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Duties And Authoritis Of The Wakaf Nazhir In Indonesian Law

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ABSTRACT

A further deep investigations of the role of nazhir within Indonesia's legislation is undoubtedly important to become socialized among Muslim societies in order them be able to manage waqf properties sustainably without deviating from the rule of law applicable in both Islamic and Indonesian law. Although not formally organized in Islam, Nazhir has been arranged in such a way that it has a common ground with the prevailing regulations in Indonesia.

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INTRODUCTION

Waqf land assets in Indonesia are still underutilized. Research conducted by the Center for Language and Culture (PBB) at UIN Syarif Hidayatullah Jakarta (Kasdi) on 500 respondents from waqf administrators (nazhir) in 11 provinces shows that waqf assets are mostly idle (77%) rather than productive (23%). Other general findings also indicate that the largest use of waqf assets is for mosques (79%) compared to other uses, and that they are more prevalent in rural areas (59%) than in urban areas (41%). Furthermore, the administrators themselves are not focused on management; the majority work part-time and are unpaid (84%), and those who work full-time and focused are very few (16%). Furthermore, waqf is mostly managed by individuals (66%) or traditionally, rather than professional

organizations (16%) and legal entities (18%). Kasdi then concluded that the fundamental problems behind the stagnant development of waqf are two things: unproductive waqf assets and the unprofessional capacity of the administrators. (Kasdi, 2016)

The jurists of the Islamic school of thought (Mazhab) do not include a nazhir as one of the pillars of waqf, but their role is recognized as crucial to the management of waqf assets (Al-Kabisi, 2004; Kementerian Agama RI, 2016; Sylvianie, 2023). In the Fiqh of Waqf, it is explained that although mujtahids do not make nazhir one of the pillars of waqf, scholars agree that the waqif must appoint a nazhir, whether an individual or an institution. The appointment aims to ensure the protection and management of waqf assets, so that they are not wasted. For Furqan, waqf assets are inanimate objects, so their value and production do not depend on the object itself, but on its manager, or nazhir. The Indonesian Waqf Board (BWI) emphasized that without a nazhir, waqf assets cannot be maintained in their sustainability and development, let alone benefit from them. Kasdi reinforced Hasymi's explanation. The key to waqf management lies in the existence of waqf managers, especially the nazhir, and a solid work team to maximize the role of the waqf. If managed professionally, waqf will become a potential Islamic institution that functions to fund and develop the community's economy. Nazir should be encouraged to achieve the highest level of performance and efficiency, so that they can play a more significant social role in waqf development (Lahuri dkk., 2023; Sukarno dkk., 2019).

The success of Nazir management then impacts the sustainability of the assets' function for community welfare. (Amin dkk., 2024; Islami dkk., 2023) The demand for sustainable management is clearly evident in Indonesian land waqf law. Government Regulation Number 28 of 1977 concerning Land Waqf, Article 1, paragraph (1), states that waqf is a legal act by an individual or legal entity that separates a portion of their wealth, in the form of land, and institutionalizes it in perpetuity for the purposes of worship or other public needs in accordance with Islamic teachings. This provision is further clarified in the more general waqf regulations, Law Number 41 of 2004 concerning Waqf (UUWk), Article 1, paragraph (1). Waqf is the legal act of a waqif (religious trustee) to separate and/or hand over a portion of his or her property for permanent or specific use, according to his or her interests, for religious purposes and/or public welfare according to Sharia law (Kemenag RI, 2012).

Cultivating trust in the role of nazhir (Islamic trustee) in waqf assets in Indonesia still needs to be developed (BWI Editorial Team, 2019). Fathurahman et al. concluded that their research in Bandung on nazhir performance is influenced by this deficiency. Waqf in the city still relies on personal trust, not institutional trust, which negatively impacts sustainable and responsible management (Fathurrohman dkk., 2014). Kasdi echoed this sentiment. Waqf management has more potential to be implemented by institutional nazhir, both organizations and legal entities, compared to individual nazhir based on traditional management. Furthermore, based on the number of administrators and staff, organizational

and legal entity nazhir outnumber individual nazhir. In general, waqf management can be optimally directed and managed if the nazhir is trustworthy and professional.(Kasdi, 2016) Therefore, Furqon also suggested that, when researching nazhir competencies based on social entrepreneurship, more extensive socialization of productive waqf among waqf nazhirs should be carried out to foster a productive waqf paradigm among them, thus becoming an instrument for community empowerment.(Furqon, t.t.)

