

**YOUTUBE CHANNEL AS A OBJECT PRODUCTIVE WAQF  
PERSPECTIVE OF POSITIVE INDONESIAN LAW AND ISLAMIC LAW**

**THESIS**

**By:**

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**ECONOMIC SHARIA LAW DEPARTMENT**

**SHARIA FACULTY**

**STATE ISLAMIC UNIVERSITY**

**MAULANA MALIK IBRAHIM MALANG**

**2023**

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**MAULANA MALIK IBRAHIM MALANG**

**2023**

## STATEMENT OF THE AUNTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

### **YOUTUBE CHANNEL AS A OBJECT PRODUCTIVE WAQF PERSPECTIVE OF POSITIVE INDONESIAIAN LAW AND ISLAMIC LAW**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 23 Mei 2023

Writer,



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## MOTTO

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ 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. (QS. Ali Imran [3]: 92)

## ACKNOWLEDGMENT

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

*Alhamdulillah* rabbil'alamin, have given His rahmat and servan, so we can finish this thesis entitled “YOUTUBE CHANNEL AS A OBJECT PRODUCTIVE WAQF PERSPECTIVE OF POSITIVE INDONESIAN LAW AND ISLAMIC LAW”. Peace be Upon into The Rasulullah Prophet Muhammad SAW who has taught us guidance (*uswatun hasanah*) to do activity correctly in our life. By following Him, may we belong to those who believe and get their intercession on the last day of the end. *Aamiin*.

From all the teaching, advice, guidance, and helps of service for us to finish this thesis, then with all humility the writer will expresses the gratitude which is unqualed to:

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2. Dr. Sudirman, M.A., as the Dean of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
3. Dr. Fakhrudin M.HI., as the Head of Sharia Economic Law Department of Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.
4. Dwi Hidayatul Firdaus, M.SI., as supervisor lecturer of the writer during my study at Sharia Economic Law Department of Syariah Faculty of The State Islamic University Maulana Malik Ibrahim of Malang.



5. Dr. Burhanuddin Susamto, S.HI., M.Hum., as my thesis supervisor. The writer thanks for his spending time to guide, direct and motivate to finish writing this thesis. The writer hopes that he and his family will be blessed by Allah.
6. All lecturers at Syariah Faculty of the State Islamic University of Maulana Malik Ibrahim Malang who have provided learning to all of us. With sincere intentions, may all of their charity be part of worship to get the pleasure of Allah SWT.
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10. Expecially HES family class of 2019 and the ICP family who have been with me in struggling from the first semester to the end, and becoming a new family overseas is impressive, learning also my new experience that I

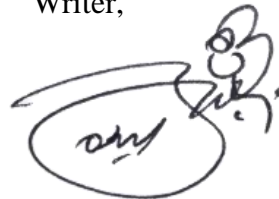
got belong four years of joint education process at UIN Maulana Malik Ibrahim Malang.

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With the completion of this thesis report, the hope that knowledge which we have gained during our studies can provide the benefits of life in the world and the hereafter. As a human who has never escaped fault, the author is very hopeful for the forgiveness, criticism and suggestions from all parties for future improvement efforts.

Malang, 23 Mei 2023

Writer,

A handwritten signature in black ink, appearing to be 'Sayyidatul Ummah', written in a cursive style. The signature is enclosed within a hand-drawn oval shape.

Sayyidatul Ummah

NIM 19220147

## TRANSLITERATION GUIDENCE

### A. General

Transliteration is the transfer of Arabic script into Indonesian (*Latin*) script, not Arabic translation into Indonesian. Included in this category are Arabic names of Arabs, while Arabic names of non-Arab nations are written as the spelling of their national language, or as written in the book to which they refer. The author of the book title in the footnote and bibliography, still uses this transliteration provision.

There are many transliteration options and provisions that can be used in writing scientific papers, both international, national and specific provisions for certain publishers. The transliteration used by the Sharia Faculty of Maulana Malik Ibrahim State Islamic University Malang uses EYD plus, which is a transliteration based on a joint decree (SKB) of the Minister of Religious Affairs and the Minister of Education and Culture of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. B/U/1987, as stated in A Guide Arabic Transliteration, INIS Fellow 1992.

## B. Consonant

A list of Arabic letters and their transliterations into Latin letters can be found on the following page:

Arab	Name	Latin	Name
ا	Alif	-	-
ب	Ba	B	Be
ت	Ta	T	Te
ث	Ṡa	Ṡ	Es (Point above)
ج	Jim	J	Je
ح	Ḥa	Ḥ	Ha (Point above)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Ḍ	Ḍ	Zet (Point above)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es and Ye
ص	Ṣad	Ṣ	Es (Point Below)
ض	Ḍad	Ḍ	De (Point Below)
ط	Ṭa	Ṭ	Te (Point Below)
ظ	Ẓa	Ẓ	Zet (Point Below)
ع	‘Ain	‘.....	Inverted Apostrophe

غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
ه	Ha	H	Ha
أ	Hamzah	.....'	Apostrof
ي	Ya	Y	Ye

*Hamzah* (أ) which is located at the beginning of the word follows its vowel without being marked with anything. If it is located in the center or at the end, then it is written with a sign (').

### C. Vocal, Long-pronounce and Diphthong

Any Arabic writing in Latin script vocal *fathah* written with “a”. *Kasroh* with “i”, *dlommah* with “u”, while the long readings of each are written in the following way:

Short Vocal		Long Vocal		Diftong	
ا	A		Ā		Ay
ي	I		Ī		Aw
و	U		Ū		Ba'

Long Vocal (a) =	Ā	For example	قال	Become	Qāla
Long Vocal (i) =	Ī	For example	قِيلَ	Become	Qīla
Long Vocal (u) =	Ū	For example	دُون	Become	Dūna

Especially for reading *ya' nisbat*, then it should not be replaced with “i”, but still written with “iy” in order to describe *ya' nisbat* at the end. Likewise, for diphthong sounds *wawu* and *ya'* after *fathah* written with “aw” and “ay”. Consider the following example:

Diftong (aw) =		For example	قول	Become	Qawlun
Diftong (ay) =		For example	خير	Become	Khayrun

#### D. Ta' Marbutah

*Ta' marbutah* transliterated as “t” if it's in the middle of a sentence, but if *ta' marbutah* it is at the end of the sentence, then transliterated using “h” for the example الرسالة للمدرسة become *al- risalat li al-mudarrisah*, or if it is in the middle of a sentence consisting of an arrangement *mudhaf* and *mudhaf ilayh*, then transliterated by using *t* that connects to the next sentence, for example في رحمة الله become *fi rahmatillah*.

#### E. Auxiliary Verb and Lafdh Al-Jalalah

Auxiliary verb “al” (ال) written in lowercase, unless located at the beginning of a sentence, while “al” In lafadz it is the net that is in the middle of

the sentence that is propped up (*idhafah*) then it is eliminated. Consider the following examples::

1. Al-Imam al-Bukhariy said.....
2. Al-Bukhariy dalam muqaddimah kitabnya expland.....
3. *Billah 'azza wa jalla*

#### **F. Indonesian Arabic Names and Words**

In principle, every word derived from Arabic should be written using the transliteration system. If the word is an Arabic name of an Indonesian or an Indonesian Arabic, it does not need to be written using the transliteration system. Consider the following example:

“.....Abdurrahman Wahid, The former fourth President of the Republic of Indonesia, and Amin Rais, the former Chairman of the People's Consultative Assembly at the same time, have made an agreement to eliminate nepotism, collusion, and corruption from the face of Indonesia, in one way through intensifying prayers in various government offices, but....”

Pay attention to writing the name “Abdurrahman Wahid”, “Amin Rais” and word “salat” Written using Indonesian writing procedures that are adjusted to the writing of the name. These words are also derived from Arabic, but they are names from Indonesians and are Indonesian, for that they are not written in a way “Abd al-Rahman Wahid”, “Amin Rais”, and not written with “Shalat.”

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Sayyidatul Ummah, 2023. CHANEL YOUTUBE SEBAGAI OBJEK WAKAF PRODUKTIF PERSPEKTIF HUKUM POSITIF INDONESIA DAN HUKUM ISLAM. Skripsi, Program Studi Hukum Ekonomi Syariah, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing Dr. Burhanuddin Susanto, S.HI., M.Hum

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**Kata Kunci :** Wakaf, Wakaf Produktif, Chanel Youtube

### **ABSTRAK**

Wakaf adalah sedekah yang berbeda dengan kegiatan ibadah lainnya. Perkembangan wakaf terus berlanjut hingga adanya wakaf produktif. Wakaf produktif merupakan hasil dari perkembangan zaman dengan berbagai kemajuan, termasuk kemajuan teknologi. Salah satu teknologi yang banyak digemari oleh masyarakat adalah youtube. Di Indonesia, platform YouTube menjadi platform yang banyak diakses oleh pengguna dalam segala usia, karena mudah digunakan, terdapat pilihan youtube gratis atau youtube premium dan konten kreator dapat memonetisasi channel youtube yang dimilikinya. Maka, diperlukan telaah hukum positif Indonesia dan hukum Islam dalam kebaruan sebagai objek wakaf produktif.

Metode penelitian yang digunakan berupa jenis penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual. Jenis dan sumber data hukum dalam penelitian ini menggunakan data primer seperti perundang-undangan, peraturan pemerintah dan sebagainya. Data sekunder dan data tersier berupa dokumen, jurnal, buku, ensiklopedi, kamus, internet dan sebagainya yang berkaitan dengan penelitian ini. Adapun tujuan dari penelitian ini yaitu untuk menganalisis bahwa channel YouTube dapat dijadikan sebagai objek wakaf produktif berdasarkan hukum positif Indonesia dan kajian Islam.

Hasil penelitian ini disimpulkan bahwa channel youtube dalam perspektif hukum positif Indonesia bisa dijadikan objek wakaf baru berupa kategori benda bergerak disertai hak atas kekayaan intelektual. Channel youtube sebagai objek wakaf produktif dalam perspektif hukum Islam juga diperbolehkan selama tidak melanggar syariat Islam. Maka dari itu, channel YouTube yang dikelola secara individu, kelompok, maupun institusi dapat dimanfaatkan dengan baik sesuai dengan peraturan yang berlaku di Indonesia dan tidak melanggar syariat Islam, sehingga menimbulkan pengaruh positif bagi penggunanya.

Sayyidatul Ummah, 2023. YOUTUBE CHANNEL AS A OBJECT PRODUCTIVE WAQF PERSPECTIVE OF POSITIVE INDONESIAN LAW AND ISLAMIC LAW. Skripsi, Economic Sharia Law Department, Sharia Faculty, State Islamic Maulana Malik Ibrahim Malang, Supervisor Dr. Burhanuddin Susanto, S.HI., M.Hum

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**Key Word :** Waqf, Productive Waqf, Youtube Channel

### **ABSTRACT**

Waqf is alms that is different from other worship activities. The development of waqf continues until the existence of productive endowments. Productive endowments are the result of the development of the times with various advances, including technological advances. One technology that is much loved by the public is YouTube. In Indonesia, the YouTube platform is a platform that is widely accessed by users of all ages, because it is easy to use, there is a choice of free youtube or youtube premium and content creators can monetize their youtube channels. Thus, it is necessary to study Indonesian positive law and Islamic law in novelty as objects of productive waqf.

The research method used is in the form of a type of normative legal research with a statutory and conceptual approach. The types and sources of legal data in this study use primary data such as legislation, government regulations and so on. Secondary data and tertiary data in the form of documents, journals, books, encyclopedias, dictionaries, internet and so on related to this research. The purpose of this study is to analyze that YouTube channels can be used as productive waqf objects based on Indonesian positive law and Islamic studies.

The results of this study concluded that the YouTube channel in Indonesia's positive legal perspective can be used as a new waqf object in the form of a category of movable objects accompanied by intellectual property rights. YouTube channels as productive waqf objects in the perspective of Islamic law are also allowed as long as they do not violate Islamic law. Therefore, YouTube channels managed by individuals, groups, and institutions can be used properly in accordance with applicable regulations in Indonesia and do not violate Islamic law, thus causing a positive influence on its users.

سيدة الأمة، ٢٠٢٣. قناة يوتيوب كمنظور وقفي مثير للقانون الوضعي الإندونيسي والشريعة الإسلامية. أطروحة، برنامج دراسة القانون الاقتصادي الشرعي، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، مشرف الدكتور برهان الدين سوسامتو ، ماجستير، دكتوراه

الكلمات المفتاحية : الوقف ، الوقف الإنتاجي ، شانيل يوتيوب

### مستخلص البحث

الوقف هو صدقات تختلف عن أنشطة العبادة الأخرى. يستمر تطوير الوقف حتى وجود الأوقاف المنتجة. الأوقاف الإنتاجية هي نتيجة لتطور العصر مع مختلف التطورات ، بما في ذلك التقدم التكنولوجي. إحدى التقنيات التي يجلبها الجمهور هي يوتيوب. في إندونيسيا ، تعد منصة يوتيوب عبارة عن منصة يمكن الوصول إليها على نطاق واسع من قبل المستخدمين من جميع الأعمار ، لأنها سهلة الاستخدام ، وهناك خيار من يوتيوب المجاني أو يوتيوب فاروميوم ويمكن لمنشئي المحتوى تحقيق الدخل من قنواتهم على يوتيوب وبالتالي ، من الضروري دراسة القانون الوضعي الإندونيسي والشريعة الإسلامية في الجدة كأهداف للوقف الإنتاجي.

طريقة البحث المستخدمة هي في شكل نوع من البحوث القانونية المعيارية مع نهج قانوني ومفاهيمي. تستخدم أنواع ومصادر البيانات القانونية في هذه الدراسة البيانات الأولية مثل التشريعات واللوائح الحكومية وما إلى ذلك. البيانات الثانوية والبيانات الثالثة في شكل وثائق ومجلات وكتب وموسوعات وقواميس وإنترنت وما إلى ذلك تتعلق بهذا البحث. الغرض من هذه الدراسة هو تحليل أنه يمكن استخدام قنوات يوتيوب ككائنات وقفية منتجة بناء على القانون الوضعي الإندونيسي والدراسات الإسلامية.

