

LEGAL PROTECTION FOR NADZIR ON LAND WAQF DISPUTE RESOLUTION IN INDONESIA

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ABSTRACT : Nadzir berperan penting dalam memelihara dan mengelola harta wakaf tanah, namun, realisasinya kedudukan nadzir kurang kuat dalam menghadapi sengketa, sehingga belum sepenuhnya mendapatkan perlindungan hukum dalam penyelesaian sengketa wakaf tanah. Penelitian bertujuan untuk menganalisis bentuk perlindungan hukum bagi nadzir dalam penyelesaian sengketa wakaf tanah. Hasil penelitian dapat digunakan sebagai ide gagasan bagi kebijakan pemerintah, kaitannya dengan perlindungan hukum bagi nadzir dalam penyelesaian sengketa wakaf tanah. Penelitian ini termasuk doktrinal dan diskriptif analisis, menggunakan pendekatan yuridis normatif, membutuhkan data sekunder, yang terdiri dari bahan hukum primer, sekunder dan tersier. Pengumpulan datanya melalui studi pustaka dan dokumentasi yang berkaitan dengan perlindungan hukum, nadzir dalam sengketa wakaf, dan penyelesaiannya. Hasil penelitian menunjukkan bahwa nadzir mendapatkan perlindungan hukum dalam penyelesaian sengketa wakaf tanah, apabila perbuatan wakaf sudah terpenuhi rukun dan syarat, serta nadzir taat hukum dalam melaksanakan kewajibannya. Perlindungan hukum bagi nadzir secara preventif, yakni regulasi penyelesaian sengketa wakaf dan legalitas nadzir berupa SK nadzir, secara represif berupa; pemberian hak untuk dibela dan dilindungi secara adil dari pihak yang merugikan dan hak untuk dibantu/didampingi dalam penyelesaian sengketa wakaf tanah secara non litigasi dan/atau litigasi. Tujuannya untuk mendapatkan kepastian dan keadilan di depan hukum, sehingga tanah wakaf terselamatkan dan dapat diberdayakan oleh nadzir. Rekomendasinya, KEMENAG dan BWI mengangkat nadzir profesional, dan BWI berperan mengadvokasi nadzir dalam penyelesaian sengketa wakaf tanah supaya mendapatkan perlindungan hukum.

Kata Kunci : Perlindungan Hukum, Nadzir, Penyelesaian Sengketa, Wakaf Tanah.

ABSTRACT : Nadzir important role in maintaining and managing land waqf assets, however, in reality, the nadzir's position is not strong enough in dealing with waqf disputes, so he has not received full legal protection in resolving land waqf disputes. The research aims to analyze the tools and forms of legal protection for nadzir in resolving land waqf disputes. The results of the research can be used as ideas for government policy, in relation to legal protection for nadzir in resolving land waqf disputes. This research is doctrinal, uses a normative juridical approach, requires secondary data, consisting of primary, secondary and tertiary legal materials. The data was collected through literature studies and documentation related to legal protection, nadzir in waqf disputes, and their resolution. The results of the research show that nadzir receive legal protection in resolving land waqf disputes, if the waqf deeds have fulfilled the terms and conditions, nadzir obey the law in carrying out their obligations. Legal protection for nadzir in a preventive manner, namely regulations for resolving waqf disputes and legality of nadzir in the



form of a nadzir decree, repressively in the form of; granting the right to be defended and protected from detrimental parties and the right to be assisted/assisted in resolving land waqf disputes in a non-litigation and/or litigation manner. The aim is to obtain certainty and justice before the law, so that the waqf land is saved and can be empowered by nadzir. The recommendation is that the Ministry of Religion and BWI appoint professional nadzir, and BWI plays the role of advocating for nadzir in resolving land waqf disputes so that they receive legal protection.

Keywords : Legal Protection, Nadzir, Dispute Resolution, Land Waqf.



