

Nazir Al-Waqf in Imam Syafi'i's Perspectives and Regulation in Indonesia

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Abstract:

This article discusses of possessing endowment refers to an association that copes the endowment properties from the endower in order to be managed and developed based on its intentions (Act number 41 of 2004 article 1 section 4). According to Imam Syafi'i, possessing endowment can be comprised by wakif, or mauquf 'alaih, or hakim. Dissimilarity with the constraints in the Government Regulations number 28 of 1977, possessing endowment should be managed by individuals or institutions in contrast with the constraints that are mentioned by Imam Syafi'i. Evenly, Act number 41 of 2004 article 9 has mentioned that possessing endowment may include: a. individuals, b. organizations, c. institutions. The main notions discussed in this study are: first, the concept of Imam Syafi'i, Government Regulation number 28 of 1977, and Act number 41 of 2004 about The Endowment of Land Properties; second, the position of possessing endowment according to Imam Syafi'i Government Regulations number 28 of 1977 about The Endowment of Land Properties, and Act number 41 of 2004. In addition, the aims of this study are: first, getting a description about the concepts delivered by Imam Syafi'i, Government Regulation number 28 of 1977, and Act number 41 of 2004 about The Endowment of Land Properties. Second, gaining a description about the position of possessing endowment according to Imam Syafi'i, Government Regulation number 29 of 1977, and Act number 41 of 2004. Third, gaining a description about the influence of Imam Syafi'i perspectives in Government Regulation number 28 of 1977 and Act number 41 of 2004 about The Endowment of Land Properties, especially about the position of possessing endowment. This study is started by literature review of Imam Syafi'i works that relate to endowment appraisal and a review of Government Regulation number 28 of 1977, Act number 41 of 2004 and Government Regulation Number 42 of 2006. The conclusion of this study gives an affecting description from Imam Syafi'i perspectives towards Government Regulations number 28 of 1977, Act number 41 of 2004 and Government Regulation Number 42 of 2006 about endowment in Indonesia. In addition, the majority of Indonesian Muslims is enthusiastically involved in applying the concept of Imam Syafi'i in relation to the notion about possessing endowment in its practices.

Keywords: Nazhir, Waqf, Possessing, Government Constitutions

A. INTRODUCTION

Etymologically, the term *waqf* means to stop or stand still. As for the terminological meaning, *waqf* means to restrain possessions, to gain benefits from it, without damaging the possession (Ash-Shan'ani 1991, III 167). According to the Government Regulation number 28 of 1977 on regarding the Endowment of Land Properties, article 1 section (1): A lawful action of an individual or an institution which separates a part of its land property possessions and institutionalizing it for good, for the sake of religious interests or other general deeds according to the Islamic principles (Ministry of Religion RI.1984. 91). On the basis of the above-mentioned section 1, it is indicated that the *waqf* property comprises of various types of goods that are not easily damaged during utilization. However, there are also *ulama* that regards *waqf* as limited to a plot of land.

The legal basis of *waqf* is not explicitly mentioned in Al-Quran however there is an implicit reference, as explained by Imam Syafi'i, Imam Malik and Imam Ahmad ibn Hanbal (Hasbi Ash-Shiddiqie: 1978. 179). There are several verses in Al-Quran that describes the essence of *waqf*, accordingly: Al An'am 38, Al Hajj 77, An Nahl 97, Ali Imran 92. (and Hadith of the Prophet PBUH) indicates that: ""When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ceaseless charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."" (Muslim).

A *waqf* institution has only been recognized during the Islamic period. Previously, there was *bahirah*, *saibat*, *washilat* and *ham*. As can be read in Al Maidah: 103 "Allah has not appointed (such innovations as) *bahirah* or *sa'ibah* or *wasilah* or *ham*. But those who disbelieve invent falsehood about Allah, and most of them do not reason." (Al-Syafi'i 1990. IV. 54).

