

## Ensuring Beneficiaries' Rights and Legal Protection Through Strengthening Downward Accountability in Waqf Management: A Shariah-Legal Analysis of the Stakeholder Theory

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### ABSTRACT

This research explores how stakeholder theory can enhance the protection of waqf beneficiaries' rights and ensure their legal safeguards through strengthened downward accountability. It reconciles traditional Islamic practices with modern governance principles to improve transparency and beneficiary involvement in waqf governance. The study employs qualitative doctrinal methods, utilising Islamic jurisprudence and legal theories to analyse the rights of waqf beneficiaries, with an emphasis on fiduciary duties, stakeholder accountability, and the need for *mutawalli's* legal obligations to implement downward accountability. Findings show that integrating stakeholder theory into waqf management can effectively balance the interests of multiple stakeholders, including waqf beneficiaries. Implementing this principle can enhance accountability, fostering better socio-economic development and protection for waqf beneficiaries. However, addressing power imbalances between the *mutawallis* and waqf beneficiaries, exacerbated by the lack of a legal requirement for downward accountability from the *mutawallis*, is essential to ensure the complete protection of beneficiaries' rights and the efficient and transparent operation of the waqf system. Thus, this study proposes a beneficiary-centric model of waqf governance rooted in



stakeholder theory and aligned with Islamic principles, emphasising the need to prioritise beneficiaries' interests in waqf management and addressing potential challenges to their fulfilment. The research proposes the need to impose enforceable obligations on *mutawallis* to be accountable to waqf beneficiaries under their management.

**Keywords:** Waqf management; Legal obligations; Downward accountability; Beneficiary-centric governance

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## 1. Introduction

Waqf is an Islamic endowment involving the permanent dedication of property for religious or charitable purposes to ensure ongoing welfare services for the intended recipients.<sup>1</sup> From an economic perspective, waqf entails redirecting resources from immediate consumption toward productive assets that facilitate future consumption. The excess income waqf generates can be utilised by blending saving and investment activities.<sup>2</sup> A waqf beneficiary, known as '*mawquf alaih*', denotes an individual entitled to benefit from or receive profits from assets designated as waqfs.<sup>3</sup>

The status of waqf management in Nigeria is unfavourable due to a mix of potential and persistent challenges. While waqf institutions have historically contributed to social welfare, poverty alleviation, and public service provision in the country, their development remains weak due to several factors, including the lack of federal legislation specifically governing waqf, which results in its management by *mutawallis* without clear regulatory oversight. The decline of waqf institutions since the fall of the Sokoto Caliphate is attributed to the current administrative failures, corruption, and weak corporate governance in the waqf sector. Despite revival efforts in states like Zamfara, growth has been limited, necessitating the need for further attention to improve the status of waqf management across the nation.<sup>4</sup> However, ensuring the efficacy of waqf institutions by engaging several policies hinges significantly on the interests of beneficiaries. The waqf manager (*mutawalli*), tasked with administering waqf properties in the best interest of beneficiaries, plays a pivotal role in preserving assets to

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<sup>1</sup> Mohamad Isa Abd Jalil, Sofri Yahya and Anwar Allah Pitchay, 'The Contemporary Model of Waqf Structure', *The International Conference on Islamic Leadership and Management* (Universiti Islam Sultan Sharif Ali, 2016); Habeebullah Olawale Alawiye and Imran Khan Keerio, 'Towards Resolving Overlapped Distribution of Waqf Funds Through Artificial Intelligence: Focusing on Educational Waqf's Beneficiaries' (2023) 3(3) *Al-Kashaf* 74.

<sup>2</sup> Md Mahmudul Alam and others, 'Waqf as a Tool for Rendering Social Welfare Services in the Social Entrepreneurship Context' [2018] *Global Journal Al-Thaqafah* 87.

<sup>3</sup> Abd Jalil, Yahya and Pitchay (n 1); Alawiye (n 1).

<sup>4</sup> Habeebah Simisola Fa-Yusuf, Saheed Abdullahi Busari and Bilkis Lawal Shuaibu, 'Waqf Effectiveness in Nigeria: Problems and Solutions' (2021) 10(2) *Journal of Islamic Finance* 79; Habeebullah Olawale Alawiye and Zubaidah Syed Abdul Kader Sharifah, 'Navigating Waqfmanagement In Nigeria: A Review Of Colonial Legacies, Legal Reforms, And Beneficiary Rights' (2025) 19(1) *Labuan Ejournal of Muamalat and Society* 23.

maximise revenues and ensuring that the beneficiaries get their entitlements as intended by the *waqif*.<sup>5</sup>

Safeguarding beneficiaries involves preventing third parties from violating their rights, mitigating incentives for rights infringements, and providing legal recourse in the event of violations. Often marginalised, beneficiaries should be granted rights to enable the state to defend them against the undue influence of influential members of the waqf sector.<sup>6</sup> Ensuring beneficiaries' protection should be prioritised over protecting customers because beneficiaries do not hold the same status as customers. While dissatisfied customers can switch to another brand or a competing product, beneficiaries do not have the choice to exchange the benefits they receive from a waqf for alternatives.<sup>7</sup>

In waqf management, legal protection involves enforcing the *mutawalli's* fiduciary duties, ensuring they manage waqf assets per *Shariah* and the waqf's goals. This protection is vital, as beneficiaries depend on the *mutawalli* to act in their best interests, properly administering, preserving, and investing waqf assets. Key duties—such as operating within the authority, ensuring transparency, avoiding conflicts of interest, and prioritising beneficiary welfare—establish legal rights for beneficiaries that require safeguarding.<sup>8</sup> Moreover, according to the decision in *Oko v AG, Ebonyi State*,<sup>9</sup> someone's duty towards an individual will always correspond to a right he can claim. However, for a duty to generate a right, it must involve an action or forbearance rather than merely an internal state of mind.

Legal mechanisms, including accountability measures, are crucial in preventing misconduct and ensuring recourse for violations of rights. When *mutawallis* fail to fulfil their obligations, legal protections enable corrective actions, allowing affected parties to seek redress for losses resulting from negligence or misappropriation.<sup>10</sup>

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<sup>5</sup> Abubakar Yusuf Sanyinna, 'Integration of Waqf, Microfinance and Micro, Small and Medium Enterprises for Poverty Alleviation in Sokoto State, Nigeria' (DPhil thesis, Universiti Utara Malaysia 2018) <[https://etd.uum.edu.my/8344/1/s900645\\_01.pdf](https://etd.uum.edu.my/8344/1/s900645_01.pdf)>; Cengiz Toraman, Bedriye Tunçsiper and Sinan Yilmaz, 'Cash Awqaf in the Ottomans as Philanthropic Foundations and Their Accounting Practices', *5th Accounting History International Conference, Banff, Canada* (2007) <<https://waqfacademy.org/wp-content/uploads/2013/02/Ottoman-Cash-Awqaf-Administration-and-Accounting-Practices.pdf>>; Fuadah Johari and others, 'Enhancing Synergy in the Waqf Ecosystem in Malaysia: Promoting Increased Waqf Contributions Among Beneficiaries, Donors, and Mutawalli' (2023) 15(3) *International Journal of Economics and Finance Studies* 76.

<sup>6</sup> Idowu Mopelola Ajibade, 'Mainstreaming Human Rights into Anti-Corruption: A Strategy for Protecting Vulnerable Groups in Nigeria from Double Jeopardy' (*Social Science Research Network*, 19 November 2008) 1; Ronald C Slye, 'International Law, Human Rights Beneficiaries, and South Africa: Some Thoughts on the Utility of International Human Rights Law' (2001) 2(1) *Chicago Journal of International Law* 59.

<sup>7</sup> Hisham Dafterdar, *Insights into Awqaf Management and Development* (IBF Net Group 2023); Hisham Dafterdar, 'Awqaf Beneficiaries: Venerable or Vulnerable' (*IBF DigiLabs. Pte. Ltd.*, 2017) <<https://netversity.io/awqaf-beneficiaries-venerable-or-vulnerable/>>.

<sup>8</sup> Zubaidah Syed Abdul Kader Sharifah and Nor Asiah Mohamad, 'Examining the Fiduciary Duties of the Waqf Trustee: Benchmarking With the Law of Trusts and Islam' [2018] 1 *Shariah Law Reports Articles* i.

<sup>9</sup> (2021) 14 *Nigerian Weekly Law Reports* (pt 1795) 63, p 100, paras A–C.

