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## COMMUNITY, ADAT, AND ISLAMIC LAW: HOW MOSQUE HANDLE WAQF IN SIANTAR CITY, INDONESIA

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**Abstract:** This article examines the practices of waqf that manage by the mosque in Siantar by comparing the adat law and Islamic law. This study aimed to find out the management of *waqf* funds carried out by Nazir of Mosque Jami' Darussalam Siantar city and a review of customary law and Islamic law on these activities. The results of the management of *waqf* land are intended for renovation and maintenance of mosque facilities and infrastructure while cooperation conducted in form of *muzara'ah muthlaqah* according to most Islamic jurisprudence scholars is *mubah*. In customary review, it showed that this management of rice fields has been for a long time with a system that has not changed even though the management of the mosque has changed. Controlling social that comes from the community makes the mosque function as it should to always be maintained, cared for, and prospered.

**Keywords:** *mosque jami' darussalam, waqf, islamic law, customary law*

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## INTRODUCTION

The world is a place to sow seeds and hereafter is a place to stay, this is the philosophy in most of the muslims, so deep regret is useless for those who leave this world without good deeds during their life in this world. When a person dies, all his deeds are cut off except for three things: 1). *Shadaqah jariyah*, is something that is constantly being taken advantage of by many people, such as waqf of land, books, establishment of educational institutions, worship facilities and infrastructure and etc. 2) Useful knowledge, as long as the knowledge is used by other people, so during that time the person who gives knowledge will be rewarded. If the person who is given the knowledge also give it to others and that person practices it, the reward still continues to flow. 3) Pious children that always prays for their parents, obedient and beneficial to their parents although their parent has passed away, relatives and friends of their parent and always continue to maintain the trust given to them.(Muslim, 2007).

In historical records, it is undeniable that activities related to *waqf* have occurred since the time of the prophet and his companions. This is reflected in the event of brotherhood of companions of Muhajirin and Anshar or command and motivation to donate property for fundraising, war preparation or to help lives of prophet's companions who need it. In the second year of Hijri, prophet had ever donated his treasure like giving *waqf* of land to build mosque as in the hadith narrated by Umar bin Syaibah quoted by Imam As-Syaukani.(Muntaqo, 2015) Therefore we make sure that waqf activity has special position in this religion and keeping up of the state based on mandate of the 1945 Constitution which is to guarantee public welfare. Waqf practice in land has taken place for long time in Indonesia (Studi, Ekonomi and Iqtishodia, 2011).

Mosque has a very strategic role in forming the character of the nation and also the role was believed to be able to become one of *walislah* to create a society that has social piety. The practice of religious teachings makes mosque has a central position both in worship related to God (mahdah) and social worship such as infaq, sedekah, waqf so mosque

must be managed well and responsible based on demand of the time and situation.

The normative approach has instilled a point of view where the mosque is the source of civilization. The other side, the position of customary law is also believed as the oldest law on earth which has a role in creating social resilience which the spirit of customs is in line with the spirit of Islamic teachings. Therefore, the position of custom has important position in establishing laws that continue to develop and to adapt to the times and circumstances. In *qawaid fiqhiyyah*, it is written that:

العادة محكمة

“Customs can be used as a legal basis”

تغير الأحكام بتغير الزمان والمكان

“Changes in a law can be accompanied by changes in times and circumstances”(Al-Syathibi, 2004)

In Islam, if someone wants to donate part of their treasure, in form of *hibah*, *sedekah*, *infaq* and *waqf*, should pay attention to provision of fiqh (Islamic law) governing it. Then the treasure that has been donated, so administrator mandated to look after and distribute the treasure to pay attention to legal provisions that have been determined by Islamic law. So utilization of the property returns to the owner of the property in the form of rewards and blessings so that the transfer of the property can be of worship value in the sight of God. Therefore to explain it, the researcher would divide this writing to some sub parts, begun by introduction, view of Islamic law about waqf and how the management of productive waqf by *nazir* based on religious provision, then researcher would make conclusion in last part.

This article used qualitative descriptive method which formed of field research with main source (secondary data) in data collection was administrator of Mosque Welfare Agency Mosque Darussalam Siantar City as administrator and recipient of waqf from benefactor by collecting data based on researched object, then analyzing customary law and Islamic law. The aim from this article was to reveal the position of Islamic law

and customary law in managing assets belonging to mosques which are *waqf* in the form of rice fields located in Siantar city, Mandailing regency. I tried to explain the relationship of two perspectives they are Islamic law, customary law as well as governance of *waqf* fund by Nazir and good controlling so it resulted the benefit based on management principles (Kasdi, 2017).

