

## Artikel 8

# The Authority of Heirs in Dismissal and Replacement of Nadzir: Discourse on the Contextuality of Waqf Rules in Indonesia an...

 Kuku Dwi Kurniawan

 Publication Articles Mar - Apr 2025 Dosen UMM

 University of Muhammadiyah Malang

---

### Document Details

Submission ID

trn:oid::1:3232977173

Submission Date

Apr 29, 2025, 4:11 PM GMT+7

Download Date

Apr 30, 2025, 5:58 AM GMT+7

File Name

the\_Contextuality\_of\_Waqf\_Rules\_in\_Indonesia\_and\_Islamic\_Law.pdf

File Size

366.4 KB

5 Pages

3,375 Words

17,371 Characters





# 10% Overall Similarity

The combined total of all matches, including overlapping sources, for each database.




## Filtered from the Report

- ▶ Bibliography
- ▶ Quoted Text

## Match Groups

-  **15 Not Cited or Quoted 7%**  
Matches with neither in-text citation nor quotation marks
-  **8 Missing Quotations 3%**  
Matches that are still very similar to source material
-  **0 Missing Citation 0%**  
Matches that have quotation marks, but no in-text citation
-  **0 Cited and Quoted 0%**  
Matches with in-text citation present, but no quotation marks

## Top Sources

- 7%  Internet sources
- 6%  Publications
- 2%  Submitted works (Student Papers)

## Integrity Flags

### 0 Integrity Flags for Review

No suspicious text manipulations found.

Our system's algorithms look deeply at a document for any inconsistencies that would set it apart from a normal submission. If we notice something strange, we flag it for you to review.

A Flag is not necessarily an indicator of a problem. However, we'd recommend you focus your attention there for further review.

### Match Groups

- **15 Not Cited or Quoted 7%**  
Matches with neither in-text citation nor quotation marks
- **8 Missing Quotations 3%**  
Matches that are still very similar to source material
- **0 Missing Citation 0%**  
Matches that have quotation marks, but no in-text citation
- **0 Cited and Quoted 0%**  
Matches with in-text citation present, but no quotation marks

### Top Sources

- 7% Internet sources
- 6% Publications
- 2% Submitted works (Student Papers)

### Top Sources

The sources with the highest number of matches within the submission. Overlapping sources will not be displayed.

1	Internet	www.atlantis-press.com	2%
2	Publication	Nu'man Aunuh, Muhammad Lutfhi, Yaris Adhial Fajrin, Kukuh Dwi Kurniawan et ...	1%
3	Publication	"Revitalization of Waqf for Socio-Economic Development, Volume II", Springer Sci...	<1%
4	Student papers	University of Muhammadiyah Malang	<1%
5	Internet	journal.iainlangsa.ac.id	<1%
6	Publication	Muhammad Luthfi, Yaris Adhial Fajrin. "Registration Nazhir To The Minister Of Re...	<1%
7	Internet	jurnal.unikal.ac.id	<1%
8	Internet	eprints.eudl.eu	<1%
9	Internet	journal.iaimnumetrolampung.ac.id	<1%
10	Internet	ssbfnet.com	<1%

11	Internet	discovery.researcher.life	<1%
12	Internet	journals.smartinsight.id	<1%
13	Internet	prin.or.id	<1%
14	Internet	www.russianlawjournal.org	<1%

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

Muhammad Luthfi<sup>1\*</sup>, Nu'man Aunuh<sup>2</sup>, Radhityas Kharisma Nuryasinta<sup>3</sup>, Yaris Adhial Fajrin<sup>4</sup> and Kuku Dwi Kurniawan<sup>5</sup>

<sup>1,2,3,4,5</sup> Muhammadiyah University of Malang, Malang, Indonesia.  
\*muhammadruthfi@umm.ac.id

**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

© The Author(s) 2025

S. Al Fatih et al. (eds.), *Proceedings of the International Conference on Law Reform (5th Inclar 2024)*, Advances in Social Science, Education and Humanities Research 870,  
[https://doi.org/10.2991/978-2-38476-362-7\\_35](https://doi.org/10.2991/978-2-38476-362-7_35)

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

1 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*.

11 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.

6 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

3 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].

2 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*.

2 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].

2 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*.

10 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*.

14 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.

