



The Legality of Nadzir Waqf Land Managerin Islamic Philanthropy Studies (A Case Study in Tampan, Pekanbaru City)

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ABSTRACT

Purpose: This research aims to find out the legality of nadzir as the manager of the waqf lands in Islamic philanthropy perspective of it.

Design/Method/Approach: The report on the replacement and dismissal of nadzir to the office of religious affairs of Tampan is not properly performed; thus of the 212 population, the writer takes 5 nadzirs as a sample analysed descriptive qualitative analysis with purposive sampling technique.

Findings: The research shows that none of nadzir reports the replacement and dismissal to the local office of religious affairs (KUA). The nadzirs only know that waqifs hand waqf land over to them to be used by muslim, but not for the matter of the replacement and dismissal. In other words, nadzirs in Tampan have not developed a professional sense of duty due to the lack of socialization from KUA.

Originality/Values: Furthermore, the impact of no report on retiring and shifted nadzir to KUA is mudharat in the system of administrations or report on waqf land. At worst, misuse of waqf land can occur. The report on the replacement and dismissal of nadzir in Tampan is inconsistent with article 221 of Law Number 41 of 2004. Verse 1 and 2 state that nadzir is obliged to report the replacement and dismissal of nadzir to local KUA.

INTRODUCTION

Waqf institution is an Islamic social institution with social economic value. Wealth is enjoyed by not only an individual but also public. It is not because Islam prohibits a person from being wealthy but teaches mankind about the function of material possessions for society, which is the main background to establish waqf institution for the main purpose of preventing social instability¹.

An affluent rich person is encouraged to give a portion of his wealth to those who are in need of it as there is others' right in one's wealth, as is stated in Adz-dzariyat (51):19.

﴿وَالْأَخْرُومِ لِلسَّائِلِ حَقٌّ مِّمَّا لَمْ يَكُنْ فِيهِمْ وَفِي﴾

“And at their possessions there is a right to the poor who ask and the poor who have no part”

Before Islam, the waqf had been done by societies; it had not been called waqf², with the objects being not only property for worship place but also cash. Waqf land is maintained by an individual *nadzir*, organization, or legal entity with a minimum of three people and a maximum of ten people. *Nadzir* is appointed by the head of KUA on the advice of the local Indonesia Ulema Council (MUI) and the local government³.

The management of the waqf land cannot be separated from *nadzir* responsible for ensuring whether the waqf assets are developed or are in vain. *Nadzir* is obliged to guard, develop, and cultivate the potential of waqf as well as preserving the benefits of the waqf asset⁴.

An individual *nadzir* can quit from his position if passing away, permanently restrained, resigning, or dismissed by Indonesian Waqf Board (BWI). The cessation of one *nadzir* does not result in the cessation of other *nadzirs*⁵. This is because there is no deadline for *nadzir* appointment and *nadzir* can be a lifetime's work. If among *nadzir* individuals, one quits from his position, the existing *nadzir* should report to KUA to be forwarded to BWI no

¹Juhaya S Praja, *Pewakafan Di Indonesia* (Bandung: Yayasan Piara, 1997).

²Ahmad Rofiq, *Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 2000).

³Bahder Johan Nasution, *Hukum Perdata Islam Kompetensi Peradilan Agama Tentang Perkawinan, Waris, Wasiat, Hibah, Wakaf, Dan Shodaqah* (Bandung: Mandar Maju, 1977).

⁴Departemen Agama RI, *Pedoman Pengelolaan Dan Pengembangan Wakaf* (Jakarta: Dirjen BIMAS Direktorat Pemberdayaan Wakaf, 2006).

⁵Presiden Republik Indonesia, “PERATURAN PEMERINTAH REPUBLIK INDONESIA NOMOR 42 TAHUN 2006 PELAKSANAAN UNDANG UNDANG NOMOR 41 TAHUN 2004 TENTANG WAKAF,” Pub. L. No. 42, 4 (2006).

later than 30 (thirty) days from the date of cessation of *nadzir*, who will then be replaced by *nadzir* appointed by BWI.

The topic of the problem regarding the legality of this waqf *nadzir* has never been studied before. However, there are several previous studies that carry the topic of waqf to be studied, including first, research conducted by Abdurrahman Kasdi with the research title "The Role of *Nadzir* in the Development of Waqf". From this research it is concluded that the existence of *nadzir* is very necessary in empowering waqf and managing waqf property⁶. Second, research conducted by Ali Masyhar, Ridwan Arifin, and Adib Nor Fuad on "Certification of Transfer of *Nadzir* Individual Waqf Legal Entities to *Nadzir* Legal Entities for Mosques/Musholla in Gunung Pati District, Semarang City". The results of his research reveal that the issuance of a certificate of transition of *Nadzir* waqf from individual *Nadzir* to institutional/legal entity *nadzir* (in this case NU), brings assurance of certainty in the management of Mosques/Musholla in Gunung Pati District⁷. From the two previous studies above, the similarity with the research that the researcher is studying is that they both carry the topic of waqf. The difference lies in the focus of the study being researched, which is about the legality of individual *nadzir* in Tampan District.

