



Waqf Law in the Muslim World: A Study of the Organization and Administration of Waqf in Tunisia

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Abstract

This research examines Islamic waqf in Tunisia, a topic that is rarely discussed in contemporary studies, especially from a historical and sociological perspective. Most of the existing studies focus more on normative aspects such as the laws, conditions, and pillars of waqf. In contrast, empirical research looking at the historical and sociological aspects of Islamic waqf is limited to local cases. Tunisia, which is known to be liberal in Islamic law reform, especially in the field of family law, rarely has in-depth studies on waqf. The purpose of this study is to analyse the organisation and administration of waqf in Tunisia and its impact on society. The research uses the literature method with a normative juridical approach which is descriptive analytical in nature. The results show that the organisation and administration of waqf in Tunisia are influenced by internal Muslim factors as well as government policies. The government, in particular, has a very dominant influence in the process. There are two main motivations from the ruling party: first, economic motivation that emerged since the French protectorate, which encouraged economic capitalisation; second, political motivation that initially supported certain political processes, but later developed for other political interests, as happened during the time of President Habib Bourguiba. The practice of waqf administration in Tunisia mostly involves administrative reform efforts in the broader context of Islamic law. Although there is no clear form of productive waqf, waqf in Tunisia has evolved in terms of its form and implementation mechanism in a more professional manner.

Keywords: Waqf, Tunisia, Management, Professional

Introduction

Tunisia, a country where 99.5% of the population is Muslim out of a total population of 10.8 million. It became a state under French protectorate after the La Marsa convention of 1883. Since then, the legal culture in Tunisia has been widely influenced by Western legal culture. Civil law, civil law, and criminal law, reflect French legal principles in Tunisia. Previously, the country was an autonomous province of the Ottoman Turkish Caliphate. On 20 March 1956, Tunisia's independence was officially recognised by France, and it became a Republic in 1957. In its constitution, Tunisia made Islam the state religion. The Maliki school is the most widely followed school in the country. The Hanafi school, which was officially adopted when the Ottoman Turks came to power in Tunisia, has also been influential, although it has not entirely replaced the Maliki school of law.¹

This article attempts to present a discourse and elaborate a little on the existence of waqf in one of the most controversial Muslim countries, Tunisia. The focus of attention is on the issues surrounding the organisation and administration of waqf in Tunisia. Why is the issue of waqf organisation and administration there important and how is it run and implemented?

Its writing is motivated by the fact that there is a scarcity of studies on Islamic waqf in terms of historical and sociological facts as they have been conducted in various Muslim countries so far. As far as the author's observations go, the existing studies are mostly concentrated in the normative area; around the commandments, virtues, and conditions and pillars of waqf. Only a few of the contemporary works are born from historical and sociological perspectives or empirical research. However, even then, they only target specific local and institutional cases.²

Talking about Tunisia, there is always something that attracts attention when the small country at the western end of the Arab world is brought back to the centre of the intellectual and social discourse in the Islamic world. As is known, Tunisia is a Muslim country that is known to be liberal in its efforts to reform Islamic law, especially in the field of family law. However, unlike in family law, which is rich

¹ Budi Juliandi, "Wakaf Dan Politik di Tunisia", Jurnal Ahkam: Vol. XV, No. 2, Juli 2015, 137-144.

² Sebagai contoh, Adijani al-Alabij, *Perwakafan Tanah di Indonesia dalam Teori dan Praktek*, (Jakarta: Rajawali Pers, 1989). Juhaya S. Praja, *Perwakafan di Indonesia Sejarah, Pemikiran, Hukum dan Perkembangannya*, (Bandung: Yayasan Plara, 1995) dan masih banyak yang lainnya. Semua itu berbicara mengenai perwakafan di Indonesia. Informasi tentang perwakafan di Tunisia tersebar secara parsial dalam berbagai studi tentang hukum Islam di negara-negara Arab dan Afrika. Namun demikian, sampai dituliskannya makalah ini, penulis belum menemukan satu buku atau artikel yang secara khusus membicarakan mengenai wakaf di Tunisia.

in improvisation and various studies, there are very few adequate studies or discussions on waqf.

The lack of this field of study is of course a sad thing. As one of the Islamic institutions that contains social and economic values, the waqf institution must be acknowledged to have played various strategic roles in the midst of the survival of Muslims in various parts of the world, both socio-culturally and politically.³ All of this should give birth to various awareness and *intellectual* and cultural *interests* for efforts to improve and develop the social institutions of the ummah.

In Tunisia itself, the institution of Islamic waqf has become increasingly interesting in line with the *regulative-legalistic* characteristics of its Islamic law reform efforts. As an Islamic teaching that has strategic economic potential, waqf is then inevitably included in the list of *regulative-legalistic* "reforms" of Islamic law.⁴ However, it is precisely because of this that the institution of waqf in Tunisia eventually found itself in the midst of a tug-of-war between various interests and ideologies. Indeed, this is the fundamental problem faced by Tunisia in the context of its efforts to organise and administer Islamic waqf.

