

**COMMERCIALIZATION OF CASH WAQF IN NIGERIA:
AN ANALYSIS OF ITS IMPLEMENTATION**

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**ACADEMY OF ISLAMIC STUDIES
UNIVERSITY OF MALAYA
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ABSTRACT

Cash Waqf is a viable form of Islamic endowment whose prime goal is providing relief to the less privileged citizens especially the Muslims in the society. Quite incontrovertibly, Waqf has inherent potential to ensure redistributive justice in the society given its numerous benefits. Waqf endowment provides human relief, dignity, financial support, and social needs to alleviate the struggles faced by needy Muslims such as poverty, unemployment, and lack of support. However, it is indeed ironical that despite Nigeria, an apparent Muslim dominated country, rich in both human and natural resources is still plagued by the social menace of poverty. Quite worrying is the intergenerational dimension that the incidence of the social menace of poverty is assuming in Nigeria. Educational and health problems are among other social problems confronting many Muslims in Nigeria. The rate of unemployment among the youths and adults is skyrocketing across the nation and contribute to the abject poverty. Many Muslim children, for example, are victims of exploitation, while some of them often work under unhealthy and hazardous conditions due to their parents' inability to provide for their means of sustenance. The objective of this thesis is to examine the administration of Waqf in Nigeria from the existing legal provisions. To study the predicaments facing the Nigerian Muslims and how Islamic finance Waqf can be applied through the commercialization of cash Waqf and its implementation. In addition, it discusses how cash Waqf instrument can be used to empower less-privileged Nigerian Muslims. It further discusses useful suggestions and solutions to the multifaceted problems facing Nigerian Muslims. The research applied qualitative and quantitative approaches to examine the applicability of commercialization of cash Waqf funds in Nigeria and its implementation. Three hundred questionnaires were distributed and collected between April and September, 2012 to Nigerian Muslims while nine

Nigerians were selected based on expert sampling and interviewed on the commercialization of cash Waqf in Nigeria as an instrument for Nigerian Muslims empowerment. The thesis proposes strategies through which cash Waqf can be used for the creation of resources and tools for empowerment of less privilege Nigerian Muslims across the nation. The research is based on hypothesis that cash Waqf can play commendable efforts in empowering Nigerian Muslims through the lawful lucrative contract or transaction. It argues that cash Waqf can be used for educational funds, creation of employment opportunities, agriculture, and provision of tools for entrepreneurial activities. As a result, many Nigerian youths and adults would be fully empowered educationally, financially and socially. Finally, it is discovered from the findings that Waqf is viable and able to reduce poverty among less-privileged Nigerian Muslims. Similarly, there are many lucrative and profitable businesses and transactions that Waqf management can transact with cash Waqf endowment.

ABSTRAK

Wakaf Tunai adalah satu bentuk waqaf Islam yang berdaya maju dengan matlamat utamanya sebagai wadah untuk membantu golongan miskin terutamanya umat Islam di kalangan masyarakat. Kewujudan wakaf serta pelbagai kebaikan serta faedah yang diwujudkan olehnya adalah diakui berpotensi bagi memastikan keadilan pengagihan semula kepada masyarakat. Kewujudan wakaf membantu masyarakat Islam yang memerlukan dalam perjuangan mereka menghadapi kemiskinan, pengangguran serta kekurangan bantuan dan sokongan. Institusi wakaf memberi satu bantuan kemanusiaan yang meningkatkan maruah, sokongan kewangan dan memenuhi keperluan sosial masa kini. Nigeria, adalah sebuah negara dominasi umat Islam yang kaya dari segi sumber semula jadi dan sumber manusia namun ironinya negara ini masih dibelenggu oleh ancaman sosial kemiskinan. Ancaman kemiskinan ini telah menyebabkan peningkatan kesan sosial yang negatif di antara generasi di Nigeria. Selain dari kemiskinan, ramai dari masyarakat Islam Nigeria menghadapi masalah sosial lain seperti masalah pendidikan dan kesihatan. Kadar pengangguran di kalangan belia dan orang dewasa meningkat dengan kadar yang membimbangkan di seluruh negara dan turut menyumbang kepada kemiskinan tegar di kalangan rakyat Nigeria. Ramai kanak-kanak Islam, sebagai contoh, menjadi mangsa eksploitasi, manakala sebahagian daripada mereka sering bekerja dalam keadaan yang tidak sihat dan berbahaya akibat ketidakupayaan ibu bapa mereka untuk menanggung nafkah bagi keluarga. Objektif utama tesis ini adalah untuk mengkaji pentadbiran wakaf di Nigeria berdasarkan peruntukan-peruntukan undang-undang yang sedia ada. Untuk mengkaji permasalahan yang dihadapi oleh umat Islam Nigeria dan bagaimana wakaf kewangan Islam boleh diguna pakai dengan mengkomersialkan dana wakaf tunai serta pelaksanaannya di negara itu. Di samping itu, tesis ini membincangkan bagaimana wakaf tunai boleh digunakan sebagai wadah bagi memperkasakan golongan umat Islam yang kurang bernasib baik di Nigeria. Tesis ini seterusnya membincangkan cadangan-cadangan yang mampu

memberi penyelesaian kepada masalah-masalah sosial yang pelbagai rupa yang dihadapi oleh umat Islam Nigeria. Penyelidikan ini mengguna pakai pendekatan kualitatif dan kuantitatif untuk mengkaji kebolegunaan dan pengkomisian dana wakaf tunai di Nigeria serta perlaksanaannya. Tiga ratus soal selidik telah diedarkan dan dikumpul di antara April dan September 2012 kepada umat Islam Nigeria, manakala sembilan warga Nigeria telah dipilih untuk ditemu ramah berdasarkan persampelan dari golongan pakar berkaitan pengkomisian wakaf tunai di Nigeria sebagai wadah bagi memperkasakan umat Islam Nigeria. Tesis ini mencadangkan strategi-strategi untuk menjadikan wakaf tunai sebagai sumber dan alat untuk membantu memperkasakan golongan umat Islam Nigeria yang kurang bernasib baik. Kajian ini adalah berdasarkan kepada hipotesis bahawa wakaf tunai boleh memainkan peranan dalam usaha memperkasakan umat Islam Nigeria dengan mewujudkan melaluinya kontrak atau transaksi yang sah dan menguntungkan. Kajian ini berpendapat bahawa wakaf tunai boleh digunakan sebagai dana pendidikan, mewujudkan peluang-peluang pekerjaan, pertanian, dan penyediaan peralatan untuk aktiviti keusahawanan. Sehubungan dengan itu, penggunaan wakaf tunai seperti yang dicadangkan dapat membantu golongan belia serta seluruh rakyat Nigeria dalam memperkasakan mereka dari segi pelajaran, kewangan dan sosial. Kesimpulannya, dapatan kajian ini ialah sistem wakaf adalah berdaya maju dan dapat mengurangkan kemiskinan di kalangan umat Islam Nigeria yang kurang bernasib baik. Dana dari wakaf tunai juga boleh digunakan oleh badan penerusan wakaf bagi mewujudkan dan melaksanakan pelbagai perniagaan dan transaksi yang lumayan serta menguntungkan.

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LIST OF ABBREVIATIONS

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institutions
BOT	Built Operate and Transfer
DU	Discourse Unit
EFCC	Economic and Financial Crime Commission
FOS	Federal Office of Statistics
HIV/AIDS	Acquired Immune Deficiency Syndrome
IIIT	International Institute of Islamic Thought
IIUM	International Islamic University Malaysia
NCNE	National Commission for Nomadic Education
NGOs	None Governmental Organisation
R.A	Radiyallahu Aniah
R.A	Radiyallahu Aniu
REITs	Real Estate Investment Trust
RICE	Religion, Ignorance, Culture and Ethnicity
S.A.W	Sallahu Alai Wasalam
SMEs	Small and Medium Enterprise
UM	University Malaya
WAMY	World Assembly of Muslim Youth

CHAPTER 1: BACKGROUND OF THE RESEARCH

1.1 History of the Nigerian Legal System

The Federal Republic of Nigeria located in the western part of Africa and which got its independence on October 1, 1960 has evolved out of three major regions, the Northern Region, the Eastern Region, and the Western Region into 36 states with 3 different legal systems. The three different legal systems applied in Nigeria are customary law, *Shari'ah*, and English common law which are adopted by virtue of colonization.¹ Though these three legal systems are accorded recognition in the Nigerian Constitution, Muslims in different parts of the country do not have access to full application of the *Shari'ah* because of many reasons. The major militating factor against the full application of the *Shari'ah* arises from constitutional provisions that have restricted its full application. Therefore, Muslims in Nigeria have been agitating for the full implementation of the *Shari'ah* since the colonial years with little result, especially in the south-west. This, to most Nigerian Muslims is an act of injustice by non-Muslims, who have their own law mainly derived from the English Law.²

1.1.1 Customary Law

Customary law is traditionally divided into two parts: Ethnic or Non-Muslim law and Muslim law; hence the [*Shari'ah*] is in reality a subset of the customary law.³

¹ Yemisi, J. & Funke. (2010). "Guide to Nigeria Legal Information," Hauser Global Law School program, 3-4. Retrieved from <<http://www.nyulawglobal.org/globalex/Nigeria.htm>>. See also, Amuda, Y. J. (a) (2010). *Child Labour under Nigerian Laws: An Analytical discourse of their enforceability*. Germany: LAP LAMBERT Academic publishing, 28-29.

² Yadudu, A.H. (1993). "Impact of Colonialism on Islamic law and its administration in Nigeria", *Journal of Islamic & Comparative law reviews*, 13, (2), 144-156.

³ Obilade, A. (1979). *The Nigerian Legal System. Nigeria: Spectrum Law Publishing*, 83.

1.1.2 Ethnic/Non-Muslim Law

Nigerian many ethnic groups have their different customs and cultures. The customary law refers to the native and indigenous law that applies to each member of an ethnic community. It reflects the culture, customs, values and habits of the people whose activities it regulates in the areas of personal and family relations like marriage, divorce, guardianship and custody of children and succession.⁴

It could be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. The onus of proving a custom lies upon the person alleging its existence.⁵ This is because Section 14 of the Nigerian constitution provides that where a custom cannot be established by judicial notice it may be established by proof.

The Nigerian customary law system varies from one tribe to another. Igbo marriage and custody laws are quite different from the Hausa and Yoruba marriage and custody laws for instance.

The Nigerian customary law is enforced in customary courts, the courts at the lowest rung of the Nigerian legal system that in most cases are presided over by non-legally trained personnel on matters relating to the customs of a community. Though unwritten, uncertain and difficult to ascertain, the customary law is flexible and has the capacity to adapt to social and economic changes without losing its character.⁶

That the *Shari'ah* is designated ethnic law or customary law is totally contradictory to the concept of customary law. Perhaps because it is thought to belong to Arab custom yet, even English Common law is not the traditional law and custom of Nigerian yet English common law is not considered as an ethnic or customary law. Customary law as defined above is the system of law that reflects the culture, customs,

⁴ Obilade, A., 83-84.

⁵ Obilade, A., 83-84.

⁶ Obilade, A., 83.

values and habits of the people.⁷ This shows that Common Law may be the culture and custom of English people imposed on colonized countries. Therefore, it was implemented at the expense of the culture or system of law of the colonized people as it does not reflect the culture, custom and values of the Nigerian people.

The above shows that in Nigeria, there is no need to apply English Law because of its dissimilarity with the Nigerian customs and culture. It is suggested that the English law needs to be removed totally from the Nigerian legal system or the application should be limited to Christians.⁸

According to the Osborne C.J cited in *Levis v Bankole* and quoted by Obilade, a striking feature of West African native custom is its flexibility and unquestionable adaptability to altered circumstances without entirely losing its character.⁹

1.1.3 Shari'ah

Since the Fulani Muslim leader Uthman Dan Fodio, who established the Sokoto Caliphate, overthrew the Hausa Songhai Empire due to their injustice (Robert, 2010), *Shari'ah* has been the legal corpus of the northern part of Nigeria from the Kanem and Hausa territories respectively. The *Shariah* thereafter functioned as the sole law with the indigenous law as a supplement on matters where the *Shari'ah* is silent or on the Malik principle.¹⁰

Nigeria's experience of British imposition of English Common Law supplanted the *Shari'ah*. English law claims a monopoly over nearly all forms of law and the

⁷ Obilade, A., 83-84.

⁸ Yadudu (a), A.H., 144-153

⁹ Obilade, A., 84.

¹⁰Yadudu, A. H.(b) (1992). "Colonialism and the transformation of Islamic Law. *Journal of legal pluralism*, 32 (32), 110-113. See also, Tijjani, M. N. (2002). "History of the *Shariah* in some states of Northern Nigeria to Circa 2000, " *Journal of Islamic Studies*, vol .13, (1), 14-15. See also, Yadudu, (a), 144-146.

Shari'ah law was restricted to civil matters and personal issues such as marriage and inheritance.¹¹

Islamic practices were improved upon greatly at that time until the coming of the British colonial masters. Professor Anderson says "in fact *Shari'ah* was applied more widely in the Northern Provinces of Nigeria than any other part of the British Empire. *Shari'ah* application was boosted after the establishment of the Sokoto Caliphate by Shaykh Uthman Dan fodio".¹²

The application of the *Shari'ah* in Nigeria was curtailed when the British conquered Northern Nigeria as contained in the speech delivered by Lord Lugard, the governor of Northern Nigeria, addressing the Emir:

You emirs can go on administering justice as before but without any suspicions and corruption. I also add that you should stop cutting off the hands of thieves, you must leave everyone with his feet and hands [the punishment of *Shari'ah* for robbery, homicide and continuous habit of theft] we do not agree with the types of prisons whereby you imprison people and refuse to give them food, leading to their death.

The application of British Common law, the restricted Islamic law and Native Customary law continued till 1959 when Sir Ahmad Bello set up a commission for the reform of the existing penal law and courts. Sir Ahmadu Bello sought that Islamic law should be rejuvenated as seen in his paper presentation, which states;

I wish to impress upon the House the magnitude of the problem which we face. This Regime comprises of a great diversity of people having different custom and cultural background. In Religion about seven out of ten are Muslims, a new penal code of criminal law should be introduced

¹¹ Syed, K. R. (1986). *Islamic Law in Nigeria*. Nigeria: Islamic publication Bureau, vii.

¹² Doi, A. R. I. (1992). *Islam in a multi-religious society in Nigeria: A case Study*. Malaysia: A.S Noordeen, 205.

into religion that should not be in any way contrary to the tenets of our religion.¹³

In 1956, before the above move by Sir Ahmadu Bello, the first Court of Appeal was established in Kaduna, while the Muslim Court of Appeal was re-designated as the Court of Appeal in 1960.

In other parts of Nigeria such as Yoruba land, in 1913 the *Shari'ah* Court was instituted in Ede. In 1923, Lagos Muslims demanded the *Shari'ah* and in 1938 Muslim scholars and Muslims students demanded that the *Shari'ah* be established officially.

In 1924, Ijebu ode Muslims demanded from the chief secretary to the colonial government that he *Shari'ah* Court be established. In May 1984, Muslims of the South again demanded the establishment of the *Shari'ah* Court. The notable *Imams* of Lagos, Ibadan, Ijebu-ode, Abeokuta and Akure gave sermons at Friday prayers [*jumuah*] demanding the *Shari'ah* Court.¹⁴

It can be understood from the above that *Shari'ah* had been applied in some parts of Nigeria before the advent of the colonialists and that cause for many decades, Muslims have been agitating and looking forward to the full application of the *Shari'ah*, but all has been in vain.¹⁵

However, there is still need for legal provision under Nigerian constitution on the management and administration of *Waqf* across the nation in general and South West in particular as *Waqf* issues are only slightly referred to under *Shari'ah* court of Appeal.¹⁶ The existing *Waqf* institution in Nigeria needs total overhauling to provide quality and competent management of *Waqf* as well as legislation that will control the *Waqf* institution. In addition, there are provisions that can be the basis of legislation for

¹³Amuda, Y. J. (a) (2010). 34. See also, Balogun, S.U. (1992). The position of Shariah in Nigeria, xv (1), 5-7.

¹⁴ Balogun, 5-7, Doi, 210-213.

¹⁵ Amuda,(a) , 33-35

¹⁶Oseni, U. A. (2012) *Towards the effective legal regulation of Waqf in Nigeria: problems and prospects*. In: *Waqf laws and management with special reference to Malaysia*. Institute of Objective Studies, New Delhi, India, pp. 339-354.

Waqf such as section 262 (1) and 272 (2) of Nigerian Constitution, 39 (1) and section 41 of the Land Use Act of Nigeria.¹⁷

Section 262(1) and (2) of Constitution of the Federal Republic of Nigeria 1999 provides that:

262. (1) The Sharia Court of Appeal shall, in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law.

(2) For the purpose of subsection (1) of this section, the Sharia Court of Appeal shall be competent to decide -

(a) any question of Islamic personal law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;

(b) where all the parties to the proceeding are Muslims, any question of Islamic personal law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a foundling or the guardianship of an infant;

(c) any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;

(d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or

(e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

¹⁷Constitution of the Federal Republic of Nigeria 1999, Section 262, and 272.

Section 272-279 of Constitution of the Federal Republic of Nigeria 1999 provides that:

272. (1) Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.

273. For the purpose of exercising any jurisdiction conferred upon it under this Constitution or any law, a High court of a State shall be duly constituted if it consists of at least one Judge of that Court.

274. Subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State.

275. (1) There shall be for any State that requires it a Sharia Court of Appeal for that State.

(2) The Sharia Court of Appeal of the State shall consist of -

(a) A Grandi Kadi of the Sharia Court of Appeal; and

(b) such member of Kadi of the Sharia Court of Appeal as may be prescribed by the House of Assembly of the State.

276. (1) The appointment of a person to the office of the Grandi Kadi of the Sharia Court of Appeal of a State shall be made by the Governor of the State on the

recommendation of the National Judicial Council, subject to confirmation of such appointment by the House of Assembly of the State.

(2) The appointment of a person to the office of a Kadi of the Sharia Court of Appeal of a State shall be made by the Governor of the State on the recommendation of the National Judicial Council.

(3) A person shall not be qualified to hold office as a Kadi of the Sharia Court of Appeal of a State unless -

(a) he is a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has obtained a recognised qualification in Islamic law from an institution acceptable to the National Judicial Council; or

(b) he has attended and has obtained a recognised qualification in Islamic law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than ten years; and

(i) he either has considerable experience in the practice of Islamic law, or

(ii) he is a distinguished scholar of Islamic law.

(4) If the office of the Grandi Kadi of the Sharia Court of Appeal of a State is vacant or if a person holding the office is for any reason unable to perform the function of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the Governor of the State shall appoint the most senior Kadi of the Sharia Court of Appeal of the State to perform those functions.

(5) Except on the recommendation of the National Judicial Council, an appointment pursuant to subsection (4) of this section shall cease to have effect after the expiration of three months from the date of such appointment, and the Governor shall not re-appoint a person whose appointment has lapsed.

277. (1) The sharia Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.

(2) For the purposes of subsection (1) of this section, the sharia Court of Appeal shall be competent to decide -

(a) any question of Islamic personal Law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;

(b) where all the parties to the proceedings are muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant;

(c) any question of Islamic personal Law regarding a *wakf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;

(d) any question of Islamic personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or

(e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

278. For the purpose of exercising any jurisdiction conferred upon it this Constitution or any law, a sharia Court of Appeal of a State shall be duly constituted if it consists of at least three kadis of that Court.

279. Subject to provisions of any made by the House of Assembly of the State, the Grand Kadi of the Sharia Court of Appeal of the state may make rules regulating the practice and procedure of the Sharia Court of Appeal.¹⁸

Section 262 (1, 2(a-e) and 272-279 of Nigerian Constitution 1999 mainly focus on the issues related to the Islamic rites and practices such as Marriage, divorce, custody of children, maintenance of family, guardianship of an Infant after the dissolution of marriage. It is further provided for the issues related to *waqf*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim and jurisdiction and power of Shariah Court is clearly in the said sections.

In addition, provision for establishment of Waqf Endowment in Nigeria is briefly mentioned in Section 262 (2c) and Section 277 (2c) as the legal basis for the establishment of *Waqf* endowment across the nation in order to cater for the needs of citizens due to failure of Nigerian government to provide adequate maintenance for Nigerians and the less privileged in particular. Those provisions are relevant to the *Waqf* because *Shari'ah* court of Appeal is responsible for any matter or cases related to *Waqf* and also on land matter dispute, gifted and endowed as waqf property.

Section 39 (1) and section 41 of the Land Use Act of Nigeria provides that:

39. (1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings:-

(a) Proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purposes of these paragraph proceedings include proceedings for a declaration of title to a statutory right of occupancy.

(b) Proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act.

¹⁸ Constitution of the Federal Republic of Nigeria 1999, Section 262, 272-279.

(2) All laws, including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section.

40. Where on the commencement of this Act proceedings had been commenced or were pending in any court or tribunal (whether at first instance or on appeal) in respect of any question concerning or pertaining to title to any land or interest therein such proceedings may be continued and be finally disposed of by the court concerned but any order or decision of the court shall only be as respects the entitlement of either of the parties to the proceedings to a right of occupancy, whether statutory or customary, in respect of such land as provide in this Act.

41. An area court or customary court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government under this Act; and for the purposes of this paragraph proceedings include proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modification as would enable effect to be given to this section.¹⁹

Section 39 (1) and section 40 and 41 of the Land Use Act of Nigeria provide that High Court of Nigeria has exclusive jurisdiction on any land issues or dispute across the nation in order to right the wrong. Since there is provision for establishment of waqf Endowment across the nation in the interest of less privileged Muslims. Section 39 (1) and section 40 and 41 of the Land Use Act of Nigeria can be relied on by Waqf Endowment Institution management in Nigeria in case there is any dispute or issue on any endowed and gifted land as waqf.

¹⁹ Land Use Act, Chapter 202, Laws of the Federation of Nigeria 1990, Section 39 (1), 40 and 41.

1.1.4 Common Law

English law is a main aspect of the Nigerian legal system that includes of the common law doctrine of equity, statutes and subsidiary legislation. It was adopted as the law of Nigeria in 1863 when ordinance No. 3 of that year introduced English law into the Colony of Lagos.²⁰

Before 1862, each of the territories which together now constitute Nigeria had a system of administration of justice. In most parts of the Northern region, the principal law administered by the court was Islamic law of the *Malik* School. In other parts of the territories that now constitutes the Southern states and some Northern states; the law in force was unwritten customary law.²¹

Before the nineteenth century, British and other foreign merchants had traded with the indigenous people on the coast of West Africa. The attempts made by the indigenous courts in that area to settle trading disputes between locals and foreigners were unsuccessful because foreigners rejected the Court and considered customary law as strange. Later in 1849, the British government appointed a Consul to regulate trade matters between the British merchants and the indigenous merchants. This was followed in 1872 by an equity court established in Lagos and another in 1874.²²

The Supreme Court Ordinance established a Supreme Court of the Colony of Lagos and territories in the neighbouring adjacent territories over which the British government had jurisdiction in 1876. From 1900 to 1913, the Niger Coast protectorate and the territories of the Royal Niger Company and Southern Nigeria amalgamated while in 1914, the colony and protectorate of Southern Nigeria and the protectorate of Northern Nigeria were amalgamated to form the colony and protectorate of Nigeria.²³

²⁰ Obilade, 69.

²¹ Muhammad, T. & Syed Khalid, R. (1986). "The Administration of Islamic law in Nigeria," *Journal of Islamic & Comparative Law Quarterly*, vol.vi, (1), 27-35. See also, Syed, K. R., 44-46. See also, Obilade, 17-52.

²² Doi, 17-22.

²³ Tabiu & Syed Khalid, 27-35, Obilade, 17-52.

How English law was introduced into the Nigerian legal system shows that the British came to Nigeria with business in mind but due to their personal interests they monopolised the legal system by introducing their own law. Though a foreigner must respect his second home where he is domiciled and submit totally to the rules and regulations that are the norms there, colonialists did not obey the law of the land but imposed their law on Nigerians even though there was a law before.²⁴

1.2 Summary of this Research

This research examines the *Shari'ah* provisions as well as the various aspects to which it can be utilized to empower the Nigerian Muslims through commercialization of cash *Waqf* and its implementation. Commercialization of cash *Waqf* is critically examined so as to know the extent to which it can be useful for the Nigerian Muslims. The formal establishment of *Waqf* institution in Nigeria will enable many Nigerian to benefit from its programs of activities. Nigerian Muslims need *Waqf* to serve as humanitarian assistance and as bail out from the poverty and financial constraints. Since there are limited government grants, scholarships and other financial supports in Nigeria, especially, from Nigerian government. Some private cooperative bodies are not Islamic because of their unlawful interest that *Shari'ah* prohibits. Therefore, *Waqf* endowments will reduce poverty rate among the Nigerian Muslims in so many aspects.

1.3 Research Questions

- 1- Are the Nigerian Muslims naturally created as being poor or is it the economic situations that render them to be poor?
- 2- What are the lucrative transactions that *Waqf* management can transact with cash *Waqf*?

²⁴ Amuda, Y.J. (c) (2007). Custody of children after divorces under the Shariah, custody and civil laws in Nigeria: A comparative analysis. (Unpublished Master Thesis). International Islamic University, Malaysia, 28-29.

- 3- Does cash *Waqf* viable and able to reduce poverty among Nigerian Muslims and beyond.
- 4- Is cash waqf viable for SME business in Nigeria and is there any lacuna in administration of waqf in Nigeria.

1.4 Objectives of the Study

- [1] To examine the administration of *Waqf* in Nigeria from the existing legal provisions.
- [2] To study the predicaments facing the Nigerian Muslims and how Islamic finance *Waqf* can be applied through the commercialization of cash *Waqf* and its implementation.
- [3] To discuss how cash *Waqf* instrument can be used to empower Nigerian less privileged Muslims.
- [4] To give useful suggestion about solution to the multifaceted problems facing Nigerian Muslims.

1.5 Statement of Problem

It is indeed an irony that despite Nigeria being a resources' rich country, most of its citizens live in abject poverty.²⁵ Quite worrying is the intergenerational dimension that the incidence of the social menace of poverty is assuming in Nigeria.²⁶ In terms of regional distribution, data from the Federal Bureau of Statistic of Nigeria as well as the Central Bank of Nigeria suggest that the prevalence of poverty in Nigeria is significantly a northern phenomenon. Unfortunately, this region is predominantly Muslims. While the causes of such incidence are numerous, its manifestation is even

²⁵ Pramanik, A.H. (1999). *Poverty from Multidimensional Perspectives: A Micro Level Study of Seven Malaysian Kampung (Villages)*. Malaysia: Cahaya Pantai (M) Sdn Bhd.

²⁶ Adewale, A.A. (2013). Financial Capital, Livelihood Assets Accumulation and Poverty in Ilorin, Nigeria: Connecting the Triad. *Jurnal Ekonomi dan Bisnis Islam (Journal of Islamic Economics and Business)* 2(2):46-59.

more, For instance, many Nigerian Muslims are not capable to adequately cater for their family due to their financial constraints. The poverty level has forced many children to drop out from school at different levels while many of them are engaged in child labour.²⁷ Others are involved in unlawful and illicit acts like prostitution, theft in order to survive or in order to assist their family. Many Muslim women and men are unemployed due to economic crisis. Some Muslim women were converted to another faith such as Christianity with intention to getting financial support from the churches and the clerics.

Educational and health problems are other social problems confronting many Muslims in Nigeria. Many Muslims children, for example, are victims of exploitation, while some of them often work under unhealthy and hazardous conditions due to their parents' inability to provide for their means of sustenance. Similarly, there is need for more legally and constitutionally recognised organisation dealing with *zakat* and *Waqf* endowment or monitoring of the property of a deceased, and there is need for creation of a special body to look into Arabic schools' system in Nigeria in order to raise their standards to those similar to the formalized institutions.

Islam as a theologically communitarian religion emphasises so much on distributive justice. A plethora of verses in the Holy *Quran* and a myriad of *hadith* of the Holy Prophet Muhammad (s.a.w) accentuates on the need for social support from the rich to the poor in the society. Quite a number of mechanisms including but not limited to *zakat*, *Waqf*, *sadaqat* are all provided in Islam. It therefore, presents a huge paradox that most Muslim dominated areas in this case, Nigeria are still beset by poverty incidences. It could be that there is an apparent under-utilization of the various benefits of such Islamic provisions for poverty alleviation.

²⁷ Amuda (a), 107-113.

Sequel to the foregoing, in this study, which focuses on Nigeria it may be stated that the increasing percentage of poor Muslims may be linked to not exploring modern day but Islamically permissible means of poverty alleviation. As such, the thesis sponsored therein in this research is that a proper conceptualization, implementation, institution, and commercialization of cash *Waqf* can be used to better the lots of the poor Muslims in Nigeria. Based on the finding, there is no literature on the commercialization of cash *Waqf* in Nigeria for poverty alleviation. The juristic justification from the *Shariah* is thus put forth with the aim of providing the basis for the proposed model.

1.6 Hypothesis

This research is based on the hypothesis that *Waqf* has comprehensive rules governing Muslims in general and it is believed that *Waqf* can play a commendable effort in empowering Nigerian Muslim through the lawful lucrative contract or transaction. As a result of that, many Nigerian youth and adults would be fully empowered educationally, financially, and socially. Many Muslims in Nigeria are facing financial constraints and lack of supports that contributed to the level of their poverty and inability to cater for the welfare of their children. This thesis is expected to recommend useful suggestions that will assist in the implementation of law on *Waqf* in Nigeria in order to uplift the standard of living of the Nigerian Muslims through the commercialization of cash *Waqf* on profitable contract and investments.

1.7 Limitation of Study

This thesis focuses on commercialization of cash *Waqf* and its implementation as well as the efficacy and production of the desired results in the implementation of the law on cash *Waqf*. Its application in Nigeria through lawful lucrative transaction in support and

empowering the Nigerian Muslims in all aspects. The study discussed the system and administration of *Waqf* in some countries as a lesson for Nigeria. The study looked at the problem facing Nigerian Muslims and suggested positive ways by which they can be economically empowered on the basis of profitable transactions and contract. The research concentrated on the Nigerian situation with references to the experiences of some countries like Singapore, United Arab Emirate, Kuwait and Malaysia.

1.8 Methodology

The study applied qualitative and quantitative methods throughout the finding that covers library, field work, distribution of questionnaires to respondents, and interviewing the selected experts. Materials and data from books, statutes, articles from refereed journals, gazettes, decided cases, seminar papers and proceedings, newspapers, writing and relevant websites will be consulted in for the analysis of the current situation in Nigeria. The methodology that adopted for the research related to the roles of *Waqf* in benefiting the Nigerian Muslims. This was examined by way of historical analysis. References were made to some countries practising *Waqf* as the best way for Nigeria to emulate.

1.8.1 Content Validity

During the pilot study stage in January, 2012, the researcher consulted some experts in academic institutions such as experienced PhD holders, PhD students and some lecturers in higher institutions of learning like UM, IIUM, and UKM to seek for their views and opinions. Some of their suggestions and comments were found useful to this research and considered. The detail of the participants in pilot study can be seen in the aforesaid diagram:

Table 1.1: Names and Data of Pilot Study Participants

No.	Name	University	Expertise	Justification	Contact
1	Dr.Adewale Abideen Adeyemi	International Islamic University Malaysia	Waqf, povety and Statistics	He checked the flow of the drafted questions in questionnaire. He made useful comments and improved the quality of questionnaire	abidewale@gmail.com 0164696076
2	Oladapo Hakeem Babatunde	International Islamic University, Malaysia	Waqf	He is Waqf expert and agreed with the content of the questionnaire	tundejao68@gmail.com 01127068508
3	Abdul Kabeer Ballo Adelani	International Islamic University, Malaysia	Waqf	He wrote his Ph.D on waqf and agreed with the content of questionnaire	aadelani@yahoo.co.uk 002348052410810
4	Dr. Ganiyat Adesina Uthman	UPM/Dean Faculty of Social Sciences at National Open University of Nigeria (NOUN).	Sukuk	She commented on aspect of Sukuk in the questionnaire and her comments considered relevant and useful	almiqdad@gmail.com 002348099471198, 002348133678454
5	Yusuf Sani Abubakar	UKM	Shariah and Law	He agreed the whole draft of questionnaire	yusuf700@yahoo.com
6	Buniyamin Bello	International Islamic University, Malaysia	Shariah	He agreed the whole draft of questionnaire especially Shariah aspect.	bunyaminbello@unisza.edu.my or waleomole@gmail.com 0189010230

Table 1.1: Continued
Names and Data of Pilot Study Participants

No.	Name	University	Expertise	Justification	Contact
7	Adekunle Daud Balogun	University Malaya	He specialised on money laundering	He corrected the grammatical errors and on the hindrances of waqf management	balo1960@gmail.com 0149676051
8	Yusuf Abdul Azeez	International Islamic University, Malaysia	Shariah and Law	He made useful correction to the whole draft and his comments were useful.	abdulazeezyusuf2003@yahoo.com
9	Ahmad Faosiy Ogunbado	International Islamic University, Malaysia	Muamalat	He commented on commercialization aspect of cash waqf and his comment contributed to the quality of questionnaire	tunbado@hotmail.com Islamic Business School (IBS), College of Business (COB), Universiti Utara Malaysia (UUM). Sintok, 06010, Kedah. Malaysia. 6049286725. 0173952470
10	Aliyu Dahiru Muhammad	International Islamic University, Malaysia	Islamin Banking and Finance	He agreed with the questionnaire	alitahir797@yahoo.com 002348180380028
11	Dr. Ibrahim Olatunde Uthman	University of Ibadan, Nigeria	Islamic Studies	He agreed with the whole content and said the research will contribute to the livelihood improvement of less privileged Muslims in Nigeria	ibrahimuthman@yahoo.com 002348036201617 and 002348092830841
12	Ahmad Tijani Surajudeen	International Islamic University, Malaysia	Statistician	He checked the connectivity and flow of the questionnaire since he is a statistician	sirajudeen_20@yahoo.com 002348097896828

1.8.2 Constructive Validity

In order to carry out the principal component analysis (PCA), a total of 300 respondents from Zamfara, Sokoto, Kano, Kaduna, Kwara, Kogi, Oyo, Osun, Ogun, Jos and Plateau States were participated in the first instrumental validation section. The researcher distributed 300 questionnaires to the participants and collected from the respondents. If more than 90% questionnaires retrieved and achieved, its considered a good response, based on the argument of Babbie (1989) that achieving a fifty percentage (50%) response can be considered adequate, sixty percentage (60%) should be regarded as good, while seventy percent (70%) should be considered as a very good response rate for the data analysis.

1.8.3 Research Instruments

In order for respondents to clearly express their views on the research questions, the researcher developed questionnaire on Commercialization of cash *Waqf* and its implementation (QCOCWII). The instrument was divided into four sections. Firstly; Respondent's profile (15 items). Secondly; Re-creation of *Waqf* across Nigeria (15 items). Thirdly; *Waqf* and *Sukuk* (15 items). Fourthly; *Shariah* punishment for *Waqf* violators (15 items). The content validity of the questionnaire was evaluated by the project advisors and supervisors for improvement upon the questionnaire.

1.8.4 Respondents

Three hundred questionnaires were distributed between April and September, 2012 to Nigerian Muslims, particularly the Islamic scholars, undergraduate and postgraduate students, business men, legal practitioners and others. Concerning the interview, nine of them were interviewed in order to have additional facts that were not documented.

1.8.5 Population and Sampling

The subjects of this study were selected from different geographical locations in Nigeria. It was mainly focused on Northern, Southern, Western, and Eastern Nigeria. It was difficult to cover all the states but the samples were taken according to each geographical location. Three hundred (300) questionnaires were distributed across the nation on the subject matter of the thesis.

1.8.6 Data Analysis

The questionnaires were be keyed into Statistical Package for Social Science (SPSS) for analysis. Mean, standard deviation, and percentile were used for data analysis. This is to identify and discover the level of poverty among the Nigerian Muslims and how the cash *Waqf* can be used to empower them. In addition, mean, standard deviation, and percentile were also used to answer the research questions.

1.9 Literature Review

There are quite a number of studies that are relevant and valuable to the theme and scope of this research. Some books are found to be useful to this research while others, among them, do not directly focus on the roles of *Waqf* in benefiting Nigerian Muslims which is the focus of this research. Other works written by scholars on topics relating to this present research would be reviewed so as to examine the positions and opinions of some of them on the issue of *Waqf*.

Pursuant to the topic, there are many articles written by scholars which are considered useful. Dunya (2002) listed the benefits of cash *Waqf*: (i) more members of the community have cash to offer compared to immovable property; (ii) Cash *Waqf* lends itself to joint *Waqf* (such as *Waqf mushtarak* or *Waqf juma'i*), which can attract financing for development or diverse or large projects; (iii) Cash *Waqf* enables

investment in diverse economic activities, so greater returns can be expected; (iv) The versatility of Cash *Waqf* since it can be used for any objective or social purpose; and (v) Cash *Waqf* provides higher chance of growth.²⁸

Maiman (2006) points out that cash *Waqf* provides the benefit that it is easily liquefiable compare to land or property.²⁹ In addition, Ammar (2006) further expounded on the benefits of cash *Waqf*.³⁰ Firstly, currency as the replacement of coins is the medium for exchange of goods. Secondly, currency is replaceable with similar units, meaning that it is a *mal mithli*. Thirdly, cash *Waqf* enables more people to donate *Waqf*, which will provide more resources to help the poor and needy. Lastly, cash *Waqf* has the capacity to create economic stimulus as well as providing funds for welfare projects. The potential of cash *Waqf* has been studied by many researchers. Çizakça (1998) detailed the historical evidence indicating the potential of cash *Waqf*.³¹ In the past, the *awqaf* system has been used by the state to provide all essential services to the Muslim community without any cost to the state. He proposes that a modernization of this system will result in a significant reduction in government expenditure, providing the advantage of downsizing the public sector as well as eliminating *riba*.

Toraman (n.d.) looked at the use of cash *Waqf* by the Ottoman Empire and claims that cash *awqaf* had important implications for the survival of the Ottoman empires social structure, since the society's health, education and welfare were completely financed by gifts and endowments.³²

²⁸Dunya, S.A. (2002). Al-waqf al-naqdi, madkhal li tafil dawr al-waqf fihayatina al-muasirah. 3, 57-82.

²⁹Maiman. (2006). Waqf al-nuqud wa al-awraq al-maliyyah. *A'mal Muntada Qadaya al-Waqf al-Fiqhiyyah al-Thaniyyah, Tahdiyyat Asriyyah wa Ijtihadat Shar'yyah*. Kuwait: IDB, Kuwait Awqaf Public Foundation.

³⁰Ammar, A. M., (2006). Waqf al-Nuqud wa al-Awraq al-Maliyyah. *A'mal Muntada Qadaya al-Waqf al-Fiqhiyyah al-Thaniyyah, Tahdiyyat Asriyyah wa Ijtihadat Shar'yyah*. Kuwait: IDB, Kuwait Awqaf Public Foundation.

³¹Çizakça, .M. (1998). Awqaf In History And Its Implications For Modern Islamic Economies. *Islamic Economic Studies*, 6(1). (Jeddah: IRTI & IDB).

³² Toraman, Cengiz, et.al (n.d), *Cash Awqaf in the Ottomans as Philanthropic Foundations, and their Accounting Practices*, <journal.mufad.org>.

Islahi (1992) proposed the need for internationalization of *awqaf* by establishing a non-government Muslim foundation which can provide public goods on large scale which will target the issues of illiteracy, sickness and lack of technical knowledge by the needy.³³

Kahf (1998) considers that a *Waqf* is critical for socioeconomic development and proposes creation of a third sector that is distinct from profit-motivated private sector and the public sector. He considers that this third sector can achieve objectives of education, health, social and environmental welfare, as well as providing defence services and public utilities.³⁴

Chowdhury (2011) writes that cash *Waqf* is capable of reforming the present institutional setup and the networking relationship throughout the country with the objective of improving their performance through efficient and need-based management of *Waqf systems*.³⁵

Mohammed (2011) proposes a *Waqf* bank which can be applied as a bank for the poor. Its permissibility in Islam is explained based on the validity of cash *a waqf* and need for the *Waqf*, by its beneficiaries and society. He suggests that in the presence of favourable political will, a *Waqf* bank will contribute to society greatly. He maintains that the institution of *Waqf* has the unrealised potential to develop and establish a *Waqf* bank.

There are numerous studies that have highlighted the practical application of cash *Waqf* in different projects. For instance, cash *Waqf* has been effectively used in assisting Islamic educational institutions. According to Danna (2007), *Al Azhar* University was built through the cash *Waqf* fund and most of its cash *Waqf* fund was

³³Islahi, A. A. (1992). Provision of Public Goods: Role of The Voluntary Sector (Waqf) In Islamic History. (Financing Development In Islam: *Seminar proceeding series IRTI & Islamic Law, Banking & Finance*.

³⁴ Kahf, M. (1998). Financing the development of awqaf property, paper presented at the seminar on development of awqaf organized by IRTI Kuala Lumpur, Malaysia, March 2-4, 1998.

³⁵Chowdhury, M.S.R., Ghazali, M.F., & Ibrahim, M.F. (2011). Economics of cash waqf management in Malaysia: A proposed cash waqf model for practitioners and future researchers. *African Journal of Business Management*, 5 (30), 12155-12163.

invested in the building of the storage warehouse at the Suez Canal.³⁶ In addition, she states that the Egyptian government also borrowed *Waqf* funds from *Al-Azhar* University for purposes of government consumption. As a result, she claims the sustainability achieved by *Al-Azhar* University proves the effectiveness of the cash *Waqf* fund, even though the university is not a profit-oriented institution.

Khademolhoseini (2009) notes that the *Waqf* institution has been used in many Muslim countries through the creation of movable *Waqf* especially cash *Waqf* to a large extent.³⁷ He highlights some of the models used in the creation of cash *Waqf* in Muslim countries. They include *Waqf*-shares model, corporate cash-*Waqf* model, deposit product model, cooperative model, *Waqf* mutual fund model and *wakalah* with *Waqf* fund model. Magda (2008) also mentions various cash *Waqf* concepts that have been developed by *Waqf* authorities, such as *Waqf* shares models, *takaful Waqf* model and corporate cash *Waqf* models.³⁸

The *Waqf* shares model for instance, is a public *Waqf* practiced in countries such as Malaysia, Indonesia, Sudan, Kuwait and UK. In this model, founders will buy *Waqf* shares from specified religious institutions and receive cash *Waqf* certificates to evidence the purchase. These *Waqf* shares will then be endowed to the issuing institution that will act as a *Mutawalli* to manage the collected fund, which will be distributed for charitable purposes as specified by the institution (Magda, 2005).³⁹

Sabit (2011) mentions financing mechanisms such as *hukr*, *ijaratain* and *istibdal* and *sukuk musharakah* that have been utilized to obtain funds for *Waqf* development projects.⁴⁰

³⁶Danna, D.R. (2007). Penerapan Wakaf Tunai Pada Lembaga Kewangan Publik Islami.

³⁷Khademolhoseini, M. (2008). Cash Waqf A New Financial Instrument For Financing Issues: An Analysis of Structure and Islamic Justification of Its Commercialization. Imam Sadiq University.

³⁸ Magda Ismail A. M. (2005). The Revival of the Institution of Waqf in Sudan. *Awqaf Journal*, (8): 33-58.

³⁹Magda, I. A. M. (8): 33-58.

⁴⁰ Sabit, M T. H. M. (2011). Towards an Islamic Social (Waqf) Bank.

Abdul Jalil (2009) notes that Warees Pte Ltd in Singapore has successfully transformed a number of unproductive *Waqf* lands into huge commercial residential areas. In addition, cash *Waqf* scheme and a modern financial mode of *sukuk musharaka* bond have been introduced to fund *Waqf* development activities. Through investment in the *sukuk*, investors in this modern *sukuk musharakah* instrument can get directly involve in the development of various *Waqf* assets.

Hasan (2011) also details the application of *Waqf sukuk* by MUIS, which allows liquidity to be generated in a risk-free manner through the use of risk-free bonds (*sukuk*). The funds which are obtained from the *sukuk* are then used to renovate old and under-developed real estate properties into highly valued and market-rated properties

Khademolhoseini (2009) mentioned *sukuk* issuance as one of the potential instruments that can be applied by *Waqf* administrations to develop *Waqf* assets. However, he points out that this instrument remains underdeveloped in most Islamic countries, although countries such as Malaysia have been pioneers in the issuance of various *sukuk* at the domestic and global level.⁴¹

Hasan and Shahid (2010) propose the establishment of a cash *Waqf* fund and *Waqf* assets through the issuance of *sukuk*. They offer *sukuk* as an alternative mode of financing for developing the vast under-used *Waqf* properties. They suggest that to fulfil the social purpose of the *Waqf* institution, there is a need to create sources of funding for re-construction of *aqwaf* buildings by creating cash *Waqf* fund and by issuing *musharakah sukuk*. They hold that the returns from this initiative will be significant and will benefit a larger number of beneficiaries.

Arnaut, .M.M (2005) examines *Waqf* roles in promoting new cities in Bosnia. This work is relevant and useful to this study on the ground that this research examines how the Islamic finance *Waqf* can be applied through *sukuk* to rescue many Nigerian

⁴¹Khademolhoseini, M. (2008). Cash Waqf A New Financial Instrument For Financing Issues: An Analysis of Structure and Islamic Justification of Its Commercialization. Imam Sadiq University.

needy Muslim from financial constraints. Similarly, it will study how the *Waqf* money can be utilized in Nigeria in a way that both Nigerian needy Muslims and *Waqf* house will benefit from any lucrative project or business that may be embarked upon.⁴²

Al-Saad Ahmad Mohammad (2005)⁴³ and Omar, Fuad Abdullah (2006)⁴⁴ discusses the *Waqf* role on financial assistance towards the family and modern institution in response to the women issues. Both authors focused on how *Waqf* money can be used to empower and support the needy family while Omar focus of attention is on women. Both studies are relevant to this study on the basis that this work will examine how the *Waqf* money can be extended to the Nigerian needy Muslims so as to be self-sufficient through the application of *sukuk*.

However, the authors did not discuss the Nigerian Muslim financial status in their findings which is the focus and hypothesis of this research.

Magdal (2005) focuses on the revival of the institution of *Waqf* in Sudan and the author analysed history of the institution of *Waqf* in Sudan, classification of *Waqf* property in Sudan, step taken by the government to revive the institution of *Waqf*.⁴⁵

Also, the establishment of new companies, and *Waqf* revenues distribution were fully discussed by writer. This paper also considered relevant and useful because the present research is going to discuss the way to revive *Waqf* in Nigeria and how its revenues could be distributed judiciously. However, the author did not cover how to boost and enhance Nigerian needy Muslims financially and economically which is the one of objective of present research.

The research of Khafagy Riham Ahmed (2007) examines the roles of Islamic endowments in Egypt in resisting British colonialism from 1882 to 1952. He also

⁴² Arnaout, M. M. (2005). *Waqf* roles in promoting new cities in Bosnia. *Journal of Awqaf*, (8): 47-57.

⁴³ Al-Saad, A. M. (2008). *Waqf* Role in Family. *Journal of Awqaf*, (8): 125-141.

⁴⁴ Omar, F. A. (2006). Role of modern *Waqf* institutions in women issues. *Journal of Awqaf*, (6):137-155.

⁴⁵ Magda, I. A. M. (2005), (8): 33-58.

highlights roles of *Waqf* on Islamic Middle and High schools in Egypt where daily meals, rewards for talents, and financial assistance for graduates were provided for students. The roles of endowment on Egyptian National University, *Al-Azhar* Mosque University, and endowment and developing Egypt's independent economy and Islamic legal system were discussed in the paper. This work is considered as useful and relevant material to the present research. Although, Khafagy focuses on Egypt while present research would be on Nigeria. Nevertheless, the opinions expressed in those books would be considered because it discusses how *Waqf* could be used to assist the needy in providing educational facilities, hospitals and mosques, etc.⁴⁶

Badran (1982) focuses on the historical background of *Waqf*, definition, principles, elements, and conditions of *Waqf*. He discusses the conditions related to property under *Waqf* control and the beneficiary of the property. Badran, generally, expounds and analyses the *Shari'ah* rulings on the *Waqf*. The book is also considered useful because it gives broaden idea into the present research. Although, the writer did not cover the Nigeria situation which is the main attention of this present research. Therefore, this work will cover how *Waqf* can play a useful role to Nigerian Muslims by way of assisting them to eradicate poverty.⁴⁷

Rashid and Husain (1979) discusses establishment and constitution, functions of the board, measures adopted by government to improve and strengthen *Waqf* administration, meaning of *Waqf*, kinds of *Waqf*, legal incidents of *Waqf*, creation of *Waqf*. The author also studies lease of *Waqf property*, application of the income of *Waqf*, proof of *Waqf*, interpretation of *Waqf* and the *Waqf* Act, 1954. This work is also relevant to the topic in the way that all discussion in the book is useful to the present work. The present work on *Waqf* will vividly examine the Indian *Waqf* administration

⁴⁶Khafagy, R. A. (2007). "Beyond Politics: Roles of Islamic Endowments in Resisting Colonialism in Egypt (1882-1952). *Awqaf Journal*, (13): 15-23.

⁴⁷ Badran, A. A. B. (1982). *Al-Ahkam al-Wasayah wal-Awqahf*. Egypt: Muassasat Shabab al-Jamiat, 254-330.

whether the system can be applied in Nigeria in order to achieve the objectives of the research. However, the *Waqf* Act 1954 will be critically studied if it also in line with the Nigerian Muslim situation.⁴⁸

Qureshi (1990) writes about the history and development of *Waqf*, treatment of *Waqf* during Muslim rule in India, *Waqf* law and administration of *Waqf* in India, and definition of *Waqf* according to ancient jurists. Qureshi also discussed the advantages and disadvantages of *Waqf*, creation of *Waqf* and power of court to grant permission for the disposition of *Waqf* property. This book is useful in the reference on *Waqf* practice in India will help in reshaping and restructuring *Waqf* in Nigeria. However, Qureshi did not discuss on Nigeria which is the main focus of this research because his work is mainly on India.⁴⁹

On the role of *Waqf* in benefiting the Nigerian Muslims, there is a work by Al-Qasimiy (2001). This work focuses on the *Waqf* under Islamic Law, rules on *Waqf*, *Waqf* and contemporary generation, *Waqf* and modern age, problem facing the administration of *Waqf* and its implementation, and the solution to it. This material is found to be useful for this research only that it is written in Arabic while the present thesis will be written in English. The book also did not focus on Nigeria while the present research focuses mainly on Nigeria.⁵⁰

Al-Shaybaniy (1999) critically examines the law on land lease under the *Waqf*. The book is relevant to this research but not to the theme of study.⁵¹

Abu Zahrah (1971) writes extensive work on *Waqf* where he explains the concept of *Waqf*, principles, conditions of *Waqf* and also those who are entitled to *Waqf* under Islamic law. Abu Zahrah's work is considered as the most useful material for this

⁴⁸ Rashid, S. K. & Husain, S. A. (1979). *Waqf Laws and Administration in India*. Lalbagh, Lucknow: Eastern Book Company Law Publishers and Booksellers, 61-72, 94-99, 109-113, 178-188, and 189-246.

⁴⁹ Qureshi, M.A. (1990). *Waqfs in India a study of administrative and legislative control*. New Delhi: Gian publishing house, 1-23.

⁵⁰ Al-Qasimiy, M. A. (2001). *Al-Waqf*. Beirut: Dar Al-Kotob Al-Ilmiyah, 5, 13-20, 43-80, 139-147, and 150-154.

⁵¹ Al-Shaybaniy, A. A. U. A. B. (1999). *Ahkam al-Awqaf*. Bairut: Dar alkotoub ali-Ilmiyah, 172-195.

present study because it covers many aspect of *Waqf*. However, the author did not examine how the Islamic finance *Waqf* through *sukuk* can be used to assist and empower needy Nigerian Muslim and how the *Sukuk* will benefit *Waqf* house through its commercialisation.⁵²

In addition, Al-Saad (2005)⁵³ and Omar (2006)⁵⁴ discussed the *Waqf* role on financial assistance towards the family and modern institution in response to the women issues. Both authors focused on how *Waqf* money can be used to empower and support the needy family while Omar focus of attention is on women. Both studies are relevant to this study on the basis that this work will examine how the *Waqf* money can be extended to the Nigerian needy Muslims so as to be self-sufficient through the application of *sukuk*. However, the authors did not discuss the Nigerian Muslim status in their findings which is the focus and hypothesis of this research.

Arnaout (2005) examines *Waqf* roles in promoting new cities in Bosnia. This work is relevant and useful to this study on the ground that this research will examine how the Islamic finance *Waqf* can be applied through *sukuk* to rescue many Nigerian needy Muslim from financial constraints. Similarly, it will study how the *Waqf* money can be utilized in Nigeria in a way that both Nigerian needy Muslims and *Waqf* house will benefit from any lucrative project or business that may be embarked upon.⁵⁵

Al-Aidooni (2007) examines the protection of minor in Maghreb countries and Andalusia through the *Waqf*. The author's work is relevant to this thesis on the basis that this research will examine how Islamic finance *Waqf* can assist Nigerian minors especially Nigerian Muslim children who are facing financial constraint to continue their education or vocational training to a logical conclusion. Although, al-Aidooni

⁵² Abu Zahrah, M. (1971). *Alajhaha Al-Islam Muharat Fi Al-Waqf*. Cairo, Egypt: Daar al-Fikri al-Arabiyy.

⁵³ Al-Saad, A. M. (2008). *Waqf Role in Family*. *Journal of Awqaf*, (8):125-141.

⁵⁴ Omar, F. A. (2006). Role of modern *Waqf* institutions in women issues. *Journal of Awqaf*, (6):137-155.

