

Chapter 7

Envisaging the Islamic *Waqf* System: The Qur'an, Sunna, *Ijtihād* and *Nuzum* Theory

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Introduction

This chapter explores the historical and theoretical aspects of the *Waqf* institution within the Islamic societies, focusing on its origins, legal interpretations, and the role of *Ijtihād* in its development. The term “*Waqf*,” derived from the Arabic root “w-q-f,” signifies the suspension of ownership rights over tangible assets like land or buildings, allowing for their usufruct without transfer of ownership. This study traces the evolution of *Waqf* from its early mention in Islamic texts, through various legal interpretations. Despite the absence of explicit references in the Qur'an and Hadith, this chapter demonstrates how *Waqf* emerged as a critical component of Islamic social, political, and legal frameworks, responding to the needs of Muslim societies. By examining the contributions of historical figures and the integration of *Ijtihād*, this research underscores the dynamic nature of Islamic law and the importance of institutional adaptation in shaping the practices and regulations surrounding *Waqf*.

The term “*Wāqif*” originally referred to “one who stops and stands still,” but it gained a new meaning related to the *Waqf* system as someone who donates *Waqf* property. The term “*Mawqūf*” refers to what is made a *Waqf* property, while “*Mawqūf 'alaih*” refers to the beneficiary of the *Waqf*.

This chapter will examine the theoretical aspects of *Waqf* through a historical observation of the development of *Waqf* in Islamic societies. It begins by looking at its roots in Qur'an and Hadith, and then provides a brief review of the opinions developed in the Islamic law in that concern by outlining the main legal interpretations within the field of *Ijtihād* (the act or deriving or making Law in the light of the available texts from Qur'an and Hadith) over time, based on these varying opinions. Finally, the chapter will introduce a unique approach to articulate the development of the *Waqf* system in the Islamic society through *Nuzum* theory.

1. Background

The concept of *Waqf*, a unique form of charitable endowment in Islamic law, is believed by some scholars to predate Islam, tracing its origins back to the era of Prophet Ibrahim. Notably, Al-Burhan Al-Tarabulsi (1449–1516 CE) mentions that Ibrahim established several endowments that persist to this day. However, Islamic jurists such as Imam Shafi'i and Ibn Hazm argue that *Waqf*, as known today, is distinctly Islamic, suggesting that pre-Islamic Arab societies did not practice *Waqf* in any form.

In any case, since its establishment in the early Islamic period (1st Hijri century / 622 CE), one of the most known types of *Waqf* is the contribution of land or assets to build places for worship and religious studies. Besides this, the *Waqf* institution has been crucial in developing public infrastructure. *Waqf* has supported a wide range of social and public works, including building mosques, marketplaces, and hospitals, alongside the provision of roads, inns, and public utilities such as water supply, which cater to travelers and the general populace.

It has also contributed to environmental and other altruistic endeavors, including planting trees and caring for stray animals and

birds. However, during the last century, the role of *Waqf* has shifted due to nation building by various Muslim governments, often under the guise of aligning with Western concepts of modernization.

Still, in recent years, there has been a resurgence in the importance of the *Waqf* system within the context of Islamic finance and the broader revival of Islamic values. Countries like Malaysia and Indonesia have introduced new policies to promote and manage *Waqf* assets effectively, reflecting a broader trend of re-institutionalizing *Waqf* to address modern social and economic challenges.

The *Nuzum* theory, or the Theory of Islamic Institutions, as this chapter suggests, offers a framework for understanding how the *Waqf* system has developed and evolved through *Ijtihād* (independent juristic reasoning), responding to historical and contemporary societal needs. This theory suggests that the development and sustainability of Islamic institutions like *Waqf* are influenced by legal, social, and historical factors. Thus, it provides a comprehensive lens through which the historical significance and contemporary potential of the *Waqf* system can be analyzed and appreciated.

This chapter presents three hypotheses to provide a framework for understanding the *Waqf* system beyond historical/contemporary or legal/economic divides. Firstly, I argue that there are relatively scarce source materials for the *Waqf* system in the Qur'an and the Hadith. The chapter compares this finding to the case of *Zakāt* and concludes that the historical developments of the *Waqf* system stem more from *Ijtihād*-based institutionalization by jurists than immediate applications of clear teachings from the Qur'an and the Hadith.

Secondly, the chapter proposes a framework to understand the nature of *Ijtihād*-based institution-building in the *Waqf* system, which the jurists and policy makers elaborate in response to the social needs of the day. This framework is based on the *Nuzum* theory or the theory of

Islamic institutions.