Accountability is essential in waqf management, ensuring that the *mutawalli's* actions are monitored to prevent neglect and uphold ethical responsibilities. Quranic teachings highlight that without accountability, individuals may act irresponsibly. A lack of accountability can lead the *mutawalli* to neglect his management and moral duties, resulting in mismanagement, corruption, and a breach of trust with waqf beneficiaries.

Allah said:

'Indeed, they did not expect any account [of their deeds], and they denied Our signs with vehement denial. But all things We have enumerated in a book. So, taste [the punishment], for We will not increase you except in torment.'<sup>11</sup>

In Islamic jurisprudence, it is established that *wasīlah* (means) takes the ruling of their results; if the result is terrible, the means are prohibited, and if the result is good, permissible means can be used to facilitate the result. Furthermore, some scholars emphasise the need to block means that lead to harm.<sup>12</sup> Al-Qarafi stated that preventing corruption involves stopping any action that, although not inherently harmful, may lead to harm; thus, Imam Malik would prohibit such actions.<sup>13</sup> Bin Taimiyyah added that any potential path to corruption should be blocked unless it is outweighed by a greater benefit, as in necessity situations, such as when a doctor performs a diagnostic test on a patient of the opposite sex.<sup>14</sup> Consequently, if accountability in waqf management mitigates prohibited actions, it aligns with Islamic law and may even be recommended or required by *Shariah*, depending on the specific needs of waqf institutions.

The stakeholder theory enhances downward accountability in waqf management by requiring a balance of interests across all stakeholders to ensure protection. Legal mechanisms play a crucial role in empowering stakeholders to sanction undesirable actions, while accountability is achieved when organisations provide timely and accessible information. This enables stakeholders to participate in decision-making and enforce control effectively.<sup>15</sup> Findings reveal significant challenges in fulfilling downward accountability, as resource dependence theory shows a tendency for charitable institutions to focus on resource-controlling stakeholders, neglecting the recipients. To better serve their beneficiaries, these institutions should strengthen their accountability systems, aligning

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<sup>10</sup> *Akilu v Fawehinmi (No. 2)* (1989) 2 Nigerian Weekly Law Reports (pt 102) 122; *AG, Adamawa State v AG, Fed* (2005) 18 Nigerian Weekly Law Reports (pt 958) 581, p 654, paras A–C.

<sup>11</sup> Quran 78:27–30.

<sup>12</sup> Islamweb, 'Sharh Qaidah Al-Wasail Laha Ahkam Al-Maqasid [شرح قاعدة الوسائل لها أحكام المقاصد]' (*Islamweb.net*, 2004) <<https://islamweb.net/ar/fatwa/50387/شرح-قاعدة-الوسائل-لها-أحكام-المقاصد>>.

<sup>13</sup> Al-qarafi Ahmad Idris, *Al-Furuq* ('ālam Al-nashr), 2/32.

<sup>14</sup> Bin-Taimiyyah, *Al-Fatawa Al-Kubra* (Dār Al-kutub Al-'ilmiyyah 1987), 1/287.

<sup>15</sup> Omobolaji Olarinmoye, 'Accountability in Faith-Based Development Organizations in Nigeria: Preliminary Explorations' (Global Economic Governance Programme, University of Oxford 2011); Kose John and Lemma W Senbet, 'Corporate Governance and Board Effectiveness' (1998) 22(4) *Journal of Banking and Finance* 371.

them with their core values and mission and redirecting efforts to support recipients genuinely.<sup>16</sup>

This research examines the necessity of protecting beneficiaries in waqf management and implementing a beneficiary-centric model of waqf governance. While addressing challenges hindering the implementation of downward accountability in most charitable institutions, it demonstrates why beneficiary voices need to be rescued from marginalisation, emphasising the need for effective mechanisms for downward accountability.

## 2. Literature Review

### 2.1 The Nature of Stakeholder Theory

Stakeholder theory has been incorporated into management and accounting science for corporations and nonprofit organisations (NPOs) for several decades. Its concept was first introduced by Freeman in 1984 in his award-winning book, 'Strategic Management: A Stakeholder Approach'. Freeman's definition of stakeholders encompasses any group or individual capable of impacting or being impacted by the organisation's goals, leading to ongoing discussions about identifying stakeholders and determining managerial priorities.<sup>17</sup> According to Barney, 'a stakeholder is a person, group or organisation with a vested interest, or stake, in the decision-making and activities of a business, organisation or project. Stakeholders can be members of the organisation they have a stake in, or they may have no official affiliation with the organisation. They can have a direct or indirect influence on the activities or projects of an organisation.'<sup>18</sup>

According to the International Organisation for Standardisation's guidelines for corporate social responsibility, stakeholders are identified in an organisation through several criteria, including the organisation's legal obligations to them, their potential to be positively or negatively affected by its decisions, and their likelihood of engaging with its activities and expressing their concerns towards them. They include customers, employees, investors, suppliers, boards, communities, and government bodies.<sup>19</sup>

The stakeholder theory focuses on managerial approaches to protecting stakeholders' interests, unlike the shareholder theory, which aims to maximise shareholder value. Stakeholders encompass any group or individual capable of influencing or being influenced

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<sup>16</sup> Mubarak Shehu Musawa, 'Communicated Accountability of Charitable Organisations: The Case of Nigeria' (2019) 8(1) *Jurnal Ekonomi Bisnis dan Kewirausahaan* 33.

<sup>17</sup> Norman Hamdan, Ahmad Zamri Osman and Hafiz-Majdi Ab Rashid, 'The Stakeholders Ecosystem of Waqf Institutions in Malaysia' (2019) 27(2) *Jurnal Syariah* 281; Stakeholder Theory, 'About the Stakeholder Theory' (*Stakeholder Theory*) <<http://stakeholdertheory.org/about/>>.

<sup>18</sup> Nick Barney, 'What Is a Stakeholder?' (*Informa TechTarget*, 2023) <<https://www.techtarget.com/searchcio/definition/stakeholder>>.

<sup>19</sup> Barney (n 18).

by an organisation's goals or any groups or individuals whose well-being, either for themselves or others, is directly impacted by the actions or decisions of a firm.<sup>20</sup> In the context of waqf management, the *waqif*, *mauquf 'alaih*, and the *mutawalli* are important stakeholders of waqf administration due to their different roles in the operation of waqf. The *waqif* is the donor or founder of the waqf. He must be a mature, sane, and free person with full ownership of the asset who voluntarily declares it for waqf. The *mauquf 'alaih* are the beneficiaries, either the general public or specific individuals, who are entitled to benefit from the waqf as stated in the waqf agreement. The *mutawalli* is the appointed trustee responsible for managing and distributing the waqf according to the *waqif's* intent, ensuring that the waqf remains inalienable, irrevocable, and perpetual.<sup>21</sup> According to Mahadi and Rashid, stakeholders also include Allah, Muslim leaders, contributors to waqf, and the broader Muslim community.<sup>22</sup>

Waqf, an Islamic financial institution, is deeply rooted in the principles of social justice and equity. Its charitable goals aim to address social inequalities and uplift marginalised individuals, embodying the broader Islamic values of compassion, justice, and social responsibility. Waqf governance involves *mas'uliyah* (responsibility), making an individual or organisation to be recognised as an authority and responsible for their actions. This is adapted by examining how *the mutawalli (waqf manager) discharges accountability towards stakeholders, including waqif (waqf donors), beneficiaries, and the public.*<sup>23</sup>

The stakeholder approach broadens NGOs' accountability to encompass all those impacted by their actions, viewing accountability as an ongoing, inclusive process rather than merely a post-decision evaluation. Engaging in it ensures fair and efficient decisions and redefines accountability as a catalyst for societal change. Moreover, NGOs can be accountable in four directions: upwards to donors and regulators, downwards to beneficiaries, internally to uphold mission and values, and horizontally to peer organisations.<sup>24</sup>

In summary, ensuring transparency, accountability principles, and equitable treatment for all stakeholders are essential in waqf management. This aligns with the concept of stakeholder theory and corporate governance. Corporate governance involves techniques for overseeing and managing companies to achieve their objectives while safeguarding the

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<sup>20</sup> Diana Lorenzo-Afable, Marjolein Lips-Wiersma and Smita Singh, "'Social' Value Creation as Care: The Perspective of Beneficiaries in Social Entrepreneurship' (2020) 16(3) Social Enterprise Journal 339; Hidayatul Ihsan, 'Framing Accountability Model for Awqaf Institutions' (2021) 1(1) Rafgo 7; Mahadi Ahmad and Syed Khalid Rashid, 'The Need for High Corporate Governance in Nigerian Zakāf and Waqf Institutions' (2016) 24(3) Jurnal Syariah 495.

<sup>21</sup> Abd Jalil, Yahya and Pitchay (n 1).

