

Effectiveness of *Waqf* Management in the Framework of Creating the Welfare of the People

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Abstract

The objectives of this study are: 1) To determine and analyze the effectiveness of waqf management according to Law Number 41 of 2004 for the welfare of the people, 2) To determine the inhibiting factors in waqf management, 3) To find solutions to overcome the inhibiting factors in waqf management. The approach method used in this research is the sociological juridical method. The specification of this research is a research with a descriptive analytical description of the specification. Sources of research data in the form of primary and secondary data. Collecting data using literature study as the main data and interviews as supporting data. Methods of data analysis using qualitative analysis methods, namely, data reduction, presenting data and concluding.

The results of the study stated that The effectiveness of waqf management for the welfare of the people is based on Nazhir on duty. In this case, the management of Waqf according to Law No. 41 of 2004 in order to realize the welfare of the people has not been effective because of the lack of knowledge about the administration of waqf assets. The inhibiting factor faced in the management of waqf in order to realize the welfare of the people is that nâzhir is not optimal in managing waqf, the government is not socializing Law no. 41 of 2014 and PP No. 42 of 2006, and low public awareness to carry out waqf management activities. Hence the solution waqf management in realizing the welfare of the people, namely synergies with related agencies in the form of government efforts to regulate regulations related to these problems which are carried out by optimally empowering religious institutions.

Keywords: Effectiveness, Waqf, People's Welfare

1. Introduction

Wealth in Islam has a very important role to support human life, without wealth, prosperity will not be created. In addition, Islam explains that wealth is a means to get closer to Allah SWT. In the view of Islam, property has a social function where in every property owned by an individual there are other people's rights that must be fulfilled. Thus the property should not stop and dwell on certain individuals. Wealth must be shared to create public welfare at large, especially those who are weak. In the view of Islam, property is absolute property of Allah, therefore the use of property must be adjusted to the provisions outlined by Allah, where for people who are weak in property ownership must obtain a certain portion of the wealth of the rich.¹

One way to get closer to Allah SWT related to property is *waqf*. *Waqf* is a manifestation of self-servitude to Allah SWT. Humans were created by God as social beings who have responsibilities to others, one of which is through *waqf*.

¹ Didiek Ahmad Supadie. 2015, *Wakaf Menyejahterakan Umat*, Unissula Press, Semarang, p. 21

Islam positions *waqf* as an instrument to strengthen the economy and prosper the people.²This shows that the state is very concerned about the management and development of *waqf* in order to carry out the mandate of the law to create economic independence and bring prosperity in the community by issuing laws governing *waqf*.

The condition of *waqf* in Indonesia is generally in the form of immovable objects and is not managed productively only for limited public benefit such as mosques, prayer rooms, Islamic boarding schools, schools and other institutions. *Waqf* is very different in existence with zakat, infaq and shodaqoh, that is, if it has been distributed completely, so will the benefits, but for *waqf* payments, it remains eternal while only the benefits are given, so that the benefits remain as long as they exist. With the inauguration of Law No. 41 of 2004, the Indonesian *Waqf* Board (BWI) was formed as an independent institution to manage *waqf* nationally. The form of the task of this institution is to promote and develop national *waqf* in Indonesia by forming several representatives in the province or district or city as needed.³

Talking about the management and development of *waqf* requires commitment from the government, community and scholars. It is necessary to pay attention again to various matters related to *waqf*, including *waqf* property, *waqf* designation, and nadzir as well as more optimal and professional management. Whether *waqf* is handed over to individuals or through an appropriate *waqf* body so that it can manage *waqf* correctly and professionally. This is an important discourse for the government to pay more attention to the duties of the *waqf* body as an effort to improve the welfare of the people. Based on the description of the background, we need to examine the development of *waqf* management and its impact on the welfare of the people.

Looking at the views on social welfare, it can be concluded that the field of social welfare includes a general spirit to do business with the arguments and the existence of security guarantees, so that it can be proven that legal order must be based on a certain scale of values, which are not formulated with formulas that absolute but by taking into account the changing interests of the community following the changing times, circumstances, and changes in the nation's beliefs.

The main key in the welfare state is the issue of guaranteeing the welfare of the people by the state. Regarding this, Jurgen Habermas argues that guaranteeing the welfare of all the people is the main thing for a modern state. Furthermore, according to Habermas, the guarantee of the welfare of all the people in question is embodied in the protection of the risk of unemployment, accident, illness, old age, and death of the breadwinner must be covered largely through the welfare provisions of the state.⁴

² Farid Wajdy dan Mursyid. 2007, *Wakaf dan Kesejahteraan Umat*, Pustaka Pelajar, Yogyakarta,, p. 78.

