

# REGISTRATION NAZHIR TO THE MINISTER OF RELIGION OF INDONESIA: A PERSPECTIVE REVIEW OF THE RULES OF ISLAMIC LAW

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**Abstract:** The birth of the Waqf Law and the Waqf Implementation Regulations brought a new policy direction regarding the regulation of *nazhir*. *Nazhir* as an institution that plays a role in the process of productivity of waqf assets is required to be professional in carrying out their duties, therefore a new regulation is formed regarding the *nazhir* registered with the Ministry of Religion. Regulations for the implementation of waqf in several articles state the obligation to register *nazhir*, but the rules for these obligations are not accompanied by sanctions rules that allow punishment for those who do not implement these rules. This study discusses the policy of registering *nazhir* before and after the issuance of the Waqf Law and the policy of registering *nazhir* to the Minister of Religion from the perspective of the rules of Islamic law. This research is normative research, with a prescriptive discussion. The results of this study stated that the rules for registering *nazhir* before the issuance of the Waqf Law are contained in the Land Waqf Regulation and Presidential Instruction Number 1 of 1991, while the rules for registering *nazhir* after the birth of the Waqf Law are contained in Article 14 (1) of the Waqf Law. In terms of Islamic law, *nazhir's* registration rules to the Minister of Religious Affairs meet the elements of *ijtihad* through *mashlahah mursalah* and *amr* studies in *ushuliyah* rules.

**Keywords:** *Nazhir*; Minister of Religion; Islamic Law Rules.

## 1. Introduction

Waqf in Islam is “part of worship that has the value of charity,”<sup>1</sup> a Muslim is “encouraged to give an item or rights he must support the welfare of mankind,”<sup>2</sup> by utilizing waqf objects (assets), “whose time can be eternal or with a certain grace period.”<sup>3</sup> Waqf regulations in Indonesia are collaborative rules, not only sourced from Islamic law but also based on the *ijtihad* process of Islamic jurists in Indonesia.

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<sup>1</sup> Yudi Haryadi and Molly Mustikasari, “Tabarru’ Wakaf Alternatif Jaring Pengaman Sosial Bagi Rakyat Miskin,” *Jurnal Ilmu Multidisplin* 1, no. 1 (May 31, 2022): 63–73, <https://doi.org/10.38035/JIM.V1I1.13>; Jaih Mubarak, *Wakaf Produktif* (Bandung: Simbiosis Rekatama Media, 2008). Pg. 155.

<sup>2</sup> Wildan Munawar, “Profesionalitas Nazir Wakaf: Studi Manajemen Wakaf Produktif Di Lembaga Wakaf Daarut Tauhiid,” *Journal of Islamic Economics and Finance Studies* 2, no. 1 (June 24, 2021): 17–33, <https://doi.org/10.47700/JIEFES.V2I1.2731>.

<sup>3</sup> Yuli Rofai, Umar Burhan, and Multifiah Multifiah, “The Role of Productive Waqf for Public Welfare (Study Case of Nadzir Foundation In University of Islam Malang),” *International Journal of Social and Local Economic Governance* 2, no. 2 (October 22, 2016): 152–60, <https://doi.org/10.21776/UB.IJLEG.2016.002.02.6>.

The *ijtihad* is “then outlined in a statutory regulation regarding waqf so that it becomes part of the positive law that exists in Indonesia”<sup>4</sup> and is therefore Indonesian *fiqh*.

Waqf regulations in Indonesia stipulate that waqf legal acts consist of various elements (pillars), among the pillars that make up waqf legal acts, “there is one pillar whose duty is to be the main aspect in maintaining and increasing the productivity of waqf assets, in accordance with the initial waqf process, namely *nazhir*.”<sup>5</sup> Registration *nazhir* closely related to the accommodation of *nazhir* into the pillars of waqf in waqf rules in Indonesia. In classical *fiqh* studies, “the *fuqaha'* do not make *nazhir* a part of the pillars of waqf, but regarding his appointment, the *fuqaha'* agree to apply the institutionalization of *nazhir* in waqf legal acts in Indonesia.”<sup>6</sup>

The enactment of Law Number 41 of 2004 concerning Waqf (hereinafter referred to as the Waqf Law) and Government Regulation Number 42 of 2006 concerning the Implementation of Law Number 41 of 2004 concerning Waqf (hereinafter referred to as Waqf Implementation Regulation) brought new policy directions in waqf regulations in Indonesia. Many new things were brought up to fix the policy direction regarding waqf regulations in Indonesia, including the policy on *nazhir*.

The policy for registering *nazhir* as stipulated in the laws and regulations before the birth of the Waqf Law is regulated in Article 6 (3) of Government Regulation Number 28 of 1977 concerning Land Waqf of Owned (hereinafter referred to as the Land Waqf Regulation) jo Article 219 (3) Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (hereinafter referred to as Presidential Instruction No. 1 of 1991), states that *nazhir* is registered with the Head of the Office of Religious Affairs (hereinafter referred to as Head of KUA). Whereas in Article 14 (1) of the Waqf Law jo Article 4 (2), Article 7 (1), and Article 11 (1) of the Regulations on the Implementation of Waqf, it is stated that *nazhir* in the process of waqf administration is registered with two agencies, namely the Minister of Religion and Indonesian Waqf Board (BWI). One thing that is taken “into consideration registration policy *nazhir* enacted so that *nazhir* who have been appointed and become part of the institution authorized to manage and develop waqf assets,”<sup>7</sup> receive guidance from the Minister of Religion.

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<sup>4</sup> Faisal, “Analisis Hukum Penggunaan Dana Wakaf Tunai Untuk Pembangunan Infrastruktur,” *DE LEGA LATA: Jurnal Ilmu Hukum* 5, no. 2 (July 7, 2020): 193–207, <https://doi.org/10.30596/DLL.V5I2.4058>; Abdul Halim, *Hukum Perwakafan Di Indonesia* (Jakarta: Ciputat Press, 2005). Pg. 48; Muhammad Luthfi and Yohana Wardoyo, “Nadzir Registration Regulation To The Indonesian Waqf Board With A Positive Legal Perspective And Islamic Law,” *Legal Standing : Jurnal Ilmu Hukum* 4, no. 2 (October 8, 2020): 205, <https://doi.org/10.24269/lis.v4i2.2839>.