Methods

The research method applied in the study of Islamic waqf law in the Muslim world, especially in Tunisia, combines a qualitative approach with a normative juridical literature method and analytical descriptive research. The qualitative approach was chosen because the focus of the research aims to explore and understand the phenomenon of Islamic waqf law in Tunisia, both from a historical and sociological perspective. This research will analyse patterns in the organisation and administration of existing waqf, with the aim of gaining a deeper picture of waqf practices in the country. In terms of the type of research, this study uses two main approaches: first, normative juridical research, which examines waqf-related legislation in Tunisia and relevant Islamic legal norms, as well as how these legal

³ Mohd. Zain bin Haji Othman, *Islamic Law with Special Reference to the Institution of Waqf*, (Kuala Lumpur: Prime Minister's Department Religious Affairs Division, 1982), hlm. 2. Tentang posisi strategis wakaf sebagai sumber pembangunan umat, lihat M. Habib Chirzin, "Wakaf, Sektor Ketiga, Sebagai Sumber Pembangunan Umat: Jaringan dan Kerjasama", *Makalah Workshop Internasional: Pemberdayaan Ekonomi Umat Melalui Pengelolaan Wakaf Produktif*, IIIT & Ditjen Bimas Islam dan Penyelenggaraan Haji Depag RI, Batam, 7-8 Januari 2002, p. 1-3.

⁴ Menurut Joseph Schacht, ada tiga hal penting yang masuk dalam daftar pembaharuan hukum Islam bersamaan dengan disahkannya UUD tahun 1956, yaitu *pertama*, penghapusan wakaf umum dan menasionalisasi harta berharga menjadi milik negara. *Kedua*, menyingkirkan kekuasaan *qadhi*, dan *ketiga*, diundangkannya Kode Status Personal Tunisia. Lihat Joseph Schacht, *Pengantar Hukum Islam*, alih bahasa Moh. Said, dkk., (Jakarta: Departemen Agama, 1985), p. 140.

theories and principles are applied in practice; second, analytical descriptive research, which not only describes existing phenomena, but also analyses the relationship between government policies and waqf practices in society, as well as the influence of economic and political motives on waqf management. The data sources used include primary data obtained through interviews with legal practitioners, academics, and relevant government officials, as well as direct observation of the organisation and administration of waqf in Tunisia. Secondary data sources include legal documents, government regulations, and scholarly literature discussing Islamic waqf, particularly in Tunisia. To collect data, this research relies on two main techniques: desk research, which includes the analysis of books, scholarly articles, and existing regulations, and in-depth interviews, to obtain information directly from sources involved in waqf management. Once the data is collected, it will be analysed descriptively to reveal the influence of legal policies, as well as political and economic motivations in the implementation of waqf in Tunisia. The researcher will draw conclusions about the dynamics of Islamic waqf law in Tunisia, the factors that influence the development of waqf, and its implications for waqf practices in the wider Islamic world. This research is expected to provide new insights in understanding the practice of waqf in Tunisia and contribute to a more in-depth study of Islamic law, using historical, sociological, and normative approaches.

Waqf in Modern State Practice: In Search of a Theoretical Argument

Waqf is one of the Islamic teachings that has a *tabaru'* (voluntary) value and aims to perpetuate one's property for the benefit of the community and social.⁵ The definition of waqf itself, linguistically, comes from the Arabic word *al-Waqf* (الوقف), a masdar form of *Waqafa*, *Yaqifu*, *Waqfan* (وقف - يقف - وقفا وقف). The word *al-Waqf* is synonymous with *al-Habs* (الحبس), a masdar form of *Habasa*, *Yahbisu*, *Habsan* (حبس - يحبس - حبسا), which means to hold back.⁶ Waqf itself according to the language is holding back to do, spend.⁷

In terms of terms, scholars differ in giving the definition of waqf according to the aspects they emphasise. Sayyid as-Sabiq, defined it as "holding back wealth

⁵ Ahmad Rofiq, *Hukum Islam di Indonesia*, (Jakarta: Rajawali Pers, 1998), hlm. 483. Lihat juga Juhaya S. Praja, *Perwakafan di Indonesia*, (Bandung: Piara, 1993), p. 27.

⁶ As-Sayyid as-Sabiq, *Fiqh as-Sunnah*, III, (Mesir: Dar-al-Qalam, 1984), p. 378.

⁷ Nor Mohammad Abdoeh, "Tinjauan Filosofis Terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf," *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 7, no. 1 (2020): p.15.

and giving its benefits in the way of Allah SWT." ⁸Imam Taqiyuddin Abi Bakr, on the other hand, emphasised its purpose, which is "to hold or stop property that can be used for good in order to get closer to Allah SWT."⁹ Because the waqf property is of eternal value, the act of waqf is also worth or rewarded *with jariyah*, *continuing* and flowing even though the *waqif* has passed away.