³ Rachmadi Usman, 2009, *Hukum Perwakafan di Indonesia*, Sinar Grafika, Jakarta, p. 132.

⁴ Gianfranco Poggi, 1992, *The Development of the Modern State Sociological Introduction*, Stanford University Press, California p. 126.

In the welfare state, according to Sentanoe Kertonegoro, the two risk groups must receive attention to be overcome. The reason is because the fundamental risk is macro collective and is felt by all or most of society as economic risk. While special risks are risks that are more individual macro, so that the impact is felt by individuals or business units.⁵

Thus, in essence, the welfare state can be described as the influence of human desires that hope to ensure a sense of security, tranquility, and prosperity so as not to fall into misery. This reason can be described as a driving force as well as a goal for humans to always seek various ways to achieve prosperity in their lives. So that when the desire has been guaranteed in the constitution of a country, then the desire must be guaranteed and the state is obliged to realize that desire. In this context, the state is in the stage of being a welfare state.

In the 1945 Constitution, social welfare is the special title of Chapter XIV which contains article 33 on the economic system and article 34 on the state's concern for the weak (poor and neglected children) and the social security system. This means that social welfare is actually a platform for the economic system and social system in Indonesia. So, in fact, Indonesia is a country that adheres to the concept of a "welfare state" with a "participatory welfare state" model which in the social work literature is known as Welfare Pluralism or welfare pluralism.

In the implementation of social welfare, it is necessary to have the widest possible role of the community, including individuals, families, religious organizations, social organizations, non-governmental organizations, professional organizations, business entities, social welfare institutions, as well as foreign social welfare institutions for the purpose of implementing targeted social welfare. , integrated, and sustainable in order to realize the welfare of the people as a command from the preamble of the Constitution, among others, through the management of *waqf*. The problem in this research is management *waqf* according to Law Number 41 of 2004 for the welfare of the people has not been effectively implemented in society.

In accordance with the background of the problem, this research aims to: 1) To find out and analyze the effectiveness of *waqf* management according to Law Number 41 of 2004 for the welfare of the people, 2) To find out the inhibiting factors in *waqf* management, 3) To find solutions to overcome the inhibiting factors in *waqf* management.

2. Research Methods

The approach method used in this research is a sociological juridical approach. In this study, the sociological juridical approach is based on laws and regulations and theories or concepts related to research on the effectiveness of *waqf* management for the welfare of the people in BWI, Jepara district. The data

⁵ Sentanoe Kertonegoro, 1987, *Jaminan Sosial dan Pelaksanaannya di Indonesia*. Cet, II. Mutiara Sumber Widya, Jakarta, p. 7.

sources in this study are primary data sources, data collected and obtained from interviews with the head of BWI, Jepara district. Data collection methods are documentation studies and interviews with the Head of the Indonesian *Waqf* Board (BWI) in Jepara Regency regarding the effectiveness of *waqf* management to prosper the people. The data analysis method used in this research is a qualitative method. The analysis can be carried out in an analytical descriptive manner by explaining the data findings at BWI Jepara regarding the effectiveness of *waqf* management, inhibiting factors and solutions in *waqf* management.

3. Research Results And Discussion

3.1. The Effectiveness of *Waqf* Management According to Law Number 41 of 2004 for the Welfare of the People

The development of *waqf* management in Indonesia which continues to grow in a more elegant and professional manner institutionally, *waqf* is not only in the form of land, mosques, schools and other objects with classical patterns, *waqf* develops into "productive *waqf*" or "cash *waqf*" which has a big impact. in social change and welfare, even though its management in Indonesia must be under the Basic Agrarian Law before Law Number 41 of 2004 concerning *Waqf* was issued. After the enactment of the *waqf* law, the state formally accommodated the needs of the community and the implementation of Islamic law in the form of positive law.

