

**LEGAL ACTION AGAINST WITHDRAWAL  
WAKAF PROPERTY  
(Decision Study No. 22/Pdt.G/2017/MS-Aceh)**

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**ABSTRACT**

Withdrawal of Waqf Assets based on Decision No. 22/Pdt.G/2017/MS-Aceh because the objects which are waqf assets belonging to the Bireueen Islamic Education Society have been misused by the Bireueen Ministry of Religious Affairs in a dysfunctional manner, namely the waqf objects are recorded as Public Property. In order for the irregularity of the waqf assets to be in accordance with the waqf pledge made, the owner of the waqf rights takes over the waqf assets. The validity of Nazir as the owner of the waqf rights in the event of misappropriation of waqf assets based on Resolution no. 22/Pdt.G/2017/MS-Aceh is reviewed from the provisions of Article 42 of Law Number 41 of 2004 concerning Waqf which explains: "It is the duty of nazhir to manage and dispose of waqf assets for their intended use, according to their function and designation." So that the waqf assets that were originally borrowed by the owner of the waqf rights can be disposed of if there is misuse of waqf assets. The Judge's reason for permitting the takeover of misused waqf assets in Decision no. 22/Pdt.G/2017/MS-Aceh, based on the findings of the facts by the Judge, is of the opinion that legally there is no legal justification for the Defendant/Applicant to hold objects that are unlawfully and unlawfully owned and managed as YPI Bireuen's claim property.

**Keywords: Legal Action, Withdrawal of Waqf Assets.**

**INTRODUCTION**

**A. Background**

The reality of life shows that many waqf disputes still arise in life, such as unregistered waqf, unmanaged or neglected waqf assets, improper transfer of waqf to unauthorized third parties, confiscation of waqf land, rejection of waqf mortgages by third parties, heirs, and many more.

Several factors encourage the release of waqf assets because they do not comply with the provisions of waqf allocation. Examples of waqf disputes include the issue of liquidation of waqf land, namely in Resolution no. 22 / Pdt.G / 2017 / MS-Aceh. In this case, the disputed land is owned by the Bireuen Islamic Education Association which was loaned to the Bireuen Religious Hall which was subsequently established for the MTsN Bireuen school, but at the time of the loan, the Bireuen Central Religious Education

Office used the position of misappropriation of waqf assets through malfunction, namely what is the registration of waqf as Public Property.

Depending on the difference in waqf assets according to the waqf pledge made, the owner of the waqf rights can take the waqf assets. As in this case, the nazir as the holder of waqf rights can obtain waqf assets according to the name in the waqf allocation. This is in accordance with Article 42 of Law Number 41 of 2004 concerning Waqf: "It is the duty of the nazhir to manage and administer waqf assets in accordance with their purpose, function, and allocation." So that waqf assets originally borrowed by the owner of waqf rights can be reclaimed if there is misuse of the waqf assets.

**RESEARCH METHODS**

The type of research used is formal legal research, known as pedagogical legal research. The author's approach to writing this rule is descriptive. The data used in this study is a literature survey. Qualitative data analysis was conducted.

## **RESULTS AND DISCUSSION**

### **1. The Background to the Withdrawal of Waqf Assets in Decision No. 22/PDT.G/2017/Ms-Aceh**

Waqf assets essentially belong to the people. Therefore, the public needs to understand their benefits. Therefore, maintaining waqf assets is a collective obligation. Therefore, the existence of an institution responsible for managing waqf assets is crucial, as has been done in several Islamic countries.

Indonesia appears to be slow in managing waqf, despite having a Muslim majority and ranking first among the world's Muslim populations. The implication of this lack of action is that many waqf assets are poorly managed, and some remain unused.

The Compendium of Islamic Law, provides a definition of waqf by Article 215, which defines waqf as a legal act of a person, or a group of people or legal entity sharing part of their property, and institutionalizing it permanently, for the purpose of worship or other public needs in accordance with Islamic teachings.

In fact, land conflicts are nothing new. However, people today are experiencing a greater level of conflict than during the colonial era. Causes of land conflicts include:

- a. Unbalanced and inappropriate land ownership or management.
- b. For the economically weak community.
- c. The weak bargaining position of local communities with land rights in land acquisition.