وخلصت نتائج هذه الدراسة إلى أن قناة يوتيوب من المنظور القانوني الإيجابي لإندونيسيا يمكن استخدامها ككائن وقف جديد في شكل فئة من الأشياء المنقولة مصحوبة بحقوق الملكية الفكرية. يسمح أيضا بقنوات يوتيوب ككائنات وقفية منتجة من منظور الشريعة الإسلامية طالما أنها لا تنتهك الشريعة الإسلامية. لذلك ، يمكن استخدام قنوات يوتيوب التي يديرها الأفراد والجماعات والمؤسسات بشكل صحيح وفقا للوائح المعمول بها في إندونيسيا ولا تنتهك الشريعة الإسلامية ، مما يتسبب في تأثير إيجابي على مستخدميها.

## BAB I

### INTRODUCTION

#### A. BACKGROUND OF RESEARCH

A long time ago a philosopher from the East, Imam Al-Gazali, stated that Islamic law is oriented towards benefit, namely usefulness, goodness, benefit, as to create it, there are five things that need to be protected, namely protecting religion (*hifzud din*), protecting the soul (*hifzun nafs*), protecting reason (*hifzul 'aql*), protecting offspring (*hifzun nasl*), and protecting property (*hifzul mal*).<sup>1</sup> As in its level that must be protected is the most important role in the guidance of human life so that there are no deviations in the process.

As the times progress, the deprived population has never decreased. It was noted that the number of poor people in Indonesia in September 2019 amounted to 26.58 million people (10.21%), only decreased by 1.19 million people compared to March 2019 of 27.77 million people (10.64%). As it decreases a little, but there are things that are not certain. Thus, the data shows that the poor live in rural areas outnumber the poor who live in urban areas, so there is an imbalance of opinion. In September 2019, the percentage of poor people in rural areas was 13.47%, while in urban areas it was 7,26%.<sup>2</sup>

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<sup>1</sup> Jaser Auda, *Maqasid Shariah as Philosophy of Islamic Law: A Systems Approach*, alih bahasa Rosidin dan „Ali „Abd el-Mun“im dengan judul *Membumikan Hukum Islam Melalui Maqasid Syariah*, (Bandung: Mizan Pustaka, 2015), h. 51.

<sup>2</sup> Badan Pusat Statistik, “Persentase Penduduk Miskin September 2019 turun menjadi 9,22 persen,” *Bps.go.id*, 15 Januari 2020, diakses 22 Juni 2023, <https://www.bps.go.id/pressrelease/2020/01/15/1743/persentase-penduduk-miskin-september-2019-turun-menjadi-9-22-persen.html>

Some things are potentially life-threatening due to the lack of fulfillment of the needs of each individual, both primary needs and secondary needs and others. In the principle (*hifzul mal*) or protection of property, Muslims are required to set aside some of their property and then give it to people in need, such as the duafa, the indigent, the stricken by disaster, people in debt, orphans, and so on. In this case, there is the value of worship as a form of obedience to Allah SWT, as humans have various forms of sustenance in the form of property.

As there is a muamalah value, namely the relationship between human beings in the form of paying attention to the equitable distribution of wealth so that it does not only revolve around the circle of certain people, but also to avoid crime that may be experienced due to the state of inequality of the social system in society. In reality, people who have a lot of possessions become richer, and conversely people who have few possessions want to get some of the wealth from the rich. Thus, in Islamic sharia waqf as one of the instruments of Islamic economics has a strategic role in improving the economy of the Ummah. To overcome poverty, waqf is a potential source of funds. Where waqf can be an alternative source of funding.<sup>3</sup>

The Waqf Management and Development Guidelines state that “Islam pays great attention to economic justice in order to create a just and prosperous society and minimize the occurrence of social inequalities based

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<sup>3</sup> Hilman Latief, 2017, *Melayani Umat: Filantropi Islam dan Ideolog Kesejahteraan Kaum Modernis*, Yogyakarta: Suara Muhammadiyah, h. 19.

on the economy between the poor and the rich. So as to create a prosperous society in justice and a society that fair in prosperity. Islam views wealth as Allah's mandate SWT (*amanatullah*) some of which become a means of glue to build brotherhood and togetherness.”<sup>4</sup>

The written statement in the Waqf Management and Development Guidelines proves that waqf can help the economic sector for the welfare of the community. As explained in the principles of waqf teachings, it is recommended for people who are able to help the underprivileged by donating their endowment funds to be managed by the authorities and the results are used to meet their needs, even foster and raise their status.<sup>5</sup> Thus, waqf is very helpful for the welfare of the community and is able to motivate in terms of economy and utilization of property for others.

The implementation of waqf has been carried out since the time of the Prophet Muhammad SAW which is believed to contribute to improving community welfare. Some of the implementation of waqf include well waqf by bestfriend of Uthman bin Affan, Mukhairik plantation waqf by Prophet Muhammad SAW, land waqf by Sahabat Umar bin Khattab, waqf by the Fatimid Dynasty for Al-Azhar Educational Institutions and so on until it develops and is implemented in various world countries such as Saudi Arabia, Egypt, Turkey, Jordan, Qatar, Kuwait and others. Thus, it can be concluded that waqf is very beneficial in the welfare of the people.

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<sup>4</sup> Anonim, *Pedoman Pengelolaan dan Pengembangan Wakaf*, (Jakarta: Kemenag RI Dirjen Bimas Islam Direktorat Pemberdayaan Wakaf, 2006), 6.

<sup>5</sup> Anonim, *Pedoman Pengelolaan dan Pengembangan Wakaf*, 6.



The State of Indonesia has regulations on waqf regulated in Law No. 41 of 2004 concerning Waqf (hereinafter referred to as the Waqf Law), Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 (State Gazette of the Republic of Indonesia of 2004 Number 159, Supplement to the State Gazette of the Republic of Indonesia Number 4459). In the regulation, there are several fundamental changes including the expansion of waqf objects, where what was originally only in the form of immovable objects and must be tangible such as land and buildings, but in the law is extended to waqf objects in the form of movable objects. So that a new classification of waqf objects emerged in positive law, namely waqf objects of immovable objects and waqf objects of movable objects.<sup>6</sup>

Quoting from Satjipto Rahardjo, regarding Law No. 41 of 2004 concerning Waqf and PP. No. 42 of 2006 concerning the Implementation of the Waqf Law can be projected as a means of social engineering to make changes in the thoughts, attitudes, and behavior of Muslims to be in line with the spirit of this law.<sup>7</sup> Therefore, the goal of optimizing the development of waqf objects runs smoothly according to the expectations of the people for the welfare of the people.

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<sup>6</sup> Pasal 16 ayat (1) Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf, yang mengklasifikasikan objek wakaf menjadi benda tidak bergerak dan benda bergerak.

<sup>7</sup> Abdul Haris Naim, "Pengembangan Objek Wakaf dalam Fiqih Islam dan Hukum Positif di Indonesia." *Ziswaf: Jurnal Zakat dan Wakaf*, Vol. 4, No. 2(2017): 245-262 <https://journal.iainkudus.ac.id/index.php/Ziswaf/article/view/3044>

The development of the current era has entered the rapid development of technology and information where almost everything can be done through digital. Society is faced with challenges in order to adapt to the modern environment of the digital era. An era in which data storage, information delivery processes, and printed distribution of information have begun to be reduced, where they tend to rely on bargaining power of internet access services more optimally, which ignores the limitations of printing and broadcasting models by allowing conversations between many parties, allowing simultaneous reception, and changing and re-disseminating objects.<sup>8</sup> So, there are a number of platforms that have rich value and benefits, one of which is Youtube. Youtube is a "product" of the modernization and digitalization era and is one of the "children" of its time who has great consumption and production value.

At the local level of Indonesia, a survey conducted by "We Are Social" stated that Youtube is the most popular platform for netizens to visit compared to other platforms. Where of the 150 million population active social media users (social media) 88% (percent) of them use Youtube.<sup>9</sup> The survey shows that there are more than 3/4 active social media users in Indonesia (the majority users) are active users Youtube. Therefore, most of

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<sup>8</sup> Eribka Ruthellia, David Mariam Sondakh, dan Stefi Harilama, "Pengaruh Konten Vlog dalam Youtube terhadap Pembentukan Sikap Mahasiswa Ilmu Komunikasi Fakultas Ilmu Sosial dan Politik Universitas Sam Ratulangi," *Acta Diurna Komunikasi*, Vol. 6 No. 1(2017) <https://ejournal.unsrat.ac.id/index.php/actadiurnakomunikasi/article/view/15479>

<sup>9</sup> Aria W. Yudhistira, "Youtube, Medsos No. 1 di Indonesia," *Katadata.co.id*, 06 Maret 2019, diakses 4 November 2022, <https://katadata.co.id/ariayudhistira/infografik/5e9a55212afab/youtube-medsos-no-1-di-indonesia>

the productivity can be generated from a Youtube channel, as it grows widely if it can be used as a new objek in the wakafan. Seeing the writhing The community towards the Youtube platform is growing, so to become producers and consumers also continues to increase every day.

Indonesia's positive law waqf regulations as contained in Law No. 41 of 2004 concerning Waqf and Government Regulation No. 42 of 2006 concerning the Implementation of the Waqf Law contain provisions for property that can be waqf. As in article 15 and article 16 of the Waqf Law, several categories of waqf property such as immovable and movable property are listed and article 19, article 20 and article 21 in the Government Regulation on their implementation are listed category of movable objects other than money. Thus, there are still restrictions in it so that it can be developed or expanded related to productive waqf objects.

The statement can be noted that in this Government Regulation Law, the definition of the object is still limited as written rules. However, currently Youtube is included in the category of moving objects that produce and can be used as waqf objects considering that the rules do not specifically regulate it. So this study was conducted to try to examine whether there is a possibility to use Youtube channels as new waqf objects with doctrinal research and by searching data in literature.

## **B. STATEMENT OF PROBLEM**

Based on the background description above, the problem formulation of this study is as follows:

1. Can a YouTube channel be used as an object of waqf under Indonesia's positive law?
2. What is the perspective of Islamic law in using YouTube channels as productive objects of waqf?

## **C. OBJECTIVE OF RESEARCH**

Based on the formulation of the problem above, this research aims as follows:

1. To analyze that YouTube channels can be used as waqf objects based on Indonesia's positive law.
2. To analyze the perspective of Islamic law in using YouTube channels as productive objects of waqf.

## **D. BENEFIT OF RESEACH**

1. Theoretically

With the results of this research, it is expected to help know, understand and add insight in the field of law, especially the study of contemporary waqf on new objects that meet the requirements, as well as the progress of the times with the development of the digital era, such as the existence of a youtube channel as a productive waqf in the view of positive Indonesian law and Islamic law.

## 2. Practically

The results of this research are expected to contribute, add insight, motivation in research development, reference input materials, consideration and contribution of thoughts. As for academics, it is expected to be a reference in strengthening research related to YouTube channels as waqf objects. For waqf officers, it is hoped that it can be a reference that YouTube objects can be used as new waqf objects. For the community, it is hoped that it can add and broaden the horizons that monetized YouTube channels can be transferred into productive endowments so that they can be implemented properly and correctly.

## **E. OPERATIONAL DEFINITION**

To avoid misunderstandings and misinterpretations of some of the terms used in this study, the author provides the following term limitations:

1. Waqf is the detention of property that is not used up once used for the purpose of mubah, and is intended to obtain the favor of Allah Almighty.<sup>10</sup> The pillars and conditions of waqf must be fulfilled before endorsing his property. There are several criteria for property Those that can be entrusted include those that contain many benefits for the welfare of the people.

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<sup>10</sup> Pedoman Pengelolaan dan Pengembangan Wakaf, (Jakarta: Kemenag RI Dirjen Bimas Islam Direktorat Pemberdayaan Wakaf, 2006), h. 25.

2. Youtube is one of the new media, which relies on an internet connection that allows for interconnectedness, access to individual audiences as recipients and senders of messages, its interactivity, diverse uses as an open character, and its ubiquitous nature.<sup>11</sup> A platform that is loved and widely used by people from all walks of life, it can even monetize the content on its channel. Therefore, many people are switching to this platform.
3. The positive law that governs the lives of Indonesian people is the law in force in Indonesia today. Indonesia's positive law is the entire principles and rules that govern human relations in society.<sup>12</sup> Laws are imposed for Indonesian society in order to achieve order and justice, but strict punishment for violators is imposed to follow up and have a deterrent effect so as not to repeat it.
4. Islamic law is a law whose outline was established by Allah SWT through the Prophet Muhammad SAW, which must be followed by Muslims based on faith in relation to Allah SAW as well as with fellow humans and things.<sup>13</sup> Islamic law applies to Muslims, but Islamic law is different from positive law. Where the positive law there is a valid written penalty of violation in The Indonesian state, but Islamic law does

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<sup>11</sup> Denis McQuail, *Teori Komunikasi Massa* McQuail, (Jakarta: Salemba Humanika, 2011), Edisi 6, Buku 1, h. 43, dikutip Eribka Ruthellia, David Mariam Sondakh, dan Stefi Harilama, "Pengaruh Konten Vlog dalam Youtube terhadap Pembentukan Sikap Mahasiswa Ilmu Komunikasi Fakultas Ilmu Sosial dan Politik Universitas Sam Ratulangi", e-journal "Acta Diurna" Komunikasi, Vol. VI, No. 1. 2017, h. 1-18.

<sup>12</sup> Mochtar Kusumaatmadja dan Arif Sidharta, *Pengantar Ilmu Hukum*, (Alumni Bandung, 1999), h. 1.

<sup>13</sup> Mahmud Syaltut, *Al Islam 'Aqidah wa Syari'ah*, (Kairo Daar Al Kalam, 1966), h. 12.

not apply this because punishment occurs on the day of retribution for those who violate it.

## **F. METOD OF RESEARCH**

Research method is a method used by researchers in collecting research data. This research method is also defined as a way to conduct investigations using certain methods as determined in order to obtain a scientific work. In this study the methods used are:

### **1. Type of Rrsearch**

The type of research used is normative research, which is research that focuses on legal norms. This research will use library research research methods or literature research. Normative research is legal research that puts the law as a building of a norm system, the norm system built is about the principles, norms, rules of laws and regulations, court decisions, agreements, and doctrines (teachings).<sup>14</sup>

Library research is a type of research in which data or materials in the research process are obtained from libraries, be it in the form of books, encyclopedias, journals, magazine dictionaries, documents and others.<sup>15</sup> The normative legal research hypothesis in this study is the rules both in legislation and other regulations regarding waqf related to YouTube channels as new waqf objects. Thus, the essence of collecting research data is obtained from literature that has a relationship with the material, not field

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<sup>14</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta: Pustaka Pelajar, 2012), h. 28.

