أوقاف
AWQAF

Comprehensive Guide to the Classification of Endowment Types

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Introduction

This Guide contributes to disseminating specialized knowledge in the domain of endowment classification and assisting endowment founders in determining the type of endowment they wish to establish and the ensuing rulings and procedures. Accordingly, a guide has been developed to provide a simplified explanation of each type of endowment, based on the Sharia and legal references.

Purpose of the Guide:

01

Enhancing awareness of endowment founders when establishing an endowment through a guide to the classification of endowment types.

02

Raising awareness of beneficiaries through examples of disbursement channels and classifications of each example.

03

Providing a comprehensive and user-friendly reference for endowment founders and endowment community.

Endowment Condition:

Article (1) of the Charter of the General Authority for Awqaf defines the endowment condition as “The formula used by the endowment founder regarding the endowment, its revenue, disbursement channel, supervisor, or recipient”.

An endowment condition is one of the central issues concerning the endowment contract, as it is the most crucial guarantee to ensure adherence to the endowment founder’s original intention of endowment, its supervision, disbursement channel, and the like. While the endowment founders’ intention can be clarified during their lifetime, it can be determined solely by their written condition after their death.

The significance of endowment condition is emphasized by the well-known saying of jurisprudents: “Endowment condition is similar to Sharia text”, i.e. the endowment founder’s statement in the condition is similar to Sharia text in terms of understanding, implication, and mandatory application.

The endowment condition covers everything the endowment founder provides in the condition, such as appointing the supervisor, determining the disbursement channels of proceeds, and other terms.

Therefore, it is primarily essential to refer to the endowment condition to identify the type of endowment: (public, private, or joint). Al-Mardawi stated that: “One should refer to the endowment condition to identify distribution among recipients, the order of preference, combination or sequencing, equal treatment or prioritization, inclusion or exclusion of individuals based on certain characteristics, appointment of a supervisor, disbursement, and all other aspects ... stated by El-Ashab”.

Types of Endowments:

The classifications of endowments vary depending on different considerations. This Guide will address the primary classification of endowments, which considers the disbursement of endowment proceeds depending on the types of recipients. This classification is provided for in the Charter of the General Authority for Awqaf, issued by Royal Decree No. (D/11), Dated 1437/02/26 AH, where Article (1) thereof provides for the following three types of endowments: (public endowment - private endowment - joint endowment). This classification was adopted by jurisprudents and followed by the laws and regulations governing the endowment sectors in Islamic countries. For instance, while discussing endowment judgments, Al-Buhuti stated that "If the endowment is not designated to specific individual, such as for the poor, warriors, and scholars ... (and if it is) designated to a specific person ...".

The expression of "endowment is not designated to specific individuals, such as for the poor, warriors, and scholars" refers to charitable endowment, while the expression of "an endowment designated to a specific person" refers to private endowment. Additionally, if the endowment founder stipulates disbursement to a combination of both types, it refers to joint endowment.

First Type: Public (Charitable) Endowment

It is the most beneficial type of endowment. This type of endowments has played a significant role in the history of Islamic society over ages. Through such endowment, schools, institutes, hospitals were built, roads were paved, water sources were provided, shelters and care homes were established, scholars and students were financially supported, and libraries were provided, leading to the progress of civilization and advancement of Islamic society.

01 Definition of Public Endowment:

A public endowment is defined as a conditional endowment on certain general charitable aspects, specifically or descriptively. It means that the endowment founder allocates the endowment proceeds or benefits for general charitable entities and disbursement channels.

02 Public Disbursement Channels:

Public disbursement channels refer to channels allocated for the purposes of benefit, righteousness, and charity. Examples include endowments to mosques, the poor and need, water provision, animal sacrifice, food distribution, housing, the Holy Qur'an, learning and teaching, cemeteries, pilgrimage (Hajj), call for Islam, providing food for fasting people, widows and divorcees, orphans, travelers in need, marriage support, well digging, healthcare, technology, security, disaster relief ... etc.