Land conflicts are a form of extreme and violent competition. At the macro level, the sources of conflict are structural, such as differences in land tenure. At the micro

level, conflict can arise from differences in values (culture), differences in data interpretation, objective descriptions of local information or landscapes (technical), or differences in economic interests, which can be found in disparities in land ownership and management structures.

Article 1 of Law Number 41 of 2004 concerning Waqf states that waqf is a legal act of a waqif, to transfer and assign part of his property, to be used permanently, or temporarily, at his own discretion, for worship or religious purposes. according to sharia. Law Number 41 of 2004 regulates waqf in general, meaning that Law Number 41 of 2004 does not specifically regulate the waqf of privately owned land, so that the use of private waqf land that often occurs in Indonesia is still subject to Government Regulation Number 28/1977 concerning Land Waqf.

The use of waqf land is similar to the general function of waqf, namely for the benefit of the community. However, Law Number 41 of 2004 concerning Waqf specifically states that the allocation of waqf land is subject to the waqf dedication that has been borne. The main cause of waqf problems that often occur in practice is the large number of waqf lands that are not followed up with waqf deeds. Again, the majority of waqf in Indonesia is carried out based on religion or belief.

This situation ultimately results in the absence of a legal basis for waqf land, so that if problems arise in the future regarding the ownership of the waqf land, the resolution will be hampered, especially in the area of evidence. Another factor that often causes problems in the practice of waqf in Indonesia is the request of the waqif's heirs for the return of the waqf land and the Nadzir whose use differs from the waqf agreement affecting the waqf land for several generations. In practice, it is often heard and seen that waqf land is demanded back by the waqif's heirs after the waqif dies.

Actually, this situation is not a big problem, because referring to the

provisions of the law, waqf can be made for a certain period of time, so that when the specified period has passed, the waqf is returned to the waqif and his heirs. However, specifically in the case of waqf land, the provisions for making a waqf deed have excluded ownership rights to waqf land so that the waqf land cannot be obtained.

Based on the above statement, it can be concluded that the cause of the waqf dispute is that the law on waqf land in Indonesia has not been regulated in Law Number 41 of 2004, many waqf lands still have waqf commitment deeds that have not been fulfilled, demands for the return of waqf land to the waqif's heirs and waqf land that is controlled by Nazhir from generation to generation.

## **2. The Legality of Nazir as the Holder of Waqf Rights in the Withdrawal of Misused Waqf Assets Based on Decision No. 22/Pdt.G/2017/MS-Aceh**

The nazhir, as the party responsible for the management and administration of waqf, occupies a crucial position in waqf. The nazhir's position in waqf is so crucial that the proper functioning of the waqf object depends on the nazhir himself. Therefore, as a crucial instrument in waqf, the nazhir must determine the conditions that allow the waqf to be properly empowered. In addition to the obligatory conditions and pillars of waqf, the existence of the nazhir as the party entrusted with managing the waqf assets is crucial. Although mujtahids do not consider nazhir to be one of the pillars of waqf, scholars agree that a waqif must appoint a nazhir, either individually or collectively.

The purpose of a nazhir waqf is to ensure the preservation and maintenance of the donated assets, ensuring they are not wasted. In general, the characteristics of a nazhir must be tailored to current needs. Islamic jurisprudence scholars have established flexible (reasonable and rigid) conditions, such as providing suitable and qualified individuals for their jobs, as well

as ensuring their professionalism and capabilities. Since one of the goals of a waqf is to make it a profitable source of income, a nazhir is required to carry out his duties professionally and responsibly. If the nazhir is unable to perform his duties effectively, the qadi (government official) is obliged to replace him, explaining the reasons.

The flexibility of waqf nazhir requirements depends on the needs on the ground. If waqf nazhir is still used individually and does not contribute positively to waqf management, then the nazhir must be a legal entity to provide the best possible impact on the community. For more clarity, the waqf nazhir requirements can be stated as follows:

- a. Ethical requirements include understanding waqf law, both Sharia and legislative. Honesty, trustworthiness, and fairness, enabling trustworthiness in the administration and management of waqf objectives, and resistance to temptation, particularly in business development. Selectiveness, sincerity, and challenging nature, as well as intelligence, both emotionally and spiritually.
- b. Business requirements are having the desire, experience and/or readiness to learn, the skills to see business opportunities as an entrepreneur.
- c. Management requirements include superior abilities and competencies in leadership, vision, intellectual excellence, social and empowerment, as well as professionalism in the field of resource management.

