

Strategic Navigation of Waqf Law: Maximizing the Productivity of Waqf Land Management

Navigasi Strategis Hukum Wakaf: Memaksimalkan Produktivitas Pengelolaan Tanah Wakaf

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Abstract

Waqf is considered a recommended act of worship in Islamic teachings and reflects the devotion of individuals. To safeguard the community's interests, the state has established a legal framework concerning Waqf through Law Number 41 of 2004. According to this law, waqf pledges are no longer limited to verbal declarations but must be recorded in written form through an official waqf pledge deed. Furthermore, the law emphasizes the need for productive waqf management. In East Tanjungpinang District of Tanjungpinang City, the quantity and size of waqf land surpass those of other districts within the city. This presents an intriguing opportunity to investigate the effectiveness of productive waqf land management in this District based on Law No. 41 of 2004 on Waqf. The research takes an empirical juridical approach, aiming to assess effectiveness and identify constraints encountered in the implementation of the Waqf Law in East Tanjungpinang District. Data for the study was collected from various sources, including books, journals, relevant documents (secondary data), and interviews conducted with stakeholders involved in waqf management (primary data). The findings of the study demonstrate that waqf implementation in East Tanjungpinang District aligns with Islamic teachings and Law No. 41 of 2004 concerning Waqf. However, several obstacles hinder its effective implementation, including law enforcement, infrastructure, community, and cultural factors.

Keywords

Waqf Law; Waqf Land; East Tanjungpinang District; Tanjungpinang City

Abstrak

Waqf merupakan ibadah yang disarankan dalam ajaran Islam dan mencerminkan ketulusan individu. Untuk melindungi kepentingan masyarakat, negara telah membentuk kerangka hukum melalui Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf. Menurut undang-



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undang ini, ikrar wakaf tidak lagi terbatas pada pernyataan lisan tetapi harus dicatat secara tertulis melalui akta ikrar wakaf resmi. Selain itu, undang-undang menekankan perlunya manajemen wakaf yang produktif. Di Kecamatan Tanjungpinang Timur Kota Tanjungpinang, jumlah dan luas tanah wakaf melampaui kecamatan lain di kota tersebut. Ini merupakan hal menarik untuk diteliti terkait efektivitas manajemen tanah wakaf produktif di kecamatan tersebut berdasarkan Undang-Undang No. 41 Tahun 2004 tentang Wakaf. Penelitian ini menggunakan pendekatan yuridis empiris, bertujuan untuk menilai efektivitas dan mengidentifikasi kendala yang dihadapi dalam implementasi Undang-Undang Wakaf di Kecamatan Tanjungpinang Timur. Data untuk penelitian ini dikumpulkan dari berbagai sumber, termasuk buku, jurnal, dokumen terkait (data sekunder), dan wawancara dengan para pemangku kepentingan yang terlibat dalam manajemen wakaf (data primer). Temuan penelitian menunjukkan bahwa implementasi wakaf di Kecamatan Tanjungpinang Timur sejalan dengan ajaran Islam dan Undang-Undang No. 41 Tahun 2004 tentang Wakaf. Namun, beberapa kendala menghambat implementasinya untuk efektif, termasuk penegakan hukum, infrastruktur, masyarakat, dan faktor budaya.

Kata Kunci

Undang-Undang Wakaf; Tanah Wakaf; Kecamatan Tanjungpinang Timur; Kota Tanjungpinang

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Introduction

Since the independence of the Indonesian state, the issue of waqf land has been regulated under Law Number 5 of 1960, known as the Basic Regulations on Agrarian Principles (UUPA). Article 14 paragraph (1) letter b of the UUPA states that the government, in the context of Indonesian socialism, establishes a general plan for the supply, designation, and use of land, water, and space for worship and other sacred purposes, in accordance with the belief in One God. Additionally, Article 49 paragraph (1) of the UUPA recognizes and protects the property rights of religious and social institutions, especially when used for religious and social purposes. Furthermore, Article 49 paragraph (3) of the UUPA states that waqf land is protected and regulated by Government Regulation.

In line with these provisions, Government Regulation No. 28 of 1977 was enacted to regulate land waqf. However, this regulation specifically focuses on waqf of property rights and does not address other waqf objects. To further refine waqf arrangements, the Waqf Law was enacted in 2004 under Law Number 41 of 2004.¹ This law serves as a guide for the orderly implementation of waqf, ensuring that waqf properties are utilized according to their intended functions.² It emphasizes the importance of effectively and efficiently managing waqf for the benefit of worship and the promotion of general welfare.³ The parties involved in waqf include the wakif (provider of waqf), *nazhir* (manager of waqf), and the waqf property itself.⁴

According to data from the Directorate of Zakat and Waqf Empowerment at the Ministry of Religion of the Republic of Indonesia, there are currently 370,437 waqf land locations in Indonesia, covering a total area of 50,031.72 hectares. These waqf lands are allocated for various purposes, including mosques (44.35%), prayer rooms (28.42%), graves (4.45%), schools (10.68%), Islamic boarding schools (3.49%), and other social activities (8.61%).