INTRODUCTION

Waqf is one of the acts in the use of assets, carried out by the wakif, by appointing a nadzir who is tasked with managing the waqf assets for public interests that do not conflict with Islamic law, for example; for the interests of worship, education, health, social, and economics (Azha, Baharuddin, Salahuddin, & Afandi, 2013). Nadzir as the manager of waqf assets, his task is to preserve and empower waqf assets continuously so that the benefits can be felt by the community (Kasdi, 2014). Nadzir is appointed by the wakif (who donates the assets) based on his activity in religious activities and beliefs formed in social relations wakif to nadzir, of course, is a mandate that must be carried out continuously in maintaining, preserving and managing waqf assets (Islamiyati, Setyowati, & Rofiq, *Pembaharuan Hukum Pengelolaan Tanah Wakaf Di Wilayah Pesisir Utara Jawa Tengah*, 2023). Nadzir is allowed to take benefits or profits in maintaining and managing the waqf assets, amounting to 10% of the proceeds. clean management of waqf assets. The community's background to becoming nadzir, begins with the intention of worship to care for Allah's assets.

Along with the progress of waqf law, the act of waqf is not only done verbally, but the state has established waqf regulations, so that waqf is carried out in writing, through the pronouncement of the waqf oath made by the wakif before the PPAIW (Wakf Oath Deed Making Official). Furthermore, it is stated in the waqf oath deed, as a document that is authentic evidence of the waqf act. The document is signed by the PPAIW, the wakif, two male witnesses who have met the requirements, and the nadzir. The existence of a waqf oath deed can avoid the emergence of disputes that usually occur with the heirs of the wakif, after the wakif dies (Bukido & Makka, 2020).

During the Dutch colonial era, waqf assets were regulated and registered at the Regent's Office, so that they were documented and the public could use them for religious and social purposes. The waqf assets are continuously managed by Nadzir, and cannot be transferred, sold, confiscated as collateral or given to others. In the post-independence era, the government has formed a Department of Religion which is tasked with managing the practice of implementing Islamic law, including administering and preserving waqf assets, because philosophically waqf orders originate from Islamic law (Anshori, 2021). The Ministry of Religion assigns a Religious Affairs Office located in each District, which ex officio becomes the Official for Making the Waqf Pledge Deed



(PPAIW), and one of the tasks of PPAIW is to save/preserve land endowment assets with nadzir.

Efforts to save/preserve the waqf assets above, in their development, have been carried out by the government through the Ministry of Religion together with the nadzir who are appointed by the waqif when making waqf. However, efforts to provide legal protection for nadzir have so far not been optimal. This is demonstrated by state policy, which has not paid attention to the existence of nadzir in the management and progress of waqf in society. As a result, nadzir are often treated unfairly by the wakif's heirs and the wakif themselves, when carrying out their obligations, for example; the heirs or the community grab the inheritance from the nadzir, the wakif interferes with the nadzir's affairs in managing the waqf assets, so that the nadzir is not happy, and waqf disputes occur.

Some of the explanations above, if analyzed, show that there is a legal issue regarding legal protection for nadzir in dealing with land waqf disputes. Law Number 41 of 2004 concerning Waqf indicates the duties of nadzir as the manager of land waqf assets. However, in reality, the position of nadzir is not strong enough in dealing with waqf disputes, when the duties of nadzir as the manager and custodian of waqf assets are questioned by other parties, so that there are waqf assets that are not saved because they are seized by irresponsible parties. The background of this legal issue, it is important to carry out research on Legal Protection for Nadzir in Settlement of Land Waqf Disputes in Indonesia. The aim of the research is to analyze legal protection for nadzir in resolving land waqf disputes. The results of the research can be used as ideas for government policy, in relation to legal protection for nadzir in resolving land waqf disputes.

LITERATURE REVIEW

Research on the theme of the position of nadzir and land waqf disputes has been carried out by researchers, namely Abdurrahman Kasdi, regarding the role of nadzir in waqf development. This research describes that nadzir plays an important role in the maintenance, development and management of waqf assets. Therefore, professional nadzir are needed who are able to manage waqf assets, so that their use can be felt productively by the community, so that prosperity and social justice are created.



Zulfadli Hamzah (Hamzah, 2016), in his research on the Role of Nazirs in Developing Productive Waqf, shows that efforts to develop waqf assets productively require the competence of nadzir in the preservation and management of waqf land, both individual nadzir, legal entities, and organizations. The competence of nadzir includes kifayah and diniyah competence. Diniyah competence is the ability of nadzir in managing land waqf assets related to religion, for example; making waqf as an effort to practice and spread (da'wah) Islamic teachings. While kifayah competence is the ability of nadzir in managing waqf assets, related to the management of company organizations and management of improving business economics.

