

## THE ROLE OF THE INDONESIAN WAQF AGENCY IN THE IMPLEMENTATION OF NAZIR SUPERVISION OF LAND WAQF (STUDY AT BADAN WAKAF INDONESIA OF LHOKSEUMAWE CITY)

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### Abstract

The purpose of this study is to determine and analyze the role of Badan Wakaf Indonesia BWI in the implementation of Nazir supervision of land waqf in Lhokseumawe City, explain the obstacles in the supervision process by BWI towards nazir in Lhokseumawe City, and efforts made in the supervision process of nazir in Lhokseumawe City. This research uses empirical juridical research, and uses a qualitative approach. The results of this study indicate that the role of BWI towards the implementation of nazir supervision of land waqf in Lhokseumawe City has not been running at all. This is indicated by the fact that there have been no coaching or supervision activities carried out by BWI Lhokseumawe City during its formation in February 2019. The obstacles experienced by BWI towards the implementation of nazir supervision of land waqf in Lhokseumawe City are the absence of budget availability for BWI's operational costs, and also the lack of understanding and public awareness of the importance of land waqf which can benefit the economic, social and religious interests of the community. The efforts made by BWI towards the implementation of nazir supervision of land waqf in Lhokseumawe City are to allocate a budget or seek a budget for BWI operations by coordinating with the local government and also the provincial ministry of religion. In addition, the efforts made are to conduct socialization, guidance and supervision of nazirs in carrying out their duties and functions so as not to violate existing regulations.

Keywords: *Land Waqf, BWI Role and Nazir Supervision.*

### Abstrak

Tujuan penelitian ini adalah untuk mengetahui dan menganalisis peran Badan Wakaf Indonesia (BWI) terhadap pelaksanaan pengawasan Nazhir terhadap wakaf tanah di Kota Lhokseumawe, menjelaskan hambatan-hambatan dalam proses pengawasan oleh BWI terhadap nazhir di Kota Lhokseumawe, serta upaya yang dilakukan dalam proses pengawasan terhadap nazhir di Kota Lhokseumawe. Penelitian ini menggunakan jenis penelitian yuridis empiris, dan menggunakan pendekatan kualitatif. Hasil penelitian ini menunjukkan bahwa peran BWI terhadap pelaksanaan pengawasan nazhir terhadap wakaf tanah di Kota Lhokseumawe belum berjalan sama sekali. Hal ini ditandai belum ada kegiatan pembinaan maupun pengawasan yang dilakukan oleh BWI Kota Lhokseumawe selama pembentukannya pada februari 2019 yang lalu. Hambatan yang dialami BWI terhadap pelaksanaan pengawasan nazhir terhadap wakaf tanah di Kota Lhokseumawe yaitu tidak adanya ketersediaan anggaran untuk biaya operasional BWI, dan juga masih kurangnya pemahaman serta kesadaran

masyarakat akan pentingnya wakaf tanah yang dapat bermanfaat bagi kepentingan ekonomi masyarakat, sosial dan keagamaan. Upaya yang dilakukan BWI terhadap pelaksanaan pengawasan nazhir terhadap wakaf tanah di Kota Lhokseumawe adalah dengan memplotkan anggaran atau mengupayakan adanya anggaran untuk operasional BWI dengan berkoordinasi dengan pemerintah daerah dan juga kementerian agama provinsi. Selain itu upaya yang dilakukan adalah melakukan sosialisasi, pembinaan dan pengawasan terhadap para nazhir dalam menjalankan tugas dan fungsinya agar tidak melanggar peraturan yang ada.

Kata Kunci: *Wakaf Tanah, Peran BWI dan Pengawasan Nazhir.*

## INTRODUCTION

In Indonesia, very little waqf land is managed productively in the form of a business whose results can be utilized for those in need, especially the poor. Such utilization from a social point of view, especially for religious purposes, is indeed effective, but the impact is less positive and only limited to the above matters without being balanced with realizing the socio-economic welfare of the community, it will not be optimally realized.<sup>1</sup>

The state is present only as a guarantor of waqf land ownership as long as there is no dispute in the community. The birth of disputes in the community is due to the non-fulfillment of administrative requirements carried out by government officials against an applicable statutory regulation.<sup>2</sup>

Article 47 paragraph (1) of Law No. 41 of 2004 concerning Waqf which states that "In order to promote and develop national

waqf, an Indonesian Waqf Board (BWI) is established. One of the objectives of the Indonesian Waqf Board is to promote and develop national waqf."

