



**REPOSITIONING THE INDEPENDENCE OF THE INDONESIAN WAQF BOARD IN THE DEVELOPMENT OF NATIONAL WAQF  
(A Critical Review of Law No. 41 of 2004 Concerning Waqf)**

*Rimanto\**

Doctoral Program, UIN Raden Intan Lampung, Indonesia  
Email: rimantoyadiman@gmail.com

*Sonny Zulhuda*

Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia  
Email: sonny@iium.edu.my

*Agus Hermanto*

Faculty of Sharia and Law, UIN Raden Intan Lampung, Indonesia  
Email: gusher.sulthani@radenintan.ac.id

*\*Corresponding author*

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**Abstract:** Juridically, the laws and regulations have weakened the Indonesian Waqf Board (BWI) in the regulation of waqf, so that the set goals of the Indonesian Waqf Board have not fully achieved, including advancing and developing national waqf. The overlapping management and supervision of waqf by other institutions is suspected of causing BWI's duties and authorities' inadequacy. Besides, several crucial problems, including the Indonesian Waqf Board (BWI), have implications for the stagnation of BWI provisions' implementation. These regulations have not been followed by the Indonesian Muslim community as a whole. What is interesting to examine is why the Indonesian Waqf Board is unable to function correctly? This study's objective was to find ideal constructions about the position, duties, and authorities of BWI in advancing and developing national waqf. This study was a scientific evaluation with its qualitative-descriptive-analytical characteristics. The method used was qualitative analysis, and the results were presented descriptively. The pattern of reconstructing authority of the Indonesian Waqf Board (BWI) was a study of Law Number 41 of 2004 concerning Waqf so that articles were compiled to lead to a genuinely independent, credible, and robust board in the governance of the Republic of Indonesia. Besides, it is necessary to have accreditation for BWI so that its management's standardization is credible.

Secara yuridis peraturan perundang-undangan terdapat pelemahan terhadap kedudukan Badan Wakaf Indonesia (BWI) dalam pengaturan perwakafan, sehingga berdampak pada belum sepenuhnya tercapai tujuan Badan Wakaf Indonesia dibentuk, yaitu memajukan dan mengembangkan perwakafan nasional. Adanya timpangtindih pembinaan dan pengawasan wakaf oleh lembaga lain, diduga sebagai penyebab tidak maksimalnya tugas dan wewenang BWI. Selain itu, ada beberapa problematika yang krusial, tidak jelasnya

status independensinya Badan Wakaf Indonesia (BWI) yang berimplikasi pada stagnansi pelaksanaan ketentuan BWI sehingga aturan tersebut belum diikuti oleh masyarakat Muslim Indonesia secara keseluruhan. Yang menarik untuk dikaji adalah mengapa Badan Wakaf Indonesia tidak dapat berfungsi sebagaimana mestinya? Tujuan penelitian ini untuk menemukan konstruksi ideal tentang kedudukan, tugas serta wewenang BWI dalam memajukan dan mengembangkan perwakafan nasional. Penelitian ini merupakan evaluasi ilmiah dengan sifatnya yakni kualitatif-deskriptif-analitis. Metode yang digunakan adalah analisa kualitatif, dan hasilnya disajikan secara deskriptif. Pola rekonstruksi toritas Badan Wakaf Indonesia (BWI) adalah penelitian terhadap Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf, sehingga tersusun pasal tentang BWI yang dapat menjadikan badan yang benar-benar independen, kredibel serta kuat dalam tata kelola pemerintahan Republik Indonesia perlu adanya akreditasi terhadap BWI agar standarisasi pengelolaannya kredibel.

**Keywords:** *Repositioning; Waqf Board; Nasional Representation.*

## INTRODUCTION

In Islamic law, Waqf is an Islamic teaching aspect with a spiritual dimension and teaching that shows firm philanthropic dynamics.<sup>1</sup> Waqf has been practiced for a long time before Islam appeared, which it is even estimated since humans recognize life in this world.<sup>2</sup>

This can be seen where every community provides public facilities, such as worship, clean water sources, roads, and buildings. These facilities can be used jointly, and the ownership status is not personal.<sup>3</sup> Rofiq stated that the waqf practice, which Allah prescribes, has extraordinary purposes, including seeking Allah's blessing and the community's benefit. Because of this noble purpose, waqf should not be managed in an effort against Islamic law.<sup>4</sup>

Meanwhile, based on the Islamic point of view, the idea of waqf has three great potentials, including; *First*, the practice of waqf is based on a very high spirit of trust from a waqif to a nazir. *Second*, waqf assets are the property of Allah. In other words, they have a theological aspect, so they cannot be granted, sold but can provide lasting benefits. *Third*, the purpose of waqf is to improve the welfare of the people.<sup>5</sup>

<sup>1</sup> Abdurrahman Kasdi, "Model Pemberdayaan Wakaf Produktif Di Indonesia," *ZISWAF: JURNAL ZAKAT DAN WAKAF* 1, no. 1 (August 19, 2016): 1-15, <https://doi.org/10.21043/ziswaf.v1i1.1528>. See also Miftahul Huda and Lukman Santoso, "The Construction of Corporate Waqf Models for Indonesia," *International Journal of Innovation, Creativity and Change* 13 (2020): 720-34.

<sup>2</sup> Agus Hermanto, "Konstruksi Wakaf Dalam Perspektif Hukum Islam dan Aplikasinya di Indonesia," *Filantropi : Jurnal Manajemen Zakat dan Wakaf* 1, no. 1 (April 12, 2020): 1-19.

