

## Clarifying Heirs' Rights in Indonesian Waqf Law: Toward Stronger Governance and Conflict Prevention

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**Abstract:** This research analyzes the current legal framework governing the rights of a wakif's heirs under Indonesian waqf law and proposes a model of regulatory reform aimed at enhancing waqf governance and minimizing potential inheritance disputes. The urgency of this research arises from the increasing number of waqf dispute cases brought before Indonesian Religious Courts, many of which involve heirs claiming ownership of assets already pledged as waqf. These disputes reflect ongoing legal uncertainty and the lack of clear regulatory provisions governing heirs' procedural rights, a condition that risks weakening both the long-term sustainability of waqf management and the overall stability of the legal system. The objectives of this study are twofold: (1) to analyze the normative and socio-legal factors contributing to heirs' involvement in waqf disputes, and (2) to propose a legal reform framework that clarifies their position within the waqf system. Using a normative juridical method with statutory and conceptual approaches, the study finds that the ambiguity of Law No. 41 of 2004 concerning Waqf, particularly the absence of the term "wakif's heirs" in Article 6, creates interpretive gaps leading to recurrent ownership claims. To address these issues, this paper proposes revising the Waqf Law to explicitly recognize the limited supervisory rights of heirs while maintaining the sanctity of waqf as perpetual charity. This proposed reform seeks to align the principles of Islamic jurisprudence with national law in order to ensure legal certainty, reduce the potential for disputes, and strengthen the overall effectiveness of waqf governance. The study contributes conceptually by redefining heirs' legal standing and practically by promoting a conflict-resilient and sustainable waqf ecosystem in Indonesia.

## Introduction

Waqf represents a long-standing form of Islamic philanthropy that has been practiced continuously since the earliest introduction of Islam across the Indonesian archipelago (Kasdi et al., 2022). As a socio-religious instrument, waqf plays a strategic role (Rosyid et al., 2024; Siddiq et al., 2025). Waqf assets can serve as a means of empowering Muslim communities (Melis et al., 2025; Zaenurrosyid et al., 2024). These assets can provide educational, religious,

health, and social welfare facilities for marginalized and underprivileged groups (Latief, 2023; Nofiardi & Helmy, 2024; Ridho et al., 2025). However, the practice of waqf in Indonesia still faces several challenges. Many waqf assets are not managed appropriately (Effendi et al., 2022). Many of these assets remain underutilized, with a considerable portion of waqf land left unmanaged and neglected (Marza et al., 2022; Yasniwati, 2023).

One underlying factor is the limited professional capacity of waqf administrators. Many *nadzir* (waqf managers) still lack formal competency assessment and professional certification (Kinashih & Ramadhita, 2022; Zaenurrosyid et al., 2025). Another problem lies in asset certification. Many waqf properties have yet to receive official waqf certificates. According to data from the Ministry of Religious Affairs, 36,066.60 hectares (42.58%) of the total 57,263.69 hectares of waqf land remain uncertified (Sudirman et al., 2022). The lack of certification significantly constrains the optimal use of waqf assets for the purpose of community empowerment (Emha et al., 2022; Fauzi et al., 2022). It also creates opportunities for waqf disputes. In 2022, there were 299 waqf dispute cases recorded. In 2023, 48 cases were documented. In 2024, the number of waqf dispute cases increased to 41, and later in the same year, an additional 144 cases were registered.

Waqf disputes may emerge between the *nadzir* and the heirs of the waqf founder, as well as with other parties who initiate legal claims or engage in unlawful actions involving waqf assets. This upward trend highlights the persistent structural weaknesses in Indonesia's waqf legal framework, particularly the lack of explicit provisions regulating the procedural rights of wakif's heirs. The growing number of disputes reflects not only administrative inefficiencies but also the absence of a coherent legal mechanism to prevent overlapping claims over endowed assets. Accordingly, legal reform has become increasingly urgent to safeguard legal certainty, uphold the integrity of waqf governance, and preserve public trust in waqf as a fundamental institution of Islamic social welfare.

One illustrative example is a case decided by the Semarang Religious Court (Decision No. 987/Pdt.G/2003/PA.Smg), in which the heirs asserted ownership over a parcel of land that had long functioned as a mosque, on the grounds that no formal waqf pledge deed (*AIW*) had been issued. The court ruled in favor of the heirs and allowed the withdrawal of the asset (David, 2023). (2) A case involving heirs who sued the *nadzir* over a paddy field allegedly endowed by another party. The dispute ended with a decision by the Supreme Court of Indonesia (Decision No. 456 K/AG/2007) (Rizaldi et al., 2023). (3) Another case concerned a lawsuit filed by heirs against the *Pejabat Pembuat Akta Ikrar Wakaf* (PPAIW), or Waqf Deed Official, in Sukun District, Malang, before the Surabaya Administrative Court. The court nullified the PPAIW's decision after finding that the transfer of waqf management to a waqf organization had been carried out without the heirs' consent (Afandi, 2021).

Additional disputes between the wakif's heirs and the *nadzir* were also reported in Manisrenggo Village, Kediri, East Java. The heirs attempted to appoint a replacement *nadzir* after the original *nadzir* mentioned in the *Akta Ikrar Wakaf* (*AIW*), or Waqf Pledge Deed, had passed away. However, one heir objected, citing the lack of involvement from village officials, religious leaders,

community figures, and former mosque administrators. The Office of Religious Affairs rejected their request to replace the nadzir and subsequently reported the case to the *Badan Wakaf Indonesia* (Indonesian Waqf Board, BWI) in Kediri. The dispute was subsequently brought before the Kediri Religious Court (Decision No. 512/Pdt.G/2022/PA.Kdr) and later proceeded to the Surabaya Administrative Court (Decision No. 117/G/2023/PTUN.SBY), both of which ultimately dismissed the heirs' claim.