<sup>22</sup> Ahmad and Rashid (n 20).

<sup>23</sup> Isha Bharti, 'Waqf Property Management: Balancing Objectives, Constraints and Beneficiary Concerns' (2023) 4(1) Jus Corpus Law Journal 281.

<sup>24</sup> Robert Lloyd, 'The Role of NGO Self-Regulation in Increasing Stakeholder Accountability' (One World Trust, 2005).

interests of all stakeholders involved. It further encompasses the relationship between a corporation and its stakeholders.<sup>25</sup>

## **2.2 Islamic Law Perspective on the Stakeholder Theory**

In Islam, the core of stakeholder theory centres on human responsibility to Allah as the principal stakeholder, emphasising a deep-rooted trust within the framework of divine authority. The importance of this relationship arises solely from Allah's role as the ultimate protector, with humans as His entrusted steward.<sup>26</sup> The *Shariah* states that bequeathing an asset as waqf implies surrendering it to Allah, emphasising Allah's status as the foremost stakeholder in waqf institutions.<sup>27</sup>

Islamic corporate governance incorporates unique elements grounded in Islamic socio-scientific epistemology, emphasising Allah's unity and the principles of decision-making. Islamic corporate governance can effectively fulfil its purpose by addressing spiritual and worldly needs within Islamic societies. Key concepts such as *tawhid*, *shūrā*, *muhasabah*, and *Shariah* supervisory processes are fundamental to Islamic corporate governance.<sup>28</sup>

The Islamic economic system promotes a stakeholder-oriented model, prioritising the protection of all stakeholders' rights and interests. This model relies on two core principles of Islamic law: honouring contractual agreements and respecting property rights.

Allah says: 'O you who believe! Fulfil [all] contracts.'<sup>29</sup>

The above verse emphasises the duty of all Muslims to fulfil all their commitments, including corporate responsibilities and contractual obligations.

In corporate governance, contractual obligations are vital for all participants, stressing collective responsibility to protect others' rights, regardless of their decision-making role.<sup>30</sup>

Moreover, Islamic social responsibility emphasises actions that benefit individuals and communities, upholding religious values beyond financial gain. It integrates *taqwa*, legal adherence, morality, and justice, advocating for ethical principles in both personal conduct and economic matters, emphasising human obedience to Allah through compassionate actions toward all stakeholders. This reflects Islam's enduring commitment to social responsibility.<sup>31</sup>

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<sup>25</sup> Ahmad and Rashid (n 20).

<sup>26</sup> Ichsan Setiyo Budi, 'Islamic Corporate Social Responsibility (ICSR) Disclosure and Islamic Banks (IBs) Performance: The Application of Stakeholder Theory from Islamic Perspective' (2021) 25(1) *Jurnal Akuntansi dan Auditing Indonesia* 76.

<sup>27</sup> Hamdan, Osman and Ab Rashid (n 17).

<sup>28</sup> Ahmad and Rashid (n 20).

<sup>29</sup> Qur'an 5:1.

<sup>30</sup> Abdulrahman Alnofli, 'Corporate Governance in Islamic Financial Institutions: حوكمة الشركات في المؤسسات المالية' (1)5 (2021) *International Journal of Fiqh and Usul Al-Fiqh Studies* 65.

<sup>31</sup> Budi (n 26).

The principles of *Maqasid Shariah* require trustees to act in the best interests of beneficiaries, ensuring that dealings are fair and just, without unjust enrichment, deception, or uncertainty. Misconduct, including breaches of trust or wilful neglect, can result in the removal of trustees, underscoring the importance of accountability. Moreover, contracts must adhere to *Shariah* principles, avoid prohibited activities such as unjust speculation, and be transparent and fair to avoid being voidable.<sup>32</sup>

According to Sharifah and Mohamad, the *mutawalli* must operate within the scope of their authority, avoiding abuse or self-dealing and fulfilling their obligations with integrity and transparency. Consequently, implementing stakeholder theory in waqf management is significant for enhancing the *mutawallis'* commitment to duty of care, as well as their loyalty, fairness, and accountability.<sup>33</sup>

Based on the perspectives outlined in this section, the stakeholder approach concept originates from Western thought. Nevertheless, its applicability within Islamic law was established by referencing specific Islamic moral theories that govern beliefs and behaviours, such as the oneness of Allah, *taqwah*, and justice.

### **2.3 The Significance of Waqf Beneficiaries Among Other Stakeholders**

Waqf beneficiaries or *mawquf alaihim* are the individuals granted the privilege to utilise or reap benefits from waqf assets. They are the recipients of waqf benefits, outlined by the *wāqif*, and their presence is essential to prevent the waqf from becoming invalid.<sup>34</sup> A *waqf* is a charitable institution in Islamic law where a founder dedicates assets for ongoing community welfare, governed by a *waqfiyyah* (deed). Managed by trustees, it provides perpetual benefits to designated recipients as a means of serving Allah. This act fosters community well-being, with rewards continuing for the donor even after their lifetime.<sup>35</sup>

Waqf beneficiaries are commonly classified into two categories: specific beneficiaries and general beneficiaries. Specific beneficiaries are individuals or groups directly benefiting from waqf assets or those designated as beneficiaries by the *waqifs*. In most cases, Islamic jurists require a declaration of acceptance (*qabul*) to validate the implementation of waqf.

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<sup>32</sup> Sharifah and Mohamad (n 8).

<sup>33</sup> Sharifah and Mohamad (n 8).

<sup>34</sup> Hamdan, Osman and Ab Rashid (n 17).

<sup>35</sup> Ibrahim Nuruddeen Muhammad, 'Waqf, Values and the Ulama: Towards Harnessing Philanthropy for Community Uplift in Northern Nigeria' (*Social Science Research Network*, 2013) <<https://dx.doi.org/10.2139/ssrn.2253994>>; Monzer Kahf, 'Waqf and Its Sociopolitical Aspects' in Monzer and Siti Mashitoh Mahamood Kahf (eds), *dalam Essential Readings in Contemporary Waqf Issues* (CERT Publications 2011); Oluwaseun Sulaiman Saidu, Murat Cizakca and Rodney Wilson, 'Removing the Cog in the Waqf Wheels: A Policy Formulation for Nigeria' (2021) 10(2) *Share: Jurnal Ekonomi dan Keuangan Islam* 275; Abu Umar Faruq Ahmad, Noor Mohammad Osmani and Mohd Fazlul Karim, 'Islamic Finance in Australia: The Potential Problems and Prospects' in Abdul Ghafar Ismail Mohd Ezani Mat Hassan Norazman Ismail Shahida Shahimi (eds), *Proceedings of Seventh International Conference the Tawhidi Epistemology: Zakat and Waqf Economy* (Institut Islam Hadhari Universiti Kebangsaan Malaysia 2010).



Conversely, general beneficiaries are individuals or groups not explicitly identified by *waqifs*. In such instances, it is deemed sufficient to legally declare the *waqif's* intention to establish a waqf (*ijab*) without necessitating a declaration of acceptance.<sup>36</sup>

Additionally, waqf beneficiaries may be categorised as multiple beneficiaries or unilateral beneficiaries. For example, a *waqif* might designate multiple beneficiaries to receive benefits from their assets, such as allocating half of the proceeds to their family and the remaining half to a charitable cause or the disadvantaged.<sup>37</sup>

Moreover, waqf beneficiaries also encompass both individuals and public entities. Individual beneficiaries may include underprivileged individuals, religious institutions, and initiatives focused on social and human capital development, educational endeavours, and research funding. Public utilities encompass healthcare provisions, such as medical facilities, financial support for physicians, trainees, patients, and medications. Nonetheless, waqf proceeds are generally directed towards aiding the impoverished and needy.<sup>38</sup>

To be considered rightful beneficiaries of a waqf, they must meet the requirements. These include being clearly identified, in existence at the time of the waqf's establishment, adhering to Islamic principles, refraining from using the waqf for purposes contrary to Islamic law, and not being the *waqif* themselves.<sup>39</sup>

It has been argued that the stakeholder theory's effectiveness in providing clear guidelines for managing diverse stakeholders simultaneously is challenging. Based on that, some scholars believe that scrutinising power differentials and prioritising some stakeholders over others are significant. It is conventionally accepted to prioritise the needs of specific stakeholder groups, as achieving equal accountability to all stakeholders is often unfeasible.<sup>40</sup>

Even though Allah (SWT) emerges as the primary stakeholder, the *mutawalli's* obedience to Allah concerning waqf can only be fulfilled through his compassionate actions toward all other stakeholders.<sup>41</sup> Accordingly, *the mutawalli's accountability to Allah can be tangibly reflected through their accountability to certain individuals, including waqf beneficiaries and the waqif.*<sup>42</sup> According to Buerhan et al., besides Allah, the other two key stakeholders in waqf are the *waqif* and the beneficiaries.<sup>43</sup> Moreover, Daud et al suggest that the *waqif* and beneficiaries

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<sup>36</sup> Johari and others (n 5).

