

Problems of Waqf Management in Indonesia: A Review of Positive Law

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Abstract

The implementation of waqf has been happening in many regions in Indonesia. The essence of waqf as a form of worship that brings great rewards and community welfare should be managed properly by professional nadzirs, not the other way around. Various problems have occurred in various regions, resulting in the management of waqf not maximizing and not achieving common goals. This research uses a normative juridical approach that is descriptive analytical by using various theories in legal science related to the process of implementing waqf within the framework of positive legal development in Indonesia. The problems of waqf management in Indonesia so far have been caused by the lack of socialization about waqf by a less aggressive government, waqf management and management that is not in accordance with the rules, limited human resources (nadzir) who meet the requirements and weak control systems in supervision to be less effective in its application in society. The problems that exist so far show that they arise from external factors, namely legal subjects who have not experienced limitations and sufficient knowledge in managing waqf properly and correctly according to the rules of law and Islamic religious law. For this reason, it is necessary to supervise the management of waqf by the government and society so that strict supervision is expected that waqf in Indonesia can be managed properly so that the results can be utilized to empower the quality of life of the people.

Keywords: *Waqf, Positive Law, Problematics*

INTRODUCTION

Indonesia as a country with a majority of Muslim countries, has great potential in terms of waqaf (Asri et al., 2020). As Muslims, we are obliged to do waqf because it is one of the acts of worship for Muslims and to get rewards. From a social point of view, waqf is an important instrument that is expected to contribute to improving the welfare of society (Putro et al., 2021). Waqf is a potential of the ummah that has not been fully explored and developed. Over the past year, efforts to develop this potential have been continuously explored in the face of globalization. It is highly desirable for Muslims to be fond of waqf, so that with many Muslims donating waqf, the poor will be helped (Arifin, 2019).

To further strengthen the position of waqf and to avoid things that can harm the community and prevent the misuse of waqf, the government issued laws and regulations that specifically regulate waqf. This began with the issuance of Government Regulation No. 28 of 1977 and its subsequent implementing regulations. The main purpose of this regulation is to make waqf land a religious institution that can be used as one of the means for the development of religious life, especially for Muslims to achieve a just and prosperous society based on Pancasila (Nasution, 2023). In the management of waqf assets, many obstacles are faced. The first problem of waqf asset management is waqf land certification. Most Indonesian Muslims understand that waqf is valid if it is done verbally without being officially registered with the government administration. The phenomenon that occurred before Law No. 5 of 1960 and Government Regulation No. 28 of 1977 until the birth of Law No. 41 of 2004 concerning Waqf was that waqf actions were carried out only by trusting one of the religious leaders appointed as nadzir. This kind of waqf legal action views waqf as a good deed that has a noble value in the presence of God without having to go through administrative procedures, and waqf property is considered to belong to God alone, and no one will dare to disturb it without God's permission. However, the traditional practice of waqf invites new problems, such as the loss of waqf objects which are sometimes used as a struggle by the heirs of the nadzir.

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The second problem is the unprofessional naz | ir. The absence of nadzir requirements that lead to professional performance is supported by the absence of attention (reward) as a manager of waqf property so that the result that arises from this condition is that many naz | ir in managing waqf is only used as a part-time job that is undertaken only casually.

The third problem is the understanding of some Indonesian Muslims that waqf assets cannot be exchanged (Veithzal Rizal Zainal, 2016). This understanding cannot be separated from the history of the beginning of Islam and the development in the region. They are closer to the fiqh-oriented waqf law and the Shafi'i school of thought. This understanding of the Indonesian Muslim community about waqf has led to their attitudes and behavior in waqf being measured through the barometer of fiqh-oriented and Shafi'i-style and the most they believe that ibdal al waqaf is not allowed, so they tend to be traditional and conventional (Ibad et al., 2018). The fourth problem is that the implementation of existing regulations has not been maximized due to the lack of legal instruments in the existing regulations, such as the Indonesian Waqf Board (BWI), which has vital duties and functions in the management of waqf assets. In fact, there are still many districts/cities that have not yet formed such a body. Of course, this formal obstacle gives the color of waqf management and development that is still far from expectations.