A crucial aspect that needs to be socialized to nazhirs so they can manage waqf assets sustainably is the Indonesian law and regulations relating to their roles, including their rights and obligations. Further exploration of the nazhir's role in Indonesian legislation would be beneficial. It is hoped that nazhirs will then be able to manage waqf assets properly and avoid deviations from Islamic law, particularly as it applies in Indonesia. The detrimental impacts of improper management.

METHOD

This normative legal research is useful in discovering the truth of scientific logic, where the law itself is the object from a normative perspective. This doctrinal research only examines written regulations and other legal materials. Normative legal research is also called library research or document study because it is primarily conducted on secondary data available in libraries. Secondary data in the legal field is divided into: Primary legal materials are legal materials issued by the government and are binding on several laws and regulations. The primary legal material is the 2004 Waqf Law. The data found is then interpreted using statutory, conceptual, and comparative approaches to formulate conclusions and recommendations.

RESULTS & DISCUSSION

Nazhir in Indonesian waqf legislation

Article 2 of the Waqf Law stipulates that a waqf is valid if it is implemented according to the pillars stipulated by sharia. Furthermore, Article 6 states that a waqf is implemented by fulfilling the following elements: Waqf; Nazir; Waqf Assets; Waqf Pledge; allocation of waqf assets; and the term of the waqf.

Article 7 defines waqf as an individual; an organization; and a legal entity. The following article further explains that an individual waqf can only perform a waqf if he or she meets the following requirements: adult; sane; healthy; not impeded from carrying out legal acts; and the legal owner of the waqf assets. Meanwhile, an organizational waqf can only perform a waqf if he or she meets the organization's requirements for waqf assets belonging to the organization, in accordance with the organization's articles of association.

An explanation of waqf assets is found in Article 1 paragraph (5). Waqf assets are assets that have long-lasting durability and/or long-term benefits and have economic value according to sharia, which are donated by the waqf. Article

15 also stipulates that waqf assets can only be donated if they are legally owned and controlled by the waqif.

According to Article 1 paragraph (3), the waqf pledge is a statement of the waqif's will, made verbally and/or in writing, to the nazhir (guardian) to donate his/her assets. Article 17, however, states that the waqf pledge is executed by the waqif to the nazhir before the PPAIW (Waqf Pledge Deed Official), witnessed by two witnesses. It is stated verbally and/or in writing, and outlined in the waqf pledge deed by the PPAIW.

In the Waqf Law, a nazhir is then referred to as the party who receives waqf assets from the waqif to be managed and developed according to their intended purpose (Article 1 number 4). This definition is not significantly different from the linguistic one. Furqan from various sources interprets nazhir linguistically as a guard. The guard of rice fields and date palm groves is called a guard. Hanafi scholars refer to the nazhir as Qayyim al-Waqf or Mutawalli, and define him as a person who manages and supervises waqf affairs. However, the term nazhir in waqf is more commonly used in most books by Fuqaha and Muhaqiqin, such as those by Imam Ibn Taymiyyah and Imam al-Syaukani. (Al-Alabij, 2012; Al-Kabisi, 2004; Kementerian Agama RI, 2016)

Nazhir, in Article 1 (4) of the same law, is defined as the party who receives waqf assets from the waqif to be managed and developed according to their intended purpose. Based on this, the nazhir is key to achieving the objectives of the waqf, so the selection of a nazhir must meet the requirements to develop and manage the waqf assets so that they remain productive and achieve the waqf objectives.

Articles 9 and 10 specify that there are not just two, but three groups of nazhir:

1. Individuals; their obligation is to meet the following requirements: Indonesian citizens; Muslim; adult; trustworthy; physically and mentally capable; not hindered from performing legal acts.
2. Organizations: The following requirements must be met: the organization's management must meet the requirements for an individual nazhir; the organization must operate in the social, educational, community, and/or Islamic religious fields.
3. Legal entities: These institutions become nazhir if they meet the following requirements: the management of the legal entity must meet the requirements for an individual nazhir; they must be an Indonesian legal entity established in accordance with applicable laws and regulations; and they must operate in the social, educational, community, and/or Islamic religious fields. Therefore, nazhir authority does not automatically accrue to a legal entity when it receives waqf property. The institution must first be registered with the Minister and the Indonesian Waqf Board (BWI) through the Office of Religious Affairs.

