

LEGAL VALIDITY FOR NAZHIR AS A MANAGER OF WAKAF ASSET IN TAKING BACK WAKAF ASSETS THAT ARE NOT USED IN ACCORDANCE WITH THEIR DESIGNATION

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ABSTRACT

This study examines the legal validity for Nazhir as a waqf asset manager in reclaiming waqf assets that are not used according to their intended use. The research method used is normative juridical. The results of the study indicate that the validity of Nazhir in the withdrawal of misused waqf assets is analyzed based on Decision No. 22/Pdt.G/2017/MS-Aceh which is in line with the provisions of Article 42 of Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf, waqf assets that were initially loaned by Nazhir can be withdrawn if proven to be misused. The judge's consideration in granting the withdrawal of misused waqf assets in Decision No. 22/Pdt.G/2017/MS-Aceh is based on the fact that legally there is no legal reason for the Defendants/Appellees to illegally and unlawfully detain and control the disputed object as the legal property of YPI Bireuen.

Keywords : *Nazhir , Manager Asset Endowment , Withdrawal Treasure Waqf .*

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INTRODUCTION

One of the objects of waqf is land waqf. Land is an important element in human life. This is inseparable from the role of the land itself, namely as a place to live, a place of business activities, a place of office activities, a place of education activities, a place of health activities, a place of worship activities and others. To obtain the land, it can be obtained by means of sale, exchange, rent, borrow, grant and can also be obtained through waqf. The existence of waqf land, in addition to providing benefits to the community and the state, can also cause disputes if the waqf land does not have legal force and a certificate. Therefore, to avoid disputes, a certificate of the waqf land itself is needed. In addition, a certificate of waqf land is very necessary in order to create orderly administration and legal certainty.

Security through certificates is an effort to avoid future disputes. Because with the certificate, the waqf land has legal force and provides clarity on the rights contained in the waqf land. Waqf in the form of land in Indonesia is explained in

Article 1 number 1 of the Law Republic of Indonesia Number 41 of 2004 concerning Waqf that Waqf is a legal act of a waqif to separate and/or hand over part of his property to be used forever or for a certain period of time according to his interests for the purposes of worship and/or general welfare according to sharia.

The problem of waqf is often found in cases of waqf land disputes, both internal and external disputes. For example, in an internal dispute, because of an interest/reason, the waqif withdraws the land that he has donated. So that it causes a dispute between the waqif and the manager, namely nazhir. In addition That Also related dispute extreme for example dispute between nazhir with party the third borrower or participate help manage treasure endowment said, so that when misused And transferred by party third, then nazhir can interesting return treasure the said wakafter in accordance with its intended use.

Examples of waqf dispute cases include cases of withdrawal of waqf land by party nazhir taken by party third, namely in the Decision No. 22/Pdt.G/2017/MS-Aceh. In this case, the object of the dispute is the waqf property owned by the Bireuen Islamic Education Foundation which was then loaned to the Bireuen Ministry of Religion for the MTsN Bireuen school, but during the loan period, the Bireuen Ministry of Religion misused the status of the waqf property by building and carrying out maladministration, namely entering the waqf object as State Property.

Due to the inconsistency of the waqf property according to the waqf pledge made, the waqf property can be withdrawn by the holder of the waqf rights. As in this case, Nazhir as the holder of the waqf rights can withdraw the waqf property according to the designation stated in the waqf pledge. This is in accordance with the provisions of Article 42 of the Law Republic of Indonesia Number 41 of 2004 concerning Waqf states that: "Nazhir is obliged to manage and develop waqf assets in accordance with their purpose, function, and designation". So that waqf assets that were initially loaned by the holder of waqf rights can be withdrawn if the waqf assets are misused.

METHOD

Type research used that is study law legal normative¹. Data collection techniques used namely through studies document and also literature against secondary data in the form of ingredients primary, secondary and tertiary law. The analysis used is in a way descriptive.

