

Nāzir Al-Waqf in Imam Syafi'i's View and Its Implementation in Indonesia

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Abstract:

This article focuses on the possessing endowment that refers to the association that copes the endowment properties from the endower in order to be managed and developed based on its intentions (Act Number 41 of 2004 Article 1 Section 4). According to Imam Syafi'i, possessing endowment can be comprised by waqf, or mawqūf 'alayh, or ḥākīm. Dissimilarity with the constraints in the Government Regulations Number 28 of 1977, possessing endowment should be managed by individual or institution in contrast with the constraints that are mentioned by Imam Syafi'i. Evenly, Act Number 41 of 2004 Article 9 has mentioned possessing endowment may include: individuals, organizations, and institutions. This study examines that Nazhir Waqaf in Indonesia must be established referring to the view of Imam Syafi'i, Government Regulation Number 28 of 1977, and Act Number 41 of 2004 about The Endowment of Land Properties. Through literature review of Imam Syafi'i works and refers to Government Regulation Number 28 of 1977, Act Number 41 of 2004, and the Government Regulation Number 42 of 2006, this paper concluded that Nazhir Waqaf can be implemented referring to the view of Imam Syafi'i and also regulated under the Government Regulations Number 28 of 1977, Act Number 41 of 2004, and the Government Regulation Number 42 of 2006 about Endowment in Indonesia.

Keywords: *Nāzir, Waqf, Endowment, Land Property, Regulation.*

A. INTRODUCTION

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

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

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

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

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

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

B. METHODS

This study is started by literature review of Imam Shafi'i works that relate to endowment appraisal and a review of Government Regulation number 28 of 1977 and Act number 41 of 2004 about the practice of endowment in Indonesia. The research method under consideration is the qualitative method, specifically a literature research or book survey. Main reference sources include: kitab al-Umm, Government Regulation number 28 of 1977, and Act number 41 of 2004 regarding endowment in Indonesia. In addition, other book reference serves as a secondary source to enrich this study.

C. RESULT AND DISCUSSIONS

1. Short History of Imam Shafi'i

Imam Shafi'i was born in the month of Rajab, 150 H (767 M), in the city of Guzah (Palestine). His father has already died when Shafi'i was still in his mom's womb. The name 'Shafi'i was taken from his father's family "Ibn Idris ibn Abbas ibn Utsman ibn Shafi'i ibn Saib ibn Yaizd ibn Hasyim in Abdul

Muthalib ibn Abdi Manaf.” It means that Imam Shafi'i is part of the family tree of Nabi Muhammad SAW. This is rooted back to their great great grandfather, Abdi Al-Manaf the third grandfather of Nabi SAW. From his mother side, Shafi'i is the son of Fatimah ibnt Abdillah ibn Hasan ibn Husain ibn Abi Thalib.

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

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

The famous works of Imam Shafi'i are including; *Al-Risā la*, *Al-Umm*, *Ikhtilā f al-Ḥadīth*, and *al-Musnad*. Imam Shafi'i died on Thursday, 29 Rajab of 204 H (820 M) in Egypt.

2. Waqf and Nāzir endowment

According to *jumhūr al-'ulamā'*, a *waqf* needs to fulfil four requirements, including: *waqīf* (a person who gives *waqf*), *mawqūf 'alayh* (a person who receives *waqf*), *mawqūf bih* (the endowed property) and *shighah* or *pledge* (the statement). (Pradja, 1993: 27).

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

Imam Shafi'i explained *Nā zir* endowment as follows: If there is a contract of *waqf* while the *Nā zir* is not mentioned, then the *waqīf* automatically serves as a *Nā zir*. This function can also be done by *mauqū f 'alayh* or *ḥā kim*, which sets a *waqīf* as a *Nā zir* endowment. (Imam Shafi'i: 1990. IV. 63)

As contained in Government Regulations number 28 of 1977, the elements of *waqf* comprise of: *waqīf*, a property/possession, *waqf khairi*, a pledge, *Nā zir*, a witness, and the officials which is responsible for the creation of the endowment pledge. In that case, based on Government Regulation there is a clear position of *Nā zir endowment*. The elements of *waqf* are described in detail, while the elements of *waqf* as established by *jumhūr r al-'ulamā'* is not as detailed (Athoillah, 2015:217). This condition could lead to a misunderstanding in the Muslim community, especially in understanding the essence of *waqf* (Joseph, 2014). Based on the writer's analysis, the explanation as contained in Government Regulation provides a more general interpretation which is more operational and accommodative with regard to the development of Indonesian Muslim community's understanding of *waqf*. Consequently, there is an insignificant possibility that there will be a

misunderstanding regarding *Nāzir* endowment. However, the position of *Nāzir* endowment needs to be formally determined in order to avoid the practice of trading or abuse of *waqf* endowment, which could be the result of the increased value of *waqf* endowment or other factors (Cf, Athoillah, 2013). Other factors that are explained in Government Regulation number 28 of 1977 while have not been set by *jumhūr al-'ulamā'* are including these additions: *waqf khairi*, the witness and the officials which is responsible for the creation of the endowment pledge. One could say that the three elements serve an important role in *waqf*, hence, if one of those is missing, the implementation of *waqf* cannot be said as legitimate, according to the constitutional law and the Islamic religious law in Indonesia.