Based on the Compilation of Islamic Law, article 221 of Law Number 41 of 2004, *nadzir* is dismissed by the head of local KUA because of: a.) death, b.) an appeal from the individual, c.) inability to perform his duty as *nadzir*, d.) committing a crime and therefore convicted. If there is a vacant position for *nadzir* due to one of the reasons mentioned in the verse (1), a successor is appointed by the head of local KUA on the advice from the local government and MUI. A *nadzir* who has stopped from his position as in the verse (1) sub a is not automatically replaced by one of his heirs⁸

If the individual *nadzir* who quits from his position is a *nadzir* for waqf in a limited period of time and an indefinite period of time, then the existing *nadzir* notifies the wakif or wakif's heir if wakif passed away. If the *nadzir* is within 1 (one) year after Waqf Pledge Act (AIW) cannot perform his duties, then the head of KUA either on his own initiative or at the proposal of *wakif* or his heir is entitled to propose to BWI for *nadzir* dismissal and replacement. This *nadzir* dismissal can be reported to local KUA. If there is no local KUA, the report can

⁶Abdurrahman Kasdi, Peran Nadzir dalam Pengembangan wakaf. *Jurnal Ziswaf*, 1 (2), 225.

⁷Ali Masyhar, Ridwan Arifin, Adib Nor Fuad Sertifikasi Alih Nadzir Badan Hukum Wakaf Perorangan kepada Nadzir Badan Hukum Bagi Masjid/ Musholla di Kecamatan Gunungpati Kota Semarang, 02 (1), 66. Diperoleh 30 April 2021, dari <https://journal.unnes.ac.id>

⁸Departemen Agama RI, "Kompilasi Hukum Islam," Pub. L. No. Nomor 1 Tahun 1991, 31(1991), <https://putusan3.mahkamahagung.go.id/peraturan/detail/11e9da0c8167c5c0b9c2313930343435.html>.

be made to the nearest KUA, Ministry of Religious Affairs, or representative of BWI in the province/ district / city.

Like any other KUA in Indonesia, that in Tampan as institution to record waqf pledge (*ikrar*) has *nadzir* whose responsibility is to take care and manage waqf asset. During the service of a *nadzir*, replacement is certain due to such reasons as death or adders change. However, in actual fact, a *nadzir* or waqf institution unable to perform the duty seems to stop from the position as personal decision and be replaced by other *nadzirs* without official replacement from the head of the nearby KUA. This appears negligible so that the dismissal and replacement of a *nadziris* inconsistent with Law Number 41 of 2004 on the Compilation of Islamic Law.

TEORITICAL REVIEW

Waqf Definition

In Arabic, waqf means al-habsu from the verb habasa - yahsibu - habsan, which means keeping one away from something or imprison. This word then develops to habbasa meaning to donate a portion of wealth for God. The waqf itself comes from the verb وقف (*fiilmadi*)-*fiilmudori* ') اوقف (*isimmasdar*) which means to stop or stand. The Arabic word of al-waqf has some meanings as follows⁹:

والتسبيل التحببى بمعنى قف الو

“Waqf is holding assets for waking, not moving.”

From the aspect of terminology, waqf can be given a variety of interpretations, namely:

الشرع وفى : الله سبيل فى منفعة وصرف المال حبس اى . الشمرة وتسبيل الاصل حبس

“waqf according to syara' is to hold thing and make use of the result, meaning to hold an object and use its benefits in the cause of Allah.”

Waqf means al-habs (holding) which, in boarder meaning, is *tahbiisulashlwatasbiilulmanfa 'ah*" withholding an item and providing a benefit¹⁰. Thus, waqf according to syara' means the containment of ownership rights on property (al-'ain) for the purpose of donating the benefits (al-manfa 'ah) in the cause of Allah. Withholding dzat (origin) of things means holding waqf assets

⁹Adijani al Alabij, *Pewakafan Tanah Di Indonesia Dalam Teori Dan Praktek* (Jakarta: Raja Grafindo Persada, 2002).

¹⁰Syaikh M. Bin Shalih al Utsaimin, *Panduan Wakaf, Hibab Dan Wasiat Menurut Al- Quran Dan as-Sunnab* (Jakarta: Pustaka Imam Asy-Syafi'i, 2008).

from being inherited sold granted, mortgaged, rented, or loaned¹¹.