Based on the Black's Law Dictionary, the welfare state theory (Welfare State Theory) states that the welfare state is a nation whose government runs various programs.⁶ The 1945 Constitution of the Republic of Indonesia is a reference for all local government policies towards various regional development sectors including law, economic, social and cultural policies. Based on Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia that "the national economy is carried out". based on economic democracy with the principles of togetherness, fairness, efficiency, sustainability, environment friendly, independent, and by maintaining a balance of progress and national economic unity" and Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "the State shall develop a security system for all people and empower the weak and unable to fulfill human dignity".⁷In this case, one of them is through the management of *waqf* by the government for the welfare of the community. *Waqf* management is one of the important aspects in developing a new *waqf* paradigm in Indonesia. Whereas in the old *waqf* paradigm, so far the emphasis has been on the importance of preservation and immortality of *waqf* objects, in the development of the new *waqf* paradigm, the

⁶Bryan A Garner, 1990, Black's Law Dictionary Seventh Edition, West Group St Paul, Minn, p. 1588.

⁷ Ahmad Ridwan and Widayati, "Implementation Of Village Funds In Implementation Of Development As An Effort To Improve Community Welfare In Kadiwono Village, Bulu District, Rembang Regency", *Jurnal Daulat Hukum*, Vol. 3 Issue 1.

emphasis is on more tangible aspects of utilization without losing the existence of the *waqf* object itself. To improve and develop aspects of its usefulness, of course the very central role is the management system that is applied.⁸

The management of *waqf* has differences with the management of zakat or alms in general. The *waqf* manager is prioritized to keep the *waqf* property intact but developed in order to provide maximum results to the mauquf alaih. While the management of zakat, amil can distribute all zakat assets collected to mustahiq. Therefore, the form and management of *waqf* management is different from zakat.⁹ Ideologically *waqf* is something that believes in the existence of God by teaching awareness to realize social justice, by placing the issue of property must contain social values.¹⁰

Waqf must be developed optimally with productive professional management to achieve tangible results in the lives of many people. So that *waqf* does not stop being the wealth of Muslims who "stagnate" with all its complicated problems. However, the management of *waqf* in Indonesia for the welfare of the people has not been implemented properly. This is because in some areas there is no Indonesian *Waqf* Board (BWI). The establishment of BWI in every region in Indonesia is a necessity, if BWI in every region in Indonesia later has been formed, then synergy between *waqf* institutions can be created so that *waqf* governance can be implemented optimally because of the strong synergy between *nâzhir*, the Ministry of Religion, BWI, wakif, and other *waqf* enforcement officers, such as: *Waqf* Pledge Deed Officials (PPAIW), can also cooperate with each other so that *waqf* management can run optimally. As an authorized agency or institution with greater influence, it is BWI that has an important role in *waqf* in Indonesia, the institution must have a role and take a large part in the pattern of *waqf*. These institutions have a central role in *waqf* enforcement officers such as: *nâzhir*, wakif and other officials. BWI can take steps such as: fostering, providing training, understanding of *nâzhir* or wakif and assisting all forms of financing needed by *nâzhir* in managing assets to support management and then BWI must supervise all forms of management activities that occur. can also cooperate with each other so that *waqf* management can run optimally. As an authorized agency or institution with greater influence, it is BWI that has an important role in *waqf* in Indonesia, the institution must have a role and take a large part in the pattern of *waqf*. These institutions have a central role in *waqf* enforcement officers such as: *nâzhir*, wakif and other officials. BWI can take steps such as: fostering, providing training, understanding of *nâzhir* or wakif and assisting all forms of financing needed by *nâzhir* in managing assets to support management and then BWI must supervise all forms of management

⁸ Paradigma Baru Wakaf di Indonesia, 2017, Directorate of Empowerment Waqf of the Directorate General of BIMAS Islam, Ministry of Religion of the Republic of Indonesia in 2017. h. 105

⁹ Rahmat Dahlan, 2016, "Analisis Kelembagaan Badan Wakaf Indonesia", *Esensi: Jurnal Bisnis dan Manajemen*, Vol. 6, No. 1, p. 116.

¹⁰ Sumarlan, 2018, "Analisis Implementasi Undang-Undang Nomor 41 Tahun 2004 Terhadap Legalitas Tanah Wakaf (Studi Di Kantor Kementerian Agama Kota Salatiga)", *Jurnal Daulat Hukum*, Vol. 1 No.1

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Regarding *Nazhir's* obligations and rights, which are more clarified, including the sanctions given if there are violations in the implementation of these tasks. In Article 42 of Law Number 41 of 2004 concerning *Waqf* it is explained that *Nazhir* is obliged to manage and develop *waqf* property in accordance with its purpose, function, and designation, and in the next article it is emphasized that the management must be in accordance with sharia provisions and be carried out productively, even If a guarantor institution is needed, it is also permitted as long as the guarantor institution is also sharia-based. In addition, *Nazhir* must also administer, supervise and protect *waqf* assets, and report the implementation of his duties to BWI.