## DESCRIPTION OF SIANTAR CITY

The history of Siantar city in the past had several villages (*huta – huta*) experienced by the Mandailing community; two villages in east side; Padang Mardia and Kampung Borotan, two villages in west side; Lumban Sibaguri and Kampung Bargot, in the middle there is *Bagas Godang* or King's Palace Borotan. This area was ruled by kings clan Borotan, in the history of the descendant recorded that the first King in this region was King Balintang.

At the time of the king's inheritance in Lumban Sibaguri, Sang Yang was picked up to be a King in Lumban Sibaguri, so he was taken with al greatness custom. Therefore Lumban Sbaguri was changed his name becoming Hutasantar because the king was taken there. It was mentioned by Party of clan Borotan by mentioning King Mananti or Mananti King because they welcomed Sutan Kumala Sang Yang given title by child of Mangaraja Enda or grandchild of Sutan in Aru (Si Baroar). Therefore all treasure of Bagas Godang (Palace) and land become his responsible (Dja Endar Muda, no date).

Clan Borotan became clan Nasution, so in Hutasantar there are two clans of Nasution, they are Nasution Borotan as original clan in Hutasantar and Nasution Si Baroar became substitute of King. In staying Hutasantar, a policy applied, Nasution Borotan stayed in Julu Ni bagas Godang (east side of King's Palace) and Nasution Si Baroar stayed in Joe Ni Bagas Godang. Until now the difference can still be found and there are other small clans such as Pulungan, Hasibuan, Mardia, Rangkuti and Batubara. During government of Sutan Kumala Sang Yang in Hutasantar region, it consisted of: east side beside Mountain Merapi (Lembah Sorik Merapi Sub District), west side beside Panyabungan Tonga, south side beside

River Aek Perlampungan and North side beside River Aek Pohon.

After Indonesia has been independent and Sumatra has been divided into some provinces, so at the first Tapan Na Uli is on South in Sumatra Island, it becomes South Tapanuli district. Based on Constitution number 12 of 1998 about formation regional district level II Toba Samosir and District level II Mandailing Natal signed on November 23<sup>th</sup> 1998 and officially validated by Minister of Home Affairs on March 9<sup>th</sup> 1999 by electing H. Amru Daulay, S.H as first Regent in Mandailing Natal district (Drs. Rinaldi, 2020). Siantar city in Mandailing language is also known which is named Hutasiantar which is under the auspices of government administration of Panyabungan Kota Sub-district as Central government of Mandailing Natal district. By changing government system, Hutasiantar region that was previously led by King's son in Lumban Sibaguri (King Borotan) was known as the Sutans are reduced, which was in the east bordering the village of Siobon, in the west bordering the village of Kayujati and Panyabungan Jae, in the south bordering village of Sigalapang Julu and in the north bordering village of Darussalam (Pagaran Sigatal) (Dja Endar Muda, no date).

Currently, Kotasiantar has a population of 4,950 people and all of them are Muslim and their ethnicity is Mandailing. Siantar city as one of crowded area, has a big enough mosque named Mosque Jami' Darussalam Siantar city functioning as religious activity center. The existence of this mosque has existed since the reign of the king in Lumban Sibaguri that has undergone many expansions and renovation (Natal, no date). Mosque Jami' Darussalam Siantar city stood in 1965, it has stood on waqf land, benefactor is Sutan Syeh Zainal Abidin while in construction lying the first stone is constructed by Sutan Syeh H. Muhammad Syarif Rangkuti that was in strategic place on the edge of a very busy highway, that was why many drivers stopped to pray or just to take a rest a minute before continuing the journey. Besides large parking area, educational institution like kindergarten Darussalam and Islamic School Darussalam was in the same complex with the mosque.

Management Structure of Mosque Jami' Darussalam Siantar city based on decree of Head of Religion Office, Panyabungan district

Number 24 of 2020 about determination of management of Mosque Welfare Agency of Mosque Jami' Darussalam Panyabungan Sub-district in 2020-2024 as follows, the head of Panyabungan Sub- district; the head of Religious Affair Office of Panyabungan Sub- district; the Head of Ulema Council of Panyabungan Sub- district; the Head of Siantar city.

Mosque Jami' Darussalam Siantar city has religious activity such as MDA (*Madrasah Diniyyah Awwaliyah*), *Masjlis Ta'lim Naposo Nauli Bulung*, *Majlis Zikir* and other religious activity. Source of fund in supporting activity of Mosque Jami' Darussalam was from *infaq* and *shadaqah* of pilgrims. Moreover, Mosque Jami' Darussalam Siantar city also has a plot of rice field that is right now managed by people by profit sharing system becoming main source of income in supporting Mosque activities. The position of the mosque as a land manager which in practice is handed over to the community through agreement *muzara'ah* conducted in Religious Affairs Office Panyabungan Town.

