

TITLE PAGE

**EXAMINATION OF WAQF AS ALTERNATIVE SOURCE OF FINANCING BUSINESS
IN NIGERIA**

BY

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NSU/LLM/LAW/0098/17/18

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JUNE, 2019

DECLARATION

I hereby declare that this thesis titled "*Examination of Waqf as Alternative Source of Financing Business in Nigeria*" has been written by me and it is a report of my research work. It has not been presented for another post graduate degree at this or any other University. All quotations are indicated and sources of information specifically acknowledged by means of references.

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CERTIFICATION

This thesis titled "*Examination of Wāqf as Alternative Source of Financing Business in Nigeria*" by Usman Mukhtar Bunza meets the regulations governing the award of Masters of Law (LL.M), of the School of Postgraduate Studies, Nasarawa State University, Keffi, and is approved for its contribution to knowledge.



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DEDICATION

I dedicate this thesis to my father and mother, Malami Usman Bunza and Aisha Muhammad for giving me the necessary educational training to be what I am today.

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ABSTRACT

Waqf is a viable form of Islamic financial integration in the society, primarily aimed at providing relief to the less privileged persons in the society. Waqf has the inherent potential to ensure redistributive justice in the society given its numerous benefits in providing human relief, dignity, financial support, and social needs to alleviate the struggles faced by needy Muslims which includes poverty, unemployment, and lack of support. However, in Nigeria, the concept of waqf have not gotten much momentum and this could be attributed to the secular nature of the country where programmes meant to provide necessary financial supports, inclusion and alternatives in the society are subjected to so much scrutiny and criticism along the ethnic and religious ideology. Consequently, waqf has not been fully utilised to the advantage of the general public in the society despite our huge human and natural resources. Quite alarming is the progressive dominance of poverty in the country due to lack of any structural and institutional financial intervention which waqf would have adequately serve as alternative in the circumstance. Many businesses are shutting down and all the relevant financial institutions are less concern about the development and even if they were, the financial interventions they offer to the people by way of loan is not enough and sometime, ends up collapsing the business completely because of the high interest rate and the regulatory body does little or nor efforts in addressing these challenges. Human development is eroding past and youths are becoming jobless by the day, hence, the focus of this thesis. The study attempts to examine the administration of waqf in Nigeria from the existing legal provisions and how the concept, being an Islamic form of financial inclusion in the society could be applied in our secular Nigerian context to provide alternative source of financing business in Nigeria. The study also identified areas where waqf can be used for educational funds, creation of employment opportunities, agriculture, and provision of tools for entrepreneurial activities as a result of which, many Nigerian youths and adults would be fully empowered educationally, financially and socially. This research used the doctrinal method of research where both primary and secondary sources are examined which includes statutes, case laws and other legal sources. The research identified various classifications of waqf, its applicability, fundamental principles, challenges and solutions to the challenges. The research as stated earlier tries to identify the possible ways waqf can serve as alternative of financing business in order to sustain the dwindling Nigerian economy. The finding of this research is that while waqf is gaining dominance in countries where Islamic economic system, the concept has not received much applicability in a country like ours, particularly the secularism nature of the country. However, the research advocated for the recognition and adoption of waqf in our secular country, Nigeria with the view to provide alternative to long archaic conventional method financing business in Nigeria. The research concluded by recommending institutional framework to institutionalize waqf in Nigeria as a means of empowering small and medium businesses.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Waqf is described as the most important institution, which provided the foundation for Islamic civilization, as it was interwoven with the entire religious life and the social economy of Muslims. From mosques, schools and hospitals to markets and inns, most of the public sector was financed through *awqaf*. The *waqf* provided the only permanent organizational form under Islamic law which did not explicitly have the concept of impersonal juristic personality.¹

Therefore, the *waqf* was the most suitable legal form for financing long-lasting services. Small wonder if the entire sector of public services in the Muslim world was managed through *awqaf* before the advent of the modern state in the twentieth century. Interestingly, the *waqf* was not limited to the provision of public services. A large number of *waqf* properties were reserved in favour of the founders and their family members, generation after generation. However, even in such private *awqaf*, the ultimate beneficiaries were the poor of society or public services. Therefore, the *waqf* as an institution encompasses both private and public functions.²

Under Islamic law, *waqf* refers to an institutional arrangement whereby the founder endows his property in favour of some particular persons or objects. Such property is perpetually reserved for the stated objectives and cannot be alienated by inheritance, sale, gift or

¹ Muhammad Zubair Abbasi, the Classical Islamic Law of *Waqf*: A Concise Introduction, Arab Law Quarterly 26 (2012) 121-153.

² G.C. Kozlowski, *Muslim Endowments and Society in British India* (Cambridge: CUP, 1985) p. 1-2.

otherwise.³ In the organizational structure of a *waqf*, there are three major parties. The founder is called the *waqif*, who creates a *waqf* either by writing or pronouncing his intention to make a *waqf* of his property in favour of the beneficiary or beneficiaries, called *mawquf alayh*, who, according to some jurists must be capable of owning property.⁴

A *waqf* can also be created for a specific purpose, e.g., promotion of religious education or the welfare of the needy and the poor. The third party is the administrator, called the *mutawalli*, who administers the *waqf* according to the conditions laid down by the founder. The qadi performs the duty of supervision over the *waqf* by keeping a check on the administrator.⁵

A specialized government department (*diwan*) to govern public *awqaf* is also found as early as the Umayyad dynasty. The institution of *waqf* is not mentioned in the Quran, which is considered the primary source of Sharia. However, the general verses that emphasize charity are taken to be the legal authority from the Quran for the validity of the *waqf*.⁶

There are traditions of the Prophet and his Companions who established the *waqf* as *sadaqa* (charity). Although such traditions provided the basis for *waqf* law, the detailed law was developed by jurists on the basis of secondary sources of Islamic law such as *qiyas* (analogy), *ijma* (consensus), *istihsan* (juristic preferences), *istishab* (continuity) and *'urf* (custom) and reflects the socio-political developments of the time.⁷ The principle of *istislah* (public good) was also applied in the later periods in order to legalize new practices such as cash *awqaf*.⁸ Muslim jurists dealt with the law of *waqf* at length in their corpuses of *Fiqh* and every

³ Muhammad Zubair Abbasi, the Classical Islamic Law of *Waqf*: A Concise Introduction, Arab Law Quarterly 26 (2012) 121-153.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See Quran 3: 92,, Quran 2:177, 215, 267.

⁷ W. Al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, Dar al-Fikr, vol. 10, p. 7603.

⁸ Muhammad Zubair Abbasi, the Classical Islamic Law of *Waqf*: A Concise Introduction, Arab Law Quarterly 26 (2012) 121-153.

compendium of Islamic law of all major schools contains a separate chapter on the law of *waqf* or *habs* (as it is known in the Maliki and Shafi'i Schools).⁹

1.2 Statement of Problem

This research attempt to examine the concept of *waqf* as alternative source of business financing in Nigeria with the keen view to determine how effective could *waqf* serve as a source of business financing in Nigeria. To what extent could it be explore to meet the yearning and aspiration of financial inclusion goal in Nigeria? How *waqf* could be explored to improve the small medium business in Nigeria? How *waqf* could be a panacea to poverty alleviation and provide job opportunities in Nigeria? To what extent could it be applied to improve the economy of Nigeria looking at Nigeria as secular state?

1.3 Research Questions

The research will attempt to answer the following questions:

1. To what extent can *waqf* serve as alternative source of business finance in Nigeria?
2. To what extent can the concept of *waqf* be accommodated to ameliorate the challenges of business funding in Nigeria?
3. To what extent could the concept of *waqf* be explored to achieve the necessary financial support for the small and medium scale businesses in Nigeria?

⁹ Ibid.

1.4 Aim and Objectives of the Study

The general objectives of this study include:

1. To examine the concept of *waqf* and how it can be applied to serve as alternative source of business financing in Nigeria.
2. To identify the possible ways of how *waqf* can be improve the living standard of down trodden persons in Nigeria.
3. To identify the challenges of *waqf* institution in Nigeria.

1.5 Scope of the Study

This study focuses on the alternative source of business financing in Nigeria with *waqf* as the viable tool of achieving the said objective. The study is limited in scope in that the research examined the concept of *waqf* as alternative source of business financing in Nigeria. Thus, since the study is not comparative in nature, it will focus mainly on the necessary impact the concept of *waqf* would add to the economic growth of the Nigeria. The introduction of the trader by the Nigerian government to help the market people boost their business would not have been a novel issue if *waqf* institutions have been in existence in Nigeria. Thus, it is the focus of the study to look at the necessary indices by which *waqf* would ameliorate the financial yarning of Nigerians doing business.

1.6 Significance of Study

The conduct or establishment of business in Nigeria has always been pose with some constraint and these constraints are basically financial in nature. The significance of this work is stem in the fact that it aimed to identify other means of business financing in Nigeria using

CHAPTER TWO

LITERATURE REVIEW

2.1 Conceptual Framework

Under Islamic law, *waqf* refers to an institutional arrangement whereby the founder endows his property in favour of some particular persons or objects. Such property is perpetually reserved for the stated objectives and cannot be alienated by inheritance, sale, gift or otherwise.¹⁰

According to Ibn 'Arafah,¹¹ *waqf* is to donate the benefit accruable from a property during the time of its existence and being the property of the donor, even if the ownership is not actual. Sayyid Sabiq defines the concept as "withholding or immobilizing an asset and mobilizing or releasing its proceeds".¹² Withholding means that the assets cannot be sold or disposed of in any way, releasing the proceed means that the benefit or usufruct can be obtained from the asset without consuming it. *waqf* may be defined as holding a maal (an asset) and preventing its consumption for the purpose of repeatedly extracting its usufruct for the benefit of an objective representing righteousness and/or philanthropy¹³. *Waqf* is also known as a perpetual endowment created in the form of property, money or other items for charitable or religious purposes and the usufruct (benefit) is confined to the society as a whole or for a specific segment of society in need.¹⁴ This religious act is one of the commendable forms of charity and repeatedly encouraged and mentioned in the Quran and Sunnah.

¹⁰ Muhammad Zubair Abbasi, *the Classical Islamic Law of Waqf: A Concise Introduction*, Arab Law Quarterly 26 (2012) 121-153.

¹¹ Salih 'Abdul Sami' Al-Azhari, *Jawahirul Ikliil, Commentary on Khali's Mukhrasar*, Darul Fikr, Lebanon, Vol. ii, P. 205.

¹² As-Sayyid Sabiq, *Fiqhus Sunnah*, Darul Fikr, Lebanon, 4th Edition, Vol. iii, P. 378.

¹³ Kahf, M., The role of *waqf* in improving the Ummah Welfare, paper presented at the International Seminar on "Waqf as a Private Legal body", Organized by the Islamic University of North Sumatra, Medan, Indonesia, Jan. 6-7, 2003. <<http://monzer.kahf.com/papers/english/>> accessed on 17th July, 2019.

¹⁴ Hassan, A., & Shahid, M. A., Management and Development of the Awqaf Assets, Paper presented at the Seventh International Conference – The Tawhidi Epistemology: Zakat and *Waqf* Economy, Bangi, 2010. <...> accessed 17th July, 2019.

The four eminent Islamic scholars have given different meanings of *waqf* or endowment. Al-Hannafi views *waqf* is to preserve and up keep the original wealth that belong to someone else and give the profit to the needy. Al-Maliki opines that *waqf* is the ownership of the profit from the origin of wealth which was given for endowment and gives it to whoever the endowment was meant for or the needy. According to Shafii, *waqf* is to keep the wealth that can give benefit, and keep its remaining in the same form while the original owner cannot consume it. Hanbali views *waqf* is keeping the original owner from consuming wealth that he had endowed, wealth which produced benefit should remain in the same form.¹⁵

Culled from the above views of four eminent scholars, *waqf* is a wealth that was kept from the consummation of the original owner and gives its benefit to the poor and needy, and that wealth must remain in the same condition without being consummate by the first owner.¹⁶

It is imperative to note at this juncture that most of the scholarly views and opinion on the subject matter of *waqf* gave a limited definition of the subject matter in the sense that only property which is corporeal in nature is subject of *waqf*. Thus, dispensing with in corporeal property as subject of *waqf*.

According to Sait and Lim *waqf* involves a dedication of fixed asset for the purpose of charity and generating income, which will benefit the beneficiaries in a perpetuity basis.¹⁷ This definition accords continuity or perpetuity to *waqf*, i.e., it applies to non-perishable properties whose benefit and usufruct can be extracted without consuming the property itself as espoused by Khaḥ.¹⁸ Therefore, *waqf* usually relates to land and buildings. AHMI & Mohammad M. T. S., posited three characteristics inherent *waqf* and are irrevocably,

¹⁵ Musa Abdullahi and Nura Ibrahim Mukhtar, *Waqf* as an instrument for poverty eradication and job creation, being a paper presented at 1st Kano *Waqf* International Conference (KWIC) organised by Islamic Law Department, B.U.K. in collaboration with Khairat Islamic Trust and Sa'adiyyah *Waqf* Foundation at Mahmud Tukur Open Theatre, Bayero University, Kano, Nigeria on 15th to 16th Nov., 2016, <https://www.academia.edu>, accessed on 17th July, 2019.

¹⁶ Ibid.

¹⁷ Sait S. & Lim H., *Land, law and Islam: property and human rights in the Muslim world*. London, 2006: Zed Books.

¹⁸ Khaḥ, M. *Financing Development of Awqaf Properties*, International Conference on Awqaf and Economic Development, Kuala Lumpur, 1998, 2- 4.

perpetuity, and inalienability. Again this reflects that a *waqf* asset has to have a perpetual tenure.¹⁹

However, what constitute perpetuity became subject of argument among the scholars and consequently several arguments were proffered. According to Khaf, perpetuity entails three conditions, thus: (i) property made *waqf* must be appropriate for perpetuity by its legal status, by its accounting treatment or by nature; (ii) the will of the *Waqf*'s founder must be related; (iii) objective of *Waqf* must be perpetual.²⁰ To other Muslim scholars like Razali Othman and AHMI & Mohammad M. T. S., have said the perpetuity is relative and could mean the remaining tenure of the *waqf* asset or as long as the *waqf* asset lasts.²¹ *Waqf* in perpetuity infers that *waqf* cannot be sold or transacted and should remain the domain of *waqf*.²²

The Maliki school accept that temporary *waqf* can be brought about by the will of the founder and also accept the *waqf* of usufructs, which is by definition temporary too. Consequently the Maliki School strongly argues for the coexistence in *awqaf* of temporality and perpetuity side by side.²³

Expanding the concept further, Shamsiah²⁴ discusses the issues of leasehold property which is considered as a *waqf* asset in Singapore, which can be considered as a wasting asset. Unlike cash *waqf*, where the value is kept intact, the value of a leasehold property erodes. Here not only is the *waqf* life temporal but also the value of the asset diminishes with time. This is similar with Intellectual Property, which has a life span. Once the legal lifespan is

¹⁹ Mohammad, M., T., S. and Abdul Hamid, M., I. 2006. Obstacles of the Current Concept of *Waqf* to the Development of *Waqf* Properties and the Recommended Alternative. Available at: < <http://eprints.utm.my/S01/1/27-38.pdf> >. Accessed on 17th July, 2019.

²⁰ Kahf, M., Towards the revival of *Awqaf*, *Proceedings of the third Harvard University Forum on Islamic Finance: Local Challenge, Global Opportunities*. Cambridge, Massachusetts. Center for Middle Eastern Studies, Harvard University, 1999, 103 – 109.

