

# Mandatory Sector In Appointment Legal Entity Of Nazhir In Waqf Regulation And Foundation Regulation In Indonesia

*By Endeh Suhartini*

# Mandatory Sector In Appointment Legal Entity Of Nazhir In Waqf Regulation And Foundation Regulation In Indonesia

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**Abstract:** Nazhir is one of the elements that must be fulfilled in the implementation of waqf. The existence of nazhir is also one of the uniqueness of another form of management of Islamic Philanthropic funds, namely zakat. Nazhir's role is to manage and empower waqf objects so that the existence of waqf objects can provide and bring benefits in a sustainable manner of the benefit of the general public (ummah). The results of the development of waqf that are managed professionally and by Nazhir who is trustworthy (amanah) and professional, and by the BWI Institute will bring benefits and for the public, both in the form of designating a development of mosque / musholla facilities, Islamic educational institutions, Islamic hospital development, or for the benefit of other people's economic empowerment assistance. This paper provides an overview of how the concept of the mandatory sector is seen in the formation and appointment of Nazhir Legal Entities in terms of managing waqf assets. The Voluntary sector is inherent in the basic principles of the practice of waqf. So the authors assume that a waqf asset that is managed by using the principle of 'mandatory', will have an impact and a large contribution to maintain the economy of the community. As is well known, there are quite a number of social institutions that sustainably show a large contribution to improving the welfare of the community, and this is sourced from and by endowment funds which are voluntarily submitted from the endowment. The forming of Regulation Number 28 of 2004 concerning Amendments to Regulation Number 16 of 2001 concerning Foundations is intended to better ensure legal certainty and legal order, as well as provide a correct understanding to the public regarding the Foundation, so that it can restore the function of the Foundation as a legal institution in order to achieve certain objectives in the field of social, religious and humanitarian.

**Index Terms:** Mandatory Sector, Legal Entity of Nazhir, Waqf Regulation, Foundation Regulation.

## 1 INTRODUCTION

In Islam, waqf is one of the virtues in the form of property which is given its benefit to others. The Qur'an refers to waqaf as al-habs, defined as personal property which is given for the benefit of the public to be used as long as the goods remain. The essence of waqf lies in the existence of the goods which in Islamic teachings is called as amal Jariyah (continuous charity), and is included as one of the shadaqah jariyah (Eternal Islamic philanthropy) (U. Hasanah & Fahrurroji, 2013). The purpose of Islamic law is merely to realize the benefits of society, both in the world and in the hereafter, and to deny the harm and unity, and to realize absolute justice. Both to the law enshrined in nash, or the law which is the result of ijihad. The establishment of the Nazir institution waqf in the Law of Waqf Indonesia is a manifestation of the clarification of the provisions in the shariah (nash Al-Quran and al-Hadiths) which are global (mujmal). So, the formulation of nazhir institution is a form of 'Islamic jurisprudence' (fiqh) as a result of the understanding of 'Islamic law' (syariah) (A. Yumarni, 2019). According to M. E. Nasution and U. Hasanah (2006), specifically, land waqf is one of the most potential Islamic economic instruments in providing enhancement of social welfare aspects. Waqf can give contribution in solving socio-economic problems as long as it is managed professionally and productively. Nazhir, is one of the elements that must exist and be fulfilled in the implementation of waqf. The existence of nazhir is also one of the uniqueness of other forms of Islamic philanthropy fund management, namely Zakat. Nazhir plays a

role to manage and empower the object of waqf so that the existence of the waqf object can provide and bring sustainable benefits for the general public (ummah).

## 2 PROCEDURE FOR PAPER SUBMISSION

### 2.1 Review Stage

The appointment of responsibility for the management of waqf assets to Nazhir was hinted at by the Messenger of Allah who was accepted by the companions of the Prophet, by directly appointing a number of Shahabah to develop the waqf assets. As invited, Abu Rafi was appointed by Rasulullah, then Ali bin Abi Talib, and other Shahabah (Al Asqalani, 1960). This appointment is important for endowments to be submitted to Nazir or for endowments for management. Expertise and creativity in this context becomes a necessity when it comes to the purpose of waqf worship itself, which is to create value benefits for the wealth of waqf. What was done by the Prophet, followed by other companions of the Prophet, including Abu Bakr with waqf of House, Umar bin Khattab with Khaibar land, Ali bin Abi Talib with Land in Yanbu', Khalid bin Walid in his armor, Ustman bin Affan with the wells of Raumah, Zubayr ibn Awwam, Sa'ad bin Abi Waqash, Amru bin 'Ash and Hakim bin Hazam with their houses, as well as several other companions (Shahabudin) of the Rasulullah. The state, Indonesian Government, has a big role in creating justice and equitable social economic welfare for the people of Indonesia. as contained in the formulation of the Pancasila and also the four main points of the Preamble to the 1945 Constitution, namely: (1) that the state of Indonesia is a country that protects and encompasses the entire nation of Indonesia and the whole of Indonesia's blood spilled, and is sufficient for all groups and individual understanding; (2) that the Indonesian state wants to bring about social justice for all its citizens; (3) that the Indonesian state adheres to the concept of popular sovereignty. a state formed and organized based on popular sovereignty; and (4) that the state of