Waqf issues such as swap cases are still unfamiliar to the community due to a lack of understanding and public attention. In Government Regulation No. 1 of 2008 concerning Procedures for Preparing Recommendations for Applications for Exchange / Change of Status of Waqf Property Article 4 paragraph (1) has regulated the prohibition of exchanging waqf property including changes in its status, but with the exception of obtaining permission from the Minister. The permission obtained from the Minister is the result of considerations given from the Indonesian Waqf Board (Furqon, 2017). Some cases of waqf land swaps that occur in Indonesia go through a long and rather complicated process, this is one of the steps taken to avoid misuse of waqf land, so that in the future cases due to the swap of waqf land can be avoided. The exchange of waqf assets is a form of the role of the nadzir in carrying out its duties to produce waqf land (Rosadi, 2019). It is hoped that with the exchange, waqf assets will become more optimal in producing benefits for the welfare of the community. To make the right decision, maintain the existence of waqf assets and not cause losses, the implementation of the exchange of waqf assets should be carried out carefully (Suhartini, 2018). (Suhartini, 2018)

Since 2004, the Government of the Republic of Indonesia has issued a new law, Law Number 41 of 2004, relating to waqf in Indonesia. This law explains in detail the procedures for registering waqf assets, the rights and obligations of waqf asset managers, the pattern of waqf asset development, and waqf organizations in Indonesia. In addition, this law also regulates how to change the status of waqf assets, of course with conditions regulated by law and allowed by sharia. Seeing the above conditions, even though the rules regarding waqf have been formed and there are still many cases in the field, it is interesting to study more deeply the issue of waqf. For this reason, the writing of this article focuses on what problems cause waqf cases to run rampant even though positive legal rules have existed so far in Indonesia.

METHODS

This research is descriptive analytical, where the analysis is carried out critically using various theories in legal science that are directly or indirectly related to the issue of reconstructing legal benefits and the process of implementing waqf within the framework of positive legal development in Indonesia (Diantha, 2016). Researchers use a normative juridical approach, which is a method that uses secondary data sources, namely laws and regulations, legal theories and opinions of scholars, which are then analyzed and draw conclusions from the problems that will be used to test and review the secondary data (Hartiwiningsih et al., 2019).

RESULTS AND DISSCUSION

The concept of Waqf in the level of Fikhih Law and National Law

Review of Waqf According to Jurisprudence

The term *istibdal waqf* has been known for a long time through the case of the sale of waqf objects and then replaced by buying other objects with the intention of replacing the first object. This waqf exchange object itself can be of the same type of goods or different types. *Istibdal waqf* according to Muhamamd Abid Abdullah Al Kabisi is a term for the exchange of waqf goods that have been sold or exchanged in terms of waqf designation (Jubaedah, 2017). This nomenclature of *Istibdal waqf* (exchange of waqf objects) places the meaning of the first waqf in the position of the object it replaces. In Arabic, both the exchange of the waqf object (*al-ibdal*) and the term request to replace (*istibdal*) have the same meaning. These two terms do not only apply to the term waqf, but apply as a separate contract pattern (Harahap & Darwanto, 2021).

Shaykh abu Zahrah Rahimahullah explained that the practice of *istibdak* that prevailed at that time was a way of removing the law of the first waqf object. For this reason, the waqifs wrote a condition not to sell or change the waqf objects. The benefits of waqf *istibdal* are not only limited to the party to whom the waqf is allocated, but include the majority of people and the ummah. This is in line with Abu Zahrah's view. An important note on this aspect is that waqf objects that cannot be moved are relatively weak. And something that yields little for similar objects, this shows that it actually has an impact on the loss of State assets in general. In reality, the policy of waqf *istibdal* has the following two consequences. The rampant injustice and unlawful eating of wealth that exceeds their humiliation after eating waqf wealth.

