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Maximizing Charitable Endowments for Healthcare: *Maqasid* Shariah Perspectives from Wahbah Zuhaili and Shariah Economic Laws Compilation

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Abstract: A gift is a voluntary agreement without compensation, either to heirs or other people. However, its implementation will have an impact on conflict when the grantor suffers from illness. Of course, this has different legal implications than for healthy people. This study focuses on the opinions of Wahbah Al-Zuhaili and KHES. This research method uses library research, which is qualitatively analytical through a historical approach and a statute approach. The data analysis method uses the *fiqh muqaran* approach. The results of the research show that first, the law of giving sick people *maqasid* Shariah values is found in the following aspects: protecting religion, protecting the soul, protecting the mind, protecting property, and protecting offspring. Second, Wahbah al-Zuhaili classified illness conditions as serious illness and non-severe illness. Conditions of serious illness that cause death before one year has passed, the law applies to people who are seriously ill and cause death. Meanwhile, for illnesses that are not serious or do not cause death, the grantor may commit with the recipient to pay for life until death, as stated in Article 454 paragraph 2. Third, KHES specifically includes grants for seriously ill people in articles 724–727.

Keyword: *Maqasid* Shariah, Gift for the Ill, Wahbah Al-Zuhaili, KHES.

INTRODUCTION

In principle, endowments are acts of *muamalah* based on *tabarru*, emphasizing social welfare (Sariah et al., 2022). However, endowments also carry significant potential for disputes. Even pure gifts without compensation can ignite conflicts among parties with vested interests (Harahap et al., 2023). Such conflicts arise when the grantor is unable to fulfill the endowment due to certain conditions, such as mental incapacitation or severe illness. Certainly, such situations require legal certainty to prevent detrimental outcomes, such as the revocation of gifted assets. If this occurs, what initially was an act of merit (worship) through endowment transforms into a sinful act due to disputes, particularly involving the heirs of the grantor. The issue of a grantor's severe illness is a subject of study

among scholars in their works. For instance, Wahbah Al-Zuhaili, in his work "*Fiqh al-Islam wa Adillatuhu*," explains that severe illness is one that typically leads to death, wherein the sick individual is incapable of discerning external matters if male or internal matters if female. If the individual passes away under such circumstances within a year, whether bedridden or not (Al-Zuhaili, 2006).

Furthermore, if the illness persists continuously for a year and then the individual recovers, their actions are considered akin to those of a healthy person, provided the illness was not severe and their condition has improved. However, if the illness is severe, their condition changes and it results in death, then their state from the time of the change until death is considered an illness leading to death. The consequence is that actions performed during severe sickness leading to death, followed by demise, are judged based on the condition of the severe illness. However, if the individual recovers from the sickness within a specified period, which is one year, then their actions are deemed those of a healthy person. Thus, there is a defined timeframe, namely one year. The types of diseases leading to death according to the Shafi'i and Hanbali schools, as quoted by Wahbah al-Zuhaili, include diseases meeting two criteria: First, the disease concludes with death. However, if the individual recovers from the illness and then passes away, their endowment is considered that of a healthy person, as the illness did not culminate in death. Second, the disease is worrisome, meaning it confines the individual to bed, such as partial paralysis, leprosy, or intermittent fever lasting a day or two. All individuals suffering from such diseases are judged as healthy individuals, as these diseases are typically not serious. In this regard, the afflicted individual is to be healthy (Al-Zuhaili, 2006).

