
NADZIR REGISTRATION REGULATION TO THE INDONESIAN WAQF BOARD WITH A POSITIVE LEGAL PERSPECTIVE AND ISLAMIC LAW

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Abstract

Regulation of nadzir registration to Indonesian Waqf Agency (BWI) is a new rule about Waqf in Indonesia. This rule has a different push point in the rules, the rule of law using the word "must" as its registration regulation, And the rules of implementation use the word "mandatory". The use of the word "obligatory" is also not followed by the sanction of the rules. This study explains the regulation of the registration of Muconsulting to BWI's perspectives on positive laws and Islamic law. The problem formulation, how the regulation of registration of nadzir to BWI is reviewed from the rules of the positive law and the rule of Islamic law? This research is a normative study. Research results, The regulation of registration of Muconsulting to BWI is reviewed from the positive legal rules, content is a rule that contains orders, the nature of the rule is the Factative law. According to Islamic law via ushuliyah rules it goes into the aspect of amr (command), That do not have to be, In qiyas the order of the rules equals the order of Hajj.

Keywords: *Regulation of nadzir Registration, Indonesian Waqf Agency, Positive law, Islamic law.*

A. INTRODUCTION

Waqf in Indonesia is an important element in developing the economy.¹ Waqf plays a role as a solution in solving social problems and improving community welfare, this is because in addition to having a religious dimension, waqf also has a social dimension.²

The birth of Law Number 41 of 2004 concerning Waqf (Law No. 41 of 2004 concerning Waqf) gave birth to a new institution in the world of waqf in Indonesia, a

¹ Farid Rifai. (2020). Analisis Sistem Pengawasan Wakaf di Indonesia. In *1st Annual Conference of Ihtifaz: Islamic Economics, Finance, and Banking*, June, 116.

² Dosen IAIN Palopo. (2017). *Regulasi Dan Fenomena Perwakafan Di Indonesia, At-Tahkim*, 5(3), 8; B. Syafuri. (2018). *Nadzir Wakaf: Versi Fiqh Islam dan Peraturan Perundang-Undangan*. Al-Ahkam, 14(2), 59.

new institution that was born as a result of the passing of this law is the Indonesian Waqf Board (BWI).³

One of the goals of the formation of BWI is that the institution can provide guidance to nadzirs appointed by wakif during the waqf process.⁴ Advice to nadzir is given in order to maintain and improve the professionalism of nadzir in administering and managing waqf assets.⁵ So the hope is that through this guidance, competent nadzirs can be produced in increasing the productivity of waqf assets.

Waqf regulations in Indonesia after the birth of BWI mandated the registration of nadzirs who were appointed in the process of donation to these institutions. UU no. 41 of 2004 concerning waqf states, "In the framework of guidance as referred to in Article 13, Nadzir must be registered with the Minister and the Indonesian Waqf Board".⁶

Article 4 paragraph (2) Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf (PP No. 42 of 2006 concerning Implementation of the Waqf Law) with regard to individual nadzir states, "Nadzir as referred to in paragraph (1) must be registered with the minister and BWI through the local Office of Religious Affairs". The obligation to register nadzir to BWI also applies to organizational nadzirs and legal entity nadzirs as regulated in Article 7 paragraph (1) and Article 11 paragraph (1) PP No. 42 of 2006 concerning the Implementation of the Waqf Law.⁷

The nadzir registration policy to BWI is a new rule, in the waqf regulation in Indonesia, where the rule was never included in the previous waqf regulation. This can be understood because the waqf regulation in Indonesia after the birth of Law no.

³ Rahmat Dahlan. (2016). *Analisis Kelembagaan Badan Wakaf Indonesia*. *ESENSI: Jurnal Bisnis dan Manajemen*. 6(1). 115.

⁴ Muhammad Aziz. (2017). *Peran Badan Wakaf Indonesia (BWI) dalam mengembangkan prospek wakaf uang di Indonesia*. *JES (Jurnal Ekonomi Syariah)*. 1(2). 188; Pasal 63 ayat (2) Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf.

⁵ Jaih Mubarak. (2010). *Wakaf Produktif*. Simbiosis Rekatama Media, 161.

⁶ Pasal 14 ayat (1) Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf.

