

Optimizing the Role and Function of *Nazhir* as the Embodiment of Accountability Principle of Waqf Regulation in Indonesia

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Abstract

This paper conducts the study on the role and function of the nazhir of waqf in empowering the object of waqf with the aim that the intended waqf object can give benefits and contributions continuously to the public (ummah). In relation, the existence of nazhir in waqf institution is become unique in the other form of the Islamic fund management philanthropy, namely zakat. Moreover, law no 41 of 2004 concerning on waqf stated that nazhir is a person and/or a legal entity that assigned to maintain and manage a waqf property. This article discusses one of the principles contained in the law of waqf which popularly known as the principle of accountability of a nazhir manifested in in the form of optimizing the role and function of nazhir as the recipient of trust, preservation and management of waqf assets with reference to the provisions of waqf in Islam and waqf in the perspective of Indonesian legislation.

Keywords: Optimization, Nazhir, Principle of Accountability, Waqf Regulation

A. Introduction

The *Waqf* command is part of the order to do good, and the *Waqf* command also means the order to use a universal treasure whose benefits are not limited only to Muslims, but to all human beings without distinction of religion and belief. However, the *waqf* in terms of its function is empirically distinguished into two: which is useful for all people (including non-Muslims) such as land waqf for roads; and waqf is used only by Muslims; such as waqf for mosques and Muslim burial gardens. Among the waqf beneficiaries are education caretakers (Mubarak, 2013).

Historical facts show that *waqf* has shown various important roles in developing various social, economic, educational, and cultural activities. Waqf should be able to play an effective role in building the independency of muslims community from the government fundings. Waqf proved to be a social security instrument in community empowerment (Mardani, 2016). Compared to other worship, however, waqf is a special. Its specialty lies in the continuous flow of rewards of it to the *wakif*, someone who make his/her belongings as waqf, even though he/she has passed away during the waqf's possessions utilized in accordance with the purpose waqf itself. because of its privileges, even though the waqf worship is not an obligation but Muslims are very enthusiastic in doing it (Uswatun Hasanah. and Fahrurroji, 2013).

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 existance of the goods which in Islamic teachings is called *asamal Jariyah* (continuous charity), and is included as one of the shadaqah jariyah (Eternal Islamic philanthropy) (Uswatun Hasanah and Fahrurroji, 2013). Rasulullah Saw said: "When the son of Adam (human being) dies, then break his charity, except for three things; *Shadaqah jariyah*, useful science and godly children who pray for their parents "(Muslim: 1631).

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One thing is encouraging that the potential utilization of zakat funds managed by National Zakat Board (BAZNAS) and *Lembaga Amil Zakat (LAZ)* as well as waqf potential has received recognition from the national development planning authority. This is reflected from the data of the Ministry of PPN / Bappenas (national development planning) as stipulated in the Indonesian Syariah Finance Architecture. They assume that, 70 percent or Rp 509.6 trillion of Islamic financial resources in Indonesia derived from zakat and waqf funds. As it is known the potential of accumulating zakat per year based on research BAZNAS (2011) is Rp 217 trillion, while the potential of waqf especially in the form of money or cash waqf of Rp 377 trillion per year (Nassar, 2017).

According to Mustofa Edwin Nasution (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).

The desire in realizing the professionalism and productivity in terms of the development of waqf property is the fundamental idea of the author, to see how the ideal role and function Nazhir waqf in carrying out the profession in the framework of the realization of the Principle of Accountability in the principle of waqf. Which, legally, on the management of Waqf in Indonesia, has now been legalized through Law No. 41 of 2004 on Waqf, as well as how Islamic Law sees the role of nazhir for the existing benefits from a waqf object. (the aim of idea).

B. Literature Review

There are several academic and / or research studies were done related to the Theme of the Role of Nazhir in the Management of Waqf Treasures. Both studies discuss the perspective of the authority of Nazhir in legislation, and / or the manifestation of benefits arising from the object of waqf, and the role of Indonesian Waqf Board as the institution appointed to oversee the implementation of the management of waqf in Indonesia. There are:

The Role of Waqf in Achieving Social Welfare: A Study of Waqf Management in South Jakarta, a Dissertation by Uswatun Hasanah (1997). The dissertation examines the waqf management in South Jakarta has contributed to the economic ummah level and to educate people. It finds out that the waqf management in South Jakarta has not been improved as it has been projected. The waqf properties in South Jakarta are used for everyday uses, such as places of worship mosques and mosques, schools and so on. These kinds of uses do not lead to the achievement of social welfare. Based on Uswatun Hasanah's opinion, the writer is interested to conduct a more in-depth study on the role of Nazhir Function as well as the institution of Indonesian Waqf Board in realizing the Principle of Accountability towards the object of waqf.