The law of *istibdal* according to the madhhabs, from the perspective of the Hanafiyah madhhab, is permissible. The basis of the policy is the benefit and lasting benefits that accompany the practice of *istibdal*. With the aim of preserving the benefits of waqf goods, the condition of the perpetuity of waqf is fulfilled and does not violate sharia. The reason for this is that it depends on the ruling that will arise in a particular case. If the waqif requires *istibdal* both for himself and for whoever manages the waqf. Then *istibdal* is valid and the condition is carried out. The reason it is permissible is because the basic law of waqf, which is supposed to be continuous and binding, cannot stand alone, but is supported by other elements. Something that produces continuously is the basic philosophy of waqf.

Maliki scholars, argue that waqf goods in terms of sales are divided into three parts, namely: Mosques; immovable objects and; movable goods and animals. Waqf in the form of a mosque cannot be sold. Meanwhile, immovable goods other than mosques, such as shops or houses, have the form of goods that are still used so that they can provide benefits and goods that have no benefits. *Ijma* scholars agree that goods that still have benefits may not be sold. As for movable goods other than mosques, if the benefits of the goods are in accordance with the scholarly consensus, but in an emergency it is permissible to sell them, such as the expansion of mosques, cemeteries and public roads because it is for the common benefit of the people and what is not done will cause hardship and distress and disrupt their world life such as roads, bridges and others.

The Shafiyah school of thought (Zaldi & Tanjung, 2023): The Shafii school of thought indicates that *istibdal* is absolutely forbidden, which is popular among them. The book *Fath Almu'in* states: Waqf property cannot be sold even if it is damaged. If a mosque (waqf) is damaged and it is impossible to rebuild it, it cannot be sold and does not return to the one who endowed it, because it is still possible to pray and do *i'tikaf* on its land. As long as the waqf has a small amount of produce, it cannot be sold according to the scholars of the Shafi'i school of thought. A waqf tree that has been lost or knocked down by the wind does not invalidate the waqf, so it cannot be sold or given away unless it is put to another use, such as a door if it is not possible to take rent from it.

Hanbali scholars limit *istibdal* to emergencies such as the poor condition of waqf assets, so as long as there is no emergency that can change the original purpose of waqf, then waqf assets cannot be sold. It is not permissible to sell waqf property unless it has lost its benefits. When it is sold, it must be replaced with a similar price. The Hanbali school also does not distinguish between mosque and non-mosque waqf. 2 conditions for

making an exchange according to Ibnu Taymiyah. 1. Because of urgent need, 2. Exchange due to strong *maslahat* considerations.

Review of Waqf Under Positive Law

To protect waqf assets, waqf assets are prohibited from: a. being used as collateral. b. being confiscated. c. being donated. d. being sold. e. being inherited. f. being exchanged or transferred in other forms of transfer of rights. However, there are exceptions, namely the exchange of waqf assets is allowed if, a. The waqf asset is used for public purposes in accordance with the General Spatial Plan (RUTR) based on the provisions of the applicable laws and regulations and does not conflict with sharia; b. The waqf asset cannot be used in accordance with the waqf pledge; c. The exchange is carried out for direct and urgent religious needs. Implementation is carried out in writing by the Minister of Religious Affairs with the approval of the Indonesian Waqf Board.

The value and benefits of the exchange property are calculated as follows; a. the exchange property has a tax object sales value (NJOP) at least equal to the NJOP of the waqf property; b. the exchange property is located in a strategic area and is easy to develop. The procedures and requirements for implementation are as follows:

- 1) Check the completeness of the following documents
- 2) Checking the documents of the application process for exchange/change of waqf assets.
- 3) Conducting status change assessment. By conducting interviews with the nazir/community and field visits to gather information on: The background of the exchange/change of status of waqf assets; The origin of the exchange/change initiative; The background of the relationship with the owner of the exchanged assets; The nazir's work plan.