According to the preceding examples, it can be observed that an endowment may be allocated for a specific entity. However, it is classified as a public endowment if such specific entity provides public services. Examples include:

(a) If the endowment founder endows a property and allocates its revenues for a specific mosque, such as an endowment to the Two Holy Mosques or either one of them. This is classified as a public (charitable) disbursement channel because it is utilized by all prayers performing prayers in such mosque.

(b) If the endowment founder endows a land to a specific cemetery, this is classified as a public (charitable) endowment because such cemetery is utilized by all people.

(c) If the endowment founder endows a building to a specific charitable organization that supports general charitable purposes. This is classified as a charitable endowment because it is utilized by all beneficiaries of the organization's services.

03 Formulas of Public Endowment:

The formulas of charitable endowment vary depending on the type of public disbursement channel it is intended for. Below are some of the most common forms:

First Form: The endowment founder stipulates that the disbursement channel be one of the above public disbursement channels. Examples include:

(a) I have endowed this land to the poor and needy.

(b) I have endowed all properties under my control to those centers providing Qur'an memorization and meals for fasting people during Ramadan.

Status: This is a public endowment because the disbursement channel is charitable representing in general charitable aspects, specifically or descriptively.

Second Form: The endowment founder endows a property to its descendants, requiring that they meet the charitable endowment conditions. Examples include:

(a) I have endowed this land to the needy descendants. By "needy", I mean my descendants who are eligible for zakat.

(b) I have endowed all properties under my control to the poor descendants and relatives.

Status: This is a public endowment because if the property is endowed solely to the poor, needy, or destitute in general, it would naturally include the poor descendants and needy as the description mentioned by the endowment founder (needy – poor) determines whether the descendants and relatives are covered by the endowment or not.

Third Form: The endowment founder allocates the endowment to multiple charitable disbursement channels. Examples include:

(a) I have endowed these shops, so that an animal sacrifice may be offered each year for me and my parents, and for the spread of Islamic knowledge, including Qur'an memorization and call for Islam.

(b) I have endowed this company to public hospitals, orphanages, and to printing of the Holy Qur'an.

Status: This is a public endowment because all disbursement channels provided for in the condition fall under channels of charitable endowment.

Second Type: Private Endowment:

An advantage of private endowment is the enduring benefit achieved by preserving the asset and disbursement of returns to generations of descendants, relative recipients, or other persons designated by the endowment founder in the condition. It perpetuates good deeds, ensures ongoing reward after death, maintains family ties, and preserves inheritance from being squandered by heirs.

01

Definition of Private Endowment:

A private endowment is a conditional endowment on a specific descendant or relative, whether by person or description. It means that the endowment founder allocates the proceeds or benefits of endowment initially to themselves, their children, or to specific individuals, whether by person or description. For example, the endowment founder may say “I have endowed this land and the benefits thereof to myself or to my children”.

02

Private Disbursement Channels:

Private disbursement channels are those represented in the recipients themselves, whether by person or description. Examples include:

Endowment to “oneself, children and their descendants, spouses, relatives, cousins, members of a specific family, aunts, uncles, natural persons, such as specific person and his children, juridical specific persons ... etc.

03

Formulas of Private Endowment:

The formulas of private endowments vary depending on the types of recipients. Below are some of the most common forms:

First Form: Words and expressions denoting that the endowment is allocated for specific recipients, whether by person or description. Examples include:

(a) I have endowed to myself the entire land, including its proceeds, use, residence, and use for housing others.

(b) I have endowed this house to my children and their children, until Allah inherits the earth and all those upon it.

(c) I have endowed the building in Riyadh to my cousins and their descendants.

Status: When using the above or similar wording, the benefits will be restricted exclusively to the designated person, as long as it meets the endowment condition. If the designated recipient no longer exists, the endowment will revert to the next. If none remains, it will be reverted to the public disbursement channel identified by the endowment founder after the private one.

Second Form: Words and expressions denoting that the endowment is allocated for private disbursement channels, then it will be reverted to charitable ones. Examples include:

(a) I have endowed this building to Mohammed, then to Khalid, and thereafter to the interests of the Two Holy Mosques.

(b) I have endowed this property to my children until their extinction, and then to maintenance and furnishing of mosques.

(c) I have endowed this company to my children and their descendants, and then to widows and divorcees.