The duties carried out by BWI in carrying out its duties and authorities as regulated in Article 49 of Law Number 41 of 2004 concerning Waqf, states that BWI has the duty and authority to provide guidance to nazir in managing and developing waqf assets, managing and developing waqf assets on a national and international scale, giving approval and/or permission for changes in the designation and status of waqf assets, dismissing and replacing nazir, giving approval for the exchange of waqf assets, providing advice and considerations to the government in formulating policies in the field of waqf.

The Indonesian Waqf Board (BWI) is independent in carrying out its duties. To support its role, BWI must be facilitated with

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<sup>1</sup> Tim Depag, *Paradigma Wakaf Produktif*, Jakarta: Direktorat Pemberdayaan Wakaf, 2008, p. 106.

<sup>2</sup>Muchtar Wahid, *Analisis Deskriptif Terhadap Kepastian Hukum Hak Milik Atas Tanah*, Bandung: Citra Aditya, 2005. p. 41

strong and stable institutional elements to be more effective and efficient in carrying out its duties. In its development, the presence of BWI has not been maximized in developing waqf in the country.

Based on the results of research conducted by Muslem Abdullah in his book entitled "Challenges to the Implementation of Land Waqf in the Indonesian Legislative System" in Lhokseumawe City, it explains that there are still people in Lhokseumawe City who still carry out land waqf not in front of the Waqf Pledge Deed Official (PPAIW), but they make waqf pledges only to nazhir or village imams and mosque imams they trust. This condition occurs because the legal culture of the community is still very much bound by the religious customs prevailing in the community, namely they are of the opinion that waqf is valid after the ijab from the endower to the recipient of the waqf.<sup>3</sup>

The establishment of BWI originated from the large number of waqf lands and waqf development innovations that have not been recorded and managed properly, so that data collection and guidance on nazir need to be held socialization and guidance. The establishment of BWI is the beginning to revive the waqf movement, which philosophically waqf as one of the Islamic

institutions has become one of the supports for the development of Islamic society from the golden age of Islamic civilization to this day.

The establishment of BWI is also a follow-up to many waqf lands whose utilization is still consumptive and has not been managed productively. One of BWI's duties is to provide guidance to nazir in managing and developing waqf assets. Nazir is the party that receives waqf property from the waqif to be managed and developed in accordance with its designation. Similar to wakif, nazir includes individuals, organizations, and legal entities.

On February 6, 2019, the Lhokseumawe City Government through the Ministry of Religious Affairs of Lhokseumawe City established the BWI Representative of Lhokseumawe City. BWI Lhokseumawe City was formed based on Law Number 41 of 2004 concerning Waqf.

Based on the background of the problem above, it is known that there are problems related to this research. These problems can be identified as follows:

1. How is the role of BWI towards the implementation of Nazir supervision of land waqf in Lhokseumawe City?

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<sup>3</sup>Muslem Abdullah, *Tantangan Pelaksanaan Wakaf Tanah Dalam Sistem Perundang-Undangan Indonesia*. Banda Aceh: Lembaga Kajian Konstitusi

Indonesia (LKKI), Fakultas Syariah dan Hukum, Universitas Islam Negeri (UIN) Ar-Raniry, 2019, p. 95

2. What obstacles occur in the supervision process by BWI towards nazir in Lhokseumawe City?
3. What efforts are made by BWI to resolve obstacles in the process of supervising nazir in Lhokseumawe City?

The purpose of this research is to:

1. Knowing and analyzing the role of BWI in the implementation of Nazir supervision of land waqf in Lhokseumawe City.
2. Knowing and explaining what obstacles occur in the supervision process by BWI towards nazir in Lhokseumawe City.
3. Knowing and explaining what efforts BWI has made to resolve obstacles in the process of supervising nazir in Lhokseumawe City.

