



Refereed Biannual Journal Specialized in Waqf and Charitable activities

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Abu Hurairah (may Allah be pleased with him) reported, The Messenger of Allah (peace be upon him) said: "When a man dies, his deeds come to an end except for three things: Sadaqah Jariyah (ceaseless charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."

[Narrated by Muslim]



## **Project of AWQAF journal**

AWQAF Project is based on a conviction that Waqf – as a concept and an experience – has a great developmental potential which entitles it to contribute effectively to the Muslim communities and cope with the challenges which confront the Muslim nation. The history of Islamic world countries also reflects on Waqf rich experience in devising a societal involvement which encompasses almost all diverse walks of life and helps primarily in developing solutions for emerging human difficulties. During the decline of the Muslim nation, Waqf provided shelter and support for a significant share of the innovations that Islamic civilization was famed for and assured them to pass from one generation to another.

Nowadays, the Islamic world is witnessing a governmental and popular orientation towards mobilizing its material competencies and investing its genuine perceptions that culture makers' cherish in a spirit of scholarly innovation to arrive at fully comprehensive developmental models deeply rooted into the values of righteousness, virtue and justice.

Based on this conviction, AWQAF Journal embarks upon achieving a mission that would enable Waqf to assume the real and befitting standing in the Arab and Islamic arena of thought. It therefore seeks to emphasize Waqf as a discipline and entice those remotely or greatly interested in Waqf, uphold a scientific trend towards developing Waqf literature and link it to comprehensive social development considerations.

Since Waqf originally relates to voluntary activity, such claims would require that AWQAF Journal attaches its contents to the social work lively activities closely related to private community issues and volunteer engagements, relevant intermingling concerns associated with state-society interaction while allowing balanced participation between the making of community future and NGOs role.

### **AWQAF Journal Objectives**

- Reviving the culture of Waqf through familiarizing the reader with its history, developmental role, jurisprudence, and achievements which Islamic civilization grew into until recent times.
- Intensifying the discussions on the scientific potentials of Waqf in modern societies through emphasis on its modern structures.
- Investing in current Waqf projects and transforming them into an intellectual and culture-based product to be deliberated among specialists. This is hopefully expected to induce interaction among researchers and establish a linkage between theory and practice of the tradition of Waqf.
- Promoting reliance on the civilizational repertoire in terms of social potential resulting from a deeply rooted and inherent tendency towards charitable deeds at the individuals and nation's behavior levels.
- Strengthening ties between the Waqf school of thought, voluntary work and NGOs.
- Linking Waqf to other areas of social activities within an integrated framework to create a well-balanced society.
- Enriching the Arab library on this newly emerging topic, i.e. Waqf and Charitable Activities.

### **An Invitation to All Researchers and Those Interested**

AWQAF Journal naturally would aspire to accommodate all the topics that have a direct or indirect relationship to Waqf such as charitable activities, volunteer work, community and development organizations, and reaches out to researchers and those interested in general to interact with it; in order to meet the challenges that obstruct the march of our societies and peoples.

The journal is pleased to invite writers and researchers to contribute to one of the three languages (Arabic, English and French) to the material related to the objectives of the journal and Waqf horizons in the different sections such as studies, book reviews and academic dissertations abstracts and coverage of seminars and deliberations of the ideas published.

Materials intended for publication in AWQAF Journal should observe by the following:

- The material should not have been published or intended for publishing in any other magazine.
- The material should abide by the academic ethics in connection with documenting the sources and references, together with the academic processing.
- A research should fall between 4000-10000 words, to which a 150 word summary must be attached.
- A research should be typed on A4 paper and it is preferable to send an electronic copy on CD (MS Word).
- All researches and articles will undergo a confidential refereeing.
- AWQAF Journal welcomes all books' presentations, dissertation abstracts, seminars' and conferences' coverage.
- Material once sent for publication, whether published or not published, will not be returned.
- The journal will be entitled to publish any material separately or within a book format without seeking permission from the relevant owner.
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# Editorial

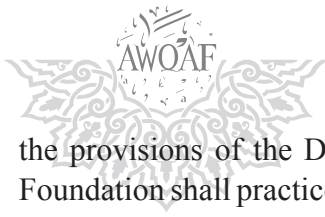


## **Awqaf Public Foundation and the Strategy of Endowment**

At the early nineties of the last century, there has been a remarkable momentum in the State of Kuwait. Its most prominent manifestation was the establishment of Awqaf Public Foundation in 1993. In fact, due to the excellent and pioneering status of the Kuwaiti experiment in the field of endowment, this has been a significant factor in recognizing the State of Kuwait, represented by Awqaf Foundation, as the State coordinating Awqaf file in the Islamic world countries in accordance with the Resolution of the Conference of the Ministers of Awqaf held in the Indonesian Capital Jakarta in October 1997.

Awqaf Public Foundation has been selected as such due to its excellence in this field and its adoption of several strategies which contributed to the development of endowment inside the State of Kuwait and outside on the international level. Ever since it has been established by virtue of the Amiri Decree No. 257 issued on November 1993 AD, Awqaf Public Foundation has paid attention to identifying its strategic vision commensurate with





the provisions of the Decree. Such Decree stipulated that Awqaf Public Foundation shall practice its power in the field of endowment in its capacity as a governmental body which is relatively independent in taking its decisions in accordance with the regulations and systems of governmental administration so as to care for endowment affairs.

Awqaf Public Foundation has adopted the strategic planning approach. In October 1997, the Strategic Chart has been issued outlining the mission of Awqaf Public Foundation as follows “Establishing endowment as an effective developmental formula in the organizational structure of the society, activating and managing endowment resources in a manner which realizes the legal purposes of the endowers, develops the society and supports the contemporary Islamic cultural trend”.

Besides, Awqaf Public Foundation has taken a set of necessary executive measures in order to provide climate suitable for realizing this strategic mission.

Six years after the issuance of the first Strategic Chart, the second Strategic Chart of Awqaf Public Foundation has been issued on June 2003 AD. It outlines the vision of Awqaf Public Foundation as follows: “Leadership in developing and maintaining endowment, effectiveness in the payment of revenues in accordance with the legitimate purposes through a developed organizational structure and interaction with a supportive society”.

The new strategy adopts the slogan “A Growing Endowment”. Such view stems from the standards of institutional and developmental efficiency of the endowment, the activation of its social, economic and developmental role in the State of Kuwait and the disbursement of its revenues in accordance with the endowers’ conditions. The strategy considers endowment as a charitable sector or the third sector which does not aim at primarily generating gains. Endowment aims at reconciling between the governmental and private sectors through endowment superintendence. The superintendence body is a primary and legal prerequisite for endowment and it has even become one of the necessities



of modern times. The mechanisms and incentive control systems of the organizations assist in the proper management of endowment. This matter led to a specialization in performing works and figuring out a new concept of the endowment sector supported by the Islamic Shariah by realizing the endower's conditions and reconciling between the governmental and private sectors in order to fulfill the needs of endowers and the conditions of the payment of their revenues in accordance with the channels set forth by Awqaf Public Foundation with the ultimate goal of organizational and incremental building and interaction with the supporting society.

The Fourth Strategic Document has been issued on 2009. It is summed in "Leading thought and the institutional application of the endowment rituals as a means for comprehensive development on the local level and an example to be followed on the global sphere".

Based on the juristic rule which advocates that "The endower's condition is as binding as the Legislator's provision" and as a means to corroborate adherence to legal purposes, Awqaf Public Foundation worked towards the optimal investment of assets, realization of the highest levels of revenues, efficient disbursement of yields and the development of personnel in the field of endowments so that the Foundation shall be empowered to continuously present developed models in order to fulfill the needs of the society development and partner with the various official and voluntary organizations in order to realize the different aspects of the mission of Awqaf Public Foundation.

Awqaf Public Foundation has perfectly managed the file of the State coordinating the efforts of the Islamic world countries through 16 projects which support the various aspects of the endowment sector including:

1. Midad project for publishing, distributing and translating books in the field of endowment
2. Project of supporting post graduate students in the field of endowment
3. Project of Kuwait International Competition of Endowment Researches



4. Awqaf Magazine project
5. Forum of Juristic Endowment Issues Project
6. NAMA Project for the Development of Endowment Organizations
7. Qitaf Project for Communicating and Exchanging Endowment Experiences
8. Project of the Endowment Pilot Law
9. Project of the Endowment Literature Finder
10. Project of the Endowment Knowledge Corpus
11. Project of the Dictionary of the Biographies of Endowment Prominent Figures
12. Project of the Dictionary of the Endowment Terms
13. Project of Kuwait International Competition of Writing Children's Stories
14. Project of the Award of Awqaf Public Foundation on Endowment Excellence and Innovation. This project falls within the next strategy of the Foundation.

Through the project of the coordinator State, Awqaf Public Foundation has become an example to be followed on the global sphere by making use of its pioneering experience in the field of endowment and charitable work at the Arab Gulf countries, Arab and Islamic countries as well as the other world countries.

The Fifth Strategic Document has been issued in 2014. It is summed in "Excellence in investing endowment, disbursing its yield and corroborating its culture through an effective societal partnership".

Awqaf Public Foundation has outstanding endowment investments. It has become an example to be followed throughout the countries of the region. The revenues of these investments are spent on developmental projects in the Kuwaiti community through a prominent partnership with



governmental, local and private organizations and strategic partnerships with local organizations such as:

A strategic partnership with the Islamic Development Bank “IDB”, Jeddah by providing support in the field of endowment through NAMA Project for the Development of Endowment Organizations. This project aims at rehabilitating the staff of these endowment organizations and improving their capabilities through programs dedicated to developing their competence, exchanging experiences between the State members of the Islamic Summit Organization and the Muslim minorities all around the world and conducting courses. So far, 22 courses have been held in the various world countries. There is a cooperation with the Islamic Development Bank through Qitaf Project to communicate and exchange endowment experiences. So far, 30 seminars have been held in the various world countries. Cooperation also aims at issuing the Endowment Pilot Law which shall take into consideration the doctrinal and legislative diversifications in the Islamic countries. The Law shall contribute to developing the endowment legislations currently approved in the Islamic countries so that it shall be utilized as the official law of the State.

Issue No. 30 of Awqaf Journal – one of the projects of the State coordinating endowment efforts in the Islamic world countries – contained a research on “Islamic Endowment Accounting and Financial Accounting Standards Board for Not-For-Profit Organizations” by Dr. Bahaa Eldin Bakr. The research aims at identifying the accounting concepts and standards at the Not-For-Profit Organizations which have been issued by the USA Financial Accounting Standards Board (FASB). The most important recommendation proposed by the study is to work towards the issuance of a comprehensive, independent international accounting standard for the Islamic endowment.

The second research has been titled “Financial Estate of Endowment” by Dr. Othman Ahmed Othman. The researcher concentrated on some Agreements of Contemporary Endowment Financial Transactions, Sharing Ending with Ownership, Lease Ending with Ownership, Investment at



Islamic Financial Institutions such as Islamic Banks, Islamic Investment Institutions, Islamic Funds Institutions, and the like.

The third research has been titled “Governance of the Endowment of Productive Resources” by Dr. Yasser Abdulkareem Al Horany. Through this research, he manifested the importance of the governance of the endowment of productive resources in improving the efficiency of performance and increasing productivity level by applying the principles of governance, eliminating all forms of administrative and financial corruption and seeking compliance with the ethical rules.

The fourth research has been titled “Charitable Endowments and their Role in Supporting Voluntary Work” by Dr. Taha Hussein Hudail. The research highlights the types of endowments which may support voluntary work and their impact on it. The research presented specialized voluntary works and how to disseminate an effective education policy towards voluntary work.

Issue No. 30 of Awqaf Magazine also includes an essay on “A Historical Overview on Endowment Advisory Opinions (Fatawa)” by Dr. Emad Hussein Muhammad and a review of a book titled “A Discourse on Endowment” by Badr Al-Mutawalli Abdul Bassit. The book has been reviewed by the researcher Lubna Salihin.

The Editorial Team

# Researches



## **Islamic Endowment Accounting and American Financial Accounting Standards Board for Not-For-Profit Organizations**

Bahaa Eldin Abdul Khaleq Bakr

### **Brief of the Research:**

This study aims at identifying the concepts and accounting standards at Not-For-Profit Organizations issued by the Financial Accounting Standards Board (FASB) and their suitability for the Islamic Endowment Accounting.

### **The Most Important Findings of the Study:**

There are some differences in the concept of endowment, with all its types, depending on the US and Islamic accounting standards. There are also some clauses in Financial Accounting Standards Board for Not-For-Profit Organizations which could be beneficial and suitable for the Islamic endowment accounting, while the other clauses may not be used due to the different nature and particularity of the Islamic endowment from the



donations of all kinds in US Accounting Standards. In spite of the positive aspects achieved by the US Accounting Standards including accountability, governance, quality and transparency, there are differences between the concepts and issues related to endowment in US Accounting Standards compared to the Islamic endowment which make reliance on them as a basis for the Islamic Endowment Accounting unsuitable. Consequently, such standards are not fit for application to the Islamic endowment organizations

### **The Most Important Recommendations Proposed by the Study:**

Pursuit to issue a comprehensive, independent international accounting standard for the Islamic endowment by the Accounting and Auditing Organization of Islamic Financial Organizations (AAOIFI) and amend it when necessary in the light of the updated decisions of the International Islamic Fiqh Academy (IIFA) regarding endowment with the aim of comparability, understanding and consistency and the formula of a conceptual framework which applies the fundamentals and objectives of Islamic endowment accounting and Shariah requirements that are suitable for the endowment to be a reference for the development of the accounting standard of endowment.

### **Introduction:**

The recent few years have witnessed a revival of the organization of Islamic endowment. Many international conferences of Islamic endowment have pointed out the increase of interest and awareness at the endowment organizations as one of the community development tools. Additionally, the demands on Islamic endowment accounting have increased <sup>(1)</sup>. In line with the modern management of endowment, intensive and great concentration should be placed upon the principles of

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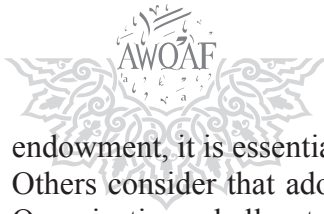
(1) Council of International Islamic Fiqh Academy of the Organization of the Islamic Conference at its fifteenth session held in Muscat (Sultanate of Oman) 14- 19 Muharram 1425 AH corresponding to 6 –11 March 2004 AD.

Cajee, Z.A. (2008). The revival of endowment in Muslim communities: Implementation of the recommendations of the international endowment conference, South Africa, Cape Town, November, 2007. Conference proceedings, International conference on endowment and Islamic civilization.



accountability and transparency. It is well established that accounting, as a tool of good governance and best practices of endowment organizations, shall lead to improving the accountability and transparency of endowment superintendent <sup>(1)</sup>. Additionally, accounting is a way for the endowment superintendent to fulfill his responsibilities towards many parties such as the endower, board of endowment, government and the community at large <sup>(2)</sup>. No professional organization has dedicated itself to address the issue of issuing accounting standards for the Islamic endowment. A study pointed out that there are no guidelines or standards in relation to the preparation of financial concluding statements of endowment organizations at the level of Malaysia <sup>(3)</sup>. Another study pointed out also that there are no guidelines or standards designated for the endowment organizations in Indonesia, which in turn shall assist in assuring the minimum limit of the quality of practices <sup>(4)</sup>. The idea of Islamic endowment accounting focuses on the statement of the accounting basics and treatments of endowment transactions (resources - revenues - expenses - channels - investments) in the light of juristic provisions derived from the sources of Islamic Shariah and, additionally, in accordance with the advisory opinion and decisions issued by assemblies, boards and centers of Islamic jurisprudence. It also includes the standards of presentation and accounting disclosure via the financial statements and reports of endowment organizations in order to cover the information which shall assist in taking the proper decisions. For some, in the absence of accounting standards designated for Islamic

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- (1) Adnan, Muhammad Akhyar, Maliah Sulaiman, & Putri Nor Suad Megat Mohd Nor. (2007). Some thoughts about accounting conceptual framework and standards for Awqaf organizations. *Indonesian Management & Accounting Research*, 6 (1), 43-56.
  - (2) Ihsan, Hidayatul and Shahul Hameed Muhammad Ibrahim. (2007). Endowment accounting and possible use of SORP 2005 to develop endowment accounting standards. Paper presented at the Singapore international endowment conference 2007, Singapore.
  - (3) Siti Rokyah, M. Z. (2004). Determinants of Financial Reporting Practices on Endowment by Malaysian State Islamic Religious Council in Malaysia. Unpublished Masters Dissertation. International Islamic University Malaysia.
  - (4) Ihsan, H., Shahul, H. H. M. I. (2011). ENDOWMENT Accounting Management in Indonesian ENDOWMENT Organizations: The Cases of Two ENDOWMENT Foundations. *Humanomics*. Vol. 27, No. 4, pp. 252-269.



endowment, it is essential to make use of the similar existing standards <sup>(1)</sup>. Others consider that adopting the accounting approach in Not-For-Profit Organizations shall not be sufficient for endowment accounting because endowment is a social organization<sup>(2)</sup>. The Financial Accounting Standards Board (FASB) has paid attention to Not-For-Profit Organizations; as it has issued some accounting standards to serve as a guideline for performance and a reference in application. FASB addressed the term of (Endowment) in these standards, leading to the need to consider these standards and validate their suitability with the Islamic endowment accounting standards. Therefore, the problem of the research lies in providing the answer to the following question:

To what extent the Financial Accounting Standards Board of Not-For-Profit Organizations are appropriate for the Islamic Endowment Accounting?

To answer this question, the research has been divided into five topics as follows:

### **First topic: Concepts of US Accounting for Not-For-Profit Organizations**

The US Accounting Standards issued by FASB develop some concepts that should be used in Not-For-Profit Organizations. It is important to evaluate these concepts compared to Islamic endowment. The most important of these concepts are the following:

#### **1- Contribution:**

A contribution is an unconditional transfer of cash or other assets to an entity or a settlement or cancellation of liabilities towards another entity on the basis of a voluntary nonreciprocal transfer made by another entity (donor) playing this role other than as the owner. Other assets include securities, land, buildings, use of facilities or utilities, materials and

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(1) Ihsan and Shahul, 2007; and Adnan et al., 2007

(2) Adnan, Muhammad Akhyar. (2005). Akuntansi dan auditing kelembagaan wakaf [Accounting and Auditing for Endowment Organizations]. Akuntansi Syariah, Arah, Prospek & Tantangannya (pp. 143 – 152). Yogyakarta: UII Press.

supplies, intangible assets, services, and unconditional promises to give those items in the future.

**2- Nonreciprocal Transfer:** A transaction in which an entity incurs a liability or transfer of an asset to another entity (or reception of an asset or cancellation of a liability) without directly receiving (or giving) value in exchange.

**3- Contribution-Related Restrictions and Conditions:**

There are two types of restrictions. First: restrictions imposed by the donor on the means of using the donated assets and the related time period. These restrictions may be permanent where the donor imposes a condition on the organization that such resources shall be permanently maintained but the organization shall be permitted to use up or expend a part or all of the revenue (or other economic benefits) derived from the donated assets such as the permanently restricted endowment. There are temporary restrictions where the donor permits the donee organization to use up or expend the donated assets as specified and satisfied either by the passage of time or the actions of the organization, such as term endowment. Second: the restrictions imposed by the board of the organization on the unrestricted net assets related to the nature of the organization, the environment in where it operates, or the purposes specified in its articles of incorporation in addition to restrictions resulting from contractual agreements with suppliers, creditors and other parties involved in transactions with the organization. For example, the endowments created by the board of the organization are considered as “spendable endowments”.

In case of donor-imposed conditions, the donor shall stipulate a future and uncertain event which, if occurred or otherwise, shall give the promisor the right to restore the assets it has transferred or releases the promisor from its obligation to transfer its assets. This is called: “conditional promise to give”, whereas the “unconditional promise to give” depends only on the passage of time or demand by the promisee for performance or demand upon the request of the relevant donor to obtain funds for creating the endowment<sup>(1)</sup>.

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(1) FASB (1993), FAS 116: Accounting for Contributions Received and Contributions Made .



#### **4- Expiration of Donor-imposed Restrictions:**

A restriction expires when the stipulated time has elapsed (time restrictions), when a certain purpose (purpose restrictions) is fulfilled or both. In this case, the restricted net assets shall be reclassified in the financial statements to unrestricted net assets.

#### **5- Endowment:**

According to US Accounting Standards for Not-For-Profit Organizations, depending on the donors' desire, the funds or donations may be collected for the creation of an endowment for specified purposes, for a temporary or permanent term or both. Consequently, the contribution shall take the form of endowment and the standards provide for different types of endowments as follows:

##### **First: Donor-Restricted Endowments**

###### **1- Permanent endowments:**

Paragraph No. 14 of the Financial Accounting Standards No. 117 indicates that those amounts are the holdings of assets on which permanent restrictions are imposed by the donors such as a) Land or works of art donated with stipulations that they shall be used for a specified purpose, preserved, and shall not be sold, or b) Assets donated with stipulations that they shall be invested to provide a permanent source of income. The same paragraph states that separate line items may be reported within permanently restricted net assets or in the notes to the financial statements. It is also known as true endowments; i.e. any funds received from the donors under a restriction that the principal should not be spent, and it shall be maintained, unused up permanently and invested to generate an income that would be spent on a specified purpose. The donor shall sign the endowment document and the true endowments shall be controlled through the donor's condition.

###### **2- Term endowments:**

Paragraph No. 15 of the Financial Accounting Standard No. 117 indicates that donors' temporary restrictions may require that resources be used in a later period or after a specified date (time restrictions), or that



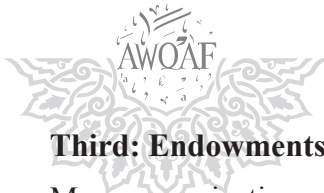
resources be used for a specified purpose (purpose restrictions) or both. For example, gifts of cash and other assets with stipulations that they shall be invested to provide a source of income for a specified term and that the income shall be used for a specified purpose are both time and purpose restricted. Those gifts are often called term endowments. It also indicates that the separate line items may be reported within temporarily restricted net assets or in the notes to the financial statements to distinguish between temporary restrictions for (a) support of particular operating activities, (b) investment for a specified term, (c) use in a specified future period, or (d) acquisition of long-lived assets.

It is also known as restricted-quasi endowments; i.e. funds received from the donor that imposes a condition that the principal should be spent after a specified period or upon the occurrence of a certain event, in contrary to the true endowments that permanently hold and maintain the principal.

### **Second: Board-designated endowments**

They are endowments created by the board of a Not-For-Profit Organization from its own resources such as surplus of support, operating revenue or unrestricted wills, rather than from the donor or any other external agency. These funds function like true endowments, but they may be spent at any time at the option of the board of directors and shall be treated as a permanent capital although there is no legal obligation for doing so. Legally, these endowments are unrestricted endowments and are known as unrestricted quasi endowments. The unrestricted quasi endowments shall be submitted to the board for approval. Typically, the document of quasi endowment is signed by one of the board of directors of the organization and is controlled by the organization.

Paragraph No. 17 of the Financial Accounting Standard No. 117 asserts that the information about self-imposed restrictions which may be useful to the users of the financial statements, including information on voluntary resolutions taken by the board of an organization to designate a portion of its unrestricted net assets to function as an endowment (sometimes called a board-designated endowment), may be provided in the notes or the body of the financial statements.



### **Third: Endowments Held for Others**

Many organizations have endowment funds invested in endowment bases at other organizations, such as x, and those endowments constitute an obligation in the accounting system of x. Except as described in paragraphs 12 and 14 of the Financial Accounting Standard No. 136 which is the case of granting the recipient organization variance power by the donor or the recipient organization and the specified beneficiary are financially interrelated organizations, the recipient organization that receives assets from a donor and agrees to use those assets on behalf of other or transfer those assets, transfer the return on investment of those assets, or both to a specified beneficiary is not a donee. It shall recognize its liability to the specified beneficiary concurrent with its recognition of cash or other financial assets received from the donor. Both the liability and assets shall be measured at the fair value of the assets received.

Paragraph No. (3) of the Financial Accounting Standard No. 116 provided that “the recipient of assets who is an agent or trustee has little or no discretion in determining how the assets transferred will be used”. Reciprocally, according to the Financial Accounting Standard No. 136, the organization has discretion sufficient to recognize the contribution received if it can choose the beneficiaries of the assets. In contrary to all endowed gifts of all types, the non-endowed gifts are the gifts that their usage is restricted or (not restricted) by the donors and they shall not require to be endowed. The gifts are recorded in the account of the expendable restricted fund (expendable and restricted board-designated fund) or the account of the relevant net assets<sup>(1)</sup>.

### **Extent of Appropriateness of the Financial Accounting Standards Board of Not-For-Profit Organizations for the Islamic Endowment Organizations:**

After the examination and scrutiny of the above-mentioned accounting concepts related to the non-profit organizations and comparing it to the Islamic endowment, the following points are found:

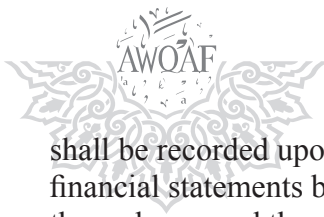
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(1) University of Maine System (January 2012), Business Process-Accounting for Gift and Endowments, Office of Finance and Treasurer, Unit 3-p.17

- According to the American concept of contribution in general, the endowment from the American prospective is a form of contribution if the contributor (endower) obtains a continuous income (future distributions) from the endowment investment. If the endower declares himself as the beneficiary and makes a condition to acquire the return of the relevant endowments, that is not a contribution but a reciprocal transfer. It may be both of them; a reciprocal transaction and contribution together. Whereas the endower obtains a portion of the distributions or returns on the endowment, the remainder is allocated to other certain beneficiaries or a public bank. This is suitable for the Islamic endowment as a type of contribution and it is expanded and desirable. Shariah texts on endowment are absolute and they include perpetual, temporary, common and classified estates, utilities, money, real estate and movable property. The shares of companies that are lawfully permissible to be owned may be endowed in addition to instruments, moral rights, utilities and investment units because they are considered legal<sup>(1)</sup>. Certain persons or bodies can assume or take the charge of paying the liabilities of the endowment as a support of the facilitation of endowments. It is also consistent with the Islamic endowment in terms of determining the beneficiary and making a stipulation for obtaining the yield of the endowment, but the Islamic endowment requires that the beneficiary must be allowed by virtue of the Islamic law. The distribution of the yield of Islamic endowment to the beneficiary must be in accordance with certain priorities such as the expenses assuring the maintenance of the endowed asset and paying the debts of endowment.
- Financial Accounting Standard No. 116 distinguishes between the reciprocal transfer and nonreciprocal transfer. This affects the process of accounting recognition of contributions in general including endowment. The process of accounting recognition of Islamic endowment shall not be affected, whether or not in return for money, i.e. the nature of endowment remains unchanged and the endowment

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(1) Council of International Islamic Fiqh Academy of the Organization of the Islamic Conference at its nineteenth session held in the Emirate of Sharjah (UAE) from 1 to 5 Jummada I 1430 AH corresponding to 26 - 30 April 2009 AD.



shall be recorded upon its initiation. It is preferred to distinguish in the financial statements between the endowment in exchange for a yield to the endower and the endowment without giving a yield to the endower.

- Legally, the endowment, according to the Financial Accounting Standards Board, may be restricted or unrestricted. The endowment is legally restricted by the donors and is unrestricted by the board of directors. From a legal and lawful view, the Islamic endowment is restricted whatsoever its type, the body giving the endowment or its beneficiaries.
- The true endowment is similar to the Islamic perpetual endowment in terms of the essence, not the form, via using the term of donors instead of endowers, in addition to using the term of donor's conditions instead of endower's conditions.
- The term endowment is rather broader than the Islamic temporary endowment. The first is related to a period of time, the occurrence of a certain event or both, while the latter is only related to a period of time without need to the occurrence of a certain event. The latter differs from the first in the entitlement of the amount endowed after the lapse of the period of time. In the first type, the donee is entitled to spend the endowed amount in whole or in part according to the donor's conditions after the lapse of the period of time or upon the occurrence of a certain event or both. In the Islamic temporary endowment, the amount is returned only to the endower after the lapse of the specified period of time.
- In accordance with FASB, the board-restricted endowment funds are apparently similar to the private Islamic endowment if the endower is the board of the organization and the direct beneficiary may be the organization. The board-unrestricted endowment funds are similar to the charitable Islamic endowment, yet its two type are contrary in content to the Islamic endowment with all its types in terms of the timing of permitting disbursement/use. The board-endowed funds are generally flexible and absolute to be spent at any time at the discretion of the board, but the Islamic endowment is restricted for a specified term or in perpetuity.





- All non-endowed funds that are contributed by the donor or the board are spendable accounts. Such funds contain restrictions imposed by the donors of the board concerning the means of spending, using or investing it. From Shariah prospective, the generally non-endowed funds are those funds which owner has the right to spend or invest via legitimate Islamic ways, whether the principal was non-endowed, the return on the investment of the asset or both.
- There is a key difference between endowments from the perspectives of the US Accounting Standards and Islamic endowments. This difference is confined to the means of investing the liquidated funds due to the difference of religious standards. Bonds are one of the investment tools of endowed financial gift, in accordance with FAS No. 124, which depends on the idea that the usurious transaction is the optimum way for maintaining the value of the fund. It is also considered one of the safe types of sales, but this prospective is contrary to Islam. Additionally, the item of usurious interests is, in accordance with US Accounting Standards, on the forefront of statement of activities and may be mixed with other non-usurious accounts, whereas the Islamic view entails the inclusion of it as an independent item within the attachments of Islamic endowment's financial statements.
- Islamic endowment does not take the form of a conditional contribution (conditional promise to give), i.e. it does not mean the recognition of endowment if it fulfilled a certain condition (suspended endowment). The International Islamic Fiqh Academy, in its decisions issued concerning endowment, did not mention the validity or permissibility of conditional (unfulfilled) endowment. It also indicates that the Shariah texts on endowment are absolute and this implicitly means its validity. Shariah Standard No. 33 on Endowment has clearly stipulated the acceptance of endowment as an addition to the future such as the saying: I have endowed something for the early next year. It may be disclosed in the notes of the financial statements in the item of suspended endowment and upon obtaining and controlling such endowment, and it may be included on the face of financial statements. Additionally, the Islamic endowment can benefit from the process of recognition of conditional contribution in the financial statements as a refundable gift (obligation)



until the fulfillment of the condition on which the transfer is based. Thereafter, the revenue of contributions is recognized via using the term of “refundable” with the temporary Islamic endowment and shall be displayed in the financial statements on the basis of a temporary refundable endowment (endowment obligation). Upon the expiration of the determined period, the temporary endowment obligation shall be refunded to its owner.

- The Islamic endowment may take the form of temporary and permanently and temporarily restricted contribution, but the temporary restriction of contribution is released upon its expiration and reclassified in the financial statements as unrestricted and spendable contribution by the donor. This is contrary to the Islamic endowment that is returned to its owner upon the expiration of the period agreed upon with the endower. The Islamic endowment that its usage is permanently or temporarily restricted is not released of the restriction of usage during the period endowment, but sometimes the method of usage may be changed due to a preferred interest or that may result in great benefits to the beneficiaries. This change may affect the financial statements.
- The distinction of net assets in the for-profit organization and establishments of Islamic endowment assists in the separate classification of its endowment net assets that are not spendable and inalienable via different ways of sale and purchase in the financial statements and independent from the non-endowment net assets that are spendable.

## **Second Topic: Financial Accounting Standard No. 93: Recognition of Depreciation in the Not-For-Profit Organizations <sup>(1)</sup>**

### **Definition of the Standard:**

This statement establishes the financial accounting and reporting standards that require all Not-For-Profit Organizations to recognize the cost of using up long-lived tangible assets - depreciation - in the general-purpose external financial statements. However, in consistency with the accepted practice relating to the land used as a building site, depreciation

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(1) FASB (1987), FAS.93: Recognition of Depreciation by Not-For-Profit Organizations.

needs not be recognized for individual works of art and certain historical treasures which their potential economic utilities or services are exhausted very slowly and their estimated service life is very long.

### **Extent of Appropriateness of the Financial Accounting Standard No. 93 for Endowment Accounting**

Some Islamic endowment organizations applied the accounting on the accrual basis regarding the revenues and expenses of the endowment, including the depreciation costs, but others apply the cash basis regarding the revenues because it restricts the provision of utilities.<sup>(1)</sup> In addition, the recognition of revenues and expenses upon its realization, resulting in comparing the revenues and expenses for the period,<sup>(2)</sup> is compatible with the Shariah rules and principles and was applied by AAOIFI. This basis assists in following up the entitlements and charging the financial year against the revenues and expenses of the endowment units.

The contents of this FAS may be applied because it is suitable for the endowment; whereas IIFA implicitly indicates that the provisions may be deducted from the yield of endowment.<sup>(3)</sup> This is supported by the Shariah Standard No. 33 on Endowment: it has clearly stipulated that the provisions may be formed for replacing the exhausted endowment by new endowment estates via periodically deducting from the yield - after distribution to the eligible persons - an amount appropriate to the economic life of the exhausted endowment estates in a manner sufficient for replacing the exhausted endowment with new endowment estates.<sup>(4)</sup>

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- (1) Hussein Hussein Shehata (B.V) accounting basics and treatments of endowment, a study submitted to AAOIFI as a requirement for preparing an accounting standard in the light of juristic provisions.
  - (2) AAOIFI (1414H-), Concepts of Financial Accounting of Islamic Banks and Financial Organizations, Financial Accounting Standard No. (2) (amended), approved on Jummada I 1414H corresponding to October 1993D.
  - (3) Council of International Islamic Fiqh Academy of the Organization of the Islamic Conference at its fifteenth session held in Muscat (Sultanate of Oman) 14- 19 Muharram 1425H- corresponding to 6 11 March 2004D.
  - (4) AAOIFI (1429H), Shariah Standard No. 33 on Endowment, the Shariah Council approved the Standard of Endowment in its meeting No. (21) held on 24- 28 Jummada II 1429H corresponding to 28 June –2 July 2008 at Dar Al Taqwa Hotel, KSA.



### **Third Topic: Financial Accounting Standard No. 116: Accounting for Contributions Received and Contributions Made<sup>(1)</sup>**

#### **Definition of the Standard:**

This Standard establishes financial accounting and reporting standards for contributions received and made, and the following is the most important standards:

- Contributions received, including unconditional promises to give, are recognized as revenues in the period received at their fair values and contributions made, including unconditional promises to give, are recognized as expenses in the period made at their fair values. Conditional promises to give, whether received or made, are recognized when they become unconditional, that is, when the conditions are substantially met.
- This Standard requires to distinguish between contributions received that increase permanently restricted net assets, temporarily restricted net assets, and unrestricted net assets. It also requires the recognition of the expiration of donor-imposed restrictions in the period in which the restrictions expire.
- This Standard allows certain exceptions for contributions of services and works of art, historical treasures, and similar assets. As to contributions of services, it is recognized only if the services received create or enhance non-financial assets or require specialized skills that are provided by individuals possessing those skills, and would typically need to be purchased if not provided by donation. Contributions of works of art, historical treasures, and similar assets need not be recognized as revenues and capitalized if the donated items are added to (collections) held for public exhibition, education, or research in furtherance of public service rather than financial gain. This Standard requires also certain disclosures for collection items not capitalized and for receipts of contributed services and promises to give.

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(1) FASB (1993), FAS 116: Accounting for Contributions Received and Contributions Made

## **Illustrative Examples of the Application of the Principles of Recognition and Measurement to the Received Contributions in Accordance with FAS 116:**

### **Example 1 - Contribution of Real Property**

- A religious organization C receives a building as a gift from a local corporation with the understanding that the building will be used principally as an education and training center for organization members or for any other purpose consistent with the organization's mission. Educating and training its members are an important activity of the mission.
- The religious organization would recognize the contributed building as an asset and as support and measure that property at its fair value (paragraph 8). Information necessary to estimate the fair value of that property could be obtained from various sources, including (a) amounts recently paid for similar properties in the locality, (b) estimates of the market value of the property by local appraisers or real estate brokers, (c) an estimate of the fair value of the property by the local tax assessor's office, or (d) estimates of its replacement cost. This contribution is an unrestricted support because the donated assets may be used for any purpose and the religious organization does not have a policy of implying time restrictions on gifts of long-lived assets (paragraph 16). If the religious organization's policy is to imply a time restriction, the contribution is a temporarily restricted support and the restriction expires over the useful life of the building.

### **Example 2 - Contribution of Utilities**

- A charity foundation operates its works from a building it owns in the city. The electricity company contributes with electricity to it on a continuous basis subject to the donor's right to cancel the contribution.
- The simultaneous receipt and use of electricity or other utilities are a form of contributed assets and not services. Therefore, the charity foundation shall recognize the fair value of the contributed electricity as both revenue and expense in the period it is received and used. The charity foundation shall estimate the fair value of the electricity received by using rates normally charged to a consumer of similar usage requirements.



### **Example 3 - Contribution of the Use of a Property**

- Ibn Baz Islamic Charitable Association received the free use of an area of 3000 square feet to be a head office provided by a local company. The local company has informed the Charitable Association that it intends to continue providing the space allocated to it as long as it is vacant and unused by the company, although it expects it would be able to give the charity 30 days advance notice, it may discontinue providing such space at any time. The local company rents similar space for \$ 5 to \$ 10 annually per square foot and represents the prevailing market rate for the head office space in such area. The Charitable Association decides to accept the contribution of the free use of the head office space to conduct its daily central administrative activities.
- The simultaneous receipt and use of facilities are a form of contributed assets. Therefore, the Charitable Association shall recognize the fair value of the contributed facilities as both revenue and expense in the period it is received and used.
- If the local company explicitly and unconditionally promises the use of the facility for a specified period of time (for example 5 years), the promise would be an unconditional promise to give. In that case, the Charitable Association would recognize the receipt of the unconditional promise as a receivable and as a restricted support at its fair value. The donor would recognize the unconditional promise when made as a payable and an expense at its fair value.

### **Example 4 - Contribution of Service**

The Islamic University of Palestine decides to construct a building on its property. It obtains the necessary architectural plans and specifications and purchases the necessary architectural services, materials and permits at a total cost of \$ 400,000. A Construction Company contributed the necessary labor and equipment. An independent appraisal of the building (exclusive of land), obtained for insurance purposes, estimates its fair value at \$ 725,000.

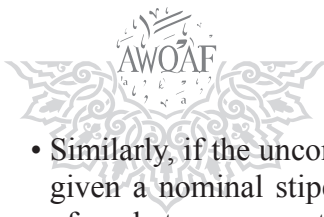
- The Islamic University would recognize the services contributed by the Construction Company because the contributed services received meet the condition that: (a) the services received create or enhance

non-financial assets - or because the services meet the condition that (b) the services require specialized skills, are provided by individuals possessing those skills, and would typically need to be purchased if not provided by donation.

- Contributions of services that create or enhance non-financial assets may be measured by referring to either the fair value of the services received, of the asset or of the asset enhancement resulting from the services. In this example, the fair value of the contributed services received could be determined by subtracting the cost of the purchased services, materials, and permits (\$ 400,000) from the fair value of the asset created (\$ 725,000), which results in contributed services received at an amount of \$ 325,000. Alternatively, the amount that the Construction Company would have charged upon selling such services could be used if it may be more readily determined.
- If some of the labor did not require specialized skills and was provided by volunteers, those services still would be recognized because they meet condition (a).

#### **Example 5 - Contribution of Service**

- The salaries of the Faculty of Shariah are a major expense of the Islamic University. There are compensated doctors and lecturers who work at the University and contribute a part of their services (hold classes) to the university without a compensation. The performance of both compensated and uncompensated faculty members is regularly and similarly evaluated; both must meet the university's standards and both provide services in the same way.
- The Islamic University would recognize both revenue and expense for the services contributed by the uncompensated faculty members because the contribution meets condition (b). Teaching requires specialized skills; the religious personnel are qualified and trained to provide those skills; and the Islamic University typically would hire paid instructors if the religious personnel did not donate their services. The University could refer to the salaries it pays similarly to qualified compensated faculty members to determine the fair value of the services received.



- Similarly, if the uncompensated faculty members in this example were given a nominal stipend to help defray certain amounts of their out-of-pocket expenses, the Islamic University still would recognize both revenue and expense for the services contributed. The contribution received would be measured at the fair value of the services received less the amount of the nominal stipend paid.

#### **Example 6 - Contribution of Service**

- A member of the board of directors of a charitable organization is a lawyer and from time to time, at the request of the board, provides advice on general business matters, including questions about business opportunities and challenges and ethical, moral, and legal matters. The advice provided on legal matters is provided as a director, not as a lawyer, and the opinions generally are limited to routine matters. Typically, the lawyer suggests that the charitable organization should seek the opinion of its attorneys on complex legal questions. All of the organization's trustees serve without compensation, and most trustees have specialized expertise (for example, a chief executive officer, a minister, a physician, a professor, and a public accountant) that makes their advice valuable to the charitable organization. The director-lawyer also serves without compensation as a trustee for two other charitable organizations.
- The charitable organization would be precluded from recognizing the contributed services it receives from its director-lawyer or its other trustees because the services contributed do not meet either of the conditions of the FAS. Whereas condition (a) is not relevant, the director-lawyer's services do not meet condition (b) because the complex legal questions that require the specialized skills of a lawyer are referred to the organization's attorneys or because the advice provided by trustees typically would not be purchased if not provided by donation.

#### **Example 7 - Contribution of an Interest in an Estate**

- In 1980, individual R notifies the Church S that he has stated the church in his will and provides a written copy of the will. In 1985, individual R dies. In 1986, individual R's will was sent to the probate court for verification of its validity and the probate court declares the will valid.





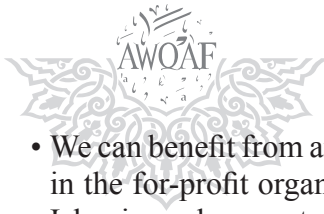
The executor informs Church S that the will has been declared valid and that it will receive 10 percent of individual R's estate, after satisfying the estate's liabilities and certain specific bequests. The executor provides an estimate of the estate's assets and liabilities and the expected amount and time for payment of Church S's interest in the estate.

- The 1980 communication between individual R and Church S specified an intention to give. The ability to modify a will at any time prior to death is well established; thus in 1980 Church S did not receive a promise to give and did not recognize a contribution received. When the probate court declares the will valid, Church S would recognize a receivable and revenue for an unconditional promise to give at the fair value of its interest in the estate (paragraphs 8 and 19 - 21). If the promise to give which has been contained in the valid will has been instead conditioned on a future and uncertain event, Church S would recognize the contribution when the condition was substantially met. The conditional promise in the valid will would be disclosed in notes to financial statements (paragraph 25).

#### **Extent of Appropriateness of the Financial Accounting Standard No. 116 for the Islamic Endowment Accounting**

- The organizations of Islamic endowment should recognize the contributions for the development of a certain endowment as endowment revenues on the safe of financial statements. However, the conditional and unconditional promises to give for the development of the Islamic endowment should not be recognized as revenues on the safe of financial statements, rather, it may be disclosed in its attachments for the purposes of following up and monitoring. The reason for this is that the contract cannot be completed except via handing over the endowed item by the endower. The promise to endow without handing over results in no endowment, whereas the formula of endowment stipulates the assertion that the formula of endowment is asserted and there is no potential for refraining from giving the endowment. The endowment cannot be established via promise, but via fulfillment, namely, the endowment must not be based on a condition such as the advent of someone <sup>(1)</sup>.

(1) Kuwait Awqaf Public Foundation, Home Page, About Endowment, Endowment Jurisprudence, Endowment Regulations <http://www.awqaf.org.kw/Arabic/AboutEndowment/FiqhOfEndowment/Pages/EndowmentRegulations.aspx>



- We can benefit from and adapt the three previous categories of net assets in the for-profit organization to be appropriate for the organizations of Islamic endowment. It required the distinction between the Islamic endowments increasing the net assets of endowments in an independent item under which its different types are independently and separately included, such as perpetual, temporary, real estate, movable and utilities, which increase the net assets other than the endowments. The classification of Islamic endowment in the financial statements contributes to the knowledge of the interest of the community of endowers in the different types of endowment. Moreover, the display of cash endowment in an independent item results in freely disposing of the endowment via the various investment ways in accordance with the Shariah rules, unlike the endowment of property, utilities or movable. Distinction between the perpetual and temporary types is useful in the evaluation of the organization's ability to the optimum allocation of utilization of resources.
- Recognition of release of restrictions imposed by the endowers is required in the period that would be ended or such restrictions should be changed. Recognition of change of restrictions imposed on the perpetual endowments makes no effect on the total balance of the net assets of perpetual Islamic endowments, but it is considered an internal reclassification (inter-accounts) from restricted, perpetual Islamic endowments to unrestricted or unrestricted, perpetual Islamic endowments. Recognition of release of restrictions imposed on the temporary Islamic endowment is made upon the expiration of its determined time and hence the net assets of temporary Islamic endowment are decreased in the value of temporary returned endowment. In case of changing the restriction of usage during the period of temporary Islamic endowment by the endowers or the organization of Islamic endowment, the recognition of change shall not affect the total balance of the net assets of temporary Islamic endowments.
- The contribution to the development of an Islamic endowment should be recognized in case of fulfilling one of the above-mentioned conditions, according to Financial Accounting Standards No. 116, and any other services result in comparing the expenses of the organizations of

endowment such as an endowment for paying the fuel expenses of the organizations of endowment, and, by that time, the recognition of the revenues of endowments and expenses of the endowed property (such as fuels) is made upon its occurrence.

- We can benefit from the accounting treatment of contributions of services and utilities and contribution of use of property according to this Standard via referring to the accounting of endowment of utilities. The endowed utilities are measured on the basis of the equivalent as provided for in Shariah Standard No. 30. In my opinion, the recognition of Islamic endowment on the face of financial statements passes through two phases:

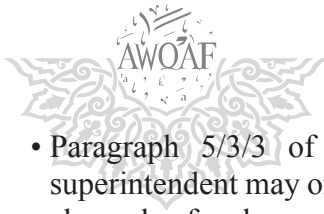
### **1- Reassurance the legitimacy of pillars of endowment:**

IIFA did not address the pillars of endowment. However, Shariah Standard No. 30 has clearly stipulated that the four pillars of endowment, represented in the formula, endower, endowed property and beneficiary, should be compatible with the Shariah Standards.

