

Strengthening the Position and Function of Nazhir Waqf as an Independent Institution

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ABSTRACT

Analysis of legal materials is carried out using the content analysis method (content analysis method) which is carried out by describing the material of legal events or legal products in detail in order to facilitate interpretation in the discussion. Nazhir's position as an independent waqf institution is very important and central because the party who receives the waqf property from the wakif to be managed and developed according to its designation is called nazhir and does not depend on any party. Specifically in the Waqf Law, there is no article that specifically explains the position of Nazhir. Nazhir individuals, organizations and legal entities have a very important position in terms of their duties and responsibilities, in maintaining and empowering waqf assets so that they can develop so that the value of the benefits (profits) obtained can be used for social interests, especially for Muslims. The importance of Nazhir's position in the context of waqf is as a party who has the responsibility to maintain, maintain, manage and develop waqf assets, but in terms of waqf fiqh, in the view of the scholars, in principle Nazhir is not included in one of the pillars of waqf.

Keywords : Nazhir Wakaf, Independen.

INTRODUCTION

Talking about the essence of nazhir waqf, as a waqf institution, has characteristics in its governance, in the implementation of waqf practices, this is because in waqf institutions, in fact there are wakifs who are people or legal entities who endow their assets, then Nazhir as administrator who is given the responsibility to manage waqf assets. In addition, there are waqf assets which are the object of operation, both movable and immovable assets, which are only taken for benefits and their designation in accordance with Islamic law, may not be used as collateral, confiscated, donated, sold, inherited, exchanged or transferred in the form of transfer of rights. others, it is also regulated in Article 40 of Law no. 41 of 2004 concerning Waqf. More specifically, it is regulated in Article 49 PP No. 42 of 2006 concerning the Implementation of Law no. 41 of 2004 concerning Waqf, that the exchange of waqf assets can be done with the written permission of the minister based on the consideration of the Indonesian Waqf Board. Nazhir as the person who is most responsible for the waqf property that the wakif has donated to him, the trust of the wakif submits his property in the form of waqf to nazhir, not only intended to maintain it, but in the context of developing, and all efforts to make the waqf property productive.

Nazhir's position as a central point in achieving successful management and

empowerment of waqf assets, of course, must be supported by good competence and skills. Even though waqf property is a tangible inanimate object which is categorized as movable and immovable object, the value and benefits of waqf property depend on how Nazhir can make it more productive and valuable in order to provide benefits to society, especially Muslims.

The management of waqf property by Nazhir in a professional and productive manner can be realized if Nazhir has broad authority and independence, namely through an independent Nazhir institution in the form of an independent legal entity, with the institutional system regulated in a centralized management/administration. Where the operational activities carried out by nazhir waqf are individuals, organizations and legal entities that have so far been regulated in the laws and regulations of an institution, such as foundations, religious and educational organizations, community institutions, and legal entities, which should have independence in carrying out their duties. operational activities, but are organizationally subject to a Centralized Kenazhiran Mandiri Institution in the form of an Independent Legal Entity, not subject to the rules stipulated in the laws and regulations of the institution under the auspices of the waqf institution.

Currently, many waqf assets are abandoned, and unproductive due to Nazhir's ability to manage waqf assets conventionally, which is only used for consumptive activities, without knowing that waqf assets can be managed productively, one of which is by investing waqf assets for benefits. the profits) obtained can continue to grow with the aim of diversifying the existence of the waqf property without eliminating or reducing the initial essence of the waqf property, namely taking its benefits without reducing its substance (a'in). Even though the position of nazhir is very large with respect to waqf assets, as according to the Waqf Law explained in Article 1 paragraph (4), it is the party who receives the waqf property, which comes from the wakif to be managed and developed according to its designation. Therefore, Nazhir's position has a very important position as is his role in managing and developing waqf assets that have been mandated by wakif. So it will be studied about the position of nazhir as an independent waqf institution and how to strengthen the function of nazhir as an independent waqf institution

