

Waqf in the Perspective of Waqf Rules in Indonesia

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Abstract

For Muslims in Indonesia, the basic concept of waqf in Islam is very well understood, and more than that, if examined further, there will be many waqf assets in Indonesia. In the perspective of a country, it is necessary to implement regulations, including Waqf Law (Law), Government Regulation (PP) on Waqf, Regulation of the Indonesian Waqf Board (BWI), and Regulation of the Minister of Religion (PMA). This study aims to explain waqf from the perspective of waqf rules in Indonesia. This research uses qualitative-descriptive-literature methods. The conclusion is that the existing waqf rules that apply in Indonesia aim to maintain the existence of waqf to always be in accordance with the basic concept of waqf in Islam. In addition, this rule also serves as the basis for the legal protection of legality of waqf in Indonesia.

Keywords: *Waqf, Constitution of the Republic, Compilation of Islamic Law (KHI)*

Introduction

Waqf is a special form of Islamic economic instrument that bases its function on the elements of virtue (*birr*), goodness (*ihsan*) and brotherhood (*ukhuwah*). The main feature of *waqf* is that there is a shift in private ownership towards the ownership of the Muslim community which is expected to survive and provide lasting benefits. Through *waqf*, it is hoped that the process of distributing benefits to the wider community will take place, from private benefits

to social benefits.¹ The distribution of these benefits continues to grow, both in the concept of generosity (philanthropy) and also in the concept of empowerment.

As one of the religious institutions that is closely related to the socio-economic situation, *waqf* has helped a lot in the development of Indonesia as a whole, both in human resource development and social resource development.² One of the important things in *waqf* is how the benefits/results of this *waqf* can be channeled properly and accurately, which will certainly have an extraordinary positive impact on the Muslim community.

The distribution of *waqf* revenue in the form of *waqf* revenue empowerment is generally aimed at *mauquf 'alaih* (*waqf* recipients), who have sometimes been determined by *waqf* for what and to whom. Even so, some *wakif*'s do not refer to the distribution of *waqf* to the people in particular, but to something of a macro nature such as public interest and so on. Generally, *waqf* recipients are grouped into two main groups. *First*, people who are incapable or helpless. There are two groups in this category, namely economic disabilities (such as poor children, neglected, helpless women, and so on because of the economic hardships that befell them) and incompetence in the form of lack of freedom and slavery to obtain their human rights (such as minorities, marginalized, victims of violence, and so on). *Second*, for the public interest. The recipients of this *waqf* is not due to economic shortages, but because its services and objectives are for the benefit of many Muslims. Within this group, there are many programs and models of *waqf* distribution ranging from education, health, religious facilities, to public facilities that are closely related to the lives of many people.³

In terms of *waqf* social justice, it can be seen from at least three angles. *First*, *waqf* to meet basic needs that include food, shelter, education and health. *Second*, *waqf* to strive in increasing equal opportunities for everyone, especially the less fortunate. *Third*, *waqf* for structural change that includes changes in social systems and less

¹AM Saefuddin, *Membumikan Ekonomi Islam* (Jakarta: PT. PPA Consultans, 2011), 125-126.

²Abdul Aziz dan Mariyah Ulfah, *Kapita Selektta Ekonomi Islam Kontemporer* (Bandung: Alfabeta, 2010), 65-66.

³Miftahul Huda, *Mengalirkan Manfaat Wakaf: Potret Perkembangan Hukum dan Tatakelola Wakaf di Indonesia* (Ponorogo: Jurusan Syari'ah STAIN Ponorogo, 2014), 257-258.

pro-poor institutions.⁴

The distribution of these benefits must be developed continuously, both in the concept of generosity (philanthropy) and also in the concept of empowerment. *Nazhir* is expected to be able to channel/strengthen the results of this *waqf* properly and accurately.