<sup>5</sup> Acep Zoni Saeful Mubarak, “Penggantian Nazhir Wakaf Perseorangan Ke Badan Hukum Dalam Perspektif Maqashid Asy-Syari’ah (Studi Di Badan Wakaf Indonesia Perwakilan Kota Tasikmalaya),” *Jurnal Ekonomi Syari’ah* 5, no. 1 (May 2020): 80–97, <https://doi.org/https://doi.org/10.37058/jes.v5i1.1507>; Riyadi Usman, *Hukum Perwakafan Di Indonesia* (Jakarta: Sinar Grafika, 2009). Pg. 38.

<sup>6</sup> Koliq Hasbia Sidiq, “Pengelolaan Dan Pengembangan Wakaf Di Pondok Pesantren Ali-Muttaqin Ponorogo” (Institut Agama Islam Negeri Ponorogo, 2021), <http://etheses.iainponorogo.ac.id/16327/>; B Syafuri, “Nadzir Wakaf: Versi Fiqh Islam Dan Peraturan Perundang-Undangan,” *Al Ahkam* 14, no. 2 (December 31, 2018): 59–76, <https://doi.org/10.37035/AJH.V14I2.1488>.

<sup>7</sup> Yedi Purwanto, Hari Utomo, and Rasyida Noor, “Nazir Al-Waqf in Imam Syafi’i’s Perspectives and Regulation in Indonesia,” *International Journal of Nusantara Islam* 4, no. 1 (2016): 49–62, <https://doi.org/http://dx.doi.org/10.15575/ijni.v4i1.1202>.

Looking at the consideration aspect of *nazhir* registration that for *nazhir* institutions to obtain guidance from the Minister of Religious Affairs, the nature of *nazhir* registration to the Minister of Religious Affairs is mandatory under Article 4 (2), Article 7 (1), and Article 11 (1) of the Waqf Implementation Regulations. The regulation regarding the obligation to register *nadzir* with the Minister of Religious Affairs not only applies to *nazhir* immovable assets but also includes *nazhir* movable assets including *nazhir* cash waqf as stipulated in Article 58 (1) of the Waqf Implementation Regulations. The regulation on the obligation to register *nazhir* with the Minister of Religious Affairs, if further reviewed in the rules governing the registration of *nazhir*, does not provide for sanctions if the *nazhir* registration rules are not implemented. In addition, “no rule specifically explains the procedure and implementation of *nazhir* registration to the Minister of Religious Affairs, for *nazhir* movable assets. This is different from the *nazhir* registration rules as stipulated in the Land Waqf Regulations.”<sup>8</sup>

Waqf is part of the treasures in Islamic law, for that it is interesting to study the *ijtihad* process in determining the rules for registering *nazhir* to the Minister of Religion in the study of Islamic legal rules, both in terms of legal benefits (*mashlahah*), as well as in terms of *ushuliyah* and *fiqhiyah* rules. Based on the problems described above, the study in this study focuses on the policy of *nazhir* before and after the issuance of the Waqf Law and the policy of registering *nazhir* to the Minister of Religion in view of the rules of Islamic law.

The purpose of this study is to examine the problem of *nazhir* to the Minister of Religion from the perspective of Islamic law principles. The contribution of this research theoretically as a form of scientific development in the field of waqf, especially regarding the study of *nazhir*, practically this study can be used by practitioners as reference material in answering problems regarding the policy of *nazhir* to the Minister of Religion, and study material for policy makers to improve the rules and policies regarding the registration of *nazhir* in the future.

This paper is the development of a study conducted by the author with the title “Registration of *Nadzir* at the Ministry of Religion of the Republic of Indonesia (Concept Study of Legislation in Indonesia) which describes the concept of *nazhir* to the Minister of Religion in terms of waqf regulations in Indonesia.”<sup>9</sup> Studies on *nazhir* have been carried out by several researchers, including a study by Fachroodin about “the role of *nazhir* in managing waqf land from the perspective of the Waqf Law in *Ngadi* village, Kediri district.”<sup>10</sup> A study by Nurhayati and Nurjamil on “the accountability of *nazhir* cooperatives sharia financial institutions sharia (LKS) – cash waqf acceptance (PWU) in managing cash waqf through fintech.”<sup>11</sup> The study

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<sup>8</sup> Muhammad Luthfi, “Tinjauan Pelaksanaan Pendaftaran Nadzir (Studi Di Kantor Urusan Agama Kecamatan Junrejo Kota Batu)” (Universitas Muhammadiyah Malang, 2014). Pg. 78.

<sup>9</sup> Muhammad Luthfi et al., “Registration of Nadhir at the Ministry of Religion of the Republic of Indonesia (Concept Study of Legislation in Indonesia),” in *KnE Social Sciences*, ed. Anggraeny Isdian, vol. 2022 (Malang: KnE Publishing, 2022), 679–685, <https://doi.org/10.18502/KSS.V7I15.12142>.

<sup>10</sup> Fachroodin, “Peran Nadzir Dalam Pengelolaan Tanah Wakaf Ditinjau Dari Perspektif Undang-Undang Nomor 41 Tahun 2004 (Studi Kasus Di Desa Ngadi Kec. Mojo Kab. Kediri),” *Mahakim: Journal of Islamic Family Law* 4, no. 1 (January 9, 2020): 49–63, <https://doi.org/10.30762/MH.V4I1.1712>.