## References

- [1] A. B. Musthafa and F. Sariningsih, "Legislasi Agama Dan Potensi Ekonomi: Analisis Undang-Undang Nomor 41 Tahun 2004 Tentang Wakaf Di Indonesia," *IQTISHOD: Jurnal Pemikiran dan Hukum Ekonomi Syariah*, vol. 3, no. 1, pp. 45–61, Apr. 2024, doi: 10.69768/ji.v3i1.47.
- [2] J. Jumadiah, F. Faisal, H. Hamdani, and S. Sutriani, "Waqf dimensions in the context of improving the mosque prosperity board's economy based on law number 41 of 2004 regarding waqf," *Jurnal Geuthèè: Penelitian Multidisiplin*, vol. 6, no. 2, Art. no. 2, Aug. 2023, doi: 10.52626/jg.v6i2.266.
- [3] A. T. Puspita and H. Tanjung, "Waqf Development in Indonesia: R Application," *International Journal of Waqf*, vol. 3, no. 2, 2023, doi: 10.58968/ijw.v3i2.357.
- [4] N. Fahmi, H. Hasbi, B. Gobo, M. Mirnawati, and M. Helmi, "The Complexity Of Waqf Land In The Context Of Customary Law In Indonesia," *Tadayun: Jurnal Hukum Ekonomi Syariah*, vol. 5, no. 1, Art. no. 1, Jun. 2024, doi: 10.24239/tadayun.v5i1.268.
- [5] S. Sabdo and M. S. Fajar, "Wakaf Produktif Dan Peningkatan Taraf Hidup Umat (Studi Kasus Wakaf Produktif Di Pimpinan Daerah Muhammadiyah Metro)," *JURNAL KEMUHAMMADIYAHAN DAN INTEGRASI ILMU*, vol. 1, no. 1, Art. no. 1, Jul. 2023, doi: 10.24853/jkii.1.1.1-24.

- [6] A. Yani, "Reconstruction of the Waqf Pledge as a Juridical Acronym for Expert Waqf Dispute Resolution," *Management of Zakat and Waqf Journal (MAZAWA)*, vol. 5, no. 1, Art. no. 1, Sep. 2023, doi: 10.15642/mzw.2023.5.1.105-121.
- [7] M. W. Nugroho and Rozihan, "Penarikan Kembali Asset Wakaf Oleh Ahli Waris Wakif (Studi Di Kecamatan Mranggen Kabupaten Demak)," *Jurnal Ilmiah Sultan Agung*, vol. 1, no. 1, Art. no. 1, 2022.
- [8] Rofi'ah, "Penyelesaian Sengketa Wakaf (Studi Kasus Di Desa Sungai Ruan Kecamatan Maro Sebo Ulu Kabupaten Batang Hari)," 2022, Accessed: Jul. 28, 2024. [Online]. Available: <http://repository.iq.ac.id/handle/123456789/2966>
- [9] A. N. Rohim and A. H. Ridwan, "Wakaf dalam Perspektif Al-Qur'an dan Hadis: Esensi dan Signifikansi pada Tataran Ekonomi dan Sosial," *AL QUDS: Jurnal Studi Alquran dan Hadis*, vol. 6, no. 2, Art. no. 2, Sep. 2022, doi: 10.29240/alquds.v6i2.3742.
- [10] I. A. H. Muslim ibn al-Hajjaj, *Shohih Muslim*. Riyad.
- [11] D. Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, vol. 8, no. 8, pp. 2463–2478.
- [12] M. Zainuddin and A. D. Karina, "Penggunaan Metode Yuridis Normatif Dalam Membuktikan Kebenaran Pada Penelitian Hukum," *Smart Law Journal*, vol. 2, no. 2, Art. no. 2, Aug. 2023.
- [13] U. H. Umar, "Integrating Family Waqf into an Inheritable Going Concern Business: An Instrument for the Sustainable Welfare of Exempted Heirs," in *Revitalization of Waqf for Socio-Economic Development, Volume II*, K. M. Ali, M. K. Hassan, and A. elrahman E. S. Ali, Eds., Cham: Springer International Publishing, 2019, pp. 67–87. doi: 10.1007/978-3-030-18449-0\_4.
- [14] J. Hafidz, "Accountability Procedure For Heirs In The Registration System Of Wakaf Assets Land In Indonesia," *Russian Law Journal*, vol. 11, no. 3, Art. no. 3, Apr. 2023, doi: 10.52783/rj.v11i3.995.
- [15] P. Amriah, "Implementation of Waqf Law No. 41 of 2004 and Government Regulation No. 42 of 2006 on the Management of Waqf Assets | Journal of Comprehensive Islamic Studies", Accessed: Aug. 14, 2024. [Online]. Available: <https://journal.centristm.or.id/index.php/jocis/article/view/100>
- [16] T. Pratama, Syahmirwan, and A. N. W. A. Rosyit, "The Strategic Role Of Article 6 Of Law No 41 Of 2004 In The Management Of Term Waqf: A Progressive Review Of Islamic Economic Renewal," *Legalis: Journal of Law Review*, vol. 1, no. 1, Art. no. 1, Oct. 2023, doi: 10.61978/legalis.v1i1.8.
- [17] M. N. Robbani and N. Fatwa, "Islamic Management and Risk Management Applications in Pesantren Based on Waqf," *I*, vol. 5, no. 1, Art. no. 1, Jun. 2024, doi: 10.35878/santri.v5i1.1203.
- [18] B. Prakoso, B. I. Permana, I. V. Nugraningsih, and C. O. Prakoso, "The Legal Certainty of Wakaf Without The Existence of A Wakaf Power Deed Made by The Officer Making The Wakaf Power Deed," *Co-Value Jurnal Ekonomi Koperasi dan kewirausahaan*, vol. 15, no. 2, Art. no. 2, Jul. 2024, doi: 10.59188/covalue.v15i2.4515.
- [19] H. N. Lita, S. M. B. Mahamood, A. Suryamah, and R. Darodjat, "Implementation of Syirkah Principles (Partnership) in the Establishment of a Waqf Asset Management Company," *International Journal of Islamic Economics and Governance*, vol. 4, no. 2, Art. no. 2, Dec. 2023, doi: 10.58932/MULD0031.
- [20] E. N. Cahyo, "Examining The Potential Of Waqf-Based Education Management: A Case Study Of Pesantren Darussalam Gontor Indonesia," *I-iECONS e-proceedings*, pp. 800–825, Oct. 2023, doi: 10.33102/iecons.v10i1.94.
- [21] L. Hakim and K. Nawawi, "Finding Solutions to Productive Waqf Management Problems: A Case in Indonesia," *International Journal of Waqf*, vol. 4, no. 1, Jun. 2024, doi: 10.58968/ijw.v4i1.508.
- [22] F. Faisal and N. Simatupang, "The Strengthening Position and Functions of Waqf on Nadzir as an Independent Institution," *JURNAL AKTA*, vol. 9, no. 2, Art. no. 2, Jul. 2022, doi: 10.30659/akta.v9i2.22955.
- [23] O. Abid and S. Miakhil, "A Historical Overview Of Waqf," *International Journal of Sukuk and Waqf Research*, vol. 5, no. 1, pp. 1–8, Jan. 2024, doi: 10.46281/ijswr.v5i1.2170.
- [24] B. S. Sairally, "Editorial," *IJIF*, vol. 16, no. S1, Art. no. S1, May 2024, doi: 10.55188/ijif.v16iS1.778.
- [25] E. Askouri, "The Role of Waqf in Achieving the Purposes of Islamic Law," *Iqtisad: Reconstruction of Justice and Welfare for Indonesia*, vol. 11, no. 1, Art. no. 1, Jun. 2024, doi: 10.31942/iq.v11i1.10922.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.





