

The Strengthening Position and Functions of Waqfon Nadziras an Independent Institution

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The Strengthening Position and Functions of *Waqf* on *Nadzir* as an Independent Institution

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Abstract. The purpose of writing this study is to find out and analyze the position and function of *nadzir Waqf* as an independent institution so that it is expected to strengthen the role of *nadzir Waqf* in carrying out their duties, the approach used in this study uses normative juridical, the results of the research result state that *Nadzir* as the party who will determine the success of the *Waqf* implementation, only as an administrator who does not have more power, power and authority in managing the *Waqf* property that has been handed over to the *Waqf*. This is of course inseparable from the laws and regulations governing *Nadzir Waqf* itself as a guide in carrying out its activities, *Nadzir Waqf* in carrying out its duties and functions must pay attention to and be subject to various laws and regulations that are so many, many rules that must be obeyed by *Nadzir* made *Nadzir* inflexible in carrying out the development and management of the *Waqf* property.

Keywords: Function; Independent; Institution; *Nadzir*; Position; *Waqf*.

1. INTRODUCTION

Talking about the essence of *Nadzir Waqf*, as a *Waqf* institution, it 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 *Nadzir* as a manager who is given the responsibility to managing *Waqf* assets. To make *Waqf* productive, it cannot be separated from the important role of *Waqf* managers (*nadzir*) in developing *Waqf* in order to have a positive impact on society and the state. *Nadzir Waqf* in proper company manager who must be able to plan and manage *Waqf* assets.¹

Waqf is one of economic resources that have been shown to play a major role in the economy. In language endowments meaningful stop or stand (*waqafa*, *yaqiyu*,

¹ Agung Abdullah, *Nadzir dalam Perspektif Kelembagaan Wakaf di Indonesia*, *Jurnal Ilmiah Ekonomi Islam*, Vol 6 No 03 2020, page.403-408

Waqf).² In the view of Islam, the assets that have been donated are no longer the property of the *Waqf* and will not be transferred to the property of the people or entities that are the purpose of the *Waqf*.³ *Waqf* assets have been separated from the ownership rights of the *Waqf* since the pledge of *Waqf* was carried out, which later became the property of Allah whose benefit is the right of the recipient of the *Waqf*. Thus, the *Waqf* property becomes the mandate of Allah to individuals or legal entities to manage and manage it.⁴ In essence, *Waqf* property as regulated in Article 40 of Act No. 41 of 2004 concerning *Waqf* and Government Regulation Number 42 of 2006 concerning the Implementation of Act No. 41 of 2004 concerning *Waqf*, that *Waqf* assets that have been donated are prohibited from being used as collateral, confiscated, granted, sold, inherited, exchanged, or transferred in the form of other transfer of rights⁵.

As a tradition that has been practised for a long time, *Waqf* or endowment is clear evidence that Muslims in Indonesia are developing through this worship.⁶ *Waqf* assets are public assets that must be legally protected. *Waqf* is a legal act whose implementation must be in accordance with statutory procedures, *Waqf* legal actions must be stated in the *Waqf* pledge deed.⁷ According to Islamic law, *Waqf* has indeed occurred immediately with the statement of *Wakif* (people who *Waqf*) which is an *ijab*, because the implementation of *Waqf* is seen as a unilateral legal act.⁸

Nadzir as the person most responsible for the *Waqf* property that the *Wakif* has donated to him, the trust of the *Wakif* submits his assets in the form of *Waqf* to *Nadzir*, not only intended to maintain, but in order to develop, and make every effort to make the *Waqf* property productive. In various fiqh books, none of the scholars have stated that *Waqf nadzir* is a pillar of *Waqf*. However, the scholars agree that the *Wakif* must appoint the *Waqf* manager (*nadzir*), whether he is himself, the recipient of the *Waqf* or someone else.⁹

Nadzir'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 an inanimate object that is tangible, as well as

