

## *Fiqh Muamalat* View on *Nazhir* Wages in Law Number 41 of 2004

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### Abstract:

*Nazhir* is an important element to ensure the productivity of waqf assets. However, often the welfare of *nazhir* and transparency in waqf management are not given enough attention. In Law Number 41 of 2004, it is stipulated that in carrying out their duties the waqf *nazhir* is entitled to receive compensation from the results of managing waqf assets in the amount of no more than 10% (ten percent). However, whether this is in accordance with the principles of *fiqh muamalat*. And being able to support the sustainability of waqf management is something that must be endeavoured. So with the existence of these regulations, regulators must ensure that waqf management can continue properly. This research aims to explain *fiqh muamalat* analysis regarding the rights of waqf *nazhir* which have been written in Law Number 41 of 2004 through the views of several *Ulama* and find out how it is implemented by the Indonesian waqf board as the regulator. This research uses qualitative methods with a normative juridical analysis to study the rules and norms of positive law by combining sharia rules and positive law. The wage for waqf *nazhir* written in Law Number 41 of 2004 of 10% can be justified in the view of scholars if the *wakif* does not specify it in the waqf pledge. But there will be criticism regarding the feasibility of *nazhir* wages regulated in laws that are still very general due to differences in the size of waqf assets and the workload of each *nazhir* if we look back at the details of the waqf property.



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## Introduction

Waqf is legally regulated by Law Number 41 of 2004 concerning Waqf. This law provides a clear and comprehensive legal basis for waqf regulation in Indonesia. Law Number 41 of 2004 defines waqf as a legal act carried out by a *wakif* (giver of endowments) by releasing his property to be used forever or for certain period of time, that the function of worship or social interests that do not conflict with religious provisions (Indonesia, 2004). This law also establishes several principles and provisions in the implementation of waqf. One of them is the regulation of waqf objects which include land, buildings, and other assets that can be enjoyed continuously and can produce benefits. Law Number 41 of 2004 also regulates the formation of the Indonesian Waqf Board (BWI) which is tasked with supervising, developing and assisting the management of waqf. BWI has an important role in maintaining, managing, and developing waqf assets effectively.

The concept of waqf itself, as stated by Hanafiyyah scholars, is as follows:

حَبْسُ الْعَيْنِ عَلَى حُكْمِ مَلِكِ الْوَاقِفِ وَالتَّصَدَّقُ بِالْمَنْفَعَةِ

"Holding an object that belongs to the waqif and donating its benefits to the cause of goodness" (Abidin, 2000).

From this statement, it can be mutually understood that in Abu Hanifah's opinion, *wakif* assets remain the ownership of the *wakif* and do not transfer, only the benefits from these assets are then intended for the people's needs. So that the waqf assets can be taken back by the *wakif* at any time. This is what then underlies the birth of temporary waqf in this modern era. In waqf there are four elements in it which then become the pillars of waqf, namely *wakif*, *mauquf 'alaih*, *mauquf bih*, and *shighat* or in Indonesia was called the waqf pledge. The position of the waqf *nazhir*, although not included in the pillars of waqf, has a very important role in managing waqf assets so that they remain beneficial for *mauquf 'alaih*. So *nazhir* act a very big role to build and develop of waqf assets.

Law Number 41 of 2004 stipulates that *nazhir* must obtain permission from the Ministry of Religion or the local waqf institution before he can carry out his duties. This aims to ensure that *nazhir* has adequate expertise and qualifications to manage waqf assets and to prevent misuse of waqf. *Nazhir* is responsible for managing waqf assets in good faith and with full responsibility. They must safeguard and protect waqf assets from damage, destruction or unresercherized transfer. *Nazhir* must also use waqf assets in accordance with the goals set by the *wakif*, such as the establishment and maintenance of Mosques, schools, hospitals, or other social activities.

