

Diversion of Nazhir Waqf; Analysis of BWI Regulation No. 1 of 2020

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Abstract. Diversion of Waqf Nazhir Analysis of the BWI No. 1 of 2020 concerning Guidelines for Waqf Property Management, this study aims to elaborate on waqf, dismissal and replacement of waqf nazhirs. This research uses library research presented descriptively with a normative legal approach. Data collected using literature on waqf fiqh and waqf legislation in Indonesia. This study shows that referring to the history of waqf which is used as the basis of waqf, namely the act of Umar bin Khattab endowment of land in Khaibar that Umar was ordered by the Messenger of Allah to withhold the principal and alms the proceeds. So the definition of waqf is the legal act of a person or group of people or legal entity (wakif) that separates part of his property and institutionalizes it forever for the benefit of worship or other public affairs in accordance with Islamic teachings. Nazhir plays a role in managing and utilizing waqf assets to be productive, nazhir is required to have scientific competence of amaliah, scientific shari'iyah and da'wiyah. Nazhir was given guidance and can also be dismissed by BWI if he does not carry out his duties and/or violates the prohibitions stipulated by laws and regulations.

Keywords:

waqf, nazhir, diversion

Introduction

Waqf existed and was practiced by people before Islam, although it has not been called waqf. Permanent standing places of worship are available on it in the form of operational needs provided by the founders so that they can be used in supporting worship activities, the methods practiced are the same as waqf. Baitul Haram and Al-Aqsa Mosque are places of worship, it cannot be described as belonging to someone. Its use is clearly for the benefit of everyone to carry out worship in it, this fact according to Abu Zahrah as quoted by Ahmad Rofiq, cannot deny that waqf existed before Islam. (Ahmad Rofiq., 1997). Likewise, the Prophet's Mosque is the land purchased by the Prophet SAW to the orphan brothers Sahal and Suhail bin Amr for 20 dirhams, he built the mosque into a waqf. (Maharani, n.d.) In Islam, waqf is not limited to places of worship and things that are its infrastructure and facilities, but is allowed in all kinds of alms. Such as alms to the faqir and people in need, freeing sahaya servants, good joint ventures, and all activities that intend to get closer to Allah SWT (taqarrub ilallah) including gifts to family and others, this has not existed before Islam.

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Waqf became the first Sharia instrument carried out by Umar bin Khattab to improve the welfare of the people, of course with the permission of the Prophet SAW. At that time, Umar had a fertile and productive garden in Khaibar. Hoping to help others and for the welfare of the people, Umar then consulted the Prophet (peace be upon him) about the procedures for donating the garden. The Holy Prophetsa gave advice that the garden should still remain tree, managed properly and the proceeds donated to the community. This narration was used by scholars as the basis of waqf law in Islam and gave an illustration that on the waqf land Umar bin Khattab immediately became the manager (Nadzirnya), then the Prophet gave instructions that the manager could take the results of the management to eat and feed others with a record of not exaggeration with the intention of hoarding it.

Waqf is one of the Islamic financial instruments that has an important function in the development of the Islamic economy, especially for the development of Muslim countries including Indonesia. Indonesia as the largest Muslim country in the world has great potential in managing endowment funds for development as well as other countries that have managed their endowment funds productively such as Egypt, Turkey, Bangladesh, Kuwait, and Pakistan. The success of waqf fund management cannot be separated from the role of a nazhir who manages waqf funds optimally. Therefore, a nazhir is required to have competence and professionalism with his competence and meet certain criteria in the hope that waqf funds can be managed more productively. (Hamzah, 2016) Citing the latest data on the Waqf Information System (SIWAK) application of the Ministry of Religious Affairs of the Republic of Indonesia in 2023, it is obtained that the potential of Indonesian waqf land is spread across 440,512 locations with a total area of 57,263.69 hectares. (Kementerian Agama RI, 2022) Amirsyah Tambunan Organizing Committee PT. Ventura Waqf Indonesia revealed that the potential area of Indonesian waqf land is five times wider than the area of Singapore. However, unfortunately the huge potential of waqf until now has not been managed professionally and more productively. "But the problem so far is still managed traditionally, which is intended for mosques, prayer rooms, cemeteries, and others. It has not been managed productively," he said. In the future, according to him, waqfland assets in Indonesia should be managed to empower the community Amirsyah Tambunan Organizing Committee PT. Ventura Waqf Indonesia revealed that the potential area of Indonesian waqf land is five times wider than the area of Singapore. However, unfortunately the huge potential of waqf until now has not been managed professionally and more productively. "But the problem so far is still managed traditionally, which is intended for mosques, prayer rooms, cemeteries, and others. It has not been managed productively," he said. In the future, according to him, waqf land assets in Indonesia should be managed to empower the community. "How can these movable and immovable waqf assets be optimally managed for the benefit of the people, the potential is far greater than zakat which is 217 trillion," he said. (Tambunan, 2022) Who manages waqf so that it becomes effective? i.e. Nadzir. It is in the hands of nazhir that waqf can develop and in the hands of nazhir also land can be lost.