In Indonesia, waqf has been regulated under law number 41 of 2004 regarding the government establishing Indonesian Waqf Board. Verse 1 article 1 states:

"Waqf is defined as a deed of the waqif to separate and/or hand over a portion of his property to be used perpetually or temporarily (for a certain period of time) for the purpose of worship and/or general welfare according to sharia"¹².

Article 215, chapter I of book iii on KHI concerning waqf legal form, Islamic Law defines waqf as follows:

"Waqf isa legal act of a person, a group of people ora legal entity that separates some of his/their wealth and establish it perpetually for the purpose of worship or other common interests according to the teaching of Islam"¹³

From the above definitions of waqf, it can be concluded that waqf aims to bring benefit of the property that is given to those who are entitled to be used in accordance with Islamic sharia teaching. This corresponds to article 5, Law Number 41 of 2004 saying waqf carries out the function of developing the potential and economic benefits of the asset for worship and the improvement of general welfare.

Concept of Nadzir

Nadzir comes from Arabic verb *nadzara-yandzurun-nadzaran*, which means guarding, maintaining, managing and supervising. Also, nadzir is isimfa'il of the word nadzir that can then be interpreted as the supervisor (guard) while nadzir waqf, known as nadzir, is the one who is given the task of managing waqf. Nadzir, in terminology, is an individual or legal entity that holds the mandate to maintain and take care of waqf asset in accordance with its nature and purpose¹⁴.

Nadziris the individual who receives waqf asset from waqf to be managed and developed accordingly. Nadzir with his responsibility to maintain and manage waqf asset has such a crucial position that whether waqf functions effectively or not form auquf 'alaih is completely dependent on nadzir.

¹¹Muhammad Jawad Mughniyah, *Fiqih Lima Madzhab : Edisi Lengkap* (Jakarta: PT Lentera Basritama, 1996).

¹²Presiden Republik Indonesia, "Undang Undang Nomor 41 Tahun 2004," Pub. L. No. 41 Tahun 2004, 6 (2004), <https://www.bwi.go.id/wp-content/uploads/2019/09/Undang-undang-No.-41-2004-Tentang-Wakaf.pdf>.

¹³Departemen Agama RI, *UU No 1 Tahun 1974 Tentang Perkawinan Dan UU No 7 Tahun 1989 Tentang Peradilan* (Jakarta: Direktorat Pembinaan Badan Peradilan Agama, Direktorat Jendral Pembinaan Kelembagaan Agama Islam, Departemen Agama, 1996).

¹⁴Suparman Usman, *Hukum Perwakafan Di Indonesia* (Serang: Darul Ulum Press, 1994).

Nevertheless, nadzir has no absolute control over the asset he receives¹⁵.

RESEARCH METHODS

This study uses descriptive qualitative analysis in which systematic and complete data is obtained and then qualitatively analysed with the purpose of studying the examined problem fundamentally and deeply at the root of the problem to provide its clarity. The problem-solving technique is applied by illustrating or describing the condition of the research subject/object (one, institution, society and others) at present based on the facts that appear or are totally true. This descriptive analysis is aimed to depict the phenomenon or circumstance of nadzir legality as the manager of the waqf land in Tampan as is stated in article 221, Law Number 41 of 2004 on Islamic Law. The research data is assessed and examined under the underlying clause, Islamic economic and positive law.

FINDINGS AND DISCUSSION

The Legality of Nadzir in Tampansubdistrict

The presence of nadzir as the individual given trust in managing waqf asset is crucial. Although a large number of mujtahid do not make nadzir as one of waqf pillars (rukun), the Islamic scholars agree that waqif has to appoint nadzir, either individuals or legal entity. The appointment aims to preserve and take care of asset as long as preventing it from being abandoned. So crucial is the position of a nadzir that he has to meet the the main requirements in order that the waqf asset can be empowerment¹⁶.

One of the main obstacles in waqf development in Indonesia is the existence of nadzir in a traditional way of thought and society due to the following factors:

- a. The stagnant school of thought of the majority of muslims over the issue of waqf is still tightly held. Waqf has been placed only as a relatively inessential religious teaching. Moreover, the majority of Indonesian Muslim scholars focus more on the aspect of benefits. This results in a large number of waqf assets providing fewer benefits to society. Many assets are even abandoned owing to following the thought of Imam Syafii that does not allow the change of the waqf property even if it is damaged. This leads to the waqf asset sun able to be developed more optimally.

¹⁵Direktorat Pemberdayaan Wakaf Dirjen Bimas Islam, *Fikih Wakaf* (Jakarta: Dirjen Bimas Islam, 2005).

¹⁶Departemen Agama RI, *Paradigma Baru Wakaf Di Indonesia* (Jakarta: Dirjen Bimas Islam, 2007).

