

## Reconstruction of the Indonesia's wakaf institution as an independent legal agency to optimize the management of assets of wakaf as an effort to make a just and prosperous state

Faisal<sup>1</sup>, Muhibbin<sup>2</sup>, Sri Kusriyah<sup>3</sup>, Muhammad Ngazis<sup>4</sup>

<sup>1</sup> Doctorate Student of Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

<sup>2, 3, 4</sup> Faculty of Law Sultan Agung Islamic University Semarang, Indonesia

### Abstract

The existence of waqf as a form of worship of wealth (wealth) that can contribute to economic activity is one of many ways to improve the welfare of society and reduce poverty however, the existing laws and regulations do not specify the existence of an independent waqf institution as a separate legal entity. The dependence of the waqf institution will certainly have negative implications for the practice of waqf as its action in organizing the waqf is not optimal. The focus of this research study is Why Waqf Institutions in Indonesia are not formed as Independent Legal Entities as an effort to create a Just and Prosperous State and How to Construct a Waqf Institution as an Independent Legal Entity to Create a Just and Prosperous State which is studied using the constructivism paradigm with an empirical research approach or sociological starting from primary or basic data, namely data obtained from the field which is carried out through observation, interviews, or questionnaires.

Based on the results of the research, the position and function of *Nazhir*, in reality, has not shown what is meant in the meaning of *Nazhir* itself. This is because the rules related to *Nazhir*, both regarding the position, role, and function have not been clearly and concretely regulated. The problem faced by waqf institutions, including BWI at this time is the inability to move dynamically, because all activities of the existing waqf institutions cannot run according to the rules of the provisions of the waqf itself, aside from the lack of clarity in regulations, the waqf institution cannot be separated from the government's shadow. existing waqf institutions as regulated in Law no. 41 of 2004, does not specifically explain the connotation of the institution attached to the waqf itself which includes wakif, *Nazhir*, both individuals, organizations, and legal entities. So that the urgency of reconstruction to reconstruct the Waqf Institution, needs to be done by making it truly an independent legal entity.

**Keywords:** reconstruction, waqf management, prosperous nation

### Introduction

So far, the perspective that has emerged in the thinking of the *Nazhirs* that managing waqf assets is limited to managing mosques, prayer rooms, and burial grounds, is not denied by an individual, or organizational *Nazhir*, as it has been like that for a long time, therefore, it can be said that the management of the land is not effective <sup>[1]</sup>.

Managing waqf assets, contrary to many, can be used for many things such as educational institution, Islamic boarding school, self-service, business entity, share waqf, cash waqf or cash waqf, plantation waqf, and others so that it becomes productive waqf, and of course, it is not as simple as managing the waqf assets to be used for a mosque, musholla, or burial ground. Because managing productive waqf assets is very necessary for *Nazhir* who has managerial abilities, competence, professionalism, and has special qualifications (if needed, a recognition in the form of expertise certification) in which must be regulated as an independent legal entity.

The existence of *Nazhir* as an independent legal entity can certainly be implemented if a separate legal entity is born in the waqf institution/waqf body.

The idea of establishing an independent legal entity for a waqf institution in this study is not like an ordinary

institution, but a waqf institution that has a separate legal entity or is recognized as a separate legal subject. Because the position of waqf has more special/special characteristics and characteristics than foundations or other legal entity institutions, where the institution/*nazhir* waqf as an institution to manage waqf assets has provisions of *fiqh*/Islamic law inherent in it, so the provisions of Islamic law/*fiqh* in waqf institutions must refer to / comply with the foundations' laws, one of which is Article 26 Paragraph 2 of the Law on Foundations, which states that "Foundations' assets can be sourced from waqf", and Article 15 paragraph 3 of the Foundation Law states, " of waqf ", the word " waqf " can be added after the word " foundation " .