<sup>37</sup> Adam Muhammad Abubakar, 'Towards an Effective Investment in Waqf Properties in Nigeria' (Proceeding of the International Conference on Masjid, Zakat and Waqf, Kuala Lumpur, December 2014).

<sup>38</sup> Johari and others (n 5).

<sup>39</sup> Abubakar (n 37).

<sup>40</sup> Ihsan (n 20); Ahmad and Rashid (n 20).

<sup>41</sup> Budi (n 26).

<sup>42</sup> Sanyinna (n 5).

<sup>43</sup> Buerhan Saiti, Adama Dembele and Mehmet Bulut, 'The Global Cash Waqf: A Tool Against Poverty in Muslim Countries' (2021) 13(3) *Qualitative Research in Financial Markets* 277; Johari and others (n 5).

should be prioritised among different stakeholders, particularly in terms of transparency issues.<sup>44</sup>

Notwithstanding, it can also be argued the waqf beneficiaries should be the most prioritised stakeholders in waqf management because they are central to the waqf operation, as waqf validity and fulfilling its charitable purpose rely on their existence. They give purpose to the waqf, and encourage donations and volunteer support. Some jurists even consider the waqf as essentially belonging to the beneficiaries, given its creation for them.<sup>45</sup> This assertion can be evidenced by examining the tradition of classifying waqf based on different beneficiaries in relation to the division of waqf purposes. The classification in both considerations includes charity, family, religious, and *mushtarak* (combined) *waqf*. Charity *waqf* supports societal benefits like education and healthcare, while family *waqf* benefits heirs. Religious *waqf* addresses Muslim community needs, and *mushtarak waqf* serves both family and communal charitable objectives.<sup>46</sup> Additionally, waqf beneficiaries, as they are directly affected by actions and omissions of waqf management, are more attuned to its inefficiencies than the *waqif*, who may rely on indirect information. Beneficiaries' firsthand experience enhances oversight, making waqf audits more reliable when they are involved.<sup>47</sup>

Further, though the *waqif* holds an esteemed role, the interests of the *marwquf alaih* take precedence, as their well-being is allowed to outweigh strict adherence to the *waqif's* conditions by the *mutawalli* under Islamic law, indicating that the beneficiaries' interest must be considered when assessing the validity of any policy introduced to waqf management.<sup>48</sup>

Lastly, from a practical standpoint, the existence and availability of the *waqif* are not guaranteed. *Waqif* may pass away or lose interest in overseeing his waqf due to distance or other reasons. On the other hand, the beneficiaries will continue to exist as long as the waqf remains in effect. Prioritising accountability towards the *marwquf alaih* ensures that waqf management is continuously effective and responsible, even without the *waqif*.<sup>49</sup>

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<sup>44</sup> Dalila Daud, Rashidah Abdul Rahman and Zaluddin Sulaiman, 'Waqf Reporting to Fulfil Stakeholder Attribution in Waqf Islamic Councils' (2011) 2(1) Business and Management Quarterly Review 38.

<sup>45</sup> Abd Jalil, Yahya and Pitchay (n 1); Dafterdar (n 7); Hisham Dafterdar (n 7).

<sup>46</sup> Dafterdar (n 7); Hisham Dafterdar (n 7).

<sup>47</sup> Ahmad Zamri Osman and Gloria Agyemang, 'Privileging Downward Accountability in Waqf Management' (2020) 11(3) Journal of Islamic Accounting and Business Research 533 <<https://doi.org/10.1108/JIABR-05-2017-0064>>.

<sup>48</sup> Ziyād Khalaf 'Alawī Amjad and 'Āmir Muhammad, 'Athar Sharṭ Al-Wāqif 'Alā Al-Waqf' (2021) 10 Journal for Legal and Political Sciences/Magallat Kulliyyat Al-Qanun Li-L-ulum Al-Qanuniyyat Wa-Al-Siyasiyyat 497; Toraman, Tunçsiper and Yilmaz (n 5); Johari and others (n 5); Sanyinna (n 5).

<sup>49</sup> Susan O'Leary, 'Grassroots Accountability Promises in Rights-Based Approaches to Development: The Role of Transformative Monitoring and Evaluation in NGOs' (2017) 63 Accounting, Organizations and Society 21.

## 2.4 Analysis of Stakeholder Theory in the Context of Waqf Beneficiaries Under Nigerian Law

The concept of a 'stakeholder' originated in 1963 from the Stanford Research Institute (SRI), where it was first used to describe individuals or groups with a legitimate claim or interest in an organisation's operations and success.<sup>50</sup> In the context of waqf, waqf beneficiaries are legally recognised as stakeholders because they are directly affected by how waqf assets are managed and have enforceable rights under fiduciary duties imposed on *mutawallis* (trustees).<sup>51</sup> Consequently, the legal analysis of stakeholder theory in relation to waqf beneficiaries can be established through the study of the fiduciary responsibilities between them and the *mutawallis*, drawing from both classical Islamic jurisprudence and some Nigerian legal authorities to explore the extent of *mutawallis*' trust-based obligations. Likewise, examining evolving notions of ownership in waqf is also necessary to highlight the importance of accountability to waqf beneficiaries in waqf management. However, this analysis cannot be separated from *Shariah* integration, as waqf is a product of Islamic law, making it one of the matters that are fundamentally governed by Islamic law in the Nigerian legal perspective.<sup>52</sup> In *Gwabro v Gwabro*, the Court of Appeal held that 'English law principles are inapplicable in matters of *Shariah*, and the court is enjoined to only follow Islamic law principles where they are in vogue and not to import other systems into it.'<sup>53</sup>

### 2.4.1 The Fiduciary Relationship Between *Mutawalli* and Waqf Beneficiaries

A fiduciary relationship is a trust-based bond where one party relies on another to act in their best interests with loyalty, integrity, and care. Rooted in equity, it requires the fiduciary to prioritise the beneficiary's welfare. Although not exhaustively defined in law, its essence lies in the trusted nature of the interactions between the parties.<sup>54</sup>

It was observed by Gibbs CJ in the American case *Hospital Products Ltd v United States Surgical Corp.*<sup>55</sup> that '... Fiduciary are of several types, carrying different obligations ... and a test which might seem appropriate to determine whether a fiduciary relationship existed for one purpose might be entirely inappropriate for another purpose ... In the decided cases, various circumstances have been relied on to indicate the presence of a fiduciary relationship'.

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<sup>50</sup> Tamplc Philip, 'The Origins of the "Stakeholder" Concept' (*TAM UK—Organisational Strategic Planning Specialists*, 20 September 2013) <<https://tamplc.wordpress.com/2013/09/20/the-origins-of-the-stakeholder-concept/>>.

<sup>51</sup> Sharifah and Mohamad (n 8).

<sup>52</sup> International Waqf Fund, 'Waqf in Islam' (*International Waqf Fund*) <<https://waqf.org/waqf-in-islam/?cn-reloaded=1>>; Alam and others (n 2).

<sup>53</sup> (1998) 4 Nigerian Weekly Law Reports (pt 544) 60, p 71, para A.

<sup>54</sup> Sharifah and Mohamad (n 8).

<sup>55</sup> (1984) 156 Commonwealth Law Reports 41.

Likewise, the Nigerian case of *FBN Plc v Banjo*<sup>56</sup> observed that a fiduciary relationship is built on trust, where one person relies on another's integrity and fidelity. It arises when one party places confidence in the other, creating a dynamic of influence. This relationship can be legal, social, domestic, or personal.