Research by Muhammad Taufan Djafry (Djafry, 2021), regarding Problems and Settlement of Waqf Disputes According to Law Number 41 of 2004 and Islamic Law (Wahdah Islamiyah Land Waqf Dispute Study), describes that nadzir is one of the factors causing land waqf problems in society. The actions of nadzir who do not carry out their duties and obligations as regulated by the Waqf Law, trigger land waqf disputes, for example: nadzir does not use waqf assets according to their function and designation; nadzir controls waqf land for personal interests..

Based on the description of the research results above, it shows that research on legal protection for nadzir in resolving land waqf disputes in Indonesia has never been carried out by previous researchers. The focus of the research is waqf law in the scope of protecting nadzir as waqf managers, in resolving land waqf disputes. The novelty of this research is strengthening government policy in providing legal protection for nadzir in resolving waqf disputes, so that nadzir can carry out their duties in accordance with existing law.

METHODOLOGY

This research is a type of doctrinal research which aims to develop a theoretical concept regarding legal protection for nadzir in resolving land waqf disputes in Indonesia, based on reference studies or reading materials. The approach method uses normative juridical. Juridical means research that seeks to examine matters relating to law, based on literature study references regarding waqf disputes related to nadzir and their resolution. Normative is research on the rules in waqf regulations or other regulations that are related to legal protection for nadzir in resolving waqf disputes.



The research data needed is secondary data in the legal field, which is divided into primary, secondary and tertiary legal materials. The data collection method is through literature study and documentation related to the research theme. Research data will be analyzed descriptively analytically and interpreting articles or paragraphs of legislation related to the research theme. Data processing is carried out by reviewing, organizing, conceptualizing or compiling data, synthesizing, analyzing, editing, coding and concluding.

RESULT AND DISCUSSION

In this discussion chapter, the results of research on legal protection for nadzir in resolving land waqf disputes will be described, including; legal protection, land waqf disputes related to nadzir, and their resolution.

1. Legal Protection

Protection, according to the Big Indonesian Dictionary (KBBI) means a process, method and act of protecting, while law means rules stipulated in legislation. Legal protection is the protection given to a person regarding the rights inherent in a person, which are considered weak as explained in the statutory regulations (Muchsin, 2003). Philipus M Hadjon (M. Hadjon, 1987), is of the opinion that legal protection is the protection of human dignity and human rights in accordance with legal rules originating from Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI) as its basic principles.

Legal protection is an effort to provide rights to those who need them, to defend them if their rights are not granted in resolving disputes (problem solving). Legal protection aims to protect human dignity, in accordance with the rules set by the state (Gegen & Santoso, 2021). Legal protection is divided into two, namely: 1) Preventive legal protection, namely legal protection from the government through laws and regulations which aim to prevent violations and provide signs or limitations in carrying out an obligation. 2) Repressive legal protection, namely the final stage of legal protection which can take the form of sanctions such as fines, imprisonment and additional penalties given after a violation or dispute occurs.

2. Land Waqf Dispute in Nadzir



Waqf disputes are problems that occur between the parties involved in waqf actions, which cannot be resolved internally, but require other parties to resolve them (Santoso, 2014). In waqf deeds, the object that is disputed is usually the waqf property, while the parties to the dispute can be between the community and the nadzir (waqf administrator), the wakif (person with the waqf) and the nadzir, or the nadzir and the wakif heirs (Islamiyati, Setyowati, Hendrawati, Musyafah, & Rofiq, 2021). Factors causing waqf disputes, for example; nadzir wan achievement (breaking promises and irresponsibility), waqf assets not being certified, withdrawal of waqf by the wakif or wakif heirs, transfer of function of waqf objects, heirs acting in bad faith towards waqf assets, by acting unkindly to nadzir (Hendrawati & Islamiyati, 2018).