<sup>15</sup> Rahmadi, *Pengantar Metodologi Penelitian*, (Banjarmasin: Antasari Press, 2011), 15.

data by conducting research into the field where the incident occurred. So that literature data can be done by analyzing all data and legal materials related to research.

## **2. Research Approach**

In relation to normative legal research, this study does not use data based on field observations. In contrast to empirical research, where this study conducts analyses of legal materials using certain approaches. So, in this study the research approach used is the statutory approach (statute approach) and conceptual approach (conceptual approach).

The statutory approach (statute approach) is an approach carried out by reviewing all laws and regulations related to legal issues in this study. This is intended to obtain information from various aspects regarding the legal issues being discussed. Thus, the hypothesis of the legislative approach is a legal review of laws and regulations regarding waqf relating to YouTube channels as waqf objects.

The conceptual approach is research on legal concepts such as legal sources, legal functions, legal institutions, and so on.<sup>16</sup> The conceptual approach departs from the views that develop in legal science by studying views in legal science, researchers will find appropriate ideas with the issue under review.<sup>17</sup> Thus, the hypothesis of the conceptual approach is the development of legal science as an idea in waqf issues related to YouTube channels as waqf objects.

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<sup>16</sup> Johan Nasution, *Metode Penelitian Ilmu Hukum*, Bandung: mandar maju, 2008, h. 96.

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada, 2005), h. 158



### 3. Type and Law Material

The types and sources of data that will be used as a basis to support normative research are data obtained from information in writing in the form of documents as called legal materials. These legal materials include primary legal materials, secondary legal materials and non-legal or tertiary materials in the form of basic norms, legislation, scientific research results, books, and so on. The explanation of these data is as follows:

- a. Primary Data is a source of data that is used as the main source in conducting this research. In a study, of course, there is main data or main data that is the main reference material.<sup>18</sup> Thus, the primary data in this study are Law Number 41 of 2004 concerning waqf, Government Regulation Number 42 of 2006 concerning the implementation of the Law.
- b. Secondary Data is a source of data that supports this study. Usually this data is in the form of data that has significance with the theme of the research.<sup>19</sup> The secondary data from this study are books, journals or articles that have related themes with productive waqf, youtube channels, Indonesian positive law and Islamic law.
- c. Tertiary data are materials that provide explanations to primary and secondary data. The tertiary data in this study are the Big Indonesian Dictionary (KBBI), the Encyclopedia of Islam and the

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<sup>18</sup> Rahmadi, *Pengantar Metodologi Penelitian*, 71.

<sup>19</sup> Rahmadi, *Pengantar Metodologi Penelitian*, 71.

Internet related to the theme of productive waqf, youtube channels, Indonesian positive law and Islamic law.

#### **4. Method of Law Material Collection**

In connection with the type of research used, namely normative legal research, the data collection method used is a literature study (Library Research), which is research conducted by conducting literature reviews such as books, scientific papers, laws and regulations and others related to productive waqf youtube channels. So that these data can be analyzed and find conclusions that are easy to understand.

#### **5. Analisis of Law**

Primary legal materials, secondary legal materials and non-legal materials will be analyzed by examining related youtube account waqf as productive waqf and a review of positive Indonesian law and Islamic law then described in prescriptive form, namely explaining, elaborate and provide arguments so that conclusions can be drawn about the problems in this study.

### **G. PREVIOUS RESEACH**

The discussion related to YouTube channel waqf as a productive waqf from the perspective of positive Indonesian law and Islamic law is a new discussion that the author still rarely finds research that discusses this issue. This makes researchers find novelty in the discussion because it is still rare to find similar studies that discuss YouTube channel waqf as a productive waqf from a positive Indonesian legal perspective and Islamic law. This is

reinforced by the formulation of the problem that the researcher made so that the problems that the author raised have never been discussed by other authors. However, in some scientific works, there is little resemblance to the author's research, including::

1. Afif Maulana Adi Kusuma, 2021, Youtube Account Waqf (Juridical Study of YouTube Accounts as a New Potential to Be Utilized as Waqf Objects: A Conceptual Normative Approach).<sup>20</sup>

In this thesis research using a conceptual normative approach. This research was conducted to determine the extent to which new objects in waqf can be utilized and the law of endowment. This research was conducted in the Semarang area. The discussion refers to the usefulness and goodness and results obtained by usaha. If it contains good effort, Then the results are halal and can be used and vice versa if it contains ugliness then the results can be haram.

The results obtained from this study are the benefits discussed in it as well as teaching as productive endowments by endorsing copyright to the uploaded content and income generated from monetization efforts of videos that have been uploaded in it.

This research has something in common, namely examining Youtube account endowments. However, this research has differences with the author's research, which is in the focus of discussion related to

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<sup>20</sup> Afif Maulana Adi Kusuma, "Wakaf Akun Youtube (Telaah Yuridis Terhadap Akun YouTube Sebagai Potensi Baru Untuk Dimanfaatkan Menjadi Benda Wakaf: Pendekatan Normatif Konseptual)" (Skripsi, Universitas Islam Negeri Walisongo Semarang, 2021), <https://eprints.walisongo.ac.id/id/eprint/14774/>

positive law only. While in the author's research the analysis uses Indonesian positive law and Islamic law.

2. Supriadi, Muhammad Roy Purwanto and Ahmad Soleh, 2021, YouTube Content Waqf as a Productive Waqf in the 5.0 Era in the Perspective of Sharia Maqashid.<sup>21</sup>

In this thesis research using literature studies, while the approach used is a normative juridical approach. This research was conducted to determine the implementation of productive waqf in the economic empowerment of the people. The concept of productive waqf in youtube content waqf and the concept of youtube content waqf in the perspective of maqashid syariah.

The results obtained from this study are Waqf youtube content as one of the productive waqf instruments that has great potential in overcoming poverty and initiating gaps between mankind. There are various efforts and processes that must be carried out in it such as creating a youtube account, creating and uploading interesting videos that are good and Islamic and allocating income from youtube for the benefit of the people. Thus, the substance of the waqf youtube content is in line with Maqashid Syariah which originates from *maslahah-mursalah* or general benefit as one of them is in order to realize social welfare through the distribution of funds from the youtube content and make the best use of it.

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<sup>21</sup> Supriadi, Muhammad Roy Purwanto dan Ahmad Soleh, "Wakaf Konten YouTube Sebagai Wakaf Produktif Di Era 5.0 Dalam Perspektif Maqashid Syariah", *At-Thullab Jurnal Mahasiswa Studi Islam*, Vol.2 Nomor 1(2021) <https://journal.uui.ac.id/thullab/article/view/18025>

This study has something in common, namely examining YouTube content endowments as productive endowments. However, this research focuses on the perspective of Maqashid Syariah, while the author's research focuses more on YouTube channels as objects of waqf in Indonesian positive law and Islamic law.

3. Ahmad Nur Ahsan, Didin Hafidzuddin dan Qurroh Ayuniah, 2023, Analysis of YouTube Channels as Productive Endowments.<sup>22</sup>

In this thesis research using qualitative methods, while the approach used in this research is normative conceptual research. This study was conducted to find out and test the ability to use the Youtube account as a new endowment object. This research was conducted to examine sharia law including sharia economics and legal regulations based on supporting data. The discussion refers to YouTube as digital progress, video content in accordance with Islamic law, video content in accordance with the law, as well as waqf requirements and youtube requirements.

The results obtained from this study are data that YouTube as a form of digital progress. As in the content of the youtube video must be in accordance with Islamic law which contains benefits. As for video content that complies with the law so that it meets YouTube's own requirements and waqf requirements.

This research has something in common, namely analyzing YouTube channels as productive endowments. However, this research

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<sup>22</sup> Ahmad Nur Ahsan, Didin Hafidzuddin dan Qurroh Ayuniah, Analisis Channel YouTube Sebagai Wakaf Produktif, *Al-Kharaj*, Volume 5 No 4(2023) <https://doi.org/10.47467/alkharaj.v5i4.1919>

focuses more on the realm of economics, while the author's research focuses more on the YouTube channel as an object of waqf in Indonesian positive law and Islamic law

4. Hamli Syaifullah dan Ali Idrus, 2019, Management of Productive Waqf Development in the Digital Age at Bani Umar Waqf Institution.<sup>23</sup>

In this thesis research using empirical conceptual and the concepts used in this research Using two concepts, namely the concept of volunteer-based human resource management or Volunteer and concept making digital-based marketing channels. This research was conducted to find out and develop the concept of recruiting human resources as volunteers in developing institutional waqf and collecting waqf by introducing and marketing it to the Muslim community through various platforms such as creating websites, facebook, fanpages and Instagram.

The results obtained from this research are the handling of human resources as the driving engine of institutions that can be activated by *Nazir* volunteers through a collaboration scheme with universities. Because there are more opportunities and benefits that can be obtained by volunteers and institutions to develop their waqf assets. The development of digital marketing channels at a fairly low cost and consistent in educating creative content, thus encouraging the public's willingness to donate waqf at the Bani Umar waqf institution.

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<sup>23</sup> Hamli Syaifullah dan Ali Idrus, "Manajemen Pengembangan Wakaf Produktif Era Digital Di Lembaga Wakaf Bani Umar", *Al-Khidmat*, Vol.2 No. 2(2019) <https://journal.uinsgd.ac.id/index.php/al-khidmat/article/view/5838>

This research has something in common, namely the development of productive endowments. However, this research focuses more on the management of productive waqf development in the digital era at the Bani Umar waqf institution, while the author's research focuses more on the youtube channel as an object of waqf in Indonesian positive law and Islamic law

No	Identity of the Research	Research Title	Equation	Difference
1.	Afif Maulana Adi Kusuma	Youtube Account Waqf (Juridical Study of YouTube Accounts as a New Potential to Be Utilized as Waqf Objects: A Conceptual Normative Approach)	This study has something in common, namely examining the waqf of Youtube accounts	This research has differences with the author's research, which is in the focus of discussion related to positive law only. While in the author's research the analysis uses Indonesian positive law and Islamic law
2.	Supriadi, Muhammad Roy Purwanto and Ahmad Soleh	YouTube Content Waqf as a Productive Waqf in the 5.0 Era in the Perspective of Sharia Maqashid	This research has something in common, namely examining YouTube content endowments as productive endowments	This research focuses on the perspective of Maqashid Syariah, while the author's research focuses more on YouTube channels as objects of waqf in Indonesian positive law and Islamic law
3.	Ahmad Nur Ahsan, Didin Hafidzuddin and	Analysis of YouTube Channels as	This research has similarities,	This research focuses more on the realm of

	Qurroh Ayuniah	Productive Endowments	namely analyzing Youtube channels as productive waqf	economics, while the author's research focuses more on the YouTube channel as an object of waqf in Indonesian positive law and Islamic law
4.	Hamli Syaifullah and Ali Idrus	Management of Productive Waqf Development in the Digital Age at Bani Umar Waqf Institution	This research has something in common, namely the development of productive endowments	This research focuses more on the management of productive waqf development in the digital era at the Bani Umar waqf institution, while the author's research focuses more on the youtube channel as an object of waqf in Indonesian positive law and Islamic law

## H. STRUCTURE OF DISCUSSION

To make it easier for readers and other researchers to conduct research, in this thesis proposal a writing systematics design is prepared so that the mindset is more directed and focused, as for the systematics as follows:

CHAPTER I contains an introduction, in this chapter contains the background of the problems to be raised in this thesis, the formulation of the problem, The objectives and benefits of this study are also contained in it. In addition, there are research methods used in ongoing research, previous



research and writing systematics made to find out the writing design used in research.

CHAPTER II contains a literature review that contains theoretical studies. It will be described in chapter II of this all the reviews of theories needed in studying and analyzing problems in this research. The author uses various sources of books, journals and other references to strengthen the source of this research. Literature review is very important for researchers because it is a provision of theory used in research discussions.

CHAPTER III contains Research Results and Discussion, This chapter contains an analysis of research results and aims to answer the formulation of problems that have been described in this study.

Chapter IV contains a conclusion, which contains conclusions and suggestions. The conclusion is a short answer to the formulation of the problem proposed and several suggestions are put forward as suggestions for the results of this thesis research.

## BAB II

### LITERATURE REVIEW

#### A. Theoretical/ Conceptual Framework

##### 1. Waqf or Endowments

Waqf is etymologically derived from waqf which means *radiah* (restored), *al-tahbis* (restrained), *al-tasbil* (captive) and *al-man'u* (prevent). Meanwhile, according to the term, there are several opinions, one of which is waqf according to Hendi Suhendi which is to hold something that is eternal in substance, and allows it to be taken advantage of to be given in the way of Allah.<sup>24</sup> As for Suryana et al said that Waqf is holding property and providing benefits in the way of Allah, as a means of getting closer to Allah whose rewards are unlimited as long as the waqf lives, but carries over until he dies.<sup>25</sup> Ali MD's opinion says Waqf is one of the institutions recommended by Islamic teachings to be used by someone as a means of distributing sustenance given to him by Allah.<sup>26</sup> Thus, waqf is an economic source that plays a major role in the benefit.

Waqf in terminology is the detention of property that is taken advantage of without being destroyed immediately and for a changed use and intended to gain the pleasure of Allah SWT.<sup>27</sup> Meanwhile, waqf in Law No. 41 of 2004 concerning Waqf, stated that endowments are Wakif

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<sup>24</sup> Hendi Suhendi, *Fiqh Muamalah*, Jakarta: PT Raja Grafindo Persada, 2008, h. 239.

<sup>25</sup> Surya dkk, *Pendidikan Agama Islam untuk Perguruan Tinggi*, Bandung: Tiga Mutiara, 1996, h. 131.

<sup>26</sup> Ali, M. D. *Sistem Ekonomi Islam Zakat dan Wakaf* (Jakarta : UI-Press, 2008), 80.

<sup>27</sup> Departemen Agama RI, *pedoman pengelolaan dan pengembangan wakaf*, h. 25

law act to separate or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and public welfare according to sharia.<sup>28</sup> So that the person who has the endowment is not cut off in reward even though he has died, if the waqf property benefits the people forever.

