



# WAQF IN ISLAMIC JURISPRUDENCE AND ALGERIAN LEGISLATION: FROM ADMINISTRATION TO INVESTMENT A STUDY IN LIGHT OF LAW N°. 25-06 RELATING TO AWQAF

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## Abstract:

The introduction should be written in (Times New Roman font, size 13, line spacing 1 cm); it must contain an introduction to the topic by defining the subject and importance of the study, the research problems, in addition to specifying the methodology followed. The detailed study plan should not be included; instead, the broad outlines of the research should be reviewed.

The waqf is a charitable institution that contributes to economic and social development, as it encompasses spiritual, jurisprudential, and legislative dimensions. Waqf allows for the dedication of the benefits of endowed properties for charitable purposes, while it preserves the principal asset. This study aims to shed the light on the legal and conceptual framework of Waqf in Islamic jurisprudence and Algerian legislation, focusing on its management and investment mechanisms. This academic research explores how Waqf supports various social fields, as well as finances infrastructure, and promotes social solidarity. Furthermore, it seeks to enumerate the most important mechanisms that ensure the sustainability of Waqf and highlight its social and economic impact.

**Keywords:** Waqf, Islamic jurisprudence, Algerian legislation, administration, investment

## Introduction

The waqf (endowment) has consistently been one of the most effective means leading to economic and social growth and development, it encompasses spiritual, jurisprudential, and even legislative aspects. It functions as a beneficial institution that also contains economic dimensions, primarily based on methods and

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mechanisms for investing agricultural, industrial, and commercial endowments . Waqf is considered among the most crucial economic and social institutions in Islamic civilization, built upon the principle of retaining the principal asset (corpus) and dedicating its usufruct (benefits) for charitable purposes, thereby ensuring the continuity of benevolence and good deeds in society. Throughout history, waqf has played a significant role in funding numerous public facilities such as mosques, schools, and hospitals, as well as caring for the poor and needy . This allowed waqf institutions to undertake many tasks previously thought to be exclusive to government bodies, such as health and social affairs, expanding the objectives of waqf to encompass all forms of piety and charity . From this perspective, the primary goal of waqf is defined as creating stable and permanent financial resources to meet the religious, social, economic, and other needs imposed by human societies, and to strengthen the network of social relationships among individuals and entrench values of solidarity and mutual support among them

The waqf system has received attention from the Algerian legislator, who sought to regulate and protect it through a series of legal texts . These include the repealed Waqf Law 91-10, culminating in the new Waqf Law 25-06 . The legislator's role was not limited to protecting waqf; it also worked to establish legal mechanisms for its investment and development to maximize its benefit, ensure the continuity of its revenue, and focus on the governance of its administration . Waqf investment is considered as an important means of preserving and developing endowments to achieve economic and social development. This is accomplished through various legal methods such as leasing long-term usufruct ;exchange, and contracting, among other forms consistent with the provisions of Islamic Sharia and law.

Based on this, a key question arises: To what extent has the Algerian legislator succeeded in regulating the management and investment of waqf to ensure its sustainability and development? Given the significant importance of waqf as a funding entity that requires direction toward sustainable and continuous investment projects, the significance of delving into this topic emerges by elucidating the main challenges confronting waqf administration in

achieving its desired objectives and the requirements for waqf investment, keeping pace with overall current and emerging.

The nature of this topic necessitates the adoption of descriptive and analytical methodologies, dividing the subject into two main axes.

The changes first axis addresses the conceptual and legal framework of waqf, while the second enumerates the most important mechanisms and tools established for its management and investment.

## **1. The Concept and Types of Waqf**

Waqf is a humanitarian act known to humanity since ancient times, and it is considered one of the best and most enduring forms of expenditure and benefit . This enables it to be an independent financial system that garners significant attention and forms the core of many activities, as it is a source of benefit and fulfills needs . This can only be achieved through waqf investment in a manner that ensures its permanence and continuity. Therefore, it was necessary first to define the meaning of waqf, and then to clarify its overall types.

### **1.1. Waqf – Meaning and Legality**

Waqf is considered one of the most important economic institutions in Islam, aiming to consecrate the asset under Allah's command and to donate its fruits for various acts of piety and charity 1. Hence, it was necessary to define the meaning of waqf both legally and jurisprudentially, then clarify its legality and ruling.

#### **1.1.1. Definition of Waqf in Sharia and Law Linguistically**

waqf means "holding" or "detaining and dedicating" Al-Qudah (2015). These meanings encapsulate the idea of waqf and reflect what jurists and their followers have stated. Terminologically, Islamic jurists have differed considerably in defining waqf . The jurist Abu Hanifa defined waqf as: "holding the asset under the ownership of the waqf founder, and donating its benefit for a charitable purpose, either immediately or in the future"(Ramoul, 2006, p. 26).