The frequent exclusion of the wakif's heirs from the waqf implementation process has repeatedly given rise to disputes, largely due to the absence of clear legal provisions defining their procedural rights. At the same time, the emotional and historical ties of heirs to endowed property frequently give rise to conflicting ownership claims. These dual realities, legal ambiguity and socio-cultural attachment, make the issue of heirs' rights central to waqf governance reform. Addressing this problem is not only a matter of legal certainty but also essential for sustaining the trust and participation of Muslim communities in Indonesia's waqf ecosystem. Law Number 41 of 2004 concerning Waqf explicitly declares that inheritance does not apply to assets endowed as waqf. Once a waqf is established, both the wakif and their heirs are legally deemed to have fully surrendered any proprietary rights over the waqf assets. The position of the wakif's heirs is only recognized in Article 25 of the Waqf Law, which grants the right to consent to the waqf of the wakif's entire estate.

The absence of regulations regarding the rights of the Wakif's heirs increases the potential for waqf conflicts in Indonesia. From a theoretical standpoint, this research draws on the concepts of legal certainty and public trust theory in Islamic legal governance, which emphasize the importance of transparent and consistent regulation in maintaining the legitimacy of religious endowments. By aligning Indonesia's waqf law with these theoretical foundations, the study fills a scholarly gap left by previous research, which has largely focused on economic or managerial aspects of waqf but has rarely examined the normative position of heirs within the legal structure. This article contends that the Waqf Law needs revision. Amendments can be made by adding the phrase "Wakif's heirs" as part of the elements of waqf implementation as regulated in Article 6 of the Waqf Law. This measure is essential to ensure that waqf implementation is not only valid under both Sharia and positive law, but also responsive to social realities that frequently generate claims rooted in familial relationships.

Numerous scholarly studies have extensively examined waqf in Indonesia, along with the various challenges surrounding its implementation and governance. Waqf is a financial instrument that can be used to empower the Muslim community (Ali, 2024; Azrak, 2022; Elesin, 2017). In Indonesia, most waqf assets are still in the form of land and are used in a consumptive manner (Sudirman & Ramadhita, 2020). These assets are primarily utilized for religious and educational purposes (Choiri & Ardyansyah, 2024). The certification of waqf land also needs to be optimized through synergy among institutions (Wibisono et al., 2025). Meanwhile, the number of productively managed waqf assets remains limited (Aristyanto & Riduwan, 2025; Huda et al., 2025). The limited number of *nadzir* possessing sufficient professional

capacity to manage productive waqf assets constitutes a significant contributing factor to the problem (Maswanto & Yudha, 2025). Stakeholders in the waqf sector must also improve public understanding of productive waqf (Rasyidi et al., 2024). Legal reform in the waqf sector is necessary for adaptation to social dynamics and technological changes (Faisal et al., 2024; Nashirudin et al., 2025; Nofianti et al., 2024). Indonesia's waqf management also encounters challenges arising from conflicts between the *nadzir* and third parties, including the waqif's heirs and other entities engaged in unlawful conduct (Afandi, 2021; Hayati, 2018). Waqf management in Indonesia also encounters significant challenges in the form of disputes between *nadzir* and third parties, including the wakif's heirs as well as other actors involved in unlawful activities.

In this light, the study aims to reconcile the divergence between normative Islamic law and positive law in waqf regulation by prioritizing the clearer articulation of heirs' rights as a key strategy to mitigate legal uncertainty and avert potential conflicts. By proposing a reform model for waqf governance, this research not only contributes to the academic discourse on Islamic legal reform but also offers practical recommendations for policymakers to enhance the effectiveness and sustainability of Indonesia's waqf management system.

### **Method**

The analysis uses a statutory and conceptual approach, as described by Marzuki (2007), to interpret relevant legal norms and theoretical foundations. The statutory approach involves examining primary legal instruments such as Law No. 41 of 2004 on Waqf, Government Regulation No. 42 of 2006, and the Compilation of Islamic Law. The conceptual approach explores fundamental principles of fiqh al-waqf and doctrines related to the position and procedural rights of heirs in waqf administration. In addition, a comparative approach is applied to contrast Indonesia's regulatory framework with those of other Muslim-majority countries, such as Malaysia and Turkey, where the involvement and protection of heirs in waqf governance are more explicitly regulated. This comparative perspective offers important insights into how Indonesia can reinforce its legal framework to prevent overlapping ownership claims and recurring governance disputes.

The legal materials utilized in this research consist of primary, secondary, and tertiary sources. Primary materials include statutory texts, court decisions, and official documents that have binding legal authority. Secondary materials comprise books, peer-reviewed journal articles, and research reports relevant to the governance of waqf and heirs' rights. Meanwhile, tertiary materials consist of legal dictionaries, encyclopedias, online legal databases, and official publications from the Indonesian Waqf Board (BWI) and the Directorate General of Religious Courts, which serve as interpretative aids in understanding and classifying legal concepts. All data were collected through comprehensive library-based research, involving the systematic identification, examination, and synthesis of authoritative legal materials and scholarly sources on waqf law in Indonesia (Ali, 2021).

The data were analyzed qualitatively using descriptive-analytic and inductive reasoning techniques (Fidhayanti et al., 2025). Through this process, relevant legal norms and theories were examined, grouped, and interpreted to draw general conclusions from specific legal facts. The analysis ultimately aims to formulate a normative framework that clarifies the rights of the wakif's heirs, provides legal certainty, and supports the creation of a more transparent and conflict-resilient waqf governance system in Indonesia.

## **Results and Discussion**

### **Waqf and the Empowerment of the Muslim Community**

Waqf is one of the forms of *sadaqah jariyah* (ongoing charity) in Islam that holds both devotional and socio-economic dimensions. Etymologically, the term *waqf* originates from the Arabic word *waqafa – yaqifu – waqfan*, meaning to have, to stop, or to stay in place. In this context, "to hold" refers to the act of withholding ownership over property so that it cannot be transferred, sold, inherited, or gifted—but instead, its benefits are dedicated for a particular purpose under Sharia. Conceptually, waqf refers to a legal act in which an individual (*wakif*) dedicates a portion of their property for perpetual use in the public or religious interest, without any expectation of personal gain, and with the stipulation that the property may neither be sold, inherited, nor otherwise transferred (Siregar et al., 2022).