Some previous studies that have something to do with the author's discussion include: Ima Maspupah and Shofia Mauizotun Hasanah "Strengthening Islamic Philanthropy through Sukuk Based Waqf Optimization" in conclusion that the creation of Sukuk that complies with Islamic Sharia such as Ijarah can be used as a basis for increasing cooperation among Muslim countries and financial markets by utilizing waqf assets. In waqf-based sukuk ijarah there are at least four parties involved, namely (1) the Indonesian Waqf Board (BWI) or nadzir, (2) developers, (3) the special purpose vehicle (SPV) as the issuer of sukuk ijarah, and (4) investors. The development of this commercial waqf property is carried out on a piece of waqf land managed by BWI/nadzir using the method or concept of build, operate and transfer (BOT) through the issuance of sukuk al-intifa'. Then it will be leased to investors as benefit users with the contract contract Ijarah mawsufah fi Zimmah.(Maspupah & Hasanah, 2016)

Zulfadli Hamzah "Nazhir's Role in Developing Productive Endowments" Nazhir has a very strategic role in empowering productive endowments. His position as a manager of waqf assets is very decisive on the success or failure of the empowerment of waqf assets themselves. Therefore, waqf nazhirs, whether individual nazhirs, organizations, or legal entities, are required to have competence and professionalism in empowering waqf assets. To become a professional nazhir, a nazhir must have the competence of diniyah and the competence of Kifayah then a nazhir must have the ideal conditions described above. This is necessary so that the nazhirs in the future will play a more active role in managing waqf assets productively which are still within the corridors of sharia provisions. We hope that nazhirs in Indonesia will begin to improve themselves to always introspect / evaluate themselves and cover all their shortcomings by working with various parties to advance wakafan management in Indonesia. Likewise with the Indonesian Waqf Board (BWI) to continue to conduct intensive guidance to nazhirs in Indonesia.(Hamzah., 2016)

Muhammad Abdullah Subekti and Zaki Mubarak "Ulama's View on Nazhir Waqf Wages" the result of his research is that the wakif has the right to determine wages according to a decent size according to his view, without anyone else being able to limit it. This is because the perfection of waqf will be achieved if it is in accordance with what is said and required by the wakif, including regarding the provisions of the rights of mustahik and nadzir wages. The judge is only entitled to determine the wages of the nadzir in accordance with the prevailing law. Because the purpose of the appointment of the nadzir is to take care of the benefit of the people, so that his actions cannot conflict with the benefit of the people. Differences of opinion of scholars if the wages of nadzir are not determined by the wakif and the judge. If the nadzir does not file a complaint with the judge, the ulama agrees that the nadzir does not get wages either from waqf profits or from the mall. If the nadzir files a complaint with the judge, then according to the Hanafi and Maliki scholars it is stated that the judge has the right to determine the standard wage for the wakif. Shafi'iyah scholars give three opinions, namely that the nadzir cannot get wages unless they need it, the nadzir can take wages but

only a little and the last one is that the nazhir can take standard wages whether they need it or not. Hanbali scholars, however, argue that if the nazhir works without taking wages then he does not get wages. And if the nazhir works by taking wages, Hanbali scholars have three opinions, namely that the nazhir may take wages whether they need or not, the nazhir may take wages to simply meet his needs, and the nazhir may take standard wages. (Subekhi and Mubarak, 2021)

Based on the literature search above, the research entitled "Transfer of Waqf Nazhir ([Analysis of Indonesian Waqf Board \(BWI\) Regulation Number 1 of 2020](#))" with the same title and specific discussion that has been published in scientific journals has not been found by the author. So this title is interesting to study to see how the procedure, type of nazhir transfer and the reason for the transfer according to the Indonesian Waqf Board based on the rules it issued. The following research will answer some problems; 1) What are Waqf and Nadzir Waqf? 2) Who has the right to become a Nadzir in terms of requirements and competencies possessed? 3) What is the process and reason for the transfer of Nadzir waqf according to BWI Regulation No.1 of 2020?