The use of the word waqf at the end of the word foundation certainly has the connotation of a single sentence which is interpreted as a separate legal entity, but in reality, the foundations and waqf have their own respective (separate) statutory provisions. Therefore, the construction of an independent waqf/*nazhir* waqf institution is very important to formulate, in order to provide legal certainty to the waqf / *nazhir* waqf institution having the authority and responsibility independently in managing waqf assets. Because independent waqf institutions are not just the handover or transfer of waqf assets from wakif to *Nazhir*, but there is full responsibility for waqf/*Nazhir* institutions to maintain, manage, empower and distribute continuously for the benefit of the Muslim community and, to all.

<sup>1</sup> Wulandari, Shinta & Effendi, Jaenal & Saptono, Imam. (2019). Pemilihan *Nazhir* Dalam Optimalisasi Pengelolaan Wakaf Uang. Jurnal Aplikasi Bisnis dan Manajemen. 5. 10.17358/jabm.5.2.295.ss

The practice of waqf that occurs in people's lives has not been fully organized and efficient so that in various cases the assets of waqf are not properly maintained, abandoned, or turned into the hands of third parties by violating the law. Based on data from the waqf information system <sup>[2]</sup> (siwak.kemenag.go.id) of the Directorate of Zakat and Waqf Empowerment, the Ministry of Religion of the Republic of Indonesia, that the donated land in Indonesia reaches 386,822 land parcels, with an area of 51,854, 55 hectares (518,545,500 m<sup>2</sup>), which are already Certified fields are 234,999 with an area of 19,783.23 hectares (197,832,300 m<sup>2</sup>), while those that have not been certified are 151,823 fields with an area of 32,071.33 hectares (320,713,300 m<sup>2</sup>). Also, based on data from the Indonesian Waqf Board, the land parcels of waqf that have been certified in Indonesia are 134,237 plots, with an area of 111,481,173 m<sup>2</sup>, with an average certified area of 1,063.53 m<sup>2</sup>, with details in Aceh 5,357 plots, DKI Jakarta 3,707 Plots, and East Java 29. 395 Sector.

This condition certainly raises a question regarding the effectiveness of the Indonesian Waqf Board as an agency to develop and promote waqf in Indonesia. Where the duties and authorities of BWI are based on Article 49 paragraph 1 of Law no. 41 of 2004, as well as regarding BWI work procedures through BWI Regulation No. 1 of 2007 in general, the activities carried out should be normative in nature with a scope in the administrative aspect, not having broad authority in determining policies regarding the direction of development and advancing waqf comprehensively.

In Indonesia, *Nazhir's* duties are regulated in Article 7 PP No. 20 of 1977; Article 13 paragraphs 1, 2, & 3 PP No. 42 of 2006; PP No. 25 of 2018; Permenag No. 4 of 2009; Minister of Agrarian & Spatial Planning / Head of the National Land Agency No. 2 of 2017; Director-General of Islamic Community Decision No. Dj.II / 420 of 2009; Director-General of Islamic Community Decision No. 800 of 2014; Article 11 of RI Law No. 41 of 2004; BWI Regulation No. 1 of 2007; BWI Regulation No. 1 of 2008; Indonesian Waqf Board Regulation No. 3 of 2008; Indonesian Waqf Board Regulation No. 1 of 2009; Indonesian Waqf Board Regulation No. 2 of 2009; Indonesian Waqf Board Regulation No. 1 of 2010; Indonesian Waqf Board Regulation No. 2 of 2010; Indonesian Waqf Board Regulation No. 4 of 2010; Indonesian Waqf Board Regulation No. 2 of 2012.

Overall, there is no specific and comprehensive explanation regarding *Nazhir's* authority in managing waqf. Even in taking policies, *Nazhir* must still coordinate with BWI and the Minister of Religion. So that the independence of the waqf institution/*nazhir* of waqf does not have absolute power in determining the direction of empowerment and development of waqf.