<sup>11</sup> Siti Nurhayati and Nurjamil, “Tanggungjawab Nazhir Koperasi Syariah Sebagai Lks Pwu Dalam Pengelolaan Wakaf Uang Melalui Aplikasi Fintech,” *Res Nullius Law Journal* 2, no. 2 (July 16, 2020): 141–57, <https://doi.org/10.34010/RNLJ.V2I2.3196>.

by Yuslem, Siregar, and Rosidi regarding “the implementation of *nazhir* and waqf deeds in Kec. Huta Bargot Kab. Mandailing Natal perspective of the Compilation of Islamic Law and Law no. 41 of 2004.”<sup>12</sup> Comparison of this research study with existing research studies both examine *nazhir*, however, to be different, because there has been no study that discusses the policy of registering *nazhir* to the Minister of Religion reviewed according to the rules of Islamic law

## 2. Method

The study in this paper uses “a normative research structure,”<sup>13</sup> the approach used “in reviewing this research consists of a statutory approach and a concept approach,”<sup>14</sup> the statutory approach is used to review the *nazhir* registration rules in waqf law in Indonesia while the concept approach is used to review the *nazhir* registration rules based on the rules of Islamic law.

The laws and regulations used as the primary legal material for this research include the Waqf Act, the Waqf Implementation Regulation, the Land Waqf Regulation, Presidential Instruction No. 1 of 1991, Regulation of the Minister of Religion Number 1 of 1978 concerning Implementing Regulations of Government Regulation Number 28 of 1977 concerning Waqf of Owned Land (hereinafter referred to as the Minister of Religion for the Implementation of Land-Owned Waqf), Regulation of the Minister of Religion Number 4 of 2009 concerning Administration of Cash Waqf (hereinafter referred to as Minister of Religion Administration Regulation) Cash Waqf), Regulation of the Minister of Religion Number 73 of 2013 concerning Procedures for Waqf of Immovable Objects and Movable Objects Other than Money (hereinafter referred to as the Minister of Religion Regulation on Procedures for Waqf Other than Money), Regulation of the Minister of Religion Number 34 of 2016 concerning Organization and Work Procedures of the Sub-District Religious Affairs Office (hereinafter referred to as the Minister of Religion of the KUA Organization), Regulation of the Director General of Islamic Community Guidance Number: Kep/D/75/78 concerning Forms and Guidelines for the Implementation of Regulations on Land-Owned Waqf (hereinafter referred to as the Regulation of the Director General of Islamic Community Guidance on the Form and Implementation of Land-Owned Waqf), as well as the Decree of the Director General of Community Guidance Islam Number 800 of 2014 concerning the Implementation of the Regulation of the Minister of Religion No. 73 of 2013 concerning Procedures for Waqf of Immovable and Movable Objects Other than Money and its attachments

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<sup>12</sup> Nawir Yuslem, Ramadhan Sahmedi Siregar, and Ahmad Rosidi, “Implementasi *Nazhir* Dan Akta Wakaf Pada Kecamatan Huta Bargot Kabupaten Mandailing Natal Ditinjau Dari Kompilasi Hukum Islam Dan Uu No 41 Tahun 2004,” *AT-TAFAHUM: Journal of Islamic Law* 3, no. 2 (July 2019): 116–46, <http://jurnal.uinsu.ac.id/index.php/atafahum/article/view/6769/3001>.

<sup>13</sup> Kornelius Benuf and Muhamad Azhar, “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer,” *Gema Keadilan* 7, no. 1 (April 1, 2020): 20–33, <https://doi.org/10.14710/GK.7.1.20-33>; David Tan, “Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum,” *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (December 28, 2021): 2463–78, <https://doi.org/10.31604/JIPS.V8I8.2021.2463-2478>.

<sup>14</sup> Yati Nurhayati, Ifrani, and M. Yasir Said, “Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum,” *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1–20, <https://doi.org/10.51749/JPHI.V2I1.14>; Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed. (Jakarta: Kencana, 2017). Pg. 251.



(hereinafter referred to as the Regulation of the Minister of Religious Affairs for Waqf Procedures Other Than Money).

The secondary legal materials of this study include books and other scientific articles related to *nazhir*, registration of *nazhir*, and Islamic legal principles from *ushuliyah*, *fiqhyyah* and *ijtihad* methodology related to this study, while tertiary legal materials come from encyclopedias and dictionaries that support the study. The prescriptive analysis is “used in this study, to form a new argument regarding the registration of *nazhir* to the Minister of Religion based on the rules of Islamic law.”<sup>15</sup>

### 3. Analysis or Discussion

#### 3.1. Nazhir Registration Policy Before and After the Birth of the Waqf Law

“The history of waqf legal acts in Indonesia has been applied since Islam entered the archipelago,”<sup>16</sup> “until the period of renewal of waqf law with the birth of the Waqf Law.”<sup>17</sup> From the period when Islam entered Indonesia until the renewal of waqf law, the rules that overshadow waqf in Indonesia changed every period, starting with “the waqf period understood in simple (*traditional*) practice, until the waqf period was understood in a professional management way,”<sup>18</sup> by carrying out the concept of *al-waqf al-muntaj* with the birth of *haiatu al-auqaf al-induniisiyyah*.

Departing from the period of waqf rules in Indonesia, the *nazhir* registration rules have also changed, adjusting the period, in this case, the period of *nazhir* registration rules in waqf rules in Indonesia is divided into 2 periods:

1. Period Before the birth of the Waqf Law (1960 – 2004)

Waqf regulations in Indonesia before the Waqf Law was promulgated, summarized in several laws and regulations, including, 1) Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, 2) Regulation on Waqf of Owned Land, 3) Regulation on the Implementation of Waqf of Owned Land, 4) Regulation of the Director General of BIMAS Islam concerning the Form and Implementation of Waqf of Owned Land, and 5) Presidential Instruction No. 1 of 1991.