Classical and contemporary Islamic scholars offer distinct doctrinal definitions of waqf. For instance, Imam Abu Hanifah defines waqf as holding a characteristic asset owned by an individual and dedicating its benefits for charitable purposes. He underscores that the ownership resides with the wakif, although its advantages are relinquished. Conversely, Imam Malik asserts that waqf transfers ownership to Allah, meaning no individual can retrieve the item. Imam Syafi'i states that waqf is about preserving the property whose benefits can be utilized without diminishing its essence, to be given to those in need as an act of devotion to Allah. Imam Ahmad ibn Hanbal defines waqf as the preservation of the original asset while its benefits are distributed to designated beneficiaries in accordance with the wakif's intent (Faisal & Simatupang, 2025).

In Indonesia, waqf is regulated under Law Number 41 of 2004 on Waqf. Article 1, paragraph (1) of this law defines waqf as: "A legal act of the *wakif* to separate and/or transfer a portion of their property to be utilized forever or for a certain period by their interests for religious or public welfare purposes by sharia." (Dasrianto et al., 2023) This definition emphasizes that waqf is not merely the transfer of assets, but it also reflects voluntary intent, sustainability, and socio-religious purpose. Endowed assets (both movable and immovable) must be managed and developed to provide ongoing benefits to the community. The law also allows temporary waqf, although traditional Islamic scholars predominantly favor its permanent nature. Therefore, waqf is firmly grounded in linguistic, theological, and legal principles. It is not only a personal devotional act but also a tool for equitable wealth distribution, strengthening social solidarity, and advancing community development. A sound understanding of this concept is crucial to ensure that waqf practices remain

consistent with both Sharia principles and state law, thereby optimizing its wide-ranging and long-term benefits.

Waqf is a vital instrument within the Islamic economic system (Musari, 2022). As mentioned earlier, waqf holds great potential to empower the Muslim community (Mahadi, 2022; Wahyudi, 2024). It has played a strategic role in supporting various aspects of social, educational, economic, and religious life (Medias et al., 2021; Palasenda & Salikurrahman, 2024). Waqf is not only viewed as a spiritual act that generates ongoing rewards for the *wakif*, but also as a means of wealth redistribution and social solidarity among Muslims (Saripudin, 2021). Unlike other acts of worship that are personal in nature (Khamim et al., 2025; Musanna et al., 2025), waqf has a strong social dimension as it is oriented toward public interest and communal benefit. Optimizing the function of waqf is relevant not only in spiritual terms but also as a systematic effort to eradicate poverty, improve welfare, and strengthen the collective independence of the Muslim ummah.

Historically, the waqf institution has proven to be a vital pillar in the development of Muslim society. During the height of Islamic civilization, waqf served as a vital financial foundation for a broad spectrum of social institutions and public services, including madrasas and universities, hospitals, clean water systems, commercial activities, as well as the development of public infrastructure such as roads, bridges, and mosques (Kasdi, 2017). The continued existence of Al-Azhar University in Egypt is closely tied to the waqf system (Kiasatina, 2025). The waqf system in the Ottoman Empire was systematically established and cohesively integrated, functioning as a significant source of public financing without imposing a burden on the state (Rizqa, 2021).

It proves that waqf is not merely an act of charity, but also an economic mechanism that can strengthen the resilience of the ummah. Regrettably, in many Muslim-majority countries, including Indonesia, the immense potential of waqf has yet to be fully harnessed for community empowerment. The majority of waqf in Indonesia remains consumptive, primarily allocated to mosques, cemeteries, or religious educational institutions. While spiritually significant, such assets are not yet managed productively to generate sustainable economic value (Huda et al., 2025). According to the Indonesian Waqf Board (BWI), there are over 400,000 hectares of waqf land in Indonesia that have not been productively utilized (Amanda, 2023; Zamzami & Andaryuni, 2025). Many waqf assets are neglected, poorly documented, or managed traditionally by *nadzir* who lack managerial capacity and access to capital or training. It indicates that the main challenge in community empowerment through waqf lies not in asset availability, but in their effective management and utilization.

To strengthen the social impact of waqf, a fundamental paradigm shift is required from a consumptive orientation toward a productive waqf model. Productive waqf refers to a management model that focuses on the sustainable utilization of assets to generate income or economic value, which can then be channeled into social, educational, health, or economic empowerment programs. Examples of productive waqf include establishing waqf-based hospitals, developing commercial properties whose rental income funds social

initiatives, or investing in agriculture and MSMEs using waqf assets (Putra & Ali, 2021; Wahda & Ramadhita, 2024). This model transforms waqf from merely a symbol of individual piety into a driver of community economic development. In Islam, wealth is not solely for personal gain; it also bears a social responsibility that its owner is obligated to fulfill. This concept is emphasized in Surah Al-Baqarah verse 267, which commands believers to give the best of their wealth in the way of Allah, and in the hadith of the Prophet Muhammad SAW stating that ongoing charity, including waqf, will continue to benefit a person even after death (Rohim & Ridwan, 2022).

Optimizing waqf for community empowerment also requires strong and adaptive regulatory support. In Indonesia, waqf is regulated by Law No. 41 of 2004 and Government Regulation No. 42 of 2006 (Sudirman, 2014). While these regulations provide a solid normative foundation, implementation still faces field challenges, including limited public awareness, overlapping agrarian regulations, weak asset documentation, and low capacity among *nadzir*. Institutional reform and regulatory strengthening are crucial to establish a healthy, transparent, and accountable waqf ecosystem.

The government should encourage synergy among the Indonesian Waqf Board, Islamic financial institutions, Islamic organizations, and the private sector to develop innovative models in waqf management. In addition to regulatory support, the quality of *nadzir* as waqf managers is a key success factor for productive waqf transformation. Professional, trustworthy, and competent *nadzir* who possess expertise in management, finance, and investment are essential for optimizing the effective management of waqf assets. Information technology also plays a crucial role in facilitating transparency and efficiency in waqf administration, including digital asset recording, online financial reporting, and sharia-compliant social investment platforms.