- b. There is lack of the human resource quality of nadzir. Many waqifs give their properties on the basis of their belief in religious figures such as *kyai*, *uẓtadẓ*, *ajengan*, or *tuan guru* with less or no consideration of their managerial quality (ability). As a result, a number of the waqf properties are left unattended (neglected).
- c. weak desire of nadzir also contributes to the ruddy condition of waqf in Indonesia. Many nadzirs do not have strong militancy in raising spirit of waqf empowerment for the general welfare. Also, what worsens the condition is the fact that some nadzirs misuse the waqf assets, such as renting the waqf estate for business for personal gain or deliberately making a sale with a third party in an illegal way.

Regarding waqf property for mosque, there are a large number of both movable and immovable properties, but in villages, the latter is more common, which, in general, includes:

1. Farm lands: farming,
2. Plantation, farm
3. Field, secondary crop¹⁷.

Tampan has extensive waqf lands managed by nadzirs who are appointed by waqif and taken pledge in KUA Tampan. However, in fact, some nadzirs have retired or been replaced but without official report to KUA as stated in article 221 on KHI concerning Waqf Law. The writer will present several examples of waqf land in condition of replacement and the dismissal of nadzir with no official report to KUA.

Al-Muttaqin Mosque

Located on HR Soebrantas street, the village of Tuah Karya, Al Muttaqin mosque is endowment from Haji Harun. Buyung Muhtazar was appointed as nadzir with Syafrizal and M. Yunus as witnesses when waqf pledge was recited. This mosque was given as waqf property on a-2385m land in 1990, having overseen the construction of educational facilities, MDA, mosque (main worship place), and sale centre up to now. During the process of certification, however, Syafruddin replaced the position of Buyung Muhtazar as nadzir because he changed his place of residence. This change was implemented without acknowledgement from KUA. In other words, nadzir change was made without Official Letter for legal appointment of nadzir and without legitimation.

Syafaruddin replacing Buyung Muhtazar as nadzir stated, "I do not know

¹⁷(Departemen Agama RI, 2007)

that there must be official report to KUA when there is nadzir replacement. What I know is that whether the purpose of waqf is achieved or not is dependent on nadzir given the responsibility. The land which was donated as waqf by Haji Harun produced great benefits for nearby people. After Buyung Muhtazar left, I just wanted this land to keep providing benefits. However, 2 years after I served as nadzir, I intended to take the position down as the heirs of waqif had desire more for developing the value of the property by building educational facility which since then has been managed by the heirs of waqif.

Meanwhile, Muhtar as a local in RT 02 said, “I, as a local, only want the waqf land to be utilised although it is managed not by nadzir appointed by waqif. The main point is that this property is not for sale”.

Ubudiyah Mosque

The mosque located on Jalan Garuda Sakti, the village of Simpang Baru was waqf property from M. Zain with Amir Hamzah appointed as nadzir and Nasrun and Hasanuddin as witnesses when the pledge was taken. This 2220-m plot of land was given in 1989. Amir Hamzah performed his duty well but it was still controversial as some people disagreed with the sustainable development agreed by the society. As a result, Amir Hamzah asked to stop from his position and be replaced by Herman as a nadzir. Yet, for the reason that he was also head of RW, he refused the position to avoid double job. This illegal process of position change was without the knowledge of the office of Religious Affairs, which proves that nadzir does not need the legality from the office of Religious Affairs.

Amir Hamzah as the first nadzir and now as head of RW stated, “I did not want to serve as waqf because there was a dissenting view from some people not wanting me to keep my position as nadzir at that time. Besides, as I also was head of RW, I thought one responsibility was enough for me so that I could focus more on my work performance. I did not earn my salary, so I thought that I did not need to report to the office of Religious Affairs, and that someone wanted to donate his wealth was enough for me to be grateful”.

Also, Herman as substitute nadzir said, “As long as I live and I am physically fit, I perform my duty well. But, I don't think that the report to KUA is essential to do because there is no positive matter we get. Besides, KUA itself never disseminates the information on the obligation report nadzir change”.

Nurul Iman Mosque

This mosque, located on Jalan Taman Karya, Tampan, was built on a waqf land from Muhammad and Zainal Arifin was the nadzir. The waqf purpose of this mosque is for worship place, educational and MDA facility. This a-

1960m plot of land had Waqf Pledge Act (AIW) in 2004 which presented Mimi Rawat and Bukhari Sidik as witnesses. However, nadzir as the land manager did not seem to perform his duty well since his responsibility to manage waqf property was not fully taken up. In fact, considerable benefit could be gained from a variety of activities such as buying and selling. Due to this negligence, Samrudin soon substituted Zaenal Arifin as nadzir, which means the replacement without legality form KUA or unauthorized nadzir without the knowledge of the authorities.

