**ISTIHSAN-BASED WAQF IN THE CAROTAI TRADITION IN THE TANANG RIVER COMMUNITY, AGAM DISTRICT, WEST SUMATRA**

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**Abstrak:** Masyarakat Nagari Sungai Tanang Kecamatan Banuhampu sudah lama melaksanakan wakaf dengan pemeliharaan ikan di sebuah kolam ikan besar yang oleh masyarakat disebut Tabek Gadang. Setelah ikan-ikan dari wakaf itu siap panen, sebagian dipancingkan beberapa kali pemancingan dengan ribuan para pemancing dan uang hasil pemancingan tersebut dapat dipergunakan untuk pembiayaan masjid, mushalla dan peruntukkan lain. Sebagian dijual kepada para pedagang, dan sebagian lain dicarotaikan atau diperebutkan oleh ribuan masyarakat. Artikel ini membahas tentang carotai wakaf pada masyarakat Nagari Sungai Tanang dengan mendalami nilai-nilai yang menjadi pertimbangan masyarakat melakukan budaya tersebut dan bagaimana pandangan istihsan mengingat ia berasal dari tanah wakaf berupa Tabek Gadang yang diproduktifkan melalui pendekatan istihsan. Metode kualitatif dengan pendekatan etnografi dipergunakan untuk menjawab fokus penelitian ini. Artikel ini berargumen, masyarakat melalukan carotai wakaf tersebut untuk mewariskan kepada generasi berikutnya nilai-nilai kebersamaan, kekeluargaan dan memupuk sifat amanah, meskipun dari segi dalil umum tidak ada yang mengatur dan membolehkannya, tetapi dengan beralihnya kepada dalil lain berdasarkan istihsan dengan ijma’ bisa dijadikan pertimbangan untuk terus berlanjutnya budaya atau tradisi carotai wakaf ini.

**Kata kunci**: Carotai Wakaf Produktif; Istihsan; Tradisi Masyarakat

**Abstrak:** The people of Nagari Sungai Tanang, Banuhampu District, have long performed waqf by raising fish in a large pond that the community calls Tabek Gadang. When the Waqf fish are ready to be harvested, some of the fish are caught several times by thousands of fishermen, and the money from fishing can be used to finance mosques, prayer rooms, and other things. Some of the fish are sold to traders, and others are shared or fought over by the community. This article discussed Carotai waqf in Nagari Sungai Tanang community by exploring the values that the community considered in carrying out this culture, and how was istihsan view towards it, considering that this activity originated from waqf land in the form of Tabek Gadang, produced through the istihsan approach. Qualitative method with an ethnographic approach was used to answer the focus of this research. This article argued that people carry out Carotai waqf to pass on the values of togetherness, kinship, and to foster the nature of trust to the next generation. Even though in terms of general arguments, no one regulated or allowed it, but by turning to other arguments based on istihsan with ijma’, this can be used as a consideration to continue the culture or tradition of carotai waqf.

**Keywords**: Productive Carotai Waqf; Istihsan; Community Traditions

**Introduction**

Waqf plays a very important role in community life. The need for mosques and prayer rooms as places of worship has had a positive impact, and the provision of land waqf has become a habit. As it develops, waqf in the form of educational facilities with the establishment of Islamic boarding schools and *madrasas*, health services, and the establishment of orphanages without reducing the waqf for places of worship are still being carried out, including ones in Nagari Sungai Tanang, Banuhampu District, Agam Regency. The people of Nagari Sungai Tanang build the *“sumarak”* (glory) of their nagari, including with waqf. They have built a mosque, prayer room, and small *surau* with waqf funds provided by the community. Apart from that, they have also built village *madrasas’* (Islamic schools) as a place to educate children to study Quran and religion, and provided burial grounds as well.[[1]](#footnote-1)

In addition to mosque and prayer room, places of religious study, and burial grounds, it is very interesting that there was a Waqf for 1 (one) large fish pond by the community called Tabek Gadang, which is about 300 meters long and about 75 meters wide, which is right in front of the Nagari Jami’ Mosque. This large fish pond, which is rarely found elsewhere in the Minangkabau area, is utilized by mosque administrators, nazhir, and community leaders by raising fish. After the pet fish are grown, they discuss the timing of fishing. The money earned from fishing can be used for mosque operations, prayer rooms, and other purposes.