²¹ Mohammad, M., T., S. and Abdul Hamid, M., I. 2006. Obstacles of the Current Concept of *Waqf* to the Development of *Waqf* Properties and the Recommended Alternative. Available at: < <http://eprints.utm.my/S01/1/27-38.pdf> >. Accessed on 17th July, 2019.

²² Ibid.

²³ Fauziah Raji, et al, Intellectual Property an Asset for *Awqaf*, *International Journal of Real Estate Studies*, Vol 9, 1, 2015.

²⁴ Shamsiah A. K., *Contemporary Shari'ah Structuring for the Development and Management of Waqf Assets in Singapore*, 2010, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/778/>.

expired, the IP become public domain. Hence as such the usufruct from the Intellectual Property can be considered for *waqf* for the legal life span. However an Intellectual Property is also limited by its economic life span especially for patents. Nevertheless, Kahf²⁵ declared that the sunnah has recognized several forms of *waqf*, which are temporal such as a horse or a sword. Such understanding leads to an inference that temporal *waqf* is possible, whether the asset is temporal in nature or the period of *waqf* is temporal as assigned by the founder.²⁶

Shamsiah points out that many of the religious institutions such as the mosque and the madrasahs in Singapore have appealed to the community to donate as *waqf* equipment such as computers, furniture and fittings. However, these assets are not being recognized nor recorded as *waqf*, since the definition of *waqf* is a permanent dedication of property, and such gifts do not naturally fit in the description of a *waqf*. By allowing temporal, the type and class of *waqf* asset can be enlarged substantially.²⁷

Karim and Mohamad Azhar argued that there are many resources that could be gained by *waqf*, and should not be confined to landed property or cash donations, but also can use other assets such IP, namely copyrights, patents, and goodwill to name a few.²⁸

By and large, *waqf*, as a voluntary charitable act, is one of the mechanisms in the Islamic economic system set, among others, to promote equitable and just distribution of wealth.²⁹

The contributions of *waqf* in the political and socio-economic growth and development of Muslim communities over the years were so pertinent so much so that it has been labeled as the most visible evidence of charity. More importantly, *waqf* assets were instrumental in providing social and economic safety valve through its role in promoting religion, education,

²⁵ Kahf, M. *Financing Development of Awqaf Properties*, International Conference on Awqaf and Economic Development, Kuala Lumpur, 1998, 2- 4.

²⁶ Fauziah Raji, et al, Intellectual Property an Asset for Awqaf, *International Journal of Real Estate Studies*, Vol 9, 1, 2015.

²⁷ Shamsiah A. K., *Contemporary Shari'ah Structuring for the Development and Management of Waqf Assets in Singapore*, 2010, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/778/>.

²⁸ Karim, R., *Zakat and Waqf Bank for Social Development and Improved management of Waqf*, presented at International Waqf Conference, 2007, South Africa.

²⁹ Sadeeq, M.A., *Waqf, Perpetual Charity and Poverty Alleviation*, 2002, *International Journal of Social Economics*, P. 135 – 151.

shelter, health, food security and rural-urban transformation. In the tenth century, *waqf* replaced zakat as the vehicle for financing social and economic development in Islamic societies.³⁰

2.2 Theoretical Framework

Waqf is driven by spirituality, social justice, and personal satisfaction of the donors and its purposely meant to provide key essential services like health, education etc so as to improve the welfare of the people in the society at no cost. This was evidenced during the Ottoman Empire in which the *waqf* was incorporated in its fiscal system to cater for its public expenditures for decades.³¹

The ancient nations used to *Waqf* their properties and made it places of worship. The *Waqf* was not limited those days to places of worship; it was more than that, as one of the rulers of Nubia (Punut), during the reign of the fourth Ramesses, locked up his land and made a Will, that the revenue of that land is to be used for buying a calf every year and scarified to his soul after his death.³²

In the Roman era the government appointed a public servant to oversee the execution of the *Waqf* and in the Jaahiliyyah, the Arabs had houses of worship and temples where they stored what was offered as gifts then use it as a *Waqf*.

Waqf was created during the lifetime of the Prophet (PBUH). Whenever the Prophet (PBUH) identified any need in his society, he either fulfilled it by creating *Waqf* or encouraged his companions to fulfill it via the creation of *Waqf*. Thus, Muslims knew of *Waqf*, and idolized

³⁰ Singer, M.A., Charity in Islamic societies, New York, Cambridge University Press, 2008, *Journal of Interdisciplinary History*. <https://www.academia.edu/> accessed on 17th July, 2019.

³¹ Ibrahim Mohammed Lawal, *Waqf: A Contributory Tool for Bridging Infrastructural Deficit in Nigeria*, *European Journal of Islamic Finance*, 11, Dec. 2018. Available on <http://www.ojs.unito.it/index.php/EJIF> accessed on 17th July, 2019.

³² Shadiya Mohamed S. Baqutayan et al, *Waqf Between the Past and Present*, *Mediterranean Journal of Social Sciences*, Vol. 9, University Technology Malaysia (UTM), 2018.

it during the lifetime of the Prophet (PBUH), because the Prophet himself created many *Waqf*.³³

In addition, the Prophet (PBUH) also used *waqf* to finance its weaponry in times of war and as well as financing its economy.³⁴ Islahi, stated that there is need to internationalize the voluntary institution of *awqaf* nowadays, by setting up a non-government world Muslim foundation which should provide public goods on large scale and in much more significant fashion than has been the case up till now, to combat illiteracy, sickness and lack of technical know-how.³⁵

Furthermore, it can provide defense services and public utilities in many instances which will go a long way to discourage borrowings.³⁶ For instance, Islamic *waqf* influenced the development of trusts in Western Europe-most notably the establishment of such venerable educational institutions such as the University of Oxford and Merton College.³⁷ In Egypt, the first hospital to adopt medical records which later became the medical school sector of medicine called Al Noorie Hospital in Damascus founded in 1145AD, was built on *waqf*. Many eminent physicians graduated at the medical center, including Ibn Nafis, a scholar who discovered the theory of the respiratory system in the human lung so also the Al-Azhar University. Other users of *waqf* revenues include health services which cover construction of hospitals and spending on physicians, apprentices, patients, and medicines. One of the examples of health *waqf* is the Shishli Children Hospital in Istanbul which was founded in

³³ Ibid.

³⁴ Ibrahim Mohammed Lawal, *Waqf: A Contributory Tool for Bridging Infrastructural Deficit in Nigeria*, *European Journal of Islamic Finance*, 11, Dec. 2018. Available on <http://www.ojs.unito.it/index.php/EJIF> accessed on 17th July, 2019.

³⁵ Islahi, A., *Provision of Public Goods: Role of Voluntary Sector (Waqf) in Islamic History*, (Financing Development in Islam: Seminar proceeding series IRTI & IDB), 1992.

³⁶ Kahf, M., *Financing the Development of Awqaf Property*, Working Paper for the Seminar on Development of Awqaf by IRTI, (Malaysia; Kuala Lumpur), 1998.

³⁷ Ibrahim Mohammed Lawal, *Waqf: A Contributory Tool for Bridging Infrastructural Deficit in Nigeria*, *European Journal of Islamic Finance*, 11, Dec. 2018. Available on <http://www.ojs.unito.it/index.php/EJIF> accessed on 17th July, 2019.

1898. In addition, more than 8,000 educational institutions and more than 123,000 mosques in Bangladesh are *waqf* institutions.³⁸

According to Saadallah, Abu al-Qasim, "*Waqf* is one of the most important aspects of Islamic civilization; it is a foundation that expresses the will of the Muslim and deep sense of solidarity with the Muslim community..." Indeed, the growth of *Waqf* in the Muslim world can be attributed to a number of factors; the strong religious believe and charitable desires of many Muslims is one of the factor that have led many people to make at least part of their property as a *Waqf*.³⁹ The *Waqf* of the Islamic community in the era of Prophet Muhammad (PBUH) and his companion (Caliphate) fulfilled the needs of the society at that time, whether in terms of charity or the jihad requires for the sake of Allah. The purpose of creating *Waqf* varied from the 2nd century AH to include social, scientific, and religious life. It began from the simple endowment for a family to what is known in the history of *Waqf* as a comprehensive end that benefits the Ummah.⁴⁰

Zuki quoted from some studies that establishing a *Waqf* is the idea for the cause of humanity and the mosque of Quba was first established by *waqf*. In the Muslim world, many humanitarian projects today are operated through the institutions of *waqf* such as building houses for the needy people, springs development for providing water for public consumption, helping in the handicapped and the poor, building bridges, financing orphanages and home for elderly and financing the marriage of young people in need.⁴¹

³⁸ Ibid.

³⁹ Shadiya Mohamed S. Baqutayan et al, *Waqf Between the Past and Present, Mediterranean Journal of Social Sciences, Vol. 9, University Technology Malaysia (UTM), 2018.*

⁴⁰ Ibid.

⁴¹ Zuki, M.S., *Waqaf and its role in Socio Economic Development, International Journal of Islamic Finance, vol. 4, issue 2, 2012.*

2.3 Definition of *Waqf*

Waqf or Habs means: 'to prevent', or 'to restrain'. Legally they mean "to protect something, by preventing it from becoming the property of a third person".⁴² The classical definition of the *waqf* is given by Imam Abu Hanifah saying "the appropriation of any particular thing in such a way that the founder's right in it shall continue and the advantage of it go to some charitable object." This definition however is not preferred by his disciples i.e. Abu Yusuf and Mouhammad as well as jurists in shafi'i, hanbali and imami schools.⁴³ The point of disagreement is the retention of the title by the donor which gives him the discretion to revoke the trust anytime during his lifetime, as he pleases provided that trust is not effective after the death of the donor or as a result of a decision by a competent court. The majority of jurists agree that the donor has no title in the trust as the property, after promise⁴⁴ or after promise and possession, becomes God's property (i.e. ownerless), and hence the donor has neither title in the property nor power to revoke the trust.⁴⁵

Abu Zahrah defined *waqf* as "the prevention of a benefit-generating estate from corporal disposal but using its usufruct and benefit in charity, intended so at the time of creation and thereafter."⁴⁶ Abu Zahrah's definition of *waqf* is generic: he includes the fundamental ideas proposed by various jurists, and still maintaining that the donation must be of immoveable property⁴⁷ which gives the impression that the given *waqf* should be in perpetuity. This line of reasoning, after due consideration is given to the practice during and after lifetime of the Prophet (s), is perhaps too restrictive and for practical reasons has resulted in stagnation of *waqf*

⁴² Al-Sarakhsi, *al-Mabsut*, Cairo, 1956, vol. 12, p. 27, translation by Mohd. Zain b. Haji Othman, *Islamic Law with special Reference to the Institution of Waqf*, Kuala Lumpur: Prime Minister's Department, Religious Affairs Division, 1982, p.21. See the definition of *waqf* in al-Hilli, *al-Jami'*, p.369.

⁴³ see Abu Zahrah, *Muhadarat*, p39-40, 62-69, for Shafi'ies views see al-Sharbini, Mughni al-Muhtaj, kitab al-*waqf*, for hanbalies, see ibn Qudamah, *al-Mughni*, vol. 6 p. 185. Note an opinion of Amad ibn Hanbal and the majority of the Malikis seem to agree with the view of Abu Hanifah except the latter give option to the donor to revoke the trust whenever he wishes so.

⁴⁴ see case

⁴⁵ Kasani, *Badai'*, vol. 6, pp. 346-347. this view of Abu Hanifah has been accepted by Sudanes legislation for the benefit of owners when they need the donated property for themselves: Hasan Abdullah al-Amin, "al-*Waqf* fi Fiqh al-Islami", p. 129.

⁴⁶ Abu Zahrah, *Muhadarat*, p. 5.

⁴⁷ id, p. 69

properties due to the lack of finance to develop such properties.⁴⁸ The sound and very recent definition of the *waqf* is “the holding of certain property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside that specific objective.”⁴⁹ This last definition, for a good reason, widens the idea of *waqf* to include almost all those elements which were intentionally omitted by some classic jurists in their concept and definition of *waqf*: this will include not only immovable property to be the subject of the trust, it also will include the donation of movable property as well usufruct and cash. The genius of this definition is that it concentrates on the recurrence of the benefit generated by the donated property, which needs not be immovable property. This interpretation of *waqf* is in line with the various types of trusts or *waqf* practiced during the lifetime of the Prophet (s) and the four righteous Caliphs. Extending, furthermore, the scope of *waqf* will result in attraction of a variety of means and funds; therefore, enabling the contemporary Islamic trust institutions to finance the development of stagnant properties themselves and contribute to the welfare of the society generously. One may not argue that such an opinion blurs the line between *waqf* and sadaqah, for every *waqf* is a type of sadaqah.⁵⁰

2.3.1. Types of *Waqf*

The purpose of a *waqf*, according to all schools of thought is taqarrub ila Allah (pleasure of God) by spending usufruct for birr and khayr (charity and pious purposes).⁵¹ Consequently, majority of jurists classified *waqf* into the following types, thus:

1. Religious *Waqf*

⁴⁸ Mohammad Tahir Sabit, *the Concept and Objective of Waqf*, Universiti Technolgi, Malaysia.

⁴⁹ Munzer Qahf, see also his *al-Waqf al-Islami, Tatawurruh, Idaratuh, Tnmiyyatuh*, Damiscus & Beirut: Dar al-Fikr, 2000, p. 62. In the latter he defines *waqf* as the preservation, in perpetuity or temporary, of a property capable of recurrent utilization, either the object itself or its income, for a type of a specific or a general philanthropy.

⁵⁰ See Mohammad Tahir Sabit, *the Concept and Objective of Waqf*, Universiti Technolgi, Malaysia. The hanafi jurists divided *sadaqah* to *sadaqa munfidhah* (one where the title and possession plus its usufruct is passed to the beneficiary) and *sadaqah mawqufah* (*waqf* in its conventional sense).

⁵¹ Muhammad Zubair Abbasi, *the Classical Islamic Law of Waqf: A Concise Introduction*, *Arab Law Quarterly*, 26 (2012) 121-153.

2. Philanthropic *Waqf*

3. Family *Waqf*

The above will be discussed hereunder seriatim.

1. **Religious *Waqf*:** In any society and for any religion, adds to the social welfare of the community because it helps satisfy the religious needs of people and reduce the direct cost of providing religious services for any future generation.⁵² What is interesting in the Islamic religious *waqf* is that the Shari'ah did not give any religious bodies, persons, or leaders managerial privileges or beneficiary's rights on any religious grounds. An Imam or preacher may be entitled to certain benefits from the revenues of a religious *waqf* on one ground only, that is, if the name or position is assigned such benefits by the *waqf* founder.⁵³ The majority of the mosques in the Islamic world is kind of religious *waqf* that they have been founded by well-meaning. In addition, the property has been allocated for mosques and religious schools are kind of endowments.⁵⁴

The meaning of being civil is that it has its legal framework, objectives, documentation and regulations for management and use of its output. It is not left to the imams, preachers or leaders of Payers to manage the Islamic *waqf* or to take decisions according to their own preferences.⁵⁵ These characteristics of Islamic *waqf* took the whole idea and application of charity in the Muslim society to a level of civic organization and establish the *waqf* as an institution of charity infrastructure that is able to sustain servicing the society at large and in all its aspects and needs.

⁵² Abdulmajeed Hassan Bello, *Waqf* in Shari'ah an ignored effective mechanism for the sustainable development of a society, paper presented at the Fourth International Conference on New Strategies for Sustainable Development, University of Uyo, Akwa Ibom State, Nigeria, Jan. 28 – 29, 2014.

⁵³ Mozer Kahf, "Role of *Waqf* in Sustainable Development. Available at <http://www.onislam.net/english/shari'ah/contemporary-issues-themes/waqf>. Accessed 17th July, 2019.

