

THE WAQF GOVERNANCE FRAMEWORK IN  
SENEGAL

BY

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## ABSTRACT

Waqf has been in practice in Senegal since the 11th century and played an important role in society by providing social services to the Muslims society. Given such importance, the government went further to enact a law which was deemed amicable for the practice of Waqf. However, with the passing of time the practice of Waqf gradually declined and it became apparent that several factors had undermined the full potential of Waqf in the socio-economic development of Senegal. Fortunately, this has caught the attention of scholars who have been motivated to identify the causes of such decline the practice of waqf and to seek ways of reviving Waqf in Senegal. These efforts however have been more theoretical than pragmatic in nature. A pertinent aspect that has been considered is the Waqf Act and the management issues which most of these scholars considered as an impediment to the development of Waqf in the country. There was also the issue of lack of qualification and knowledge among most people in Senegal about Waqf. Despite this, no detailed study has been conducted to investigate thus issues, thus the novelty of this current study is to examine the Waqf governance framework in Senegal. This study adopts the qualitative method using semi-structured interviews with six academicians and experts in Islamic finance. The interviewees were from two major cities in Senegal, namely Dakar and Louga. The findings show that the law of Waqf in Senegal is new and the high authority of Waqf has considered several methods to implement the new regulatory framework and create al Awqaf in accordance with this law. This research has also found that there are two main types of Waqf as far as the management is concerned: privately managed waqf and publicly managed Awqaf, i.e. by the Higher Authority of Waqf (HAW). The new law has to be implemented first before addressing the management issue. Moreover, based on the interviewees' views, transparency, accountability and reporting can not be measured since the Waqf legislation in the country is still to be fully implemented. However, the High Authority of Waqf has launched several initiatives in order to oversee the transparency, accountability and their reporting of Awqaf in Senegal.

## خلاصة البحث

عُرف الوقف في السنغال مُنذ القرن الحادي عشر، ولعب دوراً مهماً في مساعدة المجتمع، وذلك من خلال توفير الخدمات الاجتماعية للمجتمع المسلم. نظرًا لهذه الأهمية، ذهبت الحكومة إلى سنّ قانون يُعْتَبَرُ مناسباً لممارسة الوقف وضابطاً له . ومع مرور الوقت، تراجعت ممارسة الوقف تدريجياً وأصبح من الواضح أنّ هناك عدة عوامل قوّضت الإمكانيات الكاملة للأوقاف في التنمية الاجتماعية والاقتصادية للسنغال. لحسن الحظ، لفت هذا انتباه العلماء الذين لديهم حافز قويّ لتحديد أسباب هذا التراجع في ممارسة الوقف والبحث عن سبل إحياء دور الوقف في السنغال. لكن هذه الجهود كانت نظرية أكثر منها واقعية. حقيقة، إنّ أحد الجوانب ذات الصلة التي نُوقِشت باستفاضة هو قانون الوقف وقضايا الإدارة التي اعتبرها معظم هؤلاء العلماء عائقاً أمام تطوير الوقف في البلاد. كان هناك أيضاً مشكلة نقص المؤهلات والمعرفة لدى معظم الناس في السنغال حول الوقف. على الرغم من ذلك، لم يتم إجراء دراسة مفصلة للتحقيق في القضايا العالقة. وعليه، فإن غاية هذه الدراسة الحالية هي دراسة إطار إدارة الوقف في السنغال. اعتمدت هذه الدراسة الطريقة النوعية باستخدام مقابلات شبه منظمة مع ستة أكاديميين وخبراء في التمويل الإسلامي. كان الأشخاص الذين تمت مقابلتهم من مدينتي رئيسيتين في السنغال، وهما داكار ولوغا. أظهرت النتائج أنّ قانون الوقف في السنغال جديد وأن السلطة العليا للأوقاف قد نظرت في عدة طرق لتنفيذ الإطار التنظيمي الجديد وإنشاء الأوقاف وفقاً لهذا القانون. كما وجد هذا البحث أيضاً أنّ هناك نوعين رئيسيين من الأوقاف فيما يتعلق بالإدارة: الوقف المدار من قبل القطاع الخاص والأوقاف المدارة عن طريق مؤسسات عامة، أي من قبل الهيئة العليا للأوقاف (HAW) . ويرى الباحث أنه يجب تنفيذ القانون الجديد أولاً قبل معالجة مشكلة الإدارة. علاوة على ذلك، بناءً على آراء من أجريت معهم المقابلات، لا يمكن قياس الشفافية والمساءلة والإبلاغ؛ لأن تشريع الوقف في البلاد لم يتم تنفيذه كاملاً بعد . فضلاً عن ذلك، أطلقت الهيئة العليا للأوقاف عدة مبادرات من أجل الإشراف على الشفافية والمساءلة والإبلاغ عن الأوقاف في السنغال.