#### **This problem is what urges the author to study it further in a research with the following issues**

1. Why the Waqf Institution in Indonesia is isn't yet established as an independent legal entity in an effort to create a Just and Prosperous Indonesian State?
2. How to Reconstruct a Waqf Institution as an Independent Legal Entity to Create a Just and

<sup>2</sup> Siwak. (2020). Land Donated as Waqf in Indonesia, taken from siwak.kemenag.go.id on August 2020.

#### **Prosperous Indonesian State?**

#### **Method of Research**

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge <sup>[3]</sup>. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach method used in this research is *Empirical-Juridical* <sup>[4]</sup>, which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

#### **As for the source of research used in this study are**

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data <sup>[5]</sup>. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

#### **Research Result and Discussion**

#### **Reason Why the Waqf Institution in Indonesia isn't yet established as an independent legal entity in an effort to create a Just and Prosperous Indonesian State**

Broadly speaking, legal entities are closely related to the rights and obligations of the legal subjects (companies, foundations, institutions, institutions) to be able to take legal actions with the aim of meeting the needs of the bearers of rights and obligations. Establishing a legal entity as a legal subject, because a legal entity can be said to be an institution that has an independent position, holds rights and obligations, and has the ability to take action before the law. So that the legal implication of being independent or of a legal entity is that the existence of a legal entity is always independent so that it does not depend on the will of the founder, or the organ, but is determined by the law itself.

<sup>3</sup> Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

<sup>4</sup> Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.

<sup>5</sup> L. Moleong, (2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

Based on the fictitious theory presented by Von Savigny<sup>[6]</sup>, legal entities are purely artificial or fictitious as a result of state action within the framework of rights and obligations, so that they cannot be subject to civil and criminal responsibility. Therefore, a legal entity is fiction, but people can still assume it as a legal subject who can carry out legal actions like humans.

Meanwhile, regarding legal entities according to the *propriete collective theory* presented by Rudolf von Jhering<sup>[7]</sup>, argues that rights and obligations are only owned by human associations, so that legal entities are neither an abstraction nor an organism, so the rights and obligations and assets of legal entities belong to members. Collectively (collective) whose wealth is tied based on a purpose.

It is different from a legal entity in the organ theory put forward by Otto Van Gierke<sup>[8]</sup>, a legal entity is neither abstract (fiction) nor property (right) that has no subject, but a legal entity is a real organism that actually manifests itself in legal relations who can form their own will with the intermediary tools at their disposals such as the board and its members.

Meanwhile, according to the *juridische realiteitsleeretheorie* (juridical theory of reality) by Meijers<sup>[9]</sup>, a legal entity is something that is real (real) and concrete but abstract (cannot be touched) is as real as humans, but its similarities are only limited in the field of law. So in general, based on various theories put forward by experts, it can be concluded based on Article 1653 of the Civil Code that the Indonesian Waqf Board (BWI) is a legal entity established for a specific purpose that does not conflict with law and morals. The same as corporations (limited liability companies and cooperatives) and foundations.

If seen from the provisions of Law no. 41 of 2004, PP. 42 of 2006, as well as the Indonesian Waqf Board Regulation No. 1 of 2007, the regulation does not explicitly state that the Indonesian Waqf Board (BWI) is an independent legal entity, including institutions under BWI's supervision such as individual waqf institutions, organizations and legal entities. This is because the waqf legislation does not have a comprehensive explanation in the context of the independence of the waqf institution as is the law on foundations and organizations.

The absence of a comprehensive explanation means that the waqf legislation is often attached to other laws as the waqf institution is established by a foundation or organization.

The Obscurity of the status of waqf institutions mentioned above can be seen in Article 1 paragraph (7) of Law no. 41 of 2004 where the Indonesian Waqf Board is an independent institution to develop waqf in Indonesia. Article 1 paragraph (11) PP No. 42 of 2006 that the Indonesian Waqf Board, hereinafter abbreviated as BWI, is an independent institution in carrying out its duties to develop waqf in Indonesia. As well as Article 2 paragraph (1) BWI Regulation No. 1 of 2007 that BWI is an independent institution in carrying out its duties.