After about 5 times of fishing, there are usually two things that the mosque administrators, nazhir, and community leaders do, they put tens of thousands of fish seeds back into the tabek gadang or *Carotai* them. When the agreement is reached between the mosque management, the Waqf Nazhir, and the community leaders, some of the fish are sold to *toke* (traders) and some are distributed to the community. This activity is attended not only by the people of Nagari Sungai Tanang, but also many oursiders, such as people from Bukittinggi, Padang Luar, Pakan Sinayan, and other villages around the Tanang River. It is even more interesting because not only people from their hometowns participated, but also people from other cities, such as from Jakarta, Medan, Lampung, and Padang who deliberately return to their hometowns to participate in the excitement of the Carotai Waqf.

 Many previous studies have been conducted on waqf, which can generally be divided into three forms. First, in the form of cash waqf with a slightly different location and approach. Yuli Yasin states that temporary cash waqf is really needed because many waqf assets are not well managed. Since it is temporary, it is a solution to develop waqf in addition to the existing perpetual waqf.[[2]](#footnote-2) Rysda Nurul believes it is important to create a community in the campus environment that promotes Waqf by involving various parties so that the Waqf can provide greater benefits.[[3]](#footnote-3) Rudy Haryanto emphasizes that the waqf money collected by Nazhir is invested in halal productive businesses so that the profits can be used for the needs of the community and dawah.[[4]](#footnote-4)

 Scholars have different opinions regarding cash waqf as stated by Mustafa Kamal. According to the Indonesian Ulema Council, cash waqf is permissible based on considerations of following the opinion of Hanafi school which allows dinar and dirham waqf, whereas according to Syafi’iyah scholars it is not permissible because the waqf must be eternal and not expire after being used.[[5]](#footnote-5) Suryani explaines that the Indonesian Ulema Council’s fatwa on cash waqf is in line with Sharia principles because it is beneficial to society.[[6]](#footnote-6) Garut ulama also agree that cash waqf is permissible because it does not conflict with the essence of waqf,[[7]](#footnote-7) and so that Muslims have the opportunity to organize Waqf well.[[8]](#footnote-8)

 Second, the management and exchange of waqf lands. Amimah Oktarina gave an example of the successful management of productive waqf in the Great Syuhada Mosque in Yogyakarta. With the existence of cash waqf in the mosque, it required professional management so that the hope of making a greater contribution could be realized,[[9]](#footnote-9) Meanwhile, according to Chairul Huda, the management model with sole ownership, partnership, and a combination of the two was like the one used by the Sultan Agung Semarang Foundation.[[10]](#footnote-10) This is slightly different from Abdurrahman Kasdi, who divides managers into individuals, organizations, and unified legal nazhir.[[11]](#footnote-11) Meanwhile, according to Lutfi El Falahi, the transfer of the function of the Waqf land based on Islamic law and Law No. 41 of 2004 concerning Waqf is permitted in accordance with the applicable provisions and has better benefits for the benefit and interests of the community.[[12]](#footnote-12)

 Third, the waqf management model is similar to the waqf for testamentary policies at the Al-Azhar Waqf Institution in Jakarta. According to Siska Lis Sulistiani, the insurance policy bequest waqf at this institution did not fully follow the fatwa of the National Sharia Council of the Indonesian Ulema Council in 2016, which was socialized in 2017, while the insurance policy bequest waqf has existed since 2012.[[13]](#footnote-13) Apart from political waqf in the form of optimizing waqf assets through waqf *sukuk*, *sukuk* and waqf are two different instruments. The joint effort between the two aims to achieve greater utility value.

Long before that, the *sahaba* (the Prophet Muhammad’s PBUH companions) had also given away the best of their possessions. The income from a piece of land in Khaibar from Umar bin Khattab’s waqf was given to the poor, Sabilillah, Ibn Sabil, and the servants without accumulating wealth. Abu Talhah donated his beloved Bairaha garden, Usman bin Affan bought the Raumah well, which was given to the community, and the water was also channeled to the date palm garden, thereby improving the welfare of the community during his time, and there were many more waqfs made by *sahaba* and people after them.