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² Amimah Oktarina, Asnaini, Developing Model of Productive *Waqf* Masjid Agung Syuhada Yogyakarta, *QIJIS: Qudus International Journal of Islamic Studies*, Vol 6, Issue 1 2018, page.103-126

³ Farhati, Dewi & Akhmad Khisni, Legal Review of Implementation Endowments Authority Relating to The Under Hand Agreement Made by *Waqif* (Case Study in KUA Wonosalam, Demak), *Jurnal Akta*, Vol 5 No. 3 2018, page.3773-776

⁴ Agung Wicaksono, The Problematic of *Waqf* Representatives and The Settlement of Disputes, *Jurnal Akta*, Vol 7 No. 4 2020, page.329-334

⁵ Darmiko Irwansyah, Ahmad Sulchan, Implementation of Land Procurement for *Waqf* Land Affected by the Solo-Ngawi Toll Road, *Jurnal Akta*, Vol 8 No. 1 2021, page.7-15

⁶ Ani Yumarni, etc, The Implementation of *Waqf* as 'Urf in Indonesia, *Sriwijaya Law Review*, Vol. 5 Issue 2, July (2021), page.287-299

⁷ Achmad Irwan Hamzani, Mukhidin, Perlindungan hukum terhadap harta benda wakaf sebagai aset publik di kecamatan Wiradesa Kabupaten Pekalongan, *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, Vol. 16, No. 2 2016, page.159-177

⁸ Achmad Irwan Hamzani, *Perkembangan Hukum Wakaf di Indonesia*, Diya Media Group, Brebes, 2015, page.112

⁹ Wahbah Zuhaili, *Fiqh Islam Wa adillatuhu*, Jilid 10 (Penjemah: Abdul Hayyie al-Kattani dkk.) Gema Insani, Depok, 2007, page.231.

movable and immovable objects, the value and benefits of *Waqf* property depend on how *Nadzir* can make it more productive and valuable in order to provide benefits to society, especially Muslims.

³⁴ The management of *Waqf* assets by *Nadzir* in a professional and productive manner can be realized if *Nadzir* has broad authority and independence, namely through an independent *Nadzir* institution in the form of an independent legal entity, with the institutional system regulated in a centralized management/administration. *Nadziran* institutions have a central role in the management of *Waqf* assets in general. Therefore, the existence and quality of *Nadzir*'s human resources must be seriously considered. *Nadzir* (both individuals, organizations and legal entities) must consist of people who have noble character, are trustworthy, well behaved, experienced, mastered administrative and financial sciences deemed necessary to carry out their duties in accordance with the type of *Waqf* and its purpose. In general, *Waqf* management can be directed and fostered optimally, if the *nadzir* is trustworthy (trustworthy) and professional. Because these two things will determine whether the institution can ultimately be trusted or not.¹⁰

Currently, many *Waqf* assets are abandoned and unproductive due to *Nadzir*'s ability to manage *Waqf* assets in a conventional manner, 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 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 *Nadzir* 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 *Waqf* to be managed and developed according to its designation. Therefore, *Nadzir*'s position has a very important position as is his role in managing and developing *Waqf* assets that have been mandated by the *Wakif*.

¹² The purpose of writing in this study is to find out and analyze the position and function of *nadzir Waqf* as an independent institution so that it is expected to strengthen the role of *nadzir Waqf* in carrying out their duties

2. RESEARCH METHODS

⁶ The method that researchers use is juridical Normative research is legal research regarding the enactment or implementation of normative legal provisions in action at any particular legal event that occurs in society.¹¹ This research uses the concept of law where, law is positive norms in the national legal system of legislation, the research is doctrinal, namely law is a manifestation of the symbolic meanings of social behavior as seen in their interactions. Non-doctrinal legal research, the approach uses qualitative research. This research is based on the legal positivist concept which states that legal

¹⁰ Abdurrahman Kasdi, Peran Nadzir Dalam Pengembangan Wakaf, *ZISWAF*, Vol 1 No. 2 2014, ¹⁷ p.213-226

¹¹ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Jakarta, 2004, page.134.