## RESEARCH METHODS

The type of research used in this research is to use the empirical juridical / sociological juridical method, which is a research that uses a method of approaching problems that exist in society and looking at applicable legal norms and then connected with legal facts found in the field.<sup>4</sup>

The approach used in this research is qualitative. Qualitative research is a procedure for producing descriptive data in the form of written or spoken words from people or observable behavior where the approach is directed at the setting and the individual collectively or as a whole.<sup>5</sup>

The main data source in this research is secondary data. Secondary data can be obtained through literature studies, including laws and regulations, books, internet sites, mass media, dictionaries and other data, which are divided into primary data sources, secondary data.<sup>6</sup> Data collection techniques using interviews, observation and documentation techniques.

## RESULTS AND DISCUSSION

### **The Role of the Indonesian Waqf Board on the Implementation of Nazir Supervision of Land Waqf**

The Indonesian Waqf Board representative of Lhokseumawe City was born based on Article 48 of Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf and Indonesian Waqf Board Regulation Number 2 of 2012 concerning Representatives of the Indonesian

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<sup>4</sup>Bambang Sunggono. *Legal Research Methodology*. Jakarta: Rajawali Pers, 2003, p.58

<sup>5</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, Bandung, Remaja Rosdakarya, 2002 p.3

<sup>6</sup> Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum*, Jakarta: Ghalia Indonesia, 1990), p.52

Waqf Board, in order to support the implementation of the duties and functions of the Indonesian Waqf Board for the smooth, efficient, and optimal implementation of the duties of the Indonesian Waqf Board.

In fact, if we look at the purpose of the establishment of BWI representatives in each Regency / City, it aims to maintain, safeguard, manage, and develop waqf property to be utilized in accordance with its functions, for the purposes of worship, improving the welfare of the people, encouraging the people's economy, and social services.

With the establishment of BWI Lhokseumawe City in 2019, it indicates that the waqf process will be carried out by BWI, especially regarding guidance for nazir, dismissing and replacing nazir, and managing waqf properly and correctly.

BWI representatives in regencies/cities have the following duties and authorities:<sup>7</sup>

1. Implementing BWI policies and tasks at the district/city level.
2. Coordinate with the Office of the Ministry of Religious Affairs and related institutions in carrying out tasks.
3. Fostering nazir in managing and developing waqf assets.

4. Act and be responsible for and on behalf of the Regency / City BWI Representative, both inside and outside.
5. Terminate and/or replace the nazir of waqf land with an area of less than 1,000 square meters.
6. Issuing proof of registration of land waqf nazirs whose area is less than 1,000 square meters.
7. conduct a survey of waqf land with an area of less than 1,000 square meters that is proposed to be re-designated or exchanged and report the results to BWI.
8. Perform other duties assigned by the Provincial BWI Representative.
9. Carry out other tasks assigned by the Provincial BWI Representative

Based on the results of research conducted by the author regarding the role of BWI Lhokseumawe City in the implementation of nazir supervision of land waqf, it is known that, BWI Lhokseumawe City during its formation until now has not played a role at all. BWI Lhokseumawe City has not carried out any activities or guidance for nazir or waqf management. Regarding waqf until now after the BWI of Lhokseumawe City was formed, it is still

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<sup>7</sup> Article 5 Regulation of the Indonesian Waqf Board Number 2 of 2012 concerning Representatives of the Indonesian Waqf Board

carried out at the KUA office in each sub-district.

If we look at the purpose of the establishment of BWI representatives in each Regency / City, it aims to maintain, safeguard, manage, and develop waqf assets to be utilized in accordance with their functions, for the purposes of worship, improving the welfare of the people, encouraging the people's economy, and social services.

Seeing the inaction of BWI Lhokseumawe City in carrying out the duties that have become BWI's responsibility to supervise Nazir, this indicates that BWI as a body that has the task of providing guidance and supervision of nazir in managing and developing waqf property is obliged and fully responsible for the actions of the nazir for the tasks they carry out cannot run properly.

In the theory of Responsibility according to Hans Kelsen states that, "a person is legally responsible for a certain act or that he bears legal responsibility. The subject means that he is liable for a sanction in the event of a contrary act".<sup>8</sup> Based on this theory, BWI's role as the person responsible for the supervision of the nazirs does not work as expected.