Especially in Tanjungpinang City, the research revealed the presence of 216 waqf lands covering approximately 23.44 hectares, which is equivalent to 0.2344 square kilometers. Tanjungpinang City itself spans an area of 239.50 square kilometers,

¹ Indah Sulistya, Neneng Hasanah, and Muhammad Iqbal Irfany, "Strategi Pengelolaan Wakaf Uang Oleh Badan Wakaf Indonesia (BWI)," *Al-Awqaf: Jurnal Wakaf Dan Ekonomi Islam* 13, no. 1 (2020): 39–58, <https://doi.org/https://doi.org/10.47411/al-awqaf.v13i1.95>.

² Ummi Salamah Lubis, "Hak Kekayaan Intelektual Sebagai Objek Wakaf," *Luris Studia: Jurnal Kajian Hukum* 1, no. 1 (2020): 31–38, <https://doi.org/https://doi.org/10.55357/is.v1i1.18>.

³ Article 4 and Article 5 of Law Number 41 of 2004 concerning Waqf.

⁴ Refer to Law Number 41 of 2004 concerning waqf, in article 1 number 1 it is explained that the definition of wakif is the party who waqf his property. Then in point 4 the definition of nazhir is the party who receives waqf property from the wakif to be managed and developed according to its designation. Then in number 5, it is explained that the definition of waqf property is property that has long-lasting durability and/or long-term benefits and has economic value according to Sharia which is donated by the wakif.

characterized by a combination of hilly terrain and gently sloping valleys leading to the shoreline. The land area of Tanjungpinang City is approximately 131.54 square kilometers, while the ocean area is about 107.96 square kilometers. The city is comprised of four districts: Tanjungpinang Kota District, West Tanjungpinang District, Bukit Bestari District, and East Tanjungpinang District. Among these districts, East Tanjungpinang District is the largest, covering an area of 83.50 square kilometers, surpassing the other sub-districts such as Tanjungpinang Kota District with an area of 52.50 square kilometers.⁵ East Tanjungpinang District exhibits the highest potential and widest expanse of waqf land compared to the other sub-districts.

Based on this background, this study aims to examine the effectiveness of managing productive waqf land in the East Tanjungpinang District, Tanjungpinang City by considering the diverse perspectives and interpretations of waqf in Islamic literature and legal frameworks. Hence, it addresses the following questions:

1. How effective is the management of productive waqf land in Tanjungpinang Timur District, Tanjungpinang City?
2. What are the obstacles faced in the management of productive waqf land in Tanjungpinang Timur District, Tanjungpinang City?

Method

This study aims to analyse and address the formulated problems using a sociological juridical approach. The sociological juridical approach is a legal research method that initially relies on secondary data and subsequently incorporates primary or field data. It examines the application of statutory regulations and seeks to establish correlations between various symptoms or variables. The data collection tools utilized in this research include document studies, observations, and interviews.⁶

As this research employs the sociological juridical method, both primary and secondary data are utilized.⁷ Primary data is obtained through interviews and observations conducted at the East Tanjungpinang Religious Affairs Office, the Tanjungpinang City Ministry of Religion Office, the Riau Islands Province Ministry of Religion Regional Office, as well as from *Nazhir* and wakif (waqf donors). Furthermore, the researchers also observed waqf land that has been managed in East Tanjungpinang District of Tanjungpinang City. Secondary data encompasses primary legal materials, secondary legal materials, and tertiary legal materials.⁸ Primary legal materials consist of laws and regulations governing waqf,

⁵ Teguh Susanto, "Sejarah Singkat Kota Tanjungpinang," Pemerintah Kota Tanjungpinang, 2017, <https://www.tanjungpinangkota.go.id/pages/profil>.

⁶ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2012).

⁷ Rina Shahriyani Shahrullah and Henry Hadinata Cokro, "Penegakan Hukum Bagi Pedagang Usaha Mikro, Kecil Dan Menengah Terhadap Para Pelaku Usaha Monopoli," *Journal of Law and Policy Transformation* 5, no. 2 (December 10, 2020): 113–27, <https://doi.org/10.37253/jlpt.v5i2.1391>.