In the current digital era, waqf digitalization presents a primary opportunity to expand public reach and participation. Digital platforms can be used to collect *cash waqf* from a broad range of contributors quickly, easily, and transparently (Jafar et al., 2025; Megat et al., 2024). Cash waqf itself is highly flexible and adaptive, as it does not depend on fixed assets like land or buildings. Funds from cash waqf can be invested in sharia-compliant instruments, with the proceeds allocated to empowerment programs. Experiences from nations such as Turkey and Malaysia demonstrate that effectively administered cash waqf can substantially enhance the social and economic advancement of the Muslim community.

In Indonesia, initiatives such as WakafLink and collaborative programs between the Indonesian Waqf Board (BWI) and Islamic banks constitute promising initial efforts toward the development of a more inclusive digital waqf ecosystem (Badan Wakaf Indonesia, 2025). Empowering the ummah through waqf must go beyond economics to encompass education and culture. Waqf can be utilized to build vocational training centers, Islamic educational institutions, scientific research facilities, and initiatives for Islamic cultural development. In this way, waqf becomes a holistic tool for social transformation that touches every aspect of Muslim life. Strengthening the intellectual and spiritual capacity of the ummah through quality education and equitable

access is a fundamental prerequisite for the future revival of Islamic civilization. Therefore, waqf managers should direct their efforts not only toward economic gain but also toward realizing the values of an advanced, just, and noble Islamic civilization.

### **The Rights of the Wakif's Heirs in Indonesia's Waqf Regulations**

Waqf is the act of a *wakif* separating part of their wealth for the benefit of the Muslim community (Rini et al., 2024). Initially, waqf was conducted for an indefinite duration. However, in its development, waqf can also be held on a short-term basis (Ambrose & Peredaryenko, 2022; Rahman et al., 2023). If the *wakif* intends to dedicate the property permanently, the endowed assets no longer belong to the *wakif* but to Allah SWT. The management of the waqf property is transferred to the *nadzir* (Huda & Sulistyowati, 2022). If the waqf is made for a specific period, the *wakif* may reclaim the waqf asset by the agreed duration (Dermawan & Harahap, 2024). As a financial act of worship, waqf must fulfill its pillars and conditions. Scholars of fiqh accept that the primary pillar of waqf is the *sighat* (the waqf statement). However, they hold differing opinions regarding the status of the *wakif* (donor), the *mauquf 'alaiah* (beneficiary), and the *mauquf bih* (object of waqf) (Rozalinda, 2017; Syafi'i, 2020).

Article 215 of the Compilation of Islamic Law (KHI) defines the pillars of waqf as the *wakif*, the declaration, the waqf object, and the *nadzir* (Atika & Rofiq, 2022). Article 6 of the Waqf Law further stipulates that a valid waqf must comprise several essential elements, namely the *wakif*, the *nadzir*, the waqf property, the waqf pledge, the designated purpose of the property, and the specified duration of the waqf. Regarding the *wakif*, Article 7 explains that a *wakif* can be an individual, an organization, or a legal entity. An individual *wakif* must meet specific requirements: be of legal age, mentally sound, not legally incapacitated, and possess lawful ownership over the asset to be endowed (Zaldi & Tanjung, 2023).

However, there is no explicit regulation regarding the rights of the *wakif's* heirs either in classical *fiqh* or in the Waqf Law. The discussion of heirs is dispersed across various laws and is mostly implied. These include: *First*, the right to approve the execution of waqf through a will that exceeds one-third of the estate, as stipulated in Article 25 of the Waqf Law (Aizem & Sudirman, 2023). *Second*, heirs are entitled to receive information concerning the termination of a *nadzir*, whether resulting from death, removal by the Indonesian Waqf Board (BWI), voluntary resignation, or permanent incapacity, as regulated under Article 6 paragraph (2) of Government Regulation No. 42 of 2006. *Third*, the right to propose the dismissal and replacement of the *nadzir* as regulated in Article 6 paragraph (4) of the same Government Regulation. Such proposals must be submitted to the BWI through the local head of the Religious Affairs Office (KUA). However, this proposal must be based on the *nadzir's* failure to carry out their duties for one year since the issuance of the Waqf Pledge Deed (Afandi, 2021).

In practice, the granting of these three rights to the heirs is paradoxical. On one hand, the government seeks to ensure that the implementation of waqf remains aligned with its intended religious and communal purposes. Waqf, as

a form of social worship, not only reflects a vertical relationship between the *wakif* and God but also encompasses a horizontal relationship with society, including the *wakif's* family. In many cases, the heirs are the ones most familiar with the *wakif's* original intent due to their emotional and historical connection with the endowed property. Involving heirs in waqf management may be seen as a way of honoring the *wakif's* wishes and preserving the noble values underpinning the waqf. These values include: a) Religious value, waqf is a highly recommended form of worship in Islam, with rewards that continue to flow even after death (*sadaqah jariyah*) (Huda et al., 2024); b) Social value, waqf helps meet the needs of Muslims in education, health, and social welfare (Faozan et al., 2025); c) Economic value, productive waqf boosts economic growth, creates employment, and reduces poverty (Shirazi, 2021); d) Humanitarian value, waqf reflects compassion and a spirit of sharing; dan e) Sustainability value, waqf ensures that its benefits are enjoyed by future generations (Munir, 2025).

The inclination to bestow successors with exclusive rights in the administration of waqf assets, particularly in appointing the *nadzir*, frequently results in legal complexities, as illustrated in Table 1. Justifications for such involvement are typically based on kinship and emotional ties with the *wakif* and the endowed property. However, from a normative standpoint, the concept of waqf asserts that once a property has been pledged and legally ratified as waqf, personal ownership is severed, and the asset becomes the property of Allah SWT for public benefit. Any form of interference by heirs in the management of waqf assets may contradict the core principle of waqf as perpetual, non-inheritable, and free from familial claims. The involvement of heirs, particularly in the appointment of *nadzir*, carries the risk of obscuring the boundary between waqf assets and inheritance claims. Legally, this can lead to ambiguity in ownership structure; sociologically and psychologically, it may cause internal family conflict.