Looking at Government Regulation No. 28 of 1977 concerning waqf land, it is stated that before the enactment of Government Regulation No. 28 of 1977, all legal actions related to changes in the status of waqf property were carried out entirely by the nazir without any clear reasons. However, after the enactment of Government Regulation No. 28 of 1977, any change in the status of waqf land is required to register or be registered. The issue of changing the status of waqf land is not introduced in Islamic Jurisprudence, but contemporary scholars and classical scholars provide an idea about the need to change or change the function of waqf if the waqf can no longer function as intended by the waqif.

The provisions of article 11 paragraph 1 of government regulation number 28 of 1977 explain that basically land that has been endowed cannot be changed to another designation or use than that referred to in the waqf pledge, while in paragraph 2 there are restrictions on deviations from the provisions in the article. Among them are that certain things have first received written approval from the Minister of Religion for the change or transfer of the function of the waqf land can be done among the reasons; a) because it is no longer in accordance with the purpose of waqf as pledged by the waqif and b) because of the urgent public interest. The obligation to report on changes in the status of waqf land and changes in its use according to Article 11 paragraph 3 is imposed on the Nazir to be reported to the local government of the Regent/Mayor of the respective region or the head of the local Agrarian sub-directorate for further settlement.

Government Regulation No. 28 of 1977 regulates the sanctions stipulated in the event that there is a violation of the provisions in article 11, according to article 14, the party who violates the provisions stipulated in article 11 of Government Regulation No. 28 of 1977 shall be punished with imprisonment for 3 (three) months or a fine of up to Rp. 10,000.00 (ten thousand Rupiah). Article 15 further stipulates that if the act is committed by or on behalf of a legal entity, criminal charges shall be brought and punishment and disciplinary measures shall be imposed, both against the legal entity and against those who gave the order to commit the act or acted as a leader or responsible person in the act or omission or both.

As explained above, although Government Regulation No. 28 of 1977 stipulates clear and firm sanctions related to violations of article 11 of PP No. 28 of 1977, PP No. 28 of 1977 and several other related regulations open up opportunities for irregularities in the allocation of waqf land. This is also supported by article 41 of waqf

law No. 41 of 2004, article 49 paragraph 1, which explains that there is a change in the status of waqf property in the form of exchange of waqf objects except in writing from the Minister based on BWI consideration. The second paragraph (2) of the same article also explains that: a) The change in waqf property is used for the public interest in accordance with the General Spatial Plan (RUTR) based on the provisions of laws and regulations and does not conflict with sharia principles; b) waqf property cannot be used in accordance with the waqf pledge; c) the exchange is carried out for direct and urgent religious purposes.

In addition to the considerations as referred to in paragraph 2, permission to exchange waqf assets can only be granted if: a) the exchange asset has a valid certificate or ownership book in accordance with statutory regulations and; b) the value and benefits of the exchange asset are at least the same as the original waqf asset. Changes in the status of waqf assets in the form of exchange are prohibited except with the written permission of the Minister based on BWI approval. The written permission and the Minister as referred to in paragraph (1) can only be given with the following considerations: a) the change of waqf assets is used for the public interest in accordance with the general spatial plan based on statutory provisions and does not conflict with sharia principles; b) the waqf assets cannot be used in accordance with the waqf pledge; or. c) the exchange is carried out for direct and urgent religious purposes.

In the same regulation, there are changes related to changes in waqf assets for nominal land area. In the event that the exchange of waqf assets as referred to in paragraph (2) can be carried out on waqf assets with an area of up to 5000 M² (five thousand square meters), the minister mandates the head of the regional office to issue a written permit (Surjanti, 2021).

