supervision. Besides the problem mentioned above, there are some areas of lands endowment that 1) have not been certified yet (about 30.70%); 2) and there are still many lands endowment being taken over by property companies, endowment being taken back by the heirs, endowment assets disappearing or being used outside its rights; 3) *ruislag* (take over) of problematic land endowment; 4) lack of utilization of endowment assets for economic activities productively and the usage that valuable for the welfare of the people, and 5) the capacity and sense of responsibility of the endowment organizer still needed to be improved.

### Practices and the Establishment of Endowments during the Colonial Period

Since the *Bijblad* 1905 No. 6196, Circular Letter issued by the Dutch East Indies Government which regulates land waqf including mosques and houses of worship, several products of endowment legislation were issued by the Dutch East Indies Government. This regulation concerns the donation of land designated for mosques and other places of worship. However, these Circular Letters did not work as they should.<sup>17</sup> As for the era of Japanese rule, there were no statutory regulations regarding endowment. So, the legal products formed by the Dutch East Indies continued to apply until Indonesia's independence, which was confirmed by the Transitional Article in the 1945 Indonesian Constitution.

The early days of endowment development can be traced back to the 12<sup>th</sup> century to the 14<sup>th</sup> century AD when *Sufi* teachers penetrated Islam into the archipelago. The most robust evidence can be traced from the role of Wali Songo when introducing and spreading Islam to the palace environment. The guardians usually started by establishing Islamic boarding schools and mosques in the sultanate (palace). Syekh Maulana Malik Ibrahim carried out this pattern in 1419 AD and Sunan Ampel in 1467 AD, which was then followed by other Wali Songo<sup>18</sup> Figures. Mosques and Islamic boarding schools,<sup>19</sup> apart from being the arrows for the spread of Islam, they are also known as the first endowment institutions to become the new seeds for the development of Islamic philanthropy in the next period.<sup>20</sup>

<sup>17</sup> Ali, *Sistem Ekonomi Islam, Zakat Dan Wakaf*.

<sup>18</sup> The Demak Mosque, built by Wali Songo, also functioned as a centre for the development of Islamic culture and politics, especially in Java. During this period, three institutions were formed to support and strengthen the existence of the Islamic kingdom in Java, namely: (1) the palace as the centre of royal political power; (2) mosques and heritage as religious centres; and (3) the market as a trading centre. See M. Lutfi Malik, *Etos Kerja, Pasar, Dan Masjid: Transformasi Sosial-Keagamaan Dalam Mobilitas Ekonomi Kemasyarakatan* (Jakarta: LP3ES, 2013).

<sup>19</sup> Omar Amin Hoesin wrote that the use of mosques simultaneously for the benefit of schools (educational institutions) has been known and has become a habit of Muslims in other parts of the world since time immemorial. He termed it a 'mosque school'. Someone chooses to stay quiet in the mosque to study and learn from experts without worrying about food. Because people are 'being' will come to deliver food to the mosque. One example is the Grand Mosque in Damascus and the Harun Al-Rasyid mosque in Baghdad. Apart from functioning as a place of worship, the mosque building is also used for lecture rooms for various faculties, especially religious sciences. See Omar Amin Hoesin, *Kultur Islam* (Jakarta: Bulan Bintang, 1981).

<sup>20</sup> Yulia Mirwati, *Wakaf Tanah Ulayat Dalam Dinamika Hukum Indonesia* (Jakarta: Rajawali Pers, 2016).

As with the formation of the *Surau* (Mosque) in the Minangkabau region of West Sumatra, the *surau* is usually located on matrilineal land, *ulayat* land (land used communally) provided by the *nagari* (village), or on land endowment given by villagers.<sup>21</sup> This period of *surau* also functions as an economic base that lasts from time to time. The *surau* area is not only for the centre of Islamic teaching, but to some extent also as a community that fulfils its own needs, complete with rice fields, fields, gardens, and *lapau* (stall).

Amelia Fauzia explained that not all the construction of mosques came from endowment funds but also obtained from zakat funds in the West Java region.<sup>22</sup> It can be seen in the explanation of the Regent of Serang, in 1904, who reported that the practice of endowment consists of four types, namely mosque endowment, grave endowment, general endowment, and family endowment. A Mosque endowment is a plot of land for constructing a mosque or anything related to religion. Someone donated land and handed it over to the endowment organizer and the community to construct a mosque. Thus, the construction of mosques will depend on almsgiving and other smaller endowments. Grave endowment to be used as a grave. A general endowment is a garden or plantation land whose income (from plantation products) is used to benefit the village. The family endowment is a plot of land whose income is mainly for the benefit of endowment givers, commonly known as family endowment.

