

Regulations of Waqf Management in Contemporary Indonesia

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Abstract

Waqf has important role in the life of Muslims. In Indonesia, the issue of waqf management optimalization in promoting the welfare of the poor has long been practiced collectively by various community organizations and educational institutions. The Indonesian government has issued various regulations about function optimally of waqf. This research is descriptive analytical, using normative legal research methods, namely legal research conducted by researching library materials. The research was conducted by analyzing the laws and regulations related to waqf in Indonesia. This study concluded that state regulations in Indonesian waqf management have been started since the Dutch Colonial Government, followed by the Old Order, New Order and Reform Order governments. Waqf regulations are not only based on one school of jurisprudence (mazhab), but are based on various schools of thought by taking opinions that are considered relevant in the development of contemporary waqf.

Keywords : *Waqf, Indonesia, Law, Regulation*

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1. INTRODUCTION

The Reformation Era in Indonesia began when Soeharto President stepped down from the presidency in 1998. The objectives of this Reformation Era are: (1) Prestructuring the state structure, including the constitution and laws that deviate from the goals and ideals of the state; (2) Improving the life of people and the state in politics fields, social culture, economy, defense and security; (3) Improving old habits that are not in accordance with the spirit of reform such as corruption, collusion, nepotism; and (4) Renew all forms of community elements and new values in the life of the nation and state.

The Reform Era's government policy in the field of law was determined by utilizing materials from the customary law system, Islamic law and Western law.(Masruhan, 2011). The legal order has the following characteristics: national insight, able to accommodate legal awareness of regional ethnic groups and religious beliefs, written and unified, rational in terms of efficiency, fairness, rules and values, transparency and responsiveness to the development of community aspirations and

expectations.(Azizy, 2004). National development efforts are carried out by all components of the nation to achieve state goals whose effectiveness, efficiency and objectivity require national development planning. As one of the elements in national law development, the values of Islamic law have been contained in many laws and regulations. One of the Islamic law elements included in the legislation is waqf.

Waqf has an important role in the Muslims life. In the early era of Islam, the existence of waqf was able to become a means of welfare for Muslims in various forms, for example the construction of worship places, education, health, social services and other public interests. The existence of waqf continues to have a significant impact on the Muslims lives. The existence of waqf as an inseparable part of Islamic teachings not only has a spiritual dimension as an effort to increase devotion to Allah SWT, but has a social dimension that is able to provide economic welfare for the people.

For Moslem, *waqf* played an important role in developing religiosity and their relationship to society.

There are two paradigms in managing *waqf* including ideology paradigm and socio-economic paradigm. The ideology paradigm focuses on everything that culminated in the belief in God's Perseverance must be accompanied by the awareness of the realization of social justice. (Qurrata et al., 2019).

In Indonesia, the issue of *waqf* management in promoting the poor welfare has long been practiced collectively by various community organizations and educational institutions, and now the Indonesian Waqf Board (Badan Wakaf Indonesia/BWI) has been established as one of the semi-autonomous government bodies that has the authority and management *waqf* in Indonesia. The concept and practice of cash *waqf* as one of the innovations of Islamic philanthropy has been legitimized by the Indonesian Ulama Council (Majelis Ulama Indonesia/MUI) and the Indonesian Ministry of Religion. It is hoped that there will be maximum support and management in exploring the potential and management of *waqf* and other Islamic philanthropic funds to be more maximal and directed, as well as providing socio-religious impacts in solving the basic problems of the poor.

In principle, the *waqf* management in Indonesia is same as the management of *zakat* which was previously carried out by community organizations and educational institutions. This is evidenced by the growth and development of mass organizations and educational institutions that manage *waqf* and *zakat* for social, educational, health and other purposes. Therefore, the experience of these organizations and educational institutions is very important to be considered in Indonesian *waqf* management, both in terms of institutions and related to community culture, and the state's side in *waqf* management and Islamic philanthropy in general.