Further research is done by Syaddan Dintara 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.

Furthermore, as stated by Tholhah 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.

From several Literature Review mentioned above, the author can conclude that the topic on the Optimization role and Function of Nazhir in the realization of the Accountability Principle has never been done before. This paper will discuss about Optimizing the Role and Function of *Nazhir* as the Embodiment of Accountability Principle from the perspective of Islamic Law and Law Number 41 of 2004 on *waqf*.

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 money waqf. 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) (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 (BWI, April, 2017).

C. 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 empowerment of role and function of Nazhir in the context of the implementation of waqf law for the advantage and the benefit of Muslims in Indonesia. The purpose of this method are:

- 1) Collecting data and information needed to know the role and function of nazhir in perspective of Law Number 41 of 2004 about Waqf.
- 2) Collection of data and information needed to review the role and function of Nazhir toward the object of waqf property.
- 3) The collection of data and information needed to know various policies and programs that have been done by the government in improving and empowering the role and function of nazhir to realize the Accountability Principle for nazhir itself.

As the data presented by Indonesian Waqf Board, an independent institution which is functioned as media to promote and develop nation waqf, The method used in this research is qualitative method, where the result of the study is descriptive.

D. Findings and Discussion

1. Nazhir in the Perspective of law No. 41 of 2004 on Waqf

The word Nazhir comes from the Arabic word, the verb *nazhara-yanzhuru-nazharan*, means keeping, nurturing, managing, and watching. And the noun is Nazhir which means Superintendent, guard, caretaker. The nazhir waqf is a person or legal entity that holds a mandate to maintain and manage waqf property in accordance with the form and purpose of the waqf itself. According to Mardani (2016), the enactment of Law No. 41 of 2004 on Waqf is a very big bet for Muslims to prove the effectiveness of Waqf which is called the greatest wealth of Muslims. Especially in the midst of a prolonged crisis experienced by Indonesia. UU Waqf awaited its implementation to create community welfare.

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 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.

2. The philosophy of waqf'snazhir in Islam

According to Masykuri Abdillah (2009), due of the great benefits of waqf, matters that must be understood in the implementation of waqf was not sufficient merely to the legal issues, but also to be understood in terms of philosophy and wisdom of waqf, which can be categorized into several forms: (1) Waqf (2) Endowments Endless Waqf, (3) Waqf for Means and Infrastructure of Worship and Social Activity, (4) Waqf for Improving the Civilization of the Ummah, and (5) Waqf for Improving the Welfare of the People.

According to Achmad Junaidi, as quoted by Jaih Mubarak (2008), the parameters of professional Nazhir are (1) trustworthy, (2) Shidiq (honest), (3) fathanah (intelligent), and (5) tabligh (transfaran). The characteristics of a trustworthy nazhir resource are (1) well educated and high in morality; (2) possess superior and competitive skills; (3) have the ability to perform the division of labor; (4) be able to perform obligations and obtain equitable rights; 5) have clear and targeted operational standards.

Terms nazhir in legislation in Indonesia has not put 'trap' so that waqf property is managed so that maximum powerless because not explicitly mentioned requirement of nazhir ability from economic-business side. Therefore, the idea of Eri Sudewo (Dompot Dhuafa Republika) regarding the requirements of nazhir closer to the spirit of Law No. 41 of 2004 on Waqf, needs to be considered (Mubarak, 2008).

Waqf teaching taught by the Prophet Muhammad. is based on one of the narrations ordering Umar ibn al-Khattab to have the land in Khaibar possessed wherewithal. The Prophet's command emphasized that the substance (existence) of the garden should not be traded, granted or inherited, and the result is given for the benefit of the people. Hadith is indeed very popular as the basis of implementation of waqf teaching in Islam. The said hadith is: Meaning: it narrated from Ibn Umar ra. said: "That friend of Umar ra. got a piece of land in Khaibar, then Umar ra. facing Rasulullah SAW. to ask for directions. Umar said: "O Rasulullah SAW, I got a piece of land in Khaibar, I have not got such a good treasure, then what do you command me?" Rasulullah SAW. said: "If you like, you hold (the ground), and you sadekahkan (the result). "Then Umar mensadekahkan (land to be managed), not sold, not granted and not inherited. Ibn Umar said: "Umar menyadekahkannya (results of land management) to the needy, the kin, sahayallah, sabilillah, ibn sabil and guests. And it is not forbidden for those who manage (Nazhir) endowments of the produce in a good way (proper) or feeding others with no intention to accumulate wealth ". (i) HR Bukhari, 2565: Muslim HR, 3085

This Hadith 'Umar is the most popular hadith in the study of waqf so it is not mistaken if Ibn Hajar refers to it as *ashlun* (origin / basis) for disyariatkannya waqf. Based on this hadith also Ibn Hajar mention the opinion that says that waqf 'Umar this is a waqf that first occurred in the history of Islam. In addition, Ibn Hajar (2000: 5 / 502-507) also mentions many conclusions about the waqf of the hadith, namely waqf's legislation in the form of land and reject the opinion that says waqf is not eternal or may be withdrawn by wakif. According to Imam al-Shafi'i, waqf is a characteristic of Muslims and it is unknown whether waqf has occurred in the age of ignorance (Usman, 2015).