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Rajawali Pers, 1996).

such as Law Number 41 of 2004 concerning Waqf, Government Regulation Number 42 of 2006 concerning the Implementing Regulations of Law Number 41 of 2004 concerning Waqf, as amended by Government Regulation Number 25 of 2018, and Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for Waqf of Immovable Objects and Movable Objects Other than Money. Secondary legal materials encompass books, papers, magazines, journals, research reports, and other scholarly works related to the research topic. Tertiary legal materials are sourced from the internet, Legal Dictionary, Big Dictionary, and the Indonesian Language (KBBI). The data is analyzed by using a qualitative-descriptive approach.⁹

Result and Discussion

A. Effectiveness of Productive Waqf Land Management in East Tanjungpinang District, Tanjungpinang City

The study focuses on analyzing the effectiveness of productive waqf land management, therefore some specific terms are needed to define clearly. The term "effectiveness" is derived from the word "effective," which refers to the ability to produce results or be successful in achieving desired outcomes. Effectiveness is closely linked to the relationship between expected results and actual achievements. It implies the notion of "effectiveness" or the capacity to bring about the intended impact or efficacy.¹⁰

According to Peter Salim and Yenny Salim, management is a process that assists in policy formulation and aims to provide oversight in the implementation and achievement of goals.¹¹ Harsoyo further defines management as a series of efforts aimed at effectively and efficiently exploring and utilizing existing potentials to achieve predetermined objectives.¹²

The term "waqf" originates from the Arabic word "Waqafa," which means "to hold back," "to stop," "to stay in place," or "to remain standing." In the field of fiqh (Islamic jurisprudence), waqf is defined as the transfer of private property rights into the ownership of a waqf institution that benefits the community.¹³ Miftahul Huda defines waqf as the act of holding property, either permanently or temporarily, by refraining from personal actions

⁹ Juni Netti Mardiani and Nurlaily, "Sociology of Law Perspectives in Reviewing the Effective Social Control for Social Medias," *Journal of Law and Policy Transformation* 7, no. 1 (2022): 1–8, <https://doi.org/http://dx.doi.org/10.37253/jlpt.v7i1.6728>.

¹⁰ Barda Nawawi Arief, *Kapita Selektta Hukum Pidana* (Bandung: Citra Aditya Bakti, 2003).

¹¹ Peter Salim and Yenny Salim, *Kamus Bahasa Indonesia Kontemporer* (Jakarta: Modern English Press, 2002).

¹² Harsoyo, *Manajemen Kinerja* (Jakarta: Persada, 1977).

¹³ Muhammad Abdul Mujieb, Mabruri Tholhah, and Syafi'ah A. M., *Kamus Istilah Fiqih* (Jakarta: Pustaka Firdaus, 2002).

such as selling or giving away the waqf property, in order to repeatedly utilize its proceeds for public and specific purposes, in accordance with the wakif's intentions and within the limits of Sharia law.¹⁴ M. Zein and Efendi describe waqf as the transfer of durable property rights to an individual or a waqf management body, with the condition that the proceeds or benefits are used in ways consistent with Islamic law.¹⁵

According to M. Syafii Antonio, productive waqf land management involves three key characteristics: an integrative management pattern, adherence to the principles of *nazhir* welfare, and the principles of transparency and responsibility. The integrative management pattern allows waqf funds to be allocated to empowerment programs, including all associated costs. The principle of *nazhir* welfare recognizes the *nazhir's* role as a professional rather than a mere social worker, ensuring they can earn a decent living from their responsibilities. Transparency and responsibility principles require waqf institutions to provide annual reports on fund management to the public.¹⁶

Productive waqf refers to a scheme that aims to make waqf donations from the community productive, generating a sustainable surplus.¹⁷ These donations can be in the form of movable objects such as money and precious metals, or immovable objects such as land and buildings.¹⁸ The surplus generated from productive waqf becomes a source of endowment funds for financing various needs of the people, such as quality education and healthcare services.¹⁹ Mundzir Qahar defines productive waqf as property or a fixed principal that is dedicated to production activities, with the resulting benefits distributed according to the purpose of the waqf. For example, land waqf can be used for farming, springs can be utilized for the sale of water, and so on.²⁰

Article 43, paragraph (2) of the Waqf Law states, "Management and development of waqf property is carried out productively." The subsequent explanation of this article lists various activities allowed for productive waqf management, including collecting, investing, producing, partnering, trading, engaging in agribusiness, mining, industry, technology development, construction of buildings, apartments, flats, supermarkets, shops, offices, educational and healthcare facilities, as well as other businesses that comply with Sharia principles.

¹⁴ Miftahul Huda, *Mengalirkan Manfaat Wakaf: Potret Perkembangan Hukum Dan Tata Kelola Wakaf Di Indonesia* (Bekasi: Gramata Publishing, 2015).

¹⁵ Satria Effendi M. Zein, *Problematika Hukum Keluarga Islam Kontemporer: Analisis Yurisprudensi Dengan Pendekatan Usbuliyah* (Jakarta: Kencana, 2004).

¹⁶ Jaih Mubarak, *Wakaf Produktif* (Bandung: Simbiosis Rekatama Media, 2008).

¹⁷ Nugroho Heri Pramono, Merlina, and Wiji Astuti, "Cerdas Bersama Wakaf (CB Wakaf): Strategi Dan Inovasi Pengelolaan Wakaf Uang Di Era Digital," *Sains Manajemen* 5, no. 2 (2019): 172–82, <https://doi.org/https://doi.org/10.30656/sm.v5i2.1867>.