There are four elements of *waqf*, namely: wakif, mauquf 'alaih, mauquf bih and shigat or pledge. In this case, the positioning of *nadzir* endowment which has a responsibility to take care and to manage the endowment, is not discussed. On one hand, during that time the role of *nadzir* endowment was a direct responsibility of wakif, *maukuf alaih* or hakim, as explained by Imam Syafi'i. On the other hand, in Hadith of Ibnu Umar, the positioning of *nadzir* endowment is explicitly emphasized as follows: "It is not sinful for a *nadzir* endowment to consume a part of the endowment in a righteous manner and without the intention to possess it." (Al-Majmu.n.d. XIV: 573).

The positioning of a *nadzir* endowment becomes more prominent when the location of the endowment is in a very strategic location with a high selling price. In some cases, this condition leads to the endowment property trading, organized by the *nadzir* endowment, which is clearly against the religious principle. Emphasizing the importance of a *nadzir* endowment, this research will examine the positioning of a *nadzir* endowment, according to Imam Syafi'i, Government Regulation number 28 of 1977, and Act number 41 of 2004.

The research method under consideration is the qualitative method, specifically a literature research or book survey. Main reference sources include: kitab al-Umm, Government Regulation number 28 of 1977, and Act number 41 of 2004 regarding endowment in Indonesia. In addition, other book reference serves as a secondary source to enrich this study.

B. METHODS

This study is started by literature review of Imam Syafi'i works that relate to endowment appraisal and a review of Government Regulation number 28 of 1977 and Act number 41 of 2004 about the

practice of endowment in Indonesia. The research method under consideration is the qualitative method, specifically a literature research or book survey. Main reference sources include: kitab al-Umm, Government Regulation number 28 of 1977, and Act number 41 of 2004 regarding endowment in Indonesia. In addition, other book reference serves as a secondary source to enrich this study.

C. RESULT AND DISCUSSIONS

1. Short History of Imam Syafi'i

Imam Syafi'i was born in the month of Rajab, 150 H (767 M), in the city of Guzah (Palestine). His father has already died when Syafi'i was still in his mom's womb. The name 'Syafi'i' was taken from his father's family "Ibn Idris ibn Abbas ibn Utsman ibn Syafi'i ibn Saib ibn Yaizd ibn Hasyim in Abdul Muthalib ibn Abdi Manaf." It means that Imam Syafi'i is part of the family tree of Nabi Muhammad SAW. This is rooted back to their great great grandfather, Abdi Al-Manaf the third grandfather of Nabi SAW. From his mother side, Syafi'i is the son of Fatimah ibnt Abdillah ibn Hasan ibn Husain ibn Abi Thalib.

Since he was 9 years old, Syafi'i is used to memorize the 30 *juz* of Al Quran, mastering the Arabic language from Banu Hudzail (in Makkah), including literature and Arabic poetry. Furthermore, Syafi'i studied *fiqh* from Imam Muslim ibn Khalid al-Zanny, a teacher and a mufti in Makkah, during the time. He learned *hadith* from Imam Sufyan ibn Uyainah, a *muhaddith* in Makkah. Lastly, he studied Al Quran under the supervision of Imam Ismail ibn Qashtanthin, in Makkah.

His journey in attaining knowledge was accomplished by going to Madinah, in order to learn under the supervision of Imam Malik. In the age of 10, Syafi'i was able to memorize *kitab Al-Muwaththa* written by Imam Malik. When he arrived in Madinah, Imam Malik cheerfully welcomed him, because Imam Syafi'i has succeeded in memorizing his *kitab*. In addition, Imam Malik even gave money for Imam Syafi'i as a form of support of his good intention in continuing his study in Iraq. In that place, Syafi'i met Imam Muhammad ibn Hasan and Imam Abu Yusuf. Both *ulama* are close friends of Imam Abu Hanifah, a famous Imam Madzhab Hanafi in Iraq. Syafi'i spent two of studying in Iraq before he continued his study to Persia, Yemen, Egypt and other cities.