Because of the magnitude of *nazhir* responsibility, in a Hadith narrated by Ibn Umar:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ أَصَابَ عُمَرُ بِخَيْبَرَ أَرْضًا فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ أَصَبْتُ أَرْضًا لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ مِنْهُ فَكَيْفَ تَأْمُرُنِي بِهِ قَالَ إِنَّ شَيْئًا حَبِيسَتْ أَصْلُهَا وَتَصَدَّقَتْ بِهَا فَتَصَدَّقْ عُمَرُ أَنَّهُ لَا يُبَاعُ أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ فِي الْفُقَرَاءِ وَالْقُرْبَى وَالرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ"

"It is narrated from Ibn Umar (may Allah be pleased with him), that Umar Ibn al-Khattab obtained land (gardens) in Khaibar, and he came to the Prophet (peace be upon him), saying, "O Messenger of Allah I have obtained land that I have never obtained better wealth for me than that land, then what have you commanded (me) about it?" The Prophet (peace be upon him) replied "If you want, you hold the principal and you give alms". Ibn Umar said, "So Umar gave away the land (by contingencing) that it not be sold, not granted, and not bequeathed, that is, to the poor, relatives, riqab (servants of sahaya), sabilillah, guests and ibn sabil. It is not sinful for one who manages to eat from the land *ma'ruf* (reasonably) or feed a friend, with no intention of owning it" (Al-Asyqolani, 2000).

To make waqf productive, it cannot be separated from the important role of waqf managers (*nazhir*) in developing waqf so that it can have a positive impact on society and the country. The waqf *nazhir* is like a company manager who must be able to plan and manage waqf assets. This research focuses more on *nazhir* institutionalization process in waqf management and not solely on aspects of waqf management itself (Abdullah, 2020). The waqf *nazhir* act a very important role in managing and supervising the waqf assets that have been given by benefactors. As managers, they have a big responsibility to ensure that the waqf assets are managed efficiently and in accordance with the stated waqf objectives. In carrying out their duties, professionalism is an indispensable quality. A waqf *nazhir* is considered professional if the *nazhir* does the work because he is an expert in that field, puts his time, thought, and energy into the work. Therefore, a professional has a strong commitment to his work. This personal commitment gives rise to great and high responsibility for his work (Baharuddin & Iman, 2018).

One of the reasons why waqf has not been explored much is because of the small number of the *nazhir* is a professional in Indonesia. This results in the development of waqf assets not being productive, especially those related to cash waqf. Apart from that, there are very few *nazhir* who already have a certificate from the Indonesian Waqf Board (BWI) to be appointed as *nazhir* (Fuadi, 2018). Seeing the existing phenomenon,

*nazhir* are required to become professional *nazhir* to oversee the development of waqf. One solution to enable *nazhir* to work professionally is to have *nazhir* wage. The reason why there are still so few certified *nazhir* in Indonesia is because of the important role they have to play. And *nazhir* must also have human skills regarding *nazhir* expertise in certain fields related to the mandate to develop waqf assets.

As for Law Number 41 of 2004 concerning wage for *nazhir*, it is stated that *nazhir*, in carrying out their duties, can receive compensation from the net proceeds from the management and development of waqf assets, the amount of which does not exceed 10% (ten percent). And it is also stated in the following article that in carrying out his duties the *nazhir* will receive guidance from the Minister of Religion and the Indonesian Waqf Board (BWI) (Senjiati et al., 2020). However, one of the problems that often arises is the amount of wages given to waqf *nazhir*. The question of what percentage of waqf management proceeds should be given to *nazhir* is often a source of debate. Whether this rate is too big or too small is a question to consider. In this research, the researcher focused his discussion on comparing the conception of wages for *nazhir* according to *fiqh muamalat* and Law Number 41 of 2004 Article 12. Of course, this is very important in the efficiency of waqf management and justice for waqf *nazhir* who have done their job well.

## Methodology

The approach used in this research is normative juridical qualitative analysis and field normative juridical approach, namely legal research conducted by examining library materials or secondary data. As a basis for research by conducting a search of regulations and literature related to the problem under research which is focused on examining the application of rules and norms in positive law by combining sharia rules and positive law using qualitative literature and field techniques simultaneously (Soekanto & Mamudja, 2001). The data sources used in this research are primary legal data Law Number 41 of 2004 Article 12, Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, Hadith related to waqf, and the others are secondary data in the form of journals, theses, books, and tertiary data in the form of interviews.

## Results and Discussion

### *Principles of Wage in Fiqh Muamalat*

In the Islamic wage system, fairness is the most important norm in all aspects of the economy. As with paying employees for services, it must be fair. As a human caliph on earth, one must obey Allah laws on earth and ensure that the use of all resources is

directed towards the welfare of the people so that everyone benefits fairly and well. All economic systems have the same goal of creating a just economic system. However, not all of these systems are ready to create a consistently fair system. Without justice, society is divided into groups. One group oppresses another group, which causes hostility between people. Each, because of their greed, tries to get more out of it than they spend (Adiwarman, 2010).