Regarding *waqf* management in Indonesia, based on data from the Directorate of Zakat and Waqf Empowerment of the Indonesian Religion Ministry, until November 2020 that *waqf* land in Indonesia totaled 52,387.71 Ha (523,877,100 m²) consisting of 390,944 locations with details 236,566 locations have been certified and 154,378 locations not yet certified. The number of *waqf* objects will always grow along with the greater community participation in implementing *waqf* institutionally.

Waqf is actually one of the Islamic institutions that has the potential to be further developed to help the poor. However, the large number of *waqf* in

general is still used for consumption and has not been managed productively. *Waqf* institutions in Indonesia have not felt the benefits for the wider socio-economic welfare of the community. (Doa, 2002).

Based on existing data in community, generally *waqf* in Indonesia is used for mosques, prayer rooms, schools, orphanages, graves and very little *waqf* land is managed productively as a business whose results can be utilized for parties in need, including the poor. The use of *waqf* lands for worship purposes is indeed effective, but it will be more effective if it is used to support the community economic life. (Agama, 2003).

Effendi explained that the flexible dimension of *waqf* and supported by representative *waqf* legal regulations can be a means to overcome religious and economic problems. In the latter half of the 20th century, there was legislation on *waqf* institutions in Indonesia, with a legal product that was not good because it did not help much with the people's economic problems. The *waqf* legislation which is top-down, not bottom-up, will find it difficult to produce regulations that can solve economic problems. (Effendi, 2010).

Uswatun Hasanah explained the research that the majority of *waqf* assets in the South Jakarta area, both in the form of mosques, prayer rooms, educational institutions and so on, have not been worked out productively so that *waqf* has not played a maximum role in improving people's welfare. This is because Nazir and Wakif's understanding of *waqf* is still limited. *Waqf* is understood as nothing more than a function of ritual worship. (Hasanah, 1997). This is almost the same as the conclusion of the research conducted by Suhadi. Suhadi discussed the allocation of *waqf* which is mostly focused on ritual worship and the weak quality of nazir so that it must be continuously empowered. (Suhadi, 2002).

Research conducted by Hilmi explained that the regulation of cash *waqf* is included in the category of social engineering efforts with a low success rate because it has not shown significant results and is worthy of being a model. (Hilmi, 2012).

Fathurrahman concluded that *waqf* can be a means of alleviating poverty due to several factors, including: Nazir's professionalism in managing *waqf* objects and his accountability for fulfilling public accountability, the state being a facilitator as well as a motivator with political will in accordance with the concept of *waqf* in Islam, the Indonesian Waqf Board assisting and supervising nazirs and being able to

become professional nazirs, and the community is concerned with the development of productive waqf that is being promoted.

There are three kinds of priorities on *waqf* problems and solutions which are based on *waqf* stakeholders: regulators, nazir (those who manage *waqf*), and *waqif* (those who give their properties for *waqf*). (Huda et al., 2017).

2. METHOD

This research is a qualitative research in the form of literature review. This writing is descriptive analytical, using normative legal research methods, namely legal research conducted by researching library materials. The research was conducted by analyzing the laws and regulations related to waqf in Indonesia. This research is strengthened by studies of the waqf literature in Indonesia.

3. RESULTS AND DISCUSSION

3.1. Waqf Regulations in Indonesia

The history of waqf development in Indonesia can be said to be in line with the development of the Islamic spread. Waqf for mosques, educational institutions, pesantren, and cemeteries is the most well-known type of waqf in society. This waqf practice is assumed to have existed since Islam became a socio-political force with the establishment of several Islamic kingdoms in Nusantara since the end of 12th century AD. In East Java, a tradition that resembles the practice of waqf has existed since the 15th century AD and was actually called waqf with the discovery of new historical evidence in the early 16th century AD. As for Sumatra, Aceh, waqf is said to have emerged in the 14th century AD. (Hadi, 2014).

During the colonial period, the government's policy regarding Islamic philanthropy was subject to the political rationality of the Dutch East Indies Islam, where Islam as a value system rich in social dimensions with various political historical precedents was limited in such a way that it was practiced within the framework of personal worship. Considering that Islamic philanthropic activities are often related between members of the community, the colonial government ultimately saw the need to regulate waqf with regulations. However, the policies made are not entirely based on honest political will and correct understanding of the nature and objectives of Islamic philanthropy. As a result, it has no significance for the

development of waqf, it is only the formal administrative waqf. (Hadi, 2014).