Method

The type of research used is library research which is grouped in normative legal research and presented with a descriptive method of waqf collected from secondary data based on the Quran and Hadith, Laws and Regulations and reading books and scientific journals related to special waqf waqf nazhir diversion.

Results and Discussion

Understanding and Legal Basis of Waqf

The word "Waqf" or "Wakf" comes from Arabic "وقف" means to hold or "stop" or "stay put" or stay standing". Word وَقَفَ - يَقِفُ - وَقْفًا - حَبَسَ - يَحْبِسُ - أَلْوَقَفْتُ بِمَعْنَى تَحْبِيسًا وَتَسْبِيلًا (Zuhaili, n.d.) The word al-waqf in Arabic contains several meanings: أَلْوَقَفْتُ بِمَعْنَى تَحْبِيسًا وَتَسْبِيلًا (detain, hold property for endowment, and not be transferred). Waqf according to the term of fiqh scholars is to hand over a durable property right to a person or nazhir (guardian of waqf), or to a managing legal entity provided that the proceeds or benefits are used for things that are in accordance with the teachings of Islamic sharia.(Harun Nasution.,n.d). Among Imam Mujtahid differed in defining waqf in terms, so they also differed in viewing waqf itself, as follows:

- a. Abu Haneefa argued that waqf is the holding of an object which, according to law, remains the property of the wakif in order to use its benefits for virtue. Based on that definition, the ownership of waqf property cannot be separated from the wakif, even he is allowed to withdraw it and he can sell it. If the wakif dies, the property "contributes benefits". Therefore the Hanafi school defines waqf as: "Not doing an act on an object, which has a fixed status as property, by giving its benefits to a party of (social) virtue, either now or in the future.
- b. The Maliki School holds that a waqf does not release the waqf property from the ownership of the wakif, but it prevents the waqf from taking actions that could release its ownership of the property to others and the wakif is obliged to give

away its benefits and may not withdraw its endowment. The actions of the wakif make the benefits of his property to be used by mustahiq (waqf recipients), even though what he has is in the form of wages, or make the results to be used like endowment of money. Waqf is carried out by reciting the lafadz waqf for a certain time according to the wishes of the owner. In other words, the owner of the property retains the thing from possessive use, but allows the use of the proceeds for good purposes, that is, the reasonable benefit of the thing while it remains the property of the wakif. The endowment is valid for a certain period of time, and therefore should not be required as an eternal endowment (forever).

- c. Shafi'i and Ahmad ibn Hanbal argue that waqf is the release of the property that is waqf from the ownership of the wakif, after perfect waqf procedure. The wakif may not do anything to the property entrusted, such as: the treatment of the owner by means of ownership to others, whether by exchange or not. If the wakif dies, the property that is entrusted cannot be inherited by his heirs. The wakif distributes the benefits of the property he entrusts to mauquf 'alaih (who is given a waqf) as binding alms, where the wakif cannot prohibit the distribution of his donations. If the wakif forbids it, then Qadli has the right to force him to give it to mauquf 'alaih. Therefore the Shafi'i school defines waqf as: "Not doing an act on an object, which has the status of belonging to Allah Almighty, by giving its benefits to a (social) virtue".
- d. Other schools are the same as the Shafi'i and Ahmad ibn Hanbal schools, but differ in ownership of the object being endowed, that is, it belongs to the mauquf 'alaih (who is given the waqf), although the mauquf 'alaih has no right to take any action on the waqf object, either sell or grant it.". ([Baedawi., 2003](#)).

