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Waqf Ahli: A Classical Path Alongside Faraid

Family waqf let generations of Muslims — from Umar ibn al-Khattab to Ottoman Anatolia to Malaysia today — structure an estate proactively, while alive, instead of leaving everything to be sorted out after death. This paper examines what it actually is, how contested it has always been, and what it would take to offer it responsibly inside Nur Falah.

1946 & 1952

The two Egyptian laws that abolished family waqf outright — a reminder that this instrument has always been genuinely controversial, not a settled convenience.

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1. Executive Summary

Waqf ahli — a family or private endowment, distinct from public/charitable waqf — is a real, classically grounded instrument that Muslims have used for over a millennium to structure how an estate passes to their descendants, on their own terms, while they are alive and of sound mind. It is not a myth and not a loophole invented by this paper's earlier back-and-forth: it has hadith precedent, four-school juristic recognition, and documented use at massive scale in the Ottoman Empire. It is also, and just as genuinely, one of the most contested instruments in Islamic legal history — criticized by some jurists as a device for circumventing Quranic inheritance shares, blamed by at least one major economic historian for centuries of Middle Eastern economic stagnation, and outright abolished by Egypt in 1946 and 1952.

Both things are true at once, and a product built on this instrument has to hold both. This paper lays out what waqf ahli actually is, its fiqh basis and the genuine scholarly disagreement around it, its current legal status across Nur Falah's key markets — Malaysia above all — and what a responsibly designed "Family Waqf" tool inside Nur Falah would need to look like: not a way to escape faraid, but a proactive, well-documented, guardrailed complement to it.

65%

Of women's endowments in Ottoman Edirne were family waqf, per one documented study — evidence of genuine historical scale

5 of 14

Malaysian states with an explicit statutory provision for waqf ahli today; the rest leave it in a legal grey zone

1/3

The cap that applies to a waqf made during terminal illness — the same limit that applies to a wasiyyah, and for the same reason

2. What Is Waqf Ahli?

A waqf, in general, is a dedication of an asset "for the sake of Allah" — the corpus (mawquf) is permanently locked, and only its usufruct or income is distributed to a stated cause. Classical fiqh calls this habs al-asl wa tasbil al-manfa'ah: detain the principal, release the benefit. Most people encounter waqf am — general or charitable waqf, dedicated to a mosque, a well, a school, the poor. Waqf ahli (also called waqf dhurri, or waqf 'ala al-awlad — "waqf for the children") is the same legal mechanism turned inward: the founder (waqif) names himself and then his own descendants as the beneficiaries, generation after generation, with the terms of distribution set entirely by the founder rather than by faraid's fixed fractions.

Structurally, a waqfiyya (the waqf deed) has four essential elements: the waqif (founder), the mawquf (the corpus — land, a building, income-producing property), the mawquf 'alayhim (the named beneficiaries, typically the founder's descendants organized by branch, often with a residual charitable designation once the family line eventually ends), and a mutawalli or nazir (the trustee who manages the asset and distributes income according to the deed's terms). Because the transfer happens during the founder's lifetime — an inter vivos act, not a bequest — it falls outside the normal rules governing what happens to an estate at death. A wasiyyah is capped at one-third of the estate and can never go to an existing heir; a waqf ahli, made while healthy, faces neither restriction.

THE PRECEDENT

The core hadith precedent is Umar ibn al-Khattab's endowment of his land at Khaybar, made with the Prophet's (peace be upon him) knowledge and approval: keep the asset itself intact, and give away its produce. That single narration is the seed from which the entire waqf tradition — both charitable and family — grew.

3. The Fiqh Basis — and Where the Schools Disagree

All four Sunni schools accept waqf ahli as valid in principle. There is no explicit Quranic text on waqf as an institution; its authority rests on hadith and companion practice, chiefly the Khaybar narration above. Within that shared acceptance, real differences exist.

Naming yourself as beneficiary

Hanafi and Hanbali fiqh permit a waqif to name himself as a beneficiary of his own waqf while alive. Maliki and Shafi'i fiqh reject this specific form as circular — you cannot meaningfully "give" something to yourself. Hanafi doctrine, dominant across the Ottoman Empire, was the most elaborately developed of the four and is plausibly the most permissive in practice, though a rigorous cross-school quantitative comparison wasn't found in this research and shouldn't be overstated.