Furthermore, the management of waqf assets can be carried

out in a waqf institution based on Article 7 of Law no. 41 of 2004 which consists of wakif individuals, organizations, and legal entities.

Therefore, the position of BWI which does not have a designation as a legal entity let alone as an independent legal entity is certainly a problem in carrying out its duties and authorities stipulated in Article 49 paragraph (1) of Law No. 41 of 2004 which states that the Indonesian Waqf Board has duties and authorities, are to:

- a. provide guidance to *Nazhir* in managing and developing waqf assets;
- b. managing and developing waqf assets on a national and international scale;
- c. give approval and/or permit for changes in the allocation and status of waqf assets;
- d. dismiss and replace *Nazhir*;
- e. give approval for the exchange of waqf assets;
- f. Provide advice and considerations to the Government in formulating policies in the field of donations.

The List above shows that the theory of legal entities as legal subjects that have rights and obligations to act before the law is certainly not fulfilled in the Indonesian Waqf Board.

The limitation of BWI as a legal entity is only in the provision of having obligations as stated in Article 49 paragraph (1) and Article 61 paragraph (1) & (2) Law No. 41 of 2004.

In the view of Muhammad Arifin Gultom<sup>[10]</sup>, BWI has a very important position in the development of waqf in Indonesia, especially when it is related to its broad duties and authority that it has the duty and authority to foster, stop, and replace *nadzir*, manage and develop waqf assets on a scale nationally and internationally, giving approval for the exchange of waqf objects. BWI is also authorized to provide advice and considerations to the Government in formulating policies in the field of waqf funds. The implementation of these duties and authorities requires human resources who understand deeply about various aspects related to waqf, both from the aspects of legislation and sharia aspects, and are able to professionally carry out these duties and authorities. With this duty and authority, BWI actually contributes greatly to the management and development of waqf. This contribution has not been maximally carried out by BWI so it is necessary to hold a refresher so that BWI can further increase its contribution.

Even though in Article 47 paragraph (1) Law no. 41 of 2004 related to the formation of the Indonesian Waqf Board (BWI), it was stated that in order to advance and develop national waqf, the Indonesian Waqf Board was formed. One of the objectives of the need to establish an Indonesian Waqf Board is to advance and develop national waqf. In carrying out its duties, the Indonesian Waqf Board (BWI) is independent.

However, the independence of BWI at this point can be concluded that it only acts as an administrator in granting permits and management, and not comprehensively in implementing Article 49 paragraph (1) of Law no. 41 of 2004, because BWI has limited authority and does not have broad powers in carrying out legal actions. Therefore,

<sup>6</sup> F.C. von Savigny, in Latipulhayat, Atip. (2015). Friedrich Karl von Savigny. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*. 2. 197-208. 10.22304/pjih.v2n1.a12.

<sup>7</sup> Rudolf von Jhering. (1999). *Law as A Means to an End*, The Lawbook Exchange, New Jersey, p.96.

<sup>8</sup> Otto Van Gierke, in Mulhadi. (2017). *Hukum Perusahaan, Bentuk-Bentuk Badan Usaha di Indonesia*, Jakarta: Rajawali Pers. P.90.

<sup>9</sup> Meijers, E. M. (1974). *De regeling der rechtspersonen in het Nederlandse recht*; Leyden, Leiden.

<sup>10</sup> Interview with Muhammad Arifin Gultom. (2020). in his Academic Expertise on Sharia Economic Law Expert at Muhammadiyah University of North Sumatra on July 2020.

Fetrimen Zubair <sup>[11]</sup> stated that:

"The Indonesian Waqf Board currently has the same position as other institutions under the coordination of the Ministry of Religion of the Republic of Indonesia, because the independence of BWI's actions is not absolute (full), where all activities or activities carried out by BWI at this time must have a permit from the Ministry of Religion/Directorate of Zakat and Waqf Empowerment, Ministry of Religion of the Republic of Indonesia. So that BWI has not been maximal in conducting supervision, because the dominance in conducting supervision is still at the Directorate of Zakat and Waqf Empowerment, Ministry of Religion of the Republic of Indonesia".

