

The Role Of Waqf Institutions After The Enactment Of Law Number 41 Of 2004

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ABSTRACT

In terms of Wakaf governance in Indonesia, Act No. 41 of 2004 on Wakaf changed the perspective. Since wakaf is the teaching of Islamic law that eventually became part of the tradition of society, it was initially managed in a simple and family-friendly manner. Later, it developed into a credible, professional, and effective institutional governance. In this study, the library institute uses a normative and historical jurisprudential approach. The main source of law, Legislative Decree No. 41 of 2004 on Wakaf, is reinforced by secondary law sources, such as books, legal journals, and doctrines of law. And in its history, the Wakaf institution has made a significant contribution to the social, economic, and cultural well-being of Islam. Wakaf is also one of the possible solutions to the need for funds to address so many problems of the people individually as well as the Islamic institutions.

ABSTRAK

Dalam hal tata kelola wakaf di Indonesia, Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf mengubah perspektif. Karena wakaf adalah ajaran hukum Islam yang akhirnya menjadi bagian dari tradisi masyarakat, ia awalnya dikelola dengan cara sederhana dan kekeluargaan. Kemudian, ini berkembang menjadi tata kelola lembaga yang kredibel, profesional, dan efektif. Dalam penelitian ini, menggunakan pendekatan kualitatif library research secara yuridis normatif dan historis. Sumber hukum utama, Peraturan Perundang-undangan Nomor 41 Tahun 2004 tentang Wakaf, diperkuat dengan sumber hukum sekunder, seperti buku, jurnal hukum, dan doktrin-doktrin hukum. Dan dalam sejarahnya, lembaga wakaf telah memberi kontribusi yang signifikan kepada kesejahteraan sosial, ekonomi, dan kebudayaan islam. Wakaf juga merupakan salah satu solusi yang mungkin untuk kebutuhan dana untuk mengatasi sekian banyak masalah umat secara individu maupun kelembagaan islam.



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INTRODUCTION

Worship, in terms of its communal practice, can foster a sense of unity among the community and obedience to Him. During the golden age of Islam, endowments had already reached a level of success, even though their management was still very simple. At that time, waqf included various items such as mosques, schools, agricultural land, houses, shops, gardens, bakeries, office buildings, and all other things that are beneficial to humanity. The 8th and 9th centuries Hijri are regarded as the golden age of the development of endowments.

Indonesia, as a great nation, recognizes that one important aspect to note that brings fundamental and monumental changes in the advancement of endowments is the birth of Law Number 41 of 2004 concerning Endowments, (R.I, 2004) in addition to bringing changes in policy and the paradigm of endowments, the inclusion of movable assets in the form of money and other movable assets means that endowments in Indonesia are no longer understood in a traditional or conventional manner as merely immovable properties like land for religious

purposes, such as mosques, prayer rooms, schools, orphanages, cemeteries, and so on, which indeed have an extraordinary contribution to spiritual development in Indonesia. Similarly, in several countries such as Egypt, Turkey, Saudi Arabia, Jordan, and Malaysia, the waqf institutions have developed significantly and are able to provide substantial benefits not only to the people in their own countries but also to those in other nations, as they can serve as a method of economic empowerment sufficient to enhance the welfare of society.

The waqf law is designed to reduce problems and encourage improvement. However, many issues related to the management of endowments remain unresolved. The management process that is more productive has not yet reached an optimal level. (Saptudin, 2023) Compared to several existing regulations on waqf, this law on waqf includes several new and important aspects. Some of them concern issues related to nazhir, the property that has been endowed, and the allocation of waqf assets, as well as the necessity to establish the Indonesian Waqf Agency. Nazhir is responsible for managing, maintaining, and developing the endowment, as well as distributing the benefits or profits from the endowment to the intended parties. Therefore, whether the waqf property develops or not depends on the nazhir itself. The presence of a nazhir, who is entrusted by the waqif to manage the waqf. Essentially, a nazhir is the person responsible for the waqf property, whether it is individual waqf, organizational waqf, or legal entity waqf. Nazhir must carry out his duties well, which is to safeguard and manage the endowment according to its intended purpose. The number of tasks performed by the nazhir determines their performance.

