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 Muhammad Luthfi 1

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Conference Paper

# Registration of Nadhir at the Ministry of Religion of the Republic of Indonesia (Concept Study of Legislation in Indonesia)

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**Abstract.**

*Nadhir* in the view of modern thought is an important element in the legal act of waqf, the laws and regulations in Indonesia. In this case, according to the rules, *nadhir* must be registered with the Minister of Religion, regarding this matter, this paper tries to examine the concept of registering *nadhir* to the Minister of Religion in the rules of waqf in Indonesia. This study is normative research with a statutory approach and a conceptual approach. The results of this study state that the concept of registering *nadhir* to the Minister of Religion on the rules of waqf in Indonesia is based on the concept of goals to be achieved by the existence of *nadhir* in each of the rules of waqf.

**Keywords:** *Nadhir* registration, Ministry of Religion of the Republic of Indonesia, concept, legislation

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## 1. INTRODUCTION

The history of waqf in Indonesia began before the Indonesian nation gained independence [1]. Waqf legal actions in Indonesia are based on Islamic law which is accommodated in positive legal rules through statutory regulations [2]. The process of waqf in Indonesia develops along with the development of understanding of waqf legal acts [3].

The development of waqf law in Indonesia can be seen with the renewal of ideas about waqf which is accommodated by the enactment of Law Number 41 of 2004 concerning Waqf (Waqf Law). renewal of waqf in the Waqf Law is reflected in the process of trusting *wakif* to *nadhir*, the principle of professionalism of *nadhir* which is indicated by the attitude of trust in *nadhir*, and the principle of productivity of waqf assets which aims to improve the welfare of the community [4], [5].

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One of the main pillars of the productivity principle of waqf assets lies in the aspect of professionalism in the management of human resources and management where this aspect must belong to a *nadhir* [6], [7], this is reflected in Article 11 of the Waqf Law where the task of the *nadhir* not only plays a role in the administrative process of waqf assets, but *nadhir* also plays a role in the process of managing, supervising, developing, and reporting the productivity of waqf assets [8]–[10].

Seeing the importance of *Nadhir's* in the legal act of waqf, the rules of waqf in Indonesia then provide a guarantee of reward from the net proceeds for the development and management of waqf assets to *nadhir* [11], this process is based on Article 222 of Presidential Instruction Number 1 of 1991 concerning the Dissemination of Compilation of Islamic Law (KHI Regulation) and Article 12 of the Waqf Law. The KHI regulations in terms of rules do not specifically provide details of the amount of compensation received by *nadhir*, in contrast to the Waqf Law which concretely provides details that the reward that can be received by *nadhir* from the implementation of its duties and functions is 10% of the net proceeds of the development and management of waqf assets.

Based on the important role and duties of the *nadhir* in the process of developing and managing waqf, waqf regulations in Indonesia require registration of a *nadhir* [12]–[14] with the Minister of Religion at the time the wakif appoints a *nadhir* [15] in the legal process of waqf in Indonesia. The birth of the Waqf Law basically does not rule out waqf rules that were born before the Waqf Law, therefore it is interesting to study the concept of registering *nadhir* to the Minister of Religion on the rules of waqf in Indonesia. The purpose of this study is to find out more about the concept of registering *nadhir* to the Minister of Religion on the rules of waqf in Indonesia.

Studies regarding the registration of *nadhir* were among others carried out by Muhammad and Wardoyo in their article "*Nadzir registration regulation to the Indonesian waqf board with a positive legal perspective and Islamic law*", the paper focuses on the problem of the rules for registering *nadhir* to the Indonesian Waqf Board in the positive legal aspect in Indonesia. Indonesian and Islamic law [16]. Looking at the study conducted by Muhammad and Wardoyo, the difference between the study conducted by the author and the previous study is that in this study the aspect of registering *nadhir* to the Minister of Religion is examined.

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## 2. METHODOLOGY/ MATERIALS

This study is a normative study [17]–[19] with a statutory approach [20] on the rules of the Waqf Law, Government Regulation Number 42 of 2006 concerning the Implementation of the Waqf Law (Implementation Regulations of the Waqf Law), KHI Regulation, and Government Regulation Number 28 of 1977 concerning Land waqf (Land Waqf Regulations), all of these regulations are used as study material in looking at the rules for registering *nadhir* to the Minister of Religion, then the concept approach [20] is used to explain the concept of *nadhir* in each of the existing waqf rules in Indonesia.

The data used in this study are secondary data [20], [21], with primary legal material in the form of waqf regulations in Indonesia, secondary legal materials for research taken from journals and books that examine the concept of waqf in Indonesia and the concept of *nadhir*. Prescriptive analysis [20], [21] is used in this study to explain the provisions, value, and concept of *nadhir* to the Minister of Religion.