### **2- The principle of approvability in endowment accounting:**

The formula of the endowment may occur via verbal or written promise or their customary equivalent in demonstrating the endowment. However, for preserving the endowment, there is a necessity of the availability of a sufficient evidence in the form of documents that its validity may be verified for the recognition of the endowments as revenues upon the fulfillment of the controls of reassurance and measurability with the aim of minimizing the problems that may appear upon application that may result in the manipulation of the accounting results via non-existent assets. The deed of endowment and the court order proving it are one of the most important documents.

- Works of art and historical monuments should be recognized as revenues of endowments if they have been designated for direct benefit, such as maintaining them for the purposes of public exhibitions, education and research for boosting the public service or for the purpose of financial gain without disposal of them.



- Paragraph 5/3/3 of Shariah Standard No. 33 provided that the superintendent may only use the yield of the endowment to increase the channels of endowment according to the endower's condition.

### **Forth Topic: Financial Accounting Standard No. 117: Financial Statements of Not-for-Profit Organizations <sup>(1)</sup>**

#### **Definition of the Standard:**

This Standard establishes standards for general-purpose external financial statements provided by a Not-For-Profit Organization. This Standard indicates that such statements include statement of financial position, a statement of activities, and a statement of cash flows. It generally requires reporting amounts for the organization's total assets, liabilities, and net assets in a statement of financial position; reporting the change in an organization's net assets in a statement of activities; and reporting the change in its cash and cash equivalents in a statement of cash flows. In particular, it also requires classification of an organization's net assets and its revenues, expenses, gains, and losses based on the existence or absence of donor-imposed restrictions. It requires that the amounts for each of the three classes of net assets - permanently restricted, temporarily restricted, and unrestricted - be displayed in a statement of financial position and that the amounts of change in each of those classes of net assets be displayed in a statement of activities. Additionally, the voluntary health and welfare organizations should provide a separate statement of functional expenses and classify the expenses by both their function and nature in a form of matrix.

#### **Extent of Appropriateness of the Financial Accounting Standard No. 117 for the Islamic Endowment Accounting**

- It is established from this Standard that the identity of the financial statements of Not-For-Profit Organization is specified depending on the nature of its work, mission and the environment in which it operates and its three statements that must be issued from all Not-For-Profit Organization: financial position, cash flows, activities and another

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(1) FASB (1994), FAS 117: Financial Statements of Not-For-Profit Organizations.

statement related to the functional expenses that is required only from the voluntary health and welfare organizations. On the other hand, paragraph 2/4/3 of Shariah Standard No. 30 states that endowment has a personality and financial independence that make it eligible to impose and assume obligations. The personality of endowment differs from the personality of its manager. Paragraph 5/2 states that the preparation of the endowment accounts and submission of data and reports on it to the authorities concerned is one of the superintendent's duties. From this standpoint, the properties of the endowment must be reported independently from the properties of the board of the endowment in a separate statement or preparing financial statements separated from the financial statements of the person in charge of the endowment.

- Due to the nature and privacy of the endowment that are different from the other funds, the amount of total assets and liabilities and the net assets of each endowment should be reported separately, in addition to the preparation of a financial position for each endowment individually. Generally, it is encouraged to prepare a financial position as a single unit (consolidated financial statement) for the whole endowments. It would be preferable to use three financial statements separately: the yield of the endowment, distribution of the yield of the endowment and the expenses of the yield classified according to both its nature and function in the form of a matrix instead of the statement of activities used in the Not-For-Profit Organizations. The change in the net assets of endowments is reported in the distribution statement of the yield of the endowment and the change in cash and equivalent cash is reported in the statement of cash flows.
- It is a mandate to classify the endowment organization's net assets, yields, expenses, gains and losses depending on the existence or non-existence of the endowers' stipulation. The net assets shall be displayed as follows: the endowments of both its types whether perpetual, temporary or non-endowments in the statement of financial position, in addition to the distinction of the endowment real estates from movables and cash, those designated for direct benefit and those designated for investment. The amount of change in each type compared to the net assets should be displayed in the distribution statement of the yield.



- The organizations of Islamic endowment should prepare a distribution statement of the yield of the endowment. In this case, the priorities of the distribution of endowment yield must be observed and the priority of distribution should be according to the provision of paragraph 8 of the Shariah Standard as follows:
- First: maintenance and restoration of the endowment and formation of a provision for such matter without a text or stipulation from the endower.
- Second: distribution to the eligible persons.
- Third: formation of provisions for replacing the exhausted endowment by new endowment estates.
- Functional classification of expenses assists in linking the efforts of the organization of endowment to its achievements. The natural classification may be essential in understanding the ability of an organization to continue to provide services and the nature of the costs of providing those services.
- Information about the net assets of endowments is useful in determining the extent to which an organization's net assets are not a source of cash for payments to present or prospective lenders, suppliers, or employees and thus are not expected to be directly available for providing services or paying creditors. Information about the extent of net assets maintained by an organization, other than the endowment, is useful in assessing the organization's ability to allocate resources to provide services or particular kinds of services or to make cash payments to creditors in the future.

### **Fifth Topic: Financial Accounting Standard No. 124: Accounting for Certain Investments Held by Not-For-Profit Organizations<sup>(1)</sup>**

#### **Definition of the Standard:**

This Standard establishes standards of financial accounting and reporting for certain investments in securities and establishes disclosure requirements

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(1) FASB (1995), FAS 124: Accounting for Certain Investments Held by Not-For-Profit Organizations.

for most investments held by Not-For-Profit Organizations. This Standard requires reporting investments in equity securities (shares) with readily determinable fair values and all investments in debt securities (bonds) be reported at fair value in the statement of financial position, with gains and losses included in the statement of activities. It also requires certain disclosures about investments held by Not-For-Profit Organizations and the return on those investments. This Standard also establishes standards for reporting losses on investments held because of a donor's stipulation to invest a gift in perpetuity or for a specified term.

**Extent of Appropriateness of the Financial Accounting Standard No. 124 for the Islamic Endowment Accounting**

- The purpose of development of the endowment is to benefit from it over the period of endowment and preserve it not to sale or speculation. Consequently, the measurement of fair value or current value of endowments is not appropriate and it is preferably to use the historical cost. For the purposes of public interest (replacement of an endowment fund by another to be an endowment realizing a better yield) or according to the conservatism concept in accounting, the resources of endowment may be quoted at the current value<sup>(1)</sup>.
- Gains (losses) of the endowment are those resulting from the sale of endowments themselves. Within this scope, paragraph 9 of Shariah Standard No. 33 on the replacement of endowment estates indicates the replacement in endowment is taking out the endowed estate from the entity that has endowed it via selling it and purchasing another estate for achieving the endowment's interest. The endowment may be replaced if it was stipulated by the endower or if damaged. If the non-replacement stipulated by the endower, it may be sold and a new estate may be purchased with its price to be like the first one. The replacement is also permissible if the endowment cannot be utilized due to the non-existence of people in its surrounding, the fear for the endowment from usurpers or lack of benefit from it. This matter entails that the endowment's unrealized losses (gains) resulting from maintaining

(1) Abdulsattar Abu Ghouda and Hussein Hussein Shehata (B.V), Draft Project of Endowment Accounting Standard ,AAOIFI.



the endowments of all types, investment properties, assets endowed for direct benefit such as mosques and cemeteries, fixed assets, long-term assets including shares and cash and quasi-cash funds, should not displayed on the face of financial statements because what should be displayed on the face of financial statements is the realized events. The revenues should not be increased in the unrealized gains because they cannot be distributed to the beneficiaries. In case of calculation of such gains without distribution, a false surplus of the yield shall be displayed because there is a potential of non-realization of such gains upon the actual sale of investments. Additionally, closing the unrealized losses via deducting them from the yield is injustice to the beneficiaries. However, for the benefit of the endowment, it may be mentioned in the notes on the endowment's financial statements that the market value of the investment in comparison to the book value while indicating the difference between them, including the increase or decrease, without closing these the increases or decreases or amending the book value of investment.

- This Standard addresses the investment of some funds with usurious interests such as bonds. This is not appropriate for the Islamic law in general and as an investment tool in particular. As for the Islamic endowment, it cannot be endowed. The ill-gotten fund should be spent in the public forms of charity <sup>(1)</sup> and should be separated from the non-usurious activities. In endowment accounting, it is valid to be displayed within the attachments or notes of the financial statements, not on the face of the financial statements or separated with the aim of Shariah follow-up and monitoring.

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(1) Hussein Shehata (B.V), a guide to the contemporary application of endowment law (How to Endow your Fund in the Way of Allah) as an ongoing charity? Al-Azhar University, Egypt



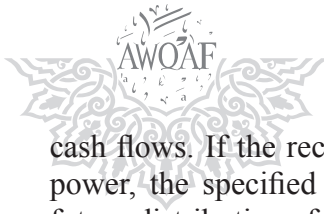
**Sixth Topic: Financial Accounting Standard No. 136: Transfers of Assets to a Not-For-Profit Organization or Charitable Trust that Raises or Holds Contributions for Others<sup>(1)</sup>**

**Definition of the Standard:**

- This Standard requires a recipient organization that accepts cash or other financial assets from a donor and agrees to use those assets on behalf of or transfer those assets, the return on investment of those assets, or both to a specified unaffiliated beneficiary (unaffiliated) to recognize the fair value of those assets as a liability to the specified beneficiary concurrent with recognition of the assets received from the donor. However, if the donor grants the recipient organization variance power or if the recipient organization and the specified beneficiary are financially interrelated organizations, the recipient organization is required to recognize the fair value of any assets it receives as a contribution received. Not-For-Profit Organizations are financially interrelated if (a) One organization has the ability to influence the operating and financial decisions of the other, and (b) One organization has an ongoing economic interest in the net assets of the other.
- This Standard requires that a specified beneficiary recognize its rights to the assets held by a recipient organization as an asset unless the donor has explicitly granted the recipient organization variance power. Those rights are either an interest in the net assets of the recipient organization (a beneficial interest) or a receivable. If the beneficiary and the recipient organization are financially interrelated organizations, the beneficiary is required to recognize its interest in the net assets of the recipient organization and adjust that interest for its share of the change in net assets of the recipient organization. If the beneficiary has an unconditional right to receive all or a portion of the specified cash flows from the charitable trust or other identifiable pool of assets, the beneficiary is required to recognize that beneficial interest, measuring and subsequently re-measuring it at fair value, using a valuation technique such as the present value of the estimated expected future

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(1) FASB (1999), FAS 136: Transfers of Assets to a Not-For-Profit Organization or Charitable Trust that Raises or Holds Contributions for Others



cash flows. If the recipient organization is explicitly granted variance power, the specified beneficiary does not recognize its potential for future distributions from the assets held by the recipient organization. In all other cases, a beneficiary recognizes its rights as a receivable.

- This Standard describes four circumstances in which a transfer of assets to a recipient organization is accounted for as a liability by the recipient organization and as an asset by the resource provider because the transfer is revocable or reciprocal. Those four circumstances are: (a) If the transfer is subject to the resource provider's unilateral right to redirect the use of the assets to another beneficiary, (b) The transfer is accompanied by the resource provider's conditional promise to give or is otherwise revocable or repayable, (c) The resource provider controls the recipient organization and specifies an unaffiliated beneficiary, or (d) The resource provider specifies itself or its affiliate as the beneficiary and the transfer is not an equity transaction. If the transfer is an equity transaction and the resource provider specifies itself as beneficiary, it records an interest in the net assets of the recipient organization (or an increase in a previously recognized interest). If the resource provider specifies an affiliate as a beneficiary, the resource provider records an equity transaction as a separate line item in its statement of activities, and the affiliate named as a beneficiary records an interest in the net assets of the recipient organization. The recipient organization records an equity transaction as a separate line item in its statement of activities.

### **Illustrative Examples of the Application of FAS 136 -Distinction Between Contribution and Transfer:**

#### **Example 1 - Gifts to a Community Foundation for the Benefit of a Not-For-Profit Organization**

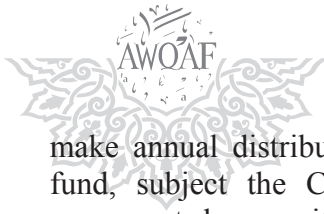
- A board of Botanical Society decides to raise funds to build an endowment. The board signs an agreement to establish such endowment at a Community Foundation. The Community Foundation and Botanical Society are not financially interrelated organizations. The campaign materials inform donors that the endowment will be owned and held by the Community Foundation. The materials explain that the gifts will be invested and that the return from their investment will be distributed to

the Botanical Society, subject to Community Foundation's expenditure policy and to the Community Foundation's right to redirect the return to another beneficiary without the approval of the donor, the Botanical Society, or any other party if distributions to the Botanical Society becomes unnecessary, impossible, or inconsistent with the needs of the community. The donor-response card also describes the Community Foundation's right to redirect the return of the fund.

- The Community Foundation would recognize the fair value of gifts received as assets and as a contribution revenue. The donors explicitly granted variance power by using a donor-response card that clearly states that gifts are subject to the Community Foundation's unilateral power to redirect the return to another beneficiary (paragraph 12). The Botanical Society is precluded from recognizing its potential rights to the assets held by the Community Foundation because the donors explicitly granted variance power (paragraph 16). The Botanical Society would recognize only its annual grants from the Community Foundation as contributions. Whether the donor intended to make the contribution to the Community Foundation may not be clear, the Botanical Society could resolve the ambiguity by a review of the facts and circumstances surrounding the gift, communications with the donor, or both. If it is ultimately determined that the donor intended to make a gift to the fund owned and held by the Community Foundation and to explicitly grant variance power, the Botanical Society would be an agent responsible for transferring that gift to the Community Foundation (paragraph 11).

**Example 2 - Transfer of Assets from a Not-For-Profit Organization to a Community Foundation to Establish an Endowment for the Benefit of the Not-For-Profit Organization**

- The Symphony Orchestra receives a large unrestricted gift of securities from an individual. Because it has no investment expertise, the Symphony Orchestra transfers the securities to the Community Foundation to establish an endowment fund. The agreement between the Symphony Orchestra and the Community Foundation states that the transfer is irrevocable and that the transferred assets will not be returned to the Symphony Orchestra. However, the Community Foundation will



make annual distributions of the income earned on the endowment fund, subject the Community Foundation's spending policy. The agreement also permits the Community Foundation to substitute another beneficiary in the place of the Symphony Orchestra if the Symphony Orchestra ceases to exist or if the governing board of the Community Foundation votes that support of the Symphony Orchestra (a) is no longer necessary or (b) is inconsistent with the needs of the community. (That is, the Symphony Orchestra explicitly grants variance power to the Community Foundation.) The agreement does not permit either organization to appoint members to the other organization's board or otherwise participate in the policymaking processes of the other.

- The Community Foundation would recognize the fair value of the transferred securities as an increase in investments and a liability to the Symphony Orchestra because the Symphony Orchestra transferred assets to the Community Foundation and specified itself as beneficiary (paragraph 17 (d)). The transfer is not an equity transaction because the Community Foundation and the Symphony Orchestra are not financially interrelated organizations (paragraph 18 (b)). The Symphony Orchestra is unable to influence the operating or financial decisions of the Community Foundation (paragraph 13 (a)). The Symphony Orchestra would recognize the fair value of the gift of securities from an individual as a contribution revenue. When it transfers the securities to the Community Foundation, it would recognize the transfer as a decrease in investments and an increase in an asset, for example, as a beneficial interest in assets held by the Community Foundation (paragraph 17 (d)). Also, the Symphony Orchestra would disclose in its financial statements the identity of the Community Foundation, the terms under which the Community Foundation will distribute amounts to the Symphony Orchestra, a description of the variance power granted to the Community Foundation, and the aggregate amount reported in the statement of financial position and how that amount is described (paragraph 19).

In this example, the Symphony Orchestra would recognize an asset and the Community Foundation would recognize a liability because the transaction is deemed to be reciprocal (paragraph 96). The Symphony

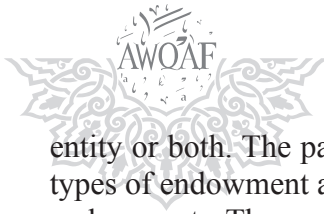
Orchestra transfers its securities to Community Foundation in exchange for future distributions.

**Extent of Appropriateness of the Financial Accounting Standard No. 136 for the Islamic Endowment Accounting**

- This Standard addresses the accounting method of transferring tangible assets - such as property - from a charitable organization to another charitable organization for investing those assets on behalf of it and transferring the return to the first organization to be spent for the purposes for which such assets were endowed or for which the charitable organization was appointed as an agent to spend it directly for the beneficiaries. These transferred assets shall be recorded in the statement of financial position of the transferor organization as liabilities of the transferee organization. This transaction is similar to the trustee in the endowment to whom the endowment superintendent assigns the management of endowment estates. The hand of management of the Islamic endowment fund is a hand of trust <sup>(1)</sup>. Some paragraphs of this Standard may be useful in a manner appropriate for the endowment via amendment or addition.
- As opposed to the US concept of variance power, paragraph 4 of Shariah Standard No. 33 states that the endower has the right to make any stipulation not contrary to the Islamic law regarding the affairs of his / her endowment. The endower's stipulation should be applied and the Shariah stipulation should be applied as well. The convention prevailing in his / her environment should be observed in understanding the stipulations of the endower. An example of the endower's stipulation is the assignment of an appointed superintendent and the determination of his remunerations, whether the superintendent is a person, group or organization. Paragraph 2 of Shariah Standard No. 33 asserts also the endower's right to appoint himself / herself as a beneficiary, another

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(1) Muhammad Abdulhaleem Omar (1423 AH), Issues and problems of Endowment Accounting - a work paper submitted to the panel discussion on: «The emerging issues of endowment and its theoretical and practical problems» held at Saleh Kamel Centre of Islamic Economics, Al-Azhar University in collaboration with the Islamic Research and Training Institute of the Islamic Development Bank and Kuwait Awqaf Public Foundation during the period 20-21 Sha'aban 1423 AH corresponding to 26-27 October 2002 AD.



entity or both. The paragraph states that the most important legitimate types of endowment are charitable, family, common and self-dedicated endowment. The superintendent has the power to make changes to the endowment in the light of the principles of Islamic Shariah, whereas paragraph 5 of the Shariah Standard provided that it is of the superintendent's functions to change the milestones of the endowment for achieving the best interest of the beneficiaries and endowment and to replace the endowment. The superintendent may not violate the endower's conditions and the persons in charge of overseeing and managing the endowment must comply with the Islamic law and the endower's conditions unless such conditions are inconsistent with the Islamic law or with what can achieve the interest according to judicial discretion.

- According to the US Standard, the decision of granting or non-granting the variance power to the recipient organization over the funds contributed for a purpose of developing an endowment has an effect on the process of accounting recognition. The funds are recorded as revenues of the recipient organization upon granting, but they are recorded as liabilities on the recipient organization upon non-granting. The endower's or superintendent's power to make changes to the Islamic endowment shall not affect the process of accounting recognition of the funds contributed for a purpose of developing an endowment; it is an endowment in all cases. However, Paragraph 3 of Shariah Standard No. 33 states that it is established primarily that the endowment is forever and may be temporary for a period if the endower has determined its time so that the endowed property would be returned to the owner upon the expiration of such period. This results in the fact that the value of the developed endowment appears in the item of equities of the endowment if the endowment was perpetual, and then the endowment becomes necessary and the endower's ownership of the endowed property shall be terminated, or in the item of equities of endowers if the endowment was temporary until the endowment is returned to the owners of the endowment, and, by that time, the endowers shall be released from the obligation to the endowment.

- The Islamic endowment in itself is not a reciprocal transfer in the US concept. Namely, it has no reciprocal value gained by the endower from the manager of an endowment, but it means comparing the benefits of beneficiaries whether via the endowment itself if it was for direct utilization or benefiting from the yield of endowment if it was for investment, unless the endower is the beneficiary of the endowment. The endowment documents are represented in three parties: the endower, the beneficiaries and the superintendent of the endowment. The superintendent of the endowment can manage the endowment on behalf the beneficiaries.
- The principal of the Islamic endowment is not an obligation of the beneficiary unless the beneficiary is the owner of the temporary Islamic endowment. However, the obligation exists only in the yield of the endowment if there are beneficiaries from it and the yield has not been spent after considering the provisions of maintenance and renovation (beneficiaries' rights). As long as the Islamic endowment has a special nature autonomous from all organizations, it may not be under any circumstances subject to supremacy or control and for any purposes, whether financial, political or economic, according to the two cases of financial interrelation of not-for-organizations mentioned in the US Standard, A or B.
- The beneficiary organization within the US Standard means the beneficiary from the contributed asset (such as contributed endowments). This is confirmed by the specified beneficial organization's recognition of its rights to the assets maintained by the recipient organization as assets unless the recipient organization is explicitly granted the variance power by the donor. The beneficiary of the Islamic endowment means the beneficiary of the benefit of the endowed asset.
- The intention of cases A, C and D is not the cancellation of the contributed endowment; this is not true with the perpetual Islamic endowment. If the endowment was temporary according to the will of the endower, the endowment shall be dissolved as per his / her condition, taking into consideration the provisions of Islamic endowment replacement and the best interests of the endowment. The intention is the cancellation of the current beneficiary of the permanent endowments and direction

of it towards a new beneficiary by the provider of the resource. This is true with the Islamic endowment and the condition involving what is prohibited by Islamic law shall be invalidated. The endower may stipulate in the formula of endowment paying his / her debts from the yield of endowment after his / her death, utilizing his / her endowment during his / her life, then to his / her issue and then to charitable works or disbursing from the yield of the endowment to whoever becomes poor from amongst his / her issue. Afterwards, the yield shall be directed towards charity <sup>(1)</sup>. As for case B, it means that the non-received contribution shall be canceled in case of the organization's non-fulfillment of the condition. This is not true with the Islamic endowment that should be fulfilled and unconditional.

- According to this Standard, the standards of accounting for trustees should not be placed because the organization does not own the asset to be considered as a trustee due to its ability to obtain some economic benefits which is often very limited and restricted by the trusteeship agreement. However, this does not mean that the restrictions imposed on the endowment concerning a certain usage or for a period of time prevent the recognition of the endowment. As long as the endowment has the power of management or disposal of it without sale so that the restriction covers the purposes that in which the endowment may be only used, recognition of it must be made.

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(1) Shariah Standard No. 33 on Endowment, op. cit.



## Conclusion

### First: Results:

- The attention paid by the Financial Accounting Standards Board to the Not-For-Profit Organizations; it has issued 5 standards related to such organizations: 93, 116, 117, 124 and 136.
- There are some differences in the concept of all types of endowment depending on the US and Islamic accounting standards which affect the Islamic endowment accounting.
- There are also some paragraphs in the Financial Accounting Standards for Not-For-Profit Organizations that may be beneficial and suitable for the Islamic endowment accounting and the other paragraphs may not be used due to the different nature and particularity of the Islamic endowment from all kinds of donations in the US Accounting Standards.

Due to the many differences in concepts and issues relating to endowment in the US Accounting Standards compared to the Islamic accounting standards, it is not appropriate to absolutely apply those standards to organizations of Islamic endowment, taking into account that there are some positive aspects such as accountability, governance, quality and transparency. This result supports some studies that indicated that the objectives and bases of Islamic accounting differ from Western accounting and that Western accounting is not appropriate for all issues related to the Islamic endowment. Therefore, we should not rely on Western accounting. Accounting guidance and procedures should be developed for the endowment. Additionally, the core concepts should comply with Shariah orientations and requirements. <sup>(1)</sup>

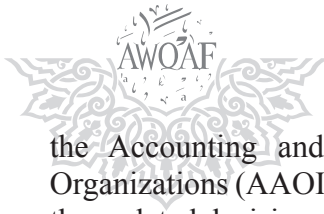
### Second: Recommendations:

- Working towards the issuance of a comprehensive, independent international accounting standard for the Islamic endowment by

(1) Shahul, H. M. I. & Yaya, R (2001). The emerging issues on the objective and characteristics of Islam: accounting for Islamic business organization.

Adnan, M. A & Gsffikin, M (1997) The Shariah: Islamic Banks & accounting concepts & practices. Paper of International Conference 1: Accounting Commerce & Finance: The Islamic perspective. University of Western Sydney, Australia.





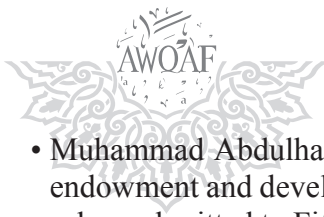
the Accounting and Auditing Organization for Islamic Financial Organizations (AAOIFI) and amending it when necessary in the light of the updated decisions of the International Islamic Fiqh Academy (IIFA) regarding endowment.

- Formulation of a conceptual framework which applies the fundamentals and objectives of Islamic endowment accounting and Shariah requirements that are suitable for endowment to be taken as a reference for the development of the accounting standard of endowment.
- It is necessary to prepare academic conferences specialized the accounting of endowment by IIFA.
- Conducting further researches concerning the accounting processing with all its different types in a separate form.
- Devoting considerable attention to the endower's different formula of investment, including building, operation and return.
- Considering the problems of application encountering the organization of endowment in the endowment accounting and exerting attempts to formulate their solutions.

## **Research References:**

### **In the Arabic Language:**

- Awqaf Public Foundation, Kuwait, Endowment Regulations <http://www.awqaf.org.kw>
- Hussein Hussein Shehata (B.V) Accounting Basics and Treatment of Endowment, a study submitted to AAOIFI as a requirement for preparing an accounting standard in the light of juristic provisions.
- Hussein Shehata (B.V), A Guide to the Contemporary Application of Endowment Law: How to Endow your Fund in the Way of Allah as Ongoing Charity? Al-Azhar University, Egypt
- Abdulsattar Abu Ghouda and Hussein Shehata (B.V), Draft Project of Endowment Accounting Standard, AAOIFI.
- Council of International Islamic Fiqh Academy (1421 AH), decisions of the Council of International Islamic Fiqh Academy at its twelfth session held in Riyadh, KSA, from 25 Jummada II 1421 AH - 1 Rajab 1421 AH corresponding to 23 –28 September 2000 AD.
- Council of the International Islamic Fiqh Academy (1425 AH), decisions of the Council of International Islamic Fiqh Academy at its fifteenth session held in Muscat (Sultanate of Oman) 14- 19 Muharram 1425 AH - corresponding to 6 –11 March 2004 AD.
- Council of the International Islamic Fiqh Academy (1430 AH), decisions of the Council of International Islamic Fiqh Academy at its nineteenth session held in Emirate of Sharjah (UAE) from 1 to 5 Jummada I 1430 AH corresponding to 26 - 30 April 2009 AD.
- Muhammad Abdulhaleem Omar (1423 AH) Issues and Problems of Endowment Accounting - a work paper, submitted to the panel discussion on: «The emerging issues of endowment and its theoretical and practical problems» held at Saleh Kamel Centre of Islamic Economics, Al-Azhar University, in collaboration with the Islamic Research and Training Institute of Islamic Development Bank and Kuwait Awqaf Public Foundation during the period 20-21 Sha'aban 1423 AH corresponding to 26-27 October 2002 AD.



- Muhammad Abdulhaleem Omar (2011 AD), accounting principles of endowment and development of its systems in accordance with Shariah rules, submitted to Fifth Endowment Fiqh Issues, Kuwait Awqaf Public Foundation, April 2011 AD.
- AAOIFI (1414 AH), Concepts of Financial Accounting of Islamic Banks and Financial Organizations, Financial Accounting Standard No. (2) (amended), approved on Jummada I 1414 AH corresponding to October 1993 AD.
- AAOIFI (1429 AH), Shariah Standard No. 33 on Endowment, the Shariah Council approved the Standard of Endowment in its meeting No. (21) held on 24- 28 Jummada II 1429 AH corresponding to 28 June –2 July 2008 at Dar Al Taqwa Hotel, KSA.

#### **In the English Language:**

- Adnan, Muhammad Akhyar, (2005). Akuntansi dan auditing kelembagaan wakaf [Accounting and Auditing for Endowment Organizations]. Akuntansi syariah, arah, prospek & tantangannya (pp. 143 – 152). Yogyakarta: UII Press.
- Adnan, M. A. & Gsffikin, M (1997) The Shariah Islamic Banks & Accounting Concepts & Practices. Paper of International Conference 1: Accounting Commerce & Finance: The Islamic perspective. University of Western Sydney, Australia.
- Cajee, Z. A. (2008, November). The revival of endowment in Muslim communities: Implementation of the recommendations of the international endowment conference, South Africa, Cape Town, 2007. Conference proceedings, International conference on endowment and Islamic civilization.
- FASB (1987), FAS 93: Recognition of Depreciation by Not-For-Profit Organizations.
- FASB (1994), FAS 117: Financial Statements of Not-For-Profit Organizations.
- FASB (1995), FAS 124: Accounting for Certain Investments Held by Not-For-Profit Organizations.

- FASB (1999), FAS 136: Transfers of Assets to a Not-For-Profit Organization or Charitable Trust That Raises or Holds Contributions for Others
- FASB (1993), FAS 116: Accounting for Contributions Received and Contributions Made.
- Ihsan, Hidayatul and Shahul Hameed Muhammad Ibrahim. (2007, March). Endowment accounting and possible use of SORP 2005 to develop endowment accounting standards. Paper presented at the Singapore international endowment conference 2007, Singapore.
- Ihsan, H., Shahul, H. H. M. I. (2011). Endowment Accounting Management in Indonesian Endowment Organizations: The Cases of Two Endowment Foundations. *Humanomics*. Vol. 27, No. 4, pp. 252-269.
- Shahul, H. M. I & Yaya, R (2001). The emerging issues on the objective and characteristics of Islam accounting for Islamic business organization.
- Siti Rokyah, M. Z. (2004). Determinants of Financial Reporting Practices on Endowment by Malaysian State Islamic Religious Council in Malaysia. Unpublished Masters Dissertation. International Islamic University Malaysia.
- University of Maine System (January 2012), Business Process: Accounting for Gift and Endowments, Office of Finance and Treasurer, Unit 3-p.17

# Researches



## Financial Estate of Endowment

Dr. Othman Ahmed Othman

Praise be to Allah, Almighty, Who said: (O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you and do not aim at that which is bad to spend from it, (though) you would not accept it save if you close your eyes and tolerate therein. And know that Allah is Rich, and Worthy of all praise) <sup>(1)</sup>, He also said: (By no means shall you attain Al-Birr (piety, righteousness, etc., it means here Allah's Reward, i.e. Paradise), unless you spend (in Allah's Cause) of that which you love; and whatever of good you spend, Allah knows it well)<sup>(2)</sup>. He also said: (Allah has promised those among you who believe, and do righteous good deeds, that He will certainly grant them succession to (the present rulers) in the earth, as He granted it to those before them)<sup>(3)</sup>

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(1) Surat Al-Baqarah: Verse 268.

(2) Surat Ale-Imran: Verse 92..

(3) Surat An-Nour: Verse 55.



Peace be upon Allah's Messenger, who was the first person keeping endowment in Allah's cause, who said: concerning the recurring charity: (When the son of Adam dies, his acts come to an end, but three: Recurring charity, a kind of knowledge from which people derive benefit, or a pious son who supplicates Allah for him).<sup>(1)</sup> He (peace be upon him) also said in the narration of Umar (may Allah be pleased with him): ((If you wish, you can keep it as an endowment to be used for charitable purposes.....))<sup>(2)</sup> The Prophet's companions, may Allah be pleased with them, the followers, and the well-doers until the Day of Resurrection followed him so that good deeds, righteousness, and well-doing are achieved.<sup>(3)</sup> So, the Author of Al Mughni mentioned that Jaber, may Allah be pleased with him, said: All rich companions of the Messenger provided endowments and this is unanimity held by them. So, anybody of them who was able to endow, he had done. This was famous and nobody denied the endowment. So, this is considered as unanimity<sup>(4)</sup> Al Hafiz Ibn Hajar said, according to Imam At-Tirmidhi: (We don't know that there's disagreement among the Prophet's companion or former scholars concerning the permissibility of land endowment)<sup>(5)</sup>.

**Research Problem:** The research problem is that Islamic endowment plays many roles for the country and the groups of people. Out of respect of these roles, the man-made laws proved that the Islamic endowment has legal personality and financial estate concerning assuming obligations and liabilities. Is such legal personality mentioned in the books of Islamic jurisprudence?

(1) Narrated by Muslim, Part 2, P 1255, Al Wasiya Book, and Abu Dawood, Part 3, P 300, and others.

(2) Narrated by Bukhari in Al Shourout, No. 2586, and Muslim in Al Wasiya, No. 1633.

(3) Muhammad Salim Angeih: Revival of Volunteering Culture and Effort Exertion: P 2.

(4) Al Mughni: Ibn Qudama Al Maqdesi. Part 6, P 386 Part 8, P 186.

(5) Fath Al Bari, Part 5, P 402. Detailed statement contained by Al Biyhaqi in his book, Al Sunan Al Kobra, Part 6, P 163.



### **Literature:**

1. Ali Mohieddin Gargdagi: Financial Estate OF Endowment or Legal Personality, published on the website of his eminence [www.gargdagi.com](http://www.gargdagi.com) In this research, the great Sheikh addressed the financial estate of endowment or legal personality in the Islamic jurisprudence, comparing it to the Islamic jurisprudence.
2. A research titled, Judgment on Borrowing for or on Endowment and Its Controls, published on the website of his eminence [www.gargdagi.com](http://www.gargdagi.com). The great Sheikh addressed that endowment debts shall not be due on endowment superintendent who borrows or lends, but they shall be due on such endowment as a legal personality.
3. Right and Financial Estate and the Effect of Death upon Them, by Sheikh Ali Al Khafif, published by Dar El Fikr Alarabi, Cairo. In this book, he addressed the financial estate in Islamic jurisprudence and when it expires. Then, he addressed the moral right, the legal personality, and the right of beneficiaries from endowment.

### **Research Approach:**

The Researcher followed the descriptive approach, as he documented the scientific information from its sources in a manner aiming to verify the idea, judgment, and attributing sayings to the persons who said them, and Hadith (Prophetic traditions) authentication, whether they are listed in Al Sahihain (Al Bukhari Book and Muslim Book) or one of them. This method requires to conduct interpretation by adding some pieces of information and explanation of texts when necessary. It also doesn't ignore assessment and criticism.

We also benefited from the deductive approach, as it depends on facts or Shariah general rules to deduce sub-issues. Those two approaches are integrated with the inductive approach starting out from partial and sporadic facts to conclude to general and aggregate facts.

Then: This research includes four sections:

Section 1: Definition of Endowment and its Legal Personality.

Section 2: Endowment Transactions of Sale, Purchase, and Istisna'.





Section 3: Some Agreements of Contemporary Endowment Financial Transactions.

Section 4: Borrowing and Lending for Endowment.

**Section 1: Definition of Endowment and its Legal Personality.**

**Subdivision 1: Endowment Definition, Judgment, and Framing.**

**Part 1: Endowment Definition**

1. Endowment Linguistic Definition

Linguistically, endowment means: keeping from disposal, such as: I endowed something: i.e. I kept it. This also includes: endowed capital, as people kept it for calculation. Thus, the word «endowment» has become common and it means endowed capital. Endowment is expressed by keeping (Al Habs). In Morocco, there's the Minister of Ahbas. So, endowment is to keep a property as owned by its endower and give alms from its returns and consecrate such returns <sup>(1)</sup>. Someone endows property and the action is endowing. He/ she kept it: consecrated its returns <sup>(2)</sup>

2. Endowment Technical Definition

According to Abu Hanifa<sup>(3)</sup>: to keep a property as owned by its endower and give alms from its returns for charity channels. Accordingly, it is not necessary that the endowment is not owned by the endower and such endowment may be revocable and sold as Abu Hanifa sees that endowing is permissible not obligatory as a borrowed property <sup>(4)</sup>.

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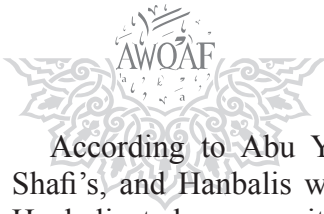
(1) Economic Terms Dictionary, Dr. Nazih Hammad, P 2 Movable Endowment and its Importance in Contemporary Islamic Investments. Dr. Ahmed Muhammad Al Zarqa: The Institute, P 21, 22. Endowment, Dr. Muhammad Abd Al Hakim Zaer: Islamic Economy Magazine, Version 194, P 42 The Endowment, Economic Analysis, Dr. Shawqi Ahmed Donia: P 29 Islamic Economy and Contemporary Juristic Issues, Dr. Ali Ahmed Al Salous: Part 2, P 939 -940.

(2) Lesan Al Arab, The Great Scholar, Jamaledin Ibn Manzour Al Afriqi Al Mesry, To Make.

(3) He is: Al Nouman Ibn Tabit Al Taimi Al Kufi, Imam of Hanafis and the founder of the Hanafi School. He is a jurist, Mujtahid, verifier, and one of the four Imams. He is an Iraqi Jurist and Imam of opinion scholars. He was born in Kufa in 80 AH, 699 and grew up there. He died in 150 AH Tabaqat Al Huffaz: Al Siouti 1/80-81. Jurisprudence Basics, History, and Jurists, P: 43-45.

(4) The right opinion is that of Al Sahebain.





According to Abu Yusuf and Muhammad Ibn Al-Hassan, Hanafis, Shafi's, and Hanbalis whose opinion is agreed by Hanafis, Shafi's, and Hanbalis: to keep a capital which may be benefited from it and its property so that it shall not be disposed by the endower or any other person for a permissible disbursement channel.. Otherwise, returns of such capital shall be spent on good deeds to make the worshipper closer to Allah, Almighty. Such capital shall not be owned by such endower, but it shall be kept for Allah, Almighty. It means that such capital is no longer owned by such endower or transferred to any other person. <sup>(1)</sup>According to Malikis: to keep a property owned by an owner, which is leased or its returns are in Dirhams for a beneficiary and for a term specified by the endower. This means that such owner shall keep such property without any ownership disposal and mandatorily donate its returns for a charitable channel and such property shall be owned by such endower for a specified term <sup>(2)</sup>.

## **Part 2: Endowment Judgment and Framing**

Hanafis see that endowment is permissible on the grounds that it is permissible to be provided by unbelievers. It may be obligatory through vow, so that the endowed property or the price thereof shall be given in charity. If such property is endowed for persons who are not beneficiaries of Zakat such as fathers, grandfathers, children, and grandchildren, endowment shall be permissible by Shariah, as it is issued by the competent endower. However, the vower shall not be exempted from vow through endowment, as the obligatory alms shall be exclusively for Allah and giving them for persons whose witness for the endower is impermissible benefits him. Therefore, it is not exclusively for Allah, Almighty. In addition, if such endower pays to such persons expiation or Zakat, it shall be considered as voluntary alms and they shall be due thereon. <sup>(3)</sup>

Abu Hanifa judged endowment as permissible and not obligatory, as it is considered a non-obligatory donation except for cases previously excluded by him. It resembles non-obligatory lending, so it is revocable at

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(1) Mughni Al Muhtaj: Part 2, P 376, Kashaf Al Qena', Part 2, P 267.

(2) Al Sharh Al Kabir, Part 4, P 76, Al Forouq: Part 2, P11.

(3) Dr. Hasib Khaireidin, Forum: Endowment System in the Civil Society in the Arab World, P 306



any time. Endowment shall be invalid at the death of endower and it shall be inherited, as the case of lending. <sup>(1)</sup>

For Malikis, the right to own endowed property shall not be terminated, but the disposal of it shall be terminated. They proved keeping on the ownership of the endowed property via the Hadith, in which Allah's Messenger, (peace be upon him) said to Umar (may Allah be pleased with him) «If you wish you can keep it as an endowment to be used for charitable purposes». This Hadith refers to giving alms from the returns and keeping on the endowed capital ownership by the endower. <sup>(2)</sup>

For Muhammad Ibn Al Hassan, Shafi's, and Hanbalis,<sup>(3)</sup> if it is valid, it shall be obligatory and shall not be terminated through revocation or any other form. The disposal by the endower of such endowment shall be terminated and it shall be irrevocable. So, the endower shall not own the endowed property.

## **Subdivision 2: Legal Personality, its Characteristics, and its Juristic Reference**

### **Part 1: Legal Personality**

Legal personality differs from the real natural personality of a person, whose personality is formed since his creation in his mother's uterus, provided that he is born alive. In this case, such person shall have incomplete eligibility of entitlement and shall have complete eligibility when he is born. Then, he/ she shall have incomplete eligibility of disposal at the age of awareness and complete eligibility of performance at the age of adulthood and discretion. In its way, such natural personality experiences many phases and consummates by death.<sup>(4)</sup>

It is the eligibility of a group or social being who has rights and assumes duties. On the other hand, a legal personality is a capacity provided by law to a group of persons or a set of capitals established for a certain purpose,

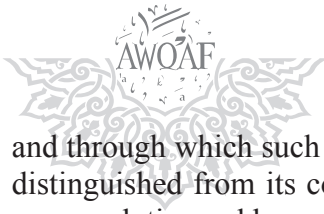
(1) Ibid P 394, Al Sharh Al Kabir, Part 4, P 76, Al Forouq: Part 2, P11.

(2) Al Sharh Al Kabir: 4/75, and Al Shahj Al Saghir 4/107.

(3) Fath Al Qadir 5/45 Al Muhazab: 1/442, Kashaf Al Qena': 4/278 Ghaiyat Al Montaha: 2/325.

(4) Prof. Dr. Ali Mohieddin Gargdaghi: Principle of Consent in Contracts, (1/263-348)





and through which such capacity, such group or set shall be a new person distinguished from its components. Such new person shall be eligible to assume duties and have rights <sup>(1)</sup>.

So, legal personality is a capacity that shall not be acquired without law. It shall have rights and assumes duties, as various laws set forth that any legal person shall have all rights, excluding those related to the natural person within the limits decided by the law. So, any legal personality shall have:

- (A) Independent financial estate.
- (B) Eligibility within the limits specified by its memorandum of association or decided by the law.
- (C) Litigation right
- (D) Independent domicile.

Its domicile is the place where its headquarters is located. The companies which headquarters is abroad and practice activities in their countries, their headquarters shall be, according to the law, the place where the local management is located and it shall have a representative expressing its intention.

In juristic terms, our jurists declared that the financial estate, which is the focus of eligibility, is one of characteristics distinguishing human beings from other creatures. If we review juristic books, we will find that some institutions, such as treasury (Bayt Al Mal) and endowments have rights and assume duties.<sup>(2)</sup>

Legal personality in endowment is based on endowment ownership and specifically to the saying that endowment ownership of the endower is terminated and it is not owned by endowment beneficiaries. This means that endowment has a financial estate independent from the financial estates of both the endower and the endowment beneficiaries. Therefore,

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(1) Dr. Amer Abdulaziz: Introduction to Law Study P 186-187 and Dr. Al Kaiyat: Companies (1/213) and Dr. Al Sanhour: Al Wasit (5,2/288).

(2) Ali Mohieddin Gargdagh: Research of Endowment Legal Personality or Financial Estate, posted on his website gargdagh.com: [wwwhttp//](http://www.gargdagh.com).



the majority of jurists for example permitted to borrow on endowment. Hanafis rejected that but they adopted the saying again for the sake of interest. They permitted it for interest, as Al Dur Al Mukhtar contained that: Borrowing on endowment shall be impermissible, unless it is required for endowment interest, such as reconstruction and buying seeds. In this case, it shall be permissible on two conditions: a judge permits that and the endowed property leasing and spending from its rent are not available.<sup>(1)</sup>

Endowment, according to the temporary jurists, is “legal person having an independent financial estate.”<sup>(2)</sup>

In addition, jurists permitted endowment superintendent, taking into consideration «endowment legal personality», to lease for such endowment and buy for it on terms. All such transactions shall be related to the «endowment financial estate» rather than the superintendent’s financial estate.<sup>(3)</sup>

## **Part 2: Characteristics of Legal Personality**

Any endowment as a legal person has many characteristics as follows:

- A. Financial estate independent from the financial estate of endowment superintendent, endower, and endowment beneficiaries: The Arabic translation of estate is (dhemma), which means promise, security, and warranty. The word Dhemmy is derived from it. It means a promised person. It is (a description of a person having rights and assuming duties)<sup>(4)</sup>. In the law, it is expressed as legal personality. Contemporary jurists almost unanimously agree that endowment has financial estate as well as legal personality in the modern sense within the limits consistent with Islamic Shariah. Its characteristics are the set of present and future

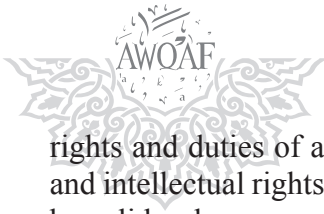
(1) Al Hasafki: Al Dur Al Mukhtar, Part 4, P 489, Al Trabulsi, Al Es’af, P 61.

(2) The Book of Set of Egyptian Laws Selected from Islamic Jurisprudence: Endowment Law, Sheikh Muhammad Ahmed Faraj Al Sanhoury, P 819 et seq.; the Book of Right and Estate, Sheikh Ali Al Khafif; Introduction to General Commitment Theory in the Islamic Jurisprudence, Sheikh Ahmed Muhammad Al Zarqa; Financial Estate in Islamic Jurisprudence, Dr. Ahmed Ali Abdullah

(3) Al Khayat: Companies, Part 1, P 217.

(4) Al Mujadidi Al Barkati: Juristic Definitions, P 300. Al Jirani: Definitions, P 143.





rights and duties of any person, such as rights in rem, personal rights, and intellectual rights. Financial estate is inherent to the person and will be valid as long as such person is existent. Financial estate is necessary to provide guarantee for creditors.

- B. Civil eligibility to acquire and use rights within the limits identified by law. There are two types of eligibility: eligibility of entitlement and eligibility of disposal: So, eligibility of entitlement is the eligibility of a person to have a right or assume a duty. Eligibility of entitlement is related and inherent to the legal personality, whether it is existent or not.