The rules for the registration of *nazhir* in the period before the birth of the Waqf Act are contained in Article 6 (3) of the Waqf of Owned Land Regulations, which explains that *nazhirs* appointed in the process of waqf legal acts must be registered with the KUA to obtain the legality of *nazhir*. This rule is then further emphasized and detailed in Article 219 (3) of Presidential Instruction No. 1 of 1991, that in the appointment of *nazhir* in waqf legal acts, first listen to “the advice of the Head of the Subdistrict and the Indonesian *Ulama* Council at the sub-district level, and the *nazhir* must be registered with the KUA to obtain the legality of the ratification of the *nazhir*.”<sup>19</sup>

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<sup>15</sup> Nurhayati, Ifrani, and Said, *Loc.Cit.*

<sup>16</sup> Mohamad Hendrik and Mufidah Mufidah, “Peran Badan Wakaf Indonesia Pasca Terbitnya Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf,” *SALAM: Jurnal Sosial Dan Budaya Syar-I* 6, no. 5 (July 30, 2019): 417–46, <https://doi.org/10.15408/SJSBS.V6I5.20830>.

<sup>17</sup> Faisal, *Loc.Cit.*

<sup>18</sup> Munawar, *Loc.Cit.*

<sup>19</sup> Luthfi et al., *Loc.Cit.*

The legality of the ratification of *nazhir* in the Waqf Regulation of Owned Land and Presidential Instruction No. 1 of 1991, is given by the Head of KUA as the Official of the Waqf (PPAIW) by Article 5 (1) jo Article 7 letter b of the Regulation of Waqf of Owned Land. The purpose of registering *nazhir* in the Waqf Regulation of Acquired Land as stated in the Explanatory section of Article 6 of the Waqf Regulation of Property is to supervise and avoid irregularities in the management of waqf by *nazhir*. The birth of *nazhir* registration rules in Article 6 (3) of the Waqf Regulation on Owned Land jo Article 219 (3) of Presidential Instruction No. 1 of 1991, is a rule born from the accommodation of *nadzir* institutions to become harmonious in waqf rules in Indonesia. This is seen at the beginning of the article in each of the rules which state, *nazhir* as explained in paragraphs (1) and (2) must be registered with the KUA to obtain legality.

The Rules of Article 6 (1) and (2) of the Waqf of Owned Land jo Article 219 (1) and (2) of Presidential Instruction No. 1 of 1991 explain the types of *nazhir* accommodated in each of these rules. if using systematic interpretation, namely “the interpretation of the law by connecting two laws and regulations,”<sup>20</sup> the birth of *nazhir* registration rules in Article 6 (3) of the Waqf of Owned Land jo Article 219 (3) of Presidential Instruction No.1 of 1991, is a legal result of the birth of the rule of law Article 6 (1) and (2) of the Regulation of Waqf of Owned Land jo Article 219 (1) and (2) of Presidential Instruction No. 1 of 1991, which regulates the type of *nadzir* as part of the pillars of waqf legal acts.

The nature of the legal applicability of *nazhir* registration in the period before the birth of the Waqf Law is a coercive rule that must be obeyed, where the legal action is mandatory to be carried out, this is shown by accommodating of the sanction rules on the legal action, if the legal action is not carried out, namely in the form of provision of penalties in the form of confinement and fines as stipulated in Article 14 of the Land Owned Waqf Regulations.

## 2. Period after the birth of the Waqf Law (2004 – Present)

The new era of *nazhir* professionalism began with the promulgation of the Waqf Act, where one of the rationales of this rule was promulgated was, to sharpen the professional level of *nazhir* as the competent party in securing waqf objects from the interference of the parties who may cause harm this is contained in the Explanation section of the Waqf Act. “The birth of the Waqf Law with one of its rationales, creating the professionalism of *nazhir* institutions in managing waqf assets,”<sup>21</sup> also influenced the rules on the registration of *nazhir*. Article 14 (1) of the Waqf Act explains that to guide *nazhir* institutions, the *nazhir* must be registered with the Minister of Religious Affairs and BWI. As an effort to improve the professionalism of *nazhir*, the Minister of Religious Affairs is required to play an active role in registering *nazhir* that already exists in society, this is explained in the Explanation section of Article 14 of the Waqf Law.

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<sup>20</sup> Farina Gandryani and Fikri Hadi, “Pelaksanaan Vaksin Covid-19 Di Indonesia: Hak Atau Kewajiban Warga Negara,” *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (April 29, 2021): 41, <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/622>; Shidarta, *Hukum Penalaran Dan Penalaran Hukum Akar Filosofi*, ed. Ufran (Yogyakarta: Genta Publishing, 2013). Pg. 170.

<sup>21</sup> Shinta wulandari, Jaenal Effendi, and Imam Teguh Saptono, “Pemilihan Nazhir Dalam Optimalisasi Pengelolaan Wakaf Uang,” *Jurnal Aplikasi Bisnis Dan Manajemen (JABM)* 5, no. 2 (May 16, 2019): 295–295, <https://doi.org/10.17358/JABM.5.2.295>.

The rules of Article 63 of the Waqf Act give the Minister of Religious Affairs the task of guiding the *nazhir* as a waqf asset management institution. The system of guidance by the Minister of Religious Affairs to *nazhir* in Article 53 of the Waqf Implementation Regulation includes several categories:

- a. Guidance in preparing facilities and infrastructure (*sarpras*).  
This guidance is aimed at preparing *sarpras* that support the operation and performance of *nazhir* in waqf legal actions, including the provision of facilities in terms of certification of waqf assets, and the procurement of waqf forms for both waqf assets and movable objects.
- b. Coaching *nazhir* personality.  
This guidance is carried out by motivating to *nazhir* in the implementation of waqf legal acts, and the formation of networks with various extension workers in the development of waqf assets following the environment of *nazhir's* existence.
- c. Coaching in waqf administration.  
This coaching begins with an understanding of regulations waqf and continued with the provision of training, management methods, and development of waqf assets.
- d. Coaching in terms of funding.  
Namely by providing a funding network in the management and development of waqf assets both from within and outside the country.

