

**Waqf Protection in Islamic Jurisprudence and their Judicial
Procedures in the Kingdom of Saudi Arabia**
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Prepared by: Dr. Nasser Bin Ibrahim Bin Aneeq

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Muhammad Bin Saud Islamic University**

The researcher talked about the waqf protection from its jurisprudential and judicial aspects, and supported that by the visibility of the judicial system in the Kingdom of Saudi Arabia in waqf protection through courts of various levels and the instruments issued by them.

The researcher started with the introduction which included an explanation of the waqf protection and the legitimacy of it, the definition of the assault on waqfs and its prohibition, and the date of the assault on waqfs. Through the first title in which he talked about aspects of waqf protection, including five chapters: The first included: Documentation and declaration. The second included: superintendence over the waqf. The third included: Disposition of waqfs. The fourth included: Maintaining the endowed property from assault. The fifth included: waqf investment and development. Each chapter has included a number of scientific researches and issues. Through the second title in which he talked about judicial procedures of waqf protection, including three chapters: The first included: Judicial procedures of waqf protection in the Kingdom of Saudi Arabia, including: Proving them of all types, assigning superintendents over them, holding them accountable, and methods of settling their disputes. The second included judicial decisions associated with assault on waqfs, including: Guarantee of waqfs, penalty, superintendent dismissal and disposition nullification. The third included: Judicial applications from the courts of the Kingdom of Saudi Arabia.

The researcher was marked by stating the juridical principles that support the jurisprudential rulings, the decisions of the jurisprudential councils, the scientific seminars and conferences specialized in waqfs, by highlighting the protection aspect in them. Thus, the researcher concluded the following scientific results:

1st: Protection and attention for waqfs and taking care of their interests are a collective duty of the nation (Ummah), and waqf protection is part of protecting Islamic law of the Five Higher Objectives of Islam.

2nd: As a special term, waqf protection is defined as: (Surrounding the waqf with the appropriate legislation and means that ensure preserving its origin and guarantee of its continuity, and create the appropriate conditions for its development and investment, the fulfillment of the waqif purpose, the benefit of the beneficiaries from the waqf, in accordance with legitimate constraints).

3rd: The waqif retraction of waqf has several cases, including: As for retraction of the waqf without the channel of spending, the waqf that has the conditional right of retraction, the after-death waqf, and the waqf held on the third estate upon death, the preponderant opinion concerning that is that the completion of waqf may not be retracted while the retraction of the after-death waqf is permissible.

4th: The unnecessary conceal of waqf is prohibited in Shariah; the one who does it is guilty. In addition, changing the conditions of the waqif, or distorting the waqf document is considered as prohibited action.

5th: Testimony upon waqf is permissible and legitimate and it goes for those who are supposed to bear testimony, for testimony to the testimony of others, and for hearsay witness, thus he who conceals it, his heart is sinful.

6th: Holding the superintendent accountable, following and arguing him in the waqfs' affairs and related matters are legitimate and have a great importance in the probity of the superintendent and the waqf; they are intended to the waqif, beneficiaries, competent judge, and whoever is delegated to this task from governmental authorities or institutions.

7th: The waqif conditions have great importance in the waqf and dealing with it, and violating them without a valid reason is not permissible, such as the existence of anything that contradicts the Shariah, or returns to the waqf with damage and deficiency.

8th: waqf revenues are spent according to the waqif's stipulation as long as the channel of spending is existent and available. In case that the channel of spending disrupted and spending was not possible, revenues shall be spent to the people closest to the waqif.

9th: Co-mingling the waqf funds is either with another waqf funds, or with the superintendent funds, etc. if it was included in the first type, co-mingling is permissible in two cases: In case that the waqif unites with the channel of spending the waqf funds, or the channel of spending unites and the waqif disagrees. In case that the channel of

spending the waqf funds disagrees, it is not permissible to Co-mingle waqf funds with each other even if the waqif agrees, unless the waqif agrees and stipulates that in his waqf. Co-mingling the waqf funds with the superintendent funds is only permissible in two cases: In case it will be in the interest of the waqf. In case that the judge authorizes co-mingling funds.

10th: Succession in superintendence includes two types, the first is: Partial Succession: It is the meaning of authorization in some issues, since there is no dispute among the jurists regarding its permissibility, in case the successor is trustworthy, and if need be. The second is: Overall Succession: It is the superintendence delegation to the other; in case the successor has the primary superintendence, there is no dispute in its permissibility. In case that the successor has the secondary superintendence, the preponderant opinion concerning that is that the successor has not been entitled to the succession and shall hold the matter to the legal judge or the authorities competent.

11th: Reconciliation in waqf lies in either its proof or in its rights and liabilities. In case it has been proved or the superintendent has proof sufficient before judiciary, he is not permissible to reconcile or waive some of it. In case he has not proof to prove the waqf, reconciliation regarding proving some of the waqf is permissible. In case that the reconciliation is regarding the waqf debts and the waqf is the creditor, it is not permissible to waive any of the waqf rights and funds, if only the superintendent stipulates that or the debtor is one of the beneficiaries of the waqf. In case that the waqf is the debtor, it is permissible to reconcile with the creditor when he has the proof of his right in the waqf. In case that the creditor has not proof, reconciliation is not permissible.