## 2. Productive Endowments

Productive endowments are the development or renewal of endowments. Productive waqf is a fixed property or principal that is entrusted to be used in production activities and the results are distributed in accordance with the purpose of the waqf. There are several types and types of waqf which are productive endowments such as land endowments to be used for cultivation, youtube channel endowments and others.<sup>29</sup>

The definition of productive waqf is property that can be used for production purposes both in agriculture, industry, digital, trade and services whose benefits are not in the waqf objects directly but from the net profit from the results of waqf development given to people who are entitled according to the purpose of the waqf.<sup>30</sup> Thus, a youtube account can be categorized as a productive endowment.

## 3. Youtube

Youtube is a platform that is much loved by people from all walks of life, in addition to easily accessing it like on a smartphone, this

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<sup>28</sup> Undang-Undang No. 41 Tahun 2004, tentang wakaf Bab I pasal I.

<sup>29</sup> Munzir Qahaf, *Manajemen Wakaf Produktif*, Jakarta: Pustaka Kautsar Grup, 2005, h. 5.

<sup>30</sup> Agustiano, *Wakaf Produktif Untuk Kesejahteraan Umat*, Jakarta: Niriah, 2008, h. 77

platform also some are free and paid. Youtube contains several channels in which there is interesting content and can add new knowledge. So the YouTube content can be subsidized into an alternative to YouTube content endowments as productive endowments.<sup>31</sup> In the concept of youtube content endowments, waqf can be a source of endowment funds, because the youtube content endowments, if utilized and managed properly, the results can be infakak and distributed to national development and communities in need.<sup>32</sup>

#### 4. Ekstensive Legal Interpretation

Extensive Interpretation essentially extends the meaning to the sound of text in laws based on actual conditions and situations so that the rules can be applied to examine and prosecute an event concretely. As an attempt to find norms that are more abstract than existing norms (abstracting), thus expanding the existing rules.<sup>33</sup> As with positive law in Indonesia, there are written and unwritten.<sup>34</sup> So this interpretation examines the written and applicable laws in Indonesia.

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<sup>31</sup> Ahsan, Abdillah. 2018. "Pengembangan sistem informasi pelayanan wakaf uang berbasis android (penelitian pada wakaf center)", Jakarta: UIN Syarif Hidayatullah Jakarta

<sup>32</sup> Sari, Winda Rahma. 2018. "Strategi Public Relations Dalam Membangun Citra Lembaga Pada Badan Wakaf Al-Qur'an", Jakarta: UIN Syarif Jakarta

<sup>33</sup> Anonim, *Penafsiran Ekstensif dan Analogi Dalam Hukum Pidana*, DokterLaw.com, 21 Desember 2022, diakses 26 April 2023, <https://dokterlaw.com/post/penafsiran-ekstensif-dan-analogi-dalam-hukum-pidana>

<sup>34</sup> Anonim, *Penafsiran Ekstensif dan Analogi Dalam Hukum Pidana*, DokterLaw.com, 21 Desember 2022, diakses 26 April 2023, <https://dokterlaw.com/post/penafsiran-ekstensif-dan-analogi-dalam-hukum-pidana>

## BAB III

### DISCUSSION OF RESEARCH FINDINGS

#### A. RESEARCH FINDINGS

##### 1. Waqf in General

###### a. Definition of waqf or Endowments

The word "*Waqf*" or "*Waqf*" comes from the Arabic "*Waqafa*". The origin of the word "*Wakafa*" means "to hold" or "to stop" or "to stay in place". The word "*Waqfa Yaqifu Waqfan*" means the same as "*Habasa Yahbisu Tahbisan*" meaning to waqfkan.<sup>35</sup> In Indonesia, the term waqf can mean the object of the endowment or institution.<sup>36</sup> Withholding because the waqf is withheld from damage, sale, and all actions that are not in accordance with the purpose of the waqf.

According to the explanation in the Waqf Management and Development Guidebook from the Directorate of Waqf Empowerment of the Ministry of Religious Affairs of the Republic of Indonesia, the Quran often states the concept of waqf with the expression of alms of wealth (*infaq*) for the public interest. While in Hadith we often find the expression waqf with the expression *habs* (hold). Where all these expressions are in line with the meaning of waqf itself, namely the detention of property that does

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<sup>35</sup> Direktorat Pemberdayaan Wakaf Direktorat Jendral Bimbingan Masyarakat Islam Departemen Agama RI, *Fiqih Wakaf*, Jakarta, 2007, h. 1.

<sup>36</sup> Juhaya S. Praja, *Perwakafan di Indonesia: Sejarah, Pemikiran, Hukum dan Perkembangannya*, (Bandung: Yayasan Piara, 1995), h. 6

not run out once used to be used for its purpose mubah, and intended to gain the favor of Allah SWT.<sup>37</sup>

In Fiqh books, scholars differ in their opinions on understanding waqf. These differences have different effects on the laws caused. The definition of waqf according to fiqh experts is as follows:

- (1) Imam Abu Hanifah defined waqf as withholding an object that by law remains the property of the waqif in order to use its benefits for virtue. The definition of waqf explains that the position of waqf property is still held or stopped in the hands of the waqif itself. In a sense, the waqif is still the owner of the property he entrusts, and is even allowed to withdraw and sell it. If the waqif dies then the waqf property becomes an inheritance for his heirs, so all that arises from the waqf is "donating benefits",<sup>38</sup>
- (2) Imam Malik argued that the waqf does not release the waqf property from the ownership of the waqf, but it prevents the waqif from taking actions that could release its ownership of the property to others and the waqf is obliged to give away the benefits and cannot withdraw the waqf. So in this case the waqf prevents the waqif from using its waqf property during a certain period according to the wishes of the waqif when

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<sup>37</sup> Pedoman Pengelolaan dan Pengembangan Wakaf, (Jakarta: Kemenag RI Dirjen Bimas Islam Direktorat Pemberdayaan Wakaf, 2006), h. 25

<sup>38</sup> M. Attoillah, *Hukum Wakaf*, Cetakan Pertama, Bandung: Yrama Widya, 2014, h. 7.

pronounce the contract (sighat). So basically this endowment lasts for a certain period of time, and therefore cannot be required as an eternal endowment (forever).<sup>39</sup>

- (3) Imam Shafi'i and Imam Ahmad ibn Hanbal are of the opinion that waqf is the release of the property that is waqf from the ownership of the waqf, after the completion of the waqf procedure. So in this case the waqf automatically decides the management rights owned by the waqif to be handed over to the nadzir allowed by the sharia, where then the waqf property belongs to Allah.<sup>40</sup>

As explained above, the definition of waqf in the Law is as follows:

- ✓ According to Law No. 41 of 2004 concerning Waqf Article 1 paragraph (1) and Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf Article 1 paragraph (1) states that Waqf is a legal act of wakif to separate and/or hand over part of its property to be used forever or for a certain period of time in accordance with its interests for the purposes of worship and/or public welfare according to shari'ah.

Some definitions of waqf above, it is concluded that waqf aims to provide benefits or benefits of property that

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<sup>39</sup> Attoillah, *Hukum Wakaf*, 7.

<sup>40</sup> Direktorat Pemberdayaan Wakaf Departemen Agama RI, *Fiqih Wakaf*, Jakarta: Departemen Agama RI, 2006, h. 2-3.

endowment to persons entitled and used in accordance with the teachings of Islamic sharia. As can be interpreted as holding some of one's property for use as social interests. This is in accordance with the function of waqf mentioned in article 5 of Law No. 41 of 2004 which states that waqf functions to realize the potential and economic benefits of waqf property for the benefit of worship and to promote general welfare.

b. Legal Basis

As for some of the legal bases of waqf according to Islamic Law in the Qur'an and the Sunnah, although not mentioned directly, their existence is inspired by verses of the Qur'an and examples from the Holy Prophets and the traditions of the Companions as follows:

1) QS Al-Baqarah (2) : 261

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلَ فِي كُلِّ سُنبُلَةٍ مِائَةٌ حَبَّةٌ وَاللَّهُ يُضَعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

261. The example of those who spend their wealth in the way of Allah is like a seed [of grain] which grows seven spikes; in each spike is a hundred grains. And Allah multiplies [His reward] for whom He wills. And Allah is all-Encompassing and Knowing.

2) QS Al-Baqarah (2) : 267

يَا أَيُّهَا الَّذِينَ آمَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ وَلَا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِأَخِيذِهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ وَاعْلَمُوا أَنَّ اللَّهَ عَزِيزٌ حَمِيدٌ



267. O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth. And do not aim toward the defective therefrom, spending [from that] while you would not take it [yourself] except with closed eyes. And know that Allah is Free of need and Praiseworthy.

3) QS Ali-Imran (3) : 92

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

92. 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.

4) QS Al-Hajj (22) : 77

وَأَفْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ ﴿٧٧﴾

77. worship your Lord and do good - that you may succeed.

Based on the explanation above, it can be concluded that Allah SWT commands us to spend part of the property we love, because Allah SWT must reward all kindness many times over. Thus, spending some of your wealth in God's way is not self-defeating, but very help the welfare of the people as Allah is Vast and All-Knowing.

5) Hadith of Muslim Narration

The mean: “From Abu Hurairah (r.a.) said, That the Holy Prophet(sa) said: When a man dies, his charity is broken except

for three (things): Shadaqah jariyah or knowledge that is taken advantage of or a pious child who prays for his parents. (HR. Muslim).

#### 6) Hadith of Muslim Narration

Meaning: From Ibn Umar (ra). Said, that the companions of Umar (ra). Obtained a piece of land in Khaibar, then went to the Prophet to ask for instructions. Umar said: O Messenger of Allah, I got a piece of land in Khaibar, I have never obtained such a good property, so what do you command me? The Prophet replied: If you like, you hold (the principal) of the land, and you give alms (the result). Then Umar did sadaqah, not sold, not inherited nor granted. Ibn Umar said: Umar gave it to the poor, relatives, slaves, sabilillah, ibn Sabil and guests. And it is okay or not forbidden for those who control the waqf land (its administrators) to eat from the proceeds in a good way (as appropriate) or to eat with no intention of accumulating property “ (HR. Muslim)

Based on the hadith above, it explains that if a human dies, his practice is cut off except for three things, one of which is shadaqah jariyah (waqf). With tree restraint and sprinkling purpose the results of the property owned make the property can be felt for the benefit of others and those who give the property can

still feel the benefits until the hereafter, as long as the property is used properly.

The Legal Basis of Waqf according to Positive Law in Indonesia in laws and government regulations, including:

- 1) Basic Agrarian Law Number 5 of 1960.
- 2) Government Regulation Number 28 of 1977 concerning Procedures for Land Owned Endowments.
- 3) Regulation of the Minister of Religious Affairs Number 1 of 1978 concerning Details of Government Regulation Number 28 of 1977 concerning Procedures for Wakafan Land Milik.
- 4) Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law.
- 5) Law Number 41 of 2004 concerning Waqf.
- 6) Government Regulation of the Republic of Indonesia No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf.
- 7) Regulation of the Indonesian Waqf Board Number 1 of 2008 concerning Procedures for Preparing Recommendations for Applications for Exchange/Change of Status of Waqf Property.
- 8) Regulation of the Indonesian Waqf Board Number 3 of 2008 concerning Procedures for Registration and Replacement of Immovable Waqf Property in the Form of Land.

- 9) Regulation of the Indonesian Waqf Board Number 1 of 2009 concerning Guidelines and Development of Waqf Property in the Form of Money.
- 10) Regulation of the Minister of Religious Affairs Number 4 of 2009 concerning the Administration of Money Waqf Registration.
- 11) Regulation of the Minister of Religious Affairs Number 73 of 2013 concerning Procedures for Wakafan of Immovable Objects and Movable Objects Other Than Money..

c. Pillars and Terms

Based on the pillars and conditions, waqf is declared valid if it has fulfilled all the pillars and conditions including:

1) Pillars of Endowment

In terms of jurisprudence, harmony is the completion of something and part of something itself. While according to the language, rukun is translated with the strongest side or sides of something on which to rest.<sup>41</sup> Thus, the pillars of waqf are:<sup>42</sup>

- a) *Waqif* (person who gives waqf).
- b) *Mauquf bih* (goods or objects that are entrusted).
- c) *Mauquf"alaih* (the party who is given the waqf / allocation of waqf).

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<sup>41</sup> Muhammad Abid Abdullah Al-Kabisi, *Fiqh Kontemporer*, Bandung: Grafika, 2004, h. 87.

<sup>42</sup> Rozalinda, *Manajemen Wakaf Produktif*, Jakarta: Rajawali Press, 2015, h. 21.

d) *Sighat* (statement or pledge of waqf as an intention to endow part of property).

## 2) Endowment Requirements

Based on the waqf pillars above, each pillar has conditions that are carried out so that the implementation of waqf becomes valid. Among the requirements of waqf are:

a) *Waqif* (one who endows). In this case the requirements of the waqif are independent, sensible, puberty (adult), not under supervision. Since the waqif is the perfect owner of the property being endowed, it can only be done if the land belongs to the waqif perfectly.<sup>43</sup>

b) *Mauquf bih* (goods or property entrusted). In wakafan, in order to be considered valid, it must meet the following conditions:

(1) The endowment property has value (there is a price).

The point is that in practice the property can be valuable if it is already owned by someone, and can be used under any circumstances. The endowment property is clearly shaped. The meaning is known with confidence when the object is entrusted, so it will not cause disputes.

(2) The waqf property shall be the property of the waqif.

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<sup>43</sup> Rozalinda, *Manajemen Wakaf Produktif*, 21-26.

(3) The waqf property is in the form of immovable objects, such as land, or objects adapted to existing endowments.

c) *Maukuf 'alaih* (allocation of waqf). Waqf must be utilized within the limits allowed by Islamic Sharia, because basically waqf is a charity that aims to bring people closer to God. To avoid misuse of waqf, the waqif needs to affirm the purpose of its waqf. Whether the property being entrusted is to help his own family as a family endowment, or for the poor, etc., or for the public interest whose purpose is clearly for good.<sup>44</sup>

d) *Shighat (lafadz)* or waqf statements can be expressed in writing, orally or a sign that can be understood in meaning. Written or oral statements can be used to declare endowments by anyone, while the sign method is only for people who cannot use it in a written or oral way. Of course, statements with these signals must be fully understood by the recipient of the waqf in order to be able to avoid disputes in the future.<sup>45</sup> The requirements for the validity of shighat ijab, both oral and written, are:

(1) *Shighat* must be munjaza (occurs instantly/finished).