Samruddin opined, “I think it is acceptable not to report the change and dismissal of nadzir to KUA. Moreover, the waqf land is used for mosque construction as it should be. Moreover, as long as I serve as nadzir, KUA has never held meeting or counselling. I think it is possible that many other duties need to be carried out by KUA instead of only receiving the report on the change of a nadzir”.

Zainal Abidin as the first nadzir and now as head of RW 06 said, “the waqf property is fairly large, and for now I have retired. This is because I serve as head of RW and the property has been managed by an institution led by Dr. Ackmal. I gave the responsibility to him with Samruddin as nadzir.

Al-Fitrah Mosque

Located on HR Soebrantras street, this mosque was endowment from Muhammad Yusuf in 1995, pledge was made in KUA with Syahrial as the appointed nadzir along with Ja'far Nurdin and Dafrianto as witnesses. Now, this land of 1560m has new nadzir, H Siron. Both H. Siron and the previous nadzir, Syahrial, have never reported the position change to KUA. This is assumed to disobey the Indonesian law, which means the new nadzir performs his duty in an illegal way.

Siron said, “I just carry out my duty as mandate from the people. I never give a report as there is no announcement from KUA and I do not really understand the obligation.”

Syahrial, as a resident in the same RT as the property, said, “the waqf land has very strategical location as it is near the main road in Pekanbaru, Bengkinang. Now, nadzir is inactive in performing his duty, but the mosque still operates, and its maintenance is handled by the society.

Nurush Sadri Mosque

This mosque, located on Jalan Taman Karya, Tampan, was endowment from Hj. Yuliana with Jasman Khatib Marajo as the appointed nadzir and M. Yunus dan Nazaruddin Qorib as witnesses. This a-1236m plot of land with

strategical location on main street in Taman Karyawas donated in 1994 for worship place. Now, the legitimate nadzir, Jasman Khatib Marajo, performs his duty ineffectively. Nevertheless, there is no report yet on the dismissal of nadzir to the authority, KUA, which results in unclear dismissal status and the substitute nadzir.

Jasman Khatib Marajo said, "I have been managing the waqf land for so long, and am not really active. But, I do not think that I need to report my resigning because whether I stop from my responsibility or not has no impact on no one. This is beyond my knowledge, and on the other hand, KUA never holds counselling regarding the obligation to report if I stop from my duty.

Hasan Basri as the head of RT 06, stated, "Nadzir is so old that he is not performing his responsibility as he did. But it does not matter for us since the mosque is still visited by many worshippers (jamaah) despite the absence of nadzir. Also, it is difficult to find someone who wants to make a charitable endowment due to the high price of land.

Of all the statements above, it can be concluded that the reasons why nadzirs do not make reports in their dismissal and replacement are as follows:

1. Not knowing the obligation to report the replacement and dismissal of nadzir to local KUA Tampan.
2. No information and instruction from KUA Tampanto nadzir to report the replacement and dismissal of nadzir.
3. Lack of socialisation from KUA Tampantonadzirs in Tampan
4. Personal principles of nadzir that waqf management is hereditary, which thus needs no intervention from KUA.
5. Belief that waqf is not something everyone has to know. One waqif and God have the right to know it.
6. Waqf is only to be guarded and managed by nadzir, and therefore it is not essential to report the replacement and dismissal of nadzir to KUA Tampan as long as there is no adverse effect on the country.

According to Mukhlis,S.Pd, the following are the reasons why no report on the replacement and dismissal of nadzir to KUA.

1. Most nadzirs have no knowledge of the regulation concerning waqf.
2. They have their own tradition in managing waqf as they know that waqf is a charitable worship to God and, thus, does not need to be reported.
3. There is cost constraint.

4. They have no knowledge regarding the procedure of the report
5. There is lack of socialization.

In the opinion of Fauzan, M.Si, the following are the causes and effects from the case of no report on the replacement and dismissal of nadzir to KUA.

1. Nadzir appointed by waqf if has no in-depth knowledge about waqf.
2. There is traditional thought that waqf land is merely required for workshop place with no right to utilize it as income resource and economic well-being of muslim society.
3. There is lack of attention from KUA as the authority in doing counseling, coaching, and supervising for the waqf land and for the nadzir managing it.

On the basis of the above principles, adzirs are convinced to set a priority over management instead of either legitimate or illegitimate status, and being appointed by KUA or not. In many cases, waqif has descendant he trusts so that he thinks there is no need to report to KUA. Besides, there is no socialization and understanding about the nature of waqf along with rights and obligations to government, resulting in hereditary management of waqf assets strengthened by society.

The writer opines that nadzirs' not reporting their dismissal or replacement leads to mudharat in administration of report management of waqf land's result, with the worst thing being misuse of waqf land. Waqf land under management of illegitimate nadzir results in no protection from law to nadzir in case of dealing with problems or dispute causing more complicated issue. The emerging issue will bring chaos and conflict in society, which is caused by minor problem and eventually results in mudharat and fatality.

