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Legal Status of Profession Waqf from a Positive legal Perspective in Indonesia

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Abstract: This research paper, "Legal Status of Profession Waqf from a Positive Legal Perspective in Indonesia," explores the emergence of a new form of waqf called profession waqf, where individuals donate their professional skills for public welfare, necessitating clear legal regulations. Building upon previous research, this study aims to establish a legal framework that aligns with Islamic principles and Indonesian law to maximize the potential of profession waqf. Using a normative legal research method, the study reviews primary and secondary legal materials to understand the legal status of profession waqf in Indonesia. The findings aim to bridge the regulatory gap and optimize the societal benefits of profession waqf, particularly in supporting religious activities, education, and health services. Waqf holds great potential to enhance the welfare of Indonesian society and is continuously evolving. The Indonesian Waqf Board (BWI), as the governing body for waqf management in Indonesia, has introduced several contemporary forms of waqf, including profession waqf. Profession waqf involves contributing human knowledge and skills in physical and non-physical domains. This research aims to understand the concept of profession waqf and its subjects in practice in Indonesia. The findings indicate that profession waqf involves endowing one's profession or expertise for the common good of society following applicable legal regulations. The subjects of waqf include the Waqif Profession, who contributes their skills or profession; the nazir, who manages the waqf assets; and the mauquf alaih, the beneficiaries of the waqf, which may be specified directly in the waqf deed or declaration or not specifically mentioned.

Keyword: Waqf, Profession Waqf, Positive Legal in Indonesia.

INTRODUCTION

Highlights the development of waqf practice that connects the profession and the principle of waqf. In Islamic law, waqf is one of the foundations with a social meaning. Although it is not obligatory for everyone, waqf is considered one form of worship with

rewards, one of which is a reward that will not stop even if the waqf has died. This shows that waqf is different from social service.¹ Waqf means holding and not transferring ownership of an asset to give it away. In terms of terminology, waqf is also the act of someone separating a portion of their assets or wealth with the aim of worship and general welfare. Likewise, based on Law Number 41 of 2004 concerning Waqf, waqf is a legal act carried out by the *waqif* by separating or handing over part of his assets to be used forever or for a certain period for the sake of worship or general welfare following the Shari'a.

Waqf is a teaching of the Islamic religion that aims to build prosperity and develop the civilization of the people to be more advanced² In principle, everything that is an aspect of consideration in the waqf process must be considered and implemented appropriately.³ In Islam, the practice of waqf has a very important position, as does zakat and zakat. The practice of waqf must fulfill its pillars. Suppose one of the pillars still needs to be fulfilled. In that case, it can be said that waqf is not valid according to religion or Islamic law, so it is necessary to be careful in managing waqf property and comply with it. Correct procedure according to Islamic law. According to Islamic law, the pillars of waqf include⁴ people who have waqf (*waqif*), blessed property (allow), the purpose of the waqf or who is entitled to receive the proceeds of the waqf (*mauquf alaih*) and the waqf statement from the *waqif* is called Sighat or Waqf Pledge. So, it can be concluded that waqf benefits society by making a very important contribution to economic and social development. The role of waqf includes its function and role in supporting religious activities, education, and health services.

Various types of waqf practices exist in society, ranging from land to al-Quran waqf. Even though there are many types of waqf, there is still the possibility of creating new types of waqf. One of the new types of waqf currently being highlighted is profession waqf. Profession endowments are gifts resulting from a person's work or expertise in the form of non-physical skills or physical skills. The endowment fund provides the membership intending to benefit from the work of the endowment fund for welfare and the public interest.⁵ One example of this profession, waqf, is a doctor who donates his profession in the medical field to a school or Islamic boarding school to serve the health of students, teachers, and people in need. Apart from the medical profession, other professions can also donate their profession, for example, the services of a broker, teacher, or lecturer.⁶

Based on the recognized benefits of professional waqf, it becomes clear that it has significant potential in society as a new form of waqf practice. Currently, profession waqf still refers to what is implemented in Law Number 41 of 2004 concerning waqf. However, the law does not specifically regulate the profession of waqf. Therefore, special regulations are needed to regulate profession waqf in Indonesia to clarify the rules and legal certainty in implementation.