The management of waqf development is carried out by waqf management institutions, which are directly related to the success of waqf projects. Since waqf assets are a trust from Allah SWT that lies in the hands of the nazhir, waqf institutions have a very important responsibility. The nazhir institutions are accountable for the waqf property they hold, whether it is the property itself or the results and efforts made to develop it. In addition to the waqf institutions established by the government, religious institutions play an important role in preserving and developing waqf assets as nazhir.

The management of waqf activities to achieve objectives is known as waqf management. "Management" comes from the word "to organize." There are many definitions of management in terms. Mahbuloh (2011:38) states that management has the meaning of management as a broad noun that can be applied in all aspects of human life.(Saptudin, 2023).

METHODS

This research employs a qualitative research approach using library research methods and data collection through a literature review consisting of journals and related documents..(Sugiyono, 2017). This research employs a qualitative research approach using library research methods and data collection through a literature review consisting of journals and related documents.(Rahman, 2024)

FINDINGS AND DISCUSSION

Definition, History, and Law of Endowment

Wakaf comes from the Arabic word al Waqf, which is the verbal noun form of waqafa, meaning to stop, to remain, or to hold something back. Here, "to hold back" doesn't really mean to sit or remain still. On the contrary, when related to property, withholding ownership for a specific purpose can be interpreted as holding onto an asset for its use. (Hendrik & Mufidah, 2019) The term waqaf or waqf comes from the Arabic word wa-qa-fa, which means to hold back, stop, remain in place, or stand. The word waqafa-yaqifu-waqfan is synonymous with the word habasa-yahbisu-tahbisan, which means to be hindered from using. Therefore, the word waqf in Arabic carries the meaning of holding back, retaining property to be endowed, not transferring ownership.(Imari & Syamsuri, 2017)

According to Article 215 (1) of the Compilation of Islamic Law (KHI), waqf is a legal act by an individual, a group of individuals, or a legal entity that separates part of its property and institutionalizes it permanently for the purposes of worship or other public needs in accordance with Islamic teachings..(Husin, 2007)

Waqf was legislated in the second year of Hijri, or after the Prophet Muhammad (peace be upon him) moved to Medina. Some scholars believe that the Prophet Muhammad (peace be upon him) was the first to perform waqf, specifically by dedicating his land for the construction of a mosque. However, other scholars argue that it was Sayyidina Umar Bin Khattab who first established waqf, and then the waqf law was implemented.(Alfiah et al., 2020)

Government Regulation Number 28 of 1977 on the Endowment of Land Ownership is the first regulation regarding endowments in an independent country. This regulation only governs the endowment of land and does not cover other endowment assets generated from the implementation of productive waqf.(Hendrik & Mufidah, 2019) After many issues and disputes in the community regarding waqf land, the government decided to regulate waqf land. This occurred due to inadequate waqf regulations at the time, which made it difficult for the government to manage a significant amount of waqf land, also causing obstacles for the community and the institutions managing the waqf land.

Since the arrival of Islam in Indonesia, Muslims have known about and practiced waqf. Waqf is one of the Islamic institutions that has great potential to be further developed to assist underprivileged communities, especially considering our country is currently facing various crises, including an economic crisis. Waqf institutions in Indonesia have not yet been optimally beneficial for society because, despite their large numbers, their utilization remains consumptive and has not been managed productively. (Husin, 2007)

In the history of waqf asset management in Indonesia, there are three distinct periods: traditional, semi-professional, and professional. The traditional period focused solely on physical development, while the semi-professional period began to develop more productive initiatives. In the professional period, waqf initiatives have been empowered to develop various aspects, including but not limited to physical development. (Imari & Syamsuri, 2017)