## Digital Receipt

This receipt acknowledges that Turnitin received your paper. Below you will find the receipt information regarding your submission.

The first page of your submissions is displayed below.

Submission author: Artikel 8  
Assignment title: Kukuh Dwi Kurniawan  
Submission title: The Authority of Heirs in Dismissal and Replacement of Nadzir...  
File name: the\_Contextuality\_of\_Waqf\_Rules\_in\_Indonesia\_and\_Islamic\_La...  
File size: 366.41K  
Page count: 5  
Word count: 3,375  
Character count: 17,371  
Submission date: 29-Apr-2025 04:20PM (UTC+0700)  
Submission ID: 2660716846

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

Muhammad Luthfi<sup>1</sup>, No'nan Aunah<sup>2</sup>, Radhitya Khariema Nurysaini<sup>3</sup>, Yaris Adhial Fajrin<sup>4</sup> and Kukuh Dwi Kurniawan<sup>5</sup>

<sup>1,2,3,4,5</sup> Muhammadiyah University of Malang, Malang, Indonesia.  
<sup>1</sup>muhamm.luthfi@um.ac.id

**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 PPANW and BPN. 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 Mraanggen subdistrict, Denak district [7], disputes over waqf assets in the Moro Sebo Ulu subdistrict, and Batang Hari district [8].

One of the grounds that creates a gap for heirs in suing for assets that has been donated is the regulation of Article 6 paragraph (4) Implementation of the Waqf Rules, where this article allows the waqf/ 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 Annalisa 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 waqf 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 Annalisa 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

© The Author(s) 2025  
S. Al-Fatih et al. (eds.), *Proceedings of the International Conference on Law Reform (5th Inkar 2024)*, Advances in Social Science, Education and Humanities Research 470,  
<https://doi.org/10.29019/578-2-38476-3627-35>