<sup>3</sup> Basar Dikuraisyin, "Manajemen Aset Wakaf Berbasis Kearifan Lokal Dengan Pendekatan Sosio-Ekonomi di Lembaga Wakaf Sabilillah Malang," *ZISWAF: JURNAL ZAKAT DAN WAKAF* 7, no. 2 (October 19, 2020): 100-117, <https://doi.org/10.21043/ziswaf.v7i2.7903>.

<sup>4</sup> Ahmad Rafiq, *Hukum Islam Di Indonesia* (Jakarta: Raja Grafindo Persada, 1998), 498.

<sup>5</sup> Kemenag, *Dinamika Perwakafan Di Indonesia Dan Berbagai Belahan Dunia* (Jakarta: Dirjen Bimas Islam, 2015), 2.

As an initial overview to study waqf in Islam, it is crucial to quote al-Quran surah Ali Imran; 92, which describes that it is essential to donate some of what we cherish to others a person will not receive good until that person donates the property they cherish.<sup>6</sup>In the hadith of Muslim, it is told that the companion, Umar, received a plot of land of *Khaibar* which was of high quality. He then asked the Prophet Muhammad. for guidance. The Prophet Muhammad said, hold the land and donate the results of the management of the land.<sup>7</sup>

The hadith above clearly illustrates that Waqf as an Islamic economic institution has two-sided influences at the same time, consisting of the transcendent side and the social side. The transcendent influence for waqif is that they will get rewards that continue to flow (*sadaqah jariyah*) even though the waqif has passed away. While for social influence, many the community will assist from the well-managed waqf assets, mainly when the waqf assets are managed productively.<sup>8</sup>

Understanding waqf in Indonesian society will not be separated from the historical process of the early spread of Islam and its development in the region. They are closer to the law of waqf in fiqh oriented and have a Shafi'i philosophy. Understanding the Indonesian Muslim community about waqf leads their attitudes and behavior in measured waqf through the barometer of fiqh oriented and ala *Shafi'iyah* and what they most believed is that *ibdal al-waqf* is not allowed, so it tends to be traditional and conventional.<sup>9</sup>The Indonesian Muslim community has different forms of waqf and under different names. Some practice the waqf of land, gardens, houses, buildings, and other inanimate objects, such as the Al-Qur'an mushaf, prayer mats, etc.

Their motivations for waqf also differ. There are at least two motivations for the Indonesian people to do waqf:<sup>10</sup>*First*, the normative ideological aspect that the Indonesian Muslim community understands waqf as a form of worship recommended by religion and is a manifestation of a person's faith. For this reason, in Islamic teachings, properties are regulated by religion depending on whether they can target this property or not. *Second*, the socio-economic aspect. Zakat is used in emergency matters and fundamental needs. However, for further development, the role of waqf is required. It becomes the capital for developing and overcoming social and economic problems in society in general, especially in Indonesian society.<sup>11</sup>

<sup>6</sup> Departemen Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Maghfirah Pustaka, 2013), 341.

<sup>7</sup> Imam Muslim, *Shahih Muslim, Jilid II* (Beirut: Dâr al-Kitab al-Ilmiyah, 2006), 299.

<sup>8</sup> Neneng Hasanah, "Kontekstualitas Ayat-Ayat Hukum Wakaf di Indonesia," *Asy-Syari'ah* 20, no. 2 (December 21, 2018): 133-44, <https://doi.org/10.15575/as.v20i2.3446>.

<sup>9</sup> Sofyan Hasan, *Pengantar Hukum Zakat Dan Wakaf* (Surabaya: Al-Ikhlâs, 1995), 33.

<sup>10</sup> Sadzali Musthofa, *Pengantar Dan Azas-Azas Hukum Islam DiIndonesia* (Solo: CV. Ramadlani, 1989), 125.

<sup>11</sup> Zainal Arifin Munir, "Revitalisasi Manajemen Wakaf Sebagai Penggerak Ekonomi Masyarakat," *Journal de Jure* 5, no. 2 (June 30, 2013), <https://doi.org/10.18860/j-fsh.v5i2.3007>. See also Kasdi, "Model Pemberdayaan Wakaf Produktif Di Indonesia," 4-5.

To realize and maximize waqf's potential, strategic efforts have been made, including making the law / fiqh of waqf a positive law in many Islamic countries. Laws and regulations are made and promulgated to ensure waqf assets' eternity, the achievement of waqf's purposes, and a guideline for waqf management.

The issuance of Law Number 41 of 2004 concerning Waqf is a strategic effort to make the people's economic potential, which has only been used in the consumptive form and managed by traditional management. Thus, it is sought to be managed productively and managed with modern management so that its great potential has a significant impact on Muslims' economy in particular.<sup>12</sup>Therefore, Law Number 41 of 2004 concerning Waqf is under the legislative principles, which is the principle of benefits,<sup>13</sup>in which this regulation guarantees the eternity of the object of waqf, becomes the legal umbrella for the nazir of waqf to utilize the object of waqf so that it has economic potential for realizing public welfare.<sup>14</sup>

Law Number 41 of 2004 concerning Waqf and several of its derivative regulations have been sufficient since 2006. Stakeholders have carried out various outreach and education efforts with mass media and various forms of training or workshops for managers or nazir of waqf. These efforts continue to be carried out intensely. How effective is this law in effect in society and impact the optimization of the purposes of waqf? However, it is considered that there has been no strengthening of waqf regulations in Indonesia, and there has been no intense cooperation between government and non-government agencies in enforcing Law Number 41 2006 concerning Waqf.<sup>15</sup>

To anticipate the negative impact of the Indonesian society's understanding of waqf, alternative solutions must be studied, analyzed, and formulate management strategies and implement in sustainably developing waqf.<sup>16</sup>Thereby, it is necessary to make a clear program plan with clear stages as well, and it can be divided over a certain period, including as follows:<sup>17</sup>The real, maximum, credible, authoritative, and independent use of the Indonesian Waqf Board is more important to be realized immediately. Referring to the relatively successful

<sup>12</sup> Suhairi, *Wakaf Produktif; Membangunkan Raksasa Tidur* (Yogyakarta: Kaukaba Dipanatar, 2014), 23-24.