Most of Indonesian society practices waqf based on the Syafi'i belief and local customs since the arrival of Islam in Indonesia. Before Law No. 5 of 1960 concerning the Basic Agrarian Law and Government Regulation No. 28 of 1977 concerning Land Ownership Endowments, Muslims still relied on their religious customs, such as conducting legal actions for land endowments verbally based on mutual trust. (Zahara, 2019) And in the end, waqf in Indonesia was initially managed solely as social charity, but over time it has undergone changes, especially in its management aimed at improving the welfare of the Muslim community. This is because endowments can provide benefits to the community, making it a social charity that can benefit many people. Therefore, the waqf approach is a business and management approach that is used. This condition is referred to as productive endowment. (Alfiah et al., 2020)

According to the content of Law No. 41 of 2004 concerning Wakaf, this law adds to several existing laws on wakaf and refines them. In the law, there are several substances, such as: (Zahara, 2019) 1) the property that is endowed, 2) the requirements for nadzir, 3) the registration of endowed assets by the Official Maker of Endowment Deed (PPAIW), 4) establishing an independent institution to develop nadzir, which is called BWI, 5) the empowerment of endowed assets, and 6) criminal provisions and administrative sanctions.

In Article 40 of Law Number 41 of 2004, essentially, the waqf law prohibits waqf property from being pledged, seized, donated, sold, inherited, exchanged, or transferred in any other form of rights transfer. Similarly, in Article 41, it is stated that based on the applicable laws and not in conflict with Sharia, this can be contested or removed for the public interest, as explained in the following article. The status of the waqf property that has been changed must be exchanged for assets that have the same benefits and exchange value as the original waqf property.

Productive Endowment

Actually, waqf in Indonesia only encompasses the donation of items that can be used collectively by the community, such as mosques, prayer rooms, schools, graves, or homes for orphans. Conventionally, the implementation of Waqf cannot build social and economic instruments to address the issues of the community. Moreover, the understanding of Nadhir and Wakif is largely limited to productive Waqf, so the implementation of Waqf is only regarded as a pledge from the Wakif without maximizing the benefits of Waqf. (Hendrik & Mufidah, 2019)

There is no broad understanding of a new paradigm for effective waqf development. Utilizing waqf as a tool for the massive economic development of the community is an important part of the concept of productive waqf. The lack of public awareness about the importance of empowering waqf for the common good is an issue that must be addressed collectively. (Kementerian Agama, 2015)

Muslims in Indonesia generally understand waqf and waqf nadzir only for the purposes of worship and common uses in Indonesia, such as mosques, prayer rooms, schools, and so on. This is because the understanding of Muslims about waqf and waqf nadzir tends to be limited to specific worship activities. (Husin, 2007) Conventionally, the implementation of Waqf cannot build social and economic instruments to address the issues of the community. Moreover, the understanding of Nadhir and Wakif is largely limited to productive Waqf, so the implementation of Waqf is only regarded as a pledge from the Wakif without maximizing the benefits of Waqf.

A new paradigm is needed, one of which is the development of waqf into movable assets, including waqf funds and shares created by assets that must be established. The banking institution or business then invests the movable waqf assets. After that, the profits from the development of waqf are used to enhance Islamic education, build Islamic hospitals, assist in the economic empowerment of the community, and construct places of worship. (Husin, 2007) Selama ini, konsep wakaf biasanya terbatas pada wakaf benda tidak bergerak seperti tanah dan bangunan. Namun, sekarang, wakif dapat mewakafkan sebagian kekayaannya berupa harta benda bergerak, seperti uang, logam mulia, surat berharga, kendaraan, hak kekayaan intelektual, hak sewa, dan harta bergerak lainnya.

Muhammad Syafi'I Antonio explains that productive endowments are the empowerment of endowments with three main characteristics. First, the waqf management system must be integrated, and waqf funds can be allocated for empowerment programs along with all associated costs. Secondly, the principle of the welfare of the nadzir has changed. The role of a nadzir is now considered a professional job worthy of being recognized as social work. Third, the principles of transparency and accountability.(Zahara, 2019)

Ali Amin Isfandiari stated that in the management of waqf assets, there are two strategies that must be considered. The first strategy is the professionalism of management in the context of waqf, which includes credibility, professionalism, and capability, as well as compensation related to the utilization wages resulting from its professionalism. The second strategy is the allocation of waqf assets, namely repurposing (changing the allocation) and relocation to develop waqf assets so that they become more productive.(Imari & Syamsuri, 2017)