Emotional attachment and a sense of ownership over waqf assets frequently generate tension, particularly when there is a conflict between honoring the waqf's purpose and a desire to retain control over the asset. In many cases, this has led to legal disputes, the revocation of a *nadzir*, or even attempts to annul the waqf altogether. These phenomena reveal a clash between the spiritual values of waqf and familial structures that still perceive endowed assets as part of the inheritance. Emotional ties to family assets often hinder complete relinquishment of ownership to the public. Accordingly, clear regulatory frameworks and strong institutional mechanisms are required to enhance public understanding of the fundamental principles of waqf and to define the proper limits of heir involvement. The participation of heirs should be confined solely to upholding the *wakif's* noble intentions, not as decision-makers in waqf governance. Without clear boundaries, potential conflicts will continue to threaten the sustainability of waqf and hinder its optimal social function.

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**Table 1. Religious Court Decisions in Waqf Dispute Lawsuits in Indonesia in 2023-2024**

No.	Religious Court Name	Case Number	Decision Date	Remarks
1	Cibinong Religious Court	8059/Pdt.G/2022/PA.Cbn	9 February 2023	Waqf dispute lawsuit
2	Madiun Religious Court	427/Pdt.G/2022/PA.Mn	13 February 2023	Waqf dispute lawsuit
3	Bandung Religious Court	63/Pdt.G/2023/PA.Bdg	15 March 2023	Waqf dispute lawsuit
4	Giri Menang Religious Court	1283/Pdt.G/2023/PA.GM	20 March 2023	Waqf dispute lawsuit
5	Kediri Religious Court	512/Pdt.G/2022/PA.Kdr	30 March 2023	Waqf dispute lawsuit
6	Raha Religious Court	118/Pdt.G/2023/PA.Rh	2 May 2023	Waqf dispute lawsuit
7	Giri Menang Religious Court	151/Pdt.G/2023/PA.GM	22 May 2023	Waqf dispute lawsuit
8	Bogor Religious Court	1704/Pdt.G/2023/PA.Bgr	29 May 2023	Waqf dispute lawsuit
9	Serang Religious Court	906/Pdt.G/2023/PA.Srg	31 May 2023	Waqf dispute lawsuit
10	Depok Religious Court	166/Pdt.G/2023/PA.Dpk	31 May 2023	Waqf dispute lawsuit
11	Jember Religious Court	1400/Pdt.G/2023/PA.Jr	13 June 2023	Waqf dispute lawsuit
12	Manado Religious Court	202/Pdt.G/2023/PA.Mdo	19 June 2023	Waqf dispute lawsuit
13	Bandung Religious Court	2972/Pdt.G/2023/PA.Badg	18 July 2023	Waqf dispute lawsuit
14	Sharia Court of Aceh Province	16/Pdt.G/MS.Aceh	15 February 2023	Waqf dispute lawsuit
15	Takengon Sharia Court	231/Pdt.G/MS.Tkn	3 October 2023	Waqf dispute lawsuit
16	Brebes Religious Court	1014/Pdt.G/2023/PA.Bbs	8 August 2023	Waqf dispute lawsuit
17	Karanganyar Religious Court	831/Pdt.G/2023/PA.Kra	1 August 2023	Waqf dispute lawsuit
18	Karanganyar Religious Court	832/Pdt.G/2023/PA.Kra	2 August 2023	Waqf dispute lawsuit
19	Brebes Religious Court	1014/Pdt.G/2023/PA.Bbs	8 August 2023	Waqf dispute lawsuit
20	Tangerang Religious Court	776/Pdt.G/2023/PA.Tng	16 August 2023	Waqf dispute lawsuit
21	Jember Religious Court	3023/Pdt.G/2023/PA.Jr	21 August 2023	Waqf dispute lawsuit
22	Ketapang Religious Court	482/Pdt.G/2023/PA.Ktp	11 September 2023	Waqf dispute lawsuit
23	Banyuwangi Religious Court	3073/Pdt.G/2023/PA.Bwi	22 August 2023	Waqf dispute lawsuit
24	Pandeglang Religious Court	405/Pdt.G/2023/PA.Pdlg	16 October 2023	Waqf dispute lawsuit

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25	Selong Religious Court	1189/Pdt.G/2023/PA.Sel	18 October 2023	Waqf dispute lawsuit
26	Cibinong Religious Court	3290/Pdt.G/2023/PA.Cbn	7 November 2023	Waqf dispute lawsuit
27	Purwakarta Religious Court	1663/Pdt.G/2023/PA.Pwk	15 November 2023	Waqf dispute lawsuit
28	Purworejo Religious Court	1446/Pdt.G/2023/PA.Pwr	15 November 2023	Waqf dispute lawsuit
29	Manado Religious Court	309/Pdt.G/2023/PA.Mdo	27 November 2023	Waqf dispute lawsuit
30	Makassar Religious Court	1954/Pdt.G/2023/PA.Mks	29 November 2023	Waqf dispute lawsuit
31	Serang Religious Court	1758/Pdt.G/2023/PA.Srg	6 December 2023	Waqf dispute lawsuit
32	Pekanbaru Religious Court	2232/Pdt.G/2023/PA.Pbr	19 December 2023	Waqf dispute lawsuit
33	Sleman Religious Court	1013/Pdt.G/2023/PA.Smn	8 January 2024	Waqf dispute lawsuit
34	Nganjuk Religious Court	2068/Pdt.G/2023/PA.NGJ	10 January 2024	Waqf dispute lawsuit
35	Martapura Religious Court	488/Pdt.G/2023/PA.Mtp	20 February 2024	Waqf dispute lawsuit
36	Kudus Religious Court	1293/Pdt.G/2023/PA.Kds	27 February 2024	Waqf dispute lawsuit
37	Raha Religious Court	440/Pdt.G/2023/PA.Rh	4 March 2024	Waqf dispute lawsuit
38	Pekalongan Religious Court	464/Pdt.G/2023/PA.Pkl	7 March 2024	Waqf dispute lawsuit