The Islamic principle of wage also offers a good solution to this problem to protect the interests of both parties, namely protecting employees and employers. In this case there are several things that must be fulfilled based on the wage principle. From an Islamic economic perspective, the principles of wage can be divided into three, namely fair, good, and decent. *First*, is fair, the meaning of fairness as a matter of proportionality can be seen from the basic principles used by the Prophet Muhammad and *Khulafaur Rashidin*. The main goal for employees is be able to meet all their basic needs (Ghofur, 2018). *Second*, is kind good or ethical, means demanding that the work carried out must bring great benefits to employees and employers. In the agreement, both parties are reminded to be honest and fair in all their dealings, so that there are no acts of injustice that are detrimental to the interests of employers and employees (Faqih & Nafila, 2021). *Third*, decent wage according to Islam are closely related to morals because wage go beyond material limits but also beyond the limits of the afterlife, namely reward. This reward is closely related to worship, and every work is worth worship (Faiq, 2015).

#### ***Determination of Wage According to Fiqh Muamalat***

Wage in an Islamic society will be determined through negotiations between employees, employers, and the state, based on the principle of justice. In making decisions about wage, the interests of the employer and breadwinner will be considered fairly. The decision must be truly fair if the level of wage given to employees is not too low so that it meets basic needs and not too high so that the employer does not lose his true share of the results of cooperation.

In *fiqh muamalat* (laws of transactions and economics in Islam), determining wage or salaries is based on ethical principles in Islamic law. There are several guidelines for determining wage in *fiqh muamalat* which are as follows. *First*, is fair and equal. The main principle in determining wage is fair and equal. Remuneration must be based on the value and quality of the work performed (Waliam, 2017). *Second*, is good intension and will. A person who employs other people must have good intentions and be sincere in providing wage to employees. *Third*, compliance with contracts in Islam, an employment contract is considered a commitment that must be respected by both parties. Wage must be in accordance with the provisions agreed in the contract (Ali,

1999). *Fourth*, timely wage Islam encourages wage to be paid on time without unlawful delays. Delays in payment of wage can harm employees and violate on their rights. *Fifth*, terms and conditions in determining wage, Islamic law takes into account the applicable terms and conditions. It is important to remember that these principles represent general guidelines in *fiqh muamalat* regarding wage determination. Actual practice in different contexts and situations may vary, but these principles should form the basis for actions and decisions taken.

### ***The Concept of Wages in Fiqh Muamalat Nisbi and Mitsli***

In *fiqh muamalat*, which is the branch of Islamic law that governs matters of agreements and transactions, wages (*ajr*) is an important concept that refers to compensation or payment given in the context of transactions or services performed. There are two important concepts related to wages in *fiqh muamalat*, namely *ajru nisbi* and *ajru mitsli*, which have different meanings and applications (Ghofur, 2020). *Ajru nisbi* (أجر نسبي), is a wage given based on a certain proportion or comparison to the work or services performed. This means that wages or compensation are given based on the amount or value of the work or services performed. This proportion can be specified in the agreement or contract between the parties involved. *Ajru mitsli* (أجر مثلي), is a wage or compensation given on the basis of similarity or comparable to similar or equivalent work or services. In the context of *ajru mitsli*, a person is given a wage equivalent to the wages given to others who perform similar or equivalent work or services (Barkah et al., 2018). The principle of *ajru mitsli* reflects the concept of equality and justice. Wages awarded shall be comparable or equivalent to wages given to others who perform similar or equivalent work or services, regardless of other factors such as experience or background.

Both of these concepts are used in *fiqh muamalat* to ensure fairness in transactions and payments in Islamic societies. These principles provide guidance on how wages or compensation should be determined in agreements or transactions, ensuring that payments are fair and appropriate to the value of work or services rendered. In addition, in *fiqh muamalat*, there are also other principles that regulate wages, such as the principle of justice and non-harm (*uqud adilah*) and the principle of sincerity and honesty in transactions (*al-ikhlas wa al-sidq*). All these principles aim to create transactions based on Islamic ethics and values, and maintain fairness in business and economic relations (Hadiyan, 2020).