3. The principles of Waqf (the ministry of religion of the Republic of Indonesia, 2013)

a. The principle of Benefit

The principle of the usefulness of a waqf object becomes the foundation most relevant to the existence of the waqf itself. This is because waqf worship is categorized as a worship that has a reward value that continues to flow even though Wakif has passed away. A waqf object can be categorized as having an eternity of benefits, there are at least four things that must exist, among others, first: the waqf objects can be utilized by the people, for example someone donating the land for established schools and the general public can take over from the existence of the school, : the waqf object gives a more real value to the wakif itself, which means giving birth to the wakif satisfaction, third: the immaterial benefit of the waqf material beyond the material benefits, fourth: the existence of the waqf object does not pose a danger to society and for the wakif itself (Manan, 2006).

b. The Principle of Responsibility

The form of responsibility referred to in this discussion is as consistent with one of the Hadiths of the Prophet: From Abu Hurairah ra. which explains the obligation to fulfill the mandate to the owner, he said: Rasulullah Saw. said, "Fulfill the trust to the one whom you are trusted (to fulfill the mandate to him), and do not betray the one who betrayed you". (Abu Dawud (3/290 no 3535), At Tirmidhi (3/564 no.1264), and others. As Abdul Manan (2006) points out, that the worship service is divine dimension and insaniyah, it means that in its implementation it implies the responsibility of the world and the hereafter. As well as the new paradigm contained in Law No. 41 of 2004 on Waqf which requires the form of management of waqf assets properly, the existence of transparency with accountability both to Allah SWT, institutional, social, and accountability in the eyes of the law.

Forms of responsibility referred to, can be classified on four forms, namely:

(1) Responsibility to God

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 as 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.

(2) Accountability to the Institute

In the case of the management of a waqf asset, an organizational body is formed which functions to control the managerial way of waqf in accordance with its designation. According to Abdul Manan, that institutional accountability is necessary to avoid deviations from waqf objects. Experience shows that due to the weak implementation of control on the institutional organization of waqf, there are many deviations from the implementation of waqf management so that the loss of waqf existence and the number of dispute with third parties (Manan, 2006).

(3) Community Social Responsibility

The concept of philanthropy is a form of love that is generally embodied by a wealthy man who helps other people who are poor or lacking. Welhendri states the general goal of philanthropy, is to manage and utilize social funds for the empowerment of society in the effort to achieve social welfare and justice, meaning that human life becomes good if it has realized its welfare and social justice (Welhendri, 1993).

(4) Legal Accountability

According to Abdul Manan (2006), the meaning of legal responsibility in the administration of waqf has a broad meaning. Which is not merely about the rules set forth in the positive law, but also concerning all things that have been explicitly regulated in the Islamic Shari'ah regarding waqf. In the case of the implementation of waqf, every element that plays in it must perform its roles and functions in accordance with Islamic Shari'a and fulfill all the provisions contained in Law Number 41 of 2004. If a nazhir does not perform its role and function as regulated, nazhir must be responsible for all his actions in accordance with applicable law. Furthermore, the form of legal liability of a nazhir will still be held accountable later by Allah SWT. This means that the question of responsibility and trust of a nazhir in the implementation of waqf is not only in the form of worldly responsibility, but also contains the responsibilities of ukhrawi (akhirat).

In addition to the provisions contained in the Act, that other general requirements for Nazhir (Djamil, 2013), among others:

- a) Nazhir is the general leader in Waqf. Therefore nazhir must be noble, trustworthy, experienced, mastering the science of administration and finance that is considered necessary to carry out its duties in accordance with the type of waqf and its purpose;
- b) Nazhir can work during his tenure within the constraints of the Waqf Law in accordance with the decisions of the social organization and the board. Nazhir performs daily duties which he thinks are good and determines his officers, and are committed to maintaining the integrity of waqf property, increasing his income, channeling the benefits. Nazhir is also a messenger on behalf of waqf against other parties or in front of the court (court);

- c) nazhir should be subject to the supervision of the Ministry of Religious Affairs and the Indonesian Waqf Board, and provide quarterly financial and administrative reports of at least a quarter of the year, on waqf and activities;
- d) nazhir is personally liable for any loss or debt arising and is inconsistent with the Waqf Law.

c. The Principle Professionalism Management

According to the management standard that must be fulfilled in the personality of nazhir, however, the respected apparatus and management of waqf (nazhir) should have an adequate education background and standard good morality so that the whole process of waqf management could produce a useful impact and would not harm the society. In addition, a waqf manager (especially nazhir) must have the skills and expertise so that the management of waqf can generate a best quality products and the respected nazhir would be able to operate the whole policy correctly according to the operational standard, so there is no lameness in management (manan, 2006)

d. The Principle of Social Justice

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 (Nurul Huda, et al., 2015).