## THE MANAGEMENT OF WAQF FUND BY NAZIR

The potential of *waqf* in Indonesia is very large, but if it was not managed well. In historical record, the success of Islam cannot be separated from the success of the state in managing *zakat* because it is fully utilized for the benefit of the people and managed professionally. (Megawati *et al.*, 2014) *Waqf* is a process of giving assets from a person to the people to be taken advantage of by preserving the substance called *shadaqah jariyah*, which *waqf* can be added value more as an investment in the afterlife practice whose reward will not be interrupted and For the people, it is a source of eternal funds that develops cumulatively for the public interest.

The practice of *waqf* has been going on for a long time along with the entry of Islamic teachings to Gordang Sembilan, Mandailing Natal district. The majority of the population believes Islam, in fact they had not implemented fully religious teaching in term of *waqf*. The condition of people had not fully known about *waqf* so the natural hope of the presence of religious humans as *uswatun hasanah* has not been

fully felt and it affects the management of *zakat* management which is still fragile, including the management of waqf in an educational institution called a boarding school (*Pesantren*). (achmad siddiq, 2011) *Waqf* management in Indonesia generally and Siantar city especially was getting better. This could not be separated from the attention of government, scholars, and people supporting muslim to keep up in *waqf*.

Interview result conducted by administrator of Mosque Jami' Darussalam Siantar city has generally described good management system. *Waqf* management of Mosque Jami' Darussalam Siantar city having waqf is rice field. Managing it used profit sharing system between cultivator and Mosque party. The management of rice field was usually planted rice or kinds of vegetables by cultivator and the division was based on harvest cycle from each plant. According to *Nazir*, profit sharing system is more benefit than other system.

In the practice of cooperative management of waqf rice fields at the Jami' Darussalam Mosque, Siantar city, the agreement between the farmer and the owner of rice field, namely the *Nazir* who represents the mosque, is only done verbally. This activity takes place by meeting between *nazir* and farmers or cultivators to determine the distribution of results every time they harvest. After the agreement was done, the activity can be conducted. It seems that the agreement was not known when *muzara'ah* ended because in the agreement that was agreed was not the validity period of the *muzara'ah*, but only result that each party accepted. It means that the party that has the rice field (*nazir*) can take waqf rice field back that has been cultivated or anytime the farmer wanted return it if they feel unable to cultivate it anymore.

The other side, the application of agreement of *muzara'ah* of waqf rice field in Mosque Jami' Darussalam Siantar city is *muzara'ah mutlaq*, which cooperation is carried out without any restrictions. *Muzara'ah* is conducted in waqf rice field and pledged to the Head of Religious Affairs office. The object of agreement is rice field owned by mosque, cultivator and seed and all tool are responsible of cultivator which is carried out on voluntary basis and report harvest result every year to *nazir*.

Based on the activity, agreement *muzara'ah* of *waqf* rice field of Mosque Jami' Darussalam Siantar city may because pillar of *waqf* has been full in Islamic law. If in agreement, this profit sharing got good harvest, the profit was divided together, vice versa. Based on the interview conducted by researcher to Dr. H. Kohar Hasibuan as the Head of mosque Welfare Agency in Mosque Jami' Darussalam Siantar city, he said that *waqf* of rice field Salambue donated by The late H. Ahmad Lubis as wide as  $\pm 3$  *bun bun* and rice field Julu donated by H. Suaib  $\pm 6$  *bun bun*, both were still descendants of the King Borotan.

Tabel 2

The rice field cultivated through agreement of profit sharing as follows:

No	Rice Field Location	Wide
1	Sawah Salambue	3 (three) bun-bun
2	Sawah Julu	6 ( six) bun-bun

From harvest result, it resulted about 7,4 ton of rice or about Rp35.640.000. The result was divided 70% became Rp23.760.000 for farmer as cultivator and 30 % (Rp11.880.000) for mosque.

In a year, the rice field can be harvested twice it means that *waqf* management can result about Rp71.280.000 and for mosque about Rp23.760.000. the result is not always same because it depends on harvest result in every year based on harvest quality and pest disturbance. The results from the management of the fields all go to the mosque which is used for the welfare of the mosque.

Tabel 3.

Here is the income of *waqf* reslt in Mosque Jami' Darussalam Siantar city.