Distribution among children

Where a waqif names "my children" without specifying proportions, the default juristic position is an equal split between sons and daughters — the opposite of faraid's 2:1 male-to-female ratio. A waqif who explicitly favors sons or excludes daughters is generally still held to have a valid waqf, but the exclusion itself is judged reprehensible (makruh) by many jurists, precisely because it starts to look like an end-run around the Quranic shares.

On the sharper question — whether waqf ahli amounts to circumventing the hadith "there is no bequest for an heir" (la wasiyyata li-warith) — this research found a documented dissenting position associated with Muhammad ibn Abd al-Wahhab and some Najdi scholars, who drew exactly that comparison. It did not find a well-sourced, directly citable condemnation from Ibn Taymiyyah or Ibn al-Qayyim specifically on this point; a popular claim to that effect circulates but couldn't be traced to a primary text in this pass, and should not be repeated as fact without a scholar confirming it against the actual works.

CONFIDENCE NOTE

Contemporary fiqh council coverage of this exact question is thin. This research could not locate an International Islamic Fiqh Academy (IIFA) resolution specifically addressing waqf ahli's relationship to faraid, nor a clear, citable position from AAOIFI or Dar al-Ifta Egypt on whether — and under what conditions — waqf ahli may be used to distribute an estate differently from Quranic shares. This is a genuine gap, not a settled "yes it's fine" — and it is the single most important item for a qualified Shariah advisor to close before this instrument goes anywhere near a live product feature.

4. Historical Scale: The Ottoman Empire

Whatever the juristic debate, waqf ahli was used at genuinely massive scale, especially across Ottoman Anatolia — today's Turkey. One documented study found that women in the city of Edirne made 65% of their endowments as family waqf rather than public waqf, using the mechanism to keep assets within their own bloodline and protect property from the Ottoman state's practice of confiscating a deceased official's estate. Family waqf became, in effect, the single most common way a family of means kept its wealth intact and out of both faraid's forced fragmentation and the state's reach — two very different pressures, both real, both driving the same behavior.

That scale is exactly why the instrument became so contested: something used by a small minority rarely draws the attention of legal reformers. Something used by a very large share of propertied families, repeatedly, generation after generation, eventually becomes visible enough — and consequential enough — for the state and the jurists both to take a side.

5. The Controversy: Two Distinct Critiques

Waqf ahli has drawn two separate lines of criticism over the centuries — one from within fiqh, one from modern economic history. They are worth separating clearly, because they point to different design lessons.

5.1 The fiqh critique — disinheriting rightful heirs

The core religious objection is straightforward: if a waqf ahli can name whoever the founder likes, in whatever proportions the founder likes, what stops it from being used to quietly cut a daughter, a disfavored child, or another Quranic heir out of what they are otherwise guaranteed? The default equal-split rule for unnamed "children" is one juristic safeguard against this. It is not an absolute bar — a founder who deliberately excludes an heir by name is still, in most classical treatments, held to have made a valid waqf. That gap between "valid" and "just" is exactly where the historical abuse happened, and exactly why later reformers moved to close it by statute rather than leaving it to individual conscience.

5.2 The economic-history critique — and its rebuttals

Economist Timur Kuran, in *The Long Divergence: How Islamic Law Held Back the Middle East*, makes a stronger claim: that waqf ahli was used systematically to escape Islamic forced-heirship rules (partible inheritance, including limits on how much a founder could favor sons over daughters), and that locking capital into rigid, perpetual structures — designed once and effectively unreformable — is a real contributor to the historical absence of durable corporations and long-run economic stagnation in the Middle East, relative to Western Europe's evolving corporate and trust law.

That thesis has real pushback. Economic historian Murat Çizakça argues Hanafi doctrine actually built substantial flexibility into waqf administration — a body of doctrine sometimes summarized as "ten conditions" giving founders and managers real latitude to adapt a waqf's terms over time — and that many waqfs demonstrably survived and adapted across centuries, which complicates a story of pure rigidity; he also argues Ottoman state policy, not Islamic law itself, better explains the stagnation Kuran attributes to waqf. Separately, David Powers' scholarship complicates the gender-disadvantage claim specifically: many actual waqf deeds gave sons and daughters equal shares — the opposite of faraid's 2:1 default — meaning waqf ahli sometimes improved a daughter's position relative to what faraid alone would have given her, not just worsened it.