ResearchThe research

Methodsmethod used is normative juridical research. Soerjono Soekanto stated that there are 5 scopes of legal research, namely research on legal principles, legal systematics, legal synchronization standards, legal history and legal comparisons. Meanwhile, Peter Mahmud Marzuki said that the research approach models in legal research include the law approach, the case approach, the historical approach, the comparative approach, and the conceptualapproach. For this research, a legal approach is used

LITERATURE REVIEW

Nazhir's Position as an Independent Waqf Institution

According to Abdul Jamil, Director General of Islamic Guidance at the Ministry of Religion of the Republic of Indonesia, waqf assets have not been productive in Indonesia, because Nazhir does not yet have entrepreneurial skills. So Al- Buhūtī in his book *Kasyaf al-Qina' 'an Matnal-Iqna'* explains that Nazhir waqf is basically a person

(organization) who controls, maintains the principal and results of the waqf, then has the task of implementing it based on the waqf pledge that has been required by the wakif. The

management, maintenance and development of waqf property which is entrusted by the wakif to Nazhir, based on Article 9 of the Waqf Law, it is stipulated that there are three types of nazhir, namely individual nazhir, organizations and legal entities. However, in Wahbah Az-Zuhaili's view, based on the agreement of the fuqaha that what is referred to as Nazhir is first, a wakif who directly manages and develops his waqf property in the sense of wakif as well as nazhir on his own waqf property, second, the person who gets the waqf who mandated by the wakif is referred to as mauquf'alaih, third, apart from the two, it is defined as a third party who has the ability to maintain, safeguard and develop the waqf property entrusted by the wakif. So in the determination of Nazhir according to the views of the scholars, the scope is wider, namely anyone can become a Nazhir waqf when he fulfills the terms and conditions where that person is the most mature, the most pious, the oldest, or someone who has certain/special criteria.

The basis of this provision is as Saidina Ali ra stipulates that his sons Hasan and Husein are to be able to supervise the assets that are waqf[13]. Even the waqf management process began to be managed independently, handed over to his relatives until another party was implemented by Umar bin Khattab's friend, namely when the land he owned in Khaibar was managed independently, then handed over to Hafsa until her death, then handed it over to be handed back to her family who has expertise in the management of waqf. control of the property. Nazhir's position as a central point in achieving successful management and empowerment of waqf assets, of course, must be supported by good competence and skills. Even though waqf property is a tangible inanimate object which is categorized as movable and immovable object, the value and benefits of waqf property depend on how Nazhir can make it more productive and valuable in order to provide benefits to society, especially Muslims. Currently, many waqf assets are abandoned, and unproductive due to Nazhir's ability to manage waqf assets conventionally, which is only used for consumptive activities, without knowing that waqf assets can be managed productively, one of which is by investing waqf assets for benefits. the profits) obtained can continue to grow with the aim of diversifying the existence of the waqf property without eliminating or reducing the initial essence of the waqf property, namely taking its benefits without reducing its substance (a'in).

The position of nazhir is a very important and central thing because the party who receives the waqf property from the wakif to be managed and developed according to its designation is called nazhir. It is Nazhir who is responsible for maintaining, maintaining and developing waqf so that waqf can function as expected which is carried out in accordance with the objectives of the Shari'a. Productive management and development of waqf property is carried out, among others, by collecting, investing, investing, producing, partnering, trading, agribusiness, mining, industry, technology development, building construction, apartments, flats, supermarkets, shops, offices, educational facilities or health facilities and businesses that do not conflict with sharia. So nazhir is the manager of waqf property whose job is to manage and develop waqf property according to its designation

Specifically in the Waqf Law, there is no article that specifically explains the position of Nazhir. In general, if it is related to Nazhir's position, it can be elaborated based on Articles, 1, 9 and 11 of the Waqf Law, where in Article 1 paragraph (4) it is stated that Nazhir is the party who receives waqf property from the wakif to be managed and developed according to its designation. Furthermore, in Article 11 it is stated that Nazhir has the task of administering waqf assets; manage and develop waqf property in accordance with its purpose, function and designation; supervise and protect the waqf property; and report the implementation of duties to the Indonesian Waqf Board. Those who can carry out these operational tasks based on Article 9 are nazhir individuals, organizations and legal entities. So it can be concluded that Nazhir (individuals, organizations and legal entities) has a very important position in terms of his duties and responsibilities, in maintaining and empowering waqf assets so that they can develop so that the value of the benefits (profits) obtained can be used for social interests, especially for the community. Islam.

