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Normative Analysis of the Feasibility of Nazhir Compensation: A Review of Law Number 41 of 2004 and Labour Law in Indonesia

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ABSTRACT

Waqf should function as a strategic instrument within the Islamic economic system for wealth redistribution and socio-economic empowerment; however, in practice, waqf management in Indonesia continues to face challenges, particularly regarding the absence of clear standards for nazhir compensation. This study aims to analyse the legal basis and normative feasibility of nazhir remuneration from the perspectives of waqf law and labour law. The research employs a normative juridical method using statutory and conceptual approaches to examine waqf regulations, labour law, and the principle of justice in Islamic law. The findings show that nazhir remuneration has a valid legal basis under Law No. 41 of 2004 on Waqf, yet it has not been regulated in detail concerning the mechanism and amount of compensation, making the principle of justice the primary benchmark for assessing the normative feasibility of nazhir remuneration.

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INTRODUCTION

Waqf is an important instrument in the Islamic economic system that functions as a means of wealth redistribution and socio-economic empowerment of society. Through optimal waqf management, waqf assets not only serve as

instruments of worship but also as mechanisms for sustainable development that are capable of generating broad economic and social benefits. In this context, waqf has significant potential to support public welfare and strengthen social justice when it is managed in a professional, accountable manner and oriented toward public benefit (Nurhidayat et al., 2022). Therefore, the success of waqf management constitutes an essential part of efforts to realize an inclusive and sustainable Islamic economic system amid the dynamics of modern societal needs.

In practice, the effectiveness of waqf management is highly dependent on the role of the nazhir as the manager and custodian of waqf assets (*mutawalli al-waqf*), who is responsible for ensuring that waqf property remains preserved, productive, and capable of providing sustainable benefits to the beneficiaries (*mauquf 'alaih*). The nazhir occupies a strategic position not only as a technical executor but also as a key actor in safeguarding the sustainability of the social and economic value and function of waqf. This role requires a high level of professionalism and integrity, as the quality of the nazhir's performance directly affects the credibility and public trust in waqf management in Indonesia (Sulistiani et al., 2023). Accordingly, the professionalism of the nazhir is a fundamental factor in maintaining the legitimacy and sustainability of waqf institutions.

Normatively, both in classical Islamic law and in contemporary waqf management frameworks, the nazhir is ideally entitled to receive compensation or *ujrah* for the services rendered in managing waqf. In fiqh literature, scholars such as Imam Malik and Imam Shafi'i affirm that providing compensation to the nazhir is permissible as long as it does not reduce the principal of the waqf and remains oriented toward public benefit. From a contemporary perspective, *ujrah* is understood as part of efforts to professionalize waqf institutions so that they are managed in a transparent, efficient, and accountable manner (Hadi et al., 2024). Nevertheless, the regulatory reality in Indonesia reveals significant normative issues, as Article 12 of Law Number 41 of 2004 on Waqf merely states that the nazhir is entitled to remuneration "within reasonable limits" without providing clear parameters regarding the mechanism or amount of such compensation. This ambiguity gives rise to legal problems related to determining the standard of reasonableness and opens space for imbalances between the level of responsibility borne by the nazhir and the remuneration received, which is often disproportionate to the workload and legal responsibilities stipulated in statutory regulations (Dewi et al., 2023; Mubaroka, 2025).

These conditions indicate a conceptual gap between the norms of Islamic law, the principles of Islamic economics, and the positive legal regulations in Indonesia. Within the framework of national labour law, the principle of fair wages based on justice and a balance between rights and obligations is well recognized and can normatively serve as a reference in formulating compensation arrangements for the nazhir. However, to date, there is no clear determination as to whether the nazhir can be functionally categorized as a worker under national

labour law, thereby giving rise to normative debates regarding the relevance and application of wage principles in waqf management (Munthe & Prihatini, 2018).

