

The Role of Nazhir in Overseeing The Settlement of Waqf Land Dispute

Della Novita^{1*}, Abdul Helim², Akhmad Supriadi³

¹²³ Pascasarjana IAIN Palangkaraya/ Magister Ekonomi Syariah, Palangka Raya, Indonesia

*dellanovita004@gmail.com

Abstract

Introduction to The Problem: The waqf land disputes which occurred on Jl. Keranggan, Palangka Raya City with an area of 580,000 m² occurred because of the inter-Nazhir case, where the old Nazhir brought the certificate of the donated land so that the new Nazhir could not carry out his duties optimally. Therefore, this study aims to determine and analyze the role of Nazhir in overseeing the settlement of waqf land disputes on Jl. Keranggan, Palangka Raya City.

Design/Methodology/Approach: This field research used qualitative methods. There are 1 nazhir subjects and 2 informant. The data were collected through observations, interviews, and documentation. It applied source triangulation for data validation. The data analysis covered data collection, reduction, display, and concluding drawing.

Findings: The result of this study is that the role of nazhir in over seeing the settlement of waqf land disputes has been role in carrying out their duties and obligations to care for and maintain the ridht to the waqf land, because the nazhir is the person who is responsible for maintain the rights to the waqf land, because the nazhir is the one who is responsible for the waqf land.

Paper Type: Research Article or General Review

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Introduction

Waqf comes from waqafa which means to hold, stop, stay in place and remain standing. As according to Shara' waqf is holding the substance (origin of the object) and using the results or it can be interpreted as holding the object and using its benefits in the way of Allah. (Sayid Sabiq, 1983) Waqf is also regulated in Law Number 5 of 1960 which includes a special provision as contained in Article 49 Paragraph (3) which reads: the perpwakafan of land owned is protected and regulated by government regulation. Furthermore, it is regulated in Government Regulation Number 28 of 1988 which confirms that waqf is a legal act of a person or legal entity that separates part of their property in the form of property and institutionalizes it forever for public purposes according to Islamic teachings. (Soedharyo Soimin, 2004)

The practice of waqf that occurs in the life of the community has not fully run in an orderly and efficient manner so that in various cases waqf assets are not properly maintained, neglected or transferred to the hands of third parties against the law. This situation is not only due to the negligence or

incompetence of the nazir in managing and developing waqf assets but also because of the attitude of the community who do not care or do not understand the status of waqf assets that should be protected for the sake of public welfare in accordance with the purpose, function and designation of waqf.(Departemen Agama, 2006) from the results of interviews during initial observations with Mrs. Khusnul Khotimah as the administrator of the Indonesian Waqf Board stated that waqf allotments in Palangka Raya are generally only in the form of mosques, madrasas, mushollas, orphanages and tombs. Waqf actually has an important role in realizing the economy can be utilized and shown to improve the standard of living of the people of Palangka Raya City. As seen from the initial observations of researchers obtained from the Ministry of Religious Affairs of Palangka Raya City regarding the potential of waqf land in Palangka Raya City, as follows:

Table 1.1
Waqf Land Data in Palangka Raya City

Location	Broad M2	Already Certified	Not Yet Certified
Kec. Pahandut	1.390.890	741.267	649.623
Kec. Jekan Raya	1.744.510	1.727.732	16.778
Kec. Sabangau	105.874	31.881	74.063
Kec. Bukit Batu	79.028	71.628	7.400
Kec. Rakumpit	131.584	118.554	13.030

The main problem that researchers found after conducting initial observations at the Office of the Ministry of Religious Affairs of Palangka Raya City, where in the results of the temporary interview there were several things that became the main problems in the management of waqf land, namely the weak managerial and lack of professionalism of the nazir. Because nazir has an important position in the management and development of waqf property. Therefore, the nazir is the person responsible for the waqf. If the nazir who manages it is less professional then the waqf land will be neglected and there can be cases of waqf land disputes.