⁵⁴ Habibollah Salrzehi et al, "*Waqf* as a Social Entrepreneurship Model in Islam" *International Journal of Business and Management*, 5/7, 2010: 179 – 186.

⁵⁵ Abdulmajeed Hassan Bello, *Waqf* in Shari'ah an ignored effective mechanism for the sustainable development of a society, paper presented at the Fourth International Conference on New Strategies for Sustainable Development, University of Uyo, Akwa Ibom State, Nigeria, Jan. 28 – 29, 2014.

Furthermore, these characteristics create a social setting in which the *waqf* was able to expand beyond the scope of religious activities to cover education, public utilities, social work, and other areas of societal services.⁵⁶

2. **Philanthropic *Waqf*:** This kind of *waqf* aims at supporting the poor segment of the society and all activities that are of interest to the community such as public utilities, the poor and needy, public libraries, scientific research, education, health services, care of animals, environmental preservation, lending to small businessmen, parks, roads, bridges, dams, etc.⁵⁷ Philanthropic *waqf* began by the Prophet Muhammad, peace and blessings be upon him, too. Drinking water used to be sold in Medina at a high price. With the continuous inflow of migrants who fled their lands and towns to escape religious-based persecution, it became difficult for the poor to pay for water; the Prophet, called on people to buy the well and make it into a *waqf* free to whoever takes water. Othman ibn `Affan bought it, made it into a *waqf* and asked the Prophet, that his pitcher must be considered also free like any other person who gets water.⁵⁸ Later, in the fourth year of *Hijrah* calendar, the Prophet, took hold of the orchards that were willed to him by *Mukhairiq* and made the remainder of their output another charitable *Waqf* after paying for his household expenses.⁵⁹ Thus, in humanitarian *waqf* benefits are allocated to public for the support of poor and promote social activities.⁶⁰ This exercise was followed by Omar, who asked the Prophet, what to do with a palm orchard he owned in the city of *khaibar*? And the Prophet, said: "Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees

⁵⁶ Mozer Kahf, "Role of *Waqf* in Sustainable Development. Available at <http://www.onislam.net/english/shari'ah/contemporary-issues-themes/waqf>. Accessed 17th July, 2019

⁵⁷ Abdulmajeed Hassan Bello, *ibid*.

⁵⁸ Abdulmajeed Hasssan Bello, *ibid*.

⁵⁹ Monzer Kahf, *ibid*.

⁶⁰ Habibollah Salarzahi, *ibid*.

will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity."⁶¹

3. **Family Waqf:** This type of *waqf* started shortly after the death of the Prophet, peace and blessings be upon him, during the reign of `Omar ibn Al-Khattab (635-645), the second successor.⁶² When `Omar decided to document in writing his *waqf* in *khaibar*, he invited some of the Companions of the Prophet, peace and blessings be upon him, to attest to this document. Jaber, another Companion, says that when the news broke out every real estate owner made certain *waqf*. Some of those put a condition that part of the fruits, revenues of their *waqf* must be distributed to their own children and descendants, and another part should be given to the poor. This kind of *waqf* is called posterity or family *waqf*. Therefore, unlike today's foundations in America that are restricted to religious or philanthropic purposes, *waqf* in Islamic law may also be for one's own family and descendants.⁶³

The categories of *waqf* is a classical one that is found in jurist books but it is necessary to add that it is not the only way that *awqaf* can be sorted. Of course, from the point of view of the use of the *waqf* property it is important to know whether the property is used for the objective it was meant to serve and revenues realized therefrom are channeled to the objective of the *waqf*.⁶⁴ In other words, we need to make a distinction between *waqf* properties that produce usufruct that is consumed by the beneficiaries and properties that may produce any other goods or services but its net revenue is going to the benefit of its objective. This distinction is very important as the investmental *waqf* should be then subject to efficiency and managerial criteria that are different from the criteria of *waqf* properties that are themselves used for their

⁶¹ Al-Bukhari, quoted by Abdulmajeed Hassan Bello, *ibid*.

⁶² Abdulmajeed Hassan Bello, *ibid*.

⁶³ Monzer Kahf, *ibid*.

⁶⁴ *Ibid*.

own usufruct.⁶⁵ Therefore, in each of the above three categories we should distinguish between investmental *waqf* and usufructal *waqf* and once a *waqf* is assigned as investmental, it can be for religious purposes, for charity or for family members, present and future.⁶⁶

2.3.2. Characteristics and/or Features of *Waqf*

Basically, *waqf* has the following characteristics.

1. Irrevocability
2. Perpetuity
3. Inalienability

IRREVOCABILITY:

Irrevocability means the lack of power of the settler (*waqif*) to revoke his donation at any time. According to Abu Yusuf *waqf* is effective and binding as soon as the declaration is made by the donor without any need for delivery of possession to the beneficiary. To him, the property is transferred from the ownership of the settler to the 'ownership' of Allah and hence irrevocable.⁶⁷ This opinion is accepted by the majority of jurists in the four schools of Islamic law. Hence, except in the case of *waqf* by will and on death-bed, the declaration must be intended to take effect immediately.⁶⁸

This position was further amplified by judicial authorities which further strengthened the irrevocable nature of *waqf*. In the case of *GARJI V. GARJI*⁶⁹, the court while identifying the irrevocable nature of *waqf* made the following observations, thus: "A *waqf* means a foundation of a charitable nature... it means the giving or donation of the usufruct of a

⁶⁵ Ibid.

⁶⁶ Monzer Kahf, *ibid*.

⁶⁷ Mohammad Tahir Sabit b. et al, *Obstacles of the Current Concept of Waqf to the Development of Waqf Properties and the Recommended Alternative*, Department of Land Administration and Development and Centre for Real Estate Studies, Faculty of Geo-information Science & Engineering, Universiti Teknologi, Malaysia.

⁶⁸ Mohammad Tahir Sabit b. et al, *ibid*.

⁶⁹ (2007) ALL FWLR (PT. 346), 494, 509.

property which is in the entire or exclusive possession of the founder or donor... in any case, the donation, endowment, or foundation is usually made for Allah's sake and therefore with charitable intention. The donor may be alive or dead and he may retain the possession of the property or its administration. Even after the death of the donor, the administration of the property donated may continue to be made in the fictitious name of the said donor and it does not mean that the said property will be reverted to his children to be inherited."

PERPETUITY:

Perpetuity and irrevocability, at first, may appear the same, but, irrevocability means that the donor has no power to revoke *waqf*. This does not imply perpetuity all the times, especially, for a temporary *waqf*.⁷⁰

Perpetuity implies that once a property, often a real estate, is dedicated as *waqf* it remains *waqf* forever. Elimination of the *waqf* character of a property requires difficult and lengthy procedure. It requires a process of exchanging the *waqf* property for another property of equivalent value with approval of a local court. Upon completion of such an exchange the new property must be dedicated a *waqf* for the same purpose and beneficiaries as the former property. Theoretically, perpetuity implies that *waqf* property should not decrease.⁷¹

INALIENABILITY:

Inalienability means that after a valid declaration is made, the subject matter of the *waqf* passes out of the ownership of the *waqif* and it cannot be alienated or transferred either by the

⁷⁰ Mohammad Tahir Sabit b. et el, *ibid*.

⁷¹ Monzer Kahf, *The Role of Waqf in Improving the Ummah Welfare*, Paper presented to the International Seminar on '*Waqf* as a Private Legal Body,' organised by the Islamic University of North Sumatra, Medan, Indonesia, Jan. 6-7, 2003.

waqif or the *mutawalli* nor do their heirs can take it by way of inheritance.⁷² This is rooted in the hadith of the Prophet (PBUH).⁷³ Accordingly, jurists also prohibit the administrator from mortgaging or pledging the *waqf* property as security for a loan, simply because whatever cannot be sold cannot be mortgaged. Following this rule, the mortgage in the modern sense, whereby the bank can sell a property, would not be permissible. For this reason, recently the Saudi judiciary allowed the revenue (ghalah), and not the subject matter of *waqf* (asl), to be charged. For instance, under the Saudi Law, where the *waqf* land is barren and has no revenue, the *nazir* can apply to the court together with the development plan, for leave to charge those buildings which are to be constructed on the land.⁷⁴

2.4 Fundamental Principles of Waqaf

Waqf becomes effective and valid once declared by the owner of the property and the object which form the subject matter of the *waqf*, as well as the beneficiaries thereto, are identified. Thus, *waqf* has the following fundamental principles.

1. Donor (*Waqif*).
2. Subject matter of the *waqf* (*Maoquf*).
3. Beneficiaries (*Maoquf 'Alaihi*).
4. Terminology (*Seegah*).

DONOR (*WAQIF*):

This is the giver or the one who made the endowment. He is called *Waqif* in Arabic. Islamic law stipulates that *waqf* is not valid unless the donor (*Waqif*) possesses certain attributes ranging from adulthood, sanity and full right to dispose his/her property. In other words, an

⁷² Mohammad Tahir Sabit b. et al, *ibid*.

⁷³ *Sahih Muslim*, kitab al-wasiyyah, bab al-waqf, hadith 1632, 15.

⁷⁴ Mohammad Tahir Sabit b. et al, *ibid*.

infant, a slave, and people of unsound minds whose property is supposed to be under the supervision of someone else cannot make a valid *waqf*.⁷⁵

In the same vein, a woman cannot exercise valid right over her property beyond one third of the whole of her property without the consent of her husband. The Shafi'i School accepts and validates *waqf* made by a non-Muslim. In their view, the ability of the donor to express *waqf* is the condition of its validity and in that sense, *waqf* is valid from a non-believer.⁷⁶

The power of the donor is indefeasible and cannot be revoked by anyone including the state and court except in according to the conditions expressly provided by the donor in the document of the *waqf*. Jurists agree that the words of a donor are the words of law,⁷⁷ therefore, the inherent general jurisdiction of courts to validate a *waqf* or do otherwise, is basically limited to the application of the general principles of ownership, that vest in the owner the powers of disposal especially in respect of gifts, his capability to use such powers, and the type of the property and the beneficiary thereto.⁷⁸

SUBJECT MATTER OF *WAQF* (MAOQUF):

This is the property itself. *Waqf* cannot be made from items of property that Islamic Law forbids their ownership or trading in.⁷⁹

Waqf can be made from the landed and movable property such as items of furniture, copies of the Quran, books, weapons and animals. In similar manner, *waqf* is valid from everything that its sale is lawful and it is tangible and not perishable or consumable item.⁸⁰

The conditions imposed by the majority of Hanafis on the subject matter of the *waqf* is that it shall exist in perpetuity (e.g. land, fixture, tools and other things used for land or mentioned

⁷⁵ M.A. Ambali, *The Practice of Muslim Family Law in Nigeria*, 3rd Edition, Princeton & Associates Publishing Co.

⁷⁶ M.A. Ambali, *ibid*.

⁷⁷ Qahf, *al-Waqf al-Islami*, p. 118

⁷⁸ Mohammad Tahir Sabit, *the Concept and Objective of Waqf*, Department of Land Administration and Development, Faculty of Geo-information Sciences and Engineering, Universiti Teknologi Malaysia.

⁷⁹ M.A. Ambali, *ibid*.

⁸⁰ As-Sayyid Sabiq, *Fiqhus Sunnah*, Darul Fikr, Lebanon, 4th Edition, Vol. iii, p. 382.

expressly in the legal texts, or anything that custom accepts it as the subject matter of *waqf* like books). The Shafi'i and Hanbali Schools allow any property which can be used and its corpus remains intact. The Malikis allow any thing that can be owned provided that the donor is the owner and there is no restraint on dealing, such as in the case of pledge, charge and lease; for the rights and interests of others prevent the owner to deal with his property without the consent of the interest-holders.⁸¹

BENEFICIARIES (MAOQUF 'ALAIHI):

These are the beneficiaries who should be competent to benefit from an endowment. They may be poor individuals, students or institutions such as schools, hospitals, libraries, mosque, etc.⁸²

The recipient of *waqf* property should be capable to own, irrespective of being real or legal person; thus real persons as the relatives and the poor or the artificial persons such as mosque, hospitals etc. are considered legally recognized beneficiaries. But a donation is not valid if it is immoral or for sinful purpose according to Hanafis and Hanbalis. To Shafi'is and Malikis, however, moral rectitude is not the condition but it shall not be a sin such as *waqf* on activities that go against the religion of the donor⁸³, and on the enemy of the state. The beneficiaries, otherwise, could be a Muslim or non-Muslim citizen (dhiminis), poor, rich and so on.⁸⁴

⁸¹ Mohammad Tahir Sabit, *the Concept and Objective of Waqf*, Department of Land Administration and Development, Faculty of Geo-information Sciences and Engineering, Universiti Teknologi Malaysia.

⁸² M.A. Ambali, *ibid*.

⁸³ Mohammad Tahir Sabit, *the Concept and Objective of Waqf*, Department of Land Administration and Development, Faculty of Geo-information Sciences and Engineering, Universiti Teknologi Malaysia, 'the sin according to the religion of the donor is recognized only by the malikis'.

⁸⁴ Mohammad Tahir Sabit, *ibid*, Hasan Abdullah al-Amin, "al-Waqf fi al-Fiqh al-Islami", p. 118.

TERMINOLOGY (SEEGAH):

This is the accepted terminology to express the *waqf*. It may be *waqf*, *habs* or any other word in any language expressing devoting something to a specific course in the way of Allah. Islamic law allows *waqf* for a period of time. When the said time expires the ownership reverts to the original owner. *Waqf* may be restricted to a certain or specific cause such as a *waqif* saying that all rents collected on my house "A" should be spent on scholarship while those from house "B" should be used to procure drugs for a particular health institution. This type of *waqf* is called specific (*mutlaq*) as against the general type of *waqf*.⁸⁵

2.5 *Waqf* and its Legal Basis

There are four inspiring events in the very early Islamic History which are taken as cornerstone for the development of legal framework of *waqf*.

1. The donation of land for building the Quba' Mosque by the Prophet (s) after he migrated to Medina.
2. The donation of Rumah (a well bought by sayidina Uthman (r) the third Caliph), to be used by public, including himself, for drinking water and household needs.
3. The donation of a garden by Talha to his relatives after the advice of the Prophet⁸⁶.

The donation, by Umar ibn al-Khattab (r), of his most valuable land in Khayber upon the advice of the Prophet (s) who told him "retain the thing itself and devote its fruits to pious purposes."⁸⁷ Later Umar (r) wrote the terms of his trust relating to the aforementioned property in a document and gave witness to that effect during his rein. The document reads that "it [the property] should neither be sold nor made the subject of gift or inheritance; that it was charity (*sadaqah*) for the poor, relatives, manumission, wonderers, guests and for the way of Allah.

⁸⁵ Mohammad Tahir Sabit, *ibid*.

⁸⁶ It is reported that when the verse (*By no means shall ye shall attain piety until ye spend of that which ye love*) was revealed Talha (r) offered to give his much-loved garden in charity but the Prophet (p.b.u.h.) advised him to do so in favour of his own nearest and dearest..

⁸⁷ *Sahih Bukhari*, hadith No. 2586, kitab al-shurut, bab shurut fi al-waqf; *Sahih Muslim*, 1632, al-wasiyah, bab al-waqf

there be no sin for the administrator to eat from it in moderation or feed friend, but not to accumulating there from.” This is considered the first formal and explicit trust created during the lifetime of the Prophet (P.B.U.H.) and written by the second Caliph of Islam.

UNDER THE CONSTITUTION

Section 277(2) of the Constitution of the Federal Republic of Nigeria, 1999 as amended provides thus:

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 question of Islamic personal law.
2. For the purpose of subsection (i) of this section, the Sharia Court of Appeal shall be competent to decide
3. Any question of Islamic personal law regarding a *waqf*, gift, will or succession where the endower, testator or deceased is a Muslim.