This study aims to normatively analyze the feasibility of nazhir compensation in waqf management by examining the provisions of Law Number 41 of 2004 on Waqf as well as the principles developed within Indonesian labour law. The analysis is directed at assessing the position and function of the nazhir within the framework of positive law, while also evaluating the extent to which principles of justice, proportionality, and balance between rights and obligations can be applied in regulating nazhir remuneration. This research is expected to make a conceptual contribution by clarifying the normative foundations for granting compensation to the nazhir, as well as a practical contribution for policymakers in formulating clearer, fairer, and more equitable derivative regulations in order to promote professionalism and the sustainability of waqf management in Indonesia.

LITERATURE REVIEW

Studies on waqf management and the role of the nazhir are not entirely new, as many scholars have examined and published research on this topic using various methods and approaches. Sylvanie (2023), in her work entitled; *“Kecakapan Nazhir dalam Pengelolaan Wakaf Produktif di Indonesia,”* discusses the role of the nazhir’s skills and competencies in managing productive waqf using a qualitative–descriptive approach. This study emphasizes that managerial ability, understanding of waqf law, and the integrity of the nazhir are crucial factors in enhancing the productivity and sustainability of waqf assets. The main finding shows that the low level of nazhir competence directly affects the suboptimal management of productive waqf. The similarity between Sylvanie’s research and this study lies in the shared focus on the strategic role of the nazhir in waqf management. However, the difference lies in the scope of analysis, as Sylvanie’s research does not address the normative aspects of nazhir compensation or its relationship with labour law, but rather concentrates on the personal capacity and competence of the nazhir.

Furthermore, et al (2022), in their study entitled; *“Profesionalisme Nadzir dalam Meningkatkan Kepercayaan Wakif di Lembaga Wakaf,”* examine the professionalism of the nazhir as a determining factor in increasing wakif trust in waqf institutions. This research employs an empirical approach by highlighting institutional waqf practices and the relationship between nazhir professionalism and the level of wakif participation. The findings indicate that the professionalism of the nazhir is directly proportional to the level of wakif trust, which ultimately has a positive impact on the collection and management of waqf. The similarity between this research and the present study lies in the emphasis on the importance of nazhir professionalism. However, the difference is found in the analytical focus, as this study does not examine the legal basis and normative

feasibility of nazhir compensation, nor does it place the issue of remuneration within the framework of waqf law and labour law.

Meanwhile, et al (2022), through their work entitled; “*Optimization of Waqf Management in Increasing Public Trust in Nazhir*,” discuss the optimization of waqf management as a strategy to enhance public trust in the nazhir. This study emphasizes the importance of governance, transparency, and accountability in waqf management. The results show that strengthening management systems and waqf governance has a significant effect on increasing public trust in the nazhir. The similarity between this research and the author’s study lies in the attention given to the role and position of the nazhir within the waqf management system. However, the difference lies in the analytical perspective, as this research does not examine the issue of nazhir compensation from a normative legal perspective, but instead focuses on managerial aspects and public trust.

Based on the above discussion, it can be concluded that previous studies generally emphasize aspects of professionalism, competence, governance, and public trust in relation to the nazhir. In contrast, studies that specifically examine the feasibility of nazhir compensation from a normative legal perspective—particularly those that link Law Number 41 of 2004 on Waqf with the principles of labour law in Indonesia—remain relatively limited. Therefore, this research offers novelty by filling this research gap through a normative juridical analysis of the legal basis, principles of justice, and the feasibility of nazhir compensation, and is expected to provide both conceptual and practical contributions to the development of a more just and equitable regulatory framework for waqf management.

METHOD

This study uses a normative juridical method to examine positive legal norms related to nazhir remuneration and Islamic legal principles. The approaches used include a legislative approach to national waqf regulations such as Law No. 41 of 2004, Government Regulation No. 42 of 2006, KHES, and Law No. 13 of 2003 concerning Manpower, as well as a conceptual approach that discusses the principles of justice (*al-‘adl*) and normative feasibility in Islamic law (Tohir et al., 2024). The research data consists of primary legal materials (regulations, fatwas, official BWI documents) and secondary legal materials (waqf fiqh literature, scientific works on Islamic economic law, research related to waqf professionalism). The analysis was conducted qualitatively by interpreting legal texts, comparing the views of scholars, and assessing the conformity with the principle of distributive justice in national law (Miskari, 2024). This method is descriptive-analytical and evaluative, aiming to identify gaps and conformities between national law and Islamic law in regulating nazhir compensation for fair and professional waqf management.