DISCUSSION

Waqf Assets Misappropriated as a Category of Unlawful Acts

The conversion of waqf objects in Islamic jurisprudence is known as *ibdāl* or *istibdāl*, in the Al-Munawair dictionary the word *ibdāl* means change and the word *istibdāl* means replacement. While *istibdāl* is defined as the sale of waqf property to buy other property as a replacement, whether the replacement property is the same as the waqf property sold or different. Some interpret *istibdāl* as

¹ Eka NAM Sihombing, Cynthia Hadita, *Penelitian Hukum* (Malang: Setara Press, 2022).

removing a property from waqf status and replacing it with other property. As for *ibdāl*, it means changing waqf property with other waqf property. There is also an opinion that interprets *istibdāl* and *ibdāl* the same because linguistically the two words have the same meaning, namely making something a substitute for something else.²

The issue of changing the function of waqf objects or *istibdāl* waqf has been discussed by scholars of the school of thought, some of whom allow it and some of whom forbid it. Scholars of the Shafi'i school of thought in the matter of changing the function (*istibdāl*) of waqf objects have a very firm stance compared to other schools of thought so that it seems that they absolutely prohibit *istibdāl* of waqf objects. This is done in order to maintain the sustainability of waqf objects or the occurrence of misuse in their implementation. The firmness of the law in the Shafi'i school of thought is based on the principle of waqf which is the basis of the Shafi'i school of thought that waqf property may not be sold, donated and inherited based on the hadith of Umar Bin Khattab who donated land in Khaibar and stipulated that the land may not be sold, donated and inherited. The purpose of the waqf that has been made may not be changed other than what was intended by the wakif.³

The book of Ianat al-Talibin states that waqf objects cannot be sold and cannot be given away even if they are damaged, even if the waqf object is a mosque that has collapsed so that it is difficult to rebuild it, it still cannot be sold and the mosque cannot be returned to its owner, because it is possible that it can be used for prayer and iktikaf on the land of the mosque. Meanwhile, changing the function of waqf objects or *istibdāl* according to the Hambali school of thought is permitted as long as there are emergency conditions, namely that the waqf object cannot be used in accordance with the waqf object. They are of the opinion that it is not permissible to sell waqf assets unless the waqf assets are of little use, then they may be sold and the proceeds from the sale can be purchased for goods of the same value as the original goods. Like a horse that can no longer be used for war, it can be sold and the proceeds from the sale can be bought for a new horse that can be made for war.

Ibn Qudamah is of the opinion that if the waqf object is damaged and its benefits are lost, such as a collapsed house or damaged land and dead again (cannot be cultivated) and cannot be repaired or a mosque that has been abandoned by the villagers and has become a place that is not used for prayer or is too small to accommodate the residents and cannot be expanded, or everything is scattered and cannot be repaired, not even part of the waqf object except by selling some of it, then that part may be sold to repair the others. If it is not possible to take any benefit from the waqf object, then all of the objects are sold.

P 40 Law of the Republic of Indonesia Number 41 of 2004 concerning Endowment states that waqf property that has been donated is prohibited from being used as collateral, confiscated, donated, sold, inherited, exchanged or transferred in the form of other rights transfers. However, this provision is excluded if the waqf property that has been donated is used for public interest in accordance with the

²Fahrurroji, 2019, *Wakaf Kontemporer*, Badan Wakaf Indonesia, Jakarta, p. 151.

³ *Ibid.* , p. 156.

spatial plan (RTUR) based on the provisions of the regulations applicable laws and do not conflict with sharia.

The implementation of these provisions can be carried out after obtaining written permission from the Minister with the approval of the Indonesian Waqf Board. Assets whose status has been changed must be exchanged with assets whose benefits and exchange value are at least the same as the original assets. There are several legal issues that make conversion treasure endowment as action oppose law , including :

1. Nazir is not competent

Nazhir is a party who receives waqf property from the waqf owner (wakif) to be managed and developed according to its designation. So, the task of nazhir is not only waqf administration, but also managing waqf assets so that they grow and are productive. If nazhir is unable to carry out his duties properly, then he can be replaced. The waqif or his heirs can request a replacement nazhir if the nazhir in question is not capable of carrying out his duties.

