

THE ROLE OF NADZIR IN THE MANAGEMENT OF WAQF LAND IN RELIGIOUS AFFAIRS OFFICE (KUA) KADEMANGAN PROBOLINGGO

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Abstract

This research aims to know the role of nadzir in managing the Waqf land in KUA Kademangan Probolinggo, analyze nadzir Waqf in the management and development of Waqf land in KUA Kademangan City Probolinggo, and analyze how to certify Waqf land in KUA Kademangan Probolinggo. This research is in the nature of field research, which examines the provisions of the applicable law and the facts that apply in social life. This research is empirical juridical research, which is an approach that aims to obtain knowledge about how the legal relationship with society and the factors that affect the implementation of law in society (Mukhalad, 2020). From the results of the study, it was concluded that nadzir in KUA Kademangan Probolinggo in carrying out his duties to manage Waqf land has not been implemented properly. Nadzir of Religious Affairs Office (KUA) of Kademangan District is responsible about Waqf, but not as the manager. Nadzir of Religious Affairs Office (KUA) of Kademangan District is only in charge of providing information and administration in recording Waqf land and its vows. KUA of Kademangan district actually has planning and organizing but it does not include Waqf specific management. This is due to the fact that it is not a special office for Waqf management, however it is merged with marriage administration.

Keywords: *Nadzir, Waqf, KUA Kademangan*

Introduction

Waqf is one of the doctrines of Islam that has a value of worship, and is said to have social values because one purpose of Waqf is seeking his pleasure. Considered to have social values because it gives something to others. In the context of Islamic worship (social worship), Waqf is one of the Islamic teachings about life in society. Since Waqf is the worship of “*tabarru*” (giving is *sunnah*), its main purpose is for devotion to God by sincerely seeking his pleasure.

Besides being a religious institution and having a social function, waqf is also a form of firm belief and a high sense of togetherness with others. Therefore, waqf is committed to creating and maintaining the welfare of fellow human beings.

In the role of worship, waqf is expected as a provision for the life of wakif (waqf giver) in the future. Waqf is a practice that which the attributes of waqf are used for good purposes, to make it a reward that continues to flow. Referred to its social role, waqf is a very valuable asset in development as a large investment without taking into account, time and material importance for who represents it. In addition, the practice of waqf is not only limited to

working hard to form a personality and character of Muslims, but also to foster a sincere attitude of wakif in giving up some of his property for the benefit of others (Magpur, 2014).

In the management of waqf property, the most instrumental success or failure of the utilization of waqf property is nadzir waqf, which is a person or group of people and legal entities assigned the task by the *wakif* (person who waqf) to manage waqf. Although the books of fiqh scholars do not include nadzir waqf as one of the pillars of waqf, waqf is a *tabarru'* worship (a gift that is sunnah). However, after paying attention to the purpose of waqf which is to preserve the benefits of Waqf, the existence of a professional nadzir is needed, even occupying a central position. It is because the Nadzir has the responsibility and obligation to maintain and utilize the property of (Hadinata, 2010).

Nadzir as a religious institution is in charge of taking care waqf property, has duties and obligations to note in carrying out their duties so that the waqf managed property is useful and can be felt by many people as it is said that the more people who feel the benefits of waqf objects, the greater the reward will be received by the wakif. However, in terms of management of waqf property performed by nadzir, KUA Kademangan is still not optimum. This is because nadzir in KUA Kademangan has only become a complement. Assigned nadzir experienced difficulties because most of the Waqf property is in the form of land and in general, the land is used to build mosques, prayer rooms, and educational institutions, while nadzir in KUA Kademangan is appointed by wakif when the construction or management is not part of the board. So nadzir of KUA Kademangan can not do much, whereas in the law issued by the government it is said that nadzir is a person or institution whose duty is to maintain and develop waqf assets.

In addition, nadzir appointed by wakif sometimes is only served as the recipient of the Waqf properties. After the handover of waqf property is completed, nadzir has not been able to carry out his duties with balk as written in the law. The nadzir who manage the Waqf properties works at a minimum limit so that what is planned by the wakif sometimes cannot be achieved. But if it is returned to the laws that have been issued by the government, and the rules of Islam that exist, then the nadzir should carry out all this.