RESULTS & DISCUSSION

Legal Basis for Nazhir Remuneration

Within the framework of waqf regulations in Indonesia, the role of the Nazhir the party that receives and manages waqf assets is regulated in Law No. 41 of 2004 concerning Waqf (hereinafter Law 41/2004). According to Article 12 of Law 41/2004, Nazhir may receive compensation from the net proceeds of the management and development of waqf assets, with a maximum amount of 10% (ten percent) (Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 Tentang Wakaf, 2004). This provision confirms that remuneration for Nazhir has a normative basis in Indonesian positive law, even though derivative regulations and technical mechanisms have not comprehensively regulated in detail the amount, mechanism for determining and managing such remuneration.

The remuneration for Nazhir in Law No. 41/2004 is not "wages" in the sense of a subordinate employment relationship as regulated in labour legislation. Instead, this remuneration is a form of compensation or reward for the responsibility of managing waqf assets entrusted by the wakif and the community. It is important to emphasise this so that it is not mistakenly treated as an ordinary employee's right, which would give rise to inappropriate regulatory implications. Recent research states that Nazhir are "entitled to receive a maximum remuneration of 10% of the net proceeds" from waqf management (Fitria et al., 2023). This type of compensation is rooted in the principle of fairness in waqf management, namely that Nazhir who carry out administrative, development and reporting tasks related to waqf management deserve compensation in order to maintain the professionalism of waqf asset management. The 2023 study "Analysis of Nazhir Compensation Cuts" states that the regulations of the managing organisation (such as the Indonesian Waqf Board/BWI) also stipulate that this compensation is after deducting the costs of managing and developing waqf assets (Dewi et al., 2023).

From the perspective of Islamic law (fiqh wakaf), the roles of the wakif and the judge (or court) are important in determining who the Nazhir is and how the remuneration is set. In classical fiqh, it is stated that if the wakif does not appoint a Nazhir or set remuneration requirements, the judge can determine this based on the interests of the community. Contemporary research in Indonesia shows that differences in interpretation between the provisions of the law and fiqh have led to a lack of clarity in the regulation of remuneration (Hafzi & Elfia, 2024). This ambiguity poses implementation challenges, including: the absence of standard guidelines on the amount of remuneration, a lack of transparency in the determination mechanism, and a lack of accurate data on the results of waqf management, which forms the basis for remuneration. For example, research at the ITB Institute states that a maximum remuneration deduction of 10% is often applied even before the net results of management are available (Dewi et al., 2023). Thus, it can be concluded that although the positive legal basis for Nazhir remuneration already exists (Law 41/2004 Article 12), from a technical and implementation perspective, there are still gaps that require derivative

regulations and more detailed guidelines so that the Nazhir remuneration mechanism is in accordance with the principles of professionalism, accountability and fairness.

Nazhir as Functional Workers

Along with the development of increasingly professional and productive waqf management, the role of Nazhir as a manager and developer of waqf assets shows characteristics that are not much different from the concept of professional labour. First, in practice, Nazhir carries out continuous and systematic work: receiving mandates from waqif, managing waqf assets, maintaining and developing the results. For example, research by Sylvanie (2023) shows that Nazhir's competence in productive waqf management greatly influences the performance of waqf institutions, meaning that there are elements of responsibility and professionalism that resemble formal work positions (Sylvanie, 2023). Although there is not always a subordinate relationship as in formal employment (e.g., between employer and employee), these elements of work, expected outcomes, and responsibilities indicate that Nazhir can be treated as a professional function in waqf governance.