At first glance, this research seems almost similar to the productive waqf carried out by the *sahaba* with the donation of gardens and wells of which the water was very useful, but from the beginning, the produce of these gardens and the water of the wells seemed to have been intended for people in need, including nazhir who was allowed to use some of the proceeds. Similarly, previous research has shown that there were also some overlaps. However, the fundamental difference with the *Carotai* waqf of Tabek Gadang in Nagari Sungai Tanang is that the original intention was to use it for operating costs of mosques, prayer rooms, and other needs. If the original intention was carried out in accordance with the provisions of waqf in general, of course there would be no problems. But when more than two thousand people fought over half of the fish harvest from the Waqf, it certainly became something unique.

 The calculation was that if each participant got on average about 2 kilograms of fish, then it could be estimated that the Carotai of Tabek Gadang fish was about four thousand kilograms, if the price of the fish was IDR. 40,000,- (Forty Thousand Rupiah) per kilogram in Bukittinggi, then it was approximately Rp. 160,000,000,- (One Hundred and Sixty Million Rupiah) if it was cashed out to be distributed to the community. The problem was not only the monetary value of the fish, but it was more specific considering that the *Carotai* fish came from a fish pond donated by the former residents of the Nagari Sungai Tanang community, while the purchase of fish seeds and their maintenance also came from the mosque’s waqf money.

This article examined the values contained in the Carotai waqf culture in the Big Fish Pond *(Tabek Gadang)* in the community of Nagari Sungai Tanang, Banuhampu District, Agam Regency, West Sumatra, and explored the istihsan view of the Carotai waqf culture in this community. Qualitative method with an ethnographic approach to the Nagari Sungai Tanang community was used in conducting this research and *istihsan* approach was used to analyze it. The data were collected through interviews with mosque administrators, community leaders, religious scholars, and youth leaders. Apart from interviews, the author also tried to complement it with documentary data. In this article, the author’s initial picture saw values of community’s life and *istihsan* that they wanted to preserve and pass on to the next generation, even if it was through Carotai waqf (fought over the harvest of waqf) carried out by the people of Nagari Sungai Tanang.

**Carotai Waqf Tradition in Nagari Sungai Tanang, Banuhampu District, Agam Regency**

1. **Religious and Social Orientation of the Waqf in Islamic Law**

Waqf, as an Islamic doctrine, is religiously and socially oriented. From a religious perspective, the hope of rewards that continue to flow even after the death of the person who donated the waqf, because the donated assets are still intact and preserved, is a motivation in itself. From social perspective, waqf is an economic tool that has great potential to support the welfare of the community[[14]](#footnote-14) As stated in Article 5 of the Waqf Law No. 41 of 2004, the function of the Waqf is to realize the potential and economic benefits of the Waqf property for the purposes of worship and promoting the welfare of the community.[[15]](#footnote-15) These two sides, both the religious side and the social side, linked to the Carotai Waqf in Nagari Sungai Tanang, are unique, as shown in the following table.

Table 1: Waqf and Carotai Traditions in the Nagari Sungai Tanang Community

|  |  |
| --- | --- |
| **No** | **Waqf According to Ulama and Community Trends** |
| 1. | According to Imam Abu Hanifah, waqf holds objects, they remain the property of the *waqif*, can be withdrawn, sold, and inherited. |
| 2. | According to Imam Malik, waqf holds objects, cannot be released from the *waqif’s* ownership, and cannot be withdrawn, but is allowed within a certain time period. |
| 3. | According to Imam Syafi’i and Imam Ahmad bin Hanbal, waqf holds objects forever, releases the ownership of the *waqif*, cannot be withdrawn, and provides benefits to the community. |
| 4. | According to the people of Sungai Tanang, waqf is generally a permanent object, regardless of the ownership of the wakif, valid forever because It cannot be withdrawn, pawned, granted, or inherited. |

According to Islamic law, waqf is a form of giving that is carried out by preserving its origin *(tahbisul ashli)* and giving its benefits to others.[[16]](#footnote-16) *Tahbisul ashli*[[17]](#footnote-17) is by holding waqf objects from being sold, granted, rented, and inherited,[[18]](#footnote-18) while the manner of its use is in accordance with the wishes of the *waqif* without any compensation.[[19]](#footnote-19) According to Imam Abu Hanifah, waqf is the holding of an object that remains the property of the *waqif* by law and the use of its benefits for good. According to Imam Abu Hanifah, the ownership of waqf property cannot be separated from the person who donates it, and the *waqif* can even take it back or sell it, including becoming an inheritance for its heirs when the *waqif* dies.