The discussion regarding this research concerns the legal status of profession waqf according to positive law in Indonesia; someone has previously conducted research. Previous research compiled by Halo Islamy and Doni Setiadi with the title Validity Profession Waqf from a Positive Legal Perspective in Indonesia, in this research, focuses on the division of waqf objects between ownership and utilization rights. Apart from that, there

¹ Halo Islamy and Doni Setiadi, Pelacakan Validitas Wakaf Profesi Dalam Perspektif Hukum Positif di Indonesia, Al-'Adl, Vol. 13 No.1, 2020.

² Nur Azizah Latifah, "Analisis Pelaksanaan Wakaf Di Kuwait", ZISWAF; Jurnal Zakat dan Wakaf, Vol. 6, No. 1, (2019), hal. 1.

³ Trisadini P. Usanti, Prawitra Talib, "Dasar Ikhtiyati Akad Pembiayaan Mudharabah di Lingkungan Perbankan Syariah", Yuridika Vol. 31, tidak. 2, (2016), hal. 298.

⁴ M. Daud Ali, Sistem Ekonomi Islam: Zakat dan Wakaf, (Jakarta: Universitas Indonesia, 1988), hal. 84.

⁵ Ahmad Sofyan Mustafa, "Konsep Wakaf Profesi Pada Hukum Positif di Indonesia", Novum: Jurnal Hukum, (2023).

⁶ *Ibid.*

is previous research compiled by Ahmad Sofyan Mustafa and Nurul Hikmah titled The Concept of Profession Waqf in Positive Law in Indonesia. This research focuses on the concept of profession waqf in Indonesia. Based on the legal issues above, this research emphasizes the existence of two problem formulations. The first problem formulation is the validity of profession waqf from a positive legal perspective in Indonesia. This is because, in Indonesia, there are no clear regulations regarding profession waqf. Second, there are differences in the regulations of professions carried out by individuals and legal entities. Starting from the formulation of the problem, interest arose in research to examine more deeply the "Legal Status of profession waqf from a positive legal perspective in Indonesia.

METHOD

Judging from the problem formulation, the type of research used by the author in this research is normative. Normative legal research is a process used to discover legal rules, principles and doctrines that can answer the legal problems faced. Normative legal research is carried out to produce new arguments, theories or concepts as recipes for solving the problems faced (Mahmud Marzuki, 2005). This method focuses on a conceptual approach and statute approach, which involves reviewing primary and secondary legal materials, such as laws, regulations and relevant legal literature. This research examines various regulations related to waqf and professions and existing legal interpretations to understand the legal status of professions waqf from a positive legal perspective in Indonesia.

RESULTS AND DISCUSSION

The Validity of Profession Waqf in the Positive Law in Indonesia

Indonesia has goals as mandated in the Preamble to the 1945 Constitution, one of which is to advance general welfare. One step to achieve this goal is to develop potential in the religious sector, which has economic value. Waqf itself can play a role as one of the strategic steps to improve general welfare. This is done by increasing the role of waqf as a religious institution useful as a means of worship and social services and as a driver of economic development.

Waqf is a form of worship recommended in Islam because of its benefits. It is a pious deed whose rewards will be recovered if other people can use the donated items.⁷ Waqf is different from other worship activities; this can be seen when waqf worship is carried out; there is a transfer from private ownership of the objects donated to ownership of Allah, which is expected to be eternal, providing continuous benefits to the community. Waqf must be managed productively to open up opportunities for profitable strategic sectors, such as creating new jobs and managing public services that lighten the economic burden on the community. Apart from that, waqf is also an Islamic economic instrument that contains various fundamental Islamic values, including benefits (problem), kindness (*ihsān*) and social solidarity (brotherhood).⁸ These values are the special characteristics of waqf instruments.