⁵⁵ Arnaout, M. M. (2005). *Waqf roles in promoting new cities in Bosnia*. *Journal of Awqaf*, (8): 47-57.

analysis did not cover the Nigeria situation which is the case study of this present work. Therefore, this research will cover the areas not covered by Al-Aidooni.⁵⁶

Similarly, Al-Sadhan (2008:104-110) explains the *Waqf* role in benefiting the young people. The author critically examined how both the *Waqf* and young people could benefit one another from endowed property. The researcher would examine how the Nigerian Muslims including the young people could benefit from Islamic finance *Waqf* through *sukuk* and how *Waqf* house could establish lucrative business or trade in the interest of the needy Nigerian Muslim.⁵⁷

Qandooz (2009) studied the role of *awqaf* in providing public services. The author examines how such public services could be provided in the interest of all. Qandooz's work is considered very useful because one of the objectives of this thesis is how the *Waqf* project can be utilized to contribute to Nigeria public services in terms of purchasing commercial cars and buses for public transportation and as a business that will benefit Nigerians regardless of their tribe, religion and gender.⁵⁸

On the Islamic finance *Waqf* through *sukuk*, Al-Zeraigi (2006) writes on *mugharasa* on *Waqf* land. The author critically examined the status quo and regulation in *fiqh* and law on the utilization of land. The work is considered as useful material on the basis that Nigeria has futile land that can be used for cropping and plantation as a business that will benefit Nigerians at large and *Waqf* house. Al-Zeraigi did not look and examine Nigerian situation and condition on utilization of Nigerian land as a commercial and lucrative business for both and how the farmer can be employed on the personal land as *Waqf* worker and pay them monthly based on the hectares or plot

⁵⁶ Al-Aidooni, W. (2007). Protecting minors in Maghreb countries and Andalusia. *Journal of Awqaf*, (13):36-54.

⁵⁷ Al-Sadhan, A. N. (2008). Future vision of *Waqf* role in benefiting from young people. *Journal of Awqaf*, (15):104-140.

⁵⁸ Qandooz, A. K. (2009). The roles of *awqaf* in providing public services. *Journal of Awqaf*, (16): 80-91.

of lands that employed farmer possesses. Therefore, this present research will cover where Al-Zeraigi did not focus in his findings as contribution to the academic.⁵⁹

Mansour (2006) focuses on *Waqf* of the Islamic education centre where the author explained on *Waqf* can play tremendous roles in educational arena in the interest of Muslims at large.⁶⁰ The study is also useful and related to the present research in the sense that this thesis will examine how the Islamic finance *Waqf* through *sukuk* can be used to assist Nigerian Muslims in particular and Nigerian at large especially the needy Nigerians. Although, Mansour silent on how to establish schools and university in Nigeria because the author's finding did not cover Nigeria which is the case study of the present study. This present study will explain how Islamic finance *Waqf* can be utilized to assist many children who are in need to continuing their education and those whom have dropped out from the school due to their parent constraints or other reason.

On the other hands, Al-Rershoi (2006) explains legality of *Waqf* on a non-Muslim where author critically examined the legal aspect and basis where non-Muslim can benefits from the *Waqf*. The work also considered as good material because Nigeria is a multi-religion country and it is not possible to isolate or deny non-Muslim from *Waqf* endowment due to their belief or faith. Although, Al-Rershoi did not cover Nigerian non-Muslims in the finding. Nevertheless, this present findings will critically examined and discussed the basis on how non-Muslim should be given opportunities to benefit from the Islamic finance *Waqf* through *sukuk* in Nigeria in the further analysis.⁶¹ Similarly, Adesina (2010) writes on Malaysian *sukuk* trading and information system as an overview in her work. The work is one of the relevant and useful materials to the present findings. Adesina's work is comprehensive work and useful because she analysed many issues related to the *sukuk* trading which this thesis will also covered.

⁵⁹ Al-Zeraigi, J. M. (2006). Mugharasa on *Waqf* land: status quo and regulation in fiqh and law. *Journal of Awqaf*, (6): 15-34.

⁶⁰ Mansour, S. H. (2006). "Waqf of the Islamic education centre: an example of fruitful *Waqf*", *Journal of Awqaf*, (6): 134-135.

⁶¹ Al-Rershoi, A. (2006). "Legality of *Waqf* on a non-Moslem", *Journal of Awqaf*, (10):13-55.

Although, despite the fact of usefulness and relevancy of Adesina's work, she did not analysis Nigerian needy Muslims which is the target and focus of this thesis on how the needy Muslims in particular would be empowered through Islamic finance *Waqf* and *sukuk* due to the absolute or relative poverty that confronting many of them. Therefore, this thesis will give further analysis and cover where Adesina did not explain in her work as contribution to the knowledge.⁶²

Shamsher, Hassan, and Adesina (2010) writes on exigency for *sukuk* bonds financing on issues and discussions where the authors explained and discussed subject matter but their analysis did not focus on how *sukuk* bonds can be applied for Nigerian needy Muslims as assistance and support to relief them. The study is a good material and useful to this present thesis.⁶³

In addition, Sukmana (2009) explains *Waqf* management through *sukuk al-intifa'a* towards a generic model where the writer critically analysed the *sukuk* and other related issue to *sukuk*. The study is very relevant to the present thesis on the argument that this present work will examine how *sukuk* can be extend to the needy Nigerian Muslims such as trading, empowerment, loan, project, hosing for rent, and other lucrative business due to the need of people across the nation. This thesis will also examine the *Waqf* management office in Nigeria and their competency to handling the issue of Islamic finance *sukuk* through *Waqf* money.⁶⁴

In the work of Aref (2009: 29-53) on the institutional structure of *Waqf* in the Nile valley countries in the interest all, Aref work is good material to this thesis on the basis that this thesis will examine how *Waqf* properties can be structured and institutionalized to empower Nigerian Muslims in particular and how the *Waqf* house

⁶² Adesina, U. A. (2010). Malaysian *sukuk* trading and information system: an overview. *Journal of sustainable Development*.

⁶³ Shamsher, M. R., Hassan, T., & Adesina, U. G. A.. (2010). Exigency for *sukuk* bonds financing: issues and discussions. *Journal of sustainable Development*.

⁶⁴ Sukmana, R. (2009). "Waqf management through *sukuk al-intifa'a*: a generic model". *Journal of Awqaf*, (17): 11-22.

will benefit from the project, business, and contracted with Nigerians in Nigeria. The thesis will also studies how Nigerian futile land can be used for farming, planting, cropping in which the product could be export into another countries as another sources of income for the *Waqf* house in Nigeria.⁶⁵

⁶⁵ Aref, N. M. (2009). "The Institutional structure of *Waqf* in the Nile Valley countries". *Journal of Awqaf*, (17): 29-53.

CHAPTER 2: HISTORICAL DEVELOPMENT AND APPLICATION OF WAQF IN NIGERIA

2.1 Introduction

This research is undertaken to examine and analyse the historical background of application of *Waqf* in Nigeria for the purpose of testing, and analysing the adequacy of its application to approach the condition of less privilege Nigerian Muslims in particular and Nigeria at large financially, educationally, socially, spiritually, and medically. This chapter will prepare the historical background to show that the application of *Waqf* can play significant roles and make useful efforts to reduce the percentage of poverty that confronting Nigerian Muslims across the nation. Therefore, this chapter deals with the historical and establishment of *Waqf* in Nigeria, administration of *Waqf*, and importance of *Waqf*. It is also examines the formation of *Waqf* board, implication of *Waqf* Act that will guide the *Waqf* foundation across the nation in the interest of needy Nigerian Muslims and the endowment. The chapter further studies the qualified and eligible institution that can establish *Waqf* and Nigerian Muslim community and *Waqf* would be analysed in the chapter.

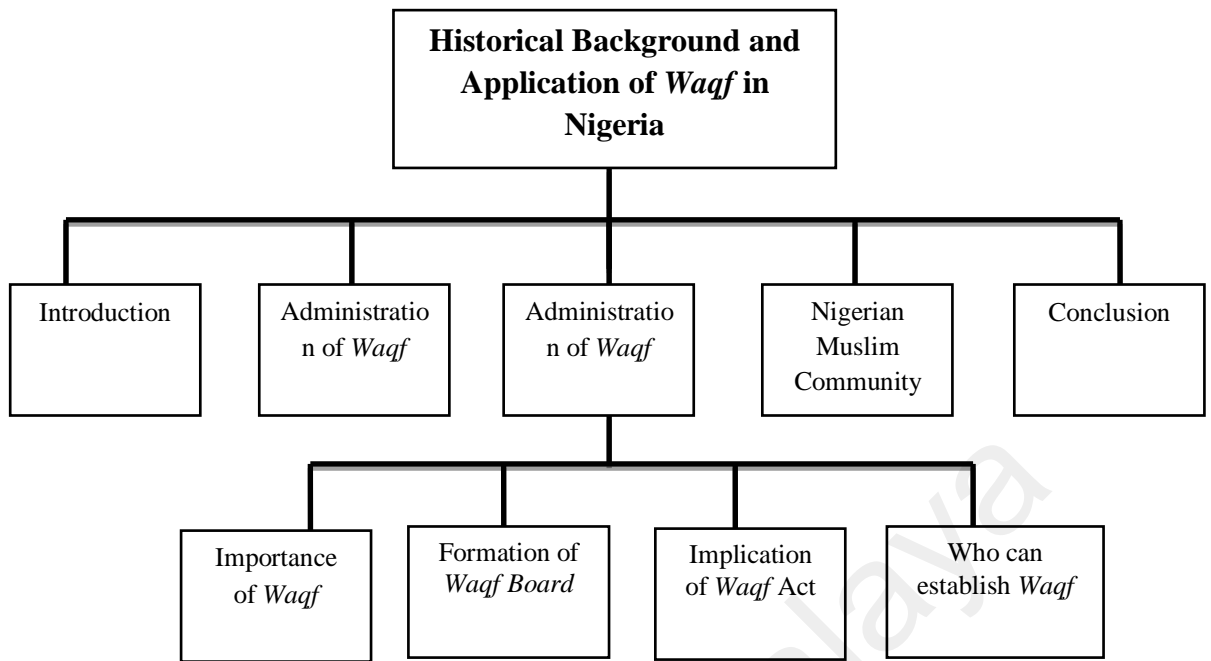


Figure 2.1 Historical Background and Application of *Waqf* in Nigeria

2.2 Historical Background and Development of *Waqf*

Awqaf house foundation is an international recognized organization which is created and established to relieve the condition of needy Muslims who is suffering among the other Muslims. Relieving poor Muslim is a prime and primary goals and objectives of establishment of *awqaf* globally. The *awqaf* body makes and provides human relief, dignity, spiritual aspect and provision of adequate maintenance for needy people in society at large and Muslims in particular. It was previously discussed that Islamic law was widely practised and implemented especially in the northern states of Nigeria before the colonization by British where the Islamic law was reduced and amended into personal law by the colonialists. The hatred of colonialist toward Islamic law in Nigeria was consciously observed by Ibrahim Umar who says:

Before 1900, almost two third (2/3) of Nigeria or to be precise all the Northern part of Nigeria was governed by *Shari'ah*. But when the colonial rulers came, they imposed their own legal system on us

relegating the *Shari'ah* to the background (terming it as a customary law).⁶⁶

It is cleared that practice of *Waqf* during the Caliphate period was well legally developed and maintained in Northern states of Nigeria in the interest of need Nigerian Muslims by then. To support the argument, the slaves by then worked on the *Waqf* lands in Northern states for cultivation and farming in the interest of Muslims especially the needy. The Emir has power and authority to declare any unclaimed, variant, and unused land as common and public land for the usage of needy people in society which is in line with the spirit and concept of *Waqf* that is immovable property.⁶⁷ The unwanted and uninvited of colonial law into Nigeria legal system has grave and negative impact on Nigerian Muslims because it affect the full implementation of *Waqf* system in Nigeria for long time and many Nigerian needy Muslims experienced the bitterness of execution of *Waqf* practice from Nigerian legal system.⁶⁸ This is because many less privilege in society were left unsheltered due to bad government and the rate of corruption and corrupt leaders that piloting affairs of Nigeria and Nigerians. The implementation and practice of *Waqf* in Southern and Western Nigeria was not well organized and practiced even up to date due to the impact of effect of common law that dominate the region. Although, there is a kind of financial assistance or alms giving and letting to the poor people by the philanthropist within and outside family or permission for land cultivation by the village leader or chief in order to assist needy people around them regardless of their faith or religion because it is considered as one of the exotic custom and culture.

⁶⁶Umar, .I. (1987). "Shari'ah as a Means to solve Modern Problems" in Syed Khalid Rashid (ed), *Shari'ah Social Change &Indiscipline in Nigeria*, Sokoto, Nigeria: University of Sokoto Press, 220. See also, Oseni, U. A. (2012), 339-354.

⁶⁷ Oseni, U.A. 2012, 339-354.

⁶⁸ Oseni, U. A. (2012), 339-354.

In Nigeria, *awqaf* foundation was established and Sheikh Ahmed Lemu is the chairman IDB Education Trust in Nigeria and the foundation has contributed a lot and transformed many lives positively. Yet, the condition and financial status of many Nigerian Muslims still attract the establishment of *Waqf* commission across the nation in order to render financial assistance to the needy Muslims in Nigeria.

Recently, there are commendable and credible efforts made by Northern governors starting from 1999 towards the implementation of *Shari'ah* and incorporation of collection of *zakat* and endowment Board that will be responsible for collection and distribution of *zakat* and *Waqf* for needy Muslims in the state and beyond. In 1999, the former Executive governor of Zamfara State in person of Ahmad Sani Yarima Bakura reintroduced the full implementation of *Shari'ah* in his state which triggered the attention of Non-Muslims who criticised the implementation of *Shari'ah* in the State but he achieved his objection on inception of *Shari'ah*. He further established *Zakat* and Endowment Board in the same year under the State Government Law No.130. The Board is empowered to conduct and plan their useful activities and also collection and distribution of *zakat* and endowment for entitled Muslims within and outside the state.

The department of *zakat* and endowment (*Waqf*) is divided into department of collection and distribution of endowment, administrative and finance and also fatwa committee, verification, market, relief, and staff committee respectively. The duties and activities of board extended into the local government, districts, and wards in the state in order to realize their goals and objectives of inauguration and establishment of *Waqf* in the state. The Zamfara state *zakat* and endowment basis or sources of income derive from *zakat* paid by philanthropist in the state, lost and found items the rightful owner cannot be traced and eligible person claimed the found items. The income also comes from donation from individual, organization, government such as cash, valuable materials, movable and immovable properties for the benefit and usefulness of needy people.

across the state. In order to achieve the purpose of *Waqf* establishment in the state, the board made adequate media publicity for the awareness of people to the *zakat* and endowment that catering the indigene of Zamfara state. Many people have benefited from Zamfara state *zaka* and endowment foundation where 120,000 people were benefited from 31,950 of grains that were collected for *zakat* and endowment. The governor himself donated six (6) houses, four (4) plot of land, one (1) locked shop for the benefit of people as *Waqf*. Similarly, five hundred and fifty (550) business items such grinding machines, tomatoes grinding machines, sewing machines and other item were distributed freely for need people within the state as empowerment in order to reduce the rate of poverty among Muslims within the state in particular. Eighteen thousands (18,000) patients were treated medically for minor sickness such as headache, cater, stomach-ache pain, malaria while eighty nine thousand (89,000) people suffering from mental were treated and assisting with business equipment in order to ease their living condition after recovery from sickness. Similarly, five thousands one hundred and twenty granted and assisted of major medical assistance due to their financial constraint to bear the medical cost and bill. Concerning education, one thousand five hundred under privileged orphan children were assisted from primary school education till tertiary institution while four thousand (4000) Arabic schools were given financial aids. In addition, twelve thousand (12,000) were given cloth and food as *Edil Fitr* and *Edil Adha* as welfare package to feel happy during the festival like other children. On the other hand, four thousand (4,000) of less privilege people were given financial support for their marriage commitments due to their financial constraint. In order to achieve the goals and objectives of *Waqf* is to render financial support for poor people in the society, therefore, the state extended its substantial financial support to four thousand six hundred people (4,600) for lepers, blind men and women and single mothers for business as human empowerment that will enrich their financial status and

protect their integrity and dignity from being a beggar that stain his or her personality. Similarly, five thousand and five hundred (5,500) people assisted with commercial transportation within and outside the state while cripple bicycles distributed to twenty-one disable people. For housing assistance, nineteen (19) houses were bought for needy people while three thousand and two hundred houses were renovated for those whom were in need and building material also distributed for such as cement, roofing sheet, and cash freely delivered to one hundred and twenty needy people in the state. For debt relief, seven hundred and thirteen debtors were bailed out from their debt bondage within the state. Since aims of *Waqf* is to provide free medical treatment for less privilege people, so, the state *Waqf* reconstructed and equipped seventeen (17) clinics in the state for free medical treatment especially for incapable people to pay the medical bill for the sickness treatment. Finally, the board has proposed many projects that would be source of income to run the affairs of *Waqf* endowment and cater for the needs of destitute people in the state. So, the board aims to establish and construct Nizzamiyyah Primary Schools in all state local government, purchasing shares from different companies for lucrative profit in the best interest of needy people, involving in transportation business services, farming, and other petty-petty trade and business under auspicious of *Waqf* endowment administration.⁶⁹

In 2007, Zamfara State endowment department realized and sourced out N424, 090.00 from donors at Board Headquarters and N2, 015,200.00 from 53 donors within 14 local Government Committees in the state. In order to bust the endowment foundation funds and income, the total amount of N24,000,000.00 has been donated and given to endowment while 1% of the total amount of state awarded contract also remitted into the endowment account which was N145,242.046.00. Similarly, 2,100

⁶⁹Alhaji Atiku Sani Maradun, A Brief Explanantion and Achievement so far recorded from inception of Zamfara State Zakat and Endowment Board by the Executive Secretary of Zakat &Endowment Board since 1999-2010.

wrappers of (Atamfa), 2,200 shadda yards, 1,004 assorted bags of grains, 2 farm lands, 17 plots for the construction of clinics for less privilege and orphans, 4 hospital wheel bicycles, and 4 cartons of drugs were donated to the *Waqf* endowment in the state.⁷⁰

The above lines are the breakdown of zakat and endowment achievement and ahead plan to render financial assistance to those who are confronting financial constraints while some are empowered with machines and other equipment that will ease and reduce their financial burden and problem. The board has done credible and commendable contribution into the life of many Muslims needy people within and outside the state while others will still get the aids from the board as the prime and primary objective to assist privilege people in the state. The question is who is going to fund the endowment? Does philanthropist in the state are fully aware and well informed about the importance of *Waqf* socially and spiritually? Are there enough fertile lands for farming and cultivation?

It is discovered from the above brief explanation by the board secretary that the board had focused and rendered financial support for the needy people in the state but the board should focus more on how to apply *Waqf* money through sukuk in other to benefit *Waqf* endowment foundation house and the needy people at large. Those who received money for business or vocational machines or equipment should be encouraged to give certain amount of money voluntarily in order to support others in future. Certain amount of money should be budgeted for lucrative business transaction that will yield profit for the *Waqf* house. The board should also employ some farmers who has at least 3 plot of land to cultivate his farm based on the board instruction and guide line on what to plant on the farm while 70% of the crops and cultivation will goes to the house for business and 30% will goes to the farmer with his monthly wages. The

⁷⁰ Alhaji Atiku Sani Maradun, A Brief Explanantion and Achievement so far recorded from inception of Zamfara State Zakat and Endowment Board by the Executive Secretary of Zakat &Endowment Board since 1999-2010.

board should engage in activities that will attract profit and gain in order to achieve the purpose of *Waqf* endowment foundation. The reason is that if the money is gifted out and there is no enough money to cater for needy people, where the board will source for money to approach the problem confronting less privilege people at that particular time. *Musharaka, Mudarabah, Istina*, and other method of finance *sukuk* can be applied through *Waqf* money in other to have enough money to cater for the need of applicants in the state. Sound and very standard school can be built for the purpose of business in order to generate money for the endowment house while clinic also can be constructed mainly for transaction where avoidable bill would be charged and house, guest house, hostel can also be built to source income for the *Waqf* house through *sukuk* for the interest of needy people and reduce the financial problem that might confront the endowment in case there no sufficient money in endowment account.

In Sokoto state, *Waqf* endowment is inform of sadaqat collection that was established in 1996 and reconstituted in 14th of June, 1999 by the governor of the state by then in person of Excellency Alhaji (Dr.) Attahiru Dalhatu Bafarawa Garkuwan. The entire member of the appointed committee for sadaqat collection and distribution had played commendable roles and efforts to reduce the rate of poverty in the state and also catered for needy people within and outside the state. The committee solely depend on the state government grant and local government monthly contribution to execute their programme in order to relief needy people in the state. Many donors had donated into the foundation to cater and assist the needs of less privilege people regardless of their gender, status, culture, and religion. The duties and responsibilities of the appointed committee is to collect and distribute collected *sadaqat*, rehabilitate disable persons at government rehabilitation centres, and also to disallowed street begging. Based on the committee responsibilities and duties, many less privilege people have benefited from the *sadaqat* collection and distribution where many needy students were assisted, some

were sent for tailoring as vocational training and empowered with sewing machines, some sent for knitting, plumbing, rewiring, and welding respectively on the expenses of the foundation. In addition, some also benefited medically where their medical bills were paid by the foundation and some other special cases and destitute old and orphans were also assisted by the foundation.⁷¹ The idea of empowering poor and needy people with various types of vocational training, businesses, petty trading, transaction, and self-employed job is better than given them money that will not solve their problem and future financial challenges. Empowering the needy people will reduce their financial constraints and pave way for them to make provisions for their dependants.

Zakat and *Hubsu* commission in Kano were established in 2003 by His Excellency Ibrahim Shekarau with intention of extending financial aids and assistance to the needy person in the state. The state government founded the commission with aims to execute various forms of assistance to the poor and needy people under the provision of the basic needs in cash, kind, food stuff, medical assistance. The commission is charged and tasked to collect *zakat*, *hubsu*, and *sadaqat* from donors and distribute them to the destitute needy people judiciously. The commission is also charged to monitor the beneficiaries of *zakat* financially and medically and to advise the government on the properties left behind as endowment or *Waqf* in the interest of poor people in the state and beyond the state. They will also update the records of beneficiaries of *zakat* and *Waqf* in order to discover whom to be assisted.⁷²

It can be discovered from all the cited states that *Waqf* has been reconstructed and re-established by the new government starting from 1999 due to high rate of poverty that rampant among the Muslims across the nation. The concern of this thesis is that all the referred states were giving out financial assistance to the less privilege

⁷¹Alhaji Umar M. Samu Danchadi. Sadaqat collection and distribution committee progress report June 2002 –May, 2003.

⁷²Kano State Zakat and Hubsu Commission, 2003.

people and those who need medical support which is considered as kind. However, the states should be more focused on how to utilize or commercialize cash *Waqf* endowment through *sukuk* that will benefit both commission or endowment and beneficiaries at large. This is because if the money is just given out without using part of the *Waqf* money in lucrative business or transaction, it may be difficult for the commission to continuing rendering financial support to the needy citizens due to the insufficient money available at the period of need. There is need for a committee that is in charge of marketing and business which should always think of any lawful lucrative business that will yield profit for the commission in the interest of citizens. They should focus on the needs of people in the market or any business that marketable and profitable in order to have enough and sufficient money to render assistance to applicants monthly or annually.

2.3 Administration of *Waqf*

It has been discussed in previous line that creation and establishment of *Waqf* is for the public interest. It is meant for pious purpose and goals, for the benefit and usage of a particular and special person and for the financial assistance and support to the individual who are in need. The reason is that needy person is unable and incapable to bear at the time of request from *Waqf* foundation or endowment. In order to maintain just and adequate collection and distribution of collected endowment from and for needy people, there must be competent and qualified people that will administering the commission based on the Islamic principle. In Nigeria, some states government have appointed some competent people to hold certain duties and responsibilities in commission and carry out their duties according to Islamic principles which will enable the commission to realize the purpose and goals of the commission. Section 3 and 4 of *Zakat* and Endowment of Zamfara state provides for the establishment of *Waqf* and

board consist of chairman while Kano state established the *Waqf* foundation. The board consist of director or chairman, treasurer, secretary, accountant, cashier, store officer, and other offices with their duties and responsibilities respectfully.

On the issue of competence, duties, and responsibilities of *Waqf* administrator, there are different views and opinion of Islamic jurists where Iman Abu Hanifa held the view that creation and establishment of *Waqf* is consider failed and invalid if an administrator's name did not mentioned however, Imam Abu Yusuf argued that *Waqf* is still lawful and considered valid by the implication that the *waqif* dedicator is considered and the *Waqf* administrator.⁷³

Another opinion says that:

In the *Fatawa* Kazi Khan it is stated that, according to Mohammed as given in his *Siyar-Kabir*, the *waqif* will not be trustee unless he has reserved the trusteeship for himself at the time of consecration but according to Abu Yusuf consignment is not necessary in the case of the *waqif*, so even when he does not (expressly) reserve the trusteeship for himself, he will still be the trustee. What I have stated is also laid down in the *Zakhira* and *Tatinma* and *Sahib-ul-Hedaya* has mentioned that this is the approved doctrine in our Mazab (school of thought).⁷⁴

According to Imam Shafi'i, the *waqif* himself can be the administrator of the *Waqf* commission but if another person has been appointed, then, the appointee should be allowed to carry out his duties accordingly.

The most important aspect on the issue of administrator is that the person must be an adult, reached age of puberty, sound mind, and trustworthy person and the *waqif* has power to appoint any qualified and competent person to be the administrator of the

⁷³ Jaldeen, M.S. (1993). *The Muslim Law of succession inheritance and Waqf in Sri Lanka*. Colobo: The Federation of Association of Muslim Youth in Sri Lanka 307.

⁷⁴ Jaldeen, M.S., 307.

Waqf commission. On the other hand, the *waqif* has veto and right to dismiss, reshuffle, dissolve, and sack the administrator and appoint another person who is more qualified and competent than the sacked administrator.⁷⁵ The appointed administrator will be legally restricted towards *Waqf* property where all conditions will be clearly stated and mentioned in the appointment letter. The administrator primary and prime duties are to protect and administer *Waqf* property judiciously and he should act according to the *Waqf* rules and regulation. The administrator is only pilot as the manager or director of the commission, therefore, he has no legal jurisdiction to alienate, alter, amend, or change the stipulated rules and regulations of *Waqf* commission unless he has been authorized to act upon his view, direction and discretion. The Hedaya states:

“....where the *waqif* has made a condition that the *mutawalli* shall not grant a long lease of the *Waqf*, and people are not willing to take a short lease thereof and it is to the advantage of the *Waqf* that a long lease should be given the *mutawalli* should prefer the matter before the *Qadi*, who is deems necessary, can make an order to that effect, ‘for the *Qadi* is the guardian of the poor’. If the *Waqf* has made a condition that the *mutawalli* shall not grant a long lease unless he deems that it would be productive of great benefit to the *cestui que* the *mutawalli* can give the lease in case of necessity, without reference to the *Qadi*”.⁷⁶

It is discovered by this research that *mutawalli* is not totally free to exercise his power over the *Waqf* property, the restriction is not mean that the *mutawalli* is not qualified or competent but to protect the *Waqf* property in the interest of less privilege people. Therefore, *mutawalli* can only act on the direction of *Qadi*. However, the *mutawalli* is allowed and permitted if the situation called for *mutawalli* unilateral

⁷⁵ Jaldeen, M.S., 308.

⁷⁶ Jaldeen, M.S., 309.

decision in the interest of needy Muslim and he should act according to Islamic principle.

Baillie states that:

“In the absence of any condition, the approved doctrine that the lease of estates in land may be decreed to be lawful for three years, unless it be for the benefit of the *Waqf* to annul; and that with regard to leases of other property, they should be decreed to be unlawful when they exceed one year unless it be for the benefit of *Waqf* of the sustain them. But this varies with the change of place and times. This is approved for the *fatwa*”.⁷⁷

Imam Shafi'i maintain his view that administrator should be strictly adhere and implement the founder's rules and regulations on the matter of collection and distribution of endowment. Based on that, the administrator has no legal and rational right to violate or act contrary to funder's authority. The roles and duties of administrator is to coordinate, maintain, collect, distribute the *Waqf* endowment property accordingly. In some states in Nigeria, the Board of Committee has been inaugurated based on their merit and qualification. The following are the post and their duties in *zakat* and *Waqf* collection and distribution in the interest of people in general and needy people in particular. Section 4 of *Zakat* (collection distribution and endowment) Board Law, 2003 provides that the Board shall comprises chairman, treasurer, assistant treasurer, ten other members whom the state governor would be appointed and conferred with power to discharge their duties according to the principles of Islamic law. Similarly, section 6 subsection (1) provides for the appointment of

⁷⁷ Jaldeen, M.S., 309.

Executive secretary and appointment of three directors by the governor to serve the purpose of *Waqf* but not less than three at a time.

2.4 Importance of *Waqf*

There is no element of doubt that *Waqf* foundation has many important roles and benefits to the beneficiary directly and donor indirectly because it will provides a kind of financial support and relief to the *Waqf* beneficiary or recipient while the donor would be rewarded in hereafter while the rich and philanthropist will be only donate to the commission and number of beggar will be reduced in the nation significantly. Spiritually and religiously, it was traced back that *Waqf* properties play an important roles in widespread religious activities by spending on mosques programs, paying the salaries of *imams*, teachers, preachers, and provisions of carpet, water, paying electricity bill and other mosque material. In Nigeria, there is no organization or societies paying salaries of *imams* nor teacher who is teaching student Quranic recitation and other religious subject they are just find other alternative to survive. In addition, many Arabic schools in Nigeria needs financial support from organization such as *Waqf* endowment to maintain the Arabic school and prove the standard of many Arabic schools in the interest of students at large. The *Waqf* can restructure and re-direct direction of many Arabic schools across the nation by introduction of western education that will pave way for Arabic student graduate to be soundly qualified to be admitted in any Nigerian universities and absorbed under the government as civil servants or employed in private sectors.

Socially, *Waqf* can also play an important roles in many social activities such marriage assistance for those who are incapable of marrying and unable to provide maintenance for his wife or rendering financial aids for those who physically and mentally capable in marrying lawful subsequent or additional wives but his income is

insufficient to maintain additional wife. Therefore, the foundation can assist such a person in order to reduce the percentage of unmarried women in society. On the other hand, *Waqf* institution can also free debtor from debt bondage for being incapable of paying his or her debt in order to protect debtor's dignity and personality in society and to empower the debtor that will protect him from subsequent debt. For those who are facing accommodation problem or unable to pay their house rent, the *Waqf* commission can make provision for such people in order to relief their burden as part of *ibadat*. It has been previously discuss that *Waqf* endowment can make provision for health services especially for poor, needy, and orphan in society while the medical bill would be bear by the *Waqf* house. The commission can also construct its own standard and modern hospital to assist incapable patient while the meagre amount of money would be charged as bill for those who capable of paying the amount. Those who are suffering from mental problem can be sent to the specialist or psychiatric hospital for proper treatment and fully responsible for the payment and medication that recommended by the physician. Rendering financial assistance to the recipients serves as brotherhood, Islamic fold and kindness that recommended in the Holy *Quran* as a rewardable act in Islam. *Waqf* also is capable to give humanitarian services to the victim of natural disaster such as flood, fire, tsunami, volcano, building collapse, accident and others because it beyond the capacity of the victim. Morally, *Waqf* foundation can sponsor many media programs on television and radio programme that will inculcate religious moral and teachings to the citizens across the nation and it should not be limited into *Ramadan* period only. The *Waqf* can able to choose the qualified and competent scholars that will pass the message across.⁷⁸

⁷⁸ Mohomed, Halima. (2008). Philanthropy and social justice in South Africa: Adressing underlying causes or mitigating impact? Thesis-MA Development Studies, University of the Witwatersrand, Johannesburg, 15-24. See also, Kahf, M.. (1998), 2-4. See also, Khaf, M. (2011). *Waqf* and its sociopolitical aspect. In Monzer Kahf & Siti Mashito Mahamood (Eds.) *Essential Readings in Contemporary Waqf Issues* (pp.49-50). Kuala Lumpur, Malaysia CERT Publication Sdn.Bhd.

2.5 Formation of *Waqf* Board

There is need for the creation or formation of *Waqf* in many majority Muslims countries in order to cater for the poor people among the Muslims whom are incapable to finance themselves and family. Under Islamic law, formation of *Waqf* commission or foundation can be made in different form, therefore, it can be created based on the Act or through the will of the founder or dedicator, and it can be also formatted at point of death or illness and other forms that will actualize the purpose of *Waqf*. There are certain conditions that must be upheld before the establishment of *Waqf* foundation such as:

- (a) the gifted property given to the *Waqf* must belong to the donor, funder, or *waqif* at the time dedication of such property to the commission.
- (b) *Waqfs* in support of the wealthy and then the indigent
- (c) *Waqf* in favour of the indigent.

The purpose and useful *Waqf* had been categorized into three heads by Imam Ali and he says that it can be for the public advantages such as building of mosque or school, quasi-public *Waqf* that is meant for the pious purpose and benefit a particular person within and outside the family and private *Waqf* for individual regardless of their status, gender, tribe. To this research, *Waqf* can be extended into other aspect that will generate more income to the commission in the interest of needy people. If the mosque or school needs to be renovated, the board can approve sufficient funds to renovate the mosque and schools that needed to be renovated.

2.6 Implication of *Waqf* Act

It has been mentioned in the previous pages that there is no legal provisions on management of *Waqf* under Nigerian constitution but the State is legally permitted to endorse any provision that would be useful and benefit the indigene of the state in

general. According to section 262 (1) and 272 (2) of Nigerian Constitution, 39 (1) and section 41 of the Land Use Act of Nigeria are the legal basis for the establishment of *Waqf* endowment across the nation in order to cater for the needs of citizens due to failure of Nigerian government to provide adequate maintenance for Nigerians and less privilege in particular. Those provisions are relevant to the *Waqf* because *Shari'ah* court of Appeal is responsible for any matter or cases related to *Waqf* and also on land matter dispute.⁷⁹

In Zamfar state, the gazette was enacted by the House of Assembly of Zamfara state in 10th of October, 2003 purposely to cater for the people within and beyond the state.

Section 2 of the Chapter one provides that:

This Law may be cited as the *Zakat* (collection Distribution and Endowment) Board Law, 2003 and shall come into operation on the 28th day of July, 2003.

The above stated provision indicates that all duties, activities, and responsibilities of *zakat* and *Waqf* commission are legally supported and the committee must act according to the provisions while the law on *Waqf* and *zakat* must be upheld by the commission. The commission is legally empowered to act according to the Islamic principle in *zakat* and *Waqf* collection and distribution in a situation where justice must be maintained and the committee must desist from any discrimination due to applicant gender, sect, culture, or status within and outside the state. This is spirit of Islamic justice when rendering assistance to the needy people in which nobody should be treated due to his or her social status but treat equally. However, the condition and needs of applicant should be evaluated and accessed when giving assistance and no applicant should be neglected un-catered for in as much there is sufficient resource to cater for him. Since committee is legally empowered by the House of Assembly, the

⁷⁹Section 262 (1) and 272 (2) of the constitution of the Federal Republic of Nigeria, 1999. See also, section 39 (1) of the Land Use Act, Cap.202, LFN 1990.

board should apply *sukuk* transaction in order to generate more income and profits to help less privilege applicants adequately.

Section 5 of part II provides that:

Subject to the provisions of this law, the Board shall be responsible for the collection, administration and distribution of *zakat*, and endowment and without prejudice to the generality of the foregoing; the Board shall have the following powers such as:

- A- To organize the administrative and financial affairs and all other activities of the Board.
- E- To make policies, plans, rules and regulations necessary for the conduct of its affairs and in the realization of its objectives.
- F- To invest *zakat* and endowment funds or the surplus of *zakat* and endowment funds in ways that will meet the objectives of the Board and serve the purpose of *zakat* and endowment.
- G- To make plans rules and regulations for the good management of endowment
- I- To maintain an account(s) with Banks into which *zakat* and endowment funds and other resources shall be kept and run.
- J- The Board shall have the power to acquire, hold and dispose of property, movable and immovable.
- K- To exercise such other powers necessary for the due discharge of its functions in accordance with the provisions of *Shariah*.⁸⁰

It can be inferred from the section 5 of the *zakat* and endowment collection law that commission has permitted to conduct its affairs and all its activities in the interest of the objective and purpose of the establishment of commission. Therefore, the commission committee should not involves in any conduct that will jeopardizes or

⁸⁰ Zakat (collection distribution and endowment) Board Law, 2003. Section 5(a,e,f,g,i,j, and h).

contravene the goals of the *Waqf* foundation. The board also has legal rights to plan and invest *zakat* and endowment fund in a rightful and lawful transaction and business as clearly stated in the provision. This research will implore and urge the commission across the nation to engage and divert part of *Waqf* collection into *sukuk* commercialization that will contribute into the needy Muslim's life positively. In commercialization, the *sukuk* can be introduced in *Musharaka*, *Mudarraba*, *Istina*, *Qard*, and other business that will serve the purpose of *Waqf* foundation across the nation. It is the commission duty to dispose all movable and immovable properties that will pave way for the board to utilize any gifted fertile lands that would be useful for cultivation and farming that will enrich the commission lucratively. It is also unambiguously and clearly mentioned in the section 5 that all board activities and function must be in line with the principle of *Shariah*; therefore, the board must abide with the *Shariah* principles towards their activities. To this present research, qualified and competent person must be appointed to run and manage the affair of *Waqf* endowment foundation in order to follow the rules and principle of Islamic law strictly. In addition to the provisions on *Waqf* endowment collection, section 31 provides that: Endowment shall be received from any individual persons groups who profess Islamic faith, and who is residence in the state or outside of any part of Muslim World and who is the right owner of the property endowed.⁸¹

It indicates from section 31 of the *zakat* and *Waqf* collection and endowment that non-Muslim is not eligible to give *zakat* nor *Waqf* endowment to the board due to the his or her faith that contrary with Islam.

Sections 32 say that:

These include all lawful items permitted by *Shariah* and any amount quantity.

(1) The Government should pay 2% of the total revenue accrued to the Board monthly

⁸¹Zakat (collection distribution and endowment) Board Law, 2003, Section 31.

as endowment.

- (2) Contractor shall give 1% of the total sum of each contract awarded by the State Government to the Board as endowment.
- (3) Other sources include the estate, farmlands, and shares in companies, centres of learning like schools, libraries and institution, and centre of worship like mosques. Social amenities like well or boreholes, orphanage home, part of salary, special grants by local and state government, and foundation. Social services like roads, hospitals, lost and found items in all parts of the states, inheritance of those who doesn't have heirs, donations, and other forms of *sadaqatun jariyah* are also included in sources of *Waqf* endowment as stated in provision.⁸²

The source of *Waqf* endowment is clearly stated in section 31 and 32 of the law that only Muslims is eligible and qualified to pay and contribute into *Waqf* endowment because it is unlawful for non-Muslim to involve in *Waqf* contribution because all act in Islam is considered as devotion and rewardeable act in Islam which is non-Muslim does not professed. The concerned of this thesis is part of this section states that 1% of the total sun of each contract awarded by the state government would be paid to the board as endowment. The question is whether non-Muslim contractor must pay 1% of the awarded contract and it is aforesaid that only Muslim is eligible to pay endowment to the board. This is based on the argument that government contract is meant for all qualified indigene of the state regardless of contractor's faith, religion, gender, or status and provided that the contractor is qualified to be awarded the state contract.

Section 33 provides that:

Once dedicated for endowment, the property ceases to be under the control of the owner and:

⁸² Zakat (collection distribution and endowment) Board Law, 2003. Section 32 (1-3).

- (a) Such endowment cannot be inherited, donated or sold out by anybody unless to improve them
- (b) There shall be witness and certificate to testify that the owner(s) have released the property.
- (c) The endowment department and the Board is the trustee to administer the properties in such a way that the benefit goes to the general public or those people to whom the endowment are mad.⁸³

It has to be noted and promptly discussed that there must be strong evidence or sealed certificate or official letter signed by the authority that the owner of the gifted property is willingly and voluntarily donated the said property for *Waqf* as endowment in order to cater for the needy people across the nation. This kind of signed and sealed document will not give hires of the donor to reclaim or file any case against the gifted property. Even, the eldest child of the donor must be the witness and signed the document for the future purposes and to protect the right of *Waqf* endowment to maintain their full rights on any gifted or donated property. This thesis has examined the provisions on *zakat* and *Waqf* endowment law and it is discovered that the provisions can be used as basis and legal background to execute the planned programmes and activities by the commission. However, the provisions does not provide any severe provision to deal with any member of board committee who violated the laws related to the *zakat* and *Waqf* endowment such as corruption, fraud, molestation of applicant, undeserved abuse against the applicants and other punishable crime or offense. The punishment for violator of the provision must be clearly mentioned and provided in order to enlighten and educate the member of *zakat* and *Waqf* committee towards their limits. Prescribing the punishment or fine on any

⁸³Zakat (collection distribution and endowment) Board Law, 2003. Section 33 (a,b, and c).

punishable act will reduce the rate and percentage of crime within the commission for the interest of the commission and the society at large. This is because the commission is dealing with money and property that required honesty and trust which honest person is solely eligible and qualified to hold the post, otherwise, the commission will not be able to realize the purpose and objective of *Waqf* endowment commission and the less privilege's predicament cannot be solved due to lack of insufficient money due to the rate of corruption that skyrocketing the mission.

2.7 Who can establish *Waqf* ?

Historically, *Waqf* is traced back to the tradition of Prophet Muhammed (s.a.w) that handed down in succession by Ibn Awf, Nafa and Ibn Umar where Umar had acquired a piece of land in the canton of Kaibar and later sought the counsel of the Prophet Muhammed (s.a.w) who stated that:

“Tie up the original property and devote the usufruct to human beings which is not to be sold or made the subject of gift or an inheritance. Bring the product to your children, or relatives and needy in the path of Allah.”⁸⁴

The above *hadith* indicates that parents should make adequate provision and maintenance to his children and relative and also render assistance and financial support to the needy people in his domain as part of devotional act and deeds in Islam. One should not only concern with his children and relative alone but also needy people must be assisted financially.

It is undeniable fact that Umar bin Khattab dedicated the property and the *Waqf* created continued for centuries until the land was considered waste. Similarly, the

⁸⁴ Shahih Al-Bukhari, Vol IV, the Book of wasaya. Lahor, Pakistan: Kazi publication, 15-16.

Prophetic Mosque known as *Masjid al-Nabawi* was built on the land donated by the two orphans who rejected the payment of the land as *Waqf* for being expected the reward from Almighty Allah for their good deeds. Caliphate Uthman bin Anfan unilateral bought a well and donated for the useful of needy people in order to have access to portable and drinkable water. Presently in Nigeria, many Nigerians have no access to drinkable and clean water which needs attention of philanthropist or the *Waqf* commission to find the solution to such predicament across the nation. This can be done by having more wells across the nation while many mosques also need to be renovated with modern toilet and water for the easiness and convenience of the worshippers. A piece of land can be bought where many well can be dug in the useful of needy people throughout the Federation.⁸⁵ In Nigeria, it is not easy for individual to create or unilateral establish *Waqf* commission with the percentage of poor and less privilege in Nigeria. Although, rich or philanthropist in each family, ward, local government and state level should try as much as possible to map out on how to empower some needy and less privilege people in his or her surrounding rather left everything to the government. Some Nigerian state government creates and establishes the *Waqf* commission purposely to reduce the poverty rate in Nigeria and their respectful states in particular as one of the promises during the campaign for election.

It is only the government can fully responsible for the adequate provision for the needy people's maintenance because the commission or foundation needs huge money to run and execute the *Waqf* activities and also to cater for the poor people in the state and beyond. Nevertheless, individual or rich people can also contribute the mission or jointly and collective create their *Waqf* commission that will cater for needy people in the local government or at state level.

⁸⁵Monzer Kahf, 2006, 12, Ahmad and Safiullah, 2012,229-232.

International donor can render assistance in establishment of *Waqf* commission in Nigeria by having headquartered while the board would be selected from each state in the nation. The state representative would be the state director that will execute the headquarter activities and the states programs based on the needs of less privilege people from each state. *Waqf* can be called with different terminology in as much it serve purpose of *Waqf* of it creation and establishment. This is based on the argument that Umar *Waqf* land *Thamgh* for his children, *Waqf* Zubair Ibn Awwam is for his daughter; In addition, *Waqf* caliphate Abu Bakar is meant for his children, *Waqf* of Sa'ad Ibn Abi Waqqas was dedicated in favour of his children (the mawquf 'ayahim/beneficiaries) and Uthman's *Waqf* land was also gifted for the usage and benefit of needy people during the period.

It can be concluded from above analysis that property can be donated on behalf of biological children, parents, or relative in as much the property is follow *Waqf* procedure and not contrary to Islamic principle. The *Waqf* can be also named or called other name that will serve similar purpose and objectives in eradicating and eliminating poverty among the Muslims and beyond. There is no harm if state or federal government controlling the foundation or commission in order to maintain rules and order in the board execution and administration that will follow normal procedure in the interest of poor people across the nation. The following are the condition that must be satisfied before the establishment of *Waqf* commission by the individual, group, society, or the government such as:

- (a) The property which is the subject matter of the *Waqf* must belong to the owner at the period of donation of such property to the *Waqf* foundation.
- (b) The donor or dedicator must be competent to make such *Waqf*.
- (c) Undivided *Waqf* share is considered as valid but if it is for mosque or burial ground is invalid.

- (d) The purpose of *Waqf* must be in line with Islamic principle.
- (e) The object of *Waqf* must be unambiguously and clearly stated and defined with certainty.
- (f) *Waqf* that donated by the testator during his death sickness cannot be operated unless the heirs consent to such property that in excess of one-third of the property.
- (j) Any *Waqf* created by will cannot be executed and implemented due to the clause in the will that it shall not be operative in case of a child born to such testator because the will can be revoked or modified by a testator before his death.

2.8 Nigerian Muslim Community and *Waqf*

Extreme and abject poverty confronting many less privilege people globally also affect Nigerians in general and Nigerian Muslims in particular. It has been argued that 1.1 billion people are leaving below or less than \$1 dollar per day while 1 billion people do not have opportunity to have access to clean and portable water for drinking and 6 million children die yearly as a result of hunger and 143 million less than 18 year dwelling in developing countries.⁸⁶ Many Nigerians are the victims of the bad and corrupt leaders that piloting Nigerian government despite the natural resources that endowed by Almighty Allah and human resources. Yet, the rate of poverty, unemployment, inadequate funding, corruption, lack of unambiguous and un-cleared policies frameworks, and selfishness are gravely contribute to the financial incapability of many Muslims across the nation that attract the establishment of *Waqf* across the nation in order to take care of needy people properly and adequately. It is believe that *Waqf* endowment commission across the nation will minimize and reduce the suffering

⁸⁶Thinkers Forum. Campaign for the poor-working to establish a social welfare system in 2009. www.thinkersforum.org See also Nurudeen, M. I. (2010). Scholarly, merchants and society: imperative for waqf-based participatory poverty alleviation initiatives in Kano, Nigeria. Paper presented in seventh international conference-the tawhidi epistemology: zakat and waf economy, Bangi, pp. 285.

and financial constraint of poor in the nation.⁸⁷ Many Muslims can have multiple and varieties of choices and advantages in *Waqf* assistances such free interest loan, creation of job, subsidized rates of shop, housing, food, and other materials that are very useful for the people across the nation. *Waqf* can also give financial support to the incapable students to pursue their education with agreement to assist the commission when they are working in order to give similar support to the less privilege students in future.⁸⁸ In support of the positive roles of existence *Waqf* commission in Nigeria to eradicate poverty and promote socio-economic, scientific, educational and medical well-being and welfare of the Muslim in particular can see in the Islamic-world observation says that:

The very idea of *Waqf* itself consist of creating and developing a third sector distinct from the profit-motivated private sector and authority based public sector, and charging this third sector with the responsibility of performing a group of tasks in the arena of righteousness, goodness, kindness, mercy and benevolence. Historically, the Islamic society assigned education, health, social welfare and environmental welfare to this sector. Furthermore, the third sector provided defence services and public utilities in many instances.⁸⁹

The above lines indicates the importance of *Waqf* in Muslim society as a righteousness foundation or endowment in support of needy people in society where the commission will carry out and execute various type and kinds of lucrative business and transaction in eliminating and eradicating financial mess of concerned Muslims across the nation. For instance, if *Waqf* endowment commission engage in bakery business at

⁸⁷ Nurudeen, 286.

⁸⁸ Nurudeen, 287, Neareast (2009) "The role of waqf in developmet." <http://www.neareast.org>.

⁸⁹ Islamic-World (2006). *Waqf*. <http://www.islamic-world.net/economic>. See also, Nurudeen, 289.

least 3 bakeries in each states, they can employed many employees to work in the bakery where the wages or salary would be paid and needy employee would be financially okay and able to provides for his or her immediate family if not extended family. In such of bakery, employee will responsible for different tasks and duties and since bread is daily need and lucrative business that will yield profits and boost the income of commission in order to have sufficient provision to solve the applicant's needs. Some workers can supply the bread to the seller across the states, so, by engaging in such business, the *Waqf* commission will have opportunity to employ many workers. Based on this analysis, it is argued that *Waqf* is the most significant charitable organization or institution that provides necessary support and play important role in society development socially, economically, educationally, and religiously.⁹⁰

According to Bremer:

Typically, the trustee was charged with developing the commercial properties so that income would be generated to support social service structures. This combination of commercial and social purpose enabled the most effective *awqaf* to function as a sort of self-contained urban development authority. A forward-looking *mutawali* had the capacity to rehabilitate an entire urban zone or the centre of a town and to establish a mix of housing, commercial facilities, mosques, and social services facilities suited to the needs of the time.⁹¹

This thesis in line with Bremer observation holds that the roles of *Waqf* commission in transforming the lives of many needy people among Muslim across the nation especially in Nigeria as a case study of this research. This is based on the argument that *Waqf* commission can engage in many combination of commercial and business that would have positive impact in the lives of Muslim at large. The boards

⁹⁰Bremer, J. (2004). *Islamic philanthropy: Reviving traditional forms for building social justice*, Washington DC, University of North Carolina, Chapel Hill, 28-29. See also, Kahf, M. 1998, 6-27.

⁹¹ Bremer, 2004, Nurudeen, 2010:291.

whom are the trustee must always strive into the profitable activities and transactions that will increase and robust the *Waqf* revenue in Nigeria. Many programmes can be funded by *Waqf* endowment such as schools, hospitals, house, hostel, companies, and farming which some will meant to assist needy people while some will meant for business to generate income.

2.9 Conclusion

It can be concluded that *Waqf* endowment has been reintroduced and established in Northern part of Nigeria and the *awqaf* houses are performing positively to cater for less privilege people in their respectful states. It is discussed that there is need for the *awqaf* endowment across Nigeria to engage in profitable business that increase endowment revenue in order have sufficient money to cater for the needy request. In Nigeria, there is an inadequate facility in schools, insufficient housing and renting houses are predicament across the nation because ordinary citizens are incapable to build their living house. Therefore, *awqaf* endowment foundations have to render assistance in giving support to the Muslims in all aspect. Individual philanthropist can join hands together to establish *Waqf* commission in the domain purposely to cater for the needs of needy people or less privilege citizens. In addition, there are legal provisions on *Waqf* administration in some states in Nigeria that can be amended as *Waqf* Act across the nation provided that each states representative involve in the *Waqf* Act amendment and collectively endorsed the *Waqf* Act in the interest of needy Nigerian Muslims in particular.

CHAPTER 3: CONCEPTUALIZATION AND ADMINISTRATION OF WAQF IN NIGERIA

3.1 Introduction

This chapter is undertaken to examine and analyse a number of Islamic related issues pertaining to *Waqf*. The various dimensions of *Waqf* designated for study in this research include the theoretical concept of *Waqf*, the Islamic legal framework of *Waqf*, classification of *Waqf*, the philosophy and objective of *Waqf*, Islamic juristic views on *Waqf*, appointment of administrators as *mutawalli*, and the provisions for the *mutawalli*. The chapter also examines the establishment of *Waqf* in Nigeria, restrictions, limitation or impediments to practicing *Waqf* in Nigeria, and the future development and of *Waqf* administrations in Nigeria. This is followed by a study of the financial requirements of *Waqf*, ownership of *Waqf* in Nigeria and religious and charitable organisations. Permissible transactions under *Waqf* and regulatory control of *Waqf* in Nigeria are also examined.

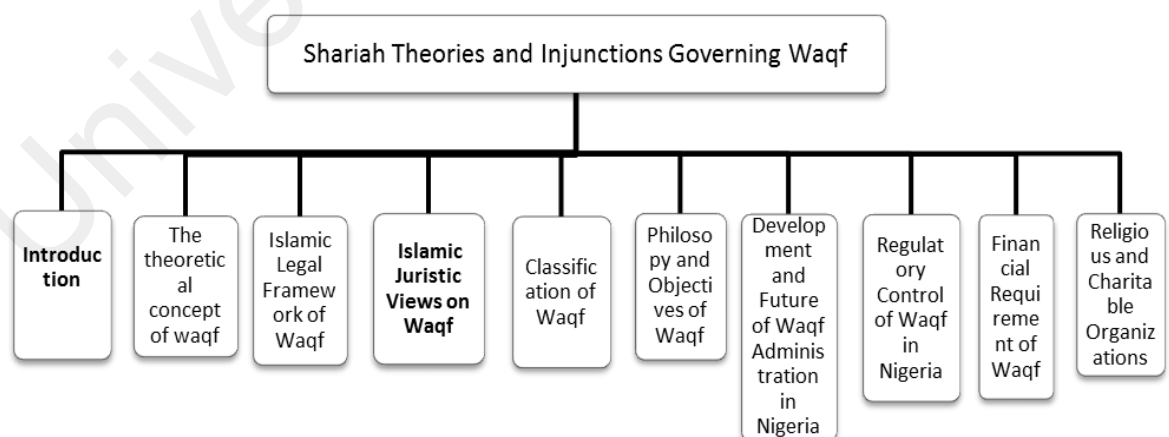


Figure 3.1: Conceptualization and Administration of *Waqf* in Nigeria

3.2 The Theoretical Concept of *Waqf*

The word '*Waqf*' originally derives from the Arabic root verb '*waqafa*' which means to hold, to keep or to detain. Linguistically, *Waqf* simply refers to forbidding the movement, transport or exchange of something.⁹² Legally, *Waqf* refers to the detention of a specific thing by the owner or appropriator or instructing that all profits or gains be solely awarded to the charity foundation in order to cater for the poor. When the '*waqif*' devotes or transfers his/her property to a *Waqf* institution, he/she transfers the ownership to Allah with the intention of being rewarded by Allah for his/her charity. The *Waqf* can be made in written or oral form, or any action or signal that clearly indicates the free will of the *mutawalli* to donate his/her property to the *Waqf* institution.⁹³ It has been argued that there is no equivalent expression in English to interpret or convey the exact meaning of the Islamic concept of *Waqf*. In spite of this, Bewley proposes that word '*Waqf*' literally means confinement or prohibition.⁹⁴

The definition and concept of *Waqf* indicates the donor's intent to gift a portion of his/her property for permanent endowment for the purpose of charity and as a financial aid for those in need. Once the property is donated to the *Waqf*, the donated property becomes Allah's property and the conditions stipulated by the *waqif*, who is the donor, should be strictly followed by the management or *Waqf* administrator.