⁷ Pasal 7 ayat (1) Peraturan Pemerintah Nomor 42 Tahun 2006 tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf menyatakan, "Nadzir organisasi wajib didaftarkan pada Menteri dan BWI melalui Kantor Urusan Agama setempat". Pasal 11 ayat (1) Peraturan Pemerintah Nomor 42 Tahun 2006 tentang Pelaksanaan Undang-Undang Nomor 41 Tahun 2004 tentang wakaf menyatakan, "Nadzir badan hukum wajib didaftarkan pada Menteri dan BWI melalui Kantor Urusan Agama setempat".

41 of 2004 concerning Waqf, has the enthusiasm to increase the productivity of the value of waqf on existing waqf assets.

Nadzir registration regulations to BWI, if you look at the aspect of statutory regulations, both in Law no. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of the Waqf Law has a different emphasis on the regulation of the article.

Article 14 paragraph (1) Law no. 41 of 2004 concerning Waqf using the word "must", in expressing the regulation of nadzir registration to BWI. Not so with PP. 42 of 2006 concerning the Implementation of the Waqf Law, in several articles regulating nadzir registration with BWI the article rules prefer the word "mandatory", in disclosing regulations on nadzir registration to BWI.

The use of the words "must" and "mandatory" in the regulation nadzir registration to BWI in Law no. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of the Waqf Law, is not necessarily followed by the existence of sanctions rules in other articles, if the nadzir appointed in the waqf process is not registered with BWI.

The regulation of nadzir registration rules to BWI is interesting to examine in relation to 1) how are the regulations on nadzir registration to BWI viewed from positive legal principles?, And 2) how are the regulations for nadzir registration to BWI viewed from the principles of Islamic law?

Several researchers have conducted research regarding nadzir. First, research with the title of changing individual nadzir to legal entities in the perspective of *maqashid ash-syari'ah*, by Acep Zoni Saeful Mubarak.⁸ This study explains that the change of individual nadzir to legal entity nadzir meets the criteria of *maqashid asy-syari'ah* including elements of maintaining religion seen from the application of waqf objectives that are in accordance with shari'ah, elements of self-preservation seen from fulfilling the professional level of nadzir performance, and elements of protecting property seen. from that waqf is a process to make waqf assets more developed.

⁸ Acep Zoni Saeful Mubarak. (2020). *Penggantian Nazhir Wakaf Perseorangan Ke Badan Hukum Dalam Perspektif Maqashid Asy-Syari'ah (Studi di Badan Wakaf Indonesia Perwakilan Kota Tasikmalaya)*. Jurnal Ekonomi Syariah. 5(1). 87-94.

Second, a research entitled *analysis of Nazhir accountability implementation in empowerment of productive waqf in Indonesia*, by Henik Hari Astuti, Yuswar Z. Basri, and Hendri Tanjung.⁹ The three of them explained that the dimension of nadzir accountability in the implementation of productive waqf has several obstacles, starting from the weak understanding of society about waqf, the unprofessionalism of a nadzir, an unintegrated administrative system and the role of the Ministry of Religion and BWI which is still half-hearted.

Third, research with the title of nadzir selection in optimizing the management of cash waqf, by Shinta Wulandari, Jaenal Effendi, and Imam Teguh Saptono.¹⁰ The results obtained from this study state that in terms of nadzir cash waqf, the recommended syari'ah banking institution, and the money waqf management strategy is determined by the professionalism of the nadzir itself.

Fourth, an article with the title of improving nadzir skills, PPAIW KUA, and syari'ah organizers through information technology-based waqf asset management, by Amiq Fahmi and Edi Sugiarto.¹¹ The results of the second article describe the increased ability of nadzir, KUA employees, and Shari'ah administrators in managing data and information regarding administration and waqf assets.

Looking at several existing studies and articles, this research is different from existing studies, where in this research what will be examined is the regulation of nadzir registration to BWI seen from the rules in positive law and rules in Islamic law. The purpose of this research is to explain the nadzir registration regulations to BWI with the perspective of positive law and Islamic law. Furthermore, this paper is theoretically useful, as a contribution to the development of knowledge regarding the regulation of nadzir registration to BWI, while practically this research can be a reference for other researchers, and for policy makers (*stakeholder*) as a means of improving existing regulations.

