

**Guardianship and Institutional superintendence over Waqf
Properties from the Standpoint of Islamic jurisprudence
A publication issued by Saeef Foundation for the Development of
Waqfs (6)**

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Origin of the book: A thesis submitted in fulfillment of the requirements for the PhD Degree in Islamic jurisprudence, College of Sharia, Riyadh, Al-Imam Muhammad Ibn Saud Islamic University

This paper of research explains the rulings on superintendence over the waqf and its types and branches in light of Muslim scholars' views, as well as its great effects on the individual and society. As the emergence of waqf institutions has recently emerged, waqfs are defined as institutions with legal personality, which are in charge of the waqf funds and their properties, as well as developing them through the organized institutional work. Now there has been a contemporary and an emerging form of institutions, and thus there has been a need for a study showing the nature of the waqf institution and its organizational structure and jurisprudential rulings. This research is divided into four chapters in two sections:

First section: It is the first three chapters which address the issues of natural superintendence in detail, where the researcher explains the reasons for the rulings, in order to serve as the bases on which the researcher shows the rulings on the jurisprudential branches of institutional superintendence in the last chapter. The researcher shows what is meant by superintendence in this section as a legitimate authority, under which the right of the waqf administrator to take possession of the waqfs and carry out their affairs is established, in a way that preserves and improves this waqf, spending their revenues on those who deserve it, as well as the right to litigate on behalf of the waqf institution. The guardianship over waqfs has conditions that are valid only with them, as the founder (the waqif) must be an adult, Islam, of sound mind and be capable of handling his or her own financial affairs, and justice. It is established that the waqif has the right

of guardianship over the waqf. It is also established that the governor has the right of guardianship over the waqf. However, once the waqf has a superintendent appointed for it, then the governor has no guardianship over this waqf. If the waqif did not assign the superintendence of the waqf to a person, or a person who died, then the waqif has the right to appoint a superintendent for the waqf. The Beneficiaries of the waqf has also the right to appoint a superintendent for the waqf. As for the governor, he/ she has the right to appoint superintendents for public waqfs as well as for the waqfs that have no superintendents. The guardianship of the authorities concerned with waqf affairs at the present time is based on Islamic basis derived from the clearly indicative texts. However, this guardianship has legal controls, and it has certain characteristics and functions that are restricted to the scope of Sharia. One of the greatest duties of a waqf superintendent is to develop the waqf asset, in addition to dividing the revenues among the beneficiaries of the waqf. If the waqf asset is not in need of revenues, then the waqf superintendent has to fulfill the rights of beneficiaries, not to delay them at all, except for a necessity that necessitates that. The Imams of the four schools of Muslim jurisprudence have agreed that it is generally permissible for the one who superintends the waqf to be paid in change for his/ her work, taking into consideration that there are differences in some details. The accountability of the superintendent, which is intended to discuss the superintendent with regard to the waqf's resources and channels of spending to ensure his/ her discharge, is a matter of importance, as well as it is a matter of consensus among Muslim jurists. The change of the scope of these provisions with the change of time necessitates a change in accountability, with which the preservation of the waqf properties is achieved.

Section Two: It is the fourth chapter, which is the purpose of the study, in which the conceptualization of the institutional superintendence of the waqf was made by explaining the jurisprudential description of the institutional superintendence of the waqf, and of the personality of the waqifs. This chapter also discusses the contractual relationship between waqifs and institutional superintendence. The need for institutional superintendence in managing the waqfs in our contemporary time was mentioned, as well as the recent trends in establishing and managing the waqfs. The researcher indicated that there is no a certain description of the institutional superintendence of the waqf. However, it can

be defined as: Institutional management over the waqf, which consists of the board of superintendence, which is the supreme legal authority that has the right to consider the waqf's affairs, in order to achieve its interests in a manner that does not violate the Islamic law, and the executive departments that follow the board that carry out specialized work to manage the waqf matters in light of the policy of the board of superintendence. The basic principle is that the contracts of employees in executive departments are ijara contracts for their work, as they are not agents of the board of superintendence, because they are not granted authorization by the board. The recent trends in establishing the waqfs are divided into two types: according to the purposes and objectives of waqf institutions: type of waqf institution and type of service (operational) institution. Now there are many reasons for the need for institutional superintendence in the management of waqfs, including: consistency and continuity of work, and preservation of the accumulation of expertise, experience, information, etc.