Waqf property as an Islamic social institution, in fact, can be used as an economic resource. That is, the use of *waqf* assets is not limited to certain activities based on conventional orientation (education, mosques, hospitals, orphanages, etc), but *waqf* assets in the macro sense can also be used for economic activities such as agriculture, including mixed farms or agriculture and livestock, industry, mining, real estate, office buildings, hotels, restaurants and others. The position of the asset is fixed, but the result can be used more optimally, and not just used for a limited way. Of course, Muslims do not need to use all *waqf* assets for productive purposes only, but this can be considered as an alternative to optimize the function of *waqf*.⁵

In its development, the distribution of *waqf* revenue is not only aimed at charity programs for the poor because with this program, only one capital will be spent. Therefore, as much as possible, it should be used for empowerment programs for the poor so that capital can be used sustainably, even if there is a possibility that this capital can be reproduced to others who need it, either to strengthen distribution capacity or as initial capital to start a business (productive capacity).⁶

In Indonesia, to further strengthen the concept of *waqf*, there are several regulations that regulate, including *Waqf Law*, and Government Regulations on *Waqf*. Therefore, this study aims to explain *waqf* in a regulatory perspective. In addition, this research is also expected to add to the treasures of Islamic knowledge, especially in the discussion of *waqf*.

Methodology

This research is compiled using qualitative methodology as a research procedure that produces descriptive data in the form of

⁴Sudirman Hasan, *Wakaf Uang: Perspektif Fiqih, Hukum Positif dan Manajemen* (Malang: UIN-Maliki Press, 2011), 58.

⁵Mardani, *Hukum Ekonomi Syariah di Indonesia* (Bandung: PT. Refika Aditama, 2011), 72-73.

⁶Ismail Nawawi, *Fiqh Muamalah: Hukum Ekonomi, Bisnis dan Sosial* (Surabaya: Putra Media Nusantara, 2010), 430.

words and language,⁷ with descriptive methods that aim to make descriptions or drawings systematically,⁸ and is a literature review, namely research conducted using literature.⁹ The researcher seeks the necessary data in the form of *Waqf* Law, Government Regulations on *Waqf*, Regulations of the Indonesian *Waqf* Council, and Regulations of the Minister of Religion. The data obtained were then compiled by the researcher to explain the *waqf* in a regulatory perspective. The analysis process takes place from the beginning to the end of the research, so it is hoped that the concept of *waqf* description can be explained. In its presentation, this research first explains the basic concept of *waqf* in Islam, then later explains the rules on *waqf*.

The Basic Concept of Waqf in Islam

Etymologically, *waqf* comes from the word *waqafa-yaqifu-waqfan* which means to stop or withhold (*al-habs*). In terms of terminology, there are several definitions of *waqf*. The Shafi'i school, according to Imam Nawawi, "*Waqf holds property that can be beneficial but not for oneself, while the object remains with it and is used for good and close to Allah SWT*", according to Ibn Hajar al-Haitami and Shaykh. Umairah, "*Waqf is the holding of assets that can be used by maintaining the integrity of the asset, by deciding the ownership of goods from the owner for what is allowed*". The Hanafi school, according to Imam Syarkhasi, "*Waqf is keeping property out of the reach of others*", according to al-Mughni, "*Waqf holds property under the hands of the owner, accompanied by the giving of benefits as alms*".¹⁰ Maliki school of thought, according to Ibn Arafah, "*Waqf is the benefit of something, in the time limit of its existence, at the same time waqf remains in the possession of its owner, even if it is only an estimate*".¹¹ Compilation of Islamic Law, "*Waqf is the legal action of a person or a group of people or legal entities that separates part of their property and institutionalizes it forever for the purpose of worship or other public interest in accordance with Islamic teachings*".¹² Law No. 41 of 2004, "*Waqf is a legal act of wakif to separate and/or hand over part of his*

⁷Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosdakarya, 2013), 4.

⁸Moh. Nazir, *Metode Penelitian* (Bogor: Ghalia Indonesia, 2013), 54.

⁹Etta Mamang Sangadji dan Sopiah, *Metodologi Penelitian: Pendekatan Praktis dalam Penelitian* (Yogyakarta: CV. Andi Offest, 2010), 28.

¹⁰Mardani, *Hukum Ekonomi Syariah di Indonesia, ...*, 63.

¹¹*Ibid.*, 64.

