



The Authority of Heirs in Dismissal and Replacement of *Nadzir*: Discourse on the Contextuality of Waqf Rules in Indonesia and Islamic Law

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Abstract. Article 6 paragraph (4) Implementation of the Waqf Rules provides opportunities for heirs to change and replace *nadzir*. However, these rules create a gap for heirs to transfer waqf assets to other *nadzir*. This research aims to determine the authority of heirs to change and replace *nadzir* in Indonesian and Waqf law and Islamic legal rules. This research is normative legal research with a statutory and conceptual approach. This research reveals that Article 6 paragraph (4) Implementation of the Waqf Rules gives the heirs the authority to make proposals for the dismissal and replacement of the *nadzir*, if the *nadzir* who manages the waqf assets is deemed unable to carry out his duties, the authority possessed by the heirs, in this case, is not absolute because the final authority to dismiss and replace *nadzir* rests with PPAIW and BWI. Therefore, the heirs' form of authority is limited to proposing and providing advice regarding the dismissal and replacement of *nadzir* on managed waqf assets.

Keywords: Authority; Heir; Dismissal and Replacement of *Nadzir*; Waqf Rules; Islamic Law.

1 Introduction

Waqf law in Indonesia is rooted in Islamic principles and has experienced significant development over the years. Law Number 41 of 2004 concerning Waqf (now called the Waqf Rules) plays a vital role in regulating waqf activities, providing legal certainty, and establishing a framework for effective waqf management [1].

Waqf regulations in Indonesia emphasize the importance of managing waqf funds efficiently to improve economic welfare and empower Muslim communities economically [2]. In addition, there has been a paradigm shift in waqf development in Indonesia, with reforms focusing on legal-constitutional aspects to improve the performance of Waqf in the country [3]. The recognition of Waqf as a legal entity in customary law further highlights the importance of adequate regulations and management practices to manage waqf assets effectively [4]. Legal norms surrounding Waqf, which focus on aspects of asset productivity, have been strengthened through various regulations, such as Government Regulation Number 42 of 2006 concerning Implementation of Law Number 41 of 2004 concerning Waqf (from now on referred to as Implementation of Waqf Rules), to ensure the implementation and utilization of Waqf appropriate for the interests of society [5].

The legal rules for Waqf in Indonesia are constitutionally regulated in the Waqf Rules and the Implementation of Waqf Rules; however, there are still several problems regarding Waqf, such as the problem of heirs reclaiming waqf assets, where the nature of one party's Waqf can be eternal, causing legal and social dilemmas. Waqf assets often face disputes when heirs sue over waqf assets, causing losses for many people [6]. Examples of disputes between heirs suing over waqf assets include what happened in the Mranggen subdistrict, Demak district [7], disputes over waqf assets in the Maro Sebo Ulu subdistrict, and Batang Hari district [8].

One of the grounds that creates a gap for heirs in suing for assets that have been donated is the regulation of Article 6 paragraph (4) Implementation of the Waqf Rules, where this article allows the *wakif* or heirs to propose the dismissal and replacement of the waqf manager (from now on referred to as *nadzir*).

The legal basis for Waqf in the hadith lies in the teachings and practices of the Prophet Muhammad and his companions, as recorded in various hadiths [9] referring to the hadith of Umar, who obtained land assets in Khaibar, explaining that in the waqf process, the assets donated are never bought and sold, given away, and inherited [10]. Based on the above, studying the concept of heir power in waqf law in Indonesia is interesting.

Research on the theme of heirs in Waqf has been carried out by Auralia with several other researchers with the title "The Position of Waqf Land Controlled by the Heirs." the results of this research explain that waqf assets pledged by the *wakif* legally must be stated in the waqf pledge deed and registered on district/city land office so that heirs cannot cancel the process [9].

Looking at the research theme conducted by Auralia and several other researchers, the difference between this research and the research in this paper is that this research will explain the relationship between the

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authority of heirs in waqf law in Indonesia, studied from the perspective of waqf legal rules in Indonesia and Islamic law.

