

Research Article

Regulation of Wakaf Management Costs in Indonesia

Siska Lis Sulistiani^{1*}, Intan Nurrachmi¹, Ramdan Fawzi¹, Abdurahman Raden Aji Haqqi²

¹Bandung Islamic University, Bandung, Indonesia

²Sultan Sharif Ali Islamic University, Brunei Darussalam

ORCID

Siska Lis Sulistiani: <https://orcid.org/0000-0003-0007-9401>

Intan Nurrachmi: <https://orcid.org/0000-0002-9634-3037>

Ramdan Fawzi: <https://orcid.org/0000-0001-5865-1461>

Abdurahman Raden Aji Haqqi: <https://orcid.org/0000-0002-1093-8663>

Abstract.

This research aims to analyze the regulations applicable in Indonesia concerning the costs of managing immovable waqf assets such as land or building waqfs. Waqf assets in Indonesia continue to increase and develop, so there is a need to have a source as a basis for waqf management in Indonesia. The research method used in this research is a normative legal research method, that is, to find out the stages of synchronization of Islamic law and national law in Indonesia concerning waqf, using relevant primary and secondary legal sources and data. The results of this research show that in Indonesia fund management waqf has not been specifically regulated with respect to initial funds in managing waqf assets so every waqf manager (nadzhir) must have a strategy to be able to cover the initial management needs, one of which is by adding cost at the beginning of the waqf agreement to the waqif for the management of those assets. The 10% referred to in the 2004 Waqf Law is the maximum limit of rights of waqf managers after successfully managing waqf assets.

Keywords: costs, management, policy, waqf

1. INTRODUCTION

Indonesia is the largest Muslim country in the world and is also known as the most generous country in the world. Indonesia's potential is based on a survey by the Charities Aid Foundation in 2022 (1).

This potential is a great opportunity to optimize waqf income in Indonesia so that it can continue to increase to help improve the country's economy (3). The practice of waqf in Indonesia has existed since before independence, it can be found in mosques, cemeteries and Islamic boarding schools which have been established in many regions in Indonesia. One of the waqf buildings that is managed and developed to this day is the Gontor Islamic boarding school, which was founded in 1926 until now and continues

Corresponding Author: Siska Lis Sulistiani; email: siska.sulistiani@unisba.ac.id

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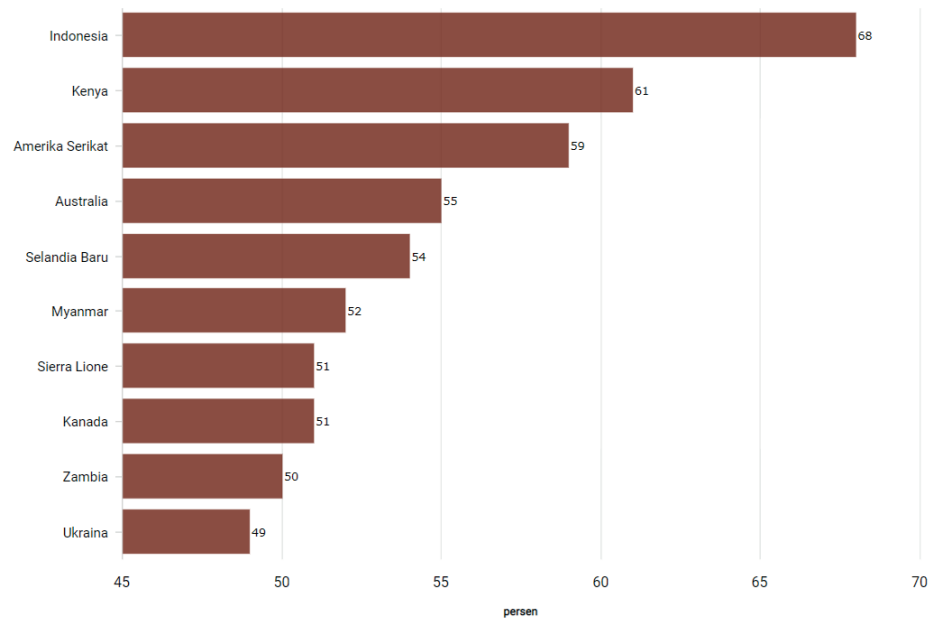


Figure 1: The Most Generous Country in the World (2).

to grow. Another waqf asset that is developing in the health sector is the Achmad Wardi eye hospital in Serang Banten which was inaugurated in 2017 (4) , with the continued development of waqf, quite a few also give rise to various kinds of problems in practice in the field (5), especially in the management aspect. Regulations and policies regarding waqf management in Indonesia only emerged in 2004 with the existence of Law No. 41 of 2004 concerning waqf after previously there was an MUI fatwa in 2002 concerning cash waqf and then followed by other derivative regulations.