norms are identical to written norms and are made and promulgated by the competent state institutions.¹²

3. RESULTS AND DISCUSSION

3.1. *Nadzir's Position as an Independent Waqf Institution*

Nadzir wakaf is a person who manages and maintains wakaf assets and income and implements the conditions set by the another *Wakif* term used by the fuqaha is *mutawalli* which etymologically means a person who manages something when it has been set for him and he implements it. While in terminology, *mutawalli* means a person who is mandated to act (*tasharruf*) on *Waqf* property and also handle matters related to it.¹³

When viewed in *fiqh* terminology, what is meant by *Nadzir* is a person who is entrusted with the power and obligation to administer and maintain *Waqf* assets. So the definition of *Nadzir* according to the term is a person or entity that holds the mandate to maintain and manage *Waqf* property as well as possible in accordance with the form and purpose of the *Waqf* property.¹⁴ *Nadzir* language comes from the word *nazara*,¹⁵ which means *bashar* (to see), and *tadabbara*.¹⁶

The word *Nadzir* also has a meaning with *al-hâfiz* (guardian),¹⁷ *al-musyrif* (manager), *al-qayyim* (director), *al-mutawallî* (administrator), or *al-mudîr* (leader).¹⁸ The word *Nadzir* in the Indonesian Arabic dictionary also has meaning; "viewer", "examiner".¹⁹

Nadzir according to the *Waqf* Law as described in Article 1 paragraph (4) is the party who receives the *Waqf* property, which comes from the *Wakif* to be managed and developed according to its designation. Therefore, *Nadzir's* position has a very important position as is his role in managing and developing *Waqf* assets that have been mandated by the *Wakif*.

Hanafi scholars mention *Nadzir* as "*qayyim al-Waqf*" or *Mutawalli*,²⁰ namely the person who regulates and oversees the affairs of *Waqf*.²¹ In the book *al-Wilayat 'ala al-Waqf*

¹² Ronny Hanitiyo Soemitro, *Metodologi Penelitian Hukum*, Ghalia Indonesia Jakarta, 1990, page.132.

¹³ A. Zamakhsyar, Aharuddin, Rifqi Qowiyul Iman, Nazir Wakaf Profesional, Standarisasi dan Problematikanya, *Li Falaḥ: Jurnal Studi Ekonomi dan Bisnis Islam*, Vol 3, No 2 2018, page.62-74

¹⁴ Daud Ali, *Sistem Ekonomi Islam, Zakat dan Wakaf*, UI Press, Jakarta, 1988, page.91.

¹⁵ Taufiq Hamami, *Perwakafan Tanah dalam Politik Hukum Agraria Nasional*, Tatanusa, Jakarta, 2003, page.97

¹⁶ Ahmad Warson Munawwir, *Kamus al-Munawwir*, Pustaka Progresif, Surabaya, 1997, page.1532.

¹⁷ Khalid Abdullâh al-Syu'aib, *al-Nazhârah 'Alâ al-Waqf, al-'Amânah al-'Ammah li al-Awqâf*, Kuwait, page.57.

¹⁸ *Ibid.* Page.526

¹⁹ Muhammad Yunus, *Kamus Arab Indonesia*, Yayasan Penyelenggara Penterjemah/ Pentafsir al-Qur'an, Jakarta 1973, page.457

²⁰ Qadi-Khan, al-Hasan ibn Mansur al-Uzjandi al-Farghani *Fatawa al-Qadikhan*. Vol. 3. Dar Ihya Turats al-Araby, 1982, page.297.

²¹ Qal'aji, Muhammad Rawas, *Mu'jam al-Lughah al-Fuqaha*. Dar an-Nafa'is. Beirut, 1985, Page.404.

related to *Nadzir* is defined as control or supervision of *Waqf*. As a person who is entrusted or given power or given the task of supervising the *Waqf* property.²²

Nadzir is not in a position as the real owner of the property as *Waqf*, but only has the authority to manage and develop the *Waqf* property. Therefore, with *Nadzir*'s important position, *Nadzir* must really have knowledge and understanding of *Waqf* assets, both textually and contextually, especially in *Waqf* management and *Waqf* entrepreneurship, so that *Waqf* assets can be managed professionally and proportionally, so that they are maintained and develop according to its designation according to Islamic sharia.