2.6 CONCLUSION

From the foregoing, this chapter reviewed some literatures on the subject matter of *waqf* from its evolution stage. The chapter further examined the contextual definition of *waqf*, the types, characteristics and/or features, fundamental principles and the legal bases of the subject matter of *waqf* from the Glorious Quran, Sunnah and under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

CHAPTER THREE

WAQF AS ALTERNATIVE SOURCE OF BUSINESS FINANCING IN NIGERIA

3.1 The Role of *Waqf* in Socio-Economic Development

Waqf could be defined as diverting funds and other resources from current consumption and investing them into productive and prospective assets which generate revenues for future consumption by individuals or society at large.⁸⁸ *Waqf* is therefore a peculiar combination between the act of saving and the act of investment. It operates by taking certain resources off consumption and simultaneously putting them in the form of productive assets that increase the accumulation of capital in the economy. The *waqf* implies a sacrifice of a present consumption opportunity for the benevolent purpose for providing income and services for the society and following generations.⁸⁹ Thus, the role of *waqf* in socio-economic development is as follows:

1. Reducing government expenditure and participation in the economy.
2. Preventing deficit financing and decreasing rate of interest.
3. Restoring distribution of income and wealth.
4. Eradicating poverty.
5. Enhancing economic progress.

The above will be discussed seriatim.

Reducing Government Expenditure and Participation in the Economy

Essentially, *waqf* is not a part of government income or expenditure, rather it is a charity given voluntarily by well-to-do Muslim people in the society to serve public interests and enhance their welfare. Having financed by *waqf* fund, the government therefore can save a great amount of its budget and expenditure which initially planned for public interests. This budget then could be effectively channeled to other important development activities. It is in

⁸⁸ Mochammad Arif Budiman, the Significance of *Waqf* for Economic Development, Politeknik Negeri Banjarmasin, 1 June 2014. <https://mpira.ub.uni-muenchen.de/81144/> accessed on 28th August, 2019.

⁸⁹ Mochammad Arif Budiman, *ibid.*

this sense that *waqf* institution can replace the government's burden and responsibility and reduce its participation in the economy.⁹⁰

As the government bureaucracy is getting bigger, there is great tendency for the economy to be more centralized. The institution of *waqf* can encourage bigger private sector participation through voluntary actions and reduce government involvement in the economy.⁹¹

Waqf can place the government participation in the economy in the right proportion and perspective. In the present globalized economy, the private sector should be given a much greater space to actively participate in economic development as an efficiency-driven economy normally can be pushed by this private sector. The economics of innovation and creativity can be nurtured when the private sector has plenty opportunities to maneuver. Generally, the big size of the government participation in the economy will hinder private sector's progress.⁹²

During Ottoman's period, the development and construction of public facilities were generously supported by the well to do Muslim people especially statesmen and rich people, which in other contemporary systems had been the sole responsibility of the state. Almost all states services, religious, social, scientific, and modern life requirements were financed and managed by *waqf* facilities at no cost whatsoever to the government.⁹³

Preventing deficit financing and decreasing rate of interest

Deficit financing normally has a bad financial impacts on the government. In the present volatile world economic condition, the public sector should reduce its public borrowings to prevent possible crises in the future. The previous financial crises affecting East Asian

⁹⁰ Nik Hassan, N. M., the Economics of Awqaf Institution, paper presented at International Seminar on *Waqf*, Johor Bahru, August 11-12, 2008.

⁹¹ Nik Hassan, N. M., *ibid*.

⁹² Mochammad Arif Budiman, *ibid*.

⁹³ Saduman, S. & Aysun, E. E., the Socio-Economic Role of *Waqf* System in the Muslim Ottoman cities, Formation and Evolution, *Trakia Journal of Sciences*, Vol. 7(2), 272-275.

countries gave a valuable lesson that huge borrowings by the public as well as private sectors, particularly from external sources, brought about excessively negative effects on the region.⁹⁴ Consequently, it has been asserted that *waqf* system can significantly contribute to massive reduction in government expenditure. This in turn leads to a reduction in the budget deficit, which decreases the need for government borrowing and curbs the 'crowding-out effect'.⁹⁵ Eventually, this also brings about a reduction in the rate of interest which constitutes a basic impediment for private investment and growth.⁹⁶ Accordingly, serious attention need to be paid to the role of *waqf* for lowering interest rate by providing the most essential social services without any cost to the government.⁹⁷

In other words, the gradual elimination or reduction of interest through the *waqf* system should be taken into consideration. Thus, *waqf* could fulfill these functions by voluntary donations made by the well to do people. Thus, privately accumulated capital may be voluntarily endowed to finance and develop social services to the society without being trapped into deficit financing at all.⁹⁸

Restoring distribution of income and wealth

Waqf institution also plays important role to achieve a just distribution of wealth and income in the economy.⁹⁹ It has been considered that through voluntary contributions of the rich for the public purpose, *waqf* can have a positive implication on the redistribution of wealth. This kind of voluntary approach has a much better result than the redistribution through taxes and government transfer expenditure as the instrument of taxes has a greater costs implication for its implementation. Due to a lack of proper tax formulation, the costs of collecting taxes may create unnecessary burdens to the government. Likewise, in the transfer of government

⁹⁴ Nik Hassan, N. M., *ibid.*

⁹⁵ Crowding-out effect is an economic theory which means that rising in public sector spending drives down or even eliminates private sector spending.

⁹⁶ Çizakça, M., *Awqaf in history and its implications for modern Islamic Economies, Islamic Economic Studies*, Vol. 6(1), 437-463.

⁹⁷ Çizakça, M., *ibid.*

⁹⁸ Çizakça, M., *ibid.*

⁹⁹ Mochammad Arif Budiman, *ibid.*

expenditure, it involves a great cost. On the contrary, in the form of *waqf*, the costs of collection will be very cheap and in most cases it even involves no cost at all.¹⁰⁰

In the last one and half centuries, political economists have agreed that the state is the most efficient solution to overcome inequality problems. However, it has been revealed that the solution in the Islamic world throughout the history has been 'individual-state cooperation' and it was observed that the product of this cooperation has been a *waqf* system.¹⁰¹

Furthermore, a better distribution of income in the economy which is one of modern economic goals can be achieved by *waqf*. In this process, taxation is definitively assigned a secondary role. There are further implications: a lower tax burden means an enhancement in the 'consumers and producers' surpluses and a diminution in the "dead-weight cost of the tax". As a result, lower taxes would have a positive impact on aggregate production while at the same time reducing costs. Therefore, prices to the consumers would decrease and avoid inflationary growth.¹⁰²

Islamic teachings highly recommend individuals to give alms to the poor or to spend money through *waqf* mechanism, in addition to zakat, for the benefit of general public. Through such voluntary mechanism, individuals are helping the authorities to improve the condition of the society.¹⁰³

As *waqf* made by the rich people provides benefit to the society in general and the poor in particular, this feature serves to alleviate the effects of income and wealth inequality. Different from the short-term impact of government budgetary policies, the institution of *waqf* could eliminate the tendency towards concentration of wealth among society.¹⁰⁴

¹⁰⁰ Nik Hassan, N. M., *ibid*.

¹⁰¹ Baskan, B., *Waqf system as a redistribution mechanism in Ottoman Empire*. North-western University, Department of Political Science, 2002.

¹⁰² Çizakça, M., *ibid*.

¹⁰³ Mochammad Arif Budiman, *ibid*.

¹⁰⁴ Siddiqi, M. N., *Role of the state in the economy: An Islamic perspective*, Leicester: The Islamic Foundation.

Eradicating poverty

Poverty and income inequality have always been among the most critical and enduring problems that the societies face. There are ways to handle the poverty problems, starting from preventive to curative measures. An important way to alleviate poverty as considered by some writers is charity, which has been playing a role and can potentially be an effective means to overcome these acute problems.¹⁰⁵ Charity has many forms, but a long lasting form of charity is one that has the characteristic of perpetuity. The institution of *waqf* is such a perpetual charity in the Islamic system.¹⁰⁶

Through *waqf*, long-term assets that generate income flows can be created and preserved. These assets obviously help the process of production and creation of wealth. *Waqf* can play an important role in poverty alleviation by specifically targeting the poor as major recipients of its benefits. *Waqf* may also be formed purposely to disseminate knowledge and coach skills in entrepreneurship development among the poor as microfinance alone cannot create wealth unless combined with entrepreneurial skills. Indeed all technical assistance programs including for poverty alleviation can be organized as *waqf*.¹⁰⁷

Enhancing Economic Progress

In general, the well managed *waqf* properties would enhance economic progress in the country.¹⁰⁸ This fact had been practiced and attested in the past, particularly during the Ottoman Empire, that *waqf* and economy was highly connected in a positive direction. As the *waqf* institution was flourishing, the country's economy was also advancing. The bigger the size of *waqf* properties, the bigger the size of private sector involvement and the more progress the economy.¹⁰⁹

¹⁰⁵ Sadeq, A. H. M., *Waqf, perpetual charity and poverty alleviation*, *International Journal of Social Economics*, Vol. 29(1/2), 135-151, 2002.

¹⁰⁶ Sadeq, A. H. M., *ibid*.

¹⁰⁷ Obaidullah, M. & Khan, T., *Islamic microfinance development: Challenges and initiative*, Jeddah: Islamic Development Bank, 2008.

¹⁰⁸ Mochammad Arif Budiman, *ibid*.

¹⁰⁹ Nik Hassan, N. M., *ibid*.

There is a positive correlation between active private sector's participation in the economy with national economic progress. More interestingly, since the *waqf* provides public goods and thus fulfills the society's needs adequately, it solves the problem of under supply of public goods, so often observed in conventional economies. Given the wide involvement of private sector, the provision of *waqf* for public purposes is so abundant and even creates an excess supply of public goods rather than their scarcity in Islamic economy.¹¹⁰

Giving *waqf* as a part of spending in the way of God also stimulates the circulation of wealth in the society as envisaged by the Glorious Quran.¹¹¹ The motivation to do *waqf* given by the Prophet and the promised lifelong and afterlife rewards have encouraged Muslim people to do this noble charity. This action could effectively avoid hoarding and idle wealth in the economy making it keeps circulated and productive which eventually leads to economic progress.¹¹²

3.2 Principles of Islamic Finance

Islamic Finance is founded on specific principles established by Islam or by the sharia, the main sources of which are the Glorious Quran, the Sunna, the al-Ijma' (consensus of all the Muslim scholars on a specific issue) and al-Qiyas (study by analogy of cases not explicitly defined in the Glorious Quran and in the Sunna by Muslim scholars). It is therefore a model characterised by the promotion of economic activities that must be in line with both the religious principles of Islam and the conventional laws in force. Consequently, when talking of Islamic Finance in general and of Islamic banks in particular, reference is made to an integral and non-exclusive part of a complex economic system, i.e., the Islamic economic system, the principles and characteristics of which derive from the sharia. These principles

¹¹⁰ Çizakça, M., *ibid.*

¹¹¹ Surah al-Hashr (Q:59:7).

¹¹² Mochammad Arif Budiman, *ibid.*

require the Muslim believer to undertake economic activities that respect the precepts of Islam, defined in modern terms as sharia compliant activities and, therefore, to eschew investments and entrepreneurial activities against the values of Islam.¹¹³

Finance therefore stems from religious precepts, but with its contracts and financial instruments creates an economic and financial model in which individual religious obligations are balanced with the assumption and fulfillment of responsibility not to damage other persons, society and nature. Islamic Finance bases its activities on the real economy, i.e., on goods that can be identified and are tangible, and calls on the parties to support the risks linked to the success or failure of the investments they have undertaken. This finance is open and within the reach of everybody, Muslim and non-Muslim, because of its ethical, peculiar characteristics.¹¹⁴

There are five fundamental principles of Islamic finance, thus:¹¹⁵

1. Ban on Ribà (charging of interest);
2. Ban on speculating (maysir) and introducing elements of uncertainty in contracts (ghàrar);
3. Ban on the use of, trade and investment in prohibited assets or activities (haram);
4. Profit and Loss Sharing—PLS principle;
5. The obligation to have real assets underlying all financial transactions.

The above will be discussed hereunder.¹

Ban on Riba (Charging Interest)

Islam prohibits interest, in Arabic 'ribà'. The explicit basis of this prohibition is to be found in the Glorious Quran¹¹⁶ and gives form to the substantial objective that characterizes the Islamic economic system, meaning that there can be no earnings without the assumption of

¹¹³ <https://webcache.googleusercontent.com/search?q=cache:95rKPUQb2DUJ:https://www.mdpi.com/20711050/10/3/637/pdf+&cd=4&hl=en&ct=clnk&gl=ng&client=firefox-b-d>. accessed on 2nd September, 2019.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Surah al-Baqarah (Q: 2, V: 275-280)

related risks and earnings must always result from the active work of man. Hence the absolute prohibition of any positive, fixed and predetermined return rate that is guaranteed regardless of the typology and the results of the investment. In particular, ribà occurs when there is an interest rate, whether positive or negative, that is fixed ex ante, linked to the time factor and to the amount of the loan, regardless of the economic results obtained through the use of the money lent.¹¹⁷

This conception implies that Islamic Finance requires to operate without resorting to interest, which however, is a key factor in the functioning of traditional finance. To replace interest, Islam indicates profit (intended economically as the rate of profit or the mark up) as a lawful alternative to earnings, i.e., the profit that results from trade/investment transactions and therefore represents the actual measure of the actual growth obtained of the capital through its use. Lawful earnings are based mainly on Profit and Loss Sharing, which in Islamic Finance is an essential principle and requires the holder of the capital and he who uses it to share both the responsibility and the risks of the investment made.¹¹⁸

Ban on Gharar and Maysir (Uncertainty and Speculation)

The Glorious Quran explicitly prohibits profit based on uncertainty (ghàrar). The ban on ghàrar principally concerns the characteristics and purposes of contracts of the Islamic financial instruments. In order to be valid, contracts must not contain elements of uncertainty in relation to the essential elements of the contract, such as the uncertainty of the purpose or the nature of the contract and the price of the goods that are the subject of the trade.¹¹⁹ Consequently, Islamic Finance does not admit so-called aleatory contracts characterized by the uncertainty of their effects. Thus, transactions are banned that determine enrichment due

¹¹⁷ Warde, I. *Islamic Finance in the Global Economy*; Edinburgh University Press: Edinburgh, UK, 2000.

¹¹⁸ Warde, I., *ibid.*, <https://webcache.googleusercontent.com/search?q=cache:95jKPUQb2DUJ:https://www.mdpi.com/20711050/10/3/637/pdf+&cd=4&hl=en&ct=clnk&gl=ng&client=firefox-b-d>. accessed on 2nd September, 2019.

¹¹⁹ Kumar, A. Religious beliefs, gambling attitudes and financial market outcomes, *J. Finance. Econ.* 2011, 102, 671–708.

o chance (such as the case of gambling and placing bets) and which have speculative elements (so-called derivative financial instruments and hedging transactions such as swaps). This principle involves the Islamic Finance's preference to operate through immediate performance exchange contracts. The aim is in preventing that the deferral of the performance of the contract by one of the parties generates a benefit for said party, or for the other one that is not proportionate to the activity put in place and results solely from variations in the quality or price of the asset being the subject matter of the contract in the period between the conclusion and the performance of the contract.¹²⁰

An equally fundamental prohibition for the validity of the contracts is maysir (speculation), a term that derives from the Arabic word 'yours', which means easiness or easy and effortless earnings. This implies the prohibition on assuming excessive risks characterised by extreme results, or the attempt to obtain richness by chance by betting on the future result of an event. The value of this prohibition, compared with gharar, is more centred on the behaviour of the individual and the relative repercussions on society.¹²¹

The Concept of Haram

According to Islam, the behaviour of the individual has social, political and economic ramifications such as relations with others (based on respect, honesty, good faith, solidarity and cooperation), clothing (respectful clothing in public spaces) and food (prohibition of many items such as wine and pork meat). Such a regulation implies the definition and classification of the actions and activities considered admissible and those prohibited.¹²²

Prohibitions are based on the concept of haram, which means 'unlawful' from the point of view of the sharia. Thus, the use, consumption and trading in or (direct or indirect)

Kumar, A. Religious beliefs, gambling attitudes and financial market outcomes, *J. Finance. Econ.* 2011, 102, 671–708. bid.