The point is that the shighat shows the occurrence and

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<sup>44</sup> Rozalinda, *Manajemen Wakaf Produktif*, 46.

<sup>45</sup> Elsa Kartika Sari, *Pengantar Hukum Zakat dan Wakaf*, Jakarta: Grasindo, 2007, hlm. 57-58.

execution of waqf immediately after the *sighat ijab* is pronounced or written.

(2) *Sighat* is not followed by vanity (false). It means conditions that tarnish or injure the basis of waqf or abolish its laws, namely custom and permanence.

(3) *Sighat* is not followed by a specific time restriction, in other words that the endowment is forever. Waqf is a shadaqah that is shari'ah for eternity, if limited in time it means contrary to shari'a therefore the law is invalid.

(4) Does not contain an understanding to revoke the waqf that has been carried out.

Based on the explanation above, harmony and conditions are important elements in waqf, but the presence of the *nazir* as the party entrusted in managing waqf assets is also very important. Although the mujtahids do not make *nazir* one of the pillars of waqf, but scholars agree that wakif should appoint *nazir* waqf, both of which Individual or institutional.<sup>46</sup> Thus, the position of the *nazir* is important and necessary for management of waqf assets to maintain them and benefit the people.

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<sup>46</sup> Direktorat Pemberdayaan Wakaf Direktorat Jenderal Bimbingan Masyarakat Islam, *Panduan Pemberdayaan Tanah Wakaf Produktif, Op. Cit*, h. 41.

The importance of the position of *nazir* in the management of waqf for the empowerment of the people has several conditions in his appointment, namely:

- 1) Moral Requirements
  - a) Understand the waqf law and ZIS, both in the review of shari'ah and legislation RI
  - b) Honest, trustworthy and fair so that it can be trusted in the management process and on target to the objectives of the waqf
  - c) Resist temptation, especially regarding business development
  - d) Have intelligence, both emotional and spiritual
- 2) Manajement Requirement
  - a) Have good capacity and capability in leadership
  - b) Visioner
  - c) Have good intelligence intellectually, socially and empowerment
- 3) Term of Business
  - a) Have a desire
  - b) Have experience
  - c) Have the acumen to see business opportunities

Based on the above statement, the position of the *nazir* is very important because it is central in the pattern of



management of waqf assets. In terms of the *nazir's* duty, where he is obliged to maintain, develop and preserve the benefits of the waqf property that is entrusted to the people who are entitled to receive it, it is clear whether or not the waqf functions depends on the role of the *nazir*.<sup>47</sup>

d. Kind and Type

Waqf is divided into several types based on the purpose, time limit, and use of goods:

1) There are three types of endowments based on their purpose, namely:<sup>48</sup>

a) Social endowments for the good of society (*khairi*) that is, if the purpose of the endowment is for the public.

b) Family endowments (*dzurri*) that is, if the purpose of the waqf is to benefit the wakif, his family, his descendants, and certain people, regardless of whether rich or poor, sick or healthy, old or young.

c) Combined waqf (*musytarak*) that is, if the purpose of the waqf is for the public and family together.

2) Based on the time limit, waqf is divided into two types:

a) Perpetual waqf, which is if the waqf is eternal goods, such as land and buildings with land, or movable property determined by the wakif as perpetual and productive waqf,

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<sup>47</sup> *Pedoman Pengelolaan Wakaf Tunai Di Indonesia*, Departemen Agama RI, Jakarta, 2007, h. 49-52.

<sup>48</sup> Munzir Qahaf, *Manajemen Wakaf Produktif*, Jakarta: Pustaka Kautsar Grup, 2005.

where part of the proceeds are to be distributed according to the purpose of the waqf, while the rest is for the cost of maintaining the waqf and replacing the damage.

b) Temporary endowment, which is if the goods entrusted are easily damaged when used without providing conditions to replace the damaged part. Temporary endowments can also be caused by the desire of the wakif who gives a time limit when endorsing their goods.

3) Based on its use, endowments are also divided into two kinds:

a) Direct waqf, namely waqf whose principal goods are used to achieve goals, such as mosques for prayer, schools for teaching and learning activities, hospitals to treat the sick and so on.

b) Productive waqf or endowments, namely endowments whose principal goods are used for production activities and the results are given in accordance with the purpose of the waqf or endowment.

According to Law Number 41 of 2004 concerning Waqf in Article 16, there are types of property that can be waqf, including::

(1) Immovable objects

(a) Land rights in accordance with the provisions of applicable laws and regulations, both those that have and have not been registered.

- (b) Bangunan atau bagian bangunan yang berdiri diatas tanah.
  - (c) Plants and other objects related to the soil.
  - (d) Other immovable objects in accordance with the provisions of sharia and applicable laws and regulations.
- (2) Moving objects, namely moving objects that cannot be exhausted because they are consumed directly, which include:
- (a) Money, money endowment is a type of waqf handed over by the Wakif in the form of money. The money is in rupiah currency. Money endowments are carried out by Islamic Financial Institutions Receiving Money Waqf (LKS PWU). The money endowment fund can be invested in financial assets and in real assets.
  - (b) Precious metals, namely precious metals and stones whose properties have long-term benefits.
  - (c) Securities, namely capital market instruments in the form of bonds, certificates, and shares;.
  - (d) Vehicles are waqf objects that are used as complementary tools in carrying out an activity, such as cars, motorcycles and the like that can be utilized optimally.
  - (e) Intellectual property rights are material rights recognized by law over intangible objects in the form of intellectual creations. Intellectual property rights include patents, trademark rights, copyrights, and others.

(f) Leasehold shall mean the right arising to movable and immovable property on lease. For example, such as building endowments in the form of houses, flats and / or apartment units that will be used for economic activities by renting out.

(g) Other movable objects in accordance with the provisions of sharia principles and laws and regulations, such as books, dictionaries, books, and others.

e. Term

The property entrusted can be used forever or within a certain period of time in accordance with needs and desires as there are several legal conditions, namely::

- ✓ Waqf must be made in cash, because the declaration of waqf results in the release of property rights or transfer of property rights at the time of waqf.
- ✓ The purpose of the endowment must be clear, the intention should be that it should be clearly stated to whom it is intended.
- ✓ The purpose of the endowment must be clear, the intention should be that it should be clearly stated to whom it is intended.

## 2. Produktive Waqf

### a. Definition

According to Sardono Sukirno, who formulated productive waqf is an adjective derived from product, namely as an operating process to produce maximum goods or services with minimum capital. Basically, the concept of productive waqf is based on the dissatisfaction of the government in its management so far carried out by the *nazir*, so that Law Number 41 of 2004 concerning waqf and Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 are part of the renewal and expansion of the scope of waqf objects and their management in order to produce many benefits.<sup>49</sup> Thus, waqf assets function optimally in the development of their utilization and management for the welfare of the people.

Productive Waqf in the terminology sense is a transformation which is a process of adding value from natural waqf management to professional waqf management to increase or increase the benefits of waqf. In addition, productive waqf can be interpreted as the process of managing waqf objects to develop and maximize the function of waqf in order to fulfill the needs of the parties entitled to receive the benefits, so that with To meet the needs of the parties who are entitled

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<sup>49</sup> Jaih Mubarak, *Wakaf Produktif*, Jakarta: Sambiosa Rekatama Media, 2010, h. 15.

to receive the benefits, waqf within certain limits has functioned to improve the welfare of the community.<sup>50</sup>

Based on Article 43 paragraph (2) of Law No. 41 of 2004 concerning Waqf states that, the management and development of waqf property is carried out productively. This productive development and management is in line with and can optimize the function of the waqf itself, which functions to realize the potential and economic benefits of waqf property for the benefit of worship and to advance the welfare of the people.<sup>51</sup>

The productive waqf element in its implementation is based on several opinions such as Danny Alit Danardono's opinion, stating that the elements that are the main criteria are the existence of inputs and outputs. The inputs are in the form of labor, capital, and management. While the output is in the form of goods and services. M.A. Mannan's opinion states that the indication of productive endowments is the existence of benefits (outputs) and the possibility for assets to be developed sustainably in the input process.<sup>52</sup> Thus, it can be concluded that the indicator of productive waqf is the presence of output or produced and input or device that produces, such as a youtube account.

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<sup>50</sup> Mubarok, *Wakaf Produktif*, 16.

<sup>51</sup> Pasal 5 UU Wakaf.

<sup>52</sup> M. A Mannan, *Ekonomi Islam Teori dan Praktek* (Yogyakarta: PT. Dana Bhakti Wakaf, 1993), h. 54.

Some definitions of productive endowments according to experts they are:

- a) According to Munzir Qahaf, productive waqf is property or fixed principal that is waqfed to be used in production activities and the results are distributed in accordance with the purpose of waqf. Such as land endowments to be used for cultivation, springs to sell water, and others.<sup>53</sup>
- b) According to Choiriyah, productive waqf is a scheme for managing waqf donations from the people, namely by producing donations so as to produce sustainable benefits. Where waqf donations can be in the form of movable property such as money and precious metals, as well as immovable objects such as land and buildings.<sup>54</sup>
- c) According to M. A. Mannan, productive waqf is a waqf that has benefits and can be developed continuously economically.<sup>55</sup>
- d) According to Danny Alit Danardono, productive waqf is a waqf that can produce output in the form of goods and services. Thus, in order for waqf to produce output, inputs in the form of resources are needed, including labor, capital, and management..<sup>56</sup>

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<sup>53</sup> Munzir Qahaf, *Manajemen Wakaf Produktif*, Jakarta: Pusat Kautsar Grup, 2005, dikutip dalam Choiriyah, "Wakaf Produktif dan Tata Cara Pengelolaannya", *Jurnal Islamic Banking*, Vol.2 No.2, April 2023, h. 25-34.

<sup>54</sup> Choiriyah, *Wakaf Produktif dan Tata Cara Pengelolaannya*", *Jurnal Islamic Banking*, Vol.2 No.2,

<sup>55</sup> M. Abd. Mannan, *Ekonomi Islam Teori dan Praktek* (Yogyakarta: PT. Dana Bhakti Wakaf, 1993, h. 54, dikutip dalam Hafisah. "Wakaf Produktif dalam Hukum Islam Indonesia Analisis Filosofis Terhadap Undang-Undang RI No. 41 Tahun 2004 Tentang Wakaf", *Jurnal MIQOT*, Vol. XXXIII, No. 1, h. 84-97.

<sup>56</sup> Danny Alit Danardono. "Pengaruh Wakaf Produktif Terhadap Peningkatan Pendapatan Nazhir dalam (Kasus Wakaf di DKI Jakarta)". Program Pascasarjana Universitas Indonesia, 2008, h. xii

Several types of productive endowments, including:

(b) Money Endowments, endowments conducted by a person/legal entity in the form of cash. The purpose of money endowments is to help raise social savings through money endowment certificates so as to create family integration among people, increase social investment and transform social savings into social capital, and create awareness of the rich towards their social responsibilities towards the surrounding community so that security and peace can be achieved. So that waqf money can only be used and distributed for things that are allowed by shari'i, such as the money that is waqfed is used as business capital so that legally it is not used up once and what is given is the result of the efforts made by *nazhir*.<sup>57</sup> So, in essence, the law of money endowments is permissible.

(c) Share Endowment, Share is a sign of surrender of capital to a limited company. Stock also means a certificate showing proof of ownership of a company and its holder has a claim right to the company's income and assets. The benefits of the shares themselves are dividends, which are part of the company's profits distributed to shareholders, Capital gains, namely profits obtained from the difference in selling the purchase price, and non-material benefits, namely the emergence of damage / obtaining voting rights

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<sup>57</sup> M.A. Mannan, Sertifikat Wakaf Tunai Sebuah Inovasi Instrumen Keuangan Islam, (Jakarta: CIBER PKTTI-UI, 2001), hlm. 29.



in determining The course of the company.<sup>58</sup> The process of endowment is that the shareholder of the shareholder can register his waqf with the Islamic financial institution receiving the money endowment (LKS-PWU) because shares are considered the same as money. Stock endowments require a professionally working institution in charge of managing waqf shares. These institutions can be in the form of waqf fund management companies or Sharia Mutual Funds so that the waqf shares can bring maximum benefits and the shares used as waqf objects are invested in halal business fields and avoid usury.<sup>59</sup>

(d) Sharia Bond Waqf, Sharia Bonds are long-term securities based on sharia principles issued by the manager to sharia bondholders. The manager is required to pay income to Islamic bondholders in the form of proceeds, as well as repay the bonds at maturity. Islamic bond waqf includes limited-term waqf because Islamic bonds are the same as bonds in general, namely long-term bonds with limited time / maturity.<sup>60</sup>

(e) Waqf State Sharia Securities (SBSN), this letter is conceptually the same as Government Bonds (SUN), namely securities in the form of debt recognition letters, both in rupiah and foreign currencies guaranteed payment and principal by the state in accordance with the validity period. Where is the holder SBSN entrusts its SBSN by

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<sup>58</sup> Jaih Mubarak, *Wakaf Produktif*, hlm. 129

<sup>59</sup> Mubarak, *Wakaf Produktif*, h. 131.

<sup>60</sup> Mubarak, *Wakaf Produktif*, h. 133.

registering it with LKS-PWU/SBSN to issue its deeds and certificates. SBSN which is the object of waqf, LKS-PWU which acts as *nazhir*, and the result as a reward and / or nominal value of SBSN that is waqf, namely the benefits given to those who are entitled to receive it. SBSN is entrusted with mudharabah, ijarah, musyarokah, and other contracts.<sup>61</sup>

(f) Waqf of Property Rights over Flats, the object of this waqf is relatively new as stated in Law Number 41 of 2004. The main function of houses, flats / units of flats is as a place to live. Thus, if a certain person or party entrusts a unit of flats, its main function is a residence. But if the parties are entitled to receive benefits, they can rent to the other party and they can avail the rent. The waqf of the apartment unit will be of economic value if its existence complements the *nazhirs* and parties who are entitled to receive the benefits of the waqf of the apartment unit.<sup>62</sup>

(g) Waqf Intellectual Property Rights (IPR), Intellectual Property Rights are material rights recognized by law over intangible objects in the form of intellectual creations.<sup>63</sup> Richard Burton Simatupang explained that intellectual property rights can be divided into two, namely first, industrial property rights consist of From patents,

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<sup>61</sup> Mubarok, *Wakaf Produktif*, h. 136-145.

<sup>62</sup> Mubarok, *Wakaf Produktif*, h. 87-92.