## **APPROVAL PAGE**

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a research paper for the degree of Master of Science (Islamic Banking and Finance).

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Dean, IIUM Institute of Islamic  
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## DECLARATION

I hereby declare that this research paper is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*I dedicate this research to my parents*

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## TABLE OF CONTENTS

Abstract .....	ii
Abstract in Arabic .....	iii
Approval Page.....	iv
Declaration Page .....	v
Copyright Page.....	vi
Dedication Page .....	vii
Acknowledgements.....	viii
List of Tables .....	xi
List of Figures .....	xii
List of Abbreviations .....	xiii
<b>CHAPTER ONE: INTRODUCTION .....</b>	<b>1</b>
1.1 Background of Study.....	1
1.2 Statement of the Problem .....	3
1.3 Objective of Study.....	5
1.4 Research Questions .....	5
1.5 Significance of Study .....	5
1.6 Scope and Limitations of Study .....	7
1.7 Organisation of Study .....	7
<b>CHAPTER TWO: LITERATURE REVIEW.....</b>	<b>9</b>
2.1 Introduction .....	9
2.2 Overview of Waqf.....	9
2.2.1 Development of Waqf institution.....	10
2.2.2 Ownership of Waqf.....	10
2.3 Administration and Management of Waqf.....	11
2.3.1 Current Awqaf Administration Practice.....	12
2.3.2 Composition, Role and Competency of Managers .....	13
2.3.3 Roles and Responsibilities of Waqf Managers and Criteria on Competency of Waqf managers .....	13
2.4 Waqf Governance.....	14
2.5 Requirements for good Governance Framework of Awqaf.....	16
2.5.1 Transparency and Market Discipline .....	16
2.5.2 Accountability in Awqaf .....	17
2.5.3 Reporting.....	18
2.5.4 Disclosure.....	19
2.5.5 Professionalism .....	20
2.6 Overview and Development of Waqf in Senegal.....	21
2.6.1 Legal Framework of Waqf in Senegal .....	22
2.6.2 The most important Awqaf Institutions in Senegal .....	24
2.7 Conclusion.....	25