Waqf assets are not yet productive in Indonesia, because *Nadzir* does not yet have entrepreneurial skills. *Al-Buhūti* in his book *Kasyaf al-Qina' 'an Matn al-Iqna'* explains that *Nadzir 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*.²³

According to Article 9 of the *Waqf* Law, there are three types of *Nadzir*, namely individual *Nadzir*, organizations and legal entities. However, in *Wahbah Az-Zuhaili's* view, based on the agreement of the fuqaha that what is referred to as *Nadzir* are first, a *Wakif* who directly manages and develops his *Waqf* property in the sense of *Wakif* as well as *Nadzir* 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 mandated by the *Wakif*. So in the determination of *Nadzir* according to the views of the scholars, the scope is wider, namely anyone can become a *Nadzir 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 children *Hasan* and *Husein* are to be able to supervise the assets that are *Waqf*.²⁴ Even the *Waqf* management process began to be managed independently, handed over to his relatives until another party was implemented by *Umar bin Khattab*, namely when the land he owned in *Khaibar* was managed independently, then handed over to *Hafsah* until her death, then handed it over to be handed back to her family who have expertise in control of the property.²⁵

Nadzir'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. Although *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

²² Majelis Wakaf dan ZIS Pimpinan Pusat Muhammadiyah *Panduan Wakaf*, Majelis Wakaf dan ZIS Pimpinan Pusat Muhammadiyah, Jakarta, 2010

²³ Manshur bin Yunus al-Buhuti al-Hanbali, *Kasyaf al-Qina' 'an Matn al-Iqna'*, Dâr al-Kutub al-'Alamiyyah, Juz 4, Beirut, page. 269.

²⁴ Az-Zuhaili, Wahbah, *Fiqh Islam Wa Adillatuhu*, Jilid 10. Terj. Abdul Hayyie al-Kattani, Gema Insani Press, Darul Fikri. Jakarta, 2011, page.332-333

²⁵ Muhammad Musthafa, *Muhadharat fi al-Waqf wa al-Washiyah*, Mathba'ah Dar al-Ta'lif, Cairo, 1957

Nadzir can make it more productive and valuable in order to provide benefits to society, especially Muslims.

The position of *Nadzir* 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 *Nadzir*. It is *Nadzir* 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* assets 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 *Nadzir* is the manager of *Waqf* property whose job is to manage and develop *Waqf* property according to its designation.²⁶

Specifically in the *Waqf* Law, there is no article that specifically explains the position of *Nadzir*. In general, if it is related to *Nadzir*'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 *Nadzir* is the party who receives *Waqf* property from the *Wakif* to be managed and developed according to its designation. Furthermore, Article 11 states that *Nadzir* 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. Where those who can carry out these operational tasks based on Article 9 are *Nadzir* individuals, organizations and legal entities. So it can be concluded that *Nadzir* (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 *Nadzir*'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 *Nadzir* 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 *Nadzir* *Waqf* in maintaining and managing the *Waqf* property, whether the *Nadzir* is an individual/self, mauquf alaih or other parties.

The importance of *Nadzir*'s position is also inseparable from the existence of the *Waqf* property handed over by the *Wakif*, so that it has legitimacy in the aspect of fiqh and the legislation in force in Indonesia. To gain legitimacy, for *Waqf* property from the aspect of Islamic and national law, a *Waqf* pledge is needed which in this case must have two elements, namely *Wakif* and *Nadzir*. Then Article 17 of the *Waqf* Law, in paragraph (1) states that the *Waqf* pledge is carried out by the *Wakif* to *Nadzir* before PPAIW (the Official Making the *Waqf* Pledge Deed) witnessed by 2 (two) witnesses.