Nazir plays a very important role in the process of managing waqf assets. Regarding the duties of the Nazir, where he is responsible for maintaining, developing and protecting the interests of waqf assets for the rightful recipients, it is clear that the functioning and non-functioning of waqf depends on the role of the Nazir at the opportunity. From here the problem is, as a Nazir he must fulfill the conditions as

mentioned above in order to fulfill his duties and responsibilities in managing waqf more effectively and in accordance with the expectations of the waqif, especially Muslims in the periphery throughout. So as not to repeat the experience they had in managing waqf assets that were not as efficient as before.

The jurists do not include the nazhir waqf as one of the pillars of waqf, because they consider waqf to be a *tabarru'* (giving only for voluntary acts of worship). However, in the general practice of waqf, the nazhir's position is very important and essential. The nazhir's shoulders are the responsibility to maintain, care for, and disburse the waqf so that the waqf can function as expected. The nazhir is responsible for distributing waqf income and using it for the benefit of the community as intended.

Nazhir is responsible for managing waqf assets, managing and administering waqf assets in accordance with their objectives, functions and designations, managing and safeguarding waqf assets, and providing reports on the performance of waqf assets to the waqf council.

The nazhir, as the party responsible for the management and administration of waqf, holds a crucial position in waqf. To be productive and sustainable, land must be protected, maintained, and developed optimally. The nazhir's duties include managing waqf assets, maintaining them, advancing them according to their function, purpose, and intended use, and protecting the interests of those entitled to them. The nazhir's position in waqf is so crucial that the success or failure of a waqf for the good of the *alaih* (property of Allah) depends largely on the nazhir. However, this does not mean that the nazhir has absolute authority over the assets entrusted to him.

In general, scholars agree that the waqf administrator's authority is limited to managing the waqf, which will be implemented in accordance with the waqf's intended objectives. The administrator is responsible for maintaining and

administering the property effectively. As the administrator of waqf assets, the administrator may employ several deputies or assistants to carry out tasks related to his duties and responsibilities. The administrator, as the person responsible for managing and maintaining the waqf, cannot sell, mortgage, or lease the waqf without court permission. This regulation is in accordance with the judicial authority, which has the authority to supervise the administrator's activities.

The transfer of the function of waqf land by the waqf land manager (nazhir) is basically not regulated in the detailed provisions of the law, but basically the transfer of the function of waqf land can be nazhir as a type of waqf land management that must be considered by nazhir. The function of waqf land from the nazhir management type is stated in the waqf law which states that "the task of nazhir is to manage and develop waqf assets in accordance with their designation, function, and allocation".

In changing the function of waqf land from its original purpose, the Nazhir must pay attention to several important factors, including:

- a. Nazhir must see whether the operation of waqf land that is far from its intended use for waqf to the general public is considered necessary or not.
- b. The Nazir must determine whether it is necessary to separate the function of the waqf land from the original purpose of the waqf or only based on the group's request.
- c. The Nazhir must determine whether the deviation of the function of the waqf land from the original purpose of the waqf actually benefits a group or is detrimental to other parties who need the function of the waqf land.
- d. The Nazir must determine whether the deviation of the function of waqf land from the original purpose of waqf will further cause tension,

especially among the community as a whole.

Every nazhir should pay attention to the above considerations in transferring the function of waqf land from its original purpose of waqf to the community, considering that waqf land was established primarily for the benefit of the Muslim community.

### **3. The Judge's Considerations in Granting the Withdrawal of Misused Waqf Assets Based on Decision No. 22/Pdt.G/2017/Ms-Aceh**

The role of waqf nazhir over state-owned waqf property that weakens the maqasid of waqf and maqasid shari'ah and causes controversy is the waqf land of the Islamic Education Organization (YPI) Bireuen, which is located at Jalan Tgk.Chik Ditiro (road year IV) Jalan Gayo, Meunasah Capa Bireuen Village, Kota Juang District, Bireuen Regency. This property along with two-story and three-story apartments were loaned in 1991 by the Indonesian Federal Government to the Northern Division of the Madrasah Tsanawiyah education program of the Indonesian National Ministry of Religious Affairs through the Head of the Aceh Provincial Ministry, then under the ownership of Haji Muhammad Ali Ishak.