Waqf trustees, whether individuals or institutions, are designated to oversee and manage waqf affairs, ensuring beneficiaries receive their entitlements. While not considered an inherent element of waqf pillars, their appointment is necessitated by the perpetual nature of waqf. This role offers flexibility, contingent upon their ability to fulfil the prescribed duties and subject to the discretion of the *waqif*, *qadi* (the judge), or governing authority.<sup>57</sup> The *waqif* must either assume the role of *mutawalli* or select an individual known for their piety, integrity, and honour. According to classical *fiqh* principles, the *waqif* retains the authority to designate a *mutawalli*, who may also serve as the initial manager of the waqf assets.<sup>58</sup>

While the teachings of Prophet Muhammad do not specify distinct duties for *mutawallis*, classical Islamic legal texts outline the *mutawalli's* duties in managing waqf properties, including maintenance, revenue collection, and distribution to beneficiaries. The *mutawalli* must protect and improve the waqf assets, honour the *waqif's* intentions, manage the leasing, and represent waqf interests legally. Compensation terms are often specified in the waqf document, although *mutawallis* may serve voluntarily or seek remuneration through the courts if not specified. Ultimately, they ensure the waqf's integrity and fair distribution to its beneficiaries.<sup>59</sup> They are prohibited from engaging in financial transactions such as selling, exchanging, mortgaging, or borrowing without court authorisation. They are obligated to ensure the perpetual charitable nature of waqf assets, adhering to *Shariah* principles and legal mandates.<sup>60</sup>

The concept of *mutawalli* and the trustee's duties are two aspects that link waqf to trust. Proper care and fiduciary responsibility from trustees and *mutawalli* towards waqf and its beneficiaries are crucial for effective waqf management. This entails acting in good faith, with meticulous attention, and in the best interests of the waqf and its beneficiaries. In the Nigerian case *Kure v COP*,<sup>61</sup> the Supreme Court held that a trust 'is a fiduciary relationship

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<sup>56</sup> (2015) 5 Nigerian Weekly Law Reports (pt 1452) 253, p 269, paras D–F.

<sup>57</sup> Ahmad Shazrin Mohamed Azmi, Noor Rosly Hanif and Siti Mashitoh Mahamood, 'A Review of Waqf Practices in the Context of Development in Malaysia' (2016) 13(1) Built Environment Journal 34; Muhammad Yusuf Saleem, 'Towards Institutional Mutawallis for the Management of Waqf Properties' (International Conference on Waqf Laws and Management 2009).

<sup>58</sup> Saleem (n 57).

<sup>59</sup> Luqman Haji Abdullah, 'Trusteeship of an Endowment in Islamic Law: Theory and Practice' (International Conference on Advances in Management Economics and Social Science 2014); Hussein Elasrag, 'Towards a New Role of the Institution of Waqf' (*Social Science Research Network* 2017) <<https://dx.doi.org/10.2139/ssrn.3011290>>; Mohammad Mahyuddin Khalid and others, 'Risk Management in Waqf Institutions: A Preliminary Study' (2019) 16(2) Journal of Fatwa Management and Research 207.

<sup>60</sup> Saleem (n 57).

<sup>61</sup> (2020) 9 Nigerian Weekly Law Reports 296 (pt 1729).

regarding property and charging the person with title to the property with equitable duties to deal with it for another's benefit. It is a property interest held by one person, called the trustee, at the request of another person, called the settlor, for the benefit of a third party called the beneficiary'.

Trustees and *mutawallis* share fiduciary duties that stress accountability, loyalty, and acting in the best interests of beneficiaries. Trustees must manage property without personal gain, avoid conflicts of interest, and treat beneficiaries equitably, focusing on fairness and transparency. Similarly, *mutawallis* under *Shariah* law must prioritise the interests of beneficiaries, avoid self-dealing, and operate within their designated authority. Both roles demand honesty and accountability to ensure fiduciary obligations.<sup>62</sup> In the Nigerian case *AG, Federation v AG, Abia State (No.2)*,<sup>63</sup> the Supreme Court held that 'it is the duty of the trustee to render account to the beneficiaries of the trust if, and when called upon to do so.'

Nevertheless, under Islamic law, a *mutawalli* is presumed to manage waqf assets honestly and is not normally required to prove his proper management. However, when their integrity is in doubt or the *waqif* stipulates conditions indicating otherwise, the *mutawalli* must justify their actions accordingly. In such cases, waqf beneficiaries can have the right to investigate the use and management of waqf funds by the *mutawalli*.<sup>64</sup> However, Al-Sinqīṭī emphasises that, due to the rarity of trustworthiness in later times, *mutawallis* must generally provide detailed financial and administrative accounts, justifying the position of Nigerian law on the need for the *mutawalli's* accountability.<sup>65</sup>

Additionally, in Islamic jurisprudence, it is established that *wasīlah* (means) takes the ruling of their results; if the result is terrible, the means are prohibited, and if the result is good, permissible means can be used to facilitate the result. Furthermore, some scholars emphasise the need to block means that lead to harm.<sup>66</sup> Al-Qarafi stated that preventing corruption involves stopping any action that, although not inherently harmful, may lead to harm; thus, Imam Malik would prohibit such actions.<sup>67</sup> Bun Taimiyyah added that any potential path to corruption should be blocked unless it is outweighed by a greater benefit, as in necessity situations, such as when a doctor performs a diagnostic test on a patient of the opposite sex.<sup>68</sup>

Consequently, the fiduciary relationship shared by trustees and *mutawallis* requires them to be accountable and to act in the best interests of their beneficiaries. Both Islamic and

<sup>62</sup> Sharifah and Mohamad (n 8).

<sup>63</sup> (2002) 6 Nigerian Weekly Law Reports 542 (pt 764).

<sup>64</sup> Al-Ṣāwī Ahmad Bin Muhammad Al-Khalwānī, *Hāshiyah Al-Ṣāwī Alā (Bulghah) Sharh Al-Kabīr* (Dār Al-Ma'Ārif), 4/120.

<sup>65</sup> Al-Sinqīṭī Muhammad Bin Muhammad Salim, *Lawāmi'U Al-Durar Fī Astār Al-Mukhtaṣar* (Dār Al-Ridwān 2015), 1/172.

<sup>66</sup> Islamweb (n 12).

<sup>67</sup> Al-qarafi Ahmad Idris, *Al-Furuq* ('ālam Al-nashr), 2/32.

<sup>68</sup> Bin-Taimiyyah, *Al-Fatawa Al-Kubra* (Dār Al-kutub Al-'ilmiyyah 1987), 1/287.

common law emphasise this responsibility, highlighting the need for transparency and ethical conduct in managing entrusted assets and emphasising the duty of *mutawallis* to render accounts to waqf beneficiaries.

#### **2.4.2 The Interest of Waqf Beneficiaries in Waqf**

Ownership, from a legal point of view, refers to the right to physically utilise an asset, to receive income from it in the form of money, goods, or services, and to exercise management authority, which includes the ability to transfer ownership.<sup>69</sup> In another expression, it is the full control, title, or proprietary right over an object or claim. It entails the right of one or more individuals to possess and utilise a thing while excluding others from doing so.<sup>70</sup>

In Islamic law, *haqq* (right) refers to a justifiable claim or interest granted by *Shariah* and is treated as a form of property (*al-mal*) with value and utility. Property rights in Islam encompass ownership, acquisition, use, and transfer; any violation of these rights disrupts the social order. Individuals may possess and use resources, but this right exists within a framework that prioritises collective rights and the social welfare of the community. Thus, private property is allowed but must not conflict with societal interests or *Shariah* principles. Once these conditions are fulfilled in someone's ownership, his property rights are protected, and forced appropriation of such property by another person is prohibited under Islamic law.<sup>71</sup>

Further, it was narrated by Abdullah ibn Amr (may Allah be pleased with them both). He said: I heard the Prophet ﷺ say:

'Whoever is killed while defending his wealth is a *shahid* (martyr).'<sup>72</sup>

The promise in the above hadith in relation to its placement by Imam al-Bukhari under the chapter titled 'The Chapter on Defending One's Property' affirms the legitimacy and nobility of safeguarding one's possessions in Islam, indicating that defending one's rights, including property and trust assets like waqf, is not only lawful but can be an act of moral and religious virtue. If the physical defense of wealth is sanctioned to the extent of martyrdom, then seeking peaceful and legal accountability, especially in cases of mismanagement or breach of trust, is even more justifiable.

The concept of waqf ownership, deeply rooted in Islamic jurisprudence, offers a unique framework that distinguishes it from conventional property ownership. In the realm of waqf, ownership lies within the purview of the individual who created the waqf based on the opinion of the Hanafists.<sup>73</sup> However, they asserted that the *waqif* is restricted in certain

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<sup>69</sup> *Orianwo v Orianwo* (2001) 5 Nigerian Weekly Law Reports 516 (pt 707), p 522, paras G–H.

<sup>70</sup> *Ona v Atenda* (2000) 5 Nigerian Weekly Law Reports 224 pt 656), p 285, paras D–E.

<sup>71</sup> Zamir Iqbal and Abbas Mirakhor, 'Stakeholders Model of Governance in Islamic Economic System' (2004) 11(2) Islamic Economic Studies 43.