However, the more authoritative definition is that provided by Imam Muhammad Abu Zahra, who stated: "Waqf is the prohibition of disposing of the ownership of an asset that can be benefited from while its substance remains intact, and making its benefit available for a charitable purpose from beginning to end"(Bou Diaf, 2010, p. 28).

Referring to Article 213 of the Algerian Family Law, the Algerian legislator defined waqf as: "holding property from ownership



by any person perpetually and charitably" (Law 84-11) . While the Algerian legislator prohibited the ownership of waqf from belonging to the founder or any other person like the beneficiary, it did not explicitly clarify to whom this ownership reverts . As for the repealed Waqf Law 91-10, it considered waqf to be: "holding the asset from ownership perpetually and donating the benefit to the poor or for any other acts of piety and charity" (Law 91-10) . In contrast, Law 90-25 concerning real estate guidance defined "waqf properties as real estate properties that their owner has voluntarily consecrated to make their enjoyment perpetual for a charitable association or a public utility association, whether this enjoyment is immediate or upon the death of the intermediate legatees designated by the said owner" (Law 90-25) .

As for waqf in Law 25-06, it is defined as: "holding property from ownership, either perpetually or temporarily, and donating the benefit for a general, private, or mixed charitable purpose. Waqf is a binding donation contract issued by a sole, free, and unimpaired will of an adult, fully competent founder" (Law 25-06) . A close reading of the aforementioned legal texts clearly shows that the Algerian legislator removed the endowed asset from the ownership of the founder, and did not transfer it to the ownership of the beneficiaries .

Thus, waqf is: "the dedication of a specific property so that its income is spent for a specific purpose while retaining the principal from ownership, provided that the waqf is perpetual or temporary, respecting the will of the founder, and excluding any condition that contradicts the provisions of Islamic Sharia"(Bou Diaf, 2010, p. 31).

### **1.1.2.Ruling and Legality of Waqf**

The immense importance of waqf, as a collection of interests and acts of obedience encouraged by Sharia, is undisputed . Waqf is considered one of the best forms of charity a Muslim can offer to seek closeness to Allah Almighty, show kindness to the needy, and cooperate in piety and righteousness . From this perspective, the wisdom and benefits of waqf become evident, as it opens the door to seeking closeness to Allah by dedicating wealth in pursuit of reward and merit . It is also a proof of social unity in Islam and the strong cohesion that faith has established in the hearts of its followers, making them like loving brothers . Furthermore, it is a means to drive economic and social development, if it is well-managed and invested(Al-Qudah, 2015, p. 49).

On this basis, and because waqf is built upon bringing benefits to people and averting harm from them, the majority of scholars, both ancient and modern, have affirmed its legality and desirability. There are numerous proofs for this, including the Hadith of Umar's waqf, narrated by Abu Umar (may Allah be pleased with them both): "Umar acquired land in Khaybar and said: O Messenger of Allah, I have acquired land in Khaybar, I have never acquired anything more precious to me than it, so what do you command me to do with it? He said: If you wish, you may hold its principal and donate its usufruct. So Umar donated it, stating that it should not be sold, gifted, or inherited, and he donated it to the poor, relatives, slaves, in the way of Allah, for guests, and wayfarers, and there is no blame upon its administrator if he eats from it in a reasonable manner and feeds others without accumulating wealth"(Nekkah, 2022/2023, p. 14). .

## 1.2. Types of Waqf

Precisely determining the beneficiaries and the purpose of the waqf is of great importance. This forms the basis for differentiating and diversifying waqf into private (family) waqf and charitable (public) waqf.

### 1.2.1. Classification of Waqf in Islamic Jurisprudence

According to Islamic jurisprudence, waqf is classified as follows:

- Waqf by Purpose: The purpose of waqf is divided into charitable waqf, also known as public waqf, and private or family waqf (Al-Qudah, 2015 p55)..
  - Charitable Waqf: This is waqf dedicated to charitable causes from its inception, or which eventually reverts to a charitable cause. This applies whether the beneficiaries are individuals, such as the poor and needy, or general charitable entities, such as mosques and hospitals (Bou Diaf, 2010, p. 40).
  - Private (Family) Waqf: This is waqf whose entitlement and revenue are designated first for the founder, then for his descendants, and then reverts to a perpetual charitable purpose according to the founder's will and conditions (Ramoul, 2006, p. 46). .