For his duties, *Nazhir* can receive compensation as his right, as stated in Article 12 of the *Waqf* Law, that "*Nazhir* can receive a reward from the net proceeds for the management and development of *waqf* assets, the amount of which does not exceed 10% (ten percent)".

Based on the results of interviews with informants, it was found that most *nazhir* who are tasked with maintaining and maintaining *waqf* assets only have a position as volunteers, meaning that for these activities *nazhir* does not receive wages that are given regularly as a form of compensation for his obligations. Field data also shows that there is no provision that regulates the minimum working area limit for his duties as a *nazhir*, meaning that a *nazhir* can have the duties and responsibilities of managing *waqf* land in several *waqf* locations. So it gives the impression that *Nazhir* is unlikely to carry out his big task of managing

waqf land optimally if he has several *waqf* objects that must be managed productively.

Based on an interview with the head of the Indonesian *Waqf* Board in Jepara district, he stated that: The management of *waqf* in Indonesia is currently more specific in Jepara district that has not been able to realize the welfare of the people, this is due to the lack of socialization and training, counseling and assistance to improve the quality and professionalism of nazhir human resources and the community in understanding good and correct productive *waqf* management in order to help present welfare in the midst of society through *waqf*.

In this case, the effectiveness of *waqf* management for the welfare of the people is based on Nazhir on duty. In this case the management of *Waqf* according to Law Number 41 of 2004 in order to realize the welfare of the people has not been effective because there is still low knowledge of the administration of *waqf* property because nazhir and the community do not understand *waqf* regulations. Even religious leaders who are *waqf* managers also do not understand the provisions of *waqf* as regulated in Law Number 41 of 2004 concerning *waqf*.

Whereas in the management of productive *waqf*, of course, a competent nahir is needed so that the *waqf* can be managed properly, apart from being competent in terms of the ability to manage and develop *waqf*, a nahir must understand the law that covers *waqf*, namely Law Number 41 of 2004 concerning *waqf*. . Which in the law has explained about *waqf* in general, the duties of nahir and also the rights obtained by nahir.

3.2. Inhibiting Factors In *Waqf* Management In Order To Realize The Welfare Of The People

- Obstacles in terms of nazhir, namely: In *waqf* one very important element is human resources or nazhir who have not been maximized in managing *waqf*.
- Obstacles in terms of policies and bureaucracy, namely: The government does not socialize the Law no. 41 of 2014 and PP No. 42 of 2006, especially the importance of productive *waqf* management to *waqf* institutions and the community, not all nazhir are people who understand *waqf* procedures,
- Obstacles in terms of public awareness, namely: Low public awareness to carry out *waqf* management activities. Low public trust in *waqf* institutions.

3.3. Solutions in Overcoming Inhibiting Factors in *Waqf* Management in Order to Realize People's Welfare

The management of *waqf* institutions is the most crucial part in understanding the issue of *waqf*. *Waqf* management is related to nazhir as *waqf* manager, *waqf* management system, and accountability. The results of research conducted by the Indonesian *Waqf* Board in Jepara Regency, showed that most of the *waqf* institutions were managed by individuals and the rest were managed by nâzhir organizations and legal entities. Compared to individual nazhir *waqf*, in

various aspects, it was found that the management of *waqf* based on organizations and legal entities in general is more likely to be pursued towards the development of *waqf*. This is due to the fact that the majority of *waqf* managers who incidentally are individual nazhir do not receive compensation. Besides that,¹¹

The solutions in overcoming the inhibiting factors in *waqf* management in realizing the welfare of the people are as follows: Synergy with related agencies, socialization of laws and regulations and the new paradigm of *waqf*, improvement of the quality of nazhir and *waqf* institutions.

This was also expressed by the Head of the Indonesian *Waqf* Agency in Jepara Regency that:¹² Not yet optimally understand, the role and synergy of technical officials in the Ministry of Religion with related parties to the central government's efforts to empower productive *waqf*, technical officials are more focused on linear handling than marketing strategic ideas in developing *waqf* that are more socially minded.

The presence of Law Number 41 of 2004 concerning *Waqf*, can actually provide quite bright hope in efforts to save and empower and develop *waqf* for the welfare of society in general. However, the socialization and implementation so far have not looked encouraging. Perhaps this *waqf* workshop is one form of socialization and efforts to implement the law, as well as efforts to develop it optimally.