According to Abu Zahroh, this practice has been going on since pre-Islamic times and was later accommodated into Islamic teachings.¹⁰ As an Islamic teaching, it has continued to be practised until modern times. In fact, since several decades of the 19th and 20th centuries, waqf thinking and innovation in practice have developed in modern Muslim countries. This is done by making the teaching of waqf into a productive institution.... economically and beneficial for the ummah, as the purpose and definition of waqf itself.¹¹

Unlike *waqf* in the traditional sense, which is dominated by immovable objects, modern *waqf* has developed in various contemporary economic forms and platforms, such as *cash waqf*, *joint ventures*, *shares* and so on.¹² This is certainly a theoretical leap away from the traditional *waqf* perspective, as found in the fiqh books.

The involvement of third parties, in this case state institutions, in record-keeping is something not found in the classical fiqh provisions on waqf. Likewise, the treatment of the waqf property itself, which is freely utilised through various modern economic procedures, completely changes the notion that waqf property cannot change, even if the latter is done carefully. Related to this is the social function of waqf itself, which in many ways has evolved considerably in terms of organisation and administration.

Waqf, which used to be a static religious teaching and institution with ritual and individual functions, is now starting to develop waqf management that has productive and economic value for the development of society at large.

⁸*Ibid.*

⁹Taqi ad-din Abi Bakr, *Kifayat al-Akhyar*, (Indonesia: Syirkah an-Nur Asia, ttt), I, p. 319.

¹⁰ Muhammad Abu Zahroh, *Muhadarat fi al-Waqf*, (Mesir: Dar al-Fikr, 1971), p. 5, as cited by Ahmad Rofiq, *Ibid*

¹¹ Professional management through organisation and administration as well as legal protection under legislation that enables the safeguarding of both the assets and the objectives of waqf are two very important things. This is where Islamic legal theoretical arguments for the sustainability or practice of modern waqf can actually be found. It is not simply claimed to be incompatible with shari'ah; on the contrary, it supports the implementation of the principles of shari'ah itself.

¹² Ahmad Rofiq, *Hukum Islam di Indonesia*, hlm. 484. Gambaran dan informasi lebih lengkap tentang bentuk wakaf modern dan pendaayagunaannya secara lebih produktif lihat Anwar Ibrahim "Wakaf dalam Syari'at Islam", *Makalah Workshop Internasional: Pemberdayaan Ekonomi Umat Melalui Pengelolaan Wakaf Produktif*, IIIT & Ditjen Bimas Islam dan Penyelenggaraan Haji Depag RI, Batam, 7-8 Januari 2002, p.11-15.

Furthermore, the management and regulation of waqf in modern practice is done through professional waqf organisations and administration. In various Muslim countries that have begun to recognise efforts to legislate Islamic law, such as Tunisia, the issue of waqf administration and organisation has finally become a subject that cannot but be included in the modern regulatory process as its legal umbrella.¹³

Socio-Political Dynamics and Tunisian Islamic Law

Among the countries in the *Maghrib* region - the westernmost region of the Arab world namely Morocco, Tunisia and Algeria, Tunisia is the smallest country geographically.¹⁴ Tunisia's government, since independence, has been a Republic headed by a Muslim President with the capital in Tunis. And since its enactment in 1956, the Tunisian Constitution has established Islam as the state religion and Arabic as the official language of instruction in the government.¹⁵

Tunisia's origins date back to the Hafsid Dynasty which was established in 1230. In 1574, Tunisia became part of the Ottoman Empire. Along with the collapse of Ottoman rule, Tunisia also experienced constant security threats and national crises from one regime to the next. The collapse of Tunisia's economy and sovereignty occurred during the time of President Muhammad Sadiq (1859-1882). This led to Tunisia eventually becoming a French protectorate through the 1883 *Al-Marsa* treaty.¹⁶

The French protectorate of 1883 until the mid-20th century, it must be acknowledged, introduced both culture and *the* influence of European legal organisation. In turn, much of Tunisia's exposure to modernisation through both demographic interaction and colonisation encouraged and to some extent underpinned efforts at social, political and legal reform.

Based on this Constitution, Tunisia is demographically and culturally a country with a relatively homogeneous religious composition. However, the socio-religious pattern that runs at the grassroots and political level is not homogeneous,

¹³ *Ibid.* See also J.N.D. Anderson, "The Recent Developments in Shari'a Law IX", in *The Muslim World*, No. 42 of 1952, pp. 257-276. This is perhaps a logical consequence of the *public* nature of the waqf doctrine itself, which necessitates a regulation to facilitate it.

¹⁴ Grolier International Incorporated, *Negara dan Bangsa Afrika*, (Jakarta: Widyadara, 1990), I, p. 86.