The relationship between the waqif, or waqifs, and institutional superintendence has several cases: The waqif could be: a superintendent, agent or trustee. As for the waqf products that are practiced through institutional superintendence, there are several contemporary applications that are permissible according to Sharia, which are appropriate to be one of the investment tools of the waqf institution, of which are: waqf Sukuk and they need more attention from the Fiqh Councils, and they can be summed up in their ruling that if the waqf Sukuk were issued and put up for public subscription without trading these sukuk by buying and selling, then this type of investment is permissible and does not conflict with the waqf. If the sukuk-waqf were issued and put for public subscription in order for these sukuk to be traded in the secondary market by buying and selling, then this type is a subject of disagreement among contemporary jurists, as some see this permissible and others prohibited. However, this needs more consideration and collective effort.

One of the most prominent permissible contemporary applications of institutional waqf is waqf funds, which have beneficial effects and returns and have appeared in Islamic societies. Among the waqf products that still need social initiatives is the collective waqf with its portions and allocated revenues. Thus, this type is a promise to beneficiaries before

they receive the revenues. After these revenues are received, deducted and deposited in the waqf channel, the waqf is then achieved. If the owner of the allocated portion or revenue dies, then this portion shall be treated in accordance with the regulations in force in that country. As for the allocated revenue, it enters within inheritance.

The integrated collective waqf for independent waqfs is considered one of the solutions for distressed waqfs and it is permissible, but controls must be taken into account when merging these waqfs. The work may be entrusted to specialized foreign companies by way of proxy, if those with experience see a benefit accruing to the waqf, and they may also entrust the work to specialized foreign companies in the form of partnership. However, this permissibility is restricted with observance of the controls, that there is a benefit that will accrue to the waqf, and there is no harm as a result of this partnership. Among the tools and products that institutional superintendence may resort to is the establishment of the waqf in the form of a build-operate-transfer contract, and this is permissible with Sharia controls established by contemporary jurists. Among the important and emerging issues is the requital given to the members of the superintendence board. Is it a pure *Ijara*? After studying and researching, it became clear that it is not a pure *Ijara*.

Rather, it is just *ju'l*, so the rulings of pure *Ijara* are not applied to it at that time. As for the requital that the employees are given in exchange for their work, it is pure *Ijara*, and the provisions of *Ijara* apply to it. If the waqif estimates the wage paid to the superintendence board and the time in which it is due, then it is necessary to work with this estimate, whether it is in the amount of the equivalent wage, or more or less. However, if the wage that is paid to the board is estimated by the governor, then it shall not exceed the equivalent wage. In the event that the waqif neglects the estimate of the wage for the institutional superintendence, then the ruling in relation to the board of superintendence shall consider its members; whether their counterparts receive a wage for the work of the superintendence or not, otherwise they deserve nothing. As for what is related to the departments of the board of superintendence, it is established that those are known to be wage earners. As for the superintendent wage, it is deducted from the revenues. There is no difference for the superintendent to be a natural or legal person. One of the matters of importance for contemporary waqf institutions is the introduction of the incentives and

rewards system, which should be applied within the Shari's controls and the nature of the waqf. As for the ruling on the State taking a wage from the waqf revenues, if the governor's guardianship is over public waqfs, then it is not permissible for the State to receive a wage, but if the governor's guardianship is over private waqfs, it is permissible to receive a wage at that time.

The issue of negligence or infringement may occur in the system of the waqf institution, and then it is considered if it is caused by only one of the members of the board of superintendence, then the guarantee is binding on this member alone. But if infringement or negligence is caused by a group of members, then the guarantee shall be binding on all the members, and the guarantee shall be shared among them. It is not sufficient to deny the guarantee by merely denying infringement and negligence caused by the executive departments, but they are forced to submit the evidence that the experts decide in this regard. In the waqf institution, there is a need to have a control body in its fullest technical, developmental and comprehensive forms of administrative and legal control. The ruling on obligation differs depending on the extent of the institution's need. Periodic financial control of the waqf institution must be implemented to ensure sound financial behavior in the waqf's channels of spending and its resources, even if this control requires its contemporary, previous, and subsequent forms. The waqf institution may need to dismiss a member in the board of superintendence for the benefit of the waqf, and then it is permissible, provided that this dismissing does not result in harm to the waqf institution. The guideline for the obligation to dismiss a member of the board of superintendence is when a member of the board of superintendence commits an act contrary to trust or capacity, or if his/ her existence causes harm to the waqf. Therefore, all this requires dismissing of this member.

Among the tasks of the board of superintendence is to initiate waqf claims in legal courts, by assigning one of the members, according to legal controls. If the lawsuit against or in favor of the waqf requires specialized competence such as the existence of an attorney and the like, then the members of superintendence are unable to do so, then authorization is required and the fees shall be deducted from the waqf revenues, because it was made for the benefit of the waqf