Research Methods

This research is in the nature of field research, which examines the provisions of the applicable law and the facts that apply in social life. This study was conducted to see the real situation that occurs in society with a view to knowing and finding the facts and data needed. After the required data is collected, then the identification of problems that ultimately lead to problem solving. This research is empirical juridical research, which is an approach that aims to obtain knowledge about how the legal relationship with society and the factors that affect the implementation of law in society (Mukhalad, 2020).

Data sources consist of primary and secondary resources. Primary data sources are taken from the results of interviews against nadzir official maker of waqf pledge (PPAIW) in the KUA Kademangan. While secondary data source is a collection and results of research, whether in the form of books, journals, and so forth (Jonathan Sarwono, 2006), or data that is not directly related to the original source but still related to the theme of research being conducted. The technique of data gathering is by conducting in-depth interviews with nadzir as a maker of Waqf (PPAIW) in the Religious Affairs Office (KUA) Kademangan Probolinggo city. Further, data analysis is conducted with the process of systematically searching and compiling data obtained from interviews and data sourced from reference from books, journals, as well as other online Cumbers (Burhanudin, 2021).

Discussion

Waqf is a legal act of wakif to separate and/or give up part of his property to be used forever or a certain period of time and in accordance with its interests for the purposes of worship and/or general welfare according to Shari'a stated in article I UU No. 41 of 2004 on waqf (Wahab, 2017). Waqf is also one of the institutions or social institutions of Islam that contain socio-economic value. The institution of waqf is one form of manifestation of social justice in Islam. Waqf is in line with the spread of Islamic Da'wah and Islamic education. Waqf is needed as a means of da'wah and Islamic education, such as for the benefit of worship mahdoh (mosque, musholla, langgar and so on) and for worship ammah-related interest matrakat in the field of social, economic, hankam and politics (Heru Agus, 2008).

1. Rukun and Terms of Waqf

In a fiqh terminology, obligatory (rukun) is something that is considered decisive in a discipline, which is an integral part of that discipline alone, or obligatory (rukun) is a complement to something, where rukun is part of something (Solihatin, 2020).

As for the obligatory deeds regarding waqf major Islamic clerics state that there are four pillars of waqf: *wakif* (the one who donated), *mauquf* (wealth waqf), *mauquf 'alaih* (purpose waqf or person entrusted to manage map waqf), *sighat* (statement wakif for give up his property).

- a. Terms of *wakif*; Independent, reasonable, adult (baligh), no forced or of their own willingness.
- b. Terms of *mauquf*; The Waqf properties have value or there is a price, have clear forms, have legal property rights of the wakif. They are also things that are not moving or objects adapted to existing Waqf habits.
- c. Terms of *mauquf 'alaih*; Party given Waqf is the party that is oriented on the goodness of utilization. Waqf target directed on benevolent, sustainable activities in the society. The properties that are given as waqf cannot be returned to wakif. Parties given waqf understand the law to have and manage the Waqf properties.

- d. Terms of sighat; *Shighat* happened instantly or one time. *Shighat* is not followed by vanity terms or fake. *Shighat* is not followed specific time restrictions, and it also does not cancel an understanding to return the Waqf submitted.

The Law Number 41 year 2004 which is about Waqf also regulates the requirement of Waqf:

- a. Wakif; Within the Law on Article 7 wakif covers: 1) Individuals 2) Organizations 3) Legal entity. The requirement of wakif individuals in the law regulated in Article 8 paragraph 1 covers: 1)Adult 2) Reasonable 3) Not obstructed by legal action 4) The rightful owner of the property of Waqf
- b. The properties of waqf; Property of waqf is explained on Article 15 and Article 16. In Article 15, it is explained that properties of waqf can only be submitted if it is owned and controlled by wakif in legitimate ways. And on article 16 verse 1, it is explained regarding waqf objects which are composed from moving and not moving objects.
- c. Nadzir; In the law Article 9 explained that nadzir covering individuals, organization or body law. The requirement of nadzir is regulated in the Law Article 10 Verse 1: 1) Citizens of Indonesia (WNI) 2) Muslim 3) Adult 4) Trust 5) Able in terms of physical and spiritual abilities 6) Not prevented from performing legal acts.
- d. Pledge of Waqf; The law about waqf pledge sets in Article 17 verse 1 and 2 which declares pledge of waqf implemented by wakif to nadzir before PPA1W with witnessed by two witnesses. 2) Pledge of Waqf as referred to in verse 1 stated in oral and/or written statement and set forth in the deed of pledge waqf by PPAIW (Solihatin, 2020). Some pillars and conditions that have been presented by majority of scholars and law Number Year 2004 on Waqf above, the author is interested in talking about the role of nadzir in the management of waqf property in the Religious Affairs Office (KUA) environment, especially in the KUA Kademangan Probolinggo City.