This legal principle can be read in the Supreme Court decision No. 460K/AG/2019 dated June 26, 2019. In its consideration, the panel of cassation judges stated that since the waqf oath was uttered by the wakif, then from that time the nazhir's obligation arose to utilize the waqf property according to its purpose. The panel of cassation judges considered that the Samarinda High Religious Court had applied the law incorrectly. The basis for the plaintiffs' request to cancel the Waqf Pledge Deed was because the nazhir was considered incompetent and negligent in utilizing the waqf property, so the wakif intended to replace the nazhir so that the waqf property would provide benefits. For 28 years since it was donated, the waqf land could not be utilized by the nazhir, and that is why the panel considered the replacement of the nazhir acceptable.

The Assembly also referred to Article 45 paragraph (1) of the Law Republic of Indonesia Number 41 of 2004 concerning Waqf. Based on this article, nazhir can be replaced if one of the conditions is met. First, the individual nazhir dies. Second, the nazhir of the organization or nazhir of the legal entity is dissolved or dissolved in accordance with applicable laws and regulations. Third, at the request of the nazhir himself. Fourth, not carrying out his duties as nazhir and/or violating the provisions of the prohibition in the management or development of waqf assets. Fifth, being sentenced to criminal penalties based on a decision that has obtained permanent legal force. Even if the replacement of the nazhir is not procedural, the High Religious Court (*judex facti*) should consider the aspect of justice.

The sense of justice of the wakif who has donated his property for 28 years was not considered by the appeal panel. "Administrative procedures should not defeat the sense of justice for the wakif who has been harmed for not receiving the benefits of goodness from the donated property," was among the considerations of the cassation panel.

The Supreme Court in its ruling stated that the people who had been appointed as nazhir in the Deed of Waqf Pledge dated 11 September 1989 were incompetent because they were negligent and did not use the waqf assets as the waqif wished.

The Nazhir has been proven to be incompetent because he was negligent and did not utilize the waqf assets as desired by the waqif, therefore the request of the Applicants for Cassation to replace the Nazhir recorded in the Waqf Pledge Deed Number W.2/05/1989 should be granted.

2. Waqf Land becomes State Property

Waqf in the form of land used as a location for educational institutions or madrasas has the potential to cause disputes, especially between the waqif or his heirs and the management of the educational foundation. However, disputes can also occur when waqf assets change into State Property. This incident occurred in Aceh, when the status of the Islamic madrasah changed to the State Junior High Madrasah (MTsN). Initially, the madrasah was built on land donated by the Aceh Ulema Association (PUSA), and its management was carried out by the Islamic Education Foundation. This foundation manages private educational institutions. Later, the status of the madrasah changed to state. Although the state madrasah already had a location and learning buildings, the waqf assets were not returned. Finally, a dispute arose in court.

The Bireuen Sharia Court stated that it could not accept the lawsuit of the management of the Islamic Education Foundation. The decision was overturned by the Aceh Province Sharia Court. The government, in this case the Head of the Bireuen Regency Ministry of Religious Affairs Office, filed an appeal. In the cassation application, the government asked the court to declare the disputed land as State Property. In decision 46K/AG/2018, the Supreme Court stated that it rejected the Government's cassation application.

Assembly considerations among others :

Reasons I and II cannot be justified because the plaintiffs were proven to be the Administrators of the Bireuen Islamic Education Foundation (YPI) and the object of the dispute was proven to belong to the Bireuen Islamic Education Foundation as endowment property from the Aceh Ulema Association .

The government borrowed the land and there was an agreement that it would be returned. However, until the dispute arose, the waqf land was not returned. Instead, it was registered as State Property.

3. Waqf Land is Controlled by a Third Party

Waqf land if unmanaged and unused, or abandoned, it is very possible for a third party to occupy it and claim it as undistributed inheritance. This kind of case occurred in Tebing Tinggi, North Sumatra. The heirs of the waqf filed a lawsuit with the Religious Court requesting that more than six thousand square meters of land be designated as waqf land to be used for the graves of family members. Dozens of people filed an intervention lawsuit. The Religious Court granted the lawsuit of the heirs of the waqf. The panel of first instance judges also ordered dozens of intervention plaintiffs to vacate the land. In decision No. 337K/AG/2019, the panel of cassation judges rejected the intervention plaintiffs' cassation request.