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

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

For an institutionalized *Nāzir*, the requirements are:

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

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

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

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

- a. *Nāzir* is obliged to arrange and be responsible of the *waqf* property and the execution of the *waqf* procedure on the basis of its objectives, as regulated by the Minister of Religious Affairs.
- b. *Nāzir* is obliged to make a regular report to the local head Office of Religious Affairs (*Kepala Kantor Urusan Agama*) and a copy to the local District Council of Ulama (*Majelis Ulama*)

Kecamatan) and the local Head of District (Camat), regarding all of its responsibilities, as indicated in section 16 (1).

- c. The procedures of writing the report as mentioned in section (2) is executed according to the regulations of the Ministry of Religious Affairs.

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

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

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

Nāzir comprises of:

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

Article 10

- (1) Individuals as mentioned in article 9a, can only be a *Nāzir* if the following conditions are met:
 - a. A citizen of Republic of Indonesia
 - b. Be a Muslim
 - c. Be an adult
 - d. *Amanah* (trusted)
 - e. Physically and mentally healthy
 - f. Unrestrained from conducting any legal activities
- (2) An organization as mentioned in article 9b can only be a *Nāzir* if the following conditions are met:
 - a. The management of the corresponding organization fulfils the requirements of individual *Nāzir* as explained in section(1); and
 - b. An organization that is actively involved in social activities, education, society development and/or Islamic (religious) activities.
- (3) A legal entity according to article 9c can only be a *Nāzir* if the following conditions are met:
 - a. The management of the corresponding organization fulfils the requirements of individual *Nāzir* as explained in section(1); and

- b. An Indonesian legal entity which is shaped in accordance with the prevailing legislation.
- c. The corresponding legal entity is actively involved in social activities, education, society development, and/or Islamic (religious) activities.

Article 11

Nāzir has the following tasks:

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

Article 12

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

Article 13

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

Article 14

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

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

4. *Nāzir* In Government Regulation number 42 Of 2006

Article 2

Nāzir includes:

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

Article 3

(1) The property of the endowment must be registered in the name of *Nāzir* for the benefit of the party referred to in *Waqf* deed of pledge as intended.

- (2) A registration of the *waqf* property in the name of *Nāzir*, does not prove ownership of *Nāzir* on *waqf* property.
- (3) The replacement of *Nāzir* does not result in the transition of the concerned *waqf* property

Article 4

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

Article 5

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

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

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

Article 6

- (1) If among *Nāzir* individuals someone quits from his position as referred to in Article 5, the *Nāzir* should report to the Office of Religious Affairs to be forwarded to Indonesian Waqf Organization no later than 30 (thirty) days from the date of cessation of *Nāzir* individuals, who will then substitute *Nāzir* as determined by Indonesian Waqf Organization.
- (2) In the case *Nāzir* quits his position as referred to in Article 5 for the endowments for a limited period and endowments in a period not limited to, the existing *Nāzir* notify Waqf or heirs Waqf when Waqf had died.
- (3) In the absence of the local Religious Affairs Office, the report referred to in paragraph (1) shall be conducted through the Office of Religious Affairs *Nāzir* nearby, the Office of Religious Affairs, or representative of Indonesian Waqf Organization in the provincial / district / city.
- (4) If *Nāzir* within a period of one (1) of from the Endowment Deed Official Pledge does not perform their duties, the head of KUA either on its own initiative or at the proposal of waqf or their heirs are entitled to propose to the BWL for the dismissal and replacement *Nāzir*.

Article 7

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

Article 8

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

Article 9

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

Article 10

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

Article 11

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

Article 12

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

- (1) In the case of the central committee of legal entities cannot execute the obligations referred to in paragraph (1), then *Nāzir* legal entity may be dismissed and its right may be replaced by BWI by taking into account the recommendations and considerations of local MUI.
- (2) If *Nāzir* legal entity within a period of one (1) of from the Endowment Deed Official Pledge do not perform their duties, the head of KUA is entitled to propose to BWI for the dismissal and replacement *Nāzir*, either on its own initiative or at the proposal *waqf* of their heirs.

Article 13

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

Article 14

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

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

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

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

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

- a. to undertake administration of *waqf* property;
- b. to manage and to develop the *waqf* property in accordance with the purpose, function, and purpose;
- c. to supervise and to protect the property of the *waqf*;
- d. to report execution of tasks to the Indonesian Waqf Board. (Law No. 41 of 2004 Section 11)

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

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

In other methods Ibn Najm disclose:

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

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

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

D. CONCLUSION

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

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

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

Secondly, regarding to Nāzir endowment, according to Imam Shafi'i "when in the pledge it was not mentioned regarding who takes the role of a Nāzir, then it can be concluded that the Nāzir will be its waqf, mawqūf 'alayh or judges." The aim is to provide legal certainty about who will be the waqf property manager. This allows the waqf property to be maintained properly in accordance to the guidance of the Islamic principles and to meet the expectations to whom the property is beneficial.

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

Fourth, endowments Nāzir provisions in Act number 41 of 2004, in Article 1, paragraph 4 states that the party receiving Nāzir is Waqf property of Waqf to be managed and developed in accordance with it condition. Provisions on Nāzir endowment mentioned in the articles: Article 9, Article 10, paragraph 1,2 and 3. Article 11, Article 12 on the right Nāzir on waqf property of (maximum) 10%. Article 13 Nāzir obtain guidance from the Minister and the Indonesian Waqf Board. Article 14 on the

necessity *Nāzir* endowments registered with the Ministry and the Waqf Board Indonesia (Article 1), and article 2 states that matters related *Nāzir endowment* as contained in Articles 9, 10, 11, 12, and Article 13, is regulated by the Government.

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

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