On the other hand, eligibility of disposal is the power of a person to undertake legal actions entitling such person rights or resulting in duties assumed thereby, such as selling, leasing, and other transactions. The eligibility of disposal is related to the realization and understanding of such person. It is only inherent to a person having some extent of understanding allowing such person to act legally. So, a person of full realization and understanding has full eligibility of disposal and a person lacking realization and understanding does not have any eligibility of disposal, and a person of incomplete realization and understanding has incomplete eligibility of disposal.<sup>(1)</sup>

- C. Right to litigation and filing cases against others: on the other hand, others have the right to file cases against such person as a legal person.
- D. The legal representative, who is the endowment superintendent, or the person identified by the endowment instrument, judiciary, or endowment administration in accordance with its articles of association: such person shall have the same rights and duties of the representative of a natural person <sup>(2)</sup>. Such representative shall also have the right to claim for his / her rights, litigation, and disputing. This was declared by the majority of most of our jurists. They declared that the institution benefiting from endowment shall be entitled to claim for compensation,

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(1) Prof. Dr. Othman Ahmed Othman: The Book of Al Wajiz of Introduction to Law, First Edition, Khartoum, 2006, P 130,131..

(2) Sharh Tohfah Al Ahkam, Ibn Maiara (2/135 et seq), Al Rawda (5/328-352), and Al Mughni, Ibn Qudama (5/597) et seq. Definition and Characteristics of Financial Estate.

guarantee, and preemption. In addition, the lease agreement shall not be terminated due to the death or dismissal of the endowment superintendent. The endowment superintendent shall be entitled to borrow. <sup>(1)</sup>- So, the effects of disposal by such superintendent shall not relate to the personality but to the capacity thereof. On the other hand, endowment shall not be affected by the disposals made by the superintendent unless they are allowed. There are other provisions such as legal effects of the legal personality. This is known as endowment superintendence. It is the administration caring for the interests of endowment through maintaining its assets, exploiting it, investing its properties, and disbursing its returns according to the conditions of its endower. So, the person assuming such superintendence is called endowment superintendent.

- E. The persons entitled to assume endowment superintendence are <sup>(2)</sup>:- the endower, trustee of such endower, and judge on behalf of a ruler. Al Hasafqi summarized that when he said: (Superintendence by the endower is unanimously permissible.... Then, it is permissible by the trustee thereof, if any; otherwise, by the ruler) <sup>(3)</sup>.

### **Part 3: Juristic Reference of Endowment Personality**

As for the juristic reference of the endowment personality through comparison between the *dada* mentioned in the comparative jurisprudence and the *dada* mentioned by the Islamic Shariah jurists, we will find that the legal effects are very convergent and any endowment has financial estate and legal personality. We will give some examples of that as follows:

1. Jurists permitted that mosques and other public institutions to be beneficiaries of endowments. They also saw that it is permissible to dedicate grants for them and left wills for them. This indicates that such endowment

(1) Hashiat Ibn Abdin (4/439)/ Al Ashbah Wa Al Naza'er, Ibn Nujaim P 193-202, Fatawa Qadikhan (3/293), Al Kharshi (7/33), Al Rawda (5/238-352), Tohfah Al Muhtaj (6/289), Al Mgughni (5/646).

(2) Al Hasafki: Al Dur Al Mukhtar, Part 4, P 379, Al Hattab: Mawaheeb Al Jalil, Part 6, P 37, Al Shirazi: Al Muhazab, Part 1, P 445-446; Al Khatib Al Sherbini: Mughni Al Muhtaj, Patr 2 P 393; Ibn Qudama: Al Mughni, Part 8, P 236-237, Al Trabulsi: Al Es'af, P 53.

(3) Al Dur Al Mukhtar, Part 4, P 379,

institutions have financial estate, at least according to the jurists who saw that it is permissible to transfer the ownership of the endowment from the endower in case of endowment for unspecified beneficiaries. This is the opinion of Abu Yusuf and Muhammad Ibn Al-Hassan. Imam Abu Hanifa has the same opinion in terms of mosques, especially after the performance of prayer in them. This is also the opinion of Shafi's and Hanbalis according to the true orientation of the juristic school<sup>(1)</sup>.

They said that mosques shall be exclusively for Allah, Almighty, and nobody shall have a right in them, taking into consideration that everything is for Allah. So, this addition indicates that there is no right to anybody but Allah<sup>(2)</sup>.

They said that it is probably that the ownership of endowment shall be transferred to Allah, Almighty, and shall not be owned by any human being, whether an endower or an endowment beneficiary<sup>(3)</sup>.

This text is very clear that the transfer of ownership shall be to Allah, Almighty. In addition, neither the endower nor the endowment beneficiary shall own such endowment. Consequently, such endowment shall have a legal personality requiring a representative thereof. This idea is indicated by the deduction mentioned by Shafi's jurists that the recurring charity endowed for serving a public institution shall be supported by the ruler if we say that endowment shall be owned by Allah, Almighty. This idea is also indicated by our saying that endowment shall be owned by Allah, Almighty, and supported by the ruler who shall take be permitted by the endowment beneficiary; otherwise, its superintendent will be asked for such permission. This shall be applied if such endowment is damaged, as the beneficiary of such endowment does not own the value thereof, but the ruler or the representative thereof shall buy an alternative of it based on the fact that it is owned by Allah, Almighty.<sup>(4)</sup>

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(1) Fath Al Qadir with Sharh Al Enaiya (6/00233), Al Sharh Al Saghir (4/97), Mugni Al Muhtaj (2/389), and Al Mugni (5/546).

(2) Fath Al Qadir (6/235).

(3) Sharh Al Muhala (3/106-107)

(4) Sharh Al Muhalla Ala Al Menhaj with Hashiati Al Qalioubi and Umairah 3/106-107(.



Moreover, Sahfi's built on the probable opinion that decision on endowment shall be exclusively issued by the judge unless the endower requires to entitle such decisions to himself or another person.<sup>(1)</sup>

2. The majority of jurists saw that the public institutions benefiting from endowments may be owned, as Malikis saw that the public institution, such as a mosque, is eligible to own or to be owned, as it is permissible to endow an owned thing, i.e. what owned and can't be sold by their owners, such as sacrifice skin, hunting dogs, etc. In this regard, they indicate that the endowment beneficiary has to be eligible to own as a mosque (legal person) or as a human being (natural person).<sup>(2)</sup> This opinion entitle the public institution (such as a mosque) to have an eligibility to be owned and to own, as a legal person. This is the main characteristic of the legal personality, which has the eligibility of entitlement (to be owned) and disposal (to own). It is represented by a natural person in accordance with the provisions of Shariah, and laws related to endowment, companies, and institutions). The owned endowment shall be valid and shall not be based on a verdict of a judge, even if through keeping for the natural owner (such as Zayed and poor) or a legal owner (such as a mosque), such as the persons who will be born, i.e. even if the eligibility is expected, endowment shall be valid and yields shall be kept<sup>(3)</sup>. This last phrase indicates, in addition to the aforementioned, that endowment may be existent, even if endowment beneficiaries are not existent yet. This clearly proves that endowment is a legal personality.

Shafi's see that the mosque is free and entitled to own. They said that it is permissible to dedicate a will for a mosque construction, fighting in Allah's cause, and a school. This also applies if endowment is absolute such as saying: «I dedicated it to the mosque», even if he intends to transfer ownership to it on the grounds that endowment is free and entitled to own<sup>(4)</sup>. An-Nawawi supported the saying of Al Rafi' that the mosque is entitled for

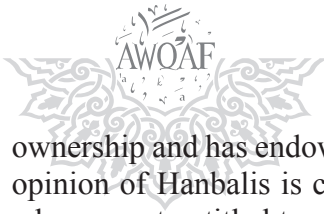
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(1) Ibid (3/109).

(2) Sharh Al Kharshi Ala Mukhtasar Khalil (7/79-80).

(3) Hahashiat Al Dosouqi Ala Al Sharh Al Kabir (4/75-77)

(4) Nehaiyat Al Muhtaj(6/47-48).



ownership and has endowment. Then he said: (It is true) <sup>(1)</sup>. In addition, the opinion of Hanbalis is closer to that. They said: Endowment for persons who are not entitled to own such as angels and Jinns is impermissible, as endowment is a transfer of ownership. So, it is impermissible for persons who are not entitled to own. Therefore, if it is said «you permit endowment for mosques and water facilities .... Etc. although they are not entitled to own», we would say that endowment here is for Muslims, and it is dedicated to their benefit) <sup>(2)</sup>. So, this text proves that the public institution is entitled to own. To own and to be owned are effects of eligibility and financial estate which both characterize the legal personality.

3. One of the most important legal effects of the legal personality currently is that the public institution is entitled to claim for its rights, litigation, and dispute. This was declared by the majority of jurists. They declared that the institute benefiting from endowment shall be entitled to claim for compensation, guarantee, and preemption. In addition, the lease agreement is not terminated due to the death or dismissal of the endowment superintendent. The endowment superintendent shall be entitled to borrow <sup>(3)</sup>, so that the effects of disposal by such superintendent shall not relate to the personality thereof, but to the capacity thereof. On the other hand, endowment shall not be affected by the disposals of the superintendent unless he is allowed. There are other provisions resulting from the legal effects of legal personality.

The aforementioned indicates that the reverent jurists made significant strides in those old ages. So, there is no Shariah impediment to benefit from the human and legal experiences in this field. The legal personality developed in the light of the contemporary laws provided endowment with the legal personality and decided that all endowed capitals are owned by it. This entitles the endowment institution to take all decisions of disposals, including sale, purchase, granting, and other disposals according to their

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(1) Rawdat Al Talibin (5/106-107) and Sharh Al Muhalla Ala Al Qalioubi and Umairah 3/159

(2) Al Mughni (5/646).

(3) Hashiat Ibn Abdin (4/439)/ Al Ashbah Wa Al Naza'er, Ibn Nujaim P 193-202, Fatawa Qadikhan (3/293), Tohfat Al Ahkam, Ibn Maiara (2/135), Al Kharshi (7/33), Al Rawda (5/238-352), Tohfat Al Muhtaj (6/289), Al Mughni (5/646) and refer to: Principle of Consent in Contracts, (1/354)



regulations and the laws regulating their disposals. So, as wisdom is the goal of a believer, we have to benefit from these developments in order to develop endowment institutions and conclude to the decisive saying that endowment has a legal personality and that the absolute ownership of the endowed property shall be transferred to it, so that it can have an organized independent administration in the light of its regulations and laws regulating it. It is to take into consideration the particularity of endowment concerning perpetuation and on the like rulings, so that the administration shall not dispose as an absolute owner, especially in terms of substitution (Istibdal). But, it shall act as a superintendent, who complies with conditions, regulations, and considerable interests.<sup>(1)</sup>

## **Section 2: Endowment Transactions in Sale, Purchase, and Istisna'**

### **Subdivision 1: Endowment Transactions of Sale and Purchase**

Sale is conducted through exchange (Ibdal) according to the ten conditions of the endower: to sell one of the endowment properties in exchange for an amount of money or other properties. On the other hand, substitution (Istibdal) means to buy a property for an endowment against the amount of money in exchange for which one of its properties is sold in order to be an endowment instead of it. Some jurists consider Ibdal as barter and Istibdal as selling a property against an amount of money and purchasing another property against the same amount of money. Jurists call Ibdal as commutation (Monaqala). So, Al Dardir defined it in the Preemption Section as: (Monaqala: to sell a property in exchange of another equivalent property)<sup>(2)</sup>.

Judgment on Ibdal and Istibdal: The views of jurists disagree concerning endowment Istibdal, as some of them tended to put restrictions on it while others permitted it.<sup>(3)</sup>

Malikis: They said that any endowed property is either a movable endowment (anything rather than a real estate) or a real estate endowment.

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(1) Ali Mohieddin Gargdagi: Endowment Legal Personality or Financial Estate, Ibid, P 19, 18.

(2) Al Dardir: Al Sharh Al Kabir, Part 3, P 476.

(3) Refer for more details to: Istibdal Thesis, Dr. Al Ayyashy Al Sadeq Fadad, P 7.





For movable endowment, they permitted to substitute it through sale. Al Sharh Al Saghir stipulated that: (To sell any kept endowments which are not useful... such as a garment, an animal, an old slave, and obsolete knowledge books which are not useful in a school and dedicate their prices for endowments equivalent to them if possible or equivalent to a part of them if not possible to fully purchase... If not possible, give the price in charity).<sup>(1)</sup> Regarding animals, he said: (If a person endows some cattle, so that their milk, wool, and fur are benefited, their offspring shall be kept as the case with parents. On the other hand, their males, other than those performing mating, and old females shall be sold for the benefit of their young females, as they are more useful)<sup>(2)</sup>.

As for real estate, it shall be impermissible to sell a real estate even if it is ruined and becomes non-useful, whether it is a house, shop or otherwise and even if it is substituted with another equivalent real estate, which is not ruined <sup>(3)</sup>. Al Sawi commented on his annotation «Boulghat Al Salek» on the saying of Al Dardir as follows: Regarding (his saying «even if it is ruined»), he indicated the saying of Malik in Al Modawana that the real estate shall not be sold even if it is ruined and the remaining endowments of the predecessors serve as an evidence of that. In relation to the reply of using (if) in the narration of Abu Al Faraj of the saying of Malik, the opinion of the Imam indicates that selling that for an interest is permissible and the price thereof shall be paid for a similar property and this is the same opinion of Abu Hanifa)<sup>(4)</sup>.

For Shafi's, they disagreed on the sale of the endowed capital if it becomes non-useful, as some of them permitted it and some of them prohibited it. If the endowed property is a mosque, even if real estates surrounding it are destroyed and people abandoned them, and such mosque is deserted, it shall not be sold <sup>(5)</sup>.

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(1) Al Dardir: Al Sharh Al Saghir, Part 5, P 412 and refer to Al Senousi: Al Rawd Al Zahir, P 20, 21.

(2) Ibid on the same pages

(3) Al Dardir: Al Sharh Al Saghir, Part 5, P 414.

(4) Ibid, P 414.

(5) Al Nawawi: Rawdat Al Talibin, Part 5, P 356-358.



For Hanbalis, they classify endowment in this regard to two types:

Endowment of activated benefits: This may not be absolutely sold or commuted. It was set forth in the narration of Ali Ibn Saeed, who said: It shall not be substituted or sold.

Endowment of inactivated benefits: It may be exchanged or substituted. Abu Taleb said: Endowment status shall not be changed and it shall not be sold, unless it becomes non-useful. This is the opinion of the Hanbali scholars. Sheikh Taqieddin permitted that for an interest. He said: It is the reasoning of guidance <sup>(1)</sup>.

The jurist writing on Monaqaala in the first type detailed his opinion. He saw that if the endowment benefits are activated and there is a preponderant interest for such endowment and its beneficiaries in executing Istibdal agreement, such agreement shall be invalid as there is no interest for the endowment institution in such matter. This shall be the case if the interest in its substitution is not preponderant or refuted. While, if the interest is preponderant for such endowment and its beneficiaries to execute Monaqaala and Istibdal agreement, this is acceptable in Imam Ahmed's Juristic School <sup>(2)</sup>.

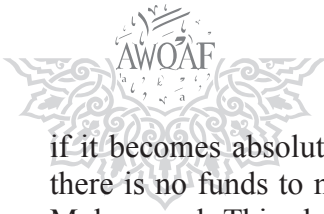
For Hanafis juristic school:, the right of Istibdal and Ibdal shall be based on four factors <sup>(3)</sup>:

1. The right of Ibdal and Istibdal is vested in the endower if such endower requires that for himself.
2. The right of Ibdal and Istibdal is vested in the endower or any other person if such endower requires to engage such person in this right. Ibn Abdin permitted Ibdal and Istibdal in the previous forms and this was unanimously agreed upon.
3. The right of Ibdal and Istibdal is vested in the judge if the endower does not require it as such judge has general jurisdiction. So, such judge may in this case exchange or substitute endowment when necessary,

(1) Al Merdawi: Al Ensaf, Part 7, P 101.

(2) Ibn Qadi Al Jabal: Monaqaala Wa Istibdal Belawqaf, P 48,47.

(3) Refer to: Ibn Abdin: Al Hashia, Part 4, P 384, 385..



if it becomes absolutely unbeneficial and does not meet its costs and there is no funds to maintain it. This is the opinion of Abu Yusuf and Muhammad. This shall be the case for an interest, so that a property is substituted with another more beneficial one. It was narrated on the authority of Muhammad that he said: If an endowed land can't be exploited and its trustee (i.e. its superintendent) finds another land more beneficial for poor people and yields more returns compared to its price, he may sell such land and buy another land. <sup>(1)</sup>. Ibn Abidin also said about this form that Istibdal shall not be permitted and this is a more correct opinion.

4. In case a person seizes the endowed property and such person repays its price, the superintendent shall buy another property.

#### **Subdivision 2: Endowment Transactions of Istisna'**

Istisna' is one of Shariah agreements adopted by Hanafis. It is included by other juristic schools in Salam and called by them as (Salam in Industries). Its form which may be applicable to reconstruct endowment under the so called (Istisna' or Parallel Istisna') and sometimes (Financing Istisna') in the contemporary Islamic banking application. The procedures of applying this form in endowment reconstruction include the initial agreement with a contractor to construct a real estate on an endowed land. Then, a third party shall be resorted to finance the construction in accordance with an Istisna' agreement concluded between the endowment institution as Mostasni' and the financier as Sani' against a certain amount. Then, such financier will conclude a parallel Istisna' agreement with the contractor for construction and pay the value of construction to such contractor according to the percentage of construction completion in the approved quittances. It shall be taken into consideration that the value of the first Istisna' agreement between the endowment institution and the financier is higher than the value of the parallel Istisna' agreement concluded between the financier and the contractor. Then the difference of such values shall serve as a profit for the financier. The endowment institution shall pay long-term periodical installments to the financier. Such installments shall be specified in the

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(1) Investment in Endowment, its Yield, and its Returns. Muhammad Abd Al Halim Omar, P 21

form through which the endowment institution can pay from returns or rental value of such building. A part of such returns or rental values shall be dedicated to endowment beneficiaries. <sup>(1)</sup>

Shafi's jurists see that Istisna' is a form of Salam <sup>(2)</sup>. In addition, Hanafis differentiated between both forms and made Istisna' an independent form. It has been known since the age of the Prophet (peace be upon him) and was applied practically in various ages.

The form of using Salam to invest endowment funds is materialized in the form that an endowment superintendent pays an amount of funds endowed therewith to buy a certain product such as wheat with certain specifications and usually at a cheap price. Upon receipt of such product and after some months for example, he will sell it at a higher price. Then such profit shall serve as an income for such endowment and its beneficiaries <sup>(3)</sup>.

A Shariah standard was issued for Istisna' agreement according to this vision (Istisna' and parallel Istisna') included in the Shariah standards issued by the Shariah Board at the Accounting and Auditing Organization for Islamic Financial Institutions <sup>(4)</sup> and such agreement was permitted in accordance with certain controls. This Istisna' agreement has been actually applied to finance constructing many private buildings by Islamic banks, such as Qatar Islamic Bank <sup>(5)</sup>. It was also used to finance endowment reconstruction in the Kingdom of Jordan <sup>(6)</sup>.

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(1) Ibid, P 21

(2) Ibn Nujaim: Al Bahr Al Ra'eq, Part 5, P 223.

(3) Abdullah Bin Mousa Al Amar: Investment of Endowment Funds, P 108.

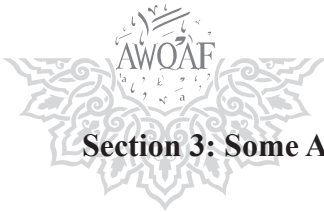
Shariah Standards Volume, The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), Standard No. 11 - 1424 AH, 2003, P 181-192.

(4) Shariah Standards Volume, The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), Standard No. 11 - 1424 AH, 2003, P 181-192

(5) Dr. Ali Ahmed Al Salous: Ibid, 2/938

(6) Investment in Endowment, its Yield, and its Returns, Ibid, P 20..





### **Section 3: Some Agreements of Contemporary Endowment**

#### **Financial Transactions**

New agreements of contemporary financial transactions were figured out by contemporary scholars and jurists. These innovative contemporary forms may be used in the financial real estate of endowment to invest endowment capitals in order to achieve the best yields and returns. Endowment beneficiaries, the society, and the nation can benefit from such yields and returns. These agreements include Sharing (Musharaka) Ending with Ownership, Lease (Ijarah) Ending with Ownership, Sharing in Capitals of Companies (such as shares, Sukuk, and Loan (Muqarada) Bonds), and Investment at Islamic financial Institutions (such as Islamic banks, Islamic Investment Institutions, Islamic Funds Institutions, and the like) <sup>(1)</sup>. These forms were presented to the Islamic juristic academies, which permitted them and developed for them Shariah controls governing their use. They require to be formulated in Shariah evidence so that they serve as a guide in practical application <sup>(2)</sup>.

#### **Subdivision 1: Muqarada Bonds:**

It is a tool providing the finance necessary to reconstruct endowment properties through issuing bonds for the public to share through paying a specified amount of money, in order to reconstruct and invest endowment lands for lease, housing ... etc.<sup>(3)</sup>. This form is based on Shariah speculation (Mudaraba) agreement between the endowment institution as a speculator and Sukuk holders as owners of capitals. This will be clear if there is an endowment land, which is not exploited and there is no self-finance to reconstruct it and build on it. Then, a feasibility study shall be prepared, in which the amount of money necessary for building shall be specified. Such amount shall be divided into small categories for which the endowment institution shall issue Sukuk in a nominal value of amount categories.

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(1) Dr. Ali Ahmed Al Salous: Ibid, 2/938 -

(2) 998 Researches submitted by the Jordanian Ministry of Awqaf to the Endowment Development Forum held in Nouakchott 1418 AH, 1977, P 3

(3) Dr. Shehata: Resaeach submitted to Awqaf Magazine, Volume 6, P 90, and Investment in Endowment, Umar 31.





Such Sukuk shall be issued for public subscription by some financial institutions, provided that the endowment shall receive Sukuk in the value of the land. The total amount shall be used to construct the building and lease its units. Then, from the total rental values, a return shall be paid to Sukuk holders, including the endowment institution, according to the value of Sukuk of each in proportion to the rental value. In addition, the endowment institution shall have a share of a speculator in return for management. Meanwhile, the endowment institution shall recover Sukuk periodically through paying their values to their holders from the return it gains, as such Sukuk are consumed at the end of the term. Then, the buildings and the land shall be owned totally by the endowment and such Sukuk may be traded in the secondary market of securities. This form was applied in the Hashemite Kingdom of Jordan in accordance with Law No. 10 of 1981 under the name of «Muqarada Bonds», which identified the institutions allowed to issue bonds, including the Ministry of Awqaf, Public institutions of financial independence, and municipalities. Actually, the Jordanian Ministry of Awqaf issued Muqarada bonds to construct buildings on endowment lands owned by it <sup>(1)</sup>.

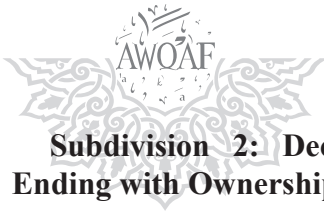
Muqarada bonds significantly drew the attention of Islamic jurists and economists. Muqarda bonds form was studied in the International Islamic Fiqh Academy at Jeddah in its third session. Then, an independent forum was dedicated to it in the fourth session to complete its study. This form was applied by the Islamic Development Bank in Jeddah <sup>(2)</sup>.

Muqarada bonds form itself is an appropriate form in the light of the contemporary changes and the general dependence concerning finance on the concept of finance democracy. In addition, finance is provided periodically from returns and it also provides a financing tool that may be traded in compliance with the juristic controls of the speculation agreement, which are set by the Islamic Fiqh Academy.

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(1) Investment in Endowment, its Yield, and its Returns. - Ibid- P 20

(2) Contemporary Orientations of Developing Endowment Investment: Dr. Ahmed Muhammad Al Sa'd and Muhammad Ali Al Umari, P 80.



## **Subdivision 2: Decreasing Sharing (Musharaka Motanaqesa) Ending with Ownership:**

It is sharing under which the financier enables the partner to acquire its share in the project ownership, whether at once or gradually, according to the agreed conditions <sup>(1)</sup>. The forms of decreasing sharing can be diversified in endowment real estates, hotel apartments, large malls, and tourist resorts, provided that Shariah provisions in terms of lawfulness and unlawfulness shall be observed <sup>(2)</sup>.

Some Hanbali jurists see that it is permissible to reconstruct an endowment, using the returns of another endowment with the same beneficiaries. It was narrated on the authority of them that if the endowed capital is sold, its price shall be spent on a similar or somewhat similar capital. Ahmed said «as it is closer to the purpose of the endower». He added: «The saying of Al Kharqi may indicate that it is not necessary for the other capital to be similar and Al Kharqi confined to such similarity in Al Mughni and Al Sharh, as the purpose is the benefit. However, such benefit has to be dedicated for a prioritized interest, as the change of the disbursement channel with the ability to maintain it is impermissible. So, if a horse can't be used for fighting, it shall be sold and its price shall be paid to buy any equipment usable in Jihad (fighting in Allah's cause). It was also narrated on his authority that: Such endowment price may be spent on endowment animals and the remaining mats and oil may be granted to another mosque and giving them in charity to poor Muslims.... Sheikh Taqieddin supported this opinion and added: For other interests and to build houses for the beneficiaries of its returns.... <sup>(3)</sup>.

These advisory opinions of the scholars of both juristic schools permitted to consider all endowment institutions as one institution of one financial estate according to the considerable interests. The preponderant opinion is that this has to be within the limits of exceptions and the main rule is the independence of each endowment, except for a preponderant interest. This

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(1) Al Amar, Ibid, P108 .

(2) Methods of Developing Endowment Capitals, P 32, Endowment and its Role in Development, P 79, Endowment System, P 57.

(3) Prof. Dr. Muhammad Al Zuhailai, Ibid, P 19.



was supported by Sheikh of Islam, Ibn Taimia, as he related the disposal of endowment capitals to the preponderant interest more than anything else. He said, after declaring the permissibility of changing and selling endowment: «The endowment interest shall be followed and it shall be managed according to the interest wherever it is. It was proven that the rightly-guided Caliphs such as Umar and Othman changed the form of endowment for an interest. Moreover, Umar transformed Kufa Mosque to be the Dates Sellers (Tammarin) Market and built a mosque in another place. And Allah knows best.»<sup>(1)</sup>

### **Subdivision 3: Endowment Funds<sup>(2)</sup>:**

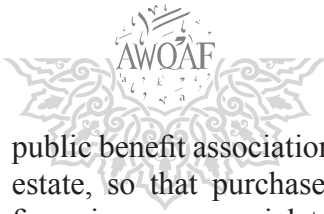
It is a new, encouraging, and serious experience applied early by the Secretariat General of Endowments in Kuwait. Then other institutions followed it. Kuwaiti Endowment Funds were established at an amount of one, two, and five Kuwaiti Dinars for many objectives, including the care of the disabled persons, health development, Quran memorization and teaching, care of mosques, scientific development, family care ... etc.<sup>(3)</sup> So: Endowment Funds are the wider scope of practicing endowment work and through them, cooperation between the non-governmental institutions and the official institutions takes place in order to achieve endowment development.

Endowment funds aim to contribute to the efforts serving the revival of the endowment Sunna through offering development projects in Islamic forms to meet the society needs and call for keeping endowments for them. In addition, such endowment funds help in properly spending the returns of the endowed capitals to meet the social and developmental needs emerging in the status quo through action programs. Such action programs shall take into consideration the generation of the highest developmental return and achieving correlation among endowment projects and between them and other projects established by the governmental authorities and

(1) Majmou' Fatawa Ibn Taimia: Sheikh of Islam, Ibn Taimia 64/8: The book source is available on Islam Website: <http://www.al-islam.com>

(2) Contemporary Orientations of Developing Endowment Investment: - Ibid, P 80

(3) Endowments in Terms of Jurisprudence and Economy, P 132, Endowment System, P 95, 98 et seq., The Role of Islamic Endowment in Developing Technological Capacity; P30,39.



public benefit associations <sup>(1)</sup>. Such endowment fund shall have a financial estate, so that purchase of real estates, shares, and various assets and financing commercial transactions will not change its nature, as all of that are investments to generate returns for such fund. So, the real estates themselves are not endowment or shares. Therefore, the contents of such fund are not fixed but they change according to the administrative policy of such fund. Such fund is always classified according to the total value of its contents in an amount of money. Such amount is the endowment. It serves as the kept property. The amounts in it are divided into small shares held by individual Muslims interested in the participation in the endowment. Returns of such fund shall be dedicated to the endowment purposes identified in the instrument of sharing in such fund under the supervision of the endowment superintendent. Such fund shall have a legal personality, as it shall be registered as an endowment. So, the endowment fund is a monetary endowment <sup>(2)</sup>.

#### **Subdivision 4: Endowment Shares<sup>(3)</sup>:**

This form was launched by ministries, authorities, and secretariats of endowment. It is a sharing in a charitable endowment through purchase of a share or a number of shares according to the financial ability. Such share shall be invested and its return shall be disbursed for certain charity channels according to such share and the intention of the shareholder. The proportion of each shareholder in a certain endowment project shall be specified and such shareholder shall not be entitled to withdraw such shares or interfere in the method of their investment <sup>(4)</sup>.

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(1) Refer to the website of the Secretariat General of Endowments in the State of Kuwait: <http://www.awqaf.org/>

(2) Muhammad Ali Elgari: Endowment Funds and their Shariah Framing. Available at the following link: <http://www.elgari.com/article81.htm>

(3) The Muslim World League Journal Issued by the Muslim World League: Volume 1855, Monday, 7/7/1425 AH, 23/08/2004, Titled "Endowment Shares" were launched in the Gulf Region since 10 years.

(4) Al Qamous Al Muhit - Mukhtar Al Sehah, Ibid, the word "دين"



## Section 4: Borrowing and Lending for Endowment

### Subdivision 1: Borrowing for Endowment

Linguistically, to borrow is to take money. The debtor is the person who borrows money or purchases on credit. Borrowing was also mentioned in the Tradition of the Prophet Muhammad, peace be upon him. <sup>(1)</sup>

Technically, borrowing, according to all jurists, is to borrow or purchase on credit. Jurists addressed borrowing for or on endowment and they set two requirements for it: existence of an interest and permission by a judge. Hanafis and Shafi's see that the superintendent may borrow on endowment for an interest with the permission of a judge. Then, such debt shall be repaid from the endowment returns <sup>(2)</sup>. In addition, Hanbalis permitted borrowing on endowment when necessary. So, they said that the superintendent may borrow on endowment without the permission of the judge for an interest .... Then such borrower shall not be required to repay such debt from properties thereof but from the endowment returns <sup>(3)</sup>.

Ibn Al Humam mentioned that borrowing takes place when the superintendent does not own anything <sup>(4)</sup>.

In addition, Al Fatawa Al Hindiya and Fatawa Qadikhan set forth that: (In case that a superintendent requires to pay land taxes (Kharaj) and other taxes and he does not have anything of endowment capitals and he wants to borrow, jurist Abu Al Qasem said: If the endower orders him to borrow, the endowment superintendent shall do. On the other hand, there are many opinions concerning the case in which the endower does not order such superintendent to borrow. The best opinion is to refer the issue to the judge to order him to borrow. This is the saying of jurist Abu Al Qasem, may Allah have mercy on him. Then, the superintendent shall repay such debt from the endowment returns). <sup>(5)</sup> Jurist Abu Laith said: (If

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(1) Prof. Dr. Muhammad Al Zuhailai, Ibid, P 20.

(2) Fath Al Qadir (6/240), Fatawa Qadikhan Behamish Al Fatawa Al Hinidiya (3/298) Al Fatawa Bazaziya Behamish Al Fatawa Al Hindiya (6/254), Hashiat Ibn Abdin (4/439).

(3) Kashaf Al Qena', (3/313 - 314).

(4) Fath Al Qadir (6/240).

(5) Al Fatawa Al Hinidiya (2/424), Fatawa Qadikhan Behamish Al Fatawa Al Hinidiya (3/297).





the superintendent finds a problem and there is no solution but borrowing, such superintendent shall borrow under the order of the judge. Then, he shall repay the debt from the endowment returns, as the judge has the jurisdiction of borrowing on endowment).<sup>(1)</sup>

Some Hanafis differentiated between borrowing for reconstruction and borrowing for another purpose. They said: Reconstruction is necessary and the superintendent may borrow for it under the permission of the judge. For other purposes rather than reconstruction, if it is for spending on beneficiaries, borrowing shall not be permitted even if the judge permits it. In addition, they said about borrowing to buy seeds on credit for reconstruction: (It is permissible for the superintendent to borrow on the endowment to buy seeds upon the order of the judge. If he does without the order of such judge, there are two opinions. If the superintendent wants to borrow on the endowment to pay a value of mortgage and the judge orders that, he can do it. Otherwise, he can't do it).<sup>(2)</sup>

Hanafis mentioned that borrowing shall be permitted if there are no yields of endowment, so the superintendent shall be forced to borrow. If such endowment has yields, he shall not borrow and shall meet the endowment needs from such yields. If the endowment yields are not collected yet and such superintendent spends from his own money, he shall recover his money from the endowment yields).<sup>(3)</sup>

In brief, all jurists of Hanafis did not permit borrowing unless in case of necessity or need and according to some controls. Some of their jurists saw that borrowing is absolutely impermissible except for cases of urgent necessities, such as destruction or serious shortage.<sup>(4)</sup>

Another group of jurists permitted borrowing for a need. They disagreed, as some of them required the approval of the judge (as the superintendent can't borrow without the order of the judge).<sup>(5)</sup>

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(1) Fatawa Qadikhan (3/297)..

(2) Al Fatawa Al Hinidya (4/424).

(3) Ibid in the same pages

(4) Fatawa Qadikhan Behamish Al Fatawa Al Hinidya (3/298).

(5) Ibid (3/297).



A third group of jurists, including Abu Al Qasem, see that borrowing is permissible under the order of the endower. So, if the endower orders the superintendent to borrow, he shall do so. If he does not issue such order and the superintendent borrows, it shall be due on such superintendent and he shall not be repaid from the endowment yields.<sup>(1)</sup>

In terms of debt, Hanafi jurists agreed on the impressibility of mortgaging endowment in return for debt. They said that the guardian may not mortgage endowment in return for debt, as this deactivates such endowment. This is also impermissible for officials in charge of a mosque. They concluded that if the mortgagee resides in the mortgaged property, such mortgagee shall incur the equivalent rent whether such property is prepared for exploitation or not, as a precaution for the endowment).<sup>(2)</sup>

The majority of Shafis permitted borrowing on endowment when necessary if the endower requires that or the judge permits that. Therefore, if the superintendent borrows without such permission issued by the judge or upon the requirement of the endower, such borrowing shall be impermissible and the debt shall not be incurred by the endowment. Accordingly, they permitted the superintendent to borrow from his own money or from any other person. If such superintendent borrows from his own money, he shall be the debtor and the creditor).<sup>(3)</sup>

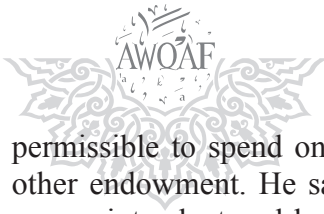
Imam Al Subki saw that the approval of the judge is necessary in such issues, as the judge is the person authorized to consider Shariah issues, so he shall generally consider the case of each certain superintendent. Then, he rules out in accordance with Shariah provisions. If such judge is the superintendent as required by the endower, he will assume the special and general consideration. So, he shall not need to be considered generally. Imam Al Subki, may Allah have mercy on him, was asked about an endowment which has been kept by its endower for the prisoners of war and another endowment kept also for the prisoners of war and one of those endowments needs reconstruction. He was asked whether it is

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(1) Ibid (3/298).

(2) Tohfah Al Muhtaj (6/289).

(3) Ibid in the same pages.



permissible to spend on the reconstruction of that endowment from the other endowment. He said: it is impermissible. However, if the ruler is a superintendent and he sees that there is an interest to borrow from an endowment to the other endowment and there is no need to emancipate prisoners of war at that time, he will be permitted to borrow from it the amount required for reconstruction and repay such amount to it after the completion of reconstruction. And Allah knows best. <sup>(1)</sup> Malikis require the permission of the judge in this regard. <sup>(2)</sup>

Hanbalis disagreed with them, as they did not require the permission by the judge or the endower for borrowing. They permitted it for the interest. They said that the superintendent may borrow on endowment without the permission of the judge for an interest, such as purchasing of an endowment on credit or against certain amount of money. He said in *Al Forou'*: And he shall dispose of such loan as a superintendent). <sup>(3)</sup>

It seems that the true opinion is the permissibility of borrowing on endowment if the judge permits it or the endower permits it in the endowment instrument. This also shall be applied to borrowing to meet objectives, activities, and methods of such endowment in the articles of association and the memorandum of association of the endowment system. Borrowing for endowment may achieve considerable interests for it. Moreover, serious disadvantages may take place if such endowment superintendent does not borrow in many cases of endowment loss, shortage, or damage.

Borrowing shall be restricted by controls such as:

- A. Approval of the judge or the existence of a requirement by the endower, which is related to his permission of borrowing or inclusion of such approval in the endowment instrument. In addition, the articles of association and the memorandum of association shall set forth the right of borrowing. This requirement may not be breached but when necessary or the occurrence of a serious damage in the case of waiting approval by the judge. <sup>(4)</sup>

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(1) *Fatawa Al Subki* (2/105).

(2) *Al Zakhira* (6/329).

(3) *Sharh Muntaha Al Eradat*. (2/215)

(4) *Al Mughni: Ibn Qudama: Al Mughni*, Part 8, P 237, *Al Hasafki: Al Dur Al Mukhtar*, Part 4, P 379,.



- B. The need for such borrowing which has to result in an interest for the endowment, ward off evil or damage, or achieve an interest, so that through such borrowing, such endowment may be sustainable or developed. This is supported by the known juristic rule “Disposal of public funds and similar funds shall be subject to the interest”<sup>(1)</sup> and the general order of Allah, Almighty, to maintain trusts and render back them to whom they are due, as He said: (Verily! Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice.. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All-Hearer, All-Seer...)<sup>(2)</sup>.. Therefore, Al Qarafi inferred from this verse that: “In each issue, the person able to meet the interest shall be authorized as a priority”<sup>(3)</sup>, as the restoration of trusts to whom they are due requires that the trustee is able to maintain such trusts and ward off evil regarding it.
- C. Endowment superintendent or administration shall develop a mechanism to repay debts, whether from yields, returns, lease or any other legitimate method.
- D. Borrowing shall be via a legitimate method without usury or other prohibited acts.
- E. Borrowing shall be on the endowment returns not on the endowment capital, except in cases of necessity, possibility of endowment loss, and inadequacy of the return.<sup>(4)</sup>
- F. Debt shall be deducted from yields before distribution.

### **Subdivision 2: Lending for Endowment**

Linguistically, lending in Arabic is (Qard), which means cutting or lending money. To lend in Arabic (Aoqrid) is to cut or give money.<sup>(5)</sup>

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(1) It is according to the rule: (Disposal concerning subjects shall be subject to the interest) and the superintendent is any person assuming any issue of the public. Jurists mentioned applications of this rule to the disposals of endowment superintendents. Refere to: Explanation of Juristic Rules, Ahmed Muhammad Al Zarqa, P 249.

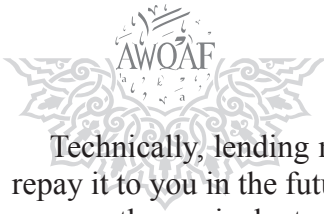
(2) Surat An-Nisa', Verse (58), Tafdir Imam Al Qurtubi, (5/255 - 256)

(3) Al Forouq (3/206).

(4) Fath Al Qadir (6/240).

(5) Al Qamous Al Muhit, Ibid, P 804





Technically, lending means giving an amount of money to someone to repay it to you in the future. <sup>(1)</sup> Hanafis defined it as something you give to recover the equivalent of it or a special receipt returned when rendering back its equivalent. <sup>(2)</sup>

Malikis defined it as a good action, whether at maturity or deferred to certain term. <sup>(3)</sup> Another jurist said that it is the payment of money as a means to be closer to Allah so that its taker shall make use of it and return it or its equivalent back.

Lending from endowment capital is impermissible except for a preponderant interest estimated by Shariah judge. In case of lending for interest, such loan shall be repaid without a conditional increase of prohibited usury. So, the endowment shall not be permitted to borrow for a third party unless the purposes of it include borrowing, as such endowment may be dedicated to repay the loans and debts of the needy people. If such loan is one of the endowment purposes of such endowment, lending by such endowment shall be permissible for the person meeting the requirements set forth in the endowment instrument, the articles of association, and memorandum of association of the endowment institution, as this meets the requirements and purposes of the endower. <sup>(4)</sup>

This is permissible to follow the requirements of such endower. In other cases, it shall be impermissible as lending does not have a considerable interest. Disposals of endowment superintendent or administration shall be subject to interest. However, if there is a considerable anxiety that the endowment liquidity may be plundered and robbed due to difficult security circumstances, it shall be better to be given as a loan to a certain person than giving it as a trust or a deposit, as the loan is guaranteed and the trust is not guaranteed, as is the case with capitals of minors whose capitals may

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(1) Abu Jaib, Sa'di: Juristic Dictionary, P 300.

(2) Radd Al Muhtar Ala Al Durr Al Mukhtar Wa Hashiat Ibn Abdin: Ibn Abdin: Part 4, P 171.

(3) Maliki Jurisprudence Encyclopedia: Al Aak, Khaled, Third Volume, P 409.

(4) Judgment on Borrowing for Endowment and its Controls Prof. Dr. Ali Mohieddin Gargdaghi: A Research published on his website <http://www.gargdaghi.com>.



be lent to their superintendents in such case.<sup>(1)</sup>

In addition, it is permissible to lend the State in emergency cases, as jurists said that the State may borrow from endowment capitals in emergency cases.<sup>(2)</sup>

In case of lending, the endowment superintendent or administration shall document such debt through all available methods in order to ensure its recovery.

Article 45 of the Kuwaiti Endowment Draft Law set forth that: (Endowment superintendent may not borrow on endowment property. Such superintendent may borrow on endowment returns in accordance with the requirements and controls set forth in the Regulations.

The Minister of Awqaf and Islamic Affairs may borrow from the returns of charitable endowment under his guardianship for the benefit of other endowments, provided that such debt shall be repaid from the returns of the indebted endowment.)

In addition, Article (78) set forth that (Endowment debts shall have the same privileges of the government debts on the capitals of debtors and they shall be collected through the same method decided to collect the capitals of the State).

#### **Borrowing for Endowment:**

This shall be permitted by the judge who will estimate the interest. Such borrowing may be conducted when necessary such as purchasing seeds, hiring workers for agriculture .... etc. This includes borrowing to reconstruct the endowment to be restituted to its original case before demolition<sup>(3)</sup>.

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(1) Badae' Al Sanae', (6/2987, 9/4467) and Al Ashbah Wa Al Naza'er, Ibn Nujaim, P 306, Fath Al Qadir (7/310), Hahashiat Al Dosouqi (3/294), Juristic Laws, P 274, Bidaiyat Al Mujtahid (2/282), Kashaf Al Qena', (2/206), Sharh Al Kawkab Al Munir (499/1).

(2) Fath Al Qadir (6/241).

(3) Investment in Endowment: Al Mees, P 11, Methods of Developing Endowment Capitls: Al Salmani, P 26-27, Investment in Endowment: Umar, P 42, Islamic Endowment: Al Qahf, P 243.



## **Conclusion**

At the end of this research, we conclude with the following findings and recommendations:

### **1. Research findings:**

- Importance of Islamic endowment which serves as a civilizational phenomenon and a financial portfolio for the successive generations.
- Definition of endowment as (keeping a property as owned by its endower and giving alms from its returns for charity channels) makes endowment an agreement of independent provisions which fulfills all requirements and exclusively restricts it to the endowed properties.
- Many laws set forth that a legal person shall have all rights, excluding those related to the capacity of a natural person within the limits prescribed by the law.
- The term of legal personality in Islamic jurisprudence does not contradict with Shariah rules and it is applied to many Shariah judgments without this nomenclature and some judgments have been based on it.
- The legal personality in endowment is based on endowment ownership and specifically to the saying that endowment ownership of the endower is terminated and it is not owned by endowment beneficiaries.
- Jurists permitted that mosques and other public institutions be beneficiaries of endowments. They also saw that it is permissible to dedicate grants for them and left wills for them. This indicates that such endowment institutions have financial estate.
- The majority of jurists saw that the public institutions benefiting from endowments may be entitled to own.
- One of the most important (contemporary) effects of the legal personality is that the public institution is entitled to claim for its rights, litigation, and disputing. This was declared by the majority of jurists. They declared that the institution benefiting from endowment shall be entitled to claim for compensation, guarantee, and preemption. In addition, the lease (Ijarah) agreement is not terminated due to the death of the endowment superintendent.
- Endowment is independent from the endower's financial estate and beneficiaries of endowment, as it has a financial estate independent

from the financial estates of the endowment superintendent, endower, and endowment beneficiaries.

- Adoption of the endowment legal personality serves as a legislative warranty maintaining independence and protection of endowments against manipulating and greedy people.
- Jurists approved borrowing for or on endowment on two conditions: existence of an interest and the permission of the judge.
- Permissibility of using new endowment forms, such as Istisna', Parallel Istisna', Decreasing Sharing (Musharak Motanaqesa) Ending with Ownership, Decreasing Lease (Ijarah Motanaqesa) Ending with Ownership, borrowing for endowment, bank deposit in investment accounts, trading in shares, direct administration of endowment investment, selling investment returns, endowment funds, and endowment shares.

## **2. Recommendations:**

- Activate the roles of juristic academies in relation to continuous studies on the jurisprudence of endowment.
- Enact laws and regulations approving endowment legal personality and financial estate and dedicate an independent endowment fund for it.
- Develop Shariah controls which govern dealing with contemporary Shariah forms for the best investment of endowment. Such controls may be formulated in form of Shariah evidence in order to act as a guide for practical application.
- Widely disseminate the jurisprudence of endowment through encouraging conferences and forums, and developing media and guide plans in order to disseminate such jurisprudence and enlighten people.
- Disseminate and generalize the experience of endowment funds, as it is a contemporary, encouraging, and serious endowment experience applied by the Secretariat General of Endowments in Kuwait.
- Benefit from human and legal experiences, as the legal personality concept developed in the light of contemporary laws which gave endowment a legal personality and entitled such endowment to own all endowed capitals. This enabled the endowment institution to take all decisions in order to develop endowment institutions.