This means that the problematic BWI in carrying out its role as stated in Article 47 paragraph (1) of Law no. 41 of 2004, stated in the context of advancing and developing national waqf, the Indonesian Waqf Board was formed, is not in accordance with its implementation, because BWI in carrying out its functions and responsibilities, especially as a legal entity that has rights and obligations cannot run linearly, because BWI is still bound or do not have independence, because they have to expect financial assistance from the state (Article 59 of Law No. 41 of 2004) and coordinate and ask for approval from the Minister of Religion/Directorate of Waqf Empowerment and Zakat Ministry of Religion of the Republic of Indonesia (Article 13; 28; 30; 37; 38; 41; 50; 57; 61; 63; 65; 68 Law No. 41 of 2004). So until this article was made, it has become one of the obstacles for BWI and waqf institutions in the development of waqf in Indonesia.

Based on Muhammad Arifin's <sup>[12]</sup> view that: "The current problem BWI is facing is the inability to move dynamically, because all BWI activities are under the shadow of the Minister of Religion / Directorate of Zakat Empowerment and Endowments, Ministry of Religion of the Republic of Indonesia. Therefore, BWI as an independent institution must be free from the ties of various interests, especially the ministry of religion". Therefore, all BWI activities are limited to giving / submitting reports to the Minister of Religion, while BWI's responsibility lies with the BWI supervisory agency and the Muslim community.

BWI's inability to carry out its duties independently is of course, inseparable from the financing factor, because BWI's funding sources are still below the allocation of the Ministry of Religion of the Republic of Indonesia, in accordance with Article 59 of Law no. 41 of 2004 which states that "In the context of carrying out the duties of the Indonesian Waqf Board, the Government is obliged to help with operational costs". Of course, the allocation of funds for operational activities originating from the state through the Ministry of Religion of the Republic of Indonesia is in contradiction with Article 47 paragraph (2) No. 41 of 2004 which states that BWI is an independent institution.

Then according to Saifullah <sup>[13]</sup>: "BWI's duties cannot be carried out optimally, even though BWI is an independent institution, its fate depends on the existence of the budget of the Ministry of Religion. Even the funds allocated for BWI

are not comparable to operational activities carried out by BWI. So the effectiveness of an institution whose funding is still dependent on the government, will not be able to run effectively and independently in carrying out its duties and obligations".

Therefore, the determination of BWI as an independent legal entity at this time cannot be implemented absolutely, this is because the community has not been able to accept BWI as a legal entity, because when BWI becomes a legal entity, the elements that absolutely must exist as a legal entity BWI must really have, such as having clear objectives, segregation of assets, owning organs, and others. Meanwhile in Indonesia, many of the management of waqf institutions are still managed by individuals. However, in order to make BWI a truly independent legal entity, then the regulation must follow the concept of the church as a legal entity called "*Kerkgenootschappen*" (church association) where the church association itself is a legal entity.

Based on the above opinion, it can be concluded that the determination of BWI as a legal entity must make BWI without having any ties or links with other parties such as funding assistance from the state and the ministry of religion. Because the concept of a legal entity basically has 3 conditions, namely having a goal to be achieved, separation of wealth, the existence of an organ. Where the different legal entity organs, according to the chosen legal entity, are companies (PT and cooperatives) and foundations.

### **The Reconstruction of a Waqf Institution as an Independent Legal Entity to Create a Just and Prosperous Indonesian State**

*Nazhir* waqf has a central role in managing and developing waqf property, so that in view of the Hanafiah scholars, it is called "Qayyim al-Waqf" or Mutawalli, which is "the person who regulates and supervises the affairs of waqf". So the word *Nazhir* is also called al-nazhr which means al-hafiz (guard), al-musyrif (manager), al-qayyim (director), al-mutawalli (administrator), or al-mudir (director). So *Nazhir* waqf can be said as a person or legal entity that holds the mandate to maintain and manage waqf property in accordance with the form and purpose of the waqf itself <sup>[14]</sup>.