¹²Pasal 215 Ayat (1), Kompilasi Hukum Islam Indonesia.

property for permanent use or for a certain period of time in accordance with his interests for the purpose of worship and/or the welfare of society according to sharia".¹³

As for what is stated as the basis of *waqf* law by the scholars is as follows:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا ارْكَعُوا وَاسْجُدُوا وَاعْبُدُوا رَبَّكُمْ وَأَفْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ ﴿٧٧﴾

"O you who believe! Bow down, bow down, and worship your Lord; and do good, that you may prosper." (QS. al-Hajj ayat 77).¹⁴

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ ءَعْلِيمٌ ﴿٩٢﴾

"You will not get any good, until you give up some of the property you love. And whatever you eat, in fact, God knows best" (QS. Ali-'Imron ayat 92).¹⁵

مَثَلُ الَّذِينَ يُنْفِقُونَ ءَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ ءَأْتَبَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِءَاةٌ حَبَّةٌ ءَ وَاللَّهُ يُضْعِفُ لِمَن يَشَاءُ ءَ وَاللَّهُ وَءَسِعَ ءَعْلِيمٌ ﴿٢٦١﴾

"The parable of the man who spends his wealth in the way of Allah is like a seed that grows seven stalks, in each stalk there are a hundred seeds. Allah multiplies for whom He wills, and Allah is All-Powerful, All-Knowing" (QS. al-Baqarah ayat 261).¹⁶

يَا أَيُّهَا الَّذِينَ ءَامَنُوا ءَأْمَنُوا ءَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا ءَخْرَجْنَا لَكُمْ مِنَ ءَءْرَظِ ۖ وَلَا تَيَمَّمُوا ءَءَحْبِيثَ مِنْهُ تُنْفِقُونَ ءَ لَسْتُمْ بِءَءَءَخِذِيهِ ءِلَّا ءَن تَعْصُوا فِيهِ ءَ ءَعْلَمُوا ءَنَّ اللَّهَ عَنِّي ءَحْمِيدٌ ﴿٢٦٧﴾

"O you who believe! Give some of your good works and some of what We have brought down from the earth for you. Do not choose what is bad - for you to erase it, but you do not want to take it yourself but by squeezing (reluctantly)

¹³Pasal 1 Ayat (1), Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf.

¹⁴Departemen Agama RI, *Al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan)*, Vol. 6 (Jakarta: Departemen Agama RI, 2010), 459.

¹⁵Departemen Agama RI, *Al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan)*, Vol. 2 (Jakarta: Departemen Agama RI, 2010), 3.

¹⁶Departemen Agama RI, *Al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan)*, Vol. 1 (Jakarta: Departemen Agama RI, 2010), 390-391.

using it And know that Allah is Almighty, Most Praiseworthy” (QS. al-Baqarah ayat 267).¹⁷

عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ أَوْ عِلْمٍ يُنْتَفَعُ بِهِ أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ ﴿١٨﴾

“From Abu Hurairah that Rasulullah SAW said, “If a person dies, his deeds will be cut off except for three things: alms, useful knowledge, and pious children always pray for him.”.¹⁹

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَصَابَ أَرْضًا بِحَيْبَرَ فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمِرُهُ فِيهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي أَصَبْتُ أَرْضًا بِحَيْبَرَ لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ فَمَا تَأْمُرُ بِهِ قَالَ إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا قَالَ فَتَصَدَّقْ بِهَا عُمَرُ أَنَّهُ لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ وَتَصَدَّقْ بِهَا فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ وَالضَّيْفِ لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ وَيُطْعِمَ غَيْرَ مَتَمَوْلٍ قَالَ فَحَدَّثْتُ بِهِ ابْنَ سِيرِينَ فَقَالَ غَيْرَ مُتَأْتِلٍ مَالًا ﴿٢٠﴾

“From Ibn Umar, Umar bin Khathab got a piece of land in Khaibar. Then he went to the Prophet SAW to ask for advice on the land. He said, “O Messenger of Allah, I have land in Khaibar where I have never acquired a property more valuable than that. What did you tell me about that land?” He replied, “If you want, you can keep ownership and contribute the benefits. “Then Umar gave him the decision that the land was not sold, not given and not inherited. He gives its benefits to the needy, brothers, people who liberate slaves, fighters in the way of God, tourists and guests. It is okay for those who take care of it to eat it in the right way and feed others without accumulating wealth. Then I narrated this hadith to Ibn Sirin. He said, “That means, not accumulating wealth”.²¹

¹⁷Ibid., 403.

¹⁸Shahih Muslim Juz 8 (405), dalam Aplikasi Maktabah Syamilah.