DATE	EXPLANATION	INCOME
05-05-2020	Rice field Julu	Rp. 5.311.500
20-05-2020	Rice Field Salambue	Rp. 7.220.000
10-12-2020	Rice field Julu	Rp. 5.000.500
29-12-2020	Rice field Salambe	Rp. 6.220.000
Total		Rp. 23.760.000



From research result, result of waqf management is for mosque maintenance cost, so it can improve development or facilities and infrastructure of Mosque Jami' Darussalam Siantar city. Interview result to Mr. Erwin Hasibuan, S.Si as treasurer of Mosque Welfare Agency said that, the result is for mosque fully based on mandate of waqf donor.

The forms of monitoring and evaluation that have been in Mosque Jami' Darussalam Siantar city are:

a. Internal

Supervision conducted by Mosque Welfare Agency and administrator assigned as supervisor by *nazir* while to evaluate it was conducted by all members of administrator and society, by discussing or special meeting, usually conducted four times a month.

Meanwhile, financial reports and transparency are always carried out and displayed monthly and weekly so that it can be known by all parties without exception, and can be seen directly by the community.

b. External

Supervision and evaluation that includes the surrounding community and or interested government institutions, is usually carried out when there is a problem that needs to be thoroughly resolved with various levels of society. The supervision that has been carried out by Nazir in carrying out the supervision system can be known as follows:

- 1) Determine operational standards as a measure in its supervision
- 2) Direct observation of the activities that have been planned based on a mutually agreed agreement
- 3) Evaluate the work programs that have been carried out during these activities to minimize deviations made by the management members

2. Accountability System

Accountability is as a teaching that must have dimensions *ilahiyyah* and *insaniyyah*, Therefore, *waqf* must be accounted for, both in this world and in the hereafter. Besides being accounted for in the world through reporting to high institutions above it and accountability to God as

a servant, accountability is the implementation and embodiment of implementation *amanah* (trust) and *shiddiq* (honesty) owned by *nazir* with his member in managing *waqf*.

### 3. Transparency

Transparency is involving all parties, both from the management, and the surrounding community so that there are no misunderstandings regarding the report related to the management of *waqf* assets. So, neither party benefits nor is harmed. Usually every time after carrying out mosque maintenance activities or other assets, there is always transparency from each *nazir*.

The transparency of report of activities that have been carried out at the mosque Jami' Darussalam Siantar city by *nazir* is real effort used to cover the action of corruption, dishonesty, manipulation, etc. so *waqf* institution in Mosque Jami' Darussalam Siantar city can be as benchmark of openness in carrying out responsibilities of *nazir* towards a better social order.

The result of interview with Mr. Ahmad Saipul Harahap, as secretary of Mosque Welfare Agency of Mosque Jami' Darussalam Siantar city said that discussion was conducted with people related to *waqf* and managed by *nazir*. The content of discussion was repair, maintenance and budget allocation of *waqf*. People was right and freedom in questioning management and development of *waqf* managed by *nazir* of Mosque Jami' Darussalam Siantar city.

With transparency, it can also be seen how well the performance of the *nazir* and their members in managing and empowering *waqf* assets. Therefore monitoring and accountability system in managing *waqf* in Mosque Jami' Darussalam Siantar city based on Constitution Number 41 of 2004 if it was viewed from the internal side, supervision and accountability are categorized as good.

## AN OVERVIEW OF ISLAMIC LAW ON THE MANAGEMENT OF WAQF IN SIANTAR

Etymologically, “*Waqf*” is derived from Arabic word in the form of the verb “*wakafa – yaqifu*” which means to stand, to stop, to restrain and to prevent. If someone says “*wakaftu indal babo*”, it means “I am standing at the door”, but the better known word is “*mauquf*” which means “to be detained or stopped”. Terminologically, the word “*Waqf*” means the act of withholding property used for purposes in the cause of Allah. This understanding is in line with what is written by Sayyid Sabiq in his book “*Fiqh Sunnah*”. The word “*wakafa-yaqifu-waqfan*” has the same meaning as “*habasa-yahbisutahbisan*” (Sabiq, 1993), which means to hold back or to stop or to stay in a place.

Another definition is defined by Shaykh Abu Bakr al-Jazairi in his book “*Minhajul Muslim*”. In the book, *waqf* is defined as the detention of an asset so that the property can no longer be inherited, traded and spent, so the property is given to the recipient (Al-Jaza’iri, 2003). The pillars of *waqf* are: *al-waqif* (the giver of *waqf*), *al-mauquf* (what is donated), *as-shighah* (agreement), and *al-mauquf ‘alaihi* (the recipient of *waqf*) (Az-Zuhaili, 2011).