<https://webcache.googleusercontent.com/search?q=cache:95jKPUQb2DUJ:https://www.mdpi.com/2071/10/3/637/pdf+&cd=4&hl=en&ct=clnk&gl=ng&client=firefox-b-d> accessed on 2nd September, 2019.

investment in certain goods or activities such as (a) alcoholic drinks (production and sale); (b) pork (the breeding of pigs, processing, sale and production of pork-based foodstuffs); (c) weapons; (d) tobacco; (e) pornography; (f) gambling and placing bets, are prohibited.

Another important deduction from this principle is the prohibition of investments in shares of companies, whether listed or non-listed, that are directly or indirectly involved in the trading or production of the abovementioned goods.¹²³

The Sharing of Risks and Earnings

Due to the ban on ribà, the Islamic economic system provides for Profit and Loss Sharing (PLS). The aim of this principle is to safeguard the parties of a transaction (the holder of the capital and the user of the capital) to assume their responsibilities in the case of successes as well as in the case of risks. The individuals that provide capital will have a return proportionate to the effective goodness of the investment and not a pre-fixed amount. As a result, this is the main difference between Western and Islamic banks, consisting in replacing interest with profit sharing.¹²⁴

Real Economic Activities

In addition to the ban on ribà, gharar and maysir and the adoption of the principle of Profit and Loss Sharing (PLS), which are mandatory in the Islamic financial and economic system, Islam defines the intrinsic characteristics of the activities that can be the subject of financial investments and transactions. Consequently, all the financial transactions must have real activities underpinning them and not be a mere exchange of sums of money or the buying and selling of financial debts (as it is in the case of swaps and derivatives in general).¹²⁵

The analysis of the principles outlined above allows that the ban on ribà is closely connected with the monetary and financial activity, whilst the other four prohibitions concern the real

¹²³ <https://webcache.googleusercontent.com/search?q=cache:95jKPUQb2DUJ:https://www.mdpi.com/20711050/10/3/637/pdf+&cd=4&hl=en&ct=clnk&gl=ng&client=firefox-b-d>, accessed on 2nd September, 2019.

¹²⁴ Ibid.

¹²⁵ Ibid.

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¹²⁴ Ibid.

¹²⁵ Ibid.

economy, the socially responsible behaviour of companies in their business and investments.¹²⁶

3.3 Islamic Financing Techniques

There are several Islamic modes of financing which serve as alternatives to interest based financing.¹²⁷ There is, however, divergence of views between theory and practice about the order of preference of these modes of financing. The theoreticians are, generally, of the view that profit/loss sharing should be the most widely prevailing mode of financing in the financial system of Islam.¹²⁸ Contemporary practice of Islamic banking, however, is overwhelmingly dependent on the use of mark-up based techniques. Profit sharing is the least popular mode of financing in most of the Islamic banks in the modern world.¹²⁹ Some theoreticians have been quite critical of this practice.¹³⁰ This controversy can be understood and synthesized by analysing the economics of the various types of Islamic financing techniques.

Furthermore, each Islamic financing technique has different shades of economic implications for the capital providers and capital users. Techniques differ according to the extent of participation in management by the capital provider. They also have different implications on uncertainty and variability of cost of the capital for the capital user. The economics of

¹²⁶ <https://webcache.googleusercontent.com/search?q=cache:95jKPUQb2DUJ:https://www.mdpi.com/20711050/10/3/637/pdf+&cd=4&hl=en&ct=clnk&gl=ig&client=firefox-b-d>, accessed on 2nd September, 2019.

¹²⁷ M. Fahim Khan, Comparative economics of some Islamic Financing Techniques, Islamic Research and Training Institute, Islamic Development Bank, Jeddah, Saudi Arabia.

¹²⁸ Ahmad, Ausaf, *Development and Problems of Islamic Banks*, Islamic Research and Training Institute, Islamic Development Bank, Jeddah.

¹²⁹ Ahmed, Khurshid, *Studies in Islamic Economics*, the Islamic Foundation, Leicester, UK, (1979).

¹³⁰ Ahmad, Ziauddin, Munawar Iqbal and M. Fahim Khan, *Money and Banking in Islam*, Jeddah International Center for Research in Islamic Economics, King Abdulaziz University and Islamabad Institute of Policy Studies, (1983).

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¹²⁷ M. Fahim Khan, Comparative economics of some Islamic Financing Techniques, Islamic Research and Training Institute, Islamic Development Bank, Jeddah, Saudi Arabia.

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¹³⁰ Ahmad, Ziauddin, Munawar Iqbal and M. Fahim Khan, *Money and Banking in Islam*, Jeddah International Center for Research in Islamic Economics, King Abdulaziz University and Islamabad Institute of Policy Studies, (1983).

different techniques needs to be studied for the capital provider and the capital user for theoretical as well as practical purposes.¹³¹

There are several possible financing techniques which conform to the Islamic principles. Some of them were prevalent in the period of the Prophet (Peace be Upon him) and the rightly guided Caliphs and these have been discussed in the fiqh literature. Others have emerged recently to meet the contemporary financing requirements within the light of the teachings of Islam.¹³²

There are five basic modes of financing.¹³³ They are:

1. Mudarabah
2. Musharakah
3. Ijara (Leasing)
4. Bay'-Salam
5. Bay' - Murabahah (Bay' Ajil) (or Mark-up based Technique)

The above will be discussed briefly hereunder.

Mudarabah

This is a kind of partnership where one partner gives money to another for investing in a commercial enterprise. The investment comes from the first partner who is called the Rab-al-Maal while the management and work is an exclusive responsibility of the other, who is called Mudarib and the profits generated are shared in a predetermined ratio.¹³⁴

¹³¹ M. Fahim Khan, *ibid.*

¹³² M. Fahim Khan, *ibid.*

¹³³ M. Fahim Khan, *ibid.*

¹³⁴ Meezan Bank's Guide to Islamic Banking,

<<https://nscpolteksby.ac.id/ebook/files/Ebook/Accounting/Ethica%20Handbook%20of%20Islamic%20Finance/23.%20MUDARABAH.pdf>>
accessed on 10th September, 2019.

Types of Mudarabah

There are 2 types of Mudarabah, namely:¹³⁵

1. Al Mudarabah al Muqayyadah (Restricted Mudarabah): The Rab-al-Maal may specify a particular business or a particular place for the Mudarib, in which case he shall invest the money in that particular business or place. This is called Al Mudarabah al Muqayyadah (restricted Mudarabah).¹³⁶
2. Al Mudarabah al Mutlaqah (Unrestricted Mudarabah): However, if the Rab-al-Maal gives full freedom to the Mudarib to undertake whatever business he deems fit, this is called Al Mudarabah al Mutlaqah (unrestricted Mudarabah). However, the Mudarib cannot, without the consent of the Rab-al-Maal, lend money to anyone. The Mudarib is authorized to do anything which is normally done in the course of business.¹³⁷

Limitations of the Mudarib

- a. However, if they want to have extraordinary work which is beyond the normal routine of the traders, he cannot do so without the express permission of the Rab-al-Maal.¹³⁸
- b. Keep another Mudarib or a partner
- c. Mix his own investment in that particular Mudarabah without the consent of the Rab-al-Maal.¹³⁹

¹³⁵ Ibid.

¹³⁶ Meezan Bank's Guide to Islamic Banking,

<<https://nscpolteksby.ac.id/ebook/files/Ebook/Accounting/Ethica%20Handbook%20of%20Islamic%20Finance/23.%20MUDARABAH.pdf>>
accessed on 10th September, 2019.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

Musharakah

Musharakah means a joint enterprise formed for conducting some business in which all partners share the profit according to a specific ratio while the loss is shared according to the ratio of the contribution. It is an ideal alternative to interest based financing with far reaching effects on both production and distribution.¹⁴⁰

Types of Musharakah

1. **Shirkat-al-Milk (Partnership by Joint Ownership):**¹⁴¹ It means joint ownership of two or more persons in a particular property. This kind of Shirkah may come into existence in two different ways:
 - a. **Optional (Ikhtiari):** At the option of the parties (e.g. if two or more persons purchase equipment, it will be owned jointly by both of them and the relationship between them with regard to that property is called Shirkat-al-Milk Ikhtiari). Here this relationship has come into existence at their own option, as they themselves elected to purchase the equipment jointly.¹⁴²
 - b. **Compulsory (Ghair Ikhtiari):** This comes into operation automatically without any action taken by the parties. For example, after the death of a person, all his heirs inherit his property, which comes into their joint ownership as a natural consequence of the death of that person.¹⁴³
2. **Shirkat-al-Aqd (Partnership by Contract):**¹⁴⁴ This is the second type of Shirkah, which means, "a partnership effected by a mutual contract." For the purpose of brevity it may also be translated as a "joint commercial enterprise." Shirkat-al-Aqd is further divided into three kinds:

¹⁴⁰ Meezan Bank's Guide to Islamic Banking, ibid.

¹⁴¹ Meezan Bank's Guide to Islamic Banking, ibid.

¹⁴² Meezan Bank's Guide to Islamic Banking, ibid.

¹⁴³ Meezan Bank's Guide to Islamic Banking, ibid.

¹⁴⁴ Meezan Bank's Guide to Islamic Banking, ibid.

- a. Shirkat-al-Amwal (Partnership in capital): Where all the partners invest some capital into a commercial enterprise.¹⁴⁵
- b. Shirkat-al-Aamal (Partnership in services): Where all the partners jointly undertake to render some services for their customers and the fee charged by them is distributed according to an agreed ratio. For example, if two people agree to undertake tailoring services for their customers on the condition that the wages so earned will go to a joint pool which shall be distributed between them irrespective of the size of work each partner has actually done, this partnership will be a Shirkat-al-Aamal. It is also called Shirkat-at-Taqabbul or Shirkat-as-Sanai or Shirkat-al-Abdan.¹⁴⁶
- c. Shirkat-ul-Wujooh (Partnership in Goodwill): The word has its root in the Arabic word Wajahat meaning goodwill. Here the partners have no investment at all. They purchase commodities on deferred price, by getting capital on loan because of their goodwill and sell them at spot. The profit so earned is distributed between them at an agreed ratio.¹⁴⁷

The Basic Rules of Musharakah

Musharakah, or Shirkat-al-Amwal, is a relationship established by the parties through a mutual contract. Therefore, it goes without saying that all the necessary ingredients of a valid contract must be present. For example, the parties should be capable of entering into a contract; the contract must take place with the free consent of the parties without any duress, fraud or misrepresentation, etc.¹⁴⁸ However, the following are the basic rules of Musharakah.

The capital in a Musharakah agreement should be:

- a. Quantified (Ma'loom): Meaning how much etc.

¹⁴⁵ Meezan Bank's Guide to Islamic Banking, *ibid.*

¹⁴⁶ Meezan Bank's Guide to Islamic Banking, *ibid.*

¹⁴⁷ Meezan Bank's Guide to Islamic Banking, *ibid.*

¹⁴⁸ Meezan Bank's Guide to Islamic Banking, *ibid.*

- b. Specified (Muta'aiyan): Meaning specified currency etc.
- c. Not necessarily be merged: The mixing of capital is not required.
- d. Not necessarily be in liquid form: Capital share may be contributed either in cash/liquid or in the form of commodities. In the case of a commodity, the market value of the commodity shall determine the share of the partner in the capital.¹⁴⁹

Ijara (Leasing)

Ijarah comes from the Arabic word *ajr* which means reward or wages for work done or services rendered. From the technical meaning in Fiqh, ijarah means a contract for hire of persons or services or "usufruct" of a property. Thus, Ijarah is about the contract between a lessor and lessee in which the lessor being the owner of the property allows the lessee to enjoy the usufructs of the property at agreed terms on the rental and period of lease.¹⁵⁰

Types of Ijarah

Ijarah can be divided into two types, namely operating lease and financial lease

1. **Operating lease (Al-ijarah 'ain):** Traditionally, the only kind of Ijarah that was only operating lease, whereby one owns an asset or equipment and leases it to others for rental for a specified period. This form of ijarah is known in Islamic banking and finance as operating lease. In this form of lease, the ownership of the leased assets will remain with the bank at the end of the lease period. In operating lease, the bank may already own a property which it wants to lease it out. In other words, operating

¹⁴⁹ Meezan Bank's Guide to Islamic Banking, *ibid*.

¹⁵⁰ Asma Fatma, Meaning of Ijarah, Universiti Sultan Zainal Abidin, Malaysia. Available at <https://www.academia.edu/3583126/MEANING_OF_IJARAH> accessed on 10th September, 2019.

lease is not preceded by a promise to lease or the concept is not based on prior promise.¹⁵¹

2. **Financial lease (Ijarah Muntahia Bittamleek):** The evolution of modern Islamic banking and finance has created another form of ijarah known as Ijarah Muntahia Bittamleek (IMB) or financial lease. The IMB is defined as a form of transfer of ownership of usufructs of some assets, such as buildings or equipment, for a particular period in consideration for a defined rent which is usually higher than the normal rental to encourage the lessor to transfer the leased assets to the lessee at the end of the lease period after the lessee has paid all installments without delay. In a financial lease, it is necessary to clearly state the method of transfer of ownership in the agreement. The final transfer will occur at the end of the lease period. The manner of transfer must be put separately in a different document attached to the lease agreement.¹⁵² The transfer of ownership could take place in one of the following manner:

- a. Promise to transfer the ownership on the basis of ordinary or conditional gift: The financial lease attached to the concept of gift is the most applied method by Islamic financial institutions. The difference between ordinary and conditional gifts is that gift without payment condition is not strong by law as opposed to gift with a condition on payment of all rental instalments. The conditional gift is similar to a contract which makes it stronger. This is because once the client pays the last installment, the bank is obliged to transfer the property.¹⁵³
- b. Promise to transfer the property through sale: In this form, the financial lease agreement is concluded with an understanding that the lessor or the bank will sell

¹⁵¹ <http://ijara.co/wp-content/uploads/2013/07/Islamic-Leasing-Documents.pdf> accessed on 10th September, 2019.

¹⁵² <http://ijara.co/wp-content/uploads/2013/07/Islamic-Leasing-Documents.pdf>. Accessed on 10th September, 2019.

¹⁵³ Ibid.

the property to the client. The sale may take place through a nominal value because the major part of the selling price has been paid in the form of rental. It must be noted that the sale may also take place prior to the maturity of the lease agreement. In this case, the sale price may be the market value of the property or the outstanding rental. The parties may also agree on sale price that will be paid on installment.¹⁵⁴

Elements of Ijarah

1. **Form:** This includes an offer and acceptance, which means *ijab* and *qabul*.¹⁵⁵
2. **Parties:** A lessor, the owner of the leased asset, and a lessee, the party who reaps the service of the leased asset.¹⁵⁶
3. **The object of the (ijarah) contract:** Includes the rental amount and the service and the usufruct to be derived from the transaction.¹⁵⁷

Bay'-Salam

Bay' salam refers to the sale which is not available at the time of contract or at the time of conclusion of the sale but which will be delivered in the future on a fixed date. In other words, it is a sale of liability whose characteristics are described in exchange for a price or capital-sum.¹⁵⁸ The Hambalis's and Shafi'is school of thoughts define it "as a contract over described merchandise sold as a deferred liability on one party in exchange for a price that is received during the contract session". While the Maliki's school of thought defines it as "a

¹⁵⁴ Ibid.