The famous works of Imam Syafi'i are including; *Al-Risalah*, *Al-Umm*, *Ikhtilaf al-Hadits*, and *al-Musnad*. Imam Syafi'i died on Thursday, 29 Rajab of 204 H (820 M) in Egypt.

2. Waqf and Nadzir endowment

According to *jumhur ulama*, a *waqf* needs to fulfil four requirements, including: *wakif* (a person who gives waqf), *mauquf alaih* (a person who receives waqf), *mauquf bih* (the endowed property) and *shighat* or *pledge* (the statement). (Pradja, 1993: 27).

In the above-mentioned notion, the positioning of a *nadzir* and a witness of waqf is not mentioned, although those two aspects are crucial in the implementation. It seems that the two additional elements are emphasized as an evidentiary function of *waqf*, not as a legitimate requirement of *waqf*.

Imam Syafi'i explained *nadzir* endowment as follows: If there is a contract (*akad*) of *waqf* while the *nadzir* is not mentioned, then the *wakif* automatically serves as a *nadzir*. This function can also be

done by *maukuf alaih* or *hakim*, which sets a *wakif* as a *nadzir* endowment. (Imam Syafi'i: 1990. IV. 63)

As contained in Government Regulations number 28 of 1977, the elements of *waqf* comprise of: *wakif*, a property/possession, *waqf khairi*, a pledge, *nadzir*, a witness, and the officials which is responsible for the creation of the endowment pledge. In that case, based on Government Regulation there is a clear position of *nadzir endowment*. The elements of *waqf* are described in detail, while the elements of *waqf* as established by *jumhur ulama* is not as detailed (Athoillah, 2015:217). This condition could lead to a misunderstanding in the Muslim community, especially in understanding the essence of *waqf* (Joseph, 2014). Based on the writer's analysis, the explanation as contained in Government Regulation provides a more general interpretation which is more operational and accommodative with regard to the development of Indonesian Muslim community's understanding of *waqf*. Consequently, there is an insignificant possibility that there will be a misunderstanding regarding *nadzir* endowment. However, the position of *nadzir* endowment needs to be formally determined in order to avoid the practice of trading or abuse of *waqf* endowment, which could be the result of the increased value of *waqf* endowment or other factors (Cf, Athoillah, 2013). Other factors that are explained in Government Regulation number 28 of 1977 while have not been set by *jumhur ulama* are including these additions: *waqf khairi*, the witness and the officials which is responsible for the creation of the endowment pledge. One could say that the three elements serve an important role in *waqf*, hence, if one of those is missing, the implementation of *waqf* cannot be said as legitimate, according to the constitutional law and the Islamic religious law in Indonesia.

Nadzir endowment according to Government Regulation number 28 of 1977 is categorized into two groups, namely individual *nadzir* and institutionalized *nadzir*. An individual *nadzir* needs to adhere to the following requirements:

- a. a citizen of the Republic of Indonesia
- b. a Muslim
- c. be an adult
- d. be sound of mind
- e. not under an amnesty
- f. resident in an area where the endowment is located

For an institutionalized *nadzir*, the requirements are:

- a. a legal Indonesian firm and located in Indonesia
- b. a representative in a district where the plot of land (*waqf*) is located
- c. every *nadzir* endowment is obliged to register to the Office of Religious Affairs to be legalized.
- d. the number of *nadzir* endowment in every district is determined by the Minister of Religious Affairs.

The requirements for a *nadzir* according to article 219 of Compilation of Islamic Law (CIL/KHI [Kompilasi Hukum Islam]) as referred to in article 215 section (4), consist of individuals who needs to fulfil the following conditions: a citizen of Republic of Indonesia, a Muslim, an adult, possess physical and mental health, currently not under an amnesty and resides in an area where the endowment is located. If it is an institutionalized *nadzir*, the following conditions are applied; a legal Indonesian firm and located in Indonesia and it needs to have a representative in a district where the plot of land (*waqf*) is located.