The importance of Nazhir's position in the context of waqf is as a party who has the responsibility to maintain, maintain, manage and develop waqf assets, but in the provisions of waqf fiqh, in the view of the scholars, in principle Nazhir is not included in one of the pillars of waqf. However, the scholars agree that when the wakif surrenders the waqf property, it is obligatory for the wakif to appoint Nazhir waqf in maintaining and managing the waqf property, whether the nazhir is an individual/self, mauquf alaih or other parties.

The importance of Nazhir's position is also inseparable from the existence of the waqf property handed over by the wakif, in order to have legitimacy in the aspect of fiqh and the legislation in force in Indonesia. To gain legitimacy, for waqf assets from the aspect of Islamic and national law, a waqf pledge is needed which in this case must have two elements, namely wakif and nazhir. Then Article 17 of the Waqf Law, in paragraph (1) states that the waqf pledge is carried out by the Wakif to Nadzir in the presence of PPAIW (Official Waqf Pledge Deed Maker) witnessed by 2 (two) witnesses. While paragraph (2) states that the waqf pledge as referred to in paragraph (1) is stated orally and/or in writing and is stated in the waqf pledge deed by PPAIW.

The existence of nazhir is not the actual owner, both individual nazhir, organizations and legal entities have the authority to manage and develop waqf assets with a qualified understanding so that they can be implemented to make waqf assets more productive, for example by making waqf assets for business capital for the community so that through management and Empowerment of waqf assets can prosper the community so that waqf assets can continue to grow. The position of nazhir who is in charge of the task of administering waqf property; manage and develop waqf property in accordance with its purpose, function and designation; supervise and protect the waqf property; and report the implementation of duties to the Indonesian Waqf Board.

Functions of Nazhir as an Independent Waqf Institution

As a party that has a very important role, where nazhir can be one of the determining elements of the success or failure of the waqf property to be managed and developed. Of course, to achieve this success, Nazhir must be able to understand his function as a person who has a big responsibility to manage waqf assets. Based on the Waqf Law, the explanation of the

function of nazhir is not specifically explained in article by article, but in interpreting the law the emphasis is on the duties and responsibilities of nazhir in managing waqf. This can be seen in Article 11 of the Waqf Law, which states that Nazhir has the following duties: administering the waqf property; manage and develop waqf property in accordance with its purpose, function and designation; supervise and protect the waqf property; report the implementation of duties to the Indonesian Waqf Board. In Abdullah's view that a Nazhir must be able to implement the task of managing waqf assets by cooperating with the community for development purposes, on the other hand working together to distribute the profits/results (benefits) of waqf property to the parties (people) who are entitled to receive it. Furthermore, it is the obligation of Nazhir to always be able to maintain, develop, repair (if there is damage) and maintain its existence [16] both in the short and long term, so that it continues to exist as a part that contributes to the benefit of society, especially in the social aspect. Nazhir's function in administering waqf assets is based on Article 11 of the Waqf Law, that Nazhir has an obligation to certify movable and immovable waqf assets, which have been submitted by the wakif as formal legality, especially in relation to legal certainty based on the laws and regulations in Indonesia.