Second, the analysis of the characteristics of Nazhir's work must include three key elements: (1) the existence of Nazhir's work has clear and sustainable management activities, (2) the existence of administrative, reporting, and waqf development responsibilities, and (3) the existence of results, namely the net proceeds from the management of waqf assets, which then become the source of Nazhir's remuneration. Underkaji's research on waqf regulations shows that the existence of results is even a prerequisite for the Nazhir's remuneration of up to 10% of the net proceeds from waqf management (Dewi et al., 2023). Thus, even though the Nazhir does not have a formally subordinate employment relationship (not bound by direct orders like employees), the function he performs is very similar to that of a "professional worker" who works for the public good and collective assets.

Third, the analogous argument that the Nazhir can be equated with professional workers for the public good becomes even more relevant in the context of modern waqf. As managers of waqf institutions or productive waqf units, Nazhir are required to have expertise, commitment, and accountability to regulatory institutions such as the Indonesian Waqf Board (BWI). For example, Faujiah (2023) emphasises that the quality of waqf institutions is highly dependent on the quality of Nazhir, including their professionalism in carrying out their duties (Faujiah & Hamidiyah, 2023). Because the duties of Nazhir target the public interest in managing waqf assets that benefit the wider community, the analogy with professional public workers has a logical basis: in terms of their objectives, responsibilities, and roles in the sharia economic system.

Fourth, the introduction of the subject of Nazhir as functional workers opens a normative debate regarding appropriate remuneration and its recognition structure in national law. When viewed from a labour law perspective,

the elements of "work", "wages/remuneration", and "work results" are important in recognising worker status. In the context of waqf, although Nazhir's remuneration is explicitly regulated not as ordinary wages but as management remuneration, the argument that Nazhir functions similarly to labour allows for further normative exploration: the regulation of professional standards, transparency, and accountability in waqf management (Hafzi & Elfia, 2024). Equating Nazhir with professional labour functionally is not merely a metaphor but can be the basis for normative legitimacy to determine proportional compensation and professional standards based on the responsibilities carried out.

Fifth, the importance of recognising that Nazhir perform significant work functions for the public also strengthens the argument for fair compensation based on contribution, rather than simply being volunteers or traditional "trustees" without compensation. Recent research on the quality of Nazhir in higher education institutions confirm that increased professionalism among Nazhir correlates with greater waqf acceptance and more effective management, indicating that appropriate remuneration is part of a strategy to strengthen waqf institutions. Therefore, in terms of function and responsibility, Nazhir are similar to professional workers who deserve rewards or compensation in accordance with their job standards and performance. Although Indonesian law does not formally equate the status of Nazhir with that of workers under labour norms, functionally Nazhir perform roles that are very similar to those of public professional workers. This provides an important normative foundation for determining Nazhir remuneration in a manner that is proportional, professional, and commensurate with their responsibilities.

The Principle of Fairness as the Basis for Normative Eligibility

The principle of justice plays a central role in determining the normative eligibility of remuneration for Nazhir. In this study, we will discuss the meaning of justice from two different perspectives, namely Islamic law and Indonesian national law. Then, we will explain how remuneration for Nazhir must be proportional to the responsibilities they bear, prioritising a balance between the contributions made and the compensation received. Justice in Islam is a fundamental principle in various aspects of life, including social, economic, and legal aspects. In fiqh muamalah, justice (al-'adl) requires a balance between rights and obligations, both between individuals and between individuals and society (Qardhawi, 1999). Justice is also closely related to maslahat (public interest), which is the main objective in the application of Islamic law. In the context of waqf, this justice requires that the compensation received by the Nazhir must be commensurate with the duties and responsibilities they bear.

For example, in the Turats book "*Iqtishādiyyat al-Waqf*", it is explained that waqf administrators (Nazhir) are responsible for the sustainability of the benefits of waqf assets, and therefore they are entitled to receive compensation in

accordance with their contribution to the management. However, this compensation must be reasonable and not exceed the limits set by the principles of Sharia, so as not to reduce the benefits of the waqf itself, which should be for the benefit of the people (Al-Asraj, 2018). On the other hand, Indonesian national law, as regulated in Law No. 41 of 2004 concerning Waqf, also recognises the right of Nazhir to receive compensation, but does not provide detailed explanations regarding the mechanism for determining such compensation (Kurniawan, 2021). Therefore, the compensation for the Nazhir must take into account the principle of social justice as stipulated in Pancasila and the 1945 Constitution, as well as be in accordance with the principle of welfare in the Manpower Law.