Article 55 of the Waqf Implementation Regulation mandates the Minister of Religious Affairs to “guide *nazhirs* at least once a year, the forms of guidance provided include, seminar activities, research, and so on,”<sup>22</sup> which aims to improve the capability of self-competence values, and *nazhir* morals in waqf management for the realization of *nazhir* professionalism.

The rules for registration of *nazhir* to the Minister of Religious Affairs are carried out through the KUA both for registration of *nazhir* on immovable assets and registration of *nazhir* on movable assets. However, the regulation did not explain in more detail the procedure for implementing *nazhir* registration to the Minister of Religious Affairs. In its implementation, the registration of *nazhir* to the Minister of Religious Affairs for the registration of *nazhir* for immovable waqf assets, the registration of *nazhir* is carried out through KUA, then the Head of KUA as PPAIW issues a letter of endorsement of *nazhir*. The Head of KUA uses the *nazhir* registration form, as stipulated in the decree of the Director General of BIMAS Islam on Waqf Forms Other Than Money.

The authority of the Head of KUA in issuing a letter of endorsement of *nazhir*, as an aspect of the legality of *nazhir* registration to the Minister of Religious Affairs, is part of the KUA structure as a government agency under the organizational structure of the Ministry of Religious Affairs, where one of his duties is to become a PPAIW and perform services to the community in the field of waqf, as stipulated in

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<sup>22</sup> Husni Abdul Jalil, Bukhari Ali, and Al Muzammir Saputra, “Pattern Of *Nazhir* Wakf Development In The City Of Banda Aceh ,” *Dusturiyah: Jurnal Hukum Islam, Perundang-Undangan Dan Pranata Sosial* 12, no. 1 (June 12, 2022): 16–30, <https://doi.org/10.22373/DUSTURIYAH.V12I1.12371>; Mufarochah and Wirdyaningsih, “Peranan Strategi Badan Wakaf Indonesia Dalam Membina *Nazhir* Secara Profesional (Ditinjau Dari UU No. 41 Tahun 2004 Tentang Wakaf),” *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 3 (March 8, 2022): 1373–84, <https://doi.org/10.36418/SYNTAX-LITERATE.V7I3.6447>.

Article 1 number 12 of the Waqf Implementation Regulations jo Articles 1 and 3 of the KUA Organization Regulation. The authority of the Head of KUA in issuing the legality of *nazhir* with a letter of endorsement of *nazhir* on the *nazhir* of immovable waqf assets is a bound authority, where the authority is obtained based on laws and regulations.

The process of registering *nazhir* with the Minister of Religious Affairs on the registration of *nazhir* immovable assets, with the issuance of a letter of endorsement by the Head of the KUA, is the implementation of the *nazhir* registration which is also stated in the Waqf Regulation of Lands Belonging to jo Presidential Instruction No. 1 of 1991. The process of implementing *nazhir* registration to the Minister of Religious Affairs by accommodating the rules in the Waqf Regulation on Owned Land and Presidential Instruction No. 1 of 1991, is part of the transitional rules in the Waqf Law and the Waqf Implementation Regulations, which still accommodate the waqf regulations before the birth of the Waqf Law if they do not conflict with these rules.

Registration of *nazhir* to the Minister of Religious Affairs also applies to *nazhir* who manage movable assets other than money and registration of *nazhir* on waqf of money. The Waqf Implementation Regulations, the Minister of Religious Affairs' regulation on Waqf Procedures Other Than Money, and the Decree of the Director General of BIMAS Islam on Waqf Forms Other Than Money, do not explain in detail the procedures for registering *nazhir* to the Minister of Religious Affairs for registration of *nazhir* on waqf assets in the form of movable objects other than money.

Article 26 of the Minister of Religious Affairs' regulation on Waqf Procedures Other Than Money, only accommodates the procedure for registering movable waqf assets other than money, without explaining the procedures for registering *nazhir* to the Minister of Religious Affairs for *nazhir* movable assets other than money. Likewise, in the Decree of the Director General of BIMAS Islam on Waqf Forms Other Than Money, it does not regulate the *nazhir* attestation form for *nazhir* registration on waqf of movable assets other than money.

In line with the procedure for registration of *nazhir* on movable assets other than money, for which there are no rules governing it, the procedure for implementing *nazhir* registration to the Minister of Religious Affairs, on registration of *nazhir* for waqf of money is also not specifically explained in either the Waqf Act or the Waqf Implementation Regulations. The Minister of Religious Affairs' regulation on the Administration of Waqf of Money rule explaining the administration of registration of waqf money also did not explain in more detail about the procedure for implementing *nazhir* registration to the Minister of Religious Affairs for registration of *nazhir* waqf money.

CHAPTER III on Registration in the Regulation of the Minister of Religious Affairs on the Administration of Waqf of Money does not explain the rules for the implementation of *nazhir* registration to the Minister of Religious Affairs for registration of *nazhir* whose waqf assets are in the form of money. Whereas in Article 58 (3) of the Waqf Implementation Regulations, it is explained that since the Waqf Implementation Regulations are issued, every individual, legal entity, and organization engaged in managing waqf assets in the form of money, is required to





register with the Minister of Religious Affairs to become a *nazhir* through the KUA office.

The nature of the registration of *nazhir* to the Minister of Religious Affairs is explained in Article 4 (2), Article 7 (1), and Article 11 (1) of the Waqf Implementation Regulations, that *nazhir* as a pillar in waqf legal acts, both individuals, legal entities, and organizations must be registered with the Minister of Religious Affairs through the KUA. The obligation to register *nazhir* to the Minister of Religious Affairs as described in the Waqf Implementation Regulations, even in the absence of sanctions rules regarding violations of the *nazhir* registration regulations, does not reduce the nature of the necessity in the implementation of the *nazhir* registration regulations.