¹⁸ Acep Zoni Saeful Mubarak, "Prospek Nazhir Wakaf Global Berbasis Pesantren Di Era Digital," *Jurnal Bimas Islam* 13, no. 1 (2020): 23–50, <https://doi.org/https://doi.org/10.37302/jbi.v13i1.190>.

¹⁹ Devita Sari, Ramdan Fawzi, and Shindu Irwansyah, "Upaya KUA Dalam Menangani Masjid Wakaf Yang Belum Bersertifikat (Studi Kasus Kecamatan Sumedang Utara)," *IMS-AM: Islamic Studies and Economics* 1, no. 1 (2023): 13–19.

²⁰ Mundzir Qahar, *Manajemen Wakaf Produktif* (Jakarta: Khalifa, 2005).

It is worth noting that waqf law is derived from Islamic teachings, and for a waqf to be valid, specific pillars and conditions must be fulfilled. According to the majority of Fiqh, there are four pillars of waqf:²¹

- a. *Waqif*: the person who donates.
- b. *Mauquf 'alaih*: the designated recipient or beneficiary of the waqf.
- c. *Mauquf*: the waqf property itself, which can be movable or immovable.
- d. *Sbighator Iqrar*: the statement or pledge of the waqif, indicating their intention to dedicate the property as waqf.

The conditions for establishing a waqf are as follows:²²

- a. Conditions for the waqif (person making the waqf): the waqif must possess the legal capacity to dispose of their wealth. This requires meeting four criteria: 1) Independence: The waqif must be of sound mind and not under the influence or control of others, 2) Reasonable judgment: The waqif should have the ability to make rational decisions, 3) Maturity: The waqif must be an adult, typically considered to be of a certain age, 4) Not being under care: The waqif should not be wasteful or negligent with their wealth. Hendi Suhendi argues that the waqif should be an expert in doing good and should make the waqf voluntarily, without any form of coercion. Similar to requirements for sellers and buyers, being an "expert in doing good" means being intelligent (not mentally impaired) and of adult age.²³
- b. Conditions for the beneficiaries of the waqf (*Mauquf 'alaih*): Beneficiaries of the waqf can be categorized as either specific (*mu'ayyan*) or unspecified (*ğairu mu'ayyan*). Specific beneficiaries can be one or more individuals or a group of people. Unspecified beneficiaries include the poor (*fuqara*), scholars (*ulama*), reciters of the Quran, fighters, mosques, troops protecting the Kaaba, schools, dams, and the affairs related to caring for the deceased.
- c. Conditions for the waqf property (*Mauquf*): the validity of waqf property depends on the following conditions:²⁴ 1) Value: The waqf property should have value and can be legally used under normal circumstances. It should have substance, be owned by someone, and usable in various situations, such as for buying, selling, borrowing, lending, and gifting, 2) Clear identification: Scholars require that the waqf property be clearly identifiable and free from any disputes,

²¹ Huda, *Mengalirkan Manfaat Wakaf: Potret Perkembangan Hukum Dan Tata Kelola Wakaf Di Indonesia*.

²² Direktorat Jenderal Bimbingan Masyarakat Islam Kementerian Agama Republik Indonesia and Direktorat Pemberdayaan Wakaf Kementerian Agama Republik Indonesia, *Fiqih Wakaf* (Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam Kementerian Agama Republik Indonesia dan Direktorat Pemberdayaan Wakaf Kementerian Agama Republik Indonesia, 2006).

²³ Hendi Suhendi, *Fiqh Muamalah: Membahas Ekonomi Islam Kedudukan Harta, Hak Milik, Jual Beli, Bunga Bank Dan Riba, Musyarakah, Ijarah, Mudayanah, Koperasi, Asuransi, Etika Bisnis Dan Lain-Lain* (Jakarta: Raja Grafindo Persada, 2013).

²⁴ Huda, *Mengalirkan Manfaat Wakaf: Potret Perkembangan Hukum Dan Tata Kelola Wakaf Di Indonesia*.

- 3) Ownership: The property being waqf must belong to the waqif. Waqf is considered valid if the property being dedicated is owned by the waqif or if the waqif has the right to make the property waqf, either through ownership or with the authority to represent the owner's interests.
- d. Conditions for the *Shighat* or pledge of waqf: the pledge or statement of waqf can be expressed verbally, in writing, or through gestures. The waqf is considered valid when there is a statement of intent (*ijab*) from the waqif and acceptance (*qabul*) from the *manquf'alaih*. Gestures are only acceptable when the waqif is unable to communicate orally or in writing.²⁵

To provide legal protection and certainty, the government enacted Law Number 41 of 2004 concerning Waqf, which was further detailed by Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf, as amended by Government Regulation Number 25 of 2018. Law Number 41 of 2004 defines waqf as follows:

"Waqf is a legal act performed by a waqif to separate and/or surrender part of their property, to be utilized indefinitely or for a specified period, in accordance with their interests, for the purposes of worship and/or public welfare according to Sharia."