Furthermore, the conditions to be fulfilled by the grantor of an endowment are as follows: firstly, being the legitimate owner of the gifted assets; secondly, being legally competent and of sound mind; thirdly, being of adult age; and fourthly, making the endowment voluntarily without coercion (Sabiq, 1981). These conditions serve as legal requirements for actions that carry legal implications. Based on the aforementioned conditions, an endowment is deemed invalid if the grantor is in a condition of severe illness or near death. Indeed, from the perspective of *maqasid* Shariah in safeguarding wealth, the words of an individual in a state of severe illness cannot serve as a legal guide for providing legal certainty regarding an action (Ghalia et al., 2018). This is because the legal subject is in an unhealthy state or may be unconscious of their words, unable to distinguish between good and bad, or under pressure. On the other hand, if the grantor's recovery from illness is possible while their entire wealth has already been endowed, they will have no assets whatsoever for their sustenance. Furthermore, nothing will be left for the heirs as inheritance. Therefore, for the sake of realizing the benefit of safeguarding one's wealth, further examination of the act of endowment is necessary.

From the perspective of Islamic law, there are several terms related to the gift of property, one of which is *hibah*. *Hibah* refers to an agreement whereby a person transfers ownership of his or her assets to another person during his or her lifetime without compensation (Hassan & Mohamad Zaizi, 2020). Thus, linguistically, *hibah* means gift or grant. According to the Hanafi school, *hibah* is the act of giving wealth without expecting anything in return at the time of the endowment. Furthermore, the Maliki school states that *hibah* specifically entails the transfer of ownership of an entity without any practical compensation given to the recipient, also known as a gift. The Shafi'i school expresses that *hibah* involves the conscious giving of wealth while still alive (Najmia, 2021). Wahbah al-Zuhaili defines *hibah* as a contractual arrangement in accordance with the will of the grantor, whereby they transfer their wealth without compensation. This differs from the definition provided by fuqaha, who consider *hibah* as a contract that results in the transfer of ownership rights to another individual without compensation during one's lifetime, akin to a voluntary charitable donation (Al-Zuhaili, 2006).

In his book "*Fiqh al-Islam Wa Adillatuhu*," Wahbah al-Zuhaili opines that endowing the wealth of a severely ill individual is considered akin to a bequest. The endowed wealth should not exceed one-third; if it does, the validity of the endowment depends on the consent of the heirs. If the heirs do not consent, then the portion exceeding one-third is deemed invalid or void (Al-Zuhaili, 2006). Severely ill individuals are considered to be under guardianship. According to Imam Malik, those who fall under guardianship comprise six categories: minors, individuals lacking mental capacity, slaves, insolvent individuals (bankrupts), the sick, and wives. Upon examination of Wahbah al-Zuhaili's viewpoint, the categorization of severely ill individuals into the state of guardianship is to safeguard their wealth (*hifzul maal*) within the context of *maqasid* Shariah. Regarding the endowment of assets for severely ill individuals, Shariah Economic Laws Compilation (KHES) provides regulations in Articles 724–727.

METHOD

Based on the data sources obtained from several libraries, this type of research is a literature review or library research (Noor, 2023). The approach used is a statutory and historical approach by the legal materials used in the form of Supreme Court regulations and Wahbah Al-Zuhaili's legal opinions that have been expressed in the past. The primary sources are the books '*Fiqh al-Islam wa Adillatuhu*' and KHES. The research conducted is a qualitative analytical doctrinal study of Islamic law (Arfa, 2018). Data analysis combines two methods of data analysis, namely: first, internal coherence, and second, historical continuity (Sahir, 2021).

RESULTS AND DISCUSSION

Maqasid Shariah in Islamic Law Perspective

Maqasid Shariah consists of two words, "*maqasid*" and "shariah." Linguistically, "*maqasid*" has several meanings, including trust, goal, reaching for something, direction, and steadfastness (Al-Qahtani, 2015). Meanwhile, "shariah" linguistically means religion, community, methodology, path, and tradition. In terminology, *Manna' al-Qaththan* is defined as what Allah SWT has ordained for His servants from the laws brought by the Prophet from the prophets, whether related to beliefs, worship, transactions, morals, or rules in life (Syarwat, 2019).