This is slightly different from Imam Malik who stated that waqf did not release waqf assets from the *waqif’s* ownership, but waqf prevented the *waqif* from taking actions that could release his ownership to other people, and he was obligated to give the benefits and could not take them back. Imam Syafi’i and Imam Ahmad bin Hambal are of the opinion that by releasing assets from the *waqif’s* ownership and giving the benefits to the community, the *waqif* cannot pass them on to heirs and cannot give them to other people, even by exchanging them.[[20]](#footnote-20) If the *waqif* limits its time by saying, “I will donate this land for 5 years, or I will donate the land as long as I don’t need it and withdraw it when I need it,” then such words do not belong to the waqf, especially according to this scholar.[[21]](#footnote-21)

Meanwhile, Maliki stated that waqf did not have to be valid forever, but could be subject to a time limit, such as 5 years in the example above, and after the time had expired or reached the time as stated, the waqf objects would return to the person who donated them. At first glance, Maliki’s opinion is quite relevant to the current conditions with the right to use contract system. If Maliki’s opinion is implemented, waqf will have an expanded meaning and opportunities for people who do not have permanent assets while they want to do waqf. In addition to opening opportunities for potential waqf owners, waqf assets will increase in number and can be developed optimally.

Based on the above opinions, it can be understood briefly that waqf must fulfill several elements in the form of pillars and conditions. The Hanafi school states that there is only one pillar of waqf, it is *shigat*, which shows the meaning of waqf. Meanwhile, according to Maliki, Syafi’i, Hanbali, and general scholars, there are 4 pillars of waqf, they are the person who gives the waqf *(al-Waqif)*, the person who receives the waqf *(al-Mauquf Alaih)*, the object that is donated, and the *shigat* of the waqf.

Although at first glance there may appear to be differences of opinion among the ulama regarding the pillars of waqf, there is no difference when one considers that *shigat*, there are indeed the person who does it, with whom he does *shigat*, what is the object of *shigat*, and the *shigat* of the waqf itself. Indirectly, it is implied that the ulama agree that the four pillars of waqf must be present when the waqf is implemented.

In addition to the pillars of waqf that must be fulfilled, there are also conditions for each pillar. A *waqif* must have the ability to act, be able to weigh the good and the bad, and be the true owner of the donated property. The importance of the ability to act is that waqf is aqad *tabarru’* which means giving away assets without hope of return. With the *tabarru’* agreement, it means that the person making the waqf must be mature, rational, based on his own will, and not someone who is bankrupt.

Fiqh scholars agree that the conditions for waqf assets are that the waqf objects are something that is clear and belongs to the person who is *waqif*. There are differences in the requirements for movable and immovable property. Some Hanafiyah and Shafi’iyah scholars require that the waqf objects be immovable or fixed objects, while Hanabilah and Malikiyah scholars provide broader conditions that in addition to immovable objects, it is also permissible to endow waqf with movable objects.

*Mauquf alaih* is a person who has the right to maintain and use waqf objects, with the conditions that he must be present when the waqf objects are handed over, that he must have the ability to own the donated assets, and that the person receiving the waqf must clearly not be someone whose authenticity is doubted. The presence of the *mauquf alaih* at the time of waqf is because, according to the ulama, waqf is not valid for unknown persons or for someone who is not present. Another requirement for the *mauquf alaih* is that he may own assets with the aim of being able to account for and maintain the waqf assets well.

Finally, the waqf *shigat* takes the form of a declaration of consent by the wakif upon the transfer of his donated assets and qabul from the mauquf alaih. This *shigat* is certainly very important considering that waqf is in the form of relinquishing property rights and transferring ownership to other people and the community at large. Although they are different from alms, gifts, and grants, they have similarities. The nature of waqf transactions is almost similar and can even be grouped with alms. In alms transactions, there is a simultaneous transfer of objects and their benefits, where the donated assets can be spent by the recipient, whereas in waqf they cannot be spent, but only the results can be used by the community.

1. **Carotai Waqf in the Nagari Sungai Tanang Community**

Tanang River is one of the nagari located in Banuhampu District, Agam Regency, West Sumatra, with a distance of about 8.6 kilometers from the center of Bukittinggi City and a distance of about 3 kilometers to the center of the sub-district, which has a large fish pond known to the local community as Tabek Gadang (the length is about 300 meters with a width of 75 meters).