The Minister issues a written permit for the exchange of waqf assets with the exception as referred to in paragraph (1) based on; a) the exchange property has a certificate or proof of legal ownership in accordance with the provisions of laws and regulations and b) the value and benefits of the exchange property are at least the same as the original waqf property. Meanwhile, the licensing process is carried out by the Head of the regional office in writing as referred to in paragraph 3 based on the approval of the Provincial BWI; so that the exchange property has a certificate or proof of legal ownership in accordance with the provisions of laws and regulations and the value of the benefits of the exchange property is at least the same as the original waqf property.

Waqf Issues in Law No. 41/2004 on Waqf

Waqf is one of the Islamic teachings that has been practiced by Indonesian Muslims since before independence. The government has also passed various laws and regulations to regulate and order waqf in Indonesia. Among the regulations that have been passed is Law Number 41 of 2004 concerning Waqf. To complement the law, the government issued Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 (Surjanti, 2021) .

Based on the provisions of Article 40 of Law Number 41 of 2004 concerning Waqf, it is explained that waqf property that has been endowed is prohibited:

Pledged as collateral

Confiscated

Donated

For sale

Inherited

Exchanged

Transferred in the form of transfer of other rights

Based on Law Number 41 of 2004 concerning Waqf Chapter IV Article 41, there is legality for the exchange of waqf objects after first requesting permission from the Minister of Religion of the Republic of Indonesia with the purpose of waqf and for the public interest, the existence of these rules is an effort to renew the

understanding that has been believed by the majority of scholars and the Indonesian people who follow the opinion of Imam Syafi'I that waqf objects cannot be tampered with even for the sake of benefit.

In the view of fiqh, it turns out that in this matter the fuqaha differ in opinion. Regarding changes in the form of waqf assets, some scholars allow it and others strictly prohibit it. Among the Maliki and Shafi'I madhhabs, they emphasize the permanence of waqf property, even if it is damaged, it is not permissible to change the waqf property with other objects even though the waqf property will be damaged or not produce something. But on the other hand, waqf objects that are already or less functional anymore because they are no longer in accordance with the designation of waqf assets. In this regard, the Hanafi and Hambali madhhabs state that it is permissible to change waqf assets because they no longer have useful value, replaced with something that is more beneficial to the general public. This is permissible either for the reason that the waqf object can function or bring benefits in accordance with the purpose of the waqf.

Waqf is generally in the form of land. Unfortunately, the waqf land has not been managed productively, so that waqf in Indonesia has not been able to play a role in empowering the people's economy. Various problems often occur related to waqf land. Among others, waqf land that is not or has not been certified, waqf land that is still being sued by some families, waqf land that is sold by those who are mandated to manage it, including unfair and unproportional exchange (ruislag) of waqf land. Not to mention the embezzlement and reduction of waqf land area, and conflicts between the foundation and some of the families who gave the waqf land, as well as abandoned or neglected waqf land. Among the problems of waqf are the following (Di, 2006):

Lack of Socialization

In general, people do not understand the law of waqf properly and correctly, both in terms of the pillars and conditions of waqf, as well as the purpose of waqf. Understanding the pillars of waqf for the community is very important, because by understanding the pillars of waqf, the community can find out who can donate, what can be donated, for what and to whom the waqf is intended, how to donate, and who can be a nadzir. The understanding of the community that is still based on consumptive waqf results in the nadzir chosen by the waqif also being those who have time to look after and maintain the mosque. In this case, the waqif does not consider the ability of the nadzir to develop the mosque so that the mosque becomes the center of community activities. Thus, the existing waqf is only focused on meeting the needs of worship, and very little waqf is oriented to improve the economy of the people. In fact, if we look at the history of waqf in the past, both by the Prophet Muhammad and his companions, in addition to mosques and places of learning, there are quite a lot of waqf in the form of gardens whose results are intended for those in need.

