

Awqaf (Endowments) Governance in Fiqh and Jurisprudence.

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Origin of the book is: A thesis for obtaining PhD degree in Shariah and Laws from Naif Arab University for Security Sciences.

This study addresses Awqaf governance that aims at representing the concept of Waqf in law and Islamic shariah, Saudi legal system and Jordanian laws; superintendent over Awqaf and its types according to Islamic shariah as well as the Saudi legal system and Jordanian laws; the concept of governance, its importance, types, characteristics, in addition to principles and areas of governance, its role in operating Awqaf and fulfilling its purpose according to Islamic shariah, Saudi legal system and Jordanian law.

The researcher, in its quest for answering the research questions, has adopted the descriptive approach which based on induction, analysis and comparison through tracing the facts of the subject matter from Islamic shariah references, Saudi legal systems and articles of Jordanian law regarding Awqaf in general and governance in particular; in addition to tracing its roots in shariah and laws.

The research outcomes can be summarized through the following points:

1. Waqf dates back to the beginning of Islam. Religious texts, sunnah refers to the permissibility of waqf by consensus. It lies in conformity with shariah; it is logical and purpose-built.

2. Shariah gives concern to the non-exclusive benefit and increases its importance as of the growing needs of Islamic communities, which in turn highlight the importance of drafting the deed of Waqf to represent its spending channels to ensure that they meet the need of Muslims and suit the element of time variance. The governance of Waqf deed shall be carried out based on specialists' consultants.

3. Also, the importance of developing waqf and the great responsibility of superintendent regarding the good management of waqf has been highly reflected and highlighted. Waqf supposed to always keep generating profit. So, the endower has to appoint good superintendents.

4. There is a great responsibility on the superintendent due to the sensitive nature of his job. Superintendent is the eye of endower on waqf and its secretary that has to meet the purposes of waqf. Both endowers and superintendent have to give attention to the development and trainings matters that in turn increase the efficiency and coherence of

superintendence; all in all, brings benefit on waqf in terms of growth and value.

5. Shariah as well as laws and legal systems have given a priority to the conditions of waqf and have stated that these conditions shall be respected and not be broken as being the map or guide for waqf.

6. The most distinct definition for governance is the one by organization for Economic Co-operation and Development (OECD) that many specialized studies in governance have referred to.

7. The importance of governance can be reflected in number of points, mainly are that: It guarantee the rights of different concerned parties. It works on establishing organizational structures through which the objectives of given institution can be determined.

8. Governance enhances the idea of competitiveness in the countries starting to adopt this concept whether being government institutions or private sector institutions. It creates practical atmosphere that brings more benefits to the beneficiaries.

9. It brings integrity, control procedures, and prevents infringements by officials and employees which in turn prevent or combat corruption.

10. Governance brings transparency and prevail justice among beneficiaries.

11. It intends for separation of ownership from management and manages the oversight on work performance.

12. There are many insolvent companies of great economic value begin to appear. The most prominent reasons behind insolvency are: Not applying the principles of governance in regard to accounting methods the given company has adopted. Governance intends for avoiding companies the accounting problems, financial failures, and insolvency.

13. The governance has a number of characteristics, most importantly: The ability to adjust and assess supervisory management and executive works; then question accountability.

14. Governance based on important factor which is: Board of directors' responsibility: the board of directors shall hold the responsibility before all parties inside the organization and the given community.

15. Good application of governance can be done through ensuring credibility of applicants as well as transparency; setting on communication tools; true disclosure of information.

16. Governance takes shape by applying its principles where not applying them result in its fade. OECD has formulated the most common principles approved by The

World Bank and International Monetary Fund (IMF). These principles can view as follows: The presence of effective foundations for governance, equal treatment of shareholders; rights of shareholder; role of beneficiaries in corporate governance; disclosure and transparency; board of directors' responsibility.

17. Governance has been limited on economic fields, but by time, it proves its efficiency and widely adopted in different fields such as engaging in some political aspects, Interaction with civil society, and freedom of information, etc.

18. Sharia calls for good, and right deeds. It does not exclude useful science even it comes from non-Muslim communities. It takes what is good as long as it does not contradict its rulings and roles in benefiting Islam and Muslims.

19. Governance is to manage waqf starting from formulation of waqf deed up to policies adopted managing all matters incorporated to the given waqf.

20. Governance focuses on the control of waqf. Shariah aspects is more deep as it comprises both internal and external control: the internal control is the religious restraint, and the external one is Adherence to the apparent provisions.

21. The Superintendent board in Awqaf has the largest load in implementing the governance principles; they are the decision makers trusted by the endower, and are the safe guards of his Waqf.

22. Western governance has emphasized the principle of transparency, and that it is one of the most important factors of the successful enterprises. Sharia has founded for this issue through the necessity of disclosure and guidance and not hiding the flaws.

23. Some Awqaf are stumbled and hindered by disputes that can be solved by applying governance rules. The positive impacts have appeared from applying them in some institutions and Awqaf, which encourages to be emulated.