⁹² Ahmed, R. (2011). "Waqf Endowment" Scope and Implication, ISESCO, Rabat, Morocco, p.13. See also, Md. Mokhter, A. & Md, S. (2009). Management of *Waqf* Estates in Bangladesh: Towards a sustainable policy formulation. This paper was presented at the International conference on *Waqf* laws and management: reality and prospects, International Islamic University Malaysia, Kuala Lumpur, 20th-22nd October, pp.4-5.

⁹³Hidayatullah, M. & Hidayatullah, A. (1996). *Mulla's Principles of Mahomedan Law*. Nineteenth edition. Bombay: N.M Tripathi Private LTD, 143. See also, Ahmed, R, 13. See also, Adnan, T. (2013). The legal and Administrative Analysis of *Waqf* in Bosnia and Herzegovina. In: *Waqf* laws and management with special reference to Malaysia. Institute of Objective Studies, New Delhi, India, pp. 315-337.

⁹⁴ Md. Mokhter, A. & Md, S. (2009). Management of *Waqf* Estates in Bangladesh: Towards a sustainable policy formulation. This paper was presented at the International conference on *Waqf* laws and management: reality and prospects, International Islamic University Malaysia, Kuala Lumpur, 20th-22nd October, pp.4. See also, Hasanuddin Ahmed, Strategies to Develop *Waqf* Administration in India, Research Paper No.50, Islamic and Training Institute, Islamic Development Bank, Jeddah, Saudi Arabia.

An important question is whether *Waqf* can be revoked after the completion of dedication of property or asset as a *Waqf* endowment? The general rules of the Hanafi school of thought as well as Imam Malik, Imam Shafi'i and Imam Hambali schools of thought is that the subject cannot be revoked after the dedicator and *Waqf* commission have willingly concluded the agreement. On the other hand, Imam Abu Hanifa further stresses the point that *Waqf* can be revoked based on the court order based on the legal and reasonable evidences and reasons but Abu Yusuf and Imam Muhammed differed from Abu Hanifa's view. It is legally permitted to introduce conditions into *Waqf* property in such a way to permit the *waqif* (dedicator) the right to revoke the property upon his/her will. On the issue of the right of revocation, Hanafi jurists expounded different views on such rights whereby Imam Muhammed suggests that right of revocations are invalid because it undermines the sanctity of *Waqf*. Abu Yusuf maintains that *Waqf* remains valid and lawful provided that such an option to revoke the *Waqf* is limited to three days if the dedicated property is a mosque (*masjid*). On the issue of testimony the testator has the right to revoke the donated property before donor's death but after donor's death, the property becomes a *Waqf* charitable property.⁹⁵

This research adopts the position of classical jurists who assert that dedicated property such as movable and immovable properties cannot be revoked since it has been dedicated for the benefit of the needy. This assertion is based on the argument that such dedicated and donated properties are gifted specifically for the needy. Therefore, revoking such property from the benefit of the needs will create unnecessary hardships for the public. As such, no such permissions should be permitted to donor in so long as the initial act of gifting the *Waqf* followed correct procedures and the donor acted free

⁹⁵ Jaldeen, 311-312

from coercion. There must be clear and unambiguous provisions indicating that donors cannot reclaim his/her donated properties after the completion of a specified period.

3.3 Islamic Legal Framework of *Waqf*

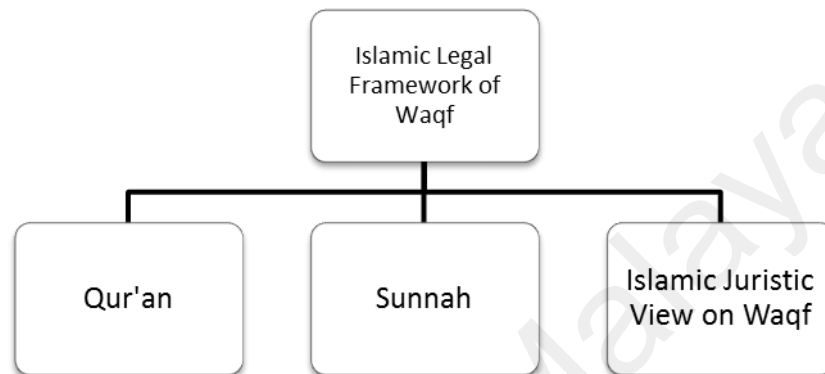


Figure 3.2: Islamic Legal Framework of *Waqf*

3.3.1 Evidences from *Qur'an* and *Sunnah*

There are numerous evidences from *Qur'an* and *Sunnah* in support of *Waqf* donations and rendering financial assistance for those less privileged in society as an act of *ibadah* (worship). Although *Qur'an* does not directly, specifically or explicitly address *Waqf*, support for *Waqf* is inspired and inferred from *Qur'an's* many references such as *sadaqah*, *infaq*, kindness and dispensing of charity to the needy across the nation.

The *Qur'an* says:

“They ask you (O Muhammad s.a.w) what they should spend. Say: whatever you spend of good must be for parents and kindred and orphans and the poor and the wayfarers, and whatever you do of good deeds, truly, Allah knows it well.”⁹⁶

⁹⁶Surat Al-Baqarah: 215.

“By no means shall you attain al-Birr (piety, righteousness (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.”⁹⁷

“O you who believe! Spend of the good things which you have (legally) earned, and 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 (Free of all needs), and Worthy of all praise.”⁹⁸

Concerning the *Hadiths* of Prophet Muhammad (s.a.w.), there are many recorded reports of events in which various properties were given or gifted as *Waqf* for the benefit of the less privileged during the Prophet’s time. There is no evidence to suggest that the Prophet (s.a.w.) did not encourage the giving of gifts as *Waqf* properties. It should be noted that Prophet Muhammad (s.a.w) was responsible for the construction of the first mosque (*‘Quba’ in Madinah*) on the land of two orphans who rejected the payment of land proposed by Prophet Muhammad on the argument that they would be rewarded by Allah in the hereafter.⁹⁹ Such activities find support in the Quran in the following verses:

The earth belongs to Allah and be patient. Verily, the earth is Allah’s. He gives it as a heritage to whom He wills of His slaves....¹⁰⁰

His is the kingdom of the heavens and the earth. And to Allah return all the matters (for decision).¹⁰¹

⁹⁷Surat Al-Imran: 92.

⁹⁸ Surat Al-Baqarah: 267.

⁹⁹Mek Wok, M. & Sayed, S. S. (2009). Optimization of Philanthropic *Waqf*: The need for Maqasid-based legislative strategies. This paper was presented at the International conference on *Waqf* laws and management: reality and prospects, International Islamic University Malaysia, Kuala Lumpur, 20th-22nd October, pp.2-12.

¹⁰⁰ Surat Al-Araf: 128

¹⁰¹ Surat Al-Hadid: 5.

Who believe in the Ghaib and perform *As-Salat* and spend out of what we have provided for them [i.e give *zakat*, spend on themselves, their parents, their children, their wives and also give charity to the poor and also in Allah's Cause].¹⁰²

And in their properties there was the right of the Sa'il (the beggar who asks) and Mahrum (the poor who does not ask others).¹⁰³

And those in whose wealth there is a recognised right. For the beggar who ask, and for the unlucky who has lost his property and wealth (and his means of living has been straitened).¹⁰⁴

It is not Al-Birr (piety, righteousness, and each and every act of obedience to Allah, etc) that you turn your faces towards east and west in prayer; but Al-Birr is (the quality of) the one who believes in Allah, the Last Day, the Angels, the Book, the Prophets and gives his wealth, in spite of love for it, to the kinsfolk, to the orphans, and to *Al-Masakin* (the poor), and to the wayfarer, and to those who ask, and to set slaves free, performs *As-Salat* and gives the *zakat*, and who fulfil their covenant when they make it, and who patient in extreme poverty and ailment (disease) and at the time of fighting (during the battles). Such are the people of the truth and they are *Al-Muttaquin* (the pious).¹⁰⁵

“They ask you (O Muhamad s.a.w) what they should spend. Say: whatever you spend of good must be for parents and kindred and orphans and *Al-Masakin* (the poor) and the wayfarers, and whatever you do of good deeds, truly, Allah knows it well.”¹⁰⁶

“And give to the kinsman his due and to the Miskin (poor) and to the wayfarer.”¹⁰⁷

“So give to the kindred his due, and to *Al-Miskin* (the poor) and the wayfarer. That is best for those seek Allah's countenance; and it is they who will be successful.”¹⁰⁸

¹⁰² Surah Al-Baqarah: 3.

¹⁰³ Surah Al-Dharyat:19.

¹⁰⁴ Surah Al-Ma'rij: 25.

¹⁰⁵ Surah Al-Baqarah: 177.

¹⁰⁶ Surah Al-Baqarah: 215.

¹⁰⁷ Surah Al-Isra: 26.

In Madinah's early days of Islam, many mosques were constructed as awqaf properties such as *al-Masjid al-Nabawi*, *Masjid Quba*, *Masjid Haram*, *Masjid Bani Dinar*, *Masjid Bani Tufrah*, *Masjid al-Jum'ah*, *Masjid al-Rayah*, *Masjid al-Sabaq*, and *Masjid al-Sajdah* to name a few.¹⁰⁹

Abu Talhah went to Prophet Muhammad (s.a.w.) after the revelation of verse 92 of surah al-Imran and said: "O Allah's Messenger, in line with Allah's command that I will not attain piety until I (you) spend of what you love, and the most beloved property to me is Bayruha- a garden where the Prophet used to go and sit under its shade and drink water. I give it to Allah and His Messenger, hoping for Allah's reward in the hereafter. So, O Allah's Messenger uses it as Allah orders you to use it. "Allah's Messenger said: Bravo! O Abu Talhah, it is a fruitful property. We have accepted it from you and now we return it to you. Distribute among your relative."¹¹⁰ Similarly, Mukhairiq who was a companion of Prophet Muhammad (s.a.w.) declared in his will that he donates the seven orchards that he owned in Madinah to Prophet Muhammad (s.a.w.) after his death. When he passed away, the Prophet made the seven orchards a charitable *Waqf* for the benefit of the poor and needy.¹¹¹

Islam encourages such charitable deeds as shown in the following hadith:

"When a person dies, all his good deeds ceases except three: the establishment of welfare institutions, the writing of a book and pious children who will pray for them."¹¹²

Umar Ibn Khattab (r.a.) who got a land in Khaybar and the went to Prophet Muhammad (s.a.w) and said: Messenger of Allah! I got a land in Khaybar. I never got a property more precious to me than this. What do you advise me? He said: "If you want, you can make *habs* on bequeath it, and give it as *sadaqah* (charity); provided that it should not be sold, bought, given as gift or inherited. Ibn Umar who narrated the incident said,

¹⁰⁸ Surah Ar-Rum: 38.

¹⁰⁹ Ahmad & Safiullah, 2012,229-232, Khaf, 2006, 12

¹¹⁰ Al-Shawkani, M. B. A. (1392H). *Nayl al-Awtar*. Beirut: Dar Ihya al-Turath al-Arabi, pp. 136.

¹¹¹ Mek Wok and Sayed Sikandar, 2009:2-10.

¹¹² Tirimidhi, Sunan, Abwab al-Manaqib (Babu Manaqib Uthman), Hadith no.660.

“then Umar gave it as charity for the poor, relatives, slaves, wayfarers, and guest.¹¹³ In addition, Abu Dawud reports from the narration of Yahya bin Sa'id, that a great grandson of Umar ibn Khattab (r.a.) gave him a written copy of the deed of ownership of the *Waqf* in Khaybar. The deed testified that Umar (r.a.) had added other properties as *Waqf*.¹¹⁴

Imam Tirmidhi and Nasai recorded two kinds of *Waqf* donated by the third Caliph, Uthman bin Affan (r.a.) The first reported case of *Waqf* is when Prophet Muhammad (s.a.w.) arrived in Madinah he realized that the city had very little drinking water except the water of Bi'r Rumah (the *Rumah* well). He asked: Who will purchase *Bi'r Rumah* to equally share the water drawn there from with his fellow companions and shall be rewarded with a better well in *Jannah*? Uthman (r.a.) then bought half of it from its owner, who was a Jew, with his own money on the condition the Jews would draw water on one day and Muslims would draw on the other day. This agreement continued for two days until the Jewish co-owner approached Uthman and complained that the water had been polluted by the Muslims and asked Uthman (r.a) to completely purchase the well. Uthman (r.a.) then purchased it and made it *Waqf* for the use of the Muslims .¹¹⁵ It was reported by Muslim from the narration of Thabit bin Anas that Abu Talha made his land (orchard) Bayruha for Allah and asked Prophet to be his witness.¹¹⁶ Ibn Hazm reports that the Caliph Ali bin Abi Talib donated lands he owned in Yanbu and Wadi al-Qura as *Waqf*. Talhah, Al-Zubair, Hakim bin Hizam and Fatima the daughter of the Prophet Muhammad (s.a.w) are all reported to have donated properties to *Waqf*.¹¹⁷

¹¹³ Muhammad Ibn Ismail al-Bukhari, Jami al-Kitab al-Shurut, Hadith no.2737, Muslim Ibn al-Hajjaj, Jami Kitab al-Wasaya, Hadith no 2764.

¹¹⁴ Kahf, 2006,12-13 , Ahmad & Safiullah, 2012,229-236.

¹¹⁵ Tirmidhi, Sunan, Abwab al-Manaqib, Hadith: 360, Md. Mokhter and Md Safiullah, 2009.

¹¹⁶ Sahih Muslim, *Hadith* no.7780.

¹¹⁷ Ibn Hazm, Al-Muhalla. Vol. 9, pp. 180.

The aforementioned quotations from the Holy *Qur'an*, *Hadiths*, and the deeds of the companions collectively illustrate the legality of the establishment of *Waqf* institutions that cater for the needs of the needy or the underprivileged among Muslims and non-Muslims in order to alleviate and reduce poverty in the community. The illustrative supporting evidences are just basis for the establishment of all forms of *awqaf* that render financial support to the impoverished. Based on such evidences, *Waqf* institutions have the potential to play pivotal roles in reducing the financial problem confronting Nigerian Muslims and non-Muslims in Nigeria. *Waqf* institutions throughout Nigeria are required to study and examine the needs of individuals and communities and make provisions accordingly. This is based on the reality that certain peoples and communities are in need of capital to start businesses to ensure the sustainability and continuity of charitable donations while others are in need of vocational instruments to pursue their livelihoods. The management of *Waqf* institutions should prioritise the protection of *Waqf* properties, enhance the value of *Waqf*, dispose, develop, invest, transact and maximise *Waqf* funds judiciously.

3.3.2 Islamic Juristic Views on Waqf

The aforesaid discussion discusses the view of classical jurists on the appointment of administrators and staffs who will administer the *Waqf* institution and the *Waqf* properties. The appointment must be based on credibility and competency in order to achieve the primary aims and objectives of establishment of *Waqf* endowment institution. There are several areas of contention among Muslim jurists concerning the appointment of administrators (*mutawalli*) who will manage or administer *Waqf* properties. One issue concerns private property and whether or not the owner can appoint himself or herself or appoint another person as administrator. Similarly is the question of if the *waqif* dies without proper arrangements, who will replace him/her

after his/her demise. In this case, the *waqif*, who is the owner, can be the *mutawalli* or appoint another person to administer the donated property. The donor can appoint qualified and competent person/s to administer the property on the death of the *waqif* if he/she dies without first appointing a *mutawalli* who will act on his/her behalf. Another point of contention among Muslim jurist is if the *waqif* can himself remain administrator? Muslim jurists differ on the legality of such conditions. According to the Maliki school of thought, such conditions are unacceptable on the ground that the owner donated the *mawquf* for himself and the donated property might be transferred or converted as family property after the demise of the owner. Based on this, the owner can appoint the administrator on himself as a condition. On the other hand, Ibn Abdul Hakam of the Maliki school of thought opined that the *waqif* can appoint the *mutawalli* and distribute the properties himself. However, Ibn Arafat disagreed and argued that it is unacceptable for a *waqif* to appoint himself as *mutawalli*. Similarly, the position of the Hanafi school of thought classified into two views while some of Abu Hanifa's disciples such as Imam Abu Yusuf, Hilal bin Yahya bin Muslim, Muhammad Ibn Hassan Ashybani argue for the validity and lawfulness of the *waqif* to appoint himself as *mutawalli* in order to influence others to donate *Waqf*. Others like Muhammad bin Hassan, opined that it is illegal for the *waqif* to appoint himself *mutawalli* and if he does, such *Waqf* is void and illegal. Imam Ahmad ibn Hanbal and Imam Shafi'i were of one mind on this matter. The arguments of both Muslim jurists can be classified into two views. The first opinion expounded that the *waqif* has absolute power to act as *mutawalli* without any hindrances and such *Waqf* is valid and lawful based on the actions of the companions of Prophet Muhammad (s.a.w). Later they opined that the *waqif* cannot appoint himself as *mutawalli*.¹¹⁸

¹¹⁸ Al-Shanqiti, A.I.A.A. (2004). *Mawahib al-Jalil min Adilat Khalil*. Bayrut: al-Maktabat al-Ilmiyah. See also, Mahdi, 2010.

In an attempt to reach some sort of closure on this issue. It appears that the aforementioned views depend on the particular situation, conditions and circumstances of each ruling. If the *waqif* has time to manage the property by himself according to Islamic principles and has made it clear to his or her heirs that such *Waqf* is not to be shared as the family estate after his demise, then the fear of such *Waqf* converting into private properties is no longer relevant. On the other hand, if the *waqif* is government, then, the government has to appoint the qualified and competent administrator (s) to administer the *Waqf* endowment because the governor or the president cannot administer the *mawquf* (property) by himself. In such a situation, the government cannot appoint itself with such powers. Finally, if the *waqif* is a private *Waqf* or collective *Waqf* by many groups, the administrator should be appointed to pilot and manage affairs of *Waqf* accordingly.

3.3.3 Appointment of many administrators as mutawallis

It is permissible to appoint many administrators to administer the affairs of *Waqf* endowments provided that all the appointees are qualified and competent. The appointees must be Muslim, mature, mentally and physically sound, pious, honest, morale and of good character and behaviour. During his caliphate Umar bin Khattab appointed Sayyidat Hafsat and those who qualified to manage his *Waqf*. Similarly, the Caliph Ali bin Abi Talib appointed Hassan as his mutawalli followed by Hussain who himself appointed qualified persons.¹¹⁹

It can be inferred from the above that the *waqif* can appoint many administrators to administer his/her *Waqf* especially at local government and state level which are beyond the capabilities of individuals to efficiently and effectively manage and administer due to the many significant challenges associated with large *Waqfs*. As such,

¹¹⁹ Ibn Qudamah, M. I. A. (1990). *Kitab al-Mughni*. Vol.5. Bairut:Dar al-Kutub al-illmiya, pp. 14. See also, Al-Khafiy 1987.

Waqf administrations require more than one administrator to head each unit or department at all of the local level, state level and federal levels where there would be a chief administrator. In Nigeria, the administrator can be appointed as a *mutawalli* in the local government. They are answerable to state administrators (*mutawalli*) while state administrators are answerable to the chief administrator at the federal level for the effectiveness and efficiency of their respective *Waqf* administrations. Having such departmental administrative offices will create job opportunities for the community.

3.3.4 Wajibat Nazir Waqf (Functions and liabilities of the Waqf administrator)

In order to maintain the sanctity of *Waqf* endowment institutions, the powers, functions, duties, and liabilities of the administrator should be clearly and unambiguously stated in the terms and conditions of *Waqf* before the appointment is finalised. It is the duty of the administrator to act according to the specifications and conditions of the *waqif* (donor) in so much as those conditions are in line with Islamic principles.¹²⁰ If the conditions laid down by the *waqif* contradict Islamic principles, it is unlawful for the administrator to abide by such rules and regulations. According to Imam Ibn Taymiyyah, if the rules and regulations of the *waqif* are in conflict with *Quran* and *Hadith*, such conditions are prohibited and unlawful for the administrator to abide by and implement. On the other hand, administrators can use his or her discretion and power to direct and channel the donated properties into lawful and legal charitable activities regardless of whether the donor stated such activities in his or her conditions or rules.¹²¹ For the best interests of the general public, the appointed administrator should behave in such a way as to achieve the goals and purposes of the *Waqf*

¹²⁰ Manar al-sabil, vol.2. 10, Kashshaf al-Qinai, vol.4., 258-259.

¹²¹ Fatawa al-Kabir li-Ibn Taymiyyah, vol.4.,509, Ilam al-mawqeen, vol.1. ,315.

establishment.¹²² The question is whether the administrator can carry out activities without the permission of others?

The many responsibilities and requirement of *Waqf* endowment institutions necessitate the appointment of many administrators who will properly manage the institution. The question is whether an administrator can singly execute or manage the *Waqf* alone? Classical jurists differed on the subject. According to the Maliki school of thought, if the *waqif* appointed two administrators at the same time and place, stipulated upon them the same terms and conditions, and their appointment letters contained the same content, then it is illegal for any one of them to execute decisions without the knowledge of the other. If he or she does so, the second administrator has the legal right to reject or accept the activities that have been carried out.¹²³ Iman Abu Hanifa and his disciple Abu Yusuf, argued that in such a case both administrators should act together and no one should carry out any activities without the permission of the others if the donor has already died. This argument is based on the terms and conditions set by the *waqif* for the execution of the *mawquf* (donated properties) in that there is a need for the administrators to consult each other on how best to administer the *Waqf* properties.¹²⁴ However, Imam Shafi'i held the view that the administrator can act single handily if the donor believes both of administrators are qualified and competent to manage the property properly. If the second administrator is weak, has died, or has become an apostate, the other can act alone. Nevertheless, if the *waqif* has appointed both administrators on the basis that both should act together, then, it is illegal and unlawful for any one of them to act without the permission of the other. In the event that one of the administrators resign, became an apostate, or is too weak to carry out their responsibilities, the judge (*Qadi*) shall appoint another qualified administrator to work with the remaining administrator because the donor entrusted the donated properties to

¹²² Niayah al-Muhtaj, vol.5., 398, al-Insaf, vol.7., 68, Riyad al-Masaail, vol.6., 111.

¹²³ As-shariu al-kabir lildariadr, vol.3, 453.

¹²⁴ Hashiyat Ibn Abidini, vol.10., 413.

the management of two administrators.¹²⁵ Lastly, Imam Ahmad ibn Hanbal opined that all appointed administrators must act together and it is unlawful to work alone because the donor appointed them purposely to work and act together. Therefore, according to the Hambali school of thought, no administrator can legally act alone without permission or knowledge of the others.¹²⁶

In this study, the *Waqf* endowment can determine any legal framework that is deemed beneficial and useful to the needy people based on the conditions, society, and necessities surrounding the *Waqf* properties or the needs of the applicants in as much as the administrator acts according to Islamic principles and without bias. If both conditions and circumstances deem it necessary for administrators to act collectively and not alone then such should be observed. Similarly, if it is considered necessary for an administrator to act alone, then, the administrator should be allowed to act alone and provide details to the second party or committee for their approval and endorsement.

There are many forms of communication based on modern technologies that facilitate information sharing that will enhance the administrator's activities. Communication through email, for example, is an effective form of communication which will allow for information sharing between committee members in order to collectively decide or reject on any given issue or action. In developing countries where there is a clear deficiency in communication and communication technologies, actions by administrators should be in line with the general objectives of the *Waqf* and decisions that are restricted to certain time constraints should not be ignored if there is a clear benefit for the *Waqf*. The primary concern is for the administrator to exercise discerning thought in such circumstances in order to identify the best course of action most beneficial for the *Waqf* and the realisation of its objectives.

¹²⁵ Ibn Qudamah, vol.2., 394, Hashiyat Qayubi vol.3., 110, Tuhfat al-muhtaj li-Ibn Hajar, vol.6., 286, Ibn Qudamah, vol.3., 77.

¹²⁶ Kashaf al-Qinai, vol.4, 272-273, al-Insaf, vol.7, 58-59.

3.4 Classification of *Waqf*

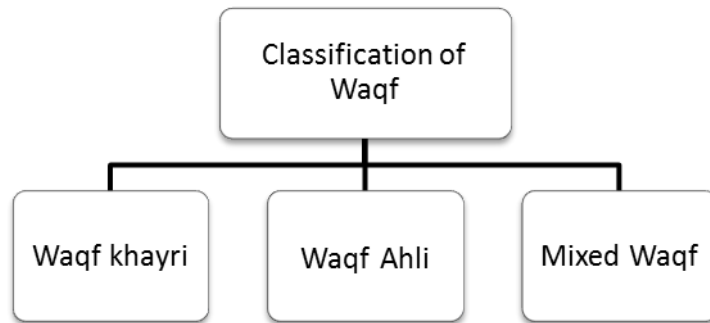


Figure 3.3: Classification of *Waqf*

Waqf can be categorized into three categories such as *Waqf khayri* (public *Waqf*), *Waqf ahli* (Family or Private *Waqf*), and mixed *Waqf*.

3.4.1 *Waqf Khayri*

This type of *Waqf* simply refers to the general *Waqf* geared towards charitable purposes in which donated properties are donated for the purpose of benefiting the greater public such as mosques, educational institutions, hospitals and other public amenities. The gifted properties are ultimately dedicated for the pleasure of Allah with the aim of being duly rewarded by Him either in this life or the next. The *Waqf khayri* can be anything that will benefit the underprivileged in society and/or realise the primary purpose of the *Waqf*. It has hitherto been discussed that the donor must be a mature, free and sane person at the time of donation, otherwise, such property is considered invalid for reasons of being a minor, slave or demented. In the context of Nigeria, the *Waqf* management is required to work hard and take extra-ordinary care when they are collecting property in order to ascertain the ownership and eligibility of donors at the time of donation. This consideration is geared towards maintaining the sanctity of the *Waqf* institution.

3.4.2 Waqf Ahli

Waqf ahli is another classification of *Waqf* in which the returns or income generated from the dedicated property are used for the benefit of family of the *waqif* or his/her descendants in terms of education, sustenance, shelter, medical treatment and other such needs of the biological children or instructed family or relatives of the donor (*waqif*). If the parents are capable of adequately providing for their children then their initial allocation can be forwarded to other more needy family members. Through such initiatives, the suffering that many children endure after the death of their parents can be eased and there is greater hope for their futures through promises of education. This type of family *Waqf* is considered a good security mechanism for children however many parents in Nigeria are unaware of family *Waqf*. In view of this, it is incumbent on Nigerian *Waqf* endowments to better educate the public about the merits of family *Waqf* as an alternative for their children's security after their deaths. The legal protections offered by family *Waqf* also help ensure that inherited properties are not abused by family members.

3.4.3 Mixed Waqf

The final type of *Waqf* is mixed *Waqf* which is a mixture of both *Waqf khayri* and family *Waqf* or private *Waqf*. Mixed *Waqf* means that part of the property can be dedicated for *Waqf khayri* and part for *Waqf ahli*. In this case, the donor must personally make it clear that part of the property is meant for *Waqf khayri* while the rest is for family *Waqf*. It is the duty of the *Waqf* management to make separate arrangements for mixed *Waqf* at the time of donation.

3.5 Philosophy and Objective of *Waqf*

The primary philosophical objective of *Waqf* is the contribution or any action, acceptable in *Allah's* eyes, that is of assistance to the underprivileged such as building mosques, hospitals, clinics, creating jobs, people empowerment, loans, and for the benefit of immediate biological children. Since the objective of *Waqf* is to render assistance or support that would be rewarded in the sight of *Allah*, *Waqf* objectives can differ from one place to another according to the needs of the underprivileged. All *Waqf* activities are considered devotional actions that benefit the founder and beneficiaries in as much as the procession and distribution of *Waqf* properties is in line with Islamic principles.¹²⁷ The philosophy and objectives for the creation of *Waqf* can also be a way of sending underprivileged students to study needed disciplines abroad. *Waqf* can be utilized to improve the standards of certain private Arabic schools in Nigeria that play an important role in securing better futures for their students.

Many public schools in Nigeria are heavily congested due to the large number of pupils due to inadequate facilities in terms of class rooms, chairs, and other facilities. Their insufficient facilities can be improved and expanded through *Waqf* contributions. Public libraries can be built where books and others references such as articles, journals, gazettes and other needed educational materials can be donated for the benefit of society. Similarly, some university libraries can be assisted through the purchasing of old and new books and journal for the benefit of all students. In addition, evening classes can be organised by *Waqf* endowments where religious studies and program can be organized and administered by the endowment. Mobile health clinics can be stationed in selected mosques within the state for the convenience of those people without access to medical treatment due to the high costs of medical treatments. Creation or stationing of mobile clinics will also create jobs for nurses and doctors who

¹²⁷ Jamal, J.N. (1990). The Islamic law of personal status. USA: Kluwer Academy Publishers group, pp. 276. See also, Abu Zahra, 53-54.

will attend to patients while serious cases can be referred to state or private hospitals. Wells can be dug at strategic places across the state and nation for the general consumption of the public and electrical transformers or electric plants can be donated to supply electricity and power for the many people living without power and electricity due to the inability of the government to provide adequate facilities for its citizens. Public toilets can also be constructed and appointed personnel can maintain its cleanliness and hygiene at a reasonable cost to the public.

3.5.1 Factors that Influence the Establishment of Waqf in Nigeria

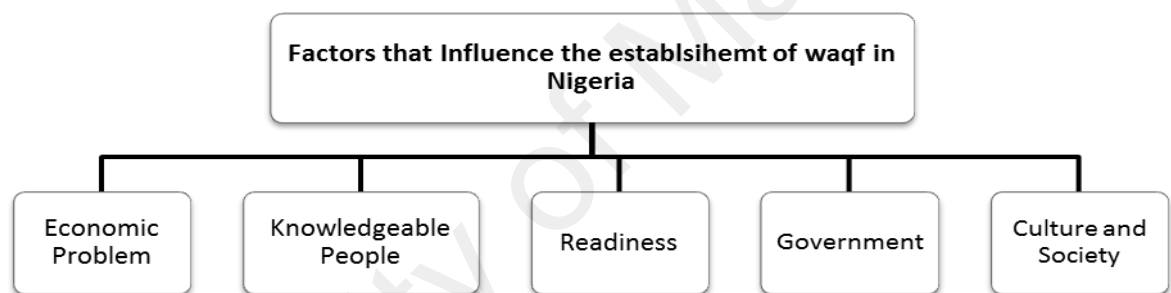


Figure 3.4: Factors that Influence the Establishment of *Waqf* in Nigeria

3.5.1.1 Economic Problems

The primary factor influencing the establishment of *Waqf* in Nigeria is the economy because many well-wishers or blessed Muslims wish to dedicate part of their properties as *Waqf* property for the interest of society in the aim to be rewarded in the hereafter. Without movable or immovable properties, it is difficult to establish *Waqf* particularly in Nigeria. If sufficient properties are allocated for the purpose of *Waqf* by individuals,

groups, and the government, there would be enough property to cater for the needs of the poor in Nigeria.¹²⁸

3.5.1.2 Knowledgeable People

The creation of *Waqf* endowments requires knowledgeable scholars in *Waqf*, Islamic economics, Islamic banking and other related sciences to manage and administer the *Waqf*. When such persons are appointed as part of the *Waqf* management committee, then, they will educate society on the values and importance of *Waqf* through their services. Subsequently their involvement also helps philanthropists to channel their properties to the most relevant institution. If the wealthy are aware of the capabilities of *Waqf* to maintain their properties in line with Islamic principles, there is a greater chance that they will willingly donate more and attract others to join them in donating to *Waqf* institutions. If ignorant people are appointed on the other hand, then there is a good chance that *Waqf* funds and properties will be mismanaged that will result in the closure of the institution and tarnish an otherwise pure institution. Based on this reasoning, there is a need for persons knowledgeable in *Waqf* and *Waqf* related issues to participate in the management and administration of *Waqf*. In the event of there being few knowledgeable persons, then a comprehensive familiarisation process should be initiated to better learn about *Waqf* and how it operates in order that they may better serve the interests of the community.¹²⁹

¹²⁸ Amuda, Y. J. (b) (2013). "Empowerment of Nigerian Muslim Households through *Waqf*, zakat, sadaqat and public funding" *International Journal of Trade, Economics and Finance* 4(6), 419-423. See also, Nurudeen, 2014.

¹²⁹ Aliyu, S. U R. (2013). "Islamic Banking and Finance in Nigeria: Issues, challenges and opportunity" in Dandago, K.I, Muhammad, A.D and Oseni, U.A (Eds.) *Essential of Islamic Banking and Finance in Nigeria*. Kano, Nigeria: Benchmark Publishers Limited, pp. 304-305. See also, Amuda, (b) 2013, 422.

3.5.1.3 Ability and Readiness

Ability and readiness are other factors that influence the establishment of waqf in Nigeria in order to know whether the waqf management staffs have required potentiality and capability to manage the endowed waqf property properly. The management capacity to act physically, mentally, legally, morally and financially in the interest of less privileged Muslims across the nation. The ability of management to generate more income from the endowed waqf property in order to have more and sufficient income to cater for less privileged Nigerian Muslims and beyond. Ability and readiness can be discussed from two perspectives namely the readiness of the *waqif* (donor) and the readiness of the *mutawalli* to manage and carry out the rules and regulations of the contract and exhaust efforts to develop *Waqf* funds and properties. If the *waqif* is well prepared, determined, dedicated and intends to donate part of his or her property for *Waqf*, and is similarly ready to work around the clock for the best interest of the *Waqf*, then, the aims and initial objectives of the *Waqf* to eliminate poverty from society would be achieved and many beneficiaries would be well empowered and able to provide adequate provisions for their immediate family (Amuda and Che Embi, 2013).

3.5.1.4 Government

This is a very important factor. The government is in the position to facilitate and speed up any law or projects that will accelerate the establishment of *Waqf* across the nation without any hindrances from anybody. The establishment of a *Waqf* committee is answerable to the *Shariah* courts in case of any illegal transactions. In addition, there would also be a need for the recognition of Islamic Banks across the state to manage *Waqf* accounts and other Islamic investments such as *mudarabah*, *musharakah*, and

sukuk. Similarly, the government should give financial support to *Waqf* institutions in order to assist those who are in need.¹³⁰

3.5.1.5 Culture and Society

Part of the political culture is the desire to be recognised and accepted by society in order to pave the way for him or her to seek future political posts. As such, some wealthy Nigerian Muslims desire that their contributions are well announced to the society in order that they may win the hearts of the community. Very few wealthy Nigerian Muslims donate in secret. In view of the current dire circumstances in Nigeria, this research is of the position that there is no harm in publically announcing charitable donations as it is potentially a means to encourage others to donate.¹³¹

3.5.2 Obstacles challenging Waqf practices in Nigeria

There are a number of factors that hinder the practice of *Waqf* in Nigeria particularly in the South and the South-west. Despite the fact that these areas largely consist of Muslims, *Waqf* is not well practiced and is not legally endorsed by the state government. Below are several reasons that help explain the situation.

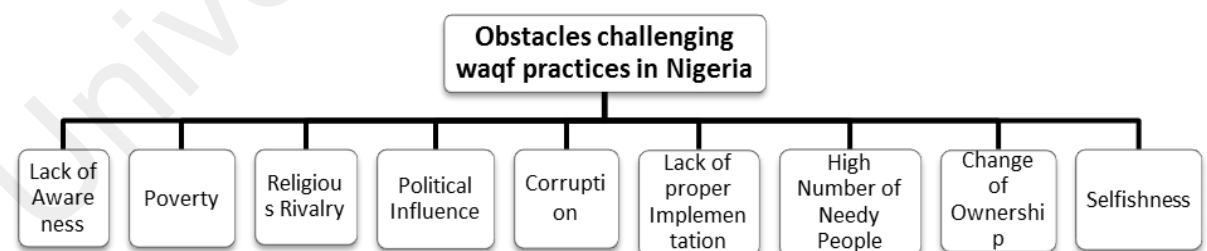


Figure 3.5: Obstacles challenging *Waqf* practices in Nigeria

¹³⁰Amuda, Y. J. & Nor Azizan, C. E. (2013). “Alleviation of poverty among OIC countries through sadaqat, cash waqf and public funding” *International Journal of Trade, Economics and Finance* 4(6), 403-404. See also, Khaf, .M. (2011). *Waqf and its sociopolitical aspect*. In Monzer Khaf & Siti Mashtoh Mahamood (Eds.), *Essential Readings in contemporary waqf issues* (pp. 51). Kuala Lumpur, Malaysia: CERT Publications Sdn. Bhd.

¹³¹ Nurudden, 2014, Aliyu, 309-310

3.5.2.1 Lack of Awareness and Ignorance

Lack of awareness of many Nigerian Muslims in general and philanthropists in particular towards the importance of the establishment of *Waqf* institutions individually or collectively as a way of reducing social illness or financial plights that confront many Muslims in the state and beyond is due to their ignorance towards *Waqf* institutions. Many philanthropists pay little attention to the creation of *Waqf*. The question is why Islamic scholars have failed to educate the rich regarding the importance of *Waqf*? The ignorance of Muslim philanthropists towards the importance of *Waqf* can be attributed to the failure of Islamic scholars due to their inability to educate populace on awareness of *Waqf* in the mosques, Friday prayers, and Islamic functions and events that present good opportunities to educate the public. On the other hand, some philanthropists might be encouraged to donate to *Waqf* but remain set in their ways. Ignorance of many philanthropists across the nation deprives the public from benefiting from the wealth of the rich that can be used as financial aids and empowering many needy people through *Waqf*. If the philanthropists in each state across Nigeria are well educated and well informed on the collective or joint efforts towards the creation of *Waqf* and giving to the needy, the accumulated properties would be channelled to appropriate quarters and it will be well managed by qualified and competent *mutawalli* or administrators. It is believed that no person is single handily capable of managing *Waqf* funds and properties in view of the high rate of corruption in the Nigerian government system. As such, it is preferable that individuals and communities donate to *Waqf* institutions in order to help those in need. Through such initiatives many lives can be changed socially, physically, mentally, religiously, financially and morally. But due to the ignorance and lack of awareness of wealthy Nigerian Muslims, and their apparent lack of social accountability many Nigerians are left suffering.¹³² The aforementioned

¹³²Amuda and Nor Azizan, 404.

Nigerian corrupt names were prosecuted for money laundering and the amount of money stolen from the government funds based on the EFCC official information.

Table 3.1
Names of Nigerian Prosecuted Money Launderers

Name of the Governor	State	Amount Involved
1- Ayo Fayose	Ekiti	N1.2 Billion
2- Joshua Dariye	Plateau	N700 Million
3- Saminu Turaki	Jigagwa	N36 Billion
4- Orji Uzor Kalu	Abia	N5 Billion
5- James Ibori	Delta	N9.2 Billion
6- Lucky Igbinedion	Edo	N4.3 Billion
7- Jolly Nyame	Taraba	N 180 Million
8- Chimaroke Nnamani	Enugu	N5.3 Billion
9- Michael Botmang	Plateau	N1.5 Billion
10- Boni Haruna	Adamawa	N 254 Million
11- Rasheed Ladoja	Oyo	N 6 Billion

Table 3.2
Names of Nigerian Prosecuted Money Launderers

Names of Minister/ Senator/House of Representative	Post/Duty/Designation	Amount Involved
1- Adenike Grange	Minister of Health	N300 Million
2- Iyabo Obasanjo Bello	Serving Senator	N 10 Million
3- Gabriel Aduku	Minister of Health	N300 Million
4-Prof. Babalola Borishade	Minister of Aviation	N 5.6 Billion

5- Femi Fani-Kayode	Minister of Aviation	N250 Million
6- Senator Nicholas Ugbade	Serving Senator	N5.2 Billion

Table 3.3
Names of Nigerians Prosecuted Money Launderers

Name of Director/Chairman/ CEO/Manager/Vice-Chancellor/ Police	Post/ Duty/Designation	Amount Involved
1 -Roland Iyayi	Managing Director of FAAN	N5.6 Billion
2- Nyeson Wike	Chief of Staff to River state Governor	N4.670 Billion
3- Kenny Martins	Police Equipment Found	N7,740 Billion
4- Filipinos	Charged for Oil Bunkering	N300 Million
5- Ghanaians	Charged for Oil Bunkering	N250 Million
6- Patrick Fernadez	Indian Businessman	N32 Billion
7- Bode George	Chieftain of the ruling party (PDP)	N100 Billion
8- Four Snr Zenith Bank Managers	Managers of Zenith Bank	N3.6 Billion
9- Prof B. Sokan and others	Directors of Inter-market Ltd	N636 Million
10 - Dr Ransome Owan and others	Chairman of Nigeria Electricity Regulatory Commissioners	N1.5 Billion
11 -Tom Iseghohi and others	GM& Managers of Transcorp Group PLC	N15 Billion
12- Dr Albert Ikomi	Perm Secretary	N43 Million
13- Dr Yuguda Manu	Chairman Taraba State Civil Services Commission	N17 Million
14 -Chief Joe Musa	DG National Gallery of Art	N1.012 Billion
15 -Dr Dayo Olagunju	Ex Sec. National Commission of Mass Literacy, Adult &Non- Formal Education.	N479 Million
16 -Hamman Bello Hammed and others	Ex-CG Customs	N2.5 Billion
17- Prof Innocent Chuka Oknkwo	Former Vice-Chancellor, Imo State University	N145 Million
18 – Dr (Mrs) Cecilia Ibru	Former CEO, Oceanic Bank PLC	N160.2 Billion
19-Dr Bartholomew and others	Former CEO Union Bank PLC	N187.1 Billion

Table 3.4
Names of Nigerian Prosecuted Money Launderers

Name of Director/Chairman/ CEO/Manager/Vice-Chancellor/ Police	Post/ Duty/Designation	Amount Involved
1- Raymond Obieri	Former Chairman Intercontinental Bank PLC	N131.8 Billion
2- Sebastian Adigwe and others	Falcon Securities Ltd	N277.3 Billion
3- Okey Nwosu		N95.1 Billion
4- Alex Nkenchor and others	Ex-Bank Manager	N860 Million

All above mentioned Nigerian figures were accused of money laundering from government or public funds.¹³³ It can be seen that the stolen money from Nigerian treasury can be channelled and used to empower the less privilege Nigerians across the nation. It is shows from the huge amount of stolen money that many of Nigerian leaders are heartless, selfish and corrupt people because they are using the office to enrich their personal account and income while many Nigerians are facing financial difficulties.

3.5.2.2 Poverty

Poverty is a socio-economic threat the Nigerians regardless of their gender, tribe, faith and status. The root cause of poverty globally is based on the argument and consensus of scholars that resources available to a nation are diverted and used to satisfy the needs and wants of few citizens of the concerned nation. Wrongful appropriation of national resources deprive many citizens their basic and fundamental needs.¹³⁴ The consequence is that the rich people become richer while poor citizens become poorer. Similarly,

¹³³ Amuda, (a), 327-329.

¹³⁴ Chambers 1989, Adewale, 48-55.

Chamber and Jordan's theories are the same and poverty has been classified into social Darwinian, culture, situational and structural theories of poverty.¹³⁵ Based on the above theories, it can be concluded that Nigerian leaders are becoming richer while the majority are becoming poorer due to misappropriation, corruption, and mismanagement of national resources causing absolute poverty across the nation.¹³⁶

Poverty is rife and common in every part of the globe. Even in the developed world the lives of many adults and children are fraught with deprivation.¹³⁷ Poverty can be studied from two perspectives; absolute poverty and relative poverty. Absolute poverty refers to a certain minimal living standard which is specified in terms of nutritional level, clothing, and the income required to support an individual.¹³⁸ Relative poverty is interpreted in relation to the prevailing living standards of society, recognizing explicitly the interdependence between the poverty line and the entire income distribution.¹³⁹ Based on the poverty definition, Nigerians are facing both absolute and relative poverty due to the rate of poverty. Many Nigerians cannot afford to feed themselves and their families adequately because of their low incomes and the size of the family.

In Nigeria, many adults and children find themselves in bad conditions due to the low income of their families. The rate of poverty in Nigeria is alarming where many men, women, and children are not able to eat well. Because of this, children flock into the labour market to survive and also to help their family. The Nigerian government is the root cause of the poverty in Nigeria due to their selfish ways. There are no concerted

¹³⁵ Adewale, 48-54.

¹³⁶ Amuda and Nor Azizan, 405.

¹³⁷ Freeman, M. (1997). *The moral status of children: Essays on the Rights of the child*. USA: Kluwer Law International, 85-86. See also, *Child Poverty and Deprivation in the UK*, (1990). National Children's Bureau, London.

¹³⁸ Shireen, M. H. (1998). *Income Inequality and Poverty in Malaysia*. New York: Rowman & Littlefield publishers, INC, 37-38.

¹³⁹ Sudhir, A. (1983). *Inequality and poverty in Malaysia: Measurement and Decomposition*. London: Oxford University Press, 113. Gree, J. & Thorbecke, E. (1986). "A Methodology for measuring food poverty applied to Kenya." *Journal of Development Economics* 24 (1), 59-74. See also, Shireen, 1998:38-39.

efforts to fulfil their promises which they made before they were elected as leaders. The *Shariah* does not recognise the wickedness of Nigerian authorities. Leadership is a trust (*amanah*) which is questionable and accountable in the hereafter. As such the government should make substantive provisions for their citizens. In spite of this, many philanthropists are capable of changing the lives of many underprivileged Nigerians by empowering them through education and providing them opportunities to better their futures. In such a way, the poverty levels of their respective communities can be significantly reduced. If the wealthy stop their extravagant spending and focus on social contributions, a lot of good can be achieved from individuals. It has been stated repeatedly in the Holy *Qur'an* that wealth is from Allah and must be spent to relieve those who are in need and suffering because it is a good deed and has advantages for both the recipients and givers.¹⁴⁰

*“That man can have nothing but what he strives for. That (the fruit of) his striving will soon come in sight.”*¹⁴¹

It is true that some are well versed and educated about the importance of *Waqf* especially Islamic scholars, but due to their limited income, they cannot render financial assistance to many needy people. This is because of the little that some are earning is insufficient for him/her to cater for their immediate family. Nevertheless, scholars can still contribute to the lives of the underprivileged by educating and informing those who are capable of establishing *Waqf* endowments to contribute to *Waqf*.

¹⁴⁰ Ajjola, A. D. (1984). *The Islamic concept of social justice*. Pakistan: Islamic Ltd, 122-123.

¹⁴¹ Surat al-Najim: 39-40.

3.5.2.3 Religious Rivalry

Knowledge is the key to everything in this life while ignorance will always be the source of many problems. Since many Muslims and Christians lack the basic principles that will guide and educate them to be tolerant, therefore, the conflict between both Muslims and Christians will continue. Many are not sufficiently informed on how to maintain peace and harmony in their surroundings. The large majority depend on their teachers and individual readings which is insufficient to achieve comprehensive understanding of their faith because they might not understand the significance certain beliefs. Recently, Nigerian Christians protested against the introduction of Islamic Banks in Nigeria claiming that Muslims want to convert the country into an Islamic state.¹⁴² The intention of the Central Bank of Nigeria is to incorporate Islamic banking into the Nigerian banking system which has been legally approved by the Nigerian Constitution. Despite the fact that Muslims constitute the majority of the Nigerian population, the majority of Nigerian Christians were against the creation of an Islamic Bank but all their efforts to block the introduction of Islamic banking in Nigeria were in vain. It can be deduce from this predicament, that *Waqf* may face similar criticism from non-Muslims especially in Christian majority states. For proper management of *Waqf* across the nation, there is a need for state government intervention to make the establishment of *Waqf* legally recognised.¹⁴³

3.5.2.4 Political Influence

Another predicament that might challenge the establishment of *Waqf* across Nigeria is the political influence involved in appointing the *Waqf* management where an incompetent person might be appointed to manage the affairs of *Waqf*. This can be seen

¹⁴² Abdulqadir, I. A. (2009). Constitutionality of Islamic Banking in Nigeria In Contemporary Issues in Islamic Jurisprudence. Benin, Nigeria: Rawel Fortune Resources, 96-115.

¹⁴³ Olorogun, L.A. (2013). Adopting best practices in the Islamic Banking Industry in Nigeria: Some case studies. In K.I Dandago, A.D Muhammad & U.A Oseni (Eds.) Essential of Islamic Banking and Finance in Nigeria (pp.46-47). Nigeria: Benchmark Publishers Limited.

in the appointment of Board Member concerning the pilgrimage whereby some members were not qualified to be appointed but due to their political connections or influence they were appointed. Later they were found mismanaging the office. Any issue related or connected with religion is a sensitive issue and cannot be politicised. The credible candidate should be appointed to run the affairs of religious programs such as *Waqf* institutions.¹⁴⁴

3.5.2.5 Corruption and Abuse of Office

Corruption by individuals might hinder the establishment of *Waqf* across Nigeria. There is a constant fear that some dubious and greedy mutawalli might divert the donated property to their own personal use which is later inherited by their heirs after their demise. It is an undeniable fact that many people are corrupt and the creation of *Waqf* requires more than one administrator in order to ensure effective administration. Corruption cannot be used as evidence or reason for not rendering assistance to needy people. The administration of *Waqf* endowments should be placed in the rights hands. The procession of appointment should be legal while the rules and regulations of the *waqif* should be clearly and unambiguous spelt out to the *mutawalli* who should be made fully aware of the consequences of his or her wilful commission.¹⁴⁵

3.5.2.6 Lack of Proper Implementation

Proper implementation of *Waqf* can only be achieved and materialized if there is proper implementation of *Waqf* administration and disbursement of *Waqf* property in line with Islamic principles. Therefore, the management must be well qualified and well aware of the rules and regulation related to transactions, business, and investment. They must

¹⁴⁴ Amuda & Azizan, 405, Monzer, 2011:51.

¹⁴⁵Asaju, K., Sunday, O. A. & Silas, F. A. (2013).“Corruption and service delivery: the case of Nigerian public service”. *Wudpecker Journal of Public Administration*, 1 (1), 001-006. See also, Amuda, (a), 325-329.

also be aware of the rules that regulate loans, agriculture, harvest, livestock, poultry, renting, transportation, and other lawful lucrative transactions. If the management fails to implement *Waqf* property properly, there would be a negative development concerning the *Waqf* and the main and primary goals of the *Waqf* would not be realized.¹⁴⁶

3.5.2.7 High Number of Needy People

The number of needy Muslims differs from one state to another based on the percentage of Muslims in a particular state. The large number of needy Muslims is a challenge confronting *Waqf* endowments because of insufficient resources and properties to cater for needy people. Due to the large numbers of needy Muslims, there is need for increased awareness regarding the need and benefits of *Waqf* especially among the rich. In a country of 180 million (one hundred and eighty million) people of whom the majority are Muslims, in order to cater for the large number of applicants, *Waqf* endowments have to engage in lucrative business ventures that will boost *Waqf* income through cash *Waqf sukuk* and other investment models. Although, *Waqf* endowments cannot eliminate poverty across Nigeria, *Waqf* endowments are capable of assisting huge numbers of applicants in so long as they are properly managed.¹⁴⁷

3.5.2.8 Change of Ownership

Changing ownership of *Waqf* property is another problem that might confront *Waqf* endowments in Nigeria if the administrator or management are greedy and work contrary to Islamic principles in changing the ownership to their personal property. In order to maintain honesty and sincerity in *Waqf* endowment institution in Nigeria, there must be rules and regulations or the *Waqf* Act must be endorsed by the upper houses in

¹⁴⁶ Amuda and Azizan, 405.

¹⁴⁷ Amuda and Azizan, 404.

Nigeria. If there are effective laws that guard and govern *Waqf* endowments across Nigeria and the punishment is spelled out in the provision, the management would think twice when considering illegal activities. The management will also act according to the rules and regulation while the primary goals of *Waqf* will materialize. Lawlessness will be controlled and the needy would be assisted and financially aided through *Waqf* properties. In addition, *Waqf* would be able to empower large numbers of unemployed adults while many would be employed by *Waqf* as part of the contribution of *Waqf* towards reducing social problems. The *Waqf* management and staff would be extra careful in carrying out their tasks in fear of the consequences for illegal actions.¹⁴⁸

3.5.2.9 Miserliness or Selfishness

Some rich people in Nigeria are well aware of the importance of *Waqf* socially, religiously, mentally, physically, and morally. Despite their many properties, they refuse to assist others due to their miserliness and fear that their money will finish. They find it difficult and cumbersome to give charity to the needy. Islamically, contribution to *Waqf* or giving *sadaqat*, is a voluntary act and there is no specific amount to be given out as *sadaqat* unlike *zakat*. Nevertheless, social problems are the responsibility of those whom are capable of rendering assistance to those who are seriously in need. Muslim scholars need to educate the society on the importance of *Waqf* and donating their property as *Waqf* in order to empower poor people within the state and beyond.¹⁴⁹

3.6 Development and future of *Waqf* administration in Nigeria

It is believed that the establishment of *Waqf* institutions across Nigeria will immensely change many lives positively. The institution of *Waqf* has existed from the time of Prophet Muhamed (s.a.w.) up to now and is capable of providing solutions to alleviate

¹⁴⁸ Amuda and Azizan, 405.