The High Religious Court can take over the consideration of the Religious Court. Moreover, according to the cassation panel of judges, the

status of the land as waqf land can be proven. The Supreme Court's considerations include:

The reason that the High Religious Court had wrongly applied the law of evidence also cannot be justified because based on evidence P.2 (will) and evidence P.13 (endowment certificate) the Plaintiffs were able to prove that the object of the dispute was endowment land to be used as burial land for the heirs.

P another messenger, No. 456K/AG/2007, the Supreme Court rejected the plaintiffs' cassation appeal. The Mataram High Religious Court did not apply the law incorrectly, and did not conflict with the law. The Mataram High Religious Court overturned the first instance court's decision, then decided to reject the lawsuit in its entirety. The plaintiffs' petitions included asking the Religious Court to cancel the act of waqfing the disputed land, requesting the cancellation of the waqf oath, and cancellation of the nazhir appointment. The plaintiffs claimed that part of the land that was waqfed for the cemetery belonged to the plaintiffs. Their lawsuit was granted by the Religious Court, but was dismissed by the High Religious Court. The plaintiffs' cassation attempt was rejected by the Supreme Court.

The issue of vacating land that has been donated by a third party (Defendant) can also be read in the Supreme Court decision No. 03PK/AG/2008. The PK attempt by the defendants cannot be accepted. Previously, the cassation panel stated that the land whose boundaries were mentioned in the lawsuit was the land donated by Plaintiff I and Plaintiff II which would be used for the benefit of the Muslim community. The cassation panel also firmly stated: "To sentence Defendant I and Defendant II to hand over the above-mentioned land donated in an empty state of anything on it to the Plaintiff to be handed back to the Muslim community (Muslims) living around the land donated in accordance with applicable waqf regulations."

4. Waqf Assets Must Be Legally Owned

Endowments that have been pledged cannot be cancelled. That is the clear formulation in Article 3 of the Law Republic of Indonesia Number 41 of 2004 concerning Waqf. Armed with that article, the panel of cassation judges in case No. 174K/AG/2017 stated that the *judex facti* had applied the law incorrectly. The cassation panel stated that the confession of Defendant II and Defendant III could not be used as a basis that the plaintiff's lawsuit was proven. This is because it is possible that Defendant II and Defendant III gave their confession because they would benefit from the cancellation of the waqf pledge. Moreover, the plaintiffs' lawsuit is still premature because there has been no legal determination of who the heirs are, so it is not clear who has legal standing. The heir has 7 children from his first wife, and 7 children from his second wife. The heir's descendants are in dispute because the 2000 square meter land was donated to the Islamic Education Foundation.

The disputed land is in the name of the first child of the first wife. The plaintiffs requested that the deed of waqf oath and nazhir appointment be canceled because the land ownership status is unclear. Article 5 of the Law Republic of Indonesia Number 41 of 2004 concerning Waqf, referred to by the

plaintiff in the lawsuit, states that waqf property can only be waqfed if it is legally owned and controlled by the waqif.

5. 'Waqf' That Is Not a Waqf

To avoid confiscation by the Dutch, an Arab descendant in Bandung had bequeathed his property to his children in a will in 1942. He collected all the property to be inherited and in the documentation it was called a waqf. The word 'waqf' became a problem decades later, when his heirs wanted to submit a letter to the National Land Agency. The BPN refused on the grounds that the land in question had waqf status. Finally, the heirs of the wakif filed a lawsuit with the Religious Court against the other heirs.

P Supreme Court messenger No. 85K/AG/2012, the defendant's cassation application was rejected by the panel. In its considerations, the cassation panel stated that the plaintiffs could prove that the disputed land was not a waqf land from their parents, which had been controlled by the plaintiffs for the past 50 years. The land and building tax on the land was also paid by the plaintiffs. So, even though there was the word 'waqf' in the will of the plaintiffs' parents, the land was not waqf land as referred to in the Law Republic of Indonesia Number 41 of 2004 concerning Waqf. There is no waqf pledge, nazhir appointment, and registration of waqf land. The local Ministry of Religious Affairs office also confirmed that the land in question was never registered as waqf land.