⁹ Henik Hari Astuti, dkk. (2019). *Analysis of Nazhir Accountability Implementation in Empowerment of Productive Waqf in Indonesia*. *Tazkia Islamic Finance and Business Review*. 13(1). 63-80.

¹⁰ Shinta Wulandari, dkk. (2019). *Pemilihan Nazhir Dalam Optimalisasi Pengelolaan Wakaf Uang*. *Jurnal Aplikasi Bisnis dan Manajemen (JABM)*. 5(2). 300-305.

¹¹ Amiq Fahmi dan Edi Sugiarto. (2016). *Peningkatan Keterampilan Nadzir, Ppaiw Kua, dan Penyelenggara Syariah melalui Pelatihan Manajemen Aset Wakaf Berbasis Teknologi Informasi*. *Prosiding SNATIF*. 281.

B. RESEARCH METHODS

This research is a normative study, to discuss the regulation of nadzir registration to BWI in the perspective of positive law and Islamic law. Some of the approaches used in this research are the statutory approach and the conceptual approach.¹²

The statutory approach in this study includes Law no. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of the Waqf Law. Where these two regulations are used as primary legal material in this research, secondary legal materials come from scientific works in the form of journals, books and other scientific articles, as well as tertiary legal materials in the form of encyclopedias and dictionaries related to this research.

The analysis used in this research is prescriptive analysis, which results in new arguments or concepts about understanding the regulation of nadzir registration to BWI in terms of the aspects of positive legal principles and Islamic law principles.

C. RESULTS AND DISCUSSION

1. Regulation of nadzir Registration to BWI in terms of positive legal principles

Nadzir registration rules to BWI, Article 14 paragraph (1) of Law no. 41 of 2004 concerning Waqf states, "In the framework of guidance as referred to in Article 13, Nadzir must be registered with the Minister and the Indonesian Waqf Board".

Article 14 paragraph (1) Law no. 41 of 2004 concerning Waqf, regarding the rules for registering nadzir to BWI using the word "must". The meaning of the word "should" if we are studied in a language can have the meaning "must" or "something is not allowed", and can have the meaning "may/jaiz" or "something that may be done or abandoned".¹³

The word "must" means "must", or "something must not be", if the word "must" becomes an adverb or adverb,¹⁴ example sentence "if Andi doesn't come,

¹² Peter Mahmud Marzuki. (2016). *Penelitian Hukum*. Jakarta: Prenadamedia Group. 136 dan 177.

¹³ <https://kbbi.kemdikbud.go.id/entri/harus>, Diakses Jum'at 10 Juli 2020, Pukul 21.00 WIB.

¹⁴ Didah Nurhamidah dan Luthfi Syaumi Faznur. (2018). *Analisis Adverbia Dalam Teks Prposisi, Teks Rubrik Surat Kabar, Dan Teks Jurnal Ilmiah*. Pena Literasi. 1(1). 17.

you have to catch up with him". In this example the word "must" means telling someone not to or must follow someone named Andi if he doesn't come.

On the other hand, the word "must" means "may/jaiz" or "something that may be done or left behind", if the word "must" becomes a verb or verb,¹⁵ example of the sentence "like that the law must be done".

Looking at the rules of Article 14 paragraph (1) of Law no. 41 of 2004 concerning Waqf, the meaning of the word "must" in the article implies that in the framework of fostering nadzir, the existing nadzir must or may not be registered with BWI. This is because the word "must" in the article rules acts as an adverb or adverb. The adverb in the rule of Article 14 paragraph (1) is an adverbial which has a textual function,¹⁶ where the word "must" in the article describes the word "registered".

In contrast to the provisions of Article 14 paragraph (1) of Law no. 41 of 2004 regarding Waqf, the regulation of nadzir registration to BWI in PP No. 42 of 2006 concerning the Implementation of the Waqf Law, has stricter rules using the word "obligatory" in its article regulations. Each Article that explains the nadzir registration obligations to BWI also regulates who the party should carry out these obligations. Article 4 paragraph (2), Article 7 paragraph (1), and Article 11 paragraph (1) PP. 42/2006 concerning the Implementation of the Waqf Law states that the registration of such nadzirs is mandatory for the Office of Religious Affairs (KUA).