As happened in the waqf land of the Haji Kamuk Ranggan Islamic Foundation, Pahandut District, Palangka Raya City, there was a case of waqf land dispute in which Mr. "s" as the nazir of the 580,000 M2 waqf land sued Mr. "kh" as the old nazir. Because he thought that the land was a grant land so he did not want to hand over the correspondence (land certificate) to the management of the new nazir. The waqf land was endowed by "KR" in 1985 for the benefit of worship and public welfare according to sharia to Mr. "AHK" as an individual nazir and in collaboration with the Al- Muhajirin Islamic Boarding School Foundation.

However, in 2016 in accordance with the rules regarding the replacement of nazir. The Central Kalimantan representative of the Indonesian Waqf Board dismissed Mr. "AHK" as nazir of 580,000 M2 of land with waqf land certificate No. 3355 issued by the National Land Agency of Palangka Raya City. And appointed/appointed Haji Kamuk Ranggan Islamic Foundation as the new nazir. With this case, the new management has difficulty in carrying out its mandate optimally, because the correspondence is still in the hands of the previous nazir.

Based on the above problems specifically. The author has reviewed in advance various studies that have relevance to the problem with the title of the research that the author makes regarding the role of nazhir Palangka Raya city in overseeing the settlement of waqf land disputes, namely. Previous

research analyzed "Waqf Land Management in the KUA Area of Jekan Raya District, Palangka Raya City" From the results of his research, it turns out that the management of waqf land carried out by nazir in the KUA area of Jekan Raya District has used open management, but in practice it is still not well organized due to the professionalism of waqf nazir who do not have good managerial skills in managing waqf land.(Nidya Ananda Putri, t.t.)

Furthermore, previous research analyzed "Problematics of Waqf Property Management in Pahandut District, Palangka Raya City" From the results of this study it can be concluded that the management of waqf property in Pahandut District is still not in accordance with statutory provisions. The form of problems faced is the process of certifying waqf lands which are still incomplete and the lack of practice of productive waqf. The solution to the problems of waqf property management is to conduct guidance to improve the role of nazhir, periodically publish waqf lands whose administration has not been completed, conduct supervision to maintain waqf land so that it is maintained and runs properly and increase socialization to introduce productive waqf to the wider community.(Kurniawan, 2016)

As for the last one to guide this research, namely analyzing "Settlement of Waqf Land Disputes (Case Study of Waqf Land in Kampung Haji Pemanggilan, Anak Tuha District, Central Lampung Regency)" From the results of this study it can be concluded that the settlement of waqf land disputes in Kampung Haji Pemanggilan, Anak Tuha District, Central Lampung Regency is by way of deliberation to reach consensus. The deliberations carried out by several parties between the nazir, heirs, religious leaders and community leaders reached an agreement, that in this case the heirs had recognized that the waqf land really belonged to his parents who had been endowed since 20 years ago and the heirs had agreed and were willing to surrender the waqf land and would not demand to withdraw or change the land.(Rahman, 2017)

Therefore, researchers are interested in further analyzing the actions of nazir when facing problems like this, therefore the author made a thesis research with the title "nazhir's role in advance of dispute resolution of wakaf land (case study of waqf land jl. kamuk ranggan palangka raya city)".

Methodology

This research includes field research. According to Sonhadji, field research is a research activity in which researchers observe and participate directly in small-scale social research and observe local culture. Individual researches directly observe the people they want to study through interaction to learn about the role of Nazir in overseeing the settlement of waqf land disputes.(Hikmawati, 2017) This research uses a descriptive-qualitative approach. Descriptive qualitative is research that is intended to collect information about the status of an existing symptom, namely the state of the symptom according to what it is at the time the research is conducted without intending to make conclusions that apply to the public or generalizations. Descriptive research is non-experimental research, because it is not intended to test certain hypotheses, but only describes "what it is" about a variable, symptom or situation. According to Bogdan and Taylor in Lexy J. Moleong, research using a qualitative approach is placed as a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior.(Moleong, 2019) Then this descriptive method is research that describes all data or research subjects/objects (a person, institution, society) and then analyzes and compares based on current and future realities and provides problem solving. Researchers use this method in order to find out and describe what happened at the research location in a straightforward and detailed manner and try to reveal the role of nazhir in overseeing the settlement of waqf land disputes.(Kartiko, 2010)