Waqf must be managed productively to open up opportunities for profitable strategic sectors, such as creating new jobs and managing public services that lighten the economic burden on the community. One of the important factors determining the development of waqf is when the state regulates waqf policy through positive law, namely by issuing waqf legislation. Law Number 41 of 2004 concerning Waqf is the driving force for empowering waqf effectively and productively because it contains a comprehensive understanding and management model that empowers the potential of waqf in a modern way.

⁷ Jubaedah, 2017, Dasar Hukum Wakaf. Tazkiya Jurnal Keislaman, Kemasyarakatan & Kebudayaan, Vol. 18, No. 2, hal. 255–270.

⁸ Firman Muntaqo, 2015, "Problematika Dan Prospek Wakaf Produktif di Indonesia", al-Ahkam, Vol. 25, No. 1, hal. 85.

The development of waqf in Indonesia is mostly for ritual worship needs, such as places of worship. Meanwhile, there are still very few waqfs for community economic empowerment. Based on research conducted by Suhadi, of the 426 respondents, 287 (67.4%) answered that waqf land management was not used for productive businesses. Meanwhile, land managed productively (32.6%) is used for plantations (61.7%), rice fields (9.4%), fish ponds (8.25%), fields (7.7%), and others. -other (5.7%).⁹

In order to gain legal recognition, profession waqf must fulfill the formal requirements set out in positive law. This includes complying with legal waqf formation procedures and making waqf deeds according to standards set by the competent authority. In addition, profession waqf must comply with the principles regulated in Indonesian positive law, such as public benefit, justice, and consistency with constitutional values. Profession waqf must provide maximum benefits for society and comply with the laws and regulations governing the field of waqf and related professions. Courts have an important role in assessing the validity of professional waqfs, ensuring that they meet the requirements set out in positive law. Apart from that, other institutions such as waqf bodies, financial institutions and supervisory institutions can also play a role in ensuring the sustainability of professional waqf.

Protection of the rights of parties involved in professional waqf is also important, including the rights of *waqif*, *mustahiq*, and other parties involved in forming and managing professional waqf funds. Compliance with sharia or Islamic law must also be considered, even though Indonesian positive law is secular. By considering all these aspects, the validity of professional waqf can be evaluated comprehensively by ensuring that the waqf is not only formally valid but also complies with applicable legal principles and provides adequate protection for the rights of the parties involved.

Profession waqf can be classified as movable property by Article 16 paragraph (3) Law Number 41 of 2004, which states that movable objects are classified as assets that cannot be used up through consumption. Apart from that, Article 16 also states that what is obtained from waqf includes money, precious metals, securities, vehicles, intellectual property rights, rental rights and movable objects. Professional waqf can be called movable property waqf because a profession will continuously produce money or other assets from a person's work or expertise. Meanwhile, Article 22 of Government Regulation No. 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning waqf explains that professional waqf is also included in movable property waqf.

Mundzir Qahaf classifies¹⁰ waqf based on the goods purpose, duration and use. Based on their objectives, waqf is divided into three types: social waqf for the public interest; family waqf, which benefits the waqf and their families; and joint waqf, which serves the public and family interests. Based on its duration, waqf consists of perpetual waqf (*Muabbad*), which includes permanent items such as land and buildings, and temporary waqf (*Muaqqat*), involving perishable goods or based on a certain time limit. Based on its use, waqf is divided into direct waqf, where goods are used directly for their purposes, such as mosques or schools, and productive waqf, where goods are used for production activities with the results distributed according to the purpose of the waqf, such as in the agricultural, industrial and trade sectors.