This research takes an in-depth look at the legal framework that regulates Waqf in Indonesia through the Waqf Rules and the Implementation of Waqf Rules. It explores how these regulations give heirs authority to determine changes or replacements for *Nadzir*. The purpose of this research is to determine the authority of the heirs in changing and replacing the *Nadzir*.

This research is vital because it provides new insight into the relationship between Indonesian positive law and Islamic law in waqf management, especially regarding the authority of heirs. It also provides a critical analysis of how existing regulations can be interpreted or may need to be reformed better to reflect the needs of Muslim communities in Indonesia. This research is innovative because it connects legal theory with actual practice. It provides a basis for developing policies that accommodate the diversity of interpretations in Islamic law while meeting the needs of positive law in Indonesia.

This research is normative [11], which examines waqf problems caused by disputes between heirs and *nadzir* in the context of waqf management, especially regarding the replacement and changes of *nadzir*. The approach used in this research is statutory [12] in analyzing and explaining the authority of heirs in the process of changing and replacing *nadzir*, and a conceptual approach [12] used in explaining the concept of Islamic law in granting heirs authority in the process—waqf management. Prescription analysis in this research explains the new concept of their power to change and replace *nadzir* through legal regulations in Indonesia and Islamic law.

2 The Authority of Heirs in Dismissal and Replacement of *Nadzir*, on the Contextuality of Waqf Rules in Indonesia and Islamic Law

Heirs play an essential role in waqf law by being able to declare part of their wealth as waqf assets during the distribution of assets in the deceased's name [13]. Heirs can also act as substitute *wakifs* in registering inherited donated land, and their responsibilities are outlined in Articles 24 to 27 of the Waqf Rules [14].

Waqf Rules in Indonesia provide opportunities for heirs to terminate and replace *nadzir* as stated in Article 6 paragraph (4) Implementation of Waqf Rules. However, the authority to dismiss and replace *nadzir* cannot simply be exercised directly by the heirs of the *wakif*, so rationalization is needed to carry out the dismissal and replacement of *nadzir*.

Article 6 paragraph (4) Implementation of the Waqf Rules provides a legal basis for the heirs in the process of dismissing and replacing the *nadzir* by stating that the heirs of the *wakif* can propose the dismissal and replacement of the *nadzir* because the *nadzir* has not carried out his duties within one year since the *wakif* pledged the waqf process [15], [16].

Statement of Article 6 paragraph (4) Implementation of the Waqf Rules, in line with the Waqf Rules, especially regarding the guidance and supervision of *nadzir*, in Article 11 paragraph (2) of the Waqf Rules states that *nadzir* are obliged to carry out their duties by the objectives, functions, and allocation of waqf assets, if *nadzir* does not carry out these duties, then the process of dismissal and replacement of the *nadzir* can be proposed by the heirs. *Nadzir* is responsible for managing waqf assets by the mandate given by the *Wakif*. If, within one year of the endowment deed being made, the *nadzir* does not carry out his duties, this can be considered a form of negligence or violation of the trust carried out by the *nadzir* [17], [18], [19].

Nadzir's negligence in carrying out his duties within one year shows negligence in waqf management. According to waqf law in Indonesia, waqf assets must be managed well to achieve the goals desired by the *Wakif*. So, this *nadzir's* negligence could harm the parties who should get benefits and productivity from waqf assets [20], [21]. The rights of the *wakif* heirs, as parties who have agreed to the giving of waqf assets by the *wakif*, have an interest in ensuring that the mandate manages the waqf assets. If the *nadzir* does not carry out his duties, then the *wakif* heirs have the right to submit a proposal for the dismissal and replacement of the *nadzir*.

