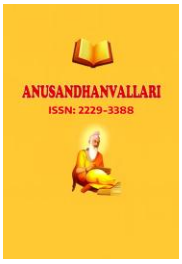

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The Classical Muslim Law of *Waqf*: A Study of Ḥanafī Legal Discourse

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Abstract: *Waqf* (pious endowment) is a crucial component of the Islamic financial system as well as a key institution within the Islamic framework, where a Muslim donates revenue-generating property for the benefit of others. This article aims to provide a comprehensive introduction to the classical Ḥanafī legal discourse on *Waqf*. A significant finding is the inconsistency in legal theory, as Ḥanafī jurists differ on whether the founder's ownership terminates upon the creation of a *Waqf*. This study explores how Ḥanafī scholars have historically understood and discussed *waqf* laws, what are the necessary conditions for its validity and what is the status of *Sharāiṭ al Wāqif*. Despite extensive discussions on *Waqf* in major *Fiqh* works, there is still a need for a comprehensive study focused exclusively on the Ḥanafī legal discourse. The study addresses this need using a descriptive and analytical methodology.

Keywords: Waqf, Ḥanafī , Fiqh, Sharāiṭ al Wāqif, Sharī'ah

1. Introduction

Waqf is one of the most significant institutions in the Islamic *Sharī'ah* (Islamic Law), with immense potential to reconstruct the social and economic fabric of society. This institution exemplifies human interdependence, generosity, tolerance, and solidarity across various dimensions—religious, social, economic, cultural[1] and humanitarian. *Waqf* has the capacity to address the fundamental needs of the impoverished, including clothing, food, and housing, while also providing a range of public goods and services, such as healthcare and education. Due to its substantial potential and embodiment of Islamic values of kindness and compassion, scholars regard *Waqf* as the most suitable *Infāq* (charitable spending) institution in Islām, capable of addressing a wide array of societal needs[2]. *Waqf* prioritizes both the welfare of families and the protection of individuals from poverty. It represents a more advanced form of *ṣadaqah*, (charitable spending) specifically known as *Ṣadaqah al-Jārīya*. *Waqf* fosters a sense of community and provides orphans, widows, and the impoverished with a stable source of income, constituting a significant act of kindness. This institution not only supports the immediate needs of vulnerable populations but also contributes to the long-term social and economic stability of the community[3].

Waqf literally means Imprisonment and interdiction. Its plural is *Awqāf,* which has been derived from the root word "*Waqafa*", which means "to stop", "to halt", and "to retain"[4] . In a technical sense, it means that the assets that have been donated will be prohibited from being transferred to another person. *Waqf* is the term used to describe the permanent dedication or consecration of movable or immovable property for any charitable, religious, educational, social, or welfare cause, either expressly or implicitly.[5] *Awqāf* are institutionalised expressions of perpetual philanthropy and manifestations of mercy, brotherly love, and affection for creation in the service of their Lord. In other words, it means to prevent *tamlik* and *tamalluk* (*Tamlik* means to give the possession of an asset to another person and *tamalluk* conveys the meaning of ownership of an asset) of its possession forever and retain it for the specific advantage of certain philanthropy[6].