Waqf management policies in Indonesia are still based on Law no. 41 of 2004 concerning waqf, but the rules relating to the amount of funds that can be received by a nadzir are 10 percent, while in hadith d it is not stated that the nominal value should not be excessive, but in practice, in the field, waqf managers, especially nadzirs who are new to managing waqf, have difficulty implementing waqf management. at the beginning because the law regulates that the 10 percent nazhir rights are the result of waqf management. Therefore this study intends to look at the policies used in funding waqf management in waqf institutions in Indonesia .

2. RESULTS AND DISCUSSION

The definition of waqf according to Article 1 of Law Number 41 of 2004, waqf is a legal act to separate and/or hand over part of one's property to be used forever or for a certain

period of time in accordance with one's interests for the purposes of worship and/or general welfare according to sharia. In Article 215 paragraph (1) of the Compilation of Islamic Law (KHI) it is stated that waqf is a legal act of a person or group of people or legal entity that separates part of his property and institutionalizes it forever for other public interests in accordance with Islamic teachings.

The definition of cash waqf in the regulatory context in Indonesia is waqf in the form of movable money assets (UU No. 41/2004 concerning waqf Article 16 Paragraph 3) in rupiah currency (PP No. 42/2006 concerning waqf Article 22 Paragraph 1) through financial institutions sharia appointed by the government (Waqf Law Article 28) which issues SWU (Waqf Law Article 29). Management and development of cash waqf assets can only be done through investment in LKS products and/or sharia financial instruments (PP Waqf Article 8 Paragraph 2) whose integrity is guaranteed by the Deposit Guarantee Institution (PP Waqf Article 8 Paragraph 4) or the Sharia Insurance Institution (PP Waqf Article 8 Paragraph 5)(6).

From some of the definitions above, it can be concluded that what is called waqf is the legal act of waqf by giving his property to be taken advantage of which is intended for the benefit of worship, social and for social welfare.

The practice of waqf that has been widely practiced by the Indonesian Islamic community is manifested in the construction of mosques, land and Islamic educational institutions that are developed in a sustainable manner, including movable waqf assets in the form of money which are managed for the eternity of their assets so that they can provide benefits to people's lives. (6 (6). The existence of Law Number 41 of 2004 concerning waqf becomes the legal umbrella for waqf management in Indonesia which makes management more dynamic. Meanwhile, on the other hand, increasing public awareness regarding the importance of education, social welfare, and institutional management of waqf has contributed to making the waqf movement more massive. In Indonesia, policies related to waqf management are generally regulated in several regulations as follows(7):

Laws relating to waqf: Law Number 41 of 2004 concerning Waqf, Law Number 50 of 2009 concerning Third Amendment to Law Number 7 of 1989 concerning Religious Courts, explanation of Law Number 41 of 2004 concerning Waqf, Government Regulation Number 28 of 1977 concerning Waqfation of Owned Land, Government Regulation Number 42 of 2006 concerning the implementation of Law Number 40 of 2004, Explanation of Government Regulation Number 42 of 2006 concerning the

implementation of Law Number 40 of 2004, Presidential Decree Number 75/M of 2007 was stipulated in Jakarta on 13 July 2007 concerning Membership of the Indonesian Waqf Board appointed by the President of the Republic of Indonesia, Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law Book III Waqf Law, Minister of Religion Regulation Number 4 of 2009 concerning Administration of Cash Waqf Registration, Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for Waqf of Immovable Objects and Movable Objects Other Than Money, Decree of the Director General of Islamic Community Guidance Number DJ.II/420 of 2009 concerning Models, Forms, and Specifications for Cash Waqf Forms, Decree of the Minister of Religion of the Republic of Indonesia concerning List of Islamic Financial Institutions Recipient of Cash Waqf, Fatwa of the Indonesian Ulema Council dated May 11, 2002 concerning Cash Waqf, and Set of Indonesian Waqf Agency Regulations regarding waqf in Indonesia(8).