Looking at Article 6 paragraph (4) Implementation of the Waqf Rules, the heir's authority to dismiss and replace *nadzir* is limited to the authority to propose dismissal and replacement of *nadzir* [22]. In this case, the heirs only have the right to propose the dismissal and replacement of the *nadzir* to the Head of the Religious Affairs Office (from now on referred to as the Official for Making the Waqf Pledge Deed, abbreviated as PPAIW). This means that the heirs can only convey to PPAIW that there are *nadzir* who must carry out their duties correctly or according to the mandate given by the *wakif*.

The authority to dismiss and replace *nadzir* by heirs is not absolute, meaning that heirs cannot replace the *nadzir* directly; heirs can only propose or recommend changing the *nadzir* to PPAIW. The final decision on whether the *nadzir* will be replaced is under the authority of PPAIW, and the Agency Indonesian Waqf (from now on referred to as BWI) is not the authority of the heirs. The authority to propose the heirs' dismissal and

replacement of the *nadzir* must be accompanied by solid evidence and reasons that the *nadzir* is not carrying out his duties. With sufficient evidence, PPAIW and BWI will accept the proposal to dismiss and replace *Nadzir*.

Regarding the heir's proposal regarding the dismissal and replacement of the *nadzir* by Article 6 paragraph (4) Implementation of the Waqf Rules, on the one hand, it will have a positive impact on waqf management, because it ensures that the *nadzir* will be better able to carry out his duties by the mandate, this is also a form of expert responsibility. heirs in the process of supervising waqf management. However, this role is indirect and must go through PPAIW and BWI authorities. However, the impact of the heirs' authority in proposing the dismissal and replacement of the *nadzir* by Article 6 paragraph (4) Implementation of the Waqf Rules, on the other hand, will also have a negative impact if the heirs have a conflict of interest where the heirs may have personal interests that are not in line with The primary purpose of Waqf. The authority to propose dismissal and replacement of *nadzir* by heirs in Article 6 paragraph (4) Implementation of the Waqf Rules is also prone to abuse by heirs who do not have integrity or commitment to waqf principles; this abuse can take the form of replacing competent *nadzir* with incompetent ones or lack of experience, which can be detrimental to the management of waqf assets. Considering these negative things, it is essential to establish a strict monitoring and evaluation mechanism for dismissing and replacing *nadzir* so that this authority is used wisely and does not harm the goals of the Waqf.

Waqf is a philanthropic movement in Islam [23], [24]; one of the basic concepts of behavior refers to the hadith of Umar ibn Khattab [25] by retaining the principal ownership of assets and giving alms, the value or proceeds from the principal of the assets held, where the assets held These will not be sold, inherited or given away [10]. Umar's hadith emphasizes that the heirs of the *wakif* do not have rights to the principal of the waqf assets. This implies that even if someone is the heir of the *wakif*, he does not have ownership rights to the waqf assets. Umar's hadith also emphasizes that *nadzir* are appointed to manage waqf assets and are allowed to utilize the Waqf proceeds *ma'ruf*; for this reason, *nadzir* has a vital role in ensuring that established provisions can utilize waqf proceeds and that waqf assets become productive.

Umar's hadith does not explicitly discuss the authority of the heirs in making proposals for the dismissal and replacement of the *nadzir* because the heirs do not have rights to the principal of the waqf assets. However, they have the authority to propose the dismissal or replacement of the *nadzir* if there is an apparent reason, such as abuse of authority or incapacity of the *nadzir* to carry out tasks, based on principles problem. Then, this authority can be formed in a regulatory regulation as contained in Article 6 paragraph (4) Implementation of Waqf Rules. From the perspective of Umar's hadith, even though heirs do not have rights to the principal of the waqf assets, they can still ensure that waqf management remains in accordance with Sharia principles.

3 Conclusion

The provisions of Article 6 paragraph (4) Implementation of the Waqf Rules provide authority for the heirs to propose the dismissal and replacement of the *nadzir*. This authority in the form of a proposal can be exercised if the *nadzir* cannot carry out his duties and functions as the manager of waqf assets for at least one year. The authority to approve the proposal remains the authority of PPAIW and BWI.

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