Nadzir is the party tasked with managing and empowering waqf assets, however, in its implementation, dissatisfaction often arises from users of waqf assets (the community), wakifs or wakif heirs with the performance of nadzir, giving rise to waqf disputes (Manaf, 2017). There are four (4) types of waqf disputes that occur in Nadzir, including;

- a. Waqf disputes between nadzir and wakif heirs usually occur after the wakif dies, and the heirs behave negatively (do not support) the heirs in waqf (Mahrus, 2017). This is because the existence of waqf assets has reduced the portion of inheritance assets to the heirs, especially if the heirs are in economic difficulties, they look for reasons to return or even seize the waqf assets as inheritance assets, at least reducing the portion of the waqf assets donated by the heirs, for example; land waqf dispute in 1983/1984 in Sungai Tabukan/Galagah village, Sungai Pandan District regarding the withdrawal of land waqf assets from the wakif's grandson to nadzir (a Muhammadiyah organization) (Zaenurrosyid, 2012).
- b. The waqf dispute that occurred between the nadzir and the wakif, this dispute occurred because the nadzir did not carry out his duties and obligations, so the wakif was not satisfied and a dispute arose (Siregar, 2012). For example; the land waqf dispute that occurred at the Banjarbaru Branch of the Muhammadiyah mass organization, East Kalimantan, was regarding the withdrawal of land that had been donated to the Muhammadiyah organization, because the Muhammadiyah was not functioning as the wakif wanted.
- c. The land waqf dispute that occurred between Nadzir and the community, these disputes usually occur at the boundaries of waqf assets, the border between waqf assets and community property, for example; There are



community members who build buildings that exceed the limits of waqf assets, thereby reducing waqf assets. Apart from that, there are community members who occupy or use waqf property for personal purposes without the nadzir's permission. If the community's behavior is detrimental to the existence of the land waqf, and the nadzir takes issue with it, then there will be a dispute between the community members and the nadzir, for example; The dispute between Nadzir and the community regarding the waqf land on which the mosque was built in Boyolali was sealed by local residents, in 2008.

- d. The land waqf dispute occurred between Nadzir and the government/agency. This dispute occurred because the function of waqf assets changed due to government policy, for example; waqf assets that were previously for graves became real estate, for example; dispute between nadzir and the government regarding the process of ruislag of waqf land used for graves into real estate in Petogongan DKI Jakarta, in 2008.
- e. The land waqf dispute that occurred between Nadzir. According to the Waqf Law, there are a minimum of three Nadzir, they should work together to carry out their duties and authority. However, sometimes there are differences of opinion between the nadzir which makes their relationship not harmonious and one party responds emotionally, resulting in a dispute (Fadhilah, 2011). An example of this is in the Tugu Semarang area, where there is no good cooperation between nadzir in managing waqf assets, so that the existence of nadzir is not effective. Apart from that, in the Genuk area, on the coast of Semarang City, there was also a dispute caused by the replacement of the new nadzir by the wakif without the knowledge of the old nadzir. Nadzir took a long time to respond emotionally, because he felt disrespected and treated unfairly, then Nadzir took a long time to report it to PPAIW, and PPAIW was the one who resolved it.

3. Waqf Dispute Resolution

A waqf dispute is a problem that occurs between two or more parties, where each party does not carry out its obligations and the other party feels disadvantaged, and is not resolved internally, so that the aims and purposes of the waqf are not achieved. The dispute that occurs here is a dispute in a civil case, because it relates to someone and another person, or someone and property.



In waqf disputes, it starts with complaints from several parties who feel their rights have been harmed, then other parties respond emotionally, resulting in a public confrontation that cannot be resolved internally (Kriefkhoff, 2001), for example; the waqf dispute occurred with nadzir, because nadzir was not responsible for managing the waqf assets so that the waqf assets were neglected. Furthermore, there are complaints from other parties, for example; wakif, wakif heirs or the community. If this can be resolved internally, it will not cause a dispute, but if the nazir responds emotionally, a dyadic conflict will arise. If the conflict cannot be resolved, then it becomes a dispute that requires a third party to resolve it (*triadic*).

Waqf disputes must be resolved, as regulated in Article 62 of Law Number 41 of 2004 concerning Waqf, which explains that waqf dispute resolution can be done through two channels, namely litigation and non-litigation. The non-litigation route is carried out through deliberation, mediation and arbitration, while the litigation route is used after non-litigation efforts are unsuccessful. The litigation route is an effort to resolve waqf disputes through judicial institutions or bodies, namely the Religious Courts located in each Regency/City (Komariah, 2014). Resolving waqf disputes through litigation and non-litigation is a form of legal protection for the parties to the dispute, because there are instructions in the form of rules for resolving them (Hidayat & Komarudin, 2019). This is the government's effort to provide legal protection for its citizens, so that the right to live in peace and tranquility is guaranteed by using waqf assets properly and correctly.