¹⁴⁹ Amuda and Azizan, 405.

poverty among Nigerian Muslims if the institution is put into the right hands. If the establishment of *Waqf* is given positive consideration without any hindrance from any quarter, the institution will positively impact on present and future societies and social problems would be significantly reduced. The development and future of *Waqf* in Nigeria is expected to grow since public awareness in this century is greater than previous centuries provided that qualified and competent administrators are appointed. The focus of development should be on the following:

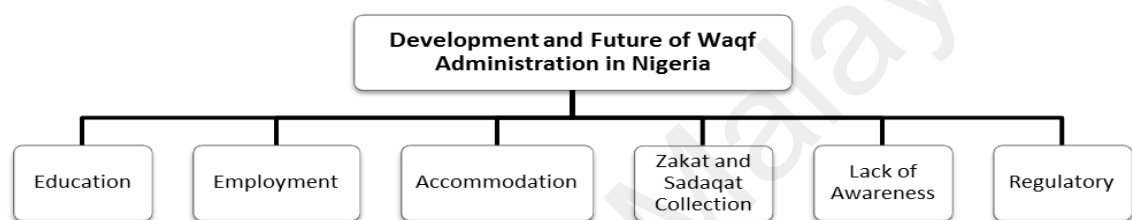


Figure 3.6: Development and Future of *Waqf* Administration in Nigeria

3.6.1 Education

Historically, educating people is one of the objectives of *Waqf* where *Waqf* properties were used to educate people in order to develop them mentally, physically, spiritually, and economically. Many teachers were employed to teach students and *Waqf* properties were used to pay their salaries. In Nigeria, many children drop out of school due to financial problems of their parents and failure of government to provide free and sound education with amenities. Many students need financial support to which *Waqf* properties can be diverted to cater for the many drop outs while educational programmes can be introduced to educate women and the elderly especially on religious studies. Similarly, *Waqf* should focus on many Arabic schools within their state. Arabic schools should improve their curriculum and syllabus to incorporate many western subjects or courses that will benefit Arabic student upon their graduation. The reason

for this is that they would be able to communicate in English and qualify to be employed as a government servant. In addition, many students can also be sponsored to continue their studies locally or internationally as part of the process of human development and empowerment. However, *Waqf* can also establish their *Waqf* educational centre where evening classes could be conducted on religious studies, certificate courses, diploma courses, and other useful programmes which are accredited by the ministry of education. This will give ample opportunity for graduate to be absorbed into the private sector or the government.

3.6.2 Employment

It has been explained that *Waqf* property can be used to educate many underprivileged people in order to acquire education from recognized institutions or universities. The cash *Waqf* investment is analysed in chapter four where job creation can be achieved through *Waqf* by investing *Waqf* funds in lucrative transactions and investments. The creation of centres across the state and local government will create jobs for qualified teachers or instructors and business centres will also employ people which will reduce the percentage of unemployed Muslims in the area. Having *Waqf* industries, small scale business, learning centres, transportation, bakeries, farm, poultry, and other transactions that require employment of workers will create jobs for needy Muslim.¹⁵⁰

3.6.3 Accommodation

The problem of accommodation is a major problem confronting many Nigerians, particularly Muslims. If *Waqf* can be employed to provide adequate accommodation, then many beneficiaries would be happy and appreciate *Waqf* endowments. The usage of land for housing can be read in chapter four where it has been analyzed and

¹⁵⁰ Amuda, (b), 422.

discussed. *Waqf* accommodation can be rented or leased whereby occupants will enjoy the house and *Waqf* will benefit from returns and invest in lucrative business. Accommodation can be built on *Waqf* land with *Waqf* money or through the developer.¹⁵¹

3.6.4 Zakat and Sadaqat Collection

Waqf endowment in each state across Nigeria can extend their roles and duties into *zakat* and *sadaqat* collection where *Waqf* will manage state *zakat* and distribute it in accordance with *zakat* ruling. *Sadaqat* collection can also be administered by the state *Waqf* to disburse the collected *sadaqat* to the needy.¹⁵²

3.6.5 Lack of Awareness

Many Nigerians are ignorant of *Waqf* and its aims and objectives due to a lack of proper education through the media and other means of communication. Although, there are positive changes especially in Northern states where the state government has made commendable efforts to educate public on *Waqf*, the importance of *Waqf* would further be known provided that the committee makes efforts to educate people on its importance religiously, socially, and spiritually.¹⁵³

3.7 Regulatory Control of *Waqf* in Nigeria

When an individual, group, or government intends to establish *Waqf*, the person would wilfully declare a portion of his/her property for the intended purpose. The owner can be the administrator or appoint somebody to administer the execution of the donated and endowed property for charitable deeds. The rules and regulations spelt out by the *waqif* must be abided to by the *mutawalli* in accordance with Islamic principles. By the

¹⁵¹ Amuda, (b), 422.

¹⁵² Amuda and Azizan, 406.

¹⁵³ Amuda and Azizan, 404-405.

virtue of section 262 (1) and 272 (2) of the Nigerian Constitution, the state has the authority to enact the *Waqf* Act in the interest of the state. The regulatory provision will protect the *Waqf* endowment throughout Nigeria and there would be no room for lawless by the any member of the *Waqf* staff or management. The enactment shall empower each state to act as a *mutawalli* in order to administer and manage all *Waqf* properties donated by the individual, group, company, or government in their respective states. The committee must act according to the provisions while the law on *Waqf* and *zakat* must be upheld by the commission. The commission is legally empowered to act according to the Islamic principles of *zakat* and *Waqf* collection and distribution in a situation where justice must be maintained. The following aspects shall be considered in determining the *Waqf* regulatory control over the *Waqf* in Nigeria:

3.7.1 Waqf means:

- (a) Any properties donated to the *Waqf* endowment movable and immovable shall be considered as *Waqf*;
- (b) Cash *Waqf*, tellers, cheques, money orders, gold, dinar, dollars, dirham, and others financial tenders;
- (c) Lands, house, cars, hotel, shops, schools, hospital, electronics, machines, furniture, and other valuable movable materials are accepted as *Waqf* properties.

3.7.2 Management/Administrator/Committee shall be responsible, manage, invest, and execute:

- (a) All *Waqf*, properties, *sadaqat*, gift;
- (b) All general, family, private, and fixed *Waqf*;
- (c) All Islamic foundation organizations;
- (d) All affairs of *Waqf*;

- (e) All *Waqf* investment.

3.7.3 Duties of Management

The administrator of *Waqf* shall be responsible for:

- (a) The management of *Waqf* properties;
- (b) To execute the direction, policy and rules stipulated by the state who is the *mutawalli*;
- (c) To supervise, arrange, manage, and administer the *mawquf* judiciously;
- (d) To develop, invest and improve the donated property through lawful business or transactions;
- (e) To carry out any activities or events that are in line with the principles and spirit of Islamic Law and the purpose of *Waqf*.

3.7.4 Supervisory Committee

- (a) To supervise the activities or all programmes of the *Waqf* management or administrator;
- (b) To inspect *Waqf* accounts and their records properly;
- (c) To request from *Waqf* management or administrators detailed reports;
- (d) Handling all cases related to the corruption, abuse of power, mismanagement and lawlessness by any staff of *Waqf* management or administrator;
- (e) The final decision of any violation or lawlessness shall be forwarded to appropriate persons to apprehend and punish the guilty staff.

3.7.5 Shariah Advisory Committee

Qualified persons from the state should be appointed as members of the *Shariah* advisory committee based on his/her credibility and act:

- (a) To draft policies on *Waqf* properties accumulated in line with the principles of Islamic law;
- (b) To monitor the investment, transaction, and business engaged by the *Waqf* endowment;
- (c) To advice and make useful recommendations to the *Waqf* committee or administrators;
- (d) To propose punishment for any crimes committed by *Waqf* management, staff or administrator in accordance with Islamic law.

3.7.6 Beneficiaries

Beneficiaries refer to those:

- (a) Who are in needs?
- (b) Facing financial constraints;
- (c) Under bondage;
- (d) Need medical treatment, education, and mosques;
- (e) For propagating Islam via television, radio and other mediums;
- (f) Other aspect that need *Waqf* financial support.

3.8. Financial Requirements of Waqf

The Nigerian Muslim community is in dire need of *Waqf* to reduce poverty. The reason for rampant poverty is that many young Nigerians are unemployed while some are looking for capital to start their business or set up shop to express their vocational skills but face financial constraints. In order to address the needs of needy Nigerian Muslims, there is a need for the creation of *Waqf* throughout Nigeria but *Waqf* cannot be well established or created without financial support or donated property by the *waqif* (s). If

there are sufficient properties or cash from the *waqif*, the government or international donations from places such as Kuwait or Saudi Arabia, to establish *Waqf* in Nigeria, then, there would be sufficient money to run the endowment. The attention of many Nigerian well-wishers or rich Nigerians can be attracted through the media or by organising public lectures, conferences, seminars, and through the *Jumuat* services. The public would then be well aware of *Waqf* and increase their contributions. The accumulated money would be positively utilized for the interest of *Waqf* and society at large. Without financial support or donated properties, it is impossible to start operating *Waqf* endowments due to a lack of *mawquf* to run the *Waqf* endowment institution. The principle requirement for the establishment of *Waqf* is property or money which is needed to manage the *Waqf* endowment and render assistance to the needy.

3.9 Ownership, Control and Management of Nigerian Waqf

Historically, *Waqf* was established and developed during the lifetime of Prophet Muhammad (s.a.w.). It was further developed by his companions. The administration of *Waqf* in Islamic law is normally placed under the auspices of qualified and knowledgeable Muslims who are appointed by the head of state. The appointed persons as director or committee members are known as *mutawalli*. The *mutawalli* can be anybody in so long as he possesses the qualities and requirements expected of him. *Waqif* is the donor who has dedicated his/her property for charitable activities. The *waqif* can be the administrator or appointed qualified person to manage the affairs of *Waqf* on his behalf. In Nigeria, there is a need for government intervention for the creation and establishment of *Waqf* institutions due to the challenges faced by the institution and for the benefit of the citizens. Each state should create or establish a *Waqf* endowment which should be attached to the ministry of religious affairs or governed by a committee appointed by the state government. The duty of the committee

is to manage the affairs of *Waqf* dedicated for charitable activities as social contribution. The committee will go beyond this by venturing the accumulated donation in profitable transactions as well as *zakat* collections as part of their duties and responsibilities. The committee can manage *zakat* and *sadaqat* properly and officially where the collected money would be remitted into the official account. The rules and regulations would be drafted by Islamic legal experts and then endorsed by the senate. The *mutawalli*, known as administrator, must be Muslim, mature, knowledgeable in Islamic law, honest, sincere, pious, sane and free, have a good reputation in society, and mentally sound. The donor can be any person in so long as the property belongs to the donor. It is the duties of the *mutawalli* to manage the properties donated or endowed for *Waqf* and distribute to the needy in line with Islamic principles. The *mutawalli* should also follow all the stipulated terms and conditions in his appointment letter and carry out his duties judiciously. Based on Islamic legal principles, the *Qadi* has the power to remove the administrator who abuses his power due to stealing and or corruption during his administration. Furthermore, the donor who is the *waqif* can also sack the corrupt administrator for abusing the office. The question is whether the *mutawalli* can benefit from donated property as *Waqf*? It is lawful for the *mutawalli* to eat or benefit from the *Waqf* property according to his need and he should not eat or benefit more than his need based on the *hadith* of Prophet Muhammad (s.a.w) that:

“There is no blame on who looks after *Waqf* to eat from it”.

Based on the above *hadith*, the *mutawalli* or management can also benefit or eat from *Waqf* properties but it should be limited to his needs and any kind of corruption or fraud should not be entertained under the pretext of lawful benefit because if the management is given freedom to eat or benefit from *Waqf* property while he is getting his monthly salary, he might exceed the limit. Moderation should be maintained and permission must be ascertained or approved by superiors before taking any benefit from

the donated *Waqf* in order to maintain the sanctity of the institution and safeguard the *Waqf* institution.

3.10 Provision for the Mutawalli's wages or salary

Under *Shariah*, there is legal provision for the *mutawalli* who administers the affairs of the *Waqf* to receive monthly or annual payment for the services he/she rendered for the *Waqf* institution. The *mutawalli*'s salary may be derived directly from the *Waqf* property or from other sources and the amount is based on the accumulated properties. There are however certain considerations if in the case of the administrator being appointed or employed by the government, if the salary must be based on qualifications or if a special salary scale is employed in consideration of the extra efforts exhausted that are beyond standard office expectations. In the case of individually owned *Waqf* endowments, salary or wages must be agreed to between the two parties in order to avoid any misunderstanding. The following *hadiths* are in support of the allocation of salary or wages for the *mutawalli*.

Abu Hurairah (May Allah be pleased with him) narrates, Allah's Apostle (s.a.w) said "My heirs will not inherit a *dinar* or *dirham* (money) for whatever I have (excluding the adequate support of my wives and the wages of my employees) is to be given in charity."¹⁵⁴

Ibn Umar (r.a) narrates that: When Umar founded an endowment (*Waqf*) he stipulates that its administrator could eat from it and also feed his friend on the condition that he would not store anything for himself from it.¹⁵⁵

It can be inferred from the above *hadiths* that the administrator is entitled to payment at the end of his/her service on the basis that the purpose of *Waqf* is to reduce or eliminate poverty among the underprivileged and if the administrator's efforts are not

¹⁵⁴ Sahih al-Bukhari.

¹⁵⁵ Sahih al-Bukhari.

suitably financially compensated, then the aims and objectives of *Waqf* would not be achieved because the administrator would then face financial difficulties concerning himself and his family. In support of this, Imam Qurtubi argued that nothing should hinder the *mutawalli's* salary. The salary or wages of the administrator (s), management, and staff can be determined by the *waqif* (donor) be they individuals or government, based on their qualifications and the nature of their responsibilities. Salary can be determined by the *waqif* or judge (*qadi*) and it can be increased in accordance with the higher qualifications (Al-Shanqiti, vol.6, 2004:37, Tufat al-Muhtaj, vol.6, 287 *Fatawa* al-Ramali, vol.3, 65 and al-Insaaf, vol.7, 64).¹⁵⁶

Similarly, the donor (*waqif*) is legally entitled to enjoy or benefit from donated property regardless of whether such a provision was stipulated at the time of dedicating such properties to *Waqf*. This argument is based on the recorded actions of some of the Prophet's (s.a.w) companions where Anas Ibn Malik (r.a.) places a house under the auspices of *Waqf* and whenever he travelled to Madinah he used to stay inside the donated house. In addition, Azubair (r.a) donated his house as charity and allowed his divorced daughter to stay inside the house in so long as she was unmarried and whenever she remarried it was no longer permissible for her to reside there. It has to be noted that managing *Waqf* properties is beyond the power of any single person. Therefore, many staffs are required to perform different roles in different departments in order to carry out their duty effectively. It is true that one or two *mutawalli* can manage *Waqf* property in the early period of Islam; however, in view of the expansive Muslim population there is a need to have special departments handling specific tasks in the overall management of *Waqf* properties. The *Qadi* has the right to appoint and dismiss the *mutawalli* based on reasonable reasons but if the government appoints the

¹⁵⁶ Al-Shanqiti, A.I.A.A.A. (2004). Mawahib al-Jalil min Adilat Khalil. Bayrut: Al-Maktabat al-Ilmiyah, vol. 6. pp.37, Tufat al-Muhtaj, vol.6, 287 *Fatawa* al-Ramali, vol.3, 65, al-Insaaf, vol.7, 64.

administrator, the government has the right to dismiss him or her and if his crime is punishable, he should be liable for the punishment.

3.11 Conclusion

It can be concluded that the concept of *Waqf* and its application in Nigeria has been analyzed and critically discussed while the legal basis of the rulings of classical jurists regarding the establishment of *Waqf* were examined in line with the context of Nigerian Muslim financial practices. In order to realise the primary goals and objectives of *Waqf* creation in Nigeria, the ruling on the *mutawalli*, classification of *Waqf*, hindrances of *Waqf*, factors influencing the establishment of *Waqf* were discussed. The immense contribution of *Waqf* to Nigerian needy Muslims and how it can change the lives of many economically, educationally, medically, physically, and socially has been discussed. However, in order to maintain the sanctity of *Waqf* in Nigeria, regulatory control of *Waqf* in Nigeria was also discussed. Finally, the financial requirements of *Waqf*, ownership, control and *Waqf* management, the *mutawwali*'s salary, the position of the religious and charitable organizations were studied within the framework of the unique settings and circumstances of *Waqf* in Nigeria.

CHAPTER 4: COMMERCIALIZATION OF CASH WAQF IN NIGERIA

4.1 Introduction

This chapter focuses on cash *Waqf* through the application of *sukuk* commercialization with *Waqf* properties endowed by the donator for the needs of the needy. The theory and concept of cash *Waqf* is discussed while the types of *Waqf* and its legitimacy along with the sources of cash *Waqf* and its associated conditions will be critically analyzed in the chapter. In addition, the legality of cash *Waqf*, the concept of *sukuk* and its application in Nigeria, the requirements for the approval of cash *Waqf*, security of cash *Waqf*, and advantages and disadvantages of cash *Waqf* in empowering Nigerian Muslim are also discussed in this study.

4.2 The Concept and Theory of Cash *Waqf*

It has hitherto been explained that *Waqf* is an act of possession or appropriation of part of the owner's property to private ownership such as *Waqf* endowment for charitable purposes. It can be inferred from the *Waqf* concept that cash *Waqf* is a form of donating an amount of money for devotional purposes.¹⁵⁷ It can be understood from the meaning of cash *Waqf* that cash *Waqf* is an amount of capital donated or gifted by the donor purposely for the needs of the needy in which a significant number of citizens are facing financial difficulties. Such monies are channelled into profitable transactions as a means of generating income for the *Waqf* endowment. Cash *Waqf* differs from *zakat* and there is no limitation for cash *Waqf* in as much as it is considered *sadaqah*. Cash-*Waqf* will benefit many Nigerian Muslims because it alleviate or reduce the poverty rate among

¹⁵⁷Khademolhoseini, M. (2008). Cash Waqf A New Financial Instrument For Financing Issues: An Analysis of Structure and Islamic Justification of Its Commercialization. Imam Sadiq University. See also, Magda I. A. M. (2008). *Awqaf: The Social and Economic Empowerment Of The Ummah*. International Seminar On Awqaf. Johor Bahru, 4.

Muslims provided that such cash *Waqf* is consciously managed by pious and honest management. Many Nigerian Muslim women need small amounts of money to enhance their small scale businesses in order to empower them. Financial assistance can be in different forms based on the discretion of the *Waqf* endowment institution.

4.3 Types of *Waqf* and Its Legitimacy

The main types of *Waqf* can be categorized into two categories namely immovable property and movable property. Any kind of property that is completely owned by the dedicator is considered valid property permitted to be donated as *Waqf* property. Below is a discussion of the types of *Waqf*.

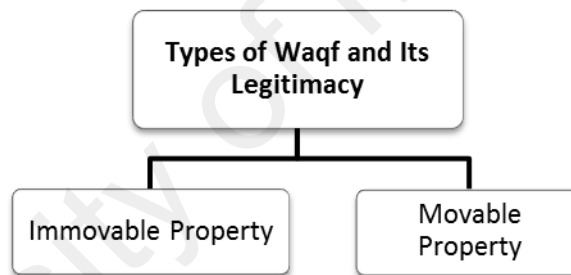


Figure 4.1: Types of *Waqf* and Its Legitimacy

4.3.1 Immovable Property

This type of *Waqf* property covers all instruments, plants, trees, and other eatable vegetable or medicinal plants that are useful to society. It also covers houses, stores, hotels, shops, offices, lands, and other useful immovable materials that can be donated to the *Waqf* commission in order to serve the objectives and purposes of *Waqf*.¹⁵⁸

The general rules on immovable properties are that the dedicator must be the absolute owner and able to claim authority on the dedicated property and there should not be any issue that will create confusion after the donation of such property to the *Waqf*

¹⁵⁸ Abu Zahra, 1950.

commission. Therefore, any family property such as houses, lands, shops and other materials and property that belong to all family cannot be donated to the *Waqf* commission unless the whole family agrees wholeheartedly and freely to donate such properties as *Waqf*. Only under such circumstances will such properties be considered valid and lawful *Waqf* properties. The classical scholars have different views regarding movable property. Imam Abu Hanifah held the view that where a land is dedicated for *Waqf* but is still under the lease agreement, *Waqf* cannot take effect until the end of the lease contract in order to protect the lessee's rights. It can be understood from Imam Abu Hanifah's view that leased land is under the control and possession of the lessee and that ownership cannot be shifted from the lessee until the lessee's ownership has expired. Only then can the *Waqf* commission take possession of the property. This opinion can be applied on similar cases and issues in order to avoid unlawful and invalid properties as endowment. However, if the *Waqf* commission is in charge of rent or lease income, then, the *Waqf* commission will take effect immediately and if any one of the leasees dies, the *Waqf* commission will take over the operation. In a situation where the land donated to the *Waqf* commission is already mortgaged, the donated property is considered unlawful and invalid unless the mortgagor has other assets or properties to redeem the property dedicated for the *Waqf* endowment. Similarly, if the mortgagor dies and the dedicated property cannot be separated from the left estate, its dedication as *Waqf* is automatically cancelled and void but if it can be released from the estate by the family, then, the *Waqf* commission will control and operate such property.¹⁵⁹

In Nigeria, the *Waqf* institution must be very conscious and proactive to investigate the ownership of any dedicated immovable property before the collection because many lands have been claimed, reclaimed, resold by family members. In such

¹⁵⁹ Jaldeen, M.S. (1993). *The Muslim Law of succession inheritance and Waqf in Sri Lanka*. Colombo: The Federation of Association of Muslim Youth in Sri Lanka 282.

situations, the *Waqf* commission should maintain the sanctity of the institution and should not simply collect or accept any immovable property before ascertaining the validity of ownership. This is where the institution lawyer becomes involved by providing legal documents as concrete evidence in case of claims on such properties.

On other hand, any property dedicated as *Waqf* by the insolvent with a view to defraud his creditor is considered invalid as *Waqf* property unless there is another property to pay his or her outstanding claims otherwise, the courts have legal power to order the sale of the property and consecration becomes invalid. The Nigerian boards of *Waqf* commissions have a lot of tasks to do especially concerning the status of dedicated properties before the acceptance of such proposed properties as *Waqf*. This is because in Nigeria, there are many properties that have been obtained through illegal means and by donating properties (also illegally acquired) their illegal actions will be relatively acceptable. If the *Waqf* institution carries out their investigations and applies strict procedures before acceptance of any dedicated property to the foundation, then they are effectively announcing to the public that they will not stand for illegal practices and will defend the sanctity of Islamic institutions. In another case, any property dedicated in the will cannot be considered as *Waqf* property until the testator's death. This is based on the argument that the testator can change his/her mind. As such, the transmutation of property to *Waqf* can only take effect after the death of the testator and only one-third of the property can be considered *Waqf* unless there are collective consents by all the testator's heirs. If some of the testator's heirs divert their own share as *Waqf* property, it is considered valid and lawful. In Nigeria, *Waqf* institutions are in need of creating specific units for dealing with the deceased's estates in order to be shared and distributed among the heirs according to Islamic principles of inheritance because many estates were shared among the heirs traditionally or contrary to Islamic

principles. This situation requires an urgent solution; one that the *Waqf* commission can offer by inculcating this in their goals.

4.3.2 Movable Property

Another suitable property for *Waqf* is movable property that can serve the purpose and objectives for the establishment of *Waqf* in order to cater and maintain the needs of people. Certain movable properties might not be useful in some nations and useful in developing countries. Those movable properties can be useful in schools such as modern technologies, and fertilizers for cultivation or flours that can be used in bakeries in the interest of the needy. Moveable properties refer to all valuable movable properties including beasts of burden, shares, stocks, building materials, books, computers, valuable machines, fertilizers, and other useful materials that can be turned to money or serve the purposes of *Waqf*. Although, classical scholars differed on the acceptance of movable property or the validity of movable properties as *Waqf* but Imam Abu Hanifah, Abu Yusuf, and Imam Muhammed held the view that movable property is invalid and not suitable as *Waqf* property. This view is based on the argument that the acceptance of movable property as *Waqf* endowment is unusual and uncommon. In support of the Hanafite School of law, Ameer Ali quotes:

“According to the great Jurist Shams ul-Alimma as-Sarakhsi; Kazi Khan says; “*Waqf* of movables is a valid custom and usage; however, regulate what movables can be made *Waqf*. The *Waqf* of shrouds, books, etc are lawful according to all. The *Waqf* of the milk of a cow is valid if customary. The *Waqf* of dirham (money) is valid. They would be applied in business and the profit arising be used for the purpose of the *Waqf*. In the same way, a measure of wheat may be dedicated.”¹⁶⁰

¹⁶⁰ Jaldeen, 283.

It can be inferred from the above quotation that useful movable properties are useful and valid for *Waqf* endowment in so long as they serve the purposes of endowment and cater for the needs of the underprivileged. The reason for this is that certain movable properties are not suitable in one country but are for another. As such, such movable properties can be transferred to benefit another country. Similarly, many students are in need of scholarships due to their financial constraints, as such, full scholarships can be granted to needy students in other countries because *Waqf* is also meant for the education of Muslims regardless of their gender and country. Based on this, movable properties are valid and useful for *Waqf* endowment. Donated monies can be sent to the needy in other countries as business transactions in order to use profits to cater for the needy. Certain developing countries are in need of food, drinkable water, medication and clothes, to name a few, as such, this research adopt the opinion that all movable materials can be exported to other states or countries provided it serves the purposes of *Waqf*.

Imam Shafi'i held the opinion that any useful, saleable and movable properties are valid and lawful as *Waqf*. He says:

"... The foundation must be of such a kind that perpetual use may be made of it. Thus it may not consist of foodstuffs or odoriferous plants, but with this exception, it may be either movable or immovable, or even such things are capable only of individual possession, but not a slave or a coat unless a particular specified one, nor one's own person, nor a slave enfranchised on account of maternity, nor a trained dog, nor one or two slaves without indicating which. On the other hand, the validity of a foundation is admitted that consists of buildings and plantations on another's land leased for that object.¹⁶¹

¹⁶¹ Jaldeen, 284, Minjah, 230.

This quotation is in line with the view that movable properties are valid for *Waqf* with the exception of those properties identified for exclusion in the quotation. However, this thesis adopts the philosophy behind the quotation but disagrees with view that foodstuff and odoriferous plants are not included in acceptable movable properties for *Waqf* endowment. This is based on the argument that *Waqf* can send foodstuffs to needy countries. Similarly, fertile lands can be bought in such countries for cultivation in order to provide enough food for the needy. An individual can also make his/her *Waqf* by providing for the underprivileged on the condition of sincerity. As such, movable and immovable properties are valid and lawful for *Waqf* endowment provided that the property is not unlawful and illegal property.

Islamic schools of thought permit everything to be the subject of *Waqf* in as much as such properties are useful to the needy. The *Shiah* school of thought quoted that:

“The Shiah Ithna ‘Ahari authorities according to the ‘*Shari’ah Islamiyat* permit everything to be the subject of *Waqf* from the use of which any benefit can be lawfully derived with the preservation of the thing itself; and clothes, furniture, lawful instrument are given as instance. It is also assumed that sheep may be the subject of *Waqf* and it said if “ a man should appropriate a sheep, the wool and existing at the time are included in *Waqf* unless specially excepted from a regard to custom, as would be the case if the animal were sold.”¹⁶²

The *Shiah* school of thought is in line with previous analysis that all lawful properties are valid for *Waqf* endowment regardless of being movable or immovable assets. Therefore, shrouds, books, milk, modern instruments and technology are valid as

¹⁶²Jaldeen, 284.

Waqf properties. It is argued that *Waqf* money is valid as *Waqf* property and such monies can be invested in any lawful and lucrative transaction that will serve the purposes of *Waqf*. Other valuable materials can be sold and the purchased money can be used for business in the interest of the underprivileged.¹⁶³

4.4 Sources of Cash *Waqf* and Its Conditions

There are three instruments that should be set up in order to realize the cash-*Waqf* project such as Cash and E-*Waqf*, Per-square Feet value certificate and the Issuance of *Sukuk*. The reason is that the said instruments will provide ample opportunity for donors to wilfully dedicate their properties for *Waqf* purposes in accordance with their instructions.¹⁶⁴ Considering the level of poverty among Nigerian Muslims, the three instruments will create jobs for unemployed adult Muslims in Nigeria through which they would be empowered and able to provide adequate provisions for their immediate families. The three instruments are as follows:

4.4.1 Cash and E-*Waqf* Funds

Cash and E-*Waqf* instruments are considered a simple way of donating and accepting from the donor because it will give the public ample opportunity to donate their money in cash or deduct amounts directly from their bank account through E-*Waqf* facilities. The deduction of public money from their account is based on their approval and consent. The total accumulated cash money would be managed by the *Mutawalli* who is acting as the *waqif* agent based on a *wakalah* contract or agreement. Based on their wilful agreement or contract, the *mutawalli* will divert or channel the accumulated money into profitable *Waqf* projects in the interest of the underprivileged.¹⁶⁵ In the

¹⁶³ Jaldeen, 284-285.

¹⁶⁴ Abdullaah Jalil, & Asharaf Mohd. Ramli. (2008). *Waqf Instruments for Construction Contract: An Analysis of Structure*. The Journal of Muamalat and Islamic Finance Research (JMIFR), 5(1), 183-196.

¹⁶⁵ Majid Khademolhoseini, 2009.

Nigerian context, it is difficult to deduct the donor's money directly without government intervention or the approval of the *Waqf* establishment. Nevertheless, direct cash donations by donors can be used to cater for needy Muslims in Nigeria. For example, if one million Nigerians donate N10 each to *Waqf* endowments, the total amount would be N10 million in each state. Such sizeable amounts of money can be utilized to cater for the needs of many needy Muslims who face financial difficulties across Nigeria. Although, the *Waqf* institution cannot singularly solve the financial problems of Nigerian Muslims, *Waqf* can nevertheless contribute tremendously to society. The *Waqf* institution should strategise on how to educate many Nigerian Muslims on the concept and importance of *Waqf* and how to generate cash from citizens for the benefit of other citizens who are in serious need of assistance.

4.4.2 Per-Square Feet Value Certificate

Since the aim of cash *Waqf* is to generate income to run the proposed profitable project in the interest of needy Nigerian. *Waqf* endowments propose lucrative projects that will benefit many Nigerians where the per-square certificate would be offered to those who can afford the proposed price provided the proposed project has been finalized. Then, the type and nature of the project, the total cost of the project, duration of the proposed project, and the price of the per-square certificate would be well explained to the purchasers. All the details that buyers need should be disseminated and well acquainted in the interest of both contracting parties i.e. *Waqf* endowment and per-square purchaser. The individual or institution that indicates interest in buying the per-square certificate will pay the agreed sum to obtain the certificate. The total amount of accumulated money collected from the per-square certificate will support the proposed project in the interest of all because part of the income would be used for charitable purposes and for management and maintenance along with other devotional activities

that will benefit society.¹⁶⁶ The illustration of per-square feet value certificate can be seen in a the situation where *Waqf* in Nigeria proposes a profitable project such as poultry or ventures into selling petrol where petrol stations are built, the per-square certificate can be proposed and offered to any interested buyer and upon which the certificate will be issued according to the agreed payment and all the accumulated money would be used to finance the poultry or fuelling station that will generate income for the *Waqf* endowment and used for the benefit of the underprivileged Nigerian Muslims.

4.4.3 The Issuance of Sukuk

The issuance of *Sukuk* to the public is another strategy to develop or acquire *Waqf* property. *Sukuk* would be issued to eligible individuals and institutions for domestic and international purposes in order to realise sufficient income to run the affairs of *Waqf*. Although, issuance of *sukuk* is a new tool that is relatively well known to countries such as Malaysia, it remains in its infancy in Nigeria.¹⁶⁷ In the case of *Waqf* in Nigeria, *sukuk* can be issued to philanthropists, collective bodies, or institutions for the purpose of charity or other devotional activities that will reduce the poverty rate confronting many Nigerian Muslims. Another strategy for the development of *Waqf* endowments in Nigeria is to strategise how best to generate income or sufficient funds that will enhance their efforts to assist the needy. For such purposes, events can be organised where the purpose of such events are clearly explained to Muslims that it is to generate money for charitable purposes. Capable Muslims would be asked to participate in such programmes where each of the audience or participant will pay to participate and the accumulated money would be used to finance any profitable project. When Muslims see the achievements of such programs they would encourage its continuity and not hesitate

¹⁶⁶ Abdullahi J. & Asharaf, . M, 3, Majid Khademolhoseini, 2009.

¹⁶⁷ Abdullahi J. & Asharaf, . M, 3, Majid Khademolhoseini, 2009.

to contribute to the proposed projects in so long as the administrative officers in charge are transparent or honest in their activities. In such a way, *Waqf* will contribute significantly to the lives of many. The major problem challenging such a proposal is if the administrative staff and management are corrupt, then, the purposes and objectives of such projects would not be achieved and the people will lose trust in them.

4.5 The Legality of Cash *Waqf*

Islam encourages Muslims to render assistance to their family, relatives, and the poor. The evidences cited in chapter two from the Holy *Qur'an*, *Hadiths*, and actions of the companions are sufficient support for the legality of the appropriation of an amount of money to *Waqf* endowment institutions. Such monies would be invested in any profitable transaction for the benefit for the underprivileged among Muslims and non-Muslims. The evidences provide just basis for any kind of *awqaf* that will render financial support to the poor. The purpose of cash *Waqf* is to be used for business, transaction or investments in any profitable investment that will enhance *Waqf* funds.¹⁶⁸

4.6 The Legal Conditions for the Establishment of *Cash-Waqf*

The conditions associated with the creation of *Waqf* are similar to those posed on cash-*Waqf*. The condition of *Waqf* contract, *waqif*, *mawquf*, and *mutawalli* are discussed in the following sub headings.

¹⁶⁸ Surah Al-Araf:128, Surah Al-Hadid:5, Surah Al-Baqarah:3, Surah Al-Dhariyat:19, Surah Al-Ma'rij:24-25.

4.6.1 Conditions of Waqf contract

The term contract is known as 'aqd' in Arabic refers to the legal bond between the statement and speech of two contacting parties where the object of contract is available.¹⁶⁹ Based on the concept of contract and before the cash *Waqf* contract can be considered legal; the following conditions should first be met:

4.6.1.1 Approach and Acceptance

In any contract, contracts such as cash *Waqf* are established on the basis of approach known as (*Ijab*) and acceptance known as (*Qabul*) where the donor will signify his/her intention to donate certain monies as *Waqf* and the *mawquf* will signify their acceptance of the cash-*Waqf* from the donor. The donor can also make his or her intention known via his or her trustee.¹⁷⁰ It can be derived from the above definition that the *Waqf* contract can be movable or immovable properties donated to *Waqf* by the donor. Based on that, any other property such as land, house, car, machines, and other immovable properties are not considered as monies.

4.6.1.2 Intention (Niyat)

In any contract, there must be an intention that demonstrates the willingness of the parties concerned on the subject matter. The indication of intention in any contract is similar in the case of *Waqf* and cash *Waqf* where the donor shows his/her will to donate a certain amount of cash to *Waqf* institutions for charitable purposes.¹⁷¹ This is because sincere intentions are an essential component of *Waqf* agreements and other contracts. False contracts are considered unlawful contracts due to coercion. The question is if any Nigerian state has made it mandatory for Muslim civil servants to donate certain

¹⁶⁹Ala Eddin, K. (2002). *The loan contract in Islamic law (Shariah): A comparative with positive law*. Gombak, Malaysia: International Islamic University Press, 4.

¹⁷⁰ Helli, 1990,161, Majid Khademolhoseini, 2009.

¹⁷¹ Helli, 1990,155, Majid Khademolhoseini, 2009.

amounts of monies from his/her monthly salary would be considered lawful or unlawful? Based on the theory of *Waqf* and intention, the donor should not be forced to donate any amount of money to *Waqf* institutions unless there is a formal process where a form would be given to the Muslim civil servant to indicate whether a certain percentage of his/her salary will automatically be deducted for *Waqf*. The specified amount would then be deducted from those who consented to the proposal provided that there is no coercion. If such an agreement is successfully achieved, then, each state *Waqf* endowment will accumulate sufficient funds to take care of the underprivileged provided that the management are spending the money consciously and judiciously.

4.6.1.3 Collection

The *Waqf* contract will be a valid and lawful contract when the donor delivers his/her intended property to the *mawquf* or *mutawalli*. The same rules and conditions apply to the cash-*Waqf* system or instrument in that the donor has to deliver the cash to the *Waqf* endowment through the proper processes.¹⁷² In the Nigerian context, *Waqf* institution should make sure that any donor who wishes to donate any amount of money should donate in cash or deposited into the *Waqf* endowment's account and bring to the teller at the institution evidence of their transaction. They should not rely on promises and all their proposed projects should be based on the amount of money available.

4.6.1.4 Not to be suspended

Another condition is that the *Waqf* should not be based on external conditions because *Waqf* is an independent institution and must be left to operate unconditionally.¹⁷³ For the smooth running of *Waqf* endowments in Nigeria, the management should be given freedoms to run their affairs and there shouldn't be any kind of conditions imposed on

¹⁷² Mohaqeq Sani, 1989, 11, Majid Khademolhoseini, 2009.

¹⁷³ Helli, 1995, 25, Majid Khademolhoseini, 2009.

the *Waqf* management in so long as the appointment of management is based on merit. The reason for this is that if management are not free to carry out their activities freely, imposed conditions are likely to undermine the integrity of the institution.

4.6.1.5 Waqif Ejection

For the validity and sanctity of cash-*Waqf* contracts, the donor (*waqif*) cannot nominate himself as *mawquf*, otherwise, the *Waqf* contract would be considered unlawful.¹⁷⁴

4.6.1.6 Perpetuity or Continuity

The important basic condition in *Waqf* contracts is continuity as it ensures regular and continual assistance through *Waqf* properties or cash-*Waqf* in order to finance charitable activities and events for the underprivileged such as giving scholarships to poor children to continue their education and maintaining mosques and Arabic schools maintenance.¹⁷⁵

4.6.2 Conditions of the Waqif (Donor)

The following are the conditions of donors:

4.6.2.1 Maturity, Wisdom and Liberty

For the purpose of the validity of contracts or any wilful agreements, the contractual parties must be mature, wise and free to decide his/her decisions.¹⁷⁶ In any cash *Waqf*, the donor must be mature, wise and free to decide the amount he/she intends to deliver to *Waqf* endowments for charitable purposes. It can be inferred that minors or the mentally unsound are not qualified to donate his/her money due to immaturity.

¹⁷⁴ Najafi, 1998,67, Majid Khademolhoseini, 2009.

¹⁷⁵ Hashemi Nasab, 1999,49, Majid Khademolhoseini, 2009.

¹⁷⁶ Najafi, 1982,20, Majid Khademolhoseini, 2009.

4.6.2.2 Ownership

Another condition of the *waqif* is ownership. Donor who intends to donate cash *Waqf* to endowments must own the money at the time of donation otherwise; the donation would be considered invalid and unlawful.¹⁷⁷ This shows that any embezzlement or stolen properties or cash would not be accepted as donation from thieves or corrupt leaders.

4.6.2.3 Insolvent

The donor should be sound, sane, physical and mentally fit, and capable to make decision. Any contract or action from an insane or unsound person is considered invalid and unlawful.¹⁷⁸ Therefore, whoever wants to donate part of his or her property as *Waqf* must be sane and sund person.

4.6.3 Conditions of the Mawquf (cash Waqf)

The following are the conditions of the *mawquf* on regard to cash *Waqf*:

4.6.3.1 Qualified to own the property

The *mawquf* who is a human being must be physically and mentally fit and mature regardless of gender and the process of donation must be in line with Islamic rules.¹⁷⁹

This research slightly disagrees with this position as the insane can be given psychiatric treatment while children can be the benefactor of *Waqf* returns in the means of financial support for the child's education or medical treatment if the child's parents are facing financial difficulties.

¹⁷⁷ Helli, 1997,393, Majid Khademolhoseini, 2009.

¹⁷⁸ Haeri Yazdi, 2002,126, Majid Khademolhoseini, 2009.

¹⁷⁹ Sahid Avval, 1997,294.

4.6.3.2 Presence

Both *waqif* and *mawquf'alaih* must be present at the time the *waqif* wants to deliver the cash *Waqf* to the *Waqf* management because their presence is a condition of cash-*Waqf*.¹⁸⁰ In this research, the presence of both the *waqif* and *mawquf'alaih* is not required as an original condition based on the argument that both can be represented through their representatives. Similarly, they can donate their funds through other means. This condition is intended to make the process of donation easier.

4.6.3.3 Waqf Profit to be legal for mawquf

The *mawquf* must not be a confined person who is independent control by another person otherwise, the *Waqf* donation are void.¹⁸¹ The question is whether *Waqf* endowments can render financial assistance to prisoners or debtors who have to pay his or her debt to free the debtor from bondage or paying off the prisoner's fine in order to be freed.

4.6.3.4 Specification

In case of family *Waqf*, the *mawquf'alaih* should be clearly indicated to the *Waqf* endowment or institution whereas in the case of public *Waqf* the donor can donate his/her property in support of any group.¹⁸²

4.7 Conditions of *mawquf* (cash)

Before the cash *Waqf* can be considered and accepted for *Waqf* endowment, the following conditions should be fulfilled:

Firstly, to be profitable cash, the donor is obliged to deliver his/her cash donation directly to the mutawalli for profitable contracts through *Wakala*.¹⁸³ The purpose of

¹⁸⁰ Imami, 1957,76, Majid Khademolhoseini, 2009.

¹⁸¹ Helli, 1982,214, Majid Khademolhoseini, 2009.

¹⁸² Imam Khomeini, 2002,310, Majid Khademolhoseini, 2009.

cash *Waqf* is to invest in lucrative contracts that will benefit the *Waqf* institution. Socondly, it must be cash delivery, in the case of cash *Waqf*, the donor has to deliver the money to the *mutawalli* for the purpose of charity.¹⁸⁴ Thirdly, dominant ownership is another condition where the donor of the proposed cash *Waqf* must be the owner of the money and the cash should not be claimed by another person, otherwise, such cash would be consider invalid due to the lack of ownership of the intended donor.¹⁸⁵ The present study is of the belief that the proposed cash *Waqf* can be owned by many owners. The most important condition is that all must consent to donate the cash as *Waqf* for the benefit of the underprivileged. This can be illustrated in the example of a joint business or company owned by two or three owners in which all owners agree to donate the proposed money. Such a donation would be accepted and used for charitable purposes.

4.8 Conditions of the *Mutawalli*

The following are the conditions of the *mutawalli*:

4.8.1 Aqil, Baligh, Rashid & Trustworthy

The *Mutawalli* who is in charge of the maintenance and execution of cash *Waqf* must be *aqil*, *baligh*, *rashid* and trustworthy (mature, able, sound, mentally fit, and capable) to manage the cash and properties entrusted to him/her without any damage or loss. He/she must not be an extravagant person who will embezzle or mismanage the entrusted cash and property. The trustee should not abuse and breach the trust given to him/her where all the contracts must be carried out accordingly and abiding by the stipulated rules and regulations.¹⁸⁶

¹⁸³ Qorbani,1997,115, Majid Khademolhoseini, 2009.

¹⁸⁴ Hashemi Nasab, 1999,58, Majid Khademolhoseini, 2009.

¹⁸⁵ Helli, 1982,212, Majid Khademolhoseini, 2009.

¹⁸⁶ Ryiahi, 2000,97, Majid Khademolhoseini, 2009.

4.8.2 Righteous Person

The *mutawalli* must be a person of good manner, character, trustworthy, honest extent, and competent. He/she must be up to the task of managing the donated cash *Waqf* or property. Although, some contemporary scholars consider righteousness as a condition of the *mutawalli*, others do not consider it as a condition for the appointment of the *mutawalli*.¹⁸⁷ In this research, righteousness should be considered as a condition of the *mutawalli* especially in Nigeria in view of the rampant corruption. In 2012, Nigeria was ranked 35th position out 183 countries of most corrupt country in the world.¹⁸⁸ According to Global Financial Integrity, Nigeria lost 130 billion dollars due to corruption.¹⁸⁹ In addition, Nigerian government lavishly spent 2752.4 billion naira for the social services without any tangible and concrete traces or development.¹⁹⁰ If the cash *Waqf* is given to corrupt *mutawallis*, the aims of such cash *Waqf* could not be materialized and the conditions of needy Nigerian Muslims will remain as they are. Therefore, the *mutawalli* must be an honest and pious person.

4.9 The application of cash *Waqf* as modern instruments

The economic meltdown and financial difficulties of the 21st century has led to demands for the restructuring of *Waqf* institutions across Muslim countries. This has become expedient in order to introduce and create movable property such of cash-*Waqf* in its comprehensive method and strategy. The modern models for the creation of cash-*Waqf* have been in place and practiced in Muslim countries such as *Waqf* shares model, corporate cash *Waqf* model, deposit product model, *Waqf* mutual fund model and *wakalah Waqf* fund and are critically examined, discussed, and analyzed in this section.

¹⁸⁷ Imam Komeini, 1997,325, Sahid Sani, 1982,177.

¹⁸⁸ Kayode, Adagba, Anyio, 1-6.

¹⁸⁹ GFI, 2013, Kayode, Adagba, Anyio, 1-6.

¹⁹⁰ Kayode, Adagba, Anyio, 4.

The models will be discussed in light of the situation of Nigerian Muslims in order to find solutions for the many socio-economic problems they are confronted by.

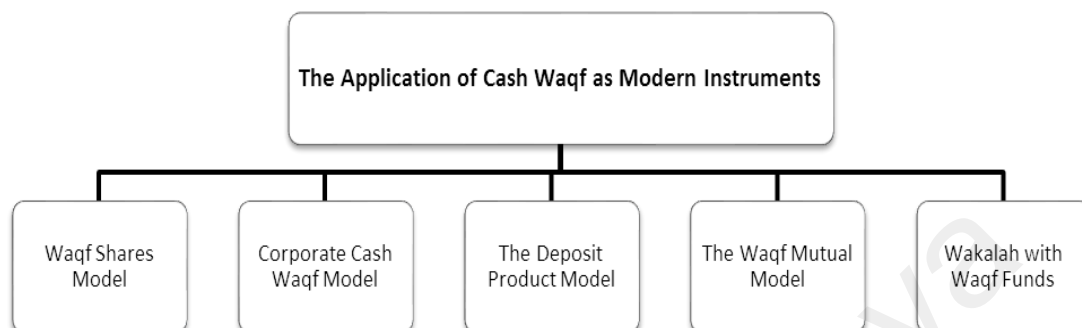


Figure 4.2: The Application of Cash *Waqf* as modern Instruments

4.9.1 Waqf Shares Model

The system of *Waqf* shares model is known as a public *Waqf* and it is practiced and well known in countries like Malaysia, Sudan, Kuwait and UK. The practice of the *Waqf* shares model is a system whereby the founder will purchase shares from reputable and recognised religious institutions at an agreed amount. The price can range between \$10 and \$100 for example, and the funder will receive a cash-*Waqf* certificate to indicate that the buyer has purchased *Waqf* shares. The *Waqf* shares will then later be donated to the endowed institution that will act as a *mutawalli* to manage the accumulated funds. The total amount of accumulated funds are channelled to charitable activities and events as stipulated by the concerned institution such as construction, renovation of mosques, establishment of schools or school renovation, and other useful and devotional activities.¹⁹¹ The *Waqf* shares model can be applied in Nigeria whereby each state's *Waqf* institution will act as a *mutawalli* and urge capable Muslims to purchase shares

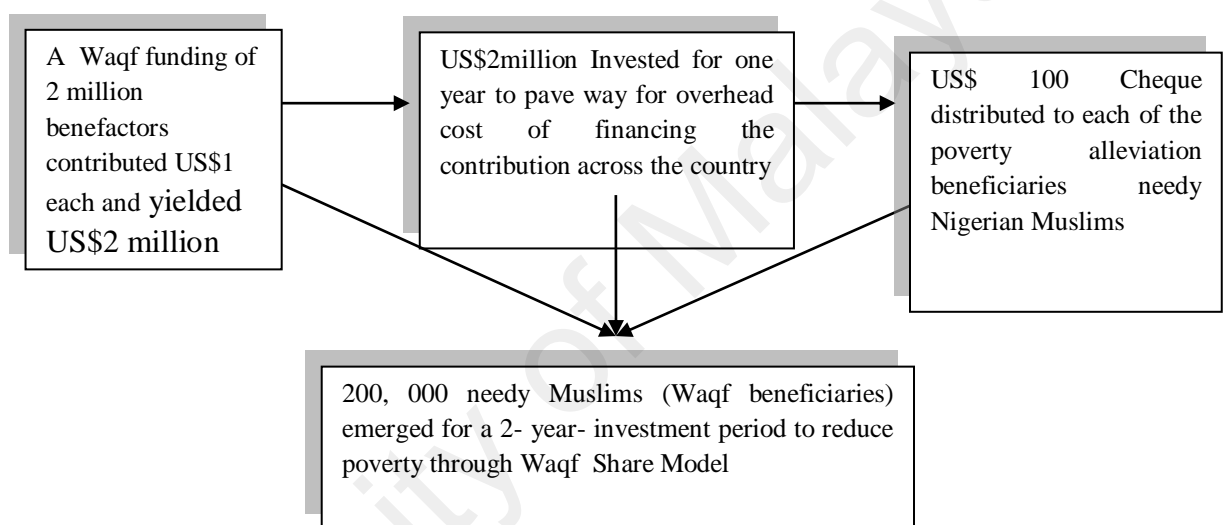
¹⁹¹ Magda, 2008, 9.

and use the accumulated money to venture into profitable business. The profit would thereafter be used to assist needy Muslims.

For example if 2 million Muslims purchased *Waqf* shares at the rate of N100 each, the total accumulated amount would be N200 million. If the amount of N200 million is well managed by honest and pious management, the amount can be diversified and ventured into lucrative transactions that can take care of the needs of needy Muslims. If the *Waqf* shares model is initiated in each state in Nigeria, the poverty rate among Nigerian Muslims would be significantly reduced. The shares can be sold via mosques, Arabic schools, Islamic centres, or by organizing special Islamic programmes or events specifically for their sale. Small scale business women need small amounts of money like N10, 000 or N20, 000 to start their business. The majority of Nigerian Muslim women sell tomatoes, onions, cassava flour, and other petty items that require small amounts of capital to improve and enhance their trade and income.

A *Waqf* endowment organization may call on Muslims possibly during the month of Ramadan when most Muslims like to donate their wealth to the poor. This is not the same as Zakat ordained by Allah as one of the pillars of Islam but similar to Sadaqat which is also voluntary. This donation is a small token in form of arms for the poor. A certificate may be issued by the *Waqf* organization to legitimize the donation and to appreciate the kind gesture of the benefactors. If the *Waqf* organization collect NGN280 (US\$1.00) from NGN560 million (US\$2 million) from 2 million Muslims across the country, the amount is small for most people to pay especially when certificate of donors will be issued to each contributor. If no overhead cost is deducted from this sum of money, the money could be invested for a period of one year into a very lucrative business like communication pending the compilation of the list of beneficiaries whose background must have been determined by the *Waqf* organization as poverty stricken individuals in the society. The profit of the invested US\$2 million

may take care of the cost of logistics put in place for the collection of the money across the nation. If the money is distributed at the rate of US\$ 100 (N28, 000) per person among the people living below poverty line, more than 200, 000 people will be endowed with enough capital to start a petty trading to survive hardship. The workability of the proposed Waqf model for poverty alleviation programme for needy Muslims in Nigeria is depicted in the figure below.



Waqf model for Poverty Alleviation programme

If this designed model is carried out consecutively in one decade, two million less privileged people will be financially empowered without being subjected to conventional bank loan-interest payment or loan agreement with a debenture firm or any finance house.

4.9.2 Corporate Cash Waqf Model

The corporate cash *Waqf* model, also known as public *Waqf*, was established in Malaysia by Kumpulan an-Nur in 1998, in Turkey in Sabanci Foundation in 1974 and in 1953, and the Hamdard Foundation practiced it in Pakistan. In addition, the National

Awqaf Foundation in South Africa practiced it in 2000. The founder of the corporate cash *Waqf* model can be an individual or corporate body. The system and application of the corporate cash *Waqf* model is that the individual or corporate body concerned channels his/her dividends to associated *Waqf* institutions as his/her cash *Waqf*. The role of the associated *Waqf* institution is to act as the *mutawalli* who will manage the venture and invest the accumulated monies into profitable transactions in the interest of the needy. At the end of the contract or business, the profit is used for charitable projects.¹⁹² *Waqf* endowments in Nigeria can apply the corporate cash *Waqf* model across the nation to earn money that can be used to establish or to create small scale business centres that will pave the way to employ some unemployed adult Muslims who will work for the *Waqf* endowment centre. For example, the realised money can be used to purchase housing construction equipment where *Waqf* will play the role of building contractor. Many people will patronise the *Waqf* endowment to build their new house due to the honesty and trust that is lacking in that industry.