This definition of waqf allows for flexibility to accommodate varying opinions among *fiqh* experts and considers the development of waqf objects for the benefit of society. The following are some of the provisions in the Waqf Law:

- a. Waqf Elements: According to Article 6 of the Waqf Law, the implementation of waqf involves fulfilling the following waqf elements: 1) Waqif (person making the waqf), 2) Nazir (waqf manager), 3) Waqf Assets, 4) Waqf Pledge, 5) Allocation of waqf property; and 6) Waqf period.
- b. Waqf Terms:
 - 1) **Waqif:** The Waqf Law categorizes waqif into three groups, as stated in Article 7: "Waqif includes individuals, organizations, and legal entities." Article 8 outlines the requirements for waqif, stating that "Individual Waqif can only perform waqf if they are mature, of sound mind, not subject to legal restrictions, and legal owners of the waqf property." Paragraphs (2) and (3) provide requirements for Organizational Waqif and legal entity Waqif, respectively, emphasizing that organizational waqif must fulfill the organization's provisions for waqf property as outlined in the organization's articles of association.

²⁵ Suhendi, *Fiqh Muamalah: Membahas Ekonomi Islam Kedudukan Harta, Hak Milik, Jual Beli, Bunga Bank Dan Riba, Musyarakah, Ijarah, Mudayanah, Koperasi, Asuransi, Etika Bisnis Dan Lain-Lain*.

- 2) **Nazir:** In the fiqh concept, the term "nazhir" is not explicitly stated as an element or pillar of waqf, but rather referred to as "maukuf 'alaih," which doesn't clearly distinguish between the party managing the waqf and the waqf designation. However, in the Waqf Law, the term "nazhir" is included as the manager and explicitly mentions the designation of waqf property, resulting in a stricter allocation of waqf property. Article 9 of the Waqf Law states: "Nazir includes (a) individuals, (b) organizations, or (c) legal entities." The requirements for becoming a nazhir are outlined in Article 10. Paragraph (1) states that an individual can become a nazhir if they fulfill the following requirements: Indonesian citizenship; Muslim; Maturity; Trustworthiness; Physical and spiritual capability; and not subject to legal restrictions.

Article 10, paragraph (2) of the Waqf Law stipulates the requirements for an organization to become a nazhir, which are as follows:

- a. The management of the organization must fulfill the requirements of an individual nazhir.
- b. The organization should be engaged in social, educational, community, and/or Islamic religious fields.

Furthermore, Article 10, paragraph (3) states the requirements for a legal entity to become a nazhir, which include:

- a. The management of the legal entity must meet the requirements of an individual nazhir.
- b. The legal entity should be an Indonesian entity established in accordance with the prevailing laws and regulations.
- c. The legal entity should be engaged in the social, educational, community, and/or Islamic religious fields.

In relation to waqf property, the Waqf Law regulates it in Article 15, Article 16, and Articles 28 to 31. Article 15 states that waqf property can only be considered as waqf if it is legally owned and controlled by the waqif. Article 16 further elaborates on the types of property that can be designated as waqf. It reads as follows: 1) Waqf assets include: a. Immovable objects, b. Movable objects, 2) Immovable objects mentioned in paragraph (1)(a) encompass: a. Land rights in accordance with the provisions of the applicable laws and regulations, whether registered or unregistered, b. Buildings or parts of buildings situated on the aforementioned land, c. Plants and other objects related to the land, d. Ownership rights to apartment units in accordance with the provisions of the applicable laws and regulations, e. Other immovable property in accordance with sharia provisions and applicable laws and regulations, 3) Movable objects referred to in paragraph (1)(b) are assets that cannot be depleted through consumption, including: a. Money, b. Precious

metals, c. Securities, d. Vehicles, e. Intellectual property rights, f. Lease rights, g. Other movable objects in accordance with sharia provisions and applicable laws and regulations.

The Waqf Law not only regulates the aforementioned waqf assets but also addresses waqifs' ability to waqf movable objects in the form of money through Islamic financial institutions appointed by the Minister of Religion. This is stipulated in Articles 28, 29, and 30. Waqf of movable objects in the form of money is performed by the waqif through a written statement of their will. It is then issued in the form of a cash waqf certificate, which serves as evidence of the waqf asset surrender. Islamic financial institutions are responsible for issuing and delivering the cash waqf certificates to the waqif and nazhir. Within 7 working days of issuing the Money Waqf Certificate, Islamic financial institutions, on behalf of the nazhir, must register the waqf assets in the form of money with the Minister of Religion.

In relation to the waqf pledge, Articles 17 to 21 of the Waqf Law regulate its procedures. Article 17, paragraph (1) states that the waqf pledge is made by the waqif to the nazhir in the presence of the Waqf Pledge Implementing Officer and two witnesses. Paragraph (2) further explains that the waqf pledge can be made orally and/or in writing, which is then documented in the waqf pledge deed by the Waqf Pledge Implementing Officer. If the waqif is unable to make the pledge orally or attend its implementation, they may appoint a proxy with a power of attorney, corroborated by two witnesses.