- **Waqf by Asset Type:** Waqf is valid for real estate and movable assets, such as cash waqf, which is widely used today, where consecrated money is deposited<sup>1</sup>. Similarly, shares and bonds can be endowed, and their income spent on the designated beneficiaries.

### 1.2.2. Algerian Legislator's Classification of Waqf

Referring to the current Law 25-06 concerning endowments, the Algerian legislator detailed the types of waqf in Article 08 as follows :

- **Public Waqf:** This is property consecrated for charitable purposes, either initially or eventually. It is divided into an unspecified public waqf, where the allocation of its income is not specified and is spent on general acts of piety and charity, and a specified public waqf, where the allocation of its income is specified and cannot be spent on other acts of charity unless the specified purpose is exhausted.
- **Private Waqf:** This is waqf that the founder dedicates to his descendants, male and female, or to one or several specified individuals. Private waqf reverts to the entity designated by the founder after the beneficiaries cease to exist, and if that entity no longer exists, it reverts to public waqf.
- **Mixed Waqf:** This is waqf that the founder initially dedicates to a general charitable purpose and to one or several specified individuals.

## 2. The Management and Investment of Waqf between Sharia and Law

The devotional and social nature of waqf has granted it special protection to ensure proper administration and management in accordance with its intended purpose<sup>7</sup>. Since ensuring the permanence and continuity of waqf is a top priority, searching for the most effective tools for its investment remains of utmost importance for its preservation and development. On this basis, Article 1 of Law 25-06 concerning endowments states that: "This law defines the general rules for regulating, managing, operating, utilizing, investing, developing, preserving, and protecting the dedication of waqf properties".

### 2.1. Management and Administration of Waqf

The Maliki school of thought holds that the guardianship and management of waqf belong to the beneficiaries or those they choose,

if the beneficiaries are specified, mature, rational, and in full possession of their faculties . The Hanafi school believes that guardianship is established with the founder, a view also held by the Hanbali school and the Shafi'i school, although the latter stipulated this only at the time of waqf establishment(Bou Diaf, 2010, p. 88).

Referring to Chapter Ten of Law 25-06 concerning the Algerian Endowments Law, titled "Management and Administration of Waqf Properties...", it is clear that the legislator has granted the authority to manage waqf primarily to the religious affairs and endowments departments, and the body responsible for managing waqf properties, which oversees public waqf institutions that provide public services, those that provide charitable services, and public investment waqf institutions, in addition to waqf supervisors, who are responsible for the direct management of one or more waqf properties, or a waqf complex (Law 25-06) .

The law also allowed the authority in charge of endowments, when necessary, to supervise private waqf, ensuring its promotion and management, as stipulated in Article 67 of the Endowments Law . The National Office for Endowments and Zakat is considered one of the most important bodies responsible for managing and administering public waqf as an administrative public utility . It carries out its duties through:

- **Public Service Tasks:** Such as preserving documents related to waqf properties, identifying and digitizing the national waqf property registry, and establishing a database for investable and developable waqf properties
- **Commercial Activity Tasks:** Such as leasing shops and agricultural waqf lands, undertaking real estate development and promotion activities for waqf plots and properties within the rules of administration and management, in addition to following up and handling disputes related to waqf managed by the Office .
- **Tasks related to contributing to and encouraging waqf movements:** Such as establishing charitable institutions and contributing to their construction, including hospitals and mosques .



- **Media Activity Tasks:** Through organizing forums and conferences, and issuing magazines and informational documents related to waqf .
- **Tasks related to encouraging scientific research:** By encouraging and supporting scientific studies and contributing to the establishment of research teams and scientific programs related to endowments (Executive Decree 21-179) .

## **2.2. Waqf Investment as a Means to Its Permanence and Development**

The special nature of waqf, as consecrated property that may not be encroached upon or tampered with, has led to specific methods for its investment with the aim of developing it Ramoul, (2006), whether in Islamic Sharia or in positive laws, such as Algerian law .

### **2.2.1. Waqf Investment in Islam**

Waqf in Islam is considered a major institution and a great religious act with human, civilizational, social, and economic dimensions Therefore, waqf has been a symbol of generosity and giving, the backbone of the Islamic economy, and a catalyst for creative energies in Islamic societies Al-Qudah, (2015). Since investment inherently involves profit and loss, and waqf funds are charitable public funds with a special status among jurists, they did not permit their disposal at a loss or for less than fair market value . Therefore, scholars established Sharia-compliant controls for investing waqf funds, ensuring that the investment respects the founder's will and is a legitimate project conforming to the provisions of Islamic Sharia, such as establishing beneficial projects, thereby preserving waqf and ensuring its development . The person responsible for investing the funds, whether a supervisor, manager, institution, or any other body, must monitor the investment to ensure it proceeds according to the planned programs within the waqf investment policy (Al-Tijani, 2021, p. 320).