The definition of waqf according to laws and regulations is: 1) Government Regulation Number 28/1977 article 1 paragraph (1) Waqf is a legal act of a person or legal entity that separates part of his property in the form of land.(Government of the Republic of Indonesia, 28 1977). 2) Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law Book 3 article 215 paragraph (1) Waqf is a legal act of a person or group of persons or legal entities that separates part of their property and institutionalizes it in perpetuity for the benefit of worship or other public affairs in accordance with Islamic teachings.(Compilation of Islamic Law., 1991). 3) Law Number 41 of 2004 concerning Waqf in 1 paragraph (1) Waqf is a wakif legal act to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to sharia.([Law of the Republic of Indonesia No. 41 on Waqf, 2004](#))

The Qur'an does not discuss specifically and unequivocally about waqf. However, since waqf is a form of virtue through material possessions, the 'ulama also understand that the Qur'anic verses that command the use of property for virtue also include virtue through waqf. Therefore, in the books of fiqh there is an

opinion that says that the legal basis of waqf is deduced from several verses. The nash proposition of the Qur'an is found in Sura Ali Imran verse 92 below:

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ۙ [آل عمران: 92]

"You never get to the service until you have spent some of the things you love". (Q.S. Ali Imron: 92)

The legal basis of waqf is taken from the hadith as explained in the book of Saheeh Bukhari hadith number 2532 below:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَصَابَ أَرْضًا بِخَيْبَرَ فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمِرُهُ فِيهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ لَمْ أُصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ فَمَا تَأْمُرُ بِهِ قَالَ إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا قَالَ فَتَصَدَّقَ بِهَا عُمَرُ أَنَّهُ لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ وَتَصَدَّقَ بِهَا فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ وَالصَّنِيفِ لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ وَيُطْعِمَ غَيْرَ مَتَمَوْلٍ (رَوَهُ الْبُخَارِيُّ). (Bukhari, n.d.)

From Ibn 'Umar radliyallahu 'anhuma that Umar bin Al Khatthab radliyallahu 'anhu got a share of land in Khaibar and then he went to the Prophet sallallahu 'alaihi wa sallam to ask His opinion on the land saying: "O Messenger of Allah, I got land in Khaibar where I never got more valuable property than that. So what did you command about the land?" So He said: "If you want, you hold (keep) the trees and then you can pray with them." Ibn 'Umar (may Allah be pleased with him) said: "So 'Umar offered it where it was not sold, neither was it given nor was it inherited but he offered it to the faqirs, relatives, to free slaves, fii sabilillah, ibn sabil and to entertain guests. And it is not a sin for the one who takes care of it to eat from it in a ma'ruf (right) way and to feed others not to hoard it. (HR. Bukhari)

Pillars and Terms of Waqf

According to fiqh, the pillars of waqf with their respective conditions, namely:

- 1). Wakif (person who endows) must have legal proficiency or kamalul ahliyah (legal competent) to perform tabarru acts' (Jay, 1989) in spending his property. Acting skills include; (1) freedom (2) reasonable (3) adult (baliqh) (4) not under supervision. (Baedawi., 2003).
- 2). Maukuf bih (property entrusted) is required to; First, the property to be entrusted must be a). al-mal al-mutaqawwam according to the Hanafi Madhhab everything that can be stored and lawful is used under normal circumstances (not emergencies). It is not legal to endow something that is not property, such as endorsing the benefits of a rented house to live in, musical instruments that are not halal to use or anti-Islamic books, because it will damage Islam. b).⁴ Ainul Ma'lumun the property to be entrusted is known with confidence that it will not cause disputes, because it is not legal to endow an obscure one of two houses. c) belongs to the wakif, then it is not valid to waqfkan that does not belong to the wakif. d). separate, not joint ownership (deliberation'). Second, the rate of property to be endowed. According to Egyptian law, the Hanafi school

does not place restrictions on the rate of waqf property. For Indonesia does not exceed one-third of the wakif property for the welfare of family members as per the Compilation of Islamic Law (KHI) chapter of the will, article 201. 3) Maukuf bih 'alaih (which is given waqf) that the allocation of waqf must be used against what is allowed by the Shari'a, namely virtue and taqarrub ilallahi.(Jay, 1989) 4) Shiqhat waqf any speech, writing or gesture from the person who contracts to waqf. Shiqhat waqf is enough with ijab from wakif without requiring qabul from mauquh 'alaih. The Mujtahids did not include Nazhir as a pillar of waqf, let alone how the process of dismissal and transfer was.(Baedawi, 2003).