> *Neither critique makes waqf ahli illegitimate. Together, they make clear it has never been a neutral convenience — it has always been a tool that can cut either toward justice or away from it, depending entirely on how the founder uses it.*

6. Modern Legal Status, By Country

Waqf ahli's legal footing today varies enormously by jurisdiction — from actively encouraged, to legally ambiguous, to outright banned. This matters directly for Nur Falah's markets.

COUNTRY	CURRENT STATUS	DETAIL
Malaysia	Recognized, unevenly	Waqf is a state, not federal, matter. Only 5 of 14 states have dedicated waqf enactments at all. Perak's 2015 enactment explicitly defines and permits wakaf zurri (family waqf); most other states subsume it under general waqf khas provisions or use the term "wakaf kepada waris" without a clear statutory category. A 1911 prohibition on new family waqf, following a 1894 Privy Council ruling against it, stood until roughly 1978.
Saudi Arabia	Actively recognized	The General Authority for Awqaf's own published guidance explicitly names family/dhurri waqf as a valid category and describes an online registration process. The full text of the 2016/17 royal decree waqf law, and any court rulings on faraid-circumvention disputes, could not be independently verified in this research and would need primary Arabic legal sources.
UAE / Dubai	Modern framework exists, charitable-leaning	Dubai Law No. 14 of 2017 lets individuals establish endowments via the Awqaf and Minors Affairs Foundation; UAE Federal Law No. 5 of 2018 also governs waqf. Available sources suggest an institutional/charitable orientation rather than a distinctly branded family wealth-succession product — DIFC trust law remains the more commonly used secular vehicle for that specific purpose today.
Turkey	No modern equivalent	Family waqf (evlatlık vakıf) was effectively ended around 1935 under the Kemalist reforms. Today's Foundations Law No. 5737 (2008) governs "vakıf" purely as general-purpose civil foundations — there is no path to create a new private family waqf in Turkey today.
Egypt	Abolished	New family waqf was restricted in 1946, and Law No. 180 of 1952 abolished it outright, folding remaining waqf administration under state control. No modern partial revival was found.

7. Malaysia Deep Dive: The Market That Matters Most

Because Malaysia is Nur Falah's primary launch market, its fragmented waqf landscape deserves more than a table row. Waqf falls under the State List in the Federal Constitution, the same fragmentation already documented in Nur Falah's domicile research and whitepaper for land and Islamic family law generally. Practically, this means:

- **Perak is the clearest case.** Its Waqf Enactment 2015, Section 10(1), explicitly defines wakaf zurri as a waqf the founder designates for family or specified persons' welfare — a clean statutory basis to build on if a pilot needed one state to start with.
- **Most states are ambiguous, not hostile.** Selangor and Terengganu use the informal term "wakaf kepada waris" rather than a codified category; other states fold it into general waqf khas provisions without addressing the family-specific case directly. Academic literature describes this gap explicitly rather than treating it as settled.
- **Historical restriction, since lifted.** The 1911 Waqf Prohibition Enactment barred new family waqf in the Federated Malay States following a 1894 Privy Council decision that treated it as incompatible with land law principles. The Islamic Waqf Validating Enactment 1972 later confirmed that a waqf benefiting the founder's own family is not automatically invalid, effectively reopening the door.
- **Practical friction remains.** Sultan's consent requirements and a mandatory sole-trusteeship model — the State Islamic Religious Council (MAIN) typically must serve as trustee rather than a family-chosen mutawalli — limit how much control a founder actually retains, even where the waqf itself is legally permitted.
- **A federal alternative exists.** The Labuan International Waqf Foundation, established 2015, offers a waqf ahli-friendly vehicle outside the 14-state MAIN structure, since Labuan is a federal territory. Worth understanding in detail before assuming a state-by-state approach is the only path.

LAND CODE INTERACTION

Waqf land in Malaysia must be registered, and alienability is restricted once dedicated — the same National Land Code friction already documented as a driver of the RM70–90 billion frozen-estate problem in Nur Falah's main whitepaper applies here too. A waqf ahli tool that doesn't account for state-specific land registration requirements would recreate the exact bureaucratic bottleneck this whole product exists to solve, just one step earlier in the process.

8. Not Either/Or: Waqf Ahli Alongside Faraid

The most important framing decision this paper can offer is this: waqf ahli is not a way to opt out of faraid. It's a way to act before faraid ever needs to apply, using a tool that has real classical standing, real historical scale, and real modern legal recognition in at least some of Nur Falah's markets — used deliberately, honestly, and while the founder is alive and of sound mind.