Looking at the rules regarding the registration of *nazhir* to the Minister of Religious Affairs, the nature of legal regulations when viewed from their nature is divided into 2, first, the rule of law that is coercive, second, the rule of law that has a regulating nature. Coercive legal regulations are not always synonymous with the establishment of sanctions rules for these rules, Seorjono Soekanto and Purnadi Purbacaraka in this case gave reasons, “for the issuance of government regulations not laws and regulations (*PERPU*) by the president, which is regulated in the Basic Law, in the issuance of *perpu* the president must get the approval of the DPR, otherwise, the government regulation must be revoked and invalid.”<sup>23</sup>

Looking at the analysis above, the nature of *nazhir* registration to the Minister of Religious Affairs is the same as the nature of issuing *PERPU* by the president which does not need sanctions rules, but in terms of legal rules, if the *nazhir* registration rules are not implemented then the legal actions carried out are considered legally invalid. For this reason, the process of registering *nazhir* with the Minister of Religious Affairs must still be carried out and the nature of the law is part of the coercive rules that must be obeyed.

The obligation to register *nazhir* to the Minister of Religious Affairs is a form of commitment that must be built in the process of waqf legal actions between the government, the community, waqf managers, and ‘ulama. The purpose of forming this commitment is to build a professional waqf concept and provide better benefits for the welfare of the community. Considering the period of waqf regulation in Indonesia as described, the comparison of *nazhir* registration periods can be seen in the following table:

**Table 1.** Comparison of Nazhir Registration Rules Period.

Aspects	The Period Before the Birth of the Waqf Law	The Period After the Birth of the Waqf Law
Types of <i>Nazhir</i>	<i>Nazhir</i> for Immovable Assets in the Form of Land	<i>Nazhir</i> for Immovable Assets and Movable Assets
Legality Granting Institutions	KUA	BWI
Registration Purpose	Supervision	Coaching and Supervision

<sup>23</sup> Ishaq, *Dasar-Dasar Ilmu Hukum*, ed. Yunasril Ali, Cet. II (Jakarta: Sinar Grafika, 2018). Pg.45-46.

Source: Regulation on waqf, which is processed.

### 3.2. Nazhir's Registration Policy to the Minister of Religious Affairs in the Perspective of Islamic Law Rules

Previous Islamic jurists' studies on waqf law have not discussed the institutionalization of *nazhir* as "a pillar in waqf law acts, the waqf pillar in the *fuqaha'* study consists of, wakif, waqf assets, waqf beneficiaries, and waqf statements (*lafadz* waqf)."<sup>24</sup> "*Fuqaha'* then gave another term in the mention of the person or institution responsible for the management of waqf assets, namely the term *al-mutawalli*,"<sup>25</sup> which in meaning is the same as the term *nazhir* in waqf. *Al-mutawalli* in his mention has several definitions, namely first, the custodian of waqf assets, second, *nazhir* is "a person who is given a mandate regarding waqf assets, third, waqf managers, and fourth, waqf institutions that administer waqf assets."<sup>26</sup>

Changes in the conditions and suitability of the times, "make waqf worship in its management must be managed with professional management, in realizing waqf productivity as an effort to fulfill human welfare."<sup>27</sup> For this reason, *nazhir's* position is very strategic to maintain, manage, and increase the productivity of waqf assets, following the spirit of the birth of the Waqf Law. The Waqf Act based on this thinking makes the *nazhir* part of the waqf element, which must be present in the legal act of waqf. The determination of *nazhir* to be part of the waqf pillar, looking at the conditions and conformity of the times following the rules of *fiqhiyyah* in Islamic law, that a legal entity can change its process of enactment due to changes in the times, places, and times of enactment of the law, in the rules of jurisprudence stated:<sup>28</sup>

تغير الأحكام بتغير الأزمنة والأمكنة والأحوال

The determination of *nazhir* to be part of the waqf pillar, making the institutionalization of *nazhir* in waqf legal acts in Indonesia mandatory, so that the absence of *nazhir* institutionalization in the waqf administration process makes waqf legal acts void. In the study of *ushuliyah* the element (*al-rakn*) is "an aspect that forms a person's legal act, if that aspect is lost or not fulfilled, then the legal act

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<sup>24</sup> Alfurqan, "Nazhir Dalam Lembaga Wakaf: Kemandirian Wakaf Masyarakat Di Kabupaten Bireuen," *Media Syari'ah : Wahana Kajian Hukum Islam Dan Pranata Sosial* 22, no. 1 (May 6, 2020): 65–81, <https://doi.org/10.22373/JMS.V22I1.6059>.

<sup>25</sup> Nurul Asykin Mahmood and Ruzian Markom, "Transformasi Institusi Pelaksana Wakaf: Kes Waqaf An-Nur Corporation," in *THE ASEAN ISLAMIC ENDOWMENT SEMINAR 2014: SEMINAR WAKAF ASEAN 2014 : "Enhancing the Economy of the Ummah through Waqf and Baitulmal"* (Selangor: Universiti Sains Islam Malaysia, 2014), 563–73, <http://localhost:8080/jspui/handle/123456789/11548>.

<sup>26</sup> Hasyeilla Abd Mutalib and Selamah Maamor, "Utilization of Waqf Property: Analyzing an Institutional Mutawalli Challenges in Management Practices," *International Journal of Economics and Financial Issues* 6, no. 7 (October 1, 2016): 36–41, <https://dergipark.org.tr/en/pub/ijefi/issue/32000/353024>.

<sup>27</sup> Nurul Iman, Adi Santoso, and Edi Kurniawan, "Membangun Kesadaran Managerial Nadzir Wakaf Produktif Ponorogo Di Era Digital," in *Seminar Nasional Pendidikan Dan Pembelajaran 2019*, vol. 0 (Ponorogo: Universitas Muhammadiyah Ponorogo, 2019), 386–92, <https://seminar.umpo.ac.id/index.php/SNPP2019/article/view/355>.