The use of waqf land as mentioned above by the government was carried out through a loan in 1993, where the Bireuen Islamic Education Association handed over the land and buildings to the government in that year. Through the Ministry of Religious Affairs of North Aceh Province (now Bireuen Province), the government borrowed the land of the Bireuen Islamic Education Foundation for the Madrasah Tsanawiyah program. The waqf land of this foundation from the waqf of the Aceh Ulema Association (PB.PUSA) was granted on 1 Muharram 1402 H, coinciding with October 29, 1981 AD. During the waqf period, PUSA had the leadership of Teungku Muhammad Dawod Bereueh and its secretary was T. Muhd. Amin, who acted as waqif. While the recipient of the waqf

(mauquf 'alayh) and nazhir was the Bireuen Islamic Education Association. When the waqf was formed, the chairman of this foundation was Teungku Haji Affan, and its secretary was Tengku Marzuki Abu Bakar. Currently the Chairperson of PAI Bireuen is H. Azhari Asyeik (as the first chairperson), Azwani Asyeik (as the second chairperson) and M. Taib Thaher (as the third chairperson).

The waqf dispute between the Bireuen Islamic Education Association and the Government began with a violation of the foundation's waqf land loan agreement by the Ministry of Religious Affairs, where the loan agreement stated, "... The Second Phase (Head of the Ministry of Religious Affairs of North Aceh Regency) lent a compound plot of land and three blocks. Belonging to the First Phase (Bireuen Islamic Education Foundation) for the purposes of teaching and learning activities as long as the government does not provide separately what is received." However, until the Madrasah Tsanawiyah (MTs) changed its status to a State Madrasah Tsanawiyah (MTsN), and MTsN already had a building for the teaching and learning process itself, there was no real hand given by the Ministry of Religious Affairs to the Management of the Bireuen Islamic Education Foundation. Even in 1999, the government registered the waqf land as public property registered in the National Guardianship Agency (BMN) Number 3A 58 / WKN.I / KP.02 / TIM.I / 2008 dated August 5, 2008.

The government's transfer of LKM Bireuen's waqf land to public land required the directors of LMA Bireuen to take legal action by filing a complaint with the Indonesian Federal Government, Cq. Religion, Bireuen Regency. The Bireuen Islamic Education Authority won the waqf case, from the Bireuen Constitutional Court to the Supreme Court of the Republic of Indonesia, with the government rejecting the Applicant's appeal.

Disputes between local waqf and the government as discussed in this study

are not impossible for other local waqf used by the government. This concern is based on the minimal role of nazhir in local waqf where the government has a stake in its use because the Bireuen Islamic Education Foundation does not act as nazhir on its waqf land because it is loaned to the government. This is known from the local waqf land used by the government for several National Islamic Madrasahs in Bireuen as previously discussed, where nazhir on waqf land does not apply according to waqf law (*ius constituendum*) and waqf law (*ius constituendum*).

## CONCLUSION

### A. Conclusion

1. The reason for the transfer of waqf assets in Decision no. 22/Pdt.G/2017/MS-Aceh is because the disputed waqf assets belonging to the Bireuen Islamic Education Society were misused by the Bireuen Ministry of Religious Affairs through mismanagement, namely registering the waqf assets as Public Property. To ensure that the irregularity of the waqf assets is in accordance with the waqf pledge made, the owner of the waqf rights took over the waqf assets.
2. The legality of Nazir as the owner of waqf rights in the event of misappropriation of waqf assets based on Resolution no. 22/Pdt.G/2017/MS-Aceh is reviewed from the provisions of Article 42 of Law Number 41 of 2004 concerning Waqf which explains: "It is the duty of nazhir to manage and dispose of waqf assets for their intended use." , based on their function and intended use." So that waqf assets that were originally borrowed by the owner of waqf rights can be disposed of if there is misuse of waqf assets.
3. The Judge's reason in granting the return of misappropriated waqf assets in Decision no. 22/Pdt.G/2017/MS-Aceh, based on the facts found by the Judge, that there is no legal reason for

the Defendant/Applicant to maintain the Respondent in an unlawful and unlawful manner and manage it as illegitimate property of YPI Bireuen, Therefore there is a legitimate reason for the Aceh Syar'iyah Court to sentence the Defendant/Applicant to marry the goods in question to be removed from the inventory of BMN assets of the Ministry of Religion in Bireuen and returned to YPI Bireuen. On these grounds, the Judge is of the opinion that the Plaintiff/Applicant's case is reasonable and legally based, therefore the Plaintiff/Applicant's request must be accepted in full.

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