Processing and Management

Currently, the management and management of waqf is very concerning. As a result, many waqf assets are neglected in their management, and some waqf assets are even lost. One of the reasons is because Muslims generally only endow land and school buildings, while waqifs do not think about the operational costs of the school, and the nadzir is not professional. Therefore, the study of waqf management is very important. The lack of role of waqf in empowering the people's economy in Indonesia is because waqf is not managed productively. To overcome this problem, a new paradigm in waqf management must be applied. Waqf must be managed productively using modern management. Productive utilization of waqf requires professional management involving a management system. The basic formulation of management consisting of planning, organizing, actuating, and controlling will maximize the utilization of waqf. The application of this controlling principle will make waqf management run effectively and efficiently. In line with this, Law No. 41 of 2004 Article 64 states that the implementation of supervision can use the services of a public accountant.

In the implementation of the organization, this controlling function will have implications for the realization of good governance, which is characterized by upholding the principle of accountability. In the next stage, the implementation of the principle of accountability will have an impact on increasing public trust in the institution. Empowerment of waqf management needs to be initiated immediately considering that there are still many waqf management institutions that have not prioritized this principle of accountability, so it is feared

that it will have implications for the loss of public trust in the institution. In waqf management itself, public trust is the most important social capital. Therefore, the loss of public trust in waqf management institutions is very counter-productive to the ideals of making waqf an instrument for the welfare of the people.

Waqf Objects and Nadzir Commitment

The object of waqf is developed to include movable objects that can be endowed, such as: rupiah money, precious metals, securities, other applicable movable objects, vehicles, intellectual property rights, lease rights in accordance with sharia provisions and applicable laws and regulations. A waqf object is any object, whether movable or immovable, that has a durability that is not only disposable and has value according to Islamic teachings". The number of land waqf assets in Indonesia is very large but has not been able to play a maximum role in the welfare of the people and empower the community's economy. Nadzir is one of the important elements in waqf. Whether a waqf functions or not is highly dependent on the ability of the nadzir. In various countries where waqf has developed and functions to empower the people, waqf is managed by professional nadzirs. In general, waqf in Indonesia is managed by nadzirs who are not able to manage the waqf they are responsible for. Waqf is expected to provide welfare to the people, sometimes the management costs are constantly dependent on zakat, infaq and sadaqah from the community.

A nadzir is required to be creative and able to manage waqf productively so that it is more beneficial. In addition, in various cases there are some nadzirs who do not hold the mandate, such as committing irregularities in management, not protecting waqf assets, and other frauds that allow the waqf to change hands. To overcome this problem, prospective waqifs should first pay attention to what the community needs, and in choosing a nadzir, they should consider their competence. Thus nadzir means a person who has the right to act on waqf property, either to manage it, maintain it, develop and distribute the proceeds of waqf to those entitled to receive it, or do everything that allows the property to grow properly and permanently.

Nadzir plays a very important role, because the development of waqf assets depends, among other things, on the waqf nadzir (Damayanti et al., 2023). In order for the asset to function properly and be able to continue, it must be guarded, maintained, and if possible developed. Judging from his duties, a nadzir is obliged to administer waqf property, maintain, develop property in accordance with its function, purpose, and designation and preserve the benefits of the waqf property for those entitled to receive it. In addition, the nadzir is also obliged to supervise and protect the waqf property. Thus it is clear that the function and failure of a waqf is highly dependent on the ability of the nadzir. With regard to his heavy duties, the nadzir also has the right to obtain the proceeds from the development of waqf. Although the mujtahidin did not make the nadzir one of the pillars of waqf, the scholars agree that the waqif must appoint a waqf nadzir (waqf supervisor).

The appointment of this nadzir seems to be intended to keep the waqf assets maintained and managed so that the waqf assets are not wasted. The nadzir can be an individual, organization or legal entity. Therefore, the management and development of waqf objects, especially cash waqf, must be carried out by professional nadzirs. Based on Article 10, it is stated that a person can only become a nadzir if they meet the requirements:

- Indonesian citizen
- Muslim
- Adults
- Amanah
- Physically and mentally capable; and
- Not obstructed from performing legal acts.