This regulation is clearly stated in Article 11 of Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf. It also states several other requirements, namely:

1. A legal entity nazhir must be registered with the Minister and the Indonesian Waqf Board (BWI) through the local Religious Affairs Office. If there is no local Religious Affairs Office, registration is carried out through the nearest Religious Affairs Office, the Ministry of Religious Affairs Office, or the BWI representative in the province/district/city.
2. A legal entity nazhir registering must meet the following requirements:
 - a. An Indonesian legal entity engaged in social, educational, community, and/or Islamic religious affairs;
 - b. The legal entity's management must meet the requirements for an individual nazhir;
 - c. One of the legal entity's management must be domiciled in the district/city where the waqf property is located;
 - d. Possess:
 - 1) a copy of the notarial deed concerning the establishment and articles of association of the legal entity, which have been approved by the authorized agency;
 - 2) a list of the management;
 - 3) bylaws;
 - 4) a work program for waqf development;
 - 5) a separate list of assets derived from waqf assets or assets of the legal entity; and
 - 6) a statement of willingness to be audited.

The above requirements must be attached when applying for registration as a legal entity nazhir.

Lulu Sylvanie's (2023) research in the *Journal of Islamic Religion* revealed that the skills and competencies of nazhir are key factors in the successful management of productive waqf in Indonesia. Her research findings indicate that many nazhir still have limited managerial and administrative skills, resulting in suboptimal waqf management. Lulu Sylvanie emphasized the importance of improving the capacity and professionalism of nazhir through training, certification, and legal assistance to ensure their duties and authorities are in line with the provisions stipulated in Law Number 41 of 2004 and Government Regulation Number 42 of 2006. These findings reinforce the urgency of strengthening a transparent and accountable nazhir management system to support the achievement of productive waqf goals in Indonesia. (Lahuri dkk., 2023; Sylvanie, 2023)

A study conducted by Suryana and Syafrizal Ikram (2024) broadens the perspective on the role of nazhir in the context of good waqf governance. This study highlights that the implementation of the principles of transparency, accountability, and efficiency in waqf management is an inseparable part of the nazhir's authority as stipulated in laws and regulations. Nazhir is not only legally

responsible for the assets he manages, but is also obliged to ensure the sustainability and economic benefits of these waqf assets for the community. The implementation of good waqf governance shows that optimizing the duties and authorities of nazhir can encourage economic empowerment of the community and strengthen public trust in waqf institutions in Indonesia.(Suryana & Ikram, 2024)

In addition to the technical requirements, Fathurrahman Djamil explained that there are other general requirements for a nazhir. First, a nazhir is the general leader of a waqf. Therefore, a nazhir must be of noble character, trustworthy, experienced, and have mastered the administrative and financial knowledge deemed necessary to carry out his duties according to the type of waqf and its objectives. Second, a nazhir may work during his term within the limits of the waqf law, in accordance with the decisions of the social organization and the board of directors. The nazhir performs daily tasks as he deems appropriate and appoints his officers, and is committed to maintaining the integrity of the waqf assets, increasing its income, and distributing its benefits. The nazhir also serves as a representative on behalf of the waqf to other parties and before the court. Third, a nazhir must submit to the supervision of the Ministry of Religious Affairs and the Indonesian Board of Trustees (BWI), and submit financial and administrative reports on the waqf and its activities at least quarterly. Fourth, the nazhir is personally responsible for any losses or debts that arise and are contrary to the waqf law.(Kasdi, 2016; Sulistiani dkk., 2023)

Obligations and Rights of the Nazhir

A Nazhir, whether an individual, organization, or legal entity, is a person entrusted by the waqif to maintain, manage, and administer waqf assets in accordance with the waqf pledge. As the holder of this trust, they naturally have various obligations and rights. Obligations relate to the actions that must be undertaken and completed to achieve the waqf objectives as intended by the waqf pledge, while rights are the reciprocal obligations resulting from fulfilling their obligations in managing waqf assets.

As the holder of the trust, the Nazhir is not burdened with any risk for damage to waqf assets, as long as the damage is not due to their intentional or negligent actions. However, to prevent damage to waqf assets, the Nazhir is charged with management, which includes the maintenance, administration, and supervision of the assets and their proceeds. This also includes reporting on all matters concerning waqf assets, from the condition and development of the waqf assets to the utilization of their proceeds.(Wadjdy & Mursyid, 2017)

In land endowments, the obligations of the Nazhir are regulated in more detail in Article 10 of the Minister of Religious Affairs Regulation Number 1 of 1978 concerning the Implementing Regulations of Government Regulation Number 28 of 1977 concerning the Endowment of Land. The explanation is as follows:

1. The Nazhir is obliged to report, manage, and supervise waqf assets and their proceeds, including:

- a. Keeping a copy of the Waqf Pledge Deed;
 - b. Maintaining the waqf land;
 - c. Utilizing the waqf land;
 - d. Utilizing and striving to increase the waqf yield;
 - e. Maintaining bookkeeping/administration, including:
 1. a record book on the condition of the waqf land;
 2. a record book on the management of the waqf land proceeds;
 3. a record book on the use of the waqf land proceeds.
2. The Nazhir is obliged to report:
 - a. The results of the waqf land endowment registration in the land register and certificate to the Head of the Religious Affairs Office (KUA);
 - b. Changes in the status of land that has been endowed and changes in its use;
 3. Implementation of the obligations referred to in paragraph (1) of this article to the Head of the KUA once a year, namely at the end of each December.
 4. The Nazhir is also obliged to report the resignation of one of the Nazhir members in accordance with the applicable regulations.
 5. If the number of Nazhir members in a group due to the resignation of one or more members results in not meeting the requirements stipulated in Article 8 paragraph (1) of these regulations, the other Nazhir members are obliged to propose a replacement for approval by the Waqf Pledge Deed Making Officer (PPAIW).

The above Minister of Religious Affairs Regulation was then simplified in Article 11 of the Waqf Law. The Nazhir's obligations are as follows:

- a. Administering waqf assets;
- b. Managing and developing waqf assets in accordance with their purpose, function, and designation;
- c. Supervising and protecting waqf assets;
- d. Reporting on the implementation of duties to the Indonesian Waqf Board (BWI).

By fulfilling their obligations, the nazhir has various rights. One of these, regulated in the Waqf Law, is the allocation of waqf assets. Article 22 explains that the waqif determines the allocation of waqf assets during the waqf pledge. In certain circumstances where the waqif does not specify the allocation of waqf assets, the nazhir has the right to determine the allocation of waqf assets in accordance with the purpose and function of the waqf. Article 13 also states that the nazhir has the right to receive guidance from the Minister and the BWI. Their rights to receive compensation are further regulated in Article 12. They may receive compensation from the net proceeds from the management and development of waqf assets, the amount of which may not exceed 10% (ten percent).

Rewards for the nazhir have actually been practiced since the reigns of Umar ibn Khattab, Ali ibn Abi Talib, and other companions. The amount of wages

received by the nazhir is in accordance with the provisions set by the waqif or judge.(Al-Munawar, 2004)

This history was later elaborated in various schools of Islamic jurisprudence (ma'hab) in various opinions. The Hanafi school of thought holds that a salary is due as long as the waqif fulfills all the requirements of the waqf. The amount can be one-tenth or one-eighth, depending on the waqif's wishes. If no such remuneration is specified, the judge determines the remuneration, considering the severity of the assigned duties.

Maliki scholars, although not all, agree with the Hanafi school. Some have issued a fatwa stating that if the waqif does not determine the nazhir's remuneration, the judge can take it from the treasury (bay al-mal). The Shafi'i school of thought ruled that the waqif determines the nazhir's remuneration. If no such remuneration is provided, the nazhir is not entitled to a salary. To receive it, the nazhir must apply to the judge for an equal salary. Some schools of thought hold that a nazhir has no right to request a salary unless he is in dire need. Another view, from the Hanabilah, offers two opinions. The first is that it is not permissible for a nazhir to receive wages other than sufficient food. The second is that a nazhir is obligated to receive wages commensurate with his work.(Al-Munawar, 2004)

From the legal and fiqh explanations of these schools of thought, it can be affirmed that a nazhir is entitled to compensation, whether derived from waqf assets or from other sources. The amount and scale can be determined based on the wishes of the waqif or judge, as well as legislation. Furthermore, consideration of the welfare of the local community where the waqf assets are located cannot be ignored.

Nazhir in the Registration of Land Waqf Pledges

The types of waqf assets under the Land Waqf Law include: immovable property; movable property other than money; and movable property in the form of money. Types of immovable property include:

1. land rights in accordance with statutory provisions, whether registered or unregistered;
2. buildings or parts of buildings standing on land;
3. plants and other objects related to land;
4. ownership rights to apartment units in accordance with statutory provisions;
5. other immovable property in accordance with sharia principles and statutory provisions.