¹⁵⁵ Asma Fatma, *ibid.*

¹⁵⁶ Asma Fatma, *ibid.*

¹⁵⁷ Asma Fatma, *ibid.*

¹⁵⁸ Ahamad, Umar, Bay' Salam as an Islamic Financial Alternative for Agricultural Sustainability in Nigeria, *Journal of Islamic Economics, Banking and Finance*, Vol-11, No. 4, Octo-Dec, 2015.

sale in which the capital sum (price) is paid in advance and the object of sale is deferred to a specified term.”¹⁵⁹

Elements of the contract

In order for bay' salam to be actually valid there must be the presence of all the following:

1. Rabbal-salam or al-musalim:- this is known as forward buyer which can be an individual as well as a group or a company.¹⁶⁰
2. Al-musalimi alayhi:- the forward seller can also be an individual, group or a company. Majority of scholars state that the word salam or salaf must be mentioned in the offer statement.¹⁶¹
3. Al-musalimfihi : object of forward sale. It is mandatory that object of sale must be specified in term of genus, type, quantity and quality. All these must be agreed upon in unequivocal terms.¹⁶²
4. Ra'sul mal al-salam: price or capital sum of the forward sale. It is a paramount condition to clearly determine the actual price. It must be specified if it is measured in volume, weight or number. Pointing to the price without explicitly stating its amount is not welcomed.¹⁶³

Bay' - Murabahah (Bay' Ajil) (or Mark-up based Technique

Murabaha is a particular kind of sale where the seller expressly mentions the cost he has incurred for the sold commodity, and sells it to another person by adding some profit thereon. Thus, Murabaha is not a loan given on interest; it is a sale of a commodity for cash/deferred price. The Bai' Murabaha involves the bank's purchase of a commodity on behalf of a client and its resale to the latter on a cost-plus-profit basis. Under this arrangement the bank

¹⁵⁹ Al-Zuhayli, Wahbah, *Financial transactions in Islamic jurisprudence*, Mohamoud A. el-Gamal (Trans), Beirut: Dar al-fikir al-Mauaser (2007)

¹⁶⁰ Ahamad, Umar, *ibid.*

¹⁶¹ Ahamad, Umar, *ibid.*

¹⁶² Al-Zuhayli, Wahbah, *ibid.* (This is based on hadith which says: "Whoever participates in a forward sale, let him buy a known volume or

own weight for a known term of deferment")

¹⁶³ Ahamad, Umar, *ibid.*

discloses its cost and profit margin to the client. In other words rather than advancing money to a borrower, which is how the system would work in a conventional banking agreement, the bank will buy the goods from a third party and sell those goods to the customer for a pre-agreed price.¹⁶⁴

Basic Rules of murabahah

1. The subject of sale must exist at the time of the sale. Thus anything that may not exist at the time of sale cannot be sold and its non-existence makes the contract void.
2. The subject matter should be in the ownership of the seller at the time of sale. If he sells something that he has not acquired himself then the sale becomes void.
3. The subject of sale must be in physical or constructive possession of the seller when he sells it to another person. Constructive possession means a situation where the possessor has not taken physical delivery of the commodity yet it has come into his control and all rights and liabilities of the commodity are passed on to him including the risk of its destruction.
4. The sale must be instant and absolute. Thus a sale attributed to a future date or a sale contingent on a future event is void.
5. The subject matter should be a property having value. Thus a good having no value cannot be sold or purchased.
6. The subject of sale should not be a thing used for an un-Islamic purpose.
7. The subject of sale must be specifically known and identified to the buyer. For example, A, owner of an apartment building says to B that he will sell him an apartment. Now the sale is void because the apartment to be sold is not specifically mentioned or pointed out to the buyer.

¹⁶⁴ Meezan Bank's Guide to Islamic Banking, *ibid.*

8. The delivery of the sold commodity to the buyer must be certain and should not depend on a contingency or chance.
9. The certainty of price is a necessary condition for the validity of the sale. If the price is uncertain, the sale is void.
10. The sale must be unconditional. A conditional sale is invalid unless the condition is recognized as a part of the transaction according to the usage of the trade.

3.4 Micro and Macro Islamic Finance

While the important role of charitable and non-government organizations is getting acknowledged recently in the overall economic growth and welfare programs of the economy, Islam had introduced these kinds of institution since its inception more than 1400 years ago. Obligatory and voluntary charities in the form of, among others, zakah and *awqaf* are important instruments to enhance the welfare of the poor.¹⁶⁵

The social welfare role of a *waqf* institution will depend on their type and size. *Awqaf* institutions are classified into two main categories. First, *awqaf* institutions can be distinguished as religious and philanthropic. The former would be religious places like mosques, graveyards, shrines/tombs, etc. and the latter would be asset/property given away for the use of a defined group of beneficiaries. The second classification of *waqf* institutions is based on the type of beneficiaries. The beneficiaries can be either family members or the general community.¹⁶⁶

Some Islamic Micro Finance Institutions (MFIs) have been initiated in a few countries. These institutions have adopted the group-based lending format of the conventional MFIs and

¹⁶⁵ Habib Ahmed, *Role of Zakah and Awqaf in Poverty Alleviation*, Islamic Development Bank group, Islamic Research and Training Institute, Jeddah, Saudi Arabia.

¹⁶⁶ Habib Ahmed, *ibid.*

adapted Islamic principles and values.¹⁶⁷ While these MFIs use various Islamic modes of financing on the assets side, they face certain problems on the liabilities side. A survey of Islamic MFIs in Bangladesh identifies lack of funds as one of the major constraints to growth and efficient operations.¹⁶⁸ The same survey identifies some problems Islamic MFIs face in obtaining funds from external sources. Though some funds are available from government agencies, they impose certain terms and conditions. Some of these terms and conditions are contrary to Islamic principles and limit the flexibility in the operations of Islamic MFIs.¹⁶⁹ For example, the funds are given on interest and the MFIs may be required to recover a certain fixed rate of return on their investments. As a result, funds from these sources cannot be employed in micro financing with certain Islamic modes of financing like *mudarabah* and *musharakah*.¹⁷⁰

Furthermore, apart from limiting the expansion of operations of MFIs, lack of funds has other detrimental implications. The MFIs cannot hire sufficient workers at competitive wages. Lack of funds also means employing fewer field level workers, lowering the employee-beneficiary ratio, adversely affecting supervision and monitoring. Paying lower wages also implies that they can employ relatively low productivity workers. Low pay sometimes induces employees with experience to move on to other MFIs paying better pay and benefits. These factors increase the probability of default and lowering the expected income of MFIs. To resolve some of the afore-mentioned problems, a *waqf*-based Islamic MFI is suggested.¹⁷¹ Thus, other than cash, the assets of a *waqf*-based Islamic MFI will comprise different types of non-interest bearing financial instruments. Due to reasons discussed below, a *waqf*-based Islamic MFI will hold a combination of low-risk fixed-income assets along with micro

¹⁶⁷ Habib Ahmed, "Financing Microenterprises: An Analytical Study of Islamic Microfinance Institutions," *Islamic Economic Studies*, 9 (2), 2002.

¹⁶⁸ Habib Ahmed, *ibid.*

¹⁶⁹ Habib Ahmed, *Waqf based Micro-Finance: Realizing the Social Role of Islamic Finance*, Islamic Development Bank group, Islamic Research and Training Institute, Jeddah, Saudi Arabia.

¹⁷⁰ Habib Ahmed, *ibid.*

¹⁷¹ Habib Ahmed, *ibid.*

financing activities. Micro financing will include investments and *qard*. For investments purposes, a variety of Islamic modes of financing may be used. The type of financing instrument will depend on the type of activity for which funds are granted. The economic activities that microenterprises usually engage in production, trading and providing (transport) services.¹⁷²

Given the small scale nature of the operations of the micro entrepreneurs, it may be difficult for the Islamic MFI to use either sale-based or partnership modes of financing. It is too costly (in terms of man-hours) and at times impossible to buy the goods/assets that beneficiaries want. For example, it becomes very difficult to accompany a beneficiary who may want a particular kind of good sold in a far off market. One way to overcome this is to use profit-sharing modes of financing. The sharing modes of financing, however, have their own problems. The main problem is the moral hazard problem arising from false underreporting of profit as it is very difficult to assess the financial accounts. This problem can be mitigated by supervising the operations and monitoring accounts of the beneficiaries. Supervision and monitoring, however, is costly. In some special cases, the MFI can use loans (*qard*) that charge service costs only. These loans would be used for poorest sections of the population and for activities where other modes of financing cannot be used.¹⁷³

Sustainability of *Waqf* Based Micro Finance

1. **Mitigating Credit Risk:** As mentioned above, the innovative operational format of MFIs suits the poor, whose lack of physical collateral disqualifies them to borrow from traditional commercial banks. *Waqf*-based Islamic MFIs will retain the innovative format of operation of conventional MFIs and oriented the program towards Islamic principles and values. Thus, like their conventional counterparts,

⁷² Habib Ahmed, *ibid*.

⁷³ Habib Ahmed, *ibid*.

Islamic MFIs have largely resolved the credit risks through social collateral of groups and weekly repayments.¹⁷⁴

2. **Resolving Moral Hazard Problem:** Islamic MFIs have some inherent characteristics that can resolve the moral hazard problem faced by conventional MFIs pointed above. The main mode of financing used by the Islamic MFIs is murabahah/bai-muajjal or ijarah (leasing). These instruments involve real transaction and instead of cash being given out, asset/good is exchanged. As a result, the opportunity of diverting funds for non-productive uses other than that requested for is reduced, if not eliminated. This increases the profitability of the MFI by decreasing the default rate.¹⁷⁵
3. **Economic Viability:** In cases where Islamic MFIs get funds from traditional interest-based outlets, the financing costs appear to be high. For example, the financing costs of two small Islamic MFIs, Noble and Rescue in Bangladesh, were 35.8 percent and 12.5 percent of the total expenditures respectively.¹⁷⁶ As the bulk of the *waqf*-based Islamic MFIs funds will come from *waqf* endowment, the financing costs of these institutions will be significantly lower than their conventional counterparts. Given the philanthropic nature of these funds, no returns are expected by contributors. While Islamic MFIs will pay returns on funds coming from external sources like deposits and beneficiary savings, the *waqf* component of funds will significantly reduce the financial costs and improve financial viability of the institution.¹⁷⁷

Habib Ahmed, *ibid.*

Habib Ahmed, *ibid.*

Habib Ahmed, "Financing Microenterprises: An Analytical Study of Islamic Microfinance Institutions," *Islamic Economic Studies*, 9 (2).

02.

Habib Ahmed, *ibid.*

3.5 Cash *Waqf* Financing

The growing poverty in the world, specifically the third world nation is mainly accentuated by the absence of credit to the grass-root of the society. They have no access to loan because the bank sees them as unbankable. This had led to the introduction of micro finance banks, and yet how to reduce poverty remains one of the biggest problems the world is facing today. Therefore, Cash *waqf* as a money-based type of *waqf* is capable of assisting the grass-root in securing interest free loan for small businesses, and also, subject to the purview of the *mutawalli* some of the grass-roots may also get no-refund financial assistance to start up a business.¹⁷⁸

The importance of being empathetic with the grass-roots manifests more when observing that, poverty alleviation was among the first activities of Prophet Muhammad (S.A.W) upon his migration to Madinah. And in this period there occurred a popular episode from one of his companion called Abdul Rahman Ibn Auf who was offered free wealth but he politely rejected and chose to be an entrepreneur by enquiring about the location of the market place. Within a short period of doing business he became successful and got married without seeking for external financial assistance. This supports the fact that source of credit is the problem facing the grass-roots.¹⁷⁹

The fundamental problem of the grass-roots today is lack of access to capital. It is a well-established fact that government cannot be the sole employer of its citizenry. This inability of the government to absorb all able-bodied member of the workforce has left many without jobs and further resulting in increasing poverty. Therefore, with the institution of *waqf* in general, as a religious philanthropic institution, and cash *waqf* in particular which is more

¹⁷⁸ Mahadi Ahmad, *Cash Waqf: Historical Evolution, Nature and Role as an Alternative to Riba Based Financing for the Grass Root*, *Journal of Islamic Finance*, 4 (1), 2015.

¹⁷⁹ Mahadi Ahmad, *ibid.*

flexible for financing entrepreneurs on interest free loan is viable of assisting the grass-roots.¹⁸⁰

Definition

Tasuli, Maliki jurist, defined Cash *waqf* "as the process of dedicating cash as *waqf* for the purpose of lending it to those designated as the beneficiaries without interest".¹⁸¹ This definition is too narrow in the sense that it did not touch on the method of making the fund sustainable; as only lending without investing the fund makes it prone to credit risk that would be further aggravated by default payment and so, the fund would crunch.¹⁸²

The Hanafi School defined it "as the process of dedicating cash as *waqf* and investment of same so that the profits are used for the *waqf*'s stipulated charitable deeds".¹⁸³ The community reading of these two classical definitions will reveal that they both complement each other to inform the exact nature of cash *waqf*.¹⁸⁴

Parties to a Cash Waqf

1. The *waqifun* (donors), who intend to get rewarded by Allah by offering part of their hard earned income as assistance to the poor through the cash *waqf* institution.
2. The management (*mutawallis*) of the cash *waqf* institution.
3. The cash *waqf*'s investees, who the *mutawallis* invest the fund with for the purpose of generating profit to help the poor.
4. The designated beneficiaries, in most cases, the grass-root of the society.¹⁸⁵

Advantages of Cash Waqf

1. **Wider public participation:** Due to the low denomination of *waqf* shares for example, almost everybody, both the affluent and poor are able to donate amount of

¹⁸⁰ Mahadi Ahmad, *ibid.*

¹⁸¹ Al-Tasuli, A. I. *Al-Bahjah Fi Sharh al-Tuhjah: edited by Muhammad AbdulQadir Shahun.*, Lebanon: Dar Al-Kutub Al-Ilmiyyah

¹⁸² Mahadi Ahmad, *ibid.*

¹⁸³ Mahadi Ahmad, *ibid.*

¹⁸⁴ Mahadi Ahmad, *ibid.*

¹⁸⁵ Mahadi Ahmad, *ibid.*

waqf share. This is even easy to donate if the *waqf* shares are structured on varying negligible amounts, according to the level of incomes of the people in a given society.¹⁸⁶

2. **Effective Instrument in Poverty Alleviation:** since there is wider public participation the scheme will go a long way in curbing poverty in the society.¹⁸⁷
3. **Flexibility of fund raising and investment of same:** Unlike the traditional tangible asset-based *waqf*, cash *waqf* always has liquidities due to continuous inflows of donation from philanthropists and government aids.¹⁸⁸

Challenges of Cash Waqf

1. Default payment by the borrowing grass-roots who may fail to return the amount lent to them. This poses a credit risk to the institution of cash *waqf* as it will cripple the activeness of the institution and consequently destroy the perpetuity.¹⁸⁹
2. Potential moral hazard by some managers (*mutawalli*) of the cash *waqf*. This occurs through lack of scrutiny of *mutawallis* and ultimately the potential donors will lose confidence in further subscription to the fund raising process of the Cash *waqf*.¹⁹⁰
3. Lack of resilience in many Muslim economies where the cash *waqf* predominantly operates. This has a gradual process of reducing the fund drastically as the investments are not capable of yielding the expected returns and consequently the beneficiary grass-roots will have nothing to do business.¹⁹¹

¹⁸⁶ Mahadi Ahmad, *Ibid.*
¹⁸⁷ Mahadi Ahmad, *Ibid.*
¹⁸⁸ Mahadi Ahmad, *ibid.*
¹⁸⁹ Mahadi Ahmad, *ibid.*
¹⁹⁰ Mahadi Ahmad, *ibid.*
¹⁹¹ Mahadi Ahmad, *Ibid.*

Possible Solutions

1. Institutionalizing *waqf* as an agency of the government so that funds raised from the scheme will be channeled or disbursed according to the rules and regulations of the relevant laws.¹⁹²
2. The *mutawalli* should be adequately paid.
3. Money or business loan should be disbursed only to persons who are fully equipped with entrepreneurial skill.
4. Periodic assessment of the beneficiaries.
5. Establishment of a mandatory saving scheme.¹⁹³

3.6 Sukuk-*Waqf*

Sukuk can be defined as "certificates of equal value representing undivided shares in ownership of tangible assets, usufructs, and services or (in the ownership of) the assets of particular projects or special investment activity".¹⁹⁴

Islamic law prohibits what's known as *riba* or interest. Therefore, traditional, western debt instruments cannot be used as investment vehicles. To circumvent this, sukuk were created in order to link the returns and cash flows of debt financing to a specific asset being purchased, effectively distributing the benefits of that asset. This allows investors to work around the prohibition outlined under Sharia and still receive the benefits of debt financing. However,

¹⁹² Section 171 of Investment and Securities Act (ISA) 2007 (as amended), states that collective investment scheme fund shall be invested by a manager.