During Dutch colonial government, waqf became one of the means in developing socio-religious organizations that managed waqf for religious activities only, for example waqf for the construction of schools, madrasah, Islamic boarding schools, and mosques. (Makhrus, 2018). Waqf law regulations during the colonial period were enacted in 1905. The first waqf legal regulation issued by the Dutch East Indies government in 1905 was the Circular of the Secretary of Government dated June 31, 1905 and contained in the *Bijblad* 1905 Number 6196. Subsequently, the Dutch East Indies government replaced waqf regulations in 1905 with Circulars of the Secretary of Government in 1931, 1934 and 1935. These regulations essentially regulate land waqf, mosque construction, and permits.

After independence, the Government of the Republic of Indonesia has issued various laws and regulations relating to waqf, including:

- a. Government Regulation No. 28/1977, concerning Land-Owned Waqf.
- b. Regulation of the Minister of Home Affairs (Permendagri) Number 6 of 1977, concerning the Land Registration System concerning the Waqf of Owned Land.
- c. Presidential Instruction No. 1/1991, concerning the Compilation of Islamic Law.
- d. Law No. 41 of 2004, concerning waqf.
- e. Joint Decree of Religion Minister and Head of National Land Agency No. 422 and No. 3 of 2004 /SKB/BPN/2004 concerning Waqf Land Certification.
- f. Regulation of Religion Minister Number 4 of 2009 concerning the administration of cash waqf registration.
- g. Regulation of Indonesian Waqf Board Number 1 of 2007 concerning the Organization and Work Procedure of the Indonesian Waqf Board.
- h. Regulation of Indonesian Waqf Board Number 1 of 2008 concerning procedures for preparing recommendations for exchange/change requests of status of waqf assets.
- i. Regulation of Indonesian Waqf Board Number 2 of 2008 concerning Representatives of Indonesian Waqf Board.
- j. Regulation of the Indonesian Waqf Board Number 3 of 2008 concerning procedures for

registration and replacement of Nazir for immovable Waqf Property in the land form.

- k. Regulation of Religion Minister number 4 of 2009 concerning Administration of cash waqf registration
- l. Indonesian Waqf Agency Regulation Number 1 of 2009 concerning guidelines for the management and development of movable waqf assets in the money form.
- m. Regulation of the Indonesian Waqf Board Number 2 of 2009 concerning guidelines for accepting cash waqf for nazir of Indonesian Waqf Board.
- n. Regulation of the Indonesian Waqf Board Number 2 of 2010 concerning Procedures for Registration of nazir money waqf.
- o. Indonesian Waqf Agency Regulation Number 4 of 2010 concerning Guidelines for Management and Development of waqf assets.
- p. Regulation of the Minister of Religion Number 73 of 2013 concerning the procedures for waqf of immovable and movable objects other than money.
- q. Circular Letter of the Secretary General of the Religion Ministry number: SJ/BV/2/HK.00/178.01/2013, regarding the registration of waqf land for mosques, prayer rooms, and tombs that stand on state land, dated August 23, 2013.

The issued of waqf law regulations always raises the underlying assumptions, such as political, economic and religious motives. These three dimensions (political, economic, and religious) are the focus of discussion in much of literature relating to the regulation of waqf law.(Hadi, 2014).

3.2. Waqf Regulation in Reformation Era

On October 27, 2004, the Government issued a new regulation, namely Law Number 41 of 2004 concerning Waqf. This law is the first law that specifically regulates waqf. With the enactment of this law, all regulations regarding waqf still valid as long as they do not contradict and/or have not been replaced by new regulations based on Law No. 41 of 2004.

Another thing that is in Law No. 41 of 2004 is existence of waqf period in accordance with interests, namely that waqf can be returned to its owner according to specified time. Then the existence of BWI (Indonesian Waqf Board) as an independent institution formed by the government to promote and

develop National endowments, and also regarding dispute resolution that can be resolved by consensus or third party assistance through mediation, arbitration and the last resort through the courts.(Ansori, 2005).