Islamic Philanthropy Studies on the Legality of Nadziras Manager of the Waqf Lands in Tampan

Generally, Muslim scholars (Ulama) have agreed that the authority of nadzir is restricted to waqf management for intended purpose of waqif. Asaf A.A. Fyzee opined, as quoted by Dr. Uswatun Hasanah, that the obligation of nadzir is conducting all the things properly for the sake of asset guard and management.

As supervisor, nadzir can appoint some vice-nadzirs or assistants to hold the affairs related to his duty and obligation. Therefore, nadzir can be an individual, organization, and legal entity as the authority who has an obligation to supervise and preserve, but not to sell, mortgage, and rent unless it is

permitted by court¹⁸.

Tampan is sub district with very wide waqf land which is managed by nadzir having been appointed by waqif and taken in KUA Tampan. Nevertheless, in fact, some nadzirs disobey the law and do not conduct their duty in accordance to the law concerning waqf due to the following reasons:

1. Inability to conduct his duty as nadzir
2. Changing his place of residence
3. Having traditional thought
4. Not knowing his obligation yet
5. Lack of socialization

Nadzir as the one who is given responsibility to supervise and preserve waqf has to be capable of performing his duty well, and make a report to KUA if he has no more capability of keeping the trust entrusted to him, as Allah said in surah Al-Anfal; 27.

“O, you who have believed, do not betray Allah and the Messenger or betray your trust while you know [the consequence].”

Trust is a right of mukallaf in regards of others' right to conduct because it is obligatory to convey the trust to those who deserve having it. Ahmad Musthafa Al-Maraghidevides the trust into 3, namely¹⁹ :

- a. The trust of man to God that is, God's requirement which must be the decree of God which has to be accepted by doing all the orders from God and leaving all His prohibition. This includes using all potentials and organs of the body for beneficial affairs as well as having a faith that it all comes from God, and wickedness is an act of treason to Allah.
- b. The trust of man to man, including returning the package to its owner, not cheating and deceiving, keeping a secret, and other acts that is a part of responsibility toward family, relative, and mankind. This kind of trust also includes leader righteous to his people, muslim scholar righteous to common people by giving guidance to those to have right intension, motivation to do charity which benefits them here and afterlife, providing quality education, asking to attempt in a legal way, offering advice which can strengthen faith to be avoided from the badness and sin and love the truth and goodness. A husband righteous to his wife, husband or wife who

¹⁸Achmad Djunaidi, *Menuju Era Wakaf Produktif* (Depok: Mumtaz Publishing, 2007).

¹⁹Muhammad Abduh, *Tafsir Al-Manar* (Beirut: Dar al-Ma'rifat, n.d.).

keeps the secret of his/her partner especially about marital relationship is also included in this kind of trust.

- c. The trust of man to himself, that is, doing all the best and beneficial for himself in both religious or world's affairs²⁰ :

Keeping the trust is high morals. Allah depicted it as a lucky believer in Q.S Al-Mu'minun (23): 8.

رَاعُونَ وَعَهْدِهِمْ لِمَنْتِهِمْ وَالَّذِينَ

“Those who faithfully observe their trusts and their covenants.”

Conversely, Allah hates those who betray, and betraying is one of characteristics of hypocrite (munafiq). Allah said clearly on this in Q.S Yusuf (12) : 52.

الْخَائِبِينَ كَيْدِي لَا إِلَهَ إِلَّا اللَّهُ وَأَنْبَاءُ غَيْبِ أَخْنَهُ لَمْ أَنْبَأُ لِيَعْلَمَ ذَلِكَ

“(Yusuf said): that did in order that he may know that I betrayed him not in secret, and that Allah guideth not the guile of betrayers.”

In Islamicfiqh, amanah is defined as trust given to someone regarding maintaining wealth such as al-wadiah and ariyah. Al-wadiah is any belonging which is left by the owner with somebody to take care of. Meanwhile, ariyah is permission given by the owner for its wealth to be used by other people without any charge²¹.

From the perspective of fiqh, the authority of nadzir is based on hadith narrated by Ibn Umar, “It is not sinful for a *nadzir* endowment to consume a part of the endowment in a righteous manner.” A righteous manner (ma'ruf) means common standard or degree. Nadzir is mutawalli, meaning possessing power restricted to preserve, guard, manage, and then utilise the waqf revenue or result in consistent to its purpose. If the waqf asset no longer has mutawalli, then a qadhi can position as observer of the asset²². Below are the requirements

²⁰Ahmad Musthafa al Maraghi, *Tafsir Al Maraghi* (Beirut: Dar al Fikr, n.d.).

²¹Habib Nazir and Muhammad Hasanuddin, *Ensiklopedi Ekonomi Dan Perbankan Syariah* (Jakarta: Kaki Langit, 2004).

