

# The Role of Maslahah in Determining Government Policies on Waqf Property Development

**BITARA**

Volume 6, Issue 2, 2023: 141-147  
© The Author(s) 2023  
e-ISSN: 2600-9080  
<http://www.bitarajournal.com>  
Received: 21 March 2023  
Accepted: 21 April 2023  
Published: 27 Mei 2023

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## Abstract

This article examines the role maslahah plays in making government policies regarding the waqf institution. Waqf, being a social financing institution directly connected with the well-being of the people, should be given special consideration on the part of the government and the trustees of this unique institution. Also, this research highlighted the different modes by which this great institution could be made more useful and beneficial. The findings revealed that every action of the government must be for the benefit (maslahah) of the people and that the instruments of ziyadah & nuqsan, istibdal & ibdal, and the rest are tooling the government can employ in order to make waqf more beneficial to its people. This research employs the library research method, where the data is gotten from secondary sources such as books, journal articles, and conferences.

**Keywords:** Maslahah, Government policies, waqf property development

## Cite This Article:

Nafisa Suleiman Rahama & Mohammad Amir Wan Harun. (2023). The Role of Maslahah in Determining Government Policies on Waqf Property Development. *BITARA International Journal of Civilizational Studies and Human Sciences* 6(2): 141-147.

## Introduction

Waqf originates from the Arabic root verb *waqafa*, which means "to stop something." It can also indicate 'holding,' 'detention,' or 'keeping.' (Chowdury et.al., 2012). Waqf is the holding and preservation of a specific philanthropy or sadaqah (charity) with the intent of banning any use or disposal of the property beyond the specific purposes to which the land is dedicated in such a way that it cannot be traded (Chowdury et.al, 2012).

Examples of Waqf are mosques, graveyards, real estate, literature, livestock, funds, and other assets. The Land was historically vital for Waqf because of its productiveness, but nowadays, Cash Waqf is more important because it is more productive than land, as demonstrated by existing research, and profitable in modern Islamic financial system practices (Chowdury et.al, 2012).

Despite Waqf is not explicitly addressed in the Quran, it is strongly emphasized. Transferring wealth is an important issue in modern economic development make it more vibrant, prejudiced, unrestricted, and innovative. (Sanusi and Hakimi 2015). The origins of this

institution in Islam, however, are related to a hadith reported by Abu Huraira [May Allah be pleased with him (R)]: When a man dies, all his activities cease except three: recurring charity (sadaqah jariyah), knowledge (from which people benefit), and a pious progeny who prays for him. (Muslim: 1631).

While the institution and practice of waqf have long been established in Muslim societies, the issue of abject poverty and other socioeconomic problems among Muslims persists and worsens. This is most likely due to inefficiency in the way the waqf has been practiced and managed (Rosli et.al., 2017). Because the people in charge of managing Waqf property - *Mutawalli* or *Waqf* manager - have been proven to be incompetent in some circumstances (Chowdury et.al, 2012). And in some cases, waqf lands are handled by non-Muslims who lack the necessary knowledge, experience, and beliefs to run the venture (Chowdury et.al, 2012).

As a result, based on the principle of public interest (*maslahah*), the government must actively participate in waqf-related matters. Although the distribution and benefits of waqf funds must follow some rules and conditions as stipulated by the waqf provider (*waqif*) in *fiqh* literature (*kutub al-fiqh*), the government should also have some discretionary power to determine the best way to manage the waqf fund for the maximum benefit of the waqf beneficiaries (*mawquf alayh*) and societies in general (Harun et.al, 2016). The primary goal of issuing fatwas and resolutions based on *maslahah* is to protect the public. The goal of enacting *maslahah*-based shariah rules is to achieve fairness and justice by bringing benefits and avoiding hardship. In view of the above, this paper aims to explore the role of *maslahah* in determining government policies and examine the role of *maslahah* in the administration of *waqf*.

## Role of Maslahah in Government Policies

According to Al-Ghazali and Al-Syatibi, the greatest goal of *Shari'ah* is to advance people's *maslahah* (Khan 1997), that is to safeguard *aqeedah* / religion, self/soul, mind and reason, offspring, and property protection. *Daruriyyat*, *hajiyyat*, and *tahsiniyyat* are the three sections of *Maslahah*. *Daruriyyat* can ensure the existence of the five main things of *Maqasid Shariah*. *Maslahah* at the level of the *hajiyyat* is anything capable of providing convenience and support for the guaranteed existence of each of the five main items. *Maslahah* at the level of *tahsiniyyat* is something capable of providing beauty, perfection, and optimism to ensure the existence of each of the five main things (Asmawi 2014).