## Sources and References

### 1. The Noble Quran

### 2. Books, Researches, and Magazines:

1. Ibn Qadi Al Jabal Hanbali: Monaqala and Istibdal Belawqaf. Published within a set titled: Writings and Verifications of his Eminence Scholar Sheikh Abdullah Ibn Umar Ibn Duhaish, Distributed by Al Asadi Library.
2. Abu Ishaq Ibrahim Ibn Ali, Al Shirazi, Al Muhazab Fi Fiqh Imam Shafi', Published in Cairo: Mustafa Al Babi Al Halabi Print House, 1379 AH/1959
3. Ahmed Ibn Al Hussein Al Biyhaqi (458 AH: Sunan Al Biyhaqi, Al Sunan Al Kobra, Copy of the first version, Hyderabad, India, 1344 AH.
4. Ahmed Ibn Muhammad Ibn Ahmed Al Adawi (died in 1201 AH): Al Sharh Al Saghir Ala Aqrab Al Masalik / Cairo (Mustafa Al Babi Al Halabi)
5. Ahmed Ibn Muhammad Ibn Ahmed Al Adawi (died in 1201 AH): Al Sharh Al Kabir Ala Mukhtasar Al Khalil / Cairo (Ihia' Al Kutub Al Arabia Print House)
6. Ahmed Ibn Muhammad Ibn Ali Ibn Hajar Al Haythami: Tohfat Al Muhtaj Fi Sharh Al Menhaj, reviewed and edited: In many copies by a committee of scholars: Dar Ehiaa Al Turath Al Araby.
7. Ahmed Ali Aubdullah: Legal Personality in Islamic Jurisprudence: Printed by Al Dar Al Sudaniya Lelkotob, undated
8. Ahmed Muhammad Al Zarqa: Explanation of Juristic Rules, Sheikh. Dar Al Gharb Al Islami.
9. Ahmed Muhammad Al Zarqa: Introduction to General Commitment Theory in the Islamic Jurisprudence, Version 1, 1999, Damascus, Dar Al Qalam.
10. Ahmed Muhammad Al Zarqa: Movable Endowment and its Importance in Contemporary Islamic Investments, Islamic Research and Training Institute, Version 1, 1995.
11. Ahmed Muhammad Al Sa'd and Muhammad Ali Al Umari: Contemporary Orientations of Developing Endowment Investment, The Secretariat General of Endowments, Kuwait, 2000.



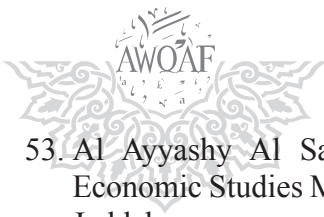
12. Secretariat General of Endowments in the State of Kuwait: Website: <http://www.awqaf.or/>
13. Endowment Investment Research submitted to the Endowment Juristic Issues Forum, Secretariat General of Endowments, Kuwait: 06/01/1424, 09/03/2004.
14. Research submitted by the Jordanian Ministry of Awqaf: to the Endowment Development Forum held in Nouakchott 1418 AH, 1977.
15. A group of Indian scholars: and Sheikh Nitham 207, 208, Printed by Dar Ehiaa Al Turath Al Araby:
16. Jamaledin, Muhammad Ibn Makram Ibn Manzour Abu Al Fadl Al Afriqi Al Mesry: Lesan Al Arab, Make, Al Matba'a Al Kubra Al Amiria, Boulaq, 1300 AH, Cairo.
17. Jamal Al Tarifi: An article in Al Khaleej Newspaper, Sharjah, Version 9242, Tuesday 22 Rajab 1425 AH, 7/09/2004, Endowment Share Projects in Investment, Secretariat General of Awqaf, Sharjah.
18. Hasib Khaireidin, Forum: "Endowment System in the Civil Society in the Arab World".
19. Hussein Shehata: Awqaf, a magazine issued by the Secretariat General of Endowments, Kuwait, Volume 6, 3 Rabea II, 1425 AH, June 2004.
20. Khaled Abdullah Shuaib: Endowment Capital Investment, Research in the First Endowment Juristic Issues Forum, Secretariat General of Endowments, Kuwait: 15 Sha'ban 1424, 11/10/2004
21. Khalid: Al Aak: Maliki Jurisprudence Encyclopedia, Dar Al Hikma, Damascus, Edition 1993, 3<sup>rd</sup> volume.
22. Khalil Al Mees: Investment in Endowment Yields and Returns, Research submitted to the Islamic Fiqh Academy, session 15 of 2003, Muscat.
23. Khamis Ibn Ahmed Ibn Said Al Salmani: Methods of Developing Endowment Capitals and Increasing Their Resources, Research submitted to session 15 of the Islamic Fiqh Academy, Muscat, 06/03/2004.
24. Rafiq Yunus Al Mesri: Endowment in Terms of Jurisprudence and Economy, Dar Al Makatabi, Edition 1420 AH, 1999.
25. Zaineddin Ibn Nujaim Hanafi (died in 970 AH): Al Bahr Al Ra'eq Fi Sharh Kanz Al Daqa'eq, Second Edition, Lebanon, Beirut (Dar Al Marifa Print House), Offset Print,



26. Zain Al Abdin Ibn Ibrahim Ibn Nujaim: Al Ashbah Wa Al Naza'er, First Edition, Damascus: (Dar El Fikr) 1983 (Died in 770 AH).
27. Sa'di Abu Jaib: Juristic Dictionary, (Dar El Fikr), Damascus, Second Edition
28. Sulaiman Ibn Al Ashath Sijistani (275 AH): Sunan Abu Dawood, Mustafa Al Babi Al Halabi, Cairo, 1371 AH, 1952.
29. Al Sanhoury: Al Wasit: Printed by Dar Ehiaa Al Turath Al Araby.
30. Al Sanhoury Muhammad Ahmed Faraj: The Book of Set of Egyptian Laws Selected from the Islamic Jurisprudence, Endowment, Second Edition, 1998
31. Shehata: Research submitted to Awqaf Magazine, Volume 6
32. Companies in Islamic Shariah and Man-made Laws, Dr. Abdulaziz Ezzat Al Khaiyat, Al Resalah Institution, Beirut, Edition 4, 1414 AH, 1994.
33. Sha'ban Muhammad Ismail: Jurisprudence Basics, History, and Jurists, Publisher: Dar Al Marikh, Riyadh, First Edition: 1401-1981
34. Shihabeddin Ahmed Ibn Idris: Known as Imam Al Qirafi,: Al Forouq: - 626-682 AH, Dar Al-Kotob Al-IlmiyahIlmiyah, Beirut, First Edition, 1418 AH, 1998.
35. Shihabeddin Ahmed Ibn Idris: Al Qirafi, Al Zakhira, verified by Muhammad Hiji et al. Publisher: Dar Al Gharb Al Islami, First Edition, 1415 AH, 1994
36. Shawqi Ahmed Donia: Endowment, Economic Analysis, Islamic Research and Training Institute, First Edition, 1411 AH, 1990.
37. Sheikh of Islam, Ibn Taimia: (4) Majmou' Fatawa Ibn Taimia, The book source: Al Islam Website <http://www.al-islam.com8/64>.
38. The Muslim World League Journal: Issued by The Muslim World League, Volume 1855, Monday, 7/7/1425 AH, 23/08/2004, P 5, Titled "Endowment Shares" were launched in the Gulf area since 10 years. They succeeded in Oman, Kuwait, and the UAE.
39. Amer Abdulaziz: Introduction to Studying Law Compared to Islamic Jurisprudence, Dar Al Gharib Printing, Publishing, and Distribution, 1977
40. Abd Al Rahman Ibn Abu Bakr Al Siouti Abu Al Fadl: Tabaqat Al Huffaz, Publisher: First Edition, Dar Al-Kotob Al-Ilmiyah, Beirut, 1403 AH.



41. Abd Al Sattar Al Haiti: Endowment and Its Role in Development, Published by the Center of Research and Studies, Ministry of Endowment and Islamic Affairs, Qatar, 1419 AH - 1998.
42. Abdullatif Muhammad Al Sarikh: Role of Islamic Endowment in Developing Technological Capacity, Master Thesis, Published by the Secretariat General of Endowments, Kuwait, 1424 AH, 2003.
43. Abdullah Ibn Ahmed, Ibn Qudama Al Maqdesi: Al Mughni, verified by Dr. Muhammad Sharafeddin Khattab, Dr. Al Sayed Hamad Al Sayed, First Edition, 1416, 1996, Dar Al Hadith, Cairo, Arab Republic of Egypt.
44. Abdullah Bin Mousa Al Amar: Endowment Capital Investment, Research in the First Endowment Juristic Issues Forum, Secretariat General of Endowments, Kuwait: 1424, 2003, Published in Contemporary Juristic Researches Magazine, 16<sup>th</sup> year, Rajab 1425 AH, September 2004.
45. Othman Ahmed Othman: The Book of Al Wajiz of Introduction to Law, First Edition, Khartoum, 2006
46. Ezzeddin Hamza Ibn Al Sheikh Al Salamiya: Dafa' Al Mythaqal Fi Mana' Munaqala, Printed by The Kuwaiti Ministry of Awqaf in one book called "Majmou' in Munaqala and Istibdal in Endowments", First Edition, 1409 AH.
47. Aladdin Al Kasani (587 AH): Badae' Al Sanae', Verified by Dar Al-Kotob Al-Ilmiyah, Beirut.
48. Ali Ahmed Al Salous: Islamic Economy and Contemporary Juristic Issues, Dar Al Thaqafa In Doha, 1416 AH, 1996, 2/938-998
49. Ali Al Khafif: The Book of Right and Estate and Effect of Death on them, First Edition, Dar Al Fikr Al Arabi.
50. Ali Mohieddin Gargdaghi: A research titled, Judgment on Borrowing for or on Endowment and Its Controls, published on the website of his eminence [www.gargdaghi.com](http://www.gargdaghi.com).
51. Ali Mohieddin Gargdaghi: Principle of Consent in Contracts, Comparative Study, Edition. Dar Al Basha'er, 1985, Its Approved Sources (263/1-348)
52. Ali Ibn Muhammad Al Jarhani Al Hanafi: Al Tarifat, Verified by Abd Al Rahman Umaira, First Edition, Lebanon - Beirut (Alam Al Kotob Print House), 1987.



53. Al Ayyashy Al Sadeq Fadad: Istibdal Thesis Research, Islamic Economic Studies Magazine, Islamic Research and Training Institute, Jeddah.
54. Al Kamal Ibn Al Humam (861 AH): Fath Al Qadir, Sharh Al Hidaiya, Al Marginani (593 AH), Dar Al-Kotob Al-Ilmiyah, Beirut, First Edition - 1415 AH, 1995.
55. Malik Ibn Anas (179 AH): Al Modawana Al Kubra, Riwayiat Sahnoun, Al Sayed Ali Ibn Abd Al Rahman Al Hashemi, Published by Sheik Zayed Bin Sultan Al Nahyan, may Allah have mercy on him (died on 19 Ramadan 1425, 02/11/2004), Abu Dhabi, 1422 AH.
56. Manar Al Islam Magazine: Abu Dhabi, Volume 357, 30<sup>th</sup> year, Ramadan 1425, October 2004, Secretariat General of Awqaf Implements Real Estate Projects.
57. Islamic Fiqh Academy Magazine: Volume 4, 1408, 1988, 36/2001
58. Shariah Standards Volume, The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), Standard No. 11 - 1424 AH, 2003, P 181-192.
59. Shariah Standards Volume, The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), Standard No. 11 - 1424 AH, 2003.
60. Muhammad Al Zuhailai: Contemporary Investment of Endowment.
61. Muhammad Amin Ibn Abdin: Rad Al Muhtar Ala Al Dur Al Mukhtar Wa Hashiat Ibn Abdin, Dar Al-Kotob Al-Ilmiyah, Beirut.
62. Muhammad Ibn Abu Bakr Ibn Abd Al Qadir (Died in 666 AH): Mukhtar Al Sehad, arranged by Mahmoud Nasser, Lebanon - Beirut (Dar Al Fikr Printing and Publishing) (1401 AH, 1981)
63. Muhammad Ibn Ahmed Al Qurtubi Maliki: Al Jame' Leahkam Al Quran Al Azim: Dar Al Fikr, Beirut, undated.
64. Muhammad Ibn Ahmed Ibn Arafa Al Dosouqi (died in 123 AH): Hahashia Ala Al Sharh Al Kabir, Hashiat Al Dosouqi, Cairo: (Isa Al Babi Al Halabi Print House).
65. Muhammad Ibn Ahmed Ibn Muhammad Ibn Ahmed Al Qurtubi Ibn Rushd Maliki (died in 595): Bidaiyat Al Mujtahid Wa Nihayat Al Muqtasid, First Edition, Beirut: (Dar Al Jeel).



66. Muhammad In Ismael Al Bukhari: Al Jamie' Al Sahihr with its explanation, Fath Al Bari, Al Hafiz Ibn Hajar, Beirut, Dar Al Fikr, Beirut Edition 1416 AH, 1996.
67. Muhammad Ibn Isa At-Tirmidhi Imam Hafiz Abu Isa: Sunan At-Tirmidhi: Dar Al Fikr, Beirut
68. Muhammad Ibn Muhammad Al Shirbini Al Khatib Al Azhari Al Sahfi', Known as Al Shirbini Al Khatib: Mughni Al Muhtaj Ela Marifat Ma'ani Alfaz Al Menhaj, Al Nawawi: Version, Mustafa Al Halabi and His Sons, Egypt, 1377, 1958.
69. Muhammad Ibn Muhammad Ibn Abd Al Rahman Al Trabulsi Al Maghribi, Known as Al Hattab: Mawaheb Al Jalil Lesharh Mukhtasar Al Khalil, Al Najah Library, Libya, Undated
70. Muhammad Salim Angeih: Revival of Volunteering Culture and Effort Exertion.
71. Muhammad Abd Al Hakim Zaer: Endowment, Islamic Economy Magazine, Volume 194
72. Muhammad Abd Al Halim Umar: Investment in Endowment, its Yields, and Returns, Research submitted to the fifth session of Islamic Fiqh Academy held in Muscat, (Sultanate of Oman) 9-11/3/2004
73. Muhammad Abd Al Halim Umar: Investment in Endowment, its Yields, and Its Returns, Research submitted to the Islamic Fiqh Academy, session 15, Muscat 6/3/2003.
74. Muhammad Ali Elgari: Endowment Funds and Their Shariah Framing. Available at the following link: <http://www.elgari.com/article81.htm>
75. Muhammad Amim Al Ehsan Al Mojadidi Al Barkati: Juristic Definitions, dictionary explaining terms used by jurists, fundamentalists, and other scholars, Second Edition, Dar Al-Kotob Al-Ilmiyah.
76. Muslim Ibn Al Hajaj Al Qasgiri Al Naisabouri (261 AH): Sahih Muslim, with Sharh Al Nawawi, Egyptian Library and Its Print House, Cairo, First Edition, 1349 AH, 1930.
77. Munzir Al Qahf: Islamic Endowment and its Development and Administration, Dar Al Fikr, Damascus, First Edition, 1421 AH, 2000.



78. Mansour Ibn Yunus Al Bahouati (1051): Kashaf Al Qena', Al Amara Al Sharafiya Print House, Egypt, Edition 1319 AH.
79. Maiara Muhammad Ahmed: Sharh Tohfah Al Ahkam, Ibn Asem, Al Mustafa Electronic Library.
80. Nazih Hammad: Financial and Economic Terms in the Language of Jurists Dictionary, Damascus, Dar Al Qalam Print House, First Edition, 2008.
81. Jordanian Ministry of Awqaf: Research submitted to the Islamic Endowment Development Forum held in Nouakchott 1418 AH, 1977.
82. Yahia Ibn Sharaf Al Nawawi (676 AH): Al Rawda - Rawdat Al Talibin, Al Maktab Al Islami, Damascus, 1386 AH.



# Researches



## **Governance of the Endowment of Productive Resources**

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### **Abstract**

The subject of governance of the endowment of productive resources is one of the emerging issues because production resources have witnessed a qualitative change that led to the advancement of crafts and industries along with improving the advantages of production and shifting from deficit to surplus in goods and services, especially in the framework of governance that imposes the existence of certain relations business relations.

There is no doubt that the significance of this research is manifested by discussing the relationship of governance with some aspects related to





endowment, shifting from using the simple instruments or small projects to the instruments of complex technology and benefiting from the advantages of macro production.

Within the context of modern advancement in manufacturing machines and competition in products manufacture, this research attempts to determine the intellectual platforms or substantive conditions of governance role in the work of endowment in the field of productive resources.

The research supposes that governance of the endowment of productive resources greatly contributed to the improvement of quality and volume of production in the work of endowment, in particular the agricultural lands that characterize endowment, taking into consideration that the problem of the research is confined to the determination of the nature of the relationship between governance and production resources and its role in formulating the mechanisms and standards governing the work of endowment.

The research consists of four topics as follows:

**First Topic:** Governance of the endowment of productive resources

**Second Topic:** Mechanisms of the Governance of the Endowed Production Resources and their Investment Formulas

**Third Topic:** Standards of the Governance of the Endowed Production Resources

**Fourth Topic:** Some Shariah Rules Relating to the Governance of Production Instruments Investment

## **Introduction**

All praise is due to Allah, the Lord of the Worlds. Prayers and peace be upon the master of Messengers and upon all his Family and Companions.

Governance has recently witnessed a notable interest in particular in the part of organizational work development, research work synchronizing with this development on the basis of increasing the efficiency of organizations and improving the level of administrative organization, leading eventually to strengthening the relations business relations on scientific bases observing the rights and obligations.



Hence comes the importance of the research. It concentrated on a sophisticated and specialized side of the field of endowment organization, specifically the governance of productive resources in this organization. This subject is almost uncovered by contemporary scientific contributions. This indicates the scientific value of the research and its particularity in discovering new perspectives in this field.

There is no doubt that talking about the productive resources of endowment and the nature of organizing the activities of dealing with these resources as an organizational process may pave the way to overcome the challenges encountering the opportunities of endowment investment. Organization of organizational dealing with the production resources constitutes an initial step preceding the activities of investment and it leads to increasing the benefits and improving the endowment yield.

In this aspect, the research attempts to formulate the essential matters of endowment resources depending on the significance of developing organizational standards of endowment work so that these standards constitute the basic rules of endowment and administrative and economic activity. The success of management through sound rules could boost the economic effectiveness of endowment and this involves improvement of the investment level in terms of decreasing the cost and increasing the returns.

It is clear that the problem in this part is represented in how to determine the nature of relationship between governance and reach the proper standards governing the work of endowment.

The research involves four topics covering the different aspects of the subject under consideration. These topics are as follows:

Concept of governance of the endowment of productive resources, its mechanisms and investment formulas, its standards and a set of Shariah rules relating to governance of investment in it.

We ask Allah to grant us sincerity in speech and actions and have mercy on our inability and our need to Him, for He is All-Hearing and Al-Responding.



## **First Topic:**

### **Concept of Governance of the Endowment of Productive Resources**

It includes three sections

#### **First Section: Concept of Governance and its Shariah Pillars**

##### **First - Concept of Governance:**

The concept of governance, or the so - called “organizational governance”, includes a set of rules and principles regulating the business relations at the organization, and directing the method by which the decisions are taken and upon which the duties and responsibilities are distributed for the protection of the best interest of the organization. The OECD defined governance as: “the system used by an organization in the process of supervision and monitoring over its operations and through which the rights and responsibilities are distributed to the different parties at the organization. It also determines the rules and procedures relating to decision making at the organization”<sup>(1)</sup>.

There is no doubt that the concept of governance at any organization focuses its attention on providing a sound supervisory environment. Internal audit bodies and work systems define the optimum rules of compliance, all within a framework of transparency, integrity and responsibility.<sup>(2)</sup> These outputs may be attained from the important activities undertaken by the internal audit and control bodies, in addition to the maintenance of the proper business relations among the different administrative levels<sup>(3)</sup>.

This concept implies also a set of principles that have been internationally approved for deepening the rules of governance with the aim of preservation of the different parties’ rights in business, stakeholders’ rights and guarantee of disclosure and transparency. The fundamentals and purposes of Islamic law have been established on all these principles and

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(1) Organization for Economic Co - Operation and Development (OECD), Principles of Corporate Governance. [www.oecd.org](http://www.oecd.org)

(2) Directors Remuneration: Report of study group. [www.ecgi.org](http://www.ecgi.org)

(3) Basel Committee on Banking Supervision, (2006), Enhancing corporate governance for banking organizations, Bank for International Settlement, p4.



may be demonstrated by the following aspects <sup>(1)</sup>:

- Equality: It is moderation and probity and standing firm in justice as contained in the Holy Quran.<sup>(2)</sup> Justice is one of the principles of creation. It denies injustice and establishes the meaning of equality among all individuals.
- Transparency: means integrity and objectivity in the transfer of information in a clear, explicit and accurate manner so that it may be delivered to all stakeholders.<sup>(3)</sup> Its origin in the Islamic law is based on the discharge of trust according to the order of the Quran <sup>(4)</sup>.
- Responsibility: means the existence of an administrative body which assumes its responsibilities and will be held accountable for their decisions. In a Hadith,<sup>(5)</sup> “Each one of you are guardians and are responsible for your wards”, and this pushes towards the mastery and quality of work.
- Accountability: it relates to the evaluation of the organization’s business and therefore any individual will be held accountable; whether by reward for good performance or punishment in the cases of infringement or default in particular.

### **Second: Pillars of Shariah Governance:**

Governance is based on many pillars, the most significance of which are the following: the ethical virtues, sound controlling environment, realization of feasibility, positive benefits, public interest and independence, and may be stated in the following items:

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(1) Nurainy, Renny, Nurcahyo, Bagus et al, (2013), implementation of good corporate governance and its impact on corporate performance: the mediation role of firm size (empirical study from Indonesia), *Global Business and Management Research: An International Journal*, vol. 5, No. 2 & 3 .

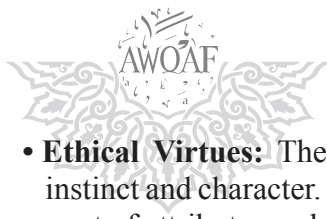
(2) Surat An - Nisa: Verse 135.

(3) Maha Mahmoud Rebhawy: Joint - Stock Companies Between Governance, Laws and Instructions, *Damascus University Journal for the Economic and Legal Sciences*, Volume 23, Issue 1, P. 97.

(4) Surat An - Nisa: Verse 58.

(5) Sahih Muslim: The Book on Government, Chapter of the Virtue of a Just Ruler, Hadith No.: 1829.





- **Ethical Virtues:** They are is an expression of religiousness, natural instinct and character. They reflect the true inner self of a man in terms of a set of attributes and good and bad meanings. <sup>(1)</sup> In management, ethics mean the following: the administrative decisions that have been adopted for reaching the organization's objectives via imposing a performance distinguished by lofty ideals such as credibility, honesty, justice, self - sacrifice and mercy. <sup>(2)</sup> There is no doubt that the Islamic ethics contain many fields such as religiousness, worship, sincerity, model-taking, consultation and others.
- **Sound Controlling Environment:** Means following up plans and detecting and correcting deviations. <sup>(3)</sup> In Islam, control draws its power from the religious sentiment, known as self - control, that paves the way for lawful obligation within the scope of internal control (business relations) and external control (state intervention).
- **Realization of Feasibility:** The concept of feasibility relates to the realization of a material return, which results from the existence of potential risks in work and its origin is represented in the following rule: "The gain is tied with risk of loss" <sup>(4)</sup> and is directly proportional to the risk. The risk should be moderate because maximizing the risk may lead to bankruptcy such as gambling and, in return, reducing the risk to the minimum limit leads to usury. Hence, moderateness is necessary without excessiveness or negligence.
- **Positive Benefits:** They mean that work must lead to a benefit and this benefit should be useful because the Islamic law prohibits all what may involve harm.
- **Public Interest:** Literatures on jurisprudence have extensively addressed this issue. The project may not realize individual gains or interests at

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(1) Ibn Mandhur: The Arab Tongue, Chapter of Qaf, Chapter of Kha'a.

(2) Muhammad Soliman Akram: Behaviors of Ethical Leadership and its Relationship to the Extent of Application of Governance Principles in Libyan Organizations, Scientific Journal of Economics and Commerce, Ain Shams University, Volume 3, Issue 1, 2012, P. 1020.

(3) Bouttora Fadila: Consideration and Evaluation of the Effectiveness of Internal Control System in Banks, Unpublished Master's Thesis, Faculty of Economics, Commerce and Management, 2006, P. 4.

(4) Muhammad Sedky Ibn Ahmed Al Bortou: Encyclopedia of Jurisprudential Norms, Beirut, Al Tawba Library, Dar Ibn Hazm, 2000, P. 502.



the expense of a public interest. This issue relates to the phenomenon of ownership that includes private and public ownerships and the public ownership may not be encroached by the individual projects. Additionally, the ruler may not dispose of this ownership via sale or purchase except in a way serving the collective interests because it is different from the state ownership in which the powers of the ruler are expanded. <sup>(1)</sup>

- **Independence:** Means the formation of a council or central organ having independence in making decisions related to the practice of endowment works. With this regard, a degree of common responsibility assumed by the State should be observed and this regulates all the objectives of endowment governance and its policies, such as updating the methods of Shariah review and audit, mandatory of Shariah audit and determination of new controls and standards involving the mutual relationship between the control bodies, board of directors, supreme management, Shariah auditor and others.

## **Second Section: The Concept of Productive Resources and Endowing them**

### **First: Concept of Productive Resources:**

Productive resources contribute to the operations of a project as essential elements and these elements are as follows: labor, land and capital. A fourth element is added in the side of management: organization. In accordance with the Islamic vision, two subordinated elements may be added time and risk <sup>(2)</sup>. However, at present, material improvements have been incorporated in the production process. Accordingly, a new element may be added: information. Therefore, the elements of production shall be: labor, land, organization and information.

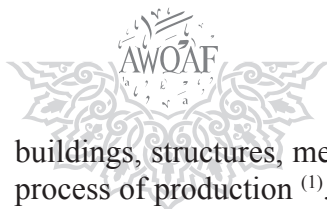
It is clear that productive resources include the material capital, namely, the investment commodities such as machines, tools, raw materials, stock,

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(1) Reference may be made to the chapter of dispossession in the book "Ownership in the Islamic Law", Abdulsalam Al Abady, Publications of Resalah Publishers, Amman, 2000.

(2) Refer to: Rafik Al Masry, Principals of Islamic Economy, 2nd Edition, Damascus, Dar Al Qalam, 1993, P. 85.





buildings, structures, means of transport and all items incorporated in the process of production <sup>(1)</sup>. They are material assets which reflect the reality of non - fungible, utilitarian capital that accepts lease not loan <sup>(2)</sup>.

The concept of productive resources may be confined to the assets contributing to the creation of the ultimate benefit; the most important of which are tools, machines, technology and the like. These resources have certain characteristics and the following are their most important ones:

- They are movable productive commodities and they may be fixed estates as well.
- They are not available commodities in low prices, i.e., the demand on them is elastic in most cases.
- They are specified as capital commodities contributing to the creation of ultimate consumable benefit.
- Productive resources enter into any productive activity such as agriculture, industry, transport, technology and others.

In industries and small crafts, productive resources contribute to the process of production although, in this case, their prices are virtually low but represent productive commodities contributing to the formation of ultimate benefit. A Prophetic Hadith narrated by Anas states a form of these resources. The Hadith says: “And buy an axe and bring it to me. He then brought it to him. The Messenger of Allah (peace be upon him) fixed a handle on it with his own hands and said: Go, gather firewood and sell it...”<sup>(3)</sup> The axe here represents a simple productive resource that contributes to small crafts such as firewood, in which the man gains money within a short period. It is one of the crafts related to performing permissible actions such as hunting and the like.

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(1) This shows clearly that the concept of capital in economy involves no money, unlike the accounting concept of capital which focuses on money.

(2) The capital is divided into non - fungible, utilitarian capital and comparable, consumable capital. The first type accepts lease and does not accept loan such as machines and the other instruments of production, which is the subject in question, and the second type does not accept lease and accepts loan such as money and other usurious types.

(3) Soliman Ibn Al-Ash'ath Abu Dawud: Sunan Abu Dawud, edited by: Muhammad Mohyeldin Abdulhameed. Damascus, Dar Al Fikr Publishing, 2/ 120, Hadith No.: 1641.

## Second: Endowment of Productive Resources

There is a difference among scholars concerning the meaning of endowment. The meaning of endowment according to Imam Abu Hanifa is “the detention of a specific thing in the ownership of endower and the devotion of its profit or products in charity for the poor or other good deeds”. His two disciples defined the meaning of endowment as “endowment signifies detention of an asset for a charitable purpose for the sake of Allah, the Almighty while the endower shall no longer have the right to dispose of such endowed asset.”, <sup>(1)</sup> This meaning is the well-known to the Shafi’is <sup>(2)</sup>. Endowment according to Maliki <sup>(3)</sup> is an expression of the owner’s will to transfer the benefit to a beneficiary for a period determined by the endower (owner). According to Hanbalis, the concept of endowment is “the detention of the capital and liquefaction of benefit” <sup>(4)</sup>.

These definitions have many benefits:

- **Phenomenon of Ownership:** The endowed estate ranges between three cases; remaining in the ownership of the endower (definition of Abu Hanifa); partially transfer of the ownership from the endower known as timing (definition of the Malikis) and transfer of the ownership from the endower in perpetuity (definition of the Hanbalis).
- **Indispensability of Endowment:** Endowment is not indispensable according to Abu Hanifa and it is similar to the loan. The reason for this opinion may be attributed to the minimum texts available to Abu Hanifa. This has been ascertained by Abu Yusuf upon commenting on the Prophetic Hadith: “give its fruits in charity and “it” may not be sold” <sup>(5)</sup>. He said: If Abu Hanifa had been informed about this Hadith, he would have applied it and refrained from the sale of endowment. <sup>(6)</sup>

(1) Al Hasfaki: Al Dor Al Mokhtar, Egypt, Al Baby Al Halaby Printing Press, 3/ 391.

(2) Al Sherbiny: Moghany Al Mohtaje, Egypt, Al Baby Al Halaby Printing Press, 2/ 376.

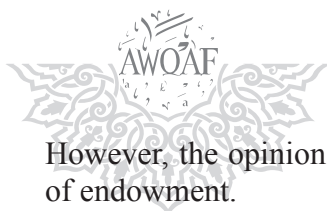
(3) Al Dardeer: Al Sharh Al Sagheir, Egypt, Dar Al Marref Bookstore, 4/ 97, 98.

(4) Al Bahwaty: Al Eawd Al Morabaa, Riyadh, Riyadh Library, 1970, 2/ 452.

(5) Reported by Al-Bukhari at the end of Book of Witnesses and Imam Muslim at the Book of Wills.

(6) Al-Sanaany: Sobol AL-Salam. Edited by: Muhammad Khalil Haras, Amman, Dar Al Forqan, 3/ 115.





However, the opinion of most scholars establishes the indispensability of endowment.

- **Period of Time:** Giving the benefit of an asset in charity in perpetuity or for a determined period by timing contributes to the development of the work power in accordance with the determined strategic objectives; whereas the national plans are usually divided into short - term and long - term plans for achieving the purposes of sustainable development. The concept of perpetuation of endowment of productive resources contributes to the achievement of such type of productive planning, since the resources of production represent “fixed production elements and its ownership is not re - transferable from time to time according to the desires and conditions of the endower” <sup>(1)</sup>. This supports the possibility of engaging in large - scale projects that depend on the advantages of significant production.
- **Sustainability:** There is no doubt that the sustainability of endowment projects depends on the sustainability of the labor element which is the most significant element. In that respect, endowment projects depend on the poor labor for establishing large - scale productive projects with the aim of protecting these categories from falling into the trap of poverty, as well as the considerable damages resulting from it and affecting the social level in whole. <sup>(2)</sup>
- **Advantages of Significant Production:** The endowment of productive resources generates developmental opportunities to engage in large ownership, namely, public or collective ownership because endowment is classified according to the rules of public ownership where its parties are determined by participation, not assignment. <sup>(3)</sup> It is clear that the transfer of ownership from the individual to the community contributes to the maximization of development aspect, achievement of opportunities of justice and the optimum usage of the endowed productive resources

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(1) Yasser Abdulkareem Al Horany: Endowment and National Work in the Contemporary Islamic Community, Kuwait, Awqaf Public Foundation, 2001, P. 44.

(2) Yasser Abdulkareem Al Horany: Endowment and Development in Jordan. Amman, Dar Majdalawy, 2002, P. 136.

(3) Muhammad Farouq Al-Nabhan: The Collective Orientation in Islamic Economic Legislation, 2nd Edition, 1984, P. 240.

because they are subject to the feasibility studies that are compatible with the national plans.

- **Timing:** The partial endowment of productive resources does not mean the non - inclusion of any benefit; because the pool of these resources is compatible with some available investment opportunities. There are simple resources that are appropriate to the small industries or individual projects and there are projects that are appropriate to mega projects. This certainly means that the usage of the Maliki concept of endowment, which determines the ownership period of the endowed estate, is as important as the conception of perpetuation, specially that the funding policy undertaken by the body of endowment in this case would facilitate the usage of productive resources. Consequently, this shall lead to expanding the scope of charity works and engaging in development projects that are limited in space and time.
- **Pool of Endowment:** The great diversity of the contemporary productive resources, especially the enormous development in the technology sector, has also contributed to the expansion of the pool of endowment and the increase of the derived benefits which became proportional to the consumers' different tastes and preferences and which were not formerly unknown.

### **Third Section: Governance of the Endowment of Productive Resources, its Significance and Objectives**

It is true that the generalization of the concept of governance assists in the elimination of the negative points <sup>(1)</sup> which resulted from concluding contracts in a manner violating the nature of the basic contracts, laws and regulation of the organization. In case of endowment, business relations are codified in accordance with the deeds and conditions of endowment and the attainment of the desired social objectives. This codification depends on the frameworks of governance, its mechanisms and principles which observe the rights of different parties; the endower, the beneficiary and the endowed estate. Governance here seeks to consolidate and promote the relationship among these parties according to the values on which it is

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(1) Ali Mahmoud Ramadan: Governance of Companies and its Impact on the Tax Proceeds, Unpublished Master's Thesis, University of Damascus, Faculty of Economy, P. 21.

based such as justice, honesty and ethics. For example, governance, in case of endowment investment, seeks via transparency, quality and clarification of information to protect the target categories who are usually vulnerable groups by granting them assurance and satisfaction.

The significance of the governance of the endowment of productive resources is highlighted through several points, the most significance of them are the following:

- 1) The status of productive resources is associated with the investment process. This means that the extraction of benefit from these resources - within the framework of “the detention of the asset and generation of the benefit” - cannot be perceived except via investment. The benefit does not come from the utilization of ownership of endowment, but from the benefits derived from it. In this respect, governance guarantees the improvement of performance, increase of productivity level and making use of all opportunities of return realization.
- 2) The endowment of productive resources makes the opportunities available for developing the endowment because it is capital assets. Additionally, these resources are the most important ways for developing and investing the endowment. It is known that the superintendent of endowment is charged with basic duties, including the development of endowment, and this duty is out of the endower’s stipulation. It is clear that the application of the principles of endowment prevent corruption from reaching the interests of the trustee by violating the endower’s stipulation via the application of transparency and achievement of the objectives of endowment development.
- 3) Governance also guarantees the increase and preservation of the useful life of the productive resources. This depends on compliance with the strategic plans such as handling accounting items to cover investment expenses and cover the decrease of useful life before their disappearance, dispersion or loss of their intended purposes.
- 4) It is also clear that there is an urgent need for governance to regulate the business relations because the productive resources contribute - via the increase of productive capacity and operation of labor force - to



addressing poverty and mitigating its social consequences. This asserts the necessity of the application of governance principles and its values.

Hence, the objectives of the governance of the endowment of productive resources are clearly highlighted while the following are the most important ones:

- Promotion of the responsibility of the trustee of the endowment in implementing the contracts of productive resources investment in accordance with the Islamic law.
- Imposition of administrative, legal and financial (internal and external) control over the activities related to the endowment of productive resources and hence the potential loss and risks are reduced.
- Achievement of the values of justice and equality and strengthening relations among the parties of endowment.
- Promotion of accountability mechanisms, especially in the financial aspects that may be affected by corruption or infringement.
- Increase of the efficiency of operational and administrative performance via transparency standards.
- Elimination of all forms of administrative and financial corruption and seeking compliance with the ethical rules.
- Assurance of the values of integrity, objectivity and transparency for all stages of the endowment project.
- Development of the procedures ensuring the reduction of work errors using control systems and high quality standards.
- Support of organs of audit, internal review and external auditors in a manner which guarantees independence, neutralism and increase of effectiveness.



## **Second Topic: Mechanisms of the Governance of the Endowed Production Resources and their Investment Formulas**

It includes three sections:

### **First Section: The Market Body and Mechanisms of the Governance of the Endowed Production Resources .**

The administrative governance of endowment is linked to different investment methods that are based on the nature and form of the market. It is clear that good governance of the endowment organization considers it as an organization subordinated to the third sector, i.e. not belonging to the government or the private sector.

There is no doubt that the government sector has the power to intervene with the management of endowment. However, long experience proves that this intervention lacked the minimum basic standards required for governance, especially with “the observance of the corruption phenomenon in endowment across the historical phases as manifested by the misuse, mismanagement, looting, robbery and misappropriation of endowments”!<sup>(1)</sup> The situation is the same with the private sector which focuses on the maximization of profits without paying any attention to the social aspects.

Although governance concentrates on the improvement of the usage of productive resources, increase of its efficiency and support of its competitive strength for acquiring a larger market share as much as possible, endowment is not classified as a government or private sector, but rather a charity sector which pays attention to the social aspects. All the foregoing does not mean missing the endowers’ objectives or losing the interests of beneficiaries, but the process of investment is made for reaching the desired social benefits and achievement of a return for covering different costs and liabilities. This matter assists in dealing with the standards imposed by the governance of endowment such as honesty, justice and integrity, in addition to the standards that are originally missed by market. Hence, the applications of governance increase the opportunities of investment and growth of the endowed assets. Consequently, it achieves greater efficiency at the level of operations, investment and social outcomes.

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(1) Ibrahim Ghanem: The Milestones of the Historical Formation of the Endowment System, Trial Issue, November 2000 AD, P. 66.

## **Second Section: Mechanisms of the Governance of the Endowed Production Resources Investment**

The mechanisms of endowment investment governance of productive resources or assets refer to the set of instruments or techniques used in the determination of investment method and sometimes these sets represent economic, administrative and financial policies which may be summed up in the following points:

### **First: Sound Business Structures:**

Governance reflects the existence of systems, regulation and organizational control which determine the pattern of business relations such as:

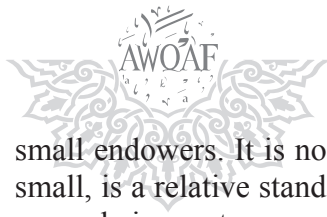
- The existence of legislations and regulations achieving justice in terms of responsibilities and duties for all parties.
- Application of an organizational structure capable of absorbing all inputs of good governance and its elements such as disclosure, transparency, responsibility, accountability and information.
- Development of plans enhancing work according to the basics of modern management.
- Activation of internal control and granting it the full independence from the board of directors or executive management.

### **Second: Large - Scale Endowment Funds:**

The endowment investment fund is defined as: “A pool in which cash endowment alms are raised, no matter how few they are, from multiple contributors. This fund is supervised by a specialized management which takes the charge of the endowment superintendent. These amounts are invested and their yield is spent for the benefit of the beneficiaries determined by the endowers”<sup>(1)</sup>. The large - scale endowment funds mean that there is a great number of endowers and the capital of the fund is great. Such capital is managed according to a scientific process by specialists. In addition, it also represents an appropriate opportunity for

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(1) The Modern Formulas of Endowment Investment, P. 167.



small endowers. It is no doubt that the size of the fund, whether large or small, is a relative standard governed by the nature of investment and the general circumstances.

On that basis, the endowment investment funds work towards mobilizing savings from the endowers to be re - utilized in certain projects. In this case, the party of the endowers represents multiple bodies; individuals, organizations, endowment bodies, Islamic financial organizations and others. The size of fund depends on the nature of the endowing bodies and their financial position. The governance procedures adopt the selection of optimum alternatives from amongst all parties of the available funding.

Through using governance procedures and implementing its standards, an organizational pattern capable of achieving better advantages for investment in the endowment funds may be reached.<sup>(1)</sup> This pushes towards the endowment specialization along with expanding the base of participation at the level of the community as a whole because governance is based on the endowment sector as a third sector in which all groups of the society are included, especially those groups that need more benefits and basic needs. As such, expansion may be made in the specialized activities of these funds whether productive or service activities and whether large or small funds.

As for the governance procedures of dealing with large - scale endowment funds, the standard of acquiring a larger market share as possible is applied via working in accordance with the advantages of significant production by forming a saving pool which may be utilized in the instruments of investment and which involves all participating endowers, including individuals, organizations, administrations of endowment and Islamic financial outlets, so that the fund may achieve better profit advantages with low levels of risk, taking into account the needs of the beneficiaries from endowment. The feasibility standard of governance is applied to the management of productive resources fund and its utilization in the appropriate investment formulas such as profit sharing in which the

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(1) Ibid, P. 192, 193.

manager of the fund plays the role of speculator, Istisna'a for lease <sup>(1)</sup> or partnership, in which the fund benefits from the opportunities of potential partnership with leading organizations in the development, operation and investment of the productive resources in feasible projects <sup>(2)</sup>.

### **Third: Application of the Developmental Productive Art**

The developmental productive art means the productive technique appropriate to the local development needs in terms of the applications of human and physical capital and giving priority to both of them.

The governance concepts and its applications on devising new ways based on renovation are used and the administrative decisions here support the new methods of productive art based on modernization and innovation. The significance of using the appropriate productive art is great in protecting the community from dependence on foreigners, preserving the external economic security from blockade and embargo, increasing the capability of attracting local workforce, preserving the cash reserve and achieving the purposes of national development. All such components promote the role of governance in increasing the optimum usage of the endowed productive resources. If the community suffers from unemployment and absence of operational opportunities, then we can devise forms of endowment work which depends on labor - intensive production such as farming and agricultural activity in general. The formulas and contracts relating to this aspect may be used so that the endowment body plays the role of a financier of production instruments, and a financier of endowed land to a strategic partner of specialized financial organization.

### **Fourth – Endowment Support of Productive Industries:**

There are small projects that may be promoted by the possibilities of the endowment body. This promotion differs according to the case of project.

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(1) Hussein Hussein Shehata: Investment of Endowment Funds, Issue 5, Kuwait, Awqaf Public Foundation, 2004, P. 99.

(2) For example, in 2008, the Awqaf Properties Investment Fund of Islamic Development Bank purchased machines for a publishing firm in Iran, leading to the increase of productive capacity of the firm. The firm was also supplied with a new production line, increasing the productive capacity from (2,5) million books to (3,5) million books at a total cost amounted to (48) USD dollar. See: The Bank's 2008 Annual Report, P. 20.



The administrative decisions may be directed to assist the programs of locating small-scale crafts to work in certain crafts, providing them with the sufficient experiences and prequalifying them with new craft programs.

The most important examples of the application of good governance concept in this aspect are represented in the action made by Awqaf Public Foundation, Kuwait when it adopted a decision of establishing the project of “Support of Kuwaiti Craftsman”. It is a leading project which seeks the achievement of a set of objectives; the most important of which are: establishment craft communities, holding qualification courses, provision of good loan for purchasing the required production instruments, information support including the available craft activities and benefiting from their relative advantages and formation of a portfolio of Kuwaiti crafts. <sup>(1)</sup>

#### **Fifth - Investment of Endowment in Shares and Muqarada Bonds:**

Here, the policy of endowment investment in shares is approved. This means that the management body invests the endowment via contribution to new industrial or craft companies or purchase of existing industrial companies.

This formula is lawfully permissible because the share represents a joint percentage in the company’s real estates, including the property, movable estates, cash and others. There is a consensus that the property is permissible to be endowed and the movable and cash ones are more likely to be endowed. Consequently, the endowment organization can invest via the endowment of shares in specialized industrial companies or contribution via participating in their incorporation. Additionally, investment may be made via holding shares in joint - stock companies through purchasing shares after their incorporation and establishment <sup>(2)</sup>.

Muqarada bonds practice the same mechanism in utilizing endowment and benefiting from it in financing the industrial sector. These bonds

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(1) Ibrahim Mahmoud Abdulbaqy: The Role of Endowment in the Development of Civil Community. The Model of Kuwait Awqaf Public Foundation, Series of University Theses (3), Ph.D., Kuwait, Awqaf Public Foundation, 2006D, P. 291, 292.

(2) Khaled Ibn Ali Al-Meshaiqah: Investment Formulas of Endowment Assets, Fourth International Conference of Endowments, Al Madinah Al Munawwara, 2/ 157.

are defined as “an investment instrument which divides the capital of speculation by issuing Sukuk of ownership of the speculation capital on the basis of units of equal value. These Sukuk are registered in the names of their holders as holding common stakes in the speculation capital”<sup>(1)</sup>.

For example, in case of Istisna’a, these mechanisms may be used in the investment of endowment cash via different methods, including:

- Istisna’a of craft establishments for the period of lease.
- Istisna’a of machines and equipment for the period of lease.
- Istisna’a of fixed assets instead of the expendable assets.

### **Third Section: Investment Formulas of the Endowed Production Resources**

The investment process of endowed productive resources may be used within many formula; the most significance of which are the formula of salam, dwindling (Mudarabah) profit sharing ending with ownership, farming, Istisna’a, Murabaha to the purchase orderer, installment sale and finance lease.