<sup>63</sup> Munir Fuady, *Pengantar Hukum Bisnis*, Bandung: PT Citra Aditya Bakti, 2005, h. 203.

brands, industrial product designs, secondly, copyright consists of scientific works, literary works and art.<sup>64</sup>

Based on the above, there is a difference between direct endowments and productive endowments. Direct waqf requires maintenance costs whose funds are obtained from outside the waqf object, because such endowments do not produce anything and cannot be used for the purpose of the endowment. While waqf is productive, part of the proceeds are used to care for and preserve waqf objects, and the rest is to be distributed to people who are entitled in accordance with the purpose of waqf. ACT. No. 41 of 2004 concerning waqf has urgency, namely in addition to the interests of mahdhah worship, it also emphasizes the need for productive empowerment of waqf for social interests.<sup>65</sup>

b. Produktive Waqf Management

In essence, productive waqf management is a management activity in the management of productive waqf objects, in its provisions it has planning, organizing and supervising. Management and development of waqf property that has an important role is nadzir. Nadzir is obliged to manage and develop property in accordance with its purpose, function, and designation in accordance with sharia principles and the development of waqf property is carried out in a

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<sup>64</sup> Richard B Simatupang, *Aspek Hukum dalam Bisnis*, Jakarta: PT RC, 2003, h. 67-68.

<sup>65</sup> Achmad Djunaidi, Thobieb Al-Asyhar, *Menuju Era Wakaf Produktif*, Jakarta: Mitra Abadi Press, 2006, h. 90.

timely manner.productive and necessary Guarantee is a sharia guarantee institution in accordance with government regulations.<sup>66</sup>

There are several things that must be fulfilled in managing waqf productively. In addition to the formulation of the conception of waqf fiqh and laws and regulations, the nadzir must also be fostered into a professional nadzir to develop the assets he manages, especially if the waqf assets are in the form of money. Where there are circumstances with some waqf assets that are very concerning. As a result, quite a lot of waqf property is abandoned in its management, even waqf property is lost. One of the reasons is because Muslims (wakif) generally only entrust school land and buildings, think less about school operational costs, and the nadzir is also less professional.

In Law Number 41 of 2004 concerning Waqf Article 43 paragraph (2), which states, that "The management and development of waqf property is carried out productively, among others, by collecting, investing, investing, production, partnerships, trade, agribusiness, mining, industry, technology development, building construction, apartments, flats, supermarkets, shops, offices, educational facilities or health facilities and businesses that are not contrary to sharia." The law also states that the nadzir is obliged to manage and develop waqf property in accordance with its purpose,

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<sup>66</sup> Muhtar Lutfi, *Pemberdayaan Wakaf Poduktif Konsep, Kebijakan dan Implementasi* (Makassar: Alauddin University Press, 2012),173.

function, and the allocation of its endowments. Furthermore, the law explains the principles of waqf management, including:<sup>67</sup>

- ✓ Waqf management should be carried out in accordance with sharia principles.
- ✓ Waqf management must be done productively.
- ✓ If management requires a guarantor, it must use a sharia guarantor.
- ✓ For waqf that are displaced or originating from abroad, the management and development of waqf property from foreign individuals, foreign organizations, and foreign legal entities on a national or international scale, as well as abandoned waqf objects, can be carried out by the Indonesian Waqf Board.
- ✓ In the event that the waqf property comes from abroad, the wakif must complete with proof of legal ownership of the waqf property in accordance with the provisions. Laws and regulations, and the nadzir must report to the relevant institution about the existence of waqf acts.
- ✓ Management and development of waqf assets is carried out with the following conditions: Must be guided by the regulations of the Indonesian Waqf Board, Management and Development of money waqf assets can only be done through investment in products of Islamic financial institutions or Islamic financial instruments, in the event that Islamic financial institutions receiving money

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<sup>67</sup> Praja, Juhaya S. & Muzarie, Mukhlisin, *Pranata Ekonomi Islam Wakaf*, Cirebon: STAIC PRESS, 2009, h. 159-160.

endowments (LKS-PWU) receive money endowments for a certain period of time, So Nadzir can only manage and develop money waqf assets at Islamic financial institutions receiving the money endowments, management and development of money waqf assets carried out at Islamic banks must follow the Deposit Insurance Corporation program with laws and regulations. Management and development of money waqf property carried out in the form of investments outside Islamic banks must be insured on sharia insurance.<sup>68</sup>

### 3. Youtube Channel

#### a. Definition

YouTube is a site founded by three friends, namely Chad Hurley, Steve Chen, and Jawed Karim. This site serves to upload videos that we can share or share with everyone in the scope of the internet. Inside there are videos that have been uploaded and we can see without having to wait long. No less interesting, YouTube also provides an exclusive broadcast feature called live streaming. The advantage of Youtube compared to television is that users can comment in comments that have been provided in each video.<sup>69</sup>

The presence of YouTube has transformed into a general media that is most in demand by the people because in it there are

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<sup>68</sup> Praja, Juhaya S. & Muzarie, Mukhlisin, *Pranata Ekonomi Islam Wakaf*, Cirebon: STAIC PRESS, 2009, h. 160.

<sup>69</sup> Ahmad Nur Ahsan dkk, *Analisis Channel Youtube Sebagai Wakaf Produktif*, Al-Kharaj: Jurnal Ekonomi, Keuangan dan Bisnis, Volume 5 No 4 (2023) 1879-1903 P-ISSN 2656-2871 E-ISSN 2656-4351 DOI: 10.47467/alkharaj.v5i4.1919

still various kinds of entertainment videos, tips and tricks, to other updated news. Currently active users of Youtube have reached 2.29 billion, this number is a fantastic number according to Ceci, 2022. With such a large number of active users, the spread of information and various kinds of news can be seen by many people quickly.<sup>70</sup>

Some opinions about youtube according to experts:

- According to Fransiska Timoria Samosir, Dwi Nurina Pitasari, Purwaka, and Purwadi Eka Tjahjono in a study entitled "The Effectiveness of Youtube as a Student Learning Media (Study at the Faculty of FISIP Universitas Bengkulu)," argues that Youtube is one of the social networking sites that provides visual and sound facilities to users.<sup>71</sup>
- According to Sianipar, Youtube is the most popular video database in the internet world, and is a video site that provides a variety of information in the form of moving images and can be relied upon.<sup>72</sup>

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<sup>70</sup> Ahmad Nur Ahsan dkk, *Analisis Channel Youtube Sebagai Wakaf Produktif*, Al-Kharaj: Jurnal Ekonomi, Keuangan dan Bisnis, Volume 5 No 4 (2023), 1879-1903, P-ISSN 2656-2871 E-ISSN 2656-4351 DOI: 10.47467/alkharaj.v5i4.1919, h. 1881.

<sup>71</sup> Fransiska Timoria Samosir, Dwi Nuria Pitasari, Purwaka, dan Purwadi Eko Eka Tjahjono, "Efektivitas Youtube Sebagai Media Pembelajaran Mahasiswa (Studi di Fakultas FISIP Universitas Bengkulu)." *Record and Library Journal*, Vol. 4, No. 2, h. 81-91, <https://e-journal.unair.ac.id/index.php/RLJ>

<sup>72</sup> Sianipar, A. P., "Pemanfaatan Youtube di Kalangan Mahasiswa." *Jurnal Ilmu Komunikasi FLOW*, Vol. 2, No. 3, h. 1-10, dikutip dalam Fransiska Timora Samosir dkk, "Efektivitas Youtube...".

- According to Jim Hopkins, as quoted in an article on Wikipedia said that Youtube is a video sharing website that allows the Registered users upload, watch, and share videos.<sup>73</sup>
- According to Hermawan Riyadi through his blog page, believes that Youtube is a website that facilitates users to share their videos, or is limited to enjoying various video clips uploaded by various parties.<sup>74</sup>

As for Youtube as mentioned in the Youtube Creator Academy (Youtube Creator Academy), stands on the foundation and offers 4 main freedom values to its users or customers, namely:<sup>75</sup>

- Freedom of expression,
- Freedom of information,
- Freedom to use opportunities, and
- Freedom to have a place to create.

Therefore, this platform can be used to create and create until it can make money. However, there are prerequisites in order to be able to make optimal use of the rights granted by Youtube, such as utilizing the comment feature, video upload feature, rating (rating), creating playlists (playlists), and subscribing to other users or

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<sup>73</sup> Jim Hopkins. "Surprise! There's a third YouTube co-founder". USA Today, 11 Oktober 2006, dikutip dalam "Youtube". pada [https://id.wikipedia.org/wiki/YouTube#cite\\_note-8](https://id.wikipedia.org/wiki/YouTube#cite_note-8) diakses pada Kamis, 27 April 2023 pukul 20.00 WIB

<sup>74</sup> Hermawan Riyadi. "Pengertian Youtube Beserta Manfaat dan Fitur-fitur Youtube yang Perlu Anda Ketahui". Artikel dalam <https://www.nesabamedia.com/pengertian-youtube/> diakses pada Kamis 27 April 2023 pukul 20.00 WIB

<sup>75</sup> "Selamat Datang di Youtube". dalam <https://creatoracademy.youtube.com/page/lesson/jumpstart?hl=id#strategieszippy-link-1>



becoming subscribers, namely by using a Google account to log in to Youtube, and who creates channels on his account.<sup>76</sup> Thus, unregistered users who do not use an account to login on Youtube or do not have one can only do "consumption" activities only, such as Watch videos or access information, without being able to interact with other users and earn money.

Account in the Big Indonesian Dictionary (KBBI), the meaning of the term account for the computer field, has a meaning, a note about a user name, password, and the right to access a network or online system.<sup>77</sup> So it can be said, with the integration of the account system, the Youtube account is also a Google account, and having a Google account means also having its own Youtube account. As explained on the Google Support page, a Google account (Google account) serves as a master login into various Google services including Youtube. Where Google accounts are a unified signIn system consisting of a single e-mail address and password that allows to be able to provide access to other Google services, such as iGoogle, Gmail, and many more.<sup>78</sup> Thus, a Google

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<sup>76</sup> "Youtube". artikel dalam <https://en.wikipedia.org/wiki/YouTube> diakses pada Kamis, 27 April 2023 pukul 20.00 WIB.

<sup>77</sup> KBBI V (Kamus Besar Bahasa Indonesia Edisi Kelima), Badan Pengembangan dan Pembinaan Bahasa, Kementerian Pendidikan dan Kebudayaan Republik Indonesia 2016.

<sup>78</sup> Rangga Saputra. "Pengertian Google Account". Artikel dalam <http://westborneoblogger.blogspot.com/2015/07/pengertian-google-account.html>

account is a Google service in the form of a master key to enter into other Google services.<sup>79</sup>

b. Difference

Herosoftmedia.co.id, it is explained that Youtube accounts are different from Youtube channels. Youtube account is an admin panel, which is simply an account used to access or login in a Youtube channel. While the Youtube channel, is a brand or channel name that contains uploaded content pemilik akun di Youtube.<sup>80</sup> According to Fairfield, 2016, a Youtube account is one type of asset from virtual property, which is a code that is created and stored on the basis of a computer system and the internet, the youtube account is treated the same as physical assets in the real world.

Additionally, one can add other managers and owners to manage a channel together without sharing a password, but only for channels with a brand account.<sup>47</sup> Or in other words give others access to a Youtube account, but not a Google account, because invited users or managers will use their respective Google accounts that have been registered by the channel owner.<sup>81</sup>

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<sup>79</sup> Rangga Saputra. "Pengertian Google Account". Artikel dalam <http://westborneoblogger.blogspot.com/2015/07/pengertian-google-account.html>

<sup>80</sup> "Bangun Brand Awareness Bisnis dengan Membuat Channel Youtube". Artikel dalam <https://www.herosoftmedia.co.id/cara-mudah-membuatchannel-youtube/> diakses pada Jum'at.

<sup>81</sup> Video dalam "Cara Kerja Akun Bisnis di Youtube". di alamat berikut <https://support.google.com/youtube/answer/9367690#channelpermissions>

c. Monetization

Making money or monetization from Youtube in general can be done in 3 ways, namely:

- a) Youtube Partner Program (YPP), Brad and Debra Schepp mentions that making money on Youtube is Simple work, "... to make real money on Youtube, you simply have to be part of its Partner Program."<sup>82</sup> One of them is by joining as a Youtube partner through the Youtube Partner Program (YPP). YPP is the official monetization program provided by Youtube and Googlefor creators to make money directly on the Youtube platform. Monetization with YPP allows creators accepted as partners to monetize their content with various monetization features, such as ad placement on select videos, merch sales, or channel memberships (subscribers). However, to become part of a Youtube partner, each creator cannot automatically join after creating or owning a Youtube channel. Instead, it must be by submitting a due diligence of the channel you want to use for monetization: whether or not it can be accepted as a YPP partner, which requires a minimum waiting time of 30 days from submission to response.

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<sup>82</sup> Brad dan Debra Schepp, *How to Make Money With Youtube: Earn Cash, Market Yourself, Reach Your Customers, and Grow Your Business on the World's Most Popular Video-Sharing Site*, (McGraw-Hill eBooks, tt.), h. 155.

In addition, there are a few more conditions to join this official Youtube monetization program, namely first, comply with all Youtube monetization policies in the Community Guidelines, Copyright, and Edsense Program Policies. Second, live in a country or region where the Youtube Partner Program is available. Third, have more than 4000 hours of valid public watch time in the last 12 months. Fourth, have more than 1000 Subscribers. And fifth, have a linked AdSense account.<sup>83</sup>

b) Multi-Channel Network (MCN), is a third-party service provider affiliated with a number of Youtube channels to offer services such as audience development, Content programming, creator collaboration, Digital Rights Management (DRM), monetization, and/or sales.<sup>84</sup> MCN is a type of stand-alone Youtube network, which has full control over its network access management. In recent years most MCNs have opened their doors to new and yet popular YouTubers, which means anyone can use the services offered. This means users will earn money from their videos more easily, especially for those who are not yet or are already Youtube partners.

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<sup>83</sup> “Kebijakan Monetisasi Channel Youtube”. Artikel dalam <https://support.google.com/youtube/answer/1311392?hl=id> diakses pada Jum’at, 12 Mei 2023 pukul 09.00 WIB

<sup>84</sup> “Ringkasan Jaringan Multi-Channel (MCN) untuk Kreator Youtube”. Artikel dalam <https://support.google.com/youtube/answer/2737059?hl=id#zippy=%2Cpendapat%2Cpembayaran%2Cmenandatangani-kontrak-dengan-mcn> diakses pada sabtu, 13 Mei 2023 pukul 12.00 WIB.