The goal of Islamic *Shari'ah* is to bring righteousness, wealth, and benefit to all people. *Maslahah* aspires to maintain the relevance and needs of humans in the world and in the hereafter. Every law that has been enacted is intended to bring happiness to individuals and society while also upholding the law. Furthermore, it strives for universal prosperity to create the highest level of perfection and a kind society. Al Shatibi asserts in his work *al Muwafaqat fi Usul al Shariah* that, in addition to preserving human interests in the earth, *Maslahah* aspires to preserve human interests in life after death (N. Muhammad et al., 2015). Furthermore, (N. Muhammad et al., 2015) claimed that the recommendations for the implementation of waqf in Islam had a significant contribution to the element of developing and preserving people's

economy. As a result, the waqf should be used as a tool for the overall development of Muslims' lives. There are economic, social, educational, and other considerations (Yumarni, A., Suhartini, E., and Mulyadi 2019).

Government policies are governed by the framework of *Siyasah Shar'iyah*. Literally, *siyasah shar'iyah* means Islamic orientation law or rule according to Islamic law (Yaacob, 1996). *Siyasah Shari'ah* is defined by Ibn-Aqil as the leader's action that can save the public and save them from destruction, even if the deed was not performed by the prophet (SAW) or there is no revelation related to the topic. For example, the prophet's companions used *maslahah* in many aspects of their lives. 'Umar ibn al-Khattab had a group of people assassinated for the murder of one person when they all partnered in the murder, even though no text existed to support it, but because of public *maslahah* (Ibrahim and zaini 2021).

According to Kamali (1989), *siyasah shar'iyah*: in the usage of the fuqaha, implies decisions and policy measures taken by the Imam and the ulul-amr (government) on matters for which no specific ruling could be found in the shariah. Fiqh (Religious) scholars have expanded the use of the term where any government affairs shall be in accordance with *maslahah* (a set of people's interests and needs) and do not conflict with the principles of religion, without a specific *dalil* (verse) (Dalila Dawud 2019). According to *Siyasah Shari'ah*, law implementation aims to ensure public interest and communal welfare, as a result, policies can be changed based on the ruler's *ijtihad* and intelligence (knowledge) (Ibrahim and zaini 2021). That government actions against its citizens must be based on the *maslahah* is a key principle in *siyasah shar'iyah*. This means that every decision and action of a government should aim for the good of mankind (Dalila 2019).

In Islam, government policy aims to create prosperity or *maslahah* for the entire Ummah (community), not a specific group of people. As a nation's society, government policy focuses on many aspects of people's lives, including education, the economy, socio-culture, psychology, and politics. During the reign of *Amirul Mu'minin* 'Umar bin Al-Khattab, the second caliph, he ruled with firmness while remaining sensitive to his people's needs (Ibrahim and Zaini 2021).

The ruler's obligation and priority are always to prioritize the benefit and interest of the citizens holistically. This is stated in an important fiqh method concerning *Siyasah Shari'ah*, which states: 'The ruler's action toward the citizens is based on *maslahah*' (Nazmi et al, 2021).

Caliph 'Umar' bn Khattab's decision for land management in southern Iraq was the first notable occasion in Islamic history in which *maslahah* was used as a basis for public policy. 'On the grounds of public interest, Umar chose not to distribute the seized territories of southern Iraq among the Muslim army's men. He argued that doing so would result in a class of feudal lords possessing enormous swaths of land, leaving future generations with very little. As a result, he declared that the acquired lands would become the property of the whole Muslim ummah, with current owners permitted to continue cultivating them while paying a charge known as *kharaj*. This ruling established a precedent for future jurists to invoke the public interest (*maslahah*) to justify public policies (Khan 1997).