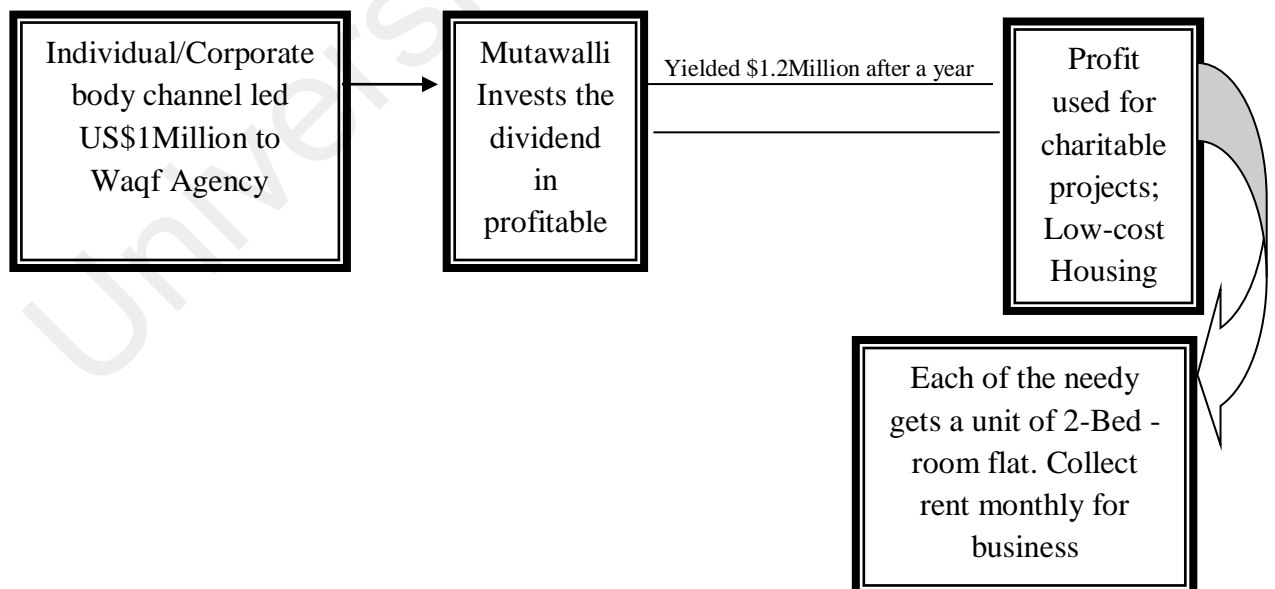


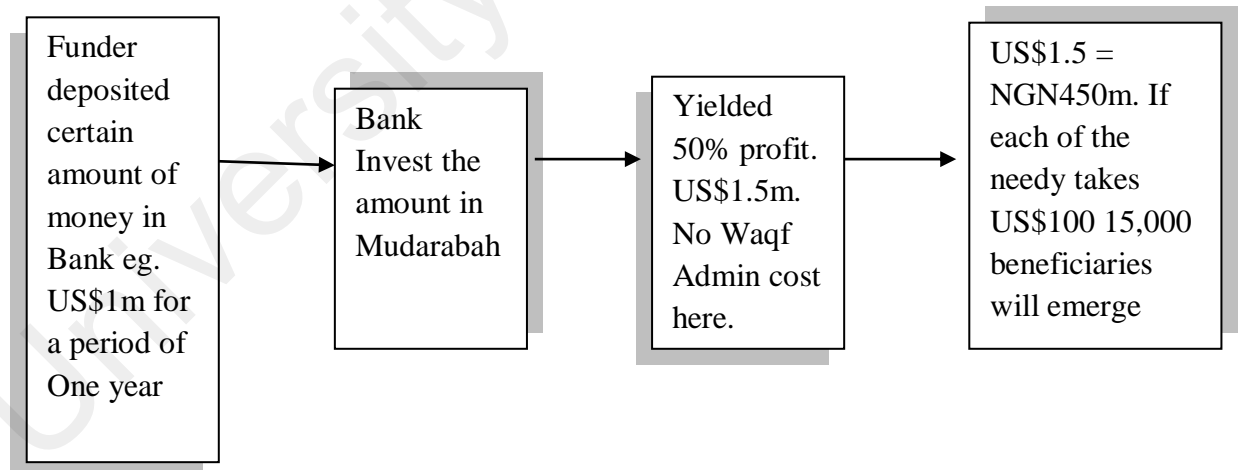
Figure 4.3: Corporate Body Dividend

¹⁹² Magda, 2008,14.

4.9.3 The Deposit Product Model

This type of deposit model has been well practiced in Bangladesh in the Social Investment Bank and the Islamic Bank Bangladesh Limited. The procedure for the deposit product model is that the funder will deposit money directly into cash-*Waqf* in a specific account and specific bank. The founder would be given the list or name of beneficiaries where he/she will chose the beneficiaries by him or herself. The bank will later act as a *mutawalli* and invest the deposited money into a *mudarabah* contract and the accumulated gain will be used for the needy.¹⁹³ It is the duty of the *Waqf* endowment management to consciously plan the type of lucrative transactions and business the *Waqf* institution wants to venture into. The feasibility of proposed ventures should be studied and examined properly in order to meet the demands of applicants who are in serious need.

Deposit Product Model



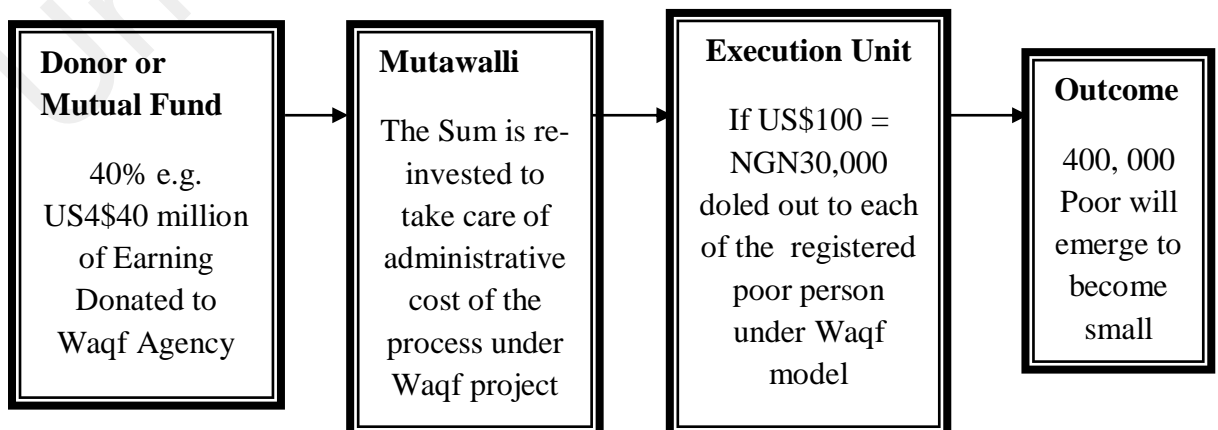
¹⁹³ Magda, 2008, 14-15.

4.9.4 The Waqf Mutual Fund Model

The *Waqf* mutual fund model is a system where the funder will contribute cash money to mutual funds and he/she will stipulate that 60%, for example, of his/her returns goes to his/her personal earnings and 40% will directly go to *Waqf* for charitable activities. *The Waqf* endowment will act as the *mutawalli* to manage the 40% contributed by the funder and invest the money in profitable investments for the benefit of the needy.¹⁹⁴

The present circumstances in Nigeria and its lack of well-organized Islamic institutions and the deficiencies of Islamic banks in Nigeria make it difficult to implement the *Waqf* mutual fund model. Nevertheless, if the *Waqf* is legally and constitutionally well established, the institution can act as *mutawalli* and manage the donated funds appropriately. In addition, the *Waqf* management can invest funds accruing from the mutual fund model in housing projects wherein the tenant will pay the rent monthly or yearly and the agreed percentage will go to the funder and *Waqf* to be invested in charitable activities. However, the house will remain under the ownership of the funder. The main objective of this model is to find solutions for the challenges faced by the underprivileged in Nigeria.

Waqf Mutual Fund Model



¹⁹⁴ Magda, 2008, 16-17.

4.9.5 Wakalah with Waqf Funds

Another model is *wakalah* with *Waqf* funds where the donor, known as the shareholder, makes an initial donation to create *Waqf* funds. The amount is based on the specifications of *Shariah* experts. Later, the shareholder will lose his/her ownership right while the donated amount becomes the property of the *Waqf* endowment. The *Waqf* endowment has the right to develop rules and regulation on how to spend, develop, and invest the donated monies. In addition, the reputable company will manage the accumulated funds as the administrator and donated cash *Waqf* can be invested in profitable investment in order to have enough and sufficient cash to cater for needy Muslims in Nigeria. Concerning *Waqf* funds, the donor is the beneficiary of the fund.¹⁹⁵ It has to be quickly mentioned that all models are beyond the capacity of individuals to manage singularly. This is because the models need experienced corporate bodies that are skilful, capable, and well experienced in executing projects related with huge amounts of money. Therefore, *Waqf* endowments should consist of a team of capable people with the experience and skill to optimise donated funds. The reason for this is that the more the *Waqf* invests in lucrative investments, business, and transactions, the more the profit would be realized and the more the *Waqf* institution has sufficient funds, the more *Waqf* is capable of helping the needy.

4.10 The Concept of Sukuk and its system of Application in Nigeria

Sukuk refers to Islamic bonds in the form of assets, stable income, tradable and provision of trust certificates on the basis of Islamic principles. It can also be defined as documents or certificates which represent the value of an asset. *Sukuk* primarily and purposely aims to generate capital for a specific project. *Sukuk* cannot be issued without

¹⁹⁵ Abdul Rahim, A. R. (2003), Accounting Regulatory Issues on Investment in Islamic Bonds, *International Journal Of Islamic Financial Services*, 4(1),11.

identification of an asset. The condition for *sukuk* is that the asset should be equal to the value stated in the *sukuk*.¹⁹⁶

There is a need for the *Waqf* to generate income from lucrative business that will enrich and increase the *Waqf* institution in order to avoid financial hindrances that might confront *Waqf* commissions particularly in Nigeria. The reason for this is that the percentage of needy Nigerian Muslims is extreme and cannot be reduced through individual contributions and assets. Based on this analysis, *Waqf* in Nigeria can create reasonable, profitable, substantial and lawful business that will generate long term income for the foundation. As such, the concept of *sukuk* can be applied through *mudarabah*, *musharaka*, *murabaha*, *ijara*, *intifa'a*, and *qarid* in the interest of the *Waqf* institution and recipients. The full details of *sukuk intifa'a* as Islamic finance via *Waqf* cash are analyzed to discover the extent and application of the transaction. It has been analyzed that present the economic meltdown affecting the economies of many developed and developing countries is the consequence and outcome of the absence of economic activities such as business transaction, companies, industries, and tangible commodities that will reduce the poverty rate. Abject poverty has killed many Africans despite the fact that their lands are fertile for cultivation and farming. *Waqf* endowments with its systematic methodology are meant for social development where the needs of people are catered for through endowment funds. This is because *Waqf* commissions or institutions play an important role in balancing the social equilibrium between the rich and the poor which is the purpose of *zakat* and *sadaqat* and also makes efforts in economic building where financial support is given to the general public.¹⁹⁷ The application of financial *Waqf* through *sukuk* will play an important role in transforming

¹⁹⁶ Tareq 2009,130-131, Sukmana, Kholid, Hassan, 2009,11-13.

¹⁹⁷ Editorial. (2009). *Waqf* and the financial crisis what *Waqf* can do to the financial crisis. *Awqaf Journal*, (17): 7-9.

the lives of many Nigerian Muslims. This will be discussed in the following sub headings.

4.10.1 Eligible Asset Classes of Sukuk

The AAOIFI has defined fourteen (14) eligible asset classes of *sukuk* that can be invested such as:

- 1- The owner (s) of existing assets may sell the securities through *sukuk* issues such as *sukuk al-Ijarah*).
- 2- The owner(s) of assets that are subject to lease may suggest or mobilise the acquisition price or cost of such an asset via *sukuk* issues such as *sukuk ijarah mawsufa bithima*.
- 3- The existing asset (securities or usufruct of the asset) that are subject to the lease can be sold by the owner through *sukuk*.
- 4- The owners of the leasehold rights of an asset to be acquired and subject to lease contract may sell securities of such an asset through *sukuk* issues such as *sukuk manfaa ijarah mawsufa bithima*.
- 5- The cost of service that the proprietor is wishing to undertake can be mobilised through pre-selling while the expected benefits are determined via *sukuk* issues such as *sukuk milkiyat al-khadamt*.
- 6- The proprietor who wishes to produce or provide specific goods, commodities or consignments in the future may pre-sell such goods through *sukuk al-salam*.
- 7- The contractor or manufacturer wishing to construct or manufacture and later deliver such agreement contracts in the future may seek the cost through *sukuk al-istisna'a*.
- 8- The cost of agreed or certain goods or commodities that are subject to future selling through *sukuk* issues can be determined via *sukuk mudarabah*.
- 9- The partner of joint or partnership business can request for capital participation through *sukuk* issues such as *sukuk musharaka*.

- 10- Buisnessman or women who have shortage of capital to run his/her business can mobilise sufficient capital through *sukuk* issues such as *sukuk mudarabah*.
- 11- In order to attain certain assets, capital can be raised or mobilised for the agent or *wakil* on behalf of owners through *sukuk al-wakala*.
- 12- Through *sukuk al-muzara'a*, funds can be raised or mobilised for the cultivation of the land by the land owners or leasehold provided that the subscriber to such an agreement is entitled to share part of the product of such cultivation.
- 13- Funds can be raised by the owner of the land to maintain matured farm trees through *sukuk al-musaqa* while the subscriber is entitled to a share from the product of such trees.
- 14- Funds can be generated and mobilised by the land owner for the maintenance of land and trees, and crops via *sukuk al-muqarasa* while the subscriber benefits from the product of such fertile land.¹⁹⁸

All the above eligible classes of assets can be sold through *Waqf* institutions based on the agreement between the owner and the *Waqf* management. Both contracting parties will be the major benefactors form the assets directly or indirectly. If *Waqf* stands as the buyer of *sukuk* from the owner and the asset can be diverted into profitable transactions or investments that will generate more income for the *Waqf* endowment that will be used to cater for the underprivileged across the nation and Nigerian Muslims in particular. Similarly, if *Waqf* plays the role of subscriber to certain lands, the *Waqf* will benefit directly and indirectly from the produce of such land product based on the agreement.

¹⁹⁸ Jaffer, 2004.

4.10.2 Permissible Transactions under Waqf

The following are the evidence that encourage lawful and illegal business and transaction that Muslims should engage or involve in in order to gain lawful profit.

Therefore, the *Qur'an* and *Hadiths* provides that:

“Then when the (*Jumu'at*) *Salat* (prayer) is ended, you may disperse through the land, and seek the Bounty of Allah (by working etc) and remember Allah much: that you may be successful.”¹⁹⁹

In another verse, “He it is Who has made the earth subservient to you (i.e easy for you to walk, to live and to do agriculture on it); so walk in the path therefore and eat of His provision. And to Him will be the Resurrection.”²⁰⁰

The economically strong Muslim is better than the weak Muslim. It can be understood from the above quotations from both the *Qur'an* and *Hadiths* that Islam encourages lawful business, transaction and trade that will enhance individual income. There is no a single verse in the *Qur'an* and *Hadiths* that illegalize or discourage involvement in fruitful transactions.²⁰¹ Since business is not limit to any particular quarters, *Waqf* institutions have the legal right to engage in all kinds and types of business through *sukuk* that will enhance *Waqf* income. This will also create positive relationships between the state, society, and *Waqf* institutions in Nigeria.

4.10.3 Islamic Finance and Socioeconomic Responsibilities through Waqf

Endowment.

It is obvious that the institutions of *Waqf* play very important roles in Muslim societies. The phenomenon has grown steadily since its beginning and has benefited the public by defraying public expenses such as the founding of mosques, graveyards, hospitals,

¹⁹⁹ Quran 62:10.

²⁰⁰ Quran 67:15.

²⁰¹ Razali, H. N. (1999). *Islamic Law on Commercial Transactions*. Malaysia: CT Publication, 1-3.

schools, orphanages, warehouses, bakeries, and other charitable, educational or religious foundation. It is used to support the aged and infirm in order to provide relief for the poor and even take care of animals, agriculture, horticulture, and water resources. *Waqf* was dedicated by their founders be they laymen or highly placed functionaries. In Nigeria, there is no capital at hand for many Nigerian Muslims to execute or carry out their business due to the rate of poverty or their financial constraints. Cash *Waqf* can be utilized in order to empower or free many Muslims in Nigerian from poverty. The risk of *sukuk* and others must be well prepared for market risk, interest rate risk, risk in foreign exchange rate, credit risk, operational risks such as default, asset redemption and investor risks. Another risk is liquidity. There are many Quranic verses that encourage and support Muslims to adequately maintain and increase their properties such as Q: 67:15 and Q:62:10. Based on such evidences from sources of Islamic law, cash *Waqf* can be maintained and increased through *sukuk al-Ijarah*, *sukuk mudarabah*, *sukuk murabahah*, *sukuk muqaradah*, *sukuk musharakah*, *sukuk al-Istismar*, and *Sukuk al-Intifa'ah*.²⁰² *Waqf* cash can be used or utilized in order to achieve functions of *Waqf* especially in Nigeria. So, *Waqf* cash can be used to positively transform many lives through Islamic finance via *sukuk*. It is has the ability to mobilize and generate funds for different sectors. It has been noted and cleared that *Zam Zam* Tower utilized the concept of *sukuk* where towers were constructed in Mecca based on BOT (Built Operate and Transfer). The purchaser bought the units on a 28 years lease agreement. Similarly, the Real Estate Investment Trust (REITs) also applied the concept of *sukuk* as a means to own properties. Proper and adequate maintenance of *Waqf* properties or assets cannot be achieved in inactive activities because Islam encourages and supports the enhancement of *Waqf* assets and properties for the purpose of

²⁰² Rakhimberdiev, S., Abdul Halim, H., Abdulkadir, A. & Yusuff, J. A. (2014). Cash *Waqf*: An Alternative to economic development and poverty alleviation in Malaysia. *Shariah Reports A Journal on Islamic Law, Banking & Finance*, cccxiii-cccxiv.

continuous financial support to the needy. If the property or asset is left idle without any profitable activities for a period of time, it is of no use for the needy. Therefore, such properties can be expanded and prevented from idleness by means of making use of it that will later benefit the poor. *Sukuk* are Islamic notes that are alternatives to conventional bonds. It has to be noted that the legality and legitimacy of the *sukuk* system or application under *Shari'ah* does not take advantage of the interest rate. The phenomenon is linked with real sector activities while investors have the right to information on the usage of investments, nature of the assets and other related particulars that would be considered redundant in conventional investments.²⁰³

4.10.4. The application of cash Waqf in different kinds of business transactions in Nigeria.

It has to be noted that the *Waqf* project is divided into two types namely primary and secondary projects. Primary projects are mainly concerned with the needs of the needy in order to provide adequate provisions for the underprivileged. The provisions include food, shelter, drinkable water, clothes, medical treatment, education to name a few. However, secondary projects aim to engage in profitable and lucrative business that will boost the income of *Waqf* institutions. Having sufficient income and funds will enhance the *Waqf*'s ability to render financial assistance to the needy. The reason for this is that *Waqf* would be able to take care of underprivileged Nigerian Muslims who are facing financial difficulties. Types of secondary profitable projects include housing, hotels, shops, malls, business centres, hospitals or clinics, schools, transportation for commercial business and any profitable transaction that will enrich *Waqf* institutions in Nigeria. This research believes that if the secondary project is carefully managed by

²⁰³ Olaniyi, O.N Echchabi, A.G. & Alfarisi, M.F (2013). *Sukuk as an alternative mechanism for infrastructure development and improvement of small business in Nigeria* in Dandago, K.I, Muhammad, A.D and Oseni, U.A (Eds.) *Essential of Islamic Banking and Finance in Nigeria* (pp.202-204). Kano, Nigeria: Benchmark Publishers Limited.

honest management, there would be sufficient profit to cater for many needy Nigerian Muslims.²⁰⁴

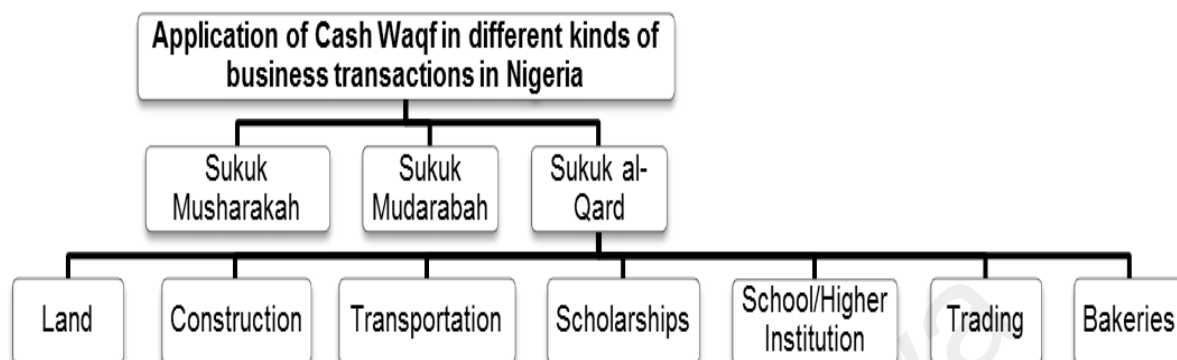


Figure 4.4: Application of cash *Waqf* in different kinds of business and transaction in Nigeria

4.10.4.1-Sukuk Musharakah

Musharakah is another system of investment in the Islamic commercial or business system where two or more people contribute certain amount of money together or another person becomes co-partner in the transaction. Those who participate in the *Musharakah* will share the profit and loss together but according to the percentage of their capital contribution into the *musharakah* investment. This kind of joint business is lawful and legal under Islamic law and has a basis in the Holy *Quran* and *Hadith* because it has been practiced since the period of Prophet Muhammad (s.a.w.) up to the present. The word '*sharikah*' is generally passive as common properties that come from inheritance or gifts. It means that the properties belong to many persons under agreement to share the allotted profits or loss. The *musharakah* can be in the form of *mufawadah* partnerships or inan partnerships.²⁰⁵ *Waqf* institutions in Nigeria can benefit

²⁰⁴ *Waqf* Editorial, 16-17.

²⁰⁵ Rakhimberdiev, S., Abdul Halim, H., Abdulkadir, A. & Yusuff, J. A. (2014). Cash *Waqf*: An Alternative to economic development and poverty alleviation in Malaysia. *Shariah Reports A Journal on Islamic Law, Banking & Finance*, cccxiii-cccxiv. See also, Nawawi, 156-157.

from many small scale business Muslim men and women who join their businesses and give the agreed capital to execute the profitable business or any lawful investment that will benefit the *Waqf* foundation. For example, poultry is one good business that *Waqf* can engage as *musharakah* where money can be given to the owner and employ additional employees who will work for the *Waqf* foundation. The *Waqf* employee would serve as a representative and behave according to *Waqf* conditions and requirements. There are certain businesses or lucrative business partnerships that *Waqf* can invest in to realize huge amounts of profit that will boost *Waqf* income and enhance and increase the *Waqf*'s ability to render assistance to needy Nigerians.

4.10.4.2 Sukuk Mudarabah

The term of *mudarabah* simply means “expression” or “journeying” that refers to “*yadaribuna fi al-ard*” in a agreement that a working person is entitled to a certain share from the profits due to his/her labour while the other is entitled to profit based on their contributed capital.

Legally, both *mudarabah* and *muqaradah* means payment of capital to working partners who will execute the business as agreed upon by both parties and who should not breach the contract. The investor who provides capital for the business is called “*rab al mal*” and the other party is called “*mudarib*”. The capital is given to the labourer based on his business or transaction experience to carry out the business and his ability to manage the money honestly and judiciously. The word ‘*mudarabah*’ was adopted by Imam Abu Hanifah while “*qirad*” was adopted by Imam Malik and Imam Shafi'i respectively. *Mudarabah* is a kind of an agreement between two or more parties to transact business together where one party will provide capital for the agreed business venture and the other party will execute the business as a working party who has no money but will work for the business. Seen from a different perspective, *mudarabah* is

a business association between money and labour for the purpose to realize profits. In the case of any shortage or loss in the business, the investor carries the burden of shortage and loss and the working is not indebted to pay the investor back for the loss. This is because the loss or shortage was not caused by the labourer.²⁰⁶

4.10.4.3 Sukuk Qard

The word '*qard*' etymologically refers to the cutting of the lender's property. Imam Abu Hanifah defined *qard* as a contract between the lender and the borrower to be repaid by the borrower to the lender based on specified terms and condition. The contract is legal and lawful in Islam because it is a way of rendering financial assistance to the needy without any interest. The contract is considered completed when the borrower received the requested amount for the purpose of loans.²⁰⁷ Lending to the underprivileged without any interest is a good act in Islam to the extent that Prophet Muhammad (s.a.w.) says that:

It was reported by Ibn Majah and Ibn Hibban (r.a.): "I saw in the light of journey that it was written on the door of the Heaven: "*Sadaqah* has ten rewards and loan has eighteen". I said to the Angel: How come the loan is given more reward than the sadaqah? The Angel replied" Because the beggar who asked had already had something, but the borrower did not ask for loan unless he was in need."²⁰⁸

Based on the concept and application of *qard* in Islam, it is believed that the application of *qard* can be another means for *Waqf* endowments in Nigeria to lend land for profitable purposes. *Waqf* foundations can loan needy Nigerians certain amounts of

²⁰⁶ Modar, A. A., Edra, G., Nawal Seif, K. & Amuda, Y. J.(2014). Critical Analysis of Murabahah Islamic Mode of Finance. Shariah Reports A Journal on Islamic Law, Banking & Finance, civ-cx. See also, Nawawi, 146-147. See also, Abdul Rahman, 1935. See also, Ibn Manzur, M. J. (1956). *Lizan Al-Rab*. Beirut: Dar Sadr, pp.543. See also, Ibn Qudamah, 14. See also, Nabil, S. (1986). Unlawful Gain and Legitimate profit in Islamic Law. Cambridge, 103.

²⁰⁷ Nawawi, 114-118, Ala Eddin, 49-50.

²⁰⁸ Al-Shawkani, M. B. A. (1392H). *Nayl al-Awtar*. Beirut: Dar Ihya al-Turath al-Arabi, pp.229.

money for reasonable and lawful purposes that will benefit the debtor provided that the *Waqf* foundation monitors the usage of the borrowed money. This is because, some may apply or request for loans from *Waqf* foundations for ceremony or festival that will only lead to loss. The following are some projects that can be executed or carried out with *Waqf* cash through *sukuk*.

4.10.4.3.1 Land

Application of BOT can be applied for the usage of land as *ijara* and *istisna'* that will be useful for the needy and profitable for the *Waqf* foundation in order to financially empower the needy. Therefore, the rules, conditions, and regulations of BOT should be properly implemented. The ultimate goal is to develop *Waqf* assets and properties from idleness and to assist the needy in different ways in order to reduce the poverty rate among Nigerian Muslims. BOT is also capable of preventing or eliminating *darar* or harm from *Waqf*.

In Nigeria, farmers can be approached in order to use their land for commercial farming by seeing to all the necessary needs of the venture based on the agreement that a certain percentage of the harvest would go to the owner and they would be paid for their labour on their farm. *Waqf* shares can be used in order to transform the lives of the needy in Nigeria. For instance, if a farmer is tasked to plant cassava, *Waqf* shares sent to an entity that converts cassava to local and common food known as (*gaari*) that can sell in a reasonable or cheaper price. Based on this idea, some people are working on farms and are being paid monthly in addition to receiving a percentage of the profits from the sale of farm products. Others are also working where cassava can be converted to *gaari*. They are also employed and paid monthly returns while *Waqf* properties, assets, or cash money is steadily increasing. Similarly, certain fertile lands can be purchased by the *Waqf* for farming, fish ponds, poultry and other business activities where many Muslim

workers would be working there and be well paid. Abandoned land can be leased from the owner for the purpose of cultivation or farming based on the consented agreement and terms for the benefit of the owner and *Waqf* institution where the owner will gain both payment from the *Waqf* institution for the usage of the land and security for the land. The reason for this is that *Waqf*'s movable properties serve as informal certificates of occupancy for the land due to land plight across the nation. It has to be well planned that any leased land can only be used for movable property because land owners may want to use the land for other purposes. *Waqf* business centres can be established where common local foods can be produce at cheaper prices for the benefit of the needy and as a strategy against price controls and hoarding. The *Waqf* market will sell its commodities at cheaper prices for the convenience of Nigerians regardless of their religion, gender, tribe, and race. This will pave the way for non-*Waqf* marketers to reduce the price and avoid inflation and hoarding.²⁰⁹

4.10.4.3.2 Construction

It is obvious that Nigerians waste land resources due to their methods of construction in contrast with the Malaysian system. In Nigeria, three plots of land can be occupied by a person to build a house or a flat where the remaining parts would be useless. In such a situation, if *Waqf* manages to have ten hectares of land in each local government, it will build tens of thousands of flats on it. The following are the rations:

10 plots = 1 hectare;

²⁰⁹ Yusuff, J. A., Azizan C. E. & Oladapo H. B. (2014). An Agricultural Approach to the Commercialization of Cash *Waqf* between Malaysia and Nigeria. *Journal of Advanced Management Science* Vol. 2, No. 4, 344-348. See also, Amuda and Azizan, 2013:406-407. See also, Larbani, M, Mohammed, O.M & Olaniyi, O.N (2013). The problems facing the agricultural sector in Nigeria and the prospect of muzaraah & supply chain model. In Dandago, K.I, Muhammad, A.D and Oseni, U.A (Eds.) *Essential of Islamic Banking and Finance in Nigeria* (pp.356-360). Kano, Nigeria: Benchmark Publishers Limited. See also, Abdul Muiz, M., Muhammad, R.P.S., Luqman Hakim, H. & Amuda, Y.J. (2014). Revisiting the permissibility of crude palm oil figures contract as Shariah complaint: Malaysia case study. *Shariah Report A Journal on Islamic Law, Banking & Finance*, cxxv.

10 plots x10 hectares = 100 plots.

In Malaysia, 4 plots of land can be used to build 15 stories of condominium that will have 1,000 flats which is equal to:

4 plots to build 1000 flats;

1 hectare will build 2,500 flats;

2500 x 20 hectares= 50,000 flats.

Based on the above analysis, if such a project can be carried out with *Waqf* cash and giving out partly as *ijarah* and partly for sale. This kind of project can benefit both Muslims and non-Muslims. Some people give their lands as *Waqf* and those assert can be used for such purposes. Having assets such as buildings will create many jobs for Nigerians during the constructing of the and after where some would be employed as management, cleaners, servicemen and other relevant occupations. *Waqf* transportation can be stationed in front of the estate as commercial transportation that will bring passenger to their lawful destinations.²¹⁰

4.10.4.3.3 Transportation

Sukuk can be used to buy transportation for drivers of public transportation. The *Waqf* institution will receive profits in addition to having replaced their initial capital. However, if *Waqf* is capable of purchasing buses or other types of transportation for business purposes wherein *Waqf* employees would be in charge of the business. Such a project will also create jobs for drivers and conductors who will be in charge of ticket. The employed drivers would be in a position to see to the financial needs of their families. Moreover, the commercial success of such projects can inspire other such projects and the profits earned can be continuously invested into similar projects. Eventually, such a process, it is hoped, will reduce the poverty rate in Nigeria.²¹¹

²¹⁰ Amuda (b), 2013,295.

²¹¹ Amuda (b), 2013,295.

4.10.3.3.4 Scholarships

Scholarships can be awarded to needy students who come from poor families on the condition that the recipient will pay 10 percent of the scholarship to the *Waqf* when he/she is working.

4.10.4.3.5 School/College/University

Waqf foundations can partner with others in owning private school/college/university that offer education at cheaper costs compared to other private schools/colleges/universities. The profits realized from other projects can be used to maintain such schools/colleges/universities. This kind of project would be used to empower Nigerian Muslims by given them sound and standard education together with Islamic teachings. Many students of Arabic schools owned by private proprietors can be helped by means of giving them western educational training that would be useful for them in order to be employed by the government or private sectors. This is to allow them to study diploma programs that will enhance their English language proficiency (Amuda, 2013: 422).²¹²

4.10.4.3.6 Trading

Many women are industrious and good in trading but face the problem of capital to start their business. Therefore, if *Waqf* can assist such people by giving them free interest loans to start or boost their business or trade. This kind of financial assistance will reduce the poverty rate among Nigerian Muslims. *Waqf* institutions can engage many industrious underprivileged women to assist them in developing lucrative business and trading where the profit would be shared according to the terms and conditions of the agreement in the interest of both contractual parties. Loans can be given to needy

²¹² Amuda (b), 2013,422.

traders and *Waqf* collectors would be in-charge of collecting the loaned monies monthly or annually or at convenience of the debtor.²¹³

4.10.4.3.7 Bakeries

Waqf can also have its own bakery where some workers would be working there as director, baker, cleaner, cashier, distributors, and drivers. Some Muslim women who are in need can be given free bread to sell and pay the money latter. *Waqf* employees can work as bread distributors across the state where the bread will be taken from one local government to another and the retailer can sell the bread at lower prices. This is a form of public assisting and empowers many unemployed Muslims.²¹⁴

4.11 The Nigerian Muslim Community and *Waqf*

The institution of *Waqf* is an extraordinary and unique in the history of Islam. It plays a pivotal role in promoting social, financial, and religious enrichment. The creation of *Waqf* and the *waqif* are concerned with transforming the lives of the underprivileged by providing them with movable and immovable properties for their benefit. Islam strongly supports financial support of the society and encourages lawful and legal profitable business. Therefore, the management of a great institution like *Waqf* should not be controlled by greed, selfishness, inhumanity and ignorance in order to ascertain the values and spirit of *Waqf* and also to achieve its goals in lending support to the needy.²¹⁵

It has been argued that 1.1 billion people are leaving on less than \$1 dollar per day while one (1 billion) people do not have access to clean and portable water for drinking and 6 million children die yearly as a result of hunger while 143 million are homeless in

²¹³ Amuda (b), 2013,296.

²¹⁴ Amuda (b), 2013,296.

²¹⁵ Adnan, T. (2013). The legal and Administrative Analysis of *Waqf* in Bosnia and Herzegovina. In: *Waqf* laws and management with special reference to Malaysia. Institute of Objective Studies, New Delhi, India, pp. 315-320. See also, Amuda (b), 296-298.

developing countries.²¹⁶ Many Nigerians are the victims of bad and corrupt leaders. The report of AD-HOC Committee submitted to the Nigerian House of Representative on 18th April, 2012 recommended the refund the total amount of one trillion, sixty-seven billion, 40 million, fourhundred and fifty-six thousand, one hundred and seventy-one naira and thirty-one kobo (N1, 067, 040, 456, 171.31 trillion) to the treasury.²¹⁷ The total amount of money was stolen from petroleum subsidy. The rate of corruption across the nation tantamount to the poverty in Nigeria. Despite the many natural resources, the poverty rate, unemployment, inadequate funding, corruption, lack of clear policies and selfishness greatly contribute to the financial incapability of many Muslims in Nigeria. This further encourages the establishment of *Waqf* in Nigeria in order to take care of the needy. It is believed that *Waqf* endowment commissions across Nigeria will minimize and reduce the suffering and financial constraints of the poor.²¹⁸ Many Muslims can have multiple choices of *Waqf* based assistance such as interest free loans, job creation, subsidies, housing, food, and other materials that are useful for the general public. *Waqf* can give financial support to incapable students to pursue their education on the condition that on employment they render similar assistance to underprivileged students.²¹⁹ In support of the positive roles of *Waqf* commissions in Nigeria in eradicating poverty and promoting socio-economic, scientific, educational and medical wellbeing, an observer comments:

The very idea of *Waqf* itself consist of creating and developing a third sector distinct from the profit-motivated private sector and authority based public sector, and charging this third sector with the responsibility for performing a group of tasks in the arena of righteousness, goodness, kindness, mercy and benevolence.

²¹⁶ Thinkers Forum. (2009). Campaign for the poor-working to establish a social welfare system in 2009. www.thinkersforum.org. See also, Nurudeen, 286-287.

²¹⁷ AD-HOC Committee, 2012.

²¹⁸ Nurudeen, 286.

²¹⁹ Neareast (2009) "The role of waqf in developmet." <http://www.neareast.org>. See also, Nurudeen, 287.

Historically, the Islamic society assigned education, health, social welfare and environmental welfare to this sector. Furthermore, the third sector provided defence services and public utilities in many instances.²²⁰

This quotation indicates the importance of *Waqf* in Muslim society as a righteous foundation or endowment in support of the needy where the commission will carry out and execute various types of lucrative business for eliminating and eradicating financial difficulties throughout Nigeria. For instance, if *Waqf* endowment commissions engage in the baking business at least 3 bakeries in each state, they can employ many employees to work in the bakery where the wages or salary would be paid and needy employees would be financially comfortable and able to provide for his/her immediate family. In such a bakery, employees are responsible for different tasks and duties. Bread is a daily need and a lucrative business that will yield profits and boost the income of commission in order to have sufficient provisions to solve the applicants' needs. By engaging in such business, the *Waqf* commission will have opportunity to employ many workers. Based on this analysis, it is argued that *Waqf* is the most significant charitable organization or institution that provides necessary support and plays an important role to develop the nation socially, economically, educationally, and religiously.²²¹

According to Bremer:

Typically, the trustee was charged with developing the commercial properties so that income would be generated to support social service structures. This combination of commercial and social purpose enabled the most effective awqaf to function as a sort of self-contained urban development authority. A forward-looking *mutawali* had the capacity to

²²⁰ Islamic-World (2006). *Waqf*. <http://www.islamic-world.net/economic>. See also, Nurudeen, 289.

²²¹ Bremer, J. (2004). "Islamic philanthropy: reviving traditional forms for building social justice" <http://www.islam-democracy.org>. See also, Kahf, 2011:168-173.

rehabilitate an entire urban zone or the centre of a town and to establish a mix of housing, commercial facilities, mosques, and social services facilities suited to the needs of the time.²²²

This study in line with Bremer’s observation that the role of *Waqf* commissions is to transform the lives of many needy people among Muslims across the nation especially in Nigeria. This is based on the argument that *Waqf* commissions can engage in many commercial enterprises that would positively impact on the lives of Muslims. The board of trustees must always strive for profitable activities that will increase *Waqf* revenues in Nigeria. Many programs can be funded by *Waqf* endowments such as schools, hospitals, houses, hostels, companies, and farming with the aim to assist the needy.

4.12 Security of cash *Waqf*

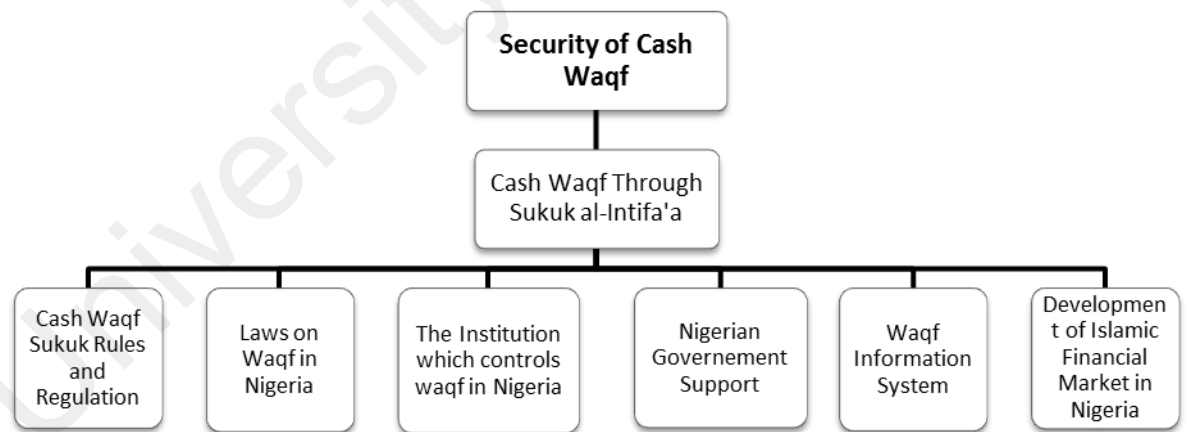


Figure 4.5: Security of cash *Waqf*

It has to borne in mind that *Waqf* properties belong to the Almighty Allah, therefore, the board, executive, or management must distance themselves from any inefficiency and

²²² Bremer, J. (2004). “Islamic philanthropy: reviving traditional forms for building social justice” <http://www.islam-democracy.org> See also, Nurudeen, 291.

dishonest attitudes. Greediness, mismanagement, irresponsible intervention, and prohibited actions that will subject the *Waqf* commission to forms of corruption that render charitable foundations ineffective.²²³ The securitization of cash *Waqf* is meant to revitalize, redirect, and generate income for the *Waqf* property through *Musharaka sukuk*, *Mudharabah sukuk*, *Sukuk al-Intifa'a*, *Qarid*, *ijarah*, and *Murabaha* via cash *Waqf* in order to cater for the needy. Securitization would differ from other investments. The following are consideration for the securitization of cash *Waqf* investments.

4.12.1 Cash *Waqf* through *Sukuk al-Intifa'a*

It has been defined that *sukuk* refers to documents or certificates that represent the value of an asset. The cash *Waqf* can be applied through *sukuk al-intifa'a* provided the application does not contravene or breach any Islamic principle. The *sukuk intifa'a* is not a new model of issuing investment because many countries such as Saudi Arabia and Singapore have applied and explored the *sukuk intifa'a* in many lucrative projects.²²⁴ The *sukuk al-intifa'a* was issued through Building, Operation and Transfer known as (BOT) which this study will further discuss and analyse for its ability to build suitable houses for Nigerians. The following are the characteristics of *sukuk al-intifa'a*: Firstly, *Sukuk al-intifa'a* is for securitization of property where the *sukuk* holder will benefit from the utilisation of assets or properties.²²⁵ If Mr. A, which is the Nigerian *Waqf* commission or Board, has the opportunity to build thirteen modern buildings in many states in Nigeria, Mr. B who is the buyer will make monthly payments to the *Waqf* commission or the buyer to re-lease the house to another party who is Mr. C. Mr. C will pay the money to Mr. B and Mr. C will remit the money to Mr. A who is the *Waqf* commission. In such a situation, the *Waqf* commission will revitalize *Waqf* cash and use

²²³Sukmana, R., Kholid, M. Kamal A. H. (2009). *Waqf management through sukuk Al-intifa'a: A generic model. Awqaf Journal*.17, 19-21.

²²⁴ Fazlur, R. (1964) *Riba and Interest, Islamic Studies*. Karachi: The Islamic Research Institute. See also, Sukmana, Kholid, Hassan,17.

²²⁵ Sukmana, Kholid, Hassan, 17.

the profit to construct another useful project that will benefit all regardless of their gender, religion, and tribe.

Secondly, the *Waqf* commission has the opportunity to sell market tools or tradable items or materials to the needy to generate income for the institution that will enable the commission to cater for the needs of the needy.²²⁶ The *Waqf* commission in Nigeria can transact in tradable and marketable transactions especially in items regarded as daily needs at cheaper more affordable prices. For example, raw food commodities are expensive and many citizens especially the under privileged are unable to purchase the commodities due to their financial constraints. Therefore, the *Waqf* commission can engage in such businesses in order to reduce the hardships faced by the poor. If the *Waqf* commission has its own small scale companies that produce necessary or basic foods at cheaper prices, many people would be happy and excited to see such kinds of Islamic organizations. More analysis and discussion would be given in subsequent pages in this chapter on the commercialization of *cash Waqf* through *sukuk*.

Thirdly, the duration of *Waqf sukuk* through *ijara* (lease) can be changed or divided into lease periods that will provide *Waqf* commissions with good money flow to run the institution.

Fourthly, transfer of *sukuk* rights to a particular period or year with the focus on how Islamic financial markets would perform. The application of BOT by the *Waqf* commission in Nigeria to develop the property owned by the institution will provide assurance and preservation of such properties. It has been said that all endowed assets belong to the Almighty Allah and such properties must be protected. The BOT scheme requires developers to develop building, shops, complexes, or offices on *Waqf* land for at least twenty five years after which ownership will transfer to the *Waqf* foundation. However, it is argued that the *Waqf* commission can encounter some risk because the

²²⁶ Sukmana, Kholid, Hassan,17-18.

developed asset may be obsolete at the time of ownership change. Changing of environment might be another predicament that *Waqf* commission might face due to unforeseen situations.²²⁷ In order to avert such predicaments, *Waqf* commissions need to prepare for future situations. It must be clearly and unambiguously stated by the *Waqf* foundation that the developer must maintain the developed asset or estate in order to avoid damage to the developed project.²²⁸ *Waqf* can be developed for houses, complex buildings, shops, offices, and other useful immovable properties which can then be rented to the public. In such a case priority must be awarded to the underprivileged. Fertile lands can also be leased by the *Waqf* commission for the purpose of farming and cultivation. Products can be sold to people at cheaper prices and exported to other states or countries. Such transactions will generate income for the *Waqf* commission. In Nigeria, abandoned lands can be leased by the *Waqf* commission for commercial purposes.

4.12.1.1 Cash Waqf Sukuk Rules and Regulation

There should be rules and regulations especially on assets that differ between conventional bonds and *sukuk*. Although, both *sukuk* and conventional bonds are similar in their primary aim of raising funds, there is a need for rules and regulations that will govern and control the issuing of *sukuk* certificates or the practicing of *sukuk* across Nigeria because this is a relatively new area in Nigeria.

4.12.1.2 Laws on Waqf in Nigeria

There should be comprehensive laws on *Waqf*, especially in Nigeria, that clearly explain the roles, obligations and benefits of the parties involved in the *Waqf* such as the *waqif*, *nazir* and *mawquf* beneficiaries and others who are directly or indirectly involved in

²²⁷Sukmana, Kholid, Hassan,17.

²²⁸ Sukmana, Kholid, Hassan,17.

Waqf administration. The Nigerian authorities should draft the laws governing *Waqf* institutions because it benefits the needy. There is a need for effective jurisdiction to rule over Nigerian *Waqf* institutions and how to mediate or reconcile in case of any conflict on donated properties or other issues related to *Waqf* properties and administration.²²⁹ There is nothing wrong with Acts of State houses of Assembly that establish *Waqf* foundation in Northern states in particular but there is need for recognised Acts under Nigerian constitution that will govern and applicable to all Nigerian states.

4.12.1.3 The institution which controls the Waqf commission in Nigeria

There is argument that *Waqf* management should be non-governmental bodies on the basis that many Muslim countries are corrupt and inefficient which have resulted in discouraging potential sponsors. It is also argued that management, especially the administrator, should be appointed by the president while the institution would be conferred with powers to carry out their charitable activities without any obstruction.²³⁰ There is need for government intervention especially on the issue of management appointment, *Waqf* laws, law enforcement, competent courts and funding. It is an undeniable fact that many Muslim countries are corrupt such as Nigerian leaders; nevertheless, there is a need for the intervention of the Nigerian government for the smooth running of the institution. However, the management should be given freedoms to carry out their activities in line with *Waqf* rules and regulations and the appointment should be based on credibility and merit not on political connections.

²²⁹ Oseni, 2012, 339-347.

²³⁰ Rashid, 2002, Sukmana, Kholid & Hassan , 20.

4.12.1.4 Nigerian Government support

The creation and establishment of *Waqf* in Nigeria requires financial government support. The establishment of *Waqf* in Nigeria in South West in particular needs government support in order to be legally recognized and approved such as the religious bodies created by the State and Federal government. *Waqf* institutions will definitely face many challenges that require government intervention. For the effective *Waqf* administration, the state or federal government must be directly or indirectly involved in the administration of *Waqf*. Many countries wherein *Waqf* institutions are well developed have strong government involvement. Although, powers should be conferred on the administrators in order to run the affairs of their institution, the government retains powers to appoint or sack administrators according to credible reasons and evidences.²³¹

4.12.1.5 Waqf information systems

Waqf management information should be well established in order to support the implementation of models that generate income for the *Waqf* endowment and all other beneficiaries. The given information will help the *Waqf* management to control and manage *Waqf* properties and carry out their charitable activities accordingly.

4.12.1.6 The Development of Islamic Financial Markets in Nigeria

The development of Islamic financial markets will attract a range of investors nationally and internationally to invest in agreed *sukuk al-intifa'a* as a means of developing the liquidity increment for Islamic financial instruments across Nigeria. It will also help in reducing *gharar*, corruption and cheating that have become the culture, custom and attitude of many business men, contractors and sellers. It will serve as a way of

²³¹ Amuda (b), 2013:284-285.

propagating Islam indirectly when *Waqf* endowment across the nation is involved in different types of business. If *Waqf* also engages in construction as contractors and are successful many people will be attracted to their successes. Engaging in different businesses will lead to demands for employment. It has been hitherto mentioned that *Waqf* needs more than one administrator, as such, each department under the *Waqf* institution will handle different roles and responsibilities that will profit the institution.

4.12.2 Advantages and Disadvantages of cash Waqf in empowering Nigerian

Muslims

It is an undeniable fact that cash *Waqf* will improve many lives through business, trade and education to name a few. Religiously, many mosques need renovation while some universities need mosques for Muslim students. In addition, there is a need for at least five Muslim cemeteries in each local government where corpses can be prepared according to Islamic burial requirements. For preaching, *zakat* collection, and arrangement for *umrah* and *hajj* programmes, cash *Waqf* will contribute to many events and activities. Similarly, *Waqf* can open a special account for the intended pilgrims to deposit money for the purpose of *hajj* based on the depositor ability to deposit the money for *hajj* or *umrah*. The money can also be used for business or investment that will benefit the. The depositor will receive his or her capital without any interest. On the issues pertaining to money, there must be clear legal provisions that will govern such institutions in order to avoid corruption, mismanagement or abuse of power.

Economically, the cash can be invested in transportation as discussed in previous pages but this transportation will be mainly for school children where cheap fares would be charged in order to ease the burden of many children going and coming from school. This will create jobs for unemployed adults and the investment will yield profits for the *Waqf* institution. Cash *Waqf* will serve as an instrument or model to

eliminate poverty among Muslims where the money will be given out as interest free loans, financial aid or gifts where close monitoring by the *Waqf* staff will ensure that the money is invested or managed judiciously.²³²

Many Muslims who are without proper education for their children would be the major benefactors from cash *Waqf* where they would be well empowered by the *Waqf* institution and their children will have ample opportunity for education. There would be insufficient cash to purchase medicines for patients in order to reduce the high rate or mortality among Muslims. *Waqf* institutions can seek the help of Muslim medical doctors as voluntary assistance in *Waqf* hospitals or clinics where adequate medicine would be available. Similarly, special operations or surgery can be carried out freely in *Waqf* medical centres where Muslim specialists would be called to give humanitarian services as part of the *Waqf*. However, cash *Waqf* will face certain challenges considered as disadvantages due to the dishonesty of some Nigerians because some may receive *Waqf* loans and fail to pay it back or run away with the money. The abuse of office by means of embezzlement or corruption will affect the institution. Injustice can be another reason that will tarnish the institution if the cash money is given out unjustly whereby the real needy are left un-catered for as administrators or management are giving the opportunity for their relatives or families.

4.13 Conclusion

It can be concluded that *Waqf* endowments have been reintroduced and established in Northern parts of Nigeria and the *awqaf* houses are performing positively to cater for the underprivileged in their respectful states. There is a need for the *Waqf* endowments across Nigeria to engage in profitable business that increases the endowment's revenue in order to have sufficient money to cater for the needs of the needy. In Nigeria, there

²³² Amuda (b), 201, 296-298.

are inadequate facilities in schools and insufficient housing. *Waqf* endowment foundations have to render assistance to Muslims in all aspects of life. Individual philanthropists can join hands with *Waqf* commissions in order to cater for the needs of the needy. In addition, there are legal provisions on *Waqf* administration in some states in Nigeria that can be amended as part of the *Waqf* Act which should be amended and endorsed by all states. In addition, *Waqf* cash can be used through *sukuk al-Ijarah*, *sukuk mudarabah*, *sukuk musharakah*, *sukuk al-Istismar* and *Sukuk al-Intifa'* to benefit millions of Nigerian Muslims. However, all risks must be considered in order to achieve the ultimate goals and objectives of *Waqf*. In Nigeria in particular, the risks associated with the director, management and program executor must be considered in order to learn from the past. As such, responsible, accountable, and God fearing people qualifies for the job of managing and administering *Waqf* endowments should be appointed based on merit.