<sup>13</sup> Jeremy Bentham, *Teori Peundang-Undangan* (Bandung: Penebit Nuansa, 2016), 25.

<sup>14</sup> Bustami Bustami and Muhammad Lutfi Hakim, "Strategy of Cash Waqf Development on Gerakan Wakaf Produktif at Baitulmaal Munzalan Indonesia Foundations in Digital Era," *Al-Tahrir: Jurnal Pemikiran Islam* 20, no. 1 (May 13, 2020): 97-119-119, <https://doi.org/10.21154/altahrir.v20i1.1934>.

<sup>15</sup> Fahmi Medias, "Wakaf Produktif Dalam Perspektif Ekonomi Islam," *La\_Riba* 4, no. 1 (2010): 69-84, <https://doi.org/10.20885/lariba.vol4.iss1.art5>.

<sup>16</sup> Acep Mubarak, "Prospek Nazhir Wakaf Global Berbasis Pesantren Di Era Digital," *Jurnal Bimas Islam* 13 (July 21, 2020): 23-50, <https://doi.org/10.37302/jbi.v13i1.190>. See also Huda and Santoso, "The Construction of Corporate Waqf Models for Indonesia," 730..

<sup>17</sup> Jaenal Arifin, "Problematika Perwakafan Di Indonesia (Telaah Historis Sosiologis)," *ZISWAF: JURNAL ZAKAT DAN WAKAF* 1, no. 2 (August 16, 2015): 1-24, <https://doi.org/10.21043/ziswaf.v1i2.1487>. See also Moh Kholisul Ibad, Siti Aisyah Youtefani, and M. Dede Zaid Rifa'i, "Problematika Perwakafan Di Indonesia," *Tazkiya* 19, no. 02 (December 25, 2018): 110.

practice of the waqf optimization movement in many other Islamic countries, it makes waqf an instrument for improving its economy.<sup>18</sup>This means that the Indonesian Waqf Board, which has received recognition from the law, needs to prepare brilliant work programs to be implemented immediately.

One important thing with the issuance of Law Number 41 of 2004 concerning Waqf, as a realization to carry out this law's mandate in 2007, is that the Indonesian Waqf Board was established. The Indonesian Waqf Board's establishment is based on Article 47 paragraph (1) of the Law concerning Waqf, which reads that to advance and develop national waqf, an Indonesian Waqf Board is established. The establishment of BWI has not shown success, which is an instrument for Muslims' economic movement, for the people's welfare.<sup>19</sup>

Based on this reality, the researchers explored existing legal issues, particularly in terms of content, which eventually, according to the researchers, some several rules or articles need to be reviewed and reconstructed to result in articles that support the implementation of the Indonesian Waqf Board (BWI) regulations professionally so that they are efficient and right on target.<sup>20</sup>Thus, the authors were interested in researching *Repositioning the Independence of the Indonesian Waqf Board in the Development of National Waqf: A critical review of Law Number 41 of 2004 concerning Waqf*.

Many previous researchers had carried out waqf management studies, but the authors had not found anything related to the Indonesian Waqf Board. These studies that had been carried out were related to legal provisions and management of waqf in general by examining them in certain areas so that they did not thoroughly examine the contents and applications of Law Number 41 of 2004, while the researchers will critically examine Law Number 41 of 2004 concerning Waqf.

Rozalinda wrote a dissertation entitled "Productive Waqf Management" that examined the real conditions of Indonesian waqf, waqf in the dynamics of Islamic legal thought, professional nazir of waqf, recording, and registration of waqf properties, management of cash waqf ranging from fundraising management of cash waqf, investment, and distribution of investment returns.<sup>21</sup>

Rahmad Dahlan wrote "Institutional Analysis of the Indonesian Waqf Board" that examined and studied the Indonesian Waqf Board's institutional aspect. This study described the Indonesian Waqf Board's real conditions in managing national waqf and its obstacles in realizing the Indonesian Waqf Board's

<sup>18</sup> Rozalinda, *Manajemen Wakaf Produktif* (Jakarta: PT Raja Grafindo Persada, 2015), 181-89.

<sup>19</sup> Siti Mashitoh Mahamood, "Pembentukan Dana Wakaf Menurut Perspektif Syariah Dan Undang-Undang Serta Aplikasinya Di Malaysia," *Jurnal Syariah* 15, no. 2 (2007): 61-83.

<sup>20</sup> The results of the analysis of Law Number 41 of 2006 concerning Waqf in Indonesia

<sup>21</sup> Rozalinda, *Manajemen Wakaf Produktif*, 62-83.

existence as an independent institution.<sup>22</sup> However, this study has not offered a stable and firm solution, how to formulate articles on the Indonesian Waqf Board so that a genuinely independent institution can be realized to accelerate the establishment of the Indonesian Waqf Board, which is in the context of advancing and developing national waqf.