## 3. RESULTS AND DISCUSSIONS

### The Concept of Registration of Nadhir to The Minister of Religion on Waqf Rules in Indonesia

The views of Islamic jurists in the classical period did not make the *nadhir* part of the waqf element [22], [23]. However, in the dynamics of modern thought, the existence of the *nadhir* is considered to be an important entity, because on the shoulders *nadhir* the process of sustainability and productivity of waqf assets is at stake. Waqf regulations in Indonesia define *nadhir* as an institution in charge of maintaining and managing waqf assets [12], [24], this is as stated in Article 1 point 4 of the Land Waqf Regulation and Article 215 point 5 of the KHI Regulation. Definition of *nadhir* in waqf regulations in Indonesia has expanded its meaning where *nadhir* is an institution whose task is not only to maintain and manage waqf assets, but also to develop waqf assets provided by the wakif [9], [25], this definition is in accordance with Article 1 number 4 Waqf Law.

Departing from the main role of *nadhir* in the management and development of waqf assets [26], the legality of *nadhir* in the waqf process is regulated for the first time in Article 6 paragraph 3 of the Land Waqf Regulation, the purpose of registering *nadhir* based on the Land Waqf Regulation, it is intended to provide legal aspects to the *nadhir* by providing a letter of approval to the *nadhir* from the Head of the District Office of Religious Affairs (Head of KUA).

7 The idea of granting legality to *nadhira* through the granting of a letter of ratification to the *nadhira* in the rules of waqf in Indonesia is also stipulated in Article 219 paragraph 3 of the KHI Regulation. In contrast to the Land Waqf Regulation, in the KHI Regulation the Head of KUA in providing legality to *nadhira* must first listen to the advice of the Head of the District (Camat) and the District Indonesian Ulema Council (MUI) regarding *nadhira*.

30 The registration of *nadhira* to the Minister of Religion after the issuance of the Waqf Law is based on Article 14 paragraph 1 of the Waqf Law. Registration of *nadhira* to the Minister of Religion applies not only to *nadhira* individual but also *nadhira* organization and *nadhira*. This legal entity is in line with the provisions of Article 4 paragraph 2, Article 7 paragraph 1, and Article 11 paragraph 1 of the Implementing Regulations of the Waqf Law.

19 The requirement to register *nadhira* as stated in Article 14 paragraph 1 of the Waqf Law is carried out with the aim of carrying out guidance and supervision that must be carried out by the Minister of Religion, the explanation of Article 14 paragraph 1 of the Waqf Law states that in the *nadhira* Minister of Religion is required to be active in registering at *nadhira* in society.

16 Registration of *nadhira* to the Minister of Religion in the Waqf Law is carried out through the local KUA, if in an area there is no KUA, then the registration of *nadhira* is carried out through the nearest KUA or through the Office of the Ministry of Religion in accordance with Article 4 paragraph 3, Article 7 paragraph 2, and Article 11 paragraph 2 Implementing Regulations of the Waqf Law. The explanation of Article 4 paragraph 3, Article 7 paragraph 2, and Article 11 paragraph 2 of the Implementing Regulations of the Waqf Law states that the procedure for registering *nadhira* is carried out in accordance with the orderly order of the hierarchical structure within the Ministry of Religion. Looking at the explanations of Article 4 paragraph 3, Article 7 paragraph 2, and Article 11 paragraph 2 of the Implementing Regulations of the Waqf Law, an understanding can be drawn that KUA is an organizational structure under the Ministry of Religion. Especially for the registration *nadhira* legal entities, the registration process to the Minister of Religion is carried out before the pronouncement of the waqf pledge, this is in accordance with Article 7 paragraph 5 of the Implementing Regulations of the Waqf Law.

20 In contrast to the Land Waqf Regulation and the KHI Regulation where the Head of KUA can issue a letter of ratification of the *nadhira*, in the waqf Regulation the institution appointed to issue proof of *nadhira* is BWI. This is in accordance with the provisions of Article 4 paragraph 4 of the Implementing Regulations of the Waqf Law.

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Looking at the concept of registering *nadhira* to the Minister of Religion in accordance with the rules in force in Indonesia, a table can be made:

TABLE 1: The Concept of Registration of Nadhir to The Minister of Religion on Waqf Rules in Indonesia.

Basic Rules	Purpose of Registration	Proof of Registration	of Authorized Institutions
Land Waqf Regulations	Provision of Legal Basis for	Ratification Letter of <i>Nadhira</i>	KUA
Regulation of KHI	Provision of Legal Basis for	Ratification Letter of <i>Nadhira</i>	KUA
Waqf Law	on the Guidance and Supervision of <i>Nadhira</i>	Registration <i>Nadhira</i>	BWI

#### 4. CONCLUSION AND RECOMMENDATION

This study resulted in a conclusion that the concept of registering *nadhira* to the Minister of Religion, looking at the laws and regulations in Indonesia, has a pattern of thinking based on the provisions contained in each of the laws and regulations. invitation, however, the pattern of thinking in each of these rules is based on the value of the purpose of the registration process carried out.

The development of thinking in the rules of waqf in Indonesia by making *nadhira* as part of the elements of waqf or in the study of fiqh called the pillars of waqf, it is appropriate to conduct a study on the registration of *nadhira* to the Minister of Religion in the study of Islamic legal rules.

1

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**1. INTRODUCTION**

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