The Mujtahids did not include Nazhir in the pillars of waqf, but the presence of Nazhir who was given the trust in managing waqf assets was very important. So the scholars agreed that the wakif should appoint the waqf nazhir either individually or institutionally. The appointment of waqf nazhir is intended so that waqf assets are maintained and maintained, so that the waqf assets are not in vain. Nazhir as the party in charge of maintaining and managing waqf has an important position in waqf. So important is the position of the nazhir in the waqf, that the functioning or not of the waqf object depends on the nazhir itself. On the other hand, the conversion of waqf land by irresponsible people and the conversion of waqf land from belonging to the ummah to private property and the unproductivity of waqf land is a series of waqf land problems that mount due to non-appointment or due to nazhirs who are appointed not working professionally in accordance with the provisions of the law.

Property That Can Be Entrusted

What are the properties that can be endowed?, in Law No.41/2004 Article 16 (1) Waqf property consists of: a. immovable objects; and b. moving objects. (2) Immovable objects as referred to in paragraph (1) point a include: a. land rights in accordance with the provisions of applicable laws and regulations, both those that have and have not been registered; b. buildings or parts of buildings that stand on land as referred to in letter a; c. plants and other objects related to the soil; d. property rights over apartment units in accordance with the provisions of applicable laws and regulations; e. other immovable objects in accordance with the provisions of sharia and applicable laws and regulations. (3) Movable objects as referred to in paragraph (1) point b are property that cannot be exhausted because they are consumed, including: a. money; b. precious metals; c. securities; d. vehicles; e. intellectual property rights; f. leasehold; and g. other movable objects in accordance with the provisions of sharia and applicable laws and regulations. (Law of the Republic of Indonesia No. 41 on Waqf, 2004)

Understanding Nazhir

In general, the book of fiqh does not list Nadzir as one of the pillars of waqf. This is understandable because waqf is tabarru worship'. However, considering the purpose of waqf which wants to preserve from waqf objects, the presence of Nadzir is very necessary. Umar bin Khattab during his life had practiced when endowment of his land, he himself acted as Nadzir, after his death the management of waqf was handed over to his daughter Hafsah, then transferred to Abdullah Ibn Umar, then continued by another family of Umar and so on based on Umar's will. This suggests that Nadzir is indispensable for the successful purpose of waqf.(Rofiq, 1997).

The word nazhir is etymologically derived from the verb nazhira-yandzharu which means to guard and take care of. While in the terminology of fiqh itself, it is

meant as a person who is given the power and obligation to manage and maintain waqf property. (Harmani, 2000) In Government Regulation Number 28 of 1977 concerning Land Wakafan Owned Article 1 Point 4 Nadzir is a group of people or legal entities who are assigned the task of maintaining and managing waqf objects. (Government Regulation of the Republic of Indonesia Number 28 of 1977 concerning Land Ownership Wakafan, 1977). The same definition of nazhir is contained in article 215 point 5 of the Compilation of Islamic Law. (Kompilasi Hukum Islam., 1991). According to Law Number 41 of 2004 concerning Waqf (Law of the Republic of Indonesia No. 41 concerning Waqf, 2004) Article 1 Point 4 and Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf (Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, 2006) Article 1 point 4 "Nazhir is the party who receives waqf property from the Wakif to be managed and developed accordingly with its designation". According to Muhammad Aziz in Hamzah. (Hamzah, 2016) states that the nazhir is the one who manages the waqf, establishes it, increases its production and distributes the profits generated to the mustahiks, and defends its truth and other works that cannot be mentioned one by one nor can they be limited, except by the profits and benefits of the work. And according to Said Aqil Husin Al Munawwar as quoted by Hamzah. (Hamzah, 2016) Says that a nazhir is a person who has the right to act on the waqf property, either to take care of it, maintain it, and distribute the proceeds of the waqf to those who deserve it or to do everything that enables the property to grow well and eternally. Based on some of the definitions above, it can be concluded that nazhir has the right to manage waqf assets starting from managing and maintaining them to distributing the benefits so that the mauquf alaih can enjoy the benefits of the waqf assets.