24. The pillar, around which Waqf revolves, is: (Realizing interest), since it is the basis of the maturity and righteousness; its result is to realize the Waqf interest. The superintendent who does not seek the interest in his actions have to be guided and rectified; in case he does not rectify his approach of dealing with Waqf, the judge shall dismiss him.

25. The significance of the prudent selection of superintendents founds for the implementation of good governance; the founder shall make sure of the diversity of the Superintendence Council in his Waqf, and avoid favoritism by appointing his relatives just for their kinship.

26. The superintendent belief of being funds under his responsibility a trust responsible

for them is considered the largest motive and the strongest deterrent which push him to increase diligence and perfection and prevents him from leniency and corruption.

27. Individual superintendence was appropriate in earlier times, but nowadays, the matter requires empowering the co-superintendence, especially with large Awqaf. Undoubtedly, view diversity and different disciplines are important factors driving Waqf to excellence.

28. Awqaf administrations are required for disclosure and transparency in their financial dealings, especially in light of these circumstances in which control over their work has increased, which requires Awqaf employees to be ready for preparing correct financial statements, with the help of chartered accountants.

29. One of the most serious matters that defects the implementation of Awqaf governance is: Conflict of interests between Superintendence Council and the Waqf, thus an explicit policy shall be developed to prevent this conflict, regulate the state of dealing with it upon occurrence; in addition to preventing the superintendent from voting on a decision in which he has an interest, and so over with all superintendents, while being careful to avoid this as much as possible.

30. Implementation of governance has contributed to increase the proceeds of many of Awqaf and institutions, undoubtedly, the increase of proceeds is an important issue in Awqaf in order to expand the benefit area of beneficiaries.

31. The governance applied to the Waqf assets guarantees the optimal use of Waqf, and is not limited to collecting the proceeds without considering the best use increasing the benefits for beneficiaries.

32. Difficulties that intercept the way of implementing Awqaf governance are not a real obstacle, but rather, they can be avoided and handled.

33. The regulation of the General Authority for Awqaf in the Kingdom of Saudi Arabia is a modern regulation, which its provisions have been highly marked over the previous system (Supreme Council of Awqaf), and it featured the governance principles which were praiseworthy for the regulator.

34. The Saudi regulator has implemented governance in many Awqaf issues, but it was less than the desired. These principles did not come as separate provisions that consider implementing governance, rather they were a set of the precautionary measures selected by the regulator and the Jordanian law.

35. Governance has emerged in General Authority for Awqaf missions, and the regulator dealing with the agenda of the Governing Council of the General Authority for

Awqaf.

36. The Saudi regulator and the Jordanian law has adhered to the Sahria rulings in regulation provisions; they were dominant over all rulings.

37. Governance implementation in Arab countries is still weak and does not reach the international application standards. Accordingly, Arab, and foreign reports have emerged confirming the decline of Arab countries' positions in achieving transparency and implementing administrative integrity.

Key Recommendations:

1- Intensifying awareness of Awqaf issues and urging their establishment; the awareness carried out by official authorities is still less than desired.

2- Seeking to establish the entities specialized in Awqaf management, organize their investments, and facilitate procedures for this.

3- Genuine coordination from the General Authority for Awqaf in the Kingdom of Saudi Arabia with the entities interested in Awqaf and specialized counseling centers, which their efforts to promote practical application and development serving Awqaf have been observed recently.

4- Holding specialized conferences between the General Authority for Awqaf and the Capital Market Authority to share their experience in applying the corporate governance regulation, and then discretion to enact rules for governance application in Awqaf field.

5- Presenting the governance form that has been indicated in the regulation of the General Authority for Awqaf, emphasizing its being one of the governance forms, and informing about what were neglected of the rest of the principles.

6- Presenting the successful experiences of Awqaf that have applied governance and have succeeded in highlighting their results, such as the Waqf of Sheikh Saleh Al-Rajhi may Allah have mercy on him - and Subaie Charity Foundation.

7- Discretion to develop forms of the collective Waqf, such as joint projects by some charitable organizations, and implementing the governance rules applicable to investment funds.

8- Spreading the importance of (Waqf governance) in the concerned parties as a beginning and the in the society in general; this will be enhanced by presenting the results of its application in some Awqaf.

9- Initiating regarding Awqaf by publishing the financial statements and clarifying their internal structuring in the Awqaf area as a beginning; with the emergence of the endowment companies' system, Awqaf explicitly display of the statements for all will be a

reflection of transparency and disclosure.

10- Adherence of Awqaf departments to create departments competent to apply governance, and to ensure the integrity of all procedures and policies.

11- The regulators in the Kingdom of Saudi Arabia and the Hashemite Kingdom of Jordan refer the Awqaf regulations in terms of the governance rules' implementation, and issuing the appropriate legislative form giving it the mandatory nature.

12- The decision makers' belief in governance helps in immediate direction towards enforcing it; the Awqaf ministries' personnel and those interested in the Awqaf sector shall submit recommendations and improve exposition and persuasion.

13- Conducting training courses about Awqaf governance.