Legality of Nazhir as Holder of Waqf Rights in Withdrawal of Misused Waqf Assets

Nazhir as the party tasked with maintaining and managing waqf has an important position in waqf. The position of nazhir in waqf is so important that the waqf object is functioning or not. depends on the nazhir itself, for that as an important instrument in waqf, nazhir must meet the possible requirements, so that waqf can be empowered properly. In addition to the requirements and pillars that must be met in waqf, the presence of nazhir as a party who is given the trust to manage waqf assets is very important. Although the mujtahids do not make nazhir one of the pillars of waqf, the scholars agree that the wakif must appoint a waqf nazhir, either an individual or an institution.

The appointment of the nazhir of the waqf aims to ensure that the waqf property is maintained and managed, so that the waqf property is not wasted. In general, the requirements for the nazhir must be adjusted to the existing needs. The experts in Islamic jurisprudence stipulate flexible requirements (appropriate and not rigid), such as the person must be worthy and fit to carry out his duties. The suitability and ability to carry out his duties. Considering that one of the objectives of waqf is to make it a productive source of funds, it certainly requires a nazhir who is able to carry out his duties professionally and responsibly. If the nazhir is unable to carry out his duties properly, then the qadhi (government) is obliged to replace him while still explaining the reasons.

The flexibility of the waqf nazhir requirements depends on the needs in the field. If so far individual waqf nazhir is still used and in its implementation it does not provide a good role in waqf management, then the requirement for nazhir to be

a legal entity is a necessity in order to empower waqf objects optimally. For more details, the requirements for waqf nazhir can be expressed as follows:

1. Moral requirements, namely understanding the law of waqf both in terms of sharia and statutory regulations. Honest, trustworthy and fair so that they can be trusted in the process of managing and distributing waqf to the target and are resistant to temptation, especially regarding business development. Choice, serious and like challenges and have intelligence, both emotional and spiritual.⁴
2. Business requirements include having the desire, having experience and/or being ready to be apprenticed, having the acumen to see business opportunities as an entrepreneur should.
3. Management requirements include having good capacity and capability in leadership, being visionary, having good intelligence intellectually, socially and empoweringly, and being professional in the field of asset management.⁵

Nazhir occupies a very central position in the waqf property management pattern. Viewed from the perspective of nazhir's duties, where he is obliged to maintain, develop and preserve the benefits of the waqf property for those who are entitled to receive it, it is clear that the function and non-functioning of a waqf depends on the role of nazhir. From here the problem is, as a nazhir must meet the requirements as mentioned above so as to be able to carry out his duties and obligations in managing waqf maximally and optimally in accordance with the expectations of the waqif in particular and Muslims in general. So that the experiences of unproductive waqf property management like the past do not happen again.⁶

The *fuqaha* do not include *the nazhir* of waqf as one of the pillars of waqf, this is because they are of the opinion that waqf is a *tabarru' worship* (giving which is sunnah only). In fact, in the implementation of waqf which is carried out anywhere, the position of *nazhir* is something that is very important and central, on the shoulders of *this nazhir* is the responsibility to maintain, guard, and develop the waqf so that the waqf can function as expected. This *nazhir* is tasked with distributing the results of the waqf and utilizing it for the benefit of the community as planned.⁷

Nazhir has the task of administering waqf assets, managing and developing waqf assets in accordance with their objectives, functions and designations, supervising and protecting waqf assets, and reporting on the implementation of tasks to the waqf agency.⁸

Nazir as the party tasked with maintaining and managing waqf has an important position in waqf. In order for the property to function properly and to

⁴Muhammad Daud Ali, 2009, *Sistem Ekonomi Islam Zakat dan Wakaf*, UI Press, Jakarta, p. 63.

⁵Kementerian Agama Republik Indonesia, 2006, *Fiqih Wakaf*, Direktorat Pemberdayaan Wakaf, Kementerian Agama Republik Indonesia, Jakarta, hlm. 62

⁶*Ibid.*, p. 66.