Regarding witnesses, Article 20 requires them to be mature, Muslim, of sound mind, and not hindered from taking legal actions. Article 21, paragraphs (1) and (2) state that the waqf pledge is documented in the waqf pledge deed, which should include the name and identity of the waqif, the nazhir's name and identity, data and information on the waqf property, the allotment of the waqf property, and the waqf period.

In terms of designating waqf assets, Article 22 of the Waqf Law specifies the permissible allocations. Waqf assets can only be allocated for worship facilities and activities, educational and health facilities and activities, assistance to the poor, abandoned children, orphans, scholarships, progress and improvement of the people's economy, and other public welfare advancements that align with sharia and statutory regulations. The waqif determines the designation of the waqf property during the waqf pledge implementation. However, if the waqif doesn't specify the designation, the nazhir can determine the allocation based on the purpose and function of the waqf.

Regarding the term of waqf, the Waqf Law itself does not establish a specific period. However, Government Regulation Number 42 of 2006, which pertains to the Implementation of Law Number 41 of 2004 concerning Waqf, distinguishes the waqf period based on the type of waqf property. Article 18, paragraph (1) of this regulation states that immovable waqf objects in the form of land can only be waqf for a limited period, except for land rights waqf as specified in Article 17, paragraph (1)(d). Therefore, the duration of waqf may vary depending on the waqif's intention to endow their assets.

Furthermore, the Waqf Law establishes the Indonesian Waqf Board as an independent institution responsible for advancing and developing national waqf. Article 49, paragraph (2) of the Waqf Law states that the Indonesian Waqf Board is authorized to collaborate with central and regional government agencies, community organizations, experts, international agencies, and other relevant parties while carrying out its responsibilities as mentioned in paragraph (1). This provision allows for partnerships and cooperation with various entities to enhance the effectiveness and impact of the Indonesian Waqf Board's activities in advancing and developing waqf at both national and international levels.

The existence of laws and regulations governing waqf, as stipulated in the Waqf Law and government regulations, has provided legal protection and introduced a new paradigm that complements the community's belief in Sharia. The Waqf Law encompasses several significant reforms, some of which are highlighted below:

- a. Introduction of Waqf Pledge Certification and Certification of Waqf Land Status. Traditionally, waqf was valid even if it was only done verbally based on trust, with one of the religious leaders being appointed as Nazhir. However, this traditional practice often led to complications. To address this, the Waqf Law mandates that the waqf pledge must be executed in writing before the Official Making the Waqf Pledge Deed, typically the Head of the Office of Religious Affairs in each district. This waqf pledge deed is a prerequisite for the certification of waqf land status.
- b. Expansion of the Waqf Object. Prior to the Waqf Law, waqf arrangements primarily focused on immovable objects such as land, typically used for traditional purposes like mosques, madrasas, and tombs. However, the Waqf Law expands the scope of waqf to include movable objects such as cash waqf, shares, and other securities. This expansion allows for the development of waqf beyond land-based assets. Cash waqf, in particular, is promoted by the Ministry of Religion as a companion to land waqf, aiming to empower and manage land waqf more effectively.
- c. Expansion of Nazhir. The Waqf Law introduces a new nazhir system, recognizing not only individual nazhirs but also nazhir organizations and legal entities. This expansion aims to enhance professionalism in waqf management. The law also imposes limitations on the tenure of nazhirs, emphasizing the need for professionalism and ensuring appropriate rights and responsibilities are assigned to nazhirs as key players in the field of professional waqf management.
- d. Establishment of Waqf Management Institutions. The Waqf Law No. 41 of 2004 highlights the importance of empowering and developing waqf assets with economic potential in accordance with Islamic principles. It emphasizes the establishment of a national waqf institution known as the Indonesian Waqf Board (BWI) to administer and manage waqf assets at a national level. The establishment of BWI aims to promote professionalism among existing nazhirs and improve overall waqf management practices in the country.

Based on interviews and field observations conducted, it can be identified that the administration of waqf, particularly land waqf in East Tanjungpinang District, Tanjungpinang City, has been carried out in accordance with Islamic Sharia guidance. However, when evaluating the effectiveness of productively managed waqf land in line with Law Number 41 of 2004 concerning Waqf, it can be concluded that the management of productively managed waqf land in this district has not been fully effective because there are obstacles in implementing productive waqf land which are extensively elaborated below.

B. Constraints in the Management of Productive Waqf Land in East Tanjungpinang District, Tanjungpinang City

The achievement of legal effectiveness relies on the positive impact and support of various factors that contribute to the implementation of the law. Soerjono Soekanto's theory of legal effectiveness identifies five key factors that influence the effectiveness of a law. These factors include:²⁶

- a. Legal factors, which refers to the law (statutory regulations);
- b. Law enforcer factors, which refers to the individuals responsible for creating and implementing the law;
- c. Infrastructure factors related to facilities, resources, and infrastructure that support the implementation of the law;
- d. Community factors, which pertain to the environment in which the law is enforced or implemented;
- e. Cultural factors, encompassing products, copyrights, and intentions based on cultural norms and values.