CHAPTER 5: ANALYSIS OF SURVEY ON CASH *Waqf* THROUGH COMMERCIALIZATION

5.1 Introduction

This chapter analyzes the questionnaire conducted on cash *Waqf* through *sukuk* commercialization. The sample was selected from Hausa, Yoruba, and Igbo tribes to discover the breadth and extent of poverty among Nigerian Muslims in particular and Nigerians at large. This survey or data will be sampled as empirical evidence and proof that many Nigerian Muslims are suffering terribly and their unfortunate condition calls for urgent delivery from financial incapability. Similarly, intellectuals were also interviewed and their responses will be analyzed. The study also aims to discover the effectiveness of the *Waqf* establishment across the nation as a semi-formal institution that will cater for the needs of Nigerian Muslims based on the available resources. The problems and obstacles that may face the *Waqf* institution is also examined. In the opinion of the researcher, the number of respondents selected and interviewed is sufficient as they are Nigerians and know what their Muslim counterparts are facing in the country regardless of their tribe and gender. The below illustrates the analysis of survey on cash *Waqf* through *sukuk* commercialization:

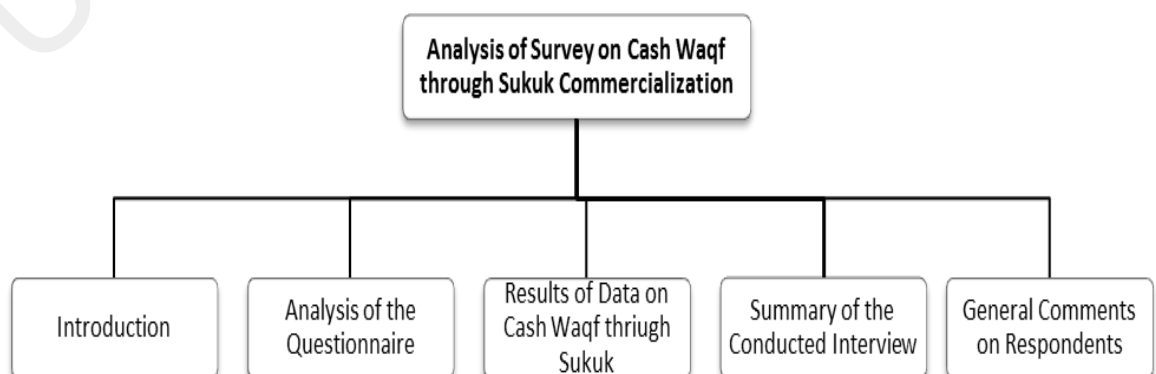


Figure 5.1: Analysis of survey on cash *Waqf* through *sukuk* commercialization

5.2 Quantitative Research: Analysis of Questionnaire

Subsequently, the answers of the questionnaires were key in into Statistical Package for Social Science (SPSS) for analysis. The socioeconomic and demographic characteristic of the respondents surveyed concerning the cash *Waqf* through *sukuk* commercialization in Nigeria analyzed in subsequent pages of this chapter. The survey of 300 Nigerian respondents was conducted in both Malaysia and Nigeria and drew its sample from members of the Hausa, Yoruba, Igbo, and other minority tribe in Nigeria as a sampling technique to support the previous analysis in this thesis. More than three thousands Nigerians are dwelling in Malaysia as registered students in public and private universities while some are expatriates in many states across the nation.

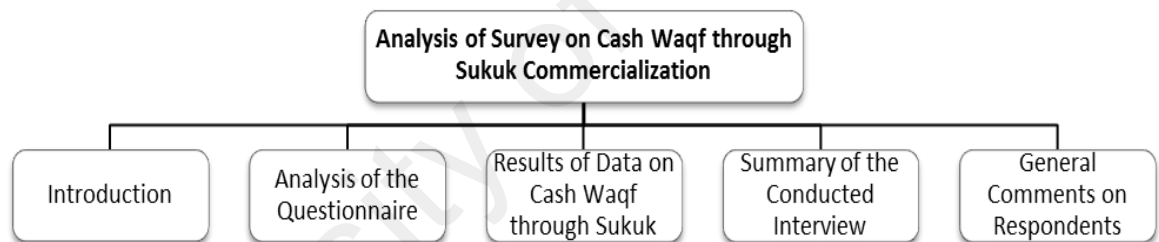


Figure 5.1: Analysis of survey on cash *Waqf* through *sukuk* commercialization

The sampling was taken from major cities and capitals in the Nigerian local governments and also from the states level in order to properly reflect the range of poverty among Nigerian Muslims in the light of cash *Waqf* through *sukuk* commercialization. Researcher conducted the survey in both countries between April and September 2012. The survey revealed that Nigerian Muslims need institutions like *Waqf* endowments that will play commendable roles in reducing poverty among the concerned applicants. It further indicates that Muslims should be major beneficiaries

while Nigerian Muslims in general should support *Waqf* institutions in their respective states.

It is the duty of the Nigerian government to do all that is necessary to reduce poverty across the nation and given special attention to the Muslims because the rate of poverty among them is very high. The data also contains information on respondents' gender, educational level, respondent understanding about *Waqf* and *sukuk* and also participants understanding of *mudarabah* and *musharakah*. The Table below shows the dimensions identified in the questionnaire:

Table 5.1
Dimensions of instrument on Cash *Waqf* in Nigeria

S/N	Dimensions of instrument on Cash <i>Waqf</i> in Nigeria
1.	Respondents' demographical.
2.	Respondent understanding about <i>Waqf</i> and <i>sukuk</i> .
3.	Participants understanding of <i>mudarabah</i> and <i>musharakah</i> .

Information on the purposes of *Waqf* across Nigeria such as the financial constraints of Nigerian Muslims will help Nigerians at large. In addition, specific information was also obtained concerning the qualification and requirement of the management committee and whether the *Waqf* institution should be controlled by the State government or non-governmental organization (NGOs). The survey reveals that *Waqf* rules and regulations should be drafted by Shariah experts and endorsed by the Parliament. It is also discusses how management should protect the *Waqf* reputation in handling *Waqf* properties and that bias and partiality should be avoided during the *Waqf* distribution to the less privileged in the society. In addition, the data also focuses on *Waqf* and *sukuk* and how to generate income to the institution in order to have sufficient income to assist needy peoples across the nation. The information concerns *Waqf*

management engagement and involvement in lawful business transactions with cash *Waqf*, women empowerment through *sukuk*, *mudarabah* and *musharakah* transaction and also farming, *Waqf* bakery, business centres, commercial transportation and halls for rent. Table 2 shows involvement in lawful business transactions with cash *Waqf* in Nigeria:

Table 5.2
Involvement in lawful business transactions with cash *Waqf* in Nigeria

S/N	Involvement in lawful business transactions with cash <i>Waqf</i> in Nigeria
1.	Women empowerment through <i>sukuk</i> , <i>mudarabah</i> and <i>musharakah</i> transaction.
2.	Farming.
3.	<i>Waqf</i> bakery.
4.	Business centres
5.	Commercial transportation
6.	Halls for rents.

The final aspect of the survey is on *Shariah* punishment for *Waqf* violators whereby *Shariah* punishment should be implemented against corrupt staff. The implementation of *hudud* and *qisas* punishment against *Waqf* staff and any crime committed by *Waqf* management should be handled by the *Shariah* court and the mufti's office and *Shariah* punishment should be meted on Muslims only. The data reveals that *Waqf* accounts must be opened in an Islamic Bank in Nigeria and there must be three signatories before any amount of money can be withdrawn. This measure is in place is to avoid lawlessness and maintain law and order in the institution. Four tables were used to explain the cash *Waqf* through *sukuk* commercialization,

respondents' profile, and re-creation of *Waqf* across Nigeria, *Waqf* and *sukuk*, and *Shariah* punishment for *Waqf* violators. The below Table shows different tables used to explain various aspects of cash *Waqf* through *sukuk* commercialization:

Table 5.3
Various aspects of cash *Waqf* through *sukuk* commercialization in Nigeria

S/N	Various aspects of cash <i>Waqf</i> through <i>sukuk</i> commercialization in Nigeria
1.	Respondents' profile.
2.	Re-creation of <i>Waqf</i> across Nigeria,
3.	<i>Waqf</i> and <i>sukuk</i> .
4.	<i>Shariah</i> punishment for <i>Waqf</i> violators.

5.3 Results of Data on Cash *Waqf* through Commercialization in Nigeria

As shown in Table 1, a significant percentage of the respondents were male. The majority of males 88.3% (n=265) was followed by 11.7% (n=35) female respondents. In regards to the status of respondents, 63.7% (n=191) were married while 36.3% (n=109) were unmarried respondents. According to the data, the age of participants was between 25-30 of 28.3% (n=85), followed by 24.0% (n=72) of 30-35, 18.7% (n=56) between 36-40, and 16.0% (n=48) 41 and above. The youngest respondents were between 18-24 and constituted 13.0% (n=39). The survey indicates that the number or percentage of participant who are postgraduate is very high with 60.7% (n=182) followed by those with degrees 39.3% (n=118). The majority of participants are Yoruba 55.7% (n=167) followed by Hausa 35.7% (n=107) and others 7.7% (n=23) while 1.0% of (n=3) marked as the respondents answer to the question.

The data indicates that the majority of respondents, namely 87.7% (n=263) understood the concept of *Waqf* while 12.3% (n=37) did not understand the concept of

Waqf. Many of the participants, 74.7% (n=224), understood the meaning of *sukuk* and its application and 25.3% (n=76) of participants did not understand the meaning and application of *sukuk*. Concerning *mudarabah*, 80% (n=240) have heard of and understood *mudarabah* while 20% (n=60) did not understand the theory and concept of *mudarabah*. Regarding *musharakah*, 82.7% (n=248) understood the theory and application of *musharakah* while 17.3% (n=52) did not understand *musharakah*. The majority of respondents, 96.7% (n=290), strongly agreed that Nigerian Muslims need institutions like *Waqf* endowments across the nation and 3.3% (n=13) disagreed.

Similarly, the majority of 88.7% (n=266) strongly agreed that Nigerian Muslims should be the major beneficiaries of *Waqf* financial aid across the nation but 11.3% (n=34) disagreed. Regarding giving support to state *Waqf*, the majority of 96.7% (n=290) strongly agreed that Muslims should give support to state *Waqf* institutions and 3.3% (n=10) disagreed. The majority of respondents, 94% (n=282), strongly agreed that Nigerian Muslims should be well educated and 6.0% (n=18) disagreed. Finally, 95.3% (n=286) strongly agreed that there are many lucrative transactions that *Waqf* management can undertake across the nation in order to generate resources and income to support the less privileged Nigerian Muslims and 4.7% (n=14) disagreed.

Table 5.4
Respondents Demographic Variable

No	Demographic Variable	Frequency	Percentage (%)
1	Gender		
	Female	35	11.7
	Male	265	88.3
2	Married		
	Yes	191	63.7
	No	109	36.3
3	Age		
	18-24	39	13.0
	25-30	85	28.3
	30-35	72	24.0
	36-40	56	18.7
	41 and above	48	16.0
4	Education		
	Degree	118	39.3
	Postgraduate	182	60.7
5	Tribe		
	Hausa	107	35.7
	Yoruba	167	55.7
	Igbo	3	1.0
	Others	23	7.7
6	Do you understand the concept of <i>Waqf</i>		
	Yes	263	87.7
	No	37	12.3
7	Do you know what <i>sukuk</i> means		
	Yes	224	74.7
	No	76	25.3
8	Have you ever heard about <i>mudarabah</i>	240	80.0
	Yes	60	20.0
	No		
9	Have you ever heard about <i>Musharakah</i>		
	Yes	248	82.7
	No	52	17.3
10	Nigerian Muslims need institution like Waqf endowment		
	Yes	290	96.7
	No	10	3.3

Table 5.4 (Continued)
Respondents Demographic Variable

No	Demographic Variable	Frequency	Percentage (%)
11	The creation of <i>Waqf</i> in Nigeria will alleviate poverty in Nigeria	287	95.7
	Yes	13	4.3
	No		
12	Muslims should be the major beneficiaries of <i>Waqf</i> financial aid	266	88.7
	Yes	34	11.3
	No		
13	Muslims should give support for <i>Waqf</i> in their states	290	96.7
	Yes	10	3.3
	No		
14	Many Nigerian Muslims should be well educated		
	Yes	282	94.0
	No	18	6.0
15	There are many lucrative transaction that <i>Waqf</i> management can undertake	286	95.3
	Yes	14	4.7
	No		

The data in Table 2 indicates that an overwhelming number 60% (n= 180) of respondents strongly agreed that the financial constraints of Nigerian Muslims calls for the creation of *Waqf* institution across Nigerian States 33% (n=99) agreed, followed by 4.3% (n=13) who answered none while 2.7% (n=8) disagreed with the majority. Concerning the purpose of *Waqf* creation, 57.3% (n=172) strongly agreed that the establishment of *Waqf* will help both Muslims and non-Muslims, 36.3% (n=109) also agreed but 4.3% (n=13) and 2.0% (n=6) responded none as their answer to the question. For the purpose of accountability and transparency, the majority, 70% (n=210), strongly agreed that pious and honest persons should be appointed as *Waqf* management, 25% (n=75) agreed, followed by 3.0% of (n=9) who disagreed and 2.0% of (n=6) marked as

the participants answer to the question respectively. On the other hand, 42.0% of (n=126) strongly agreed that *Waqf* should be controlled by government, 10.3% of (n=31) agreed while 38.7% of (n=116) disagreed and 9.0% of (n=27) none was chosen as the correct answer to the question. Similarly, the majority of 47.3% of (n=142) strongly agreed that *Waqf* should be controlled by non-governmental organization, 35.3% of (n=106) agreed, 12.7% of (n=38) and 4.7% of (n=14) participants answered none as their answer to the particular question.

In addition, 54.7% (n=164) strongly agreed that *Waqf* should be under the auspices of the State's religious affairs department, 29.3% of (n=88) agreed, 12.3% of (n=37) disagreed and 3.7% of (n=11) participants answered none as their answer to the particular question. For security purpose, majority of participants, 52.0% of (n=156) strongly agreed that *Waqf* needs government intervention for security of property, 35.3% of (n=106) agreed, 10% of (n=30) disagreed and 2.7% of (n=8) respondents chosen none as their answer. For the sanctity of the *Waqf* institution in Nigeria, the majority of 61.7% of (n=185) strongly agreed that *Shariah* experts should draft the Nigerian *Waqf* Act while 31.7% (n=95) agreed, 4.3% of (n=13) disagreed and 2.3% of (n=7) respondents chosen none as their answer respectively. Concerning *Waqf* management, 68.0% of (n=204) strongly agreed that the appointment of *Waqf* management should be based on merit, 25.3% of (n=76) agreed, 5.7% of (n=17) disagreed and 1.0% of (n=3) respondents chosen none as their answer respectively.

However, the majority of 64.3% of (n=193) strongly agreed that the poverty rate among Nigerian Muslims requires the recreation of *Waqf* in Nigeria, 29.0% of (n=87) agreed, 4.0% of (n=12) disagreed and 2.7% of (n=8) participants chosen none as their answer. Overwhelmingly, 67.3% of (n=202) strongly agreed that *Waqf* management must protect the *Waqf* reputation, 29.3% of (n=88) agreed, 1.3% of (n=4) disagreed, and 2.0% of (n=6) participants said none out of the given options as their answer. On the

distribution of *Waqf* aid, 68.0% of (n=204) strongly agreed that *Waqf* aid should be distributed judiciously, 28.0% of (n=84) agreed, 1.3% of (n=4) disagreed, followed by 2.0% of (n=6) respondents said none out of the given options as their answer.

In addition, 67.3% of (n=202) strongly agreed that biasness and injustice must be avoided during the *Waqf* distribution to the less privileged, 27.7% of (n=83) agreed, 3.3% of (n=10) disagreed, and 1.7% of (n=5) none was marked as the correct answer among the given options by the respondents. Concerning Nigerian non-Muslims, 41.3% of (n=124) strongly agreed that non-Muslim applicants should be considered for financial support, 41.7% of (n=125) agreed, 13.3% of (n=40) disagreed that non-Muslims should not be considered and 3.7% of (n=11) said none of the above. Finally, on the re-creation of *Waqf* across Nigeria, the majority of 58.3% of (n=175) strongly agreed that *Waqf* management should undertake profitable transactions to increase the *Waqf* yield, 34.0% of (n=102) agreed, 4.7% of (n=14) disagreed and 3.0% (n=9) respondents said none out of the given options as their answer.

Table 5.5
Respondent Demographic Variable

No	Items	Strongly Agreed	Agreed	Disagreed	None
1	Nigerian Muslims financial constraints call for recreation of <i>Waqf</i> across the Nigerian states?	(180)=60%	(99)=33%	(8)=2.7%	(13)=4.3%
2	Creation of <i>Waqf</i> across the Nigerian states will help Muslims and non-Muslims	(172)=57.3%	(109)=36.3%	(13)=4.3%	(6)=2%
3	Pious and honest people should be appointed as <i>Waqf</i> management.	(210)=70%	(75)=25%	(9)=3%	(6)=2%

Table 5.5 (Continued)
Respondent Demographic Variable

No	Items	Strongly Agreed	Agreed	Disagreed	None
4	<i>Waqf</i> should be controlled by the State government	(126)=42%	(31)=10.3%	(116)=38.7%	(27)=9%
5	<i>Waqf</i> should be controlled by non-governmental organizations (NGOs).	(142)=47.3%	(106)=35.3%	(38)=12.3%	(14)=4.7%
6	<i>Waqf</i> should be under the religious affairs department of the states?	(164)=54.7%	(88)=29.3%	(37)=12.3%	(11)=3.7%
7	<i>Waqf</i> needs government intervention for security of property	(156)=52%	(106)=35.3%	(30)=10%	(8)=2.7%
8	Nigeria <i>Waqf</i> rules and regulations should be drafted by <i>Shariah</i> experts and endorsed by the Parliament ?	(185)=61.7%	(95)=31.7%	(13)=4.3%	(7)=2.3%
9	Appointment of <i>Waqf</i> management should be based on merit	(204)=68%	(76)=25.3%	(17)=5.7%	(3)=1%
10	Poverty rate among Nigerian Muslims needs recreation of <i>Waqf</i> in Nigeria	(193)=64.3%	(87)=29.3%	(12)=4%	(8)=2.7%
11	<i>Waqf</i> management must protect <i>Waqf</i> reputation	(202)=67.3%	(88)=29.3%	(4)=1.3%	(6)=2%
12	<i>Waqf</i> financial aid should be distributed judiciously	(204)=68%	(84)=28%	(4)=1.3%	(8)=2.7%
13	Biasness must be avoided during the <i>Waqf</i> distribution to the less privileged in the society?	(202)=67.3%	(83)=27.7%	(10)=3.3%	(5)=1.7%
14	Nigerian non-Muslim applicants should be considered for financial support	(124)=41.3%	(125)=41.7%	(40)=13.3%	(11)=3.7%
15	<i>Waqf</i> management should undertake profitable transactions to increase the <i>Waqf</i> yield?	(175)=58.3%	(102)=34.0%	(14)=4.7%	(9)=3.0%

In Table 3, the data reveals that 63.7% (n=191) strongly agreed that *Waqf* management should engage in lawful business transactions with *Waqf* cash, 33.0% (n=99) agreed, 3.0% (n=9) disagreed and .3% (n=1) participants marked none as the answer to the question. For women empowerment, 53.0% (n=159) strongly agreed that many women can be empowered through *sukuk*, 30.0% (n=90) agreed, 11.0% (n=33) agreed while 6.0% of (n=18) respondents said none out of the given options as their answer.

However, the majority of 66.7% of (n=200) strongly agreed that *Waqf* management is capable of employing the less privileged in order to reduce the rate of unemployment if the cash *Waqf* is commercialized and invested in profitable business, 30.7% of (n=92) agreed, followed by 1.3% of (n=4) who disagreed and the same percentage also considered none as the answer to the question by the participants.

In order to employ the less privileged, the majority of 62.0% of (n=186) strongly agreed that *Waqf* management can become involved in *mudarabah* transactions in order to have sufficient capital to assist needy applicants, 29.0% of (n=87) agreed, 2.7% of (n=8) disagreed while 6.3% of (n=19) participants considered none as the best answer to the question out of the given options. On the other hand, the majority of 66.7% of (n=200) strongly agreed that *Waqf* management can become involved in farming as a contribution to Nigerian society, 29.0% of (n=87) agreed, 2.7% of (n=8) disagreed and 1.7% of (n=5) respondents considered none as their best answer. Similarly, 53.7% of (n=161) strongly agreed that *Waqf* bakery capable of generating and creating job for the less privileged Nigerian Muslims, 42.0% of (n=126) agreed, 1.7% of (n=5) disagreed and 2.7% of (n=8) participants considered none as the best answer to the question out of the given options respectively.

In regards to the establishment of *Waqf* business centers, 51.0% of (n=153) strongly agreed that *Waqf* can establish business centers for various transaction, 42.0%

of (n=126) agreed, 4.3% of (n=13) disagreed, and 2.7% of (n=8) respondents considered none as the best answer to the question out of the given options. Strategically, 53.3% of (n=160) strongly agreed that many farmers can be employed on their fertile land for *Waqf* farming, 43.3% of (n=130) agreed, 2.0% of (n=6) respondents disagreed to the question and 1.3% of (n=4) participants considered none as the best answer to the question out of the given options.

The majority of 50.3% of (n=151) strongly agreed that *Waqf* institutions can engage in a commercial transportation business where some eligible Muslims can be employed as drivers and supporting staff in order to generate income and help the less privileged, 43.3% of (n=130) agreed, 4.7% of (n=14) disagreed, and 1.7% of (n=5) respondents considered none as the best answer to the question out of the given options. Concerning medical centers, the majority of 72.0% of (n=216) strongly agreed that Nigerian Muslims need medical centers where discounted charges would be imposed on poor patients, 23.3% of (n=70) also agreed, 3.3% of (n=10) marked none but 1.3% of (n=4) disagreed with majority.

The data also revealed that 55.0% of (n=165) strongly agreed that *Waqf* houses can be built for commercial business at reasonable price, 40.3% of (n=121) agreed, 3.0% of (n=9) disagreed, and 1.7% of (n=5) selected none.

For commercialization, 57.7% of (n=173) strongly agreed that *Waqf* halls can be built in strategic places for rent at a reasonable price, 33.3% of (n=100) agreed, 5.7% of (n=17) disagreed while 3.3% of (n=10) participants considered none as the best answer to the question out of the given options.

Similarly, 56.3% of (n=169) strongly agreed that *Waqf* shops can be built for rent at a reasonable price, 35.7% of (n=107) agreed, 5.0% of (n=15) disagreed, and 3.0% of (n=9) participants considered none as the best answer to the question out of the given options. However, 54.0% (n=162) of respondents strongly agreed that *Waqf*

institutions in Nigeria can play a commendable role as *zakat* collector across the nation, 36.7% of (n=110) agreed, 6.3% of (n=19) disagreed, and 3.0% of (n=9) participants considered none as the best answer to the question out of the given options. The last part of the *Waqf* and *sukuk*, the majority of 49.0% of (n=147) strongly agreed that cash can be loaned out to needy Nigerians without interest, 34.0 % of (n=102) agreed, 15.% of (n=45) disagreed, and 2.0% of (n=6) respondents considered none as their best answer.

The researcher exploited the survey to reveal the financial constraints of the majority of Nigerian Muslims and how the establishment of *Waqf* institutions is highly needed. In order to protect the integrity of *Waqf* and maintain law and order, table 4 of the questionnaire focuses on *Shariah* punishment for *Waqf* violators. At the time of the survey, the majority of the respondents, 80% (n=240), strongly agreed that corruption is a crime under *Shariah*, 16.7% of (n=50) agreed, 2.0% of (n=6) disagreed and 1.3% of (n=4) respondents considered none as their best answer respectively. Based on the respondents, 61.0% (n=183) strongly agreed that *Shariah* punishment should be implemented against corrupt *Waqf* staff, 30.7% of (n=92) agreed, 6.3% of (n=19) disagreed with the *Shariah* punishment while 2.0% of (n=6) responded respondents considered none as their best answer to the question.

The majority of 69.7% (n=209) strongly agreed that the punishment for theft by *Waqf* management must be based on credible evidence, 25.3% of (n=76) also agreed with majority, while 3.0% (n=9) disagreed with the majority's opinion and 2.0% of (n=6) respondents considered none as their best answer. In addition, the majority of 57.0% of (=171) strongly agreed that any crime committed by *Waqf* management must be handled by the *Shariah* court, 30.7% of (n=92) agreed, 10.0% of (n=30) disagreed and 2.3% of (n=7) respondents marked none as their answer to the question. On the other hand, majority of participants, 50.3% of (n=171), strongly agreed that the *Mufti's*

office should handle any crime committed by *Waqf* management, 35.3% of (n=106) agreed, 9.0% of (n=27) disagreed and 5.3% of (n=16) participants marked none as their answer to the question.

However, the majority of participants, 59.0% of (n=177), strongly agreed that *Waqf* immovable properties must be legally registered, 37.0% of (n=111) agreed, 3.3% of (n=10) disagreed and .7% of (n=2) respondents marked none as their answer to the question. In order to maintain *Waqf* integrity and ethics, the majority of respondents 65.0% of (n=195) strongly agreed that *Waqf* account must be opened in an Islamic Bank in Nigeria, 31.0% of (n=93) also agreed with the majority, 3.3 % of (n=10) disagreed and .7% of (n=2) respondents ticked none as their answer to the question.

Table 5.6
Respondents' responses on *Waqf* Management

No	Items	Strongly Agreed	Agreed	Disagreed	None
1	<i>Waqf</i> management should engage in lawful business transactions with <i>Waqf</i> cash ?	(191)=63.7%	(99)=33.0%	(9)=3.0%	(1)=.3%
2	Many Muslim women can be empowered through <i>sukuk</i> ?	(159)=53.0%	(90)=30.0%	(33)=11.0%	(18)=6.0%
3	<i>Waqf</i> management is capable of employing the less privileged to reduce the rate of unemployment?	(200)=66.7%	(92)=30.7%	(4)=1.3%	(4)=1.3%
4	<i>Waqf</i> can involve in <i>Mudarabah</i> transaction in order to have sufficient capital to assist needy Nigerian Muslims.	(186)=62.0%	(87)=29.0%	(8)=2.7%	(19)=6.3%

Table 5.6 (Continued)
Respondents' responses on *Waqf* Management

No	Items	Strongly Agreed	Agreed	Disagreed	None
5	A <i>Waqf</i> institution can involve in farming as a contribution to the Nigeria society at large.	(200)=66.7%	(87)=29.0%	(8)=2.7%	(5)=1.7%
6	<i>Waqf</i> bakery will generate employment for the less privileged across the nation.	(161)=53.7%	(126)=42.0%	(5)=1.7%	(8)=2.7%
7	Business centres can be established by <i>Waqf</i> for various transactions?	(153)=51.0%	(126)=42.0%	(13)=4.3%	(8)=2.7%
8	Many farmers can be employed on their fertile land for <i>Waqf</i> farming.	(160)=53.3%	(130)=43.3%	(6)=2.0%	(4)=1.3%
9	<i>Waqf</i> institutions can engage in commercial transportation business where some eligible Muslims can be employed as drivers and supporting staff.	(151)=50.3%	(130)=43.3%	(14)=4.7%	(5)=1.7%
10	Nigerians need <i>Waqf</i> clinics or medical centers where discounted charges would be imposed on poor patients.	(216)=72.0%	(70)=23.3%	(4)=1.3%	(10)=3.3%
11	<i>Waqf</i> houses can be built for commercial business at reasonable price?	(165)=55.0%	(121)=40.3%	(9)=3.0%	(5)=1.7%
12	<i>Waqf</i> halls can be built for rent at reasonable price?	(173)=57.7%	(100)=33.3%	(17)=5.7%	(10)=3.3%
13	<i>Waqf</i> shops can be built for rent at reasonable price?	(169)=56.3%	(107)=35.7%	(15)=5.0%	(9)=3.0%
14	<i>Waqf</i> can play a commendable role as <i>zakat</i> collector across the nation.	(162)=54.0%	(110)=36.7%	(19)=6.3%	(9)=3.0%
15	Cash can be loaned out to Nigerian needy Muslims and non-Muslims without interest.	(147)=49.0%	(102)=34.0%	(45)=15.0%	(6)=2.0%

Due to the level of corruption in Nigeria and to protect the *Waqf* institution from bankruptcy, the majority of participants, 51.3% of (n=154) strongly agreed that three signatories must authorize the withdrawal of money from the *Waqf* account, 35.0% of (n=105) agreed, 10.3 % of (n=31) disagreed, and 3.3% of (n=10) respondents considered none as their best answer. In case of any cooperate crime, majority of 59.0% of (n=177) strongly agreed that cooperate crime criminal must be punished according to *Shariah* ruling, 29.7% of (n=89) agreed, 8.0% of (n=24) disagreed and 3.3% of (n=10) respondents considered none as their best answer respectively. The majority of respondents 48.3% of (n=145) strongly agreed that only *tazeer or tazir* punishment can be implemented against any member of the *Waqf* management who has been convicted of corruption or embezzlement to *Waqf* funds, 32.3% of (n=97) agreed, 15.0% of (n=45) disagreed while 4.3% of (n=13) respondents considered none as their best answer. Similarly, 37.0% of (n=111) agreed that only *diyah* should be implemented on *Waqf* management offenders, 27.3% of (n=82) strongly agreed, 25.3% of (n=76) disagreed with majority opinion and 10.3% of (n=31) respondents ticked none as their answer to the question.

Concerning the punishment, the majority of 44.0% of (n=132) strongly agreed that *hudud* punishment should apply in any *Waqf* cases as a deterrent to others, 40.0% of (n=120) also agreed with punishment, 8.3% of (n=25) disagreed with the majority of *hudud* and *qisas* punishment while 7.7% of (n=23) respondents ticked none as their answer to the question. On the issue of whether *Shariah* is the best law, 63.3% of (n=190) strongly agreed that *Shariah* is the best law to approach *Waqf* cases, 15.3% of (n=46) agreed, 14.3% of (n=43) also disagreed that *Shariah* is not the best law but 7.0% of (n=21) indicated respondents ticked none as their answer to the question.

However, the majority of 36.0% of (n=108) strongly agreed that *Shariah* must be implemented on Muslim offenders only, 22.3% of (n=67) also agreed but 34.3% of

(n=103) disagreed with majority while 7.3% of (n=22) showed none as their answer. Finally, 56.0% of (n=168) strongly agreed that donations should not be accepted from unlawfully acquired properties, 31.0% of (n=93) agreed, 7.3% of (n=22) disagreed and 5.7% of (n=17) indicated that respondents considered none as their best answer to the question.

The questionnaires were distributed in Nigeria and Malaysia, more than three thousands Nigerians are dwelling in Malaysia as a registered student or expatriates in different universities across the nation. Therefore, some of them were respondents while parts of questionnaire were conducted in Nigeria in order to support the analysis on commercialization of cash *Waqf* in the best interest of Nigerian less privilege. The below shows respondents' responses on the hindrances of *Waqf* Management:

Table 5. 7
Respondents' responses on the hindrances of *Waqf* Management

No	Items	Strongly Agreed	Agreed	Disagreed	None
1	Corruption is a crime under <i>Shariah</i> .	(240)=80.0%	(50)=16.7%	(6)=2.0%	(4)=1.3%
2	<i>Shariah</i> punishment should be implemented against corrupt <i>Waqf</i> staff	(183)=61.0%	(92)=30.7%	(19)=6.3%	(6)=2.0%
3	Punishment for theft committed by <i>Waqf</i> management must be based on credible evidence?	(209)=69.7%	(76)=25.3)	(9)=3.0%	(6)=2.0%

Table 5.7 (Continued)Respondents' responses on the hindrances of *Waqf* Management

No	Items	Strongly Agreed	Agreed	Disagreed	None
4	Any crime committed by <i>Waqf</i> management must be handled by the <i>Shariah</i> Court .	(171)=57.0%	(92)=30.7%	(30)=10.0%	(7)=2.3%
5	Any crime committed by <i>Waqf</i> management must be handled by the <i>Mufti</i> 's office	(151)=50.3%	(106)=35.3%	(27)=9.0%	(16)=5.3%
6	<i>Waqf</i> immovable properties must be legally registered ?	(177)=59.0%	(111)=37.0%	(10)=3.3%	(2)=.7%
7	<i>Waqf</i> account must be opened in an Islamic Bank in Nigeria?	(195)=65.0%	(93)=31.0%	(10)=3.3%	(2)=.7%
8	There must be three signatories before any amount of money can be withdrawn from the <i>Waqf</i> account ?	(154)=51.3%	(105)=35.0%	(31)=10.3%	(10)=3.3%
9	Cooperate crime must be punished according to <i>Shariah</i> ruling ?	(177)=59.0%	(89)=29.7%	(24)=8.0%	(10)=3.3%
10	Only <i>tazeer</i> (discretionary) punishment can be implemented against any member of the <i>Waqf</i> management who has convicted of corruption or embezzlement of <i>Waqf</i> funds	(145)=48.3%	(97)=32.3%	(45)=15.0%	(13)=4.3%
11	Only <i>diyah</i> should be implemented on <i>Waqf</i> management offender?	(82)=27.3%	(111)=37.0%	(76)=25.3%	(31)=10.3%
12	<i>Hudud</i> and <i>qisas</i> should apply in any <i>Waqf</i> cases as a deterrent to others.	(132)=44.0%	(120)=40.0%	(25)=8.3%	(23)=7.7%
13	<i>Shariah</i> is not the best law to approach <i>Waqf</i> cases	(46)=15.3%	(43)=14.3%	(190)=63.3%	(21)=7.0%
14	<i>Shariah</i> must be implemented on Muslim offenders only.	(108)=36.0%	(67)=22.3%	(103)=34.3%	(22)=7.3%
15	Donations should not be collected from unlawfully acquired properties?	(168)=56.0%	(93)=31.0%	(22)=7.3%	(17)=5.7%

5.4 Qualitative Aspect of Research: Analysis of the Interview

In the qualitative part, interview was used to collect data from the selected interviewees as participants. There are interview questions addressing different dimensions on cash *Waqf* management in Nigeria. Hence, in order to analyze qualitative data, various themes are extracted from the responses received from the participants. The below Table shows the three compartmentalized categories used in qualitative part of this chapter:

Table 5.8

An Illustration of the of central research questions on cash *Waqf* management

Central research question (CRQ)	Elements of central research questions		Element of CRQ in the chapter
How do the experts perceive the cash <i>Waqf</i> management?	1.	Phenomenon	Cash <i>Waqf</i> management.
	2.	Site of the study	Nigeria.
	3.	Participants	Experts of the cash <i>Waqf</i> management.

The interviews were conducted among Nigerian scholars between January and December, 2012 to determine the undocumented information from experts conversant on cash *Waqf* through *sukuk*. Ten Nigerian *Waqf* experts were interviewed, namely Prof. Dr. Daud Noibi who is a Professor of Islamic Studies and also Executive Sectary MUSWEN Prof. Dr. Zakariyau .I Oseni²³³ who is a Professor of Arabic Language and has conducted research on *Waqf* in Nigeria, Prof. Dr. Ish-aq Akintola²³⁴ who is also a Professor of Islamic Studies and a well known Director of Muslim Rights in Nigeria. In addition, Dr. Adesina-Uthman Ganiyat Ajoke²³⁵ who is an expert of *sukuk* and lectures in the Open University, Nigeria, Dr. Adewale Abidini²³⁶ is a senior lecturer in the

²³³ Interviewed by Badmus Abdul Hamid, University of Ilorin, Nigeria IIUM Gombak Selangor, September 18, 2012.

²³⁴ Ish-aq Akintola, Interviewed by author via email drishaqakintola@yahoo.com, June 5, 2012.

²³⁵ Adesina UthmanGaniyat Ajoke, Interviewed by author via email, June 15, 2012.

²³⁶ Adewale Abidni, Interviewed by author , IIUM Gombak Selangor, June 18, 2012.

Department of Islamic Finance, International Islamic University, Malaysia and also an expert of Micro-Finance and poverty eradication, Dr. Umar Oseni²³⁷ who is a senior lecturer in Ahmad Ibrahim Kulliyah of Laws, International Islamic University, Malaysia and has conducted research on *Waqf* in Nigeria from a legal perspective, Dr. Aliyu Muhammed²³⁸ also conducted research on *Waqf* in Nigeria, Dr. Isameel Ibrahim Naiya²³⁹ was interviewed in Malaysia and is working in the Islamic Development Bank, Saudi Arabia, Dr. Ibrahim Abdul Qadir Abikan²⁴⁰ who is a senior lecturer and incumbent Dean of Faculty of Law, University of Ilorin, Nigeria was also interviewed as he is an Islamic Banking expert, Dr. Abdussalam Ismail Onagun²⁴¹ who is also an Islamic Banking expert, and Mr. Abdul Akeem Oladapo who is currently working on sustainability of the less privileged Nigerian through *Waqf* at IIUM were all interviewed. The below illustrates summary of the conducted interviews among Nigerian lawyers, academicians, and non-governmental organizations regarding commercialization of cash *Waqf* and its implementation.

5.4.1 Summary of the Conducted Interviews among Nigerian Lawyers, Academicians, and non-Governmental Organizations regarding Cash Waqf through Commercialization

²³⁷ Umar Oseni, Interviewed by author , IIUM Gombak Selangor, July 25, 2012.

²³⁸ Aliyu Muhammed, Interviewed by author , IIUM Gombak Selangor, April 20, 2012.

²³⁹ Isameel Ibrahim Naiya, Interviewed by author , IIUM Gombak Selangor, November 29, 2012.

²⁴⁰ Ibrahim Abdul Qadir Abikan, Interviewed by author via email May 11, 2012.

²⁴¹ Abdussalam Ismail Onagun, Interviewed by author , IIUM Gombak Selangor, November 10, 2012.

Table 5. 9:
Summary of the Conducted Interviews

S/N	Names of participants interviewed	Designation
1.	Prof. Dr. Zakariayu Oseni	Professor of Arabic Language University of Ilorin, Kwara State. (He has done extensive work on <i>Waqf</i> in Nigeria)
2.	Prof. Dr. Is-haq Akintola	Professor of Islamic Studies. Lagos State University.
3.	Prof. Dr. Daud Noibi	MOSWEM (Muslim Ummah of South West Nigeria)
4.	Dr. Adesina Uthman Ganiyat .A.	Senior Lecturer at Open University, Lagos State Nigeria. Expert in <i>Sukuk</i>)
5.	Dr. Adewale Abidin	Senior Lecturer at Department of Finance, International Islamic University, Malaysia. (Expert in Micro Finance and Poverty Eradication).
6.	Dr. Umar Oseni	Senior Lecturer at Faculty of Laws, International Islamic University, Malaysia. (He has done research on <i>Waqf</i> focusing on Nigeria)
7.	Dr. Abdussalam Ismaeel Onagun	Islamic Finance Professional and <i>Shariah</i> Expert, Senior Lecturer at Faculty of Economics, INSANIAH
8.	Dr. Bello	Islamic Development Bank, Saudi Arabia.
9.	Dr. Ismaeel Ibrahim Naiya	ISRA (International Shari'ah Research Academy for Islamic Finance)

5.4.2 Analyses of the Interviews

The discourse unit (D.U) is used for the analysis of the responses from the participants.

From the interviews, it is clear that these scholars understand the concept and theory of

Waqf and *sukuk* and all of them strongly agreed on the re-establishment of *Waqf* across the nation. Based on the interviewed scholars' responses, they strongly agreed that present research on cash *Waqf* can contribute immensely to poverty alleviation among Nigerian Muslims. The question was directed to the interviewees on what extent that cash *Waqf* through *sukuk* can be viable and able to reduce the financial constraints among the less privileged Muslims in Nigeria. Zakariyau Oseni held the view that many Nigerian Muslim philanthropists are very rich but the majority of them do not want to give, so, with the awareness and re-establishment of *Waqf*, it will help in poverty reduction across the nation (D.U. 1)

According to Umar Oseni, cash *Waqf* can be a viable tool for poverty alleviation in Nigeria when a good hybrid model is structured based on the discourse unit (D.U. 2). However, since it is a *Waqf*, the model must ensure the sustainability of the original *Waqf* property in this case it is cash in order to retain the key feature of a real *Waqf* transaction. The *Waqf-sukuk* structure depends on the way the hybrid model is prepared. Firstly there is the structure. It may begin with a normal *sukuk* issuance where the investors donate part of their proceeds to the *Waqf* fund. The other option is to begin with the cash *Waqf* fund where part of the fund is utilized for *Sukuk al-Musharakah* where the funds are invested in *Shariah*-compliant transactions.

While the profits are distributed among the investors (*sukuk* holders) and the issuer, the amount due to the latter may be used for more philanthropic purposes to assist the less privileged. The funds may be disbursed as *qard hasan* for entrepreneurial development closely monitored by the *Waqf* management officials. Similarly, Ish-haq Akintola responded that cash *Waqf* through *sukuk* will enable them to set up cottage industries or start other businesses (e.g. poultry, fish rearing, snail production, transport, rentals, *halal* hotels) and provide jobs for other Muslims thereby raising their standard of living (D.U. 3). Adesina Uthman Ganiyat said that it can be viable and able if it is

extended to a large extent that will make the institution realise and achieve its primary objective in assisting the less privileged (D.U. 4).

To Adewale Abideen, it will be viable to the extent that ethno-religious sentiments, political arbitrage and corruption are played down and an enabling policy framework is put in place for its implementation (D.U.5). Aliyu Dahiru Muhammad said that it can be viable through financial innovations and taking care of compliance with the *Shariah*, cash *Waqf* can be used together with *sukuk* to develop dual objectives of fighting poverty and generating returns to the investors (D.U. 6). Abdul Qadir Ibrahim Abikan, Abdussalam Ismail Onagun, and Ismaeel Ibrahim Naiya were of a similar opinion that cash *Waqf* should be well organized.

Concerning the qualities that *Waqf* management should possess especially in Nigeria, Umar Oseni pointed out that the *Waqf* management should possess *Shariah* compliant investments, monitoring the use of the micro-credit funds disbursed to entrepreneurs, dedicated staff, avoidance of bureaucratic rules and policies, client-friendly procedures for the disbursement of *Waqf* benefits, and a grievance-remedial system (D.U. 7).

To Zakariyau Oseni and Akintola, *Waqf* management should possess Muslims, trustworthiness, discipline, education, while Adesina responded that the purpose of the endowment must be shown with reasonable certainty and entrusted to people of faith who are experts in effective management (D.U. 8). Adewale Abidin said the management should possess resources, ideas, contract, and expertise (RICE) in order to achieve the aims and objectives of *Waqf* endowment across the nation (D.U. 9). Aliyu Dahiru and Abdussalam Ismail Onagun opined that the *nadzir* or managers must be knowledgeable and trustworthy as this will give them the opportunity to manage the resources well. Abdul Qadir and Isameel Ibrahim Naiya stated that management must be transparent, God fearing and efficient. All interviewed participants strongly agreed

that *Waqf* endowment in Nigeria can create jobs for the unemployed graduates if it is well attuned (D.U. 10). It has been suggested that graduates can be targeted at the Nigerian Youth Service Commission Orientation camp and grouped into sizeable numbers of experts who can work together.

Concerning the role of the Nigerian government towards *Waqf* endowment across the nation, Adesina opined that the government should have supervisory and regulatory control for the efficiency of *Waqf* which is in line with Umar Oseni who viewed that the government role should be preparing a legal framework for *Waqf* management through legislation and creating *Waqf* as part of its poverty alleviation policies (D.U. 11). On the other hand, Akintayo held the view that the Nigerian government should give the *Waqf* institution a free hand to operate while Adewale Abidin and Abdussalam Ismail Onagun were of the opinion that the government should provide complementary regulatory oversight and legal infrastructure that minimizes the tendency of *Waqf* mismanagement (D.U. 12).

It is also viewed by Aliyu and Isameel Ibrahim that the government must supervise the performance of the *Waqf* institution and be ready for a dynamic change to accommodate some modern development such as infrastructure. For instance, using technology to collect and distribute *Waqf* resources (D.U. 13). Abdul Qadir said that the government should give it the needed support as a means of fulfilling its social responsibility. Contrary to this, Zakariyau Oseni held the view that the government should only encourage the management but they should be allowed and permitted to run the institution freely (D.U. 13).

However, all participants strongly agreed that any *Waqf* managerial staff offender should be punished as a deterrent to others. On the issue of transaction, Akintayo said *Waqf* management can establish private schools for Muslims from primary to tertiary levels, the opening of private hospitals and the establishment of

factories for the manufacturing of goods (D.U. 14). Similarly, Umar Oseni argued that *Waqf* management can undertake any *Shariah* compliant transaction which is in line with the thoughts of Adewale Abidin who opined that *Waqf* endowment can become involved in any *halal* transactions that will protect the principal amount invested, and generate enough return to meet the socioeconomic needs of the beneficiaries on a consistently consistent basis (D.U. 15).

However, the instruction of the *Waqf* provider may also be taken into consideration. Adesina Uthman Ganiyat held a different opinion on *Waqf* management involvement in transactions, claiming that *Waqf* endowment in transaction should depend on the line of business of the *Waqf* (D.U. 16). According to Aliyu and Abdulqadir, management should engage in real estate, productive enterprise and general merchandise transaction to generate returns in accordance with *Shariah* (D.U. 17).

Abussalam Ismail Onagun held the view that it can be any profitable transaction such as a *Mudarabah* contract. Zakariahu opined that *Waqf* can loan needy people without interest in order to assist applicants (D.U. 18). All interviewed respondents strongly agreed that *Waqf* management should engage in any lucrative transaction in order to have sufficient income to support less privileged applicants but Zakariyau Oseni said they should desist from any unlawful business and transaction that will dent *Waqf*'s image and reputation (D.U. 19). The involvement of *Waqf* endowment in lucrative transactions and business such as bakeries, commercial transactions and farming was viewed by Akintanyo as a step in the right direction (D.U. 20). He said commercial transportation is a beautiful idea. Capital-intensive commercial transportation is one of the booming businesses in the country today while farming is a splendid idea. For the poultry business, he viewed that poultry is also a booming business in Nigeria (D.U. 21). It will succeed with enough capital and qualified management. Adesina Uthman Ganiyat responded that *Waqf* bakeries, commercial

transportation, farming, and poultry would be a lucrative business for the *Waqf* endowment institution in Nigeria (D.U. 22). Contrarily, Adewale Abidin as long as a feasibility study is carried out suggesting the profit potentials of any of the businesses mentioned, my view is that the *Waqf* funds should be invested (D.U. 23).

In addition, Zakariyau Oseni strongly agreed that bakeries, farming, poultry and commercial transportation are good and viable business that *Waqf* endowment in Nigeria can transact with cash *Waqf* (D.U. 24). He further said that *Waqf* should not name their bread with an Islamic name but just an ordinary name and it must be a quality product. He stressed the view that *Waqf* should also take extraordinary caution in dealing with drivers (D.U. 25). However, the very volatile business environment in Nigeria should be seriously considered. Umar Oseni opined that a *Waqf* bakery is viable but this should not necessarily be a *Waqf* but the business of a *Waqf* recipient (D.U. 26). The *Waqf* itself should undertake more lucrative businesses such as large-scale investments through the issuance of *sukuk* but commercial transportation, farming, and poultry are viable and doable.

All of the participants strongly agreed that *Waqf* institutions can build houses for sale at reasonable prices for civil servants as it is a kind of large-scale business the *Waqf* institutions should undertake. It is only Ismaeel Ibrahim Naiya who said commercial transportation and poultry is good (D.U. 27) but may be risky and Abdussalam Ismail Onagun held the view that commercial transportation is good but very risky (D.U. 28). Finally, all of the interviewees opined that the reputation and integrity of *Waqf* endowment in Nigeria can be maintained by adopting transparent practices. The *Waqf* management institution should publish its financial reports and full details of recipients in National dailies to maintain a high level of integrity and reputation. They further said that management should not only comprise of people with proven track records of integrity, but those who also possess the requisite technical skills required for funds

management, and can discharge their responsibilities without fear or favor. Ensuring and maintaining given trust by the public will promote and protect *Waqf* integrity.

5.5 Discussion of Major Findings on Respondents' Responses

According to the respondents answer, it can be clearly understood that Nigerian Muslims are in serious need of the re-establishment and recreation of *Waqf* across the nation. They unanimously agreed that *Waqf* is able and viable to transform many lives through financial assistance. Although the respondents differed on certain issues, their differences remained within the parameters of the commercialization of cash *Waqf* through *sukuk* that will enhance the *Waqf* functions. The main concern among the respondents is the *Waqf* committee that will manage *Waqf* affairs in Nigeria.

Management should always focus on how to generate income in order to have sufficient income to cater for the less privileged people among Nigerian Muslims at large. Transparency and accountability will help smooth the running of the institution and will achieve the primary aims and objective of *Waqf* endowment. It is also inferred from participants responses that all discussed and proposed transactions are profitable but some of the interviewed participants made mention of risk in poultry and commercial transportation which can be controlled and managed if all considerations are intact. *Waqf* capable of reducing unemployment among Nigerian Muslims in particular and Nigerians at large if the management in good direction and competent staff are put in appropriate offices and assigned fitting tasks. Some of the participants viewed that commercial transportation and poultry is good for transaction in Nigeria but there is an element of risk in both businesses due to the behavior of some commercial drivers and dishonesty in their attitude in the delivery of daily payment.

Similarly, it is a fact that poultry is a very risky because chicken can die naturally and lost investment will negatively reflect on the *Waqf* institution. In this

study, the issue of commercial transportation seems to be a lucrative transaction in Nigeria if it is properly and adequately handled by experienced and pious persons. Management can adopt systems of cutting tickets and employ checkers that will double check the passengers' tickets at all strategic places and bus stops and stations. On the issue of poultry, it is natural and normal in transaction and business to make a loss or profit. Therefore, there should be risk management in dealing with business and in poultry in particular. The most important thing is to avoid risk or loss in poultry by appointing competent and qualified persons to be in charge of any *Waqf* transactions. Ordinary and inexperienced persons should not be appointed to handle the transaction or business in the interest of *Waqf* and needy applicants.

5. 6 Conclusion

It is undeniable that poverty, bad government, and adult unemployment contribute to the poverty rate among Nigerian Muslims where the re-establishment of *Waqf* is presumed to be the best institution to care for the less privileged. The survey reveals that investing cash *Waqf* through *sukuk* will generate income and sufficient capital for the institution to help needy applicants. Qualified persons should be appointed staff in a place where he or she would be useful rather than putting staff into the wrong office or unit. Rules and regulations concerning *Waqf* must be implemented and deterrent punishment must be awarded to guilty staff in accordance with Islamic principles. Proper attention should be given to commercial transportation and poultry whenever the *Waqf* management is engaging in any business in order to minimize or avoid any risk that will hinder *Waqf* management to achieve the primary aims and objectives of *Waqf*.

CHAPTER 6: THE ROLE OF CASH WAQF IN BENEFITING NIGERIAN MUSLIMS AND ITS INFUSION ON SMALL AND MEDIUM ENTERPRISES IN NIGERIA

6.1 Introduction

Al-Mu'amalat is general in nature because it connotes different applications in transaction and business between the contracting parties due to their mutual dealing and understanding on a mutually consented agreement. No human being can unilaterally and single handily depends on himself or herself nor satisfy his or her needs or wants without depending on others in terms of buying or selling. Transaction and business contribute significantly to socio-economic development and poverty reduction. A small and medium enterprise (SMEs) is a viable option for job creation in Nigeria. SMEs include manufacturing, agro-based industries, services centres, information & communication technology, agriculture, selling raw material, building materials, and others. In any contract there are conditions that must be satisfied such as conditions of conclusion of contract, conditions of validity, conditions of execution, and condition of binding of contract between contracting parties. All stated conditions must be satisfied by SMEs in order to safeguard and avoid any conflict and unwanted disagreement between the contracting parties. Transactions between SMEs are considered null contracts in the absence of the condition of conclusion. It is also considered invalid in the absence of the conditions of validity. In addition, if the concerned parties in SMEs fail to satisfy the condition of executability, the contract is suspended until the owner of the SME approves the contract. Finally, in the absence of conditions of bindingness the SME contract will be based on option of choice to conclude or nullify the contract.²⁴² It is unlawful for SMEs to involve, engage, and transact in any defective or invalid

²⁴² Ibn Abidin, 1992. See also, Al-Kasani, A. A. B. (1982). *Bada'iu al-Sana'r fi Taritib al-Shara'a*. Beirut: Dar al-Kitab al-Arabi. See also, Al-Zuhayli, W. (2007). *Financial Transactions in Islamic Jurisprudence*. (M.A. El-Gamal, Trans.) Damascus: Dar al Fikr. (Original worked published 2003).

contract or business such as sale of a non-existence object, sale of undeliverable goods or commodities, sales of liabilities, and any prohibited transactions or business (Al-Zuhayli, 2003). This chapter discusses infusion of cash *Waqf* on SME across Nigeria. It examines the importance of SMEs in empowering Muslims and how *Waqf*, *zakat* and *sadaqat* institutions can function as financial institutions for SMEs in the interest of needy Muslims. The discussion concludes by making a number of suggestions for improving the application of SMEs in Nigeria in the interest of less privilege Nigerian Muslims and beyond.

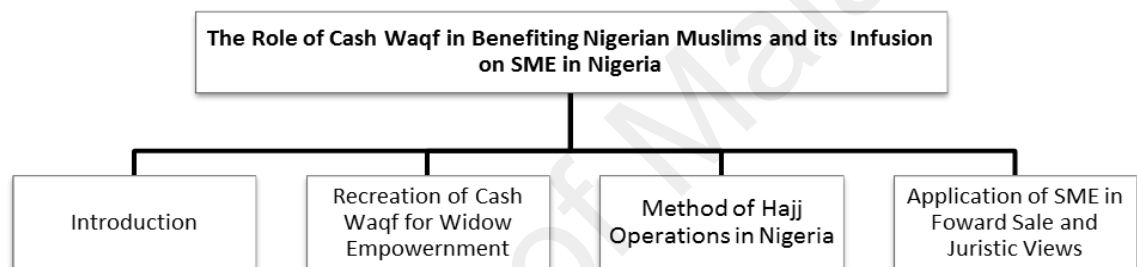


Figure 6.1: The role of cash *Waqf* in benefiting Nigeria Muslim

6.2 Recreation of Cash *Waqf* for Widow Empowerment

In some cases, after the death of a father/husband, the widow and her children find themselves helpless when faced with the wickedness of the trustees of the husband's estates. This ugly and unkind practice is rampant in some families due to their greed. Presently, many of those in control of the deceased's estates, especially the most wicked and heartless within the family, prefer to ignore the widow and fatherless children. They are ready to embezzle the helpless widow and orphans' inheritance because of their selfishness instead of meeting their needs. Such persons have forgotten the springs of charity, kindness, and generosity, which are the standard-bearers of humanity.

Inheritance is abused in such a way that the trustees ignore the inheritance of widows and minors in pursuit of their personal interests.²⁴³

Charity is incumbent upon those who are in possession of wealth to render assistance to the needy such as widows and their helpless children. Various reasons prevent certain persons from seeking help from others such as shame, honour, ignorance, and helplessness. In light of this, philanthropists should not wait until the needy come to them for help. They must constantly bear in mind that assisting others merits Allah's reward. Upon becoming aware of those in need, charity should be extended to them to ease their problems. Many widows are now in a state of helplessness and no one is ready to help them in terms of their children's education, food, health, and accommodation. Such conditions are grounds for desperation.

