

IMPERATIVES FOR SUSTAINABILITY OF WAQF THROUGH PARTICIPATION OF NON-MUSLIMS IN THE MODERN WORLD

Abdullahi Saliu Ishola

PhD, Associate Professor & Dean, Faculty of Law,
International Open University (IOU), The Gambia; Barrister
and Solicitor of the Supreme Court of Nigeria; Certified
Shariah Advisor and Auditor (CSAA); Certified Islamic
Specialist in Shariah Auditing (CISSA)

ABSTRACT

There is a general belief in many quarters that Islamic schemes are only for Muslims. While this is true strictly in religious rites, it is not so in social and commercial affairs. Within the scope of Islamic law, waqf can be situated within social/contractual matters popularly called (Mu'āmalah). This, on the surface, makes its rules flexible unlike religious rites whose rules are not so flexible in its fundamentals. Again, waqf is also a religious undertaking by which the pleasure of Allāh is sought. It is confusing if non-Muslims can get involved in waqf. As an instrument of poverty alleviation, Waqf is not just concerned about the poor conditions of Muslims but also provides succor to non-Muslims as well. Accordingly, this paper exposes participation of non-Muslims in Waqf as an imperative for waqf sustainability. Through this study, waqf stakeholders across jurisdictions would be better informed and get guided on the way and manner non-Muslims can be involved in Waqf affairs and therefore assist in the sustainability drives for waqf across jurisdictions. The paper adopts the doctrinal research methodology. The study found that participation of non-Muslims in Waqf enjoys no uniform rulings among the Schools of Shari'ah. This study is unable to undertake a case study of specific jurisdictions with

regards to participation of non-Muslims in their waqf activities and this is its limitation. Following the exposition made in this study, each jurisdiction would now be better concerned about the impacts which its position would have on the sustainability of waqf with regards to the involvement of non-Muslims in the sector.

Keywords: *Waqf; Non-Muslims; Participation; Legal Rulings; Shari'ah; Sustainability.*

Corresponding author: Abdullahi Saliu Ishola can be contacted at abdullahi.ishola@iou.edu.gm

1. INTRODUCTION

Exploring the rulings on participation of non-Muslims in Waqf to achieve its sustainability in the modern world is no longer optional. Waqf, simply translated as the Islamic endowment system, is a generic term for all forms of perpetual charity (*Ṣadaqatun Jāriyah*) sanctioned in Islamic law for Muslims; yes, for Muslims. This is because the basis for such charity is to seek the pleasure of Allāh, especially in the Hereafter (especially beginning from after death).¹ Since the qualifications for getting such pleasure of Allāh are anchored on being a Muslim,² professing the religion of Islam, it becomes intriguing to address the issue of participation of Non-Muslims in Waqf. After all,

¹ The Quran admonishes Muslims to use their possessions to seek the life of the Hereafter (*Dāru-l-Ākhirah*), though they should not forget their shares in this world life (*Ad-Duniyā*). See Sūrah Al-Qaṣaṣ (Q28) verse 76.

² Quran The Prophet Muhammad (ﷺ) stated that when every man dies his chain of rewards for good deeds are cut off except in three circumstances which include perpetual charity.

Waqf is a religious rite and a unique Islamic legacy bequeathed on humanity.³

The general rulings on the legality of the non-Muslims' participation in waqf apply to various types of waqf, conceivable.⁴ Thus, a consideration of the general legal rulings on their participation in waqf would therefore be helpful in applying the rulings to any type of waqf. This will provide necessary guides on whether non-Muslims can involve in such modern waqf schemes like Cash Waqf; Waqftech (i.e.: Fintech application to waqf); Waqf Sukuk; etc. which seem to be the trending waqf practice across the nations in the recent time. This study will therefore be handy for use to all waqf stakeholders in whatever capacity and at whatever location and period.