Therefore, the reconstruction of waqf institutions in Indonesia is inseparable from the initial construction of waqf institutions which are regulated in the currently implemented waqf laws and regulations, such as Law no. 41 of 2004; PP No. 42 of 2006; Permenag No. 4 of 2009; Permenag RI No. 73 of 2013; BWI Regulation No. 1 of 2007; BWI Regulation No. 1 of 2008; BWI Regulation No. 3 of 2008; BWI Regulation No. 1 of 2009; BWI Regulation No. 2 of 2009; BWI Regulation No. 1 of 2010; BWI Regulation No. 2 of 2010; BWI Regulation No. 4 of 2010; BWI Regulation No. 2 of 2012; UU no. 17 of 2013 concerning Mass Organization, Law no. 16 of 2001 concerning Foundations, Law no. 17 of 2012 concerning Cooperatives, Law no. 40 of 2007 concerning Limited Liability Companies. As for the reconstruction of waqf institutions in Indonesia, especially individual waqf institutions, organizations, and legal entities as independent legal entities, this can be done by:

<sup>11</sup> Interview with Fetrimen Zubair. (2020). in His Position as the Deputy Secretary of the Board of Waqf and Department of Muhammadiyah Central Executive on August 2020.

<sup>12</sup> Op. Cit.

<sup>13</sup> Interview with Zafrullah Salim. (2020). Ex-Indonesian Waqf Board on 2014-2017 period and the drafting team for Law No. 41 of 2004 concerning Waqf.

<sup>14</sup> Haneef, Mohamed & Kamil, Nazrol & Ayuniyyah, Qurroh. (2017). Development of Waqf In Indonesia: The Swot Analysis Of Indonesia Waqf Board (BWI). *Al-Infaq: Jurnal Ekonomi Islam*. 8. 10.32507/ajei.v8i2.16.

First, the reconstruction of individual waqf institutions as independent legal entities is carried out through:

- a. Making new laws, or adding or improving articles by article in Law no. 41 of 2004, regarding individual waqf institutions, along with a specific and comprehensive explanation;
- b. Determine the legal and statutory status regarding individual waqf institutions to become independent legal entities with the task and authority in managing individual waqf carried out independently (independently);
- c. The independence of an individual waqf institution as a legal entity must remain an integral part of the Indonesian Waqf Board. In the sense that individual waqf institutions within the BWI organizational structure serve as separate departments/sections in addition to other independent waqf institutions (organizational waqf institutions and legal entities). However, in managing waqf assets, individual waqf institutions still have the independence to empower, develop, and distribute the results of individual waqf assets;
- d. The system of supervision, assistance and supervision of individual waqf institutions is the right and obligation of the Indonesian Waqf Board without government interference, in this case the Ministry of Religion of the Republic of Indonesia which has been in effect through Law No. 41 of 2004;
- e. Establish legal and statutory limitations regarding the duties and authorities of individual waqf management by individual waqf institutions in empowering, developing, and distributing the proceeds of waqf assets;
- f. Managers who are carried out by individual waqf institutions must have the rights and authorities independently as long as they do not conflict with the laws and regulations that have been established regarding the formation of new laws regarding individual waqf institutions, or amendments and additions to Law No. 41 of 2004 concerning articles relating to individual waqf institutions;
- g. The occurrence of irregularities, irregularities, and violations of laws and regulations by individual waqf institutions in managing, empowering, developing and distributing waqf results can be carried out by the Indonesian Waqf Board in accordance with BWI's laws and regulations as an independent legal entity that is free from interference any party including the government (Ministry of Religion of the Republic of Indonesia).