Based on the explanation of various positive laws above, it can be understood that with good management and positive legal support, waqf can become an important instrument in advancing general welfare in Indonesia. Moreover, maximize expediency waqf. Therefore, the existence of professional waqf in Indonesia in various forms, such as professional waqf for doctors who can cure illnesses, professional waqf for teachers or lecturers who can

⁹ Wawan Hermawan, 2014, "Politik Hukum Wakaf di Indonesia," Ta'lim, Vol. 12, No. 2, hal. 159.

¹⁰ Muhyiddin Mas Rida, 2005, Manajemen Wakaf Produktif, Khalifa, Jakarta, hal. 161-162.

educate their students, as well as other professions, is a form of development effort and a way to maximize the value of large benefits to diversity and complexity of community needs.

Differences in the Regulation of Professions Waqf conducted by Individuals and by Legal Entities

Profession waqf, where a person or legal entity donates their skills or profession for the public benefit, is regulated in detail in Indonesian law. This arrangement ensures that all aspects of waqf implementation comply with applicable regulations. Profession waqf is a form of waqf in which individuals or legal entities donate their skills or profession for the public benefit. In Indonesia, the legality of profession waqf is regulated by Law Number 41 of 2004 concerning Waqf and Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004. This law determines the basic principles, subjects, objects and mechanisms of implementation of waqf. The regulation of profession waqf by individuals and legal entities in Indonesia has significant differences in several aspects, which include *nazhir*, registration procedures, document requirements, and management and supervision. Although the main objective of profession waqf remains the same, namely for the public benefit of Sharia, the management methods, requirements and supervision applied differ depending on whether the person conducting the waqf is an individual or a legal entity. The differences between profession waqf carried out by individuals and legal entities in terms of registration are:

1. Waqf by Individuals:

According to Article 6 of Law Number 41 of 2004, the subject of waqf (*waqif*) can be an individual or a legal entity. Individuals who wish to donate their profession must declare their intention and pledge the waqf before the *nazhir* (waqf manager), who is recognized by the Indonesian Waqf Board (BWI), as regulated in Article 17 paragraph (1). This process involves official documentation signed by the *waqif* and *nazhir*. The management of waqf by individuals tends to be simpler and more direct because it only involves one individual, allowing for easier supervision and clearer directions for the use of expertise. *Nazhir* (Waqf Manager): Individuals who wish to donate to their profession must appoint a *Nazhir*. This *nazhir* can be an individual or institution who is entrusted with managing and developing the results of the profession endowments. The procedure for registration in profession waqf is that individuals referred to as *waqifs* must make a waqf pledge before the Waqf Pledge Deed Official (PPAIW). This pledge is then registered with the Indonesian Waqf Board (BWI). For the document requirements, the *waqif* must provide personal documents such as KTP, profession certificate, and letters of approval from related parties if necessary. The management and supervision of profession waqf carried out by individuals usually has a smaller scale, and the management tends to be simpler. BWI supervises to ensure that the waqf is used according to its original purpose. Profession endowments carried out by individuals are often direct and specific.

2. Waqf by Legal Entity:

In profession waqf by legal entities, profession waqf is regulated more complexly. Article 9 of Law Number 41 of 2004 states that legal entities can become *waqif* by following established procedures. The legal entity must obtain formal approval from management or the board of directors and pledge the waqf in the presence of the *nazhir*. Usually, a notarial deed is required to validate this profession endowment, as regulated in Article 17 paragraph (2). *nazhir* (Waqf Manager), a legal entity that provides endowments for its profession, usually has an adequate organizational structure to manage waqf. They can appoint an internal *nazhir* from among the members of the legal entity or collaborate with a profession *nazhir* institution. Registration Procedure: Like individuals, legal entities must make a waqf pledge before PPAIW. However, the administrative process is more complex because it involves legal entity establishment documents, articles of association,

and notarial deeds for document requirements other than documents that prove the existence of a legal entity, such as a deed of establishment and articles of association, a legal entity also needs to include the latest financial reports and proof of legality from the relevant agency. Legal entities usually manage and supervise waqf management more complexly, which requires a more structured management system. Supervision by BWI or other supervisory institutions is also more intensive to ensure accountability and transparency in waqf management.