The classification of legal principles looks at the contents of the law in the form of orders, prohibitions, and permissions.¹⁷ Nadzir registration regulations to BWI in Law no. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of the Waqf Law, when viewed from the classification of legal principles in terms of content, the rules of the article constitute rules that include orders. This can be explained because the rules related to nadzir registration with BWI are rules which mean "must" and "must be done".

¹⁵ Finoza dalam Herlina. (2016). *Variasi dan nuansa makna verba melayu sanggau Kalimantan Barat*. Prosiding Prasasti, 387.

¹⁶ Didah Nur Hamidah and Luthfi Syaui Faznur. *Op.Cit*, 21.

¹⁷ Soerjono Soekanto dan Purnadi Purbacaraka. (1989). *Aneka Cara Pembedaan Hukum*. Cet.II. Bandung: Citra Aditya Bakti. 21.

Regulation of nadzir Registration to BWI in Law no. 41 of 2004 concerning Waqf and PP No. 42/2006 concerning the Implementation of the Waqf Law in terms of content, indeed the article rules indicate the obligation to register, but what should be noted is that the rules for registering nadzir to BWI are not accompanied by a sanction rule if the registration is not carried out. Therefore, the KUA or the Waqf Pledge Deed Maker (PPAIW) who do not register nadzir with BWI will not receive any sanctions.

This is different from the regulations on the registration of waqf assets by financial institutions and PPAIW, which clearly stipulate administrative sanctions for financial institutions and PPAIW that do not register waqf assets, these sanctions range from written warnings to temporary suspension from their position as PPAIW.¹⁸

CHAPTER IX Law no. 41 of 2004 concerning Waqf which regulates criminal provisions and administrative sanctions, does not in the least explain the sanctions for parties who do not register nadzir with BWI.

Criminal Provisions Article 67 of Law no. 41 of 2004 concerning Waqf only regulates criminal sanctions for parties who violate the provisions of Article 12, Article 40, Article 41, Article 44, Law no. 41 of 2004 concerning Waqf. Article 68 of Law no. 41 of 2004 concerning Waqf which regulates administrative sanctions, likewise only regulates sanctions for financial institutions and PPAIW that do not register waqf assets.

The absence of sanctions in the regulation of nadzir registration to BWI is also seen in PP No. 42 of 2006 concerning the Implementation of the Waqf Law. Article 57 PP No. 42 of 2006 concerning the Implementation of the Waqf Law only regulates administrative sanctions for Cash Waqf Recipient Syari'ah Financial Institutions who do not carry out their obligations. Although this government regulation has undergone improvements with the issuance of Government Regulation Number 25 of 2018 concerning Amendments to PP No. 42 of 2006 concerning the Implementation of the Waqf Law, Article 57 of PP. 42 of 2006 has not changed.

¹⁸ Pasal 68 Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf.

The absence of sanctions in the regulation of nadzir registration to BWI, if then viewed from the classification of legal principles in terms of nature, the legal rules regarding nadzir registration with BWI are categorized as facultative law.

The classification of legal principles in terms of nature is divided into 2, namely imperative laws and facultative laws. Imperative law is a law that has a forceful nature. Meanwhile, facultative law is a law that regulates.¹⁹ E. Utrecht distinguishes between imperative law and facultative law lies in the power of sanctions in the rules.²⁰

In the facultative law, it is possible that in a phrase a rule contains an order rule, however in this case the nature of the order allows an exception to occur, because at one time, or in certain circumstances the rule is not in harmony with the conditions that occur, thus the order that is ordered is more interpreted to be a clue.²¹

This inconsistency in the conditions of nadzir registration with BWI has even been exemplified by the legislation itself, as seen in Article 59 PP No. 42 of 2006 concerning the Implementation of the Waqf Law, before BWI was formed, proof of nadzir registration was issued by the Minister of Religion. Thus, it can be interpreted that basically the regulation of nadzir registration to BWI in the meaning of the legal rule wants it only as a guide to provide existing nadzir data as part of the waqf process after nadzir registration is carried out to the Minister of Religion.