¹⁹Muslim bin al-Hajjaj al-Qusyairi an-Naisaburi, *Ensiklopedi Hadits: Shahih Muslim* 2, Vol. 4, Terj. Masyhari dan Tatam Wijaya (Jakarta: Almahira, 2012), 71-72.

²⁰Shahih Bukhari Juz 9 (263), dalam Aplikasi Maktabah Syamilah.

²¹Ahmad bin Muhammad al-Qasthalani, *Syarah Shahih Bukhari*, Terj. Abu Nabil (Solo: Zam-Zam, 2014), 468.

From the above description, there are some provisions in terms of *waqf*. According to Azhar Bashir, the provisions are as follows. *First*, *waqf* property must remain (not transferable to others) either by trading it, giving it away, or inheriting it. *Second*, *waqf* property is free from the property of the person who donated. *Third*, the purpose of *waqf* must be clear (clear). *Fourth*, *waqf* assets can be certified by a supervisor who is entitled to participate in *waqf* assets. *Fifth*, *waqf* assets can be in the form of land and so on, which are durable and do not disappear after use.²²

An asset or *waqf* object is said to have a permanent use of at least 4 (four) things. *First*, this object can be used by many people. When a person donates land or buildings, even cash *waqf* to be formed in educational facilities, the general public will benefit from the presence of a *madrasah* or school. Especially if the school fees are cheap and even free after being subsidized by funds from the *waqf* management. *Second*, the object of *waqf* gives a more real value to the *waqf* itself. Materially, *waqf* has the right or can use the object of *waqf* as it applies to other *waqf* recipients. In an immaterial way, the *waqf*'s will certainly get a continuous reward value because the objects used by the general public will certainly provide great benefits to the society in general. *Third*, the immaterial benefits of *waqf* assets are greater than the material benefits. Or it can be put in another language that the *waqf* pressure point is actually more concerned with the function of others (many) than the object itself. Therefore, people who use *waqf* land for example to establish worship facilities are not interpreted as just vertical worship but also horizontal. *Fourth*, the object of *waqf* itself does not pose or bring danger to others and *wakif*.²³

Waqf Rules in Indonesia

A. Law No. 41 of 2004 on Waqf

Waqf is valid if implemented according to *sharia*. The promised *waqf* cannot be canceled. *Waqf* aims to utilize *waqf* property according to its function. *Waqf* serves to realize the economic potential and benefits of *waqf* property for the benefit of worship and to promote public welfare.

Waqf is performed by fulfilling the following elements of *waqf*: (1) *Wakif*, the party who contributes their property, including individuals,

²²Abdul Rahman Ghazaly, *Fiqh Muamalat*, Vol. 1 (Jakarta: Kencana, 2010), 176.

²³Huda, *Mengalirkan Manfaat Wakaf, ...*, 258-259.

organizations, or legal entities; (2) *Nazhir*, the party who receives *waqf* property from the *wakif* to be managed and developed in accordance with his appointment, including individuals, organizations, or legal entities; (3) *Waqf* assets, assets that have long-term resilience and/or long-term benefits and have economic value in accordance with *sharia*, are represented by a *wakif*, consisting of immovable, immovable objects including rights to land, buildings or parts of buildings, standing on the ground, plants and other objects related to the ground and moving objects; (4) A pledge of *waqf*, a statement of the will of the *waqf* spoken orally and/or in writing to *nazhir* to donate his property; (5) Provision of *waqf* property; (6) *Waqf* period.

In Law No. 41 of 2004 on *Waqf*, article 5 explains the function of *waqf* is to realize the economic potential and benefits of property for the benefit of worship and to improve the welfare of society. *Waqf* is a voluntary legal action that is suggested as an expression of gratitude to the *rizki* that a person has the value of social diversity.