Widows and their children should be treated wisely, kindly, and justly in the disposition of inheritance by giving them their prescribed portion according to the *Qur'an*. Doing this will ease and reduce the liabilities on the family and society, especially those with abundant wealth. If the deceased leaves an unsustainable property for the family, it is the duty and task of the immediate family to respond to their needs positively. However, it is the duty of the government to take care of citizens' welfare in providing for their daily needs and necessities. Doing this reduces poverty in society.

Waqf is a charitable organization not limited to a certain charity. It is a platform to extend assistance to all valid forms of need. Many Muslim widows are financial dependants and suffer many social, physical, sexual, and emotional challenges meriting the assistance of *Waqf* institutions to ensure their needs are met.²⁴⁴ The major cause of widow dependency is that many Muslims' wives are completely dependent on their

²⁴³ Fazoranti, O.O & Aruna, J.O. (2007). "A cross-cultural comparison of practices relating to widowhood and widow inheritance among the Igbo and Yoruba in Nigeria", *Journal of World Anthropology: Occasional Paper*, vol.iii, (1), 53-73. See also, Onuoha, 2008.

²⁴⁴ Abolarin, 1997; Oniye, 2000.

husband. The sudden death of their husbands often leaves them unprepared to sustain their lifestyles. As a remedy, cash *Waqf* can be channelled to profitable projects that can provide employment for widows across as a means of sustainable income. *Waqf* institutions can build a very big market place where many widows can be employed as *Waqf* employees to work for *Waqf* institutions with reasonable wages.

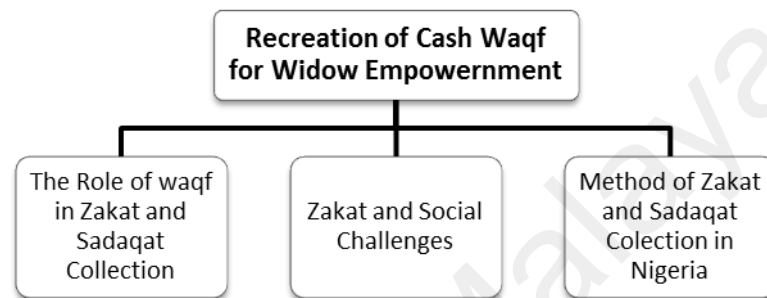


Figure 6.2: Recreation of cash *Waqf* for widow Empowerment

6.3 The Role of *Waqf* in *Zakat* and *Sadaqat* Collection

The primary objective of *sadaqat* and *zakat* collection is to assist needy Muslims. Payment of *zakat* has been prescribed as an act of worship (*ibadah*). It is levied from the wealth of qualified and competent Muslims who have more than they need. The collected *zakat* payment should be paid willingly without any force or coercion and should be distributed among the valid categories of needy as stated in the *Qur'an*.

In contrast, *sadaqat* although also a voluntary donation, is not subjected to a specific percentage of wealth. In some cases it amounts to more than that paid through *zakat*. *Zakat* and *sadaqat* are considered divine and effective mechanisms against poverty and wealth inequality.²⁴⁵

Waqf institutions can transform the lives of many of the needy through proper collection and distribution to appropriate recipients. Prophet Muhammed sent Mu'adh

²⁴⁵ Al-Abdin, 1997, Salih, N. (1986) *Unlawful gain and legitimate profit in Islamic Law*. Cambridge University Press, pp.63-65.

Ibn Jabal as governor to Yemen. When it came time to distribute *zakat* during the period of Caliph Umar Ibn Al-Khattab, Mu'adh Ibn Jabal sent one third of the collected *zakat* to Caliph Umar and in the subsequent year sent another half of the collected *zakat* to the Caliph. Caliph Umar reminded Mu'adh that he was not sent to Yemen as a tax collector and to distribute *zakat* among the needy. Mu'adh later replied that he did not find any poor people in need of *zakat*. The lesson here is that there was a strong institution that efficiently managed the *zakat* collection and distribution.²⁴⁶

With the high rate of poverty and large number of needy Muslims in Nigeria, there is a need for *Waqf* institutions at local, state, and federal levels to act as *zakat* and *sadaqat* collectors and distributors. If properly managed, the researcher believes that poverty will be significantly reduced and many lives will be transformed positively through greater household empowerment.

6.4 Zakat and Social Challenges

Islam views poverty as an epidemic to the security, stability, and faith of society and Muslims. The five major objectives of Islamic Law is preserving faith (*iman*), life, progeny, intellect, and property which can be negatively affected due to financial difficulties.²⁴⁷ In order to protect and preserve the said objectives of Islamic Law, adequate and sufficient provisions need to provide support to needy Muslims to protect from transgression and apostasy.²⁴⁸ Many Muslims converted to Christianity due to poverty in hope of financial support from the Church. Islam made the government and community responsible for eliminating poverty. Financial assistance can be achieved through efficient mechanisms of *sadaqat* and *zakat* collection and distribution. Muslims make up the majority of the Nigerian population yet they are the poorest. There is therefore a need for proper collection of *sadaqat* and *zakat* to address this problem.

²⁴⁶ Abu Ubaid, 1988, Salih, 1999, 63-64.

²⁴⁷ Al-Abdin, 1997, Salih, 63.

²⁴⁸ Al-Qaradawi 1393AH; Salih, 63-65.

6.5 Method of *Zakat* and *Sadaqat* Collection in Nigeria

Zakat collection in Nigeria is the responsibility of individuals especially Imams of mosques. The eligible and qualified *zakat* payer will pay *zakat* directly to the Imam under the assumption that the Imam knows best those most needy in the community. The competence and credibility of *zakat* collectors is a longstanding problem. Traditional methods of *zakat* collection fail to achieve the primary objectives of *zakat*.

To remedy this, there is a need for an efficient and capable establishment to collect and distribute *zakat* in Nigeria. *Waqf* is one such potential institution. Such an institution manages the collection and distribution of *zakat*, utilization of the collected charities to create employment for unemployed Muslims, and charitable functions that will meet the aims of collection of *zakat* and *sadaqat*. The institution will help address important issues such as poverty alleviation. Some ways of achieving this is through seminars and awareness programs on the role of *zakat* and *sadaqat* as means of poverty reduction. The system of collection and distribution should be made public and transparent. Such initiatives are imperative to transform Muslim society economically, socially, and religiously, in addition to reforming traditional methods of *zakat* and *sadaqat* management.

6.6 Method of *Hajj* Operations in Nigeria

Initially, the duties of the *Hajj* Commission were to collect *Hajj* fares, to arrange travelling passports, to collect and issue tickets for pilgrims, to obtain visas, and to arrange for vaccinations, however, despite these efforts, Nigerian pilgrims continue to suffer many hardships during their pilgrimage. Certain private travel agencies managing *Hajj* further exacerbate the matter through exorbitant charges, flight delays, baggage loss, poor attitude towards the pilgrims' welfare, and are generally unreliable. This is

largely due to their profit maximization approach. These unfortunate events merit the involvement of *Waqf* institutions to better manage the affairs of pilgrims.²⁴⁹

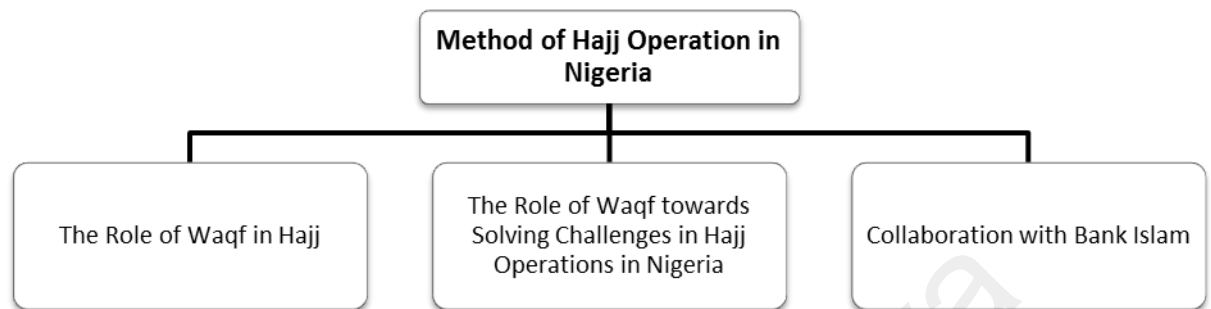


Figure 6.3: Method of Hajj operation in Nigeria

6.6.1 The Role of Waqf in Hajj

Waqf institutions in Nigeria can play important roles regarding the welfare of intending pilgrims. In this regard, the Malaysian experience in managing the finances and welfare of intending pilgrims through the Muslim Pilgrims Saving Corporation since 1963 is particularly instructive. The institution was later changed to the *Tabung Haji* (the Pilgrim Management and Fund Board) mainly to help intending pilgrims to save and invest their *Hajj* saving in *Shariah* compliant business, investment, or transaction that will yield lawful profits for both clients and the company. *Tabung Haji* also contributed to the growth and success of the Islamic Bank in Malaysia.

In 1986, an amendment was made to the *Hajj* Commission decree that ended the monopoly of Nigerian Airways as the sole carrier of Nigerian pilgrims to Mecca. The Commission was empowered to appoint and contract any airline in the best interest of Nigerian pilgrims. The amendment also empowered the *Hajj* Commission to initiate and establish a *Hajj* Saving Scheme to be managed under an interest free fund.²⁵⁰ According to Uthman, the idea of the Hajj Saving Scheme and interest free bank must

²⁴⁹ Sheriff, 2012.

²⁵⁰ Usman, 1986, Uthman, 2008.

have been borrowed from Tabung Haji due to its success.²⁵¹ Unfortunately, since the endorsement of the said decree in 1986, little action has been taken, particularly regarding the saving scheme. Due to that, it is impossible to compare the experiences of Malaysia and Nigeria.²⁵² To address the many difficulties confronting intending Nigerian pilgrims, it would be better if *Waqf* institutions collaborate with Islamic banks by introducing a *Hajj* Saving Scheme System. *Waqf* institutions can invest the money for any lawful and lucrative investment that will ultimately benefit the needy.

6.6.2 The Role of Waqf towards Solving Challenges in Hajj Operations in Nigeria

Waqf institutions in Nigeria have the potential of playing positive roles towards solving many of the problems confronting intending pilgrims in terms of proper documentation, fixed prices, proper arrangement and training in Nigeria, proper arrangement in Saudi Arabia, avoidance of unnecessary delay and disappointment after the payment of *Hajj* fees. It has been said that there is need for a *Hajj* Saving Scheme that will give ample opportunity for any intending pilgrim to save for their *Hajj* through fixed instalments over a certain period. Such a saving scheme can be introduced and managed by a *Waqf* institution at state level and the money can be transferred to the *Hajj* Commission at state level for further processing. *Waqf* institutions can act as a private company that manages the *Hajj* for those who do not wish to register under government due to abnormalities and lack of good welfare of their pilgrims in Nigeria and Saudi Arabia. Intending pilgrims will know the exact year he or she qualifies to perform the *Hajj* based on their saving.

Corruption will be also controlled and minimized if the saving scheme is introduced and managed by competent, qualified, and pious persons. Many private companies collected money from intending pilgrims who were disappointed with their

²⁵¹ Uthman, 2008.

²⁵² Usman, 1986, Uthman, 2008.

service but were not refunded in full. Unnecessary charges can also be reduced if *Waqf* institutions are in charge of *Hajj* operations. Proper arrangement will ensure that there will be little to no waste of client time and resources. This will facilitate a more enjoyable *Hajj* experience.

It should be noted however, that the development and investment of the collected *Hajj* savings is certain to meet with many challenges, obstacles and difficulties. In order to overcome any challenges that might confront the institution, there is need for modern technologies for proper documentation and information sharing. There is also a need for a proper legislative and juridical framework for the application and implementation of the proposed *Hajj* Saving Scheme. There must be rules and regulation regulating the investment of *Hajj* funds.²⁵³

6.7 Collaboration with Islamic Bank

Nigeria is not the first country to face challenges regarding Islamic banking with its no-interest system. Pakistan faced problems in 1950 along with Egypt in 1963 and 1972. Despite the challenges, Egypt managed to establish their Islamic Bank known as Nasser Social Bank.²⁵⁴ *Waqf* institutions in Nigeria must continue towards establishing greater collaborate with Islamic banks in Nigeria especially al-Jaiz Bank despite the many challenges they continue to face from all corners. Collaborating with Islamic banks will provide the opportunity to assist *Waqf* institutions across the nation for the development of human resources through targeted intervention in the education and health sectors. The bank can finance *Waqf* projects across the nation such as water supplies, agriculture, transport, household empowerment through small and medium enterprises, investment, and creating *Hajj* saving scheme.

²⁵³ Salih, 63-68.

²⁵⁴ Wilson, 1983, Uthman, 2008.

Financing *Waqf* projects, especially on agriculture will enhance and boost food security, create employment, and facilitate better transport from one state to another. The collaboration of *Waqf* institutions with Islamic banks in Nigeria will also ensure financial assistance of needs Nigerian Muslims. Financial assistance can be extended to the victims of natural disasters and improve their social and economic conditions.

Collaboration between *Waqf* institutions and Islamic banks in Nigeria will contribute directly and indirectly to poverty eradication among needy Nigerian Muslims. Proper rules and regulations have to be introduced purposely to achieve poverty alleviation among Nigerian Muslims.²⁵⁵ *Waqf* institutions and Islamic banks can work together to monitor and measure the data of households and the poverty rate across the nation. It provides the platform for lucrative projects that will create employment. It will further assist both institutions to identify lucrative projects that will benefit needy Muslims. Both institutions can consciously monitor the progress of *Waqf* institutions at local and state levels in order to make necessary adjustment and amendments to their system of operations.²⁵⁶ *Waqf* institution and Islamic banks should ensure that all loans to needy Muslims are interest free.²⁵⁷ There must be strict monitoring and rules in order to ensure that the charities, loans and financial support are used for it are proper purpose.

6.8 Moral and Ethical values in Small and Medium Enterprises

Under Islamic law there is a regulatory framework that establishes the rights and obligations for each contracting party involved in any SME transaction contract for the purpose of sharing, benefiting, caring, and change of ownership. SME contracts play an important role in human lives in general and Muslims in particular. Muslims are legally permitted to become involved in any profitable and lawful transaction and business such

²⁵⁵ Salih, 63-68.

²⁵⁶ Salih, 63-68.

²⁵⁷ Uthman, 2008.

as SMEs in order to enhance their income and reduce poverty among Nigerian Muslims in particular. However, there are numerous quotations from the *Qur'an* and *Hadith* on upholding ethics in SME contracts.

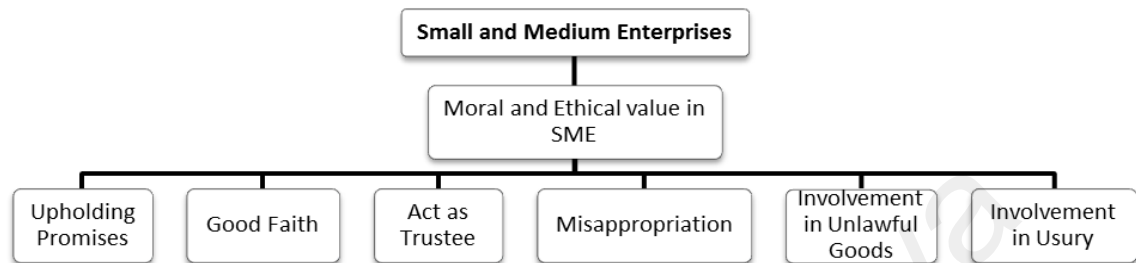


Figure 6.4: Moral and Ethical values in Small and Medium Enterprises

6.8.1 Upholding SME Contractual Promises

Contracting parties are commanded to keep their promises, duties and responsibilities in any transaction engagement. Based on that, the contacting parties involved in SMEs should honour and respect their promises in as much such promise do not contradict Islamic principles. Muslims are not permitted to engage in any unlawful or prohibited SME contract regardless of financial conditions. The following are the evidences in support of upholding and honouring promises in SME contracts:

“O you who believe, fulfil your obligations.”²⁵⁸

“And fulfil every covenant. Verily, the covenant will be questioned about.”²⁵⁹

The verse is general in nature and the implication of the above mentioned verses is that contracting parties must fulfil every engagement and all their engagement would be questioned on the Day of Reckoning. One has to bear in mind that the above stated verses are general and it can be applied in any transaction such as *Mudrabah*, *Musharakah*, *Muzaraha*, *Qard Hassan*, and SMEs. Therefore, any engagement and promises involved in SME must be honoured and respected. It is the duty of *Waqf*

²⁵⁸ Quran 5:1.

²⁵⁹ Quran 17:34.

institution across the nation to educate benefactor of cash *Waqf* to uphold their promises with institution and others.

6.8.2 Good Faith/Iman

Every type of SME must be performed with good intention and faith. The contracting parties must have good faith during their SME contract and agreement and no party should have any evil and hidden agenda against the other party such as fraudulence, cheating, stealing and other types of monopoly and usury.

The *Qur'an* says to this effect:

“O you who believe! Eat not up your property among yourselves unjustly except it be a trade among you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is most Merciful to you.”²⁶⁰

In any agreement, engagement and contract like SME, contracting parties are not permitted under Islamic law to inflict harm to other contacting parties in any form that will cause harm to the victim. Therefore, both parties should maintain the integrity of their SME contract and agreement by having good faith and intention for each and other. The seller and buyer should be conscious of their faith in their agreement and any agreement must be fulfilled accordingly. The contracting parties must desist from any type or kind of usury in SMEs as prohibited in Islam.

6.8.3 Act as Trustee to another Party

In any SME contract, the contracting parties will base their engagement, transaction, and agreement on the trust that the other party will not cheat or breach the contract. It is believed that both parties will carry out their duties according to the agreement. If the SME contract involves a valid contract or forward sale, manufacture and other legal

²⁶⁰ Quran 4: 29.

transactions, both contracting parties must uphold their agreement by fulfilling their promises. The seller or manufacturer must deliver the commodities or goods accordingly while the buyer must pay the agreed amount or the balance agreed upon.

The *Qur'an* says to this effect:

“Verily! Allah commands that you should render back the trusts to those whom they are due; and that when you judge between men, you judge with justice...”²⁶¹

6.8.4 Misappropriation in Small and Medium Enterprises

Generally, it is prohibited for the contracting parties to become involved in any misappropriation, fraud in term of quality, price, and profit of commodities, goods, and related transaction. In any SME contract or agreement, the seller should weight the goods and commodities accordingly. In an SME contract, the quality and quantity of the requested items must be delivered properly. It can be inferred from the aforesaid verse that misappropriation must be avoided in any type of SME. The *Qur'an* says to this effect:

“Woe to Al-Mutaffifin (those who give less in measure and weight). Those who, when they have to receive by measure from men, demand full measure. And when they have to give by measure or weight to (other) men, give less than due.”²⁶²

6.8.5 Small and Medium Enterprise Involvement in Unlawful Goods and Commodities

Involvement in any illegal and unlawful transaction is prohibited under Islamic law. Any form of harmful transaction is illegal and invalid under Islamic law in the interest of the contracting parties and society at large. Therefore, SME involvement in any unlawful transaction such as cocaine, wine, alcoholic, pig, selling of weapons to

²⁶¹ Quran 4:58.

²⁶² Quran 83:1-3.

criminals, renting houses for criminal activities, unlawful products, production of dangerous goods, and other related prohibited goods are strictly prohibited and punishable by law. *Waqf* institution capable of regulating the type of SME that benefactor will involve. There must be check and balance by *Waqf* institution staff.

The *Qur'an* states to this effect:

“O you who believe! Intoxicants (all kinds of alcoholic drinks), and gambling, and *Al-Ansab*, and *Al-Azlam* (arrows for seeking luck or decision) are an abomination of *Shaitan's* (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful.”²⁶³

It is understood from the interpretation of the above verse that all kinds of prohibited goods and commodities are invalid transactions. Therefore, the contracting parties are not permitted to engage in any unlawful transaction and business regardless of the concerned parties' condition and financial status.

6.8.6 Small and Medium Enterprise Involvement in Usury

Under Islamic principles, all sorts of monopoly, usury, exploitation, inflation, and injustice is prohibited and unlawful. Therefore, the contracting parties in SMEs are not allowed to engage in any usury. Even if the running or financing capital will lead to interest or usury, such capital should be avoided. This is based on the verse from the *Qur'an*:

“O you who believe! Eat not Riba (usury) doubled and multiplied, but fear Allah that you may be successful.”²⁶⁴

It has been said that contracting parties in SME must desist from any usury in order not to unjustly consume the property of others. Consuming the property of others illegally will inflict harm on the victim and his or her family. According to an Islamic

²⁶³ Quran 5:90.

²⁶⁴ Quran 3:130.

legal maxim, the harm and hardship must be removed, based on that, any act that is tantamount to usury must be avoided and removed.

6.8.6.1 Hadith

There are a number of hadiths of Prophet Muhammed (s.a.w) that encourage trade, commerce and also involvement in SMEs.

“A trustworthy, an honest and a truthful businessman will rise up with martyrs on the Day of Resurrection.”²⁶⁵

“A truthful and trustworthy trader will rise up with the Prophets, the righteous and the Martyred.”²⁶⁶

“The Messenger of Allah (swt) forbade the sale through fraudulent means or the sale by uncertainty.”²⁶⁷

“Narrated by Abdullah Ibn Umar (r) a person came to the Prophet (s.a.w) and told him that he was always betrayed in purchasing. The Prophet (s.a.w) told him to say at the time of buyinh “no cheating.”²⁶⁸

“Narrated by Hakim bin Hizam (r) the Holy Prophet (s.a.w) said: the buyer and seller have the option to cancel or confirm the deal as long as they have not parted or till they part, and if they spok the truth and told each other the defects of the things, then blessings would be on their deal, and if they hid something and told lies the blessing of the deal would be lost.”²⁶⁹

“Ibn Abu ‘Auf (r) said one who practices Najsh he is a riba eating traitor. And such a practice is a false trick which is forbidden and the Holy Prophet (s.a.w) said: deception

²⁶⁵ Ibn Majah.

²⁶⁶ Tirmidhi.

²⁶⁷ Imam Malik. (1982). Muwatta. England: Diwan Press.

²⁶⁸ Bukhari, 1997.

²⁶⁹ Bukhari, 1997.

would lead to Hell and whoever does a deed which is not in accord with our tradition, then deed will not be accepted.²⁷⁰

‘Uqbah bin ‘Amar (r) said, it is illegal for one to sell a thing if one knows that it has a defect unless one informs the buyer of the defect.²⁷¹

6.9 Application of Cash Waqf on SME in Forward Sale and Juristic Views

Classical jurists are divided on the permissibility of cash *Waqf*, most likely due to the perpetual nature of *Waqf* assets which may not be apparent in cash notes that only a few early scholars and more contemporary scholars find perpetuity in cash *Waqf* when it is utilized for loans and investment. Most contemporary jurists have justified the validity of cash *Waqf* as being in the interest of the *Waqf*, its beneficiaries and the society in general.²⁷²

Classical jurists have differed on the issue of gold and silver coins as the object of cash *Waqf*. In some reports, cash is not considered a valid object of *Waqf* by Imam Abu Hanifa, Abu Yusuf, Imam ibn Hanbal, some Maliki’s and the majority of Shafi’is.²⁷³

Cash *Waqf* is permitted by Imam al-Zuhri and Imam Zufar and the majority of later Maliki jurists and late pre-modern Hanafi jurists allowed cash *Waqf*.²⁷⁴ Ibn Taymiyyah also considered the permissibility of cash *Waqf* as a preferred view in the Hanbali School.²⁷⁵

On the other hand, it has been reported that the Shafi’i school is less inclined to allow cash *Waqf*.²⁷⁶ According to Mohammed (2011), al-Mawardi has restricted the view of Imam Shafi’i on cash *Waqf* to the donation of benefits or income when the

²⁷⁰ Bukhari, 1997.

²⁷¹ Bukhari, 1997.

²⁷² Dunya, 2002.

²⁷³ Sarakhsi, 1986, al-Zuhayli, 2003.

²⁷⁴ Bukhari, 1993, Ibn Abidin, 1992.

²⁷⁵ Majma Malik Fahd, 1995.

²⁷⁶ Dunya, 2002, Sarakhsi, 1986.

coins are rented. Al-Marwadi reported two contrasting views from Imam Shafi‘i; one view makes cash *Waqf* permissible, while another renders it impermissible. According to Mohammed (2011), the view of Imam Shafi‘i, as understood from al-Mawardi, is not restrictive, but al-Mawardi may have restricted it based on his own criterion of *Waqf* objects – that it should be of uninterrupted existence and capable of utilisation. In his view, coins do not fit these criteria unless it is used for rental.

The Hanafi jurist Imam Zufar deemed that cash meets the criterion of perpetuity when the donated cash is used for *mudarabah* trade and income is distributed among the beneficiaries (Mohammed, 2011). Ibn Abidin (1992) also notes the permissibility of cash *Waqf* under the ruling of Imam Muhammad who allowed moveable properties as *Waqf* if it is a custom of the community. In another related view, coins are considered to be non-specific replaceable property, whereby recovery and restitution of the coins are made in similar units. Since units of money can be substituted, money can be considered to exist forever. This premise can explain the Hanafi view that suggests the perpetuity of coins, and hence the perpetuity of a cash *Waqf*.²⁷⁷

There are similar views for the Maliki and Hanbali schools. For instance, the Maliki’s have reported from Imam Malik that cash *Waqf* is permissible for the purpose of loans (Majma Malik Fahd, 1995). Ibn Taymiyah from the Hanbali School, on the authority of Abu al-Barakat, has also allowed cash *Waqf* in the form of lending or investment (Mohammed, 2011). The views of contemporary scholars in literature are in favour of cash *Waqf*. Contemporary jurists accept cash *Waqf* owing to its inherent benefit.²⁷⁸

²⁷⁷Mohammed, 2011, Ibn Abidin, 1992.

²⁷⁸ Majma Malik Fahd, 1995, Mohammed, 2011.

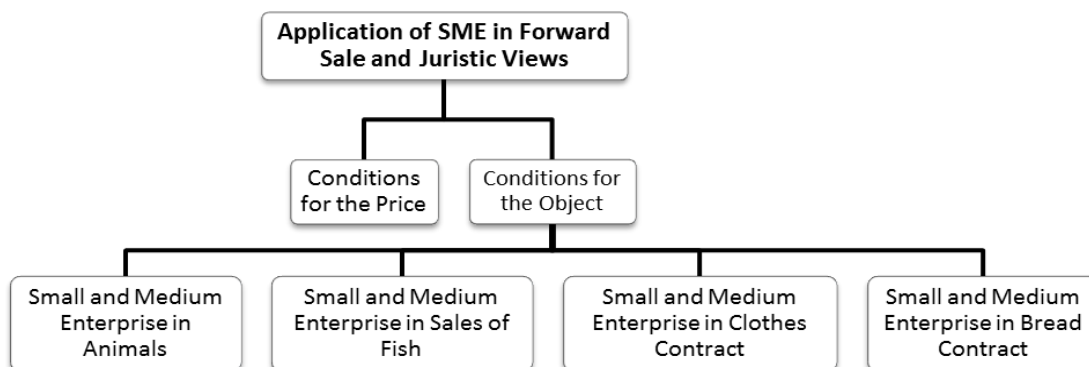


Figure 6.5: Application of SME in Forward sale and Juristic Views

Small and medium enterprise can conduct forward sale such as *bay salam* commission to manufacture (*istisna*), and others. It can also involve partnerships (*al-sharikaat*). Forward contract refers to sale of a deferred, postponed, advance payment, for an agreed price for exchange of a deferred object.²⁷⁹ There are conditions for forward sales which also include involvement of SMEs in any deferred payment and object. Muslim classical scholars asserted that any legal and lawful forward sale is valid and lawful if it satisfies conditions such as genus, characteristics, amount, the term of deferment is known, the price must be known by the concerned parties, and the place of delivery must be clearly specified during the agreement. All these conditions can be applied on any SME contract in order to avoid misunderstanding and ugly occurrences between the contracting parties. Islamic jurists unanimously agreed that *salam* (forward) contract is permissible in any measured goods and commodities (weight, volume, length, number such as cloth, egg, nut, shoes, building materials, and others). It can be deduced that engagement of SMEs in measured and volume goods is permissible in as much as it does not contradict Islamic principles.²⁸⁰

²⁷⁹Ibn Abidin, 1992, Al-Kasani, n.d ; Al-Zuhayli, 2003;Al-Qurtubi, 2002.

²⁸⁰ Oseni, U. A., Hassan, M. K. & Matri, D. (2013) *An Islamic finance model for the small and medium-sized enterprises in France*. Journal of King Abdulaziz University: Islamic Economics , 26 (2). pp. 153-180.

6.9.1 Conditions for the price of a forward contract in line with SME

Imam Abu Hanifa expounded six conditions for the contract of forward sale that are in line with SMEs such as the genus of the price the contracting parties have specified of monetary payment in their SME whether in gold, silver coins, dollars, dinar, and other monetary forms. This is to safeguard the misunderstanding and miscalculation during the exchange of commodities or goods. The price and the characteristics of the price must be also stated clearly in terms of good, age, and poor quality, and the stipulation of the amount of the price. In addition, Imam Abu Hanifa stipulated that all coins must be inspected to avoid ignorance that might cause misunderstanding, fracas, conflict, and defectiveness of the SME contract. He further said that payment and receipt of the price at the time of contract and agreement and before the separation of contractors is also considered a condition.²⁸¹ On the other hand, Imam Shafi'i, majority of Hanbalis, and Abu Yusuf argued that knowledge of the price is not a condition for forward sale. Similarly, on the condition of payment and price, the majority of classical scholars such as Imam Abu Hanifa, Imam Shafi'i and Imam Hanbali all agreed on the condition except Imam Malik who argued that deferment of the price is allowed and valid for three days or less than three days, even if the deferment is stipulated as a condition of a forward contract. If the deferment is made as a condition of a forward contract, then, if deferred payment is more than three days it renders the contract defective regardless of the length and period of deferment. If the deferment is not made as a condition of forward contract, Imam Malik has two views where he argued that the contract is defective and other not defective. The most acceptable view is that if the deferment is more than three days, the contract is defective.²⁸² The above analysis on the price is also applicable on SMEs. In order to commercialize cash *Waqf* across Nigeria, *Waqf* institution can create forward sale in SME that will be use as tool and mechanism to

²⁸¹ Al-Kasani, 1982, Ibn Abidin,1992, Ibn Humam, n.d; Al-Shirazi, n.d, Ibn Rushd, 1989.

²⁸² Al-Sarakhasi,1989;Al-Kasani,1982, Ibn Abidin,1992, Ibn Humam, n.d; Al-Shirazi, n.d, Ibn Rushd, 1989.

empower less privilege Nigerian Muslims. Based on the one of objectives of this study, many Muslims live will be transformed positively through commercialization of cash *Waqf* across the nation. It is previously mentioned in previous pages that *Waqf* managements have many roles to play in strategizing ways and methods to increase more income to the institution in the interest of Muslim community at large.

6.9.2 Conditions for the object of a forward contract in line with SME

The conditions for the object of forward sale can also be applied with SMEs involved in forward contracts. The Hanafi school of thought stipulated eleven conditions for the object of any forward contract. This is also applicable in the case of SMEs. The conditions are the object genus must be known, its type must be identified or known, its characteristics must be known, the amount known, and it should not be usury (*riba*).

Similarly, the object of forward contract must be identified by specification and it is must be differed as a condition of a forward contract. The object of a forward contract must be deferred. The classical scholars had different views on the deferment of the object. The majority of jurists such as Hanafi, Malik, and Hanbali viewed that deferment of the object of a forward contract is the condition for the validity of a forward contract. Therefore, if the object of the contract is not differed, the contract is not valid based on the hadith of Prophet Muhammed (s.a.w) that “Whoever participates in a forward contract, should buy a known volume or weight for a known deferment term.”²⁸³ On the other hand, Imam Shafi’i argued that a forward contract (*Bay al-Salam*) is valid regardless of the object of the contract is deferred or not deferred (Al-Zuhayli, 2003; Al-Khatib, n.d; Abu Ishaq, n.d). This study opines that both views can be applied in Nigeria in as much it serve the purpose of infusion of cash *Waqf* in SME. The object can be deferred if the nature of the contract requires deferment. Concerning

²⁸³ Al-Baji, 1332AH, Al-Sarakhasi, 1989, Ibn Humam, n.d, Al-Shirazi, n.d, Ibn Rushd, 1989.

the period of SME deferment of a forward contract, the jurists differed among themselves. The Hanafi and Hanbali schools of thought argued that one month or less should be considered for deferment. Contrarily, Imam Malik argued that the precise period of deferment is half a month. Similarly, Imam Hanafi, Imam Hanbali, Imam Shafi'i ruled that the precise date of deferment of a contract must clearly be specified.

Imam Malik said that the term of delivery of forward contract is permissible. Therefore, the period, time of object of SMEs must be specified either one month or half a month. The most important argument is that the contracting parties must agree on the period and specific time and date of delivery.²⁸⁴ The nature of the object of SMEs must be considered and evaluated before the agreed time of delivery. If the object of forward contract will take more than one, the object of forward contract is still valid in as much as the main condition still persists. The argument or views of jurists should not be considered as binding in the public interest. On the conditions of object, the object of the forward contract must exist in the market until delivery time.

In order to safeguard against usury, the forward contract is invalid if the object does not exist at the time of delivery. According to Imam Malik, Shafi'i, and Hanbali the most important condition is that the object must exist at the time of delivery regardless whether the object in question is available at the time of contract or not.²⁸⁵ According to Abu Hanifa, the location of delivery must be stated if the object in question is heavy. However Abu Yusuf and Muhammad did not state location of delivery as a condition of forward contract. Imam Malik argued that stipulation of location of delivery as a condition is much better than excluding it from the forward contract. The Shafi'is expounded that the party who imposes location of delivery is responsible for the cost and appropriate location must be clearly stated in the agreement of forward contract. On the other hand, Imam Hanbali held the view that the

²⁸⁴ Al-Baji, 1332AH, Ibn Al-Humam, n.d.

²⁸⁵ Al-Baji, 1332AH, Al-Khatib, n.d, Abu Ishaq, n.d, Al-Zuhayli, 2003, Ibn Qudamah, 1983.

specification of location of delivery is not considered as a condition in a forward contract.²⁸⁶

Another condition of object of forward contract is the object must have special characteristics as the price to be measured by volume, weight, size, or numbers of homogenous item like grain, fruit, flour, clothes, cotton, iron, lead, medicines, walnuts, and eggs. Imam Malik argued that forward contract is valid for objects that can be described conveniently and sufficiently and also the object that cannot be described sufficiently. To Imam Malik, the cornerstone of the forward contract is the ability to control the nature of the object in question. Imam Shafi'i argued that object of forward contract is legal provided that the object can be controlled by the specification and description. Lastly, the Hanbali school of thought claim that the forward contract is legal and lawful provided that the object can be controlled by description (Al-Baji, 1332AH; Al-Khatib, n.d; Abu Ishaq, n.d; Ibn Humam, n.d; Ibn Abidin, 1992). The researcher argued that the *Waqf* management should appoint qualified and competent staff who will manage the forward sale business and transaction accordingly.

6.9.3 Small and Medium Enterprise in Animals

Sales of animals and their parts in SMEs is a profitable and lucrative business. Selling lawful animals is permitted under Islamic law and classical scholars unanimously agreed that fat tails and other fats of lawful animals may be forward sold by weight. However, the jurists differed among themselves over sales of the entire animal. Imam Hanafi held the view that forward sales of animals are not permitted and its invalid because animal characteristics of animal price cannot be precisely controlled and determined. On the other hand, Imam Malik, Imam Shafi'i and Imam Hanbali held the position that forward sale of animals is permitted and even animals can also be loaned

²⁸⁶ Al-Khatib, n.d, Abu Ishaq, n.d, Al-Zuhayli, 2003, Ibn Qudamah, 1983, Ibn Juzayy, n.d.

based on the tradition of the Prophet (s.a.w). The permissibility of the forward sale of animals is based on the specification of its genus, age, gender, colour, and approximate size, which are easily determined by modern technologies.²⁸⁷ *Waqf* institution across Nigeria can invest cash *Waqf* in lawful animal in order to empower many unemployed Muslims who are seriously in need. The investment on selling animal will reduce rate of poverty among Nigerian Muslims. The reason is that, the unemployed will be employed and empowered and they will realise certain income to maintain themselves and their families.

6.9.4 Small and Medium Enterprise in Sales of Fish

The majority of the classical scholars such as Imam Malik, Imam Shafi'i and Imam Hanbali permitted the validity of the forward contract of fish regardless of the fatness, leanness and proportion. However, Imam Hanafi ruled that the small fish by volume or weight, salted small fish is invalid and not permitted because the small fish cannot be distinguished due to ignorance.²⁸⁸ In this study, forward sale or contract of fish regardless of the size and volume of fish is permissible is so long as the seller can use scales to determine the weight of the purchased fish. Fish is daily need globally and in Nigeria in particular where many trained and poor can assist to start their SMEs in selling fish through cash *Waqf*. If *Waqf* invest cash *Waqf* in selling fish by employing the seller with reasonable wages or salary. Many qualified unemployed Muslims can be financed to start SME in selling fish.

²⁸⁷ Al-Sarakhsi, 1989, Al-Baji, 1332AH, Al-Khatib, n.d, Abu Ishaq, n.d, Ibn Al-Humam, n.d, Ibn Abidin, 1992.

²⁸⁸ Al-Sarakhsi, 1989, Al-Zuhayli, 2003, Ibn Humam, n.d, Ibn Abidin, 1992.

6.9.5 Small and Medium Enterprise in Clothes Contract

SME in selling clothes is valid and permissible as long as the terms of contract and sale are upheld. On the forward sale of clothes, Imam Hanafi argued that the forward sale of clothes is not permitted because it is heterogeneous but it is permitted based on the juristic preference provided that the genus, type, thickness of the cloth, and its size is specified during the contracting parties agreement. The majority of jurists opined that forward sale of clothes is valid and permitted.²⁸⁹ The focus of this research is how *Waqf* institution can empower and commercialize cash *Waqf* in SME in selling clothes by employing qualified seller or invest on said contract.

6.9.6 Small and Medium Enterprise in Bread Contract

Imam Hanafi, Imam Shafi'i, Muhammad, Al-Karkhi, and Ibn Rustum unanimously held the view that the forward sale of bread is not permitted due to its extreme heterogeneity because it is difficult to differentiate between the loaves and also due to ignorance that may lead to discord between the contracting parties. However, Imam Malik and Imam Hanbali ruled that the forward sale of bread and similar goods, commodities that can be controlled and exposed to fire and can be measured by volume, number, and weight is valid and permitted.²⁹⁰ These types of SME contract is a lucrative business because bread is a daily need across the nation. Therefore, if *Waqf* invest on it, it will increase *Waqf* institution income to support needy Muslims across Nigeria.

²⁸⁹ Al-Sarakhsi, 1989, Al-Zuhayli, 2003, Ibn Qudamah, 1983, Ibn Juzaiy, n.d, Al-Kasaniy, n.d.

²⁹⁰ Al-Sarakhsi, 1989, Al-Zuhayli, 2003, Ibn Humam, n.d, Abu Ishaq, n.d.

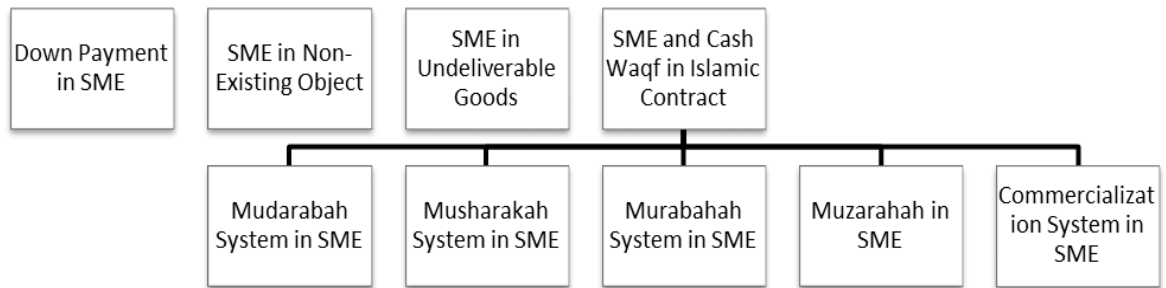


Figure 6.6: Small and Medium Enterprises

6.9.7 Down payment Sale in Small and Medium Enterprise

Application of down payment agreement in SMEs in sale contracts where the buyer purchases the item and pays part of the agreed price to the seller with the mutual agreement and understanding and condition that the down payment applies to the price if the contract is executed accordingly. However, if the contract is not carried out accordingly, the down payment will be considered a gift from the payer to the seller.

The majority of Islamic scholars held the view that such a contract or sale is forbidden while Imam Hanafi ruled that it is defective and the rest of jurists held the view that the contract is invalid. Prohibition, defectiveness, and invalidity of down payment of agreed contract is based on uncertainty and risk-taking. Contrarily, Imam Ahmad Ibn Hanbali ruled that there is no harm in this contract based on the permission of Prophet Muhammed (s.a.w) on down payment.²⁹¹ It can be concluded from above arguments and discussion that down payment should be considered a valid sale and contract if the terms and conditions of contract are clearly spelled out. The permissibility of down payment in SMEs should also be based on the public interest and juristic preference in order to make the contract and payment easy and convenient for the contracting parties. The most important aspect of down payment in SMEs is usury, risk, cheating, fraud, and illegalities the should be avoided. *Waqf* institution in Nigeria has to play an important role to assist less privilege Muslims in Nigeria to secure capital

²⁹¹ Al-Zuhayli, 2003.

to pay down payment in any lawful SME business and transaction. Provision of cash for needy Muslims to run their contract will reduce poverty in Nigeria.

6.9.8 Small and Medium Enterprise in a Non-Existing Object

The majority of classical jurists unanimously agreed that sale or contract in any form of non-existing object or the object of contract that may cease to exist is not concluded because it is not under the seller's control and the seller will not be able to deliver the object after the conclusion of contract or sales. Non-existing objects include offspring of animal, unborn animals, unseen fruits or plants. The prohibition of non-existing items in any contract is based on the *Hadith* of Prophet Muhammad (s.a.w) prohibiting the sale of the unborn animal in the womb of its mother. He also prohibited the sale of the male camel's sperm and the female camel's egg. He also prohibited the sale of fruits before they are ripe.²⁹²

The cause of prohibition of the non-existing object in the contract is ignorance and description of the item that may cause discord and misunderstanding between the contracting parties. Similarly, Imam Shafi'i and Imam Hanbali held the view that sale and contract in pearls in shells, milk in an udder, wool on the backs of sheep and other related unseen or unable to inspect object is invalid. Imam Hanafi argued that contracting and selling milk from the udder, pearls in shells or wool on the backs on sheep is a defective contract under due to ignorance. According to Abu Yusuf, selling and contracting in non-existing objects such as milk in an udder, pearls in shells, and wool on the back of sheep is valid on the ground that wool on the back of animal can be cut prior to slaughtering the sheep.²⁹³ Imam Malik, Imam Hanbali, and the Zahiris agreed on the validity of selling milk in an udder, wool on the back of animal provided that the milk is homogeneous and whose productivity is known and the sheep must be

²⁹² Al-Zuhayli, 2003.

²⁹³ Ibn Al-Humam, n.d, Al-Zuhayli, 2003, Ibn Abidin, 1992.

sheered immediately.²⁹⁴ This research opines that the conditions of the contract should be examined. If the ignorance of the object disappears then the object is valid. There are modern technologies to determine the quantity of milk inside the udder and the quality of the wool on the back of an animal. In such circumstances the contract should be considered valid. Based on the above analysis, *Waqf* institution in Nigeria can involve in stated SME contract. Institution can provide modern technologies to determine non-existing object to avoid ignorance. Provision of modern technologies for needy Muslim sellers to enhance their business will increase their income and when their daily income increases, they will have sufficient income. When they have sufficient income, the rate of poverty will reduce among them.

6.9.9 Small and Medium Enterprise in Undeliverable Goods

The majority of the Hanafi school of thought agreed that any un-deliverable commodities and goods at the time of contract and agreement is considered an invalid contract. This is applicable to animals that run away from their owner. Contrarily, Imam Hanafi argued that such a contract is valid if it is accustomed that such animals normally return back. On the other hand, the majority of jurists such as Imam Malik, Imam Shafi'i, and Imam Hanbali held the view that undeliverable commodities at the time of contract are not concluded and it is considered an invalid contract. Such a contract includes run away camels, wild cows, birds in the sky, and fish in a sea or river or ocean.²⁹⁵ It can be concluded that the involvement of SMEs in any undeliverable goods and commodities is considered invalid and not concluded based on the stance of classical scholars. Nonetheless, *Waqf* institution in Nigeria can involve in live stock business by putting cash *Waqf* in said SME contract by employing needy Muslims as

²⁹⁴ Ibn Humam, n.d, Ibn Abidin, 1992, Al-Sarakhsi, 1989, Ibn Qudamah, 1983, Abu Ishaq, n.d.

²⁹⁵ Ibn Humam, n.d, Ibn Abidin, 1992, Al-Sarakhsi, 1989, Al-Kasani, 1982.

employee. It is the duty of *Waqf* institution to normalize and remove illegalities from such business and Islamizes it by making undeliverable deliverable goods.

6.10 Small and Medium Enterprises and Cash *Waqf* in Islamic Contract

Waqf institution in Nigeria can engage and invest collected cash *Waqf* on the following Islamic contract. Many less privileged Muslims lives can be transformed through the small and medium enterprises because SMEs provide a platform for conducting business. Empowering needy Muslims in profitable and lucrative businesses will vehemently and significantly reduce poverty among Muslims. The endowment institution can utilize the integration of *zakat*, *sadaqat* and cash *Waqf* to support needy Muslims through small and medium enterprises. This is based on the effective cause and reason behind giving all those charities which is to support poor people in society. The application is left to the authorities or people in charge to consciously plan on how to aid and support the needy. Similarly, charitable management can also plan how to generate income in order to have sufficient and enough income to assist more applicants. Islamic financing modes in small and medium enterprises must be *Shariah* compliant with an attractive profit margin. There is no legal or moral justification to finance or engage in any prohibited transaction in the small and medium enterprises regardless of the needy. The following are examples of SMEs that the *Waqf* institution can engage in:

6.10.1 Mudarabah system in Small and Medium Enterprise

Mudarabah is an instrument to alleviate poverty among Muslims where the *Waqf* institution provides capital for trained and skillful needy applicants to run the business on the agreement that profit would be shared accordingly but the financial capital loss will be solely responsible by the institution. The progress of the SME would be

monitored and followed up by the institution in charge. When the applicants or needy Muslims have been empowered, then, the money can be collected and given to another group of needy Muslims. The institution acts as the capital provider and provides 100 percent financing to needy Muslims to run the lawful SME and the recipient is the entrepreneur who will manage the agreed project. It is the duty and responsibilities of the entrepreneur to manage the money properly in the interest of others who are in need. The entrepreneur must maintain transparency, truthfulness, piousness, and fear of Allah in managing the capital in his or her interest and society at large.²⁹⁶

6.10.2 Musharakah system in Small and Medium Enterprise

This type of contract refers to a form of partnership or joint venture in relation to specific lawful and legal business or transactions where the distribution or sharing of profits and loss will be apportioned in an agreement. This type of contract will boost and enhance the contracting parties' income. Similarly, the institution will generate more income to support the needy Muslims. The prime reason in investing in such contracts is to generate more income in order to have sufficient income to cater for the large number of applicants. In order to have sufficient income, the institution in charge of charities collection can partner in any lucrative investment on the basis of a *Musharakah* contract. The institution has to appoint competent and skillful staff to represent the institution for the agreed investment. Engaging in such a contract will also create employment for the skillful and trained unemployed Muslims.²⁹⁷

²⁹⁶ AlaEddin, 2002.

²⁹⁷ Nawawi, 156-159.

6.10.3 Murabaha system in Small and Medium Enterprise

Charitable institutions in Nigeria will act as financial institutions where the capital will be given to the needy Muslims who approached the institution indicating his or her intention to transact the business. Due to the lack of capital and their financial constraints, the needy are unable to engage in SME. The applicant might like to open a hair saloon, mechanic workshop, furniture workshop, modern car wash, and other lawful and profitable SME. *Waqf* institutions will purchase the requested merchandise based on the *Murabaha* agreement and the payment may be in the form of installments or a lump-sum payment. It is believed that such financial assistance will empower the recipients and his or her family. When households are empowered then the poverty will alleviate gradually. Due to poverty the charitable institution in charge will finance the SME with intention to reduce poverty and support the applicant financially. The requested working capital would be provided for the less privileged Muslims based on the agreement that such agreement will benefit the applicant and the charitable institution. Recipients may be required to return the given money back at the end of the agreement in order to be used for other needy applicants.²⁹⁸ The primary objective is to enhance needy Muslims income and also commercialize cash *Waqf* in any lucrative business or transaction in SMEs.

6.10.4 Islamic Financing Modes on (Muzarahah) Farming and Agricultural

Equipment and Machinery

The main reason for the *Ijarah* mode of contract for small and medium enterprise is to support the entrepreneur in his or her project or business. Institutions like *Waqf* endowment can use the collected charities to purchase modern farm equipment and machineries that would be useful for agriculture or farming in order to empower the less

²⁹⁸ Abdullaah and Asharaf, 2011.

privileged in society. If the farmers are in need of equipment and machineries such as modern tools or tractors that will make their cultivation easier and more convenient for them to cultivate widely and easily. The institution can make such machineries and equipment available and accessible for rent where a certain amount will be charged. Of course, if the farmer cannot avoid the payment, a certain percent of the harvested product can be given to the institution as rent. The given farm product can be used to empower other needy Muslims to sell in the marketplace. *Waqf* institutions can build shops or malls where some sellers can be employed by the institution to sell farm products at a reasonable price. This also generates employment.²⁹⁹

6.10.5 Commercialization system in Small and Medium Enterprise

The purpose of SME is to reduce poverty among the citizens at large. It is considered as able tool and instrument to empower unemployed adult across the Muslim countries. Therefore, Islamic institutions responsible for cash *Waqf* collection in order to finance the needs of the needy Nigerian Muslims. In such a situation, if the applicant needs asset or property for commercialization such as commercial vehicles, motorbike, fixed machinery for small and medium enterprises like photocopy machines, washing machines for laundry, restaurant tools and cutlery, canopy, chairs, and table for rent and others. The institution will purchase the stated and needed assets and on the BBA agreement where the needy will pay back the total cost and margin in deferred payment in a very flexible manner. Creation and provision of the listed and stated tools, assets, and property will empower the needy Muslims to stand on their own. Based on that, some adult Muslims will have the opportunity to be employed in such small and medium enterprise. The duty and responsibility of charitable institutions is to encourage the benefactors to employ fellow needy Muslims in their SME in order to reduce

²⁹⁹Al-Zeraigi, J. M. (2006). Mugharasa on *Waqf* land: status quo and regulation in fiqh and law. *Journal of Awqaf*, No. (6): 17-22.

poverty in society. Similarly, the institution can have manufacturing shops as small and medium enterprises where competent and skillful employees will be employed to work based on satisfactory wages or salaries. If needy Muslims request from the *Waqf* institution to finance his or her small and medium enterprise where furniture will be made for selling, after all the necessary feasibility tests and procedures have been studied and consciously evaluated, the institution can finance such small and medium projects on the agreement that the benefactor will pay the money back over the agreed period.³⁰⁰

6.11 Conclusion

It can be concluded that *Waqf* institution in Nigeria is able and viable to benefit many Nigerian Muslims significantly if the collected movable and immovable properties are well managed and commercialized lucratively. In addition, cash *Waqf* can be utilized to empower needy Muslim households will contribute tremendously to society if the collected charities are managed properly by the pious. The *Waqf* institution can use cash *Waqf* to assist needy applicants in securing working capital to run their project successfully. Since the prime cause or reason for collection and donation of cash *Waqf* is to remove hardship from less privilege Muslims, the *Waqf* institution will source working capital for the applicants for the agreed period. The benefactors have to maintain the given charity judiciously and for the purpose of the allocated charity. The institution will stand and act by financing and providing physical assets or cash to the needy applicants. The recipients have to uphold and respect the agreement between the two parties in the interest of other poor Muslims. It is illegal and unlawful to transact or engage in any unlawful and illegal transaction or business under small and medium enterprise like prohibited commodities and goods that contradict Islamic principles.

³⁰⁰ Habib, 2011, Ahcene, 2010,32-38.

Finally, there is need for *Waqf* institution intervention on the creation of *Hajj* Saving Scheme (HSS) across the nation where the deposited capital can be invested on profitable investment in the interest of intending pilgrims and *Waqf* institution. The predicaments confronting intending pilgrims across the nation and in Mecca can be managed positively by *Waqf* institution provided the qualified and right person placed in place.

University of Malaya

CHAPTER 7: CONCLUSION AND SUGGESTIONS

7.1 Introduction

This chapter provides a summary of the thesis's findings concerning the analytical analysis of the commercialization and *Shari'ah* justification of *Waqf* in Nigeria within the framework of Islamic finance and its application through *sukuk*. Plausible and useful solutions to the outstanding problems confronting less privileged Nigerian Muslims are suggested in order to achieve the primary goals and objective of *Waqf* endowments and to foster the spirit of brotherhood across the nation. This chapter also offers suggestions for improvements and reforms to the existing *Waqf* institution in Nigeria in addition to offering amendments to existing rules and regulation regulating the *Waqf* institution.