¹⁹³ Mahadi Ahmad, *ibid.*

¹⁹⁴ Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), 2010.

because of the way that sukuk are structured, financing can only be raised for identifiable assets.¹⁹⁵

Thus, sukuk represent aggregate and undivided shares of ownership in a tangible asset as it relates to a specific project or a specific investment activity. An investor in a sukuk, therefore, does not own a debt obligation owed by the bond issuer, but instead owns a piece of the asset that's linked to the investment. This means that sukuk holders, unlike bond holders, receive a portion of the earnings generated by the associated asset.¹⁹⁶

Features of Sukuk

1. Interest free investment.¹⁹⁷
2. It entitles the holder of the certificate common ownership of the project.
3. It is not a debt
4. It is based on Sharia compliant investments.
5. It is based on the principle of participation in the profit and loss.¹⁹⁸

Types of Sukuk

1. **Sukuk Al-Mudaraba:** In simple mudaraba contracts, investors are considered to be silent partners (rab al mal), and the party who utilizes the funds is the working partner (mudarib). The profit from the investment activity is shared between both parties based on an initial agreement. The same type of contract applies to sukuk. In a mudaraba sukuk, the sukuk holders are the silent partners, who don't participate in the management of the underlying asset, business, or project. The working partner is the sukuk obligator. The sukuk obligator, as the working partner, is generally entitled to a

¹⁹⁵ <https://www.investopedia.com/terms/s/sukuk.asp>. Accessed on 11th September, 2019.

¹⁹⁶ *ibid.*

¹⁹⁷ Malek Marwan Yousef Injas, et-el, the possibility of Integration between Islamic Bonds (Al-Sukuk) and *Waqf* System in the Case of Al-

¹⁹⁸ *Udabarah, Journal of Islamic and Human Advanced Research*, 5, (3), 2015.

¹⁹⁹ Malek Marwan Yousef Injas, et-el, *ibid.*

fee and/or share of the profit, which is spelled out in the initial contract with investors.¹⁹⁹

2. **Sukuk Al-Murabaha:** A murabaha contract is an agreement between a buyer and seller for the delivery of an asset; the price includes the cost of the asset plus an agreed-upon profit margin for the seller. The buyer can pay the price on the spot or establish deferred payment terms (paying either in installments or in one future lump sum payment). With sukuk that are based on the murabaha contract, the trustee can use the investors' capital to purchase an asset and sell it to the obligator on a cost-plus-profit-margin basis. The obligator (the buyer) makes deferred payments to the investors (the sellers). This setup is a fixed-income type of sukuk, and the trustee facilitates the transaction between the sukuk holders and the obligator.²⁰⁰
3. **Sukuk Al-Salam:** In a salam contract, an asset is delivered to a buyer on a future date in exchange for full advance spot payment to the seller. Sharia allows only salam and istisna contracts to be used to support advanced payment for a good to be delivered in the future. This same mechanism is used for structuring the salam sukuk. In salam sukuk, the sukuk holders' (investors') funds are used to purchase assets from an obligator in the future. The SPV provides the money to the obligator. This contract requires an agent (which may be a separate underwriter) who will sell the future assets because the investors want money in return for their investment not the assets themselves. The proceeds from the sale (typically the cost of the assets plus a profit) are returned to the sukuk holders.²⁰¹
4. **Sukuk Al-Ijarah:** The ijara contract is essentially a rental or lease contract: It establishes the right to use an asset for a fee. The basic idea of ijara sukuk is that the

¹⁹⁹ <https://www.dummies.com/personal-finance/islamic-finance/types-of-sukuk-in-islamic-finance/>. Accessed on 11th September, 2019.

²⁰⁰ *Ibid.*

²⁰¹ <https://www.dummies.com/personal-finance/islamic-finance/types-of-sukuk-in-islamic-finance/>. Accessed on 11th September, 2019.

sukuk holders (investors) are the owners of the asset and are entitled to receive a return when that asset is leased. The ijara contract process begins when a company that needs an asset but can't afford to purchase it outright contracts with an SPV, which agrees to purchase the asset and rent it to the company for a fixed period of time.²⁰²

5. **Sukuk Al-Musharakah:** The musharaka contract supports a joint venture business activity in which all partners contribute capital, labor, and expertise. The profit and losses are shared among all parties based on agreed-upon ratios.²⁰³ With musharaka sukuk, the sukuk holders (investors) are the owners of the joint venture, asset, or business activity and therefore have the right to share its profits. In a musharaka sukuk, unlike sukuk based on mudaraba, a committee of investor representatives participates in the decision-making process. Musharaka sukuk can be traded in the secondary market. The musharaka sukuk process begins when an obligator signs a musharaka contract with the SPV that specifies a profit-sharing ratio and indicates that the obligator will transfer assets (such as cash and property) to the joint venture.²⁰⁴
6. **Sukuk Al-Istisna':** Istisna is a contract between a buyer and a manufacturer in which the manufacturer agrees to complete a construction project by a future date. The contract requires a fixed price and product specifications that both parties agree to. If the end product doesn't meet contract specifications, the buyer can withdraw from the contract. Istisna sukuk are based on this type of contract. The sukuk holders are the buyers of the project, and the obligator is the manufacturer. The obligator agrees to

² Ibid.

³ Ibid.

⁴ <https://www.dummies.com/personal-finance/islamic-finance/types-of-sukuk-in-islamic-finance/>. Accessed on 11th September, 2019.

manufacture the project in the future and deliver it to the buyer, who (based on a separate ijara contract) will lease the asset to another party for regular payments.²⁰⁵

Sukuk as a financial Islamic instrument competition, has achieved success, despite its modernity. It has to be exploited in the development of the Islamic *Waqf* system by encouraging people to endow certain types of Islamic bonds in some of the effective projects that achieve the real economic development and get the profits, also endow for the sake of Allah almighty.²⁰⁶

3.7 Small and Medium Enterprises (Trader Money Initiative)

The definition or classification of small and medium enterprises differs from country to country. There is no generally accepted definition or classification of SMEs. Different authors, scholars and schools have different ideas as to differences in terms of capital out lay, number of employees, sales turnover, fixed capital investment, available plant and machinery, market share and the level of development. In countries like the USA, Britain and other European countries, Small and medium scale enterprises are defined in terms of turnover and number of employees. The definition and classification of SMEs in Nigeria is in terms of capital employed, turnover and number of employees.²⁰⁷

In every economies small and medium scale enterprises has been seen has a pivotal instrument of economic growth and development either in developed or developing economies. Several studies have revealed that about 97 percent of the entire enterprises in the country are SMEs and they employed an average of 50% of the working population as well as

²⁰⁵ Ibid.

²⁰⁶ Malek Marwan Yousef Injas, et-el, *ibid*.

²⁰⁷ E. C. Gbandi and G. Amissah, Financing Options for Small and Medium Enterprises (SMEs) In Nigeria, *European Scientific Journal*, 10, *eds.* 2014).

contributing to 50 percent of the country industrial output. SMEs in Nigeria are not only catalyst of economic growth and development, but are also the bedrock of the nation.²⁰⁸

Although small business activities had existed since the period of independence in Nigeria, however, conscious effort on small and medium scale enterprise as instrument of economic and national development started in 1970-1979 when Nigeria adopted the policy of indigenization through its national development plan programme. The development plan articulated the need for the Nigerian economy to be self-reliant through industrialization, entrepreneurial development employment generation and development through increasing export trade.²⁰⁹

In its intervention effort, government promulgates different regulation for the basis of protecting the small scale industries and introduced several other schemes to in order to enhance the small scale industries, the trader moni initiative of the Federal Government of Nigeria, which initiative is being headed by the Vice-President.

He said that the President Muhammadu Buhari's sole concern is that the resources of Nigeria must be used for the man and woman who need it the most and this explains the focus of the administration's entire economic policy.

He said despite the challenges associated with the fall in oil prices, President Buhari is still committed to giving hope to the poorest Nigerians hence, the implementation of the various components of the Social Investment Programmes. He said: "Under the Trader Moni Scheme, we are giving 2million people across Nigeria, N10,000 collateral-free loans with the possibility of increasing the amount within six months. "Here in Jigawa, we have given 30,000 petty traders and only today. we gave extra 2,000 to 5,000 traders, and all together, we have given about 35,000 people the loans in Jigawa alone. "We also have the Market Moni

²⁰⁸ Abiodun Fatai, *Small and Medium Scale Enterprises in Nigeria: the Problems and Prospect*, Department of Political Science, Faculty of Social Sciences, Lagos State University.

²⁰⁹ Abiodun Fatai, *ibid.*

cheme which is another initiative for traders that are bigger than the petty traders and we start from N50,000 to N350,000.²¹⁰

8 Conclusion

This chapter examined the *Waqf* as an alternative source of business financing in Nigeria and it has proved in previous ages, especially under the Islamic state, its ability to solve many problems in most societies. Its elegant aim, which is based on achieving solidarity between people, contributed to the stability of societies and their protection

²¹⁰ <https://www.yemlosinbajo.ng/why-the-focus-of-buharis-administration-is-on-welfare-of-common-nigerians-by-vp-osinbajo/>. Accessed on 11th September, 2019.

CHAPTER FOUR
WAQF CHALLENGES IN NIGERIA

4.1 INTRODUCTION

It is important to state at the onset that there is no existing law in Nigeria that provides for the management and administration of *waqf*; not even in the Muslim states in the northern part of the country. What is available in the Constitution of the Federal Republic of Nigeria 1999 (as amended) is the reference to issues pertaining to *waqf* which fall under the jurisdiction of the Shari'ah Court of Appeal.²¹¹ Thus, factors considered as challenges of *waqf* in Nigeria are as follows:

1. **Jurisprudential Issues (Fiqh Issue):** The Maliki School vested the ownership of *Waqf* to the *Waqif* (donor) which shows that there is no absolute *Waqf* and as such the properties given out as *Waqf* may be revoked at any time since the general belief is that *Waqf* is revocable.²¹² This ability to revoke *Waqf* is seriously bringing setback for the development of *Waqf*. There was an instance at Malumfashi road, Tudun-Nupawa, Kaduna whereby a person has given out a particular mosque/land as *Waqf* and his heir took over the property as an inherited estate.²¹³
2. **Legal Impediments in the Resolution of *Waqf* Issues:** Before the colonization of Nigeria, *Waqf* institution was under the office of the emir in Northern Nigeria. But after the colonization, the *Waqf* law was replaced with modern law of trusts which creates legal impediments in resolving dispute related to *Waqf*.²¹⁴ It is expedient to have in place a proper legal framework for the resolution of disputes. A situation whereby Shari'a Courts only hears and determine issues which are enshrined under

²¹¹ Umar A. Oseni, Towards the Effective legal Regulation of *Waqf* in Nigeria: Problems and Prospect, retrieved from: <http://waqfacademy.org/wp-content/uploads/2013/03/Umar-A.-Oseni-UAO.-Date.-Effective-legal-regulation-of-waqf-in-Nigeria.-Nigeria.-UAO.pdf>. Accessed on 27th September, 2019.

²¹² Umar A. Oseni, *ibid*.

²¹³ Gidado, A. D., & Sani, A. M., *Waqf* and Provision of Social Services in Kaduna State: Contributions and Challenges. *International Journal of Academic Research in Business and Social Sciences*, 8(6), 1207–1215 (ed. 2008).

²¹⁴ Gidado, A. D., & Sani, A. M., *ibid*.

Section 277 of the Constitution of Federal Republic of Nigeria, 1999 (as amended) but cannot determine any issue in respect to title even where the subject of controversy is related to land, will definitely hinder the development of *waqf* institutions in the country. Mere subjection of *waqf* matters to the jurisdiction of the Shari'ah Court of Appeal while stripping off the court of the jurisdiction on land matters which sometimes relate to *waqf* land makes nonsense of the application of Islamic law in Nigeria.²¹⁵ In *Ganya vs. Maza*,²¹⁶ one of the issues that came up for determination was whether by the provisions of Section 277 of the Constitution of Federal Republic of Nigeria 1999 (as amended), the Shari'a Court of Appeal had jurisdiction to entertain the appeal before it and the Court of Appeal in a unanimous decision held that the Shari'a Court of Appeal lacks jurisdiction entertain an appeal where the claim at the trial court is on issue involving ownership of land.

3. **Lack of Dedicated Legislation on *Waqf*:** Social security is an important element of governance in Islamic law of governance. *Waqf* is one of such institution that can enhance social security in the state. Legislations for the proper implementation and administration of zakat, *waqf*, and other social security mechanisms must precede the introduction of the hudūd in states that have been crippled by economic instability.²¹⁷
4. **Lackadaisical Attitude of the Muslim Leaders:** Despite the current state of affairs in Northern Nigeria, the Muslim leaders particularly those who have acquired political power have failed to initiate reforms in the system. Some feel *Waqf* is not so important in the administration of the State.²¹⁸

²¹⁵ Umar A. Oseni, *ibid.*

²¹⁶ (2013) ALL F. W. L. R. (PT. 689) @ 1242, Paras. H-A.

²¹⁷ Umar A. Oseni, *ibid.*

²¹⁸ Umar A. Oseni, *ibid.*

5. **Low Participation:** The long perception of people about *waqf* has been that *waqf* are created only with real asset and usually mosque. As a result those who are not in possession of real assets failed to participate in *waqf*.²¹⁹
6. **Improper Utilization:** Charitable endowments are made under different headings in Islam. The biggest two of these sectors are Zakat and *waqf*. Zakat which is an obligation of all wealthy Muslims is being paid by most of them, but its expected effectiveness has been hampered by some factors which include inefficient collection, distribution and distribution in unproductive usage. Similar experience if not worse, has been the case regarding *waqf* in most Northern states of Nigeria.²²⁰

Therefore the above identified elements have been the major challenges that hamper the effective growth of *waqf* in Nigeria.