Nadzir as one of the influential parties in the field of management and development, must provide many ways or methods so that the *waqf* is not neglected and can be utilized, as is his duty to manage and develop the *waqf* property in accordance with its purpose, function and designation, meaning that an effort must professional, both in management and management.

Compared to zakat and alms in general, *waqf* has several advantages, including:¹³ Providing continuous rewards to the payer, Is a concrete manifestation of the independence of the Islamic community in creating prosperity, One way to preserve the principal property from destruction, Making the benefits of *waqf* property can be felt by future generations, and Beneficial for people who have the right to meet their needs.

The 20th century can be said to be the century of the welfare state, because many countries are starting to pay attention to the regulation of the welfare of their people. This can be seen from the government's intervention in various aspects of people's lives, which include aspects of economic development, financial guarantees, access to telecommunications and banking.¹⁴

¹¹Interviews conducted with the Head of the Indonesian Waqf Board in Jepara Regency

¹²Interviews conducted with the Head of the Indonesian Waqf Board in Jepara Regency

¹³ Ekawaty, Marlina dan Anggi Wahyu Muda, 2015, "Wakaf Uang: Tingkat Pemahaman Masyarakat & Faktor Penentunya (Studi Masyarakat Muslim Kota Surabaya, Indonesia)", *Jurnal Iqtishoduna* Vol. 11, No. 2,, p. 2.

¹⁴ Lawrence M. Friedman, *Legal Culture and the Welfare State*, in Gunther Teubner, *Dilemma of Law in the Welfare State*, (New York, Walter de Gruyter, 1986), p. 12. See Djauhari, 2008, *Politik Hukum Negara Kesejahteraan Indonesia, Studi Tentang Kebijakan Regulasi dan Instutusionalisasi*

This series of development efforts contains development activities that take place without stopping, by increasing the level of community welfare from generation to generation. The implementation of these efforts is carried out in order to meet the needs of the present without compromising the ability of future generations to meet their needs. The National Long-Term Development 2005-2025 is a continuation of previous developments to achieve development goals as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, in the next 20 years, it is very important and urgent for the Indonesian people to carry out restructuring of various steps, including in the field of natural resource management, human resources,¹⁵

The government has the authority to prosper the community through community services to create the welfare of the people. Public service as a manifestation of the function of the State apparatus as a public servant, this service is intended to improve the welfare of the community (citizens) of a welfare state, namely as a service provider (serving) the needs of people or society. Therefore, the state is obliged to take part in the welfare of the people for their survival.¹⁶

Law enforcers, and the public are influential in determining the effectiveness of a law. With the existence of laws and law enforcers who have supported law enforcement, it is hoped that the law or its rules can run well. However, as previously explained, if Nazhir, in this case as a law enforcer, has not been able to understand the legal basis of Law Number 41 of 2004 concerning *waqf*, then the management of *waqf* has not been effective for the welfare of the people. In addition, the lack of public awareness of *waqf* and its transparent management can also affect the effectiveness of *waqf* management.

4. Conclusion

The effectiveness of *waqf* management for the welfare of the people is based on Nazhir on duty. The management of *waqf* by Nazhir has not been effective because of the lack of knowledge about the administration of *waqf* property because Nazhir and the public do not understand the regulations of *waqf*.

The inhibiting factors faced in *waqf* management are: 1) generally nazhir is not optimal in managing *waqf*, 2) the government does not socialize Law no. 41 of 2004 and PP No. 42 of 2006, 3) low public awareness to carry out transparent *waqf* management activities, 4) non-compliance with applicable policies, and the lack of involvement of local leaders/figures by the government.

The solution in overcoming the inhibiting factors in *waqf* management is synergies with related agencies in the form of government efforts to regulate

Gagasan Kesejahteraan Ekonomi Masyarakat Nelayan di Jawa Tengah, Unissula Press, Semarang, p. 40.

¹⁵ Sri Kusriyah, 2021, "Spatial Synchronization and Territorial Planning Policies between Regions and National Spatial Planning", *Jurnal Daulat Hukum*, Volume 4 Issue 2, p.2

¹⁶ Astuti, Budi, 2019, "Pelaksanaan Tugas Dan Fungsi Pemerintah Dalam Usaha Kesejahteraan Sosial Anak", *Jurnal Hukum Unissula*, Vol 35 No.1 p. 21.

regulations related to these problems which is carried out by optimally empowering religious institutions to improve community welfare, socialization of legislation and new paradigms of *waqf*, and quality improvement. nazhir and *waqf* institutions.

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