²²M. Hasballah Thaib, *Fiqih Waqaf* (Medan: Program Pascasarjana Hukum Universitas Sumatera Utara, 2003).

of nadzar to meet:

1. A Muslim
2. Capable, which is strength and capability of someone to hold what he guards and supervises.
3. Fair, someone who often spared from all the prohibition of Sharia and conduct what is obliged, and this is opinion among muslim scholars (jumhur ulama)
4. According to Wahbah Al-Zuhaili, capability can be shown through taklif (adult and sensible). Male is not requirement to be nadzir because in history, Umarr. A bequeathed Hafsa r.a to be nadzir²³.

In encyclopaedia of Islamic Law, it has been explained that a nadzir has to meet the following requirements:

1. A muslim. If the waqf asset comes from a muslim owner, it is required that nadzir is also muslim. This is in accordance with Hambali school of thought.
2. Possessing skills and knowledge about administration in managing waqf assets, and acting according to the law.
3. Fair, meaning someone who always has self-awareness of prohibited action. According to Hambali, fasik can be nadzir as long as he has responsibility and trust²⁴.

If the mentioned requirements can be fulfilled, the position as nadzir may be given to him. Otherwise, hakim is allowed to appoint the new capable nadzir having relative relationship or close to waqif. Because the right of supervision lies in waqif to be in accordance with waqf principle and have the right to choose relative or if not any, choose people outside family²⁵.

Furthermore, Islamic fiqh never explains organizational structure of individual nadzir, and in many cases in Indonesia, waqf management adheres to local custom. In terms of organizational structure and obligation, nadzir is completely appointed by waqif. If waqif does not appoint nadzir, qadhi functions as nadzir. All the rules from waqif will be law to the waqf asset²⁶.

From the above explanation, it seems that Muslims have a high hope of maximal management of waqf according to intension and purpose of waqif

²³Wahbah al Zuhaili, *Al Fiqh Al-Islam Wa Adillatub* (Beirut: Dar al Fikr, 1984).

²⁴Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam* (Jakarta: Ichtisar Baru van Hoeve, 1996).

²⁵Dahlan.

²⁶Thaib, *Fiqih Waqaf*.

when donating his wealth as waqf. The responsibility of individual nadzir and legal entity can be implemented by utilizing a maximal level of waqf asset through an effective and sustainable management, guarding, preservation, and supervision²⁷. All actions carried out in conducting duty as the waqf manager will have transcendental responsibility to Allah, as is stated in Quran that human will be examined and held accountable for managing waqf asset. Allah said clearly on this in Q.S An-Nahl(16): 52.

﴿تَتَّقُونَ اللَّهَ افْعَلُوا صِبًّا دِينَ وَ لَهُ وَالْأَرْضُ السَّمَوَاتِ فِي مَا وَ لَهُ﴾

“And surely ye shall be questioned regarding that which ye have been working”

Both individual nadzir and legal entity are demanded to have obligations to be met along with the rights as the privilege for the duties. The obligations are related to preservation, management, observation of waqf asset and the outcome. The breakdown of nadzir’s obligation is as follows:

1. Preservation and management, which is an obligation to preserve, manage, and supervise waqf asset and the outcome. Those include:
 - a. Carefully saving the second sheet of the copy of waqf pledge.
 - b. Preserving, managing, and utilizing waqf land and enhancing productivity of waqf outcome.
 - c. Utilising outcome of waqf asset in accordance with the waqf pledge and the desire of waqif. in order that those obligations above run well, nadzir has to have bookkeeping, that is, note book regarding records of condition and management of waqf land.
2. *Nadzir’s obligation* to make regular or annual report on all related to waqf asset. This report is about the result of condition record of waqf land and the result of land he preserves and manages. The regular or annual report is a recapitulation of waqf bookkeeping.
3. Incidental report. This kind of report is occasional, which means nadzir is obliged to make report to the authority in case something happens to nadzir. What requires nadzir to make incidental report is when one of nadzirs:
 - a. Passed away
 - b. Resigns

²⁷Departemen Agama RI, *Ilmu Fiqh Jilid 3* (Jakarta: Departemen Agama Republik Indonesia, Dirjen Pembinaan Kelembagaan Agama Islam, 1986).

- c. Commits crime related to his position as nadzir
- d. No longer meets the requirements as nadzir
- e. Cannot carry out his obligations as nadzir²⁸.