Based on *takfili* law, *waqf* can be categorized into several types, namely (M.Zain, 2019): compulsory (when there is a will to perform *waqf*), *sunnah* (when *waqf* property for the purpose of studying), *mubah* (it is like giving the *waqf* for oneself), *makhruh* (it is like giving *waqf* to some children without giving the *waqf* to other children without an urgent need), and Muharram/Haram (when someone owns a piece of land and then makes the land as *waqf* while he has a debt that has not been repaid).

Based on *wadh’i* law, the law for *waqf* is divided into *sahih* (valid) and *bathil* (false). *Sahih* (true) *waqf* is complete with conditions and pillars, while *bathil* (forbidden) *waqf* is like a person who makes *waqf* on something that he does not own or make *waqf* from traveller’s property which

is forbidden.

In the view of Islamic jurisprudence (*fiqh*), the majority of Islamic scholars consider the law of *waqf* as Sunnah. However, since there are many terms regarding the transfer of property, such as *hibah* (grants), alms and *waqf*, there is a term known as “*alfighu jam’un wal furuq*” which means the field of *fiqh* has many terms of use, each of which has meaning and everyone should be able to distinguish them. In this case, the I need to re-explain the differences between *zakat*, *waqf*, *sadaqah* (alms), *infaq*, *hibah* (grants), and gifts as follows. *Zakat* is a certain act of issuing certain assets to certain people at a predetermined time. Alms include all kinds of acts of kindness, even the smile that you show on your face is also counted as alms/ charity with the aim of seeking reward and goodness from Allah SWT. Obligatory alms is known as *zakat*, supporting children and wife. There are also alms which are considered as Sunnah. *Infaq* is similar to giving something because there are certain intentions and needs. *Hibah* (a grant) is a gift with the intention of establishing a good relationship (Al-Kabisi, 2004).

The relationship between *waqf* and *sadaqah* (alms) can be seen as follow. The giver of *waqf* and alms must be clear about the type of property in the *waqf*. For example, if someone says that “I give this car to this boarding school” then this car is included as *waqf* because the car does not become an individual possession. However, if the car is given to Ahmad, for example, then the law can be *sadaqah* (alms) or *hibah* (grants) in that the action is considered as giving something in the form of a gift or a grant to a certain person. In another example, person A give something to a boarding school owned by person B with a note that B has to pay the transfer fee. Then, this kind of *hibah* (grants) turns out to be a new contract. This is based on the information in the *qawaidul fihiyyah* (Al-Qardhawi, 2017):

العبرة في العقود للمقاصد والمعاني للألفاظ والمباني

Likewise the rules

لواختلف اللسان والقلب فالمتعبر ما في القلب

The recipients of *sadaqah* (alms) and *hibah* (grants) are allowed to take personal benefits from them, unlike *waqf* which is fully allocated

for the benefits of the public. *Sadaqah* (alms) and *hibah* (grants) are not required for humanitarian purposes, unlike *waqf* which requires welfare or benefit for the society.

The *lafaz* (statement) used in the *waqf* is clear and firm both in written and orally or in action. For example, there is a written statement such as “I will endow this book forever for the mosque”. Then the question might arise: what if someone says that “this building is a *waqf* for the purpose of memorizing the Qur’an for five years”, what is the law of such contract? Does the law of *waqf* change along with the expiration of the stipulated time and building returns as the property of the owner? Or will the owner of the building lose his rights and ownership? Based on the majority of Islamic scholars, such action is permissible and the status of the building will fully return to the owner of the building when the time of the stipulated contract has expired. The second opinion explains that such action is allowed, but only one third of the total value of the building will return. This is based on the will of the Caliph, Umar bin Khattab, regarding *waqf*. That is the view from the Hambali school of seeing this legal case (Kasdi, 2017).

Jami’ Darussalam Mosque has a plot of rice fields located in two places, namely Salambue and Julu which are managed by the community. Based on the results of an interview conducted with the Head of the Mosque Prosperity Agency (BKM), it was found that the rice fields were formerly a *waqf* of the descendants of King Borotan which was intended as a place for the construction of a new mosque and Islamic educational institution. However, as time goes on, the city of Siantar, which originally followed a royal system, turned into a democratic government, and do not change the position of the mosque up to these days. Even the community around the mosque donated some of their land for the expansion of the mosque where the current land of *waqf* is managed by the Mosque Prosperity Agency (BKM) which is intended for the benefit of the mosque (source: interview).

## THE EVIDENCE RELATED TO WAQF

The evidence regarding *waqf* can be seen in the Qur'an, Hadith and the consensus of Islamic scholars (*ijma'*). Even in the positive law, *waqf* has been regulated and the provision is situated in Law Number 41 of 2004 Article 3 concerning *waqf* which states "*waqf* is valid if it is carried out according to Sharia". This is also in accordance with the Government Regulation Number 42 of 2004 concerning Waqf, the Regulation of the Minister of Religion (PMA) Number 73 of 2013 concerning procedures for movable and immovable *waqf* objects and the Regulation of the Minister of Religion (PMA) Number 4 of 2009 concerning the administration of *waqf* in the form of cash (BWI, 2021).