In general, this policy has regulated the management of waqf in general, especially what is the right of the nazhir and most importantly, each of these rules must not conflict with Islamic law. In *Nihayah Al-Muhtaj*, in general, the task of the waqf nadzir is to maintain the origin of the waqf material and its results (profits) in a careful way as guardians of orphans, renting out, developing, as well as lending waqf when there is a need if there are conditions from the waqif or there is permission from judge, get the results and distribute them to those who are entitled to receive them. And in outline the obligations and rights of a waqf nadzhir are taken from the hadith of Umar ibn Khatab regarding land waqf in Khaibar. From this hadith it becomes the basis that the rights of a waqf manager are reasonable and not excessive(9).

In *al-Mausu'ah al-Fiqhiyyah al-Kuwaitiyyah* that waqf managers may take their share for consumption or charity in the usual amount. According to fiqh experts, the amount of the manager's salary is based on the decision of the waqf or authority. Waqf managers may be given a certain percentage of the results of waqf development every month or every year as compensation for their services in managing the waqf(10).

Nadzhir as the waqf manager has a very important role in the successful empowerment of waqf assets, so that this urgency makes nadzhir worthy of being an important element in the validity of waqf management, especially in the context of waqf law in Indonesia. The existence of nazhir plays a very important role in whether or not a waqf property develops or not. In fiqh literature, waqf managers are called nazhir. This term means guard, manager, administrator, head or director. Besides that, it is often also called mutawalli, which means management, authorized and committed, executive,

manager or director. No matter how big the waqf assets are if they are not handled by reliable and professional Nazhir Human Resources (HR), then the waqf assets will remain idle, and will not move in a productive direction. As happened with waqf assets in the form of land. The condition of waqf land management that is less productive is directly proportional to the quality of the manager. In addition, there is a strong impression that the existence of waqf and its empowerment is highly dependent on the nazhir. Nadzir is also obliged to do everything appropriate to maintain and manage waqf assets(11).

In Indonesia according to Article 9 of the 2014 Waqf Law that nazirs can include individuals, organizations and legal entities. As for Article 215 point 5 of the Compilation of Islamic Law, it must be in the form of a group of people or legal entities entrusted with the maintenance and management of waqf objects. As for individual nazirs, according to the provisions in Article 219 of the Compilation of Islamic Law, they must meet the following requirements: Indonesian citizen, Muslim, mature, physically and mentally healthy, not under guardianship, and residing in the district where the waqf object is located. This last requirement is different from that stipulated in Article 10 of the 2004 Waqf Law, namely Indonesian citizens, Muslim, mature, trustworthy, physically and spiritually capable and not hindered from taking legal actions.

In addition, the organizational nazhir requirements are as follows(12):

The management of the organization concerned meets the requirements for an individual nazir as referred to in paragraph (1); and organizations engaged in the social, educational, community, and/or Islamic religious fields. Then if it is in the form of a legal entity, the nazir must meet the following requirements: the management of the legal entity concerned meets the requirements for an individual nazir as referred to in paragraph (1); and Indonesian legal entities formed in accordance with applicable laws and regulations; and the relevant legal entity operates in the social, educational, community, and/or Islamic religious fields.

Individual nazirs and legal entities alike must be registered with the local sub-district KUA after hearing suggestions from the sub-district head and the sub-district Ulama Council to obtain approval. In addition, because the waqf management sector is the most important part of waqf, because the function or benefits of waqf can be felt by mauqf alaih if managed well and professionally and productively. In the waqf law and government regulations the management of waqf is also regulated in chapter V which includes Articles 42, 43, 44, 45 and 46. That is, the nazhir is obliged to manage and develop waqf assets according to their purpose, function and designation.