The formation of Law Number 41 of 2004 on *Waqf* stems from the fact that the practice of *waqf* performed in society is not yet fully organized and efficient, for example, *waqf* assets are not well cared for, neglected, and transferred to third parties by committing illegal acts.²⁴

Prior to the enactment of Law Number 41 of 2004 on *Waqf* in Indonesia, *waqf* activities were very popular in line with the spread of Islam in Indonesia. Through the *da'wah* spread by scholars, the teachings of *waqf* are also introduced to the community. This is evidenced by the existence of a historic mosque built on *waqf* land. This proves that the teachings of *waqf* derived from Islam have been accepted among the community and have become customary law. These *waqf* activities are limited to religious activities, such as the construction of mosques, *madrrasah's*, tombs so that *waqf* activities in Indonesia are not economically beneficial to the general public. Several regulations have been made to regulate the *waqf* system in Indonesia, such as Government Regulation No. 28 of 1977 on Representation of Owned Land in Article 2 and Presidential Instruction No.1 of 1991 on the Preparation of Islamic Law Article 216 which explains that in accordance with the purpose of *waqf*, which instituted it forever which serves as an interest in worship or for other purposes in accordance with the provisions of *syara'*. In article 4 of Law No. 41 of 2004 on *Waqf*, the *waqf* aims to utilize *waqf* property in

²⁴Jaih Mubarak, *Wakaf Produktif* (Bandung: Simbiosia Rekatama Media, 2008), 58.

accordance with its function.²⁵ To achieve this goal, added in article 22, that *waqf* property is only intended as a means and activities of worship, education, health, assistance to the poor, neglected children, orphans, scholarships, progress and economic or people's progress, other general welfare which is not contrary to Islamic law and positive law.

Article 5 of Law No. 41 of 2004 on *Waqf* explains that the function of *waqf* is to realize the economic potential and benefits of *waqf* property for the benefit of worship and the welfare of society. In order for the function of *waqf* to be in line with the purpose of *waqf*, the object of *waqf* must be used as best as possible in its management, therefore it is necessary to have a professional and competent inspector in his field by promoting Islamic teachings. With the presence of professional *nazhir*, *waqf* objects that are still neglected and not used optimally can function well, so as to contribute to the well-being of society and can minimize the social problems that exist in society.

B. Government Regulation No. 42 of 2006 on Waqf

Government Regulation No. 42 of 2006 on *Waqf* states that the implementation of cash *waqf* is based on the law governing *waqf* and its implementation in accordance with the provisions on cash *waqf* where the position of cash *waqf* should be clearer so that the legality of issuing cash *waqf* is guaranteed.

Government Regulation Number 42 of 2006 on *Waqf* states that *waqf* assets or objects do not specify the time period, especially for moving objects *waqf*, such as land and or buildings. Basically, the implementation of *waqf* is not limited to the time or permanent nature given by the community to support the general welfare.

In the provisions of Article 27 Government Regulation Number 42 of 2006 specifically regulates the norms of provisions for *wakif*'s that require a certain period or period of time on *waqf* objects in the form of moving objects in the form of money. *Waqf* in the form of money is usually given without a specified period of time. This is because the perspective of society is that *waqf* can be equated in the form of worship.²⁶

²⁵Naimah, "Implementasi Yuridis Terhadap Kedudukan Waqf Produktif Berbasis Peningkatan Ekonomi Masyarakat di Indonesia", *At-Taradhi: Jurnal Studi Ekonomi*, Vol. 9 No. 1, 2018, 12.

²⁶Puji Sulistyanyingsih, et. al., "Pelaksanaan Hak Kekayaan Intelektual Sebagai Obyek Wakaf", *Jurnal of International Property*, Vol. 2 No. 2, 2019, 16.

C. Inpres No. 1 of 1991 on the Compilation of Islamic Law (KHI)

Compilation is a collection when it comes to law, it can be interpreted as a collection of legal material in one book. The Compilation of Islamic Law (KHI) is the compilation of Islamic legal material that is compiled systematically as completely as possible with reference to articles commonly used in legislation. On June 10, 1991, the President of the Republic of Indonesia issued Presidential Instruction No. 1 of 1991 to the Minister of Religion, who first distributed the Compilation of Islamic Law consisting of 3 books: Book I on Marriage Law; Book II on Heritage; and Book III on *Waqf* Law. The birth of KHI was established in the form of Inpres No. 1 in 1991 to meet the needs of the Indonesian people, especially the Muslim community, so that in the field of marriage, inheritance and *waqf* law, they have a strong legal protection in these three areas.

Waqf according to Presidential Decree No. 1 of 1991 on the Compilation of Islamic Law (KHI) is the legal action of a person or a group of people or legal entities that separates part of their property and instituted it forever for the purpose of worship or other general purpose in accordance with the teachings Islam.