3. Obligations and Rights of Nadzir in Government Regulation number 28 of 1977

Obligations and rights of *nadzir* is regulated in article 220 CIL and section 7 of PP No.28/1977, as follows:

- a. *Nadzir* is obliged to arrange and be responsible of the *waqf* property and the execution of the *waqf* procedure on the basis of its objectives, as regulated by the Minister of Religious Affairs.
- b. *Nadzir* is obliged to make a regular report to the local head Office of Religious Affairs (*Kepala Kantor Urusan Agama*) and a copy to the local District Council of Ulama (*Majelis Ulama Kecamatan*) and the local Head of District (Camat), regarding all of its responsibilities, as indicated in section 16 (1).
- c. The procedures of writing the report as mentioned in section (2) is executed according to the regulations of the Ministry of Religious Affairs.

Furthermore, in article 22 of CIL and article 8 Government Regulation number 28/1977 it is explained that *nadzir* has the right to acquire an income and supporting facilities in which the amount is determined based on the decency consideration as advised by the local Office of Religious Affairs (*Kantor Urusan Agama*). Emphasizing that both individual and institutionalized *nadzir* has a limited tenure both because of a hindrance of *samawi* or *kasbi*, it is important to have a clear regulation (Bayinah, 2012). Therefore, article 221 indicates that:

- a. *Nadzir* is stopped by the Head of local Office of Religious Affairs because of the following reasons: death, an appeal from the individual, inability to continue the obligation as a *nadzir* and committing a crime.
- b. If there is a vacant position for a *nadzir* because of one of the reasons mentioned in section (1), the successor will be appointed by the Head of the Office of Religious Affairs or according to the local religious authority (*Majelis Ulama Kecamatan*).
- c. If a *nadzir* has been demoted, as explained in section (1), he will automatically be replaced by one of his heir.

Nadzir endowment in Act number 41 of 2004 article 9 is explained as:

Nadzir comprises of:

- a. Individuals
- b. an organization; or
- c. a legal entity

Article 10

- (1) Individuals as mentioned in article 9a, can only be a *nadzir* if the following conditions are met:
 - a. A citizen of Republic of Indonesia
 - b. Be a Muslim
 - c. Be an adult
 - d. *Amanah* (trusted)
 - e. Physically and mentally healthy
 - f. Unrestrained from conducting any legal activities

- (2) An organization as mentioned in article 9b can only be a *nadzir* if the following conditions are met:
 - a. The management of the corresponding organization fulfils the requirements of individual *nadzir* as explained in section(1); and
 - b. An organization that is actively involved in social activities, education, society development and/or Islamic (religious) activities.
- (3) A legal entity according to article 9c can only be a *nadzir* if the following conditions are met:
 - a. The management of the corresponding organization fulfils the requirements of individual *nadzir* as explained in section(1); and
 - b. An Indonesian legal entity which is shaped in accordance with the prevailing legislation.
 - c. The corresponding legal entity is actively involved in social activities, education, society development, and/or Islamic (religious) activities.

Article 11

Nadzir has the following tasks:

- a. To conduct the administration of the endowment property
- b. To manage and to develop the endowment property according to its objectives and functions
- c. To supervise and to protect the endowment property
- d. To give report regarding the task implementation of the head of the Indonesian *Waqf* Organization (*Badan Wakaf Indonesia*).

Article 12

In carrying out the tasks referred to in article 11, *nadzir* can receive compensation from the net proceeds for the management and development of *waqf* property in the amount not exceeding 10% (ten percent).

Article 13

In carrying out the tasks referred to in article 11, *nadzir* acquires guidance from the Ministry and the Indonesian *Waqf* Board.

Article 14

- (1) In the occasion of development, as referred to in article 13, *nadzir* must be registered with the Ministry and the Indonesian *Waqf* Board.