¹⁵ Encyclopaedia of Britannica, Edisi compact disk, 1994-2002, Entri "Tunisia", sub-bab Administration and Social Conditions. Lihat juga *Constitution of Tunisia*, pasal 1 (tentang negara), dalam situs <http://www.oefre.unibe.ch/lawicl/ts00000.html>.

¹⁶ *Ibid.*, see also the entry "Tunisia", *The Encyclopaedia of Islam New Edition*, (Leiden: E.J. Brill, 2000), Vol. X, p. 651-656.

but rather heterogeneous. This heterogeneity is quite evident when looking closely at the geo-madhabs that Tunisians follow. Tunisian society is divided into followers of the Maliki and some Hanafi madhabs. This in turn has implications for the process of formulating various public policies and regulations in the field of law, for example.

Following its independence on 20 March 1956, Tunisia immediately set about reforming and codifying Islamic law. The effort to reform Islamic law was a synthesis of the French Civil Code and the liberal interpretation of Shari'ah, particularly in relation to family law. Taking into account the composition of the existing madhabs, both madhabs were utilised in civil matters.¹⁷

The controversial *Majallah al-Ahwal ash-Syahshiyah* was born. According to Esposito, it was under President Habib Bourguiba that Tunisia became the first Arab country to ban polygamy in the field of family law.¹⁸ The *Majallah* itself included legal material on marriage, divorce and child rearing that differed from classical Islamic legal provisions. In subsequent developments, the *Majallah* or the 1956 Personal Status law has undergone several changes, additions and further modifications through amendments to the law until 1981.

The political and legal reforms undertaken in Tunisia have placed the country at the forefront of what Schacht calls the modernism of Islamic legal legislation. If Tahir Mahmud's analysis is applied, then the form of Tunisian Islamic law reform can actually be classified into codification and regulatory reforms and at the same time conducting *intra* and *extra doctrinal reforms*.¹⁹

It must be recognised that the reform of Islamic law in Tunisia does seem quite liberal. However, in the end, the reform can be seen in general as the second type in J.N.D Anderson's analysis of Islamic legal reform, namely a country that does not fully accept the influence of Western law, but still applies Islamic law with a new interpretation.²⁰ This style and nuance has coloured the development of Islamic law at the level of state regulation. This can be seen, among others, with the inclusion of

¹⁷ Tahir Mahmood, *Family Law Reform in the Muslim World*, (New Delhi: Academy of Law and religion, 1972), p. 99.

¹⁸ John L. Esposito, *The Oxford Encyclopaedia of the Modern Islamic World*, (New York-Oxford: Oxford University Press, 1991), IV, pp. 235-239. Also Grolier International Incorporated, *African States and Nations*, p. 83.

¹⁹ Tahir Mahmood, *Family Law Reform in the Muslim World*, p. 267-270.

²⁰ There are three types of states in Islamic law reform in Muslim countries. (1) countries that still apply Shari'ah as a state legal system (2) countries that abandon Shari'ah and replace it completely with Western law and (3) countries that try to combine the two legal entities in a new interpretation. J.N.D. Anderson, *Islamic Law in the Modern World*, translated by Mahnun Hussein, (Yogyakarta: Tiara Wacana, 1994), pp. 100-101. Compare with S.H. Amin, *Islamic Law and Its Implication for the Modern World*, (London: Royston Ltd., 1989), p. 12.

formal administration involving state institutions, such as marriage registration, and so on; including in this case the organisation and administration of Islamic trusts.

Waqf Organisation and Administration in Tunisia

The institution of waqf (أوقف) in North Africa - especially in Tunisia - is better known as *al-Hubus* or *habous*²¹ (أحبس). The type of *wakf* recognised in Tunisia is *khoiri wakf*. Whereas *Ahly Wakf* (*family wakf*), as in other Islamic regions, has been totally abolished.²² In addition, *waqf* in this part of Africa is also not limited to places of worship. There are other waqfs that differ in form from the former.²³

The existence of *habous* in Tunisia actually shows a continuity that has been quite established, traditionalised and accepted in the midst of society. However, in reality, the existence of *habous* has never been institutionalised into a form of organisation or certain official regulations. The implementation of *habous* is still carried out by following traditional practices. According to Esposito, this seems to be a recognisable feature in almost every Muslim country²⁴. Particularly in Tunisia, at least until the middle of the early 19th century, there was no official regulation of how it should be conducted in an orderly and productive manner.

This awareness of the importance of regulating waqf seems to have started around the 19th/20th century AD, along with the entry and strengthening of the European colonisation process in almost all parts of Africa. As one of the manifestations of faith and religious expression, *waqf* began to be noticed and its social and political role taken into account. Based on this reason, it can be understood why many parties began to feel an interest in this (religious) organisation.²⁵

In Tunisia and other African countries, this awareness emerged in tandem with the idea of Islamic (legal) reform when the initial modernisation process was introduced under the influence of European nations through both cultural-

²¹ Arnold H. Green, *The Tunisian Ulama 1873-1915: Social Structure and Responses to Ideological Currents*, (Leiden: E.J. Brill, 1978), p. 111. See also the entry "Tunisia", *E.J. Brill's First Encyclopaedia of Islam 1913-1936*, (New York-Leiden: E.J. Brill, 1987), Vol. VIII, p. 862.