Lastly, the chapter suggests that attempts to revive the *Waqf* system in contemporary contexts in Muslim countries in Southeast Asia and elsewhere should be analyzed from the perspective of re-institutionalization of the traditional *Waqf* system. This highlights the importance of understanding the historical development of the *Waqf* system and utilizing the *Nuḏum* theory to analyze its contemporary manifestations.

2. *Waqf* System through Qur'an and Hadith

This section compares the treatment of *Waqf* and *Zakāt* in the foundational textual sources of Islam, namely the Qur'an and the Sunna. While both institutions aim to contribute to social welfare in Muslim societies, the scope of *Waqf* is considerably wider than that of *Zakāt*.

The Sharia, often translated as Islamic Law, is not a law in the conventional sense of the term. Its origin comes from a tri-root verb meaning “taking water in by the mouth” or leading animals towards water. The term originally referred to a path to a water place, which is essential for human survival in the arid environment of the Arabian Peninsula. Thus, the Sharia contains all aspects of human life, including moral codes, legal rules, religious creed, and ethical guidance.

The Sharia is not enacted by a legislative body, but rather interpreted by jurists from the Qur'an and the Sunna, which are considered foundational sources in Islam. The Qur'an, the sacred book of Islam, is divided into 114 chapters and contains verses that provide the foundations for Islamic societies and Muslim life.

Although the Qur'an does not directly mention *Waqf*, scholars have discussed its legitimacy by referring to verses that address *Ṣadaqa* and *Infāq*, which are forms of charity. Additionally, some Hadiths have been

interpreted as implicitly or explicitly referencing the practice of *Waqf*. For example, in the context of the verse from Sūra Āl ‘Imrān, which states “By no means shall you attain righteousness unless you give (freely) of that which you love,” a Hadith by Anas tells of Abu Talha, the richest among the *Anṣār* of Medina, who gave his garden known as Bayruḥā’ as *Ṣadaqa* after the verse was revealed.

Table 1 shows the number of verses related to *Waqf* and *Zakāt* directly and indirectly, with direct references containing the terms *Waqf* or *Zakāt*, and indirect references where expressions in the verses are interpreted to refer to these institutions.

Table 1: References to *Waqf* and *Zakāt* in the Qur’an

Subject \ Qur’anic verses	Number of verses		
	Direct reference	Indirect reference	Total
<i>Waqf</i>	0	9	9
<i>Zakāt</i>	30	40	70

However, when it comes to the Sunna, we can find directly related Hadiths which establish the legitimacy of *Waqf* in Islam. The Sunna, as related in the Hadith literature, is the second of the foundational sources for Islamic legal reasoning, and it refers to precedents, customs, and traditions established during the lifetime of the Prophet Muhammad. These examples serve as models for Muslims to follow, but the normative nature of an act and which acts are exemplary are not always clear. This led to the development of abundant Hadith literature, which consists of sayings and narratives attributed to Muhammad. The term Hadith means a talk or a narrative, and these narrations became an essential source for legal interpretation in Islamic jurisprudence. In the Hadith by Anas b. Malik on the authentication of al-Bukhari (al-Buḵārī 1997: vol. 2, 313–314).

Abu Talha had the largest number of date palm groves from amongst the *Anṣār* of Medina. The property he loved the most was the Bayruḥā' garden which faced the (Prophet's) Mosque. Allah's Messenger used to enter it and drink of its good fresh water. When the Qur'anic Verse: "By no means shall you attain righteousness unless you spend (in charity) of that which you love." (3.92) was revealed, Abu Talha got up and said, "O Allah's Messenger! Allah says: 'By no means shall you attain righteousness unless you spend of that which you love,' and the property I love the most is the Bayruḥā' garden, so I want to give it in charity in Allah's Cause, seeking to be rewarded by Allah for that. So, you can make use of it, O Allah's Messenger, however Allah instructs you." Allah's Messenger said, "How excellent! That is a perishable (or profitable) property" (Abdullah is in doubt as to which word was used.) He said, "I have heard what you have said, but in my opinion, you should give it to your kith and kin." On that Abu Talha said, "I will do so, O Allah's Messenger!" Abu Talha distributed that garden among his blood relatives and cousins. (translation slightly modified by the present author)

One of the most known Hadith as a foundational text of the institution of *Waqf*, is the following one:

Narrated Ibn 'Umar: 'Umar ibn al-Khattab got some land in Khaibar, and he went to the Prophet [Muhammad] to consult him about it, saying, "O Allah's Messenger I got some land in Khaibar better than which I have never had, what do you suggest that I do with it?" The Prophet said, "If you like you can give the land as endowment and give its fruits in charity." So 'Umar gave it in

charity as an endowment on the condition that it would neither be sold nor given to anybody as a present and not be inherited, but its yield would be given in charity to the poor people, to relatives, for freeing slaves, for Allah's Cause, to the travelers and guests; and that there would be no harm if the guardian of the endowment ate from it with *Ma'rūf* (according to his labor with good intention), and fed others without storing it for the future..." (al-Bukārī 1997: vol. 3, 540) (translation slightly modified by the present author)

From the other Hadiths that establish directly and indirectly the institution of *Waqf*, one of the Hadiths that address *Waqf* indirectly defines it as "ongoing charity" as follows:

It was narrated from Abu Hurairah that the Messenger of Allah said: "When a man dies, all his good deeds come to an end except three: Ongoing charity, beneficial knowledge, or a righteous son who will pray for him." (Muslim ibn al-Ḥajjāj 2007: vol. 5, 625)

Nawawi stated in his commentary on Muslim's collection that the (ongoing charity) the "*Ṣadaqa Jāriya*" which is mentioned here refers to *Waqf* (an-Nawawī 1980: vol. 11, 85). This interpretation had become authoritative.

Counting the number of Hadiths related to *Waqf* and *Zakāt* is not straightforward due to the abundance of Hadith literature, the issue of repetitions, and the variations in the chains of reporters. The number of Hadiths in collections such as al-Bukhari's range from 7,397 to 2,602 depending on how repetitions and variations are accounted for. For legal purposes, the differences in one or two words in similar Hadiths are usually not significant. Table 2 shows the number of Hadiths related to *Waqf* and *Zakāt* in the main canonical collections, although discerning their contents and indirect references requires scholarly judgment.

These collections below include the “Six Canonical Collections,” which are considered the most authentic, and one important “supplement” to these collections. The author found that there are 845 Hadiths related to *Zakāt*, while there are only 60 references to *Waqf*, making references to *Zakāt* fourteen times more numerous than to *Waqf*. The author also consulted three earlier compilations that contain more of the sayings of Muhammad’s companions than later collections.

Table 2: References to *Waqf* and *Zakāt* in the Hadith (Canonical Collections)

Subject \ Hadith collection	Number of Hadiths							
	B2	M	N	AD	T	IM	H	Total
<i>Waqf</i>	22	15	16	2	2	2	1	60
<i>Zakāt</i>	110	179	183	144	64	61	104	845

B: *Ṣaḥīḥ al-Bukārī* by Muḥammad ibn Ismāʿīl al-Bukārī (d. 256/870)

M: *Ṣaḥīḥ Muslim* by Muslim ibn al-Ḥajjāj an-Naysābūrī (d. 261/875)

N: *Sunan an-Nasāʾī* (as-*Sunan aṣ-Ṣuḡrā*) by Aḥmad ibn Ṣuʿayb an-Nasāʾī (d. 303/915)

AD: *Sunan Abī Dāwūd* by Abū Dāwūd, Sulaymān ibn al-Aṣuʿat ibn Ishāq as-Sijistānī (d. 275/888)

T: *Sunan at-Tirmidī* by Muḥammad ibn ʿĪsā at-Tirmidī (d. 279/892)

IM: *Sunan Ibn Mājah* by Muḥammad ibn Yazīd ibn Mājah ar-Rabʿī al-Qazwīnī (d. 273/887)

H: *al-Mustadrak ʿalā aṣ-Ṣaḥīḥayn* by al-Ḥākim an-Naysābūrī (d. 405/1014)

Even when searching for Hadith resources beyond the later collections, the results reveal a similar scarcity of materials for *Waqf*. In fact, there are even more references to *Zakāt* in earlier collections,

making the difference between the two even more striking. Overall, in these three collections, there are one hundred times more references to *Zakāt* than to *Waqf* (Khashan 2020).

The investigations of the original Qur'an and Hadith recourses show that contextual analysis is crucial for understanding the role of *Waqf* in Islamic societies. Although the Qur'an does not directly address *Waqf*, scholars have used their knowledge of other verses and Hadiths to develop an understanding of the practice. This interpretation has influenced the development of legal rules related to *Waqf*, highlighting the dynamic nature of Islamic law and the importance of *Ijtihād*-based institutionalization in the development of Islamic institutions.

This preliminary examination of the foundational texts reveals a scarcity of direct references to *Waqf* in general, highlighting the role of jurists in later elaborating the system. The contrast with *Zakāt*, which has more extensive references, further emphasizes this point. The lack of direct sources for legal judgment places a heavier burden on jurists, who have to use their knowledge of other texts to develop a nuanced understanding of *Waqf*.