Law No. 41 of 2004 concerning Waqf is one form of state support in waqf management provided certainty of institutional waqf management. However, the existence of waqf law does not necessarily have a systemic impact on waqf management which is marked by the increasing size of the waqf object, because waqf management has been widely practiced by various community organizations and educational institutions.

Law Number 41 of 2004 concerning Waqf and the regulations issued by the Indonesian Waqf Board (BWI) have a systemic impact on waqf management in regulatory manner. The existence of this regulation increasingly gives a big role to the management of waqf in Indonesia, which previously did not have a formal legal that was binding and only guided by classical *fiqh* books.

The existence of Law Number 41 of 2004 concerning waqf is the legal foundation for waqf management in Indonesia which causes management to be more varied. On the other hand, the growing public awareness of importance of education, community welfare, and institutional management of waqf has also made the waqf movement more massive.

3.3. Definition of Waqf

Law No. 41 of 2004 concerning Waqf Article 1 explained that waqf is an act of waqif to separate and/or surrender part of his property to be used forever or for certain period of time with the interests of worship and/or public welfare according to sharia.

From that definition, it can be understood that waqf is a legal act carried out by a person, group of people or legal entity by separating part of his property and it is institutionalized forever for the benefit of worship or other public interests in accordance with Islamic law. The property referred to is not only immovable objects (fixed objects), but also movable objects as long as the object in question has a durability that is not only disposable and has value according to Islamic teachings.

In the *fiqh* literature, waqf is defined, among others:

- a. According to Syafi'iyah Scholars, waqf is holding assets that can provide benefits and eternal material

objects (*al-'ain*) by deciding the management rights of waqf and handing them over to nazhir according to the provisions of the sharia.

- b. Hanafiyah Scholars define waqf by holding back material objects (*al-'ain*) and only endowing its benefits to anyone for good purposes. The ownership of the waqf property is still the property of the waqif, and the endowment only occurs on the benefits of the property, not on the property assets. If waqif want the waqf to be taken back then this is permissible. It even becomes his right if after the waqf becomes his, then it is traded.
- c. According to Malikiyah Scholars, waqf is to provide benefits from one's property to be given to other people who are entitled to within the time determined by the waqif at the time the waqf contract (*shighat*) takes place.
- d. Hanabilah Scholars define waqf by withholding the origin and giving the result. This meaning is in accordance with the Hadith of the Prophet PBUH when Umar bin Khattab asked the Prophet's opinion about his Khaibar land.(Sukanto, 2018).

In the context of Indonesian legislation, waqf is interpreted more broadly and comprehensively by summarizing the four points of view of the ulama's opinions above, namely:

- a. Compilation of Islamic Law Article 215 paragraph 1 explains that waqf is a legal act of a person or group of people or legal entities that separates part of his property and institutionalized it forever for the purpose of worship or other public purposes in accordance with Islamic teachings. Regarding the definition of waqf objects are all objects, both movable and immovable, that have durability that are not only disposable and are valuable according to Islamic teachings.
- b. According to Law no. 41 of 2004 concerning Waqf Article 1 paragraph (1) stated that waqf is a legal act of waqif to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to sharia.
- c. According to Government Regulation No. 42 of 2006 concerning the Implementation of Law No. 41 of 2004 concerning Waqf Article 1 paragraph (1) stated that waqf is a legal act of waqif to separate and/or surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of

worship and/or public welfare according to sharia.(Ansori, 2005).

The issued of Waqf Law in 2004 is a new chapter of waqf system in Indonesia with a new paradigm. In the latest waqf law, waqf in Indonesia does not adhere to any of the schools of jurisprudence. The legal system of waqf in Indonesia has the principle of *takhayyur* (selection) which is not tied to one particular school/school. Freedom without being bound by one school of thought is very reasonable as an effort to develop waqf.(Kamil, 2009).