Further provisions of *nadzir* as referred to in article 9, article 19, article 11, article 12 and article 13 is regulated by the Government Regulation (GR).

4. Nadzir In Government Regulation number 42 Of 2006

Article 2

Nadzir includes:

- a. Individuals;
- b. Organization; or
- c. Legal entity

Article 3

- (1) The property of the endowment must be registered in the name of *nadzir* for the benefit of the party referred to in Waqf deed of pledge as intended.
- (2) A registration of the *waqf* property in the name of *nadzir*, does not prove ownership of *nadzir* on *waqf* property.
- (3) The replacement of *nadzir* does not result in the transition of the concerned *waqf* property

Article 4

- (1) Individual *nadzir* is appointed by *wakif* to meet the requirements by law.
- (2) *Nadzir* referred to in paragraph (1) shall be registered with the Ministry and Indonesian Waqf Organization (Badan Wakaf Indonesia [BWI]) through the local Religious Affairs Office.
- (3) In the absence of the local Religious Affairs Office referred to in paragraph (2), *nadzir* registration is done through the nearby Religious Affairs Office, the Office of Religious Affairs, or a representative of Indonesian Waqf Board at provincial / district / city.
- (4) Indonesian Waqf Organization published a proof of registration for *nadzir*
- (5) *Nadzir* individuals should constitute a group consisting of at least three (3) persons, one of whom was a head.
- (6) One *Nadzir* individuals as referred to in paragraph (5) must reside in the district where the endowment is located.

Article 5

Nadzir, as referred to in Article 4 paragraph (1), stops from its position if:

- a. passed away;
- b. permanently restrained;
- c. resign; or
- d. dismissed by Indonesian Waqf Organization.

- (1) The cessation of one *Nadzir* individuals as referred to in paragraph (1) shall not result in the cessation of other *Nadzir* individuals.

Article 6

- (1) If among *Nadzir* individuals some one quits from his position as referred to in Article 5, the *Nadzir* should report to the Office of Religious Affairs to be forwarded to Indonesian Waqf Organization no later than 30 (thirty) days from the date of cessation of *Nadzir* individuals, who will then substitute *Nadzir* as determined by Indonesian Waqf Organization.
- (2) In the case *Nadzir* quits his position as referred to in Article 5 for the endowments for a limited period and endowments in a period not limited to, the existing *Nadzir* notify *Wakif* or heirs *Wakif* when *Wakif* had died.
- (3) In the absence of the local Religious Affairs Office, the report referred to in paragraph (1) shall be conducted through the Office of Religious Affairs *Nadzir* nearby, the Office of Religious Affairs, or representative of Indonesian Waqf Organization in the provincial / district / city.

- (4) If *Nadzir* within a period of one (1) of from the Endowment Deed Official Pledge does not perform their duties, the head of KUA either on its own initiative or at the proposal of *wakif* or their heirs are entitled to propose to the BWL for the dismissal and replacement *Nadzir*.

Article 7

- (1) *Nadzir* organization shall be registered with the Minister and BWI through the local Religious Affairs Office.
- (2) In the absence of the local Religious Affairs Office referred to in paragraph (1), *Nadzir* registration is done through the Office of Religious Affairs nearest Office of Religious Affairs, or representative of BWI in the provincial / district / city.
- (3) *Nadzir* organization is an organization engaged in social, educational, social and / or Islamic religious activities that meets the following requirements:
 - a. organization committee must meet the requirements of individual *Nadzir*;
 - b. one of the organization committee must reside in the district / city where the endowment is located
 - c. to possess:
 1. a copy of the notarial deed of incorporation and articles of association;
 2. The list of board members;
 3. Bylaws
 4. The program in the development of endowments;
 5. The list of assets derived from *waqf* property separated from other property or that is the wealth of the organization; and
 6. a letter of statement, willing to be audited.
- (4) Requirements referred to in paragraph (3) letter I attached to the application for registration as referred to in paragraph (1).
- (5) The registration referred to in paragraph (1) shall be done before signing

Article 8

- (1) *Nadzir* organization is disbanded in accordance with the provisions of the articles of the bylaws (Anggaran Dasar) of the organization concerned.
- (2) If one *Nadzir* raised by the *Nadzir* organization died, resigned, or unable to keep his position as *Nadzir* and/or canceled, then the concerned *Nadzir* must be replaced.