<sup>72</sup> Ismā'il Muhammad Bin Al-bukhārī, *Sahih Al-Bukhārī* (Dār Bin Kathīr), 2/877, hadith 2348.

<sup>73</sup> Amjad and Muhammad (n 48).

waqf transactions to protect the waqf beneficiaries' interests. Consequently, they unanimously agreed that the *waqif* cannot revoke his waqf in specific instances.<sup>74</sup> Moreover, all their jurists uniformly prohibit the revocability of waqf in all cases except for Abu Hanifa.<sup>75</sup> As a result, Hanafists' stance on waqf ownership does not suggest disregarding the rights of waqf beneficiaries.

Likewise, the jurists concur that the *waqif's* role in defining the terms of the waqf and drafting the legal documents, known as *waqfiyyah*, is limited to ensuring that the terms do not contravene the interests of waqf beneficiaries. Should the terms jeopardise the beneficiaries' interests, the *mutawalli*, responsible for administering waqf assets, can disregard such documents.<sup>76</sup>

Some jurists argue that the principle of waqf ownership has a profound spiritual dimension, asserting that the ultimate ownership of waqf assets belongs to Allah. This perspective emphasises the divine sanctity of waqf, transcending mere human ownership, and highlights the need to protect the interests of the beneficiaries. By recognising Allah as the ultimate stakeholder within the framework of Islamic stakeholder theory, this approach promotes recognition of the diverse interests of all stakeholders, including beneficiaries, aligning them with Allah's will and Islamic teachings.<sup>77</sup>

The Hanbalists assert that the legal title and ownership of waqf belong to the beneficiaries. However, the beneficiaries' assets do not also enjoy full ownership rights. While they may benefit from the assets, they are bound by stringent restrictions outlined by the *waqif*. These restrictions prohibit beneficiaries from altering the intended use or disposing of the property, ensuring that the assets remain dedicated to their prescribed purpose in perpetuity.<sup>78</sup>

Consequently, in the realm of *waqf*, the notion of ownership distinguishes between legal and beneficial titles, each entailing distinct rights, obligations, and responsibilities. Moreover, no individual or entity can have complete legal ownership of waqf property under Islamic law.<sup>79</sup>

Beneficiaries are generally entitled to a portion of the benefits derived from the waqf's usufruct rather than direct ownership of its corpus if they retain their status as beneficiaries. It falls upon the *mutawalli* to oversee the management of waqf assets and ensure that income

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<sup>74</sup> Syed Khalid Rashid, 'Potential of Waqf in Contemporary World' (2018) 31(2) Journal of King Abdulaziz University: Islamic Economics 53; Amjad and Muhammad (n 48).

<sup>75</sup> Rashid (n 74); Amjad and Muhammad (n 48).

<sup>76</sup> Amjad and Muhammad (n 48).

<sup>77</sup> Dafterdar (n 7).

<sup>78</sup> Muḥammad Jawād Maghniyah and Muḥammad Ġawād Muġniya, *The Five Schools of Islamic Law: Al-Hanafi, Al-Hanbali, Al-Ja'fari, Al-Maliki, Al-Shafi'i* (Anssariyan 1995).

<sup>79</sup> Mohammad Abdullah, 'Waqf and Trust: The Nature, Structures and Socio-Economic Impacts' (2019) 10(4) Journal of Islamic Accounting and Business Research 512.

is distributed to beneficiaries per the stipulations set forth by the *waqif*.<sup>80</sup> Therefore, a dispute over waqf ownership only centres on the waqf corpus, asserting that income generated from waqf assets must be exclusively allocated to the intended beneficiaries. This allocation is fixed and cannot be altered by management or supervisory courts as long as it complies with *Shariah* principles and is feasible because if the original purpose of waqf becomes unattainable, the waqf benefits would be redirected to the nearest possible alternative; if no alternative exists, the revenue would be designated for the welfare of the poor and needy.<sup>81</sup>

In summary, the legal analysis of stakeholder theory under this section highlights the centrality of beneficiaries in waqf governance. Drawing from both Islamic jurisprudence and Nigerian legal principles, it is evident that *mutawallis* hold fiduciary duties to act with integrity, transparency, and in the best interests of beneficiaries. While ownership of waqf property remains complex with a distinctive nature that surpasses traditional concepts of property ownership, jurists express differing views on the legal title of waqf among three stakeholders: Allah, the *waqif*, and the beneficiaries, with no consensus on legal ownership of waqf. However, the beneficiaries' stake in waqf is universally recognised by all jurists, as they all acknowledge the beneficiaries' entitlement to its benefits. Thus, enhancing legal frameworks to reinforce the *mutawalli's* accountability to beneficiaries is essential for preserving their certain interests in waqf.

## **2.5 Essence of Accountability to Waqf Beneficiary**

Accountability is described as the responsible exercise of power, which involves acknowledging and being answerable to various stakeholders, particularly those affected by such authority. Arroyo emphasises accountability towards beneficiaries as a relationship in which individuals or groups demand that agencies report their actions and are empowered to address grievances. The fundamental tenets of accountability encompass a dedication to humanitarian standards and rights, setting and enhancing operational standards, engaging with stakeholders and involving them in programs, overseeing and reporting on compliance, and handling complaints through impartial channels.<sup>82</sup>

To ensure complete responsibility, more than just openness is required; people also need to be given the authority to act on the information they are given. Establishing ethical frameworks and models within the broader community is crucial for addressing shortcomings and preventing the inadequate representation of aid or the misuse of resources by substandard charitable institutions.<sup>83</sup>

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<sup>80</sup> Mohamed Azmi, Hanif and Mahamood (n 57); Abdullahi Audu Shuaib, 'The Role of Islamic Social Finance Instruments in Providing Services in Nigeria' (Loughborough University 2020).

<sup>81</sup> Kahf (n 35).

<sup>82</sup> Ramin Asgary and Ronald J Waldman, 'The Elephant in the Room: Toward a More Ethical Approach With Accountability Toward Intended Beneficiaries in Humanitarian Aid' (2017) 9(6) *International Health* 343.

<sup>83</sup> Asgary and Waldman (n 82).



The success of managing waqf funds relies heavily on the adherence to fundamental principles of good corporate governance, which include prioritising both upward and downward accountability. Upward accountability entails adhering to the rules and regulations established by governing bodies, while downward accountability involves the active involvement of beneficiaries in the formulation and execution of policies.<sup>84</sup>

Downward accountability practices have been thoroughly examined from the perspectives of charitable institutions and beneficiaries, each highlighting unique benefits. It promotes transparency in charitable operations, compelling management to communicate their activities to beneficiaries and fosters beneficiary involvement in decisions that affect their lives, empowering them to hold management accountable, voice their needs, and ensure those needs are met. Consequently, through this accountability, beneficiaries can influence their perceptions of charitable interventions and actively engage in management initiatives, driving significant transformations in their communities.<sup>85</sup>

Likewise, downward accountability is vital for the sustainability of the waqf sector, as it fosters trust and builds long-term relationships by addressing the needs of stakeholders, which can influence future sustainability.<sup>86</sup>

Downward accountability ensures a collaborative approach in the waqf sector. Awuah-Werekoh et al. held that charitable organisations must be accountable to funders and beneficiaries to ensure optimal resource utilisation and effective corporate governance, combining upward and downward accountability.<sup>87</sup>

According to O’Leary, downward accountability aligns with the principles of democratic governance by prioritising beneficiary participation in decisions that affect them. This involvement fosters a sense of ownership among beneficiaries, contributing to long-term sustainability beyond funding periods. Effective downward accountability requires shared decision-making authority between charitable institutions and beneficiaries, enabling beneficiaries to engage in discussions about their lives, hold NGOs accountable, and voice their needs. As a result, beneficiaries can shape their perceptions of NGO interventions, influencing project outcomes and driving meaningful changes within their communities.<sup>88</sup>

Likewise, downward accountability enhances beneficiary satisfaction by addressing their needs through transparent and trustworthy interactions alongside formal financial reporting to upward stakeholders.<sup>89</sup>

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<sup>84</sup> Khalid and others (n 59).

<sup>85</sup> O’Leary (n 49).

<sup>86</sup> Norbahriah Baharin and others, ‘“Stakeholders” Information Needs for Sustaining Waqf: Development of Theoretical Framework’ (2023) 4(2) AL-MAQASID: The International Journal of Maqasid Studies and Advanced Islamic Research 1.

<sup>87</sup> Kwasi Awuah-Werekoh, ‘Accountability Systems of Non-Governmental Organizations (NGOs): Case Study from Ghana’ (DPhil thesis, University of Birmingham 2015) <<http://etheses.bham.ac.uk/id/eprint/5829>>.