3.4. Waqf Elements

In *fiqh*, the elements of waqf are: (1) Waqif, (2) Waqf Objects, (3) *Mauquf 'alaih*, (4) *Sighat*/Pledge, and (5) Waqf Recipients (*khairi* and *ahli*). While in Law No. 41 of 2004, the elements of waqf are (1) waqf, (2) nazhir, (3) waqf property, (4) waqf pledge, (5) allocation of waqf property, and (6) waqf period.(Bariyah, 2016).

3.5. Waqf Object

In general, in Law No. 41 of 2004 there are many new things from the previous regulations. Among the new things is this law divides waqf objects into immovable and movable objects. Immovable objects for example land rights, buildings or parts of buildings, plants and other objects related to land, as well as property rights to flats. While movable objects, for example, are money, precious metals, securities, vehicles, intellectual property rights and rental rights. Especially for movable objects in the form of money, Law No. 41 of 2004 regulated it in 4 articles, namely articles 28 to 31. This is in line with the fatwa of the Indonesian Ulama Council in 2002 which allows cash waqf.(Ansori, 2005). The fatwa decision of the MUI Fatwa Commission in 2002 was as follows: (1) Cash waqf (cash waqf, *waqf al-nuqud*) is a waqf carried out by a person, group of people, institutions, or legal entities in the form of cash. (2) Included in the definition of money are securities. (3) Cash waqf is legal (*mubah*). (4) Cash waqf can only be channeled and used for things that are permitted by sharia. (5) The principal value of cash waqf must be guaranteed for its sustainability, it may not be sold, donated, and/or inherited.

Cash *waqf* is an important program for social benefit and poverty alleviation. In order to meet the criteria of a *waqf* having perpetual value and to truly create a sustainably-everlasting program, cash *waqf* must be productive. (Tutuko et al., 2017).

In the Waqf Law No. 41 of 2004 it is stated that the object of waqf consists of two kinds, namely waqf of immovable objects and waqf of movable objects. Furthermore, in Government Regulation No.42 of 2006 concerning the Implementation of Law no. 41 of 2004 stipulated that waqf objects of movable objects are divided into two, namely waqf of movable objects other than money and waqf of movable objects in the form of money. The provisions of movable objects other than money are divided into two, namely movable objects because of their nature (can be moved) and movable objects because they are stated in laws and regulations as movable objects.

The explanation above as stated in Article 16 (3) of Law No. 41 of 2004 concerning Waqf explained that movable objects are assets that cannot be exhausted because they are consumed, including money, precious metals, securities, vehicles, Property Rights. Intellectual property rights (HAKI), rental rights and other movable objects in accordance with sharia provisions and applicable laws and regulations. Provisions regarding waqf HAKI are provisions for waqf objects that have never been regulated before so that they can be one solution to the development of waqf objects in order to provide welfare for the community.

In the previous waqf legislation, it was only related to the waqf of immovable objects which were mostly used for unproductive interests, such as mosques, madrasas, cemeteries, orphanages, Islamic boarding schools, and schools. Meanwhile, the new waqf law also regulated movable waqf objects, such as cash (cash waqf), shares, other securities and intellectual rights.(Antonio, 2003).

This innovation is a phenomenal breakthrough in waqf and is an important variable in economic development. Waqf of money, shares, or other securities as regulated in the Waqf Law is not spent for consumptive needs. Consumptive use means that it violates the basic concept of waqf, because the essence of waqf money, shares and securities is mandated by Nazhir so that they can be managed productively so that their benefits can be used for the benefit of the welfare community.(Sukanto, 2018).

In order to achieve the purpose and function of waqf, waqf property can only be allocated for: (1) worship facilities and activities; (2) Education and health facilities and activities; (3) Assistance to the poor, abandoned children, orphans, scholarships; (4) The progress and improvement of the people's

economy; and/or (5) Other general welfare advancements that do not conflict with sharia, laws and regulations.(Article 22 of Law No.41/2004).