The people of Nagari Sungai Tanang with their Tabek Gadang Waqf raise fish from seedlings until the fish are big and ready to be harvested. The fish pond is irrigated with a spring about 100 meters above it (so-called *kapalo tabek*). Apart from irrigating Tabek Gadang, clean water of the Tanang River has also been known as a source of drinking water for Bukittinggi people since long time ago up to this day, as in the verse of Minangkabaunese song *“Janiah aianyo Sungai Tanang, minuman urang Bukittinggi”* (what a clear water of the Tanang River, a source of drink for Bukittinggi people). In accordance with the verse of the Minangkabaunese song, the outsiders often visited this *nagari* (area) with the verse of the song *“ba bendi-bendi ka Sungai Tanang.”* *Bendi* (horse-drawn carriage) is an illustration of the means of transportation for people who visited Nagari Sungai Tanang at that time.

The outsiders keep visiting Nagari Sungai Tanang up to this day. Many people also visit it for recreation, bringing their children to feed the fish while looking at the beautiful scenery, even not only on holidays. Apart from being fed by visitors, the fish in Tabek Gadang are also looked after by the nagari community and the caretakers.

*Niniak Mamak*, religious scholars, Nagari government, traditional leaders, community leaders, youth and the community take care of the fish. Even if there are residents who are really in dire need, they are committed not to take the fish in Tabek Gadang. They will be shamed by the people of Nagari if they take the fish.

After waiting quite a long time for the fish to be big and ready to be harvested, the people of Sungai Tanang, through their administrators such as the Ulama, *Niniak Mamak Pasukuan* (traditional leaders of the tribes), Nagari Government, Traditional Leaders, Community Leaders and Youth Delegates, have a meeting to hold a fishing expedition in which anglers participated. The money from fishing is used for mosques and prayer rooms, including other needs that have also been regulated based on the agreement of the management. When the fish in Tabek Gadang are caught by thousands of anglers, not just once, but at least 5 times every Sunday and most of the fish that are still in Tabek Gadang are taken and sold before the *Carotai* culture is held among the community. Even though the *Carotai* is not done after every fishing trip, it is at least one of the processes that must be followed when the *Carotai* is done, as stated by Elfiandi, the head of Bamus Nagari.

The culture of *Carotai* (fighting for catching fish together) with simple fishing gear is a long-standing cultural heritage or tradition that has been passed down from generation to generation and is eagerly awaited by the people of Nagari Sungai Tanang. On the long-awaited day for *Carotai* and usually on Sundays or holidays, people are already at the bank of large pond *(Tapian Tabek Gadang)* around 6:00 am local time, waiting for the sound of the tabuah as a sign of the start of *Carotai*, which usually ends around noon (Dhuhr time).

Community’s Carotai Waqf of Nagari Sungai Tanang, Banuhampu District



The last carotai culture that was held on Sunday, September 30th, 2018 was very lively. As according to Ferry Nata Kusuma (The head of Sungai Tanang), it was attended by about 2,000 participants. According to Ferry, this was an illustration of the high level of public interest in following it, even the author, as a Nagari child, often follows it.

**The Carotai Waqf Tradition as Seen from the Istihsan Theory**

1. **Istihsan in Legal Reform**

Istihsan linguistically means to consider something good,[[22]](#footnote-22) In terms of terminology, this means a mujtahid’s change from *qiyas jaliy* to *qiyas khafiy* or change from *kully* law to *juz’iy* law based on rational rules and principles. *Qiyas jaliy* is a *qiyas* that its *illat* is clear, but its influence in achieving the goals of Sharia is weak, this is often called *qiyas*. Meanwhile, *qiyas khafiy* is the opposite, the *qiyas* that its *illat* is vague, but its *illat* to achieve the goals of Sharia is strong.

The disagreement among usul fiqh scholars lies in the nature and form of *istihsan*. Hanafiyah scholars have proposed the *ta’rif* of *istihsan*, including the following:

*“Doing good deeds with ijtihad and a strong opinion in determining what is syar’i itself has handed it down to us.”*

If this is what is called *istihsan*, then there will be no ulama who reject it. Hambali scholars say that *istihsan* is a shift from *qiyas* to another, stronger proposition. Maliki scholars who use *istihsan* as a legal proposition also express it with *ta’rif:* “Doing good deeds with one of the two strongest propositions, or adhering to general propositions if those propositions can still be applied, and adhering to *qiyas* if the *qiyas* are generally valid.[[23]](#footnote-23) Based on this ta’rif, the Maliki ulama practice *istihsan* by dividing it into 4 types; there are istihsan with ‘urf, istihsan with maslahah, istihsan with ijma, and istihsan with the rules of raf’al-Harj wa al-Masyaqqah (eliminating difficulties and hardships). ).