<sup>88</sup> O’Leary (n 49).

Consequently, downward accountability is central to the ethical and sustainable management of waqf and charitable institutions. It empowers beneficiaries to promote transparency and foster trust in waqf administration. It also complements the role of upward accountability to ensure balanced waqf governance and optimal utilisation of waqf funds.

## **2.6 Challenges of Implementing Downward Accountability**

Achieving accountability to intended beneficiaries is challenging, as implementing and maintaining a tripartite accountability structure proves difficult. Some of the reasons for the difficulty are stated below:

O'Leary observes that downward accountability involves commitment toward marginalised groups who are often in vulnerable positions. However, power imbalances frequently limit beneficiary participation in decision-making, especially in contexts where demanding accountability is likely to result in losing essential aid. Nevertheless, charitable organisations tend to focus on donor and government accountability standards to avoid restrictive funding conditions, leaving beneficiaries passive as they lack the power to demand accountability.<sup>90</sup>

Further, the study conducted by Uddin and Belal observed that insufficient donor involvement in waqf management is another factor affecting downward accountability. According to the study, accountability to beneficiaries is more robust in projects funded by donors than in those solely funded by NGOs without donor support, highlighting that donor intervention has the potential to bolster an NGO's accountability to its beneficiaries.<sup>91</sup>

Thirdly, there is often an inadequate interaction between NGO officers and beneficiaries. According to the literature, effective downward accountability relies on strong interaction between NGO officers and beneficiaries. Regular engagement helps officers understand and meet the needs of beneficiaries, reducing secrecy and the need for inspections. Geographical distance can hinder these connections, so waqf officers must bridge this gap to understand the needs of beneficiaries better. Volunteers are also vital in promoting accountability and connecting funders, charitable institutions, and beneficiaries, particularly in remote areas where direct interaction is limited.<sup>92</sup>

The fourth factor involves the cost of implementing downward accountability processes. Downward accountability may incur higher costs, as gathering input and

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<sup>89</sup> Miranti Kartika Dewi, Melina Manochin and Ataur Belal, 'Marching With the Volunteers: Their Role and Impact on Beneficiary Accountability in an Indonesian NGO' (2019) 32(4) *Accounting, Auditing and Accountability Journal* 1117; Asgary and Waldman (n 82); Rumana Amin Archi, 'NGO Accountability: Undermines Responsiveness to the Beneficiaries? Case Studies from Bangladesh' (Institute of Social Studies, The Hague, The Netherlands 2008).

<sup>90</sup> O'Leary (n 49); Archi (n 89).

<sup>91</sup> Dewi, Manochin and Belal (n 89).

<sup>92</sup> Osman and Agyemang (n 47); Dewi, Manochin and Belal (n 89).

feedback from beneficiaries adds extra costs to already constrained budgets. Aid organisations may need to persuade significant donors to agree to share accountability with aid recipients.<sup>93</sup>

The fifth factor highlights the need for a robust legal framework to enhance downward accountability in NGOs. Clear decision-making rules are vital for transparency, ensuring stakeholders are well-informed throughout the process. Regulatory systems should prioritise accountability to beneficiaries, rather than merely improving reporting and compliance. This entails implementing formal enforcement mechanisms and raising awareness among stakeholders. Current NGO codes of conduct often lack clarity regarding accountability to beneficiaries, with responsibilities that are ambiguously defined and insufficient guidelines for implementation.<sup>94</sup> For instance, Zati Ilham et al, observed that Malaysian legal frameworks underscore the need for responsible and transparent waqf management to protect beneficiaries' rights. However, they often require more clarity regarding the *mutawalli's* obligations to beneficiaries, which can lead to potential disputes. To address this, it is proposed that the *mutawalli's* statutory duty be expanded to include reporting waqf performance to beneficiaries, as outlined in the Malaysian Trustee Act 1949 (TA 1949). Reporting should be triggered upon beneficiary request, with only pertinent information disclosed to alleviate the *mutawalli's* burden.<sup>95</sup>

A key point here is that implementing downward accountability in waqf management is complex due to persistent power imbalances and limited interaction between waqf beneficiaries and *mutawallis*, insufficient *involvement of the waqif in waqf governance*, and the *potential for requiring additional costs*. Ultimately, addressing these challenges requires systemic reforms to enhance waqf beneficiaries' engagement in waqf governance and establish a voice for them against any mismanagement acts of *mutawallis*.

## **2.7 Strengthening Downward Accountability Beyond Moral Obligation**

Adopting a rights-based approach to accountability, which entails empowering aid recipients to assert their rights to legal protection, is essential for promoting the integrity of waqf management.

A legal duty requires an individual to either perform or abstain from a specific action, with the nature of the obligation defined by the action's outcomes. In Common Law, these outcomes usually involve the infringement of rights, such as causing harm to individuals or property. Conversely, statutory duties focus on the condition of an entity or situation where the obligation is breached if the entity falls into disrepair, regardless of any resulting harm.

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<sup>93</sup> Asgary and Waldman (n 82).

<sup>94</sup> Lloyd (n 24); Dafterdar (n 7).

<sup>95</sup> Zati Ilham Abdul Manaf and others, 'Optimising Waqf Law for Effective Administration: A Comparative Analysis of the Trustee Act 1949 and State Waqf Enactments' (2023) 31(1) *International Islamic University Malaysia Law Journal* 235.

Thus, the essence of a legal obligation lies in the necessity to act or refrain, with the defining outcomes indicating whether a right has been violated.<sup>96</sup>

States are primarily responsible for upholding human rights, which include obligations to respect, protect, and fulfil these rights. The commitment to respect entails refraining from actions that deprive individuals of their rights, while the responsibility to protect requires preventing violations by third parties and providing legal remedies. Fulfilment obliges states to ensure that people can meet the basic needs recognised in human rights instruments.<sup>97</sup>

Further, section 14(2)(b) of the 1999 Constitution of the Federal Republic of Nigeria explicitly states that the 'security and welfare of the people shall be the primary purpose of government', placing a legal obligation on the state to establish and enforce measures that guarantee citizens' safety and well-being.

Raz contends that individual interests provide the basis for both rights and duties, where duties constitute compelling reasons for action. A right is only established when the well-being of the right-holder is significant enough to impose duties on others. While rights are not the sole basis for duties, they frequently align with several responsibilities, albeit of lesser magnitude compared to the duty to fulfil the object of the right. For an individual's interest to effectively establish a right, the reasons for action stemming from that interest must not be overridden by opposing considerations.<sup>98</sup>

A safeguarded right necessitates action from its holder for its exercise, and no action is inherently part of the right's definition. The legal system safeguards rights by imposing responsibilities on others whose proper execution prevents infringement upon the protected conditions. However, duties that protect specific rights align with those rights and are owed to the holder, unlike criminal law duties, which are obligations to the state.<sup>99</sup>

Legal intervention is essential for ensuring downward accountability in waqf management, thereby enabling beneficiaries to fully access waqf resources. Marginalised groups require legal empowerment to assert their rights and engage in decision-making, as access to justice is linked to poverty reduction by addressing their limitations. Research indicates that top-down legal reforms often overlook people with low incomes due to power imbalances, underscoring the necessity for grassroots strategies to promote legal empowerment among marginalised waqf beneficiaries.<sup>100</sup>

Additionally, legal compliance compels organisations to implement transparent practices and establish clear lines of responsibility. Through legally mandated frameworks,

<sup>96</sup> Henry T Terry, 'The Correspondence of Duties and Rights' (1916) 25(3) Yale Law Journal 171.

<sup>97</sup> Ajibade (n 6).

<sup>98</sup> Aleardo Zanghellini, 'Raz on Rights: Human Rights, Fundamental Rights, and Balancing' (2017) 30(1) Ratio Juris 25.

<sup>99</sup> Terry (n 96).