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Indonesia is a state of Godhead in accordance with a just and civilized basis of humanity (See J. Asshiddiqie, 2004). One of the research is done by S. D. Lubis (et. al., 2015), entitled Legal Relationship of Waqf Management between Nazhir and Waqf Board of Indonesia Province of North Sumatera toward Unregistered Land of Waqf, This study conducted a research on the legal relationship between Nazhir with Waqf Board of Indonesia Province of North Sumatera related to Unregistered Waqf Land Management in Medan City, and the Role of Waqf Board of Indonesia Province of North Sumatera in supervising the management of unregistered waqf land that in Medan City. The results of this study are: (1) there was a legal relationship between Nazhir and Waqf Board of Indonesia Province of North Sumatera toward unregistered land of waqf. Nazhir still has an obligation to manage it. The Waqf Board of Indonesia of North Sumatera Province encourages and forces nazhir to certify waqf land in Medan, which is managed under its own name. This is a legal relationship that must be accounted for institutionally. The largest number of Muslims in the world, especially in Indonesia, is the largest asset for the collection and development of waqfs. For example, in the Endowments of Money (Wakaf Uang). As if money can be implemented, there are potential funds that can be used for the benefit of the people. Based on the assumption of Cholil Nafis as quoted by M. Nur Rianto Al Arif, if 20 million Indonesian Muslims collect money as waqf Rp. 100,000 per month, the amount of funds collected will be 24 trillion Rupiah each year. If there are 50 million people give their money as waqf, so there will be 60 trillion money collected each year. If there are 1 million Muslims who donate Rp 100 thousand per month, we will get 100 billion Rupiah each month (Rp 1.2 trillion per year) (see Mardani, 2016). Based on the data presented by the Indonesian Waqf Board (BWI), the number of Land Waqf in Indonesia is recorded 435,768, with a land area of 4,359,443,170 square meters (M2). With details of 287,160 objects have been certified waqf, and 148,447 objects have not been certified waqf (<http://bwi.or.id/index.php/en/tentang-wakaf/data-wakaf/data-wakaf-tanah>., accessed on 24th of March 2019). Furthermore, as stated by Hasan (2011) based on the findings of research / survey of Language and Culture Center of Syarif Hidayatullah UIN Jakarta in 2006, to 500 (five hundred) nazhir responders in 11 (eleven) Provinces as follows: Majority of Nazhir work for waqf treasure as part timers (84%), and 16% work full time. 66% individuals and conventional Nazhir, 16% organizations and professionals Nazhir, and 18% incorporated Nazhir. From this description, it can be concluded that most of the waqf property in Indonesia is generally managed by unprofessional Nazhirs.

## 2.2 Methodology

Based on the problem of the study, the method used is qualitative approach. This research conducted literature research to study secondary data related to rule of law of implementation and embodiment of the Mandatory Sector in the appointment of Legal Entity of Nazhir based on Waqf Regulation and Foundation regulation in Indonesia. the implementation of waqf law for the advantage and the benefit of Muslims in Indonesia.

## 3 RESULT AND DISCUSSION

A theory known as the Welfare State Theory is a theory that is in line with the basic state of the State of Indonesia and