In Effect No. 1 of 1991 on the Compilation of Islamic Law (KHI) which is the development and improvement of materials related to *waqf* that already exist in the previous legislation, such as *waqf* object, change of *waqf* object, *nazhir* oath, *nazhir* figure, *nazhir* supervision, *nazhir* supervision, role of *Ulama* council and KUA, the implementation of *nazhir* duties and responsibilities performed by the chairperson of the sub-district KUA, district MUI and District Religious Court.

D. Regulations of the Indonesian Waqf Institution

Existence of Law No. 41 of 2001 on *Waqf* which brought fundamental progress to the *waqf* system in Indonesia, where this regulation in addition to changing the *waqf* paradigm also changed the policy on *waqf*. In this law it is understood that not only *waqf* for immovable objects, such as land and buildings, but *waqf* can also be made on moving objects such as money, precious metals, securities, intellectual property rights (RIGHTS), vehicles, rental rights, and other moving objects in accordance with the provisions of *sharia* and legal regulations.²⁷

²⁷Departemen Agama RI - Ditjen Bimas Islam, *Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf dan Peraturan Pemerintah Nomor 42 Tahun 2006 tentang Pelaksanaan*

In 2002, the Indonesian *Ulama* Council issued a *fatwa* that allows cash *waqf* in Indonesia, which can be seen from the potential *waqf* in Indonesia to reach one-third of the wealth of Muslims, which according to the Prophet its potential will be incredible. This extraordinary cash *waqf* can be managed by *nazhir* for investment developed with a *waqf* development model as in Law Number 41 of 2004 on *Waqf*, in Article 43 paragraph 2 there is a collection of investments, partnerships, trade, industry and investments of *waqf* land is strategic and has great economic value, so it can be used as a tool of tourist objects, for example, where there are many different types of games, complete with facilities for mosques, hotels so that they can increase the value of per capita income so they can open jobs for the community reducing the national unemployment quantity.

As for the role of *waqf* institution as an institution oriented to optimize the role of *nazhir* and the function of *waqf* institution as a motivator, facilitator, organizer, and education for *nazhir*. With the existence of *waqf* institutions in each region, all issues related to *waqf* can be addressed directly by the *waqf* institution, so that the *waqf* problem does not become the authority of the central government or the institution appointed by the central government. Structurally, the membership of the Indonesian *Waqf* Board (BWI) in Law 41 of 2004 is described in Article 55, which is related to the appointment and dismissal of BWI members, as follows: (1) *Waqf* membership is appointed and terminated by the president; (2) The membership of BWI representatives in these areas is appointed and terminated by the Indonesian *Waqf* Body, and his term in Article 56 explains that BWI membership is appointed for 3 years and can be reappointed for 1 term.²⁸

Conclusion

The establishment of Law Number 41 of 2004 on *Waqf* comes from the practice of *waqf* in society that is not fully limited to religious activities, such as the construction of mosques, *madrassah's*, tombs so that *waqf* activities in Indonesia are not economically beneficial to the general public. To achieve this goal, added in Article 22, that *waqf* property is

Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf (Jakarta: Departemen Agama RI Ditjen Bimas Islam, 2007), 10-12.

²⁸Rahmat Dahlan, "Analisis Kelembagaan Badan Wakaf Indonesia", *Jurnal Bisnis dan Manajemen*, Vol. 6 No. 1, 2016, 121.

only intended as a means and activities of worship, education, health, assistance to the poor, neglected children, orphans, scholarships, progress and economic or people's progress. But also, for other general welfare which is not contrary to *sharia* law and the positive law. As for the role of *waqf* institution as an institution oriented to optimize the role of *nazhir* and the function of *waqf* institution as a motivator, facilitator, organizer, and education for *nazhir*. Meanwhile, *nazhir*'s handling in cash *waqf* practice is *nazhir*'s lack of ability in managing and optimizing *waqf* objects (money), thus improving the quality of HR/*nazhir* is very much needed. The President of the Republic of Indonesia issued Presidential Instruction No. 1 of 1991 to the Minister of Religion, the first to distribute the Compilation of Islamic Law consisting of 3 books: Book I on Marriage Law; Book II on Heritage; Book III on *Waqf* Law. The birth of KHI was established in the form of Inpres No. 1 in 1991 to meet the needs of the Indonesian people, especially the Muslim community, so that in the field of marriage, inheritance and *waqf* law, they have a strong legal protection in these three areas.

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