The principle of proportionality in justice requires that the compensation received by Nazhir must be commensurate with the burden and responsibilities he bears in managing waqf. Nazhir is not only responsible for managing waqf assets, but also for ensuring their sustainability and utilisation for the benefit of the people. Therefore, the remuneration of the Nazhir must reflect the magnitude of these responsibilities and should not be considered as ordinary wages that should be determined based on the time worked or hours worked. The remuneration received by the Nazhir must be commensurate with the amount of effort expended and the benefits derived from the management of the waqf (Qardhawi, 1999). In other words, the greater the contribution made by the Nazhir to the management of the waqf, the greater the remuneration that should be received.

In principle, fairness in the context of Nazhir's remuneration means a fair balance between the contribution made by Nazhir and the compensation he receives. In the Islamic legal system, fairness prioritises not only individual rights but also the public interest. In this case, the Nazhir's compensation must be designed in such a way that it remains balanced with the main objective of the waqf, which is for the benefit of the people (Judijanto et al., 2025). In this context, the reward must not reduce the benefits of the waqf assets that should be used for social purposes. This indicates that waqf must be managed professionally by Nazhir, while still adhering to the principle of propriety in its management. The compensation given must be sufficient to ensure that Nazhir can carry out his duties properly without reducing the sustainability of the waqf (Al-Asraj, 2018).

Normative Appropriateness of Nazhir Remuneration

Remuneration for Nazhir (waqf managers) in the Indonesian legal system is not explicitly regulated in Law No. 41 of 2004 concerning Waqf. However, the articles in this law provide space for the management and utilisation of waqf, which may involve the provision of remuneration to Nazhir. Article 49 of the Waqf Law stipulates that the nazhir is tasked with managing and utilising waqf in accordance with its social objectives, but does not regulate in detail whether the nazhir is entitled to receive compensation or not (Indonesia, 2018). The provision of compensation to the nazhir should not diminish the value of the waqf intended

for the benefit of the community. In addition, this is further regulated in Government Regulation No. 42 of 2006, which provides further explanation regarding the mechanism for managing waqf. Overall, although the remuneration of the nazhir is not explicitly regulated in the Waqf Law, the provision of remuneration is still possible as long as it does not conflict with the social objectives of the waqf and existing regulations.

The appropriateness of providing remuneration to the nazhir must take into account the principle of justice contained in Islamic law and the purpose of the waqf itself. As is well known, the main purpose of waqf is for the welfare of the community, not for personal gain (Abdullah, 2020). Therefore, the remuneration given to the nazhir must be in accordance with the social function of the waqf itself and must not reduce the benefits of the waqf for the community. The appropriateness of remuneration can be measured by whether it is commensurate with the nazhir's contribution to the management and utilisation of the waqf. In addition, the provision of remuneration must also take into account moral and fairness aspects in distributing the proceeds of waqf management, so that no party is disadvantaged. The provision of rational remuneration to nazhir is very important to support the sustainability of waqf institutions. Waqf management must ensure that the remuneration provided does not interfere with the sustainability of the social and economic functions of the waqf itself. In this context, legal rationality requires that the remuneration received by nazhir must motivate them to perform their duties well, while ensuring that the objectives of the waqf, namely the welfare of the people, are achieved (Nasyir, 2023).

Rational remuneration will help maintain the integrity of the waqf institution, so that waqf management can run efficiently and effectively. Professional management will lead to optimal results, without reducing the expected social benefits of waqf. Remuneration in the context of Indonesian labour law is regulated in Law No. 13 of 2003 concerning Manpower, which covers the principles of fairness, proportionality, and welfare. These principles can also be applied in the context of providing remuneration to nazhir (Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 Tentang Ketenagakerjaan, 2003). The principle of fairness requires that the remuneration received by nazhir must be commensurate with their contributions and responsibilities in managing waqf. The principle of proportionality ensures that remuneration is given in accordance with the value generated from waqf management, and the principle of welfare ensures that the remuneration does not reduce the expected social benefits of waqf. If the remuneration received by nazhir is too high, it could reduce the amount of funds that should be allocated to other social activities that are more beneficial to the community. Conversely, remuneration that is too low can reduce the motivation of nazhir to perform their duties optimally.