The definition of *maqasid* Shariah is not fully elaborated in the works of classical scholars such as al-Juwayni, al-Ghazali, and al-Shatibi. For instance, in *Al-Mustasfa*, Al-Ghazali only mentions five *maqasid* Shariah, which is the preservation of religion, life, intellect, progeny, and wealth, without providing their definitions (Bhat, 2023). A comprehensive explanation can be found in the works of contemporary scholars such as Ibn Ashur, al-Raisuni, and Wahbah al-Zuhaili. According to Ibn Ashur, *maqasid* Shariah has two definitions: general and specific (Firdaus, 2021). Generally, *maqasid* Shariah encompasses meanings and wisdom inferred by the legislators in all or most of Shariah (El-Mesawi, 2020). Specifically, *maqasid* Shariah refers to the objectives desired by the Shariah (Allah) to realize beneficial goals for humanity or to safeguard common interests in their specific actions (Syarwat, 2019).

Maqasid Shariah serves as a method for deriving legal rulings, where considerations of benefit are paramount in determining these rulings (Alias et al., 2021). Thus, the benefits of the law can be experienced by humanity at large while simultaneously addressing contemporary issues. The goal of *Maqasid* Shariah is to achieve benefit, and the implementation of this benefit includes (Syarifuddin, 2014):

1. Bringing benefits to humanity, whether beneficial for worldly life or the afterlife. These benefits may be immediately felt, such as providing water to someone thirsty, or they may

be realized later, even though initially perceived as unpleasant, such as administering medicine to a sick person.

2. Avoiding harm, both in worldly life and the afterlife. Harm can be experienced immediately upon committing an action, such as becoming intoxicated after drinking alcohol. Alternatively, harm may occur later, with no immediate negative effects felt initially and even perceived enjoyment, such as committing adultery with a partner who has a contagious disease.

From the explanation above, it can be concluded that every prohibition and commandment in Islam contains elements of goodness for those who adhere to them. This is because Islamic Shariah teachings are based on the principle of benefit, which is simply defined as teachings that bring benefits and prevent harm. Every legal rule functions to integrate human interests, thus creating favorable conditions (Craig, 2017). The purpose of these laws is to uphold the *maqasid khamsah*, namely: preserving religion, preserving life, preserving intellect, preserving progeny, and preserving wealth (Mustamam, 2020).

Examination of the endowment of assets for the sick considers various factors. If the giver of the endowment (the grantor) has no heirs, then the endowment is valid. Furthermore, if the grantor bestows an endowment on one of their heirs, it is deemed invalid unless consent is obtained from the other heirs. However, if the endowment is given to someone who is not an heir and does not exceed one-third of the estate, then it is valid. If it exceeds one-third, the recipient must return the excess amount. Additionally, if the grantor has debts that remain unpaid until their demise, the endowed assets can be used to settle the grantor's debts. From the aforementioned discussion, the proposed solutions are intricately linked with the concept of *maqasid* Shariah, specifically fulfilling the *dharuriyyat khamsah*, such as *hifzul maal* (preservation of wealth). In this context, every parent must provide for their family to prevent destitution. The consideration for the validity of the endowment for someone who has no heirs stems from the fact that the assets are the prerogative of the grantor, who has full rights to allocate them as they wish. The recipient of the endowment may be someone who cared for the grantor during their illness. Additionally, the legal consideration regarding the amount of the endowment not exceeding one-third is due to the rights of the heirs over the estate. Similarly, if one of the heirs receives an endowment without the consent of the other heirs, it is considered invalid. These provisions are established in the context of *hifzul maal*, ensuring that the endowed assets are distributed to those who are rightfully entitled and chosen by the grantor.