Waqf assets are prohibited to: (1) As collateral; (2) confiscated; (3) Granted; (4) For sale; (5) Inherited; (6) Exchanged; or (7) Assigned in another form of transfer of rights.(Article 40 of Law No.41/2004). In addition, it should be noted that a waqf property manager (Nazhir) in managing and developing waqf property is prohibited from changing the designation of waqf property except on the basis of written permission from the Indonesian Waqf Board.(Article 44 Paragraph 1 of Law No.41/2004). This permit can only be granted if the waqf property cannot be used in accordance with the designation stated in the waqf pledge.(Article 44 Paragraph 2 of Law No.41/2004).

3.6. Waqif

Waqif is the party who waqf his property. Waqif included individuals, organizations and legal entities. The requirements that must be met to become a waqif based on Law No. 41 of 2004, articles 7 and 8 are as follows:

- a. Waqif must fulfill the requirements of being mature, sound mind, not hindered by legal action and legal owner of the waqf property.
- b. Waqif in the form of organization must fulfill the organization's provisions for waqf property belonging to the organization in accordance with the articles of association of the organization concerned.
- c. Waqif in the form of legal entity must comply with the organization's provisions for waqf property belonging to a legal entity in accordance with the articles of association of the legal entity concerned.

3.7. Waqf Pledge

The waqf pledge is a statement of waqif spoken orally and/or in writing to nazhir to donate his property. The waqf pledge must be stated in the Waqf Pledge Deed to prevent waqf land disputes due to unclear status and position of land, both between waqif and nazhir or between waqif families and local Muslims and their nazhir. In addition, to prevent disputes from occurring in cases where after the waqif dies, some of his heirs refuse and do not admit that the object is a waqf object.(Samsidar, 2016).

3.8. Nazhir

Nazhir is who received the waqf property from the Waqif to be managed and developed according to

its designation.(Article 1 Point 4 of Law No.41/2004). Nazhir can be an individual, organization or legal entity that holds the mandate to maintain and manage the waqf property in accordance with the form and purpose of the waqf. The requirements to become an Individual Nazhir as follows: (1) Indonesian citizen, (2) Muslim, (3) Mature, (4) Trustworthy, (5) Physically and spiritually capable, and (6) Unobstructed from committing acts law

As for the organizational nazhir, the requirements are (1) the management of the organization fulfills the requirements of an individual nazhir and (2) the organization concerned is engaged in social, educational, community and/or Islamic religious fields. Meanwhile, the requirements for a legal entity Nazhir are: (1) The management of the organization fulfills the requirements of an individual nazhir; (2) Indonesian legal entity established in accordance with the prevailing laws and regulations; and (3) the organization concerned is engaged in the social, educational, community and/or Islamic religious fields.

Nazhir, whether an individual, organization or legal entity, must be registered with the ministry in charge of waqf and the Indonesian Waqf Board. Nazhir individuals, organizations and legal entities are required to be Indonesian citizens. Therefore, foreign nationals, foreign organizations and foreign legal entities cannot be waqf nazhir in Indonesia.

3.9. Waqf Object Registration

Registration of waqf objects by the Official Making the Waqf Pledge Deed (Pejabat Pembuat Akta Ikrar Wakaf /PPAIW) to the competent authority no later than 7 (seven) working days after the waqf pledge is signed. The urgency of the objects waqf registration is intended so that all waqf can be controlled properly.

3.10. Indonesian Waqf Board as Waqf Regulator

The various state regulations in waqf management have implications for institutionalized and professional waqf management. Prior to Law Number 41 of 2004 concerning Waqf, in practice, waqf management was only carried out by socio-religious organizations. After the enactment of Law Number 41 of 2004 concerning Waqf, it has implications for the existence of a new paradigm regarding the types of objects that can be waqf by the Indonesian people, one of which is the permissibility of cash waqf. Meanwhile, institutional strengthening of waqf management institutions in waqf management

in Indonesia, apart from socio-religious organizations that have been conducting waqf management for a long time, namely the Indonesian Waqf Board (Badan Wakaf Indonesia/BWI) and Islamic Financial Institutions Recipient of Cash Waqf (Lembaga Keuangan Syariah Penerima Wakaf Uang/LKS-PWU).