<b>CHAPTER THREE: METHODOLOGY .....</b>	<b>26</b>
3.1 Introduction .....	26
3.2 Research Design .....	26
3.3 Data Collection.....	27
3.3.1 Data Collection Instruments.....	27
3.3.2 Interview Questions .....	28
3.4 Population and Sampling .....	28
3.5 Conclusion.....	29
<b>CHAPTER FOUR: FINDINGS AND DISCUSSION.....</b>	<b>30</b>
4.1 Introduction .....	30
4.2 Sample Characteristics .....	31
4.3 The legal framework of Awqaf in Senegal .....	32
4.4 Awqaf Management and Administration in Senegal .....	34
4.5 Transparency, Accountability, Reporting, And Disclosure of Awqaf in Senegal .....	36
4.6 Suggested Mechanism to Improve Awqaf Management and Administration in Senegal.....	37
4.7 Conclusion.....	39
<b>CHAPTER FIVE: CONCLUSION .....</b>	<b>40</b>
5.1 Introduction .....	40
5.2 Summary of Major Findings .....	40
5.3 Recommendations .....	42
5.3.1 The Waqf regulatory Framework.....	42
5.3.2 Awqaf Management and Administration .....	43
5.3.3 Transparency, Accountability and Reporting of Awqaf .....	44
5.4 Conclusion.....	45
<b>REFERENCES.....</b>	<b>46</b>
<b>APPENDICES .....</b>	<b>50</b>
Appendix 1 .....	50
Section 1: Invitation Letter .....	50
Section 2: Interview Questions .....	51
Part A: The Legal Framework of Awqaf in Senegal .....	51
Part B: Awqaf Management and Administration in Senegal .....	51
Part C: Transparency, Accountability, Reporting and Disclosure of Awqaf in Senegal .....	51
Part D: Recommendation.....	52
Appendix 2 .....	52

## LIST OF TABLES

<u>Table No.</u>		<u>Page No.</u>
4.1	Interviewees' information	31
5.1	Issues and challenges of Waqf governance framework in Senegal	41

## LIST OF FIGURES

<u>Figure No.</u>		<u>Page No.</u>
2.1	The Waqf Accountability Model	18

## LIST OF ABBREVIATIONS

AAOIFI	
AFDI	Waqf fund development institution
CEO	
FASEG	
HAW	Higher Authority of Waqf
IFAACE	
IiBF	Islamic Banking and Finance
IIUM	International Islamic University Malaysia
RA	Radallahu Annhu
S.A.W	Salallahu Aliahee Wasalam
SIRC	State Islamic Religious
SWT	Subhannah Wa Ta'alla
UNISZA	

# CHAPTER ONE

## INTRODUCTION

### 1.1 BACKGROUND OF THE STUDY

Waqf is a unique institution introduced by Islam centuries ago. The general consensus among Muslim scholars is that waqf did not exist in Arabia prior to the coming of Islam, whether in the form of buildings or land. Muslim jurists however have been able to trace it to the time of the Prophet (peace be upon him). There is no specific mention of waqf in the Holy Quran but the Holy Book does emphasize the need for Muslims to do charity and Allah has promised multiple rewards for those “ who generously spend wealth in His path “ (al-Baqarah [2]: 245).

The emergence of Islam however has seen Muslims giving away part of their wealth voluntarily to help others, especially those in need through waqf. The history of Islamic civilisation provides ample evidence of the scope, effect, magnitude and viability of Waqf as being much greater than any other Islamic voluntary institutions such as *sadaqah*, *hibah*, *wasiyah*, *qard*, and *nadhr* (Islahi, 1996: 367). Waqf was a powerful institution in early Islamic society, long before it was introduced in the West, and contributed very substantially to the development and advancement of Muslim societies (Chapra, 2008: 852-853).

There have been a considerable number of buildings and social services made possible by the financial support of waqf and maintained for centuries by way of this system throughout the Muslim world. Numerous waqfs had continued to exist for much longer than 500 years and some for more than a thousand years. The successful Waqf system eventually made its way to the west during the time of the Crusades and was adopted as part of western social institutions. It has been accepted that the world-

renowned Oxford University in England was established on the basis of the Islamic waqf model (Çizakça, 1998: 50).

Moreover, Islam as a way of life propagates attaining good moral behaviour in all walks of life, whether at the personal level or the social level. In the spirit of brotherhood Islam encourages people to help each other by all possible means so that a person can fulfil his objective in life as a vicegerent (khalifah) and together, society might achieve prosperity. In this regard, Waqf plays a critical role in efforts to manifest the brotherhood and helping each other in Islam (Quran5:2).

A largely unregulated form of Waqf has been in practice even before the advent of Islam but the systematic arrangement that was laid out by Islam and the introduction of legal injunctions which did not exist before made this institution a success (Yaccoc & Miriam, 2009).