Status: These formulas require the sequential order of benefit from the endowment. It begins with the first (private) disbursement channel mentioned before the conjunction “then”. Thus, those come after the conjunction “then” (which implies succession) will not be entitled to any proceeds, as long as the preceding recipient exists or has not exhausted their right. Therefore, the endowment remains classified as private until the designated recipient(s) is no longer present. Then, the charitable disbursement channels coming after “then” will be entitled, and the endowment will then be classified as a public charitable one.

Third Type: Joint Endowment

A Joint endowment is one that combines the advantages of both private and public endowments. It provides enduring benefit by preserving the asset for the benefit of multiple generations of descendent recipients, maintaining family ties, while it also has the advantages of public endowment as it contributes to sustainable community development and the circulation of funds for public interests.

01 Definition of Joint Endowment

A joint endowment is an endowment the condition of which covers more than one type of endowment.

Hanbali scholars referred to this type of endowment while discussing the endowment status. In Al-Mughni Book, it is stated that: “If someone endows their house to two different entities, such as their children and the poor, divided into two halves or three thirds, this is permissible”.

Moreover, if the endowment founder eventually allocates the endowed asset for their children and the poor, or for another entity, this will be permissible because as endowing

02 Joint Disbursement Channels:

Joint disbursement channels include both charitable and private disbursement channels. Examples include:

The endowment founder endows “their wealth to their descendants while simultaneously designates a specific share for a public charitable entity or endows their wealth to a public charitable entity while simultaneously designates a specific share for their descendants or a specific individual”.

03

Formulas of Joint Endowment:

The formulas of joint endowments vary depending on various types of public and private endowments. Below are some of the most common forms:

First Form: Words and expressions denoting joint endowment with specified shares in the endowed asset for recipients. Examples include:

(a) I have endowed this house to Zaid with one-fourth, to Khalid with another one-fourth, and to students with one-half.

(b) I have endowed this company to my children and their children with one-third, and to cancer patients with two-thirds.

Status: This is a joint endowment where revenues are divided to recipients (private disbursement channels and public disbursement channels), according to their shares specified by the endowment founder. Al-Buhuti stated that, "The endowment condition must be followed in apportioning the endowment, for example by granting one-half to one person, one-third to another, and one-sixth to another". Sheikh Taqi al-Din added that: "Conditions must be fulfilled if doing so does not breach the legal intent. However, it is not permissible to fulfill some of them while the intended goal is lost".

Second Form: Words and expressions denoting equal distribution among recipients without order, such as linking them with the conjunction "and". Examples include:

(a) I have endowed this farm to Khalid, the Qur'an Memorization Society, and for an annual sacrificial every year.

(b) I have endowed this building to my relatives from X family and to the poor Muslims.

Status: Equal distribution among all recipients is required without preference because the conjunction "and" implies combination and equality. Al-Bakri stated that: "The conjunction "and" implies equal distribution among persons because the conjunction "and" indicates absolute combination, not sequence, and it makes no difference among them".

Exclusion from Endowment:

Excluding the entire endowment or any part thereof is not considered endowment. The excluded part remains the private property of the endowment founder. Hence, it's important to discuss this issue as follows:

01

Form of Exclusion from Endowment:

Exclusion from endowment means that the endowment founder excludes the benefit of endowed asset, its proceeds, for their lifetime or for a specific period, or a specific amount, for themselves, their relatives and children, or designated individuals, whether by person or description.

02

Forms and Examples of Exclusion from Endowment:

First Form: Exclusion is limited to a specific period or a duration that leads to a defined term. Examples include:

(a) The endowment founder endows the endowment to orphans and the needy, while excluding the proceeds or benefits thereof, entirely or partially, for itself for a specific period.

(b) The endowment founder endows the endowment to widows and divorcees, while excluding the proceeds or benefits thereof, entirely or partially, for its children during its lifetime.

Second Form: Exclusion of a fixed portion of the endowment proceeds. Examples include:

(a) The endowment founder endows the palm trees of its farm to pilgrims and Umrah performers, while excluding one-quarter for eating by itself, its family, or others.

(b) The endowment founder endows its apartment building to house the sick or the homeless,

while excluding one apartment for the residence of its family and children.

