Nazhir's Position In Waqf Management

Dedy Yudhistira

[1] Faculty of Law, Parahyangan Catholic University, Bandung, Indonesia
9051901002@unpar.ac.id

Abstract. The role of the nazhir is crucial in the development of waqf assets. A nazhir is the entity entrusted with managing and developing waqf assets given by the wakif, ensuring they are used according to the intended purpose. The nazhir holds a central position in waqf management, as they have the ability to maximize the potential of these assets to fulfill the waqf's objectives for the community's benefit. The nazhir's expertise and competence in handling waqf assets significantly impact the returns generated, which, in turn, contribute to the welfare of the community.
Keywords: Nazhir, Waqf Management, Role.

1 Introduction

The Arabic verb nazhara-yanzhuru-nazharan, which meaning to watch over, tend to, manage, and oversee, is the source of the word nazhir. Nazhir is a word for manager, administrator, caregiver, supervisor, and guard. The organization known as qayyim atau nazhir or mutawalli, which oversees waqf assets, is another term for nazhir. [1]. Since Nazhir is the one assigned to oversee the waqf, he is sometimes referred to as waqf nazhir.
A waqf nazhir is an individual or organization entrusted with the responsibility of managing and safeguarding waqf assets in accordance with the objectives and framework of the waqf. [3]Under Law Number 41 of 2004 on Waqf, the nazhir is the party that receives waqf property from the wakif and is tasked with managing and developing it in alignment with its intended purpose.[4] The Compilation of Islamic Law designates a nazhir as the person or legal entity responsible for overseeing and managing waqf assets.[5] According to Government Regulation Number 28 of 1977, which governs the waqf of owned land, the term "nazhir" refers to the individuals or organizations assigned with the maintenance and administration of waqf assets.

2. Methods

Existence theory was developed to support the validity of Islamic law in Indonesia. The purpose of the existence theory is to guarantee that Indonesian Islamic law is aware of and comprehended by the Indonesian people in order to inform the formation of national law.

E. Lisdyono et al. (eds.), *Proceedings of the 2nd International Conference Changing of Business Law (ICOCLB 2024)*,
Advances in Social Science, Education and Humanities Research 902,
https://doi.org/10.2991/978-2-38476-356-6_11

3. Result and Discussion

According to Indonesian law, the person who receives waqf from the wakif and manages and develops it for the designated purpose is known as the nazhir [6]. Cash waqf is not that different from land or building waqf in terms of its administration mechanism. Nazhir's assignment is to invest in accordance with sharia, with the caveat that the invested nominal value cannot drop. The returns on investments are divided between communal welfare (minimum 90%) and nazhir salaries (maximum 10%) [7].
One can categorize investment returns given to the community (mauquf alaih) into two categories: economic and non-economic (such as social and educational). Revolving funds are distributed to the various economic sectors as a result of cash waqf. By increasing production capacity with the additional capital support offered, the economy will produce more goods and services [8].
Legal authorities from Islam concur that nazhir should not be considered one of the pillars of waqf [9]. While nazhir is included in the elements of waqf under Indonesian waqf law, it is not included in the pillars of waqf under Islamic waqf law. The status of nazhir in Indonesian and Islamic law is crucial and required to guarantee that the objective of waqf—the long-term benefit of society—can be accomplished, even though it is not one of the pillars and requirements for the validity of waqf under Islamic law. According to Law Number 41 of 2004 Concerning Waqf, the organization seeks to use its resources in line with its purpose.
The purpose of appointing a waqf nazhir is to ensure that the waqf assets are maintained and managed, so that the waqf assets are not wasted [10]. The appointment of a waqf nazhir serves the objective of the waqf, which is to safeguard the advantages of its assets. As such, the nazhir's presence and function are crucial. Regarding nazhir appointments, there are differences between Islamic and Indonesian legal perspectives. The following are points of disagreement with nazhir's appointment:[11].