12th: waqf sale is not permissible except in replacement according to the specific disciplines. Moreover, it is permissible to sell some of it to construct another one. The waqif is not entitled to stipulate the right in the waqf sale. In case that the waqf is sold without following the instructions organizing the waqf sale, or the waqf sale is hold in aggrieve and elation and interest are not met, the waqf sale shall be impermissible.

13th: Each waqf has its own financial disclosure and independent legal identity; indebtedness may be conducted according to specific disciplines through which the elation and interest are met.

14th: waqf rights are not time-barred and the waqf is not possessed by its prescription even if the others grab it, rather it remains continuous everlasting. No one has the right to nullify it, or dropping its debts and dues.

15th: The meddlesome is the one who disposes in things as if the owner while he is

not. In case he made some property of the others as waqf, this waqf is invalid and is held to the authorization and enforcement of the owner.

16th: Stealing of Waqf or some of it is prohibited, and it has cases and provisions, firstly: In case that the non-Muslim robs the mosque, he shall be punished by amputation. Secondly: In case that the Muslim robs the mosque, while the stolen item is used to maintain the mosque and its architecture, the preponderant opinion concerning that is that he shall be punished by amputation. In case he steals what is used for advantage and benefit, he shall not be punished by amputation. Thirdly: If the waqf is public for Muslims, the penalty of theft is not carried out on the thief, whether he is a Muslim or a Dhimmi (a free non-Muslim under Muslim governance). If, however, the waqf is for limited people, the thief outside them shall be punished by amputation. Fourthly: As for waqf revenues theft, in case the thief is one of the beneficiaries, he shall not be punished by amputation. In case he is out of them, the preponderant opinion concerning that is that the penalty of theft is carried out on him. That is all in case the punishment conditions are completed and there are no longer prohibitions.

17th: Forcing the waqf is prohibited and considered a cardinal sin. Who did that shall have guarantee and be punished. Making the waqf defective and invisible is not permissible, unless needed; rather it shall be constructed and showed off. This is due to the judgment of the superintendent or the state ruler.

18th: Electronic waqfs have their great importance in the renewable and advanced world, and it is permissible to make them as waqfs and benefit from the advanced means that they possess that help in seeking knowledge, increasing awareness and benefiting the society. The waqf provisions shall be applicable to electronic waqfs, so they act according to the waqif's conditions and his channel of spending. They have their integrity which is not permissible to be violated.

19th: The preponderant opinion is that the property and intangible rights are considered valued funds, and they are permissible to be made as waqf and it is prohibited to get abused or exploited in a manner other than what the waqif stipulated.

20th: The basic principle is that the waqf shall not be removed or nullified, unless there are a preponderant interest and a public benefit deemed by the authorized people, according to specific disciplines respecting the waqf interests and elation. Removing the waqf for the private interest is permissible in specific cases, including: In case that the waqif is indebted with debts encompassing his overall funds whether before or after the

interdiction. As for preemption and mortgaging, the waqf therein shall not be removed.

21st: waqf insurance is permissible in case it is a cooperative insurance that fulfills the interest and elation of the waqf.

22nd: The waqf investment and development is the duty of the superintendent within the limits of the permitted by the waqf type and the condition of the waqif. It is not permissible to risk waqf funds in investment or in anything else. Rather, the investor shall take into account the best and most beneficial investment areas for the waqf.

23rd: The waqf has its own judicial procedures in proving it or the various actions that take place on it, including replacement, indebtedness, changing a channel of spending, etc. It has been taken into account regarding these judicial procedures waqf protection, and fulfilling elation and interest of the beneficiaries.

24th: It is not permissible to let waqfs be available for others to dispose of them as owners. In addition, waqfs are not possessed by tenure or prescription, and the right of the superintendent, the waqif, or the authority supervising waqfs to claim the waqf is not barred, whenever the evidence becomes available.

25th: The basic principle is that whoever assaults the waqf shall guarantee the damage or deficiency caused by him, such as transgression or negligence in his disposition towards the waqf, or renting the waqf for less than the amount of rent of a similar property, or dying ignoring the waqf funds, with exception of some cases, including: Firstly, in case his action is without transgression or negligence, and secondly: In case he is authorized for disposition.

26th: Assault on waqfs requires punishment of all types, as it may result in prescribing punishment, or a discretionary punishment, depending on the ruler's jurisprudence, the nature of the assault and its causes.

27th: Superintendent of the waqf shall be the trustee of the waqf and its funds. The superintendent shall be dismissed in some cases, including: In case it seems he is helpless and unable to perform the affairs of the Superintendence, and him betrayal, negligence or other reasons. The benchmark is for the waqif or the judge who assesses the interest in it.

28th: Nullifying the waqf disposition is conducted either by nullifying the waqf so as not to be held, or by nullifying some of the actions that take place against it, each has conditions, firstly: That the waqf is for no reason, or of the interdicted debt, or in case the waqf is of a prohibited part