Article 9

- (1) *Nadzir* regional representatives of an organization that does not carry out the task and/or violates the provisions in the management and development of *waqf* property in accordance with the designation contained in Waqf deed of pledge, then the management center of the organization concerned shall resolve the matter regardless of the request from BWI.
- (2) If the central committee is not able to carry out the obligations referred to in section (1), then the *Nadzir* organization may be dismissed and its right may be replaced by BWI, taking into account the recommendations and considerations of local MUI.
- (3) If *Nadzir* organization within a period of one (1) of since Endowment Deed Official Pledge is established, do not perform their duties, then the head of KUA is either on its own initiative or

at the proposal of *wakif* of their heirs are entitled to propose to Waqf deed of pledge for the dismissal and replacement of *Nadzir*.

Article 10

If one *Nazhir* appointed by *Nazhir* organization dies, resigns, remains incapacitated and / or cancellation of his position as *Nazhir* raised by *Nazhir* organization as referred to in Article 8 paragraph (2), the organization concerned must report to KUA for subsequently forwarded to BWI later than 30 (thirty) days after the incident.

Article 11

- (1) The legal entity of *Nadzir* shall be registered with the Ministry and the BWI through the local Religious Affairs Office.
- (2) In the absence of the local Religious Affairs Office referred to in paragraph (1), *Nadzir* registration is done through the Office of Religious Affairs nearest Office of Religious Affairs, or representative of BWI in the provincial / district / city.
- (3) *Nadzir* legal entities that carry out the registration referred to in paragraph (1) shall meet the following requirements:
 - a. Indonesian legal entities engaged in social, educational, civic, and Islamic religion;
 - b. board of a legal entity shall meet the requirements of individual *Nadzir*;
 - c. one of the administrators of legal entities must reside in the district / city where waqf the endowments are located;
 - d. possesses:
 1. a copy of the notarial deed of establishment and articles of association which have been approved by the competent authority;
 2. The list of board members;
 3. Bylaws (*Anggaran Rumah Tangga*)
 4. The program/planning in the development of endowments;
 5. A separated list of wealth derived from *waqf* property or wealth which is a legal entity; and
 6. A letter of statement, stating the willingness to be audited.
- (4) The requirements referred to in paragraph (3) d is attached to the application for registration as referred to in paragraph (1).

Article 12

Regional representatives of *Nadzir* of a legal entity which does not carry out its duties and / or violate the prohibition in the management and development of *waqf* property in accordance with the designation contained in Waqf deed of pledge, then the central committee of the corresponding legal entity concerned shall finish it, whether requested or not by BWI.

- (1) In the case of the central committee of legal entities cannot execute the obligations referred to in paragraph (1), then *Nazhir* legal entity may be dismissed and its right may be replaced by BWI by taking into account the recommendations and considerations of local MUI.

- (2) If Nazhir legal entity within a period of one (1) of from the Endowment Deed Official Pledge do not perform their duties, the head of KUA is entitled to propose to BWI for the dismissal and replacement Nazhir, either on its own initiative or at the proposal *wakif* of their heirs.

Article 13

- (1) Nazhir as referred to in Article 4, Article 7 and Article 11 shall administer, manage, develop, oversee and protect *waqf* properties.
- (2) Nazhir shall make periodic reports to the Minister and BWI about *waqf* activities referred to in paragraph (1).
- (3) Further provisions concerning the procedures for making the report referred to in paragraph (1).
- (4) is regulated by the Minister Regulation (Peraturan Menteri).