Nadzir Competency Requirements

The person to be entrusted with managing waqf (Nadzir) must be determined certain requirements and skills so that their performance can be measured and evaluated by the Indonesian Waqf Board (BWI). Based on Law Number 41 of 2004 concerning Waqf in article 9 Nadzir includes a. individuals, b. organizations or; c. legal entity. Each nadzir group has the following requirements as stated in article 10 paragraph (1) Individuals as referred to in Article 9 point a can only become Nazhirs if they meet the following requirements: a. Indonesian citizens; b. be Muslim; c. adult; d. trust; e. physically and spiritually capable; and f. not hindered from doing legal acts. (2) An organization referred to in Article 9 point b may only become a Nazhir if it meets the requirements: a. the management of the organization concerned fulfills the requirements of individual nazhir as referred to in paragraph (1); and b. organizations engaged in the social, educational, social, and/or religious fields of Islam. (3) A legal entity as referred to in Article 9 point c can only become a Nazhir if it meets the following requirements: a. the management of the legal entity concerned meets the requirements of an individual nazhir as referred to in paragraph (1); and b. Indonesian legal entities established in accordance with applicable laws and regulations; and c. the legal entity concerned is engaged in the social, educational, social, and/or religious fields of Islam. (Law of the Republic of Indonesia No. 41 on Waqf, 2004)

Muhammad Aziz explained that there are two competencies that must be possessed by a Nazir, namely, Diniyah Competence and Kifayah Competence. Diniyah competence is the competence of the nazir related to religion, such as syar'i science and experience, plus the purpose of the waqf institution, namely in

the context of preaching and conveying Islamic teachings to mankind. Thus, diniyah competence can be divided into three, namely:

- 1) Scientific Competence-Diniyah, Nazir competencies related to Islamic religious science include: a). Understanding the pillars of Faith, Islam and Ihsan, b). Knowing the sources of Islamic religious law used, namely the Quran, Al sunnah and Ijtihad, c). able to read the Quran properly and correctly, d). Understand the verses and hadiths of the Prophet related to zakat, Infak and alms, e). Understand the Law of waqf, Both in the review of fiqh and laws and regulations.
- 2) Amaliah-Sharia Competence Nahir's competencies related to the practice of Islamic Religious Science include: a). Have a high commitment to uphold the pillars of faith, Islam and faith, especially the five daily prayers, b). have a good moral foundation and never do actions that damage his good name morally, either in the form of words or deeds, c). Honest, trustworthy, fair and sincere so that it can be trusted, d). Resist temptation, especially when it comes to property and the development of endowments, e). Able to work sincerely, dedicatedly and mentally devoted to the Dhu'afa.
- 3) Da'wiyah competence. The competence of nazir related to the practice of Islamic religious knowledge includes: a). Have a mentality of da'wah and amar ma'ruf nahi mungkar, b). Able to be an example in daily behavior, c). Have the ability to communicate, motivate, and reflect the person you like, d). Have high intelligence, both emotionally and spiritually, e). Have an educator and guide spirit.

While kifayah competence is a competency that refers to the ability of nazir in maintaining, maintaining, protecting, utilizing, developing, investing and distributing the proceeds of waqf profits to those who are entitled to receive it. So the kifayah competence can be divided into two, namely competencies related to management and competencies related to business economic activities.(Aziz, 2014)

In Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf explains that waqf property must be registered in the name of nazhir, as article 3 (1) Waqf property must be registered in the name of Nazhir for the benefit of the party referred to in the deed of pledge of waqf in accordance with its designation. (2) The registration of waqf property in Nazhir's name does not prove Nazhir's ownership of waqf property. (3) The replacement of Nazhir does not result in the transfer of the property of the waqf concerned.(Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, 2006)

While the duties of the nazhir as stipulated in article 11 namely Nazhir has the following duties: a. to administer waqf property; b. manage and develop waqf property in accordance with its purpose, function, and designation; c. supervise and protect waqf property; d. report the implementation of duties to the Indonesian Waqf Board. While the welfare of the nazhir is regulated in Article 12 In carrying out the duties referred to in Article 11, the Nazhir can receive a reward from the net proceeds for the management and development of waqf property whose amount does not exceed 10% (ten percent). Nazhir himself was fostered by the Minister of Religious Affairs and the Indonesian Waqf Board as per Article 13 In carrying out the duties referred to in Article 11, Nazhir received guidance from the

Minister and the Indonesian Waqf Board. Article 14 (1) In the framework of guidance as referred to in Article 13, Nazhir must be registered with the Minister and the Indonesian Waqf Board. (2) Further provisions regarding Nazhir as referred to in Article 9, Article 10, Article 11, Article 12, and Article 13, shall be regulated by Government Regulations. (Law of the Republic of Indonesia No. 41 on Waqf, 2004) Who appoints individual Nazhir?, as per Government Regulation No. 42 of 2006 article 4 paragraph (1) individual Nazhir is appointed by the Wakif by fulfilling the requirements according to law. Furthermore, in article paragraph (2) Nazhir as referred to in paragraph (1) must be registered with the Minister and BWI through the local Religious Affairs Office. The composition of the nazhir in paragraph (5) The individual nazhir must be a group of at least 3 (three) people, and one of them is appointed chairman. Meanwhile, in paragraph (6) one of the individual Nazhirs as referred to in paragraph (5) must reside in the sub-district where the waqf object is located. (Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, 2006)