Based on the explanation, there is no research similar to this current study. This study can examine the Indonesian Waqf Board's authority in managing national waqf as stipulated in Law Number 41 of 2004 concerning Waqf. It covered the legal system, BWI's institutional strengthening strategy, and BWI's duties and authorities, including the concept of BWI in the perspective of Islamic law (fiqh), the history of waqf regulation in Indonesia, and the supporting and inhibiting factors in optimizing the purpose of waqf appropriately and proportionally.

Therefore, the elements that distinguish this study from the previous studies are; *First*, the research object was the articles concerning the Indonesian Waqf Board, which were contained in Law Number 41 of 2004 concerning Waqf. *Second*, the problems studied were aspects of the legal system, including the structure, substance, legal culture, sociology, and anthropology of parties related to waqf management based on Indonesian waqf regulations.

Based on the problem's background and identification of the problem above, the authors formulated the following problem: Why BWI cannot function properly? A study generally aims to develop and assess the truth of knowledge. For this purpose, this study was conducted.

The method used in this study was normative legal research.<sup>23</sup> Wignjosoebroto referred to this normative legal research as doctrinal legal research that works to find the correct answers by proving the truth sought or from legal prescriptions written in statute books or religious books (depending on the beliefs), followed by the teachings or doctrines that underlie it. This normative legal research with a statutory approach was carried out by taking an inventory of all applicable and binding laws and waqf regulations. The laws and regulations that apply to the practice of waqf are The Provisions of Law Number 41 of 2004 concerning Waqf (State Gazette of the Republic of Indonesia of 2004 Number 159; Supplement to the State Gazette of the Republic of Indonesia Number 4459), Government Regulation Number 42 of 2006 concerning Implementation of the Law Number 41 of 2004 concerning Waqf (State Gazette of the Republic of Indonesia of 2006 Number 105; Supplement to the State Gazette of the Republic of Indonesia Number 4667), and other related regulations.

<sup>22</sup> Rahmat Dahlan, "Analisis Kelembagaan Badan Wakaf Indonesia," *Esensi: Jurnal Bisnis Dan Manajemen* 6, no. 1 (April 17, 2016): 113-24, <https://doi.org/10.15408/ess.v6i1.3125>.

<sup>23</sup> Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Banyumedia, 2013), 57.

## INDEPENDENCE OF THE INDONESIAN WAQF BOARD IN THE DEVELOPMENT OF NATIONAL WAQF

Indonesian Muslims have practiced the teachings of waqf since the early period of Islam's spread until now. The facilities needed by the people, such as mashallah, orphanages, cemeteries, Islamic boarding schools, madrasas, majelis taklim, are mostly constructed on waqf land and use waqf funds. Indeed, many productive lands, such as paddy fields, field lands, and fish ponds, are mainly donated as waqf to be managed. The results are used to finance the maintenance of the above waqf facilities or finance their operational activities.<sup>24</sup>

At this stage, the waqf management has been traditionally carried out by nazir, following the times' demands. There are no innovations in the waqf land management and development because the donated land is only managed to construct religious and social facilities.<sup>25</sup> This model of waqf management is rightful because the waqf is still beneficial for the people. However, if it is limited to this model, waqf is only limited to carrying out religious and social functions, while its economic function is neglected or has not been maximized. The nazir, who receives productive lands such as paddy fields, field land, fish ponds, do not maximize the management, so that the results obtained are not much, not even a little from these lands which are later abandoned or are not productive.<sup>26</sup>

The productive waqf was formed naturally according to the type of land being donated, not because of innovations by the nazir in the management and development of the donated land.<sup>27</sup> Along with the establishment of development and the increasing need for funds for the needs of the people, the understanding of nazir is improved in which waqf land needs to be managed and developed productively to generate profits that can be used for the construction of community facilities and their operations, and as an economic welfare fund for the nazir.<sup>28</sup>

At this stage, the nazir has managed and developed the waqf land in a semi-modern way. The nazir has managed and developed productive waqf, for example, by establishing businesses or productive waqf, such as grocery stores, building materials shops, bookstores, food stalls, rice mills, etc. The productive waqf

<sup>24</sup> Dharma Satyawan, Achmad Firdaus, and Bayu Taufiq Possumah, "Analisis Strategi Pengelolaan Wakaf Produktif di Indonesia," *Al-KALAM JURNAL KOMUNIKASI, BISNIS DAN MANAJEMEN* 5, no. 2 (January 31, 2019): 49-64, <https://doi.org/10.31602/al-kalam.v5i2.1712>.

<sup>25</sup> Miftahul Huda, Lukman Santoso, and Lia Noviana, "Pengembangan Tata Kelola Wakaf Berbasis Korporasi Di Asia Tenggara/Development The Governance of Corporate-Based Waqf In South East Asia," *Journal de Jure* 12, no. 2 (2020).

<sup>26</sup> Syafrudin Arif, "Wakaf Tunai Sebagai Alternatif Mekanisme Redistribusi Keuangan Islam," *La\_Riba* 4, no. 1 (2010): 87-117.

<sup>27</sup> Rinda Asytuti, "Optimalisasi Wakaf Produktif," *At-Taradhi: Jurnal Studi Ekonomi* 3, no. 1 (August 3, 2012), <https://doi.org/10.18592/taradhi.v3i1.577>.