#### **First - Formula of Salam (Forward Sale with Immediate Payment):**

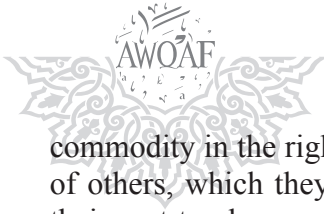
Salam is as a sale with immediate payment for a deferred receipt and it is permissible by jurists. Salam aims at achieving great purposes in the process of investment and financial, banking and industrial activity. These purposes have been approved by the Islamic Fiqh Academy concerning the contemporary application of this formula, and its resolution states:

Salam (forward buying) is considered today as a highly effective financing instrument in Islamic economy and in the activities of Islamic banks, taking into consideration its flexibility and responsiveness to the various needs of finance. Hence, the wide range of applications of Salam includes:

- 1) A Salam contract may be used to finance various agricultural operations, in which case the Islamic bank deals with farmers expected to have the

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(1) Abdulsalam Al Abady: Muqarada Bonds, Journal of Islamic Fiqh Academy, Issue 4, Part 3, 1988, P. 1976.



commodity in the right season, either from their own crop or from that of others, which they may purchase and deliver in case of failure on their part to observe delivery out of their own crops. The bank would thus have extended to them a benefit of great value and protected them against the failure to achieve their production targets on account of financial deficit.

- 2) A Salam contract may be used to finance agricultural or industrial activities particularly for financing the stages before production and export of the marketed goods by means of buying them under a Salam contract and marketing them again at profitable prices.
- 3) A Salam contract may be applied in financing handicraftsmen, small manufactures, farmers and industrialists by providing them with the necessary production needs in the form of tools, equipment, or raw materials as a forward capital against access to some of their produce and remarketing them”<sup>(1)</sup>.

As the role of the Islamic bank, Salam formula can allow the endowment body to determine poor social groups with certain professional or craft characteristics. For example, agricultural machines and equipment necessary for agricultural reclamation may be endowed as a capital of Salam. It is conditional that these machines and equipment must be provided to poor professional groups specialized in the agricultural work in exchange of obtaining some products that the endowment body can make use of them for the benefit of other poor groups. This formula is integrated between the endowment body (financier) and the target groups (beneficiary) because the poor groups often work in the agricultural sector. This sector has the virtue of being one of labor-intensive sectors, i.e. it concentrates on the human element. In the meantime, the endowment body plays the role of the strategic partner in the development of local community by helping the poor.

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(1) See: The Resolution of the Islamic Fiqh Academy No. 89/ 2/ D9



**Second - Dwindling (Mudarabah) profit sharing ending with ownership:**

This formula is a contract including a finance provided to a person to obtain production instruments, equipment and productive assets. The financier shall rent them to such person with the possibility of granting him their ownership, if he desires, during the period of rent or upon the termination of the contract.

The following are amongst these forms of endowment:

The endowment organization makes an agreement with a financing party in order to purchase production instruments and equipment for the endowment. The organization utilizes them in certain productive activities and the land of endowment may be invested for establishing a productive factory on it by a finance or industrial organization. At the end, the ownership of the factory and its production instruments shall revert to the endowment <sup>(1)</sup>. It is clear that the length of the period of lease requires the existence of detailed feasibility studies that would take into consideration the future expectations, market fluctuations, indicators of inflation, economic contraction and all factors that may affect the stability of the market due to fear of the decrease of the market value of production instruments to unsafe levels or loss of such value.

**Third - Muzara'a (Crop-Sharing):**

Crop-sharing refers to a contract in which one person works in the land of another person in return for a share in the produce of the land <sup>(2)</sup>. It is a sharing between the land owner and the person who owns the experience in the works of farming and agriculture. The endowment organization provides the agricultural endowment land to an operational party to make the investment. Although the known form of crop-sharing includes two parties, one of them provides the land and the other provides the work, but there are other forms which may be useful such as the following:

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(1) Nazih Hamad: Techniques of Endowment Investment and its Basic Management, Kuwait, Researches of Seminar Towards a Development Role of the Endowment, 1993, P. 185.

(2) Wahba Al-Zeheily: Islamic Fiqh and its Evidences, 5/ 613.



- The land and production instruments from a party and the work from another party
- The land and work from a party and the production instruments from another party
- The land from a party, the production instruments from a second party and the work from a third party
- All of the land, work production instruments provided by sharing

Any of these forms may be selected so that it shall be suitable for the endowment organization's feasibility studies and available possibilities, especially those possibilities relating to the financial aspect and the ability to finance. In addition, there is the possibility of utilization of the target groups and prequalifying them to work in certain agricultural activities because there are vital agricultural fields which depend on the usage of technology or require high technical skills.

#### **Fourth - Istisna'a (Manufacture)**

Istisna'a is "a sale contract between the ultimate purchaser and seller whereby seller - based on an order from the ultimate purchaser - undertakes to manufacture or otherwise acquire the subject matter of the contract according to certain specifications and sell the same to the ultimate purchaser for an agreed upon price." As for Istisna'a in the field of endowment of production instruments, the endowment organization can agree with a (professional) manufacturer to establish a project for producing the capital commodities on the endowed land (building a factory of durable capital commodities ...) by virtue of an agreement on certain standards and controls, provided that this projects is financed by a third party (Islamic financial organization). After completing the project and making sure of the standards integrity, the organization of the endowment pays the value of the financed capital with an agreed profit margin. The payment shall be made in the form of installments that are in agreement with the profit. Afterwards, the ownership of the project shall revert to the organization of the endowment.<sup>(1)</sup> The following are the pillars of this

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(1) Abdulsattar Ibrahim Al-Hebty: Endowment and its Role in Development, Qatar, Researches and Studies Center, 1988, P. 87

process: the endowment body (ultimate purchaser), financial organization (financier) and craft body (manufacturer)

Of course, this project requires the performance of basic technical procedures such as feasibility studies, nature of the productive activity, its suitability for the demand in the market, competitive markets and market opportunities and challenges.

Focus may be made on small projects in the process of manufacture. It is not limited to the private sector, but extends to include the third sector represented in cooperatives and family or domestic units. This step is important because of its contribution to generating job opportunities, in addition to contribution to the total added value and production of commodities and services at rates accepted by low-income individuals.

Among the famous forms of the manufacture contract is that an organization concludes a manufacture contract for supplying capital commodities. This is made via providing the small craft projects with the production instruments to be used in producing the final products. Cooperation may be made with the Islamic banks in the operations of marketing these commodities on the basis of partnership in distributing the profits.

### **Murabaha for the Orderer of Purchase**

Murabaha sale is a sale of a commodity at a known price and with a known increase. It is a type of trust-based sales and it is permissible by “Hanafi”<sup>(1)</sup>, “Maliki”<sup>(2)</sup> and “Shafi’i”<sup>(3)</sup> scholars. It may be applied to the field of endowment on the basis that the endowment organization plays the role of a financier which purchases commodities and capital equipment and sells them according to a Murabaha contract. This finance is applied to all bodies requesting the finance, whether governmental bodies, private or national sectors.

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(1) Muhammad Amin Ibn Abdeen: Footnote of Ibn Abdeen “The Reply of Al-Mokhtar to Al Dor Almokhtar”, 2nd Edition, Dar Al Fikr Publishing, 1966, 5/ 135.

(2) Muhammad Ibn Arafah Al-Dosouky: Footnote of Al-Dosouky to Al Sharh Al Kabeer, Eissa Al Baby Al Halaby Printing Press, 3/159.

(3) Al-Khateeb Al-Sherbiny: Moghni Almohtaj, Ibid, 2/ 77.



### **Sixth - Investment by the Formula of Installment Sale:**

Installment sale is a contract to sell a stuff in consideration of a deferred price that is paid according to known parts on known dates. It is one of the permissible sales in Islam, but jurists pointed out that “it is not lawfully permissible that the contract shall stipulate interests of installment separated from the current price so that it relates to the deferred price, whether the two parties agreed on the rate of interest or linked it to the prevailing interest”<sup>(1)</sup>. The endowment benefits from this formula through the purchase of the production instruments and then selling them on installments to the target poor groups to work in specific craft sectors..

### **Seventh - Finance Lease (Ijarah)**

The forms of the endowment investment by finance lease refer to the fact that the endowment organization leases the land of endowment for a specific period of time at a known annual rent in return of the lessee’s commitment to construct a building on the land of endowment (construction of an industrial complex) for benefiting from it throughout the period of lease. The amount of rent of the land designated to the lessee shall be sufficient to pay the value of construction upon the termination of the lease period. This form is lawfully permissible, taking into consideration some regulations:

- The achievement of the endowment property’s purposes in terms of the applications relating to the production instruments or capital commodities.
- The realization of benefit from construction and the annual rent and avoidance of obsolescence risk.
- Usage of this form upon the existence of deficit in the yield and inability of construction from the endowment itself.

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(1) Journal of Islamic Fiqh Academy, Issue 6, 1/ 447.

### **Third Topic: Standards of the Governance of the Endowed Production Resources**

The concept of the actual application of the governance of the endowment of productive resources depends on three types of standards; behavioral standards, functional standards and productive standards <sup>(1)</sup>. In whole, it constitutes a set of rules and controls that may be useful in the development of the control environment and its application concerning the governance of endowment. This aspect involves all forms of control, whether internal controls related to decision making and determination of authorities and responsibilities inside the endowment body, or external controls related to the laws and legislations of state intervention and improvement of efficiency of operational and administrative performance.

It includes three sections

#### **First Section: Endowment's Behavioral Standards**

The endowment's behavioral standards function as governing principles and controls which determine the codes of conduct of endowment in the investment of production instruments, including <sup>(2)</sup>:

##### **First - Adherence to the Shariah Principles:**

Islam has considered the significance of compliance with Shariah principles for reaching the duplicated rewards in the hereafter. Beside endowment, Islam urges the preservation of the reward and wage and therefore the resulted reward is considered as a continuous charity. This output represents a gift from Allah that is free of compensation and the Muslim deserves it in the Hereafter. Thus, the existence of self-compliance from the individual should be observed in the endowment investment of production instruments. This compliance is supported by the existence of religious and ethical constraints that are translated into work.

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(1) Samiha Fawzy: Governance of Companies in Egypt Compared to the Emerging Markets, Center for International Private Enterprise, Cairo, 2003 AD, P. 15.

(2) Islamic Development Bank: The Fund of Investment in the Properties of Endowment, Seventh Annual Report, 2008 AD, P. 12.



### **Second - Cooperation:**

The legislation of endowment in the Islamic community depends originally on the philosophy of cooperation as an asset. It is shown via the people's need for each other for reaching the needs so that they are realized away from oppression and predominance. As long as people need each other, the relations of cooperation are necessary among them to prevent quarrels and disputes that lead to hatred and severance of relations. Therefore, cooperation represents a golden rule in regulating the relations between individuals for reaching the ultimate goal of the exchange of needs.

It is established by some jurists <sup>(1)</sup> that cooperation is better than spreading competition in the market because competition means that everybody targets at realizing the same objective which generates the acquisition of worldly pleasures and greed. Consequently, people will compete to acquire them while evil and harm will arise between them, leading to the existence of evil in the community in contrary to the ethics of cooperation that eliminate those adverse implications and achieve the community's welfare.

### **Third – Humanitarianism and Social Responsibility:**

This means that endowment adopts a strategy which depends on work according to compliance with the individual, social and organizational responsibility. There is no doubt that the importance of endowing the production instruments comes under the scope of concentration on the aspect of social responsibility in the economic activity. This aspect is derived from the overall economic pattern that is based on the realization of the social solidarity rule and consideration of the rules of social interest such as the following two rules: “No damage and no infliction of damage” and “Avoidance of harm takes precedence over accrument of benefits” ... etc.

Therefore, the system of endowment supports the development operations, fights poverty and releases poor people from the consequences of poverty and all these efforts come within the context of providing the

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(1) Abu Hamid Al-Ghazali: Revival of Religious Sciences, Beirut, Dar Al-Kotob Al-Ilmiyah, 4/ 125.

poor people with job opportunities in productive projects. These projects may be large-scale cooperative projects which guarantee the right to own some shares of the productive capitals of endowment productive projects. The principle of humanitarianism observes the equitable circumstances that do not utilize poor people according to their tendencies, professional experiences and social characteristics while granting them job opportunities as per efficiency and achievement after acquiring qualifications and training, and consequently, granting them equitable wages whether in productive shares, returns or wages ... etc.

Therefore, endowment of productive resources is achieved within a framework of an ethical system required for the successful community relations. The standards of ethics in this system depend on the fixed assets developed by Islam in the field of regulating the exchange between individuals, including the prohibition of forbidden activities harming the community.

#### **Fourth - Transparency and Accountability:**

Transparency depends on the principle of honesty and represents a great significance in the relations of endowment because it leads to the disclosure of data transparently. It generates credibility and high confidence among the different parties and guarantees the application of honesty as an ethical rule protecting the transactions of endowment from any misconduct. Rather, dealing on a basis other than this rule shall completely destroy the endowment body.

It should be pointed out that the most prominent forms of endowment prohibited by Islam are affected by the absence of information, fraud, deception and misappropriation of the funds of endowment. Therefore, the transactions of endowment should be disclosed - including the financial outcomes of endowment accounts - periodically (monthly or quarterly), the report and expectations of the final accounts should be submitted to the parties participating in the process of investment and all financial inputs and outputs should be recorded. In addition, the policies and results of internal and external audit at the end of the periodical accounting should be clarified.

### **Fifth - State Intervention:**

The concept of the state represents a legal personality which has a general rule over persons and things. This rule is “owns the tools of power that enable it to overcome outlaws, repel aggressors and reform the delinquent people”<sup>(1)</sup>. This rule represents a legitimate parliamentary authority that the ruler gains from the nation as per the pledge of allegiance<sup>(2)</sup>.

The Islamic law has approved the different types of state intervention in the market for considering the interests of the people and because the activity of endowment investments is a part of the market activities. The state intervention, represented in the authority of the ruler, is made via taking the necessary measures for protecting the resources of endowment from loss, looting or negligence.

There is no doubt that the acts granted to the ruler as per the authority of rule are not narrow in certain endowment aspects, but rather involve the legal acts included in man-made laws, including physical acts. Such acts preserve the matter in its form without any change. It is clear that the ruler can play the role of management of endowment in many cases due to the existence of gaps in the precise conditions of the superintendent’s eligibility, the nature of endower’s conditions or reasons attributed to public interest.

This principle depends on the rule of necessity of obedience of the ruler in authority in case of goodness to the endowment’s best interest. There are rules of jurisprudence and fundamentals which justify this intervention, including: “Avoidance of harm takes precedence over the accrument of benefits”, “to repel a public harm, a private damage is preferred”, “all harms should be avoided as far as one can” and other general rules.

All measures taken by the ruler shall take the mandatory nature because judgments shall be disrupted without this nature, chaos shall prevail and

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(1) Tarek Al-Beshry: Transformations of the Relationship of Endowment with the Civil Society Organizations in the Countries of Nile Valley, Within the Book of: The System of Endowment and Civil Society in the Arab World, Centre For Arab Unity Studies, Kuwait Awqaf Public Foundation, 2003 AD, P. 138.

(2) Ali Al-Khafeef: Brief of Shariah Transaction Regulations, 1954 AD, P. 95.



the people's endowments and rights shall not be secured. It was narrated that Umar Ibn al Khattab deposed Sa`d Ibn Abi Waqqas from his post as a governor of Kufa. Al-Hafidh Ibn Hajar commented on this incident saying: "There are many benefits in this Hadith. If the public interest so required, the Imam may depose some of his governors in case of submitting a complaint against them even if it was not proven" <sup>(1)</sup>.

The intervention may be made via jurisdiction and sometimes by Al-Hisba Body. The intervention relates to the administrative method undertaken by the state to follow up the individuals' activity in ethics, religion and economy in order to achieve justice and virtue.

### **Sixth - Piety:**

The process of investment requires an extent of piety which represents an asset protecting their owner from obtaining ill-gotten gains because the process of investment is usually not free from mixed doubtful things. Therefore, the endowment body makes it obligatory to avoid the fields of doubtful things in the investment activities that are intended to be undertaken. It also makes it obligatory to comply with the Public Foundation's standards determining the optimal code of conduct of all staff in the operation of production instruments investment. This includes the improvement of relations with the different parties of endowment and compliance with the ethics of productive work.

Regarding the issue of piety, there are many issues indicating the extent of attention to avoid doubtful things. In the early Islamic era, Muslims, in the field of commercial investment, kept themselves away from the ashamed of practice of trade in the season of Hajj until the following verse has been revealed: **(There is no sin on you if you seek the Bounty of your Lord )** <sup>(2)</sup>. Sahih Al-Bukhari has paid the greatest attention concerning this regard. Al-Bukhari has been distinguished from other scholars by observing the particulars of jurisprudence of commercial investment. In his Sahih on the legitimacy of trade, he started with the Book of Sales and Trade and

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(1) Ahmad Ibn Ali Ibn Hajar: Fath Al-Bari fi Sharh Sahih Al-Bukhari, edited by: Muhammad Fau'ad Abdulbaqy and Mohebeldin Al-Khateeb, Beirut, Dar Al Maarefa Publisher, 1379 AH, 2/ 240.

(2) Surat Al Baqara: Verse 198.

then focused in the following chapters on the importance of piety, seeking the legal things and forsaking the doubtful things, including: “Chapter of Legal, illegal, and doubtful things”, “Chapter of Doubtful (Unclear) Things which should be Avoided” and “Chapter of the One who does not Care about the Source of his Earnings”. All these issues do not come under the original rulings on sale in terms of conclusion or enforcement, but they are necessary introductions for reviving the consciences and to instill the religious motives in peoples.

These particulars and fine details may be useful in supporting the aspect of financial transactions among individuals on religious bases surrounded by fear of Allah and monitoring the motivations of the soul to refrain from obtaining illegal things.

### **Seventh - Professional Experience and Jurisprudence of Dealing in Endowments:**

The interest of the endowment determines the scope in which the superintendent of endowment works. Ibn Taymiyyah says: “The superintendent has no right to dispose of endowment except as per the best interest of the endowment. He must perform the more favorable action and then the less favorable action.” He also says: “In case of saying that the trustee has the right to do what he desires, this means that doing so for a lawful interest even if the endower permitted what he desires or considers. This is an invalid condition because it violates the Islamic law”<sup>(1)</sup>.

The trustee’s understanding of the connotations on which the modern lawful formulas of endowment funds investment are based should be considered. Most endowment funds suffer from the inability of expansion because most endowers still adopt the traditional ways in investing the endowment. Therefore, the trustee should fulfill the lawful requirements relating to the eligibility of trustee, including the ability to make distinction between the valid and invalid contracts and how to avoid any form of usury.

In case of the inability to know the facts of financial transactions related to the endowment, he should seek the assistance of pious people and jurists

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(1) Ibn Mefleh Al-Hanbaly: *Almobd’a fi Sharh ALmoqn’a*, 1400 AH, 5/ 334.

who have great experience and competency. The Prophetic Hadith states that the Prophet was informed that there is a man who deceives in sales. The Prophet said: “ When you enter into a transaction you should say: There should be no deception” <sup>(1)</sup> i.e. no fraud. Ibn Hajar said: “Scholars said the Prophet inculcated him this statement to say it upon entering into a transaction, so his companion shall know that he is not experienced in the knowledge of commodities and amounts of value. Consequently, he would deal with others as others would deal with him in accordance with what is established concerning the inducement of the merchant parties to give advice to each other” <sup>(2)</sup>.

It is a must in the jurisprudence of financial transactions of endowment that the Muslim investor should have a great ability which enables him to make careful planning for the required operations and how to ensure security and safety without exposure to high risks.

### **Second Section: Functional Standards of Endowment**

The functional standards of endowment relate to the way by which the productive resources are utilized and their consequences are represented in the derived benefits that will be useful in accordance with the Shariah principles and community’s interest, including:

#### **First - Production of Pure Things:**

Pure things are all things from which a benefit may be derived. In this case, the usage of endowed production instruments shall be limited to certain investment fields complying with the permissible things in production and avoiding impure things, because production is originally intended for the satisfaction of man’s needs and maximization of benefits.

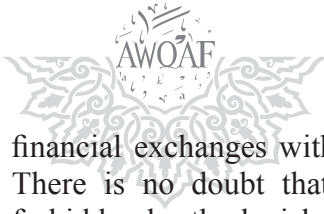
#### **Second - Commitment to the Legitimacy of the Endowment Product:**

Endowment investments need the investigation of lawful commitment with regard to the financial exchange of endowment, especially those

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(1) See: Sahih Al-Bukhari, Book of Sales and Trade, Hadith No. 2117, Book of Loans, Payment of Loans, Freezing of Property, Bankruptcy, Hadith No. 2407, Book of Khusoomaat, Hadith No. 2414, Book of Tricks, Hadith No. 6964, and Sahih Muslim, Book of Transactions, Hadith No. 1533.

(2) Ahmad Ibn Ali Ibn Hajar: Fath Al-Bari fi Sahih Al-Bukhari, op. cit., 4/ 337.



financial exchanges within the scope of work on an international basis. There is no doubt that there are many investment forms which are forbidden by the legislator. The known and forbidden forms in the field are investment in global banks adopting usurious methods, companies producing materials and commodities jeopardizing human life and companies producing services or production instruments aiming at goals other than the welfare of life, but rather at destroying it.

Of course, investment models are not free from complex formulas requiring the necessity of verification and review of the related Shariah rules in all significant respects. There are applied cases which entail adaptation between Shariah pillars and the current financial reality, especially with regard to the relations of globalization via dealing with some abominations on the basis of forgiveness or tolerance in case of insignificant amounts.

### **Third - Strategic Partnership:**

Strategic partnership depends on the utilization of production instruments endowed in operations that realize unique advantages. It depends on the costs resulting from the selection of production method. The selection process ranges between the usage of production concentrating on labor or production concentrating on capital. It also depends on the nature of finance. If this finance was an incidental finance of the endowment, in this case, the relation of partnership should be distinguished by smooth production instruments without any legal obstacles.

### **Fourth - Production on the Basis of Feasibility Studies:**

Feasibility studies contribute to the identification of the effective methods of the available resources, resulting in better returns at less costs<sup>(1)</sup>. There is no doubt that the optimum usage of productive resources in accordance with carefully considered plans paves the way for reaching the objective through the most direct route. These studies are not confined to just knowing the extent of profit, but within the frame of feasibility studies, they extend to social objectives, levels of poverty and benefit from workforce, in addition to the side effects related to the environment, culture and community's rights.

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(1) Fau'ad Abdulla Al-Omar: Investment of the Endowed Funds, Awqaf Public Foundation, 2007 AD, P. 199.

### **Fifth - Control of Contract Implementation:**

Control here is executed in many fields. In addition to Shariah control, a legal control should be made over all acts concerning the conclusion, authentication and disclosure of contracts in the light of the required transparency.

Administrative control means following up the endowment's financial operation in coordination with other units in the state, such as the General Inspectorate, Inspection and Control Body, Accounting Bureau, Anti-Corruption Bureau and Al-Hisba Body. These names differ from a country to another. These bodies undertake the processes of financial audit, inventory, evaluation of periodical account statements, investigation and proposition of practical perceptions of good governance.

#### **It may be summed up in the following points:**

- The existence of an administrative control agency which takes the charge of reviewing, auditing and evaluating all operations and investment activities. The following are examples of the matters that should be verified: prohibition of deposit of the endowment's funds in usurious banks and obtaining their usurious interests or the existence of shares distributed to companies dealing in prohibited activities. All this leads to the loss of wage and reward intended from the endowment.
- Dealing with any violation which involves infringement or negligence of the endowment funds or assets as a financial crime that should be subject to the penalties imposed by the local laws. Penalties range between imprisonment, fines or other penalties imposed by the provisions of the law.
- Determination of the objectives of controlling endowment industrial investment so as to prevent excessive risk. These objectives include the assurance of compliance with the legislations of investment using the production instruments, orientation of investment for the period of time on the basis of the interests of good business, controlling the movement of investment within safe and desirable limits and maintenance of the integrity of the financial position of the endowment organization.



- Intervention via development of quantitative and qualitative standards to control partnership relations with other parties and determination of the types of guarantee when purchasing the required production instruments and their conformity with the required technology.

### **Sixth - Diversification of Investment:**

An investment pool appropriate to the endowed funds and the nature of the proposed lawful formulas and mechanisms should be selected, especially that the diversification of investment promotes the opportunities of reducing the risk instead of the concentration of investment on a specific sector.

### **Third Section: Production Standards**

#### **First - Production in accordance with the Rule of Priorities (Assets)**

Islamic rules have been fulfilled all priorities and differentiated between them. This was discussed by the scholars of the Fundamentals of Jurisprudence in their literatures through their distinction between “needs”, “necessities” and “Improvements”. This issue has a great significance in the process of selection between the investment alternatives; i.e. talk about the optimum usage of the endowed production instruments among these alternatives does not mean the absolute concentration on the aspect of profitability. However, lawful provisions relating to the community and individual obligations are considered. This demonstrates the significance of performing investment activities required as a commitment. This commitment is imposed by the rule of necessities as it also imposed by the community obligations.

Necessary needs are integrated among their components on a standard basis guaranteeing all constituents on which human life depends, i.e. achievement of the purpose of preservation and maintenance of self from death. Consequently, any investment in the professions achieving the aspect of necessities should not be suspended even if it was one of the professions and works named by some scholars as “descending” or “inferior” professions. In this regard, Sheikh Al-Islam, Ibn Taymiyyah says: “If people need farmers, weavers or builders, this work shall become a duty and the ruler has the right to force them to perform it in exchange of a compensation if they rejected the performance of it” <sup>(1)</sup>.

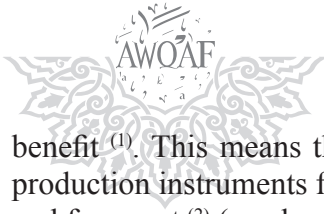
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(1) Ahmed Ibn Taymiyyah: Al-Hisba, P. 19.

There are other classifications for investment made by some scholars, including Al-Ghazali who divided it into fields of work representing necessities. Accordingly, these necessities would not fall outside the requirements of life preservation, livelihood and related reasons protecting from death such as food, clothing and housing, in addition to management of these elements. Therefore, the term “Fundamentals of Professions” or “Main Elements of Professions” has emerged to denote the satisfaction of these needs. These fundamentals are represented in agriculture, weaving, building and politics. These professions are also an obligation on the community due to the necessity of providing them and the interests of the people cannot be achieved without them. When considering the standard of the fundamentals of professions according to this classification which are divided into four sectors, we can reach a re-formula of this standard according to the sectorial distribution, which shall not fall outside the means of the fundamentals of professions represented in the agricultural sector, industrial sector, building and construction sector and services sector.

**Second - Production in accordance with the Professions Subordinated to Fundamentals (Supplements or Complements):**

In this parameter, the circle of crafts and professions expands to involve more types generated from fundamentals which have been named by jurists as supplementary professions and complementary professions. The supplementary professions supplement the fundamental professions. They are intended for increasing development and raising the efficiency of operation. For example, smithery aims at guaranteeing the existence of production instruments such as the provision of machines required for agriculture (agricultural mechanization). This means the modernization of the productive craft used for the development of this sector and the increase of its economic effectiveness. This may be disseminated and compared to the remaining fundamentals. There is no doubt that these supplements contribute to the production, development and update of fundamentals. After them come complements which are the fields that fall within the scope of final outputs of the product. For example in agriculture, wheat is turned into bread as a final product including the satiable final



benefit <sup>(1)</sup>. This means that the investment shall be oriented towards the production instruments for the satisfaction of the needs of individuals first and foremost <sup>(2)</sup> (needs or fundamentals).

### **Third - Production in accordance with the Standard of Priorities:**

One of the priorities is materialized in the fact that the development of endowment has precedence over disbursement to beneficiaries, because it is a means to preserve it from damage and destruction <sup>(3)</sup>. This parameter is closely related to the standard of priorities, but after selecting the appropriate productive art, classification among the different alternatives of these productive arts is made for choosing the most appropriate one according to many standards, including:

- Standard of the Demand Volume

In this standard, the effectiveness of demand on professions is determined. For example, in case of the severe need for foods, agriculture would be better than any field else. In case of need for one or more industries, such industry would be better in the order of needs. This is the standard in any type of professions. Consequently, the endowment investment of production instruments should be directed in the light of the orientation of effective demand.

- Degree of Risk

Investment may not be made in projects with a potential of high risks or even where profit and loss are equal. <sup>(4)</sup> This does not mean that the objective of the projects of endowments is the maximization of profits, but industrial projects investing in the endowed production instruments must be tainted by a degree of rationalism in order to cover costs and achieve the desired objectives in contrary to the principle of high risk.

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(1) Muhammad Ibn Muhammad Al-Ghazali: Revival, op. cit., 3/ 241.

(2) Rafik Al Masry: Principles of Islamic Economy, op. cit., P.104.

(3) Bada'i Al-Sana'i, 6/ 221.

(4) Ali Al Qaradaghi: Development of Endowment Resources, Journal of Awqaf, Issue 7, Shawal 1425 AH (November 2004 AD), P. 20.



- The Rate of Yield:

In this case, yield must be more than the difference between the total return less the total costs. Of course, the realized physical yield shall be varied in terms of many considerations such as the target period of time, nature of economic activity, volume of production elements, the existence of sophisticated technology, level of optimum usage of resources and other considerations.

- The Volume of Benefit:

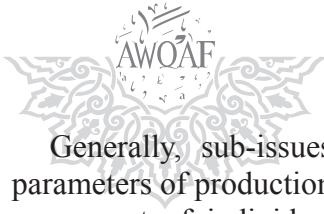
The importance of maximum benefit from professions is determined according to the benefit derived from the professions itself, i.e. people's need for it. The volume of benefit depends on the extent of the existence of a target benefit in the interest of the endowment, endower and beneficiaries. In this standard, the problem of determination of the order of importance of all professions is clear and jurists in their literatures have variously discussed this issue.

- The Standard of the Nature of the Subject Matter:

The nature of subject matter refers to the place or effort exerted in such profession. For example, the profession of goldsmithing is better than tanning and this preference according to this standard is realized in terms of the fact that goldsmithing is related to gold whereas the subject matter of tanning is the skin of dead animals. The difference between both professions is great in terms of the subject matter and description. Accordingly, the endowed production instruments are invested in applications with a relative preference in order to achieve efficiency and realize the objectives in fields better than other fields in terms of place or subject matter.

**Discussion of Production Parameters in accordance with the Standards of Needs, Aptness and Selection of Alternatives:**

The differentiation between the applications of production resources on the basis of absolute standards is a questionable matter because it differs according to persons, circumstances, place and time. There is no doubt that the development of communities, increase of technological advancement and replacement of workers with machines, or the so-called labor-intensive productive art, would characterize these standards with a relative importance rather than absolute importance.



Generally, sub-issues may be overlooked when dealing with the parameters of production. The reason for this is that production represents a segment of individual behavior, but rather represents the reality of human orientation, which is originally distinguished by complexity. It is impossible to reach a conceptual consensus on the details of this behavior.

Working in agriculture is suitable for some persons according to their talents and potentials and others are suitable for another job according to their abilities, orientations and harmony with certain works. All this leads to the consistency of the world and the development of the universe. This orientation is asserted by the people's varied needs that require the existence of all professions and crafts. Otherwise, the existence of certain professions and the absence of others shall disrupt life. Additionally, these needs are renewable, especially in the social development witnessed by the modern communities.

All this paves the way for conducting a broader comparison in the concept of the standard itself. The standard of benefit, demand or subject matter does not define the preference of the profession. The satisfaction derived from any profession, commodity or service would define the preference which shall not be an absolute preference. In certain circumstances, the skin of dead animals may be better than gold or cast gold, especially when a person is about to die whereas there is nothing to protect him from cold. At that time, jewelry and adornment are not considered as a necessary need.

#### **Fourth Topic: Some Shariah Rules Related to the Governance of the Production instruments Investment**

It includes four sections:

##### **First Section: Assurance of the Suspension of Benefit of Productive Resources**

The benefit realized from the endowment of productive resources takes the form of the hand of trust as for the agency used. The hand of trust is the hand of the possessor of the thing as per the permission of its owner, not for

the purpose of owning it but as a deputy of the owner<sup>(1)</sup>. This form realizes a common interest between both parties; the beneficiary from endowment and the investor of the endowment. This case is similar to the case of the speculator, partner and farmer. There is a second form of the hand of trust in which the interest of the owner is realized such as the depository, agent, guardian or custodian. There is a third form which can realize the interest of the beneficiary such as the borrower, mortgagee and lessee.

Although the hand of trust does not bear the consequence of the stuff destruction but in case of infringement, it becomes a guaranteeing hand that is obliged to satisfy the compensation of damage. Scholars have variously elaborated on this issue indicating that the hand of trust does not guarantee or that it guarantees in case of infringement or negligence.

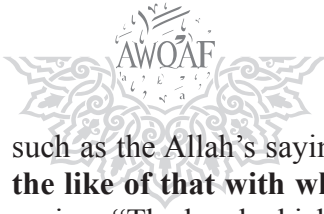
The case of the hand of trust that does not guarantee is attributed to many justifications, because the possessor is a deputy of the owner in the hand and disposal. The destruction of the estate in his hand is similar to its destruction in the hand of its owner because the default is that the possessor is not originally to be blamed. However, upon the occurrence of a crime, negligence or infringement, the hand of trust shoulders the guarantee<sup>(2)</sup>.

This case may be applied to the agency investing the endowed production instruments as a means of deriving a benefit from them. Reference should be made here to the importance of changing time and circumstances. At the time in which jurists have addressed this issue, people were closer to purity, righteousness and observation of rights, unlike this time where people are closer to graft. It was reported that some Companions were of the view that “leaving manufacturers, who are trustees, without guarantee is an excuse for neglecting or denying people’s funds or alleging their damage or loss. Therefore, they wanted to eliminate this excuse by imposing the necessity of guaranteeing their lessee’s funds that could be lost while under their custody”<sup>(3)</sup>. This is supported by definitive texts

(1) Muhammad Abu Zahra: Lectures on Endowment, Cairo, Dar Al-Fikr Al-’Arabi, P. 413.

(2) Muhammad Sa’eed Al-Mahdy: The Hand of Endowment Superintendent between Trust and Warranty: A Research Submitted to the Third Conference of Endowments in KSA: Islamic Endowment.. Economy, Management and Building of a Civilization, Part 3, P. 459.

(3) Ibid, P. 464.



such as the Allah's saying: **(And if you punish, then punish them with the like of that with which you were afflicted)** <sup>(1)</sup>, and the Messenger's saying: "The hand which takes is responsible till it pays." <sup>(2)</sup>

### **Second Section: Endowment of the Benefit of Productive Resources**

Benefit in economy means the pleasure derived from commodities and services. Consequently, it is a characteristic related to money so that it makes it capable of satisfying a need or a psychological desire.

Benefit, in this form, represents the intended purpose of things. Al-Shatibi said: "Benefits generate interests for people, rather than the possessions themselves. The land, house, clothing or money in itself does not harm or benefit, but their intended purpose is harvested. For example, the land is cultivated, the house is inhabited, the clothing is worn and the money is used in purchasing a thing which generates a benefit" <sup>(3)</sup>.

There is no doubt that the application of the endowment of benefit establishes a great base for attracting endowment because the man who does not own machines or capital production elements can lease them, generate their benefit and then endow this benefit. The lessee does not own the machine, but owns its benefit through a lease contract. He did not endow the machine itself, because he does not own it, but he endows the benefit that contributes to reaching the final product.

Maliki jurists, according to their most preponderant view, <sup>(4)</sup> and some Hanbali <sup>(5)</sup> jurists consider that it is permissible to endow the benefit unlike <sup>(6)</sup> the Hanafi and Shafi'i jurists <sup>(7)</sup> as well as most Hanbali <sup>(8)</sup> jurists who say that it is impermissible to endow the benefit. Sheikh Al Dardeer says

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(1) Surat Al Nahl: Verse 126

(2) Jami` Aat-Tirmidhi, Hadith No. 1266, and it was corrected by Hakim in Al-Mustadrak, 2/ 47.

(3) Al-Shatibi in Al-Muwafaqaat, Beirut, Dar Al Maarefa Publisher, 1/ 166.

(4) Ahmad Al Dardeer: Al Sharh Al Kabeer, Beirut, Dar Al Fikr Publishing, 4/ 76.

(5) Mansour Ibn Younes Al-Bahwaty: Kashf Alqena', Beirut, Dar Al Fikr Publishing, 1402· 4/ 244.

(6) Ala Al-Din Al Kasani: Bada'i' Al-Sana'i', Beirut, Dar Al-Kitab Al-Arabi, 1982, 6/ 221.

(7) Muhammad Ibn Amad Al Sherbiny: Moghni Almohtaj, op. cit., 2/ 378.

(8) Al Bahwaty: Al-Rawd Al-Morab'a, op. cit., 2/ 455.



in his Sharh Al-Saghir of Mukhtasar Khalil: “It is a permissible to endow an owned stuff even by suspension. The term “owned stuff” according to him means either the ownership of a stuff or benefit even if such ownership was in exchange of a compensation such as a house leased for a known period. A person has the right to endow its benefit during such period. The endowment is terminated by the lapse of such period because perpetuation is not a condition in it <sup>(1)</sup>.

The argument of the first group advocating permissibility is that the benefit may be saleable and all saleable stuff may be endowed; because the transfer of ownership occurred in both endowment and sale. If compensation is permissible in sale, it is permissible in endowment because both of them are susceptible to the transfer of ownership. As for the argument of the second group, it is represented in the fact that the benefit is a branch, whereas the estate is a root and the endowment of the branch without the root cannot be perceived.

The most likely view in this issue is the permissibility of endowing the benefit due to the strength of inference and the realization of the considerable interest in this regard. In addition, the endowment of a benefit would contribute to performing good deeds and charity. Moreover, this opens new windows for charity work supporting the reward of the benefit of endowment for both the beneficiary and endower alike. The second saying advocating the impermissibility of endowing the benefit may be refuted by stating that the separation of benefit from the owner of the estate could be perceived. For example, the benefit of the leased estate may be useful to people other than its owner and so on.

**There are many forms for the endowment of the production instruments’ benefit and the following are the most important:**

- Making us of the local or non-local personnel who have the sufficient experience in using the production instruments, utilizing this experience in exploiting the national resources and endowing the derived benefit in specific national purposes.
- Dissemination of the industrial benefit and transferring it from the areas of surplus to the areas of deficit.

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(1) See: Footnote of Al-Dosouky to Al Sharh Al Kabeer, 4/ 76.



- Cooperation between a group of endowers for making use of the advantages of mega production so that the productive elements necessary for the establishment of a specialized industrial project are hired and orienting its purposes (benefits) towards specific social sectors.

### **Third Section: Lease of the Endowed Production Resources**

The concept of lease, as viewed by jurists, concentrates on the availability of a compensation because it is a contract in consideration of a benefit or the ownership of this benefit. Hanafi jurists consider lease as “a contract in consideration of compensated benefits”<sup>(1)</sup> and this is the view of Hanbalis<sup>(2)</sup>. Maliki jurists consider that it means “a compensation for the benefits of estates”<sup>(3)</sup>; and Shafi’i jurists consider it as “ownership of a benefit with a compensation”<sup>(4)</sup>.

It is a requirement that the best interest of the endowment upon leasing it should be observed. According to Hanafi scholars, “with respect to the divergence of scholars’ opinion in any issue, the legal opinion is delivered as long as it realizes the best interest of the endowment”<sup>(5)</sup>. In this regard, the process of investment of endowment assets, whether properties or movables, seems more beneficial for the endowment unless endowed for direct benefit from its estates even if the investment has been effected by leasing.

The authority of leasing the endowment is a duty of the superintendent of the endowment. According to the Shafi’i school, “the trustee’s function is to develop and lease”<sup>(6)</sup>.

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(1) Al-Hedaya at the footnote of Fath Al-Qadir, 8/ 3.

(2) Abdur-Rahman Ibn Qudama: Al Sharh Al Kabeer on the text of Al-Muqni’ in the footnote of Al-Moghni, Egypt, Al-Maktaba Al-Salafiyya, 6/ 3.

(3) Abu Muhammad ‘Abd Al-Wahhab Al-Baghdadi: At - Talqin (The Tuition), Morocco, Ministry of Endowments and Islamic Affairs, P. 118.

(4) Soliman Albjirmi: Al-E’qna’ at the footnote of Albjirmi, Beirut, Dar Al Maarefa Publisher, 1978, 3/ 172.

(5) Albhr Alraa’k, 5/ 256.

(6) Imam Al-Nawawi: Rawdhat Al-Talibeen, 4/ 411.



In case of the endowed production instruments, overseeing the endowment represents an organizational management in which all requirements of eligibility in taking the administrative decisions are completed. The beneficiary may even take the charge of leasing the endowment. This was also the view of Hanbalis, as they advocate the validity of leasing from the beneficiary because the benefits of endowment are reverted to such beneficiary, he / she may lease it as a lessee.<sup>(1)</sup> This view was disagreed by others.

#### **Fourth Section: Substitution and Replacement of Endowed Production Resources <sup>(2)</sup>**

Substitution and replacement are one of the important terms in endowment issues. Substitution is “acquiring money or estates in exchange of the sale of the endowment estate”. Replacement is “the sale of the endowment estate and spending the substitution on purchasing another estate that would be endowed”. The concept of “substitution and replacement” represents one of the basic terms in endowment.

Although the process of substitution and replacement are deemed as considerable interests, jurists have different views concerning it especially by virtue of the endower’s stipulation which is considered as the legislator’s provision when it comes to the provisions of endowment.

Most Hanafi jurists consider that the replacement of endowment is controlled by the considerable interest which the endowed estate and beneficiaries could obtain. In this interest, the ability of the endowment to continue in spending on the intended beneficiaries and the possibility of realizing via the replacement of a yield more than the already realized yield should be observed <sup>(3)</sup>.

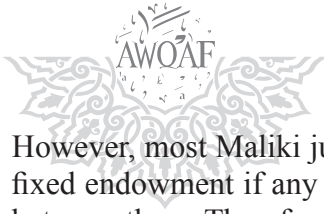
Most Maliki jurists consider that it is permissible to replace the movable endowment, other than the fixed endowment, because the movable endowment is easy to be damaged more than the fixed endowment.

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(1) Matalib Awli Al-Noha, 3/ 618.

(2) See: The Site of Kuwait Awqaf Public Foundation, About Waqf Terms: [http:// www.awqaf.org.kw](http://www.awqaf.org.kw).

(3) Ibn Abdeen: Radd Al-Mokhatat, 4/ 387.



However, most Maliki jurists consider that it is permissible to replace the fixed endowment if any damage afflicted it, although this is controversial between them. Therefore, the author of *Alsharh Alsagheir* said: “Its debris, including the stones and wood, cannot be sold. However, if they have been returned to the purpose for which they have been detained, they may be directed towards a similar purpose”<sup>(1)</sup>. Despite of the controversy between the Maliki jurists, they seek the interest of the endowment due to their apprehension of the intended manipulation on the part of the superintendent or his participation in destroying it in cooperation with any person desiring to buy it! Consequently, they will lose the interest of the endowment.

Likewise, Shafi’i jurists said: “An endowed item may not be sold even if it was destroyed”<sup>(2)</sup>. Their argument concerning this opinion is that the destroyed endowed item may be useful in other forms, but Al-Shafi’i did not distinguish between the movable and non-movable endowments. He, therefore, permitted replacement<sup>(3)</sup>.

As for the Hanbali jurists, they have tolerant opinions on the replacement of the endowment by another for accrument of a benefit or avoidance of harm. Ibn Taymiyyah considers that it is permissible to replace the endowment by another whether movable or non-movable. He even went as far as to state the permissibility of the replacement of a mosque by another because the mosque is one of the public benefits. He gave his opinion that “If the mosque was endowed in any town or place and they cannot benefit from it, the benefit may be directed to a similar purpose by building a mosque in another place”.<sup>(4)</sup>

The replacement of the endowed production instruments is subject to the change of time where technology dominated and production instruments are operated according to a high level of sophisticated technology. Of course, this was not known before, specifically in the field discussed by jurists concerning endowed movables. Some advantages of the endowed

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(1) *Al Dardeer: Al Sharh Al Sagheir*, 4/ 126- 127.

(2) *Al-Sonaiky: Fathul Wahhab*, 1/ 444.

(3) *Ibid*, 1/ 445.

(4) *Ibn Taymia: The Great Compilation of Fatwa*, 31/ 213.



production instruments, other than the other endowed items, may be listed as follows:

- The utilitarian value of these instruments depends on the useful life.
- The useful life is affected by the working hours.
- The utilitarian value of these instruments is varied according to the target final benefit.
- Some production instruments range between movables and fixed estates.

It is clear that the legitimacy of the replacement of the endowed production instruments does not apply to the juristic standards which jurists have discussed due to the difference of characteristics and variation of objectives. There are production instruments prepared for medical applications with a high cost, but they are necessary in any endowment medical sector. There is no doubt the loss of benefit from them or the decrease of their useful life results in heavy financial losses. This refers to the importance of applying the rule of replacement for obtaining other instruments with the same value. Additionally, some instruments are programed within sophisticated computer systems so that it is difficult to re-maintain them except by the manufacturer, and this leads to the increase of operating costs.

In general, the benefit cannot be lost from the production instruments endowed for other bodies or in alternative applications which are not allowed by the endowment body. Such matter is applied to heavy industries specialized in the fields of constructions and even those instruments used in the agricultural activities according to advanced technology. The importance of the principle of replacement cannot be underestimated in certain cases due to the interest of the endowment. This principle recycles these instruments and benefits from them again in an application of the permissibility of replacement instead of wasting these resources and suspending the benefit in whole.