### **Obstacles In The Implementation Of Supervision By Bwi Against Nazir In Lhokseumawe City**

Based on the results of the research, it was found that there are several obstacles experienced by BWI Lhokseumawe City in carrying out the implementation of supervision of nazir including:

#### **1. Budget**

The implementation of supervision of nazir in Lhokseumawe City by BWI is not going well. This is due to the unavailability of a budget by the government for BWI Lhokseumawe City operations. Of course, BWI Lhokseumawe City cannot carry out its duties and functions in nazir supervision of land waqf.

Whereas in Article 52 of Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf explains the financing of BWI, namely, BWI financing assistance is borne by the APBN and / or APBD for the first 10 (ten) years through the budget of the Ministry of Religion and can be extended. BWI is accountable for financial assistance as referred to in paragraph (1) periodically to the Minister.

The financing that has been regulated in the government regulation is basically used

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<sup>8</sup> Hans Kelsen, *Teori Hukum Murni...*, 2006, p.140.

for the purpose of guidance and supervision of nazirs.

The budget requirements needed by BWI Lhokseumawe City in order to carry out its duties and functions will be used for the following purposes:

a. BWI Office Rent

During the formation of BWI Lhokseumawe City in February 2019 until now, BWI Lhokseumawe City has not had an office or building. BWI Lhokseumawe City has only been based at the office of the Ministry of Religious Affairs of Lhokseumawe City, this is because some members of BWI Lhokseumawe City are employees of the Ministry of Religious Affairs of Lhokseumawe City. The budget required by BWI will be used for BWI office rental purposes.

b. BWI Operational Fund

In addition to being needed for BWI office rent, the budget needed by BWI Lhokseumawe City is for operational purposes. The need for these operational funds such as secretarial equipment such as computers, BWI transportation equipment rental, and other BWI operational needs.

c. Funds for BWI Program Socialization

The budget needed by BWI Lhokseumawe City is also allocated for socialization to nazirs and waqifs regarding

waqf. This socialization fund is needed so that BWI when going down to the villages to conduct socialization about the programs that will be carried out can be carried out.

d. Funds for Nazir Development and Supervision

The next budget need for BWI is for the purposes of coaching and supervising nazir in land waqf. Because as long as BWI Lhokseumawe City was formed in February 2019, there has been nothing from BWI Lhokseumawe City to provide guidance or supervision of nazir.

In fact, the funds needed for the guidance and supervision of nazirs aim to ensure that the nazirs have the knowledge to manage the waqf assets.

e. Funds to pay lawyers in case of waqf disputes

In waqf, especially land waqf, it is not uncommon to cause problems in the future. This is because there are disputes and waqf disputes, especially land waqf. The budget needed to hire a lawyer is done if there is a dispute in the future.

2. Lack of Public Awareness and Understanding of the Importance of Waqf Land Registration

In Lhokseumawe City itself, people's views on waqf are still lacking, especially

land waqf. In this day and age, land is very valuable as a source of income. With strategic land, shops and housing can be built for rent, so people are reluctant to be able to endow their land.

In addition, there are still events in Lhokseumawe City that indicate that many waqf lands have become lands for private interests. Because most of these waqf lands have not been registered in accordance with applicable laws and regulations, there is no legal certainty.

For example, from the data obtained by the author from the Lhokseumawe City Land Office, from the data obtained that of the 68 villages in Lhokseumawe City in 4 respective sub-districts, only 38 villages have made waqf land certificates with a total of 114 waqf land certificates and an area of 194,453 porsil. While the remaining 30 villages have not donated or made land certificates.

Based on this data, there are many waqf lands in the area that have not been registered and have not been certified. This is a problem that needs to be researched and studied further to provide solutions so that in the future there will be no more neglected land registration or certification.

To obtain legal certainty for the guarantee of waqf land registration, the most important thing is public awareness of the importance of land waqf so that the benefits of the waqf can be used. Therefore, the

community must have legal awareness to register land waqf certification as a form of legal awareness for the community in order to obtain legal certainty later. This is as the theory conveyed by Soerjono Soekanto regarding public legal awareness of broad issues, including problems of knowledge, recognition, and appreciation of the law.