The Sharia and the virtues of *waqf* can also be seen in the Qur'an, Ali-Imran (92):

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا حُبَبْتُمْ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ.

"Never will you attain the good [reward] until you spend [in the way of Allah] from that which you love. And whatever you spend – indeed, Allah is Knowing of it" (Departemen Agama, 2007)

There are some unique events happening when the verse above was revealed to the prophet Muhammad and heard by his companions. One of the companions of Muhammad named Abu Talhah RA rushed to donate his palm garden which he liked the most. Muhammad praised and appreciated the action of Abu Talhah, and said: "very good, that act is a profitable investment in the hereafter" (as narrated and stated in the hadith by Bukhari). In addition, the majority of Islamic scholars state that the law of *waqf* is sunnah and it is considered as a very commendable practice (Al-Syathibi, 2004).

*Waqf* is a kind of worship that plays an important role to advance the welfare of the society because in practice the implementation of *waqf* emphasizes the importance of holding back the existence of objects or assets to be donated. Because *waqf* is considered as worship of *ilahiyyah* and *insaniyyah*, it is necessary to pay attention on the management of *Waqf*. This is a new paradigm regulated in Law Number 41 of 2004 concerning

*waqf* (Manan, 2006).

The purpose of management in *waqf* is to maximize the potential of *waqf* and to develop the *waqf* so that it can improve the economic and social welfare of the society. *waqf* is not only carried out for consumptive purposes, but is also managed productively to generate opportunities for establishing profitable strategic sectors, such as creating new job opportunities and managing public services that ease the economy of the community. Managing *waqf* means developing productive assets for future generations in accordance with the purpose of *waqf* in the form of benefits, services and utilization of the results (Hakim, 2014). Management of *waqf* occupies the most important aspect in managing producing *waqf* because the impact of *waqf* depends on the management of *waqf*. In Qur'an Surah Al-Baqarah: 270, Allah SWT states:

“And whatever you spend of expenditures or make of vows – indeed, Allah knows of it. And for the wrongdoers there are no helpers”.  
(Departemen Agama, 2007)

Allah SWT explains that no matter how people who give donation donate their wealth, how people who give charity donate their wealth, and how people who make a vow fulfill their vow, Allah knows everything. The “knowing” of Allah here indicates that there is a recompense and that Allah will not neglect it even if it is as heavy as heavy as a *dzarra*. Allah knows what is in the heart of people who have good or bad intentions. Furthermore, the wrongdoers who do not follow what Allah has enjoined upon them; or they transgress what Allah has forbidden them from; there is no one who can help them other than Allah who will protect and help them, and they will surely be punished (Shihab, 2002).

Based on the discussion above, it is understood that the manager (*nazir*) is responsible for the success or failure of the management of *waqf* in Jami' Darussalam Mosque in Siantar. However, *nazir* plays a role in the management of the *waqf* so that it will be productive as the purpose of the *waqf* and the results can be distributed according to the intended of *waqf* designation. According to the law in *fiqh*, the requirements

of being a *nazir* are Islam and *mukallaf*, having the ability to manage *waqf* professionally, trustworthy, honest and justice. To manage *waqf* productively, some underlying principles must be followed. This aspect of professionalism at least follows the standards of the characteristics of the Prophet Muhammad.

a. Amanah (Trustworthy)

The *nazir* should be someone who is trustworthy in terms of education, skills, understanding rights and obligations, and following the standard operating procedures (SOPs). *Amanah* (trustworthy) concerns aspects of spirituality as well as aspects of professionalism that are based on commitment and qualified skills. The commitment and skill must go hand in hand because both of them support each other.

The *nazir* of Jami' Darussalam Moque in Siantar is trusted by the community to manage productive *waqf* (it means rice fields) that have been donated by the community. *Amanah* (trustworthy) concerns aspects of spirituality as well as professionalism that are based on commitment and qualified skills. However, the observation results indicate that the *nazir* of Jami' Darussalam Mosque in Siantar does not have a balanced spirituality and professionalism aspects. The *nazir* only distributed the results of productive *waqf* (rice) only for the purpose of the mosque. *Nazir* should have more skills so that he can develop *waqf* for other businesses. Therefore, the community can get the benefits from the existence of productive *waqf*.