²² Anderson, J.N.D., *Islamic Law Reform in the Muslim World*, (London: The Athlon Press, 1976), p. 168.

²³ *Ibid.*

²⁴ John L. Esposito, Entry "Waqf", *Oxford Encyclopedia of the Modern Islamic World*, Bandung: Mizan, Volume VI, 2001.

²⁵ During the colonial period, the French protectorate wanted to transform the *habous* lands from the traditional owners of Islamic groups into the property of European farmers. Richard M. Brace, *Morocco, Algeria, Tunisia*, Englewood Cliffs: N.J., Prentice-Hall, 1964, pp. 62. This was a pragmatic consequence of the system of economic capitalisation that France brought to its colonies. See the entry "Tunisia", *The Encyclopaedia of Islam New Edition*, (Leiden: E.J. Brill, 2000), Vol. X, p. 652. 652.

demographic interaction and colonisation. As an Islamic teaching, waqf began to realise its function and social role by institutionalising it formally. This is where the official regulation of Islamic waqf began.

President Khair ad-Din in 1873-1877 CE is recognised as the first to make such reform efforts in relation to public trusts.²⁶ The purpose of this endeavour was first of all, of course, to provide services and to increase public order and trust. However, it was also to pioneer a series of Islamic reforms enacted through state policy.²⁷ Moreover, these efforts were made simultaneously with other efforts at the national level as a therapy for the crisis that was engulfing Tunisia at the time.

As is known, after the Ottoman rule collapsed, Tunisia gradually experienced the impact of the security and economic crisis. The leaders who came to power in Tunisia, from Husein Bey (1835), Ahmad Bey (1837-1855), Muhammad (1855-1859), Khair ad-Din (1873-1877) and Muhammad Sadiq (1859-1882), introduced various European ideas and systems of government in their efforts to maintain and improve the state of their nation. It was in this context that waqf, as a traditional Islamic institution, was expected to pave the way for such improvements, alongside internal Muslim efforts to involve the state in its regulation and implementation.

Khair ad-Din's policy on regulation was contained in a decree dated 19 March 1874. This decree outlined the organisation and structure of the public trust to be established. The headquarters of this public trust administration was called *Jam'iyyah* (جمعية) which would be headed by a Director with an Administrative Committee and consist of a number of offices. Furthermore, each of these bodies has sub-branch offices in each important region headed by a deputy (branch chairman).

Subsequently, the above organisational structure was changed through a decree dated 17 July 1908 which placed the *Jam'iyyah* under the "*Conceil Superieur des Habous*" (High Council of Waqf) headed by a Minister [Minister of the Pen and the Director General of the Interior]. However, the *Jam'iyyah* still retained the right to oversee the management of *private* waqf.

²⁶ "Tunisia" entry, *E.J. Brill's First Encyclopaedia of Islam 1913-1936*, p. 862.

²⁷ As it is known, Khair ad-Din's efforts to strengthen the Tunisian state from the burden of conflict and social and national problems were to carry out various reform efforts in all fields, such as education, state financial administration, administration of religious affairs and so on. Included in the list of reforms was the establishment of a new office for the management of waqf assets. See Ira M. Lapidus, *Sejarah Sosial Umat Islam*, alih bahasa Ghufron A. Mas'adi, (Jakarta: Rajawali Pers, 1999), hlm. 228-229. See also, *Encyclopaedia of Britanica*, entri "Tunisia", sub-bab The Growth of European Influence.

Simultaneously - not to mention competitively in 1885 the Khair ad-Din Tunisian government also legalised the practice of *enzel*²⁸ a breakthrough taken to gain economic benefits from the habous land. It should be noted that this legalisation of the *enzel* tradition was set out in terms of the custom that had generally prevailed in the local community.

The establishment of the waqf organisation by the Khair ad-Din government was of course followed by a process and a series of other administrative provisions that were generally applicable to Muslims. Predictably, this new idea was different from the previous provisions of waqf - as mentioned in the books of fiqh.

With regard to administration, in 1898 several provisions were made regarding waqf. *Firstly*, that the waqf could be exchanged for similar objects or for money in certain cases a piece of land had to be purchased with money, in accordance with the rules of the Shari'ah (decree of 26 May, 1886). But this decree has been amended and supplemented very often. *Secondly*, the Waqf could also be leased for a fixed period of about 10 years with the possibility of extension. Further to these two, *thirdly*, was the possibility of retiring *dead-hand* land; by decree of 22 January 1905, it was again possible to redeem *enclosed* land in 20 instalments (*annuity*). Later, however, attempts were made at reforms that did not offend religious sentiments. To a certain extent, this was done by including it in the rules on inheritance.