In the cities of the Muslim Ottoman Empire, the waqf system was responsible for developing and constructing public facilities. In education, the University of Al-Azhar in Egypt was financially supported by waqf revenue for more than 800 years (Creceus, 1971), while the Shishli Children's Hospital in Istanbul was sponsored by a health waqf (*New Straits Times*, 2014). Throughout history, Waqf has been an independent entity with no government participation until the era of the Ottoman Empire where they took over responsibility to manage Waqf. Meanwhile, it is doubtful that government plays a critical role in enabling the development of Waqf by establishing policies for such a sector to maneuver and prosper, and many are against the idea of the government taking full control of Waqf (see, for example, Kahf, 2004; Ciszaka, 2000).

Rashid (2011) proposed a mixed governance method between the government and the public, much like the current practice in India whereby the government is

given some seats on the board of management of Waqf. In contrast, there are cases in which government has appointed specific ministries to cater to the Waqf sector and this has yielded positive results. A good example is Malaysia, where governance of waqf properties is under the supervision of each state's jurisdiction which is the State Islamic Religious Council (SIRC). SIRC's function as the sole trustee for all waqf properties in every state in Malaysia as evident in all state Enactments.

In contrast individual state waqf institutions have different management practices. The Department of Waqf which was introduced by the federal government of Malaysia only offered guidelines to manage Waqf assets in Malaysia.

In the context of Senegal, Waqf has been in practice since the introduction of Islam in the country and the government even went on to enact the Waqf Act and name a specific body to manage the Waqf.

Therefore, the novelty of this study is that it will focus on the Waqf governance Framework in Senegal. Given the current trend of Waqf development in the country, such an initiative will help in underpinning the core challenges surrounding the practice of Waqf in the country, which in turn will be beneficial to the regulators when formulating a solution to include the findings of this study.

## **1.2 STATEMENT OF THE PROBLEM**

Waqf institutions have contributed significantly towards Islamic civilisation in the medieval age. Major government projects such as hospitals, schools, buildings, were financed through Waqf (Mariam & Yacoov, 2009). If efficiently used by the relevant authority, Waqf could uplift the welfare of the community. However, the performance of this institution in the current area is not quite encouraging due to the declining number of people contributing to Waqf primarily because they lack trust in the



managers (Mutawalli) and in the way they manage the endowments. This, however, does not mean that there are no steps taken by Muslim leaders to revive this institution especially in majority Muslim countries like Malaysia, Indonesia, and Turkey.

Generally in most countries that practice waqf, there is an urgent call for significant enhancement in the management and monitoring Awqaf activities. This is because of frequent mismanagement, corruption, and fraud in many Waqf institutions, particularly family Awqaf (Riassouni, 2001). Mismanagement of Waqf can lead to loss of public's confidence in the Waqf manager (Mutawalli). Therefore, there is a strong need to modify and improve the management of Awqaf. Furthermore, there is a lack of accountability including, reporting, disclosure for Awqaf (Abdu Rahim et al., 2011). As the intermediate party between donors and beneficiaries, the *waqf* institution is accountable for managing of *waqf* funds and needs to divulge adequate information regarding the *waqf* fund itself (Kamaruddin et al., 2018). In the Senegal context, Waqf has been known since the entry of Islam into the country and the government went further to enact a specific law that allows the practice of Waqf in the country. However, the Waqf management in Senegal is facing significant problems which must be addressed to enhance the waqf governance framework in the country. Some of the various vital issues and challenges confronting the Waqf management and administration in Senegal are presented below:

Firstly, lack of competency and professionalism. According to Abdou Karim Diaw (2015), the first challenge after adoption of the waqf law in Senegal, was the establishment of a waqf management administration that was not only professional, but also competent and credible.

Secondly, lack of knowledge. According to Marc Rousot (2017), there is very little knowledge of Waqf among Senegalese. Thirdly, implementation of Waqf law. The law is relatively recent and still to be fully implemented (Olimata Diop, 2017).