As Rachmat Djatnika's research quoted by Amelia Fauzia on the number of lands endowment registered during the Dutch East Indies, explains the following: 79 new endowments in 1880-1850, 224 in 1850-1900, 168 in 1901-1910, 254 in 1911-1920, 383 in 1921-1930, and 495 in 1931-1940. During the 140 years of Dutch East Indies rule, the number of endowments increased five times. The use of land endowment is intended for mosques, Islamic boarding schools, Islamic schools, graves, and agriculture. The number of endowment assets has continued to increase from the second half of the nineteenth century onwards.<sup>23</sup>

In the East Java region until 1971, there was a significant increase in the number of lands endowment, although afterwards, it slowed down. This increase in the number of the new endowment was due to agrarian reform in 1960. Many landlords gave their land for endowment rather than allowing the land to be forcibly taken by the State or farmers. Thus, agrarian reform inadvertently provided benefits for Islamic institutions such as Islamic boarding schools, such as Gontor Islamic Boarding School, obtaining 240 ha of rice field endowment. The spirit of giving to the Indonesian people was visible before the Indonesian State gained its independence. Amelia Fauzia explained that the philanthropic activities initiated by the community at that time were intended to show efforts to defend the State and achieve national independence. There are 3 (three) concrete pieces of evidence that describe the form of the initiative, namely: 1) the contribution of the Acehnese people to the State. In the form of the purchase of the first Indonesian-owned aircraft; 2) The establishment of the Indonesian Red Cross Organization (PMI) as a form of awareness of national political identity; and 3) the establishment of the Republic endowment foundation

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<sup>21</sup> Azyumardi Azra, *Surau: Pendidikan Islam Tradisional Dalam Transisi Dan Modernisasi*, n.d.

<sup>22</sup> Nowadays, most waqfs for mosques depend on alms donations for the operational needs of the mosque. Alms are an alternative to mosques' construction and operational costs; besides not being burdensome, alms are not synonymous with wealth and are following the local economy and collaborative culture. Fauzia, *Filantropi Islam: Sejarah Dan Kontestasi Masyarakat Sipil Dan Negara Di Indonesia*.

<sup>23</sup> Fauzia.

(*Stichting Wakaf Republik*) which is a modern Islamic charity organization founded on August 17, 1948.<sup>24</sup>

Giving similar endowment was practised before Islam came to Indonesia, such as *huma serang* in Banten. *Huma serang* are fields that are managed collectively every year, and the results are used for common interests. In Lombok, *Pareman* land as state land is exempt from tax, and the proceeds are handed over to villages, *subaks* and temples for common interests. Likewise, *Perdikan* land in East Java, a gift from the king to a person or group who has contributed and cannot be traded.

In the literature on the history of Indonesian law, there are many Orientalist figures since the time of the Dutch East Indies who conducted research and observations on the implementation of Islamic law in Indonesia for an extended period. One of these figures was Hurgronje, who made observations of Islamic boarding school educational institutions in West Java, Central Java and Aceh.<sup>25</sup> The enthusiasm and motivation for forgiving in the form of *zakat* and endowment to the community led to making mosques and Islamic boarding schools belong to communities independent of the government.<sup>26</sup>

The results of Horikoshi's research say that the mosque is one of the places that scholars work on to serve rural communities in Indonesia. In addition to serving in the mosque, *ulama* also serves in Islamic schools, Islamic boarding schools and schools with a class system. Every Muslim, both villager, boarding school students and *ulama*, performs the five daily prayers, and the general Islamic teaching is held at the Islamic school. Mosques and Islamic schools are at the centre institutional of rural Islamic societies.<sup>27</sup>

The mosque is an original product and one of the characteristics of Islamic civilization. The term mosque itself, which etymologically means a place of prostration, has developed terminologically into an architectural object built to gather Muslims to perform the five prayers in congregation, teaching, discuss and studying Islam, feeding the poor, and other related activities with worship. Therefore, the existence of a mosque is an essential physical manifestation at the core of Islamic teachings.<sup>28</sup> Horikoshi described how the Indonesian Islamic community at that time functioned mosques. They perform whole worship at the mosque in the congregation while reinforcing their commitment to the community.<sup>29</sup>

In 2008, a discourse was launched to maximize the use of mosques apart from being a place of worship and spreading *da'wah*. Mosques also functioned as the basis for the economic development of Muslims in the form of "mosques incorporated" oriented towards the development of "economic business networks".<sup>30</sup>

As for the Islamic schools, it functions as a place for parents and children to learn religious sciences and get the direct training from scholars. Sometimes Islamic schools are also used by

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<sup>24</sup> Fauzia.