<sup>28</sup> Walid Aldzair, "تغير الأحكام بتغير الزمن," *Kafkas Üniversitesi İlahiyat Fakültesi Dergisi* 7, no. 14 (July 8, 2020): 312–30, <https://doi.org/10.17050/KAFKASILAHİYAT.746496>.

of a Muslim becomes void,”<sup>29</sup> this is like in prayer services, the reading of *al-fatihah* is part of *al-rakn* or the constituent element of prayer worship, if a Muslim is negligent in reading *al-Fatihah*, then the prayers performed become void.

The regulations in the Waqf Act, which accommodate *nazhir* into waqf pillars, provide consequences for the obligation to register *nazhir* to the Minister of Religious Affairs. Registration of *nazhir* to the Minister of Religious Affairs is carried out to provide legality to *nazhir* institutions, to realize and apply the duties and obligations of *nazhir*, provide supervision and guidance to *nazhir* institutions, to realize *nazhir* institutions who are professional in managing, maintaining, and developing waqf assets, as mandated by the Waqf Law and Waqf Implementation Regulations.

Islamic law accommodates several ways to form laws, one of which is through the *ijtihad* methodology. The *ijtihad* methodology consists of several types of rules including using the *mashlahah mursalah* method, “which is a method of determining a legal act that is not contained in *nash*, where the legal action is not yet known to be false and correct.”<sup>30</sup> Al-Ghazali connected “the notion of *mashlahah* with the aspect of maintaining the purpose of Islamic sharia,”<sup>31</sup> al-Syathibi explained, “in understanding the purpose of sharia is divided into three levels ranging from the primary (*dharuri'at*), secondary (*haji*at), and tertiary (*tahsiniat*) levels, where at the primary level there are five sharia goals including efforts to preserve *al-diin*, soul (*al-nafs*), *al-nasl* (descendants), property, and human reason.”<sup>32</sup>

“Al-Syathibi divides *mashlahah* into two understandings.”<sup>33</sup> First, *mashlahah* is related to the situation in the world, which does not discuss the *syar'i* postulate, but is in line with the values in the *syar'i* postulate, so the process is very close to the legal habits of society. Second, *mashlahah* relates to speech in *syar'i* postulates, but the postulate does not specifically provide an overview of the truth and prohibition aspects of the existing *mashlahah*.

The registration of *nazhir* to the Minister of Religious Affairs in the study of *mashlahah mursalah*, as explained by al-Syathibi, is a *mashlahah* for which there is no discussion in the postulate of *syar'i* or the postulate of *qat'i* (Qur'an and hadith) in Islamic law. Since waqf is a worship, whose legal source is *ijtihaadiyy*, so is the concept of registration of *nazhir* to the Minister of Religious Affairs has properties *ijtihaadiyyah*. The implementation of *nazhir* registration to the Minister of Religious

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<sup>29</sup> Hadi Tuasikal, “Karakteristik Perikatan Dalam Perspektif Hukum Ekonomi Syariah,” *JUSTISI* 6, no. 2 (July 1, 2020): 90–98, <https://doi.org/10.33506/JS.V6I2.973>.

<sup>30</sup> Misran, “Al-Mashlahah Mursalah: Suatu Metodologi Alternatif Dalam Menyelesaikan Persoalan Hukum Kontemporer,” *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 1, no. 1 (July 8, 2020): 133–57, <https://doi.org/10.22373/JUSTISIA.V1I1.2641>.

<sup>31</sup> Tarmizi, “The Concept Of Maslahah According To Imam Al-Ghazali,” *Jurnal Al-Dustur* 3, no. 1 (May 13, 2020): 22–29, <https://doi.org/10.30863/JAD.V3I1.642>.

<sup>32</sup> Alfa Syahrir and Zahrotun Nafisah, “Comparison of Maqasid Al-Shari'ah Asy-Syathibi and Ibn 'Ashur Perspective of Usul Al-Fiqh Four Mazhab,” *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 3, no. 2 (April 30, 2020): 185–97, <https://doi.org/10.30659/JUA.V3I2.7630>; Ahmad Jalili, “Teori Maqashid Syariah Dalam Hukum Islam,” *TERAJU: Jurnal Syariah Dan Hukum* 3, no. 02 (September 27, 2021): 71–80, <https://doi.org/10.35961/TERAJU.V3I02.294>.

<sup>33</sup> Mohammad Hadi Sucipto and Khotib, “Perdebatan Maslahah Mursalah Dalam Kitab-Kitab Al-Imam Al-Ghazali,” *El-Faqih : Jurnal Pemikiran Dan Hukum Islam* 6, no. 1 (May 9, 2020): 1–17, <https://doi.org/10.29062/FAQIH.V6I1.106>.

Affairs, viewed from the *mashlahah mursalah* method, has the main purpose (*dharuri*), including:

First, it is seen from the factors of *nazhir* duties and obligations, as well as the factor of *nazhir* supervision by the Minister of Religious Affairs. The essence of *nazhir's* task is to report concerning all waqf assets that are maintained, managed, and developed to achieve the productivity of waqf assets, as explained in Article 11 of the Waqf Law jo Article 13 of the Waqf Implementation Regulations. The supervision of *nazhir* by the Minister of Religious Affairs is aimed at monitoring the performance of *nazhir* in utilizing waqf assets for waqf purposes, and creating potential, as well as the use of waqf assets for the benefit of worship as an effort to realize the welfare of the people, as stipulated in Article 63 (1) of the Waqf Law.

The primary objective (*dharuri*) to be achieved from the legal act of registration of *nazhir* to the Minister of Religious Affairs, seen in terms of the primary aspect, concerns the duty of *nazhir* in guarding and protecting property (*hifdz maal*). What is meant by property in this sense is regarding the waqf assets under management. The meaning of "guarding" is not only guarding in the true sense but is contained in the expression to manage and develop waqf assets.