Results and Discussion

Due to the importance of the social function value of waqf, especially for Muslims, waqf often raises pros and cons in various circles. Muslims, therefore waqf often raises pros and cons in various circles. Given the important role of waqf in social life, the government has made various efforts to regulate both through laws and government regulations. In waqf itself, it has been regulated in Law Number 41 Year 2004 concerning waqf, in article 6: waqf is carried out by fulfill the following elements of waqf; wakif, nazhir, waqf property, waqf pledge, waqf designation and waqf period. In order for the management of waqf land is managed optimally and done as well as possible. So nazhir is needed who is competent or professional in managing the waqf land. the waqf land. Nazhir waqf is a body or person who holds the trust to maintain and manage waqf assets as well as possible in accordance with the law. trust to maintain and manage waqf assets as well as possible in accordance with the form and purpose. with its form and purpose. Basically, anyone can become a nazhir provided that he is entitled to take legal action. The purpose of nazhir of a legal entity is a group of people who constitute a single management (organization).

Based on the results of interviews with subjects and informants, this case stems from the 2001 riots that caused the old nazir to leave to save himself and take away the waqf land certificate. the waqf land. However, a few years after the incident the previous nazir was never seen again to manage or maintain the waqf land. never seen again to manage or maintain the waqf land. waqf land. As stated in Government Regulation No. 42/2006 article, the term of service of the nazir is the same as in Government Regulation No. 42/ 2006 article that the service period of the nazir is 5 years and can be reappointed can be reappointed. Based on this government regulation because years of neglect of waqf land covering an area of 58,000 m². Finally in 2016 it was proposed to change the nazir of waqf land covering an area of 58,000 m² so that the waqf land is useful and not neglected. At 2016 the issuance of a proof of registration of the nazir of the Haji Islamic Foundation Kamuk Ranggan and who became one of the nazir was Mr. "S" as the secretary of the nazir. Here the nazir has a very important role because it has an obligation to manage and be responsible for the management of the property. because it has the obligation to manage and be responsible for all matters relating to waqf land. Including supervising and protect.

Waqf Land Management

The word waqf becomes waqf in the Indonesian language. comes from the Arabic verb waqafa yaqifu waqfan which means to hesitate, to stop, to put down, to understand, to prevent, to prevent. means to hesitate, stop, put down, understand, prevent, hold, say, show, put down, pay attention, serve and remain standing.⁶ As a noun, the word waqf is synonymous with the Arabic verb waqafa yaqifu waqfan. as a noun, the word waqf is similar to the word al-habs with the meaning of holding back.⁷ In essence, the word waqf means holding back, preventing or prohibit and silence. It is said to hold back because waqf is withheld from damage, sale and all actions that not in accordance with the purpose of waqf.(Tulab, 2018)

According to the popular dictionary of Islamic terms, waqf is holding property and giving its benefits in the way of Allah; transferring private rights to belong to an entity that provides benefits to the community with the aim of gaining the goodness and pleasure of Allah SWT. Judging from several definitions both etymologically and terminologically, waqf is shadaqah jariyah. As a contribution of virtue that flows rewards after the person concerned dies and it can be concluded that waqf property is not personal property, but the property of certain groups in society. However, fiqh scholars disagree on the more detailed definition of waqf. In fiqh books, scholars differ in their opinions on the definition of

waqf. This difference has different consequences on the law. The definition of waqf according to fiqh experts is as follows:

First, the Hanafi Mazhab defines waqf as: " Not doing an action on an object, which has a permanent status as property, by donating its benefits to a benevolent (social) party, both now and in the future. Second, according to the Maliki Mazhab, defining waqf is the act of the waqif making the benefits of his property to be used by the recipient, even if what he owns is in the form of wages or making the results usable such as endowing money, by saying the waqf lafaz for a certain period in accordance with the wishes of the owner. Third, according to Syafi'iyah and Ahmad bin Hanbal, waqf is to release the waqf property from the ownership of the waqif, after the waqf procedure is completed. (Handoko, 2014)

From several definitions of waqf, it can be concluded that waqf aims to provide the benefits or benefits of the waqf property to the rightful person and used in accordance with Islamic teachings. This is in accordance with the function of waqf mentioned in Article 5 of Law No. 41 of 2004, which states that waqf functions to realize the potential and economic benefits of property for the benefit of worship and to promote public welfare.

Talking about waqf, of course, an organization needs management or management. Management is the science and art of managing the process of utilizing human resources and other resources effectively and efficiently to achieve a certain goal. Management is a science as well as an art to make other people want and be willing to work to achieve goals that have been formulated together, therefore management requires basic concepts of knowledge, the ability to analyze situations, conditions, existing human resources and think of the right way to carry out interrelated activities to achieve goals. carry out interrelated activities to achieve goals. In essence, human activities in general are managing (managing) to manage here requires an art, how other people need work to achieve common goals.(Alfarisi & Kumala, 2021)

In waqf management, it is closely related to the waqf nadzir. In terms of waqf management, it is the nadzir who plays a very important role. After the waqf land is registered at the PPAIW, then in the management of the waqf land, the nadzir must pay attention to the following matters: First, providing protection for waqf land by certifying waqf land, this must be done immediately so that the waqf lands do not fall to unauthorized parties. Second, managing and developing waqf assets in accordance with sharia principles and productively. Third, the management and development of waqf assets require protection from sharia guarantor institutions. Fourth, in managing and developing waqf assets the nadzir is prohibited from changing the allocation of waqf assets except with written permission from BWI. Fifth, permission to change the designation of waqf assets can only be given if the waqf assets cannot be used in accordance with the designation in the waqf pledge.(Alfiah dkk., 2020)

The Role of Nazhir in Resolving Waqf Land Dispute

Nazir waqf is a body or person who holds the trust to maintain and manage waqf assets in accordance with their form and purpose. Basically, anyone can become a nazir, provided that they have the right to take legal action. The purpose of nazir from a legal entity is a group of people who constitute a management (organization).(Munawar, 2021) The individual nazir is the custodian of waqf done by an individual. He holds the responsibility of the waqf asset. A person can become an individual nazir if he has indications about his personality, which must fulfill the following conditions: Adult, Reasonable, Trustworthy and Able to organize all affairs related to waqf assets. If the above nazir requirements are not met, the judge must appoint another person who is related to the waqif and with the principle that the right of supervision rests with the waqif.

Considering the role of nazir in waqf management which is considered urgent in the utilization of waqf in order to achieve the objectives of waqf, the scholars have set several requirements regarding nazir. The requirements of the nazir as formulated by the Ministry of Waqf and Religious Affairs and is a combination of various requirements in several fiqh literature include the following;

The first is taklif. Regarding this requirement, the scholars agree that among the requirements to become a nazir is an adult (baligh), with reason and therefore it is not allowed to appoint a madman or a child to become a nazir. Second, fairness, i.e. a person who is able to keep himself from committing major sins and or make a habit of committing minor sins as well as trustworthy (honest) and responsible, so it is not permissible to appoint people who like to sin and are dishonest to become Nazir; Third, kifayah (ability), which means that a nazir must be able and capable of carrying out his duties and obligations properly and professionally.(Baharuddin & Iman, 2018)