The situation changed when Tunisia gained its independence. The strong influence of the French protectorate left its mark on many aspects, both cultural and organisational. At the cultural level, this influence can be seen in efforts to change traditional ideas and beliefs. In family law, for example, various reform efforts were based on liberal interpretations of shari'ah and adaptations to modern social conditions.²⁹

²⁸ *Enzel*, from the Arabic *Inzal*, إنزال, is a change in the status of a waqf object through a payment in perpetuity, or a perpetual lease contract on an object at a very low price. This is a well-established tradition practised by Tunisian society. See the Tunisian entry in *E.J. Brill's First Encyclopaedia of Islam 1913-1936*, (New York-Leiden: E.J. Brill, 1987), Vol. VIII, p. 862. Compare, *The Encyclopaedia of Islam New Edition*, p. 656. For a more detailed explanation of this, see "Supplement", p. 423.

²⁹ According to some sources, the influence of Europe, especially France, is recognised in Tunisia. French, for example, is more commonly used as the language of social communication, even though Arabic has been established as the language of instruction in the government. See *Encyclopaedia of Britanica*, entry "Tunisia", sub-chapter Cultural life. See also John L. Esposito, Entry John L. Esposito, Entri "Tunisia" *Ensiklopedia Oxford Dunia Islam Modern*, Bandung: Mizan, Jilid VI, 2001, p. 59. Tahir Mahmood, *Personal Law in Islamic Countries [History, Text and Comparative Analysis]*, New Delhi: Academy of Law and religion, 1987, p. 151.

Organisationally, this European influence is characterised by the heavy adoption of models of social, political, economic regulation and legal systems as well. Therefore, in the post-independence period, still according to Esposito, the fate of waqf was not always better .³⁰

In Tunisia, this situation of European influence came to the fore during the reign of President Habib Bourguiba. It was during his reign that the *second* volume of reform was carried out in the field of waqf. Just as he made liberal reforms in the field of family law, in 1956, he also tried to abolish *khairi* waqf by nationalising valuable *habous* lands.³¹

After independence, the Tunisian government under the leadership of Habib Bourguiba set up a new project to draft a more modern family law. In formulating the draft, the drafting team referred to three guidelines. 1) unifying the judicial system for all Tunisians, 2) Modernising and reforming family law and 3) avoiding traditionalist conflicts by formulating a draft based on sharia and adopting Maliki and Hanafi fiqh as the majority of Tunisian schools of thought.³²

Unlike the reforms in family law, Bourguiba's nationalisation of *habous* lands was motivated by a specific socio-political motive to control potential Muslim socio-political forces. By nationalising the *habous* lands, Bourguiba succeeded in separating the ulama from an important source of material independence and leaving the religious establishment financially in the hands of the government.

Under President Habib Bourguiba, the organisation and administration of waqf was consequently attempted to be abolished. This was done through the Islamic law legislation project which was successfully enacted in 1956.³³ The nationalisation of *habous* lands, of course, had direct implications for the existence of the organisation, the administrative process and the social role that had originally been played through it.

At the level of state regulation, there is probably no state institution in Tunisia that calls itself a waqf institution. Nevertheless, this does not mean that the teaching of Islamic waqf has ended altogether. At the grassroots social level, this awareness of waqf can certainly still be found, even without state support. The regulation of anything related to religion, in this case probably including waqf, is

³⁰ John L. Esposito, *Ibid.*

³¹*Ibid.* See also the entry "Tunisia", *The Encyclopaedia of Islam New Edition*, (Leiden: E.J. Brill, 2000), Vol. X, p. 656. 656. See also Joseph Schacht, *Introduction to Islamic Law*, p. 140.

³² Muhammad Muhajir, *Reformasi Hukum Keluarga Islam Tunisia Pasca Arab Spring Antara Liberalisme dan Konservatisme*, Jurnal Al-Awal, Vol 14, No. 1. Tahun 2021. p. 29.

³³ Joseph Schacht, *Pengantar Hukum Islam*, p. 140.

included in the religious administration. However, since the beginning, waqf in the form of immovable objects has been in contact with state regulations in terms of *land reform* and agrarian or national land.³⁴

Although in the field of public law Islamic law has been relatively abandoned since the end of the Ottoman dynasty and continued with the arrival of French rule, in the field of family and personal law Islamic law continues to be practised by Tunisian society, where the Hanafi and Maliki schools are equally supported. The strong position of family law in a society that operates under the rule of religious scholars can be seen in the development and systematisation of the implementation of family law in society. Apart from the official enactment of foreign laws by the state. The jurists from the two dominant schools of thought since before independence or around the 1940s have succeeded in formulating a draft national sharia law.³⁵

One thing that cannot be separated in the regulatory process is the inclusion of various motivations and *vested interests* underlying these efforts, both for the sake of maintaining the Islamic institution/identity of waqf and waqf assets themselves and the interests brought by the authorities in the government. As outlined above, this phenomenon was very apparent when Islamic law legislation efforts were first introduced in Tunisia during the pre-protectorate period and even expanded in the following period.