### ***Understanding of Nazhir from the Perspective of Scholar and Law***

A waqf *nazhir* is a person assigned to look after and manage waqf assets for waqf purposes. The waqf *nazhir* must be Muslim, trustworthy (*amanah*), and physically and spiritually able to handle all matters relating to waqf assets. Waqf *nazhir* are also not

prohibited from carrying out legal actions and living in the area where waqf assets are donated (Sari, 2006). The goal is that waqf assets can provide benefits and are well maintained. Meanwhile, in Law Number 41 of 2004 concerning Waqf, the *nazhir* is the party who receives the waqf property from the *wakif* to then manage and develop it in accordance with the purposes mandated by the *wakif* in the waqf pledge Indonesia, 2004). As is known, the principle of waqf is benefit, so someone is who have to able maintain and manage waqf assets so that they remain alive and profitable. People who are able to maintain and manage waqf assets are called *nazhir*. In this case, *nazhir* includes two are, individuals, organizations, or legal entities.

The key to waqf management lies in the existence of the waqf manager or *nazhir* and a solid work team in order to maximize the role of waqf benefits (Moertiono et al., 2021). Waqf can be an Islamic institution that can fund and develop the people's economy if it is managed professionally. Because the progress of waqf is largely determined by good or bad management, *nazhir* must be encouraged as much as possible to achieve the best level of performance and, so that he becomes more important in his social role for the development of waqf (Kasdi, 2016). *Nazhir* should carry out waqf management professionally in order to provide opportunities for the development of waqf assets so that they can be more productive and apply modern management principles.

### ***Nazhir Right and Obligation***

*Nazhir* has an important role in managing waqf assets which aims to ensure that waqf funds are distributed and managed well in accordance with the intentions of the waqf giver. Because of the difficult and important task of managing waqf assets in order to achieve the objectives of the waqf, several requirements have been established to become a *nazhir*. *Nazhir* duties are very important to ensure that the use of waqf is in accordance with the intentions and objectives of the waqf giver. All of these conditions are important to carry out *nazhir* duties well and provide optimal benefits for the people who are entitled to receive benefits from the waqf. The duties of the waqf *nazhir*, if described, are as follows. Empowering waqf assets and maintaining and protecting them from damage or destruction in order to provide benefits according to the function of the waqf. Protecting waqf rights or defending in the form of advocacy in the face of legal disputes in the form of eviction or confiscation. Fulfilling or providing *mauquf 'alaih* rights by distributing the proceeds of waqf assets to those who are entitled and not delaying the distribution. Fulfill the requirements of *wakif* except in special situations or conditions that are difficult to avoid (Baharuddin & Iman, 2018).

In carrying out his very important duties, the *nazhir* certainly has rights which must also be fulfilled, but these rights can only be taken by the *nazhir* after he is able

to carry out his duties and obligations well. As for Law Number 41 of 2004 concerning Waqf, Article 12 states that *nazhir* can receive net proceeds from the management and development of waqf assets, the amount of which cannot be more than 10% (ten percent) (Indonesia, 2004). Meanwhile, it is slightly different in the Compilation of Islamic Law (KHI) in Article 222 which states that, "*Nazhir are allowed to obtain income or facilities, the type and amount of which are determined based on eligibility, of course on the advice of the District Ulama Council and the District Religious Affairs Office*" (Abdurrahman, 1995).

### ***Fiqh Muamalat Analysis of Nazhir Wage Rights in the Provisions of Law Number 41 of 2004 Article 12***

Wage rights for *nazhir* refer to the compensation or payments given to a *nazhir*. In the context of the Islam, a *nazhir* is a person or group of people who is assigned to manage charitable property or assets of waqfs or charitable foundations, for certain purposes in accordance with established provisions. *Nazhir* right to wage is a form of appreciation for the responsibility and work carried out by *nazhir* in managing the property. *Nazhir* has the responsibility to maintain and manage these assets in accordance with the stated objectives, as well as ensuring that these assets are used in a correct and effective manner. However, in the sense of *fiqh*, the term "*remuneration rights for nazhir*" may not be commonly used. Most Islamic legal guidelines emphasize principles such as *amanah* (trust), justice, and accountability in carrying out *nazhir* duties. This means that *nazhir* should not receive compensation or wage from the assets they manage, unless there is a clear and legal agreement from the trustee or resercherized resercherity (Santoso, 2010). So the *Ulama* provide two options in determining wage rights for waqf *nazhir* as follows. *First*, determination of *nazhir* wage by the *wakif*. Most scholars agree that the *wakif* has the right to determine the amount of wage which will then be given to the *nazhir* as the waqf manager. The *wakif* has the right to determine wage or rewards in an appropriate size according to the *wakif* view without any interference from other parties (Al-Kabisi, Abid, Abdullah, 2004). *Second*, determination of *nazhir* wage by the judge. The *Ulama* agree that the judge has the right to determine the compensation or wage fot *nazhir* as compensation for his work in managing and developing waqf assets. However, wage determined by the judge are prohibited from exceeding existing standards. Because the judge does not have the same powers as the *wakif* as the giver of waqf assets. The judge is only allowed to determine the *nazhir* wage in accordance with applicable customs (Al-Kabisi, Abid, Abdullah, 2004).