<sup>28</sup> Sudirman Hasan, "Wakaf Uang Dan Implementasinya Di Indonesia," *Journal de Jure* 2, no. 2 (December 30, 2010), <https://doi.org/10.18860/j-fsh.v2i2.2976>.

established by the nazir is not without obstacles and rejections.<sup>29</sup>As a new form of management and development of waqf land, productive waqf is considered a business affair that is not by waqf's function and must be rejected.<sup>30</sup>However, with the perseverance and tenacity, and success of nazir in managing this productive waqf, many people accept the productive waqf management model. They are aware that waqf has significant economic benefits, which, if managed with a business approach, will increase the economic income of the people, and the activities of the people can be financed using the profits.<sup>31</sup>

This is the importance of an institution that carries out the function of guidance for nazir. The law concerning waqf mandates the duty of guidance for nazir to be carried out by the Indonesian Waqf Board. Thus, the Indonesian Waqf Board has a severe duty, which is to create nazir professionalism in carrying out their duties, so that waqf assets are maintained, managed, and developed so that the people obtain the benefits or results. To generate a professional nazir, the formulation of professional nazir is compiled by the Indonesian Waqf Board.

With the Indonesian Waqf Board's presence, an independent institution but is still intervened by the government, the government's participation makes BWI not independent in the management and development of waqf in Indonesia. BWI is bound by waqf regulations, making it not fully play its role as an independent institution. This is very visible in waqf management, in coordination with the Ministry of Religious Affairs. The Ministry of Religious Affairs should have encouraged BWI independence by entirely handing over waqf management to BWI. Simultaneously, the Ministry of Religious Affairs' status and capacity is the national waqf supervisor, not involved in the management and national waqf management.

Since its establishment in 2007, the Indonesian Waqf Board (BWI), which is based on the mandate of Law No. 41 of 2004 concerning Waqf has played an essential role in waqf management dynamics in Indonesia. However, the critical role is still not over. The problems of waqf in Indonesia remain unsolved, especially those related to cash waqf. The role of the Indonesian Waqf Board in developing prospects in Indonesia is less than optimal. Cash waqf cannot be mapped on the following matters; *First*, guidance for professional nazir, especially for individuals or legal entities given the authority and responsibility as a nazir for cash waqf. To improve the quality of human resources of nazir, tentative policies, or even firm,

<sup>29</sup> Aam Slamet Rusydiana and Salman Al Farisi, "How Far Has Our Wakaf Been Researched?," *ETIKONOMI* 15, no. 1 (April 3, 2016): 31-42, <https://doi.org/10.15408/etk.v15i1.3110>.

<sup>30</sup> Wiji Lestari and Rifqy Thantawi, "Efektivitas Pengelolaan Wakaf Tunai Di Badan Wakaf Indonesia," *JURNAL SYARIKAH : JURNAL EKONOMI ISLAM* 2, no. 1 (June 1, 2016), <https://doi.org/10.30997/jsei.v2i1.291>.

<sup>31</sup> Ahmad Kurniawan, "Problematika Pengelolaan Harta Benda Wakaf Di Kecamatan Pahandut Kota Palangka Raya" (PhD Thesis, IAIN Palangka Raya, 2016).

may be required so that nazir's functioning can be perceived and sought. *Second*, involving strategic business partners engaged in financial services (especially shari'a-based), such as banks, cooperatives, Baitul MaalwalTamwil (BMT), and other similar institutions, in the processes of promotion and distribution of cash waqf that BWI is developing. By these prospects and public confidence in cash waqf at BWI, this can develop.<sup>32</sup>

The problem found related to the establishment of the Indonesian Waqf Board, according to the authors, that is very important, is the institution of waqf, in this case, the Indonesian Waqf Board (BWI). Despite the different degrees of religiosity, considering the urgency, BWI should be equalized in status and position with BAZNAS. BWI is an independent institution in managing waqf throughout Indonesia. However, the regulations formulated, formed, and contained in Law Number 41 of 2004 concerning Waqf do not seem to direct independence. BWI is always overshadowed by the Minister of Religious Affairs in managing and developing waqf. BWI will possess no independence value if the Minister of Religious Affairs always intervenes.

Suppose the government is serious about empowering the potential of waqf in Indonesia. In that case, there are systems and mechanisms for managing the waqf of several Islamic countries that must be adopted, both from infrastructure and superstructure for managing and developing waqf assets, for example, Saudi Arabia, Turkey, and Egypt. The three countries succeed in managing waqf by their seriousness towards this matter so that the issue of waqf becomes urgent there. Therefore, the issue of waqf is regulated and administered by ministries, boards, or state apparatuses that are specifically dedicated to managing, empowering, and developing waqf.

It is different from the Indonesian Waqf Board's presence, an independent institution but is still intervened by the government. The government's interference makes BWI not independent in the management and development of waqf in Indonesia. BWI is constrained by regulations that still imprison it to coordinate with the Ministry of Religious Affairs.<sup>33</sup>The Ministry of Religious Affairs should be wholehearted to entirely hand over the management of waqf to BWI and act only as a supervisory board, not involved in the system's realm and waqf mechanism.

The unclear status of BWI impacts the urgent matters related to the implementation of waqf to become unclear. One example is the uncertainty of financing allocated to BWI in carrying out its duties, functions, and obligations.

<sup>32</sup> Muhammad Aziz, "Peran Badan Wakaf Indonesia (BWI) Dalam Mengembangkan Prospek Wakaf Uang Di Indonesia," *JES (Jurnal Ekonomi Syariah)* 2, no. 1 (March 1, 2017): 35-54, <https://doi.org/10.30736/jesa.v2i1.14>.

<sup>33</sup> Dewi Sri Indriati, "Urgensi Wakaf Produktif Dalam Pembangunan Ekonomi Masyarakat," *Jurnal Ilmiah Al-Syir'ah* 15, no. 2 (December 31, 2017), <https://doi.org/10.30984/as.v15i2.476>.