The results of the research above can be analyzed that, waqf disputes related to nadzir can occur between nadzir or between nadzir and wakif, wakif heirs, the community, or the government. The causal factors may come from the nadzir himself, or other parties related to the waqf deeds, for example; wakif, wakif heirs, society, or government, the explanation is as follows:

- a. The causal factor of nadzir occurs when nadzir does not carry out his duties properly, or nadzir violates the rules established by law. Apart from that, also due to the nadzir not maintaining/abandoning or not managing the waqf assets, the nadzir changes the function and allocation of the waqf assets; Nadzir does not report transparently and accountably in managing waqf assets (Zainuddin, 2021).
- b. Factors causing the wakif, because there is a misunderstanding between the wakif and nadzir in managing waqf assets, or because there are different desires/interests in managing waqf assets; or the wakif always



intervenes or dominates the management of waqf assets, which makes the nadzir object.

- c. Factors causing disputes over land waqf from the wakif heirs include: because the wakif heirs do not approve of the waqf from the heir because it reduces the share of the inheritance; heirs are living in poverty/poor and wish to inherit from the assets that have been donated; or the heirs are greedy and want to cancel the waqf from the heir (Septiana, 2024).
- d. Community-based factors include: the community wants reports on the use of waqf assets in a transparent and accountable manner, involving the community to help develop waqf assets, or there is an unharmonious relationship between the nadzir as the manager and the community as the beneficiaries of the waqf assets.
- e. Causal factors from the government, namely; there has been a change in the function and designation of waqf land from religious, social and economic use to use for public purposes (Yudhistira, 2022), for example; waqf land for toll roads, real estate, markets, and others.

Land waqf disputes must be resolved, so that the waqf land can be used again by the community the tools/means used to resolve them, include;

- a. Legislative rules are used as a tool to resolve disputes, because their substance (articles and paragraphs) can be used as instructions for dispute resolution mechanisms, as explained in Article 62 of the Waqf Law and its explanation. This article, if interpreted, explains that waqf dispute resolution is carried out through two channels, namely the litigation route through the Religious Courts and the non-litigation route through deliberation, if not resolved, using mediation, if not resolved using arbitration. Explanation of Article 62 of the Waqf Law, explains explains that what is meant by mediation is the resolution of disputes with the help of a third party (mediator) agreed upon by the parties to the dispute. If mediation is unsuccessful, the dispute can be brought to a sharia arbitration body. In the event that the sharia arbitration body is unsuccessful, resolving the waqf dispute can be brought to the religious court and/or sharia court. These rules explain the procedures for resolving waqf disputes which can be carried out by the parties themselves through deliberation, or asking for help from other parties to provide alternative dispute resolution (mediation), or asking for help from experts in resolving disputes (arbitration).
- b. Government policy, for example: conversion of waqf land, in relation to the location and price of the waqf land being converted; Mosques located on PEMKOT land become waqf property by fulfilling the terms and conditions. Government here can be interpreted as PEMKOT, PEMDA, KEMENAG, PPAIW, or BPN depending on the type and character of the waqf dispute and the performance area of the government concerned.



- c. An agreement between both parties internally, or assisted by a third party (mediator), becomes a tool for resolving land waqf disputes, if the agreement leads to peace to end the dispute and foster good post-dispute relations. The peace agreement is stated in a deed of peace agreement signed by both parties, two male witnesses, preferably adding another party as reinforcement, for example; PPAIW, village officials, mediators, or notaries. The deed functions as authentic evidence of the agreement between the two parties in resolving land waqf disputes, and serves as a rule that must be obeyed by both parties.
- d. Religious Court Judges can function as a tool to resolve land waqf disputes through judge decisions/decisions, because the judge's job is to resolve disputes or cases submitted to him, after going through mediation, if not resolved, through a trial process.
- e. Expert opinion (ulama/religious figure), in the form of an MUI Fatwa, which does not conflict with the legal principles/principles of dispute resolution, is used as a tool to resolve disputes, for example; The community raises problems regarding the resolution of certain waqf disputes, and really needs a solution quickly.

It is hoped that some of the tools/means above can resolve disputes completely, effectively and optimally, and can protect the parties to the dispute, including the nadzir as the manager of the land waqf assets. Nadzir protection in dispute resolution is provided when the nadzir carries out his obligations. The nadzir's obligation is to carry out duties, as explained in Article 11 of the Waqf Law, namely; 1) Administering waqf land assets, 2) Managing and developing waqf assets in accordance with their objectives, functions and designation, 3) Supervising and protecting waqf assets; 4) Report the implementation of tasks to the Indonesian Waqf Board.