MCNs provide various facilities for video creators who don't want to bother with Google AdSense regulations. By uploading videos on Youtube, creators can more easily earn income. Some MCNs also offer additional revenue opportunities, such as brand sponsorships or dedicated sales teams, so channels can earn more overall.<sup>85</sup> Google released an updated stipulation in March 2021, that all channels that are part of an MCN must still be reviewed and follow YouTube's monetization policies, which include our Community Guidelines, Copyright, and AdSense Program Policies. So, it's the same as applying for a program partnership but not Make an impact like taking a percentage of creator revenue.

- c) Affiliate program, is a business system where there are brands or companies that have products in the form of goods and / or services, and other people as influencers who have a large audience, followers, or influence. In corporate affiliation usually requires other people as influencers to introduce, sell or market their products.<sup>86</sup> Thus, this program is an independent program, where creators can be active by looking for brands to sell, or it can also be passive, when brands or companies come to creators

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<sup>85</sup> Azizah. *Konten Kreatif Youtube Sebagai Sumber Penghasilan Ditinjau dari Etika Bisnis Islam (Studi Kasus Youtuber Kota Metro)*. Skripsi Fakultas Ekonomi dan Bisnis Islam IAIN Metro Lampung 2020, h. 26.

<sup>86</sup> Azizah, *Konten Kreatif Youtube Sebagai Sumber Penghasilan Ditinjau dari Etika Bisnis Islam (Studi Kasus Youtuber Kota Metro)*, 28.

because they need their services to sell various products they have.

This affiliate program allows creators to earn according to the performance of creators' videos. So, the more audiences who make transactions through creator affiliate links as affiliates, the greater the commission earned.<sup>87</sup> Thus, the commission amount agreement is made based on the accumulated total transactions through links in the video or video descriptions of affiliates. The program can also end by mutual agreement.

#### d. Youtube User Rights

Every registered user (who uses an account) has the right to make the most of the Youtube platform, whether accessing videos, watching, sharing them, making live broadcasts, uploading content, or even obtaining benefits in the form of income from Youtube, this is because Youtube gives rights and applies values in the form of 4 main freedoms to its users, namely:<sup>88</sup>

- ✓ Freedom of expression,
- ✓ Get information,
- ✓ Use opportunities, and
- ✓ Has a place to create.

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<sup>87</sup> Video “Cara Menghasilkan Uang dari Youtube”. dalam <https://bitlabs.id/blog/cara-menghasilkan-uang-dari-youtube/>

<sup>88</sup> Lihat dalam “Selamat Datang di Youtube.” dalam <https://creatoracademy.youtube.com/page/lesson/jumpstart?hl=id#strategieszippy-link-1>

Based on the above, it is stated that every user has the right to utilize the available space to explore and generate income. However, users also have the obligation to comply with restriction signs as well as protection of activities carried out on Youtube, with aspects of Policy and Security and Copyright.

e. Rules and Intellectual Property Rights

Some rules are implemented as aspects of policy and security in order to help maintain the climate of Youtube to remain pleasant and can be enjoyed by anyone, considering that Youtube is inhabited together by a community of users from almost all parts of the world, and to maintain user trust.<sup>89</sup> As such rules with non-publication of sexual or non-publication of sexual content, Harmful or Harmful Content, Hateful Content, Violent or Vulgar Content, Harassment and Cyberbullying, Spam, Misleading Metadata, and Scams, Threats, Privacy, Impersonation, and Child Safety.

Copyright youtube as its mission is to create a good climate for its users, in addition to giving the right to freedom to surf. So that Copyright becomes one of the important aspects that are considered, in addition to the general provisions in the Terms and Policies. Because as a container for audiovisual works, Youtube is prone to misappropriation of someone's work, so Copyright becomes a central issue that requires collective regulation.

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<sup>89</sup> Kebijakan dan Keamanan”. dalam <https://www.youtube.com/intl/id/about/policies/#community-guidelines>

As mentioned by Youtube, in many countries, when someone creates an original work that is poured into media or physical form (embodied), copyright automatically arises on the work. So that an idea, idea, and the like that has not been realized cannot be bound by Copyright. Then Copyright is an inherent right to the creator of a work that is embodied in physical form.<sup>90</sup> Uploading someone else's video or using content in a video that someone else owns the Copyright to, such as a music track, a snippet of a copyrighted program, or a video created by another user without the necessary permission, is contrary to the Copyright principle that respects any work of work by not discrediting the original creator or creator.<sup>91</sup>

In Law No. 19 of 2002 Article 1 paragraph (1) Copyright is an exclusive right given to the creator or recipient of rights, to announce or reproduce his work, or give permission to others to do so, without prejudice to regulatory restrictions legislation that pretend.<sup>92</sup> Copyright is one aspect of Intellectual Property (IP), which is the result of the human brain's thinking that is tangible in the fields of technology, science, art, and literature. The existence of this embodied work (IP) gives the right to its employees to obtain economic rights and moral rights to their business, which is called Intellectual Property

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<sup>90</sup> Video dalam “Apa yang dimaksud dengan Hak Cipta”. dalam <https://support.google.com/youtube/answer/2797466>

<sup>91</sup> Video dalam “Apa yang dimaksud dengan Hak Cipta”. dalam <https://support.google.com/youtube/answer/2797466>

<sup>92</sup> Pasal 1 ayat (1) Undang-Undang Nomor 19 Tahun 2002 Tentang Hak Cipta.



Rights, which are rights related to property arising from human intellectual abilities.<sup>93</sup>

Some types of works that are bound by Copyright are::

- Audiovisual works, such as TV shows, movies, and online videos,
- Sound recording and music composition,
- Written works, such as lecture materials, articles, books, and music compositions,
- Visual works, such as paintings, posters, and advertisements,
- Video game and computer software,
- Dramatic works, e.g. plays and musicals,
- Props made for the benefit of science,
- Performance works,
- Cinematography, photography,
- Fine arts in all forms such as painting, drawing, carving, calligraphy, sculpture, sculpture, collage, applied arts in the form of handicrafts,
- Translations, interpretations, interpretations, potpourri, databases, and other works of translation.

Based on this, for ideas, facts, and processes, it is not bound by Copyright. In accordance with Copyright law in order to qualify for Copyright protection, a work must be embodied or created and

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<sup>93</sup> Sudarmanto, KI & HKI Serta Implementasinya bagi Indonesia: Pengantar Tentang Hak Kekayaan Intelektual, Tinjauan Aspek Edukatif dan Marketing, (Jakarta: PT. Elex Media Komputindo, 2012), h. 1-5.

specified in a clear medium.<sup>94</sup> As according to Sudarmanto, in general, Intellectual Property (IP) can be grouped into two parts, namely communal rights and personal rights. Among its characteristics are:<sup>95</sup>

a) The principle of communal rights

- Passed from generation to generation,
- Show the identity and culture of a particular community,
- Part of cultural heritage,
- Unknown creator,
- Generally not for commercial purposes but preferred as a cultural and religious means,
- Develop and appear among the people,
- Ownership and preservation are communal (shared),
- Protection or preservation is desired indefinitely,
- Its legal protection must be based on the recognition of each party and be declarative (automatic or without registration); and material rights (tangible and intangible or material and moral) are owned by the state.

b) The principle of personal rights

- Passed on from scientific research, business practices, or artists' work, and carried out by individuals or legal entities,

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<sup>94</sup> Video dalam “Apa yang dimaksud dengan Hak Cipta”. dalam <https://support.google.com/youtube/answer/2797466>

<sup>95</sup> Sudarmanto, *KI & HKI Serta Implementasinya bagi Indonesia: Pengantar Tentang Hak Kekayaan Intelektual, Tinjauan Aspek Edukatif dan Marketing*, 3-4.

- Pay attention to the development of science, art, technology, or literature of certain individuals or legal entities,
- Part of the development of science and technology, art, commerce, or business,
- Recognized by the inventor, creator, or business person,
- For commercial purposes and ownership is monopoly.

According to Article 3 paragraph (2) of the Copyright Law, Copyright can be transferred or transferred, either in whole or in part, by reason of inheritance, grant, will, written agreement, or other causes permitted by laws and regulations. As for the Copyright owned by the creator, after the creator dies it belongs to his heirs or belongs to the beneficiary of the will, and such Copyright cannot be confiscated, unless the right was unlawfully acquired.<sup>96</sup>

On the protection of Copyright, as written in the Book Practically Understanding and How to Obtain Copyright, The protection of a creation arises automatically from the moment it is manifested in tangible form. Registration of a work is not an obligation to obtain copyright. However, both the creator and copyright holder who register their work will receive a work registration letter that can be used as preliminary evidence in court if a dispute arises in the future against the work.<sup>97</sup>

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<sup>96</sup> Pasal 4 ayat (1) UU Nomor 19 Tahun 2002 Tentang Hak Cipta.

<sup>97</sup> Mujiyiono dan Ferianto, Buku Praktis Memahami dan Cara Memperoleh Hak Cipta, (LPPM UNY: Sentra HKI Universitas Negeri Yogyakarta, 2017), h. 8.

#### 4. Perspectives of Islamic Law

YouTube accounts that are useful and do not violate sharia are very allowed to expand their spread. As the perspective of Islamic law on Intellectual Property Rights as an object of waqf, namely Property Rights (*Huquq Maliyyah*).<sup>98</sup> Legal protection as can be used as an object of waqf either in exchange, commercial, or non-commercial contracts. The statement allowing Intellectual Property Rights as an object of waqf is supported by the existence of positive law and the Decree of the Indonesian Ulema Council MUI No 1 MUNAS/VII/5/2005.<sup>99</sup> Thus, a youtube account with Intellectual Property Rights can be used as an object of waqf if all the pillars and conditions have been fulfilled and do not violate the rules.

Extensive legal interpretations that still hold on to the sound of the text in the Act provide an expansion of meaning to a condition actualSo that it can be applied in examining and adjudicating a concrete event.<sup>100</sup> As explained in the explanation above, the digital era produces new waqf objects that are widely accessible. Thus, with the validity of Indonesia's positive law in force and Islamic law in the

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<sup>98</sup> Ahmad Maulana Sabbaha, *Terobosan Baru Era Digital: Wakaf Memakai Akun Youtube*, <https://ibtimes.id/terobosan-baru-era-digital-wakaf-memakai-akun-youtube/>, 5 September 2022, diakses Sabtu 13 Mei pukul 15.00 WIB.

<sup>99</sup> Ahmad Maulana Sabbaha, *Terobosan Baru Era Digital: Wakaf Memakai Akun Youtube*, <https://ibtimes.id/terobosan-baru-era-digital-wakaf-memakai-akun-youtube/>, 5 September 2022, diakses Sabtu 13 Mei pukul 15.00 WIB.

<sup>100</sup> Pradikta Andi Alvat, *Perbedaan Penafsiran Ekstensif dan Analogi dalam Penemuan Hukum*, <https://forumkeadilanbabel.com/2021/11/12/perbedaan-penafsiran-ekstensif-dan-analogi-dalam-penemuan-hukum/#:~:text=Perbedaannya%2C%20bahwa%20penafsiran%20ekstensif%20masih,memiliki%20unsur%20esensial%20yang%20sama>, 12 November 2021, diakses Sabtu 13 Mei 2023 pukul 21.00 WIB

form of fatwas of the Indonesian Ulema Council as well as some opinions of ulama waqf productive youtube accounts are allowed as long as they meet all the pillars and conditions, also do not violate the rules in community guidelines or other digital rules.

## **B. DISCUSSION**

1. Youtube channel as a object productive waqf perspectice Indonesian positive law

YouTube channels can be categorized as movable objects in endowments. As the YouTube channel contains various content uploaded as works and can be seen by all YouTube users, both children and adults. YouTube users can access it via a smartphone that can be taken anywhere and accessed anytime with the internet network. Therefore, the ease of accessing YouTube is much favored by the public because of its flexible nature.

Content creators who create videos to upload on their YouTube channel can be monetized and earn money. However, there are some requirements and policies from YouTube for content creators such as subscriber count and others. Likewise, the content is limited to creating a work, which does not violate the rules or community guidelines. So, it is recommended to produce good, useful, quality and positive value work so that monetized YouTube channels with income in the form of money can be entrusted as da'wah values in terms of goodness.

The privileges of money endowments from the monetization of the channel are:<sup>101</sup>

- a. The reward continues to flow even after the endowment has died. It is based on the hadith of the Holy Prophet (peace be upon him): "If a man dies, his charity is cut off except three: alms jariah, knowledge utilized, or son of salih who prays for him". (HR Muslim, Abu Dawud, at-Tirmidhi, an-Nasa'i and Ahmad). Imam al-Nawawi, in the Shariah of Saheeh Muslim explains the above hadith as follows: "The scholars state, the deeds of the deceased are interrupted by his death except for these three things. These three things come from the efforts of the deceased person. Indeed, the son of shaleh is the result of his efforts; Similarly, his knowledge continued to be taught or studied after his death; and jariyah alms as waqf..
- b. Continuous benefits even though generations change. The giver of waqf (wakif) will receive continuous and multiple rewards. Therefore, we find that friends are people who are very eager to endow their property. Omar ibn al-Khathab, as described in the hadith, owned land that was of great value to him because of its great results and benefits. However, he wanted the treasure for his afterlife, he entrusted it. Including waqf carried out by the companions of Uthman bin 'Affan. When the Prophet came to the city of Medina and did not find any good water other than waterThe

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<sup>101</sup> Jaharuddin, *Tulisan Popular Wakaf, Ekonomi dan Bisnis*, Malang: Karya Kartika Graha, 2021, h. 42-48

well called the House, he said: "No one who wants to buy a well of the House and then he makes his bucket with the bucket of the Muslims (as makes it a waqf and he can still draw water from it) will get a better reward from that source in heaven." Uthman said, "I also bought it from my personal property." (Narrated at-Tirmidhi and declared hasan by ash-Shaykh al-Albani). In fact, Jabir's companions say "No one among the Companions of the Prophet has the ability (to waqf) but he will spend his wealth for waqf."