To be examined are their participation as donors, beneficiaries, or managers. This should not be surprising. Though their participation in waqf is usually examined from the perspectives of legality of their participation as *Wāqif* (donor) and as *Mawqūf 'alaih* (beneficiary); however, their participation as waqf manager (*Mutawallī*) is also relevant. This is because of the closed interfaith interactions that inevitably exist between

³ Muhammad Abu Zahrah, *Muhadaraat Fi Al-Waqf*, 5. The Prophet Muhammad (ﷺ) stated that when every man dies his chain of rewards for good deeds are cut off except in three circumstances which include perpetual charity.

⁴ Typologies of waqf can be viewed from the classical and the contemporary perspectives. Classically, it is divided based on the *Wāqif*, the *Mawqūf* and the *Mawqūf 'Alaih*. Contemporarily, it is partitioned based on its Management System; the Legal and Regulatory Systems; and the Contractual Structuring; among others. "Typology of Waqf from Classical and Contemporary Contexts" indeed deserves a special study at PhD Level or as a book. It would be worthwhile research to provide an insight as well a guidance into how waqf products have been designed and implemented from the past till the present. This writer desires a dedicated study in that area, *in shā' Allah*.

Muslims and non-Muslims in the modern time which may make a Muslim wāqif to consider appointing a non-Muslim as a waqf manager or the Waqf Management appointing or employing non-Muslims in the services of Waqf. Will this be legally acceptable? This paper answers this question.

Given the above, those three circumstances of participation of the non-Muslims in waqf generally are worthy of clarification. This is what is done in this study. It is however necessary to first clarify the benchmark for interfaith interactions in Islamic law, using the lens of the Quran.

1.1 Quranic Benchmarks for the Interfaith Relationship

Before proceeding, it is apposite at this introductory segment to spell out some verses of the Quran alerting the need to have a clear understanding on involvement of non-Muslims in Waqf (a religious-based endowment in Islam). There is no doubt that Waqf is a means of showing love and extending hands of good feelings towards the beneficiaries and a hand of love from the donor and a service to love and humanity by its managers. Getting non-Muslims involved in waqf in any capacity is a matter of interfaith relationship which must be observed within the Quranic benchmarks.

Therefore, presented with relevant verses of the Quran on how any show of love to non-Muslims should be expressed, one will be moved to desire a clear guidance, as a Waqf stakeholder, on the legality of getting non-Muslims involved in the waqf affairs. To start with, in Sūrah al-Mumtaḥanah (Q60: 1), the Quran is very unequivocal declaring as follows:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَتَّخِذُوا عَدُوِّي وَعَدُوَّكُمْ أَوْلِيَاءَ تُلْقُونَ إِلَيْهِم بِالْمَوَدَّةِ وَقَدْ كَفَرُوا بِمَا
جَاءَكُمْ مِنَ الْحَقِّ يُخْرِجُونَ الرَّسُولَ وَإِيَّاكُمْ أَنْ تُؤْمِنُوا بِاللَّهِ رَبِّكُمْ إِنْ كُنْتُمْ خَرَجْتُمْ جِهَادًا فِي
سَبِيلِي وَابْتِغَاءَ مَرْضَاتِي تُسِرُّونَ إِلَيْهِم بِالْمَوَدَّةِ وَأَنَا أَعْلَمُ بِمَا أَخْفَيْتُمْ وَمَا أَعْلَنْتُمْ وَمَنْ يَفْعَلْهُ
مِنْكُمْ فَقَدْ ضَلَّ سَوَاءَ السَّبِيلِ ﴿١﴾

O you who believe! Take not My enemies and your enemies (i.e. disbelievers and polytheists, etc.) as friends, showing affection towards them, while they have disbelieved in what has come to you of the truth (i.e. Islamic Monotheism, this Quran, and Muhammad (ﷺ)), and have driven out the Messenger (Muhammad (ﷺ)) and yourselves (from your homeland) because you believe in Allāh your Lord! If you have come forth to strive in My Cause and to seek My Good Pleasure, (then take not these disbelievers and polytheists, etc., as your friends). You show friendship to them in secret, while I am All-Aware of what you conceal and what you reveal. And whosoever of you (Muslims) does that, then indeed he has gone (far) astray, (away) from the Straight Path.⁵