## **Conclusion**

The research concluded with a set of results and recommendations. The following are the most important of them:

### **First - Results:**

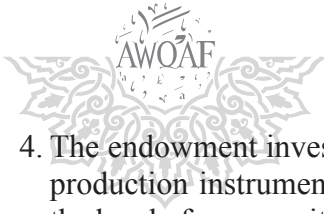
1. The concept of production instruments involves the capital or productive assets contributing to any phase of production for reaching the final benefit and these assets are susceptible to lease and not loan.
2. The production instruments in contemporary life are distinguished by their peculiar characteristics. They may be classified as movables and, sometimes, classified as fixes assets.
3. Production instruments are linked to a decreasing productive life. This decrease is accelerated from time to time due to the increase of working hours, which means that it is necessary to adopt the idea of investment in these instruments for covering the resultant expenses. Refraining from investing these instruments means their dispersion and loss of their intended purposes.
4. The period of time related to the lease of production instruments depends on conducting feasibility studies that would take into consideration the future expectations, indicators of inflation, economic contraction and all factors that may affect the stability of market due to the potential of decrease of market value of production instruments to unsafe levels or loss of this value.
5. Muqarada bonds play a significant role in utilizing the endowment and benefiting from it in financing the industrial sector via the different legal formulas such as Istisna'a formula in which machines and equipment are manufactured for leasing.
6. There are investment prohibitions forbidden by the legislator including: investment in global banks adopting usurious methods, companies producing materials and commodities harming the human life and companies producing services or production instruments aiming at goals other than the welfare of life, but rather destroying it.
7. Production conditions are set in accordance with the most favorable status and they depend on many standards and the most important of

them are: standard of demand volume, degree of risk, rate of yield, volume of benefit and nature of the subject matter.

8. The status of the hand of trust that cannot be guaranteed in the process of investment of endowed production instrument is attributed to logical reasons because the possessor is an agent of the owner in terms of possession and disposal. The destruction of the estate in his hand is similar to its destruction in the hand of its owner, because the default is that the possessor is not originally to be blamed. However, in case of the occurrence of a crime, negligence or infringement, the hand of trust shall guarantee the same.

### **Second - Recommendations:**

1. The necessity of benefiting from the temporary productive endowments (timing) through annexing them to the pool of production instruments. The nature of the complexities of production transformation at present has led to the expansion of the diversification of the nature, volume and purposes of these instruments, and hence performance of good deeds has been augmented and many development projects have been initiated.
2. Activation of the role of the Salam contract by purchasing agricultural machines and equipment necessary for the agricultural reclamation, endowing them as a capital of Salam and providing them to poor professional groups specialized in the agricultural work who have the handicraft skills in this aspect in exchange of obtaining some products which the endowment body can dedicate for the benefit of other poor groups.
3. Adoption of the idea of Istisna'a contract in the field of endowment so that the endowment organization shall provide raw materials to the small craft projects for transforming them into final products. Cooperation may be made with Islamic banks in the operations of marketing these commodities on the basis of partnership in distributing profits. The application of this contract may be oriented towards other sectors other than the private sector such as the third sector represented in cooperatives and family or domestic units. This shall lead to the promotion of the endowment role in mitigating the suffering of the poor.



4. The endowment investment funds may be utilized in the investment of production instruments via mobilizing the savings of the endowers at the level of community as a whole and purchasing capital equipment for making use of the advantages of mega production at maximum profits and minimum risks. The fund operates the assets and utilizes savings in lawful financing formula distinguished by feasibility.
5. Development of policies which guarantee the periodical disclosure of the transactions of endowment including the financial outcomes of endowment accounts. These policies include the submission of reports and expectations of the final accounts to the parties participating in the process of investment and all financial inputs and outputs should be recorded in addition to the results of internal and external audit at the end of the periodical accounting.
6. Intervention of the endowment body via development of lawful, legal and administrative standards so that these standards shall be quantitative and qualitative to regulate the partnership relations with other parties. Additionally, the endowment body shall determine the guarantee types of purchasing the required production instruments and their conformity with the required technology.

## References

### First - Arabic References:

1. Akram, Muhammad Soliman, Behaviors of Ethical Leadership and its Relationship to the Extent of Application of Governance Principles in Libyan Organizations, Scientific Journal of Economics and Commerce, Ain Shams University.
2. Soliman Albjirmi, Al-E'qna' at the footnote of Albjirmi, Beirut, Dar Al Maarefa Publisher, 1978 AD.
3. Muhammad Ibn Isma'il Al-Bukhari, Sahih Al-Bukhari, 1<sup>st</sup> Edition, Damascus, Dar Ibn Katheer, 2002 AD.
4. Tarek Al-Beshry, Transformations of the Relationship of Endowment with the Civil Society Organizations in the Countries of the Nile Valley, Within the Book of: The System of Endowment and Civil Society in the Arab World, Centre For Arab Unity Studies, Kuwait Awqaf Public Foundation, 2003 AD.
5. Abu Muhammad 'Abd Al-Wahhab Al-Baghdadi, At-Talqin (The Tuition), Morocco, Rabat, Ministry of Endowments and Islamic Affairs .
6. Islamic Development Bank, the Annual Report of 2008 AD.
7. Islamic Development Bank, Fund of Investment in the Properties of Endowment, Seventh Annual Report, 2008 AD.
8. Mansour Ibn Younes Al-Bahwaty, Al Rawd Al-Morb'i, Riyadh, Riyadh Library, 1970.
9. Mansour Ibn Younes Al-Bahwaty, Kashf Alqena', Beirut, Dar Al Fikr Publishing, 1402 AH.
10. Muhammad Sedky Ibn Ahmed Al Bortou, Encyclopedia of Jurisprudential Norms, Beirut, Al Tawba Library, Dar Ibn Hazm, 2000 AD.
11. Ibn Taymia, Ahmad Ibn Abdulhaleem, Al-Hesba, edited by Muhammad Zehry Al-Najar, Riyadh, Al Sa'eedeya Establishment.
12. Abu Al-Fadl Yahya Ibn Salama Al Hasfaki, Al Dor Almokhtar, Egypt, Al Baby Al Halaby Printing Press.

13. Nazih Hamada, Techniques of Endowment Investment and its Basic Management, Kuwait, Researches of Seminar Towards a Development Role of the Endowment, 1993.
14. Yasser Abdulkareem Al Horany, Endowment and National Work in the Contemporary Islamic Community, Kuwait, Awqaf Public Foundation, 2001 AD.
15. Yasser Abdulkareem Al Horany, Endowment and Development in Jordan, Amman, Dar Majdalawy, 2002 AD.
16. Muhammad Ibn Amad Al-Khateeb Al-Sherbiny, Moghni Almohtaj ila Ma'rifah Ma'ani Alfaz Al-Minhaj, Egypt, Al Baby Al Halaby Printing Press. .
17. Ali Al-Khafeef, Brief of Shariah Transaction Regulations, 1954 AD.
18. Soliman Ibn Al-Ash'ath Abu Dawud, Sunan Abu Dawud, edited by: Muhammad Mohyeldin Abdulhameed, Damascus, Dar Al Fikr Publishing.
19. Abu Al-Barakat Ahmad Ibn Muhammad Al Dardeer, Al Sharh Al Sagheir, Egypt, Dar Al Marref Bookstore.
20. Muhammad Ibn Arafa Al-Dosouky, Footnote of Al-Dosouky to Al Sharh Al Kabeer, Eissa Al Baby Al Halaby Printing Press.
21. Muhammad Ibn Arafa Al-Dosouky, Al Sharh Al Kabeer, Beirut, Dar Al Fikr Publishing.
22. Ali Mahmoud Ramadan, Governance of Companies and its Impact on the Tax Proceeds, Unpublished Master's Thesis, University of Damascus, Faculty of Economy.
23. Maha Mahmoud Rebhawy, Joint-Stock Companies Between Governance, Laws and Instructions, Damascus University Journal for the Economic and Legal Sciences.
24. Wahba Al-Zeheily, Islamic Fiqh and its Evidences, Damascus, Dar Al Fikr Publishing, 1985 AD.
25. Muhammad Abu Zahra, Lectures on Waqf, Cairo, Dar Al-Fikr Al-'Arabi.
26. Zakaria Ibn Muhammad Al-Sonaiky, Fathul Wahhab, Beirut, Dar Al Fikr Publishing, 1994 AD.

27. Mostafa Ibn Sa'd Al-Suyuti, *Matalib Awli Al-Noha fi Sharh Ghayet Almontaha*, Beirut, Islamic Office, 1994 AD.
28. Ibrahim Ibn Mosa Al-Shatibi, *Al-Muwafaqaat*, Beirut, Dar Al Maarefa Publisher.
29. Hussein Hussein Shehata, *Investment of Endowment Funds*, Issue 5, Kuwait, Awqaf Public Foundation, 2004 AD.
30. Muhammad Ibn Ahmed Al-Sherbiny, *Moghni Almohtaj*, Beirut, Dar Al Fikr Publishing.
31. Muhammad Ibn Ali Ash-Shawkani, *Fath Al-Qadir*, Damascus, Dar Ibn Katheer, 1414 AH.
32. Muhammad Ibn Ismail Al-Sanaany, *Sobol Alsalam*, edited by: Muhammad Khalil Haras, Amman, Dar Al Forqan.
33. Muhammad Amin Ibn Abdeen, Footnote of Ibn Abdeen "The Reply of Al-Mokhatar to Al Dor Almokhatar", 2<sup>nd</sup> Edition, Dar Al Fikr Publishing, 1966 AD.
34. Abdulsalam Al Abady, *Muqarada Bonds*, Jeddah, Journal of Islamic Fiqh Academy, Issue 6, Volume E, 1988 AD.
35. Ibrahim Mahmoud Abdulbaqy, *The Role of Endowment in the Development of Civil Community. The Model of Kuwait Awqaf Public Foundation*, Series of University Theses (3), Ph.D., Kuwait, Awqaf Public Foundation, 2006 AD.
36. Ahmad Ibn Ali Ibn Hajar Al-Asqalani, *Fath Al-Bari fi Sharh Sahih Al-Bukhari*, edited by: Muhammad Fau'ad Abdulbaqy and Mohebeldin Al-Khateeb, Beirut, Dar Al Maarefa Publisher, 1379 AH.
37. Fau'ad Abdulla Al-Omar, *Investment of the Endowed Funds*, Awqaf Public Foundation, 2007 AD.
38. Ibrahim Ghanem, *The Milestones of the Historical Formation of the Endowment System*, Trial Issue, November 2000 AD.
39. Muhammad Ibn Muhammad Al-Ghazali, *Revival of Religious Sciences*, Beirut, Dar Al-Kotob Al-Ilmiyah.
40. Bouttora Fadila, *Consideration and Evaluation of the Effectiveness of Internal Control System in Banks*, Unpublished Master's Thesis, Faculty of Economics, Commerce and Management, 2006.

41. Samiha Fawzy, Governance of Companies in Egypt Comparing to the Emerging Markets, Center of International Private Enterprise, Cairo, 2003 AD.
42. ‘Abdur-Rahman Ibn Qudama, Al Sharh Al Kabeer on the text of Al-Muqni’ in the footnote of Almoghni, Egypt, Al-Maktaba Al-Salafiyya.
43. Ali Al Qaradaghi, Development of Endowment Resources, Journal of Awqaf, Issue 7, Shawal 1425 AH / November 2004 AD.
44. Ala Al-Din Al Kasani, Bada’i` Al-Sana’i`, Beirut, Dar Al-Kitab Al-Arabi, 1982 AD.
45. Journal of Islamic Fiqh Academy, Issue 6, Volume 1.
46. Islamic Fiqh Academy, Two decisions Nos. 15 and 89/ 2/ D9.
47. Khaled Ibn Ali Al-Meshaiqah, Investment Formulas of Endowment Assets, Fourth International Conference of Endowments, Al Madinah Al Munawwara.
48. Rafik Al Masry, Principles of Islamic Economy, 2<sup>nd</sup> dition, Damascus, Dar Al Qalam, 1993.
49. Ibrahim Ibn Muhammad Ibn Mefleh Al-Hanbaly, Almabd’a fi Sharh Al-Moqn’a, 1400 AH.
50. Muhammad Ibn Mkram Mandhur, The Arab Tongue, 3<sup>rd</sup> Edition. Beirut, Dar Sader, 1414 AH.
51. Muhammad Sa’eed Al-Mahdy, The Hand of Endowment Superintendent Between Trust and Warranty, A Research Submitted to the Third Conference of Endowments in KSA: Islamic Endowment: Economy, Management and Building of a Civilization, Part 3, 1427 AH.
52. Muhammad Farouq Al-Nabhan, The Collective Orientation in Islamic Economic Legislation, 2<sup>nd</sup> Edition, Beirut, Al Resala Establishment, 1984 AD.
53. Abu Zakaria Muhiy ad-Din Yahya Ibn Sharaf Al-Nawawi, Rawdhat Al-Talibeen Rawdhat Al-Talibeen, Beirut, Islamic Office, 1991 AD.
54. Muslim Ibn Al Hajaj Al-Nishapuri, Sahih Muslim, Dar Tiba, 2006 AD.
55. Abdulsattar Ibrahim Al-Hebty, Endowment and its Role in the Development, Qatar, Researches and Studies Center, 1988 AD.



**Second - Foreign References:**

1. Organization for Economic Cooperation and Development (OECD), Principles of Corporate Governance. [www.oecd.org](http://www.oecd.org)
2. Directors Remuneration: Report of Study Group. [www.ecgi.org](http://www.ecgi.org)
3. Basel Committee on Banking Supervision, (2006), Enhancing Corporate Governance for Banking Organizations, Bank for International Settlement.
4. Nurainy, Renny, Nurcahyo, Bagus et al, (2013), Implementation of Good Corporate Governance and its Impact on Corporate Performance: The Mediation Role of Firm Size (Empirical Study from Indonesia), Global Business and Management Research: An International Journal, Vol. 5, Nos. 2 & 3.

# Researches



**Charitable Endowments  
and their Role in Supporting Voluntary Work  
Study of a Source and Method  
of Financing Voluntary Services in Hajj and Umrah**

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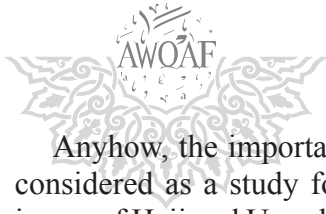
**Introduction:**

It is no doubt that voluntary work is a great charitable deed, which our true Islamic religion urged us to encourage, support, and facilitate its practice, applying the Saying of Allah in Surat Al-Ma'idah, Verse (2): ((Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression)). Voluntary work formed an aspect of social solidarity among people and disseminated among them the spirit of cooperation and synergy to practice good deeds in order to alleviate burdens on some countries hosting religious and scientific events. However, the great expansion of voluntary works, as in



the current case of the Kingdom of Saudi Arabia especially in Hajj and Umrah seasons, resulted in the necessity of providing sources of support and continuous finance for the stakeholders and volunteers in such events who exploited their time and efforts to guide, help, and serve Al-Rahman's guests coming from various parts of the earth to perform such religious rituals. Some people may inquire about the reason for the need of funds supporting such works which are primarily voluntary. We will try to answer this question in this research.

One of the procedures to be taken by us concerning voluntary work is to create and disseminate a policy of education which aims to guide the public, especially rich people and educate them concerning the importance of keeping various endowments which returns are spent in favor of voluntary works assigned to volunteers including young men and women working in the field of charitable voluntary works in Hajj and Umrah seasons. It is to be taken into consideration that such volunteers and the institutions supervising and controlling them are in need of funds to support them, their equipment, clothes, uniforms, food, communications and training courses dedicated to educate them on the method of dealing with pilgrims and Mutamirs of various ages. There are courses to educate them the basic languages used when dealing with pilgrims coming from various parts of the earth so that they may communicate with them, even in the English language in addition to courses on first aids and educational, administrative, and informational courses dedicated to all volunteers months before Hajj or Umrah seasons. The numbers of pilgrims and Mutamirs have increased within the recent years. This complicated the matters which require consolidation and mobilization of efforts to achieve success during such seasons. Their success is related to the availability of sustainable income sources which alleviate the burdens on the KSA government which provides huge amounts of money in order to contribute to the success of voluntary work. This shall not be achieved without charitable endowments which may be dedicated for this voluntary work to alleviate the related burdens. Hence, an idea has emerged to write this research on charitable endowments and their role in supporting the voluntary work in an attempt to provide a useful study for solving the problems of financing and covering expenses to be spent on volunteers working in these seasons.



Anyhow, the importance of this research stems from the fact that it is considered as a study for solving many future problems concerning the issues of Hajj and Umrah through hiring male and female charitable young people in order to contribute to the reduction of the expenses incurred by the KSA government in this regard and dedicate such funds for other aspects to facilitate Hajj and Umrah seasons. This drives us to use the analytical approach by employing some historical inferences based on the descriptive approach of historical events in this important aspect in an attempt to benefit from those experiences and apply them to our current status with regard to Hajj and Umrah in addition to presenting some other experiences.

In order to achieve the desired objective, we divide our topic into an introduction and four main sections. We assigned **Section 1** to the linguistic and terminological concept of charitable endowment and its relevant quotations in the Quran and Sunnah. In **Section 2**, we addressed the importance of endowments in supporting charitable and voluntary works in the Islamic history. In **Section 3**, we talked about the types of endowments which can be provided to support voluntary work. **Section 4** covers the impact of endowments on supporting voluntary work. We concluded our research with the most important outcomes and recommendations.

### **Section 1: Concept of Endowment:**

Charitable endowments are one of the most important voluntary works aiming to make the worshipper closer to Allah, Almighty, and gain reward from Allah. These endowments played, throughout the Islamic history, a significant and great role in fulfilling the material shortage in other voluntary works. Such endowments supported these voluntary works financially and helped them to play their supreme, charitable, and humanitarian great role. They also provided them with sufficient resources which secured them against requesting subsidy or suffering any shortage, as such endowments were generating amounts of money, most of which has been dedicated to facilitate voluntary works. We need this nowadays in order to solve many problems we suffer, as our many future projects have been obstructed while we aspire to establish them without any burdens on the budgets of our

countries which already assume other heavy responsibilities. Therefore, before proceeding with this topic, we have to primarily know the linguistic and terminological concept of charitable endowments and the relevant quotations on them in Quran and Sunnah.

### **1. Linguistic Concept of Endowment:**

**Linguistic Concept of Endowment:** Keeping, consecration, abstention such as “I endowed a house” meaning “I kept it for the sake of Allah. The plural is endowments <sup>(1)</sup>. <sup>(2)</sup>. In Arabic, the origin of endowment (Waqf) refers to perpetuation. Ibn Fares said <sup>(3)</sup>: Endowment indicates perpetuating such as: Someone endowed his land perpetually i.e. he kept it without selling or inheritance <sup>(4)</sup>.

### **2. Terminological Concept of Endowment:**

The terminological concept of endowment according to jurists refers to keeping a capital which may be benefited from and its returns are disbursed to a certain charity channel. This is permissible in good deeds from the beginning to the end. In other deeds, it is permissible in the beginning when it ends in good deeds<sup>(5)</sup>. Endowment refers to keeping a property such as a mosque, orchard, or school without ownership by people and consecrate its returns, i.e. preventing ownership of such property by anybody as it is transferred to Allah, Almighty. But, people or some people may benefit from its returns and fruits, according to the intention of the endower who endows such property to Allah <sup>(6)</sup>. Later

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(1) Al Faioumy, Ahmed Ibn Muhammad Ali (Died in 770 AH, 1338), Al Mesbah Al Munir Fi Gharib Al Sharh Al Kabir, Part 2, Dar Al Fikr, Beirut. D.

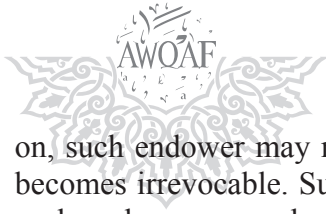
(2) Ibn Manthour, Jamaledin Abu Al-Fadl, Muhammad Ibn Makram (Died in: 711 AH/ 1311), Lesan Al Arab, Part 9, Edited by: Amin Muhammad Abdelwahhab and Muhammad Al Sawy Alabidy, First Edition, Dar Sadir Beirut, date written, P 359.

(3) Ibn Faris, Abu Al Hassan Ahmed Ibn Faris Ibn Zakaria, Mujam Maqaias Allougha, Part 6, verified by: Abd Al Salam Muhammad Haroun, Dar Al Fikr, Beirut, 1399 AH/ 1979, P 135.

(4) Ibn Manthour, Lesan Al Arab, part 68.

(5) Al Mawardy, Ali Ibn Habib, Al Hawi Al Kabir, verified by: Ali Ibn Muhammad Mouawad and Adel Ahmed Abd Al Mawgoud, Dar Al-kotob Al-Ilmiyah - Beirut, 1414 AH, 1994, Page 511, 515, Al Mu'jam Al Wajiz, the Ministry of Education, Cairo, 1425 AH, 2004, P 679.

(6) World International Encyclopedia, Part 27, Second Edition, Mausouaa Amal Al Mausouaa Publishing and Distribution, Riyadh, 1419AH, 1999, P 125.



on, such endower may not dispose of such property and the endowment becomes irrevocable. Such property shall not be inherited to the heirs of such endower as such endower no longer owns it. The returns of such property shall devolve to endowment beneficiaries <sup>(1)</sup>. Jurists gave various definitions of endowment in accordance with their consideration of some of its components, requirements, and aspects. They unanimously agreed to the origin of endowment, which is the act of keeping. It is noted that jurists disagreed on some partial provisions and particulars of endowment. For example, endowment was defined by:

- The Hanafi Juristic School as: ((To keep a property as owned by Allah and give alms from its returns)) <sup>(2)</sup>
- The Maliki Juristic School as: ((To give the returns of something as long as it is existent and it has to be owned by the endower even if presupposedly)) <sup>(3)</sup>
- The Shafi' Juristic School as: ((To keep a capital, which may be benefited from while its property shall not be disposed by the endower or any other person. Such capital shall be spent on good deeds to make the worshipper closer to Allah)) <sup>(4)</sup>.
- The Hanbali Juristic School as: ((To keep a capital and consecrate returns)) <sup>(5)</sup>.

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(1) Al Kordy, Ahmed Al Hijji: Civil Personal Status, Shariah Representation, Will, and Inheritance, Publications of Damascus University, Edition 5, Damascus, 1413 AH, 1993, P 199.

(2) Ibn Al Humam, Muhammad Abd Al Wahed: Fath Al Qadir, Part 6, Dar Al Fikr, Beirut, undated, P207-209 For more details on endowments according to the Hanafis, refer to: Ibn Al Basry, Helal Ibn Yahia Ibn Muslim (died in: 245 AH) Kitab Al Waqf, First Edition, Ottoman Encyclopedia, Haider Abad, 1355 AH, P2 et seq.

(3) Al Tasoly, Abu Al Hassan Ali Ibn Abd Al Salam, Al Bahja Fi Sharh Al Tohfa, Part 2, verified by: Edited and corrected by: Muhammad Abd Al Qadir Shahin, Dar Al-Kotob Al-Ilmiyah - Beirut, 1418 AH, 1998, P 368.

(4) Al Nawawi, Yahia Ibn Sharaf Ibn Murry: Tahrir Alfath Al Tanbih , verified by: Abd Al Ghani Al Daqr, First Edition, Dar Al Qalam, Damascus, 1408 AH, P 237.

(5) Al Salehi, Aladdin Abu Al Hassan Ali Sulaiman Al Meradwi Al Demashqi (Died in 855 AH): Al Ensaf Fi Marifat Al Rajih Min Al Khilaf Ala Mathhab Imam Ahmed Ibn Hanbal, Part 7, First Edition, Dar Ehiaa Al Turath Al Araby, Beirut, 1419AH, P5. Ibn Qudama, Abu Ahmed Muafaquddin Abdullah Ibn Ahmed: Al Mughni Fi Fiqh Imam Ahmed Ibn Hanbal Al Shaibani, P6, First Edition, Dar Al Fikr, Beirut, 1405 AH, P 206.

This last definition was quoted from the speech of the Prophet (peace be upon him) to Umar Ibn Al Khattab (may Allah be pleased with him): ((If you wish you can keep it as an endowment to be used for charitable purposes))<sup>(1)</sup>. This definition provided by Hanbalis is considered as one of the most abbreviated and clearest definitions. Therefore, through all these definitions, we can define endowment in general as the dedication of certain funds, productive capitals, or their returns or benefits for charitable private or public objectives, independently from personal disposal<sup>(2)</sup>.

### 3. Endowment in the Book of Allah

Due to its religious legitimacy, charitable endowments constituted the best forms of social solidarity among the individuals of the Islamic Society. These endowments provided cash and in rem capitals through which they supported various projects and works benefiting the humanity. Experience of endowments doesn't only fruit at times of crises, but it also fruits at times of prosperity and bliss, as they are sufficient for various projects useful to the community and alleviate the burdens on the budgets of their countries. Consequently, such budgets are employed to support other prioritized projects . Interest in endowments, good deeds, spending money on needy people, and financing projects lacking material income, such as mosques, schools ... etc. emerged since Allah, Almighty called for that in His Noble Book, saying:

(By no means shall you attain Al-Birr (Allah's Reward), unless you spend (in Allah's Cause) of that which you love; and whatever of good you spend, Allah knows it well)<sup>(3)</sup>

He also said: (O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you)<sup>(4)</sup>.

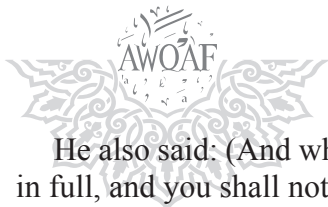
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(1) Refer to: Al Bukhari, Abu Abdullah Muhammad Ibn Ismael Al Bukhari Al Ja'fi, Sahih Al Bukhari, Part 3, Verified by: Mustafa Dieb Al Bagha, Edition 3, Dar Ibn Kathir, Beirut, 1405 AH, 1987, P 1019.

(2) Qahf, Munzir: Islamic Endowment: Evolution, Management, and Development, Second Edition, Dar Al Fikr, Damascus, 1427AH, 2006, P 17.

(3) Surat Ale-Imran: Verse 92.

(4) Surat Al-Baqarah: Verse 267.



He also said: (And whatever you spend in good, it will be repaid to you in full, and you shall not be wronged) <sup>(1)</sup>

He also said: (The believers are only those who, when Allah is mentioned, feel a fear in their hearts and when His Verses (this Quran) are recited unto them, they (i.e. the Verses) increase their Faith; and they put their trust in their Lord (Alone) (2) Who perform As-Salat (Iqamat-as-Salat) and spend out of that We have provided them (3) It is they who are the believers in truth. For them are grades of dignity with their Lord, and Forgiveness and a generous provision (Paradise) (4) <sup>(2)</sup>

He also said: (Those to whom We gave the Scripture before it, - they believe in it (the Quran) (52) And when it is recited to them, they say: “We believe in it. Verily, it is the truth from our Lord. Indeed even before it we have been from those who submit themselves to Allah in Islam as Muslims (53) These will be given their reward twice over, because they are patient, and repel evil with good, and spend (in charity) out of what We have provided them (54) <sup>(3)</sup>

He also said: (Their sides forsake their beds, to invoke their Lord in fear and hope, and they spend out of what We have bestowed on them) <sup>(4)</sup>

These verses urged and encouraged people, since the mission of the Prophet Muhammad, to spend out, especially that endowment is one of the general forms of spending out in charity<sup>(5)</sup>.

#### **4. Endowment in the Prophet’s Sunnah:**

It is no doubt that what increased the importance and legitimacy of endowments is the contents of some prophetic traditions (Hadith) indicating the importance of performing good deeds, such as spending out, giving alms, and keeping endowments. This includes the narration by Abu Hurairah (may Allah be pleased with him) narrated that that the Messenger

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(1) Surat Al-Baqarah: Verse 272.

(2) Surat Al-Anfal: Verses 2-4

(3) Surat Al-Qasas: Verses 52-54

(4) Surat As-Sajdah: Verse 16.

(5) Abu Al Khail, Sulaiman Ibn Abdullah: Endowment in Islamic Shariah, Opinion on It, Objective, and Religious and Social Dimensions, Prints of Naif Arab University for Security Sciences, Riyadh, 1429 AH, 2008, P 14



Muhammad (peace be upon him) said: **((When the son of Adam dies, his acts come to an end but three: recurring charity, a kind of knowledge from which people derive benefit, or a pious son who supplicates Allah for him))** <sup>(1)</sup>. Ash-Shawkani <sup>(2)</sup> stated that scholars interpreted the recurring charity as endowment. In addition, Anas Ibn Malik (may Allah be pleased with him) narrated that the Messenger of Allah (peace be upon him) said that: **((“There are” seven deeds which reward is continuous for a person even after he dies while he is in his grave: he who taught knowledge to others, fixed a river, dug a well, planted a palm tree, built a mosque, a Mushaf (Quran) that he leaves as a legacy, or left behind a child who asks forgiveness on his behalf after his death))** <sup>(3)</sup>. In addition, Abu Hurairah (may Allah be pleased with him) narrated that the Messenger of Allah (peace be upon him) said: **((If somebody keeps a horse in Allah’s Cause motivated by his faith in Allah and his belief in His Promise, then he will be rewarded on the Day of Resurrection for what the horse has eaten or drunk and for its dung and urine))** <sup>(4)</sup>. Therefore, the generous Messenger (peace be upon him) has been an example and a teacher of this nation, since he established the first endowment in Islam<sup>(5)</sup> which is Quba’ Mosque, when he immigrated to Medina from Mecca<sup>(6)</sup>. Then, he provided the first charitable endowment to the Islamic civil society, which was seven orchards in Medina. They were owned by a Jew called Mukhairiq, who participated in the Battle of Uhud beside Muslims. He

(1) Narrated by At-Tirmidhi in Kitab Al Ahkam, (Bab Al Waqf), and he described it: Good, Authentic. Refer to: At-Tirmidhi, Muhammad Ibn Essa, Sunan At-Tirmidhi, Part 3, verified by: Muhammad Fouad Abd Al Baqy, Dar Al Fikr, Beirut, undated, Page 660.

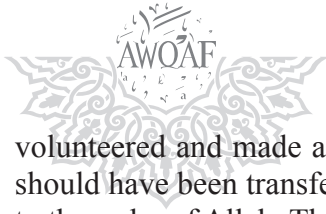
(2) Al Shawkani, Muhammad Ibn Ali Ibn Muhammad: Nail Alwtar Min Ahadith Sayed Al Akhbar Sharh Montaka Al Akhbar, Part 6, Edarat Al Tiba’a Al Muniriya, undated, P 91.

(3) Al Munziri, Abu Muhammad Abd Al Azim Ibn Abd Al Qawi, Al Targib Wa Al Tarhib Min Al Hadith Al Sharif, verified by: Ibrahim Shamseddin, Part 2, Dar Al-kotob Al-Ilmiyah, Beirut, 1417 AH, Page 41.

(4) Al Bukhari: Sahih Al Bukhari, Part 3, Page 1048.

(5) Al Muhaideb, Khalid Bin Ibn Hadoub Bin Ibn Fawzan, Athar Al Waqf Ala Al Dawaa Ela Allah, the General Secretariat of Awqaf, Sharjah, undated, Page 28.

(6) Al Tabarani, Abu Al Qasim Sulaiman Ibn Ahmed Ibn Ayoub, Al Moujam Al Kabir, Part 24, verified by: Hamdy Ibn Abd Al Majuid Al Salafi, Second Edition, Al Uloum Wa Al Hekam Library, 1404 AH, 1983, P 417, 418.



volunteered and made a testament that if he had been killed, his capitals should have been transferred to Muhammad to dispose of them according to the order of Allah. Then, the Prophet (peace be upon him) gave them in alms and endowed them after Mukhairiq has been killed. In honor of him, the Prophet (peace be upon him) said: ((Mukhairiq is the best of Jews))<sup>(1)</sup>, as he provided abundant charity enjoyed by the city of the Messenger of Allah (peace be upon him) for a long time.

Anyhow, this voluntary work encouraged many Muslims to provide, as much as they can, capitals and orchards ... etc., each according to their ability, especially when news of provision and endowment of alms disseminated among Muslims. This results in a great reward through which a person may be closer to Allah, Almighty. This is considered as recurring charity, which positive effect will remain until the Day of Resurrection, in accordance with relevant quotations in the Book of Allah and Sunnah of the Prophet of Allah. Therefore, historical sources provided us with unlimited examples of properties endowed by the Prophet's companions seeking the pleasure of Allah and Allah's Messenger. One of such alms was narrated by Ibn Umar (may Allah be pleased with him) saying that: Umar Ibn Al Khattab (may Allah be pleased with him) got a piece of land in Khaibar. Then, he came to the Prophet (peace be upon him) and said: ((I have got a piece of land better than which I have never got. So what do you advise me regarding it? The Prophet said: ((If you wish, you can keep it as an endowment to be used for charitable purposes)). So, Umar gave the land in charity i.e. as an endowment provided that the land would neither be sold nor given as a present, nor bequeathed, (and its yield) would be used for poor people, kinsmen, in the cause of Allah, guests and wayfarers In addition, its administrator could benefit from that endowment in a reasonable and just manner, and he also could feed his friends without intending to trade in it<sup>(2)</sup>.

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(1) Ibn Hesham, Abu Muhammad Ibn Abd Al Malik Ibn Hesham Ibn Ayoub Al Hamiri (died in: 213 AH) Al Sira Al Nabawiya, verified by: Taha Abd Al Raouf Sad, Dar Al Jil, Beirut, 1411 AH, Part 3, P 51, Part 4, P 37-38, Al Halabi, Ali Ibn Burhaneddin (died: 1044 AH): Al Sira Al Halabia Fi Sirat Al Amin Al Mamoun, Part 3, Dar Al Marifa, Beirut, 1400 AH, P 486.

(2) Al Bukhari: Sahih Al Bukhari, Part 3, Page 1019.



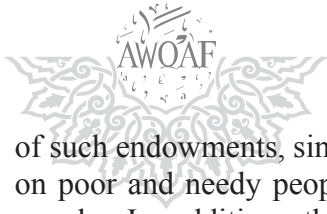
Accordingly, the Prophet's Companions (may Allah be pleased with them) provided endowed alms generously. They competed to provide the best of what they have in order to gain the reward of Allah. This includes what narrated about Othman Ibn Affan (may Allah be pleased with him) that the Prophet (peace be upon him) came to Medina and there was no fresh water in it except the well of Rumah. So, he said: ((Who will purchase this well of Rumah and place his bucket alongside the buckets of the Muslims in exchange for better than that in Paradise?)). So, I bought it with my money and I place my bucket alongside the buckets of the Muslims <sup>(1)</sup>. That well was a recurring charity provided by Othman Ibn Affan (may Allah be pleased with him) to be benefited from by all Muslims in the Medina of Allah's Messenger (peace be upon him). The importance of endowments increased for Muslims due to what provided by the Prophet (peace be upon him) before his death, including recurring charities, through which he intended to be closer to Allah, Almighty. He even didn't leave any dirham, dinar, or male or female slave. He only left his white mule, his weapon, and a piece of land endowed by him as charity<sup>(2)</sup>. Those alms endowed by the Prophet (peace be upon him) may aim to teach people how to practice good deeds among, encourage them towards social solidarity and benefiting everybody, and spread the spirit of cooperation and brotherhood among rich, poor and stranded people, wayfarers for whom capitals of endowments have been dedicated to suffice them since the dawn of Islam.

Anyway, Allah's Messenger was an excellent example in this regard. In addition, his wives and generous Companions (may Allah be pleased with them) and their followers were good examples regarding giving alms and endowments. Jabir Ibn Abdullah said: ((All rich Messenger's companions (may Allah be pleased with them) provided endowments and wrote documents proving that. They prevented to sell or grant such endowments. Their endowments were known in Mecca and Madina as per their conditions and circumstances)) <sup>(3)</sup>. It is noted that the noble objective

(1) Al Albani, Muhammad Nasereddin: Irwa' Al Ghalil fi Takhrij Ahadith Manar Al Sabil, Part 6, Second Edition, Al Maktab Al Islami Beirut, 1405 AH, 1985, P 39.

(2) Al Bukhari: Sahih Al Bukhari, Part 3, Page 1005.

(3) Al Qirafi, Shihabeddin Ahmed Ibn Idris: Al Zakhira, Part 6, verified by: Muhammad Hiji, Dar Al Gharb, Beirut, 1994, Page 323.



of such endowments, since the emergence of Islam, is to alleviate burdens on poor and needy people, as they witness the bliss and welfare of rich people. In addition, they supported social, economic, advocacy and military aspects in the emerging Islamic State. They also played a clear role in the expansion of this State, including the great victories achieved by it through the alms provided to the volunteers in the army, including funds and military equipment endowed in Allah's Cause. This is asserted by the saying of the Prophet (peace be upon him): ((For Khalid, he kept his armors and weapons in Allah's Cause))<sup>(1)</sup> and his saying (peace be upon him): ((If somebody keeps a horse in Allah's Cause motivated by his faith in Allah and his belief in His Promise, then he will be rewarded on the Day of Resurrection for what the horse has eaten or drunk and for its dung and urine))<sup>(2)</sup>

In brief, the noble verses in Quran talking about the grace of giving alms to the poor and needy people and spending out in Allah's cause and the verified holy prophetic traditions attributed to the Prophet (peace be upon him) and his companions (may Allah be pleased with them) are lessons and examples aiming to teach, guide, and demonstrate the grace of the various endowments provided for Allah's cause, whether they are immovable such as orchards, farms, wells, and real estate ... etc. or movable such as cash money, jewelry, and means of transport ... etc. Moreover, such endowments provide money spent on the objectives for which they were endowed. It is noted that the harvest of such lessons and examples has been considered to date in the various Islamic countries, especially that capitals of endowments became one of the most important financial sources supporting various voluntary and charitable works which suffer from scarcity and lack of financial resources. Hence, the importance of endowments emerges in supporting voluntary works.

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(1) Al Bukhari: Sahih Al Bukhari, Part 3, Page 1067.

(2) Ibid and the same Part, P 1048.



## **Section 2: Importance of Endowments in Supporting Voluntary Works in the Islamic History:**

It is commonly known that providing endowments and alms is one of the best voluntary charitable deeds <sup>(1)</sup> that may be donated voluntarily by any Muslim, so that he, his family members, or any public Muslims benefit from them. The historical sources provided us with various examples of such endowments, which returns were used to spend on many charitable voluntary works. But, before talking about the importance of endowments in supporting such charitable voluntary works throughout the Islamic history to date and giving some examples of such endowments and the human and social roles played by them, it is necessary at first to know the meaning of voluntary work, for which endowments are kept, and capitals are used for its sustainability and highlight its importance as an introduction to talk about the sources supporting such charitable voluntary works

### **1. Concept and Importance of the Voluntary Work:**

Volunteering in Arabic means to donate something and volunteers are those people volunteering for Jihad <sup>(2)</sup>. Arab says to volunteer is to do someone's best. As for their saying "to donate something", it means to provide it voluntarily without obligation in compliance with good deeds targeted by such volunteer. This applies only to good deeds and righteousness <sup>(3)</sup>.

Volunteering according to Shariah terminology:

It describes works and acts of worship recommended by Shariah without obligating competent people to perform them. They are optional and preferable acts. Allah, Almighty, said: (But whoever does good of his own accord, it is better for him) <sup>(4)</sup>, i.e. if any person does more than the obligatory works, it is better for such person <sup>(5)</sup>. Accordingly, we can say that

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(1) Al Khatib, Ahmed, Al Waqf Wa Al Wasya, without a publishing house, Baghdad 1968, P35, 36.

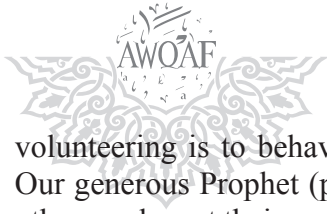
(2) Al Rafey: Al Mesbah Al Munir, Part 2, P 380.

(3) Ibn Faris: Maqaiees Allugha, Part 3, P 431.

(4) Surat Al-Baqarah: Verse 184.

(5) Al Safar, Hassan Mousa: Voluntary Work Serves Society, First Edition, without a publishing house, Qatif, 1425 AH, 2005, P 16.





volunteering is to behave voluntarily, optionally, and non-obligatorily<sup>(1)</sup>. Our generous Prophet (peace be upon him) urged us to volunteer to help others and meet their needs, as this results in a great reward, when he said: ((If a person meets a need for his believer brother, he shall be considered as a person serving Allah throughout his life)) <sup>(2)</sup>. He (peace be upon him) also said: ((Any person helps and benefits his Muslim brother, he shall be rewarded as a fighter (Mujahid) in Allah's cause)) <sup>(3)</sup>. Therefore, volunteering includes the values of human giving for the sake of others and it usually relates to the feeling of belonging to a group <sup>(4)</sup>. In social terms, volunteering is defined as time and effort exerted by a person to serve his society without obligation thereon and without waiting for material return. Therefore, volunteering is a positive phenomenon common in most humanitarian societies. In some societies, for its importance, volunteering became a subject of an educational specialization, in which its motivations, obstacles, and methods of development are taught and its experience and methods are monitored <sup>(5)</sup>.

For this importance, our true Islamic religion urges us to practice voluntary work, as it includes cohesion, coherence, intimacy, and love among the society members. Moreover, Islam appraises persons performing this religious duty to achieve brotherhood among people, so that the Islamic society is more cohesive and coherent. There are many Quran verses and Prophetic traditions urging us to cooperate to serve others, so that we achieve the interest of the Islamic society, which adopts the spirit of love, brotherhood, and cooperation since the emergence of

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- (1) Ibn Al Khatib, Abu Bakr Ahmed Ibn Ali Ibn Thabit Ibn Ahmed Ibn Mehdi (Died in 463 AH): Al Faqih Wa Al Mutafaqeh, Part 1, verified by: Adel Ibn Yusuf Al Azzazy, Dar Ibn Al Jawzi, Riyadh, 1417 AH, P 21, and endnote No. 1
  - (2) Ibn Rahuya, Ishaq Ibn Ibrahim Ibn Mekhlid, Musnad: Musnad Ishaq Ibn Rahuya, Part 1, verified by: Abd Al Ghafour Ibn Abd Al Haq Al Baloushi, First Edition, Al Eman Library, Medina, 1412 AH, 1991, P 378.
  - (3) Al Hendy, Aladdin Ali Ibn Hossameddin Al Mottaqi Al Hindi Al Burhan Fawri (died in: 975 AH): Kanz Al Ummal Fi Sunun Al Aqwal Wa Al Afa'l, verified by: Bakr Ibn Haiyani and Safwa Al Saqqa, Edition 5, Al Resalah Institution, 1401, 1981, P 455.
  - (4) Mehenna Kamel: Voluntary Work in Lebanon, Al Mabarrat Charitable Organization, Beirut, 2005, P3
  - (5) Al Safar, Hassan Mousa: Voluntary Work Serves Society, P16

Islam. In this regard, Allah, Almighty, said: (Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression. And fear Allah. Verily, Allah is Severe in punishment)<sup>(1)</sup>. The generous Prophet (peace be upon him) described cohesion and coherent of the believers by saying: ((The relationship of the believer for another believer is like the building, one supporting the others, then, he intertwined his fingers)) <sup>(2)</sup>

It is noted that the areas of charitable voluntary work advocated by our Islamic religion are wide and not restricted to a certain aspect. So, volunteering includes helping others, making them happy and joyful, removal of what is injurious from the road, combating desertification, helping poor people, needy people, afflicted people, displaced people, sick people, and wayfarers and meeting their needs, building charitable schools, mosques, orphanages, nursing homes, and social care and incurring costs of their furniture and meeting their needs, through the support of persons in charge of them and volunteering to work in them according to availability in Allah's cause. Volunteering also includes disseminating education, literacy, and participation with armies and security and civil defense when necessary. All these works and other works are included in volunteering, in order to win reward of Allah, be closer to Allah, promote the society, and alleviate burdens on governments, as the issues of life became complicated. It is difficult for some governments to meet their promises before their peoples, especially at sudden crises requiring to quickly act and provide subsidies or to volunteer by providing endowment (in the past) as alms to face critical times and use their resources for such status.

When we come to the western experience in this area, we can find that some countries have currently reached advanced stages in the areas of voluntary works through involving their peoples in this area. They reached a stage of right awareness and understanding of the noble and human goal of volunteering. Therefore, organizations and associations were established, amounts of money were paid, and capacities were employed to contribute to the success and development of volunteering. This has a positive

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(1) Surat Al-Ma'idah': Verse 2.

(2) Al Bukhari: Sahih Al Bukhari, Part 5, Page 2242.



effect on alleviating the burdens on governments and involving voluntary charitable non-governmental organizations in the public life beside the official governmental organizations This helps such organizations and associations to participate in solving various social, economic, health, environmental, and educational problems. The USA is the most interested country worldwide in this area, as there are, for example, 1.4 million non-profit organizations in the area of voluntary sector. The resources and assets of those organizations are up to USD 500 billion. So, this non-governmental sector contributes by 6% of the USA Gross Domestic Product (GDP) and provides 10.5% of the total job opportunities <sup>(1)</sup>. Some scientific studies concerning this topic indicate that the number of Americans participating in voluntary works in 1989 was about 93 million Americans, constituting 30% of the total Americans, who spend annually 20 billion hours in voluntary work for children, poor people, education and other issues <sup>(2)</sup>. In addition, the number of non-governmental organizations or those called “voluntary organizations” in Canada is up to 161,000 organizations and the number of volunteers in them is 12 million volunteers. Other recent studies indicate that 32% of adult Australians have various contributions to the voluntary works in their societies <sup>(3)</sup>.

In France, the recent reports of France Association of Social Affairs indicate that 10.5 million of the French people volunteer on weekends to participate in providing various social services of daily life. This includes the areas of education, health, environment, culture, entertainment... etc. The ages of 51% of the volunteers range between 35 and 59 years. Students constitute 21% and the ages of the volunteers of those students range between 18 and 25 years <sup>(4)</sup>. In the UK, the number of voluntary associations is about 300,000 and the number of volunteers in the UK is about 23 million volunteers. The interest of the UK government in voluntary work in 1999-2003 was very significant that it supported this important area through

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(1) Mehenna: Voluntary Work in Lebanon, P 4.

(2) Al Safar: Voluntary Work Serves Society, P 17

(3) ) Al Sultan, Fahd Sultan: Orientation of University Young Men towards Voluntary Work, A research published in the Arab Gulf Message, Arab Bureau of Education for the Gulf States, 1430 AH, 2009, P 1.

(4) Al Safar: Voluntary Work Serves Society, P 19.



providing amounts of money to encourage voluntary initiatives<sup>(1)</sup>. Through our presentation of the western experience, we conclude that the reason for success achieved by those voluntary associations and the good deeds accomplished by them is the awareness of Europeans in this regard and the significant financial support provided to such voluntary associations, which became a factor for their success.