²⁶ Racmadi usman, *Hukum Perwakafan Di Indonesia*, Cet. II, Sinar Grafika, Jakarta, 2013, page.134-135

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.

3.2. *Nadzir's Function as an Independent Waqf Institution*

As a party who has a very important role, where *Nadzir* can be one of the determining elements of the success or failure of *Waqf* assets to be managed and developed. Of course, to achieve this success, *Nadzir* must be able to understand his function as a person who has a great responsibility to be entrusted with managing *Waqf* assets. Based on the *Waqf* Law, the explanation of the function of *Nadzir* is not specifically explained in article by article, but in interpreting the law the emphasis is on the duties and responsibilities of *Nadzir* in managing *Waqf*. This can be seen in Article 11 of the *Waqf* Law, which states that *Nadzir* 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 *Nadzir* must be able to implement the task of managing *Waqf* assets by collaborating 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 *Nadzir* to always be able to maintain, develop, repair (if there is damage) and maintain its existence.²⁷, both in the short and long term, so that it still exists as a part that contributes to the benefit of society, especially in the social aspect.

Nadzir's function in the administration of *Waqf* assets is based on Article 11 of the *Waqf* Law, that *Nadzir* 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 statutory regulations in Indonesia.

Nadzir'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 *Nadzir* 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 *Nadzir* 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 *Nadzir* 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 *Waqf* assets 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, *Nadzir* 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

²⁷ Muhammad Abid, *Hukum Wakaf*, Dompot Dhuafa Republika dan Iiman, Jakarta, 2013

as referred to in paragraph (1) can only be granted if the *Waqf* property cannot be used according to its designation, which is stated in the *Waqf* pledge.

Nadzir's function in supervising and protecting *Waqf* assets based on Article 11 of the *Waqf* Law, means that when *Nadzir* 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 *Nadzir*. Supervision and protection of *Waqf* property as *Nadzir*'s responsibility certainly does not stop in a non-productive context, but can be done by: first, empowering *Waqf* assets, carrying out maintenance and repairs with the aim that *Waqf* assets 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 the results of *Waqf* to those who are entitled and not delaying it unless it is due to an emergency or there are justified syar'i reasons; and fourth, carry out the conditions of *Wakif* 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 *Nadzir* which is impossible because he does not meet the requirements of *Nadzir*.²⁸

Nadzir in carrying out his functions, reporting on the implementation of tasks 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 *Nadzir* 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 *Nadzir*'s obligation to report his duties to the minister and BWI, it is stated in Article 13 paragraph (2), which states that, "*Nadzir* 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 regulated⁶ 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 movable¹⁸ objects other than money. Where in Article 28 paragraph (1) it is stated that *Nadzir* is obliged to submit a report on the manage⁴ment 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.

The submission of the report by *Nadzir* will be followed up by the⁴ Office of the Ministry of Religion, based on Article 29 paragraph (1), that the Head of the Regency/Municipal 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

²⁸ Murthada, *Nazhir Profesional Kunci Kesuksesan Wakaf Produktif*, *Jurnal Muqtasid*. Vol 3, No. 1 2021, page.91-109.

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letter a and letter b, to the Head of the Provincial Office⁴ 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 *Nadzir* 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* property¹⁶ 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.

Nadzir *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. Specifically in the *Waqf* Law relating to *Nadzir*, it is mentioned 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 *Nadzir*, 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).

Nadzir'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 *Nadzir*'s independence in managing *Waqf* assets to be developed is often limited. Because the duties and authorities of *Nadzir* are limited by the current *Waqf* laws and regulations. The limitations that cause *Nadzir* 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 *Nadzir* 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 *Nadzir* not to be independent are also stated in PP no. 42 of 2006, including regarding the management¹⁶ 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 exchange status of *Waqf* assets must have written permission from the minister (Article 49 Paragraph 2), exchange of *Waqf* assets managed by *Nadzir* has a very long procedure (Article 51), *Nadzir*'s obligation to make periodic reports not only to BWI but also the minister (Article 13 paragraph 2).