4.1 Resource Management

The *waqf* founder determines the type of management of his/her *waqf*. The *waqf* manager is usually called *mutawalli*, *nazir* or *qayyim* and his/her responsibility is to administer the *waqf* property to the best interest of the beneficiaries. The first duty of *mutawalli* is to preserve the property; this is followed by maximization of the revenues of the beneficiaries. The *waqf* document usually mentions how the *mutawalli* is compensated for this effort and if the document does not mention a compensation for the *mutawalli*, he/she either volunteers the work or seeks assignment of compensation from the court.²²¹

In Nigeria, unlike other Muslims countries, *waqf* funds in are managed by the trustees/*mutawallis* themselves. The *waqf* governance in Nigeria is, however, not regulated by any statutes or by-laws. This could breed abusive practices in the *waqf* fund management

²¹⁹ Gidado, A. D., & Sani, A. M., *ibid*.

²²⁰ Gidado, A. D., & Sani, A. M., *ibid*.

²²¹ Abdulmajeed Bello Hassan, *Waqf in Shari'ah an Ignored Effective Mechanism for the Sustainable Development of a society*, paper presented at Forth International Conference on New Strategies for Sustainable Development, 28-29, 2014.

and hence lead to a trust deficit toward *waqf* institutions in the society.²²² It has been observed that *waqf* institutions in many parts of the Islamic World are not given proper attention and, therefore, vast *waqf* properties are subjected to ill-management. The inevitable consequence is much dilapidation and disrepair of these sacred properties. Even the best *waqf* buildings, with tremendous commercial potential, are not getting basic repairs and maintenance in some places.²²³

The causative factors that led to the decline of *waqf* glory include; legislative negligence, administrative failure, lack of political determination, persistent public ignorance of the significance of *waqf* and high rate of corruption.²²⁴

Prudent *waqf* management requires preservation and development of the *waqf* assets, investment and generation of returns, and ensuring that the returns/benefits flow to the beneficiaries as intended by the *waqif*.²²⁵ The eclipse of the endowment *waqf* has left a vacuum in the arena of public services, which has not been filled. Students, health patients, homeless, travelers, poor, needy, prisoners are only among the category of vulnerable people who have lost cover of the *waqf*.²²⁶ It has made Muslim societies further dependent on uncertain foreign donation, which is widely resisted both in terms of its inherent instability and in terms of unwanted foreign intervention. The call for harnessing indigenous *waqf* is to tap into the considerable 'social capital' which has survived through the institution of charity

²²² The World Bank Group, INCEIF and ISRA Report on Maximising Social Impact through *Waqf* Solutions, retrieved at <http://documents.worldbank.org/curated/en/930461562218730622/pdf/Maximizing-Social-Impact-Through-Waqf-Solutions.pdf> on 26th September, 2019.

²²³ Hydzulkifli Hashim Umar and Abubakar Yusuf Sanyinna, Administrative Challenges of *Waqf* Institution in the Contemporary World: future prospect, *The Journal of Social Sciences Research*, retrieved from https://www.arpgweb.com/pdf-files/spi6_41_294_299.pdf on 28th September, 2019.

²²⁴ Murat Cizakca, *A History of Philanthropic Foundations: The Islamic World from the seventh Century to the present*, retrieved from https://www.academia.edu/2153270/A_history_of_philanthropic_foundations_The_Islamic_world_from_the_seventh_century_to_the_present on 29th September, 2019.

²²⁵ Hussein Elasrag, *Towards a New Role of the Institution of Waqf*, available at https://mpr.ub.uni-muenchen.de/80513/1/MPRA_paper_80513.pdf, accessed on 29th September, 2019.

²²⁶ Abdulmajeed Bello Hassan, *Waqf in Shari'ah an Ignored Effective Mechanism for the Sustainable Development of a society*, paper presented at Forth International Conference on New Strategies for Sustainable Development, 28-29, 2014.

zakat. The endowment *waqf* is an embodiment of the principles of self-sufficiency, egalitarianism and learning that mark Muslim societies.²²⁷

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.²²⁸ This is because 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.²²⁹

The State has been unable to serve all of the public purposes undertaken historically by the endowment *waqf*. Apart from capacity, the ability of the centralized State to deliver speedy aid and humanitarian support to vulnerable groups is questionable. The endowment *waqf* served as a bulwark for civil society and has the potential to play that role. It has been argued that since social traditions such as those relating to charitable endowments (*awqaf*) are deep rooted in Muslim consciousness, 'the potency of these ethical affinities becomes all the more evident in times of crises, when official institutions prove inadequate.'²³⁰

4.2 Religious Intolerance

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.²³¹ 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

²²⁷ Abdulmajeed Bello Hassan, *ibid*.

²²⁸ Yusuff Jelili Amuda, *Commercialization of Cash Waqf in Nigeria: An Analysis of its Implementation*, P.H.D. Thesis presented at the Academy of Islamic Studies University, Kuala Lumpur, 2017.

²²⁹ Yusuff Jelili Amuda, *ibid*.

²³⁰ Abdulmajeed Bello Hassan, *ibid*.

²³¹ Yusuff Jelili Amuda, *ibid*.

which is insufficient to achieve comprehensive understanding of their faith because they might not understand the significance certain beliefs.²³²

Recently, Nigerian Christians protested against the introduction of Islamic Banks in Nigeria claiming that Muslims want to covert the country into an Islamic state. 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 recognized.²³³

4.3 Adjudicatory System

The Nigerian legal System is pluralized in nature due to the nature of its people with different cultures and beliefs. The colonial administration has significantly succeeded in redefining the nature and concept of the Nigerian legal system. Culture and traditional practices of the people were made less significant through the instrumentality of the validity tests. Islamic law equally suffered a similar humiliation in the hands of the colonial administration first by making it part of customary law and secondly by subjecting it to the validity tests.²³⁴

The first test is that an Islamic or customary law norm must not be repugnant to natural justice, equity, and good conscience.²³⁵ The second test is that an Islamic or customary law

²³² Yusuff Jelili Amuda, *ibid.*

²³³ Yusuff Jelili Amuda, *ibid.*

²³⁴ Umar Alkali, Nature and Sources of Nigerian Legal System: An Exorcism of a Wrong Notion, *International Journal of Business, Economics and Law*, 5, 2014.

²³⁵ J. O. Asein, *Introduction to Nigerian Legal System*, 2nd Ed., 2004. See also *Edet v. Essein* (1932) 11 NLR 47, 48.

norm must not be incompatible, either directly or by implication, with any law presently in force. This test was invoked in the case of *Adesubokan v. Yunusa*²³⁶ where a Muslim's will made under the Wills Act was held to be valid even though the bequests therein conflicted with provisions of the Islamic law of inheritance. The last of the validity tests is that an Islamic or customary law norm must not be contrary to public policy. A further validity test in the post-independence era holds that the constitution is the supreme law of the land. Any other law that is inconsistent with its provisions is null and void to the extent of the inconsistency.²³⁷

It is worthy to mention that the intention of the colonial administration in making Islamic law the same as customary law is aimed at taming Islamic law hence subjecting it to the validity tests. A cursory look at the features of customary law will reveal that Islamic law is indeed not the same as customary law.²³⁸ Customary law originates from the long practice of the people but Islamic law originates from Allah the lord of mankind.²³⁹

The above notion was laid to rest by the apex court in the case of *Alkaniawa v. Bello*²⁴⁰ where Wali, JSC stated that Islamic law is not the same as customary law for it does not belong to any particular tribe, it is more rigid and universal than even the English law. In the words of Justice Niki Tobi, the place of Islamic law in the development of Nigerian legal System cannot be over emphasized. Islamic law has a separate and distinct identity from customary law. To equate the two or to give the impression that Islamic law is either an offshoot of or appendage of customary law is to say the least an ignorant assumption or conclusion.²⁴¹

²³⁵ (1971) 1 ANLR, 225.

²³⁷ Abdulmumini A. Oba, *Religious and Customary Laws in Nigeria*.

²³⁸ Umar Alkali, *ibid.*

²³⁹ See Quran 45:V:18 where Allah says 'And we have made for you a law so follow it and not the fancies of those who have no knowledge.'

²⁴⁰ (1998) 8 NWLR (Pt. 561) 173.

²⁴¹ Umar Alkali, *ibid.*

The above provisions established the extent of powers of the Shari'ah Court of Appeal. However, from the historical legal perspective, most objects of *waqf* in the Muslim-dominated areas in Nigeria have been land and the question that has always been raised is whether the Shari'ah Court of Appeal could exercise jurisdiction with respect to land matters where the land is subject matter of *waqf*.

The extant provisions of Section 39(1) of the Land Use Act confers the High Court exclusive original jurisdiction in respect of any proceedings relating to land which is the subject of a statutory right of occupancy, and in proceedings to determine the persons entitled to compensation payable for improvements on such land.²⁴³

The above position of the law has made the jurisdiction of the Shari'ah Court to come under heavy attack by the Supreme Court and Court of Appeal. In *Ganya vs. Maza*,²⁴⁴ one of the issues that came up for determination was whether by the provisions of Section 277 of the Constitution of Federal Republic of Nigeria 1999 (as amended), the Shari'a Court of Appeal had jurisdiction to entertain the appeal before it and the Court of Appeal in a unanimous decision held that the Shari'a Court of Appeal lacks jurisdiction entertain an appeal where the claim at the trial court is on issue involving ownership of land.

From the foregoing, it is clear that the relics of the legal regulation of *waqf* in Nigeria are found in a sub-section in the Constitution where the jurisdiction of the Shari'ah Court of Appeal is outlined. So, the jurisdiction of the Shari'ah Court of Appeal to hear matters involving *waqf* depends on the subject matter of the *waqf* itself.²⁴⁵

²⁴³ See Section 39(1) of the Land Use Act, Cap. 202, LFN 1990.

²⁴⁴ (2013) ALL F. W. L. R. (PT. 689) @ 1242, Paras. H-A.

²⁴⁵ Umar A. Oseni, *ibid*.

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²⁴⁴ (2013) ALL F. W. L. R. (PT. 689) @ 1242, Paras. H-A.

²⁴⁵ Umar A. Oseni, *ibid*.

CHAPTER FIVE

CONCLUSION

5.1 Summary of Findings

This study has shown that *waqf* endowments is not an alien phenomenon in Nigeria as it has been revived, established and practiced 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 meet the yearnings and aspirations of the Nigerian people 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 Nigerians are living under abject poverty, below \$1 (One US Dollar). In the light of the above, there is an urgent need for the establishment of *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 Nigerians irrespective of religion, tribe, gender, and status. The situation demands a collective effort by the entire society in order to utilise the limited resources realised from *waqf* to assist poor people across the nation.

Similarly, the concept of *waqf* and its application in Nigeria has been analysed 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 practice. In order to realise the primary goals and objectives of *waqf* creation in Nigeria, the classification of *waqf*, the component elements of *waqf*, hindrances and/or challenges of *waqf*, were discussed. The

immense contribution of *waqf* to needy Nigerians and also as an alternative source of business financing in the area of Small and Medium Enterprises (SMEs) and the recent innovation of the trader *moni* by the Federal Government 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, legal regulatory framework of *waqf* in Nigeria was also discussed.

Finally, the concept of cash *waqf*, basic principles of Islamic finance and Islamic modes of business financing such as *mudarabah*, *musharakah*, *ijarah*, *sukuk*, *bai' ajal*, *salam contract*, *istisnai'* etc were also examined in the context of their applicability in the Nigerian financial practices so as to achieve the ultimate goals and objectives of *waqf*.

5.2 Observations

Based on the foregoing postulation, the following are the observations discovered in the course of the study:

1. *Waqf* is viable instruments which can be explored to serve as alternative source of business finance in Nigeria. It has worked in other societies and can work in our society to provide the necessary social security for the less privilege persons and also reduce the rate of poverty and unemployment facing our country, Nigeria.
2. *Waqf* can serve as an engine of transformation which impact will affect many lives positively provided competent, pious, qualified and experienced persons are in charge of *waqf* institution across the nation.
3. There is need for a robust and holistic *waqf* campaign and/or awareness in Nigeria in order to educate people about the institution of *waqf* especially in the southern part of Nigeria where every issue Islamic ideology is being treated with ethnic and religious

sentiments and jingoistic language as was witnessed with the introduction of Islamic Banking in Nigeria.

4. There are many lucrative and profitable businesses and transaction that *waqf* institution can provide in Nigeria.

5.3 Recommendations

From the foregoing, it can be clearly understood that Nigerian Muslims are in serious need of the re-establishment and recreation of *waqf* across the nation. *Waqf* can be viable instrument to transform many lives through financial assistance. This can be achieved by exploring the concept of *waqf* which includes amongst other ways the introduction of cash *waqf*, sukuk and other Islamic modes of financing that will enhance the *waqf* functions. However, the main concern is the relevant institution that will manage *waqf* affairs in Nigeria.

Waqf management is very important and should be given serious attention. The institution or *waqf* management committee that will manage the *waqf* 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 the foregoing discussion that *waqf* is capable of reducing unemployment among Nigerian Muslims in particular and Nigerians at large if the management is in good hand and direction and also competent staffs are put in appropriate offices and assigned fitting tasks.

Similarly, legal framework should as a matter of concern be put in place to supervise and determine *waqf* issues especially where the subject matter of *waqf* is landed property. The Constitution of Nigeria, being the grand norm has limited the jurisdiction of court saddled or imbued with the necessary jurisdiction to hear and determine issues pertaining to *waqf* which

anomaly can only be cured through a robust and holistic legislative process that will expand the horizontal jurisdiction of courts which are to hear and determine Islamic personal law issues.

5.4 Contribution to Knowledge

Based on the foregoing, this research has provided key points to the understanding of *waqf* as an alternative source of business finance in Nigeria. The research focused mainly on the challenges faced by the less privilege people in the society to access financial support in order to improve their leaving standard in the society and also as a means of financial inclusion.

The research similarly discovered many lucrative products that could be used to achieve the objectives of *waqf* in Nigeria. Thus, products like *sukuk*, *musharakah*, *mudarabah*, *murabahah*, *istisna'* and *ijarah* are all possible products of Islamic financing that could effectively realized the objectives of *waqf*.

The research further identified the major challenge facing *waqf* in Nigeria which is the absence of any regulatory framework that will superintend the *waqf* institution in Nigeria. Also lack of awareness has made the concept of *waqf* to be alien to some people especially in the southern part of Nigeria where the population is predominantly Christian.

5.5 Suggested Areas for Further Research

As has been submitted earlier in the course of this research, *waqf* is an Islamic instrument of poverty alleviation, the following have been suggested as areas for further research:

1. Nigeria is a mono economic nation that rely solely on oil save for recent time when the attention has now shifted to agriculture. However, the programme has been hijacked by the wealthy and influential Nigerians who have access to the agricultural

equipment because of their status in the society. Hence, the immediate need for the government to bring its search light on *waqf* as a bridge builder between the government and the grass root farmers.

2. Trader moni initiative is a good development for small entrepreneurs but the objective may not be fully achieved since there is criteria put in place by the government to actualize the initiative, hence the need for a *waqf* institution which will be saddle with such responsibility.
3. Insecurity is a major challenge facing our country today and the military and police are being under-funded save for the recent move by the National Assembly to enact Police Trust Fund Bill which will allow police to generate funds by way trust or endowment to fund its operations. It is therefore necessary to explore *waqf* in this area to better enhance the security architecture in Nigeria.

5.6 Conclusion

This research has discovered that many Nigerians are financially incapable to cater for their most necessary and basic needs. Thus, there is therefore an urgent need to re-introduce and re-establish the *waqf* institution across Nigeria in order to rescue the less privilege people from imminent poverty threat. There are many profitable and lucrative transactions that the *waqf* institution can provide which will serve as alternative source of business financing in the interest of the less privileged Nigerians. *Waqf* 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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