The above divine warning looks so general and formidable that one would fear having any interaction with any non-Muslim, especially in matters like waqf. To avoid such misinterpretation of the message intended in the above verse, the Quran clarifies circumstances when Muslims should distance themselves from non-Muslims, not showing love, affection, and favor to them, in

⁵ Quran, chap. 60 Verse 1.

the subsequent verses 8 and 9 of the same Quran Chapter 60. The duo verses state as follows:

لَا يَنْهَىٰكُمْ اللَّهُ عَنِ الَّذِينَ لَمْ يُقَاتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِنْ دِينِكُمْ أَنْ تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ
إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴿٨﴾

Allāh does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allāh loves those who deal with equity.⁶

إِنَّمَا يَنْهَىٰكُمْ اللَّهُ عَنِ الَّذِينَ قَاتَلُوكُمْ فِي الدِّينِ وَأَخْرَجُوكُمْ مِنْ دِينِكُمْ وَظَهَرُوا عَلَيْكُمْ أَنْ
تُولَّوهُمْ وَمَنْ يَتَّخِذْهُمُ الظَّالِمُونَ ﴿٩﴾

It is only as regards those who fought against you on account of religion, and have driven you out of your homes, and helped to drive you out, that Allāh forbids you to befriend them. And whosoever will befriend them, then such are the *Zālimūn* (wrong-doers those who disobey Allāh).⁷

It is therefore obvious from these two verses that the foundational requirement for allowing any Muslim to participate in Waqf in any capacity is for such non-Muslim not to harbor or display any hostility or hatred towards Islam and Muslims. Accordingly, any non-Muslim with a known-trait or habit of Islamophobia may not qualify to be involved or benefit

⁶Quran, chap. 60 Verse 8.

⁷ Surah al-Mumtahinah Quran, chap. 60 Verse 9.

in Waqf in any capacity.⁸ The legal and Shari'ah rulings can significantly be well appreciated from the perspectives of his participation as the donor, beneficiary, and the manager. The rulings on each of these are examined in the following discussions in this study.

2. LEGALITY OF PARTICIPATION AS WĀQIF (DONOR/ENDOWER)

In the Shāfi'ī School, waqf of the non-Muslim (*kāfir*)⁹ is valid (*Ṣaḥīḥ*) even if such waqf is for mosque as long as the non-Muslim endower does not intend acts of worship to Allāh (*qurbah*) with the waqf.¹⁰ The School validates the waqf of the non-Muslim because he is also qualified in Islam to give charity (*min ahli tabarru*) and for this kind of charity, intention of worship does not really matter in its validity.¹¹ Certainly, for doing anything with the intention of worship to be valid in Islam, the condition is that the performer of the act must profess Islam.¹² This makes the emphasis on the intention of worship to be better appreciated. Validation of the waqf of the non-Muslim, i.e., his participation in the waqf as wāqif, is also the view held by the *Jumhūr*, even if it is for or as a mosque (*Al-Masjid*).¹³

⁸ It is surprising that in so many countries where non-Muslims are hostile to "Islamic things", they are still always the most beneficial of Islamic schemes as seen in Islamic finance globally.

⁹ The more correct interpretation of the term *kafir* is "nonbeliever" while the term that could be more properly interpreted as "non-Muslim" is *Ghair Muslim*.

¹⁰ Sunaynah, *Muhimmāt Ahkām Al-Waqf*, 18–19.

¹¹ Sunaynah, 19.

¹² Act of worship is not acceptable from non-Muslims.

¹³ Imam-I-Masjid, "Waqf Al-Kafir 'Ala-l-Masjid."