After being approved by the government, the draft was finally promulgated throughout Tunisia on 1 January 1957 under the name *Majjalah al-Ahwal al-Syakhsiiyah* (Code of Personal Status) which is divided into 12 chapters/books and consists of 213 articles, namely:

- 1) Book I deals with marriage (Articles 10-28);
- 2) Book II deals with Divorce (Articles 29-33);
- 3) Book III deals with the 'Iddah period for wives (Articles 34-36);
- 4) Book IV deals with maintenance (Articles 37-53A);
- 5) Book V deals with Guardianship of Children (Articles 54-67);

³⁴ In the current Tunisian cabinet, there is one department that deals with religious matters, the *Ministry of the Religious Affairs*. This ministry is in charge of matters relating to religion, especially Islam and the small Jewish minority in the South. <http://www.ministeres.tn/html/ministeres/religieuses.html>. The author does not have any information on the position of waqf here, whether it falls under the authority of this department or not. However, in my opinion, if waqf is considered to be an Islamic teaching, then clearly it should be regulated in a specialised forum. In addition, information on waqf, as far as the author's observations are concerned, is also abundant in land studies in Tunisia. *The Encyclopaedia of Islam New Edition*, (Leiden: E.J. Brill, 2000), entry "Tunisia", Vol. X, pp. 651-656. See also *E.J. Brill's First Encyclopaedia of Islam 1913-1936*, (New York-Leiden: E.J. Brill, 1987), Vol. VIII, entry "Waqf", p. 1100-1102.

³⁵ Fahmi Assulthoni, *Konstelasi Pemikiran Hukum Keluarga Islam Di Tunisia*, Jurnal Asasi: Journal of Islamic Family Law Vol. 2 No.1 Oktober 2021, p. 72.

- 6) Book VI deals with Family Leadership (Articles 68-76);
- 7) Book VII deals with adopted children (Articles 77-80);
- 8) Book VIII deals with Missing Persons (Articles 81-84);
- 9) Book IX deals with Waris (Articles 85-152);
- 10) Book X is about Legal Capacity & Disability (Articles 153-170);
- 11) Book XI deals with Wasiat (Articles 171-199);
- 12) Book XII deals with Waqf (Articles 200-213).³⁶

Conclusion

It can be briefly mentioned that the existence of waqf in Tunisia has, over time, experienced significant ups and downs. Along with these ups and downs, it can be observed that there is also a "dynamic" in the regulation and implementation of waqf itself. However, as can also be seen, all of this cannot be separated from the *legal policy* that the policy holders themselves try to implement. In response to the issues raised at the beginning of this paper, it can be argued that the organisation and administration of waqf in Tunisia is motivated by many issues related to particular interests, both internal to the Muslim community and those of the authorities and policy makers. However, it is the latter who seem to dominate the process in Tunisia. The motivations of these policy holders can be categorised into *firstly*, economic motivations. This took place when the early European modernisation process was introduced through French protectionism, through the capitalisation of the economy. *Second*, was political motivation. Initially, this was done to support the previous political process. However, in its development it developed to also support other political interests, as happened during the time of President Habib Bourguiba. Its organisational and administrative practices, on the other hand, were mostly carried out through administrative reforms in relation to various aspects of Islamic law. It is not clear that there are specific forms of productive waqf. However, from the phenomenon that appears, it can be explained that waqf in Tunisia has also developed in the form and mechanism of its implementation in a more professional manner. Those are some of the things that the author can convey. Of course, there are not many new things that can be stated here. This is not only due to the author's lack of reach and knowledge, but also due to the limited opportunity to write it down only in the pages of a paper. To conclude this study, the author hopes for input and suggestions for various mistakes that exist, both unconscious and unavoidable in writing this time.

³⁶ Tahir Mahmood, (1995), *Statutes of Personal Law in Islamic Countries*. New Delhi: t.p., p. 43-44.