Law No.41 of 2004 concerning Waqf Article 42 Nazhir is obliged to manage and develop waqf property in accordance with its purpose, function, and designation. Article 43 (1) The management and development of waqf property by Nazhir as referred to in Article 42 shall be carried out in accordance with sharia principles. (2) The management and development of waqf property as referred to in paragraph (1) shall be carried out productively. (3) In the event that the management and development of waqf assets referred to in paragraph (1) requires a guarantor, a sharia guarantor institution shall be used. Article 44 (1) In managing and developing waqf property, Nazhir is prohibited from changing the allocation of waqf property except on the basis of written permission from the Indonesian Waqf Board. (2) The permit referred to in sub-article (1) can only be granted if the waqf property cannot be used in accordance with the designation stated in the waqf pledge.

Explanation of Article 43 Paragraph (2) The management and development of waqf assets is carried out productively, among others, by collecting, investing, investing, production, partnerships, trade, agribusiness, mining, industry, technology development, building construction, apartments, flats, supermarkets, shops, offices, educational facilities or health facilities, and businesses that do not conflict with sharia. What is meant by sharia guarantee institution is a legal entity that organizes guarantee activities for a business activity that can be carried out, among others, through sharia insurance schemes or other schemes in accordance with the provisions of applicable laws and regulations.

Reasons for the cessation of Nazhir

Law Number 41 of 2004 concerning Waqf Article 45 paragraph (1) In managing and developing waqf property, Nazhir is dismissed and replaced with another Nazhir if the Nazhir concerned: a. dies for an individual Nazhir; b. disband or be dissolved in accordance with the provisions of laws and regulations applicable to Nazhir organizations or Nazhir legal entities; c. at one's own request; d. does not carry out his duties as a Nazhir and/or violates the provisions of the prohibition on the management and development of waqf property in accordance with the provisions of applicable laws and regulations; e. sentenced to a criminal penalty by a court that has permanent legal force. (2) The dismissal and replacement of Nazhir as referred to in paragraph (1) shall be carried out by the Indonesian Waqf Board. (3) The management and development of waqf property

carried out by other Nazhirs due to the dismissal and replacement of Nazhirs, shall be carried out while taking into account the allocation of the designated waqf property and the purpose and function of the waqf.([Law of the Republic of Indonesia No. 41 on Waqf, 2004](#))

An individual Nazhir resigns from his position as a nazhir for several reasons as per Government Regulation No. 42 of 2006 Article 5 (1) Nazhir as referred to in Article 4 paragraph (1) ceases from his position if: a. dies; b. permanent disability; c. resign; or d. dismissed by BWI. Paragraph (2) The termination of one of the individual nazhirs referred to in paragraph (1) does not result in the termination of another individual nazhir. Article 6 (1) If among the individual Nazhirs resigns from their position as referred to in Article 5, the existing Nazhir must report to the Office of Religious Affairs to be forwarded to BWI no later than 30 (thirty) days from the date of the cessation of the Individual Nazhir, which then the replacement of the Nazhir will be determined by BWI. (2) In the event that among individual Nazhirs ceases their position as referred to in Article 5 for waqf for a limited period of time and waqf for an indefinite period, the existing Nazhir notifies the Wakif or the Wakif's heirs when the Wakif has died.(Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, 2006)

Diversion of Waqf Nazhir (Dismissal and Replacement) by the Indonesian Waqf Board (BWI) based on BWI Regulation No.1 of 2020

The duties and authorities of BWI as regulated by Article 49 paragraph (1) of the Waqf Law of the Indonesian Waqf Board have the following duties and authorities: a. to guide Nazhir in managing and developing waqf property; b. managing and developing waqf assets on a national and international scale; c. give approval and/or permission for changes in the allocation and status of waqf property; d. dismiss and replace Nazhir; e. give approval for the exchange of waqf property; f. provide advice and consideration to the Government in the formulation of policies in the field of wakafan;.([Law of the Republic of Indonesia No. 41 on Waqf, 2004](#))