Not only that, *maslahah* has been utilized in rulers' actions since the time of the prophet (SAW), as indicated by the distribution of *ghanimah* among Muslims during the battle of *Hunayn*. His followers followed in his footsteps, for example, in the collection and compilation of the Quran, which Abu Bakr began based on the *maslahah* (Kamali1998). Furthermore, *maslahah* was used to justify the creation of currency, the establishment of prisons/jails, the

enforcement of agricultural land tax (kharaj), and the right to inheritance of a woman whose husband had divorced her when he was dying (Kamali 1998). 'Umar ibn al-Khattab also used to seize half of the income of governors who coupled their personal fortune with official assets and then profited from their position as governor.

The policies that were adopted were for the benefit of the people, not just Muslims, but all individuals who lived under such governments. These policies should be interpreted considering the current situation. Of course, the digital age necessitates the revision of previous policies for them to remain current and applicable (Sukma 2021). The government learns how to accommodate and safeguard everyone's needs and expectations for public services and civil service (Sukma 2021).

Leadership trust to preserve people's benefit is not a playful trust, later it will be questioned in the Hereafter as the prophet (SAW) said: "There is no *wali* (ruler) trusted to lead his people from the Muslims then he dies in the condition of betraying his people, except Allah will forbid paradise for him" (Bukhari: 7151 and Muslim: 142).

In an attempt of the ruler to gain wisdom and rationality in making policies, the ruler should seek advice and recommendation from experts or specialists comprising the officials concerned (Ibrahim and Zaini 2021).

## Role of Maslahah in the Administration of Waqf Property

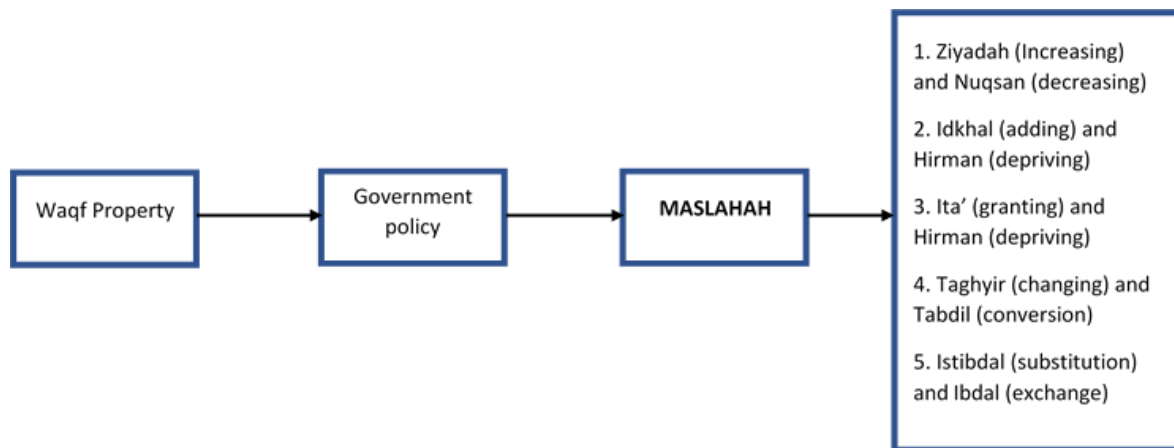
*Waqf* property is any property that is held by the waqif's heir from any sales and purchases, inheritance, grant, and will. The benefit of the *waqf* property in terms of income, acquisition, or other benefits will be determined by the *waqif* itself (Zahri 2014). Many issues pertaining to *waqf* property require innovative managerial and administrative policies. However, it is an obligation to observe *Shariah* principles relating to *waqf* to ensure any new policies pertaining to *waqf* comply with *Shariah* principles. In addition, *Maslahah* can be a parameter in scheming the solutions to solve any *waqf* issues. It is comprehended that to preserve the rights of Allah and the interests of human beings, the regulations or policy must be *Shariah* compliant and *maslahah* compliant (Awang M.B et al, 2017).

When it comes to *waqf* administration, the government's actions towards people must be related to *maslahah*, which should be done through the "*Tasarruful Imami 'ala Arra'iyati Manuthun bi al-Maslahah*" strategy or technique (Nazmi et.al 2021). Through various institutions, the government is responsible for constantly monitoring and coordinating all *waqf* assets to be fully utilized. If the *waqf* asset is no longer usable or less beneficial, it is the government's responsibility to carry out all maintenance steps necessary to ensure the property's ongoing use by the beneficiaries. As a result, when the *waqf* asset is no longer providing any benefits for a variety of reasons, the government is responsible for initiating changes to the condition of the asset to make it more beneficial so that the benefit can be realized at all levels of society in a country (Nazmi et.al 2021).