Second, the reconstruction of an organizational waqf institution as an independent legal entity is carried out through

- a. Set goals to be achieved by an independent legal entity waqf organization at the time of its establishment. So the use of waqf assets that are managed by an organization in the development, empowerment, and distribution of them is absolutely the authority of the organization's waqf institutions run by independent waqf *nazhirs*. Intervention through Indonesia's Law no. 17 of 2013 concerning mass organizations and other laws and regulations regarding waqf are no longer used as a basis and foundation in the operational activities of

the organization's waqf assets. However, its management must be compiled in the form of the Law on the Waqf Organization for an Independent Legal Entity;

- b. Perform absolute separation of assets between organizational assets and waqf assets. If you pay attention to the definition of waqf related to the separation of waqf assets, however, the problems that arise regarding the separation of wealth from waqf assets managed by an organization often do not have clear boundaries in Law No. 41 of 2004. even together or not separate, because the regulations often use Law no. 17 of 2013 or in terms of assets owned by the organization into a single unit with waqf assets;
- c. Establish organs from waqf institutions with independent legal entities that are structured in a clear and concrete manner where the organs in question are management structures starting from the central to regional levels or organs of local waqf organizations. So that the implementation and supervision are separate from the organizational organs that surround them (such as waqf institutions in Muhammadiyah and Nahdhatul Ulama). However, the organs of the organization's waqf institution are still subject to the laws and regulations of the Indonesian Waqf Board as an independent legal entity;
- d. Arranging and revising the rules and regulations on waqf assets managed by an organization, by making a New Law on Institutional Waqf Organizations with Independent Legal Entities which no longer refers to Law No. 17 of 2013 and Law no. 41 of 2004 and other waqf laws and regulations. Because, specifically in Law no. 41 of 2004, it turns out that there is not a single article that explains, explains, and mentions an independent legal entity waqf organization, but it only describes the *nazhir* of an organization whose duties, powers, and responsibilities does not have independence. Whereas in an independent legal entity the *nazhir* position of the organization should be in the structure of a legal entity waqf organization. However, in its operational activities when managing, developing and distributing waqf assets, the *nazhir* of the organization remains in an independent position;
- e. The determination of an independent legal entity in the organization's waqf institution must remain as one unit and be within the structure of the Indonesian Waqf Board that is independent (independent). Where the organizational waqf institution in the organizational structure of the Indonesian Waqf Board is one of the departments/parts of the waqf institution in addition to other independent waqf institutions (individual waqf institutions and legal entities). As for the management, empowerment, and development of organizational waqf assets, organizational waqf institutions continue to act independently (independently).

Third, the reconstruction of legal entity waqf institutions as independent legal entities is carried out through

- a. Creating an article relating to legal entity waqf institutions, such as legal entity waqf and legal entity *nazhir*. Because the existence of a Legal Entity Waqf Institution will be a place or a forum for optimal management of waqf assets, the first reason is that there is a clear objective to be achieved, there is no

separation of assets because all assets transferred to a legal entity waqf institution are assets that are deposited/given by the wakif to *nazhir* as a waqf legal entity/waqf institutions to be managed, empowered, developed and distributed for religious and social purposes, especially for the Muslim community. Organs in a legal entity waqf institution can be formed in a structured manner, starting from the Management, Supervisor, and Implementer. As for the higher structure, the organs of the legal entity waqf institution remain under the Indonesian Waqf Board which has the organs of the Executive Board and Advisory Council;