Second, judging from the legality factor and the coaching factor. *Nazhir* in the legal contest of waqf must obtain ratification, as in the process of implementing the registration of *nazhir* for immovable assets in the form of land. The guidance provided by the Minister of Religious Affairs is part of the *nazhir's* right to carry out his duties and obligations. Guidance to *nazhir* is not only administrative like waqf but also guidance in the formation of *nazhir* personality, with the process of motivating as explained in Article 53 (2) of the Waqf Implementation Regulations. The legal act of registering *nazhir* to the Minister of Religious Affairs, in terms of legality and coaching aspects, has the main objective of maintaining the morality and potential of *nazhir* (*hifdz al-nafs*) to become a professional and competent *nazhir* in the empowerment of waqf assets.

Registration of *nazhir* to the Minister of Religious Affairs, by looking at various points of view ranging from the factors of *nazhir* duties and obligations, coaching factors, the legality factors of *nazhir*, and the factors of supervision by the Minister of Religious Affairs, is an effort to form the professionalism of *nazhir* in waqf legal acts. The rules of obligation in the registration of *nazhir* are part of the legal rules that are mandatory to be worked on, as explained in the Waqf Implementation Regulations. Because of all the provisions in the Waqf Act as well as the Waqf Implementation Regulations, no article provides an exception to the order in the form of *nazhir* registration obligations.

One of the *ushuliyah* rules in concluding a law is using linguistic rules, namely "rules that work by looking at sentence structure in laws and regulations. Part of the linguistic rules in the *ushuliyah* rule is the word *amr* (command)."<sup>34</sup> The *amr* in the *nazhir* registration rules, as contained in the Waqf Act and the Waqf Implementing Regulations, can be categorized on an order indicating the obligatory conduct to be carried out. It is excluded if there is a postulate and/or article stating its opposite. This statement follows *amr's* rule which states,

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<sup>34</sup> Yusna Zaidah, "Model Hukum Islam: Suatu Konsep Metode Penemuan Hukum Melalui Pendekatan Ushuliyah," *Syariah: Jurnal Hukum Dan Pemikiran* 17, no. 2 (February 1, 2018): 143–59, <https://doi.org/10.18592/SY.V17I2.1969>.



الأصل في الأمر للوجوب إلا ما دل الدليل على خلافه.

“The consequence of not carrying out an order containing an obligation is the receipt of punishment, or when the obligation is abandoned, a person will get reproach.”<sup>35</sup> The rules for registration of *nazhir* to the Minister of Religious Affairs, although the Waqf Law and the Waqf, Implementation Regulations do not state any sanctions for a person or legal entity who does not register *nazhir*, if it is related to the legality of *nazhir*, especially on *nazhir* for immovable objects in the form of land, then The existing *nazhir* is not yet legally valid, which results in the granting of criminal sanctions if the registration is not carried out. Likewise, if it relates to the coaching factor, then *nazhirs* who are not registered with the Minister of Religious Affairs cannot get guidance from the Minister of Religious Affairs because the registration is also related to the process of collecting *nadzir* data in the waqf process.

Judging from the nature of the order contained in the *nazhir* registration rules to the Minister of Religious Affairs, the *nazhir* registration order was carried out because of the order for the existence of *nazhir* pillars in waqf legal acts. So that the registration of *nazhir* to the Minister of Religious Affairs is one aspect that must be done to strengthen the position of *nazhir* in waqf legal acts. “The study of *ushuliyah* which discusses commands in this structure is a form of command that follows the law of origin, or the existence of an order on one element becomes a command for the materials that make up the element (الأمر بالشيء أمر بوسائله).”<sup>36</sup> So with a process like this, even though the rules for registering *nazhir* to the Minister of Religious Affairs in their laws and regulations do not accommodate the sanctions rules, Islamic law rules the legal action must still be carried out.

#### 4. Conclusion

Rules of *nazhir* registration are divided into 2 periods, first, the period before the birth of the Waqf Law in which the rules for registration of *nazhir* are regulated in Article 6 (3) of the Regulation on the Implementation of Waqf of Owned Land jo Article 219 (3) of Presidential Instruction No. 1 of 1991, secondly, the period after the birth of the Waqf Act in which the rules for registration of *nazhir* are contained in Article 14 (1) of the Waqf Act. The rules for registering *nazhir* to the Minister of Religious Affairs are rules that are *ijtihadiah* in nature, viewed in the study of Islamic law, the rules meet the elements of the *ijtihad* methodology in the *mashlahah mursalah* method, with the main objective of fulfilling the aspect of guarding property (*hifdz maal*) and the aspect of preserving the soul (*hifdz nafz*), in terms of *ushuliyah* rules *nazhir* registration to the Minister of Religious Affairs meets the element of discussion of *amr* rules, which by rule of law indicates an order that must be carried out, this is because the rule does not have an exclusion to the aspect of the rule of law.

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<sup>35</sup> Anas Burhanuddin, “Kaidah ‘Pada Dasarnya Perintah Berarti Wajib, Kecuali Jika Dalil Menunjukkan Hal Lain’ Dan Penerapannya Pada Bab Muamalah,” *Al-Majaalis : Jurnal Dirasat Islamiyah* 7, no. 2 (May 20, 2020): 69–102, <https://doi.org/10.37397/ALMAJALIS.V7I2.140>.

<sup>36</sup> Kartini, “Penerapan Al-Amr, Al-Nahy Dab Al-Ibahah Sebagai Kaidah Penetapan Hukum,” *Al-’Adl* 9, no. 1 (2016): 19–36, <https://doi.org/10.31332/ALADL.V9I1.666>.

Advice that can be given as part of the result of this study process is to legal observers, especially those who take a role in waqf law in Indonesia, should in understanding the *nazhir* registration regulations, look at this rule from various factors contained in the waqf law, to form an understanding of the institutionalization of *nazhir* which is more comprehensive. The registration of *nazhir* to the Minister of Religious Affairs still leaves a part of the administrative law vacuum in terms of procedures and process of registration of *nazhir* to the Minister of Religious Affairs, especially regarding the procedures and process of registering *nazhir* to the Minister of Religious Affairs on waqf assets of movable objects other than money and cash waqf. This is an input for regulators in improving existing regulations.

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