Here, we conclude that the need to voluntary work became an urgent necessity and its culture has to be disseminated in all societies, specially the Islamic society due to the increase of the political, social, economic, health, and environmental obstacles and problems facing the humankind. Then, the situation required consolidation of governmental and voluntary public efforts to face the adversities challenging the humankind, which resulted in global financial crises and natural and environmental disasters such as earthquakes, volcanoes, floods, torrents, environmental pollution, and wars displacing thousands of afflicted people and refugees. It is to be taken into consideration that the role of voluntary works is not restricted to the said crises, disasters, and destructive human problems, but the role of volunteering and volunteers emerges in various significant religious and national events, which may cost the governments of some countries a lot of money to prepare, spend on them as well as their organizers including young men and women. So, such preparation and expenditure constitute significant burdens on such countries and their budgets. The most prominent example of that is the seasons of Hajj and Umrah, in which the Kingdom of Saudi Arabia annually hosts millions of pilgrims and Mutamirs coming from various parts of the earth. We will talk about this in the context of our talk on the importance of endowments in supporting voluntary works.

## **2. Importance of Endowments in Supporting Voluntary Works:**

Any researcher of Islamic history can note that it is easy for any rich persons performing good deeds in the various Islamic countries to give alms and volunteer through constructing mosques and their extensions such as kuttabs (places of Quran memorization) and housing affiliated to them, and supporting them with workers, muezzins, Imams, and laborers assuming works of cleaning and serving water for performers of prayers and

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(1) ) Al Sultan: of University Young Men, P 1-2



students. It is also easy for them to construct schools and their extensions such as accommodation of students, orphans, and workers as well as their kitchens dedicated for preparing various meals for students, equip such schools with required furniture and lighting, and hire teachers, teaching assistants, and workers. They can also volunteer through providing water endowments on roads ... etc. The problem facing such volunteers is their obligation to provide the continuous financial support for such charitable religious and educational facilities and their volunteering laborers, so that they can perform their religious, human, and moral duties. Therefore, such volunteers, specially rich persons, focused from the very beginning of constructing such facilities on the issue of financial support. They searched for sustainable finance sources to spend on them, their laborers and volunteers. So, they did not find any source better than endowments as a sustainable solution for their finance problems. Therefore, they provide as endowments the best of their capitals, orchards, farms, and real estate which returns suffice such projects, including their laborers and volunteers, aiming at providing the sustainability of returns for such facilities to serve humankind and provide a recurring charity until the Day of Resurrection.

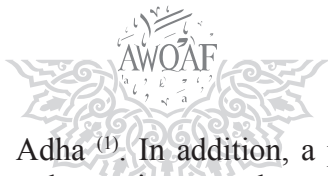
Experiences of previous nations highlight the importance of endowments in supporting volunteers in charge of places of worship and the persons assigned to serve their visitors for worship and Hajj. One of those experiences was mentioned by Ibn Kathir <sup>(1)</sup> when he indicated to the

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(1) It was mentioned that Sultan. Mahmud prayed Istikharah when he had been informed of the news of that idol such as various Indians on its ways, fatal obstacles, and dangerous land to be covered by its army. Then he assigned his army for this purpose, taking with him 30,000 fighters selected by him for this purpose, in addition to the volunteers. Allah kept them until they reached the location of that idol. They came to the yard of its worshipers and found it in a place as great as the city: We took it over and killed 50,000 persons of its supporters. Then, we removed that idol and kindled fire under it. More than one mentioned that the Indians paid large amounts of money to let that great idol to them. Then, some princess advised the Sultan to take the money and let that idol and he said: I will pray Istikharah. On the second day, he said: I considered the issue and I see that if I'm called on the Day of Resurrection as where is Mahmud who broke the idol, It will preferred for me than as who let the idol for benefits won in the world life. Then, he, may Allah have Mercy on him, intended to break it and found on and inside it precious jewelries, pearls, and gold many times higher than what they proposed. Refer to: Abu Al Fida' Ismael Ibn Umar Ibn Kathir Al Qurashy Al Demashqi (died in: 774 AH): Al Bidaya Wa Al Nehaya, Part 12, Its Prophetic traditions (Hadith) were authenticated by: Sheikh Muhammad Baioumi, Abdullah Al Meshawi, and Muhammad Rodwan Mehenna, Al Eman Library, Aden, undated, P396.

events of 418 AH. When Sultan Mahmoud Ibn Sabkatkin entered India, he found a worshipped idol called Sumnat. People were visiting it from everywhere, as the case with Muslims visiting the Sacred Mosque (Masjid Al Haram). At the place of that idol, they were spending huge amounts of money, which can't be described or counted. So, its safes were full of huge amounts of money. But, the remarkable feature of this idol was the yard of its worshipers which were described as a great place like that great city and the great endowments kept for it, which were estimated at 10,000 famous cities and villages, the returns of which were spent on the laborers in the temple and its residents. Volunteers' number was 1,000 men, 300 men cutting hair of its pilgrims, and 300 men singing and dancing while beating drums and trumpets. It had thousands of residents benefiting from its endowments. Indians from far regions were wishing to visit that idol, but they were obstructed by long roads and obstacles. Hence, we can see the importance of endowment funds sufficing such significant events, spending on them, their visitors, and volunteers. It was impossible for the budgets of countries at that time to do so without such endowments and funds which may have a surplus to be employed for other disbursement channels benefiting the society and the public.

Historical facts assert that the issue of providing endowments dedicated to support the mosques of Allah, Almighty, and their laborers including employees and volunteers received considerable attention from charitable people who paid their capitals in Allah's cause and used them to serve the mosques of Allah and their visitors. However, historical sources didn't indicate that explicitly. We can deduce the endowed in rem and cash capitals, manors, lands, and real estate of all types and forms which were not dedicated only for financing, restoring, maintaining, and lighting mosques and schools and spending on their laborers. A part of the capitals of such endowments were dedicated for volunteers in such mosques and schools, such as muezzins, imams, teachers, teaching assistants, orphans, workers ... etc. who were not included in the civil servants structure. Such capitals were spent on their clothes, feeding, movements, and subsistence of their families. In addition, a part of such capitals were disbursed as grants and clothes provided to them at the end of each year or as subsidies at some religious occasions, such as Ramadan month and Eids of Fitr and



Adha<sup>(1)</sup> In addition, a part of such capitals was employed to spend on volunteering preachers moving between cities and villages to preach for Allah Almighty and disseminate His instructions and the Islamic values<sup>(2)</sup>.

It is no doubt that endowment capitals played a significant role in supporting the Islamic regular armies and irregular armies formed usually of volunteers joining regular armies at adversities. So, endowment capitals played a role in equipping, supporting, training, and arming such volunteers and providing means of transport and protection for them and providing other needs of warriors.

If we accurately consider alms and endowments provided for the mosques of Allah, Almighty, we will note that a significant attention has been paid to such mosques throughout the Islamic history to date. The Arabic sources have various examples asserting such matter, especially in the Islamic world towns, such as Mecca, Medina, Cairo, Baghdad, Damascus, Sana'a ... etc. where religious and scientific events were convened. Such events included celebration of the beginning of Ramadan and practice of worship acts related to its nights specially the last ten nights, celebration of Eids of Fitr and Adha, and other religious events where people everywhere participated, celebration of graduation of students or visiting such mosques by the nation's senior scholars in addition to other events for which funds and alms have been provided by charitable people and endowers in order to meet their costs.

Whatever the issue was, the Two Holy Mosques in Mecca and Madina have attained the greatest attention and endowments compared to other mosques throughout the Islamic history. Alms have been provided to them and various endowments were kept to them such as lands, orchards, real estate, hotels, and traditional eastern bathing closets not only in Hijaz but throughout the Islamic world. For example, Abu Zahra<sup>(3)</sup> indicates that there were many lands and orchards endowed by some people for the Two

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(1) Wataha'eq Talimiya min Asr Al Dawla Al Rasouliya (626-858 AH/ 1228-1454), Studied, published, and verified by: Daif Allah Ibn Yahia Al Zahrani and Tala Ibn Jamil Al Rifai, Print House of: Bahadir, Mecca, 1417 AH, 1996, P13, 16.

(2) Al Muhaideb: Impact of Endowment on Dawa for Allah, Almighty, P158-161.

(3) Abu Zahra: Lectures on Endowment, P16.

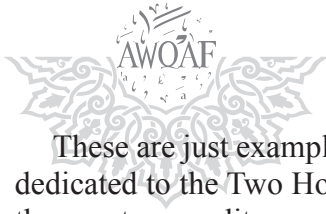


Holy Mosques such as the endowments of Abu Bakr Al Mardani, who has been rich, as he kept other endowments for other charitable channels. The returns of those endowments were provided for the Two Holy Mosques, their laborers, knowledge sessions, furniture, lighting, water, restoration ... etc. Yemen also shared in the endowments kept for the Two Holy Mosques in the Islamic history, especially in the Era of Ayyubid Sultans in Yemen. King Al Aziz Toghtakin Ibn Ayyoub (579, 593 AH) was considered one of the most famous persons endowing the best of his lands and properties for the Holy Mosque in Mecca. The returns of such endowments have been provided to Mecca until 615 AH. Then, they were provided to Al Diwan in accordance with the decree of King Al Masoud Yusuf Ibn Al Kamel, the last Ayyubid King in Yemen. In addition, King Toghtakin endowed the income of Umm Al Dajaj village, located in Tuhama, in addition to other lands for the Holy Mosque in Medina and assigned Judge Ali Bin Al Hussein Bin Wahib, as an endowment superintendent and their income was has been provided to Medina until the end of the Ayyubid Era <sup>(1)</sup>. However, the most famous person in the Ayyubid dynasty who kept endowments for the Two Holy Mosques, was Prince Othman Al Zanjably (died 583 AH) who endowed stores, hotels ... etc. in Aden for the Holy Mosque in Mecca <sup>(2)</sup>. In the Era of Al Rasouliya State, attention was paid to the endowments dedicated to the two holy mosques by Sultans and Kings, such as Mujahed Sultan Ali Bin Dawood (721-764 AH), whose reign resulted in a qualitative breakthrough in the history of endowment in Yemen, as his endowments were provided to the Holy Mosque in Mecca and other mosques. Moreover, he endowed his best properties in Wadi Zubaid, the most fertilized valley with the best yield in Yemen, for the Holy Mosque in Mecca and other mosques and schools in Yemen <sup>(3)</sup>.

(1) Ibn Al Mujawer, Jamaledin Abu Alfath Yusuf Ibn Yaaqub Ibn Muhammad (Died in 690 AH, 1291): the Book of Description of Yemen and Some Parts of Hijaz Called Tarikh Al Mustabsir. Edited by: Oskar Lu Faqrin, Second Edition, Dar Al Tanwir, Beirut, 1407, 1986, Page 246-247

(2) Bamakhrama, Afifeddin Abu Muhammad Al Taiyb Ibn Abdullah Ibn Ahmed. (died in: 947 AH, 1540): Tarikh Thaghr Aden, Part 1, Print House: Brill, Leiden, 1936, P 131.

(3) Al Khazrajji, Abu Al Hassan Ali Ibn Al Hassan (Died in: 812 AH, 1409): Al Oqoud Allo'lo'iyia Fi Tarikh Al Dawla Al Rasouliya, Part 2, edited by: Muhammad Basiouni Asal. Print House: Al Helal, Cairo, 1329, 1911, P 125 - 126.



These are just examples of some endowments which capitals have been dedicated to the Two Holy Mosques. Those endowments were marked by the great expenditure as their returns have been distributed to cover the affairs of the Two Holy Mosques, their manpower, including employees and volunteers assuming issues related to pilgrims and Mutamirs in Hajj and Umra seasons and other goals for which they were dedicated.

It can be noted here that the issue of the financial support of the affairs of the Two Holy Mosques through keeping endowments for them is an important issue, to which attention has been paid by various Muslims in the past and the present. However, If we compare Hajj and Umrah at that time to the present time, we will find that there is a significant difference between them in terms of the number of pilgrims and muatamirs, the number of volunteers ... etc. The world witnessed developments such as the means of air, land and maritime transportation, wireless communication, the financial capacity of many Muslims, the increase of charitable rich people inside and outside the KSA who donate journeys of Hajj and Umrah for many poor and needy people, the increased number of voluntary charity organizations transporting pilgrims from poor countries, security and stability during rituals and the complete care paid to visitors coming from outside and inside the KSA. Therefore, the annual visitors to the KSA to perform such rituals increased to millions in the recent years. However, the facilities annually provided by the KSA for Al-Rahman guests and the efforts exerted in this regard, the increased number of pilgrims and Mutamirs currently and in the future and the need to guide them, as many of them aren't aware of the issues of Hajj and Umrah and some of them are exposed to diseases and sudden faint due to the scorching sun, exhausting rituals and overcrowding at some public places such the stoning rituals, it is necessary to recruit thousands of male and female volunteers of young people in order to serve, help, care, guide, provide first aids and alleviate burdens on pilgrims and Mutamirs. Equipping such volunteers and supporting them require large amounts of money incurred by the KSA annually. Despite the financial capacity of the KSA to support those persons and meet all their requirements, we have to search for other finance sources supporting them continuously. We have to benefit from the experience and solutions of the predecessors, on which they depended to

support their projects based on volunteering while having no sources of finance except for their endowed capitals, which became the optimal and best solution for continuous sustenance of their projects and the volunteers in charge of them. We must highlight this in order to pinpoint the importance of endowments in the history to solve continuous and future, rather than temporary, problems.

### **Section 3: Types of Endowments that can be Provided to Support Voluntary Work:**

The presentation of the role played by endowments in supporting voluntary works is only an example of a solution adopted by the predecessors in order to conduct the business of their various costly institutions for the success of their social, religious, and scientific role for which they have been established. The endowment experience of those predecessors constitutes a material we can adopt to solve our current problems, taking into consideration the difference in terms of the great expansion we witness in all our affairs, whether in terms of our charitable voluntary projects or the increased number of volunteers working in them and who need the fulfillment of their requirements and utilities. It is not wrong to be familiar with experience of others and benefit from them, specifically the western experience in this regard as they achieved a high degree of awareness and understanding related to the importance of volunteering in solving many society problems. This was a reason for the great success achieved by them in the areas of volunteering, especially that they depended with regard to the development of their charitable works on the financial and moral support they receive from their governments and the sources provided by rich people and all citizens. The awareness of Europeans reached a level that some of them donate one third of their wealth for voluntary works. For example, the American citizen, Ted Turner, the founder of (CNN) donated USD one billion for the United States humanitarian organizations which equals one third of his wealth. It is to be taken into consideration that the culture of good deeds does not only characterize that man, but also his wife, as he mentioned in the donation statement that his wife shared him this decision and was happy with it <sup>(1)</sup>. Some Americans donated some of

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(1) Al Safar: Voluntary Work Serves Society, P17-18.



their properties for good deeds, such as the land on which the building of the United Nations International Organization, which was donated by the Rockefeller family <sup>(1)</sup>. The average financial donation by each American is estimated at USD 500 annually <sup>(2)</sup> employed for voluntary good deeds. Taking into consideration the donations provided by westerners in this regard, we, as Muslims, are urged by Islam to donate through giving recurring charity, which means endowments, so that their returns shall remain sustainable and incessant under any conditions., On the contrary, the status quo in the west is different, as various donations may be affected by economic variables which may result in the cease of support provided by Europeans, rich people, or the various international organizations.

If we consider some endowment experiences in the Islamic countries, we will find that there are many successful experiences which returns are used to support many social, charitable, and voluntary organizations. This is our aim through this study, i.e. to apply such endowment experiences to the voluntary works in Hajj and Umrah seasons through establishing similar endowment projects and using their returns for volunteers. It should be noted that the KSA is distinguished from other Islamic countries in terms of the many endowments projects; most of which are successful due to the great financial support, skillful management of great experience in this area, and the sincerity of the persons in charge of such projects and employment of the endowment returns in their right disbursement channels for the objectives for which they are kept. Such endowment projects especially in the KSA include:

### **1. Endowments of Al Haramain Charitable Foundation:**

It is the most famous voluntary charitable foundation in the KSA. It was established in 1408 AH through the efforts of some preachers. It actually worked in 1412 AH. It aims to root the true Islamic faith in the hearts of Muslims, relieve them at disasters and catastrophes, and disseminate knowledge. This Foundation adopted three endowment projects, the total

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(1) Ibid, P18.

(2) Ibid, P17.



cost of which is SAR 111 million <sup>(1)</sup>, and we consider them as the most successful endowment projects in the KSA history. They are:

**A. Ibn Baz Charitable Endowment Project:**

It was called Ibn Baz in honor of His Eminence, Sheikh Abdul Aziz Ibn Baz and it is considered as one of the most famous recurring charity projects in the KSA. It was established upon a call by Al Haramain Charitable Foundation established in 1408, through the efforts of some preachers and with a public contribution up to SAR 21 or 22 million covering the costs of this project which has been established in Riyadh in 1420 AH at Al Maghzar St. It included two residential towers with a number of residential units amounting to about 100 units. It generates an annual return of about SAR one million dedicated for the projects of charity and propagation and relief activities.

**B. Al Tawhid Endowment:**

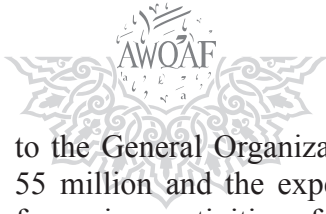
It was established after covering the cost of Sheikh Ibn Baz project, as Al Haramain Charitable Foundation realized the financial and moral benefit of this project and the need to find other fixed income sources added to the Foundation in the context of the Islamic endowment areas. The project returns, the cost of which is SAR 34 million, were dedicated to dawa for Allah, Almighty, building mosques, printing useful books, assigning dawa convoys, and other charitable works benefiting the nation. The investment businesses are financed by the amounts of money donated for the recurring charity project, the returns of endowments kept by their holders for the Foundation, and some surplus amounts of money . This is conducted through rules so that the Foundation projects are not affected anyway.

**C. Al Dawa Endowment:**

It is the third endowment of Al Haramain Charitable Foundation after Ibn Baz Endowment and Al Tawhid Endowment. It was established on a piece of land with an area of 5800 sq. m. at King Abdul-Aziz Rd., next

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(1) Refer to: Al Muhaideb: Impact of Endowment on Dawa for Allah, Almighty, P 233, Endnote No. 1.



to the General Organization for Social Insurance. The cost of it is SAR 55 million and the expected annual return is SAR 7 million disbursed for various activities of the Foundation, such as sponsoring orphans and volunteer preachers, printing books, helping needy people at home and abroad, building mosques, and other charitable projects<sup>(1)</sup>

## **2. Al Abrar Endowment:**

It is located in Mecca and it includes two great towers. Its total cost is SAR 3 million at the expense of charitable people. It aims to find a fixed return to spend on charitable deeds adopted by the endowment, such as building mosques, appointing imams and preachers, building schools, appointing teachers, sponsoring orphans, digging wells for poor people, disseminating books, and other good deeds.<sup>(2)</sup>

## **3. Endowments of the World Assembly of Muslim Youth:**

This World Assembly has been established in 1392 AH and it adopted many charitable endowment projects in the KSA and the world through non-governmental support. Its most famous endowments include:

### **A. Sheikh Muhammad Ibn Abd Al Wahhab Endowment:**

It is located in Riyadh on an area of 5400 sq. ft. and its cost is SAR 70 million. It includes 3 residential and commercial towers and administrative offices, the returns of which are dedicated to charity works.

### **B. Birr Al Waledain Project:**

It is located in Olaya St. It includes three residential units, the total area of which is 780 sq. m. They were generously donated by the businessman Sheikh Abdul-Aziz Al Mousa. The returns of this endowment are disbursed on the activities and projects of the World Assembly of Muslim Youth<sup>(3)</sup>.

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(1) Refer to: Ibid, P233-236. Quoted from Al Dawa Magazine, Volume 1765, 29 Rajab 1421 AH, 26 October 2000, P 30, Volume 1835, 14 Muharram 14423, 28 March 2002, P 53, Riyadh Newspaper, Volume 12953 issued on Thursday 17/10/2001, P 32.

(2) Ibid, P 236. Quoted from Al Dawa Magazine, Volume 1800, 21 Rabi II 1422 AH, 22 July 2001, P 74.

(3) Ibid, P 237-238. Al Dawa Magazine, Volume 1835, 14 Muharram 1423 AH, 28 March 2002, P53.

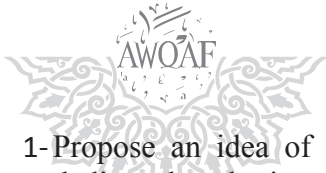
#### 4. Al Rajhi Endowments

They are some properties of Sheikh Saleh Ibn Abdulaziz Al Rajhi endowed in Allah's cause so that the returns of them shall be disbursed on various charitable and humanitarians works inside and outside the KSA. The amounts of money dedicated for disbursement on the basic projects adopted by the endowment were up to SAR 47,054,955 until 1424 AH. They are disbursed on orphans, widows, poor people, people afflicted by accidents, destructions and fire, alleviating the suffering of insolvents and paying their debts, sponsoring families of some prisoners, dissemination of Noble Quran and supporting its education sessions and memorization institutes and encouraging its memorizers and teachers, supporting Dawa and preachers for Allah, Almighty, spending on Shariah knowledge students, building, furnishing, air-conditioning and maintaining mosques and providing services related to them, printing and distributing useful Islamic books, establishing and supporting Islamic schools, educating Muslim children, distributing water, dates and foods, providing meals for fasting people in Ramadan, Hajj seasons in Mecca and Medina and other Islamic countries as well as other charity works<sup>(1)</sup>

These examples serve as models for other successful charitable endowment projects established in the KSA through non-governmental support. They have a great social effect on the public life of people in the KSA and throughout the Islamic world, as they alleviate a lot of social, economic, educational, health, environmental, and other calamities and problems of such people. However, we are concerned with developing proposals and ideas of similar endowment charitable projects which returns can be employed to spend on voluntary works and volunteers, who exert their times and experience to help and guide Al-Rahman guests including pilgrims and Muatamirs. It is to be taken into consideration that the success of the endowment charitable projects in the KSA gives us hope, revives the spirit inside us, and makes us feel the strong Islamic coherence asserted by Islam since its emergence. It asserts the expectation of success of the charitable projects which can be employed for the voluntary work in the KSA. Therefore, we suggest two principles to achieve this charity dream:

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(1) Ibid, P 240-242



- 1- Propose an idea of such endowment project which returns will be dedicated to charity works and volunteers. The competent authorities in the KSA have to approve such idea as these authorities are the official bodies which can facilitate such idea and promote it among their Royal Highness princes and businessmen.
- 2- Seek help of some senior Sheikhs and scholars throughout the KSA and the Arab Gulf region to promote this project with Saudi and Gulf VIPs, specifically their Royal Highness princes, senior officials, ministers, merchants, investors, businessmen, and any persons able to practice charity works according to their capacity.
- 3- Form a board of directors of experienced volunteer young people to assume the affairs of follow-up and communication with the competent authorities. This board will be primarily formed of a chairman, a vice chairman, secretaries, a financial official, a media official, honorary members, and key members, who shall be preferably businessmen and governmental officials and whose assignment is to facilitate the work of this board and coordinate between it, the higher authorities in the State, and the businessmen supporting the idea of such charitable endowment project.
- 4- Employ some visual and audio governmental and private media to educate people on the importance of such endowment and the reward of persons helping on the success of its project through the conclusive evidence from the Book of Allah and the Sunna of the Prophet and the pious predecessors including the Prophet's companions and followers. This will be conducted through a historical presentation of the endowments provided by them in Allah's cause and for His satisfaction as an evidence of the legitimacy of such endowments. In addition, TV short promotional clips have to be shown to indicate the importance of keeping endowments and providing recurring charity in the world life and the Hereafter, in addition to their returns and benefits for all people of all standards. The objective of this method is to communicate the idea to each house and family and encourage them to give alms for such project.
- 5- Hire a number of young people working in the area of voluntary work or who previously worked in it and distribute them to work as teams.

They shall be selected according to special requirements and official permits from the competent governmental authorities. Their primary assignment will be to meet major merchants, investors, sheikhs, scholars, and social figures practicing charity and business and convince them with the importance of giving alms for such endowment, as it equips the volunteering persons working in Allah's cause, and urge them to donate generously for the success of such endowment project, which contributes to a charity channel for the benefit of all young people.

- 6- Prepare promotional posters of high technique to highlight the importance of such project in the charity work and display them at the entrances of alleys, high roads, residential buildings, governmental authorities, schools, universities, markets ... etc.
- 7- Open a bank account in an Islamic bank or more in the name of such voluntary work endowment, which return is dedicated for spending on the volunteers working in Hajj and Umrah seasons in order to facilitate the receipt of donations from charitable people and businessmen.
- 8- Deploy donation boxes for the voluntary work endowment in various governmental departments, banks, public and private hospitals, mosques, schools, institutes, universities, markets, and other public places, in order to urge people in all groups and levels to contribute to such charitable endowment work and encourage them to give and sacrifice, in order to benefit themselves and others and gain the great reward.

Anyhow, receiving the required financial support from the mentioned charitable bodies may be the glimmer of hope to achieve the objective of the study through an endowment project helping to alleviate the costs incurred by the KSA government for the volunteers, and suffice such volunteers through sustainable income. In addition, a part of the returns of such endowments shall be dedicated for developing voluntary works and raising the level of their manpower. It seems that the idea of charitable endowments we talked about before and the investment methods in which the capitals of such endowments were invested are the best way through which voluntary work endowments are invested, such as:



- 1- Real estate selling and buying.
- 2- Constructing great commercial markets of high level of equipment and brands.
- 3- Constructing high towers in important residential sites including housing apartments of high level of planning and technique, offices for international companies, and great commercial markets and lease them in return of amounts of money dedicated for voluntary works.
- 4- Supplying residential units with all necessary services and complete infrastructure, such as roads, schools, nursery schools, markets ... etc. This will give such units a residential value attracting many lessees including nationals and residents.
- 5- Equipping great investment hospitals with Arab and foreign specialized medical staff and advanced devices and equipment. Such hospitals will provide their services at nominal prices, especially for volunteers and their families who share annually or more than once .
- 6- Opening schools and nursery schools and equipping them with all required tools of explaining, technology, scientific research in a proper scientific environment for students. Such schools and nursery schools shall be provided with teaching staff of high levels of knowledge, religiosity, and morals, who will provide such educational projects with good scientific and moral reputation throughout the KSA and the world.

The investment of capitals and alms that may be provided for the endowments of voluntary work in such projects or other successful future endowment projects on a more extensive and higher level isn't only useful for supporting the work of volunteers in Hajj and Umrah seasons, but the returns of them are disbursed on all charitable voluntary works in the Islamic world, volunteers working in the relief agencies and the humanitarian work in the Islamic countries in particular and the entire world in general, serving humanity and alleviating more suffering from disasters, catastrophes, diseases, epidemics, and other calamities currently suffered by Muslims and other nations.

#### **Section 4: Impact of Endowments on Supporting Voluntary Work:**

The success of the idea of the project of voluntary works endowments dedicated to spend on the work of volunteers to serve the guests of Al-Rahman in the seasons of Hajj and Umrah means for us to develop the ideology and method of the young people working in this area in the future and raise their scientific, intellectual, medical, and educational levels concerning dealing with millions of pilgrims and Mutamirs from various races and ethnicities. It also means providing them with various services in a manner qualifying them for another more useful humanitarian work. So, through the amounts of money provided from the voluntary work endowment, the authorities concerned with the affairs of volunteers can, months before Umrah and Hajj seasons, take some qualifying and training procedures helping to develop the role of voluntary work and young people working in it <sup>(1)</sup>. This will qualify them to acquire various experiences in this regard, which enable them to find their charitable and future way in terms of voluntary and other works. The most important qualifying, training, and organizing procedures for which the endowment returns will be dedicated include:

##### **1. Holding Various Scientific and Educational Courses:**

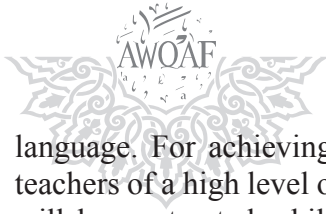
It is one of the basics which all young people practicing in voluntary work should acquire, as they are urgently needed to raise the level of volunteers in all scientific areas. These courses include the following:

##### **A. Language Courses:**

This is an important step to be considered by the persons specialized in voluntary works and on which endowment funds have to be spent, as they are important in developing the abilities of volunteers in the field of

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(1) There are some recent studies on qualifying young people to involve in the voluntary work and hence contributing to the reduction of some society problems. On such studies, refer to: Smar Bint Muhammad Ghourm Allah Al Maliki: The Extent of Realization by the Post-graduate Female Students in Umm Al Qura University of the Fields of Voluntary Works for Women in the Saudi Society (Field Study), an unpublished Master Thesis, Umm Al Qura University, 1430-1431 AH, P 48 et seq.; Activation of the Role of Voluntary Organizations in the KSA, Prepared by: The Center of Research and Studies, work paper proposed to the Saudi 2nd Conference on Volunteering, Riyadh, Muharram 1421 AH, P13-28.



language. For achieving success in this field, university professors and teachers of a high level of experience and knowledge in various languages will be contracted while focusing on the main languages (English and Arabic). The objective of conducting such intensive courses is to help volunteers to communicate with some pilgrims and Mutamirs who do not speak Arabic to avoid putting them in awkward position with them. This will give a good impression to pilgrims and Mutamirs on the scientific and cultural level of young people. Such courses may also include other languages especially that there are countries with large numbers of Pilgrims and Mutamirs. So, this requires dedicating work teams to deal with them in their language, in order to facilitate their requirements, guide them, and alleviate their suffering. Approved certificates have to be granted to such young people, which will qualify them for any job requiring certificate of experience in English and other languages studied by such volunteers.

#### **B. Educational Courses:**

They are important courses which any volunteer in such seasons has to pass. They are dedicated to educating young people the true Islamic religion instructions, Muslim's morals, and recommendations of Islam such as hospitality, good manners with others and politeness in dealing with them, as those pilgrims and Mutamirs will provide in their countries and among their relatives an image of what they see and hear and the situations and suffering they witnessed and which were alleviated by Muslim young people.

#### **C. Health Courses:**

They are nursing courses to which all volunteers have to be subject to learn methods and techniques of first aids and rapid relief to avoid some health problems which may afflict some pilgrims, due to the scorching sun, Hajj exhaustion, health problems suffered by some pilgrims such as diabetes, hypertension, or any urgency occurring suddenly during the performance of rituals. Superiority of some volunteers in the health field may drive the officials in charge to provide them with experience certificates approved by the Ministry of Health in the field of first aids, which enable such volunteers to work in any health facility by using such formal certificate.





#### **D. Courses on Information Technology and Computer:**

Through such courses, each volunteer will be able to communicate with his colleagues or the main control rooms managing the communication network with all volunteers. Such courses are urgent and they have to be attended by volunteer young people to develop their abilities in the computer and information technology. Passing the exams of such courses enables researchers to receive scientific certificates approved in the field of computer and enables them to work at any place requiring the use of computer or any modern means of communication.

#### **2. Fulfilling the Requirements of Volunteers:**

This will be achieved through the allotment of large amounts of money from the endowment returns to provide volunteer young people with all needs such as:

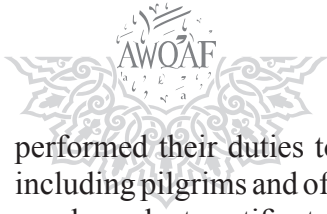
- A. Uniforms distinguishing them from other people so that they shall be known by Pilgrims and Mutamirs.
- B. Provision of modern and developed means of communication for volunteers and facilitating communication among them.
- C. Provision of all required food and beverages.
- D. Prepare electronic ID cards to identify volunteers.

#### **4. Payment of Incentive Amounts of Money for Volunteers:**

Such amounts shall be in return for their significant painstaking efforts and praiseworthy humanitarian services, provided that such amounts of money shall be dedicated to: expenses of their transportation, communication, foods, and beverages during their attendance at volunteering places in order to avoid any material losses affecting them and their families. In addition, small amounts of money are preferable to be paid to such young people to motivate them to participate in other future seasons and attract other persons to join their colleagues in the coming seasons.

#### **3. Holding Final Honoring Ceremonies:**

They have to be held at the end of each season and all volunteer young people will be honored while distinguishing exemplary persons who



performed their duties to the fullest and who are admired by all persons including pilgrims and officials. In such ceremony, appreciation certificates, good conduct certificates, experience certificates in their field, incentive medals, and small amounts of money shall be distributed. It is preferable for such honoring ceremonies to be attended by the state senior officials such as princes and senior officials as a method of motivating such young people to know through such ceremonies the extent of the importance of their work, through which they served their homeland, themselves, and the guests of Al-Rahman, who will take a good impression on those young people to their homelands.

Here, we conclude that if all perceptions and proposals are achieved, charitable endowments may result in the rationalization of expenditure of public funds of the KSA government, as there is great increase of pilgrims and Mutamirs annually. This requires to increase the number of volunteers, which may be up to hundreds of thousands of young people in the future, and this in turn costs the KSA large amounts of money. However, if the hereinabove-stated proposals are implemented, this will alleviate the burdens on the KSA government and facilitate the use of its public budget dedicated for voluntary works in such seasons for more important key priorities and alleviate the accumulation of burdens on it. This will be reflected on the financial stability of the Ministry of Hajj and Umrah and protect it against economic fluctuations resulting from urgencies, crises, and disasters. Here, charitable endowments will serve as the financial guarantee facing such economic fluctuations and the management of such endowments on sound economic bases will achieve the maximum benefit from them for both the endowers and beneficiaries alike (volunteers).

**Conclusion:**

Our study on “Charitable Endowments and their Role in Supporting Voluntary Work: *Study of A Resource and Method of Financing Voluntary Services in Hajj and Umrah*” features some outcomes and conclusions as follows:

- 1- The historical roots of supporting charitable endowments of voluntary works are very old and deeply-rooted. We have to revive them again including their humanitarian principles and values by endowing capitals for this purpose.
- 2- Charitable endowments are a key reason for the renaissance of nations in many areas of development. They are an important factor alleviating peoples’ suffering, crises, and disasters, which led to many social, economic, educational, health, and environmental problems.
- 3- Voluntary works throughout history depended in conducting their business on endowments and they have not had any other sources of finance but the modest support provided by some rulers.
- 4- Lack of revival of the Sunnah of Allah’s Messenger (peace be upon him) related to capital endowment by the Islamic peoples is one of reasons for our loss of a finance source in voluntary work.
- 5- The need to disseminate the culture of capital endowment for voluntary works and other works is urgent and it is necessary to urge governments and peoples to do.
- 6- The best way to prevent any financial crises or hardships in the appropriations of budgets dedicated to volunteers, voluntary works and other works is to endow capitals as much as possible and invest them in any successful charitable source.
- 7- Volunteering in good deeds in general and the seasons of Hajj and Umrah in particular is a necessity which people have to learn so that the society contributes to this charity and righteous field.
- 8- Joining voluntary works by volunteer young people in Hajj and Umrah seasons, meeting all their necessary requirements and needs, developing their educational and language and informational capacity, and other



procedures benefit such young people before the society, as a part of endowed capitals are spent on them to qualify and develop them and provide them with various experiences qualifying them to find their future way.

- 9- The success and development of the endowment project to support the voluntary work in Hajj and Umrah seasons will - in the future - result in the development of the scope of such endowments and their banking issues, so that they include all voluntary works in the Islamic world in order to disburse from their returns on disasters, catastrophes, wars, diseases, epidemics ...etc.
- 10- The implementation and development of endowment projects and their banking development may alleviate the suffering of countries budgets and inflation of their expenditure and help to employ funds of such budgets in other projects serving human and society development.

**Finally, the researcher recommends of the following:**

- 1- Disseminate the culture of keeping an endowment of charitable capitals among people which benefits Muslims, results in public benefit and reduces wide social differences among them, which became a part of the suffering of Islamic societies.
- 2- Oblige the educational sector to educate students in schools, institutes, and universities on the importance of endowments and volunteering, urge them to participate in such volunteering according to the ability and capacity of each. So, support funds for poor people and the interest in school cleanness, organization, and forestation may be the beginning of participation and volunteering in larger activities.
- 3- Getting acquainted with the experiences of peoples in the field of voluntary work and the aspects of their development and support in order to benefit from the strategy of their work and the sources of their finance, provided that this doesn't contradict with the Shariah rules of our true Islamic religion.

## Articles



### **A Historical Overview on Endowment Advisory Opinions (Fatawa) Study and Verification of Two Manuscripts of Sheikh “Hassan Ibn Ammar Al Shrunbulali” as a Model (Died in: 1096 AH / 1659 AD)**

Dr. Emad Hussein Muhammad

In the name of Allah, and peace be upon the Master of Messenger, Muhammad, his family and all his companions. Research on endowment advisory opinions and provisions is unlimited throughout ages. In addition, the juristic product is considerable and analyzable in various aspects. Here, we try to address that through a historical initial review as much as we can.

At the outset, we have to indicate that this study is not a juristic study and does not aim to extract juristic judgments or compare juristic judgments to Shariah sources. It approaches to study the reality which produced such advisory opinions. This study is socially and historically oriented while taking into consideration the juristic dimension of the material contained in the two manuscripts, the subject of the study.





### **Difference between Shariah and Jurisprudence:**

It is decided by Shariah scholars that there is an essential difference between “Shariah” and “jurisprudence”. Scholars illustrated this difference in the introductions of their studies on Shariah, such as the differentiation between them by the great scholar Mustafa Al Zarqa that “Shariah is texts of revelation, including the Noble Quran and the Prophet’s tradition (Sunna). So, it is protected, unchangeable, and unalterable. On the other hand, jurisprudence is to understand such texts and deduce judgments from them in accordance with the principles and rules of Shariah in this regard. So, jurisprudence is a human act which can be discussed and criticized <sup>(1)</sup>.

This difference is detailed according to “Kuwaiti Juristic Encyclopedia”: “There is a similarity between Shariah and jurisprudence as both of them include practical provisions contained in Quran and Sunna or proved by the unanimity of the nation. Shariah solely includes provisions of faiths and Jurisprudence solely includes provisions of independent juristic reasoning (Ijtihad), which were not addressed in Quran or Sunna and are not unanimously agreed by jurists” <sup>(2)</sup>. Accordingly, jurisprudence is produced by human minds understanding Shariah on the one hand and the surrounding reality on the other hand.

### **Jurisprudence is One of the Sources of History:**

In accordance with the aforementioned difference between Shariah and jurisprudence, Islamic jurisprudence can be studied as a historical phenomenon. Jurisprudence is an attempt by jurists to understand orders and prohibitions in accordance with the principles of jurisprudence and their evaluation of the reality of people and the environment on which they provide their advisory opinions. Therefore, we see that jurisprudence, i.e. understanding of Shariah, changes with time. In addition, there are effects of the societal traditions according to each region, as we can study jurisprudence books, especially juristic advisory opinions (Fatawa), as a

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(1) Mustafa Al Zarqa: General Juristic Introduction, Dar Al Qalam, Damascus, Edition 1, 1998, P 154 and Abd Al Karim Zidan: Introduction to Islamic Shariah, Al Resalah Institution, Damascus, Second Edition, 2006, P 65.

(2) The Ministry of Awqaf and Islamic Affairs: Kuwaiti Juristic Encyclopedia, Dar Al Salasil, Kuwait, 2005, Edition 2, 193/32.

civilization product on the one hand and consider the relationship between their contents and the historical events and social and political backgrounds on the other hand <sup>(1)</sup>.

This method can acquaint us with the opinions of jurists and the change to them in the same juristic school from time to time. However, this may be on the theoretical level. So, the lack of our acquaintance with the reality producing this jurisprudence, how it is formed, and the societal reality affecting and affected by such judgments and advisory opinions, will result in flaw in juristic or historical concepts. Hence, scholars advised to study jurisprudence in the light of history and study history in the light of jurisprudence. This is a useful method to a large extent. But, to what extent this method reflects the social reality in which a jurist was brought up and issued a juristic opinion? This will be in the light of the emergence of the Islamic jurisprudence as a fruit of applying Shariah to social realities <sup>(2)</sup>.

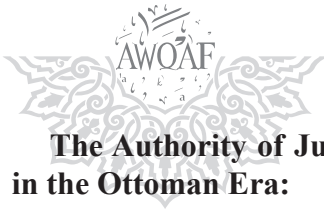
This orientation is not adopted but in few studies and it was indicated to by Mr. Abu Al Hassan Al Nadawi in some of his historical studies, as he said: "It is not the failure of historians only, but also it is the failure of those who study the official history books and terminology only and do not study other books which do not bear the name of history or are not found in the place dedicated to history in the libraries. However, such books serve as a significant material of history and are a valuable source of history. They include books of literature and religious books in which great people wrote their confessions and recorded their life events and experience, books in which some students recorded words or preaching of their Sheiks or conversations in their meetings, sets of pamphlets and sermons indicating the spirit of their authors, or books written on enjoining good and preventing evils, criticizing the society and denying evils and innovation in religion" <sup>(3)</sup>. This study will adopt this orientation.

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(1) Rudolph Peters, "Administrators and Magistrates: The Development of a Secular Judiciary in Egypt, 1842-1871," *Die Welt des Islam*, 39 (1999) , pp. 392.

(2) Dalind Al Arqash: *Women in Tunisia Have Been Exposed to Imprisonment, Beating, and Divorcement Since the 18th century*, Al Tamimi Foundation, 1999, P 260.

(3) Abu Al Hassan Al Nadawi: *Men of Thought and Dawa*, Dar Al Qalam, Damascus, First Edition, 1990, 102/1.



### **The Authority of Jurists and Establishment of the Social Position in the Ottoman Era:**

In the previous context, a question is raised on the legislative process in “the Islamic State”. Here, “the Islamic” concept is the description kept by the Ottoman State since its establishment until its collapse. The addressed question is: Who assumes legislation? This question stemmed from “Shariah politics” books, in which jurists talked about the form of rule, affairs management between rulers and citizens, judiciary, and denial and attesting in evidences before judges. These topics are contained in many writings. However, none of these writings addressed the legislative power, as many researchers concluded that this legislative assignment is entrusted to Shariah scholars in each age. Attention has to be paid to this, as the process of making Shariah scholars has been conducted through mechanisms uncontrolled by the State, princes, or Caliphs. Moreover, such process has been financed by the endowment system, which has been mostly managed independently from the State authorities. Such entity created by the society has been supported by the respect and appreciation of the society itself rather than the ruling authority in any of its degrees. Therefore, the juristic and legislative opinion has been stemming from an entity formed by the society and was acquiring its strength from the societal agreement not from what has been imposed by the ruling authority. This differs from what has been formed gradually inside the contemporary Islamic societies, including schools and colleges for study of laws and legislative bodies affiliated to the State which acquire their power from the power of ruling, and the individuals prepared to get their privileges according to the will of the ruling authority<sup>(1)</sup>.

#### **The Historical Context of the Manuscript and its Author:**

Many Arab regions were subject to the Ottoman rule in the tenth Hijri century / sixteenth century AD. This was followed by gradual transformation processes, especially in some regions, which have been previously independent. Consequently, countries such as Egypt have been transformed from a central state to an affiliated state economically

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(1) Tareq Al Bishry: Approach to Consider Contemporary Political Regimes in the Islamic World States, Shorouk, Cairo, 2007, Second Edition, P 58-68.



and politically. Therefore, everything in Egypt became related to a ruler outside the Egyptian environment. In addition, taxes and regulations were imposed on this state and were enforced by employees who do not belong to the people on whom such laws were enforced and who do not have the authority to change them. The entire regime was transferred to the Ottoman capital “Istanbul”. However, the social status and forces nearly did not change, including the former rulers. “Mamluks” were still socially existent, as the Ottoman Sultan assigned a prince of them to rule Egypt on behalf of him<sup>(1)</sup>.

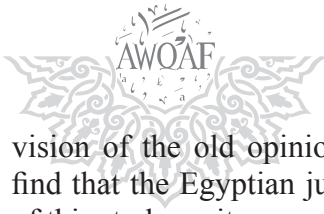
Accordingly, the Ottoman laws enforced in the Arab region as of 1525, 933 AH have been based on Shariah and the Ottoman rulers depended on Shariah scholars and jurists to develop the legal grounds. So, the legal articles were presented to the Mufti (Juristic Advisor) to know the Shariah opinion on them. Based on the answer of such Mufti, writers were assuming the legal drafting of such advisory opinion (Fatwa). The Ottoman Empire adopted the “Hanafi Juristic School” as a base for all legislations. However, it allowed, when it conquered the Arab region, some judges who refer to other juristic schools concerning their judgments in individual cases. Accordingly, there were laws based on conclusively proved provisions in Shariah, such as the punishments for murder, theft, and adultery. There are laws based on Ijtihad by jurists, in case of lack of Shariah text in such regard, so that justice is achieved and the State affairs are managed, and stability prevails<sup>(2)</sup>.

The book of “Durar Al Hukkam Fi Sharh Ghurara Al Ahkam”, written by “Minla Khisru”, was considered as a reference for judges as of “Muhammad Al Fatih” era. On this the book, there are various annotations. Some persons criticized such annotations on the ground that they symbolize juristic stagnancy. However, for meticulous persons, they provide a renewable

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(1) For more details, refer to: Muhammad Ibn Ahmed Ibn Eias: Badae’ Al Zohour Fi Waqa’e Al Dohour, Book Organization, Cairo, 1984 and Fadel Baiyat: Studies in Arab History in the Ottoman Era, Dar Al Madar Al Islami, 2003 and Saiyar Al Jamil: Ottomans and Modern Formation of Arabs, Mou’sasat Al Abhath Al Arabia, 1989.