Therefore, there is a need to address this problem so as to improve the Waqf management and administration in the country. This study endeavours to examine the Waqf governance framework in Senegal.

### **1.3 OBJECTIVES OF THE STUDY**

In light of the identified research problem identified above, the following are three formulated research objectives:

1. To examine Awqaf management and administration in Senegal.
2. To examine issues on Waqf management and administration in Senegal.
3. To recommend an effective mechanism in order to improve Awqaf management and administration in Senegal

### **1.4 RESEARCH QUESTIONS**

To attain the research objectives listed above, the following research questions are asked:

1. How are Waqf institutions being managed in Senegal?
2. What are the main issues in Waqf management and administration in Senegal?
3. What needs to be done to ensure the best and most effective management and administration of Waqf in Senegal?

## **1.5 SIGNIFICANCE OF THE STUDY**

The study will contribute the following valuable information to the High Authority of Waqf in Senegal in terms of providing aspects of a governance framework that will support the development of Awqaf in Senegal.

Firstly, in respect of governance, the study will add to the existing body of knowledge on the areas of governance of waqf institutions which is the issue at stake. Secondly, the study will help in elaborating the role of waqf in catering to the basic needs to the less fortunate such as housing, healthcare, education transportation among others. Apparently, the position of Waqf commissioners of Senegal is in the process of being reformed and the government has made efforts to appoint new officers who are expected to run the institutions better. Therefore, this study will guide the management team to improve the management of Awqaf. The study will provide some pointers from developed countries in governance framework on waqf that Senegalese' High Authority of waqf could follow to enhance the practice of waqf in the country.

Thirdly, if such initiatives are adopted and practised it will lead to better management of waqf institutions, and the public will be able to monitor the managers' work. With the use of social media, this problem can be alleviated by engaging the public in the assessment of the manager's performances.

Fourthly, the findings of the study will also contribute to designing a technique of selecting the managers who represent the Waqf institution. The need to have qualification parameters for management Waqf assets is crucial for the improvement of Waqf assets because this will contribute to better performance of such institutions. Lack of competent officers was one of the reasons for the decline of Waqf institutions in Senegal and the major contributor to poor governance.

This initiative of including qualification parameters will lead to proper and efficient allocation of resources by the management, for example, better investment strategies for the Waqf properties, which needs qualified people with particular expertise such as knowledge of finance, economics, and other important aspects of management (Ihsan & Abdullah, 2015).

## **1.6 SCOPE AND LIMITATIONS OF THE STUDY**

The study is confined the waqf institutions in Senegal particularly their governance framework and the requirement for good governance, such as transparency, accountability, reporting, and disclosure. Nevertheless, there are more aspects that could be covered, for example, the role of the leaders in the development of waqf institutions. Thus the study only concentrates on governance framework for Awqaf in Senegal.

## **1.7 ORGANISATION OF THE STUDY**

This study is organised in five chapters as follows:

Chapter One: An introduction that presents the importance of the research topic by providing the background of the study, problem statement, research objectives, research questions, scope and limitations, and I and the significance of the study.

Chapter Two: This is the literature review focused on previous studies relevant to the Waqf governance framework.

Chapter Three: The chapter explains the methodology used in this research which is based on a qualitative approach and involves interviews with experts.

Chapter Four: This chapter discusses the issues and challenges facing the Waqf governance framework in Senegal and provides a mechanism that may be adopted to improve the Waqf management and administration in the country

Chapter Five: presents the general conclusion of this research including a study summary and recommendations for future research

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 INTRODUCTION**

This Chapter presents an overview of Waqf from an Islamic perspective and shows how waqf is one of the important social finance instruments used in Islamic society since the time of Prophet Muhammad (PBUH). The practice of Waqf is prevalent for the funding of public good through religious activities, education and healthcare. The second part presents the management and administration of Waqf. The third part highlights Waqf governance and the requirements for a good governance framework. Finally, the last part describes the development of Waqf in Senegal and the legal framework of Waqf in the country.