Source: Directory of Supreme Court Decisions, Republic of Indonesia

Based on the data presented in Table 1, the Religious Court as the authority competent to adjudicate waqf disputes does not consistently dismiss claims submitted by the wakif's heirs. For instance, the decision of the Semarang Religious Court Number 987/Pdt.G/2003/PA.Smg ruled that the disputed asset constituted joint property of the *wakif* and his wives, and subsequently annulled the waqf that had been made (David, 2023). Waqf, as a permissible (*mubah*) religious act in Islam, should not obstruct or negate the performance of other *shar'i* obligations. Within the framework of Islamic law, this principle affirms that any voluntary or recommended act of virtue must not contradict obligatory duties (Asari & Hasanuddin, 2024). For example, waqf must not conflict with the implementation of inheritance law or the obligation to repay debts. If a property has been endowed but is later found to be necessary for fulfilling a *shar'i*-mandated obligation, then, based on the principle of justice in Islamic law, such obligations must take precedence. The implementation of waqf must take into account the legality of ownership and may not override fundamental *shar'i* rights, including those of the heirs or the *wakif's* financial responsibilities.

Disputes over waqf between the heirs of the *wakif* and the *nadzir* reflect the importance of caution in the execution of waqf. The principle of prudence is a fundamental tenet that must be applied at every stage of the waqf process, from the *wakif's* intention and declaration to the selection of the *nadzir*, and

the management and utilization of the waqf assets. Such prudence is essential given that waqf constitutes a permanent and irrevocable transfer of ownership from an individual to Allah SWT. Every step in the waqf process must be guided by sound legal, social, and economic considerations to avoid future complications. One form of this prudence is ensuring that the property to be endowed is indeed the private property of the *wakif*, free from disputes, debt, or inheritance claims. Moreover, the principle of prudence should be reflected in the involvement of all relevant parties, particularly the heirs, both prior to and during the waqf administration process in order to prevent disputes or objections to the waqf declaration. The implementation of waqf without due diligence has the potential to undermine its primary purpose, which is to provide sustainable benefits to the community. The application of prudence is not only a moral and ethical obligation but also a legal necessity to safeguard the sanctity and sustainability of waqf's social functions.

Such disputes can obstruct the realization of the waqf's primary purpose, namely the provision of sustainable and long-term benefits for the public. Therefore, the waqf process should be grounded in family consultation involving all relevant parties, especially the heirs. It is vital to ensure that waqf administration and documentation are conducted transparently and do not give rise to future claims or objections. When waqf is carried out unilaterally and without sufficient caution, the risk of legal dispute increases. Furthermore, heirs may still pursue their claims if they are able to demonstrate that the waqf was implemented in violation of applicable legal requirements, such as in cases involving jointly owned property that was endowed without the consent of all legally entitled parties. Although positive law affirms that property already endowed is no longer subject to inheritance, in practice, legal loopholes still allow for the protection of heirs' interests, particularly in cases where procedural violations are evident. Thus, the upholding of justice within the waqf framework must not disregard the rights protected under both Islamic law and national legal systems.

The Waqf Law explicitly provides space for the heirs of a *wakif* to maintain a role, albeit within a limited scope. This role includes the right to supervise the *nadzir* who manages the family's waqf assets and to take preventive action by reporting mismanagement to the relevant authorities. These provisions confirm that the restriction of heirs' rights does not constitute a denial of those rights, but rather reflects their proper positioning in accordance with *shari'i* principles. The presence of such regulation is expected to minimize future conflict and attempts by heirs to reclaim waqf assets, while clarifying their position and function in a fairer and more sustainable waqf system.

### **Reformulation of the Regulation on the Rights of the Wakif's Heirs in Indonesian Law**

The regulation of the rights of the *wakif's* heirs in Indonesia's waqf law still leaves room for debate, both normatively and in practice. Although Law Number 41 of 2004 on Waqf provides a relatively obvious legal framework regarding the transfer of ownership from the *wakif* to Allah SWT, in practice, disputes often arise involving claims or objections from the heirs of the *wakif*

(Amelia et al., 2025; Mauliyani, 2022). These problems frequently stem from a lack of alignment between the original intention of the waqf, the procedures governing its implementation, and the civil legal interests of heirs who perceive that their rights have been disregarded. It indicates that the current regulation has not yet fully succeeded in bridging the need to protect the civil rights of heirs on one hand, and the principles of perpetuity and benefit of waqf on the other. Reformulating the regulation of the heirs' rights is therefore significant as a response to the tension between preserving waqf assets and ensuring justice in protecting the rights of the wakif's family. In several cases, disputes have arisen due to the lack of involvement of heirs in the waqf process, particularly in administrative aspects such as the recording of the waqf pledge deed (*Akta Ikrar Wakaf*), the appointment of the *nadzir*, and the physical handover of assets.

The lack of a participatory mechanism in this process can lead to a sense of injustice. It may also open the door to legal challenges against the waqf's validity in religious courts. This situation indicates that waqf regulations should more comprehensively address the relational aspects between the wakif and their heirs, not only in terms of formal ownership transfer but also during the transitional process. Involvement of the heirs in the creation or registration of the *Akta Ikrar Wakaf* should be a mandatory procedure in waqf practices in Indonesia. Such involvement is crucial to prevent future disputes, such as attempts to reclaim land that has been endowed or the denial of the pledge by heirs who feel excluded from consultation or information. Often, conflicts arise because heirs feel that the wakif transferred all or most of their assets without considering the interests of the family left behind. It leads to a sense of loss regarding what should have been a source of inheritance or economic security for the wakif's descendants. Such tensions affect not only family relationships but can also hinder the social function of the waqf assets themselves.