3. *Waqf* System and *Ijtihād*

The notion of *Ijtihād* has significantly influenced the development of the *Waqf* system within Islamic jurisprudence. Although 'Umar ibn al-Khattab, the second orthodox caliph, initiated several institutional reforms during his decade-long reign, such as the *Dīwān* system and the adoption of the Islamic calendar, he did not establish the *Waqf* system. The sparse references to *Waqf* in the Qur'an and Hadith, combined with the already established *Zakāt* system, imply that there was initially no perceived need for an additional welfare mechanism. Early instances of *Waqf* were more akin to sporadic acts of voluntary almsgiving rather

than a formalized system.

The structured development of *Waqf* as a system is traceable through historical and Islamic legal records, with the earliest sign of political intervention occurring during the Umayyad period. This intervention included the creation of a *Dīwān* specifically for *Waqf* management, initiated by Tawba ibn Namir, the *Qādī* of Egypt, to ensure proper administration and prevent corruption within *Waqf* properties.

Among the early works dedicated to the specific legal intricacies of *Waqf* were those by the Hanafi jurists Hilal al-Ra'y (Hilal ibn Yahya ibn Muslim al-Basri, died 245 AH/859 CE) and al-Khassaf (Abu Bakr Ahmad ibn 'Amr al-Khassaf, died 261 AH/874 CE), whose seminal texts were titled "*Aḥkām al-Awqāf*" (Rulings on Endowments). Recognizing the significance of their contributions, Imam Abu Muhammad 'Abd Allah ibn al-Husayn al-Nasihi al-Naysaburi, a Hanafi scholar who died in 447 AH/1055 CE, amalgamated the works of al-Ra'y and al-Khassaf into a single volume titled "*al-Jam' baina Waqfay Hilāl wa al-Ḳaṣṣāf*," which was critically edited and published in 2021 by the General Secretariat for *Awqāf*, Kuwait.

The institutionalization and study of *Waqf* underwent several centuries of evolution, with each era bringing its own scholarly contributions that addressed the contemporary needs and challenges of the *Waqf* system through *Ijtihād*. This ongoing scholarly attention underscores the adaptability and significance of *Waqf* in responding to the legal and social exigencies of Muslim societies over the centuries.

4. *Nuẓum* Theory and *Waqf*

This section explores how the lack of textual guidance for *Waqf* legislation in the Qur'an and Hadith led to the development of *Waqf* regulations in Islamic history. It highlights the importance of institutions

in realizing Islamic objectives and how these objectives are achieved through the efforts of jurists, scholars, state power, and the populace. To analyze this institutionalization in the Muslim society, this chapter proposes the *Nuḏum* theory, which refers to Islamic institutions and how they developed in response to political, economic, and societal needs during the historical development of the Islamic state. The term *an-Nuḏum al-Islāmīya*, or Islamic Institutions, was first introduced by ‘Abd al-‘Aziz al-Duri in 1945. The term *Nuḏum* is the plural of the Arabic word *Niḏām*, meaning “putting things into a system.” This concept refers to the development of institutions in Islamic societies, both original and borrowed, to meet the political, economic, and societal needs of the time. Al-Duri’s work provided insight into how these institutions were formed and evolved throughout the historical development of the Islamic state.

Tracing the origins of the discussed *Nuḏum* theory, the pre-modern scholars, al-Mawardi and Abu Ya‘la ibn al-Farra’, who pioneered the genre of *Aḥkām Sulṭānīya*, or Sharia rules of governance. Both scholars discussed various topics related to governance, including financial issues such as the administration of alms and land tax, but did not specifically mention *Waqf* despite its importance as an institution in the religious and philanthropic fields.

Al-Duri’s work on Islamic institutions introduced the concept of *Nuḏum* and aimed to understand the hidden elements and trends that influenced Islamic society. He studied various systems such as governmental, economic, social, political, and cultural, which helped him gain a deeper historical perspective on the political system and its manifestations during political events, crises, and famines. Al-Duri’s study of trade and craft guilds, as well as social movements, helped him understand the influence of the masses on the history of Muslims and the development of Islamic sects and factions.

While al-Duri's *Nuzum* theory is useful in understanding governance and administration in Islamic societies, it does not address the institutions of daily prayers, almsgiving, and *Waqf*. The scope of the theory needs to be expanded to include these important institutions. Additionally, al-Duri acknowledges the pre-Islamic origins and foreign influences on institutional developments in Islamic societies, particularly the Sassanian and Byzantine influences during the Arab conquests. However, the Sharia allows for the adoption of useful elements from other societies as long as they do not conflict with building an Islamic society.