Based on Article 49 paragraph (1) of Law No. 41 of 2004, the duties and authorities of Indonesian Waqf Board as follow: (1) Provide guidance to nazhir in managing and developing waqf assets; (2) Carry out the management and development of waqf assets on a national and international scale; (3) Giving approval and/or permission for changes in the designation and waqf property status; (4) Dismissing and replacing nazhir; (5) Giving approval for the exchange of waqf property; (6) Provide advice and consideration to the government in formulating policies in the field of waqf.

3.11. Waqf Supervision

As for the waqf supervision policy, it is explained in Law Number 41 of 2004 concerning waqf Article 63 paragraph (1), namely that the Minister carries out guidance and supervision of waqf administration to realize the purpose and function of waqf. Then in paragraph (3) of the same article it is stated that the guidance and supervision as referred to in paragraph (1) and paragraph (2) is carried out by taking suggestions and considerations of the Indonesian Ulama Council (MUI). Then in article 65 it is stated that in the implementation of supervision, the Minister may use a public accountant.

In general, the law has given the task of Religion Minister who is assisted by the Indonesian Ulama Council and the Indonesian Waqf Board to threaten parties who commit fraud and/or disputes related to waqf management. These efforts can also be assisted by the active role of the community and government. In carrying out their supervisory duties, the Minister and Indonesian Waqf Board are also allowed to invite community organizations, experts, international bodies and parties deemed necessary. Likewise, using a public accountant to check financial transactions carried out by nazhir. With access to the bureaucracy and authority in broad law enforcement, it is expected to be able to assist in law enforcement which is an important aspect of developing waqf.(Rifai, 2020).

It can be seen that one of Nazhir's obligations is to report on waqf assets managed to the Indonesian

Waqf Board regularly at least every six months. The report is a form of Indonesian Waqf Board supervision on the waqf management carried out by Nazhir.

3.12. Criminal Provisions and Administrative Sanctions in Waqf Management

Law No. 41 of 2004 concerning Waqf is equipped with criminal and administrative sanctions related to the misuse of the waqf property. This aim to maintain the waqf property still used according to its designation and avoid misappropriation and misuse of the waqf property. In article 67 paragraphs 1-3 it is stated that: (1) Any person who intentionally guarantees, grants, sells, inherits, transfers in the form of another right transfer of waqf property that has been waqf as referred to in Article 40 or without permission to exchange waqf property that has been waqf as referred to in Article 41, shall be punished with imprisonment. a maximum of 5 (five) years and/or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah). (2) Any person who deliberately changes the designation of waqf property without a permit as referred to in Article 44, shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of a maximum of Rp. 400,000,000.00 (four hundred million rupiah).

Any person who intentionally uses or takes facilities from the results of management and development of waqf assets in excess of the amount specified as referred to in Article 12, shall be sentenced to a maximum imprisonment of 3 (three) years and/or a maximum fine of Rp. 300,000,000. 00 (three hundred million rupiah).

3.13. Significance of Law No. 41 of 2004 concerning Waqf

Law No. 41 of 2004 concerning Waqf is a refinement of the existing waqf legislation by adding new things as an effort to empower waqf in a productive and professional manner. The substance of the 2004 waqf law seeks to: (1) Unifying various regulations regarding waqf; (2) Guaranteeing legal certainty in waqf; (3) Protect and provide a sense of security for waqif and nazhir, both individuals, organizations and legal entities; (4) As an instrument to develop a sense of responsibility for parties who are entrusted with managing waqf; (5) As a public policy corridor in advocacy and settlement of waqf cases and disputes; and (6) Encouraging optimization of waqf management and development.(Syarjaya, 2009).

In general explanation of Waqf law, there are at least 2 reasons that are the driving force for the issued of the law: (1) That the objective of Indonesian Republic is to promote general welfare. To achieve this goal, it is necessary to explore and develop the potential contained in religious institutions that have economic benefits. Among the strategic steps to improve public welfare, it is deemed necessary to increase the role of waqf as a religious institution that does not only aim to provide various kinds of services means religious and social, but also has economic power that has the potential to promote the general welfare. (2) The practice of waqf that occurs in people's lives has not been fully and efficiently run so that in various cases the waqf property is not properly maintained, neglected or turned into the hands of third parties in a way that is against the law. Such a situation is not only due to Nazhir's negligence or inability to manage and develop waqf assets, but also because of the attitude of the people who are less concerned or do not understand the status of waqf property which should be protected for the sake of public welfare in accordance with the purpose, function, and designation of the waqf.(Elucidation of Law No.41/2004 Part I).