2. Nadzir Registration to BWI Regulations in terms of Islamic Law Principles

Islamic law through the *ushuliyyah* principle recognizes several ways of doing *istinbath al-ahkam* from the linguistic aspect (*mabaahitas al-alfaz*). Some of these aspects of language include *amr, nahy, 'aam, khaash, takhshish, mujmal, manthuq, and mafhum*.²²

¹⁹ L.J. Van Apeldoorn. *Pengantar Ilmu Hukum*. Pradnya Paramita Pustaka Dan Teknologi. Hal. 183; Hanafi Arief. (2016). *Pengantar Hukum Indonesia*. Cet. I. Yogyakarta: LKIS Pelangi Aksara. 12.

²⁰ Soerjono Soekanto dan Purnadi Purbacaraka, *Op.Cit*, 22; Djumhana dalam Zainal Said. (2016). *Polemik Undang-Undang Perbankan Indonesia (Tinjauan Sosio Yurids)*. Sahide Ahmad (Eds). Cet. I. Yogyakarta: The Phinisi Press. 14.

²¹ Soerjono Soekanto dan Purnadi Purbacaraka, *Op.Cit*, 23.

²² Sapiudin Shidiq. (2017). *Ushul Fiqh*. Cet. 3. Jakarta: Kencana, viii; A. Basiq Djaliil. (2014). *Edisi Revisi Ilmu Ushul Fiqh (satu & dua)*. Cet. II. Jakarta: Kencana, vii-viii.

Nadzir registration regulations to BWI in Article 14 paragraph (1) of Law no. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of the Waqf Law, seen from the linguistic structure of the rules, are included in the *amr* (command) aspect.

Amr has the definition of a *shighat* (speech) from one aspect of a higher degree to an aspect of a lower degree.²³ The *amr* element consists of 3 parts, namely the giver of the order, the recipient of the order, and the utterance of the command itself.²⁴

The rules for registering nadzir to BWI who act as the giver of orders are the government or legislator, which in this case is the party that promulgates the regulation on waqf and includes regulations regarding the registration of nadzir to BWI. The giver of the orders in the nadzir registration regulations to BWI in this case is the People's Representative Council of the Republic of Indonesia (DPR RI) and the President of the Republic of Indonesia (the President of the Republic of Indonesia), as stated in Law No. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of the Waqf Law.

The recipient of the order in this rule is KUA, this is indicated in Article 4 paragraph (2), Article 7 paragraph (1), and Article 11 paragraph (1) PP No. 42 of 2006 concerning the Implementation of the Waqf Law which states that registration is carried out through KUA. KUA as the party receiving the nadzir registration order to BWI is a word that still needs explanation (*ta'wil*). Words like this in the *ushuliyah* rule fall into the category of *manthuq*.²⁵

The explanation of the KUA as the party receiving the nadzir registration order to BWI, it can be explained that the order is addressed to the authorized official in the KUA. The explanation of the competent official is described in

²³ Abdul Karim Zaidan dalam H. Zainuddin Hamka. (2017). *Kaidah-Kaidah Tafsir yang Berhubungan dengan Amr (Perintah) dan Nahy (Larangan) di dalam Al-Qur'an*. Ash-Shahabah. 3(2). 179.

²⁴ Amir Syarifuddin. (2011). *Ushul Fiqh Jilid 2*. Cet. 6. Jakarta: Kencana, 172.

²⁵ Ahmad Fadli Fauzi. (2019). *Dilalah Manthuq And Ma'fhum In The Imam Syadi'i Perspective*. Al-IHKAM: Jurnal Hukum Keluarga Jurusan Ahwal al-Syakhshiyah Fakultas Syariah IAIN Mataram. 11(2). 122; Ahmad Atabik. (2016). *Peran Manthuq Dan Ma'fhum Dalam Menetapkan Hukum Dari Al-Qur'an Dan Sunnah*. YUDISIA: Jurnal Pemikiran Hukum dan Hukum Islam. 6(1). 99.

Article 37 paragraph (1) and paragraph (2) of PP No. 42 of 2006 concerning the Elucidation of the Waqf Law, namely the Head of KUA as PPAIW.