Hallaq, a famous Islamic law researcher, stated that the customary law of pre-Islamic Arabia was insufficient to deal with the complex problems that arose in the new provinces after the Arab conquests, and Muslim judges often invoked laws that had prevailed prior to the Islamic conquest. There is a difference of opinion among Muslim scholars regarding the origin of the *Waqf* system. Al-Nawawi, a well-known Shafi'i jurist and Hadith scholar, believed that the *Waqf* system is one of the exclusive features of Islam, while al-Shafi'i, the founder of the Shafi'i school, stated that people in the pre-Islamic period did not keep houses or land as *Waqf* seeking pious goodness. However, al-Tarabulusi, who authored one of the important classical works on *Waqf*, claimed that *Waqf*'s origin is pre-Islamic and can be traced back to the prophet Ibrahim al-Khalil. This author subscribes to the conclusion of Dr. Monzer Kahf, who limited pre-Islamic *Waqf* to a very narrow scale (Khashan 2022).

In general, the *Nuzum* theory is a framework that can be used to analyze Islamic institutions. These institutions can be divided into four categories based on their origins and historical formation. The first category includes institutions that existed during the pre-Islamic era or pre-Islamic religions. The second category includes institutions

established by the Qur'an and Sunna, such as prayers, fasting, and *Zakāt*. The third category includes institutions that were borrowed or imported from preceding civilizations and developed according to Islamic principles and needs. The fourth category includes new institutions created by exercising *Ijtihād* (independent reasoning) to meet societal needs, such as the *Waqf* system. This framework is useful in situations where there is limited historical information available about the formation of institutions.

The *Waqf* system was developed through *Ijtihād*, where scholars exercised independent reasoning to respond to specific social needs. The *Nuẓum* theory provides a framework for analyzing Islamic institutions, and the *Waqf* system can be categorized into five needs: public/general, social services for specific groups of people, relief for special circumstances, protection of animals, and special needs initiated by donors. The *Waqf* system was diverse and included various endowments for charitable purposes, such as helping people perform *Hajj*, providing wedding costumes, freeing prisoners, and paving streets. Ibn Battuta was amazed by the *Waqf* system's diversity and even witnessed a *Waqf* that provided a replacement for a broken porcelain dish.

The legal rules of the *Waqf* system developed along with the system itself, and later, books on the subject became extensive and specialized. *Aḥkām al-Awqāf* by al-Khassaf is a leading classical work on the subject, while modern works such as Qadri Pasha's book and Mustafa Ahmad al-Zarqa's *Aḥkām al-Awqāf* combine classical and modern approaches to organizing the subject matter.

The legal rules of the *Waqf* system have developed as the system itself developed to provide public works and social facilities. The classical works by jurists and modern classics both focus on the technicalities of the *Waqf* rules, such as which properties can be turned into *Waqf* properties and what to include in *Waqf* deeds. The rules do not

concern the aims of the *Waqfs* or resultant charitable purposes, unlike the *Zakāt* system. The *Waqf* rules are borrowed from Sharia rules in the domain of property, possessions, contracts, and wills. The main concern of the jurists was the perpetuity and inviolability of *Waqf* property to ensure the fund for public goods could be perpetual.

The *Nuẓum* perspective helps us understand the *Waqf* system, which started in the Prophetic period but was expanded through *Ijtihād* to correspond to the society's needs. The donors had discretion over the purpose of their *Waqf*, while jurists built institutional rules to ensure the perpetuity of the fund and its social good. This understanding is essential for the contemporary revitalization of the *Waqf* system, which needs to be re-institutionalized in a suitable form based on historical legal interpretation and current societal needs.

Conclusion

The lack of direct mention of *Waqf* in the Qur'an and Hadith indicates that the formation of the *Waqf* system was not part of the early Islamic period's social and political priorities. The scarcity of textual evidence on *Waqf* has made it challenging to understand how Muslims regulated their *Waqf* transactions. This chapter suggests that the social, political, and legal components of Islamic society played a crucial role in developing regulations for *Waqf* throughout Islamic history. The *Nuẓum* theory, or the theory of Islamic institutions, proposed by 'Abd al-'Aziz al-Duri, provides a framework for analyzing institutionalization in Muslim society. It explains how Islamic institutions developed in response to political, economic, and societal needs during the historical development of the Islamic state. This chapter concludes that despite the lack of textual guidance, the development of Islamic institutions demonstrates the dynamic nature of Islamic law and the importance

of *Ijtihād*-based institutionalization in the development of Islamic institutions.

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