Waqf investment is a factor in economic production, and waqf is one of the most important factors for development, especially when it is subject to the diverse and multiple investment avenues permitted by Sharia, such as leasing sharecropping (, manufacturing contracts , diminishing partnership ending in ownership, and financing (Berrāh, 2017, p. 186).

### 2.2.2. Algerian Legislation and Waqf Investment Methods

A review of Article 65 of the Algerian Endowments Law indicates that the Algerian legislator specifically tasked the authority responsible for endowments, particularly the religious affairs and endowments departments and the body responsible for managing, utilizing, developing, and investing waqf properties, with adopting the optimal ways to invest and develop waqf, especially in the fields of planning, urban development, and real estate promotion, agriculture, trade, and production, and services such as education, health, and tourism, as well as financial and monetary institutions . This is due to the importance of these areas for the individual and society, which indeed achieves the purpose of utilizing and investing waqf (Law 25-06) .

Law 25-06 on Endowments detailed the contracts through which waqf can be developed, such as (leasing), (sharecropping), (agricultural partnership), (long-term usufruct), (observatory contract) , (contracting), (exchange), maintenance and restoration, (partnership), build-operate-transfer (BOT), build-operate-own (BOO), (profit-sharing), (cost-plus sale), and (forward sale) 1. It affirmed that public waqf or the charitable share in mixed waqf can be utilized and invested under the aforementioned contracts in a manner consistent with Islamic Sharia . It also clearly indicated the possibility of investing waqf through participation in capital, adopting the Takaful (Islamic insurance) system, and establishing investment accounts with financial institutions (Law 25-06).

Thus, the Algerian legislator has sought to create an investment environment in the waqf sector to encourage investors, especially regarding real estate investment for waqf., transforming dormant assets into productive assets, establishing waqf companies, and contributing to investment funds(Madar, 2025, p. 1345).

While awaiting the issuance of implementing regulations for the new Endowments Law, the texts adopted for the application of the repealed Law 91-10 remain in force . On this basis, the National Office for Endowments and Zakat, as a commercial institution with an industrial character, remains the most prominent entity striving for the permanence of waqf through its sound investment in projects that benefit the individual and society .



## Conclusion

In conclusion, waqf is considered one of the most important economic and social institutions known to Islamic society. The Algerian legislator has sought to regulate it through a set of laws aimed at protecting, managing, and investing waqf properties. It has also become clear that waqf investment represents an effective means of developing waqf properties and achieving their social and economic objectives. However, the success of this investment requires developing legislation, improving waqf management, encouraging investment initiatives, utilizing technology in waqf property management, and developing modern investment formats derived from Islamic jurisprudence, such as waqf sukuk and waqf investment funds. Therefore, developing waqf investment in Algeria is a fundamental step to enhance economic and social development and achieve solidarity among community members.

From the findings of this research, the following conclusions can be drawn:

- Waqf is an important economic and social institution in Islam based on the principle of preserving the original asset while dedicating its benefits for charitable purposes, thus ensuring the continuity of charity and social welfare.
- The new Algerian Waqf Law reflects a shift from merely administering waqf to investing and developing it in order to achieve the optimal utilization of waqf properties.
- Algerian legislation recognizes several types of waqf, including public waqf, private waqf, and joint waqf, which allows diversification in the fields of benefit and utilization.
- Algerian legislation clearly identifies the main institutions responsible for managing waqf, such as the Religious Affairs and Awqaf services, waqf supervisors, and the National Office of Awqaf and Zakat.
- The Waqf Law provides several investment mechanisms such as leasing, agricultural partnerships, *musāqāt*, *murābaḥa*, partnership contracts, and build-operate agreements, which enhance opportunities for developing waqf assets.
- Waqf investment represents an effective tool for achieving economic and social development if managed through modern approaches based on efficiency and good governance.

Based on the above, the following recommendations can be proposed:

- Accelerating the issuance of the implementing regulations of Waqf Law No. 25-06 in order to activate its provisions and ensure their effective application in practice.

- Promoting waqf investment through the establishment of waqf companies and specialized waqf investment funds.
- Benefiting from modern Islamic investment instruments such as waqf sukuk and waqf investment funds.
- Training and qualifying the personnel responsible for managing waqf affairs in the fields of administration, investment, and Islamic finance.
- Strengthening scientific research and academic studies related to waqf and increasing conferences and seminars aimed at developing innovative solutions for its development, while also raising awareness of its importance as a significant source of investment.

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