With this status quo, the values of justice will not be manifested in the regulation of BWI. The presence of BWI in the management and development of cash waqf is considered urgent and must be considered carefully. All things that can support BWI's performance must be fulfilled, whether in its structure, infrastructure, and superstructure. Thus, it is obligatory to define the status of BWI if the government wants the realization of management and development of waqf that can improve the welfare of the people. In this regard, the authors offered to improve the status of BWI to become a Non-structural Government Institution (LNS). Thereby, the status and position of BWI become apparent in the constitutional system.

In this regard, the article related to this is article 47 paragraph (2), which reads: "*The Indonesian Waqf Board is an independent institution in carrying out its duties.*"<sup>34</sup>It is no longer relevant to be applied, so it must be reconstructed.

To explain the changes and improvements to the status of BWI, article 47 paragraph (2) should be formulated by the following editorial: "*The Indonesian Waqf Board is a non-structural government institution that is independent and responsible to the President through the Minister.*" Thus, the status of BWI becomes apparent as a non-structural government institution, and its position is directly under the president.

Changing the status of BWI to a non-structural government institution is the application of the value of justice in the form of equality of status of BWI with other institutions, also an implementation of the concept of the W. Friedmann equality,<sup>35</sup> which in essence, equality is seen as an element of justice, which contains universal values, and that justice, on the one hand, can be interpreted as the same as law. On the other hand, justice is also the goal of the law. In achieving this goal, justice is seen as impartiality. This attitude contains the idea of equality, which is equality of fair treatment of all individuals, and in this case, fair treatment by the government to BWI in carrying out its duties and functions.

With this change in status in the future, BWI, as a waqf legislator, has a strong authority in making regulations. This is because, with an exact institutional status, BWI's legality in the formation of BWI regulations regarding waqf will automatically meet the institutional principle in the formation of laws and regulations.

Regarding the discussion of the existence of the Waqf Board, the researchers found some weaknesses of Law Number 41 of 2004 concerning Waqf, which are related to the status, independence, structure, duties, and financing of the Indonesian Waqf Board (BWI), which significantly has a powerful effect towards the implementation, management, and development of waqf in Indonesia.

<sup>34</sup> Law Number 41 of 2004 concerning Waqf, article 47 paragraph (2)

<sup>35</sup> W. Friedman, *The State and the Rule of Law in a Mixed Economy* (London: Steven and Sons, 1971), 385.

In terms of the state structure of Indonesia, the status of BWI is not exact. This can be as seen as regulated in 2 (two) articles, including article 1 and article 47 paragraph (2) as follows: Article 1 point 7 reads: *"The Indonesian Waqf Board is an independent institution to develop waqf in Indonesia."*<sup>36</sup> Article 47 paragraph (2) reads: *"The Indonesian Waqf Board is an independent institution in carrying out its duties."*<sup>37</sup>

Based on these two articles, it is evident that the status of BWI is unsettled because, on the one hand, BWI is responsible for the case of waqf matters in Indonesia. However, in terms of regulations, it is unclear as BWI is not included in the Non-Structural Institution, even less a Structural Institution, whether it is permanent or only as ad-hoc, it is not explained in this Law concerning Waqf or Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf.<sup>38</sup>

The unclear status of BWI has an impact on its independence. BWI is an independent institution, as stated in Article 1 point 7 and Article 47 paragraph (2) above. However, promo ends questioned this independence because, despite several articles<sup>39</sup> as contained in these Laws concerning Waqf, waqf's management and development is always haunted by the Ministry of Religious Affairs. The Minister of Religious Affairs does deal with the supervision of BWI and interferes with the implementation of waqf that should be carried out by BWI independently.<sup>40</sup>

Thereby, in this context, the researchers are not mistaken to formulate the hypothesis that it seems that the government is still half-hearted and/or not severe in appointing BWI as an independent waqf institution that implements the management and development of waqf in Indonesia explicitly.

The Government's lack of seriousness is eventually proven again by the state structure of BWI, which is not regulated straightforwardly and firmly in the Law concerning Waqf. BWI is only located in Jakarta as the capital of the Unitary State of the Republic of Indonesia. However, the BWI structure in Provinces and Regencies/Cities is not regulated as the Zakat Institution, where zakat is also a religious instrument made into positive law.<sup>41</sup> The presence of BWI at provincial and regency/city levels should also be accommodated in the Law concerning Waqf.

<sup>36</sup> Law Number 41 of 2004 concerning Waqf, Article 1.

<sup>37</sup> Law Number 41 of 2004 concerning Waqf, Article 47

<sup>38</sup> Mustafa Edwin Nasution, "Peran Badan Wakaf Indonesia (BWI) Dalam Pengembangan Wakaf Di Indonesia," *Jurnal Al-Awqaf* 1, no. 1 (2008), <https://www.bwi.go.id/indeks-jurnal-al-awqaf/>.

<sup>39</sup> Law Number 41 of 2004 concerning Waqf, Article 14 Paragraph (1) along with the explanation, Article 13, Article 14, Article 37, Article 38, and Article 41

<sup>40</sup> M. Nur Rianto Al Arif, "Efek Multiplier Wakaf Uang Dan Pengaruhnya Terhadap Program Pengentasan Kemiskinan," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 46, no. 1 (January 1, 2012), <https://doi.org/10.14421/asy-syir'ah.2012.%x>.

<sup>41</sup> Law Number 23 of 2011 Article 5 to Article 16.