<sup>25</sup> Karel A. Steenbrink, *Pesantren Madrasah Sekolah: Pendidikan Islam Dalam Kurun Modern* (Jakarta: Dharma Aksara Perkasa, 1986).

<sup>26</sup> Fauzia, *Filantropi Islam: Sejarah Dan Kontestasi Masyarakat Sipil Dan Negara Di Indonesia*.

<sup>27</sup> Hiroko Horikoshi, *Kyai Dan Perubahan Sosial* (Jakarta: P3M, 1987).

<sup>28</sup> Nangkula Otaberta and Yulia Eka Putrie, *Contemporary Architecture of Islamic Societies Between Globalization and Traditions*, 2 ed (Malang: UIN Maliki Press, 2013).

<sup>29</sup> Horikoshi, *Kyai Dan Perubahan Sosial*.

<sup>30</sup> Malik, *Etos Kerja, Pasar, Dan Masjid: Transformasi Sosial-Keagamaan Dalam Mobilitas Ekonomi Kemasyarakatan*.

students to recite and study nature, learn Arabic and listen to lectures from scholars and *clerics* (*kyai*). The essential function of the Islamic school for scholars is to communicate with the *ummah* and to cultivate knowledge and *aqidah* for the ordinary people through the recitation congregation.<sup>31</sup> Unlike the Islamic boarding schools education system, this institution is very specialized and aims to train students to have independent abilities. The students usually live in dormitories, occupy one small room and are filled with between three and five *santri*, sometimes even up to ten *santri*. Each student is free of charge for lodging and education received from the *ulama*.<sup>32</sup>

In the early history of the formation of Islamic schools by Islamic leaders, Islamic schools were a new milestone in the implementation of Islamic education. Islamic school institutions emerged in the fourth century Hijriyah. Ahmad Syalabi argues that the development of a mosque to an Islamic school occurs directly, not using an intermediary institution. The development of Islamic schools can be a logical consequence of the increasing number of recitation activities in mosques whose primary function is worship. To disturb the peace of worship at the mosque, educational activities have been made in a particular place known as an Islamic school. In contrast to mosques, Islamic schools have led to a more professional education management system, and they have specific regulations regarding almost all education components. For example, if in a mosque a person can be free and independent in choosing a teacher or *halaqah*, that can no longer be done in an Islamic school. Islamic schools differentiate the level and duties of teachers between *mudarris* (teachers), *mu'id* (assistants), and *aw'adz* (tutors).<sup>33</sup>

As for Indonesia, the writers on the history of Indonesian Islamic education agree that there were the first Islamic schools that were established during the period of growth, especially in the Sumatra and Java regions. Mahmud Yunus included Islamic schools in this period of growth, including *Adabiah School* (1990) and *Diniah School Labai al-Yunusiy* (1915) in West Sumatra, *Nahdlatul Ulama Madrasah* in East Java, *Yogyakarta Muhammadiyah Madrasah, Tasywiq Thullab Madrasah* in Central Java, *Madrasah Persatuan Islam* in West Java, *Madrasah Jam'iyat Kheir* in Jakarta, *Madrasah Amiriah Islamiah* in Sulawesi, and *Madrasah Assulthaniyyah* in Kalimantan.<sup>34</sup>

In Tanah Melayu, the development of an educational institution in the form of an Islamic school began in the 13th century along with the development of Islam which was manifested in the form of a mosque which also functioned as a place to study.<sup>35</sup> In the Java region, some of the Islamic schools are closer to the Dutch-style school system. Some are more influenced by the development of Islamic education reforms in the Middle East, partly a convergence between the Islamic boarding school education system and the modern Islamic school or school system.<sup>36</sup> It is known that Islamic organizations such as Nahdatul Ulama (NU), Muhammadiyah, Persatuan Islam (Persis) and Al-washliyah have a long history of practising endowment. For example, in the NU

<sup>31</sup> Horikoshi, *Kyai Dan Perubahan Sosial*.