The Messenger of Allah was an exemplary queen in all goodness, including waqf. The companions of 'Amr ibn al-Harith said, "After the Prophet died, he did not leave dirhams, dinars, and male or female slaves. He left only a bighal (named) al-Baidha', weapons, and land that he had made as alms." (Narrated by al-Bukhari). Al-Imam Ibn Hajar in Fathul Bari explains this narration, "He gave away the benefits of his land. The law is the law of endowments." Muslims who are eager to follow the example of the Prophet and desire great virtues, will not waste the door of goodness in the form of waqf, both waqf intended as a place of worship and others, in the form of educational, da'wah, and social activities. With Allah's permission, this will be a great good for Muslims and a good cause for the life of a society.

- c. Waqf has an Eternal character meaning that waqf will not run out until the Day of Judgment, when the ummah waqf, then the nadzhir

(manager) has the obligation to maintain the waqf from time to time. In time, endowments will not decrease, in fact, continue to grow. As a clear example, to this day there is still an account in the name of Ustman bin Affan in a Saudi Islamic bank, which is an accumulation of waqf management that he had done thousands of years ago (voa.muslim.com). As another proof is that Habib Abdurrahman's waqf originated in the area of Bugak, Peusangan, Matang Glumpangdua, Bireuen Regency, Aceh, two hundred years ago, near the Grand Mosque, which is managed by the kingdom of Saudi Arabia, until now continues to grow and its benefits are given to the Sceh Hajj Pilgrims every year (detik.com).

- d. Waqf money to stimulate the development of Indonesian endowments. According to data from the Ministry of Religious Affairs, there are 1,266,672,406 M<sup>2</sup> of waqf land in Indonesia, in 403,845 locations. It is said that this is the largest waqf land in the world. Unfortunately, waqf management in Indonesia is still in the form of land management, mosques, cemeteries, madrassahs, schools, Islamic boarding schools, which have not been managed optimally. According to Nasution in H.M Cholil Nafis (2009), if only 20 million Muslims in Indonesia have endowments, then the potential reaches Rp. 7.2 T per year, only with waqf Rp. 1,000 per day / Rp. 30,000, - per month. So great is the potential of waqf



money that can be managed, to develop the vast amount of waqf land.

- e. Proven to be a solution, including the fields of education and social security. Egypt's Al-Azhar University is a clear example of waqf making a real and solutive contribution in productive waqf management, and it is also followed by major campuses in the world. Then there is no sufficient reason if campuses and educational institutions in Indonesia do not apply the concept of waqf in education financial management. It may not be optimal management of the waqf financial system in education in Indonesia, due to the lack of education of the waqf system and its impact on the education system on campus, if socialization continues to be intensified, workshops are held, hopefully giving birth to a good understanding of waqf, which gives birth to a real mall of waqf activities that are solutive for the basic problems of society, namely education, health and business.
- f. Flexible, Waqf money gives freedom to wakif to waqf flexibly from the number, place and time, meaning not waiting for the wakif (waqf giver) to own land first, to have a building first, to be rich first, whatever wealth is owned if the understanding of waqf is good, then there is no obstacle for anyone to waqf There is no longer any reason for Muslims not to waqf, Once again waqf is a noble practice of friends, with the existence of money endowments open up

opportunities for maximum charity. One day we It is dead, but the rewards of our endowments continue to flow, when we can no longer Do anything, then immediately come to Islamic financial institutions to waqf money.

The implementation of waqf has been happening for a long time, from the research of John L Espitiso who proved that the age of waqf is the same as the age of humans.<sup>102</sup> As it had happened in the time of the Prophet and followed by his companions set an example of kindness to his people from all parts of the world. Waqf has enormous influence and benefits if managed properly, because waqf is different from other alms in its period and nature. Waqf is permanent to support the economy with goals and benefits that are very meaningful for the benefit of the people.

The development of waqf is accompanied by human civilization and changing times as there is rapid progress every year. Similarly, laws that support the existence of waqf, can develop in accordance with its benefits and novelty. Human civilization influenced by scientific progress can create new things and developments in the certainty of positive law and Islamic law.

The Indonesian state has positive laws that apply to its nation. As the legislation governing waqf is stated in Law No. 41 of 2004 concerning Waqf (hereinafter referred to as the Waqf Law) and Government Regulation No. 42 of 2006 concerning Implementation of

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<sup>102</sup> Kementrian Agama RI, *Dinamika Perwakafan Di Indonesia dan Berbagai Belahan Dunia*, 2015.

Law No. 41 of 2004 (PP concerning Implementation of the Waqf Law). The regulation has generally applicable provisions in the Articles therein.

Based on Article 43 paragraph 2 of Law number 41 of 2004 concerning waqf states that the management and development of waqf property is carried out productively as stated by some of the privileges of waqf money, Waqf YouTube channels that make money can also be included in the category of productive waqf. YouTube channels that produce some interesting and quality content can provide benefits and new knowledge to other users. Thus, da'wah can also be done through good content from the YouTube channel.

Waqf develops in productivity which is called productive endowment. As its development affects the objects of property that can be endowed, of course, things that do not violate the rules and sharia and productivity with great benefits. Thus, productive waqf in the form of a youtube account with intellectual rights is allowed in Indonesian positive law as long as it meets all the pillars and other conditions and rules.

The theory of productive waqf from Munzir Qahaf with its statement productive waqf is a fixed property or principal that is waqf to be used in production activities and the results are distributed in accordance with the purpose of waqf.<sup>103</sup> While the statement of productive waqf Choiriyah is a scheme for managing waqf donations from the community by producing donations so that they can produce

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<sup>103</sup> Qahaf, *Manajemen Wakaf Produktif*, h. 25-34.

good benefits that sustainable. Where waqf donations can be in the form of property moving such as money and precious metals as well as immovable objects such as land and buildings.<sup>104</sup> Statement of M. A. Manan productive endowments are endowments that have benefits and can be developed continuously economically.<sup>105</sup> While Danny Alit Danardono's statement, productive waqf is a waqf that can produce output in the form of goods and services, so that in order for waqf to produce output, inputs in the form of resources are needed, including labor, capital and management.<sup>106</sup>

These statements support the YouTube channel to be used as a waqf object because the YouTube channel is included in the category of movable objects and the monetization results can be used for the welfare of the people. Although the regulations in Indonesia still do not explicitly regulate the permissibility of YouTube channels as waqf objects. So, in contemporary development, YouTube channels can actually be used as objects of waqf because they are a moving asset as well as other than money.

## 2. Youtube channel as a object productive waqf in Islamic legal studies

YouTube accounts as productive waqf objects must certainly meet all sharia provisions, harmony, requirements and according to guidelines and other supporting provisions. In the pillars there are several

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<sup>104</sup> Choiriyah, *Wakaf Produktif dan Tata Cara Pengelolaannya*”

<sup>105</sup> . Mannan, *Ekonomi Islam Teori dan Praktek*, h. 84-97.

<sup>106</sup> Danardono. “Pengaruh Wakaf Produktif Terhadap Peningkatan Pendapatan Nazhir dalam (Kasus Wakaf di DKI Jakarta, h. Xii.

requirements that must be met as already explained, because these pillars and requirements are important things in waqf. Without the fulfillment of the pillars and conditions, waqf can be considered invalid.

Productive endowments certainly produce productivity that is of great benefit to the recipients, if managed properly and correctly. The waqf manager called *nazhir* should carry out the mandate given properly because of Allah SWT so that the waqf property given is not wasted or neglected. Some factors that influence the lack of management of waqf property include *nazhir* knowledge in managing and developing the waqf is less than optimal, wakif Those entrusted to manage it are less open with Ask and learn from the example existing or to be developed.<sup>107</sup> Therefore, a person who wants to waqf arrives well to whom he gives the endowment and clarifies the purpose and rules so as to produce great benefits.

Decision of the Indonesian Ulema Council No.1 MUNAS/VII/5/2005 about the Protection of Intellectual Property Rights is general and more protective of its rights holders only, but it does not consider the public interest.<sup>108</sup> Just as waqf is a muamalah activity in the realm of daily activities outside worship as the principle of mu'amalah "the original law in muamalah matters is permissible, unless there is a reason that forbids it." As well as the opinion expressed by Dr. Yusuf

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<sup>107</sup> Kementrisn Agama RI, *Kumpulan Khutbah Wakaf*, 2015, h. 101.

<sup>108</sup> Yuyun Widyastuti, Analisis Fatwa MUI No.1 MUNAS/VII/5/2005 tentang Perlindungan Hak Kekayaan Intelektual (Hak Cipta) Dalam Perspektif Masalah Mursalah, *Jurnal Al-Hakim* <https://doi.org/10.22515/alhakim.v2i1.2496>

Qardhawi, namely the explicit and logical nash is a clear, authentic, and explicit verse of the Qur'an or Sunnah, both the words and deeds of the Prophet Muhammad SAW which mention the prohibition.<sup>109</sup> So, this statement can be an explanation that a youtube account as a productive waqf in Islamic law is permissible as long as it does not violate the Shari'a, meets all the pillars and conditions as well as community guidelines and new rules applied.

There are several content criteria from the YouTube channel, including:<sup>110</sup>

- a) Youtube content to be uploaded must not violate Copyright Law. Everyone has their own work, this Act protects one's work from being claimed by others. With the Copyright Law, the state protects and respects a work created by someone and encourages that person to create new works again. The main purpose of the Copyright Law is to protect the economic rights of the creator of the work, moral rights and exclusive rights for the creator of the work. Copyright has been regulated in Law no. 28 of 2014 which was passed on October 16, 2014.
- b) The next law that must not be violated is pornography and pornoaction. Pornography is the display of human body or sexuality with the aim of arousing the lust of the viewer. While what is meant

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<sup>109</sup> Yusuf Qaradhawi, Halal wal Haram fil Islam, alih bahasa Tim Penerbit Jabal dengan judul Halal dan Haram, (Bandung: Penerbit Jabal, 2014), Cet. 12, h. 24.

<sup>110</sup> Ahmad Nur Ahsan, Didin Hafidzuddin dan Qurroh Ayuniyah, Analisis Channel YouTube Sebagai Wakaf Produktif, *Al-Kharaj*, Volume 5 No 4(2023) <https://doi.org/10.47467/alkharaj.v5i4.1919>, h. 1893-1894.

by pornoaction is a movement that leads to arousing lust, either accompanied by showing the body or not. The State Law that regulates Pornography and Pornoaction is State Law Number 44 of 2008. The Act that explain in detail the purpose of this regulation is to form a society with noble ethics, and respect the dignity of fellow human beings.

- c) Videos in Youtube content must also stay away from things that are violent, gambling and narcotics, because the viewing will affect the behavior of the audience. Young children who are accustomed to watching violent films will tend to solve problems more often with violence because it is in accordance with what is watched (Republic of Indonesia, 2009). Gambling and narcotics content will also bring bad behavior to its audience. The layman will see gambling as a shortcut in earning good money. While narcotics will make the audience curious and want to try it, after trying it will become addicted and damage the body.
- d) The prohibition of YouTube's Community Guidelines is a ban on spam and deceptive practices. Spam is content that is posted repeatedly or excessively. Including spam is promising viewers that viewers will see something at the end of the video, but it doesn't exist. This includes directing viewers to dangerous sites, using thumbnails and titles that don't match the content.

e) Impersonation and false interactions are also not allowed. Impersonation is a channel that imitates in terms of appearance, content, profile and so on to confuse others to distinguish the original channel from impersonators. Channels like this will be deleted by Youtube with a strike first. A fake interaction is an act that manipulates the number of views, the number of viewers who like and comment or anything else. Any form of manipulation is prohibited and will be subject to sanctions.

f) Suicide content should also not be shown on Youtube. The content in question is all videos that defend suicide, glorify suicide, self-harm content, video tutorials on how to commit suicide. While Youtube still allows educational content related to the dangers of suicide, suicide victims are blurred and not given detailed descriptions and some educational content that has a positive impact.

Based on YouTube's policy, it prohibits content about violence that is clearly displayed without blur. Content that appeals to violence, content about the banned mafia, hate speech directed at individuals, races or groups, and harassment and cyberbullying. These things are prohibited by Youtube to reward Youtube users and safeguard the next generation from illicit acts.

In the management of waqf assets, the Youtube Channel will be guided and Nazhir is entitled to guidance from BWI, this is in accordance with article 53 paragraph 1 of the Government Regulation on Waqf. The



guidance includes the preparation of infrastructure facilities, the preparation of regulations, the empowerment and development of waqf assets and so on. As in Islam it is also obligatory to carry out the mandate as well as possible.

Supervision of Youtube Channels that have been entrusted is carried out by the government and the community, both active and passive, Active supervision means conducting direct checks on Nazhir regarding the management of the Youtube Channel. While passive supervision means observing reports related to waqf management. With this supervision, every income or expenditure from the Youtube Channel must be clear and transparent. Monthly production costs for content creation and monthly income must be recorded clearly and transparently.

The positive impact of kindness content is directly such as content in the recitation channel. While kindness content that has a positive impact indirectly is like content in educational channels. As there are prohibited and not allowed such as deviant pornographic content and that is not in accordance with Islamic values, so the provisions regarding YouTube channel waqf Not only on positive law but also on Islamic law. Therefore, it is important that there are limits and conditions on YouTube channels as productive endowments to limit content in certain channels.

## **BAB IV**

### **CLOSSING**

#### **A. Conclusion**

1. In the perspective of Indonesia's positive law, YouTube channels can be used as productive waqf objects in accordance with Law No. 41 of 2004 concerning Waqf (hereinafter referred to as the Waqf Law) and Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 (PP concerning the Implementation of the Waqf Law). As the youtube channel is included in the category of endowments of movable objects other than money. So, youtube channels that have been registered with Intellectual Property Rights and make money with monetization are very beneficial for the welfare of the people.
2. In the perspective of Islamic law, youtube channels can be used as objects of productive endowments. As there is no contradiction from Dr. Yusuf Qardhawi's statement and the fatwa of the Indonesian Ulema Council. However, the content on the YouTube channel must not violate Sharia and community guidelines or other regulations. So that both the youtube channel and the monetization results are very useful.

#### **B. Suggestion**

The research that the author conducted in the form of this thesis discusses the renewal of waqf objects, namely youtube accounts as productive waqf to analyze and interpret them in view of positive Indonesian law and Islamic law. Several written regulations support the ability to entrust YouTube

accounts, although there has been no implementation. Thus, further research is needed for all academics and the community to support studies with the same theme in research.

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