In the management of productive waqf land in East Tanjungpinang District, Tanjungpinang City, several obstacles are encountered in relation to these five factors:

- a. **Legal Factors (waqf legislation):** Article 32 of the Waqf Law stipulates that the Waqf Property Registration Agency (PPAIW), acting on behalf of the Nazhir, must register the waqf property with the competent authority within 7 working days from the signing of the waqf pledge deed. The explanation of Article 32 states that the National Land Agency is the authorized agency for land waqf, while the agency related to the main task handles waqf of movable objects other than money. However, the role of the wakif, Nazhir, or other parties who wish to assist in registering waqf property, either through financing or independent submission, is

²⁶ Salim H. Sidik and Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis* (Jakarta: Raja Grafindo Persada, 2013).

not feasible based on Article 32 of the waqf law. In the context of productive waqf management, the Waqf Law lacks clarity in terms of procedures and measures. Article 43, paragraph (2) of Law Number 41 of 2004 concerning Waqf states that "Management and development of waqf property is carried out productively." However, the law does not provide specific guidelines, standardization, or procedures regarding the productive management of waqf land. The explanation of this article mentions various forms of business activities that can be pursued in the development of waqf assets, including collecting, investing, producing, partnering, trading, agribusiness, mining, industry, technology development, construction, apartments, flats, supermarkets, shops, offices, educational facilities, and healthcare facilities, as long as they are in accordance with Sharia principles. However, the law does not further elaborate on the procedures and standards for effectively managing waqf land or other waqf properties. Another constraint is the absence of actions taken against nazhirs who fail to manage waqf land productively or neglect their obligation to submit reports to the Tanjungpinang Ministry of Religion Office and the Indonesian Waqf Board (BWI), as mandated in the waqf law. The law requires nazhirs to manage waqf assets in a productive manner and submit regular reports. However, there is a lack of enforcement mechanisms to ensure compliance with these requirements, which can hinder the effective management of waqf land in Tanjungpinang Timur District, Tanjungpinang City. Addressing these constraints is essential to improve the management of productive waqf land in the region, including the need to establish clear procedures and guidelines for managing waqf properties productively and implementing mechanisms to enforce the responsibilities of nazhirs in managing waqf assets and submitting reports to the relevant authorities.²⁷

- b. **Law enforcer factors:** the qualifications required for a Nazhir in terms of their ability to manage and develop waqf assets, such as educational qualifications, managerial skills, or other professional abilities, are not explicitly outlined in the law. In practice, the selection of Nazhir is still often based on personal characteristics within the community. The formation of the Indonesian Waqf Board (BWI) representative in Tanjungpinang City has not been realized yet. Unlike other regencies/cities in the Riau Archipelago Province, Tanjungpinang City lacks a BWI representative at the district/city level. Considering the substantial amount of waqf land in Tanjungpinang City, it is essential to establish a BWI representative in order to effectively manage and develop the potential of waqf land in the city.²⁸ The

²⁷ Interview with Mrs. Halimah as Head of the Zakat and Waqf Empowerment Section, Islamic Community Guidance Division at the Regional Office of the Ministry of Religion of the Riau Islands Province. (Interview on 14 December 2020)

²⁸ Interview with Mr. Candra Wesnedi, as Head of KUA East Tanjungpinang District (Interview on 12 October 2020), he also stated that land waqf in Tanjungpinang City is very unique where with the

Ministry of Religion Office in Tanjungpinang City has not fully exercised its supervisory authority as stipulated in Article 63 of the Waqf Law, Article 56 of Government Regulation Number 42 of 2006, and Article 31 to Article 32 of the Minister of Religion Regulation Number 73 of 2013 on Procedures for Waqf of Immovable and Movable Objects Beyond Money. These regulations mandate the Ministry of Religion Office to oversee and supervise waqf activities, but its implementation in Tanjungpinang City has been incomplete.

- c. **Infrastructure factors:** the budget allocated for waqf administration, including waqf land certification, is relatively small compared to other sectors. Currently, the government budget through the Ministry of Religion is the main source of funding for waqf land certification. The implementation of the supervisory authority mandated by the waqf law is not conducted intensively due to limitations in human resources and budgetary constraints, as mentioned earlier. Mr. Sukirno, an official at the East Tanjungpinang KUA in the interview shared that they often face challenges in verifying the location of waqf land or conducting land inspections for waqf donations. Consequently, the KUA relies on data provided by the wakif during the waqf pledge without being able to physically verify the location due to limited personnel and financial resources. According to the waqf law, BWI is an independent institution tasked with developing waqf in Indonesia. However, the law also allows for possible financial assistance from the state budget through the Ministry of Religion. Nazhir, responsible for managing waqf land, faces limitations in funding and lacks sufficient expertise in productive management. The availability of funding largely relies on donations and community contributions. Additionally, Nazhir requires regular educational programs to enhance their skills in managing waqf land productively. The Chairman of the Nazhir Forum in East Tanjungpinang District emphasized the need for dedicated individuals in the early stages of waqf land management, as financial constraints often pose challenges. Regular training and knowledge updates provided by relevant institutions are crucial for improving Nazhir's competence in waqf management.²⁹
- d. **Community factors:** law enforcement is essential for maintaining societal harmony and peace. However, a significant obstacle in the community's involvement in the management of productive waqf land arises from a lack of awareness and understanding of the waqf law and its associated regulations, such as Law Number 41 of 2004 concerning Waqf.³⁰ The technical aspects of implementing the law