There are several things that are burdened on the Nazir, which he is obliged to carry out so that the condition of the waqf property is maintained and the benefits can be maintained so that mauquf 'alaih can be fulfilled. In the book of Fathul wahab, it is explained that if someone becomes a Nazir, he is assigned to develop waqf property, rent it out, protect the results, collect them and distribute them to those who are entitled to them.(Hamzah, 2016) Nazirs in carrying out their duties as custodians and managers of waqf objects in order to preserve the benefits of waqf objects in accordance with their objectives, the Nazirs also have obligations and rights. As the supervisor of waqf assets, the Nazir can employ several representatives or someone to organize affairs related to their duties and obligations. In managing and supervising, the Nazir is obliged to:

Carefully maintain the second sheet of the copy of the Waqf Pledge deed. This sheet is very important, because the deed is important evidence that can be used as in defending waqf property if one day it is contested in court. Maintaining, managing and utilizing waqf land and trying to increase the productivity of its results. The Nazir is authorized to do things that can bring goodness and create a benefit to the waqf property. Using waqf products in accordance with the waqf pledge.(Arif, 2023) In an effort to develop the waqf property so that it is productive, the Nazir is entitled to a fair and decent wage in meeting his daily needs. According to the Fuqaha, the nazir is entitled to a wage from the time he starts managing and taking care of the waqf property either by building, exploiting, selling production and distributing what has been collected to him, in accordance with the requirements of the waqif and other work that can be done by his fellow nazirs.

In a waqf organization, the nazir may act as a manager or director. as a manager or director. Where the nazir can apply the concept of management science in managing waqf assets, especially in productive waqf. Nazir also can apply the 4 management functions abbreviated as POAC, namely planning, organizing, and managing. POAC, namely planning, organizing, actuating, and directing. organizing), actuating (directing), and controlling in managing waqf assets. (controlling) in managing waqf assets. Because the nazir is like a manager or director, the nazir is directly responsible for managing the waqf assets. then the nazir is directly responsible for all activities related to the management of waqf assets. waqf property. If we look at the experience of the nazir in Egypt in managing waqf, among others in Egypt in the management of waqf include management aspect and their experience in developing large and well-established businesses, so that they can be identified and researched on the areas of waqf management. can be identified and researched on areas that are suitable for waqf management and can be taken in accordance with waqf management and the benefits that can be derived from it benefits.(Hamzah, 2016)

Settlement of Waqf Land Dispute

The term "dispute" (Disputes, English), is often referred to as the same as "conflict" (Conflict, English). Henry Campbell Black explains the meaning of "dispute" as "a conflict of controversy; a conflict of claims or rights; an assent of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issues are joined, and in relation to which jurors are called and witnesses examined".⁵ The occurrence of conflict mostly starts with a dispute or friction of opinions or different understandings in society. In conflict theory is the English term "conflict theory" which stems from social class conflicts between community groups, this group consists of oppressed groups and ruling groups so that it will lead to forms of social change, both those that lead to the positive impact of social change or those that lead to the negative impact of social change.

Nader and Todd in Ihromi state that basically conflicts that occur in society go through the following stages of conflict (conflict stage): a) The first stage, conflict starts with the emergence of grievances from one of the parties (grievance) from one party against another party (individual or group). the other party (individual or group), because the complaining party feels that his rights have been violated, treated unfairly, rudely, blamed, stepped on his pride, damaged his good name, hurt his heart, and others. his/her heart, and others. Initial conditions such as This is referred to as the preconflict stage, which tends to lead to monadic confrontation. to monadic confrontation; b) The second stage, if (monadic); b) The second stage, when then the other party shows a negative reaction in the form of a hostile attitude to the emergence of complaints from the first party, then this condition increases the first party, then this condition increases escalation into a conflict situation (conflict stage), so that the confrontation between the parties takes place dyadically (dyadic); c) The third stage, if then the conflict between the parties is shown and brought to the public arena (society), and then processed into a case of dispute in a particular dispute resolution institution dispute resolution institution with the involvement of a third party. third party, then the situation has increased into a dispute (dispute stage), and the nature of the confrontation between the disputing parties becomes triadic (triadic). confrontation between the disputing parties becomes triadic. (Fadhilah, 2011)