The purpose of productive waqf management: Waqf management provides guidance and services for a number of assets intended to achieve specific goals. Therefore, the main focus of waqf management should be centered on maximizing the acquisition of profits for the predetermined purposes of those assets.(Zahara, 2019) Among them: 1) Increasing the value of waqf assets to achieve the best objectives in supporting waqf goals, 2) Recognizing that waqf assets are a source of perpetual funds whose proceeds are allocated for various social purposes, it is important to preserve the principal by investing waqf assets carefully and prudently, 3) Ensuring that the proceeds of waqf are distributed correctly to the designated waqf purposes, whether based on the waqif's statements in the waqf deed or on fiqh opinions, especially in cases where the waqf deed is lost and the waqf purpose is unknown. This will reduce the likelihood of errors in the distribution of waqf proceeds, 4) Adhering to the conditions set by the waqif, whether regarding the type of investment and its objectives, the identification of the object and its location, or the structure of management and how the nazhir occupies the position, and 5) Providing explanations to donors and encouraging them to make new waqf contributions, and generally offering guidance and advice for the establishment of new waqf both verbally and through examples.

Waqf supervisors—an individual or a group of individuals from a legal entity assigned to manage waqf assets—are the key players in the management of productive waqf properties. There are too many examples of waqf asset management conducted by supervisors who lack the necessary skills, resulting in waqf properties not functioning effectively and often becoming burdensome, providing no benefits at all to the intended beneficiaries. (Zahara, 2019)

The existence of Law Number 41 of 2004 concerning waqf is one of the efforts to provide a legal framework that is expected to encourage the development of waqf in Indonesia. This law regulates the institution of waqf. The Waqf Law and the regulations of the Indonesian Waqf Board serve as references for the implementation regulations of waqf institutions. First, the waqf institution is responsible for educating nazhir about the management and development of waqf assets. Second, it oversees and develops waqf properties on a national and international level; third, it grants approval or permission for changes in the status and allocation of waqf properties; fourth, it can dismiss and replace nazhir; and fifth, it provides approval for the exchange of waqf properties. Lastly, it advises and considers the government when they formulate waqf policies.(Alfiah et al., 2020)

Adequate empowerment is necessary for productive waqf. The goals and benefits of productive waqf will be influenced by the implementation of effective empowerment and management models. This is because management is a series of actions that consist of strategic planning, resource management, and asset development to achieve desired goals and outcomes. Fundraising, management, and distribution of benefits are the three main models that can be used to organize productive waqf. This is also demonstrated by the government's attention to the management of endowments, one of which is; On May 11, 2002, the Indonesian Ulema Council (MUI) issued a fatwa allowing cash waqf (waqf al nuqud) with the condition that the principal value of the waqf must be guaranteed to be preserved..(Lubis, 2020)

Lembaga Wakaf

Management is not just an art; it is also a science. Art is a technique to achieve desired goals. Management science requires creativity as the foundation of management knowledge and the ability to apply it. As a result, the fields of art management and other sciences complement and balance each other..(George R & Leslie W., 2011)

If the goals of waqf management are to be achieved, the functions of waqf management are necessary, as indicated by the waqf management model, which shows how all elements are interconnected in a bidirectional manner. Planning, organizing, leading, and controlling are all actions that occur simultaneously and are correlated with one another. This is a method for managing formal relationships that develop gradually.(Imari & Syamsuri, 2017)

Zakat, infaq, shadaqah, and waqf are assets of the Muslim community that must be continuously promoted to society so that the wealthy (Muslims who possess great wealth) are willing to share with their less fortunate brothers and sisters. If applied correctly, the funds provided by the author through Islamic philanthropy can aid in educational empowerment and alleviate poverty. The confidence in distribution and management still needs improvement..(Wati, 2023)

According to Sherafat Ali Hashmi, the ideal management of waqf institutions resembles corporate management in terms of waqf management. This indicates that a corporate management approach can be applied to waqf management. To maximize the expected results of the endowment, the presence of a Nazhir and a solid working team is very important. The comparison with countries that have a majority Muslim population, such as Egypt, Algeria, Saudi Arabia, Kuwait, and Turkey, is used as the subject of the research. They have been making waqf productive for a long time. The development of waqf is also very effective, even in countries with smaller Muslim populations. Singapore, for example, has waqf assets worth \$250 million when converted. The Islamic Religious Council of Singapore (MUIS) established a subsidiary called Waqf Real Estate Singapore (WAREES) to manage it..(Kementerian Agama, 2015) If they can, why can't Indonesia, the country with the largest Muslim population in the world?