Article 14

- (1) The tenure of Nazhir is five (5) years and may be reappointed.
- (2) The reappointment of Nazhir referred to in paragraph (1) is conducted by BWI, if the person concerned has been carrying out a good job in the previous period in accordance with Islamic principles and legislation.

From the Government Regulations and Act above, *nazhir* is one indispensable element in the implementation of *waqf* (Assegaf and Sawarjuwono, 2013). The task of *Nadzir* is to maintain prosperity, empowering, lease, and extract the benefits from *waqf* properties (Dahlan. Yaa'akub, Abdul Hamid and Palil, 2014). Because of the above-mentioned task, the 'Ulama of Hanafiyah, Malikiyah and Shafi'ites agreed that he was entitled to a reward from the benefits of the *waqf* objects or wages that have been promised by *wakif* (Wahbah Zuhayli, 7694) or from the local government of the state treasury (*bait al-mal*) (An-Nawawi al-Banteni, 174). Imam Nawawi in the book *Nihayat Zaiyn* mentioned that Nazhir (which is not *wakif*) are entitled to wages that have been promised by *wakif* even though it is more than a standard wage minimum (An Nawawi al-Banteni, 273) If Nazhir is resigned or fired, the judge has the right to appoint the person that is ready to manage endowments. This person is paid from the endowment empowerment results. (Wahbah Zuhayli, al-Fiqh al-Islami Wa Adillatuhu, 7694)

According to Malikiyah, Nazhir is entitled to receive wages from the results of *waqf*

شيء له يكن لم اذا الوقف من شيئا للناظر يجعل ان وللقاضي

"And for judges (government) may not make a wage from the endowment if Nazhir does not have anything".

Legal thought is reflected in the Law of *waqf* which says that *Nadzir* has the task:

- a. to undertake administration of *waqf* property;
- b. to manage and to develop the *waqf* property in accordance with the purpose, function, and purpose;
- c. to supervise and to protect the property of the *waqf*;

- d. to report execution of tasks to the Indonesian Waqf Board. (Law No. 41 of 2004 Section 11)

The article reinforces the special authority of Nazhir which has a stronger position than others, according to the rules (kaidah) (Zaenudin Ibrahim (Ibn Najm), al-Asybah wa al-Ndhair, p. 186.)

العامة الولاية من أقوى الخاصة الولاية

"Special authority has a stronger position rather than the general rule".

In other methods Ibn Najm disclose:

ناظر وجود مع الوقف في التصرف القاضي يملك لا

"The judge does not have the jurisdiction over the existing endowments to manage waqf properties, as long as Nazhir is present".

Nazhir authority is also mentioned in Article 23 that, "In the case of *wakif* do not specify the designation of *waqf* properties, Nazhir can assign the designation of *waqf* property in accordance with the purpose and function of endowments." (Law No. 41 of 2004 Article 23, paragraph 2)

In respect of the wage of Nazhir mentioned in Article 12, which reads, "In carrying out the tasks referred to in Article 11, Nazhir can receive compensation from the net proceeds for the management and development of waqf properties which amount does not exceed 10% (ten percent). (Law No. 41 2004, Article 11).

D. CONCLUSION

Based on the results of a comparative study of the positioning of *Nadzir endowments*, some conclusions can be drawn as follows:

First, the *waqf* concept as stated by Imam Syafi'i were generally modest, it can be seen from the description of his theory of the elements of endowments, namely: *wakif*, *mauquf 'alaih*, *mauquf BIH*, and the pledge. On the other hand, the provision of endowments established by Government Regulation number. 28 of 1977 is the development of the basic thoughts of Imam Shafi'i because it has undergone the process of adjusting to the conditions and demands of the people of Indonesia. In the PP it is determined that the elements of endowments consist of: *wakif*, lands *waqf* properties, endowments *khairi*, pledge, *nadzir*, witnesses, and the Endowment Deed Official Pledge of Government Regulation. In Act number 41 of 2004 under Article 6 stated that the elements of *waqf* as follows: *Wakif*, *Nadzir*, Endowment properties, Endowment Pledge (*ikrar*), Appropriation of the *waqf* property and Endowment duration.