On the other hand, if waqf is considered as an act of worship, it is juristically consensual that such waqf of a non-Muslim is not permissible on the ground of sins.¹⁴ However, in relation to the non-Muslim citizens of an Islamic state (*dhimmi*), where the beneficiaries of the waqf are such that, just as in Islam, in the religion of the non-Muslim, he can intend an act of devotion through charity or virtue to such beneficiaries, then to the Ḥanafiyah, such waqf of the non-Muslim would be valid.¹⁵ Thus, waqf of the non-Muslim to the poor or to the Jerusalem Mosque (*Masjid Qudus*) is valid, according to this School.¹⁶ To the Ḥanafiyah, there are two major conditions that must be met simultaneously for the waqf of the non-Muslim to be valid. These are:

- (1) that the waqf qualifies as an act worship (*qurbah*) in Islam; and,
- (2) it is also an act of worship in the eyes of the religion of the non-Muslim.¹⁷

To a group of the Maliki School, waqf is considered as an act of worship which requires the status of the wāqif as a Muslim for its validity. The reasoning of this group is that, in establishing his waqf, the wāqif hopes for spiritual/divine/religious rewards (*thawāb*) and the non-Muslim cannot aspire for such rewards with his disbelief in Allāh.¹⁸ Along this reasoning, Nasir has

¹⁴ The reason for this is that his waqf cannot be regarded as an act of worship in his religion or Islam, by which he moves closer to Allah; this is particularly the position in relation to such non-Muslims like worshippers of the moon. See Zuhayly, *Al-Wajeez Fi Fiqh Islaamy*, 314.

¹⁵ Zuhayly, 314.

¹⁶ Zuhayly, 314.

¹⁷ *As-Safi'i, Al-Awqaaf*, 488.

¹⁸ Imam-I-Masjid, "Waqf Al-Kaafir 'Ala-I-Masjid."

explained that “according to the Sunni law¹⁹ [...] the dedicator (*wāqif*) should be a person professing the Muslim faith”.²⁰ This simply means that the *wāqif* should be a Muslim according to the Sunni law.

Imam Ibn Qayyim Al-Jawziyyah has extensively clarified what is permissible and what is not permissible about waqf from or for the benefits of the non-Muslim citizens (i.e. *Ahlu Dhimmah*).²¹ As regard legality of the participation of the non-Muslim in waqf as the *Wāqif*, Ibn Qayyim states that the rules applicable to the waqf of a Muslim would apply to his waqf as long as the waqf is for such beneficiaries as the needy, the poor, road construction and repairs or even for his children or family.²² However, if he makes it a condition in his waqf for his children and relatives that they must remain non-Muslims to take benefits of the waqf, such conditions cannot be enforceable and all the scholars agree that the Judge would not have jurisdiction to enforce such conditions (ولم يجز للحاكم أن يحكم) (بموجبه).²³

If the non-Muslim stipulates in his waqf that the benefits shall go to the poor non-Muslims, the poor non-Muslim beneficiaries will be allowed to take the benefits of the waqf. The reason is not because of their being non-Muslims as stipulated in the waqf, but because they are poor people. Thus, if they become

¹⁹ The author also specifically discusses the views of the Shia School in his analyses and that is why he is specific in attribution this position to the Sunni School. This present study is based on the views of the Orthodox Islamic Schools of Law of Hanafi, Maliki, Shafi'i and Hanbali Schools, respectively. Other Schools like Shia are not considered here.

²⁰ Nasir, *The Islamic Law of Personal Status*, 275.

²¹ Al-Jawziyyah, *Ahkaam Ahlu Dhimmah*, 214–17.

²² Al-Jawziyyah, 214.

²³ Al-Jawziyyah, 214.

Muslims, they would be more entitled than their poor non-Muslim counterparts.²⁴ It is also noticeable that if non-Muslims make a waqf (e.g. cash waqf) for the benefits of their temples, churches and places of worship, the waqf would be null and void.²⁵

From the perspective of the rules of *hibah* (gift), as gifts from the non-Muslim is valid,²⁶ waqf from the non-Muslim can thus analogically be taken as valid as well since the rules applicable to *hibah* are also presumed to be applicable to waqf.²⁷ Notwithstanding this, the Ḥanafiyah have laid down two clear rules for the validity of the waqf of a non-Muslim viz:

That the waqf is acceptable in Islam as valid acts of worship

That the waqf is also acceptable as an act of worship in the eyes of his religion.²⁸

The above two conditions must both be satisfied together for the waqf of the non-Muslim to be valid. Thus, it is not lawful, according to the school, for the non-Muslim to make waqf as or in favor of the mosque. This is because, even if such is an act of worship in Islam, it is not so in his own religion. This is also the position firmly upheld in the Māliki School as well.²⁹ As earlier noted, the positions of the Shāfi'yyah and the Ḥanābila is that what matters is the validity of such waqf in the eyes of Islamic law and, to that extent, what determines the validity of the waqf

²⁴ Al-Jawziyyah, 214.