Based on an interview conducted with Dr. H. Kohar Hasibuan, the Head of the Mosque Prosperity Agency of Jami' Darussalam Mosque in Siantar, he mentioned that "the proceeds of the collected *waqf* funds were intended for renovation and supporting facilities at the Jami' Darussalam Mosque in Siantar".

b. Shiddiq (Honesty)

The *nazir* has to be someone who is honest in running and managing the program. Honesty is the basis of trustworthy. People are known to be trustworthy if they are honest. Honesty is a reflection of professionalism. In the management of the existing *waqf*, the *nazir* of Jami' Darussalam



Mosque in Siantar is always transparent and conveys the results of the implementation of the productive *waqf* management to the community so that the community knows how to manage the *waqf* and where the collected *waqf* funds are allocated.

Based on the results of an interview conducted with Mr. Ahmad Saipul Harahal, the Nazir of Jami' Darussalam Mosque in Siantar, he mentioned that deliberation is always held with the community and religious/community leaders related to the existing *waqf* managed by the *nazir*. In the deliberation, the development and improvement of the existing *waqf* are discussed, including where the collected *waqf* funds will be allocated.

In line with that, according to Dr. H. Kohar Hasibuan, the Head of the Mosque Prosperity Agency, the management of *waqf* property at the Jami' Darussalam Mosque in Siantar is in accordance with Islamic law because it does not deviate from the goal of those who donate their assets for the cause of Allah, namely the construction of the mosque. Then the proceeds from the *waqf* property have been earmarked for the renovation of the mosque.

c. Fathanah (Smart)

The *nazir* should be someone who is smart, creative and innovative in managing *waqf*. He is not only smart intellectually, but also smart emotionally and spiritually. The most important thing is that he should be smart in problem solving when he is experiencing various problems. Likewise, he should be smart in the empowerment and the development of the *waqf* in the future. Considering that one of the objectives of *waqf* is to make a productive source of funds, it certainly requires a *nazir* who is able to carry out his duties professionally and responsibly. In the Hadith, prophet said that:

“If the mandate has been wasted, just wait for destruction to occur”. There is a companion of Rasulullah who asked “what is the meaning of the mandate wasted? The Prophet replied: “If the matter is given not to the experts, then wait for the destruction” (Ismail, 1985).

The Hadith above emphasizes that everything must be given to those

who are able to maintain the mandate and who are experts in their fields. This is in line with the professional attitude that must be possessed by a *nazir* who manages the *waqf* so that the *waqf* assets can develop and benefit the community, and the *waqf* property will not become something in vain. Based on the observation, the *nazir* of Jami' Darussalam Mosque in Siantar is following the Islamic law in managing the productive *waqf* in the form of rice fields. The *nazir* manages and distributes the results of the *waqf* in accordance with the pledge of the *wakif* who wants the rice fields as the mosque assets.

The management of *waqf* funds (obtained from rice field *waqf*) at Jami' Darussalam Mosque in Siantar applies profit sharing with absolute *Muzara'ah*, namely cooperation carried out without any limitations. *Muzara'ah* is carried out on *waqf* land that has been pledged at the Religious Affairs Office. The profit sharing system (*muzara'ah*) is agricultural management cooperation between the owner of the land and the cultivator of the land. In this system, the land owner gives agricultural land to the cultivator to be planted and maintained in exchanged for a certain share (percentage) from the harvest. The cooperation in the form of *muzara'ah* is permissible (*mubah*) according to most *fiqh* scholars. The *muzara'ah* system is based on and aims at mutual assistance and mutual benefit between the two parties. As in the QS. Al-Maidah: 2, Allah SWT states that:

“...And cooperate in righteousness and piety, but do not cooperate in sin and aggression. And fear Allah; indeed, Allah is severe in penalty” (Departemen Agama, 2007).

If agriculture is not successful because of pests or something else, then it is natural because not every effort brings results as expected by everyone. Allah SWT mentioned in Q.S. Yasin: 33-35.

"And a sign for them is the dead land. We give it life, and We bring forth from it grains, so that they eat thereof. And We have made therein gardens of date palms and grapes, and We have caused springs of water to gush forth therein. So that they may eat of the

fruit thereof -- and their hands made it not. Will they not then give thanks.”(Departemen Agama, 2007).

Likewise the Hadith of the Prophet narrated by Ibn Umar:

From Nafi that Abdullah bin Umar RA., reported that the Prophet Muhammad (PBUH) “employed the people of Khaibar, and they got half of the fruit or plants produced”(Sunarto, 1999).

Regarding the implementation of the Muzara’ah, the Islamic scholars agree that the law is allowed to develop Waqf in a Muzara’ah way that reflects productive activities in accordance with the spirit of Islam, namely the empowerment of mosques and the community economy.