<sup>100</sup> Benjamin Van Rooij and Ineke Van de Meene, *Access to Justice and Legal Empowerment. Making the Poor Central in Legal Development Co-operation* (Leiden University Press 2008) 9.

such as internal audits, compliance programs, and reporting standards, laws hold corporate leaders accountable not only to regulators but also to various stakeholders and the wider public. Effective compliance depends on developing and implementing clear, well-documented, and communicated policies that guide the organisation's operations.<sup>101</sup>

Consequently, implementing legal frameworks to ensure accountability to waqf beneficiaries addresses the challenges of fulfilling downward accountability within charitable sectors. Focusing on legal interventions to enhance the transparency and integrity of waqf management makes it possible to protect beneficiaries' rights and promote a culture of responsibility through adherence to legal standards, thereby ensuring the efficiency and integrity of waqf management.<sup>102</sup> Similarly, it is crucial for judicial reform efforts to protect waqf beneficiaries by integrating comprehensive strategies that enhance operational efficiency and prioritise equitable access to justice, particularly for disadvantaged populations, including waqf beneficiaries, to fulfil the promise of judicial reform in promoting fairness and accessibility.<sup>103</sup>

### **3. Materials And Methods**

The research adopts a qualitative doctrinal approach, relying on Islamic jurisprudence and legal theories to analyse the rights and protections of waqf beneficiaries, with a focus on the fiduciary duties of *mutawallis* (waqf managers) and their legal obligations, safeguarding beneficiaries' rights under Islamic law. It employs an interpretative analysis of Islamic law (*fiqh*) and juristic opinions, particularly from the Hanafi and Hanbali schools, to explore waqf ownership and beneficiary rights, integrating Freeman's stakeholder theory with Islamic corporate governance principles like *tawhid* (oneness of Allah) and *shura* (consultation) to underscore accountability mechanisms in waqf institutions. The research also uses a comparative legal analysis to align Islamic corporate social responsibility (ICSR) principles with Western concepts of stakeholder theory, emphasising the need for downward accountability and legal empowerment to protect beneficiaries. In addition, the study critically examines existing legal frameworks governing waqf management and advocates for reforms that enhance transparency and beneficiaries' participation in waqf governance, proposing legal frameworks that align with both *Shariah* and secular systems to support the waqf's socio-economic role in benefiting underprivileged communities.

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<sup>101</sup>Kayode Akinsola, 'Legal Compliance in Corporate Governance Frameworks: Best Practices for Ensuring Transparency, Accountability, and Risk Mitigation' (*Social Science Research Network*, 2025) <<https://dx.doi.org/10.2139/ssrn.5126542>>; Richard Fiene, 'Theory of Regulatory Compliance' (*Social Science Research Network*, 2016) <<https://dx.doi.org/10.2139/ssrn.3239691>>.

<sup>102</sup>Van Rooij and Van de Meene (n 100).

<sup>103</sup>Vivek Maru, 'Access to Justice and Legal Empowerment: A Review of World Bank Practice' [2010] 2 *Hague Journal on the Rule of Law* 259.

#### **4. Result**

The research findings highlight the critical need for strong accountability and governance mechanisms in waqf management to protect waqf beneficiaries, known as *ma'wquf alaih*. Islamic jurisprudence assigns a fiduciary role to waqf trustees, or *mutawallis*, emphasising principles of transparency, loyalty, and conflict avoidance. Both Hanafi and Hanbali schools stress that trustees must prioritise the welfare of beneficiaries, ensuring that management practices align with the *waqif's* intentions. This responsibility is rooted in a broader ethical framework that includes the principles of *tawhid* (divine unity) and *shura* (consultation), which advocate for a stakeholder-oriented approach within Islamic corporate practices.

Stakeholder theory plays a vital role in improving accountability in waqf management by involving beneficiaries in governance. This theory complements Islamic corporate social responsibility (ICSR), which emphasises ethical resource management for social justice, reflecting a commitment to Islamic values similar to Western stakeholder models. However, challenges arise in applying these principles within waqf institutions, especially in relation to waqf beneficiaries, indicating a potential sidelining of beneficiaries' interests in waqf management. Therefore, establishing a robust downward accountability framework is essential to keep beneficiary welfare at the forefront of waqf management.

The research emphasises that downward accountability in waqf governance not only enhances transparency but also encourages the active participation of beneficiaries in policy and decision-making, thereby building community trust and fostering a sense of ownership. Comparative analysis reveals that while Islamic stakeholder theory and Western governance models aim to enhance accountability, they face distinct challenges, particularly due to the lack of regulatory clarity regarding *mutawalli* obligations. To address these issues, more explicit frameworks are needed within Islamic contexts. By implementing downward accountability, waqf management can effectively align with both legal responsibilities and ethical stewardship, ensuring that waqf assets are managed equitably and transparently for the benefit of intended beneficiaries.

This section highlights the necessity of legal mechanisms to enhance downward accountability in waqf management. Judicial reforms that focus on increasing transparency and equity are crucial for protecting marginalised beneficiaries, who frequently lack influence in decision-making processes. Grassroots reforms, as opposed to top-down strategies, are more effective in addressing power imbalances, enabling beneficiaries to fully participate in governance and access justice. This approach not only upholds the rights of beneficiaries but also enhances the overall integrity of waqf institutions, thereby fulfilling both religious and social obligations.

#### **5. Discussion**

The research highlights the importance of integrating stakeholder theory into waqf governance, as it offers a comprehensive model that not only reinforces Islamic fiduciary principles but also ensures inclusive and accountable decision-making. The stakeholder

theory emphasises balancing the interests of all affected parties, aligning with *Shariah* concepts, including the values of *tawhid* (divine unity), *shura* (consultation), and *muhasabah* (accountability), underscoring the duty of *mutawallis* to act transparently and justly. This integration strengthens the ethical foundation of waqf institutions by elevating the role of beneficiaries from passive recipients to active stakeholders. It enables a shift toward a beneficiary-centric model of waqf governance, ensuring beneficiary involvement in waqf governance by empowering them to track and challenge any act of mismanagement in the waqf sector. This reduces the negative effects of power asymmetries in the waqf management structure and improves the welfare of waqf beneficiaries in the waqf sector.

However, the study identifies that perverse waqf management practices often fail to adequately implement beneficiary participation in decision-making due to power imbalances that favour resource-controlling stakeholders over beneficiaries. To address this, the research recommends developing a beneficiary-centric model of waqf governance, which involves imposing a legal obligation on *mutawallis* to report and be accountable to waqf beneficiaries, thereby fostering downward accountability that aligns with Islamic ethical standards and promotes democratic transparency. Such an approach would enhance waqf's contribution to socio-economic development, enabling beneficiaries to hold *mutawallis* accountable and furthering efforts in poverty alleviation and social justice. Moreover, emphasising beneficiary-centric governance within the waqf context could legally empower marginalised beneficiaries, ensuring that waqf governance is just, inclusive, and truly reflective of Islamic ethical commitments.

Consequently, addressing the limitations of current waqf laws and proposing reforms could enhance protections for beneficiaries through policy adjustments. Introducing a dedicated law for waqf management is needed in Nigeria law that will outline *mutawalli* fiduciary legal duties on waqf management and incorporate several accountability measures, such as enforcing a duty to allow beneficiaries participation in the governance of waqf into legal frameworks, establishing a reasonable platform for them to challenge any mismanagement in waqf institution, granting them rights of information about the affairs of waqf, providing seasonal reports to them on waqf, and making necessary explanation to them on any new development concerning their waqf. The regulation should establish a regulatory body to monitor and ensure compliance with these regulations. A lack of compliance can be used as presumptive evidence of *mutawallis'* mismanagement in court when disputes arise. This would enhance the transparency and integrity of waqf institutions. Essentially, a robust governance framework that upholds both legal and Islamic ethical standards can empower beneficiaries by equipping them with specific legal rights and accessible mechanisms for legal recourse.

## **6. Conclusion**

This study has laid the groundwork for understanding the legal protection of waqf beneficiaries under Islamic law by analysing stakeholder theory, emphasising the need to implement downward accountability in waqf management. However, challenges are often

encountered by implementing downward accountability in most charitable institutions, including the waqf sector. It has been shown that ensuring efficient waqf management requires the law to safeguard waqf beneficiaries and promote a beneficiary-centric model of waqf governance through the establishment of legal obligations on *mutawallis* towards enhancing the participation of waqf beneficiaries in waqf management oversight. This includes imposing duties on the *mutawallis* to frequently inform and provide seasonal reports to the beneficiaries on waqf affairs, establish a platform for them to challenge their misconduct, notify the beneficiaries of any developments within their institution that may affect them, and prescribe sanctions for failure to observe those obligations. Implementing this will shield waqf beneficiaries from being vulnerable victims of oppression by influential stakeholders of the waqf institution. Essentially, protecting the rights of waqf beneficiaries is imperative, not only in compliance with Islamic law but also in alignment with the modern standard of corporate governance. Strengthening the legal rights of waqf beneficiaries through the lens of stakeholder theory is both a *Shariah*-compliant imperative and a progressive step toward a more accountable and equitable waqf governance system. This research contributes to the field by offering a *Shariah*-aligned, stakeholder-driven framework that enhances legal protection for waqf beneficiaries, proposing a beneficiary-centric model of waqf governance.

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