The inclusion of the wakif's heirs as a waqf element can be analogized to the position of the *nadzir* in classical Islamic jurisprudence. In Islamic legal tradition, the *nadzir* is not a requirement (*rukun*) or condition (*syarat sah*) for the validity of a waqf. However, scholars agree that the presence of a trustworthy and competent *nadzir* is necessary to ensure that waqf assets are preserved and developed by the wakif's objectives. This concept has been adopted into Indonesia's positive legal system, where the *nadzir* is positioned as a crucial element in waqf governance. The *nadzir*, although not initially required explicitly by Sharia, can be institutionalized through legislation. Therefore, it is reasonable to grant the heirs a proportional role as an adaptation to modern social dynamics and legal requirements. Although the heirs of the wakif have not traditionally been part of the normative structure of waqf in fiqh, they should be functionally accommodated within the national legal framework. Their role is not as asset owners but as monitors overseeing the management of family waqf assets. This supervisory role is essential to ensure that waqf assets are managed accountably by the *nadzir* and remain aligned with the initial objectives declared by the wakif. Beyond safeguarding the trust of the wakif, the involvement of heirs can also function as a preventive control against potential mismanagement or misuse of waqf assets by incompetent or dishonest *nadzir*.

The formulation of the rights of the wakif's heirs within the national waqf system aims to clarify and provide legal certainty regarding their position within the waqf governance structure. Under Islamic law, once an asset is endowed (*waqf*), ownership is transferred to Allah SWT, and it is no longer part of the inheritable estate. It means that heirs no longer have legal rights to claim or retract assets that have been endowed. Nonetheless, national law can still provide participatory space for heirs as part of the waqf management community, especially if they meet the qualifications to serve as *nadzir*. The Waqf Law includes provisions allowing individuals or family institutions to become *nadzir*, provided they meet the administrative and managerial capacity requirements set by regulation. Through these participatory mechanisms, the inclusion of heirs in waqf governance gains legal legitimacy and can effectively reduce the potential for dispute. This involvement provides a legitimate sense of ownership over the family's assets, even though they are no longer personally owned under the law.

Furthermore, the presence of heirs in waqf management can help resolve various implementation issues frequently encountered in waqf practice in Indonesia, such as weak *nadzir* capacity, overlapping land rights, and internal family conflicts (Estefany et al., 2022). The wakif's heirs are allowed to play a constructive role in waqf management. When sensibly formulated, their involvement can positively contribute to transparency, social legitimacy, and the sustainability of waqf assets.

Their involvement enhances transparency and accountability in the management of waqf assets. Many studies indicate that the main weakness in waqf governance in Indonesia lies in reporting and public accountability. It is because not all *Nadzir* possess adequate managerial capacity, compounded by the lack of effective oversight mechanisms. By involving heirs as part of an informal oversight structure, a social and moral pressure is created for the *nadzir* to perform their duties professionally and responsibly. Heirs, due to their emotional connection to the endowed property, will be strongly motivated to ensure that the assets are used by the original waqf intention. However, it is crucial to note that the involvement of heirs must not exceed boundaries and must avoid creating conflicts of interest. Their role should be viewed as part of a checks-and-balances system within waqf management, rather than as dominant actors who interfere with the policies of the *nadzir*.

This regulatory reformulation also holds significant potential to encourage broader public engagement in the waqf movement. When society sees that waqf is managed transparently, inclusively, and accountably, public trust in waqf institutions will increase. Ultimately, this trust will stimulate the growth of waqf assets and expand their impact on the community. In the long run, strengthening waqf governance through the involvement of heirs will help establish a healthy, dynamic, and sustainable waqf ecosystem. Waqf will no longer be seen solely as individual charitable giving but rather as an Islamic socio-economic system capable of addressing contemporary challenges. The incorporation of the wakif's heirs as waqf components aligns with the legal precept "*Ad-dararu yuzālu*," meaning "harm must be eliminated" (Djazuli, 2019). This principle affirms that Islamic law does not justify legal rulings that generate harm, danger, or social conflict, whether at the individual or societal

level. Any policy or practice that carries the risk of harm must therefore be avoided, reduced, or removed, even when this requires departing from general legal provisions in order to secure the public good. The urgency to regulate the role of heirs in waqf management is not intended to eliminate their rights as parties with emotional ties to the wakif. However, regulations must strictly limit the scope of their intervention so as not to intrude into the management domain of assets that have been transformed into the ownership of Allah SWT. In this regard, heirs may be granted a limited supervisory role as part of social control, but not absolute authority to set policies or manage waqf assets.

Preventive efforts based on the principle of "*Ad-dararu yuzālu*" can be carried out through three measures: (1) strengthening the formal legal aspect of the waqf pledge deed by clearly separating endowed assets from inheritance, (2) providing fiqh-based legal education to the public about the permanence of waqf, and (3) reformulating national waqf regulations that explicitly prohibit heir intervention in post-pledge waqf management. Thus, the principle of "*Ad-dararu yuzālu*" serves not only as an ethical-legal foundation but also as a strategic reference in building a conflict-free, transparent, and community-oriented waqf management system. Clearly and proportionally regulating the role of heirs is a crucial step in upholding this principle and in promoting sustainable waqf development in Indonesia.

### **Proposed Legal Reform for Strengthening Waqf Governance**

The findings of this study reveal a fundamental legal gap in Indonesia's waqf regulatory framework concerning the procedural rights of the wakif's heirs. The term "ahli waris wakif" (wakif's heirs) is entirely absent from the text of Law No. 41 of 2004 on Waqf and its implementing regulation, Government Regulation No. 42 of 2006. This absence refers not only to the lack of explicit terminology but also to the absence of substantive provisions that clarify the heirs' procedural standing in relation to waqf assets. As a result, the law provides no legal mechanism through which heirs can monitor, supervise, or challenge the administration of waqf property, particularly when disputes arise after the death of the wakif. This regulatory vacuum contributes to uncertainty and overlapping interpretations, especially in cases where waqf deeds (ikrar wakaf) are incomplete or lack proper certification.

Empirical observations from the Directorate General of Religious Courts (Ditjen Badilag) further demonstrate the growing trend of waqf-related disputes in recent years. According to official judicial data, the number of waqf dispute cases in Indonesia increased from 25 cases in 2020 to 41 cases in 2021, and reached 53 cases as of October 2022 (Direktorat Jenderal Badan Peradilan Agama, 2022). Many of these cases involve inheritance claims over waqf property, where heirs argue that the initial act of dedication was performed without full intent or proper documentation by the wakif. This pattern underscores that the absence of clear legal recognition for heirs' procedural rights is a contributing factor to recurring ownership conflicts. In the absence of explicit legal guidance, the role of heirs remains unclear, as it is neither fully recognized by the state nor entirely excluded by religious norms, leaving them in a condition of legal uncertainty that frequently results in litigation.