Both individuals and legal entities must comply with applicable regulations to ensure the legality of their profession endowments. Article 11 of Law Number 41 of 2004 requires every waqf to be registered and reported to BWI, which then carries out regular supervision and audits. *nazhir*, who manages waqf, is also responsible for reporting on the management and utilization of waqf regularly, ensuring transparency and accountability in the use of waqf. The essence of these differences is in scale and complexity; waqf by individuals tends to be simpler and on a smaller scale, while waqf by legal entities involves a larger organizational structure and higher administrative complexity. For documentation and legality, individuals require personal documents and profession approval, while legal entities require establishment documents, articles of association and financial reports. Meanwhile, legal entities' supervision of waqf is usually more intensive than that of individuals, considering the scale and impact, which are more structured and intensive.

According to Hasan Muhammad Rifai, someone who wants to donate his profession must pay attention to the following provisions: (1) the *waqif* must produce the benefits of the work being donated. (2) The work donated must have value according to Sharia. (3) The work donated must be capable of being handed over or carried out. (4) The work being donated must be clear or known. (5) The time for the waqf work is determined if the waqf is temporary. (6) The work that is donated is made into a waqf pledge deed. (7) The work donated is permissible according to Sharia. (8) The *waqif* does not receive compensation for the work he is waqf for. Compliance with regulations is key in implementing profession waqf. All *waqif* must ensure that their activities comply with applicable regulations, including registration and regular reporting to BWI. BWI has the authority to supervise and audit waqf management, ensuring transparency and accountability. By complying with these regulations, both individuals and legal entities can contribute through profession endowments, creating sustainable benefits and positive changes in society.

CONCLUSION

As stated in the Preamble to the 1945 Constitution, Indonesia strives to enhance general welfare. A key strategy to achieve this is tapping into the religious sector's economic potential, particularly through waqf. Waqf, an encouraged form of worship in Islam, entails donating assets for the ongoing benefit of the community. When managed effectively, waqf can generate new employment opportunities and improve public services, alleviating the community's economic burden. The Indonesian government facilitates waqf development through laws such as Law Number 41 of 2004, which aims to empower and modernize its management. However, despite its potential, most waqf in Indonesia is currently utilized for ritualistic purposes rather than for economic empowerment. Proper management and adherence to legal standards are essential to maximizing the benefits of waqf. With effective management, waqf can greatly contribute to Indonesia's general welfare by meeting various community needs through diverse professions and productive waqf initiatives.

Based on the discussion above, the profession of waqf has great potential to improve general welfare in Indonesia under the development goals mandated in the Preamble to the 1945 Constitution. Waqf is useful for worship and social services and can drive economic development through productive management. However, there are significant differences between individuals and legal entities in regulating profession waqf. Profession waqf by

individuals requires a waqf pledge registered with the Indonesian Waqf Board (BWI), with simpler procedures and document requirements involving personal documents such as an Indonesia identity card (KTP) and profession certificates. Management and supervision tend to be simpler and are carried out by BWI.

Meanwhile, profession waqf by legal entities involves more complex procedures because it involves legal entity establishment documents, articles of association, and notarial deeds. Document requirements are also broader, including financial reports and proof of legality from relevant agencies. Management and supervision are more complex and intensive, requiring a structured management system and more intensive supervision from BWI or other supervisory institutions. Apart from that, attention to Sharia provisions is also important in carrying out profession waqf, including ensuring that the work being donated is permissible according to Sharia and that the *waqif* does not receive compensation for the work he is waqf. Thus, the development of profession waqf in various forms by individuals and legal entities can be an important instrument in advancing general welfare in Indonesia if it is carried out with good management and attention to sharia provisions and applicable regulations.

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