The types of land rights that can be waqfed are then divided into the following:

1. ownership rights to land, whether registered or unregistered;
2. rights to common land within apartment units in accordance with statutory provisions;
3. building use rights, cultivation use rights, or use rights located on state land;

4. Building use rights or use rights located on land with management rights or private property rights require written permission from the holder of the management rights or ownership rights.

The requirement for waqf land registration has actually been in place since 1950. Waqf land must be registered in each district. This provision is expected to improve future management, maintenance, and implementation in the administration and administration of the land.(Manan, 2008) Law Number 5 of 1960 concerning Basic Agrarian Regulations (LN 1960 Number 104) or UUPA provides specific regulations on this issue in an article concerning the obligation of lawmakers to adhere to elements based on religious law.(Shomad, 2010)

To implement land waqf legislation, Government Regulation Number 10 of 1961 concerning Land Registration (LN 1961 Number 28) was issued, which contains technical regulations for land registration.(Shomad, 2010) These provisions were later supplemented by Government Regulation No. 28 of 1977 concerning the Endowment of Land and Regulation of the Minister of Religious Affairs No. 1 of 1978 concerning the Implementing Regulations of Government Regulation No. 28 of 1977 concerning the Endowment of Land, which established procedures for the endowment of land, including the obligation to register it.

The practice of land waqf has been deemed inefficient and inefficient. A number of waqf lands are not properly maintained, neglected, or transferred to third parties through unlawful means, which has become a common occurrence in society. This situation is not simply due to negligence or inability of the nazhir (owner) to manage and develop waqf assets. The government needs to pay attention, and the public must be aware of the status of waqf land assets, which should be protected for the public welfare in accordance with the purpose, function, and designation of waqf.

Based on the above considerations, and to meet the need for comprehensive waqf law, not limited to land, and within the framework of developing national law to create legal and administrative order that protects waqf assets, the Waqf Law was issued. The law stipulates that legal acts of waqf must be recorded and outlined in a waqf declaration, registered, and announced. The implementation must be carried out in accordance with the procedures stipulated in the laws and regulations governing waqf.(Manan, 2008)

Articles 32 and 33 of the Waqf Law stipulate that the Waqf Decree Making Officer (PPAIW), on behalf of the nazhir, must register waqf assets with the authorized agency no later than 7 (seven) working days after the waqf declaration is signed. The Minister and the Indonesian Waqf Board (BWI) then administer the registration of waqf assets and announce the registered waqf assets to the public (Articles 37-38).

If waqf assets, including land, are exchanged or have their designation changed, the nazhir, through the PPAIW, re-registers the exchanged or changed waqf assets with the authorized agency and BWI, in accordance with the applicable provisions regarding waqf asset registration procedures. The name of the nazhir must also be included when registering waqf assets with the

authorized agency no later than 7 (seven) working days after the waqf pledge deed is signed (Articles 35-36). Therefore, registration of waqf land by the PPAIW requires the submission of:

1. A copy of the waqf pledge deed;
2. Letters and/or proof of ownership and other related documents.
3. Proof of registration of the waqf assets is submitted by the PPAIW to the nazhir.

CONCLUSION

The waqf nazhir is a position for which waqf has been specifically regulated within the applicable laws in Indonesia, in this case in the form of a statute. This means that the nazhir's position is based on the laws and regulations in force in Indonesia. The nazhir cannot be elected without regard to applicable laws. His functions, rights, and obligations are regulated in waqf law. Scholars also agree that the nazhir's authority is generally limited to managing the waqf for its intended purpose. His obligation is to undertake all reasonable measures to safeguard and manage the assets. He may employ several representatives or assistants to carry out matters related to his duties and obligations. The nazhir can be an individual, an organization, or a legal entity. The nazhir, as the party responsible for supervising and maintaining the waqf, may not sell, mortgage, or lease the waqf assets unless permitted by the court. The nazhir cannot utilize waqf land for activities prohibited by applicable laws and regulations. The nazhir's waqf management under Islamic law is also regulated in a way that aligns with applicable regulations in Indonesia. He is then obliged to safeguard and manage, and represent, the waqf assets he manages both within and outside the law. He is obligated to provide periodic reports to authorized officials and to defend or defend the assets if the assets are ever disputed in court. However, the nazhir is also entitled to various benefits as stipulated in the regulations.

Public awareness of the nazhir's role in waqf management also needs to be raised to increase waqf awareness, which impacts their trust and credibility. The nazhir can take the initiative, as suggested by Fathurrahman et al. The rapid development of information technology greatly supports the use of affordable social media to conduct outreach, education, and persuasion to encourage the community to care more about waqf.

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