1. According to the Mazhab Syafi'iyah, the wakif, the community (mauquf alaih), and the government are the three entities with the authority to choose a nazhir.
2. Under Indonesian waqf law, nazhirs must be appointed and authorized by the government through the Indonesian Waqf Board. The legislation also outlines the various types of nazhirs and the qualifications necessary to assume this role.
3. The appointment of the nazhir or the wakif's appointment is governed by Islamic law.

Preserving the advantages of waqf assets is the aim of waqf. Nazhir's presence is absolutely essential. The nazhir's place in waqf legislation is crucial since it determines whether a waqf object can function or not.To provide long-lasting advantages to the community, the nazhir role still needs to be strengthened. There are still issues with Law Number 41 of 2004 regarding Waqf, particularly with regard to attempts to fortify the institution. To facilitate the realization of waqf's objectives and benefit the broader public, nazhir's status under Indonesian law must be strengthened and resteated.In order to have a good effect on profitable waqf management, the Indonesian Waqf Board and the Ministry of Religion for nazhir must strengthen the development and monitoring of waqf. The revenues from this effort will be donated to community empowerment. In order to accomplish the objectives of the waqf, Nazhir is responsible for the development and administration of its assets. The current situation is that nazhir's implementation of waqf is thought to have been poorly done, meaning that the potential of waqf is not immediately correlated with the advantages of waqf that the community can enjoy.

4. Conclusion

The role of the nazhir is essential in optimizing the management of waqf assets to achieve the intended goals of the waqf for community benefit. To fulfill these objectives, the nazhir can collaborate with other parties in the management and growth of waqf assets. However, it is believed that the nazhir's involvement in waqf management has been inadequate and substandard, resulting in a lack of progress in waqf empowerment. If the nazhir manages the waqf assets effectively and professionally, the community will reap the rewards. To improve the administration of waqf, it is crucial for the Indonesian Waqf Board and the Ministry of Religion to enhance the development and monitoring of the nazhir.

References

1. M. D. Ali, The Position of Islamic Law in The Indonesian Legal System. Jakarta: Yayasan Risalah, 1985.
2. S. Usman, Waqf Law in Indonesia. Jakarta: Darul Ulum, 1999.
3. R. Rimanto, "Repositioning the Independence of The Indonesian Waqf Board in the Development of National Waqf: A Critical Review of Law No. 41 of 2004 Concerning Waqf," J. Kaji. Huk. dan Sos., vol. 18, no. 1, 2021, doi: 10.21154/justicia.v18i1.2303.
4. D. Romli and A. Q. Zaelani, "Counter Legal Drafting of the Islamic Law Compilation, A Gender Perspective," Atl. Pers, vol. 492, 2019.
5. P. P. Indonesia, Peraturan Pemerintah (PP) Nomor 28 Tahun 1977 tentang Perwakafan Tanah Milik. Indonesia: LN. 1977/ No. 38, TLN No. 3107, LL Setkab : 12 HLM, 1977.
6. R. I. Pemerintah, PERATURAN BADAN WAKAF INDONESIANOMOR 01 TAHUN 2009TENTANGPEDOMAN PENGELOLAAN DAN PENGEMBANGANHARTA BENDA WAKAF BERGERAK BERUPA UANG. Indonesia, 2009.
7. M. Nur Rianto Al Arif, Sharia Financial Institution. Bandung: Bandung: CV Pustaka, 2012.
8. M. Nur Rianto Al Arif, Sharia Financial Institution, 1st ed. Bandung: Bandung: CV Pustaka Setia, 2012.
9. M. A. Dr. H. Ahmad Rofiq, Hukum perdata Islam di Indonesia. Jakarta: Jakarta : Rajawali Pers, 2013.
10. A. R. I. Departemen, Paradigma baru wakaf di Indonesia. Jakarta: Direktorat Pemberdayaan Wakaf, Direktorat Jenderal Bimbingan Masyarakat Islam, 2006.
11. R. Ahmat, Hukum Islam di Indonesia. Jakarta: RajaGrafindo Persada, 1995.