2. Duties, rights and obligations of Nadzir

In accordance with Waqf law no. 41 of 2004, a nadzir, whether an individual, organization or legal entity has several duties as follows:

- a. Conduct administration the waqf properties
- b. Maintain, manage and develop waqf property, in accordance with purpose, and design function.
- c. Supervise and protect waqf property.
- d. Report on the implementation of various activities in order to grow the waqf assets referred to. In essence, individuals, organizations, or legal entities have the same obligation, namely holding the mandate to maintain, manage and organize Waqf property in accordance with its purpose.

While there are two rights of nadzir, is:

- a. Nadzir is entitled to a reward, wage, or a share of a maximum of 10% of the profits on the management and development of waqf property.

- b. Nadzir is entitled to guidance from the minister who handles waqf and the Indonesian Waqf Board to carry out his duties properly and correctly.

In order to carry out difficult tasks as a nadzir, then a nadzir should have some ability, including:

- a. Ability or technical expertise, such as operating computers, designing room and others.
- b. Expertise in communication and interaction with society, especially with parties which are directly related to waqf.
- c. Conceptual expertise in order to manage and produce property waqf.
- d. Firm in making decisions, after deliberation and thought mature
- e. Expertise in managing time.
- f. Including having maximum energy, daring to take risks, enthusiasm, and confidence.

Nadzir as a manager of harm Waqf, also has the right to hire someone or more in order to maintain, maintain, and develop waqf assets. Nadzir also has an obligation to distribute the proceeds from the Waqf property to those who are entitled to receive it in accordance with its designation. There is also an opinion that the Waqf property can be rented out and the proceeds are intended for the benefit of the people.

A nadzir is entitled to get a share of the productive Waqf business that he manages and develops. It is based on the practice of companions Umar Ibn Khatab and Ali ibn Abu Talib. According to the Hanafi madhhab, Maliki and Imam Ahmad nadzir are entitled to a reward from the business results of waqf assets that have been developed. As for the amount of difference from each other in accordance with the responsibilities and duties that are fixed in accordance with the provisions of the wakif, if the wakif does not stipulate, it is determined by the judge or the agreement of the existing Waqf management. The Syafii madhhab stated that wakif was not entitled to a share (BW1, 2014).

Basically, anyone can be nadzir as long as he can take legal action. However, because the task of nadzir involves property whose benefits must be conveyed to those who deserve it, the position of nadzir is given to people who are indeed able to carry out that task.

According to Law No. 41 of 2004 article 10 paragraph (1) on Waqf requirements for individual nadzir are:

- a. Indonesian citizen,
- b. Islam,
- c. Mature,
- d. Amanah,
- e. Physically and spiritually capable, and
- f. Not prevented from doing legal acts

For nadzir organization the conditions are:

- a. The organization manager meet terms for individual nadzir,
- b. The organization concerned to make moves in the field social, education, community and or religious Islam.

While the requirement for nadzir in legal entity are:

- a. Manager of the organization is concerned to meet requirement of individual nadzir,
- b. Legal entity in Indonesia formed in accordance with legislation rules which is applicable, and
- c. The concerned organization manages the social field, education, community, and or Islamic religious activities.

Nadzir whether he works for an individual, organization, or legal entity must be registered with the ministry that handles waqf and the National Board of Waqf. Thus, individual nadzir, nadzir within organization and legal entities are required to be Indonesian citizen. Because of that, foreign nationals, foreign organization and foreign legal entities can not become nadzir of Waqf in Indonesia (Waqf, 2014).

While in the book published by Directorate of Empowerment and Waqf Directorate General of Community Guidance, Ministry of Religious Affairs of the Republic of Indonesia entitled the New Paradigm of Waqf in Indonesia dividing the conditions and requirement for the nadzir.

3. Terms of moral

- a. Understand about law about waqf dan ZIS, good in Shari'ah overview and legislation in the Republic of Indonesia
- b. Honest, trustworthy and fair so he/she can be trusted in process waqf management.
- c. Able to face the challenges, especially regarding business development.
- d. Choice, passionate and likes challenges.
- e. Good communication skill emotional and spiritual.