The sentence structure regarding the regulation of nadzir registration to BWI is included in the *amr* aspect, because the article rules indicate the existence of a command word structure to do an action. The order in question is the obligation and obligation to carry out legal actions of registering nadzir with BWI. Al-Hasan, a mu'tazilah scholar, explained that an *amr* (command) cannot be said so, if the *amr* (command) does not have an aspect of the word being ordered to perform an action.²⁶

The sentence structure of the regulation of nadzir registration to BWI is included in the *amr* aspect, also shown by the use of the word *amr* (command) in the article of the rule. Article 14 paragraph (1) Law no. 41 of 2004 concerning Waqf uses the word "must" in the article's rules to indicate that the rule must or must not be done. PP No. 42 of 2006 on the Implementation of the Waqf Law prefers the word "mandatory" to indicate the obligation to carry out the registration order.

The sentence structure for regulation of nadzir registration to BWI that uses the word command in the article rules is the same as the verse of the Koran which contains aspects of the word *amr* (command) in the verse, this picture can be seen in the verse which describes the will of Allah in creating something. Allah SWT said,

إِنَّمَا قَوْلُنَا لِشَيْءٍ إِذَا أَرَدْنَاهُ أَنْ نَقُولَ لَهُ كُنْ فَيَكُونُ (40)

40. Verily We say to something when We will, We only say to him: "kun (be)", Then be it.²⁷

The verse above illustrates that if Allah SWT wants to create everything then Allah SWT uses the command word "Be" or "كُنْ", for everything that is willed, so that everything that Allah wills comes into being. It is clear in this verse that Allah shows his commandment by using the sentence which shows the command word itself, namely the word "كُنْ".

²⁶ Misbahuddin. (2015). *Ushul Fiqh II*. Abdul Wahid Haddado (Eds). Makassar: Alauddin Press, 27.

²⁷ Al-Qur'an, al-Nahl (16): 40.

The law of *amr* (command) in the *ushuliyyah* rule does not necessarily imply an obligation, but in this case the law of command can sometimes show repetition (*tikrar*), does not require distraction (*laa yaqtadhi al-faur*), becomes an order for an act that scratches (*amrun biwasailihi*), the prohibition of the opposite (*nahyun 'an dhiddihi*), and the law of the commandment can also indicate the freedom of the recipient of the order from the command given.²⁸

Amr law in the regulation of nadzir registration to BWI, although in essence in language these rules are rules that indicate orders or orders, in essence the law of these orders is not to be rushed. This is because the nature of orders or orders in these rules is not bound by time, so it has more loose time. Even so, there is no implication in the form of sanctions if this registration order is not carried out immediately.

In Islamic law this is in line with the command to carry out the pilgrimage, every Muslim is then given leniency in carrying out these orders because in this case the verse states,

وَأَذِّنْ فِي النَّاسِ بِالْحَجِّ ... (27)

27. and call on people to perform the hadj,...²⁹

The nature of the Hajj command in the verse of the Koran is in the form of an order, as for the mandate that shows the new Hajj obligation appears in the hadith of the Prophet,

2620 - ... عَنْ ابْنِ عَبَّاسٍ، أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَامَ، فَقَالَ: «إِنَّ اللَّهَ تَعَالَى كَتَبَ عَلَيْكُمُ الْحَجَّ» فَقَالَ الْأَفْرَغُ بْنُ حَابِسِ التَّمِيمِيِّ كُلُّ عَامٍ يَا رَسُولَ اللَّهِ؟ فَسَكَتَ، فَقَالَ: «لَوْ قُلْتُ نَعَمْ، لَوَجِبَتْ، ثُمَّ إِذَا لَا تَسْمَعُونَ، وَلَا تُطِيعُونَ، وَلَكِنَّهُ حَجَّةٌ وَاحِدَةٌ»

From ibn Abbas, the Messenger of Allah (peace be upon him) actually stood up, then said: Verily, Allah SWT obliges all of you to haj. So asked Aqra 'ibn Habis al-Tamiimii: Is it every year, O Messenger of Allah ?, Rasulullah paused

²⁸ Qishmu Minhaji Diraasah Ma'had Darussalam. (1427). *Mukhtashor Ushulul Fiqh Wa Al-Qawaa'id Al-Fiqhiyyah*. Ponorogo: Darussalam Press, 11; Abdul Hamid Hakim. *Mabaadii Awwaliyyah Fii Ushuulul Fiqh Wa Qawaaid Al-Fiqhiyyah*, Terj. Sukanan dan Khairudin, 5-6.