Regarding the position and structure of BWI institution, we can see it in article 48, which reads:<sup>42</sup> Article 48, *“Indonesian Waqf Board is located in the capital of the Unitary State of the Republic of Indonesia and can form representatives in Provinces and/or Regencies/Cities according to their needs.”*

Based on the article mentioned above, only the position of BWI is explicitly regulated by law, while for the Provincial and Regency/City levels, it is not strictly regulated. The obscurity can be seen from the sentence *“... and can form representatives in Provinces and/or Regencies/Cities according to their needs.”* The words “can” and “and/or” are evidence of the obscurity and even lack of seriousness of the makers of the Law concerning Waqf in realizing waqf that brings public welfare.

Furthermore, the impact of the government’s lack of seriousness in managing and developing waqf and in establishing a waqf institution, which is BWI, can be seen in Article 59 of Law Number 41 of 2004 concerning Waqf, which reads: *“In the context of carrying out the duties of the Indonesian Waqf Board, the Government is obliged to assist the operational costs.”*<sup>43</sup>

Based on this article, it is clear that BWI is not financed by the APBN but by government assistance. To realize the management and development of waqf, which has significant economic potential and benefits to advance the general welfare, the government must prioritize waqf institutions in financing by charging BWI operational costs into the state budget.

The inaccuracy of the regulation, which is the weakness of this Law of Waqf that the authors can convey is regarding the duties and authorities of BWI as regulated in Article 49, as follows: Article 49; (1) *The Indonesian Waqf Board has the following duties and authorities: a. guiding Nazir in managing and developing waqf assets; b – managing and developing waqf assets on a national and international scale; c. giving approval and/or permit for changes in the allocation and status of waqf assets; d. dismissing and replacing Nazir; e. approving the exchange of donated assets; f. providing advice and considerations to the Government in formulating policies in the area of waqf. g. In carrying out the tasks referred to in paragraph (1), the Indonesian Waqf Board may cooperate with Central and Regional Government agencies, community organizations, experts, international agencies, and other parties deemed necessary.*<sup>44</sup>

As described in the discussion on Nazir above, the researchers will again remind that article 49 paragraph (1) letter d regarding Nazir’s dismissal and a replacement must be eliminated because it is not BWI that appoints Nazir. In this case, BWI only registers data or has data from Nazir, who registers themselves to BWI and the Ministry of Religious Affairs through KUA.

<sup>42</sup> Law Number 41 of 2004 concerning Waqf, Article 48

<sup>43</sup> Law Number 41 of 2004 concerning Waqf Article 59.

<sup>44</sup> Law Number 41 of 2004 concerning Waqf Article 49

The Indonesian Waqf Board status, which is independent but textually (regulation) and contextually (application) irregular, results in a convoluted bureaucratic implementation. This can be seen from several articles, including 4 (four) Articles as follows: (1) Article 13, which reads: *"In carrying out the duties referred to in Article 11, Nazir receives guidance from the Minister and the Indonesian Waqf Board."*<sup>45</sup> (2) Article 14, which the paragraphs read: (a) *In the framework of the guidance referred to in Article 13. Nazir must be registered with the Minister and the Indonesian Waqf Board.* (b) *As referred to in Article 9 Article 10, Article 11, Article 12, and Article 13, further provisions regarding Nazir are regulated by a Government Regulation.*<sup>46</sup>

Besides, the convoluted bureaucratic regulations can also be seen from the regulations on registration and announcement of waqf objects in Chapter III, including in the following articles:<sup>47</sup> Article 32; *PPAIW on behalf of Nazir registers waqf assets with the authorized agency no later than 7 (seven) working days from the signing of the waqf pledge deed.* It means that the waqf institution also has specific regulations.

Article 33; *In the registration of waqf assets referred to in Article 32, PPAIW submits: a. a copy of the waqf pledge deed; b. letters and/or proof of ownership and other related documents.* Administratively, the waqf letter becomes legal evidence.

Article 34; *Authorized agency to issue proof of registration of waqf assets.* Article 35; *Proof of registration of waqf assets referred to in Article 34 is submitted by PPAIW to Nazir.* As the evidence of publication is also carried out transparently, the presence of witnesses proves that transparency.

Article 36; *If the waqf assets are exchanged, or the designation changed, Nazir, through PPAIW, re-registers them with the authorized agency and the Indonesian Waqf Board for the exchanged or changed the designation under the applicable provisions in the procedure for registering waqf assets.* If there is a change of function, the waqf institution also has provisions that must be followed.

Article 37; *The Minister and the Indonesian Waqf Board administer the registration of waqf assets.* Article 38; *The Minister and the Indonesian Waqf Board announce to the public the registered waqf assets.* Article 39; *Further provisions regarding PPAIW, procedures for registration, and the announcement of waqf assets are regulated in a Government Regulation.*<sup>48</sup> Following the existing provisions, that administration becomes legal evidence that guarantees the waqf property that has been released and has transferred ownership.

<sup>45</sup> Law Number 41 of 2004 concerning Waqf Article 13

<sup>46</sup> Law Number 41 of 2004 concerning Waqf article 32 to 39

<sup>47</sup> Law Number 41 of 2004 concerning Waqf article 32 to 39

<sup>48</sup> Aziz, "Peran Badan Wakaf Indonesia (BWI) Dalam Mengembangkan Prospek Wakaf Uang Di Indonesia," 35-40..

This regulation is a reference that can be applied in the management of waqf in Indonesia. A regulation made to regulate everything related to waqf can be carried out correctly and adequately, meaning that people who donate sincerely can be guaranteed. Besides, the waqf donated can be appropriately managed so that the waqf's goal can be achieved, which is the transfer of an item to a new owner for the general public's benefit so that the *jariyah* can flow to the person who has donated.