The duties of the nadzir in the Waqf Law are clearly stated in Article 11, namely:

Administering waqf assets

Manage and develop waqf assets in accordance with their purpose, function and allocation.

Supervise and protect waqf assets

Reporting the implementation of duties to the Indonesian Waqf Board.

In addition to fulfilling the requirements mentioned in the law, in order for the nadzir to work professionally in managing waqf, the nadzir, especially the cash waqf nadzir, must also have other abilities such as:

Understanding waqf law and laws and regulations related to waqf issues. A nadzir should have a good understanding of waqf law and laws and regulations related to waqf issues. Without understanding these things, a nadzir will not be able to manage waqf properly and correctly.

Understand the knowledge of shari'ah economy and shari'ah financial instruments. Waqf is one of the potential Islamic economic institutions to be developed. Therefore, it is appropriate that a nadzir, especially a cash waqf nadzir, is required to understand the shari'ah economy and shari'ah financial instruments.

Having insight into the practice of waqf, especially the practice of cash waqf in various countries. Thus, a nadzir is expected to be able to innovate in developing cash waqf, for example, cash waqf practices carried out in Bangladesh, Turkey, and others.

Having access to prospective waqifs. Ideally, the cash waqf manager is an institution that has the ability to access prospective waqifs, so that the nadzir is able to collect quite a lot of waqf funds. This condition will clearly help the collection of a large amount of waqf funds so that it is expected to improve the welfare of the people.

Managing finances professionally and in accordance with shari'ah principles, such as investing waqf funds. This investment can be in the form of short, medium or long-term investments.

Perform beneficiary account administration. These requirements require high technology and reliable human resources.

Distributing the investment returns of waqf funds. In addition to being able to invest, it is expected that a nadzir is also able to distribute the investment returns of waqf funds to mawqūf 'alayh. It is hoped that the distribution is not only consumptive, but can empower mawqūf 'alayh.

Manage waqf funds in a transparent and accountable manner.

A nadzir must work in accordance with what is required by the waqif and in accordance with applicable laws and regulations and always coordinate with the authorized parties. Article 47 paragraph (1) of Law Number 41 of 2004 concerning Waqf mandates the need to establish an Indonesian Waqf Board (BWI). Article 49 paragraph (1) states that the Indonesian Waqf Board has duties and authorities:

Providing guidance to nadzir in managing and developing waqf assets.

Managing and developing waqf assets on a national and international scale

Giving approval and or permission for changes in the designation and status of waqf assets.

Dismiss and replace nadzir

Giving approval to the exchange of waqf assets

Provide advice and considerations to the government in the preparation of policies in the field of perwakafan.

The same article paragraph (2) states that in carrying out its duties BWI can cooperate with government agencies both central and regional, community organizations, experts, international bodies, and other parties deemed necessary. Judging from the duties and authority of BWI in this Law, it appears that BWI not only has the responsibility to develop waqf in Indonesia, but also has the task of fostering nadzirs, so that later waqf can function as prescribed by waqf. In order for waqf to develop properly and nadzirs to carry out their duties and obligations in accordance with the laws and regulations, supervision of waqf management must be carried out.

Law No. 41/2004 Article 42 emphasizes that the nadzir is obliged to manage and develop waqf assets in accordance with their purpose, function, and designation. In order to have maximum usability, the nadzir must be trustworthy and professional. Without these two abilities, it is impossible for a nadzir to manage waqf assets optimally. Due to its urgent role, Indonesian positive law stipulates nadzir as an element in waqf as indicated by Government Regulation No. 28 of 1977 Article 1, KHI Article 215 (5) and Law No. 41 of 2004 Article 6.