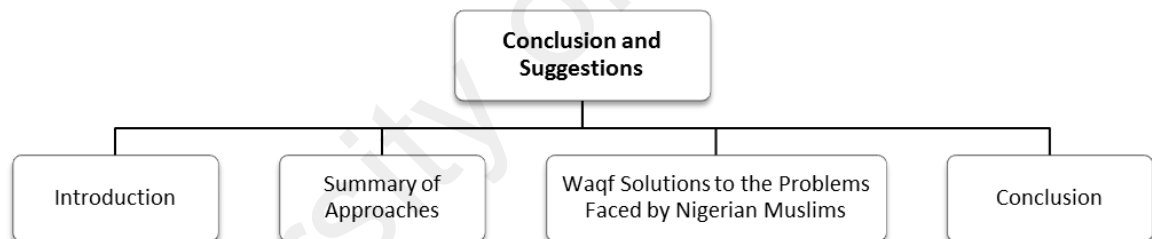


Figure 7.1: Conclusion and Suggestions

7.2 Summary of Approaches

This study has shown that *Waqf* endowments have been revived and established in Northern Nigeria and the *awqaf* houses are performing positively to cater for the needs of the less privileged. The need for *awqaf* endowments across Nigeria to engage in profitable business ventures that increase endowment revenue in order to better meet the needs of the needs has been discussed. In Nigeria, school facilities are sub-standard, housing and renting insufficient whereby ordinary citizens are incapable to have their

own house. Many Nigerian Muslims are living under abject poverty. In light of this, there is an urgent need for *Waqf* institutions in Nigeria. It is true that *Waqf* awareness in Nigeria especially in Southern and Western Nigeria remains very poor, as such there is a need to promote the existence and activities of *Waqf* institutions in order to educate citizens about the importance of *Waqf* to the society and nation. The demands on charity in Nigeria exceed the capabilities of individual philanthropists and large sums of money and resources are needed to meet the basic needs of the less privileged Nigerian Muslims irrespective of tribe, gender, and status. The situation demands a collective effort by the entire society and to pool the donations of philanthropists to donate through the aegis of *Waqf* institutions in order to utilise the gifted properties to assist poor people across the nation. *Waqf* foundations must render assistance by providing comprehensive support to Nigerian Muslims. Individual philanthropist can join hands to establish *Waqf* commissions to cater for the needs of the needy. In addition, there are legal provisions on *Waqf* administration in some states in Nigeria that can be amended to form a new *Waqf* Act by including the provision that each state representative must be involved in drafting the Act and collectively endorse the Act in the interest of needy Nigerian Muslims.

Similarly, the concept of *Waqf* and its application in Nigeria has been analyzed and critically discussed while the legal basis of the rulings of classical jurists regarding the establishment of *Waqf* were examined in line with the context of Nigerian Muslim financial practices. In order to realise the primary goals and objectives of *Waqf* creation in Nigeria, the ruling on the *mutawalli*, classification of *Waqf*, hindrances of *Waqf*, factors influencing the establishment of *Waqf* were discussed. The immense contribution of *Waqf* to needy Nigerian Muslims and how it can change the lives of many economically, educationally, medically, physically, and socially has been discussed. However, in order to maintain the sanctity of *Waqf* in Nigeria, regulatory

control of *Waqf* in Nigeria was also discussed. Finally, the financial requirements of *Waqf*, ownership, control of *Waqf* management, the *mutawwali*'s salary, and the position of the religious and charitable organizations were studied within the framework of the unique settings and circumstances of *Waqf* in Nigeria. In addition, *Waqf* endowments have been reintroduced and established in Northern Nigeria and the *awqaf* houses are performing positively to cater for the underprivileged in their respectful states. *Waqf* cash can be used through *sukuk al-Ijarah*, *sukukmudarabah*, *sukukmusharakah*, *sukuk al-Istismar*; *sukuk al-Intifathat* will surely benefit millions of Nigerian Muslims.

All risks must be considered in order to achieve the ultimate goals and objectives of *Waqf*. In Nigeria in particular, the risks associated with the director, management and program executor must be considered in order to learn from the past experience when a Nigerian was appointed as director of WAMY and latter sacked due to corruption and mismanagement of office. As such, responsible, accountable, and God-fearing people are qualities that should be sought when searching of a *Waqf* manager and/or administrator. Appointments should be based on merit.

The data collected on *Waqf* and its application through *sukuk* in Nigeria revealed that poverty, bad government, and unemployment contributed to the poverty rate among Nigerian Muslims where the re-establishment of *Waqf* was deemed to be the best institution to care for the less privileged. The survey revealed that investing cash *Waqf* through *sukuk* will generate income and sufficient capital for the institution to help needy applicants. Qualified persons should be appointed in positions in which they will be maximum use rather than putting staff into the wrong office or unit. Rules and regulations concerning *Waqf* must be implemented and deterrent punishment must be awarded to guilty staff in accordance with Islamic principles. Proper attention should be given to commercial transportation and poultry whenever the *Waqf* management is

engaged in any business in order to minimize or avoid any risk that will hinder *Waqf* management to achieve the primary aims and objectives of *Waqf*. *Waqf* institutions can also focus on micro-finance for the empowerment of women especially widows and the unemployed.

Family *Waqf* was also discussed in regards to generating greater public awareness and to realise the importance of family *Waqf*. It is believed that family *Waqf* will solve many challenges faced by heirs after the death of theirs such as being neglected, cheated, and monopolised by the greedy members of the family. The study further highlighted and analysed how *Waqf* institutions across Nigeria can play a viable and pivotal role in *Sadaqat* and *Zakat* collection and distribution of the collected money according to Islamic principles. The reason is that there is no formal method and system of *Zakat* collection in most States in Nigeria.

Waqf institutions can also be responsible for the coordination of *Hajj*. In this regard the Malaysia system of *Hajj* can be a good model for *Waqf* institutions in Nigeria. A special unit can be created for *Hajj* operations. This will encourage many intending pilgrims to regularly save money for the purpose of *Hajj*. It will be useful for *Waqf* institutions to use the money for any profitable transaction.

7.3 *Waqf* solutions to the problems faced by Nigerian Muslims

There should be a department under the Ministry of Religious Affairs that takes charge of *Waqf*, *Zakat*, and *Hajj* in the interest of needy Muslims. It is believed that *Waqf* institutions can contribute immensely and positively transform many lives if all measures are taken into consideration. The situation of many Nigerian Muslims merits urgent intervention. In light of the urgency, *Waqf* institutions must take the aforesaid solutions and suggestions seriously.

7.3.1 Learning from Developed Countries

The directors or chairmen in charge of *Waqf* institutions need to learn and emulate developed countries such as Singapore, United Arab Emirate, Kuwait, Malaysia, and Turkey regarding how to manage *Waqf* endowments properly and effectively. The appointed directors or chairmen should pay particular attention to how the listed countries managed to succeed in discharging their duties especially in what concerns gifted movable and immovable properties. To change and restructure the whole *Waqf* system in Nigeria is not impossible. It requires a large and concerted effort since many good examples are available to emulate. The persons in charge need to learn from the master plan of the listed nations and apply it to the Nigerian context. They can send their staff to those countries for training or request experts to train them in Nigeria for proper and effective planning in the interest of the less privileged. If they can take their system as a role model, things will improve for the less privileged Muslims provided that discipline is maintained at all levels. The appointed directors or chairmen should not pay lip service to people's needs. They must display and maintain honesty, dedication, commitment, piety, justice and just wealth distribution among the needy applicants regardless of their gender, state, tribe, and status.

The institution of cash waqf has witnessed a tremendous revival in Muslim majority and Muslim minority countries in the twenty-first century.³⁰¹ The degree of acceptance of cash waqf by the overwhelming society as a powerful tool for socio-economic development has led to a plethora of study concentrating on cash waqf recently. In an attempt to offer the reason behind the popularity of cash waqf nowadays discusses four main benefits of implementing cash waqf.³⁰² First, individuals are having

³⁰¹ Mohsin, M. I. A. (2013). Financing through cash-waqf: a revitalization to finance different needs. *International Journal of Islamic and Middle Eastern Finance and Management*, 6(4), 304–321.

³⁰² Ibrahim, H., Amir, A., & Masron, T. A. (2013). Cash Waqf: An Innovative Instrument for Economic Development, *International Review of Social Sciences and Humanities*, 6(1), 1–7.

equal right to contribute to cash waqf since it does not require being super rich before one can contribute in its course. Second, more funds could be generated through cash waqf and this can be used to develop assets such as, abandoned land and undeveloped waqf land for agricultural and business related purposes. Third, academic institutions could use cash waqf to solve cash flow problem by creating back-up funds. Fourth, implementing cash waqf funds by Islamic institutions could reduce their dependency on government.

In addition, the acceptance of cash waqf and the development of its legal framework in Islam was due to its capability of fulfilling many crucial needs in various sectors that are currently financed by the state/the government. For example, the various sectors where cash waqf are used are; education, national security, health care, commercial and business activities, shelter and food for the poor and needy, transportation facilities, creating jobs for many people through agricultural and industrial sectors without inflicting any cost on the government.³⁰³ Besides, cash waqf is one of the redistribution institutions that is used for supporting general goods and welfare of the whole society without profit as objective, but compounding rewards in the hereafter³⁰⁴.

According to Mohsin (2013), there are six types of cash waqf scheme that are currently practiced in both the Muslim majority and Muslim minority countries around the World. These six cash waqf schemes according to the author are; waqf shares scheme, deposit cash waqf scheme, compulsory cash waqf scheme, corporate waqf

³⁰³ Haruna, B. J., Nulambeh, N. A., Ibrahim, T., Harun, M. Y., & Sanoh, M. F. (2015). Financing and Developing the Agricultural Sector Through Cash Waqf: An Analysis of Cash Waqf Using the Mudarabah Approach. *South East Asia Journal of Contemporary Business, Economics and Law*, 6(1), 65–81. See also Mohsin, M. I. A. (2013).

³⁰⁴ Cizakca, M. (2011). *Islamic Capitalism and Finance, Origins, Evolution and the Future*. Cheltenham: Edward Elgar. <http://doi.org/10.1017/CBO9781107415324.004>.

scheme, deposit product waqf scheme, and co-operative waqf scheme. The schemes have been playing important roles in the socio-economic development of both the Muslim majority and Muslim minority countries such as Malaysia, Singapore, Indonesia and Turkey. Knowing more about how it is done and successful in these countries would go a long way in enlightening and guiding other countries that are interested in implementing cash waqf.³⁰⁵

Distinctively, Malaysia has been recognised for its contributions to the development and growth of Islamic banking and finance. This country is also doing fine with respect to the practices of cash waqf. It has implemented cash waqf in various State Religion Councils (the organization that offers and manage the cash waqf scheme or the so called waqf shares.³⁰⁶ In Malaysia, the Jabatan Wakaf, Zakat dan Haji is responsible for the management, allocation and coordination of fund given by the Malaysian government between each of the State Islamic Religious Council (SIRCs). SIRCs are institutions under Malaysian government and they are acting as the sole trustee of waqf and the administrator of waqf assets. Each of these SIRCs has specific developmental programme of waqf assets. However, the decision of subsidiaries institutions must be approved by the fatawa council in each state.³⁰⁷ The two types of cash waqf schemes that are popularly and publicly practiced in Malaysia are waqf shares scheme and corporate waqf scheme.³⁰⁸

Waqf shares scheme emerged in the immediate past decade in different countries including Malaysia, Indonesia, Kuwait, and the UK. The objective of this scheme is to generate money from the sales of shares and use the proceeds to support the welfare of the society. In line with the resolution of *Majma' Fiqh Islami* on 24th November 2005,

³⁰⁵ Mohsin, M. I. A. (2013).

³⁰⁶ Ibrahim, D., & Ibrahim, H. (2013). Revitalization of Islamic Trust Institutions Through Corporate Waqf. *4th International Conference on Business and Economic Research (4Th Icerber 2013)*.

³⁰⁷ Mokhtar, F. M., Sidin, E. M., & Razak, D. A. (2015). Operation of Cash Waqf in Malaysia and its Limitations. *Journal of Islamic Economics, Banking and Finance*, 11(4), 100–114.

³⁰⁸ Hasan, Z., & Abdullah, M. N. (2008). The Investment of Waqf Land as An Instrument of Muslims' Economic Development in Malaysia. *The Dubai International Conference on Endowments' Investment, 4-6th February 2008*, 1–25.

several states in Malaysia has issued waqf shares. As noted in a study by Ibrahim (2013), the six states that have offered waqf share schemes as at 2013 are; Johor, Pahang, Penang, Selangor, Terengganu and Malacca. The minimum price for the waqf share issued by these states is RM10 with exemption of the Penang Waqf Fund Scheme that has RM5 as minimum price. When shares are purchased from each State Religious Council, the proceeds from the issued shares are used to finance lawful activities according to the needs of these states. Interestingly, it has been documented that the scheme has contributed to several economic and educational development in these states where waqf shares have been issued.³⁰⁹

Apart from waqf share scheme, corporate waqf scheme is another publicly practiced (although its founder includes private corporation, public corporation and individuals) cash waqf scheme in Malaysia. Other countries that are famous with respect to corporate waqf scheme are Turkey, India, Pakistan and Bangladesh.³¹⁰ Corporate waqf is a modern innovation and is understood as an appropriate tool needed to generating income that would be useful to improving the economic standard of ummah. It is to raise funds for entrepreneurs with ability, skill, expertise and spirit of turning business to a successful one.³¹¹ It is also seen as an effective measure to delivering benefits to the entire public without prejudice to the principles of waqf.³¹² The launching of corporate waqf by Johor Corporation (JCorp) in 2006 has transformed the practices of cash waqf in Malaysia.³¹³ In that case, waqf assets in the form of company shares was issued and managed by corporate body.³¹⁴ According to the

³⁰⁹ Hasan, Z., & Abdullah, M. N. (2008).

³¹⁰ Mohsin, 2013.

³¹¹ Mohd Zakaria, A. A., Abd. Samad, R. R., & Shafii, Z. (2012). Venture Philanthropy - Waqf Practices and Its Implementation: Scenario in Malaysia. *International Journal of Business, Economics and Law*, 1(108-115), 108–115.

³¹² Ibrahim & Ibrahim, 2013.

³¹³ Chowdhury, M. S. R., Ghazali, M. F. Bin, & Ibrahim, M. F. (2011). Economics of Cash Waqf management in Malaysia: A proposed Cash WAQF model for practitioners and future researchers. *African Journal of Business Management*, 5(30), 12155–12163. <http://doi.org/10.5897/AJBM11.1810>.

³¹⁴ Zainol, F. A., Daud, W. N. W., Abdullah, Z., & Yaacob, M. R. (2014). Social Entrepreneurship Via

founder, Tan Sri Muhammad Ali Hashim, the main agenda of this corporate waqf was to improve socio-economic wellbeing of Malaysians. In short, the JCorp's corporate waqf involved the transfer of 12.35 million units of shares belonging to JCorp Kulim (M) BHD, 18.60 million unit shares in KPJ Healthcare BHD and 4.32 million unit shares in Johor Land BHD to a trustee known as Kumpulan Waqf An- Nur BHD.³¹⁵ Therefore, structuring of corporate waqf in Malaysia on Business Corporation and banking and financial institution are done by Johor Corporation and Bank Muamalat Malaysia Berhad.

In Singapore, the two cash waqf schemes that are publicly practiced are deposit cash waqf scheme and compulsory cash waqf scheme. Similar to Malaysia, this scheme has been used in Singapore to providing different goods and services needed in different Muslim communities. According to Mohsin (2013), starting from the beginning of the twentieth century when the first deposit cash waqf was created, the Muslimin Trust Fund Association, which was founded on 31st August 1904, come into being.³¹⁶ The existence of Muslimin Trust Fund Association was witnessed when Alsagoff and Co. and various other Muslim businesses and individuals endowed certain amount of cash as waqf and to be invested. Following its objectives, the proceeds from this investment are used to finance the burials of poor Muslims, give aid to Muslim orphans, give aid to the Alsagoff School, and charity projects.³¹⁷

Corporate Waqf: A Case of Islamic Chamber of Commerce (ICC) in Malaysia. *Global Journal of Commerce & Management Perspective*, 3(5), 50–53.

³¹⁵ Hanefah, M. M., Jalil, A., Ramli, A. M., Sabri, H., Nawai, N., & Shahwan, S. (2009). Financing the Development of Waqf Property: The Experience of Malaysia and Singapore. *International Conference on Waqf Laws and Management: Reality and Prospects*.
<http://doi.org/10.1017/CBO9781107415324.004>.

³¹⁶ Mohsin, 2013.

³¹⁷ Cizakca, M. (2000). *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*. Istanbul: Bogazici University Press.
<http://doi.org/10.1017/CBO9781107415324.004>. See also, Mohsin, 2013.

The compulsory cash waqf scheme is another uniquely popular in Singapore and this is purposely to generate Mosque Building Fund.³¹⁸ In this, each Muslim employee is mandated to donate a predetermined amount of money on a monthly basis and the contribution is made through the Central Provident Fund (CPF) Board, i.e. Singapore's national social security organization. Accordingly, the amount of money required to be contributed monthly varies from employee to employee but ranged between US\$1 and US\$7 based on employee's gross income. However, Muslim employees are encouraged to make greater voluntary contributions. Muslim employees contribute their specific amount through an automatic check-off system. In other words, their contributions are deducted by their respective employers and the deducted amount are channelled to CPF for appropriate utilization.³¹⁹

In Indonesia, apart from normal practice of waqf and cash waqf, the popular and publicly practiced scheme is waqf shares scheme according to Mohsin (2013).³²⁰ Similar to Malaysia, cash waqf scheme, known as Tabung Wakaf Indonesia or Indonesia Waqf Share, was launched by Indonesia Waqf Board in early 2000. The main reason for establishing Indonesia waqf shares is to raise funds that are used to finance services related activities and which can benefit the Muslim society at large. In an attempt to evaluate the effectiveness of this scheme, Siswanto and Dewi (2007) note that the scheme has been successful in financing poverty alleviation programmes, arranging several educational programmes, offering free medical services to the poor and needy, and providing different entrepreneur development programmes.³²¹

³¹⁸ Abdul Karim, S. (2007). Contemporary Waqf Administration and Development in Singapore; Challenges and Prospect. In *The Singapore International Waqf Conference* (pp. 1–10).

³¹⁹ Abdul Karim, S., 2007, Mohsin, 2013.

³²⁰ Mohsin, 2013.

³²¹ Siswanto, D., & Dewi, M. K. (2007). The Effectiveness of Waqf Fund Raising Through Mutual Fund in Indonesia. In *Singapore International Waqf Conference 2007* (pp. 243–268).

Turkey is another country where corporate waqf scheme is extremely popular and publicly practiced.³²² As mentioned, other countries within this domain are Malaysia, India, Pakistan and Bangladesh. Pertinent to the discussion made under the practices of corporate waqf scheme in Malaysia, the intentionally omitted Modus operandi under the above discussion for corporate waqf scheme are; firstly, the founder of corporate waqf scheme which can be public or private corporation, known as mother corporation/main founder, will establish an Associated Waqf Institution as a trustee. Secondly, the mother corporation will then ask subsidiaries to periodically contribute part of their profits to the corporate waqf. In addition, other philanthropist individuals, companies and institutions are also called to donate into this Associated Waqf Institution. Thirdly, within the capacity of the Associated Waqf Institution, the contributed amount are managed and invested the accumulated cash waqf from the different contributors. Finally, the proceeds from the investment are channelled to certain projects after all costs have been properly settled.³²³

Corporate waqf scheme has recorded a great success in Turkey (Abdul Kader, 2015).³²⁴ In 1974, Sadıka Sabancı, the wife of Hacı Omer Sabancı established corporate waqf in Turkey. Sadıka Sabancı donated all her personal wealth to an endowment that was later incorporated by her sons into Sabancı Foundation. According to Koyunsagan (n.d) (as cited in Mohsin, 2013), this foundation has played a significant role in the development of Turkish economy today, especially in the area of health, education, arts, sports and culture. It has also contributed to women empowerment, youth and the disabled development.

³²² Khademolhoseini, 2011.

³²³ Mohsin, 2013.

³²⁴ Abdul Kader, S. Z. S. (2015). Trust , Foundation and Waqf Development: Emerging of Established Traditions Trust: Evolution and Development. In *International Conference on Waqaf, Trust and Endowment, Russian Academy of National Economy and Public Administration* (pp. 1–10).

7.3.2 Social Awareness

Many Nigerian Muslims are not well aware of the existence of *Waqf*. The majority of Nigerians are not well informed and educated about the importance of *Waqf* to the society, community, and nation. Many philanthropists need to be educated and informed about the aims and objectives of *Waqf* and its roles in circulating and extending money to the less privileged. There is a need for greater public awareness about *Waqf*. It is the duty of the *Waqf* management at State and Federal levels to advertise and educate Nigerians about *Waqf* and its importance via media, centres, conferences, mosque, *jumu'ah* prayer, public lectures, and all modern forms of communication. It is the belief of this study that many able people are happy to donate to *Waqf* institutions. If Mr. A donates his property as *Waqf* to the Mr. B for a given period, the land can be cultivated for farming which will boost and generate income to the *Waqf* endowment and provide greater security for the land owner.

7.3.3 Foundations for Waqf in Nigeria

Before the *Waqf* institution in Nigeria can be viable and able to meet the needs of the needy, the following must first be met:

7.3.3.1 Government

The Nigerian Government at the State and Federal levels must provide full support to *Waqf* institutions across the nation in order to achieve its primary goals and objective in terms of financial, regulatory, moral and other logistic support. The future of *Waqf* in Nigeria will be constantly bright and inspiring if the government provides all needed support at all levels. Government support can result in the proper management of *Waqf* properties towards the successful planning and implementation of *Waqf* development and distribution of profit. Lawful innovations in generating lawful income that will

benefit *Waqf* institutions across the nation might bring better economic development for the Nigerian Muslims in particular and Nigerians at large. The management will consciously manage and pilot the assigned responsibilities legally, religiously, and morally. The reason is that he or she knows that any failure, mismanagement, and embezzlement will attract *Shari'ah* punishment and there is no means for the *Shari'ah* punishment to be compromised. It will provide an opportunity to task the Islamic Affairs Council of Nigeria to supervise the *Waqf* management and maintain just distribution.

7.3.3.2 Philanthropist

Since the economic development of needy people cannot be left to the government alone, therefore, donors are an important pillar in the establishment of *Waqf* institutions. Without donors, there is no way to possess or acquire lawful properties that would be used to cater for needy applicants. Therefore, there is a need for Nigerian philanthropists to give financial support to *Waqf* institutions. The donation of movable and immovable properties is preferred as it is conducive to further growth of wealth. Promotion of the role and importance of *Waqf* among the public will increase the number of donors. Many *Waqf* programmes and different types of *Waqf* can be introduced to the philanthropist in the best interest of the donor, the needy, and the *Waqf* institution. Some may intend to donate property for a limited period. The short term donated properties can be protected and secured for the owner who is also a donor from confiscation and be used as a productive source for the development of wealth for the *Waqf* institution.

7.3.3.3 Overseas

There are a significant number of Nigerian Muslims living abroad. Many of them are financially well to do compare with Nigerians living in Nigeria. The idea of *Waqf* can be promoted or disseminated to them via modern ways of communication such as yahoo group, twitter, face book, email, Skype. The primary objective is to educate and instil the importance of *Waqf* to the Nigerian Muslims living abroad. If some of them have immovable properties in Nigeria and he or she is aware that such properties can be confiscated and stolen, then awareness of benefits of donating those properties as short period *Waqf* may encourage them to donate. The owner will be at peace that his or her properties are in right hands and are secure from danger. The *Waqf* institution will also benefit from the gifted properties before the agreement ends or expired. Awareness and involvement of philanthropist and Nigerian Muslims abroad can only be achieved and materialized if strong efforts are made to promote the benefits of *Waqf*.

7.3.3.4 Events /program

Since this study is about cash *Waqf*, there is a need to advance the methods used to generate and expand *Waqf* income in order to have sufficient provisions to cater for the applicants' needs. Based on this premise, *Waqf* management should strategize and prioritize profitable events and programmes in line with Islamic principles. Well-known scholars can be invited to deliver talks or lectures on certain current and contemporary issues that will attract many people and participation will be charged. The purpose of charges should be well known to the participants that all collected charges will be channelled to the *Waqf* account in order to cater for the needy. In addition, football matches can be organised where Nigerian professionals can be invited to play freely without any fee paid and spectators will pay for the ticket with the intention of generating cash *Waqf* or income to the *Waqf* institution in Nigeria. If all the realized

money is properly managed and utilized, many lives would be transformed and changed positively. It will also significantly reduce the unemployment rate in Nigeria.

7.3.3.5 Lawyers

There is a need for the competent and qualified Muslim lawyers to oversee cases related to disputed *Waqf* properties. The lawyer will also be in charge of legal procedures related to donate properties such as signing the agreement, stamping, oath, and all necessary procedures are needed before the agreement can be finalised.

7.3.3.6 Merit candidate

Waqf institutions cannot be effective without having good and qualified management to manage the affairs of *Waqf*. The appointment of management or staff should be based on merit and qualification not because of influence. If all measures and procedures are properly taken into consideration in staff appointment and staffing, the appropriate and qualified persons will be appointed and the main objectives of the institution will be achieved. The interest of the Muslim society must prevail over individual interest or desire, therefore, the most qualified and competent person should be appointed to manage *Waqf* affairs.

7.3.3.7 Rules and Regulations

There must be rules and regulations that will regulate the *Waqf* affairs in Nigeria, the rules might be at the State or Federal level. The most important point is that the rules and regulations must be based on *Shari'ah* and qualified scholars should be invited to draft the *Waqf* Act in Nigeria. The rules can be codified in order to be understood by management and concerned quarters. There should not be any ambiguity in the Act for the interest of all. The Nigerian Government is needed to endorse the proposed bill as

Waqf Act without any political delay or religious bigotry. The Nigerian Constitution allows the state to implement any act that will be in the interest of her indigenes. Without *Waqf* Legislation or *Waqf* Act, *Waqf* institutions will suffer in regards to its legal status and legal issues related to land, and temporary and family *Waqf*.

7.3.3.8 Regulatory bodies

There should be a regulatory body or committee that will be vested with powers and charged with duties and responsibilities to administer, control and manage the *Waqf* management in order to regulate manage activities against mismanagement and corruption in the institution. The committee will monitor the affairs of *Waqf* institutions and how the management is piloting the institution. This is to protect the interests of the donors and the needy in dealing with *Waqf* properties. The committee should ensure that incomes arising or generating from the *Waqf* properties are well managed and accurate reports are issued. The regulatory body will issue instructions for the proper administration of *Waqf* where quarterly audits will be required to maintain transparency of the institution. Those assigned duties or responsibilities should be approved by the President or Governor, or *Sultan*, or highest the most senior person in charge. The regulatory body shall consist of *Shari'ah* and civil lawyers, independent Islamic scholars, *Shari'ah* experts, and all persons with relevant skills and expertise. All *Waqf* activities must be approved by the regulatory body before the management can carry out such activities in the interest of the *Waqf* and the needy. The body should work in line with the principles of *Shari'ah*. The regulatory body must give concrete and satisfactory reasons why submitted proposals by management have been rejected.

7.3.3.9 Appointment of Directors/Supervisors

The appointment of a director or supervisor must be based on trustworthiness, skill, and professionalism. Appointed persons should be able and qualified to meet the challenges. The person should be a knowledgeable person especially on *Waqf* and have a sound *Shari'ah* background. The deputy director or supervisor must possess similar criteria. The director must be able and capable of generating income and be kind to the less privileged Nigerian Muslims. He or she must fight against tribalism by maintaining just distribution of *Waqf* properties to deserved applicants. The director must be responsible and answerable to the regulatory body in case of mismanagement or lawlessness in the *Waqf* institution.

7.3.3.10 General Secretary

The general secretary must be a person of integrity and able to carry out his or her duty according to rules and regulations. There should not be any bias in secretary appointment due to his or her status, gender, and tribe. Whoever qualifies and is skilful should be appointed.

7.3.3.11 Accountant General/Treasurer

This post requires a very pious, honest, responsible, Allah fearing person regardless of his or her educational background. A person who graduated from an Arab country such as Saudi Arabia or Cairo does not immediately qualify as the best candidate for the post. The committee must take precautions and extraordinary care when appointing the accountant general or treasurer by having cross measures in place. The audit must be vigilantly audited quarterly in order to avoid embezzlement, mismanagement, corruption, and theft. If the appointed accountant is given a free reign, he or she might misbehave which will seriously affect the institution and the needy.

7.4 Functions and Responsibilities of *Waqf* Management

All necessary actions must be put in place such as *Waqf* registration, *Waqf* properties movable and immovable properties, scheme, plan, master plan, activities, functions, programme and other related issues must be well planned by the management and approved by the regulatory body. Nobody should act on his or her own interest but in the interest of the *Waqf* institution and the needy.

7.4.1 Transaction

The opinions of participants and interviewed respondents shows strong agreement that *Waqf* can undertake any profitable business such as farming, poultry, cattle rearing, commercial transportation, bakery and any other profitable and lawful business. The *Waqf* institution can purchase land directly for farming and harvest the products that can reproduce edible and stable food for the society at cheap prices compared to the market. For example, *Waqf* can have *Gari* (cassava flour) business centres where *gari*, common food, can be produced and sold at a reasonable price. In such a business, *Waqf* is capable of employing unemployed adults who will then be able to provide and take care of their children. A similar train of thought can be applied to other businesses such as transportation, bakery and poultry.

The *Waqf* management can also act as a contractor where *Waqf* employees can work in any building construction, road construction, consultant, developer, and other business that increase *Waqf* income. Many capable citizens will like to transact with *Waqf* on the grounds that *Waqf* will handle the contract accordingly and charge reasonable prices because of their religious consciousness. *Waqf* needs to display its ethical standing and responsibility in handling any agreed projects by performing beyond expectations. This will attract others to patronise or contract *Waqf* for similar projects.

7.4.2 Employment of Waqf worker/employee at various units as paid workers

It has been suggested that *Waqf* management must have a broad plan on how to generate income for the institution lawfully and legally. In order to enhance *Waqf* income and contribute to the welfare of the needy, the *Waqf* authority can employ competent and qualified carpenters, layers, butchers, and mechanics who can work in their respectful areas and disciplines. Since the *Waqf* institution is well known to the majority of Nigerians as a trustworthy institution, customers can patronise these establishments with the satisfaction of knowing they are in good hands. *Waqf* can be awarded many contracts locally and internationally especially by those Nigerians living abroad. Fraud, mismanagement, and cheating are rife particularly in property management. Many have lost huge amounts of money due to fraudulent contractors. If the *Waqf* institution in Nigeria can create a department in charge of housing, it will create many job opportunities.

7.4.3 Loaning

Waqf can loan out cash for applicants without any interest or charges and there should be a committee or staff that will monitor what the money is used for. There should be a system or method where a person cannot be given a loan unless they are in a group known as a group loan. It should be in conditions that three or five persons can only apply for a loan and the first person will get his or her loan and when he or she returns the money back, then, the next person will be entitled for the loan. Similarly, there must be a weekly meeting that the entire group must attend in order to give progress report about the loaned money whether the person is using the money for its purpose. Grouping people together will serve as security for the money because others will monitor the debtor to ensure the money is used judiciously because they know that the debtor's failure will hurt their chance of a loan.

7.4.4 Religious Programmes

Initially, the role of *Waqf* is to maintain mosques; however the situation in Nigeria requires the *Waqf* institution to aid many mosques in term of renovation, provision of facilities, payment of utilities, and paying salaries for imams if possible. Many mosques lack basic facilities and need assistance from institutions like *Waqf*. Aiding mosques in Nigeria will improve the standard of mosque and the Imams can be educated on certain things that will benefit them. *Waqf* can arrange and plan daily, weekly, and annual programs for the benefit of the mosques to engage in educating society religiously and morally.

7.4.5 Education

Waqf endowment in Nigeria should do all that is within its capacity to maintain one of the primary goals and objectives of *Waqf* charity which is the development of education in Muslim societies. Therefore, *Waqf* management should study and critically examine the level of need in many public and private schools and where it can contribute to the development of education. If there is a need to have *Waqf* schools, colleges, and universities, *Waqf* should plan for it in order to give less privileged people ample opportunity for education. *Waqf* management can invest in schools and institutions of higher learning as businesses and the income can be used to fund charitable educational institutions. Such programs will create employment and reduce poverty among the Muslims.

7.4.6 Religious and Charitable Organizations

Religiously, it has been said in previous pages that all *Waqf* activities are considered devotional actions provided it conforms to Islamic principles. Religiously, *Waqf*

endowments can act as *zakat* collection agencies because the collection of *zakat* is not well administered. Many eligible *zakat* payers pay their *zakat* to those whom they think are eligible or in need. Sometimes they give their donations to Muslim scholars to distribute the collected *zakat*. In this study, *Waqf* has the potential to be recognised as a credible and effective institution to collect *zakat*. *Waqf* staff can be placed in each mosque or central mosque for *zakat* collection and the accumulated *zakat* would be remitted to a special account specifically for *zakat*. The accumulated funds would then be distributed according to Islamic principles and will contribute to society. Part of the collected funds can be used for transactions or for investment for the future interests of the needy. In addition, religious programmes can be sponsored and well organised by *Waqf* endowment across Nigeria. Other religious organizations can be registered under *Waqf* endowments. Socially, the much needed aid can be given to the underprivileged in society and Islamic restaurants, hotels, and resorts can be built for the benefit of citizens and visitors for a small and reasonable fee. Housing and other utilities can be constructed and provided for the benefit of the general public particularly the needy. Contractors can be contracted to develop *Waqf* land and after the completion of the agreed project, the contractor will collect the dividends for an agreed period and later hand over ownership to the *Waqf* endowment to have absolute control and ownership of the developed land for the benefit of the needy. *Waqf* can also be responsible for educating the illiterate by organising many useful programmes for the illiterate youths and the elderly for the purpose of creating an awareness of global development in terms of technology. Educational programmes can be introduced for children, youths, and elders via media agencies across the nation. Many working children can be removed and safe from labour and re-register in schools. *Waqf* institutions can be responsible for ensuring they receive proper education and it can be seen as an act of devotion.

7.4.7 Arabic System of Education in Nigeria

Arabic schools are called *Quranic* schools where the Arabic language and Islam are taught. Arabic schools in the Nigerian system are divided into two types: *MakarantaAllo* (Tablet-school) and *MakarantaIlmi* (The Higher School). This classification is common in the Northern states of Nigeria. However, there is another classification of Arabic schools in Nigeria such as *Ile-Kewu* (Total informal school), semi informal school, and formal Islamic school. In the *Makarantar* and *Ile-Kewu* system, education is informal due to the lack of curriculum uniformity, class-rooms, trained teachers, and poor teaching facilities. In both systems, children would go to the school at the teacher's (*Alufa* or *Mualim*) discretion, and children can leave the place at any time they like. The classroom is usually in the mosque or at the teacher's residence where children sit in a circle around their teacher when learning the Holy *Qur'an*. In addition, there are no stipulated school fees nor fixed income for the teacher and the teacher relies on charity (*Sadaqah* brought to him).

The teacher depends on *sadaqah* and looks to the charitable Muslims to sustain his life and that of the students who are dwelling with him because he is responsible for their care. For that reason, the *Mualim* used to send his students to houses begging for charity and sometimes send them to collect firewood to sell. Some students are engaged in divination and amulet making as sources of income for both the teacher and students for their survival. This system of Islamic education in Nigeria is based on the proprietor's discretion and the government has no involvement over the school and its operations. Another system of Islamic education in Nigeria is the *Madrasah* School that is classified as a semi-formal school where many Arabic subjects are taught according to students' age and their level of education. The school is run in the classroom, has some trained teachers, and some untrained teachers.

The *madrakah* operates and runs with different syllabuses and curriculums and school fees have been introduced in the system. Most of these Arabic schools are fully recognized in the Northern States of Nigeria and students can be employed as paid workers. However, in the Southern States of Nigeria, the state government does not recognize the system of Arabic education because it is informal. Lack of accreditation by the Southern States for Arabic schools seriously affects the future of many Muslim children because they cannot be employed as civil servants. Many of them work as Muslim clerics and perform missionary work for philanthropists in the community, while some also work in Arabic schools as teachers. Nearly all the students would be victims if not for Arab countries that have offered admission for a few of them to complete their education in Arab countries to complete their degrees.

This research is of the view that Arabic school proprietors are not fully at fault nor are the parents to blame for the mistake of allowing their children to study in such informal and unrecognized schools. Due to the religious consciousness, many parents do not want their children to convert to another faith and their intention is to inculcate Islam into the minds of their children, forgetting the future of their children and the risk of employment.

However, many founders forget that not all their registered students can continue their education in Arab countries. The most beneficial solution is to place the students' interests above their own personal interests in a way that their informal Arabic school would be accredited and recognized by the government. This will pave the way for students to be admitted to any Nigerian university and be employed after his or her education. Similarly, if the founder does not want government recognition and accreditation, the time of learning should be changed to evening classes to enable the children to enrol in government schools in the best interests of the children. In terms of

formal school, it is suggested by the researcher that *Waqf* institutions in Nigeria can improve Arabic schools.

The new changes will be immeasurable and incomparable because it gives many students the opportunity to be well-educated in both Islamic and Western education. If this idea and method were introduced and applied successfully in the North and many Arabic schools were subsequently recognised, there is the opportunity to introduce Arabic schools in Southern Nigeria (Yoruba Land) that will give students future job opportunities that will reduce poverty and increase their source of income. This research sees many opportunities arising from changing the Arabic system in Southern Nigeria such as committed students would be able to acquire and hold a degree in different specializations that would be of benefit to the *Ummah*, while those who cannot obtain a degree level can go to college and get a diploma. This will pave the way for them to be qualified for employment. By being employed by the government or private sector, the rate of poverty will reduce. The responsibility rests on institutions like *Waqf* to do all that it can to transform and upgrade the standard and status of Arabic schools. As such, there is a need to upgrade the syllabus and curriculum of Arabic schools.

The Arabic school syllabus in Nigeria needs to be upgraded to create greater uniformity among these Arabic schools. There should be a new method and scheme that all these school must follow and apply to save children from future problems. The government should be allowed to interfere in the system to help their students and prepare them to be useful for themselves and the nation. It is believed that *Waqf* can find solutions to the problems confronting Arabic schools in Nigeria in terms of syllabus, curriculum, accreditation, and employment of trained and qualified teachers, payment of teaching and non-teaching staff and other facilities. All those changes will improve the financial status of Muslims.

7.4.8 Introductory adult classes

There is a need for adult classes that will provide greater opportunities for adult Nigerian Muslims. The class can be organised as evening classes and Islamic studies will be included in the curriculum. This kind of adult classes will open their mind and eyes to useful knowledge. Having such knowledge might change some of them positively, religiously and morally. *Waqf* endowment can use some Arabic schools for the Adult classes, certificate courses, and other educational programme while *Waqf* provides facilities for instructors and payment. Such a programme will also create employment for those who completed pure Arabic school.

7.4.9 Waqf as a means of Da'wah

Waqf endowment plays an important role in inculcating good ethics and virtues in individuals and society. Islam focuses on training individuals spiritually, morally, ethically, and religiously in order to suppress individual greediness and selfishness. The rate of corruption in Nigeria is alarming. Since the government has failed to curb corruption among themselves, it is very difficult for them to wage a real and holistic war against corruption because the whole system has been corrupted according to their capacity. The entire system is corrupted; therefore, *Waqf* can play a commendable role to reduce corruption across the nation through wise da'wah approaches. *Waqf* can preach against corruption and cheating by introducing a *Waqf* market daily, weekly, or monthly. The introduction of a *Waqf* market will provide the *Waqf* management with the opportunity to introduce an Islamic commercial system that encourages reasonable pricing and fair trade practices. This will be a positive window through which the public can witness first-hand the comprehensive nature of the *Shari'ah*. *Waqf* management should maintain uniformity in their pricing of commodities. Engaging in such activities will encourage traders to sell their commodities at a reasonable price without cheating

the buyers. Having such markets will also create employment and enhance *Waqf* finances.

7.4.10 Involvement in handling properties at a reasonable and Islamic price

The management of the *Waqf* institution in Nigeria should be required to provide policies to enhance and generate income from the *Waqf* property. Therefore, power should be vested in management to acquire, register, dispose, transact, and develop, to make full use of *Waqf* property legally and lawfully. All necessary procedures must be abided by during the investment in order to avoid lawlessness or actions contrary to the Nigerian Constitution and State Enactment. The *Waqf* management must carry out investments with transparency to attract future donors and investors. The purpose of investment is to increase the *Waqf* income in order to have surplus to cater for the less privileged. In addition, such investment must prevent harm in the sense of loss or default and it must be *Shari'ah* compliant because any investment that contradicts *Shari'ah* principles is considered invalid. Investment can cover any profitable investment such as the opening of profitable business centres, building commercial houses for sale, and building student hostel for institutions of higher learning at a reasonable price. Similarly, *Waqf* should invest in companies that manufacture or produce marketable goods to the populace at a controlled price that will attract many customers and buyers. *Waqf* management can invest in housing, petrol stations, nurseries, primary and secondary schools for the less privileged. It has been said that management should be transparent in their investments. *Waqf* can be involved in any profitable investment with cash *Waqf* in as much as the invested business will yield profits for the institution.

The *Waqf* institution in Nigeria can transact with foreign investors to invest in the nation where *Waqf* management will be entrusted to manage the business. For

example, if *Waqf* possess fertile land, the land can be used for any profitable business. The *Waqf* institution can invite the developer to develop the land based on the agreement and investor will return the ownership to the investor while *Waqf* will benefit from the project to cater for the less privileged Nigerian Muslims.

7.4.11 Hajj/Umrah program

Waqf plays many roles in protecting faith, religion, life, property, and social development. Based on religion and faith protection one of the functions and activities of *Waqf* is to support the *Hajj*. In this regard, it can develop language courses and *Hajj* training courses for intended pilgrims. Similarly there must be educative programmes, lectures, training, and other related functions that will educate pilgrims on the values and importance of *Hajj* and how to behave themselves in the Holy Land. *Waqf* can play a very important role in assisting and benefiting from any intending pilgrims by encouraging them to open saving accounts with the *Waqf* institution to save for their pilgrimage. It is believed that such a programme will help many Nigerian Muslims save in order to perform the *hajj*.

The *Waqf* management can make use of the saved money for profitable business ventures that will benefit the *Waqf* endowment and the needy. In case of default, *Waqf* management will be responsible for any lost. The *Waqf* institution may opt to engage in joint business where *Waqf* management would be permitted to utilise the money for business or any profitable transaction provided that both parties share the profit but *Waqf* will bear the shortage and loss. The same system is applicable to *Umrah*. The Malaysian system of *Tabong Haji* may serve as a good model.

7.4.12 Act as Zakat collector and distributor

It is clearly stated that purpose of paying and giving *zakat* is to contribute to society financially because the recipient of *zakat* would be able to utilise the given *zakat* towards himself and his family. Due to the *Zakat* scenario in Nigeria, there is a need for able and viable institutions like *Waqf* endowment to have a very good arrangement, plan, and method of *zakat* collection and distribution. Involvement of the *Waqf* endowment will enhance and improve the existing system of *zakat* collection and will serve the purpose of *zakat* in Nigeria.

Despite the fact that capable and eligible philanthropists are paying their *zakat*, contributions often fall into the wrong hands. This needs to be remedied in the interest of needy people and society at large. *Waqf* endowment can also learn from Malaysia as a role model on how they invest and manage collected *zakat*. The person in charge of *zakat* must be a person of integrity there must be transparency in the operational system.

This is to avoid and safe guard unforeseen negative effects towards the collected money. It is also suggested that part of collected *zakat* payment can be distribute to recipients in order to be invested in any profitable business and transaction. On the other hand, the collected *zakat* payment should be given to the needy people at appropriate times of need in order to serve its main purpose and objective.

7.4.13 Assistantship

Since the prime goal and objective of *Waqf* is its contribution to human welfare and social development of Muslim societies, this means that the *Waqf* institution is a charitable institution that extends financial aid and support to those in need. Many Nigerian Muslim students are in need of financial aid during their studies and since one of the objectives of *Waqf* endowment is to make education available and accessible, *Waqf* endowment in Nigeria should extend financial assistance to students who are in

need in their respectful schools, colleges, and universities through viable mechanisms to reach out to students in need. The financial support might be informed of scholarship, loan without interest, or any methods that will benefit recipients and endowment.

Similarly, student scholarships should be awarded to those who are studying locally and internationally. The *Waqf* endowment educational committee must avoid any kind of discrimination in their selection or approval of applicants. Any act that will jeopardise the holistic duty and responsibility of *Waqf* endowment must be desisted by all members of the institution.

7.4.14 Settling debts

Waqf management should also focus and render assistance to those in debt. They should empower the needy through cash *Waqf* or any other mechanism that will empower the person in question by providing adequate or satisfactory provisions for himself or the entire immediate family. Many are not capable to pay their loans due to interest increment because many cooperative systems are loaning out the loan with interest that creates problem for many debtors. *Waqf* management can look into the problem of loan and debt and find solutions to the problem by paying outstanding debt and render financial support to the debtors. *Waqf* can also introduce a system of giving free interest loans to the needy and make payment flexible for the debtor. Approval of the *Waqf* loan must be based on the condition that the loan will be strictly for business or transaction. Any loan application for ceremonies will not be entertained. The reason is that many run to debtors because of naming or funeral ceremonies with the intention that such ceremonies will be profitable and later find him or herself in debt.

7.4.15 Financial Aid for Additional wife

In order to reduce adultery and fornication that are cause of unforeseen diseases or sickness, it is suggested that *Waqf* endowment should create a unit that will look into marriage problems in the society especially those who are not married due to financial incapability. The *Waqf* can finance marriage by paying off all the marriage expenses. In addition, in a situation where a married man is willing to marry an additional wife in order to reduce social problems, *Waqf* should also give financial support to the person seeking a second wife and support also for the wife to accept the husband's decision.

This kind of financial aid will encourage many capable men to seek additional marriages. It is also the duty of such a unit to introduce the rules and regulations to prevent abuse. This kind of preventive measure will prevent many men from abusing the marriage institution. Many men wish to marry but due to their financial needs, they decide to remain bachelors because they cannot pay the dower or financially maintain a wife. It is the duty of a charitable organization such as *Waqf* endowment to help those who need *Waqf* support for marriage. This kind of financial aid will reduce the rate and percentage of adultery and fornication in the society and the couple will live together legally, morally, and religiously. The assistance can be also extended to the abandoned wives or abused wives financially, morally, and religiously.

7.5 Micro-financing system in Nigeria via cash *Waqf*

The introduction of a micro financing system of aid to the needy Muslims can be achieved through cash *Waqf*. *Waqf* can engage in *Mudaraba*, *Musharaka*, *Murabaha*, *Muzara'a*, *Al-Qarid Hassan*, and *Ijara* contract agreements in a flexible manner that will benefit both contracting parties. This will give opportunities for many less privileged Nigerian Muslims to be financially empowered.

7.5.1 Purchasing Tools for Business

Since the study focuses on commercialization of cash and its implementation financial mechanism, it is also suggested that the *Waqf* endowment in Nigeria purchase tools such as rental businesses. If *Waqf* can have chairs, tent material, cutleries, cooking material, and other useful and profitable equipment for rent that will yield profit for *Waqf* to cater for the needy applicants. In such a business, there would be a need to employ some domestic workers that will be in charge of delivery and collection. However, management should also plan and strategize profitable tools for business. If the sources of *Waqf* income are many and lucrative, it will enhance their ability and capability to cater for greater numbers of the needy.

7.5.2 Family Waqf

Historically, *Waqf* has acted as a social institution and mechanism to reduce poverty within the family and society. It is suggested that able and capable families can make arrangement for family *Waqf* agreement with the *Waqf* institution in Nigeria in order to have a future plan for their children in case of unforeseen occurrences and disasters. Such family *Waqf* arrangements will play an important role in the children's future and will safeguard mismanagement and cheating towards the estate left by the diseased. The *Waqf* institution will also benefit from any movable or immovable properties entrusted to *Waqf*. Many greedy and irreligious families can unjustly usurp the properties left to the heirs. Therefore, the *Waqf* institution has to educate the society about the importance of family *Waqf* and how it can act as a future plan to protect the family and society. In a nutshell, any family *Waqf* must be in line with *Shari'ah* principles and should not be contrary with Islam especially regarding the issue of inheritance. None of the entitled family members should be deprived from his or her entitlement or portion from the left estate.

7.5.3 Rules on Awqaf in Nigeria

Umar Oseni argued that there is an urgent need to streamline the legal framework for *Waqf* in Nigeria through proper legislation that will cover general guidelines for the regulation and management of *Waqf* properties, remunerations or allowances for management, codified legislation in the spirit of four school of thought in order to achieve the primary and main goals of *Waqf* endowment in Nigeria. All the classical school of thought should be followed and applied in the interest of all because holding or clinching to a particular school of thought might not be solely needed. The researcher proposes that the *awqaf* Act or provisions must be in line with the spirit and concept of the *Shari'ah* in the interest of the integrity of the *Waqf* institution and Nigerian Muslims. The provision would play a significant role towards implementing, managing, and maintaining *Waqf* properties properly.

7.6 Findings on Commercialization of Cash *Waqf* in Nigeria

Based on the findings of the study:

- 1- It is discovered that cash *Waqf* is viable and able to reduce poverty rate among Nigerian less privilege Muslims and beyond if the cash *Waqf* is commercialized properly and accordingly.
- 2- It is also shows that *Waqf* endowment in Nigeria can transform many lives positively if competent, pious, qualified, and experienced persons are in charge of *Waqf* institution across the nation.
- 3- There is need for *Waqf* awareness in Nigeria where *Waqf* managements have to exploit all means of communication to educate Nigerians on importance of *Waqf* to society and nation at large.
- 4- There are many lucrative and profitable businesses and transaction that *Waqf* management can transact with cash *Waqf* endowment.

7.7 Ways to achieve objectives of *Waqf* Endowment in Nigeria

The present economy and poverty rate in Nigeria and among the Muslims in particular call for powerful institutions like *Waqf* endowment that will render support to the less privilege among them. This kind of institution should consist of qualified and competent people in the institution in order to carry out their duties and responsibilities collectively in the interests of the nation generally. If this could be done by the *Waqf* management sincerely and justly, the poverty among the Muslims will be reduced and appreciated by the Muslim community. In order to achieve the aims and objectives of *Waqf* endowment in Nigeria, the aforesaid points should be taken into consideration such as:

7.7.1 Needs a Dynamic Man as *Waqf* Institution Director

Presently, *Waqf* institution is re-established in Nigeria and Northern states in particular for the interest of the needy and less privilege Muslims and beyond. For that purpose, there is need of dynamic director or management who can manage endowed properties properly and accordingly in the interest of needy Muslims and society at large. With the rate of poverty and economic situation across the nation, *Waqf* institution does not need a selfish director but someone who is well and fully committed, dedicated, honest, pious and just. The person who will dictate for what is good for Nigeria and Nigerians by helping needy Nigerian. The *Waqf* management who will make tremendous positive changes in *Waqf* institution and Nigerians by transforming all the system in the best interests of all not because of themselves. The *Waqf* management who is needed must be able to reduce poverty from the Muslims community in particular by way of giving financial support, sound education, shelter, medical based on their ability and resources donated.

7.7.2 Nigerian Government Intervention

For the smooth running of *Waqf* institution across the nation, there is need for Nigerian government involvement in terms of financial support, security, legal backing, supervision, and recognition in the interest of Nigeria at large. It is cleared that the existing *Waqf* endowment in the Northern states are receiving their states government support financially, morally, legally, and physically. Although, the institution should be given freedom to run its affairs based on the Islamic principles, yet, there is need for check and balance from the government for transparency and accountability in the interest of institution and needy Muslims in particular.

7.7.3 Security Improvement in Nigeria

The security situation and condition across the nation is very poor and needs the urgent action from the government in order to provide adequate security for the nation at large. The insecurity issues beyond the *Waqf* institution ability due to their limitation and jurisdiction. Nevertheless, *Waqf* can involve in building standard and adequate security in the nation directly and indirectly.

7.7.4 Deterrent Punishment for guilty management

In order to impose or punish on any guilty *Waqf* management, there is need for government intervention and tried in competent *Shari'ah* Court in particular in the interest of institution. The management should be legally required to declare their asset before the appointment and confirmation as *Waqf* staff or management in order to control corruption and mismanagement of *Waqf* property. If there are rules, regulations and proposed punishment, the management will be conscious of their actions towards the endowed property.

7.7.5 Waqf Instituion Involvement in Economic Development

It has been earlier stated that the *Waqf* institution needs dynamic director or management in the interest of institution and needy Muslims at large. There is need for the management to diversify and strategise on how to generate income for the institution and involve in any lucrative and Islamic transaction where the institution will realize more income. The management should learn from other countries like Kuwait, Saudi Arabia, Singapore, Turkey, Malaysia and Indonesia on how they are managing and running *Waqf* institution in their respective nations.

7.7.6 Working with Islamic NGO's

There is need for the *Waqf* institution across the nation to work closely with some Islamic NGO's in order to have direct information about the needy Muslims, passing message about *Waqf* across through the NGO's, *Waqf* awareness and other related issue. This will help *Waqf* institution to discharge their duties accordingly and making use of the NGO's to pass and get information in the interest of *Waqf* institution and Muslims in general. The NGO's will assit *Waqf* institution to identify those who are in need of sound and accessible education, commercial transportation, suitable accommodation, Medical care, potable water, feeding, debt payment, and other related issues.

7.8 Conclusion

This research has discovered that many Nigerian Muslims are financially incapable. There is therefore an urgent need to re-introduce and re-establish the *Waqf* institution across Nigeria in order to rescue the needy Muslims from poverty. There are many profitable and lucrative transactions that the *Waqf* endowment in Nigeria can involve itself with in the interest of the institution and the less privileged Nigerian Muslims.

Awqaf Endowment in Nigeria will play a pivotal role in poverty eradication in Nigeria if all necessary steps are properly considered. *Waqf* management must employ pious, religiously conscious, erudite, and responsible people in order to protect the sanctity of the *Waqf* institution.

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