Nazhir's function in managing and developing waqf property in accordance with its purpose, function, and designation based on Article 11 of the Waqf Law, it is intended that Nazhir must be able to develop waqf assets to be more productive. The management and development of waqf assets must of course be based on sharia values. Based on Article 42 of Waqf, it has been explained that Nazhir is obliged to manage and develop waqf property in accordance with its purpose, function, and designation. Furthermore, Article 43 paragraph (1) Management and development of waqf assets by Nazhir as referred to in Article 42 is carried out in accordance with sharia principles; paragraph (2) The management and development of waqf assets as referred to in paragraph (1) is carried out productively; paragraph (3) In the event that the management and development of the waqf property as referred to in paragraph (1) requires a guarantor, then a sharia guarantor institution is used.

Furthermore, Article 44 paragraph (1) states that in managing and developing waqf assets, Nazhir is prohibited from changing the designation of waqf assets except on the basis of written permission from the Indonesian Waqf Board; Paragraph (2) The permit as referred to in paragraph (1) can only be granted if the waqf property cannot be used in accordance with the designation stated in the waqf pledge.

Nazhir's function in supervising and protecting waqf assets based on Article 11 of the Waqf Law, means that when Nazhir makes a waqf pledge with wakif, there is absolutely a transfer of responsibility for the control of waqf assets, both movable and immovable from wakif to Nazhir. Supervision and protection of waqf property as Nazhir's responsibility certainly does not stop in a non-productive context, but can be done by: first, empowering waqf property, maintaining and repairing it with the aim that waqf property can be protected from various damage and destruction, so that its existence can still provide benefits as the purpose of waqf; second, protecting waqf rights by defending or advocating in the face of legal disputes, or evictions and confiscations in order to preserve the preservation and benefit of waqf for social welfare; third, to fulfill the rights of mauquf 'alaih by distributing waqf proceeds to those who are entitled and not delaying it unless there is an emergency or there are

justified syar'i reasons; and fourth, implement the Wakif requirements and must not violate these conditions except in special situations and conditions that are difficult to avoid, such as in the appointment of an individual Nazhir which is impossible because he does not meet the nazhir requirements

Nazhir in carrying out his functions, reporting on the implementation of duties to the Indonesian Waqf Board based on the provisions of Article 11 point "d" of the Waqf Law, of course confirms the need for accountability that Nazhir has in carrying out his duties. So that the reporting submitted can be formally accounted for to the Indonesian Waqf Board, as well as to the public or wakif. Based on the provisions of the Waqf Government Regulation, which regulates the obligation of Nazhir to report his duties to the minister and BWI, it is stated in Article 13 paragraph (2), which states that, "Nazhir is obliged to make periodic reports to the Minister and BWI regarding waqf activities as referred to in paragraph (1)". Meanwhile, in paragraph (3), further provisions regarding the procedure for making reports as referred to in paragraph (2) are regulated by a Ministerial Regulation.

Provisions for making reports are regulated through a Ministerial Regulation based on the Regulation of the Minister of Religion of the Republic of Indonesia No. 73 of 2013 concerning the procedures for waqf of immovable and movable objects other than money. Where in Article 28 paragraph (1) it is stated that Nazhir is obliged to submit a report on the management of immovable waqf property and/or movable waqf property other than money to the Regional Office of the Provincial Ministry of Religion and BWI periodically every 6 (six) months. Furthermore, paragraph (2) that the report on the management of waqf assets as referred to in paragraph (1) includes the implementation of management, development, and use of the results of the management. Submission of the report by Nazhir, will be followed up by the Office of the Ministry of Religion, based on Article 29 paragraph (1), that the Head of the Regency/City Ministry of Religion Office is obliged to report the implementation of waqf affairs for immovable objects and movable objects other than money as referred to in Article 2 letter a and letter b, to the Head of the Provincial Office of the Ministry of Religion periodically every 6 (six) months; paragraph (2) The Head of the Provincial Office of the Ministry of Religion submits the report as referred to in paragraph (1) to the Minister through the Director General periodically every 6 (six) months. The form of the report submitted by Nazhir through the Office of the Ministry of Religion is in accordance with Article 30, that the report on the management of waqf assets as referred to in Article 28 and Article 29 contains at least: the type of waqf property being managed; form of utilization of waqf property; the results of the management of waqf assets; and the use of the results of the management of waqf assets.