Nadzir, it is important to get legal protection in resolving waqf disputes, because Nadzir's position as manager of land waqf assets can preserve waqf assets. If the nadzir does not receive legal protection, then the waqf assets will not be saved and will be controlled by unauthorized parties, so that the waqf law cannot be enforced. Legal protection for nadzir is directed at providing, maintaining and protecting and enforcing nadzir rights from opposing parties who are detrimental to the existence of waqf assets. Apart from that, it also gives nadzir the right to be treated fairly, receive guarantees, protection and legal certainty.

The rights granted by nadzir, are explained in the Waqf Law Articles 12 and 13, namely receiving compensation from the net proceeds from the management and development of waqf assets whose amount does not exceed



10% (ten percent) and receiving guidance from the Ministry of Religion (KEMENAG) and the Agency. Indonesian Waqf (BWI), if you commit an unlawful act. If the nadzir violates the law or does not carry out his duties within one year of his appointment as nadzir, then BWI or PPAIW has the right to propose a replacement for the nadzir.

The government's legal protection for nadzir who have disputes over waqf law is carried out through the establishment of rules that are used as the legal basis for resolving disputes, so that the nadzir gets certainty and legal protection (Toruan, 2017). Several provisions on the legal basis for resolving waqf disputes include;

- a. KHI Presidential Instruction Number 1 of 1991 Book III, part two, Article 226 explains that the resolution of waqf disputes is carried out through litigation, through the trial process in the Religious Court. This regulation gives the nadzir the right to resolve waqf disputes through the Religious Court, in order to obtain legal protection from the judge for the actions of the parties that harm the waqf assets.
- b. Waqf Law Number 41 of 2004 CHAPTER VII Article 62, has provided legal protection for nadzir, in the form of instructions for resolving land waqf disputes, so that nadzir obtains legal guarantees and protection.
- c. Explanation of Article 62 of the Waqf Law, has provided protection for the nadzir, in the form of granting him the right to know about the procedures for resolving waqf disputes through deliberation, or asking for help from other parties to provide alternative dispute resolution (mediation), or asking for help from experts in resolving disputes (arbitration).
- d. Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, has provided protection for the nadzir, in the form of granting the nadzir's rights in resolving land waqf disputes through litigation, where the judge is tasked with reconciling the parties through mediation before the trial process begins.
- e. Law Number 3 of 2006 concerning Religious Courts has explained that judges provide protection for the nadzir, in the form of access to justice, equality, and legal protection, in the form of a fast, efficient and regulatory trial process, so that the judge decides the case fairly and satisfies the parties.
- f. PPAIW applies the rules to provide a letter of appointment of nadzir as a form of formality or written evidence to become nadzir, along with the rights that must be received when becoming nadzir, because he has carried out his obligations as a waqf land manager. The Nadzir Decree is very



important to use as a form of legality for nadzir in carrying out his duties and obligations. Its function is to avoid land waqf disputes with the wakif, the wakif's heirs, and/or the community. Thus, the nadzir appointment decree is used to prevent waqf disputes. If a waqf dispute has occurred, the nadzir has received legal protection so that it is easier to resolve.

Based on the explanation above, it can be analyzed that the protection of nadzir in waqf in general, namely; gives nadzir the right to take 10% net profit from the results of waqf land management and gives the right to receive guidance and direction from BWI and the Ministry of Religion. Meanwhile, legal protection for nadzir in resolving waqf disputes is provided if the nadzir's performance complies with the law or does not violate the law. Preventive legal protection for nadzir, in the form of: regulations for resolving waqf disputes and legality of nadzir in the form of a nadzir decree. Meanwhile, repressive legal protection, in the form of; granting the right to be defended and protected from parties who harm waqf land and the right to be assisted in resolving waqf disputes through non-litigation and litigation.

Land waqf dispute resolution mechanisms through non-litigation, initially carried out by deliberation, by presenting the nadzir and the opposing party, for the opinions of both parties to be heard, decided together in a fair manner, agreeing/consensusing peacefully and each party implementing the agreement together. If differences of opinion occur are respected and efforts are sought, mutual settlement in a win-win solution, thus satisfying the parties. In this way, Nadzir gets legal protection with a peaceful resolution that satisfies both parties, so that it can create good relations after the dispute.