⁷Abdul Manan, 2006, *Aneka Masalah Hukum Perdata Islam Di Indonesia*, Kencana Prenada Media Group, Jakarta, p. 269

⁸the Republic of Indonesia Law Number 41 of 2004 concerning Waqf.

continue, the property must be guarded, maintained, and if possible developed. Viewed from the duties of the *nazhir*, where he is obliged to administer waqf property, maintain, develop property according to its function, purpose, and designation and preserve the benefits of the waqf property for those who are entitled to receive it. The position of *the nazhir* in waqf is so important that whether or not the waqf functions for *mauquf alaih* is very dependent on *the nazhir* of the waqf. However, this does not mean that *the nazhir* has absolute power over the property entrusted to him.

Scholars agree that the authority of the waqf *nazhir* is limited to managing the waqf to be used in accordance with the purpose of the waqf desired by the wakif. The obligation of *the nazhir* is to work properly to maintain and manage the assets. As a supervisor of waqf assets, *the nazhir* can employ several representatives or assistants to carry out affairs related to his duties and obligations. *The nazhir* as a person who is obliged to supervise and maintain the waqf may not sell, mortgage, or rent the waqf assets unless permitted by the court. This provision is in accordance with the judicial power which has the authority to control the activities of *the nazhir*.⁹

The transfer of the function of waqf land carried out by the waqf land manager (*nazhir*) is basically not regulated in the provisions of the law in detail, but basically the transfer of the function of this waqf land may be carried out by the *nazhir* as a form of waqf land management that is considered appropriate by *the nazhir*. *The transfer of the function of waqf land which is a form of nazhir management is stated in the waqf law which states that " nazhir has the task of managing and developing waqf assets in accordance with their objectives, functions, and designations."*¹⁰

In diverting the function of waqf land from its original waqf purpose, *Nazhir* should consider several important aspects, including:

1. *Nazhir* must see whether diverting the function of waqf land from its original waqf purpose for the general public is deemed necessary or not.
2. *Nazhir* must see whether changing the function of waqf land from its original waqf purpose is really necessary or is only based on a group's request.
3. *Nazhir* must see whether diverting the function of waqf land from its original waqf purpose actually benefits a group or harms other communities that require the function of the waqf land.
4. *Nazhir* must see whether diverting the function of waqf land from its original waqf purpose will later lead to disputes or not, especially among the community in general.

The above considerations should be considered by every *nazhir* in changing the function of waqf land from its original waqf purpose for the public, considering that waqf land is basically intended for the welfare of the Muslim community.

⁹Wirduyaningsih, 2005, *Hukum Islam Zakat Dan Wakaf Teori Dan Prakteknya Di Indonesia*, Papas Sinar Sinanti, Jakarta, pp. 119-120.

¹⁰the Republic of Indonesia Law Number 41 of 2004 concerning Waqf.

Judge's Considerations in Granting the Withdrawal of Misused Waqf Assets

The non-playing of the nazhir waqf over the waqf property utilized by the government which resulted in the weakening of *the maqasid* waqf and *maqasid* sharia and led to the dispute was the waqf land of the Islamic Education Foundation (YPI) Bireuen, located at Jalan Tgk.Chik Ditiro (junction IV) Jalan Gayo, Meunasah Capa Village, Bireuen, Kota Juang District, Bireuen Regency. This waqf land along with a two-story building and three first-story units in 1991 were borrowed by the Government of the Republic of Indonesia for the Madrasah Tsanawiyah education program of the Ministry of Religion of the Republic of Indonesia through the Head of the Office of the Department of Religion of North Aceh Regency who at that time was held by Haji Muhammad Ali Ishak.

The utilization of waqf land as mentioned above by the government through a loan was carried out in 1993, where the Bireuen Islamic Education Foundation handed over the land and buildings to the government in that year. The government through the Office of the Department of Religion of North Aceh Regency (now Bireuen Regency) borrowed the land of the Bireuen Islamic Education Foundation for the Madrasah Tsanawiyah program. The waqf land of this foundation came from the waqf of the Central Board of the Aceh Ulama Association (PB.PUSA) which was donated on 1 Muharram 1402 H. coinciding with October 29, 1981 M. At the time of the waqf, PUSA was under the chairmanship of Teungku Muhammad Dawod Bereueh and the secretary was held by T.Muhd.Amin, who acted as the waqif. Meanwhile, the recipient of the waqf (*mauquf 'alayh*) and its nazhir were the Bireuen Islamic Education Foundation. When the waqf was carried out, the chairman of this foundation was held by Teungku Haji Affan, and the secretary was Teungku Marzuki Abu Bakar. Now the Chairman of the Bireuen Islamic Education Foundation is held by H. Azhari Asyeik (as chairman one), Azwani Asyeik (as chairman two) and M. Taib Thaher (as chairman three). While the secretary is held by Ridwan Syamaun.