²⁵ Al-Jawziyyah, 415.

²⁶ Doi, *Shari'ah: The Islamic Law*, 335: "Gifts from, and in favor of, non-Muslims can also be made".

²⁷ Zuhayly, *Al-Fiqh Al-Islamy Wa Adilatuh*, 10:7611.

²⁸ As-Safi'i, *Al-Awqaaf*, 488.

²⁹ As-Safi'i, 489.

of the non-Muslim is its validity in Islamic law. That is why his waqf for the church would not be valid since such is not valid in Islamic law.³⁰

When the non-Muslim is a *Murtadun* (Apostate), some specific rulings have been made in respect of his participation in the waqf as a wāqif. Two views have been particularly expressed by the Ḥanafiyyah in this regard.³¹ In their first viewpoint, if such a non-Muslim creates the waqf while he is still an apostate, the waqf will remain suspended (*mawqūf*) to determine his final choice. If he finally reverts to Islam, the waqf will become valid, but if he does not revert and dies or is killed on his apostate status or he is ordered to move to the land of the non-Muslims (*Dār Al-Ḥarb*), then the waqf will become invalid.³²

On the other view, if the *Murtadun* had instituted the waqf before he apostatizes, the waqf will be nullified and become invalid so much that even if he eventually reverts to Islam, the waqf would not be valid unless he renews it.³³ It is from this postulation that a legal waqf maxim has been developed stating that “Awqāf of any person (i.e. Muslim) will be nullified by apostasy – *Tubṭilu awqāf Umri’i bi-rtidād* (تبتطل اوقاف امرئ بارتداد)”.³⁴ The waqf of a female Apostate is however valid because she is not to be killed.³⁵

From the foregoing analyses, it can be appreciated that there are opportunities for non-Muslims to be encouraged and

³⁰ As-Safi’i, 489.

³¹ Zuhayly, *Al-Fiqh Al-Islaamy Wa Adilatuh*, 10:7626.

³² Zuhayly, *Al-Fiqh Al-Islaamy Wa Adilatuh*; As-Safi’i, *Al-Awqaaf*, 489.

³³ As-Safi’i, *Al-Awqaaf*, 489.

³⁴ Zuhayly, *Al-Fiqh Al-Islaamy Wa Adilatuh*, 10:7627.

³⁵ As-Safi’i, *Al-Awqaaf*, 489.

attracted to institutionalize waqf if they so desire. This is especially so when such waqf would be in the form of *Waqf khairi* when the beneficiaries are not religious affiliated to qualify to benefit from the waqf such as the poor, orphans, widows, and educational supports. Through this understanding, awqāf can be sustained as many newer awqāf would be launched daily not only by Muslims but also by non-Muslims. Islam as a religion would also be positively projected as accommodating of non-Muslims to contribute to laudable humanitarian projects like waqf. This positivity would be better appreciated when we look at the positions of Islamic law on the allowance for non-Muslims to participate in waqf as beneficiaries. This is examined in the next segment.

3. LEGALITY OF PARTICIPATION OF NON-MUSLIMS IN WAQF AS THE MAWQŪF 'ALAIH (BENEFICIARY)

It is indisputable that the *Mawqūf 'Alaih* (Beneficiary) is an essential party to any valid waqf. It is however not generally clear if a non-Muslim can validly participate in the waqf in the capacity of a *Mawqūf 'Alaih*. Juristic views on this issue are also diverse. These diverse views are further diversified based on whether the non-Muslim is a *Dhimmi* or other categories of non-Muslims.