²⁹ Al-Qur'an, al-Hajj (22): 27.

for a moment, then said: If I say yes, then you will definitely do it, and you will not be able to, then do the pilgrimage only once.³⁰

The order to carry out the haj pilgrimage if the qiyas method is used is basically the same as the order to register nadzir with BWI, which is the main source in Law no. 41 of 2004 concerning Waqf the nature of the order is an order using the word "must" is not mandatory, the mandatory order to register nadzir with BWI has just appeared in PP No. 42 of 2006 concerning the Implementation of the Waqf Law.

In the hierarchy of statutory regulations, the law in this case is higher than PP, whereas in Islamic law the Koran is a higher source of law than hadith.

D. CLOSING

1. Conclusion

Based on the explanation above, it can be concluded about the nadzir registration regulations to BWI that:

- a. Nadzir registration regulations to BWI in the review of positive legal principles in terms of legal rule classification, the contents of the nadzir registration regulations to BWI are good in Law No. 41 of 2004 and in PP. 42 of 2006 concerning the Implementation of the Waqf Law, is a rule that shows an order, this is because in the study of the language of the regulation the use of the word "must" which means "must" or not, and use the word "obligatory" in the article's rules. Meanwhile, by nature, the regulation is a facultative law that regulates, because there is no sanction rule in the regulation, if the regulation is not implemented.
- b. The regulation of nadzir registration to BWI in reviewing the principles of Islamic law through the *ushuliyah* rules of registration of nadzir to BWI in the study of *istinbath al-ahkam* in terms of language is included in the *amr* (command) aspect, this is because the regulation fulfills the elements of *amr* with the presence of the Indonesian Parliament and The President of the

³⁰ Abu Abdurrahman Ahmad ibn Syu'aib bin Ali al-Khurasani al-Nasa'i, (1986). *Al-Sunan Al-Sughra Li Al-Nasa'i*. Juz. 5. Maktab Al-Mathbuu'at Al-Islaamii. Maktabah Syamilah, 111, Hadits nomor 2065, Dari ibn Abbas, Sesungguhnya Rasulullah SAW bersabda:

Republic of Indonesia as the party giving orders, the Head of KUA acting PPAIW as the party given the order, as well as the word "must" and the word "obligatory" in the article rules regarding the rules for registering nadzir to BWI both in Law no. 41 of 2004 concerning Waqf and PP No. 42 of 2006 concerning the Implementation of the Waqf Law as a command statement. On the other hand, the regulation is included in the *amr* (command) aspect, because there is an order word in the form of an obligation and an obligation to carry out legal acts of registering nadzir. However, the law of the order to carry out the registration does not have to be hastened because the regulation is not bound by one time and there is no legal sanction if the act is not committed. In the qiyas method, the order for nadzir registration can also be equated with an order to do Hajj, which is a higher regulation, namely Law no. 41 of 2004 concerning Waqf, the nature of the registration order is that it is an appeal or not an absolute obligation, the mandatory order appears later in PP. 42 of 2006 concerning the Implementation of the Waqf Law. In the qiyas method, the order for nadzir registration can also be equated with an order to do Hajj, which is a higher regulation, namely Law no. 41 of 2004 concerning Waqf, the nature of the registration order is that it is an appeal or not an absolute obligation, the obligation order appears later in PP. 42 of 2006 concerning the Implementation of the Waqf Law. In the qiyas method, the order for nadzir registration can also be equated with an order to do Hajj, which is a higher regulation, namely Law no. 41 of 2004 concerning Waqf, the nature of the registration order is that it is an appeal or not an absolute obligation, the mandatory order appears later in PP. 42 of 2006 concerning the Implementation of the Waqf Law.

2. Suggestion

It is important for lawmakers, with the legal nature of the regulation of nadzir registration to BWI which is still regulatory or facultative, there must be a change in the regulation by making it an imperative law, this can be done by imposing sanctions rules on these rules.

Waqf practitioners must pay more attention to the rules of nadzir registration to BWI, although it is not a mandatory order, but in the process of registering nadzir to BWI, it must still be carried out considering the nature of the orders which do not have to be rushed.

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