<sup>32</sup> Horikoshi.

<sup>33</sup> Maksum, *Sejarah Dan Perkembangannya* (Jakarta: Logos Wacana Ilmu, 1999).

<sup>34</sup> Maksum.

<sup>35</sup> Ahmad Dzulfahmi Muhamad and Mohammad Redzuan Othman, "Pengislahan Sistem Pendidikan Islam Di Tanah Melayu: Peranan Mudir Madrasah Al-Mashoor Al-Islamiah Pulau Pinang, 1916-1957," *Jurnal of Al-Tamaddun* 15, no. 1 (2020): 133–45.

<sup>36</sup> Horikoshi, *Kyai Dan Perubahan Sosial*.

environment, there are many Islamic boarding schools, Islamic schools, mosques, prayer rooms, and religious institutions with endowment status, especially land and buildings.<sup>37</sup>

Another case with *pesantren* (Islamic boarding schools),<sup>38</sup> the results of observations made by Hurgronje found that most of the students who frequently visited Islamic boarding schools in Java, *surau* in Central Sumatra, or *rangkang* in Aceh, were the embryos of teachers of religious scholars and scholars, who underestimated instead of wanting the position, or those whose parents assign a value based on a certain understanding based on religious orders.<sup>39</sup>

Some Islamic boarding schools receive regular income from their status as a *perdikan* area<sup>40</sup> or from an endowment. When students enter or leave the boarding school, at harvest time or the end of fasting, they or their parents often give some gifts to the *kyai*, likewise, *zakat* is often paid to the *kyai*. It is often found that the humble *kyai* have to make a living by farming or trading. Additional income from education is often insufficient to pay for the management of the education it carries.<sup>41</sup>

### ***Al-'Urf* Method in Practice of Endowment**

The term *al-'Urf* is known to have various meanings. According to Abdul 'Aziz al-Khayyat, *al-'urf* is something that humans have used, and they have lived it in various aspects of life. Abdul 'Aziz al-Khayyat argues that the scholars also distinguish between *al-'adat* and *al-'urf*. As the rule of '*kullu'urf 'aadah wa laysat kulla 'aadah 'urfan* (every '*urf* is '*custom*; and not every '*custom* is '*urf*).<sup>42</sup> Jaih Mubarak argues that *al-'urf* in Indonesian is defined as custom or habit. As Quoted, the opinion expressed by Abu Hamid Muhammad bin Muhammad al-Ghazali, al-Jurjani, and 'Ali Haidar that *adat* (custom) means *al-'urf*. In *Ushul Fiqh*, *al-'urf* has two different meanings, namely *al-'urf*, which is both called *al-'urf as-shahih* and *al-'urf*, which is damaged is called *al-'urf al-fasid*. One of the basic principles of jurisprudence relating to customs or habits is *al-'adah muhak-kamah* which means '*Adat* (can be taken into consideration) in the stipulation of law'.<sup>43</sup>

<sup>37</sup> "Proses Lahirnya Undang-Undang Wakaf," in *Direktorat Pemberdayaan Zakat Dan Wakaf* (Jakarta: Dirjen Bimas Islam Kementerian Agama RI, 2005), 86.

<sup>38</sup> Terminologically, when viewed in terms of form and system, Islamic boarding schools were adopted from the learning system from India. Before spreading Islam in Indonesia, this system was generally used for the education and teaching of Hinduism in Java. After Islam entered and spread in Java, the system was then adopted by Islam. Like the Koran, the term *pesantren* does not come from an Arabic term but India. Likewise, the terms *Pondok*, *langgar* in Java, *surau* in Minangkabau and *rangkeng* in Aceh are not Arabic terms but from terms found in India. Apart from adopting the *pesantren* system in India, the similarity in form between Hindu education in India and *pesantren* can be considered as a clue to explain the origin of the *pesantren* education system. See Steenbrink, *Pesantren Madrasah Sekolah: Pendidikan Islam Dalam Kurun Modern*.