Nazhir waqf has a central role in managing and developing waqf assets, so nazhir in the view of Hanafi scholars mentions as "Qayyim al-Waqf" or Mutawalli[18], which is "a person who regulates and oversees waqf affairs" So the words of nazhir are also referred to as al-nazhr which is defined as al-hâfiz (guardal-musyriif (manager), al-qayyîm (director), al-mutawallî (administrator), or al-mudîr (director).). So Nazhir waqf can be described as a person or legal entity that holds the mandate to maintain and manage the waqf property in accordance with the form and purpose of the waqf itself.

Nazhir waqf activities are based on the Waqf Law, PP No. 42 of 2006, Minister of

Religion Regulation No. 4 of 2009, and the Regulation of the Minister of Religion of the Republic of Indonesia No. 73 of 2013. Especially in the Waqf Law relating to nazhir it is stated as a party who receives waqf property from Wakif to be managed and developed according to its designation (Article 1), also referred to as individual nazhir, organization and legal entity (Article 9), and has the task of administering the waqf property; manage and develop waqf property in accordance with its purpose, function and designation; supervise and protect the waqf property; and report the implementation of duties to the Indonesian Waqf Board (Article 11).

Nazhir's position which is so important in the development of waqf assets, of course, requires good and extensive professionalism and knowledge, so that the managed waqf assets can develop and make a positive contribution to improving welfare, especially for Muslims. However, the problem that arises is that Nazhir's independence in managing waqf assets to be developed often experiences limitations. Because the duties and authorities of Nazhir are limited by the current waqf laws and regulations. Limitations that cause nazhir not to be independent can be seen in the waqf law, including: regarding the management and development of waqf assets (Article 44), guidance that is not only carried out by BWI but also by the minister (Article 13), registration of nazhir not only at BWI but also by the minister (Article 14 paragraph 1), changes in the designation of waqf assets must be approved by the Indonesian Waqf Board (Article 44 paragraph 1), the Minister carries out guidance and supervision of the administration of waqf to realize the purpose and function of waqf (Article 63 paragraph 1). Limitations that cause nazhir not to be independent are also stated in PP no. 42 of 2006, including regarding the management and development of waqf assets, must be guided by BWI regulations (Article 48), changes in the status of waqf assets in the form of exchange are prohibited, except with written permission from the Minister based on BWI considerations (Article 49 paragraph 1), the status of the exchange of waqf assets must have written permission from the minister (Article 49 Paragraph 2), the exchange of waqf assets managed by Nazhir has a very long procedure (Article 51), Nazhir's obligation to make periodic reports not only to BWI but also the minister (Article 13 paragraph 2) The

various limitations stated above cause the development of waqf in Indonesia to be said to be not fast compared to other countries such as Singapore, Malaysia, Brunei Darussalam, Turkey, Egypt, and so on. This is inseparable from the status and position of nazhir individuals, organizations and legal entities that do not have clarity in their independence in managing waqf assets. Because they must comply with other laws and regulations, such as the Ormas Law, Foundation Law, Cooperative Law, Limited Liability Company Law, Waqf Law, PP No. 42 of 2006, Minister of Religion Regulation No. 4 of 2009, and the Regulation of the Minister of Religion of the Republic of Indonesia No. 73 of 2013. One of the overlapping regulations between the Waqf Law and Government Regulation No. 42 of 2006 with the Law on Ormas, Foundations, Limited Liability Companies and Cooperatives, namely regarding the disbandment of Nazhir, it is stated that the Nazhir organization is dissolved or dissolved in accordance with the provisions of the Articles of Association of the organization concerned (PP No. 42 of 2006 Article 8), the Nazhir of the organization must be a member of the organization (Article 10 paragraph 2 of the Waqf Law), nazhir a legal entity is an administrator of a legal entity (Article 10 paragraph 3 of the Waqf Law).