Two things keep this framing honest rather than aspirational. First, faraid remains the default floor for anything not already, validly, and completely transferred out of the estate before death — there is no scenario in which a Muslim can simply declare their estate exempt from faraid after the fact. Second, and just as importantly, the same safeguard that governs hibah made during terminal illness governs waqf made under the same circumstances: a waqf ahli established during marad al-mawt (a fatal, ongoing illness) is treated like a bequest, capped at one-third of the estate and barred from going to an existing heir, specifically to prevent exactly the deathbed maneuver this whole conversation started by questioning. The safeguard exists because the abuse case is real, documented, and has a name in fiqh — not because the tool itself is suspect when used honestly, years before it's ever needed.

> *The permissible version of this instrument looks like Umar at Khaybar: a decision made in full health, with a named trustee, for a stated purpose, years before death. The impermissible version looks like a will rewritten the night before — and fiqh already has a name and a cap for that version, whether it arrives as a wasiyyah, a hibah, or a waqf.*

9. Product Implications: A Family Waqf Designator

If built, this sits naturally alongside the existing faraid calculator and wassiyah generator as a third Horizon 1 tool, and it is arguably the strongest natural fit for the blockchain framing already established in Nur Falah's main whitepaper — habs al-asl, the permanent locking of the corpus, maps almost literally onto smart-contract immutability.

Core flow

Select an asset from the existing asset registry. Name a mutawalli (trustee) and successor mutawalli. Define beneficiaries and distribution terms across generations, with the equal-split default pre-filled and any deviation requiring an explicit, separate confirmation step rather than a quiet default. Generate a waqfiyya document with the founder's stated purpose, corpus description, and trustee terms.

Guardrails, non-negotiable

Marad al-mawt detection: if the founder's own inputs suggest a terminal-illness context, the tool applies the one-third cap and flags that heir consent may be required, the same way the wassiyah generator already does. No silent unequal-distribution default: excluding or reducing a specific heir's share requires an explicit acknowledgment screen referencing the juristic controversy in Section 5, not a checkbox buried in a settings menu. Jurisdiction-aware output: the generated deed should reflect the specific state's waqf enactment where the founder is domiciled — Perak's explicit provisions look different from Selangor's informal practice — rather than issuing one generic document nationwide.

What this tool is not

It is not a faraid-avoidance wizard, and should never be marketed as one. The honest framing throughout — in-app copy, onboarding, and any future whitepaper or marketing material — is "structure your estate proactively, the way Umar did," not "protect your assets from faraid." That distinction is not cosmetic; it is the entire difference between the instrument's permissible and impermissible use.

10. Open Questions Requiring Scholarly Review

This paper is research, not fatwa. Before any waqf ahli feature ships, the following need a qualified Shariah advisor's direct sign-off — ideally someone able to read primary Arabic and Ottoman Turkish legal sources directly, since several items below could not be closed with English-language research alone:

- Whether contemporary fiqh councils (IIFA, AAOIFI, national fatwa bodies) have a citable, current position on waqf ahli's relationship to faraid — this research found the coverage thin and could not locate a direct resolution.
- Verification of the Ibn Taymiyyah/Ibn al-Qayyim critique of waqf ahli that circulates popularly — this research found no primary-text citation supporting it and recommends not repeating the claim until confirmed or corrected against the actual works.
- The full text of Saudi Arabia's 2016/17 royal decree waqf law (Nizam al-Awqaf), and whether Saudi courts have ruled on any disputes where waqf ahli was challenged as faraid-circumvention.
- Whether — and how — a mixed madhhab user base (Nur Falah's users won't all follow the same school) should see different defaults for the self-as-beneficiary question, where Hanafi/Hanbali and Maliki/Shafi'i positions genuinely diverge.
- State-by-state confirmation, ideally with a Malaysian waqf/Islamic legal specialist, of exactly which of the remaining nine Malaysian states without explicit waqf ahli statutes would recognize a deed drafted by the app at all.

This document is research prepared for internal product and strategy use. It is not a fatwa, not legal advice, and not a substitute for jurisdiction-specific legal counsel or qualified Shariah scholarship. Several items — particularly around Saudi statutory text, contemporary fiqh council positions, and the Ibn Taymiyyah attribution — are explicitly flagged above as unverified in this research pass and should not be relied upon or repeated as settled fact.

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