The management and development of waqf assets by nazhir as intended in Article 42 is carried out in accordance with sharia principles. The management and development of waqf assets as intended is carried out productively. In the event that the management and development of the waqf assets in question requires a guarantor, a sharia guarantor institution is used. In managing and developing waqf assets, nazirs are prohibited from making changes to the designation of waqf assets except on the basis of written permission from the Indonesian Waqf Board. The permit referred to can only be granted if the waqf assets cannot be used in accordance with the designation stated in the waqf pledge (13).

In addition, the nazhir's duties are regulated in Article 11 of Law No. 41 of 2014 which includes: administering waqf assets; managing and developing waqf assets in accordance with their objectives, functions and designations as well as overseeing and protecting waqf assets and reporting on the implementation of tasks to the Indonesian Waqf Board. In addition, wage rights for nadzhir waqf in Indonesia are regulated in several applicable regulations. In Article 12 of the Waqf Law, it is explained that Nazhir can receive compensation from the net proceeds for the management and development of waqf assets, the amount of which does not exceed 10% (ten percent). Then it is continued in Article 13 regarding the guidance of nadzhir that in carrying out the duties as referred to in Article 11, Nazir receives guidance from the Minister and the Indonesian Waqf Board (14).

Regarding nadzir rights, it is also regulated in the 2020 BWI Regulation Article 23 paragraph (2) concerning the distribution of waqf management results that, the distribution of the net results of waqf management is carried out for nadzir at a maximum of 10%, mawkuf alaih at least 50% and reserves the amount after deducting the net nadzir results. and mauquf. Meanwhile, KHI Article 222 explains that nadzhir have the right to receive income and facilities, the type and amount of which are determined based on eligibility based on the advice of the District Ulema Council and the local District Religious Affairs Office.

As for the operational costs of managing waqf outside of nadzir rights, the following methods can be carried out (15):

The operational costs of waqf assets can be allocated from the following social funds items. (1) The results of the development of waqf funds. For example, on September 1, 2021, the waqf institution received Rp. 100 million in cash waqf from person A. Furthermore, the waqf institution placed the funds in an Islamic bank deposit. After

three months, it provides a return of IDR 10 million. So, what is entitled to be used as operational costs is IDR 10 million (the proceeds from the development of waqf funds).

From donations, alms and unrestricted grants. For example, a waqf institution that receives cash waqf of IDR 100 million also has unrestricted donations of IDR 10 million. So, the Rp. 10 million can be allocated as operational costs. So, the IDR 100 million waqf can produce benefits.

From the asset endowment infaq fund. For example, person A donates Rp. 10 million to the waqf institution and he agrees that five percent of it will be used as waqf operational costs. So, waqf institutions may set aside IDR 500 thousand as waqf operational costs. This is based on the following provisions (16):

Waqf funds may not be used as operational costs, whether related to waqf asset management costs or salaries of waqf management employees. As the hadith of Rasulullah SAW said, "... hold on to the basics and distribute the results." (HR an-Nasa'i). The phrase 'hold the principal' means that the principal of the waqf cannot be given to the recipient (mustahik). For example, a waqf institution A that is collecting waqf funds has received a cash waqf of Rp. 10 million, so no part of the Rp. 10 million is used to finance the construction of the waqf building or the salary of the builder.

As long as the operational costs are needed so that waqf assets can be utilized or generate benefits, it is permissible to use infaq/alms funds at the usual rate.

The waqf institution - in its early days - which received waqf of goods, needed operational costs. On the other hand, sharia has regulated that waqf assets may not be used as operational costs. With this solution, it can provide benefits or solutions so that the waqf assets can be immediately utilized by mustahik.

3. CONCLUSION

Waqf management policies in Indonesia have been in place for a long time, even before the existence of Law No. 41 of 2004 concerning waqf. However, the development of waqf management has become more dynamic after the existence of Law No. 41 of 2004 concerning waqf and other regulations as part of the legal umbrella for the development of waqf innovation in Indonesia. Regarding waqf management in Indonesia, it is regulated that nadzhir rights cannot be more than 10 percent of the results of waqf management based on Law No. 41 of 2004, while waqf operational costs can be taken or allocated from the results of asset development/waqf funds, infaq/alms funds/

grants, or from waqf donations for operational costs of the assets donated. With the provisions that the amount of the fee refers to the norm and does not exceed 10 percent in accordance with statutory regulations and is not excessive as regulated in the hadith.

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