The ulama allow waqf for movable objects such as cars and similar things, even though according to the regulations waqf is for fixed objects such as land and buildings.[[24]](#footnote-24) This permission is related because it has become *‘urf* for the community to donate its movable objects. Based on the category of istihsan with *‘urf*, Malikiyah ulama allow waqf to movable objects even though there is a time limit.

*Raf’al-Harj wa al-Masyaqqah* in eliminating difficulties and hardships includes rules that are *qath’i* in nature. One thing that often happens in society is the use of public toilets without regulations regarding the rental price, the time of use, and the amount of water used. According to *ashal* or general rules, this example is prohibited because it involves *gharar*. However, based on *istihsan*, this rental is permitted with the consideration of eliminating difficulties, because the use of public bathrooms has become a communal necessity that is difficult to avoid.

Abandoning general arguments because of problems such as the problem of dependents or guarantees for cooperating workers. Based on the rules of *Ashal*, a worker who enters into a cooperation agreement is a trustworthy person, thus there is no need for guarantees unless it appears that one of them has not kept his promise. Imam Malik with *Istihsan* believed that one who cooperates with other people is still burdened with collateral coverage by abandoning the basic rules because there is a benedit to be achieved.

Istihsan with *ijma’,* such as abandoning general rules or arguments based on *ijma’*.[[25]](#footnote-25) Among the examples is the obligation of someone who cuts off the tail of another person’s donkey. According to the general rule, one who cuts off the tail of another person’s donkey must pay according to what he has done. However, based on *ijma’*, someone who damages a part of another person’s donkey must replace the entire thing, not just the part of the donkey that was damaged. Imam Malik made *ijma’* the basis for istihsan in this example with the obligation for those who cut off the tail of another person’s donkey to pay the price of the donkey.

Indirectly, some people also practice it. When someone else’s property or object is damaged by someone else, he does not want just the damaged part to be replaced, but the person whose item or object was damaged asks for a complete replacement or even a new one, while giving the damaged part to the person who broke it. The original rule is that the replacement is only for the damaged part, but considering that the damage means that the item or object is not functioning properly, it is a departure from the original rule with a full replacement.

Based on the above examples, Malikiyah ulama use istihsan with Islamic arguments and leave other Islamic arguments. Moving from the requirements of one Sharia proposition to another Sharia proposition such as *ijma’, maslahah, ‘urf,* and eliminating difficulties. The author also agrees to use *istihsan* when it is understood as moving from one argument to another stronger argument or moving from the provisions of one general argument to another more specific argument.

 Al-Bazdawi, a prominent Hanafi cleric, stated that *istihsan* is a form of *qiyas*, one that is weak in influence but strong in evidence is called *jaliy*, and the other that is strong in influence but weak in evidence is called *khafiy*.[[26]](#footnote-26) The first is called *qiyas*, and the second is called *istihsan*, in the sense that *istihsan* is the strengthening of *qiyas khafiy* against *qiyas jaliy*. The ulama who most strongly rejects *istihsan* in this second sense is Imam Syafi’i, who said that anyone who practices *istihsan* is the same as making up the Sharia.[[27]](#footnote-27)

No definition of istihsan could be found among the *Shafi’iyah* scholars because from the beginning they did not accept *istihsan* as one of the arguments for establishing sharia. In this case, Imam Syafi’i stated that whoever uses istihsan has actually made up the Sharia.[[28]](#footnote-28) Imam al-Ghazali also did not use *istihsan (ibthal al-istihsan)* because Sharia is not made for servants other than those justified by miracles. The use of the term *istihsan* tends to lead to making up one’s own Sharia.[[29]](#footnote-29)

Slightly different from the Malikiyah scholars above, Hanafi scholars who also use *istihsan* that is divided into: *istihsan bi al-Nash, istihsan bi al-Ijma’, istihsan bi al-Qiyas al-Khafi, and istihsan bi al-Darurah.* *Istihsan* with *Nash* *(istihsan bi al Nash)* is a mujtahid’s that turns away from the law desired by general rules to the text that specifically requires it.[[30]](#footnote-30) In principle, the general rules cover almost the same issues, but in practice there are special arguments that differ from the general arguments, such as the issue of drinking water during the month of Ramadan. Based on the general rules, drinking water in the month of Ramadan breaks the fast. For people who forget that they are fasting, drinking water will not break their fast because there is a special reason.