Based on the explanation above, the researchers considered that with the material content of the Law concerning Waqf, which requires BWI to carry out duties and authorities that the Ministry of Religious Affairs always accompanies, its application greatly complicates the bureaucracy, and this, in the end, makes the community undermined to donate property for interest of the people. If the government is serious about managing and developing waqf in Indonesia, the bureaucracy must be simplified to make it easier for the public or waqif to register waqf assets.

Moreover, regarding this bureaucracy, there is a big question that the authors conveyed: What is the problem that the Ministry of Religious Affairs cannot allow BWI to carry out the duties of waqf freely and entirely independently? This question is based on several articles that always juxtapose the Ministry of Religious Affairs (the Minister) with BWI. Even though in the general provisions of Article 1 and Article 47, BWI is an independent institution.

If the researchers can make comparisons, it can be seen that waqf institutions are far behind compared to zakat institutions' development. The zakat instrument has now developed very widely and has entered the spectrum of formal state legislation. For example, there is currently Law Number 23 of 2011 concerning Management of Zakat due to the reconstruction of Law Number 38 of 1999 concerning Management of Zakat.

- a. Despite the different degrees of religiosity, considering the urgency of waqf, BWI should be equalized in status and position with BAZNAS as a non-structural government institution. This affirmation of status is in the context of applying the value of justice in the form of equal status of BWI with other institutions, strengthening the legality of BWI in the formation of BWI regulations regarding waqf so that it meets the institutional principle in the formation of laws and regulations, which will realize waqf management and development which can improve the welfare of the people.
- b. The status of BWI as an independent institution is no longer relevant to be applied because it is unclear whether the status of BWI is a structural or non-structural institution, so it must be reconstructed. To explain the changes

- and improvements to the status of BWI, this can be carried out in the form of a severe evaluation, between the manager and the center, among which can be through active and continuous communication so that there are no protracted problems. It can also be carried out in accreditation, so there is the seriousness of both human resources, the nazir, and the facilities needed.
- c. The formation and recruitment of central, provincial, and regency/city of BWI members must be based on laws or government regulations. This is intended to create legitimate power for BWI and become a non-structural government institution equal to other non-structural government institutions and create justice. Recruitment is a determinant of the human resources who will collect, manage, and distribute the waqf results, so strict and very serious criteria must be carried out.
  - d. The provisions of BWI's authority in article 49, paragraph 2 reflect ambiguous articles. In article 1, BWI has authority as a nazir supervisor. In article 49, paragraph 4, BWI has the authority to dismiss nazir, while in paragraph 2, BWI allows or enables BWI to become nazir at once. To strengthen the Indonesian Waqf Board's position and strength, it is essential to position BWI as part of the waqf regulator in Indonesia and the waqf supervisor and not as Nazir. This needs to be determined to avoid conflicts of interest. It should be expanded clearly and firmly to follow the flow of interests in the law concerning waqf, which incidentally is one of the essential instruments in improving the nation's economy and state, which will realize the people's welfare.

The institutional structure of the membership of BWI in Law Number 41 of 2004 concerning Waqf is explained in article 55, which is related to the appointment and dismissal of the membership of BWI as follows; *First*, the membership of the Indonesian Waqf Board is appointed and dismissed by the President; *Second*, the membership of BWI representatives in the regions is appointed and dismissed by the Indonesian Waqf Board. The management term explains in Article 56 that BWI membership is appointed for a term of office of 3 (three) years and can be re-appointed for 1 (one) term of office.

The National Zakat Board (BAZNAS) is a national zakat board where the management system is appointed through a Presidential Decree. The National Zakat Board is assigned to implementing zakat management by applying applicable laws and submitting reports on implementing its duties annually to the President and the People's Representative Council. Regarding the term of membership, the National Zakat Board refers to the Presidential Decree of the Republic of Indonesia number 8 of 2011 concerning the National Zakat Board

(BAZNAS) of Article 15, which reads: 1) members of the National Zakat Board are appointed for one 3 (three) years; 2) members of BAZNAS who have completed one period as referred to in paragraph 1 (one) can be reappointed as members of the National Zakat Board only for one subsequent period. It can be seen that the membership structure of the Indonesian Waqf Board (BWI) and the National Zakat Board (BAZNAS) are almost the same. However, these two independent social institutions' vision and mission have one purpose: for the people's welfare.

Based on the analysis of the explanation to the realities above, the management of the Indonesian Waqf Board (BWI) has been regulated in Law Number 41 of 2004, which shows the operational implementation of waqf nationally. However, active communication between the central and regional governments is required. Sometimes it is required integrally and continuously so that an integrated interconnection will be established. Besides, the contribution to the implementation of BWI requires accreditation so that there is credibility.

## CONCLUSION

The results of this study showed that the pattern of reconstructing authority of the Indonesian Waqf Board (BWI) was a study of Law Number 41 of 2004 concerning Waqf so that articles on BWI were compiled to lead to a genuinely independent, credible, and robust board in the governance of the Republic of Indonesia. Besides, it is necessary to have accreditation for BWI so that its management's standardization is credible. To explain the changes and improvements to the status of BWI, article 47 paragraph (2) should be formulated by the following editorial: "*The Indonesian Waqf Board is a non-structural government institution that is independent and responsible to the President through the Minister.*" Thus, the status of BWI becomes apparent as a non-structural government institution, and its position is directly under the president.

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