Third Form: Combination of exclusion from endowment and joint endowment. Examples include:

(a) The endowment founder endows its building to its children and the needy, while excluding the benefit thereof for itself during its lifetime.

(b) The endowment founder endows the palm trees of its farm to its family and children and to pilgrims and Umrah performers, while excluding the proceeds for itself during its lifetime.

Note: The portion excluded by the endowment founder will remain their personal property, not part of the endowment. Further details on this point will be addressed later.

03 Status of Exclusion from Endowment:

Several jurisprudents have permitted exclusion from endowment, such as allowing the endowment founder to benefit from it during its lifetime, a practice that is widely accepted by the courts. The Draft Endowment Law permitted exclusions from endowment, as Article (16) thereof states that: “An endowment founder may ... 2. Stipulate the exclusion of proceeds or benefits of endowment, or any part thereof, for itself or for others, for the duration of its lifetime or for a specified term”.

In deciding the permissibility of exclusion from endowment, the Law aligns with the view adopted by the Hanbali scholars and some other jurisprudents, as they permitted such exclusion. Ibn Qudamah stated that: “In summary, if the endowment founder stipulates that he may spend from the endowment on itself, both the endowment and the condition will be valid. This was explicitly stated by Ahmad. Al-Athram stated that: It was said to Abu Abdullah “Can I stipulate in the endowment that I will spend on myself and my family from it?; He replied: Yes, and gave the evidence, stating: I heard from Ibn ‘Uyaynah, from Ibn Tawus, from his father, from Hajar Al-Mudari, that in the endowment of the Messenger of Allah (peace and prayer be upon him), his family were allowed to eat from the endowment in a reasonable, not reprehensible, manner”. Al-Qadi stated that: “The endowment is valid by unanimous narration, because Ahmad explicitly stated this as reported by multiple sources”.

For the validity of exclusion from endowment, it must be either limited to a specified term or a defined portion of the endowment. Ibn Rajab stated that: “According to our view, it is valid to exclude the benefits of a property whose ownership has been transferred from its owner for a specified period. This implies that an asset may be endowed while the benefit thereof are excluded for a specified period or for the duration of its lifetime, because the uncertainty of duration in this case does not affect the validity as it is uncertainty of the lifespan of each generation relevant to the next one”.

04 Is the Exclusion from Endowment Considered a Joint Endowment?

Exclusion from endowment is not considered a joint endowment because the excluded portion does not have the same status of endowment. Therefore, the endowment founder has the right to dispose of the proceeds and benefits of the excluded portion by gifting, selling, or leasing it ... etc. The excluded proceeds and benefits do not have the same status of endowment during the exclusion period. Thus, if the exclusion period terminates, the proceeds will have the status of endowment. If the beneficiary of endowment condition passes away during the specified term, the remaining term passes to their heirs, who will be entitled to lease the endowed asset either to the recipients or to others, as explicitly stated by such school.

The remaining part of Article Sixteen of the Draft Endowment Law referred to above states: "If the beneficiary of endowment condition passes away before the expiry of the specified period, their heirs will be entitled to the remaining part of such period. If no heirs exist, the exclusion will expire for the remaining period".

Differences Between the Two Main Types of

Differences between the two main types of endowments can be summarized as follows:

01 The proceeds of a private endowment are limited to the endowment founder's descendants or other designated individuals or their descendants, while the proceeds of charitable endowment are for a public charitable entity, even if designated by description, such as scholars, the poor, orphans, and the like.

02 A private endowment benefits the endower's descendants or those specifically named by the endowment founder, regardless of being rich or poor, or in need of the proceeds or not, while a charitable endowment typically benefits a public entity where spending is restricted.

03 A private endowment may come to an end if the descendants cease to exist, at which point it may revert to a charitable endowment, while charitable endowment rarely ceases as it is allocated for a ceaseless entity, such as the poor or students.

04 Private endowment determines the disbursement channel by the identities of recipients, while charitable endowment requires description of the disbursement channel.

An endowment may be fully charitable, fully private, or partly charitable and partly private, which is the joint endowment.

May Allah Grant Success