This is consistent with the fundamental principle in *maqasid al-Shari'ah*: "Finding or Bringing Good and Obstructing or Avoiding Harm" (Jalbu al-Masalih wa Dar-u al-Mafasid). This is the primary foundation in the aspect of property management, particularly when it comes to *waqf* assets, for it to achieve the greatest benefit (*maslahah*) in accordance with *Shariah*.

Based on the views of most Islamic jurists and a portion of Shafie jurists, the government must avoid abandoning waqf property without making attempts to reclaim or enhance its form of use or modify its functions to a more advantageous manner (Nazmi et.al 2021). *Maslahah* of *waqf* can be expanded in the following ways, which improve the asset from the standpoint of its source and application. All these factors are designed to prevent damage or loss in the use and worth of *waqf* asset. The figure below depicts how government policies are determined by *maslahah* in *waqf* property development.

**Figure 1: Maslahah in waqf property development**



1. *Ziyadah* (increasing) and *Nuqsan* (decreasing): allow the mutawalli or the founder to raise the share of one beneficiary while reducing the share of another beneficiary. This can be done to protect the needs of one beneficiary who needs more funds at a specific moment to continue operating when the other beneficiary does not need all his allocations during that time (Al-khatib 2016). For instance, if the founder had initially established a *waqf* with the intention of allocating its earnings equally between a certain mosque and a hospital, but then realized that the hospital required more than 50% and the mosque required less than 50%, then, in this case, these provisions grant the authority to raise the hospital's portion to, say, 70% and lower the mosque's portion to 30%.
2. *Idkhal* (addition) and *Ikhraj* (removal): These provisions allow the trustee to add another beneficiary and/or remove an existing beneficiary if they determine that the new beneficiary needs assistance in a way that is more urgent or significant than the needs of the existing beneficiary (Al-khatib 2016). This can also allow public service flexibility, for instance by allocating *waqf* funds from a dam's construction once it is complete to another crucial function like delivering water or electricity in rural areas in accordance with the needs of the community.
3. *I'ta* (granting) and *Hirman* (depriving) entitle the trustee or founder the right to distribute all or a portion of his *waqf* to any beneficiary for a set period, and they also have the right to deprive any recipient if there is a pressing necessity (Al-khatib 2016). For instance, if a *waqf*'s income is used to fund a student at a certain university, the

- founder may choose to donate some or all that income to a person in greater need, such as a sick at a particular hospital.
4. *Taghyir* (replacement) and *Tabdil* (conversion) allow the trustee to alter the function of the waqf funds whereas *Tabdil* mandates the founder the right to alter the nature of the waqf property itself (Al-khatib 2016). For instance, a building that was used for housing can be used for commercial activities if the area around that building has turned into a business district.
  5. *Istibdal* (substitution) and *Ibdal* (exchange) are particularly significant provisions because they permit the founder or trustee to sell an unprofitable waqf asset and then buy an additional lucrative asset to replace the unprofitable asset that was sold off (Al-khatib 2016). For instance, if a waqf land that was originally in the suburbs of a town ends up in the middle of it because of urban expansion and its value soars as a result, the founder is allowed to exchange the waqf land for another one, and in the process, he can either expand the waqf land by buying additional property at the suburbs or he may improve his waqf with funds.

The above-mentioned provisions are tools, the government can employ to make waqf more beneficial to the ummah. Therefore, it's necessary for the government to train the caretakers of waqf property on the various aspects with which waqf property could be developed.

## Conclusion

From the discussion so far, we have learned that every action of the government should be in line with the *maslahah* of the *ummah*, based on the renowned *fiqh* ruling which states "Rulers' actions toward the subject are based on *maslahah*". Also, we have seen the different methods by which the government can make waqf more useful and beneficial to the ummah. Some of the methods highlighted are *ziyadah* and *nuqsan*, *istibdal* and *ibdal*, and so on. Hopefully, this research will help policymakers and waqf trustees everywhere in the world to make the best use of *waqf* properties for the benefit of Muslims and humanity in general.

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