(2) The Administrative Law of the State of Egypt in the Ottoman Era: Translated and studied by Majida Makhloof, Dar Al Afaq Al Arabia, Cairo, 2008, P 34 and Muhammad Nour Farahat: The Social History of Law in Modern Egypt, Dar Souad Al Sabah, Cairo, 1933, P 91.



vision of the old opinion according to the new realities. Therefore, we find that the Egyptian jurist who is the author of the manuscript, subject of this study, write an explanation and annotation on this book (its name is mentioned below), in which he objected to some of his opinions. Ibn Abdin depended on this book in his famous annotation (Hashia) many times and supported his opinions. The legal references of judges included the Book of “Multaqā Al Abhur”, written by “Ibrahim Halabi” in the era of Sultan Sulaiman Al Qanoni”, in addition to the Book of “Al Siyasa Al Shariyah”, written by Dadah Effendi in the field of Ta’zir punishments (punishments for violations which are not stipulated in Shariah texts). Those were the books on which the Ottoman Hanafi judiciary depended. In addition, there were Fatawa of “Abu Al Saoud Effendi”, Fatawa of “Ibn Kamal Basha”, and Fatawa of other Muslim Sheikhs <sup>(1)</sup>. When the Ottoman judicial system was applied in Egypt, the system of deputy chief justice was adopted in the four Islamic juristic schools and each judge was judging according to one of these juristic schools and was considered as a deputy chief justice of Egypt. <sup>(2)</sup>

#### **Questions Addressed by the Manuscript, Subject of the Study:**

According to the foregoing, Islamic jurisprudence was the reference of judiciary in the Ottoman Empire and all its states. This includes all judiciary topics, whether those related to economy, commercial agreements, criminal punishments, and personal status, including the issues related to family life in the society.

The second verified pamphlet addresses a question worthy of attention in this regard, as it is an objection to the Fatwa of Damascus Official Mufti. After the jurist “Al Shrunbulali” indicated in his first pamphlet his opinion concerning the division of the returns of an endowment concerning which a question was addressed, the Fatwa was issued contrarily to the opinion of the Egyptian Hanafi Juristic School in Egypt. Therefore, the inquirer addressed his question again including the Fatwa of Damascus Mufti. This was mentioned by Sheikh Al Shrunbulali and he mentioned the pamphlet

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(1) Administrative Law: Majida Makhoulouf, P 37.

(2) Ibid.

text including the Fatwa of Damascus Mufti before his reply to it. Then, he concluded to object to the Mufti opinion on the ground that he erred in reasoning. The question here is:

**To what extent a jurist supported by a society is able to face a Fatwa issued by an official authority?**

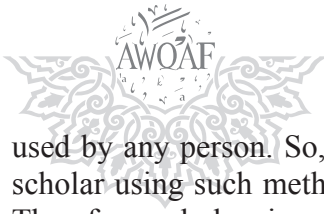
This is a discussion and a question contained in some pamphlets of Al Shrunbulali. This transforms his written opinion as a document for any person affected by the opinion of the Mufti or a judge to reconsider such fatwa or judgment. This is a system which enables the society to review the authority decisions in the Islamic system and empowers the jurist who has primarily a societal power. In this case, we find the jurist “Al Shrunbulali” assumed the position of Ifta’ (giving juristic advisory opinion) through selecting him by the juristic community and without any official order issued by the ruling authority. The society acknowledged his worthiness to this position <sup>(1)</sup>. Therefore, he became a force balancing any encroachment or deviation by any official authorities of the State even if it depends on Shariah.

**Importance of the Manuscript in Juristic Renovation:**

The first manuscript addresses a new system and an innovative method to solve juristic issues in the context of distributing endowment yields, as Sheikh Al Shrunbulali was designing a diagram for any endowment issue. Then, he designed a schedule to specify the shares which are distributed in accordance with the endowment instrument. This method was not used before according to Al Shrunbulali who could not allege it without certainty, while he disseminated his pamphlet among the scholars of his age. I reviewed the endowment fatawa (juristic advisory opinions) available through endowment instruments in some Egyptian Shariah courts, such as Alexandria Court and some Cairo courts, which were concerned with dividing endowment yields in addition to the Fatawa of the Egyptian Dar Al Ifta’ in the 19<sup>th</sup> century such as Al Mehdi Al Abbasi Fatawa and Muhammad Al Banna Fatawa. I did not find that this method has been

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(1) Emad Helal: Egyptian Ifta’, Egyptian Dar Al Ifta’, Dar Al Wathae’q Al Qawmiya, Cairo, 2013, 805/2.



used by any person. So, Sheikh Al Shrunbulali was the first and the last scholar using such method, as it needs a special mathematical mentality. Therefore, scholars ignored it.

Sheik Al Shrunbulali presented the new method which he figured out under consideration of the scholars through this pamphlet. So, he occupied a high position from the perspective of the scholars concerning the treatment of such issues. This mathematical method to calculate shares enabled him to calculate accurately. This indicated a case of Ijtihad stemming from the societal reality and its requirements. So, scientific development stems from dealing with developments according to new mechanisms through a mentality accommodating modern science which is able to develop and a scientific position respected in the knowledge area. In addition, this indicates clearly that development and renewal stem from developments or societal issues. We find that when reviewing or reading the Fatawa of each age, as Ijtihad stems from and starts through addressing questions. Then jurists respond. This pamphlet serves as a practical case in this context as presented to us so that the fact of development stemming from societal challenge and juristic response is achieved.

### **Seals on the Manuscript and Books Endowment:**

The second issue attracting attention in the manuscript from which we verified two pamphlets is that both editions we depended on are endowment, as the first page of both contained: “Endowment for Allah, Almighty”. In Edition (A) approved in this verification, each first page of each pamphlet bears a seal of (Endowment of Abd Al Qader Al Rafi’), and year 1913. Edition (B) contained: “Endowed by Mrs. Zulaikha, wife of Ali Bey, Roznamji<sup>(1)</sup> of Egypt, who kept it in Khizana of<sup>(2)</sup> Hadrat Al Saida Zainab”, under No. 303544.

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(1) Roznamji: Official in charge of the financial books in Egypt. The original language of the word (Roznama) is Persian. It is divided into: “Book” and Day”, i.e. “Day book”, Then, it became: “Financial books”. Therefore, it describes the bureau assuming this function and “Roznamji” i.e. the person assuming this job. So, it was describing the official in charge of financial books. Refer to: Mustafa Abd Al Karim Al Khatib: Dictionary of Historical Terms and Nicknames, Al Resalah Institution, 1996, First Edition, P 214.

(2) Khizana : Here, it means “the library of the Mosque and this was the name of the library at that age (the Verifier) .

We have to assert that many researchers in the field of Librarianship saw, in terms of libraries history, that the Islamic library is owed to the endowment system concerning its development and sustainability. The essence of the endowment system is that endowment property is kept out of ownership and the financial estate of its endower for the benefit of the beneficiaries specified by such endowers. They also asserted that this system was applied in the Islamic civilization in the third Hijri century and prevailed widely in the fourth Hijri century upwards<sup>(1)</sup>. There are many forms of book endowment approving the registration of such endowments and considering them as valid. These forms include:

[A] Writing endowment text on such book.

[B] Writing an inclusive endowment instrument including the limits and general objectives of such endowment. Such instrument shall be registered at the court or before Shariah judge. This requires a certain drafting in the Hanafi Juristic School which requires appearing before the judge and a discussion between the judge and the endower. Finally, the judge shall approve such endowment instrument. In the other juristic school, this shall be conducted through registration of the endowment instrument before the judge in order to approve the validity of the mentioned drafting.

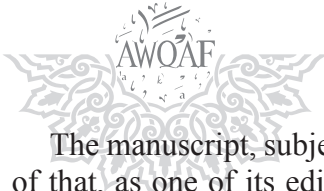
[C] Sealing the title page and other internal pages with a seal indicating the book endowment<sup>(2)</sup>.

Endowment libraries generally varied to include public and private libraries, libraries of small and big mosques, libraries of schools, Khanquaoat (places for contemplation by Sufis), hospices, libraries of graveyards, and libraries of hospitals and astronomical observatories.

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(1) Sha'ban Abdulaziz Khalifa: Books and Libraries in the Middle Ages (The Islamic East, the Far East) , Al Dar Al Misria Al Lubnania, Cairo, First Edition, 1997, P 309, and Yahia Mahmoud Al Saati: Endowment and Arab Library Structure.. Exploration of the Cultural Heritage, King Faisal Center for Research and Islamic Studies, Riyadh, First Edition, 1988, P 32.

(2) Al Saati: Endowment and Arab Library Structure, P 130, and Sha'ban Khalifa: Books and Libraries in the Middle Ages, P 310.



The manuscript, subject of this study, is considered as a practical model of that, as one of its editions was an endowment in a private library and the other edition was kept for students in Al Saida Zainab Mosque in Cairo downtown.

### **Ancestry and Birth of the Author of the Manuscript <sup>(1)</sup>:**

The author of this manuscript is “Sheikh Hassan Ibn Ammar Ibn Ali Al Misri Al Wafa’i Al Shrunbulali Al Hanafi Abu Al Ekhlas” <sup>(2)</sup>. Al Shrunbulali is derived from Shubra Bloul, a town near Monouf Al Uliya at Monoufia Province, Egypt <sup>(3)</sup>. He was born in 994 AH, 1585. Then, his father departed to Cairo when he was six years. So, he grew there <sup>(4)</sup>.

### **His Sheikhs:**

The great Sheikh Al Shrunbulali Al Hanafi was a student of great scholars of his age, such as:

- Sheikh Ali Ibn Muhammad Ghanim Al Maqdasi: He is Muhammad Ibn Ali Ibn Khalil Al Khazraji Al Saadi Al Abbadi of Maqdasi descent. He was born in Cairo in 920 AH/ 1514 and resided in Cairo. He was nicknamed as “Noureddin Al Hanafi”. His descent was from “Quds”. He was the leader of Hanafis in his age. He was unanimously agreed on as a talented and superior scholar in all types of Shariah knowledge. He grew in Egypt and memorized and recited the Noble Quran in the seven Qira’at (Quran Recitation Modes). He assumed high positions such as Imam of Al Ashrafiya and Sheikh of Al Wazir School, and Sheikh of Al

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(1) The researcher significantly benefited from the verification of Dr. Ahmed Jabbar, the University of Thi-Qar in Iraq of the pamphlet “Ithaf Al Arib Bijawaz Istinabat Al Khatib” and the verification of Dr. Ahmed Mahmoud Al Mahmoud, From Bahrain of the pamphlet: “Sa’adat Ahl Al Islam Bel Musafaha Aqib Salat and Salam” in this point. The benefit is materialized in knowing the names of references and sources. So, they were the best guide and assistant to refer to them and verify the complete biography.

(2) Muhammad Al Muhibi: Kholasat AL Athar Fi Aiyan Al Qarn Al Hadi Ashar, Dar Sader, Beirut, 135/2, and Umar Reda Kahala: Dictionary of Authors, Dar Ehiaa Al Turath Al Araby, Beirut, Lebanon, 365/3, Mustafa Ibn Abdullah Al Hanafi, (known as Haji Khalifa) : Kasf Al Thonoun Aan Asami Al Kotob Wa Al Fonoun, Al maktaba Al Faiasaliah, 292/5

(3) Al Muhibi: Kholasat AL Athar, 39/2.

(4) Khaireddin Al Zarkali: Al Aalam, Dar Al Elm Lel Malayin, Beirut, Version 15, 2002, 208/2.

Iqra'. His books include: Sharh Nazm Al Kanz, Sharh Al Asbah Wa Al Naza'er. and Al Shamaa Fi Ahkam Al Jomou'a <sup>(1)</sup>. He died in 1004 AH, 1595 AD <sup>(2)</sup>.

- The great scholar Muhammad Al Hamawi Al Misri, nicknamed as "Shamseddin Al Hanafi". He was born in Hamah in 1024 AH, 1615 and grew up there. He accompanied his father and learnt from him traditional and intellectual knowledge. Then, he migrated with his father to Damascus. After some years, he migrated to Egypt in which he died in Jumada I 1049 AH / 1682 AD <sup>(3)</sup>.
- Sheikh Muhammad Ibn Mansour Ibn Ibrahim Ibn Salama Muhibeddin, nicknamed as Al Muhibi Al Demashqi Al Hanafi, the jurist, Al Muhaddith. He was born in 931 AH/ 1524. He wrote a comment on Al Hidaiya book. He died on 1030 AH / 1620 AD <sup>(4)</sup>.

### **His Students:**

The great scholar, Al Shrunbulali taught in Al Azhar Mosque and was appointed in "Cairo". He was reliable concerning Fatwa. He occupied a high position for the officials in the State and many students learnt from him <sup>(5)</sup>. His students include:

- Sheikh Ahmed Ibn Mahmoud, nicknamed as Al Ajami Al Shafi' Al Misri, born on 1014 AH / 1605 AD, who was a creative and intelligent Imam. He was an Egyptian great scholar who was fully familiar with history, Arab days and ancestries. He was a reference for esteemed people in his age in terms of considering problematic issues, as he was experienced and knowledgeable. He compiled a large number of books. He wrote: "Sharh Tholathiat Al Bukhari" and "Resalat Al Athar Al Nabawiya" <sup>(6)</sup>.

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(1) Al Muhibi: Kholasat AL Athar, 180-185/3 and Al Zarkali: Al Aalam, 12/5.

(2) Al Muhibi: Kholasat AL Athar, 181/3.

(3) Refer to: Ibid (459/3) .

(4) Refer to: Ibid (231/4) .

(5) Umar Reda Kahala: Umar Reda Kahala: Dictionary of Authors 265/3 and Al Muhibi: Kholasat AL Athar, 38/2, adapted.

(6) Refer to: Al Muhibi: Kholasat AL Athar, 176/1.

- Sheikh Shahin Ibn Mansour Ibn Amer Al Armanawi Al Hanafi. He was the best jurist of Hanafis in his age in Cairo. He was famous and his Fatawa prevailed everywhere. He was born in his town in 1030 AH / 1620 AD. He departed to Al Azhar and learnt recitation of Quran Qira'at as narrated from the great Sheikh Abd Al Rahim Al Yemeni, the Quran Reciter. He learnt Islamic jurisprudence from Imam Al Shehab Al Shwairi, Ahmed Al Minshawi, Ahmed Al Rifai', and Hassan Al Shrunbulali. He assigned to Iqra'in Al Azhar and taught some notable scholars. He died in Egypt in 1100 AH / 1668 AD <sup>(1)</sup>.
- Muhammad Ibn Tajeddin Ibn Muhammad Al Maqdisi Al Ramli Al Hanafi, Mufti of Al Ramla. He was a pious Imam and scholar. He was the nephew of Sheikh of Islam, Khairuddin Al Ramli, who taught him jurisprudence, as he taught him "Al Durar", including its annotation as an instructor <sup>(2)</sup>.
- Sheikh Yunus Al Misri Ibn Ahmed Al Mahali Al Azhari Al Kafrawi Al Shafi' who departed to Damascus and taught Hadith in it <sup>(3)</sup>.

### **His Juristic Approach:**

Before proceeding with presentation of his juristic approach, we have to mention that he occupied the position of Mufti, not according to a Sultani decree or a decision by Mashiakhat Al Islam in Istanbul, but according to the unanimity of the knowledge community in his age. Documents described him as the "Mufti of Hanafis" and "Sheikh of Ifta' and Teaching in Al Azhar Mosque" <sup>(4)</sup>. We can present the most important features of his juristic approach as follows:

- Full familiarity with the Hanafi Juristic School and evaluation of the opinions of scholars according to this juristic school.
- Addressing all issues whether they are minor such as the issue of shaking hands after prayer, as he dedicated a pamphlet to discuss the opinions

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(1) Al Muhibi: Kholasat AL Athar, 222/2.

(2) Ibid: 411/3.

(3) Refer to: Al Muradi: Selk Durar, 266/3.

(4) Emad Helal: Egyptian Ifta', Egyptian Dar Al Ifta', Dar Al Wathae'q Al Qawmiya, Cairo, 2013, 805-832/2.



of scholars concerning it; or major issues whether juristic or related to faiths. So, he wrote about such major issues such as his annotation on the juristic reference adopted by the State “Durar Al Ahkam” written by “Minla Khisru”

- His Ijtihad concerning the use of knowledge tools such as calculation tables in a method resulting in more accurate fatawa, especially those requiring digital processing. This approach is presented in this manuscript, subject of the study.
- His accuracy regarding consideration and verification of issues. This is quite clear in his rejection of the opinion prevailing in the “Hanafi School” that the endowment beneficiaries shall incur diyah (blood money) if a killed person is found inside an endowed place and the killer is unknown. He analyzed the issue and rejected the judicial judgment on it in his pamphlet: “Al Nass Al Maqboul Lerad Al Ifta’ Bdiyat Al Maqtoul”.
- His discussion with his opponents through the opinions of the great Imams in the juristic school such as Imam Abu Hanifa and Abu Yusuf. In the field of endowment, he was referring primarily to the Ijtihad of Imam Al Khassaf. If he did not find a solution in these references, he would resort to the main means of Ijtihad such as the language and fundamentals of jurisprudence in order to deal with the two Islamic basics (Quran and Sunna). This is clear in the pamphlet: “Tahqiq Al Aalam Al Waqifin Ala Mafad Ebarat Al Waqifin”.
- His support of the opinions entailing good effect and increasing the beneficiaries of endowment yields, as long as the juristic vision of the wording of the endower supports such tendency. This is directly clear in his defense of the tendency of his Sheikh “Ali Al Maqdisi” in his Book: “Al Tahqiqat Al Qudsiya” mentioned hereunder.

### **His Writings:**

The great scholar Al Shrunbulali Al Hanafi had many writings. The subject of most of them was jurisprudence, Islamic basics and faiths. The most important writings include:



1. Hashiat Al Durar Wa Al Ghurarar of Minla Khisru <sup>(1)</sup>.
2. Taisir Al Maqasid Fi Eqd Al Fara'ed Fi Sharh Manzomat Ibn Wahban<sup>(2)</sup>.
3. Jawab Fiman Naqad Fi Nawaqid Al Wodow' <sup>(3)</sup>.
4. Atabat Zawi Al Ahkam Wa Bughiat Durar Al Hukkam <sup>(4)</sup>.
5. Al Tahqiqat Al Qudsiya Wa Al Nafahat Al Rahmaniya Al Hassaniya Fi Mathhab Al Sada Al Hanafiya. It is 60 pamphlets known as "Al Rasa'el Al Shrunbulalia" <sup>(5)</sup>.

### **Scholars' Praise of him:**

He was one of the great jurists and virtuous people in his age. He was well-known. He compiled numerous writings and left great production and numerous pamphlets. The father of Al Muhibi described him as "Reference Sheikh Al Hassan Al Shrunbulali, Al Azhar light and sparkling planet ... leader of disagreement jurists, author of the most superior edited books and pamphlets, with good characteristics. He facilitates the understanding of people with his sophisticated editing. He provides religious issues and explains certain problems. He has good manners and was fluent. He was the best jurist in his age. He compiled many books in the Hanafi Juristic School. The best book of them is "Al Durar Wa Al Ghurarar of Minla Khisru". His books were well-known in his life and people benefited from them. They are the best evidence of his rooted faculty and foresight. He explained "Manzomat Ibn Wahban" in two volumes. He compiled a brief on jurisprudence and numerous pamphlets and edited books <sup>(6)</sup>.

### **His Death:**

He died on Friday after Asr Prayer, 11 Ramadan 1096 AH / 1659 AD at the age of 75 years. He was buried in "Al Mujawirin Graves", may Allah have mercy on him.

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(1) Al Muhibi: Kholasat AL Athar, 39/2.

(2) Al Zarkali: Al Aalam, 208/2.

(3) Al Moulami: Dictionary of Authors of Manuscripts in the Holy Mosque in Mecca 336.

(4) Al Zarkali: Al Aalam, 208/2 and Kahala: Dictionary of Authors 265/3

(5) Al Muhibi: Kholasat AL Athar, 38/2.

(6) Ibid: 28/2.



### **The Book Attribution to the Author:**

There is no disagreement that this book is attributed to the great scholar “Abu Al Ekhlas Hassan Al Shrunbulali Al Hanafi”, as all scholars presenting his biography unanimously agreed that it is one of his compilations. This was mentioned by Ismael Pasha Al Baghdadi in his book “Idah Al Maknoun Ala Kashf Al Thonoun” <sup>(1)</sup> and his book “Hadiyat Al Arifin Fi Asma’ Al Mou’lifin wa Athar Al Musanifin” <sup>(2)</sup>. He was also mentioned by Sheikh Abdullah Ibn Abd Al Rahman Al Moulami in the “Dictionary of Authors of Manuscripts in the Holy Mosque in Mecca” <sup>(3)</sup>.

### **How was the Manuscript Written?**

Al Shrunbulali mentioned that he wrote this book under the request of Sheikh Muhammad Al Muhibi Al Hanafi, whose Fatwa were discussed by Al Shrunbulali until his death. Then, Al Shrunbulali compiled those Fatawa in a form of pamphlets with new Fatawa after the death of his Sheikh. He titled these total pamphlets “Al Tahqiqat Al Qudsiya Wa Al Nafahat Al Rahmaniya Al Hassaniya Fi Mathhab Al Sada Al Hanafiya” and divided them according to jurisprudence topics. The endowment was addressed in details in the pamphlets “29 - 34”. Then, he compiled a pamphlet on judiciary.

He indicated this matter in his manuscript kept by mistake as separate pamphlets! Each pamphlet had an independent number, even the introduction of those pamphlets in which he set out their division according to jurisprudence topics in the form of a table of contents was called by mistake as the pamphlet of “Al Tahqiqat Al Qudsiya Wa Al Nafahat Al Rahmaniya Al Hassaniya Fi Mathhab Al Sada Al Hanafiya”. However, this is the name of the inclusive manuscript of all the pamphlets, which is under number 324519 in Al Azhar Library.

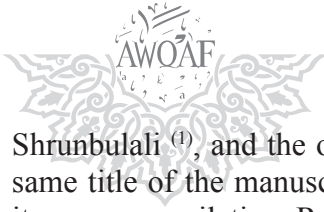
This resulted also in a problem for some researchers. So, a group of them considered each pamphlet as a separate book written by Al

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(1) Baghdadi: Idah Al Maknoun, 14/3

(2) Baghdadi: Hadiyat Al Arifin, 92/5

(3) Al Moulami: Dictionary of Authors of Manuscripts in the Holy Mosque in Mecca 334.



Shrunbulali <sup>(1)</sup>, and the other group revealed the truth. So, they listed the same title of the manuscript as it was given by its writer and considered it as one compilation. Really, both groups were wrong as those pamphlets were separate Fatawa and the author issued them in the form of separate pamphlets at the beginning. Then, the advice of his Sheikh Al Muhibi was accepted and implemented by Al Shrunbulali. Therefore, they became one compilation including separate Fatawa.

It should be noted that the author of the manuscript listed in this inclusive manuscript 60 pamphlets, 59 of which were written by him and a pamphlet was annexed to his pamphlets. This pamphlet was written by his Sheikh Ali Al Maqdisi. Some people attributed this pamphlet to him, despite he mentioned in the table of content that he annexed it due to its importance and rarity. The title of this pamphlet is “Naqd Al Qisma”. Al Shrunbulali said: “Pamphlet 34: The wonderful important pamphlet to present Naqd Al Qisma and Al Musawah Bain “Al Subki” Wa “Al Khasaf” and a reply to the author of A;-Ashbah for his mistake and suspicion. The pamphlet was written by the sheikh of my teachers and the great scholar “Ali Al Maqdisi”. I am honored to include it in my pamphlets, as it is unique in its topic.”<sup>(2)</sup>

### **The Verification Approach:**

1. The writer depended on two editions of each pamphlet: Editions (A) and (B). He dedicated edition (A) to the original approved text and dedicated edition (B) to adding more correct opinions and the omissions. The editions are:

### **Pamphlet 1:**

**Edition (A): Manuscript Title:** Fath Bari’ Al Altaf Bejadwal Tabaqat Mustahiqi Al Awqaf, **The Author:** Al Shrunbulali Abu Al Barakat, Hassan

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(1) Examples of that include: Research of Dr. Ahmed Jabbar, the University of Thi-Qar in Iraq: Verification of the pamphlet of “Ithaf Al Arib Bijawaz Istinabat Al Khatib” and the Research of Dr. Ahmed Mahmoud Ibrahim, University of Bahrain: Verification of the pamphlet of “Sa’adat Ahl Al Islam Bel Musafaha Aqib Salat and Salam”.

(2) Hassan Ibn Ammar Al Shrunbulali: Pamphlet of “Al Tahqiqat Al Qudsiya Wa Al Nafahat Al Rahmaniya Al Hassaniya Fi Mathhab Al Sada Al Hanafiya”, Al Azhar Library, Manuscript No. 324519, P 3.



Ibn Ammar Ibn Ali, Hanafi Jurist, **Edition No.** 324704, Al Azhar Library, Cairo, Number of Pages: 5.

**Edition (B): Manuscript Title:** Fath Bari' Al Altaf Bejadwal Tabaqat Mustahiqi Al Awqaf, The Author: Hassan Al Shrunbulali Al Hanafi. **Manuscript No.** 303610, Al Azhar Library, Cairo, registered by mistake in the table of contents under the Title: "Resalat Mufidat Al Husna Ledafi' Thann Al Khulu Bessukna".

### **Pamphlet 2:**

**Edition (A): Manuscript Title:** Al Ibtasm Be'hkam Al Ifham Wa Nashq Nasim Al Sham Kalbasham, **The Author:** Hassan Ibn Ammar Al Shrunbulali Al Hanafi. **Manuscript No.** 324701, Number of pages: 5.

**Edition (B): Manuscript Title:** Al Ibtasm Be'hkam Al Ifham Wa nashq Nasim Al Sham, **Manuscript No.** 303821, Al Azhar Library, Cairo, Number of Pages: 3 Pages, and a table of content by mistake, titled: "Resalat Al Durra Al Farida Bain Al Aalam Letahqiq Hukm Mirath Mann Uliq Talaqoha Qabl Al Mout Bishahr Aw Aiyam".

2. The spelling was corrected in the manuscript.
3. The Quran verses and Prophetic Hadith contained in the manuscript were attributed to their sources. He listed them consecutively without separation.
4. Books mentioned by the writer as references were introduced in addition to the names of famous persons.
5. Some words were clarified.

Finally, praise be to Allah, the Lord of the Worlds

# Book Review



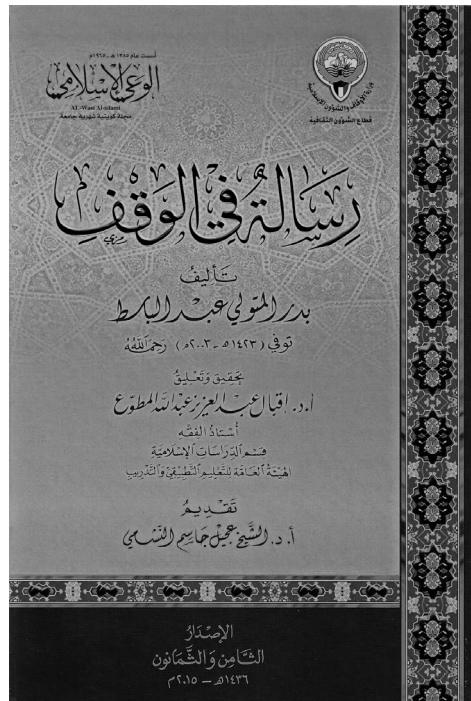
## A Discourse on Endowment

By: Badr Al-Mutawalli Abdul Bassit

Introduction by: Professor Doctor Sheikh Ujail Jassim An-Nashmi

Investigated and Commented by: Professor Doctor Iqbal Abdul Aziz Al-Mutawwaa

Reviewed by: Lubna Salihin



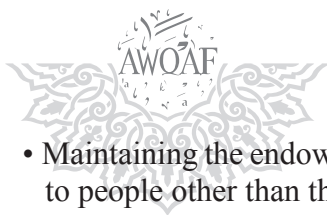
This book is one of the first writings on endowment-related contemporary issues in the modern times. It has been verified by Professor Doctor Iqbal Al-Mutawwaa, professor of Jurisprudence at the Public Authority for Applied Education and Training. This valuable book has been included in the publications of the Islamic Awareness Magazine issued by the Sector of Cultural Affairs in the Ministry of Awqaf and Islamic Affairs. Taking into consideration that this valuable book contains a comprehensive study on endowment, Awqaf Magazine decided to present an interesting review of this book as a means of reviving such valuable book in terms of its depth and endowment concept and publish it to disseminate such useful knowledge among all people. As for the scientific verification approach adopted by Mrs. Iqbal Al-Mutawwaa, she relied on the sole version of this valuable discourse which is available at the Center of Sheikh Salih Kamel, Al-Azhar University, Scientific Theses, Sector of Social Sciences, No. 2/345/7. This is the only available version of the 175-page book which is published in a regular paper size. In most of its topics, the author relied on the Hanafi books. Sometimes, he would refer to the other Juristic Schools. The book is divided into an introduction, six Chapters and a conclusion. The Introduction covers five issues as follows:

- Linguistic and legitimate definitions of endowment.
- Definition of endowment in accordance with the views held by Imam Abu Hanifah An-Nuaman, his two companions Judge Abu Yusuf Al-Ansari and Muhammad Ibn Al-Hassan Ash-Shaibani, Imam Malik, Al-Kamal Ibn Al-Humam Al-Hanafi, Imam Ash-Shafie and Imam Ahmad
- Cornerstones of endowment
- Is endowment effected through action without need to say such formulas?
- Is it possible to generalize the related legal ruling while the resultant effect of the action shall only be taken into consideration?

Chapter One deals with the wise purport of the legitimacy of endowment by discussing the following three issues:

**First: Advantages of Endowment**

The author stated the most important advantages of endowment including:



- Maintaining the endowed property and protecting it from being alienated to people other than the endowers
- Guaranteeing the sustenance of endowment beneficiaries
- Reversion of charitable endowment to benevolence-based entities
- Urging Muslims to perform charitable deeds

**Second:** Disadvantages of Endowment

The author stated and refuted these disadvantages as follows:

1. The property is no longer alienated.
2. Partitioning of the endowed property and the shares of inheritors are getting slimmer with the lapse of time.
3. Employment and idleness are prevalent among endowment inheritors.
4. Endowment Superintendents have control on endowment inheritors.
5. Assuming that endowment inheritors are able to file a lawsuit against the endowment Superintendent and even a judgment is passed in their favor, there is no guarantee to enable them to restore such right.
6. Endowment inheritors have financial troubles.
7. Productivity is deteriorating in the endowed properties.
8. Legitimate shares are not in conformity with the legal rulings on testament.
9. Some endowers abuse the liberty vested to them when stating their conditions.
10. Endowment entails enmity and hatred.

At the end of Chapter One, the author drew the attention of the readers to necessarily strike a balance between the advantages and disadvantages. He stated that although advantages are few in number, they have a great effect. Such advantages are either corollary to the endowment itself, a prerequisite of its validity or a mandatorily cherished errand. These advantages are corollary to the private and even the charitable endowment just like a person's shadow and the sun lights because love of goodness is an inherent intrinsic attitude in human souls. As for disadvantages, though numerous, they are interrelated. The origin of most of them is negligence in adhering to upright education, holding the oppressor into accountability



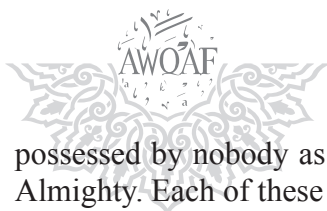
for his oppression and effecting justice and fairness with regard to the relation between the oppressor and the oppressed people. Most of these disadvantages could be cured and redressed. The author concluded the first Chapter with an important truth. Both types of endowment have many benefits and advantages. It is a divine tradition that Allah, the Almighty, legislates for His worshippers the legal provisions which are of benefit to them in their religion and worldly affairs. As a means of manifesting His Grace and Mercy, Allah legislated the rulings related to endowment.

Chapter Two presents the proofs of the legality of endowment from the Quran, Sunnah, unanimous agreement of scholars and analogy. The author discussed the misconception on the legality of endowment and he refuted such misconception. Chapter Three outlined the Juristic Schools of the Imams with regard to endowment and their relevant proofs. He presented and verified the Juristic School of Abu Hanifah and his companions. Then, he moved to the proofs of the majority of scholars on the permissibility of endowment and that it is mandatory in accordance with the legal texts as well as the reasoning of the minds. He concluded by comparing the three Juristic Schools and pointing out the selected views from them. Regarding the original permissibility of endowment, its obligation or non-obligation, the author concluded that there are three Juristic Schools:

- The first Juristic School holds that it is prohibited and forbidden.
- The second Juristic School holds that it is legally permissible but without obligation.
- The third Juristic School holds that it is both legally permissible and obligatory.

**Scholars who believe that it is obligatory also have three Juristic Schools:**

The first Juristic School holds that it is still possessed by the endower who shall not have the right vested to owners in terms of alienating their possessions. The second Juristic School holds that endowment has been dispossessed from the endower and possessed by the endowment beneficiaries, provided that they shall not have the right vested to owners in terms of alienating their possessions. The third Juristic School holds that endowment has been dispossessed from the endower while being



possessed by nobody as it became the exclusive possession of Allah, the Almighty. Each of these opinions have been supported by relevant proofs.

Chapter Four is titled “Prerequisites of Endowment”. The author started with an introduction outlining the linguistic and legal meanings of “Prerequisites”. He divided this Chapter into two parts. Part I is titled “Prerequisites of Obligation”, while Part II is titled “Prerequisites of Validity”. Here is a simplified glimpse on Part I and the prerequisites of endowment obligation according to the views held by Imam Abu Hanifah “may Allah have mercy on him”:

First prerequisite: a judgment passed by the ruler to the effect of its obligation

Second prerequisite: building the mosque, separating it from the possessed property and the road and actual permission to perform prayers therein

Third prerequisite: it shall be considered as a testament.

The author moved to the prerequisites of the obligation of endowment according to Imam Muhammad and his proofs as well as the proofs of Imam Abu Yusuf and his companions “may Allah have mercy on them”.

Part II is related to the prerequisites of validity. These prerequisites have been divided into four types:

**First type:** prerequisites related to the endower which shall fulfill six conditions as follows:

First prerequisite: the endower shall be free.

Second prerequisite: the endower shall be mature.

Third prerequisite: the endower shall be sane.

Fourth prerequisite: the endower shall not be attached due to insanity, absent-mindedness or an engulfing debt.

Fifth prerequisite: the endower shall be an undisputed owner of the property even through an invalid contract.

Sixth prerequisite: the endower shall embrace a religion.



**Second type:** prerequisites related to the endowed property which shall fulfill four conditions as follows:

First prerequisite: the property shall be known to the endower at the time of endowment and it shall be indicated in the endower's statement.

Second prerequisite: the endowed stuff shall be a property. When elaborating this prerequisite, the author shed light on several endowments evidencing their permissibility through the views held by the Imams. All Imams unanimously hold that it is permissible to endow a property because it is corroborated by legal texts as well as the reasoning of the minds. As for movable properties, the Imams – may Allah be pleased with them – hold extremely various views on their permissibility. He quoted the views held by Imams with regard to the endowment of movable properties, endowment of the Holy Quran and books of knowledge, endowment of the building while excluding the land, endowment of building in land leased for an unlimited period in consideration of a minimized lease value, endowment of gold and silver, endowment of the shares of real estate and commercial companies. The author also referred to the linguistic and customary definitions of takhir.

Third prerequisite: the property shall be owned by the endower at the time of endowment.

Fourth prerequisite: the endowed property shall be separated in case endowment is related to a mosque or tomb.

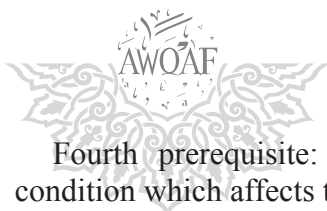
**The third type** of prerequisite is concerned with the beneficiaries from the endowed property.

**The fourth type** of prerequisites is concerned with the endowment formula. To be valid, the author set out six prerequisite for its formula:

First prerequisite: the endowment formula shall be immediately effective.

Second prerequisite: the endowment formula shall not be conditional to be effective after death.

Third prerequisite: the endowment formula shall not have the option of being a condition.



Fourth prerequisite: the endowment formula shall not contain a condition which affects the original endowed property.

Fifth prerequisite: the endowment formula shall not be provisional.

Sixth prerequisite: the endowment formula shall contain a provision indicating perpetuity even by connotation.

The author also discussed the endowment made by a sick person and the effect of these prerequisites.

Chapter Five is the most thoroughly-outlined part of the book because the desires of the endowers are diversified and different. In this Chapter, the author manifested the division of these prerequisites and the general rules set out by jurists in order to understand the conditions of endowers along with some applications on these rules. The author also pointed out the ten conditions frequently set forth by endowers and self-endowment. The divisions of these conditions stipulated by the endower in his / her deed may be either contradictory to the inherent nature of endowment and its meaning, contradictory to its interest or contradictory to the reverent legal rulings. In the first case, both the condition and endowment are invalid. In the second case, the condition is invalid and the endowment is valid. As for the third case, if the endower's condition does not undermine the inherent nature of endowment or lead to losing an interest and it does not contradict the reverent legal rulings, it must be adopted. This means that neither the judge nor the endowment Superintendent shall be eligible to violate it.

Then, the author stated the ten conditions which we shall set out as follows:

1. Increase
2. Decrease
3. Inclusion
4. Exclusion
5. Preference
6. Allocation
7. Granting

8. Deprivation
9. Alternative
10. Replacement

At the end of Chapter Five, the author set forth the endower's condition of collecting the harvest for himself / herself. He pointed out the proofs of scholars who both disallowed and allowed such issue, compared the Shafie to the Hanafi Juristic Schools and ended with the conclusion of such controversy.

The last Chapter, Chapter Six, talks about endowment patronage, its limits, nomenclatures, and the prerequisites which shall be observed when selecting the endowment Superintendent including prerequisites of validity or prioritization. The author concluded this Chapter with concise yet detailed demonstration of the rulings on mosques taking into consideration their special provisions which are different from the rulings of other endowments. Finally, the author stated the references quoted in this Discourse followed by the verifier's resources and references, and index of Quranic verses and Prophetic Traditions. The book has been concluded by the Table of Contents and a list of the publications of the Islamic Awareness Magazine.

Undoubtedly, the author exerted his best efforts in defining endowment. He also paid attention to clarifying the ten prerequisites which identify the legality of endowment and its provisions. Accordingly, this book is considered a valuable addition to the Arab and Islamic library.

## News & Coverages



### **Awqaf Foundation honors the winners of Kuwait International Competition of Endowment Researches in its Ninth Session**



Awqaf Foundation, represented by the Studies and External Relations Department, honored the winners of Kuwait International Competition of Endowment Researches in its Ninth Session during 1435 – 1436 AH / 2014 – 2015 AD). The Competition is complementarily sponsored by His Highness the Crown Prince Sheikh Nawwaf Al-Ahmad Al-Jaber As-Sabah, may Allah protect him. The Minister of Justice, Awqaf and Islamic Affairs has been present during the ceremony. The researches of this session covered two main issues:

**First Issue: The social function of the Islamic endowment in solving the current problems**

**Second Issue: The role of endowment in supporting the family**

Regarding the first issue, Dr. Mundhir Abdul Karim Ahmad Al-Qadah, a Jordanian national, was on top of competitors with his research on “Endowment System and its Role in Achieving Comprehensive Social Development and Building the Islamic Society”.

Dr. Abdus-Salam Rayyah, from Morocco, also shared the first position with his research on “The Social Function of the Islamic Endowment System in Solving the Current Problems.”

From the State of Kuwait, Dr. Badr Ghisab Az-Zamanan came third with his research on “The Social Function of the Islamic Endowment System in Solving the Current Problems.”

Regarding the second issue, Dr. Abdul Qadir Bin Azzuz, Algeria, was on top of competitors followed by Muwaffaq Sheikh Ibrahim, Syria, on the second position while the third position has been occupied by Dr. Abdur-Raziq Durgham from Egypt. Their three winning researches have the same title “The Role of Endowment in Supporting the Family”.

Awqaf Foundation shall include the winning researches in the list of books to be published within the Scientific Publication Plan of the Studies and External Relations Department.

It is worthy to mention that Kuwait International Competition of Endowment Researches is one of the 16 projects of the State coordinating the efforts of the Islamic countries in the field of endowment. The first session of the Competition has been initiated in 1999 AD. It targets at encouraging scientific research in the field of endowment, shedding light on it and considering it as one of the priorities for researches whether on the individual or institutional levels.



## **Signing a Joint Action Plan between Awqaf Foundation and the Islamic Research and Training Institute “IRTI” during 2016 AD**



Awqaf Foundation and the Islamic Research and Training Institute (an affiliate of the Islamic Development Bank “IDB”), Jeddah have signed their plan for joint action in the field of endowment for 2016. The plan covers the projects of the State coordinating the efforts of the Islamic countries in the field of endowment; including:

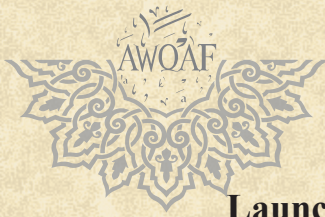
- Endowment Data Bank Project: It seeks to create an interactive website in the Arabic, English and French languages. It aims at providing information on endowment activities in the Islamic countries so as to serve the activities of the endowment and research institutions.
- Qitaf Project: It aims at communicating and exchanging endowment experiences, shedding light on the successful endowment experiences and generalizing the means of benefiting from them in the countries of the Islamic world by holding a series of seminars and workshops which present those experiences.



- NAMA Project: It aims at training professionals in the field of endowment by conducting specialized programs to develop endowment organizations, rehabilitate their staff and improve their capabilities.
- Forum of Juristic Endowment Issues Project: It is held regularly every two years to discuss contemporary juristic endowment issues. Seven sessions of this forum have been held so far and the eighth forum is underway.

It is worth mentioning that the Studies and External Relations Department supervises the preparation of the Code of the Juristic Endowment Provisions Encyclopedia which shall address all materials written by the scholars of Islamic doctrines on the legal provisions of endowment. This Code shall be easily accessible to all including researchers and stakeholders in the field of endowment.

It should also be noted that the projects of the State coordinating the efforts of the Islamic countries in the field of Endowment amount to 16 projects. Such projects have been selected in the light of choosing the State of Kuwait represented by Awqaf Foundation to undertake the role of the State coordinating Awqaf file in the Islamic world countries in accordance with the Resolution of the Sixth Conference of the Ministers of Awqaf in the Islamic member states in the Organization of Islamic Cooperation (formerly Organization of the Islamic Conference) held in the Indonesian Capital Jakarta in October 1997.



## Launching the Automatic System of Managing Endowments



The Information System Center of the Kuwaiti Awqaf Foundation has launched the Automatic Systems Software in order to fulfill the needs of the Foundation Departments. The Automatic Systems Software has been officially launched within the activities of the Twenty-Second Endowment Forum held in the State of Kuwait on 27 – 28 December 2015.

The Endowment Management Automatic System Software provides all users in the Foundation with information on investment systems, real estate systems, customer service and reception systems, financial and accounting systems and project management systems, in addition to the experience of the Information System Center and Awqaf concerned departments based on the systems applied in the Foundation and the previous studies conducted by the Center to spot the needs of departments with regard to the various aspects of managing endowments.

The Endowment Management Automatic System Software contains integrated information on endowments. It consists of a set of interrelated modules including the database of endowers, their affiliate endowments,

data of endowment supervisors and offspring, financial data of endowments and endowers, endowed capitals and related investments, engineering data of the properties forming these endowments, their related contracts and projects, data of the legal cases related to endowments and the applications for support submitted by Awqaf Foundation to entities and individuals. Each Department shall have their own role in the System as per the privileges granted to them.

The said System has many features such as the provision of a uniform database of all endowment data which shall be available to all competent departments each according to their respective specialty, ease of use which makes information easily and quickly accessible, execution of administrative procedures related to the automatic management of endowments through the System, surveillance and control system to ensure that data shall not be lost, provision of dashboards for each Department in order to smoothly and accurately follow up their business and a data protection and safety system in addition to several other features.

The Endowment Management Automatic System Software aims at realizing more than one target at the same time. The most important cherished targets include the development of endowment management by using the most recent automatic systems in order to save time and efforts, accurately accomplish missions, automatically, accurately and immediately issue a statement of an endower's accounts, provide a safe environment for saving data which shall not be amended except by the authorized personnel, provide an internal control on such data and unify the databases to ensure non-repetition of entries through different detailed data ...etc.

It is worthy to mention that the Endowment Management Automatic System Software consists of a set of basic, specialized and integrated modules. It serves all competent departments in the various sectors of Awqaf Foundation. The system modules are divided in accordance with the fields of business such as reception, registration, financial and accounting businesses, investment, payment of endowment revenues and decision-making tools.



## **AWQAF Journal Waqf**

In recognition of the Waqf thought and philosophy in establishing the social projects and extending services in the framework of sustainable and self-supported system, KAPF established AWQAF Journal Waqf. Therefore, this periodical publication will not rely on the sales revenue of its issues; rather it seeks to realize the aims and objectives for which it was created. It will endeavour to provide the Journal free of charge to all those who are interested in Waqf as well as researchers, research centers and organizations related to Waqf.

On the other hand, KAPF will continue to develop the financing of AWQAF Journal Waqf through inviting contributions, whether in the form of subscriptions, deductions or any amounts for the account of the journal in an attempt towards supporting the journal and enabling it to assume a share of the society burdens in extending vital developmental services.

### **Deed Purposes:**

- Contributing to upgrading Waqf research effort so that the journal ranks with the prestigious refereed periodical journals.
- Emphasizing the typical dimension of Waqf, together with identifying its characteristics and the role entrusted to it.
- Addressing the related issues in a methodology that links vision to the reality and therefore encourage thought in practical findings.
- Linking the topics of Waqf to its concerns in the entire Islamic world.
- Delivering the largest number of issues of AWQAF Journal maximum audience of researches, universities and research centers free of charge.
- Encouraging efficient experts to consider specializing in Waqf related issues.
- Establishing a network for all those interested in Islamic and particularly Waqf thought, and facilitating communications and interaction among them.

### **AWQAF Journal Superintendent:**

- KAPF is the Superintendent of AWQAF Journal Waqf.
- KAPF strives to develop AWQAF Journal Waqf and invites contributions to participate in it.
- KAPF monitors the periodical journal works and entrusts specialist scientific experts with operating its affairs in line with the strategy to promoting the Waqf sector and as per the standards applicable for refereed journals.