Basically, waqf dispute resolution must be pursued through deliberation. Based on Uu No.41 of 2004 article 62 paragraph (2), if the deliberation mechanism does not produce results, the dispute can be carried out through mediation, arbitration, or court. results, the dispute can be resolved through mediation, arbitration, or court. This means that the power given to the Religious Court as a resolver of waqf disputes is the last institution when the deliberation process does not produce results. waqf is the last institution when the deliberation process is no longer able to resolve the dispute. Article 62 of Law No. 41/2004 on Waqf emphasizes that the settlement of waqf disputes is pursued through deliberation for consensus. If dispute resolution through deliberation is unsuccessful, the dispute can be resolved through mediation, arbitration, or court. mediation, arbitration, or court. Furthermore, it is stated in the explanation, that what is mediation is the settlement of disputes with the help of a third party (mediator) agreed by the disputing parties. A greed by the disputing parties. In the event that mediation does not succeed in resolving the dispute, then the dispute can be brought to a sharia arbitration body. In the event that the sharia arbitration body sharia arbitration body does not succeed in resolving the dispute, then the dispute can be brought to the religious court and/or sharia court. religious court and/or sharia court. This is in line with Article 49 paragraph (1) of Law Number 7 Year 1989 as amended by Law No. 3 of 2006 concerning Religious Courts, which states Religious Courts, which states

"Religious Courts are tasked with examining, deciding and resolving cases at the first level. resolve cases at the first level between people who are Muslims, in the fields of:(Komariah, 2014)

- 1) marriage;
- 2) inheritance;
- 3) wills;
- 4) grants;
- 5) waqf;
- 6) zakat;
- 7) infaq;
- 8) shadaqah; and
- 9) shari'ah economy

If researchers analyze from conflict theory, then the conflict that occurred on the kamuk ranggan waqf land began when the old administrator or the old nazhir took away important letters and claimed that the waqf land had been granted to him. In terms of dispute resolution over waqf land and disputes about waqf in general, this is regulated in Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf Article emphasizes that the settlement of waqf disputes is pursued through deliberation for consensus. If dispute resolution through deliberation is unsuccessful, the dispute can be resolved through mediation, arbitration, or court. There are two ways or forms of resolving waqf land disputes, namely: The first is the court route (litigation) and the second is the out-of-court route (non-litigation). Of the two ways or forms of resolving waqf land disputes, there are fundamental differences between forms of dispute resolution through the court and out-of-court dispute resolution.(Arifin, 2020)

Conclusion

The process of resolving disputes over waqf land of the Haji Kamuk Islamic Foundation Ranggan in Palangka Raya City is pursued in several ways including in a family manner, then using the mediation route as far as it is unsuccessful and did not find the bright spot of this case, then the party concerned has taken the Religious Court route. The parties concerned have taken the path of the Religious Court. The role of nazhir in overseeing the settlement of waqf land disputes of the Haji Kamuk Ranggan Islamic Foundation has an active role in maintaining and maintaining waqf land, because nazhir has such a big responsibility in carrying out its duties. So that when a waqf land dispute case occurs, the nazir follows the process of resolving the waqf dispute from reporting the case to the supervisor (BWI), from taking the deliberation / family path, mediation so that it is still processed by the Religious Court.

Expected research benefits In the event of a dispute, it would be nice if both parties can combine options or agreements with each other so that by combining these options, a bright spot can be found immediately which can then be poured into a deed of agreement. Thus the problem of waqf disputes can be resolved and not protracted. The need to understand the function, purpose and allocation of waqf for the community, The need for understanding the function, purpose and designation of waqf for the community, waqif and nazir so that the potential of waqf can later be useful for the welfare of the community.

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