Endowments of Wealth for the Ill: Wahbah Al-Zuhaili's Perspective

Wahbah Zuhaili argues that the definition of a disease that causes death is a disease that usually causes death. It is a sickness that makes a person unable to manage his affairs outside the home if he is a man and unable to manage his affairs inside the home if he is a woman. If a person dies in such a condition within one year, whether bedridden or not, then it qualifies as an illness that causes death. Furthermore, if the illness persists continuously like this and lasts for one year, then the individual is considered healthy. Their actions are regarded as those of a healthy person, as long as the illness is not severe and their condition does not worsen. However, if the illness is severe and causes a change in their condition resulting in death, then their condition from the time of the change until death is considered an illness leading to death (Al-Zuhaili, 2006).

To prove that a person's illness caused death, among other things, can be shown by several pieces of evidence;

1. Any legal action arising from an individual in a state of illness and intended as charity is considered an action added to the status after death, and the laws of bequest apply to it, regardless of the name given to the action.

2. The heirs of the person who performed such actions must prove that this legal consequence arose from the person who left them an inheritance while they were in a condition of illness leading to death. They have the right to prove this by any means. The heirs are not required to provide the date of occurrence of the document if such a date is absent.
3. If the heirs prove that the action arose from the person who left them an inheritance while in a state of illness leading to death, then this action is considered charity, as long as the person who performed it did not bring forth anything contradictory to that action. This is applicable as long as there is no specific law that opposes it (Al-Zuhaili, 2006).

Based on these requirements, charitable acts performed by sick individuals are legally recognized, provided they are by certain conditions and do not contradict other evidence. The heirs of the individual who performed the charitable act have the right to prove that the act was performed by the individual who left the estate to them in a state of illness leading to death. They can use various kinds of evidence to prove this, and they are not required to provide the date of the act if there is no such date.

Endowments of Wealth for the Ill: Perspective of KHES

KHES defines endowment in Article 668, number 9, stating that endowment is the transfer of ownership of an item to another person without any compensation. The legality of an endowment is contingent upon the giver of the endowment (the grantor) being of sound mind and adult age, as stipulated in Article 707. Therefore, the execution of an endowment by someone who is seriously ill raises the question of whether their mental faculties are sound. This is because individuals who are seriously ill may not be able to think normally and objectively; their primary concern may be focused on recovering from their illness. Consequently, this poses an issue when someone who is seriously ill undertakes legal actions, such as making an endowment.

KHES specifically mentions endowments made by individuals who are seriously ill, with several provisions outlined in Articles 724 to 727. Article 724 states, *"If someone who has no heirs endows all their wealth to another person while seriously ill and then delivers the endowment, then the endowment is valid, and the Bait Mal (public treasury) has no right to interfere with the estate after the individual's death."*

Article 725 states, *"If a husband who has no offspring or other heirs, or a wife who has no offspring from her husband or other heirs, endows all their wealth to their spouse when one of them is seriously ill and then delivers it, the endowment is valid, and the Bait Mal (public treasury) has no right to interfere with the estate of either of them upon their death."*

Article 726 states, *"If someone endows a gift to one of their heirs when the person is seriously ill and then dies, the gift is not valid unless there is consent from the other heirs. However, if the gift is given and delivered to someone who is not their heir and the gift does not exceed one-third of their estate, then the gift is valid. But if the gift exceeds one-third and the heirs do not approve of the gift, the gift is still valid for one-third of the entire estate, and the recipient of the gift must return the excess from one-third of the estate."*

Article 727 states, *"If someone's estate is depleted to pay off debts and the person, while seriously ill, endows their property to their heirs or someone else, then delivers it, and subsequently dies, Then the creditor has the right to disregard the endowment and include the gifted items in the repayment of their debt."*

KHES only regulates endowments made by severely ill individuals that lead to death, while those with chronic illnesses that do not lead to death are not addressed. As outlined in KHES articles 724–727, concerning endowments made by severely ill. In this article, it is explained that if the giver of the gift has no heirs and is in a serious illness condition, then they have the right to endow all of their wealth to someone else. Article 725 stipulates that if a husband without descendants or other heirs, or a wife without descendants from her

husband or other heirs, endows all of their wealth to their spouse while one of them is seriously ill and then delivers it, the gift is valid, and the Treasury has no right to interfere with the estate of either of them who has passed away. This article outlines that if one spouse, who lacks descendants or other heirs, or if a wife lacks descendants from her husband or other heirs, endows all of their wealth to their spouse while one of them is seriously ill, then they have the right to donate all their assets to their spouse.