*Istihsan bi al-Ijma’* means abandoning Qiyas and general rules because of Ijma’ which establishes a different law from the previous law established by *qiyas*. *Istishna* type of buying and selling is void according to qiyas and general rules because buying and selling is done without any objects or goods, but based on *istihsan with ijma’*, buying and selling like this is permissible and this is what the community follows. Finally, *istihsan bi al-Dharurah* gives an ancient example that can be indirectly applied to other examples that society faces. If a well is impure, the well water cannot be used for cooking or ablution for prayer, based on *qiyas*. If you pour several buckets of water into the well, the water you pour will indirectly mix with the unclean well water. According to some Hanafiyah scholars, by using *istihsan bi al-dharurah*, the well can be cleaned and used as usual by pouring several buckets of clean water into the well.

1. **Carotai Waqf as seen by Istihsan**

Table 2 Waqf and Istihsan in Community Culture

|  |  |  |
| --- | --- | --- |
| **No** | **Waqf According to Ulama and Community Trends** | **Istihsan According to Scholars and Society** |
| 1. | According to Imam Abu Hanifah, waqf holds objects, remains the property of the *waqif*, and can be withdrawn, sold, and inherited. | Hanafiyah scholars argue with *istihsan* using *qiyas khafiy* against *qiyas jaliy* while dividing it into *istihsan bi al-Nash, istihsan bi al-Ijma’, istihsan bi al-Qiyas khafiy, and istihsan bi al-Dharurah.* |
| 2. | According to Imam Malik, waqf holds objects and does not release them from the *waqif*’s ownership, but they cannot be withdrawn, and waqf may be subject to a time limit. | Malikiyah scholars use istihsan by dividing it into *istihsan with ‘Urf, istihsan with Maslahah, istihsan with Ijma’, and istihsan with Raf’ al-Harj wa al-Masyaqqah.* |
| 3. | According to Imam Syafi’i and Imam Ahmad bin Hanbal, waqf holds objects forever, releases the ownership of the wakif, cannot be withdrawn, and provides benefits to society. | Shafi’iyah scholars do not accept istihsan as evidence in establishing Sharia law, while some Hanabilah use it. |
| 4. | According to the people of Sungai Tanang, waqf is generally a permanent object, regardless of the ownership of the *waqif*, and is valid forever because it cannot be withdrawn, pawned, donated, or passed on to heirs. | In general, the people of Sungai Tanang do not understand istihsan as a legal proposition, but with many considerations, they carry out *Carotai* waqf, which in a sense uses *istihsan*. |

Regarding the implementation of Carotai waqf in the Nagari Sungai Tanang community, the *Istihsan* is of the opinion that it needs to be further investigated considering that the Carotai waqf comes from the Tabek Gadang fish, which was a waqf from the previous *waqif*. That the land used as Tabek Gadang has remained the same from the past until now. The Tabek Gadang has never been donated, exchanged, or withdrawn by its previous heirs, let alone it is waqf by many tribes in Nagari Sungai Tanang. Apart from fish farming, the water from Tabek Gadang continues to flow down to irrigate the farmers’ fields and this function has not changed. The intention of the waqf rewards to provide convenience to the farmers continues to this day, which is very much in line with Imam Syafi’i’s opinion.

Similarly, in terms of time, the people of Nagari Sungai Tanang understand that no waqf is limited by a period of time. The waqf granted by the *waqif* is valid forever and this is well known to the Nagari community. Meanwhile, the management of the waqf assets is not specifically determined, but it seems that the waqf assets are managed and administered by nazhir, mosque administrators, community and youth leaders, the Nagari government, as well as traditional leaders from each tribe in the Nagari. In general, the management is not determined by permanent team, but depends on who the delegates and respective administrators are.