4. Terms for Management

- a. Have the capacity and good capability in leadership.
- b. Visionary
- c. Good communication skill and good intellectual skills, as well as social ability and empowerment.
- d. Professional in the field of management treasure.
- e. Have a clear work program.

5. Terms for business

- a. Has desire.
- b. Has experience.
- c. Have sharpness in viewing business opportunities as befits entrepreneur.

From the requirements above shows that nadzir occupies the post which is very central in the waqf property management business. Reviewed in terms of tasks nadzir, should maintain, develop, and preserve the benefits of the land being donated for people who are entitled to accept it.

Land data Waqf of Religious Affairs Office (KUA) of Kademangan Probolinggo Year 2021

No	Region	Area	Usage	WAKIF	NADZIR	NO AIW	Date of AIW
1	Pilang	73 M2	Office	Elfi Trisnarningsih	Foundation Perjuangan Wahidiyah	VvT.2/08 / - 411. - Kua. 13.26.02/4/2021	April 27, 2021
2	Ketapang	130 M2	Institution Education	Dra. Peni Sri Lestari dan Chairunnisa Muharramarigia	Hardjiwanto	WT.2/08/ - 907. - Kua. 13.26.02/11/2021	30 November, 2021
3	Triwung Kidul	1.574	Institution Education	Husnawiya h	Foundation Education Islam Yakalam	WT.2/08 /85.1/Kua.13.26.02/02/2021	February 01, 2021
	Kademangan	65 M2	Musholla	Hj. Sri Untari	AbdulAjis, S. Pd.	WT.2/08 /834/Kua. 13.26.02/11/2021	12 November 2021

Source Data: Recap of Waqf Land, the Head of Religious Affairs Office (KUA) of Kademangan Probolinggo Mr. Kusnandar, S. Ag.

Based on source of the data, the land for waqf in the Kademangan district Probolinggo is used as a means of da'wah and Islamic education in line with the goals of Islam. In addition to being a means of da'wah and Islamic education, waqf land is also used for Amah worship related to the interests of the community (in the social, economic, defense and security, and political fields). Nadzir waqf strategy in the management and development of waqf land in KUA Kademangan Probolinggo City

a. Cross-Agency Synergy

It must be recognized that various efforts to develop waqf have been made, both from Islamic organizations, nadzir, universities, NGOs, and self-government but have not received maximum results. The birth of Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006 on its implementation is evidence that the government is working on waqf as a legal payment to develop representation in the future. Even the government's efforts to regulate regulations related to these problems are still being carried out with the aim of empowering religious institutions optimally for the

improvement of the welfare of many people. However, the government's efforts need to be supported by cooperation, synergy, and the seriousness of all related parties (stakeholders) so that Waqf really has a positive impact on the community (Mukhalad, 2020).

It is no exception regarding the practice of Waqf that occurs in the community of Kademangan District of Probolinggo city which is currently not fully applied orderly and efficiently. In various cases, waqf assets have not been maintained, abandoned, or turned into the hands of third parties by means of unlawful or waqf property that should be productive but not productive, as desired or existing in Law No. 41 of 2004 on Waqf namely Article 43 paragraph (2).

b. Socialization of legislation

The presence of Law No. 41 of 2004 on Waqf, can actually give a relatively bright hope in the rescue efforts and empowerment and development of waqf for the welfare of the community in general. However, socialization and implementation until have not seemed encouraging. Perhaps this Waqf workshop is one of the manifestations of socialization and efforts to implement the law, as well as its development efforts to the fullest.

On that basis, the Ministry of Religious Affairs of Probolinggo city needs to socialize on improving the performance of the nadzir in carrying out their duties as nadzir Waqf, so that the management of Waqf can be done correctly, professionally, in accordance with applicable regulations and laws, in line with Sharia law and also positive law.

In addition to the above, Waqf certificate should be socialized, because currently there is still a waqf land in Kademangan district that does not have a waqf land certificate. This needs to be done considering that there is still no Waqf land that has proof of representation, such as letters that provide information that the land has been submitted. The discovery of waqf land that does not have administrative evidence is due to many wakif who carry out oral traditions with high confidence when donating their land to individual and institutional nadzir.

c. Improving the Quality of Nadzir and Waqf Institutions

Nadzir as one of the influential parties in the field of management and development of Waqf, must provide many ways or methods so that the Waqf is not neglected and can be used properly, as his task of managing and developing Waqf property in accordance with the purpose, function, and designation, meaning that an effort must be professional, both in management and management.