<sup>39</sup> Snouck also discovered that in the Pidie region, before the arrival of the Dutch to Aceh, certain places became learning centres, where many *murid* (Acehnese term for "students / santri" the Arabic language of students) both from the country of Pidie and Aceh are studying. These places are *Langga*, *Langgo*, *Sriwene*, *simpang le leubeue* (*Ayer Labu*) *Tiro*, who later became very famous for having two *teungku* in the place who took an important part in the war against the Dutch, in the past was less famous for the knowledge taught there than the large number of scholars who produced and lived there. See C. Snouck Hurgronje, *Orang Aceh: Ilmu Pengetahuan, Sastra, Permainan Dan Agama* (Yogyakarta: Matabangsa, 2020).

<sup>40</sup> *Perdikan Land* is land given by the ruling *Sultan* or *Raja* to its founder because it is considered to have certain services. *Perdikan village* are often found in the areas of Demak, Banyumas, Adiun, and Kediri. See Steenbrink, *Pesantren Madrasah Sekolah: Pendidikan Islam Dalam Kurun Modern*. This state policy on land status can be seen in Law Number 13 of 1946 concerning the Elimination of *Perdikan Villages*.

<sup>41</sup> Steenbrink.

<sup>42</sup> Abdul Aziz Al-Khayyat, *Nazhariyyat Al-'urf* (Amman: Maktabah Al-Aqsha, 1997).

<sup>43</sup> Jaih Mubarak, *Kaidah Fiqh: Sejarah Dan Kaidah Asasi* (Jakarta: Raja Grafindo Persada, 2002).

The style of change that prevails in society refers to the reality of society.<sup>44</sup> Likewise, the use of *al-'urf's* legal arguments in forming an endowment law is related to developing traditions. The history of endowment in Indonesia was first practised by following the customs of the local community. Local wisdom is an effort to preserve the traditions of pre-Islamic society. According to customary law, an endowment is recognized as a legal subject besides humans (*natuurlijk person*). According to customary law, legal entities recognized as legal subjects include village, ethnicity, country, endowment, foundations, and cooperatives as legal entities.<sup>45</sup>

In the history of endowment management in Indonesia, the majority of endowment assets are managed by traditional endowment organizers, so endowment is not productive. So that the history of endowment management in Indonesia does not repeat itself, there needs to be a paradigm shift. Namely, from consumptive management to product management, and from traditional endowment organizers based solely on trust towards professional endowment organizers recruited based on expertise in their respective fields and empowering efforts from Individual endowment organizers to Institutional endowment organizers so that accountability is easy.<sup>46</sup>

In the context of legal discovery, *al-'urf* is a legal argument used by *mujtahids*, a person who explore legal matters in exploring legal certainty about a problem. The normative basis for endowment is not explicitly explained in the Al-Quran or al-Hadith. Therefore, the field of legal discovery in the field of the endowment is very wide open. The diversity of nomenclature is also due to the absence of the word endowment explicitly in two sources of Islamic law. It means that endowment is included in the area of legal discovery, especially concerning management methods, types of endowment requirements, and designation of an endowment.<sup>47</sup> Yusuf al-Qaradhawi stated that in the field of *muamalah*, activities that involved person to person in the community, the field of legal discovery, which demands new answers, there are two areas. First, in the economic or financial sector, a series of forms of transactions have emerged in this field that has never been encountered in the past. Second, the field of science or medicine. In this field, there are also found various ways of activities that require legal clarity.<sup>48</sup>

The perception that exists in the minds of indigenous Indonesians is that the relinquishment of ownership rights to become endowment is a voluntary act known as the *tabarru'* (volunteer) contract and does not require administrative records. Before Islam came to the country, there was already a social institution that was almost the same as an endowment.

Referring to the two meanings of *al-'Urf*, namely *al-'urf ash-shahih* (*good custom*) and *al-'urf al-fasid* (*bad custom*), the large distribution of land endowment in Indonesia and its identical designation to mosques, Islamic schools, and graves are manifestations of the tradition of giving charity. Which has been rooted in society long before Indonesia's independence. For example, the *Pareman land* in Lombok and the *Pusako Tinggi* land in Minangkabau. It can be categorized as

<sup>44</sup> Et.al Siti Fatimah Salleh, "Analysis of the Elements of Social Change in the Context of 'Urf in Islamic Law'," *Global Journal Al-Thaqafah (GJAT)* 7, no. 1 (2017): 99–116.