Weak Control System

Supervision is an absolute must. For decades, waqf in Indonesia has lacked serious supervision. As a result, quite a lot of waqf assets are neglected and even some waqf assets are lost. In many developed countries, supervision is one of the most important elements, especially if the waqf developed is cash waqf or other movable objects. Therefore, a waqf institution must be willing to be audited. Supervision of waqf management actually began during the Umayyad period, in the seventh century and the first half of the eighth century. Its function was to oversee the distribution of waqf proceeds from possible misuse of the waqf by the nadzir **15**. There are at least two very important forms of supervision: the supervision of the local community and the supervision of the competent government. Perhaps the reason for the loss of many waqf assets is the lack of administrative and financial control. Therefore, supervision in these two areas requires seriousness.

In addition to supervision by the local community, the role of government supervision is also very important. Community supervision is carried out by waqf boards or community organizations in accordance with the standards of administrative and financial feasibility, which are determined by the standards prevailing in the market, essentially according to the standard prices or salary standards in profit-oriented economic institutions, while maintaining their objective characteristics and objectives.

Community supervision can be more effective than supervision by the government, because it is localized, especially since each waqf asset is tied to the people entitled to the waqf and its purpose directly. Community supervision covers both administrative and financial aspects simultaneously. As for the supervision by the government, it can be through both administrative and financial aspects, but this supervision is a type of periodic external supervision. With this dual supervision, namely from the community and the government, it is hoped that waqf assets can develop properly and the rights of mawqūf 'alayh are fulfilled, so that waqf can truly improve the welfare of the people. The regulation of waqf supervision in Indonesia has been regulated in Law No. 41 of 2004 concerning Waqf. Article 63 paragraph (1) states that the Minister conducts guidance and supervision of the implementation of waqf to realize the purpose and function of waqf. Then in paragraph (3) of the same article it is stated that the guidance and supervision as referred to in paragraph (1) and paragraph (2) is carried out by taking into account the advice and consideration of the Indonesian Ulema Council.

Then in Article 65 it is stated that in the implementation of supervision, the Minister may use a public accountant. The issue of supervision is further regulated in Government Regulation (PP) No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf. Article 56 of Government Regulation No. 42 states: (1) Supervision of waqf is carried out by the government and the community, both actively and passively; (2) Active supervision is carried out by conducting a direct inspection of the nadzir on the management of waqf, at least once a year; (3) Passive supervision is carried out by observing various reports submitted by the nadzir related to waqf management; (4) In carrying out the supervision as referred to in paragraph (1), the government and the community may request the assistance of independent public accountants; (5) Further provisions regarding the procedures for supervision of waqf as referred to in paragraph (1) shall be regulated by Ministerial Regulation. Guidance and supervision in this waqf issue is very important.

That is why Article 63 emphasizes that: (1) The Minister shall provide guidance and supervision on the implementation of waqf to realize the purpose and function of waqf. (2) Specifically regarding the guidance as referred to in paragraph (1), the Minister shall include the Indonesian Waqf Board. (3) The guidance and supervision as referred to in paragraph (1) and paragraph (2) are carried out by taking into account the advice and consideration of the Ulema Council.

CONCLUSION

Based on the description above, it can be seen that Waqf can basically empower the ummah, so waqf must be managed productively by a professional nadzir. Perwakafan in Indonesia still needs improvement, because although the legislation is quite good, its application has not been carried out properly. Various problems that arise in society due to the lack of socialization about waqf by the government that is less aggressive, waqf management and management that is not in accordance with the rules, limited human resources (nadzir) who meet the requirements and weak control systems in supervision become less effective in its application in society. The problems that exist so far show that they arise from external factors, namely legal subjects who have not experienced limitations and sufficient knowledge in managing waqf properly and correctly according to the rules of law and Islamic religious law. Therefore, an understanding of waqf legislation and productive waqf management must be carried out by nazirs. In order for the nadzir to work properly and correctly in accordance with the applicable laws and regulations, supervision must be carried out by the government and society, both actively and passively. In carrying out supervision of waqf management, the government and society can seek the assistance of independent public accountants. With strict and good supervision, it is hoped that waqf in Indonesia can be managed properly so that the results can be utilized to empower the quality of life of the people.

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