smallest area compared to other districts/cities the development of the number of people who donate their land until now still increasing.

²⁹ The results of the interview with Mr. Supeno, as Nazhir on waqf land in Batu IX Village and the Chairman of the Tanjungpinang City Nazhir Forum (Interview on October 28, 2020).

³⁰ The results of interviews with 2 (two) waqifs, namely Mrs. Tri Astuti (January 1, 2021) and Mrs. Maryamah (January 3, 2021), they generally stated that they did not understand about waqf arrangements

further complicate matters. Due to this limited understanding, individuals within the community are unaware of their rights and obligations as outlined in the waqf law. It is crucial for both the general public and those who contribute their assets for waqf purposes to recognize their legal roles in overseeing the management carried out by the Nazhir, as specified by the law.

- e. **Cultural factors:** there is a common misconception among some individuals that a verbal pledge is sufficient for a waqf to be considered valid. However, from a legal perspective, waqf pledges must be documented in writing and made in the presence of an authorized official responsible for creating the waqf pledge deed. While Islamic law recognizes the validity of a verbal pledge for waqf, recording it in a written document is necessary to ensure compliance with state laws. Furthermore, there is a prevailing belief in society that waqf can only be utilized for constructing mosques, prayer rooms, and tombs. However, it is important to note that waqf can be utilized for the public good and community development, aiming to foster prosperity. This misconception limits the potential of waqf in benefiting the broader community. Additionally, it is a common practice for people to assume that their role in waqf ends once the waqf land is transferred to the Nazhir.³¹ However, according to the waqf law, the wakif, as a member of the community, retains the right to supervise the management of the waqf land even after its transfer to the Nazhir.

Conclusion

The implementation of waqf in Tanjungpinang Timur District, Tanjungpinang City is aligned with Islamic teachings and Law No. 41 of 2004 concerning Waqf. Proper registration and administration of waqf land have been carried out, and the donated land is managed according to the waqif's (the giver of the waqf) designation, primarily for places of worship such as mosques and prayer rooms. However, the management of productive waqf land has not been fully effective due to various factors, including legal constraints, inadequate law enforcement, insufficient waqf facilities and infrastructure, limited understanding of waqf arrangements, and cultural beliefs that associate waqf solely with places of worship.

The obstacles in managing productive waqf land in Tanjungpinang Timur District, Tanjungpinang City can be attributed to several factors. First, the legal factor is characterized by Law Number 41 of 2004 concerning Waqf and its implementing regulations, which lack clear explanations regarding the qualifications that a Nazhir must

in the laws and regulations. They donated a piece of land they owned to build a mosque with the intention of worship.

³¹ Interview with Mr. Mustofa, as the Head of the Islamic Community Guidance Section at the Tanjungpinang City Ministry of Religion Office (Interview on October 9, 2020)

possess in managing and developing waqf assets. There is also a lack of guidance on reporting requirements for Nazhir, with no specified actions to be taken by the Ministry of Religion or the Indonesian Waqf Board in case of non-compliance. Additionally, there is a lack of standardization or guidelines on productive waqf land management. Second, the factor of law enforcer is evident in the absence of a representative of the Indonesian Waqf Board for Tanjungpinang City, suboptimal supervision from the Ministry of Religion in Tanjungpinang City, and the lack of authority to take action when a waqf manager (Nazhir) fails to submit reports on waqf land management, which is their responsibility. Third, the constraints related to facilities and infrastructure include limited human resources, both in terms of officers responsible for collecting and managing waqf data, as well as officials entrusted with the authority to create waqf pledge deeds. These tasks are often distributed across different areas of waqf services and guidance. Budgetary limitations also hinder the supervision and development of waqf, while Nazhirs face limitations in terms of financial resources and understanding, impacting their ability to manage waqf land productively. Fourth, community factors contribute to the challenges as there is a lack of knowledge and understanding among the community regarding waqf implementation and management, including both Islamic guidance and legal regulations on waqf. Due to this limited understanding, the community is unaware of their rights and obligations as stipulated in waqf laws and regulations. Finally, cultural factors play a role, as waqf is perceived as a recommended act of worship in Islam, with the community, including both wakif and Nazhir, considering waqf solely as an act of worship intended for religious purposes.

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