<sup>45</sup> Ansori, "Kearifan Tradisi Al-Qur'an Dalam Proses Enkulturasasi Budaya Lokal," *Ibda: Jurnal Studi Islam Dan Budaya* 9, no. 1 (2011): 89–97.

<sup>46</sup> "Paradigma Baru Wakaf Di Indonesia," in *Directorate of Zakat and Waqf Empowerment* (Jakarta: Director General of Islamic Community Guidance at the Ministry of Religion of the Republic of Indonesia, 2013), 52.

<sup>47</sup> Amir Mu'allim, "Ijtihad Ekonomi Dalam Pengelolaan Aset Wakaf," *Jurnal Al-'Adalah* 14, no. 2 (2017): 291–310.

<sup>48</sup> Yusuf Al-Qaradhawi, *Pengantar Kajian Islam [Al-Madkhal Li Ma'rifatil Islam]* (Jakarta: Pustaka Al-Kautsar, 2013).

*al-'urf ash-sahih*. So ideally, the large amount of land endowment should be accompanied by the commitment of the endowment organizer in managing endowment assets.

Therefore, it can be understood that the understanding of Indonesian Muslims about endowment is not only based on the Al-Qur'an, Hadith books and Jurisprudence books, especially the Syafi'i school of thought, also by custom. Many of the customs of Indonesian society originate from or are influenced by Islamic teachings, including the custom regarding endowment. On the other hand, religious institutions originating from Islam are also coloured by Indonesian customs, primarily by establishing harmony, propriety, and harmony to resolve disputes over endowment. *Ulama* in Indonesia, although they claim to be Syafi'i, in understanding the meaning of endowment, can also accept other schools of thought, as mentioned above, as well as the influence of the local community.<sup>49</sup> It means that Indonesian culture plays a significant role in providing colour and dynamics to the understanding of Indonesian society about endowment and the way of the endowment.

## CONCLUSION

The legalization of endowment in Indonesia into Law Number 41 of 2004 concerning endowment results from a legal discovery that comes from a habit of Indonesian society, called *al-'Urf*. The provisions in Law Number 41 of 2004 concerning endowment accommodate the allocation of land, which is dominated by the designation of mosques, Islamic schools, and graves. Furthermore, this is supported by data on the distribution and designation of endowment land in Indonesia. Likewise, with the appointment of endowment organizer as the managing institution, namely 66% of lands endowment are managed by Individual endowment organizer. The Indonesian society put forward the principles of character and kinship to the candidate of endowment organizer, which is other known as the traditional endowment. When looking at the tradition of Indonesian endowment society, which was initially only for three objects, namely mosques, Islamic schools, and graves, as well as the direct appointment of endowment organizer. Thus, the author argues that due to the value of voluntary worship (voluntary sector) inherent in endowment, strengthening and empowering 3M land endowment and the Individuals endowment organizer for 3M endowment need serious attention from stakeholders. Interests, without deleting, eliminating, or replacing the Individual endowment organizer to become the endowment organizer of Organizations and/or Legal Entities.

In the context of the value and allotment of land endowment, traditional endowment does not vary and does not develop rapidly, as is the case with a current productive endowment echoed by social institutions that manage cash endowment. Traditional waqf in Indonesian territory is found only limited to mosques, Islamic schools, and graves. However, it does not mean that the land endowment is underdeveloped and unproductive, which can be caused by the condition of the area of the land endowment itself or due to the inadequate level of economic needs of the local community. So the authors conclude that this situation does not make the land endowment converted to a more productive designation or replaced by its institutional endowment organizer because it is not creative. In this situation, the argument of *al-'urf* law is appropriate to be used as a legal basis for refusing the replacement of the endowment organizer. It is because the three allotments

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<sup>49</sup> Ali, *Sistem Ekonomi Islam, Zakat Dan Wakaf*.

of the land endowment are intended for matters that are directly related to the benefit of the people that fall into the category of *hajjiyyat* needs (basic needs). Includes 1) Apart from being a symbol of Islamic civilization, a mosque is also a centre for fostering the public morally, mentally and spiritually; mosque as a historical witness that religion is rooted in people's lives in the minor environment, namely the village; 2) Islamic school as a symbol of scientific civilization for the advanced generations who are educated and have noble character; and 3) grave as a necessity which is sanctified in religion (organizing the deceased in Islam).

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