- b. The establishment of a legal entity waqf institution must be an independent legal entity that is free from intervention from other statutory regulations (limited liability companies, foundations, cooperatives, and so on), as well as intervention from the government in this case the Indonesian Ministry of Religion. Because the legal entity waqf institution is an independent legal entity, it has its own law that regulates the management of legal entity waqf assets;
- c. The independence of legal entities in legal entity waqf institutions means that there is no intervention nor multiple interpretations in the management of waqf as it has been implemented, namely management of legal entity waqf assets using Law No. 16 of 2001 "Foundation", or Law no. 40 of 2007 "Limited Liability Company", or Law no. 12 of the 1967 Law / Law no. 17 of 2012 "Cooperatives", or Law no. 41 of 2004. Even the intervention of the law on limited liability companies, foundations, cooperatives tends to obstruct and obstruct the *nazhir* of waqf in developing legal entity waqf assets. On the other hand, Law no. 41 of 2004 also adds to the problems in government intervention represented by the Ministry of Religion of the Republic of Indonesia in the management of waqf assets. Because the power and authority possessed by the Ministry of Religion of the Republic of Indonesia is so broad, including in providing / conducting guidance and supervision (Article 13 and Article 63), registration of *Nazhir* must be with the minister (Article 14 paragraph 1), the appointment of sharia financial institutions to receive waqf for movable objects in the form of money must go to the minister (Article 28), the registration of movable waqf assets in the form of money by sharia financial institutions in the name of *nazhir* is carried out to the minister (Article 30), one of which is to administer the registration of waqf assets to the minister (Article 37), announcement of waqf assets one of which has been registered with the community is carried out by the minister (Article 38), changes to the status of waqf assets must obtain written permission from the minister (Article 40 and Article 41 paragraph 2), in carrying out the duties of the Indonesian Waqf Board must pay attention to suggestions and considerations, one of which is from the minister (Article 50), the appointment of the Indonesian Waqf Board by the President is a proposal from the Minister (Article 57), the responsibility for carrying out the duties of the Indonesian Waqf Board must be submitted to the minister (Article 61), the implementation of supervision, the minister can use a public accountant (Article 65), the administration of administrative sanctions for violations of non-registration of waqf

assets is carried out by the minister (Article 68 ). The extent of power and authority possessed by the minister, in this case, the ministry of Religion of The Republic of Indonesia, certainly makes the management of waqf assets by individuals, organizations, and legal entities ineffective because there is no independence for the waqf managers to develop creativity, innovation, and productivity in the management of waqf assets. Even the Indonesian Waqf Board is often interpreted as a waqf body that does not have absolute power in conducting guidance and supervision of waqf institutions in Indonesia so that BWI is only limited to an administrative institution that grants permits for waqf institutions;

- d. To establish legal entity waqf institutions as independent legal entities, whose organizational structure remains within the structure of the Indonesian Waqf Board. However, its management remains the right and responsibility of each legal entity of waqf institution.

### Conclusion

1. The Provisions of The Law no. 41 of 2004, PP. 42 of 2006 and the Indonesian Waqf Board Regulation No. 1 of 2007 explicitly does not contain an article which explains that the Indonesian Waqf Board (BWI) and waqf institutions (individuals, organizations, and legal entities) are absolutely independent waqf institutions. Because the rules and regulations of waqf in Indonesia often overlap, even the government (Ministry of Religion of the Republic of Indonesia) has very large interventions in the management of waqf carried out by the *nazhir* waqf. On the other hand, the context of the independence of waqf institutions is like the law on foundations and organizations, where the waqf law is often attached to other laws when the waqf institution is established and managed as Law No. 16 of 2001 "Foundation", or Law no. 40 of 2007 "Limited Liability Company", or Law no. 12 of the 1967 Law / Law no. 17 of 2012 "Cooperatives".
2. The reconstruction of waqf institutions in Indonesia is inseparable from the initial construction of waqf institutions which are regulated in the currently implemented waqf laws and regulations, such as Law no. 41 of 2004; PP No. 42 of 2006; Permenag No. 4 of 2009; Permenag RI No. 73 of 2013; BWI Regulation No. 1 of 2007; BWI Regulation No. 1 of 2008; BWI Regulation No. 3 of 2008; BWI Regulation No. 1 of 2009; BWI Regulation No. 2 of 2009; BWI Regulation No. 1 of 2010; BWI Regulation No. 2 of 2010; BWI Regulation No. 4 of 2010; BWI Regulation No. 2 of 2012; UU no. 17 of 2013 concerning Mass Organization, Law no. 16 of 2001 concerning Foundations, Law no. 17 of 2012 concerning Cooperatives, and Law no. 40 of 2007 concerning Limited Liability Companies.

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