Article 726 states that if someone grants a gift to one of their heirs while that person is seriously ill and then passes away, the gift is not valid unless it has the consent of the other heirs. However, if the gift is given to someone who is not an heir and does not exceed one-third of the deceased's estate, then the gift is valid. If the gift exceeds one-third and the heirs do not approve, the gift remains valid for one-third of the entire estate, and the recipient must return the excess from that one-third.

This provision explains that the giver of the gift is allowed to give it to their heirs and others if they obtain consent from the other heirs while they are seriously ill. However, if it exceeds one-third and the other heirs do not approve, the excess must be returned to the other heirs. Article 727 states, "If someone's estate is depleted to pay off debts, and that person gives their property as a gift to their heirs or others while seriously ill, and then passes away, the creditor has the right to disregard that gift and use the gifted items to pay off their debts." This provision clarifies that if a debtor makes a gift without obtaining permission from the creditor, the creditor has the right to disregard the gift and use the deceased's estate as payment for the debt.

Based on the explanation above, there are similarities and differences between Wahbah al-Zuhaili's analysis and KHES regarding the gift of property by someone who is sick. The difference lies in the condition of the person's illness. In his work, Wahbah al-Zuhaili classifies the illnesses experienced by someone when making a gift; some are classified as severe illnesses that end in death within a year, whether lying in bed or not. The indicator is that a man is not responsive to external interests, meaning he is unable to fulfill his duty as a husband to provide for his family. Whereas, a woman is not responsive to internal interests, meaning she cannot manage household affairs and fulfill her duty as a wife. Some are classified as not severe illnesses, indicated by continuous sickness lasting for a year, then improving. In this condition, if the person makes a gift resulting in depleting his wealth, the giver of the gift may require the recipient to fulfill a specific commitment, such as providing for the giver's livelihood until death or giving a salary for life, as stated in Article 454 paragraph 2.

Meanwhile, KHES only specifically explains severe illnesses. Another difference is that Wahbah compares gifts with wills, so the laws established in wills also apply to laws established with gifts. However, this is not evident in the discussion in KHES. The similarity between Wahbah al-Zuhaili's opinion and KHES is that heirs are not entitled to receive gifts unless authorized by other heirs. A gift to someone else with assets exceeding one-third must obtain permission from their heirs, and if permission is not granted, the excess must be returned. A person in debt prioritizes paying off their debt over the practice of giving gifts.

CONCLUSION

The legal analysis of gifts from the sick with *maqasid* Shariah values includes several aspects; protecting religion, soul, mind, property, and offspring. Getting permission from the heirs is the main requirement for gifts from terminally ill people. This is because it contains the rights of the heirs that must be given after the death of the deceased. According to Wahbah al-Zuhaili, gifts from the sick are classified based on the severity of the illness, namely, severe and non-severe illnesses. In the case of a severe illness that results in death within one year, a gift to another person is considered valid if the giver has no heirs. However, if the gift is made to both the heirs and another person, the consent of the other

heirs is required if it exceeds one-third of the estate. If more than one-third is given without the consent of the heirs, then the excess must be returned. As for illnesses that are not severe or that do not cause death, the grantor can commit to supporting the grantee until death. KHES clearly outlines grants from terminally ill people in Articles 724–727, which, among other things, regulate the validity of granting all assets to people who are terminally ill and have no heirs. The validity of grants from husbands and wives who have no offspring. The invalidity of a grant from a sick person who later dies to his heirs without the permission of other heirs and the invalidity of a grant from a terminally ill person who later dies to another person whose property exceeds one-third without the permission of his heirs.

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