The waqf dispute between the Bireuen Islamic Education Foundation and the Government was caused by the Ministry of Religion violating the foundation's waqf land loan agreement, where in the loan agreement letter it states, "... The Second Party (Head of the Aceh Utara Regency Department of Religious Affairs Office) has received a loan of a plot of yard land and three building units belonging to the First Party (Bireuen Islamic Education Foundation) for the purposes of teaching and learning activities as long as the building itself has not been provided by the Government." However, until the Madrasah Tsanawiyah (MTs) had changed its status to a State Madrasah Tsanawiyah (MTsN), and MTsN already had a building for its own teaching and learning process, there had been no real handover from the Office of the Ministry of Religion to the Management of the Bireuen Islamic Education Foundation. In fact, the government has registered the waqf land as state property registered in the inventory of State Property (BMN) Number 3A 58/WKN.I/KP.02/TIM.I/2008 dated August 5, 2008.

The transfer of the Bireuen Islamic Education Foundation's endowment land to state-owned land carried out by the government necessitated the management of the Bireuen Islamic Education Foundation to take legal action by suing the Government of the Republic of Indonesia Cq. Ministry of Religion of the Republic

of Indonesia, Cq. Ministry of Religion of the Aceh Provincial Office, Cq. Head of the Bireuen Regency Ministry of Religion Office. This endowment lawsuit case was won by the Bireuen Islamic Education Foundation, starting from the Bireuen Sharia Court to the Supreme Court of the Republic of Indonesia with the rejection of the Applicants for Cassation from the government.

Disputes between community endowments and the government as discussed in this study are not impossible to occur in other community endowments that have been utilized by the government. This concern is based on the non-role of nazhir in community endowments that involve the government in their utilization, such as the non-role of the Bireuen Islamic Education Foundation as nazhir for its endowment land because it has been loaned to the government. This is known from the community endowment land utilized by the government for several State Elementary Madrasahs in Bireuen as discussed previously, where the nazhir for the endowment land does not function as intended by the endowment law (*ius constituendum*) and the endowment law (*ius constitutum*).

CONCLUSION

Misuse of waqf assets as a category of unlawful acts can refer to Article 40 of the Republic of Indonesia Law Number 41 of 2004 concerning Waqf which states that waqf assets that have been waqf are prohibited from being used as collateral, confiscated, donated, sold, inherited, exchanged, or transferred in the form of other rights transfers. So if waqf assets are misused according to the designation in the waqf pledge, then this can be categorized as a form of unlawful act . The legality of Nazhir as the holder of waqf rights in the withdrawal of misused waqf assets based on Decision No. 22/Pdt.G/2017/MS-Aceh in accordance with the provisions of Article 42 of Law Republic of Indonesia Number 41 of 2004 concerning Waqf which explains: "Nazhir is obliged to manage and develop waqf assets in accordance with their purpose, function, and designation". So that waqf assets that were initially loaned by the holder of waqf rights can be withdrawn if the waqf assets are misused. The judge's consideration in granting the withdrawal of misused waqf assets based on Decision No. 22/Pdt.G/2017/MS-Aceh is based on the facts found. The Judge is of the opinion that legally there is no legal reason for the Defendants/Appellants to illegally and unlawfully detain and control the object in question as the legal property of YPI Bireuen, therefore there is a legal basis for the Aceh Syar'iyah Court to sentence the Defendants/Appellants to remove the object in question from the list of BMN assets of the Ministry of Religion of Bireuen and return it to YPI Bireuen. Based on these considerations, the Judge is of the opinion that the Plaintiffs/Appellants' lawsuit is sufficiently justified and based on law, therefore the Plaintiffs/Appellants' lawsuit must be granted in its entirety.

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