#### **2.2 OVERVIEW OF WAQF**

Waqf constitutes one of the significant achievements of the Muslim Ummah. This section shows how Quranic verses urge Muslims to do charity, to perform good deeds and spend in the way of Allah and paved the way for waqf. The Prophet Mohammad (PBUH) mentioned it in his Sunnah and urged his Companions to do it while the believers raced to implement it. Over the centuries Waqf has had considerable and positive impact on development and prosperity which resulted in to the distinction and excellence of Islamic civilisation (Al-Gebori & Humaish, 2008). There were several types of Awqaf that included but were not restricted to establishing houses of worship, centers of learning and hospitals as well as shelters. They also involved structural development like construction roads, social work like caring for those who were poor and in need as well as travellers. Waqf is a vital branch of socio-cultural, cultural as

well as economic life. It is based on compassion, communication, social *takaful* and empathy among Muslims. That non-Muslims were taken care of through waqf is also noteworthy (Al-Gebori & Humaish, 2008).

### **2.2.1 Development of Waqf institution**

Waqf was established on the arrival of prophet Muhammed (sup) in Medina. The building of the Waqf mosque know till today as the Quba Mosque was followed by the construction of the prophet Muhammed S.A.W mosque. In the Muslim Ottoman cities, the Waqf system, as earlier mentioned, was responsible for the development and construction of public facilities. In education, the University of Al-Azhar in Egypt was funded by Waqf revenue for more than 800 years (Crecelius, 1971), meanwhile, the Shishli children's Hospital in Istanbul was financed by a health Waqf (*New Straits Times, 2014*).

Waqf practices can be carried out along with products and service in the Islamic finance industry such as *Sukuk*. In fact, a number of structures have already been successfully introduced in developing Waqf assets. For example, in Singapore, *Sukuk musharakah* was designed to develop a commercial building on Waqf land. In Mecca, for the Zam Zam tower complex was built on land adjacent to the Holy Mosque. In short, Waqf is now been attracting mounting interest worldwide.

### **2.2.2 Ownership of Waqf**

From a legal perspective, the ownership of Waqf property lies outside the person who created the Waqf. Some Muslim jurists maintain that the rightful ownership of Waqf belongs to Allah SWT. Others are of the opinion that it belongs to the beneficiaries but their ownership is not total as they are not permitted to dispose of the property or

use it in a way that differs from what was decreed by the founder of Waqf. In this respect, Waqf differs from a foundation because the management of a foundation is usually able to sell its property. This suggests the greater potency of perpetuity in Waqf than in foundations.

### **2.3 ADMINISTRATION AND MANAGEMENT OF WAQF**

In terms of management of the Waqf institution, all jurists agree that it is the prerogative of the Waqf to appoint anyone he wants to be Nazir, but if he fails to do so, the responsibility falls upon the Kadhi to make the appointment... This was the act of Omar (RA) when he stipulated that after his death, his daughter, Hafsa (RA) was to be the Nazir of this Waqf, and if she died the responsibility sh be transferred to the people of wisdom among his descendants (Irwa ul Ghalil, 1998).

Additionally, jurist have argued that it was the responsibility of the owner to be the Nazir until he died, after which such responsibility would be transferred to his daughter as mentioned above, thus showing that the founder can be the Nazir. The ability of the Nazir to be able to execute his duty accordingly is another condition which the jurists pondered upon. This is very important since it gives the opportunity to people who have knowledge, skill and the ability to perform without being intimidated to be Nazir. When the jurist discussed such a situation they termed it as” Kifayah” which shows that the Nazir is expected to be independent not only in his capability as a person but also in his decisions pertaining to the running of the Waqf property. Some jurists are of the view that Nazir should be Muslim and never a non-Muslim.