There is also divergence in respect of when the *Dhimmi* is participating as the identified/clearly specified beneficiary (*Dhimmi Mu'ayyin*) or as the unidentified beneficiary but mingled with general beneficiaries (*Dhimmi Ghairu Mu'ayyin*).³⁶ The issue

³⁶Ad-Dayrshwah, "Legality of Waqf on a Non-Moslem - Mada Mashr'uuiyyah Al-Waqf 'Ala Ghair Al-Muslim," 20-39.

is also approached through reference to the rules guiding gifts (*hibah*) in favor of the non-Muslim. It is believed that whatever rules that apply in *hibah* would also apply to making the non-Muslim the *Mawqūf ‘Alaih*.³⁷ Specific rulings applicable to the *Murtadun* also attract some attentions. These diversifications on the matter would therefore be clarified below to clearly put the legality of participation of the non-Muslim in waqf as *Mawqūf ‘Alaih* in its proper perspective.

In respect of the *Murtadun*, it is not permissible for him to participate in the waqf as *Mawqūf ‘Alaih* as waqf made for him is not valid (*lā yasiḥ*).³⁸ The reason for this has been hinged on the fact that, establishing a waqf in favor of the *Murtadun* would amount to supporting his sinful act and such waqf cannot be done as an act of moving closer to Allāh or seeking divine rewards though the exercise.³⁹

From the perspective of the rules of *hibah* on the *hibah* beneficiary, as it is permissible for gifts to be made in favor of non-Muslims,⁴⁰ it can be presumed that waqf is also permissible to be made for the non-Muslims. A line of distinction is however drawn between when waqf is specifically made in favor of the non-Muslim and he is so clearly identified as the *Mawqūf ‘Alaih* and when his condition, such as being poor or being a student, qualifies him as a beneficiary. The position is that in both circumstances, even though he is so identified, he would not take the benefit of the waqf if he is a *haribiyyūn* or *murtadun*.⁴¹

³⁷ Ibn-Qudaamah, *Al-Mughny*.

³⁸ Zuhayly, *Al-Wajeez Fi Fiqh Islaamy*, 313.

³⁹ Zuhayly, 313.

⁴⁰ Doi, *Shari’ah: The Islamic Law*, 335.

⁴¹ Zuhayly, *Al-Fiqh Al-Islaamy Wa Adilatuh*.

As the globalized world now brings Muslims and non-Muslims in closer contacts and interactions more than ever, the sustainability of waqf projects in the modern time can be better promoted when non-Muslims are given the best treatment permissible in Islamic law through the Waqf schemes. Thus, aside targeting Muslims, waqf can equally be made to support the non-Muslims which can in consequently be a means to attract them to the religion of Islam. There is also a point of meeting which can be established between zakah and waqf.

The said meeting point between the two schemes of zakah and waqf can be well conceptualized from two main angles. First, as Zakah is allowed to be paid to non-Muslims who are being attracted to the religion of Islam or who are showing signs of getting inclined towards the religion of Islam (*al-mu'allafatu al-qulūb*),⁴² a leaf from this can also be borrowed in determining waqf beneficiaries. In other words, as Zakah provides guidance to waqf in matters of who waqf beneficiaries should be, using Zakah beneficiaries as the benchmark, it is most appropriate to posit that, like zakah, waqf for non-Muslims for the purpose of attracting them to the religion of Islam would be valid without arguments from any quarters. Thus, as a contribution from this research, it is opined very strongly that waqf for the benefits of aspiring non-Muslims either generally benefitting from the waqf or specially made for them would be valid.

Second, as the modern trends towards making zakah more impactful now tilt towards zakah investment and sustainability, it is recommended that waqf can be effectively explored to

⁴²See Qur'an 9 (Surah Tawbah): verse 60 on the list of zakah beneficiaries where the aspiring non-Muslim is listed as the third category.

achieve this, much better than through other approaches. Accordingly, waqf technique is a tool for zakah investment and preservation for enhanced impacts worthy of consideration. Accordingly, the time is ripe for “Zakah Waqf” as a scheme to be given a deserved consideration. Given that all Zakah beneficiaries are also qualified to be waqf beneficiaries, waqf can be a great tool towards making these beneficiaries to be better catered for. It would help achieve the much more desired zakah investment and wider impacts.