Even in the book *Iqtishadiyatul Al-Waqf* by Doctor Husein Al-Asraj, the wage of a *nazhir* are like the wage of a employee, which can be determined by agreement



between the *wakif* and the *nazhir* or determined by a judge (Al-Asraj, 2018). However, there are situations where *nazhir* can be given reasonable compensation for the time and effort they invest in managing the trust assets. In *fiqh* (Islamic law), the rights of *nazhir* (waqf managers) are based on the principles of Islamic law which include responsibility, trust, justice, and accountability.

The existence of Law Number 41 of 2004 concerning Waqf is an effort to create a legal for waqf institutions, which is intended to encourage the growth of waqf institutions in Indonesia. Law Number 41 of 2004 Article 12 has the content namely "*In carrying out his duties as referred to in Article 11, nazhir can receive compensation from the net proceeds from the management and development of waqf assets whose amount does not exceed 10% (ten percent)*" (Indonesia, 2004). If we seen more closely, there is no obligation for *nazhir* to take the reward which has been limited in amount, but *nazhir* has partial rights. In religious terms, Law Number 41 of 2004 concerning Waqf is a new breakthrough in waqf *fiqh* towards a dynamic and contextual paradigm of waqf *fiqh* (Hadi, 2014). However, if we look at Article 12 of the Law, which is the focus of this research, we can see a slight difference between the existing laws and regulations and the opinions of *fiqh* scholars.

If viewed in terms of the implications of Law Number 41 of 2004 Article 12, there are several aspects related to the rights. *Nazhir* is the one affected by this regulation. Article 12 itself states that in carrying out his duties and mandate as *nazhir*, *nazhir* can receive compensation from the net proceeds from the management and development of waqf assets whose amount does not exceed 10% (ten percent) (Indonesia, 2004). If we look at the theory of wages in *fiqh muamalat*, Law Number 41 of 2004 Article 12 makes *nazhir* wages as *ajru mitsly*. Where the determination of wages is equated for all people who work as *nazhir*. This is different from the *fiqh muamalat* concept of wages for *nazhir* which is then determined by the *wakif* or judge with a record within reasonable limits and not excessive. It is important to note that the eligibility of wages for waqf *nazhir* may vary from context to context. Therefore, it is necessary to conduct careful research and consultation to determine whether 10% of the proceeds from the management of waqf assets are in accordance with the specific needs and conditions in a particular area or community. Such evaluation should take into account the above factors to ensure that the wages for waqf *nazhir* are in accordance with the objectives and principles of good waqf (Usman, 2016).

## Conclusion

In the views of several scholars who allow the provision of wage for waqf *nazhir*, they are divided into two opinions which apparently have differences with Law Number 41 of 2004 Article 12 which regulates the rights of *nazhir*. These two opinions are as follows, determination of *nazhir* wage by the *wakif* and determination of *nazhir* wage by the judge. In the book *Iqtishadiyatu Al-Waqf* written by Doctor Husein Al-Asraj explained that the wage of waqf *nazhir* are like the wage of a employee. What is determined between the employee and the person giving the job in this context is the *nazhir* and *wakif* or it can also be determined by the judge, in this case it could be the government or regulator. So in this case Law Number 41 of 2004 Article 12 states "Nazhir can receive the compensation from the net proceeds from the management and development of waqf assets whose amount does not exceed 10% (ten percent)". It can be applied if the *wakif* does not determine the amount of remuneration for the waqf *nazhir* in the waqf pledge and *qabul* agreement. However, when viewed in the *fiqh muamalat*, the law makes wages for waqf *nazhir* into *ajr mitsli*. Which equates the amount of wages for each *nazhir* profession regardless of other things. However, this can be inappropriate because the amount of waqf property managed by each *nazhir* is different. Making the workload and of course the wages for each *nazhir* will vary according to the results of the management of the assets they manage. If that happens, then Law Number 41 of 2004 Article 12 is not in accordance with the principles of remuneration in *fiqh muamalat*, namely fair, good, and decent.

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