Efforts in optimizing the management of waqf assets so that they can develop rapidly in order to contribute to improving the welfare of Muslims both from the social, economic and religious aspects, it is necessary to reconstruct the nazhir waqf (individual, organizational and legal entity nazhir waqf) to become independent waqf nazhir. The independence of Nazhir waqf is inseparable and has synchronization with the reconstruction of individual waqf institutions, organizations and legal entities as independent legal entities that have been stated previously. Because the reconstruction carried out on individual waqf nazhir, organizations and legal entities to become independent waqf nazhir is certainly based on the structure of waqf property management, where independent waqf nazhir will indirectly have independent status and position because they are in the waqf institution as an independent legal entity.

Reconstruction carried out on individual waqf nazhir, organizations and legal entities to become independent waqf nazhir, including:

1. Nazhir waqf individuals, organizations and legal entities are part of the management of individual waqf institutions, organizations and legal entities as independent legal entities.
2. Nazhir individual waqf is in the organ of the individual waqf institution as an independent legal entity.
3. Nazhir's waqf organization is in the organ of the organization's waqf institution as an independent legal entity.
4. Nazhir waqf legal entity is in the organ of the waqf legal entity as an independent legal entity.
5. The appointment of nazhir waqf is carried out by the Indonesian Waqf Board without government intervention (Ministry of Religion of the Republic of Indonesia), at the suggestion of the waqf institution (individual waqf institutions, organizations and legal entities that are independent legal entities).
6. The exchange of waqf assets for the purpose of development and empowerment can be carried out by nazhir waqf in accordance with the provisions of the Shari'a and decisions of the respective waqf institutions, guided by and harmonizing the regulations set by the respective waqf institutions with the regulations set by BWI, without BWI approval and permission. and the government (Ministry of Religion of the Republic of Indonesia).
7. The development of waqf property is the prerogative right of nazhir waqf, as long as its management and designation does not violate Islamic law (Islamic law) and the rules set by BWI.
8. The reporting system and accountability of activities carried out by Nazhir waqf is carried out to each waqf institution itself, with a copy to the Indonesian Waqf Board.
9. Supervision of nazhir waqf activities is carried out by the respective waqf institutions, the Indonesian Waqf Board, and the community. However, the structured supervision system is absolutely the responsibility of the waqf institution itself. The Indonesian Waqf Board and the public can report irregularities and mistakes made by nazhir waqf to their respective waqf institutions.

Nazhir as an administrator who is given the responsibility to manage waqf property, both movable and immovable property, which may not be used as collateral, confiscated, granted, sold, inherited, exchanged or transferred in the form of other rights transfers.

The managed waqf assets can be profit-oriented if they are developed properly and remain in the corridor of shariah objectives. The type of development of waqf assets through the role of nazhir can be carried out in the form of collection, investment, investment, production, partnership, trade, agribusiness, mining, industry, technology development, building construction, apartments, flats, supermarkets, shops, offices, educational facilities or health facilities and businesses that do not conflict with sharia. Then, the profits obtained are the responsibility of Nazhir to convey the allocation so that it is right on target.

CONCLUSION

Productivity of assets is the responsibility of Nazhir as a person who has been mandated by the wakif. The centrality of Nazhir's role in managing and empowering waqf assets requires adequate capabilities, so that waqf assets can provide benefits with the quantity of Muslims who are entitled to receive more results from the development of waqf assets so that they continue to be productive. Nazhir's competence is needed to manage and empower both movable and immovable assets. Nazhir institutions that do not have independence are an obstacle to optimally managing waqf assets. Strengthening nazhir as an independent waqf institution aims to increase the quantity of Muslims who are entitled to receive the use of waqf assets. Thus, the distribution of the results of the development of waqf assets will provide more benefits.. The urgency of the Nazhir institution is to become an independent legal entity so that it has more independence in managing, empowering, and developing waqf assets so that it is more optimal and more Muslims can receive benefits to continue to develop waqf assets. Through the revision of the Waqf Law, it is necessary to construct so that the nazhir institutions have independent authority in the form of independent legal entities.

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