Consequently, Zakah Waqf would also be a means to achieve for the zakah payers to attain perpetual rewards through the waqf of their zakah rather than just the onetime off rewards they would get for paying their zakah annually. Through this, more zakah payers may also be encouraged and therefore engender the use of zakah to better address socio-economic problems in the society. More significantly, the tool of Zakah Waqf would make aspiring non-Muslims together with new reverts to Islam to be better catered for. It will enhance a more effective use of the shares of the aspiring non-Muslims from zakah to be better preserved, invested, managed, administered, and generally utilised.

4. LEGALITY OF PARTICIPATION AS THE MUTAWALLI AL-WAQF (MANAGER)

The rulings on who is qualified as a *mutawalli* have been summarised by Nasir when he states that:

“the founder of a waqf may constitute himself the first *mutawalli*. A *mutawalli* may be female, or even a non-Muslim. Equally a body of persons in the form of a committee may be

entrusted with the administration of the waqf, but no minor or a person of unsound mind can be appointed a *mutawalli*”.⁴³

The above assertion makes it clear that, a non-Muslim can participate in the waqf as a *mutawalli*, though this is not generally agreed upon by most of the jurists. For clarity, it is deducible that various sets of persons or entities who can participate in the waqf as *Mutawalli* are as follows:

1. The Wāqif (Founder)
2. A Male or Female (Muslim)
3. A Non-Muslim (Male or Female)
4. Body of Persons/Committee

It has also been stated that the *Mawqūf ‘Alaih* can also be appointed as the Mutawalli. Therefore, premised on this, the legality of the participation of the non-Muslim as the Mutawalli can therefore hinge on the validity of his participation in the waqf as the *Mawqūf ‘Alaih* in the legally permissible circumstances earlier noted.⁴⁴ In other words, like any other *Mawqūf ‘Alaih*, once a non-Muslim can legally participate in waqf as a *Mawqūf ‘Alaih*, his participation as Mutawalli in the capacity of the *Mawqūf ‘Alaih* would also be valid.⁴⁵

Given the investment engagements that would much more be involved in the Management of Waqf, an engagement that requires the services of variant experts and professionals, participation of a non-Muslim whose expertise is inevitably

⁴³ Nasir, *The Islamic Law of Personal Status*, 275.

⁴⁴ For instance, a non-Muslim cannot be a Manager of Mosque.

⁴⁵ Mahmud Muhammad At-Tontow I., *Al-Wasaaya Wal-Waqf Fi Sharīh Al-Islamiyyah*, 201.

needed, cannot be brushed aside. Consequently, having a non-Muslim in the team of the Management of a Waqf, which is not for religious purposes, would be imperative for the sustainability of waqf in the modern time. Waqf sector has grown beyond mere declaration in its importance, its growth and sustainability are now highly paramount. Achieving this through the participation of non-Muslims in its management should not be of negative worries. Rather, it should be embraced and practiced.

5. CONCLUSION

Considering the religious pluralistic nature of the modern world, this study has undertaken to demonstrate that facing the reality on the participation of non-Muslims in waqf is imperative in the efforts towards the sustainability of waqf. Thus, necessary attention should be given to the legal rulings on participation of non-Muslims in waqf, as espoused by various Schools of Islamic law. As necessary, this paper has basic principles of a valid waqf for a non-Muslim as the donor, beneficiary, or manager.