5
The various limitations⁵ 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 *Nadzir* 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 *Nadzir*, it is stated that the *Nadzir* 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 *Nadzir* of the organization must be a member of the organization (Article 10 paragraph 2 of the *Waqf* Law), *Nadzir* 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 *Nadzir Waqf* (individual, organizational and legal entity *Nadzir Waqf*) to become independent *Waqf Nadzir*. The independence of *Nadzir Waqf* cannot be separated 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 *Nadzir Waqf* individuals, organizations and legal entities to become independent *Waqf Nadzir* is certainly based on the structure of *Waqf* property management, where independent *Waqf Nadzir* 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 Nadzir*, organizations and legal entities to become independent *Waqf Nadzir*, among others are:

- *Nadzir Waqf* individuals, organizations and legal entities are part of the management of individual *Waqf* institutions, organizations and legal entities as independent legal entities.
- *Nadzir* individual *Waqf* is in the organ of the individual *Waqf* institution as an independent legal entity.
- *Nadzir* of organizational *Waqf* is in the organ of the organization's *Waqf* institution as an independent legal entity.
- *Nadzir Waqf* legal entity is in the organ of the legal entity *Waqf* institution as an independent legal entity.
- The appointment of *Nadzir Waqf* is carried out by the Indonesian *Waqf* Board without government intervention/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).
- The exchange of *Waqf* assets for the purpose of development and empowerment can be carried out by *Nadzir Waqf* in accordance with the provisions of the Shari'a and the decisions of the respective *Waqf* institutions, guided by and harmonizing the regulations set by the respective *Waqf* institutions with the regulations set by BWI, with approval and permission from BWI and the government (Ministry of Religion of the Republic of Indonesia).
- Development of *Waqf* property becomes the prerogative right of *Nadzir Waqf*, as long as its management and designation does not violate Islamic law (Islamic law) and the rules set by BWI.
- The reporting system and accountability for activities carried out by *Nadzir Waqf* is carried out to each *Waqf* institution itself, with a copy to the Indonesian *Waqf* Board.

- Supervision of the activities of *Nadzir Waqf* 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 *Nadzir Waqf* to their respective *Waqf* institutions.

4. CONCLUSION

Nadzir as the party who really determines the success of the *Waqf* implementation, only as an administrator who does not have more power, power and authority in managing the *Waqf* property that has been handed over by the *Wakif*. This is of course inseparable from the laws and regulations governing *Nadzir Waqf* itself as a guide in carrying out its activities, *Nadzir Waqf* in carrying out its duties and functions must pay attention to and be subject to various laws and regulations that are so many, many rules that must be obeyed by *Nadzir* made *Nadzir* inflexible in carrying out the activities of developing and managing the *Waqf* property. So that it is difficult for *Nadzir* to move to develop and manage the *Waqf* property in the *Waqf* by the *Wakif*, in accordance with the purpose of the *Waqf* itself. In order for this goal to be realized, it is necessary to have an independent legal entity that has professional and proportional responsibility in managing *Waqf* assets. Where the independent legal entity includes *Nadzir Waqf* as an entity from a legal entity. As a legal entity, where *Nadzir Waqf* will certainly be able to realize justice and prosperity for the state in order to improve the welfare of the community. Therefore, the position and function of the *Nadzir* reality need to be placed independently so that its position, role and function can maximize the management of *Waqf* assets. This can be done by giving freedom, convenience, and strength to *Nadzir Waqf* in carrying out legal actions, so that efforts to develop *Waqf* assets, when given rights and obligations, can realize the purpose of *Waqf* itself. *Nadzir*'s independence is reflected in the certainty he has in taking actions in managing *Waqf* assets without the intervention of any party. The independence of *Nadzir Waqf* certainly cannot be separated from changes, improvements, to the *Waqf* Law, especially regarding articles related to *Nadzir Waqf*.

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