In addition, nadzir must also administrate, supervise, and protect waqf assets, as well as report the performance of their duties to the Indonesian Waqf Agency. However, for his duties, nadzir can receive a reward as his right of a maximum of 10% of the net proceeds from the management and development of the Waqf property.

In this case, the Mora of Probolinggo City can make guidance to nadzir waqf, for example, the discussion was raised "management and administration of Waqf management". If this program is carried out by the Ministry of religion to the maximum, it will be able to change the way of thinking which is still traditional to be more modern, to understand about Waqf, and to have creativity in developing existing waqf assets. In addition, the Probolinggo City also needs to control the nadzir period. Nadzir which has exceeded the term of office and unprofessional nadzir because the development of waqf in Kademangan subdistrict hampered. Based on this, the program planned by KUA and the Ministry of Religious Affairs will be able to change and regulate nadzir who has exceeded the term of office and to replace by nadzir who has knowledge in the field of representation so that representatives in Kademangan district can develop optimally and in accordance with its objectives.

d. The certification of the land for Waqf in the Religious Affairs Office (KUA) of Kademangan Probolinggo City

In the legislation governing Waqf both in Government Regulation No. 28 of 1977 on the land representation of KHI and in the new law, namely Law No. 41 of 2004 on Waqf, is not regulated the issue of the procedure for certification of waqf land. However, in order for the Waqf land to have a waqf land certificate, the Waqf land must follow a certification procedure whose mechanism is very difficult and long (Gustiansyah, 2019).

Based on the author's interview with employees Kua District Kademangan Probolinggo city, that there are several procedures so that land Waqf can get a certificate of land Waqf among which is to meet in advance some of the following requirements:

a. AIW (Waqf pledge deed)

To obtain this AIW, there must be a Waqf pledge, which conditions are:

- 1) Certificate/deed of sale-purchase (proof of ownership of land),
- 2) Land statement letter signed by the local village head,
- 3) A statement of land not in dispute/has never been traded signed by the village head and Sub-District Head
- 4) Land statement signed by the District Head and Sub-District Head
- 5) The most recent Property Tax (PBB) letter (original)
- 6) Copy of wakif ID card
- 7) Copy of nadzir ID card, 5 people
- 8) Copy of Witness ID card, 2 people
- 9) Statement of inheritance and power of inheritance (if wakif has died) signed by all heirs bearing a 6000 stamp, known by the village head and Sub-District Head
- 10) Stamp 6000, 10 pieces
- 11) Letter of notarial deed (foundation or legal institution)

- b. Other important documents (original SHM, last UN, waqf land plan/ map). After all the above conditions are met, then the next is submitted to the Kua region where the Waqf land is located, then the KUA will check whether all the necessary documents are complete and appropriate. If it is appropriate, the KUA will submit it to the city level BPN in charge of the area where the Waqf land is located. The Indonesian National Land Office (BPN) will check the files received; if it is complete and appropriate then the BPN will make a visit and measurement of the Waqf land. As for after that, the BPN will immediately issue a waqf land certificate with a conditional period of time.

Conclusion

Nadzir as a manager of waqf assets, has the right to hire someone or more in order to maintain, maintain, and develop waqf assets. Nadzir also chooses the obligation to distribute the proceeds from the Waqf to those who are entitled to receive it in accordance with its designation. There is also an opinion that the Waqf property can be rented out and the proceeds are intended for the benefit of the people. In addition, nadzir is also entitled to acquire part of the productive Waqf that he manages and develops. However, nadzir in KUA Kademangan Probolinggo in carrying out his duties in managing waqf land has not been done well. Because, nadzir of Religious Affairs Office (KUA) of Kademangan District are only responsible of administering Waqf, but not as the manager. Nadzir of Religious Affairs Office (KUA) of Kademangan District is only in charge of providing information and administration in recording Waqf land and its vows only. The Religious Affairs Office (KUA) of Kademangan district actually has planning and organizing but does not manage the management of Waqf specifically, this is because KUA is not a special office for the management of Waqf but combined with the field of marriage.