## A REVIEW OF CUSTOMARY LAW ON THE MANAGEMENT OF WAQF IN SIANTAR

Custom is the oldest law on earth. Custom comes from the Arabic language, namely “*al-‘urf*” which means “habit”. In terms of al-Jurjani, it is revealed that a habit is carried out repeatedly by a group of people, and the action does not conflict with common sense. There are also people who define *al-‘urf* as certain things that are already known to the public, both in words and deeds.

The scholars of *ushul fiqh*, such as Hasbi As-Shidiqi distinguishes between *al-‘urf* and *al-‘adah* in that *al-‘urf* is something that people generally agree and do in their lives, while *al-‘adah* is a habit that is repeated over and over again, both by individuals and groups. Shaykh Mustafa az-Zarqa said that *al-‘urf*, *al-‘adah* and *ta’amul* share similar meaning, namely a habit that is common among people, although *al-‘adah* is wider in scope than just *al-‘urf* (Chaerul Umam, 2000).

The system of cooperation on *waqf* land belonging to the Jami’ Darussalam Mosque in Siantar has been in effect for a long time. The cultivators of the rice fields also are the residents of Siantar who take turn in cultivating the rice fields. On the commemoration of Islamic holidays at the Jami’ Darussalam Mosque, the *nazir* will announce to all local

residents regarding the conditions and the management of the *waqf* land to the public. Uniquely, the management of this paddy field is usually prioritized for underprivileged families for their economic empowerment. If the results of this collaboration help the cultivators of the rice fields to be independent, then the next management will be handed over to other underprivileged residents.

This cooperative system of managing rice fields is a customary provision that is binding. Even though the decree on the appointment of mosque administrators has expired and has been replaced by new management, the management of *waqf* in the form of rice fields will continue.

This is because the agreement made is part of a habit that has been in effect for a long time in which in *qawaidul fiqhiyyah* it is explained that:

العادة محكمة

“That customs can become legal provisions” (Abd Rachim, 2003)

The existing management and cooperation system has transformed into binding customs that have very strong social control because the community feels that the Jami' Darussalam Mosque belongs to the Muslims in Siantar, including the *waqf* land. Therefore, all residents of Siantar feel responsible for maintaining, caring for and managing every asset belonging to the mosque properly in accordance with the provisions of Islamic law.

As for the provisions of *al-'adah muhakkamah*, namely not all *'Adah* customs can be used as a basis for determining or implementing a legal provision of *al-'adah muhakkamah*, but there are provisions that must be fulfilled, namely:

- a) *'Adah* does not conflict with the texts in the Qur'an or al-Hadith or with the principle of definite legislation with contradictions that result in a denial of the application of all aspects of the law as a whole instead of *al-'urf al-fasid*.
- b) *'Adah* is constant (*muttarid*) and applies in the majority such as the submission of dowry in marriage in cash or installments is considered

constant if this fact occurs in every marriage event throughout the country.

- c) '*Adah* is formed earlier than the period of its use as a legal footing, this condition can be stated in terms commonly used when conducting transactions such as *waqf*, buying and selling, wills and marriage ties.
- d) There are no words or actions that contradict the substance or turn away from '*Adah*' (Jazil, 2015).

## CONCLUSION

The management of *waqf* of Mosque Jami' Darussalam Siantar City having *waqf* which is rice field, in the management, it used profit sharing, the *waqf* management is only in the form of rice fields. In cooperation of *waqf* rice field management in Mosque Jami' Darussalam Siantar City, the agreement between farmer and rice field owner that was represented by *nazir* was only conducted orally. This activity took place by meeting *nazir* and farmers or to determine the distribution of results each time they harvest. After the agreement was agreed, the activity could be carried out. It could be seen that in the agreement it was not known when this *muzara'ah* ends. The application of agreement of *muzara'ah* toward *waqf* rice field in Mosque Jami' Darussalam Siantar City is *muzara'ah* conducted in *waqf* rice field that has been pledged in Religious Affair Office. In the implementation of rice field management donated to Mosque Jami' Darussalam, it was not separated from customary law supervision while traditionally, the management was only given to Siantar people having poor economy and this cooperation system had been going on for generation although the management of Mosque Jami' Darussalam changed. Controlling social made mosque has function fully where people felt responsible for prospering, maintaining, and caring for mosque and assets. Based on the explanation above, it could be concluded that management and cooperation system of *waqf* rice field belonged to mosque in *muzara'ah* is *mubah* and strengthened by the customary position in turning the rice fields into productive *waqf*. The rules of fiqh

also mention the customary position that can be accepted if it does not conflict with the main provisions of the *nusus syar'iyah*.

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