The purpose of issued Waqf Law is to fulfill legal needs in the context of developing national law. In detail, the intended objectives are:

- 1) To create legal order and waqf administration to protect the waqf property. This law emphasized that waqf legal actions must be recorded and stated in the waqf pledge deed, registered and announced whose implementation is carried out in accordance with the procedures stipulated in the laws and regulations governing waqf and must be implemented. This law does not separate expert waqf whose management and utilization of waqf property is limited to relatives (heirs) and *khairi* waqf which is intended for the benefit of the general public in accordance with the purpose and function of the waqf.
- 2) To expand the scope of waqf object. The scope of waqf which has been generally understood so far tends to be limited to waqf of immovable objects such as land and buildings. According to this law, waqf can also donate part of their wealth in the form of movable waqf property, either tangible or intangible, namely money, precious metals, letters, valuables, vehicles, intellectual property rights, rental rights, and other movable property.

- 3) To expand the scope of waqf use. This law stipulated that waqf assets are not solely used for religious and social purposes, but are also directed to promote public welfare by exploring the potential and economic benefits of waqf assets. This law provided opportunities for nazhir to enter broad economic activities in the management of waqf property as long as it is in accordance with the principles of sharia economic management.
- 4) To secure the waqf property from the interference of third parties that harm the interests of waqf. One of the ways to do this according to this law is to improve the professional abilities of nazhir.
- 5) To form an Indonesian Waqf Board that can have representatives in the regions as needed. The Board is an independent institution that carries out tasks in the field of waqf that provides guidance to Nazhir, manages and develops waqf assets on a national and international scale, gives approval to changes in the designation and status of waqf assets, and provides advice and considerations to the Government in formulating policies. in the field of endowment.

The Waqf Law enacted in 2004 is expected to become a statutory regulation that can meet the demands, needs, and developments that occur in society. This can be seen from various aspects: (1) Accuracy of structure, considerations, legal basis, language (terms), use of letters, and punctuation; (2) Conformity of content with juridical, sociological, and philosophical basis. The suitability of this juridical aspect shows that there is authority, conformity to the form and type of legislation, following certain methods, there is no conflict between one statutory regulation and another and does not conflict with the principles of general law that apply. Sociological conformity showed that laws and regulations are made in accordance with the needs, demands, and developments of society. Philosophical conformity showed that laws and regulations are made in the context of realizing, implementing or maintaining legal ideals that become the standard of community life; (3) These laws and regulations can be implemented (applicable) and guarantee certainty. A statutory regulation must take into account the carrying capacity, both the government environment that will implement it and the community where the statutory regulation will apply. This carrying capacity

includes personnel, finance, organization, community conditions, and others.(Manan, 1995).

The dimension of waqf that is flexible and supported by representative waqf legal regulations can be means to overcome religious and economic problems.(Effendi, 2010). Waqf can be a means of alleviating poverty due to several factors, including: (1) Nazhir's professionalism in managing waqf objects and his accountability fulfills public accountability; (2) The state becomes a facilitator as well as a motivator with political will in accordance with the concept of waqf in Islam; (3) The Indonesian Waqf Board assists and supervised the nazhir and can become a professional nazhir; and (4) The public cares about the development of productive waqf which is being promoted.(Fathurrahman, 2007).

4. CONCLUSION

State policies or regulations in waqf management in Indonesia have been started since the Dutch Colonial Government, followed by the Old Order, New Order and Reform Order governments. After Law No. 41 of 2004 concerning Waqf was enacted, waqf management became more varied and creative, including the existence of waqf in the form of movable objects. Waqf regulations are not only based on one school of jurisprudence, but are based on various schools of thought by taking opinions that are considered relevant in the development of waqf for now.

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