If the resolution of the land waqf dispute can be resolved through deliberation, then the parties can resolve it through a mediation mechanism, of course mediation that is in accordance with the correct principles and principles, namely; hhe mediator must be fair, non-discriminatory/biased, objective, tasked with providing alternative dispute resolution, independent, responsible, and try to reconcile the parties. If the dispute resolution mechanism process is correct, it will produce mutually beneficial results and have good consequences for social relations. Thus, in the mediation mechanism, nadzir gets legal protection in the form of being treated by the mediator fairly, non-discriminatory, objectively, and responsible for reconciling.



If the waqf dispute cannot be resolved through the mediation mechanism, then arbitration is used. Arbitration is the resolution of waqf disputes in the form of a written agreement, carried out outside of court, and has strong legal force which can ensure that the parties act in accordance with the contents of the agreement. Arbitration has absolute power because it is like a judicial legal product. An arbitrator is a person who is an expert in his field so he is able to resolve problems quickly, his implementation must meet subjective and objective requirements (M. F. & D. L., 2006). Waqf dispute resolution using this method is a waqf dispute over movable objects managed by nadzir through business, trade, venture capital, or other Islamic economic activities. In Islamic countries, which empower waqf assets in the fields of business and trade, often use this method in resolving waqf disputes. In arbitration, nadzir receive legal protection in the form of resolving disputes fairly and helping to save waqf assets, so that they can give the community the right to utilize waqf objects, both from social, religious and economic aspects depending on the management of the nadzir.

The background of the state is providing legal protection for nadzir in resolving waqf disputes, because in principle waqf is one of the teachings of religion (Islam), where the state guarantees the freedom of every person to practice the teachings of his religion (Supriyadi & Hadi, 2019). In this way, waqf actions are protected by the state, because they are part of the practice of religious teachings, and can help the state's efforts to facilitate development programs in several areas, including; education, health, employment, economy, welfare, poverty alleviation, and others (Zuhaili, 1989).

Another reason is that the state provides legal protection for nadzir in resolving waqf disputes, because the act of waqf contains the aim of providing rights to dhu'afa (weak people) who need help, by giving some of the assets they own in order to foster a sense of humanity among others. Waqf is a form of human concern for the public interest, assets for the public interest take precedence over the interests of assets for themselves (Hafsah, 2009), so Muslims who provide waqf will receive advantages/rewards in this world and the hereafter (when viewed from the perspective of religious teachings).

Based on the explanation above, the actual aim of waqf is to provide rights for people in need, provide educational and health rights for citizens who cannot afford it, and provide weak entrepreneurs with the right to receive capital for their businesses. The act of waqf aims to elevate human dignity so that they



have a humane nature, compassion towards fellow human beings. Therefore, it is very appropriate for the state to provide legal protection to nadzir as waqf law enforcers in resolving disputes, so that waqf assets are not lost, and are beneficial to society.

CONCLUSIONS

Nadzir really needs legal protection in resolving land waqf disputes, because the position of nadzir is very much needed in preserving and managing land waqf assets. Nadzir gets legal protection, if the waqf deeds have fulfilled the terms and conditions, the nadzir obeys the law, and carries out his obligations in accordance with the rules explained in Law Number 41 of 2004 concerning Waqf and its explanation as well as Government Regulation Number 42 of 2006 concerning Implementation of Waqf. Legal protection for nadzir in a preventive manner, in the form of regulations for resolving waqf disputes and legality of nadzir in the form of a nadzir decree, repressively in the form of; granting the right to be defended and protected from parties who harm waqf land and the right to be assisted/accompanied (advocacy) in resolving waqf land disputes, both non-litigation and litigation. The aim of nadzir legal protection in resolving land waqf disputes is: to obtain legal certainty and fair treatment before the law, so that land waqf assets can be saved and empowered by nadzir. Recommendations that are worth conveying are that the government (KEMENAG) and BWI are expected to form and appoint professional nadzir who understand waqf law and waqf property management, to prevent land waqf disputes from occurring. Apart from that, BWI as a waqf body/institution is expected to play a role in advocating for nadzir in resolving land waqf disputes so that nadzir receive legal protection.



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Research Results

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