The gradual improvement regarding the positioning of *nadzir* endowment has been conducted by the Indonesian government in order to run the 1945 Constitution Article 29, paragraphs 1 and 2.

Secondly, regarding *nadzir* endowment, according to Imam Syafi'i "when in the pledge it was not mentioned regarding who takes the role of a *Nadzir*, then it can be concluded that the *nadzir* will be its *wakif*, *mauquf 'alaih* or judges." The aim is to provide legal certainty about who will be the *waqf*

property manager. This allows the *waqf* property to be maintained properly in accordance to the guidance of the Islamic principles and to meet the expectations to whom the property is beneficial.

Third, the position of *nadzir* endowment in Government Regulation number 28 of 1977 has been clearly mentioned in relation to the obligations, rights, and other matters relating to *nadzir* endowments. This is described in Article 6, paragraph 1 and paragraph 4 and includes individual *Nadzir* and legal entities. Then in Article 7, the obligations and procedures for reporting *nadzir* endowment is described. Article 8 mentions regarding the rights of *Nadzir* to acquire an income and facilities from the *waqf* property.

Fourth, endowments *nadzir* provisions in Act number 41 of 2004, in Article 1, paragraph 4 states that the party receiving *nadzir* is *Waqf* property of *Wakif* to be managed and developed in accordance with *peruntukkannya*. *Ketentuan* on *nadzir* endowment mentioned in the articles: Article 9, Article 10, paragraph 1,2 and 3. Article 11, Article 12 on the right *nadzir* on *waqf* property of (maximum) 10%. Article 13 *nadzir* obtain guidance from the Minister and the Indonesian *Waqf* Board. Article 14 on the necessity *nadzir* endowments registered with the Ministry and the *Waqf* Board Indonesia (Article 1), and article 2 states that matters related *nadzir* endowment as contained in Articles 9, 10, 11, 12, and Article 13, is regulated by the Government.

The Government Regulation number 42 of 2006 on Chapter II explains that *nadzir* endowment consists of Part General Article (2) *Nadzir* include: an individual, organization or a legal entity. Section 3 describes the need to register the property on behalf of *nadzir* endowment, while it does not mean that the property belongs to them, and regarding the *Nadzir* replacement which does not result in the transition of *waqf* properties. Part two pointed out regarding individual *Nadzir*, comprised of Articles 4 (No 6, paragraphs), Article 5 of *Nadzir* replacement mechanism as set out in Article 4 (1) of Article 6 consists of four paragraphs. The third part of the organization *Nadzir* consist of Article 7 (including 5 sections). Article 8 (consisting of two sections about the dismissal of the organization *nadzir*). Article 9 on *nadzir* regional representatives of an organization (consisting of three sections). Article 10 regarding the rules of individual *Nadzir* appointed by *nadzir* organization when they resign or die, or when the position is canceled. Part Four discusses the *Nadzir* Legal Entity. Article 11 consists of four sections. Article 12, second section highlights the provisions of *nadzir* regional representative of a legal entity which does not carry out its duties and / or violate the prohibition in the management and development of *waqf* property in accordance with the designation listed in *Waqf* deed of pledge. The fifth part explains the tasks and the service period of *nadzir*. Article 13 consists of four sections. Then Article 14 regarding the service period of *nadzir*, consists of two sections. In general it can be concluded that the position *nadzir* endowment in Act number 41 of 2004 and Government Regulation number 42 of 2006 provides details and clarity on the positions, kinds, rights and obligations of *nadzir* endowments, as well as the service period of *Nadzir* endowments. It shows that the Indonesian government provides service for the Muslims in relation to the affairs of *waqf* in Indonesia.

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