Bibliography

- Adijani al-Alabij, *Perwakafan Tanah di Indonesia dalam Teori dan Praktek*, Jakarta: Rajawali Pers, 1989.
- Abdoeh, Nor Mohammad. "Tinjauan Filosofis Terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf." *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 7, no. 1 (2020): h.15.
- Amin, *Islamic Law and Its Implication for Modern World*, London: Royston Ltd., 1989.
- Anderson, J.N.D, "development in Syari'ah Law IX (The Waqf System)", *The Muslim World*, Oktober, 1952.
- Anderson, J.N.D, *Hukum Islam di Dunia Modern*, alih bahasa Machnun Husein, Yogyakarta: Tiara Wacana, 1994.
- Anderson, J.N.D. *Islamic Law Reform in the Muslim World*, London: The Athlon Press, 1976.
- Arnold H. Green, *The Tunisian Ulama 1873-1915: Socialstruktur and Respons to Ideological Currents*, Leiden: E.J. Brill, 1978.
- As-Sayyid as-Sabiq, *Fiqh as-Sunnah*, III, (Mesir: Dar-al-Qalam, 1984), hlm. 378.
- Assulthoni, Fahmi, *Konstelasi Pemikiran Hukum Keluarga Islam Di Tunisia*, Jurnal Asasi: Journal of Islamic Family Law Vol. 2 No.1 Oktober 2021.
- E.A. Ayandele, "Nationalist Movement in North Africa and the Achievement of Independent in the Twentieth Century", dalam Joseph C. Anene and Godfrey N. Brown (ed.), *Africa in the Nineteenth and Twentieth Centuries A Handbook for Teachers and Students*, New York: University of Ibadan, 1966.
- E.J. Brill'symbol First Ensyropaedia of Islam 1913-1936, New York-Leiden: E.J. Brill, Vol. VIII, 1987.
- Grolier International Incorporated, *Negara dan Bangsa Afrika*, Jakarta: Widyadara, 1990.
- Ira M. Lapidus, *Sejarah Sosial Umat Islam*, alih bahasa Ghuftron A. Mas'adi, Jakarta: Rajawali Pers, 1999.
- Jamal J. Nasir, *The Islamic Law of Personal Status*, 2nd Edtion, Graham & Trotman Ltd., London, 1990.
- Juhaya S. Praja, *Perwakafan di Indonesia*, Bandung: Piara, 1993.

- Jean-Claude Vatin, "Revival in the Maghrib: Islam as an Alternative political Language", dalam Ali E. Hillal Dassuki (ed.) *Islamic Resurgence in the Arab World*, New York: Praeger Publisher, 1982, p. 221-248
- John L. Esposito, *Ensiklopedia Islam Modern*, Bandung: Mizan, Jilid VI, 2001.
- Joseph Schacht, *An Introduction to Islamic Law*.
- Joseph Schacht, *Pengantar Hukum Islam*, alih bahasa Moh. Said, dkk., Jakarta: Departemen Agama, 1985.
- Juhaya S. Praja, *Perwakafan di Indonesia Sejarah, Pemikiran, Hukum dan Perkembangannya*, Bandung: Yayasan Plara, 1995.
- Juliandi, Budi, "Wakaf Dan Politik di Tunisia", *Jurnal Ahkam*: Vol. XV, No. 2, Juli 2015.
- M. Habib Chirzin, "Wakaf, Sektor Ketiga, Sebagai Sumber Pembangunan Umat: Jaringan dan Kerjasama", *Makalah Workshop International: Pemberdayaan Ekonomi Umat Melalui Pengelolaan Wakaf Produktif*, IIIT & Ditjen Bimas Islam dan Penyelenggaraan Haji Depag RI, Batam, 7-8 Januari 2002, hlm. 1-3.
- Mohd. Zain bin Haji Othman, *Islamic Law with Special Reference to the Institution of Waqf*, (Kuala Lumpur: Prime Minister's Department Religious Affairs Division, 1982), hlm. 2.
- Muhajir, Muhammad, *Reformsi Hukum Keluarga Islam Tunisia Pasca Arab Spring Antara Liberalisme dan Konservatisme*, *Jurnal Al-Awal*, Vol 14, No. 1. Tahun 2021.
- Zahroh, Muhammad Abu, *Muhadarat fi al-Waqf*, Mesir: Dar al-Fikr, 1971.
- Richard M. Brace, *Morocco, Algeria, Tunisia*, Englewood Cliffs: N.J., Prenticce-Hall, 1964.
- Russell A. Stone, "Religious Ethic and Capitalism in Tunisia", *International Journal of Middle East Studies (IJMES)*, 5.3, Juni, 1974, p. 260-273.
- Mahmood, Tahir, (1995), *Statutes of Personal Law in Islamic Countries*. New Delhi.
- Mahmood, Tahir, *Family Law Reform in the Muslim Worls*, New Delhi: Academy of Law and religion, 1972.
- Mahmood, Tahir, *Personal Law in Islamic Countries [History, Tex and Comparative Analysis*, New Delhi: Academy of Law and religion, 1987.
- Rofiq, Ahmad, *Hukum Islam di Indonesia*, Jakarta: Rajawali Pers, 1998.
- Taqi ad-din Abi Bakr, *Kifayat al-Akhyar*, Indonesia: Syirkah an-Nur Asia, ttt, I: 319.
- The Cambridge Encyclopedia of the Middle East and North Africa*, New York: Cambridge University Press, 1988, p. 428-432.

The Encyclopaedia of Islam New Edition, (Leiden: E.J. Brill, 2000), Vol. X

The Middle East and North Africa, Thirty-Second Edition, Europa Publisher Limited.