Implications for Waqf Management Policy and Practice

In the management of waqf in Indonesia, one of the challenges faced is the lack of clear guidelines or standards regarding the remuneration that can be received by the nazhir. Although the law provides room for the provision of remuneration, there are no standard guidelines that can ensure uniformity and legal certainty in the provision of remuneration to the nazhir. Therefore, the Indonesian Waqf Board (BWI) needs to issue clear guidelines or standards regarding remuneration for nazhir, so that there is no uncertainty or abuse that could harm the parties involved, both the nazhir and the party donating the property (wakif).

These guidelines will also help create uniformity in the management of waqf throughout Indonesia and ensure that the remuneration provided is in accordance with the principles of fairness, propriety, and rationality. For example, clear standards regarding the amount of remuneration, the mechanism for providing it, and the procedures that must be followed by nazhir can help avoid practices that are not in accordance with the principles of Islamic law. Good waqf management requires a high level of professionalism from nazhir. In practice, nazhir are often faced with challenges in managing waqf assets that require adequate knowledge, skills, and managerial abilities. Therefore, strengthening the professionalism of nazhir through training and education is very important to improve the quality of waqf management.

In this context, institutions such as the Indonesian Waqf Board (BWI) and other institutions related to waqf management must provide training and certification programmes for nazhir. These programmes will provide the skills and knowledge needed to ensure that waqf management is carried out in accordance with sharia objectives and principles, as well as optimising the social benefits of waqf. This professionalism is also related to the management of productive waqf, which requires further skills in the fields of economics, finance, and management. Thus, improving the capacity of nazhir will help maintain sustainability and efficiency in waqf management (Vina Fithriana Wibisono et al., 2022).

The principles of good governance in waqf management include transparency, accountability, participation, and fairness. The application of these principles in waqf management will ensure that waqf funds are managed properly, efficiently, and in accordance with the original objectives set. In this case, the principles of good governance are very relevant to be applied in every aspect of waqf management, including in the provision of remuneration to nazhir. Transparency in waqf management will provide clarity to all parties involved, including the wakif, nazhir, and the community, about how waqf funds are used. Accountability ensures that the nazhir is responsible for every decision made regarding waqf management. Participation requires the active involvement of the community or relevant parties in the supervision and evaluation of waqf management (Aryana & Yuliafitri, 2023). Fairness ensures that all parties involved receive their appropriate rights, including in terms of remuneration for nazhir.

CONCLUSION

Based on normative analysis, compensation for nazhir has a valid and legitimate legal basis in both Islamic law and positive law in Indonesia. The principle of justice positions the nazhir as a party entitled to receive appropriate remuneration for their responsibilities and contributions in managing and maintaining the sustainability of waqf assets. The continuous, systematic, and highly responsible nature of the nazhir's functions indicates that compensation should not be understood as a form of commercialization of waqf, but rather as an instrument of distributive justice to ensure professionalism and the sustainability of waqf management. Therefore, the feasibility of nazhir compensation must be measured based on a balance between rights and obligations, the level of work contribution, and the primary orientation of waqf toward public benefit.

From the perspective of Law Number 41 of 2004, nazhir compensation is recognized as a legitimate right; however, its regulation remains general and does not yet provide legal certainty regarding feasibility standards and mechanisms for its determination. This condition creates room for interpretation that may lead to injustice in the practical management of waqf. When examined functionally through the principles of labour law, the role of the nazhir shares similarities with that of professional workers who are entitled to proportional remuneration, even though their working relationship is not subordinate in nature. Therefore, more detailed derivative regulations are needed through the roles of the government and the Indonesian Waqf Board to establish fair, transparent, and accountable compensation standards, accompanied by efforts to strengthen nazhir professionalism through training and certification in order to realize just and sustainable waqf management.

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