The dynamism of the waqf institution and its mechanism of economic development in the present times. Furthermore, the contribution of waqf for economic development can be explained, among others, as follows (Budiman, 2014).

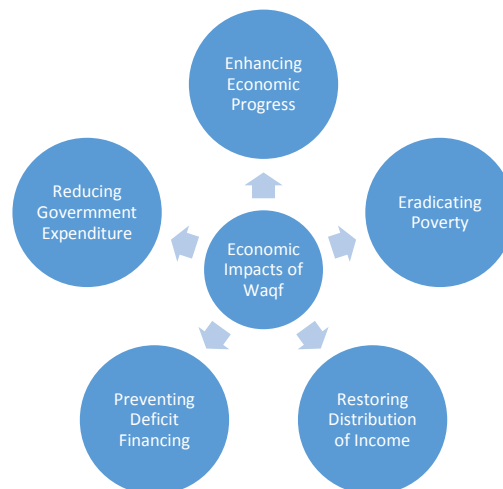


Figure 1. The Contributions of *waqf* for Economic Development

According to M. Fuad Nasar (2017), there are some actual issues that need attention and solutions from the government and the community today, especially with regard to the performance of nazhir waqf, namely: First, the lack of accuracy of dynamic data of waqf assets, including money waqf or cash waqf (cash waqf). Secondly, the low rate of collecting money waqf is still low. Third, there are still many uncertified waqf land (about 34%) and have not been utilized optimally for the benefit of the ummah. Fourth, there is still a lot of waqf land that is being snatched up by property companies, waqf is recovered by heirs, waqf assets vanish or used out of rights, and ruislag (exchange) over the troubled waqf land.

Fifth, the lack of utilization of waqf assets for productive economic activities and utilization that add value to the welfare of the people. Sixth, capacity and sense of responsibility of nazhir (waqf managers) that still need to be improved.

Seeing the reality of kenazhiran as mentioned above, the program of quality improvement nazhir become nazhir-nazhir professional and have adequate competence is a necessity in order to empowerment of waqf of present and future, especially with the strengthening orientation 'waqf productive' and 'waqf cash' , which requires new managerial skills and expertise in banking administration (Hasan, 2011).

E. Conclusion

Based on the observation of legal literatures and the results of previous research which has been stated above, the writer concludes that in order to optimize the performance of a nazhir waqf as well as in order to realize the Principle of Accountability in a nazhir, the principle of capability and credibility of nazhir should be put forward by wakif. As in the opinion of Ahmad Junaidi, which states that the parameters of professional nazhir are (1) Amanah (trustworthy), (2) Shidiq (honest), (3) Fathanah (intelligent), and (4) Tabligh (transfaran). Furthermore, get special coaching for nazhir waqf continuously from Indonesian of Waqf Board (BWI). In the case of waqf nazhir designation, the ideal is wakif should prioritize the competence and capability of a nazhir. It can be assumed that in the appointment of some nazhir waqf is not based on personal professionalism, but based on the relationship of proximity or kinship that develops in society, or because the factor of nazhir figure in society. Furthermore, the professionalism of nazhir is seen in the Deed of Waqf Pledge (AIW) within the AIW listed the interests of utilization of waqf in accordance with its designation. So that the government's efforts in this case not only curb from the point of organizing the administrative mechanism of legalization of waqf, but also from the managerial point of waqf objects through and on behalf of nazhir waqf.

The form of optimizing the role of Nazhir function is through continuous guidance carried out by the Waqf Board of Indonesia, among others: (1) meeting in the framework of development by BWI, (2) training activities, and (3) socialization related to the latest regulation on the management of waqf objects by nazhir. Furthermore, in the appointment nazhir, kapabilitas and the competence of a nazhir in the field of management and development of waqf objects should be put forward, in order to realize the principle of accountability and the principle of benefit in Islamic waqf principle.

In principle, in personality nazhir, ideally should be animated over the profession and mandate given so as to have desire to the achievement of the interests of the people through business and endeavor. In addition Nazhir as the manager of waqf assets, should have motivation and entrepreneurial spirit to attempt to invest waqf assets into the productive business sector. So that waqf economic investment by nazhir that trust can bring value of benefit and benefit of people. *Wallabul a'lam.*

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