From a theoretical standpoint, the issue of heirs' rights within the waqf system intersects with two fundamental legal principles: legal certainty and public trust. The absence of procedural recognition for heirs weakens the certainty of property status after a waqf declaration, thereby undermining public confidence in waqf as a sustainable religious endowment. Previous studies have emphasized that transparent and well-defined legal frameworks are essential to maintain public trust in waqf institutions, as they ensure accountability, prevent conflicts of interest, and reinforce the legitimacy of charitable endowments within Islamic societies (Haidlir et al., 2023). Similarly, the absence of clear legal procedures in managing family or ahli waris wakif roles may lead to degeneration of family waqf (waqf ahli), diminishing both its social and legal significance (Sadique et al., 2016). Therefore, reforming the legal position of wakif's heirs is crucial not only for conflict prevention but also for strengthening transparency, accountability, and trust within waqf governance (Ikhyanuddin et al., 2022).

From a comparative perspective, Indonesia's waqf legislation contrasts with several other Muslim-majority jurisdictions that have successfully integrated heirs' rights into their waqf management systems. In Malaysia, for instance, state-level Waqf Enactments explicitly acknowledge the advisory and supervisory role of the donor's family (waris pewakaf) in ensuring the preservation of endowed assets, aligning with the broader Islamic legal principle of shared moral responsibility within waqf administration (Sadique et al., 2016). Similarly, in Turkey, the General Directorate of Foundations (Vakıflar Genel Müdürlüğü) institutionalizes heirs' oversight rights through formal trusteeship structures that promote transparency, prevent asset misuse, and strengthen legal certainty (Rakhmat & Beik, 2022). These comparative experiences demonstrate that explicit recognition of heirs' procedural rights not only reinforces institutional accountability but also enhances public confidence in waqf governance. Hence, Indonesia could adopt a similar model by integrating limited procedural rights for heirs into its waqf law framework to balance private inheritance interests and collective religious benefits.

Based on the normative and comparative analysis, this study proposes a legal reform by amending Article 6 of Law No. 41 of 2004 to explicitly include the term "wakif's heirs." This addition should provide heirs with limited procedural rights, including the right to receive information on the management of waqf property, to oversee its use in accordance with the waqf deed, and to report any violations to the Indonesian Waqf Board (BWI) or the Ministry of Religious Affairs. Such rights would not interfere with the perpetual nature (ta'bid al-waqf) of the waqf but would strengthen public oversight and prevent potential abuse by nadzir (waqf managers). The inclusion of procedural rights for heirs is consistent with global trends in waqf governance that emphasize transparency, accountability, and participatory monitoring to ensure the sustainability of endowed assets (Yunus et al., 2024). By institutionalizing heirs' limited procedural roles, Indonesia's waqf governance framework could better align with both Islamic legal principles and modern legal accountability systems observed in comparable jurisdictions (Sharan & Paliwal, 2025).

To ensure the effective implementation of these reforms, a comprehensive socialization and education strategy is required. The Indonesian Waqf Board (BWI), the Ministry of Religious Affairs, and the Religious Courts should collaborate to conduct regular training for nadzir and community leaders on legal documentation, dispute prevention, and heirs' procedural rights. Empirical studies also indicate that public awareness and administrative literacy are critical components of successful waqf reform, especially in preventing inheritance-related conflicts (Hafidz, 2023). In addition, the development of a digital waqf registration system could significantly improve administrative accuracy and accessibility, reducing disputes caused by miscommunication or lack of data, as observed in emerging best practices of digital waqf management in other Muslim-majority countries (Sharan & Paliwal, 2025). These measures would transform legal reform into tangible improvements in governance, fostering a waqf system that is more transparent, inclusive, and resilient to conflict.

In summary, the absence of heirs' recognition in Indonesia's waqf law has produced both legal and administrative uncertainties that contribute to the rising number of inheritance-related waqf disputes. By integrating evidence, comparative insights, and normative legal analysis, this study concludes that comprehensive legal reform is imperative to clarify the procedural rights of wakif's heirs. Doing so will not only ensure legal certainty and prevent recurring conflicts but also reinforce the long-term sustainability and public trust in Indonesia's waqf governance system, consistent with international calls for greater transparency and accountability in waqf administration.

## **Conclusion**

This study concludes that Indonesia's waqf legal framework, as stipulated in Law No. 41 of 2004 and Government Regulation No. 42 of 2006, still lacks explicit recognition of the wakif's heirs as legal subjects. The absence of procedural rights for heirs has created a legal vacuum that leads to uncertainty in waqf ownership and management, particularly after the death of the wakif. Empirical data from the Religious Courts (Ditjen Badilag) indicate a rising trend of waqf disputes involving heirs, revealing that this gap contributes to overlapping ownership claims and administrative conflicts. From a theoretical perspective, this study contributes to the discourse on legal certainty and public trust by demonstrating that the recognition of heirs' limited procedural roles, including supervision, access to information, and reporting rights, is compatible with the principle of waqf perpetuity (ta'bid al-waqf). Comparative findings from Malaysia and Turkey further demonstrate that state-supervised and family-involved waqf systems improve transparency and institutional accountability. Accordingly, this study recommends revising Article 6 of Law No. 41 of 2004 to include heirs as procedural stakeholders, supported by a digital waqf registration system and joint programs between BWI, the Ministry of Religious Affairs, and Religious Courts to enhance governance capacity and reduce disputes. However, the study is limited by its normative and comparative scope, relying mainly on legal interpretation without empirical field data. Future research should adopt empirical and socio-

legal methods to examine how heirs' participation affects dispute resolution, community trust, and the implementation of digital waqf systems. Clarifying heirs' procedural rights is therefore not merely a legislative need but a strategic reform to ensure a transparent, accountable, and sustainable waqf governance system in Indonesia.

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