One of the basic questions of this research is what to do with the fish allocated (disputed) by the Waqf. It is clear that the main results expected from Tabek Gadang were fishing and selling fish. If the fish was taken away, something would be lost in terms of price, value, and income. However, from the perspective of *istihsan*, this seems to fall under the category of *istihsan bi al-Ijma’* because it can be seen that all the people of Nagari Sungai Tanang, represented by nazhir waqf, *niniak mamak* (traditional leaders of each tribe), religious scholars, inttelectuals, traditional leaders, community leaders and youth, agreed to hold the Carotai waqf. This, especially considering that Carotai activities are still being carried out today.

*Istihsan bi al-Ijma’* is a division of *istihsan* by Hanafiyah ulama who use it as a postulate in enforcing the law. When it comes to waqf, according to Imam Abu Hanifah, the waqf holds the waqf objects, but the waqf objects remain the property of the *waqif* and he can withdraw them, sell them, or even pass them on to heirs. Malikiyah clerics also use *istihsan*, whether it is *istihsan with ‘Urf, istihsan with maslahah, istihsan with ijma’, or istihsan Raf’ al-Harj wa al-Masyaqqah,* but when it comes to waqf it is a little different because Malikiyah clerics believe that the waqf continues to exist. Waqf assets cannot be separated from the ownership of the *waqif*, but the waqf cannot be withdrawn, donated, or bequeathed to heirs.

Syafi’iyah ulama and some hanabalah ulama who do not postulate with *istihsan* are very much in line with the people of Nagari Sungai Tanang in implementing waqf. The community believes that waqf objects must be held indefinitely, regardless of the waqf’s ownership, and the *waqif* and his family cannot withdraw, donate, sell, or pass on to their heirs. If it is related to such an understanding, of course, the community does not carry out the Carotai tradition or culture from the proceeds of the Tabek Gadang waqf.

In the Carotai waqf in the Nagari Sungai Tanang community, it is understood that there is a combination of two different opinions of the ulama, because in terms of the waqf rules, it seems that they use the opinion of Imam Syafi’i, while in terms of the implementation of the Carotai waqf, they use the opinion of Imam Abu Hanifah, even though in the Nagari Sungai Tanang community, Imam Abu Hanifah’s opinion is not as well known as Imam Syafi’i’s opinion.

**Social Cohesion Growing out of the Carotai Tradition**

Carotai Waqf in Tabek Gadang Nagari Sungai Tanang is estimated to have started around 1950 and taught the values of life to the residents of Nagari community as stated by Ferry Nata Kusuma (community figure). First, it teaches nephews, nieces, and children the values of trust in protecting and raising the fish in Tabek Gadang. They remind each other of their respective roles and make them aware that even though the fish in Tabek Gadang are not prohibited fish, they have to take care of them together.

Second, to teach family values and togetherness. Many of the people of Nagari Sungai Tanang have migrated to Jakarta, Medan, Padang, and other cities that are almost the same as other Nagari in the Minangkabau circle. These overseas communities rarely return home together (so-called pulang basamo) to their hometown in Nagari Sungai Tanang, unless there are activities that the children of the three *jorong* (villages) do together, such as this Carotai event.

Third, to re-cultivate the spirit of mutual cooperation and a sense of togetherness. According to Elfiandi (Chairman of the Nagari Advisory Board), in the implementation of the Carotai Waqf, there was no difference among people whether they have lower or higher social status. Everyone was covered in mud, their bodies and clothes were wet, but they still had time to talk to each other. Happy smiles for people who caught big fish, and for those who caught small or medium fish, they were still enthusiastically looking for them.

Apart from that, Wandrizon, chairman of Nazhir Waqf of Tabek Gadang, explained that the Carotai waqf was carried out when the Tabek needed repairs, such as the edge of the pool was leaking, while the time for carrying out the repairs was still a matter of deliberation, so that the Carotai waqf can be participated in by as many people as possible in Nagari Sungai Tanang, both those in their hometown and people who are overseas by going home together (so-called *pulang basamo*).

**Conclution**

The implementation of the Carotai waqf in Tabek Gadang (a large fish pond) in Nagari Sungai Tanang, on the one hand, sought to realize the values of social cohesion in the community, while on the other hand, the fish that was Carotai (disputed) was waqf assets. By looking at several series of activities before the implementation of the Carotai waqf, and most importantly the joint deliberations before the decision to do Carotai in Tabek Gadang was carried out, even if there was no evidence to support it, but at least with some considerations, it attracted positive values for the youth, it can be understood that they tried to find good from the Carotai waqf activities with an agreement that was more similar to *istihsan bi al-Ijma’*.

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