Article 43 of Law Number 41 of 2004 states that

1. In managing and developing waqf asset, nadzir is dismissed and replaced by the head of local KUA because of:
 - a. Death
 - b. Disbanding or being disbanded according to the rules for nadzir organization or legal entity.
 - c. An appeal from the individual
 - d. Not performing his responsibility as nadzir and/or violating prohibition in managing and developing waqf asset according to the rules
 - e. Being convicted by the court with permanent legal force
2. The dismissal and replacement as referred to in verse (1) are carried out by Indonesian Waqf Board.
3. The management and development of waqf asset by another nadzir as a result of the dismissal and replacement are carried out by considering the set allotment of waqf asset and waqf purpose and function²⁹.

In Islamic perspective, mudharat is something threatening the existence of human in relation to the so-called pancatujuan (five aims), namely preserving religion, soul, mind, descendant, honor or wealth. Therefore, darurat is correlated to dharuriah, not hajiah and tahsiniah, whereas hajat (need) is correlated to hajiah and tahsiniah³⁰.

الضرر يزال

*"Harm must be eliminated"*³¹.

Doing or leaving a matter because of emergency (dhorurot) is allowed for the only purpose of preventing harm. Related to this, the interest of human, according to Dr. Wahbah Az-Zuhaili, is classified into five.

- a. Dharurat, that is, the interest of human who is allowed to use prohibited

²⁸Presiden Republik Indonesia, Undang Undang Nomor 41 Tahun 2004.

²⁹Presiden Republik Indonesia.

³⁰Usman Mukhlis, *Kaidah-Kaidah Ushuliyah Dan Fiqhiyah, Pedoman Dasar Dalam Istimbath Hukum Islam* (Jakarta: Raja Grafindo Persada, 1999).

³¹Mukhlis.

things because the interest lies on the top of interest of human life. If it is not allowed, harm may occur. Such condition allows all the prohibition, such as wearing silk for a naked man.

- b. Hajah, that is, the interest of human to things which, if not allowed, put an individual into a difficulty or close to harm. Such condition is not permissive to prohibited things. For example, someone capable to fast, he is allowed to break the fast with clean meal, not unclean meal.
- c. Benefits, that is, the interest of human to create a proper life. Thus, law is strictly enforced because law, in truth, benefits human, such as consuming staples -rice, vegetables, side dish, and other kinds.
- d. Fudu, that is, the interest of human only to live excessively, is leading to wickedness or prohibition. Such condition is charged with sudduddzariah, meaning closing the ways which may lead to harm³².

ضرار ولا لاضرر

“There should be neither harming nor reciprocating.”

(HR. Ahmad and Ibnu Majah from Ibnu Abbas)³³.

Tampan has a number of nadzirs with responsibility to manage, guard, preserve, and supervise waqf asset handed over by waqif and used for the interest of society. Waqf lands are managed to be facilities of worship, education, or health centre, and graveyard. So competent is the management that the waqf assets are not abandoned and can be well developed to benefit society.

Nadzirs have no knowledge about the obligation to report the replacement and dismissal of nadzir to local KUA although it is obligatory for KUA to socialize concerning the report to nadzirs. In fact, the report is crucial as since through it, people can know how the waqf land is managed, and whether it can be developed or not. The replacement and dismissal of nadzir has to be reported in written form and clear legality to meet the waqif's purpose, waqf regulation, and nadzir's duties such as reporting the result of land management in accordance to article 220 on KHI³⁴.

Nadzirs never make reports on the replacement and dismissal of nadzir to KUA, and it can be seen that they do not meet responsibilities as is stated in article 221, verse 1 and 2 of Law Number 41 of 2004 on KHI.

³²Mukhlis.

³³Muhammad bin Yazid and Abu Abdullah Khuzaini, *Shabib An-Nasa'iy* (Beirut: Dar al Fikr, n.d.).

³⁴Departemen Agama RI, *Kompilasi Hukum Islam*.

In practice, there is no sanction statement which will be imposed to nadzir not reporting if he has resigned or been replaced. Even so, the report is truly essential for the purpose of preserving the asset wealth, and the trust given by waqif to nadzir, which is regarded as the trust from human with its responsibility before Allah in the afterlife. Mudharatas result from violating the trust is the emerge of concern or fear of misuse of theunaccomplished purpose, allotment, and security for public interest.

Therefore, the report on the replacement and dismissal of nadzir in Tampan is inconsistent with article 221, verse 1 and 2 and Law Number 41 of 2004 concerning the obligation to report the replacement and dismissal of nadzir to local KUA.

CONCLUSION

Based on the results of the research conducted, it can be concluded that first, the legality of nadzir who manages waqf land in Tampan District is not legal or legally illegal. This is due to the inconsistency between practice in the field and the law that regulates the conditions for changing nadzir waqf which must report administration to the religious affairs office and the Tampan sub-district head. Second, Islamic law requires the obligation of Muslims to behave in a trustworthy manner and act in accordance with Islamic Shari'a law or follow the rule of law, namely that harm must be eliminated, especially to avoid administrative failures in the protection of waqf assets.■

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