asserts that a State whose government guarantees the welfare of the people and to be able to realize the welfare of its people must be based on the five pillars of state, namely: Democracy, Rule of Law, Human Rights Protection, Social Justice and Anti-Discrimination. The initiator of the theory of Welfare State, is Prof. Mr. R. Kranenburg, he revealed that "the State must actively seek prosperity, act fairly which can be felt by the whole community equally and evenly, not the welfare of certain groups but the entire people" (Asshiddiqie, 2017). The definition of Nazhir according to Law No. 41 of 2004 on Waqf is the party that receives the waqf property from wakif to be managed and developed in accordance with its designation. As in Article 215 paragraph (5) Compilation of Islamic Law (KHI) defines Nazhir is a group of persons or legal entities assigned the task of maintenance and management of waqf objects. In Government Regulation No. 28 of 1977 concerning Ownership of Land Owned states Nazhir, is a group of persons or legal entities assigned the task of maintenance and management of waqf goods. Based on the provisions of Article 9 of Law Number 41 of 2004 regarding Waqf states that Nazhir includes: (1) Individual, (2) Organization, and (3) Legal Entity. The requirements of individual Nazhir are regulated in Article 10 paragraph (1) of Law Number 41 of 2004, namely (1) Indonesian citizen, (2) Moslem, (3) adult, (4) amanah, (5) capable of physically and spiritually, and (6) are not hindered by legal action. The requirements of organizational nazhir are regulated in Article 10 paragraph (2) of Law Number 41 of 2004, namely (1) the organizers of the organization concerned meet the requirements of individual nazhir, and (2) organizations engaged in social, education, community and / or religious of Islam. Requirements for nazhir of a Legal Entity are (1) the management of the legal entity concerned in compliance with the requirements of the individual nazhir, (2) the Indonesian legal entity established in accordance with applicable laws and regulations, and (3) the legal entity concerned in the social, educational, social, and / or Islamic religion. A Nazhir has a Moral attachment to Allah as a Khalik, and nazhir plays the Caliph in relation to the trust given to the Nazhir. So Nazhir must have a serious intention and firmly uphold the mandate in carrying out its responsibility. Manager of one of the assets of waqf. As also confirmed in Article 11 of Law Number 41 of 2004 regarding Waqf stating that 'Nazhir has the duty: (a) to administer waqf property; (b) managing and developing the waqf property in accordance with its objectives, functions and designations; (c) supervising and protecting waqf properties; (d) report on the implementation of duties to Indonesian Waqf Board. The formulation of the principles contained in the Law of endowment derived from Law No. 41 of 2004 on Waqf, is entered into a study group of Aspects of New Paradigm Waqf in Indonesia. Since the Government of Indonesia legalized the implementation of Waqf through Law No. 41 of 2004, it means that the implementation of waqf in Indonesia not merely contains aspects of pure muamalah worship, but also the attention and authority of the state to curb it. Based on the research conducted by Nurul Huda, et al, stated that (1) the low nazhir competence in the management of waqf is one of the priority issues in the management of waqf. The informant stated that the existing nazhir does not yet have the competence in managing waqf. People who become nazhir are a group of people who have awareness to manage waqf, although nazhir not yet have knowledge in

managing waqf, (2) waqf or nazhir management is not yet optimal management of waqf. The management of waqf that has not been optimally resulted in the existing waqf-waqf to be less productive, thus giving less benefit economically for the society. The informant conveyed that the knowledge possessed by nazhir concerning waqf is still very low, so many nazhir who are less daring develop waqf land become more productive, because wakif only give mandate to nazhir only to build mosque, school, and so on. While in the optimal management of waqf, nazhir can develop a waqf to be more productive without changing the waqf form mandated by wakif (Huda, 2015). The accountability of waqf asset management is likely the same as the accountability of charity institutions (Hyndman & McDonnell, 2009) which describes the relationship of donors, governments and beneficiaries. Charities are obtained from both government and private donors. The charitable institutions must be responsible for the charities given according to the agreement with the donors. The donors gain benefits from the good effects due to observance of the regulations, while the regulator gives to the charity institutions the legality for the operation, supervision and tax exemptions. The institution provides benefits to the community, even though they have no direct obligation to the community (Tumirin, et. al., 2017).

#### 4 CONCLUSION

Essentially, waqf in Islam is seen as an act of worship that become the voluntary sector which acts as a pillar of development and social empowerment to create the welfare of the Ummah. Voluntary from the aspect of surrender / transfer of assets from the Wakif to Religion (management by Nazhir), then voluntarily also managed by Nazhir who can be appointed directly by the Wakif. As explained in Article 9 of the Waqf Regulation. However, this is not the case when the waqf assets are managed by Nazhir which is under the name of the Foundation and / or by a Legal Entity in Indonesia. As it is known, there are quite a number of social institutions that sustainably show a large contribution in improving the welfare of the community, and this is sourced from and by waqf funds which are voluntarily submitted from the endowments. The embodiment of the mandatory sector is seen in this term, where wakif (candidates) are required to surrender their waqf assets only to the Ummah fund management institutions under the Foundation. A Formation of Law Number 28 of 2004 concerning Amendments to Law Number 16 of 2001 concerning Foundations is intended to better ensure legal certainty and legal order, as well as provide a correct understanding to the public regarding the Foundation, so that it can restore the function of the Foundation as a legal institution in order to achieve certain objectives in the field of social, religious and humanitarian.

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