The pillars of a valid waqf which are considered as the indispensable conditions to be fulfilled for any waqf to be valid are four. Even though these conditions are generally and popularly propagated to be four, namely; Wāqif (donor); Mawqūf 'Alaih (beneficiary); Mawqūf (the property); and Şīghah (contract terms); this researcher agrees with the proposition made by Mohsin⁴⁶ by which she considered the conditions to be five. Accordingly, it is the position in this study that Mutawalli is also a necessary condition/pillar to validity of any

⁴⁶ Mohsin, *Cash Waqf: A New Financial Product*.

waqf. Therefore, understanding the position of non-Muslims in participating in waqf in that capacity is imperative for the sustainability of waqf in the modern world.

Again, apart from the issue of the pillars of waqf, the Mutawalli also appears as an essential party to waqf. There are three essential parties to any waqf; without whose presence the waqf cannot be useful or functional. These are the Wāqif, the Mawqūf Alaih and the Mutawalli. Considering the modern reality of the inevitable interactions of Muslims with non-Muslims, this study has justifiably explored the legal rulings on participation of non-Muslims in waqf. Guided by the earlier clarifications on the existence of three essential parties to waqf, the participation of the non-Muslims in waqf has therefore been examined from the purviews of his participation as Wāqif, Mawqūf 'Alaih and Mutawalli. It is revealing that even though he can participate in the status of each party, there are some limitations in his participation attached. Notably, non-Muslim citizens of a Muslim country can participate in waqf if such manners of their participation do not contravene the Islamic law.

The significant contributions of this study include the wholistic approach it adopted in revealing the rulings on participation of non-Muslims in waqf in any of the three capacities as a party to the waqf. This is not so common. The AAOIFI Shari'ah Standard No. 60 on Waqf merely declares that in respect of his participation as a waqf donor thus: "Waqf by a non-Muslim is valid subject to observing rulings and conditions of Waqf" (2/43/5). This study has succeeded in revealing much more than that.

It is therefore the conclusion of this study that, for whatever sustainability efforts being advanced for waqf to be effectively impactful, it is imperative for the adequate attention to be paid to the participation of the non-Muslims. Waqf schemes should not just be designed with Muslims in focus as donors, beneficiaries, or managers. Rather, requisite provisions for the involvement of the non-Muslims must be properly captured and implemented. Through this, waqf sustainability can be better expected to be successful.

REFERENCES

- Ad-Dayrshwah, A. B. M. N. (2006). Legality of waqf on a non-Moslem – Mada mash'uiyyah al-waqf 'ala ghair al-Muslim. *AWQAF*, 6(10), 13–59.
- Al-Jawziyyah, I. Q. (2008). *Ahkaam ahlu dhimah* (1st ed.). Daar Ibn Hazm.
- As-Safi'i, J. A.-H. S. (2011). *Al-awqaaf*.
- Doi, A. R. I. (2007). *Shari'ah: The Islamic law* (7th pr.). A. S. Noordeen.
- Ibn Qudaamah, M. (2005). *Al-mugny* (5th ed., Vol. 8). Dār 'Aalim Al-Kutub.
- Imam-I-Masjid. (2004). Waqf al-kaafir 'ala-l-masjid. In *Ahkam al-masjid*. <http://www.alimam.ws/ref/2602>
- Mahmud, M. M. A.-T. (1989). *Al-wasaaya wal-waqf fi sharii'ah al-Islamiyyah* (1st ed.). Akadamiyyah Shartotu Dubai (Dubai Policy Academy).
- Mohsin, M. I. A. (2009). *Cash waqf: A new financial product* (1st print). Pearson Malaysia Sdn. Bhd.
- Abu Zahrah, M. (1971). *Muhadaraat fi al-waqf* (2nd ed.). Daar Al-Fikr Al-'Arabi.
- Nasir, J. J. (1990). *The Islamic law of personal status* (2nd ed.). Graham & Trotman.
- The Qur'an. (n.d.).
- Sunaynah, A. B. M. A. (2005). *Muhimmāt ahkām al-waqf*. Daar Razi.
- Zuhayly, W. (2004). *Al-fiqh al-Islaamy wa adilatuh* (4th ed., Vol. 10). Dār Al-Fikr.
- Zuhayly, W. (2005). *Al-wajeez fi fiqh Islaamy* (Vol. 3). Dar Al-Fikr.