BWI Regulation No. 1 of 2020 concerning Guidelines for the Management and Development of Waqf Assets Article 4 paragraph (1) BWI has the right to dismiss and replace Nazhir if Nazhir does not carry out his duties and/or violates the provisions of prohibitions on the management and development of waqf assets in accordance with the provisions of laws and regulations. Paragraph (2) The management and development of waqf property carried out by other Nazhirs due to the dismissal and replacement of Nazhirs, shall be carried out while taking into account the allocation of waqf assets determined and the purpose and function of waqf.(Indonesian Waqf Board Regulation No. 01 of 2020 concerning Guidelines for Management and Development of Waqf Property, 2020) For the nazhir of waqf land, the authority of BWI has been determined according to the level of organization and the area of land managed by the nazhir, which is above 20,000 square meters, becomes the authority of the Central BWI, if the area of waqf land is 1000 to 20,000 square meters is the authority of the BWI Provincial Representative, and if the area of the waqf land is less than 1000 square meters, the change and dismissal of the nazhir becomes the authority of the BWI District or City Representative. ([Burhanuddin, 2020](#)) Regarding the duties and authorities of BWI Article 49 (1) point d dismiss and replace nazhir for the following reasons:

Nazhir's dismissal for not performing duties

Referring to Government Regulation No. 42 of 2006 article 4 paragraph (1) point d that the termination of an individual nazhir due to dismissal by BWI if the person concerned does not carry out his duties as per Article 6 paragraph (4) If the Nazhir within a period of 1 (one) year since the Waqf Pledge Deed is made does not carry out his duties, then the Head of KUA either on his own initiative or on the proposal of the Wakif or his heirs has the right to propose to BWI for the dismissal and replacement of Nazhir. The duties of nazhir that are neglected result in dismissal based on article 11, namely: a. administrating waqf property; b. manage and develop waqf property in accordance with its purpose, function, and designation; c. supervise and protect waqf property; d. report the implementation of duties to the Indonesian Waqf Board.(Government Regulation of the Republic of Indonesia Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, 2006)

Violating the Prohibition Provisions

While violating the provisions of the prohibition in the management and development of the price of waqf objects, namely as stated in Article 44 (1) In managing and developing waqf property, Nazhir is prohibited from changing the allocation of waqf property except on the basis of written permission from the Indonesian Waqf Board. (2) The permit referred to in sub-article (1) can only be granted if the waqf property cannot be used in accordance with the designation stated in the waqf pledge. As for the allocation of waqf property as stated in Law No. 41 of 2004 in Article 22 In order to achieve the purpose and function of waqf 1 waqf property can only be intended for: a. worship facilities and activities; b. educational and health facilities and activities; c. assistance to the poor, abandoned children, orphans, scholarships; d. progress and improvement of the people's economy; and/or e. other public welfare advances that are not contrary to sharia and laws and regulations.([Law of the Republic of Indonesia No. 41 on Waqf, 2004](#))

Another thing is also a prohibition for nazhir based on the Waqf Law, namely changing the status of waqf property such as making waqf objects as boroh or collateral, granting, selling, bequeathing or being converted as stated in Article 40 Waqf property that has been waqf is prohibited: a. used as collateral; b. confiscated; c. granted; d. sold; e. inherited; f. exchanged; or g. transferred in any other form of assignment of rights.([Law of the Republic of Indonesia No. 41 on Waqf, 2004](#)).

Conclusion

Based on the description above, it can be concluded that waqf is a waqf legal act to separate and/or hand over part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to sharia. In order for waqf assets to achieve their goals and utilization, they must be managed by nazhirs who already have requirements such as being Muslim, mature, independent and have scientific competence in diniyah, scientific syar'iyah and da'wiyah. The waqf nazhir may be his own siwakif or the wakif appoints another person to be the nazhir. In the Waqf Law, it is known as individual nazhir, organizational nazhir and legal entity. Nazhir waqf was dismissed or replaced for several reasons, namely expiration of his term,

resignation, death and dismissal by the Indonesian Waqf Board. The Indonesian Waqf Board has the authority to dismiss nazhirs for two reasons; First, not carrying out his duties as a nazhir for one year since being appointed as a nazhir, and second, violating the provisions of the prohibition on the management of waqf assets.

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