The existence of waqf institutions has become very strategic amid the social and economic issues facing Indonesian society today. Waqf is an Islamic teaching that emphasizes the importance of economic welfare (social dimension), in addition to being one of the aspects of Islamic teachings that has a spiritual dimension.(Husin, 2007)

An institution that has waqf assets must manage the waqf property productively. This includes planning, organizing, managing human resources, leadership, and supervision. (Imari & Syamsuri, 2017). This can be explained as follows:

First, planning. According to the book "Sharia Management in Practice" by Didin Hafidhuddin and Hendri Tanjung, the preparation of planning requires research to obtain information about the feasibility of economic activities. Demographic characteristics, economic activities, competition, social climate, spatial planning, and the environment are components of this data. (Hafidhuddin & Tanjung, 2005)

Second, organization. An organization can also be defined as a whole that consists of financial facilities, physical materials, and human resources whose behavior is regulated according to their positions based on the tasks assigned to them. The arrangement of positions and tasks is outlined in the organizational structure as a framework for cooperation among various parts according to a pattern that ensures order, logical arrangement, and harmonious relationships. (Alma, 2006) The physical organization of productive waqf includes three main methods for managing collection, investment, and distribution of its benefits. The goal of physical management is to ensure that productive waqf generates more income through optimal management, protects the owner's assets, reduces the risk of damage, and distributes profits..(Imari & Syamsuri, 2017)

Third, human resource management. Supervisors are trained in various fields to enhance their skills. This includes training in waqf law, sharia economic systems, waqf administration, and other relevant materials. The supervisor of productive waqf carries a heavier burden than the supervisor of waqf assets that are directly utilized. Therefore, regular training is very important. To fulfill the duties as a nadzir as stated in Article 11 of Law Number 41 of 2004 concerning Waqf, one must understand Islamic business and be able to take appropriate actions to advance the waqf assets for which they are responsible..(Imari & Syamsuri, 2017)

Fourth, leadership. In terms of leadership, there are two strategies that can be applied: protection and projection: "taking on new and better things" and "preserving the good old ones." (menjaga tradisi yang baik). To take advantage of these two approaches, you must continuously enhance various sensitivities in management and development. Focus on the principles of honesty and integrity, effectiveness, planning, evaluation, and cooperation and synergy.(Imari & Syamsuri, 2017)

Fifth, supervision. Adequate supervision—administrative and financial—is needed to manage productive waqf. The purpose of this supervision is to assist and support the managers of waqf assets in becoming more productive. Supervision, also known as control, is a systematic effort to establish performance presentation standards through feedback information, comparing actual achievements with the established standards, and taking necessary corrective actions to ensure that all organizational resources are used in the most efficient and effective manner to achieve the organization's goals. (Widjajakusuma & Yusanto, 2002)

CONCLUSION

Basically, the regulations in force, especially Law No. 41 of 2004 and Government Regulation No. 42 of 2006, have been used to manage waqf assets in Indonesia from the beginning. In addition, this regulation is still

used conventionally, especially regarding immovable waqf property. The management and development of waqf assets in Indonesia is still not professional because it has not fully complied with the applicable regulations.

However, it cannot be denied that the management of Waqf in Indonesia is one effective way to improve the welfare of the community. Basically, the management of waqf assets in Indonesia already includes maximizing their utilization. Waqf, a part of Islamic teachings, demonstrates Islam's significant concern for global social issues. In this context, the teachings of endowment are actually related to natural resources, namely wealth and human resources (HR) as the subjects of utilization.

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