### **EFFORTS MADE BY BWI IN THE PROCESS OF SUPERVISING NADZIR ON LAND WAQF IN LHOKSEUMAWE CITY**

#### **1. Plotting the Budget**

Based on the explanation above, BWI Lhokseumawe City should get a budget to carry out its duties and functions. Thus the formation of BWI Lhokseumawe City has received legal certainty for BWI members to carry out their duties and not just regulations that are not carried out.

One of the objectives of the Indonesian Waqf Board is to promote and develop national waqf. In carrying out its duties, the Indonesian Waqf Board (BWI) is independent. To support its role, BWI must be supported by strong and stable institutional elements to be more effective and efficient in carrying out its duties.

Based on Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf. Article 52 of the



Government Regulation explains the financing of BWI, namely, BWI financing assistance is charged to the APBN and / or APBD for the first 10 (ten) years through the budget of the Ministry of Religion and can be extended. BWI is accountable for financial assistance as referred to in paragraph (1) periodically to the Minister.

BWI financing is regulated in Article 14 of the Indonesian Waqf Board Regulation No. 2/2012 concerning Representatives of the Indonesian Waqf Board which states that operational costs required for the implementation of the duties of BWI representatives can be obtained, among others, from:

1. Government assistance
2. Other parties' assistance that is lawful and not considering
3. The reward from the net result of the management and development of waqf assets is a maximum of 10% (ten percent).

BWI's source of financing is still carried by the allocation of the Ministry of Religious Affairs of the Republic of Indonesia. The allocation of funds contradicts Article 47 paragraph (2) of the Waqf Law which states that BWI is an independent institution.

BWI Lhokseumawe City's financing does not only come from the Ministry of

Religion and the Regional Government, but BWI's sources of financing also come from the assistance of other parties or institutions, both domestic and foreign. This is stated in Article 15 of the Indonesian Waqf Board Regulation Number 2 of 2012 concerning Representatives of the Indonesian Waqf Board.

## 2. Providing Socialization, Guidance and Supervision of Nazirs

With the establishment of BWI Lhokseumawe City in 2019, it indicates that the waqf process will be carried out by BWI, especially regarding guidance for nazir, dismissing and replacing nazir, and managing waqf properly and correctly.

Article 5 paragraph (2) of the Indonesian Waqf Board Regulation Number 2 of 2012 concerning Representatives of the Indonesian Waqf Board also states that BWI Regency / City Representatives have the following duties and authorities:

1. Implementing BWI policies and tasks at the district/city level.
2. Coordinate with the Office of the Ministry of Religious Affairs and related institutions in carrying out tasks.
3. Fostering nazir in managing and developing waqf assets.
4. Act and be responsible for and on behalf of the Regency/City BWI

Representative, both inwardly and outwardly.

5. Terminate and/or replace the nazir of waqf land with an area of less than 1,000 square meters.
6. Issuing proof of registration of land waqf nazirs whose area is less than 1,000 square meters.
7. conduct a survey of waqf land with an area of less than 1,000 square meters that is proposed to be re-designated or exchanged and report the results to BWI.
8. Perform other duties assigned by the Provincial BWI Representative.
9. Carry out other tasks assigned by the Provincial BWI Representative

The nazirs must be coached and supervised in carrying out their activities. The nazir must have knowledge and intelligence in managing waqf assets. Because in every waqf land management, there is a nazir right that is obtained by 10% of the proceeds from the management of waqf land.

## CONCLUSIONS

The conclusions that can be described based on the results of the research that the author has described above are as follows:

1. BWI's role in the implementation of nazir supervision of land waqf in Lhokseumawe City has not been

running at all. This is indicated by the fact that there have been no coaching or supervision activities carried out by BWI Lhokseumawe City during its formation in February 2019.

2. The obstacles experienced by BWI in the implementation of nazir supervision of land waqf in Lhokseumawe City are the absence of budget availability for BWI's operational costs, and also the lack of understanding and public awareness of the importance of land waqf which can benefit the economic, social and religious interests of the community.
3. The efforts made by BWI towards the implementation of nazir supervision of land waqf in Lhokseumawe City are by plotting a budget or seeking a budget for BWI operations in coordination with the local government and also the provincial ministry of religion. In addition, the efforts made are to conduct socialization, guidance and supervision of nazirs in carrying out their duties and functions so as not to violate existing regulations.

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