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The Juridical Framework of Public Housing: Reflections on Legitimacy and Responsibility

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Abstract

This article conceptualizes public housing as a trust-based allocation of usufruct, grounded in the principles of *bayt al-māl*, fiduciary responsibility (*amānah*), and public welfare (*maşlahah*), without generating private ownership. It aims to fill a significant gap in the literature by systematically relating the fiscal order shaped in Islamic law around the administration of *bayt al-māl*, the principle of trust, and the notion of public benefit to the administrative logic of Turkey's public housing regime (Law No. 2946). Its central argument is that public housing may be reinterpreted through an "amānah-usufruct model." Within this model, the *raqabah* (corpus or bare title) remains vested in the public, while the *manfa'ah* (usufruct or right of use) is structured as a duty-linked, time-bound, and supervisable entitlement. The study adopts a doctrinal-comparative method, examining together classical fiqh texts, fiscal doctrines, contractual typologies, and modern legislation regulating allocation, non-transferability, evacuation, and compensation. The analysis is based on conceptual mapping, internal coherence, and functional comparison, and does not rely on empirical data. The findings demonstrate that both fiqh and modern administrative law regulate public housing as a supervised and duty-linked usufruct intended to prevent waste and secure public accountability. This convergence becomes particularly visible in such principles as the requirement of actual residence, non-transferability, the restriction of succession by inheritance, the application of proportionality and *kifāyah* criteria in allocation, liability based on *ta'addi* and *taqşir*, and the obligation to vacate the dwelling upon termination of office. The principal divergence, however, lies in the normative foundations of legitimacy: whereas fiqh is grounded in a conception of responsibility shaped by trust and moral obligation, modern law is governed more decisively by procedural and administrative rationality. The article's original contribution lies in proposing an analytical framework for assessing the legal legitimacy of public housing along the axes of allocation, supervision, and return. This approach demonstrates that public housing should be understood not as private property, but as a usufruct arrangement ordered toward the public good, and it clarifies more distinctly the legal distinction between public housing and social housing.

Keywords: Islamic Law, Public Housing, Bayt al-māl, Amāna, Maşlahā.

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Kamu Konutlarının Fıkhî Çerçevesi: Meşruiyet ve Sorumluluğa Dair Bazı Mülahazalar

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Öz

Bu makale, kamu konutunu beytülmal, emanet ve maslahat ilkelerine dayanan, mülkiyet doğurmayan güvene bağlı bir intifâ tahsisi olarak kavramsallaştırmaktadır. Çalışma, İslam hukukunda beytülmal yönetimi, emanet ilkesi ve kamu yararı anlayışı etrafında şekillenen mali düzen ile Türkiye'deki kamu konutu rejiminin (2946 sayılı Kanun) idarî mantığını sistematik biçimde ilişkilendirerek literatürdeki önemli bir boşluğu doldurmayı amaçlamaktadır. Temel iddia, kamu konutunun "emanet-intifâ modeli" çerçevesinde yeniden yorumlanabileceğidir. Bu modelde rakabe kamuda kalmakta, menfaat ise göreve bağlı, süreyle sınırlı ve denetlenebilir bir kullanım hakkı olarak yapılandırılmaktadır. Çalışma, doktrinal-karşılaştırmalı bir yöntem benimsemekte; klasik fıkıh metinleri, mali doktrinler, akit tipolojileri ile tahsis, devredilmezlik, tahliye ve tazmin hükümlerini düzenleyen modern mevzuatı birlikte değerlendirmektedir. Analiz, kavramsal eşleştirme, iç tutarlılık ve işlevsel karşılaştırma ölçütlerine dayanmakta olup ampirik veri içermemektedir. Bulgular, hem fıkıh hem de modern idare hukukunun kamu konutunu, israfı önlemeyi ve kamu hesap verebilirliğini güvence altına almayı amaçlayan, gözetimli ve göreve bağlı bir intifâ olarak düzenlediğini göstermektedir. Bu yakınsama; fiilî ikamet şartı, devredilemezlik, miras yoluyla intikalin sınırlandırılması, tahsiste orantılılık ve kifâye ölçütleri, ayrıca ta'addî ve taksîre dayalı sorumluluk ile görevin sona ermesi hâlinde tahliye ilkelerinde belirginleşmektedir. Buna karşılık temel ayrışma, meşruiyetin normatif dayanaklarında ortaya çıkmaktadır: fıkhîta emanet ve ahlâk temelli sorumluluk anlayışı öne çıkarken, modern hukukta usûlî ve idarî rasyonalite belirleyici olmaktadır. Makalenin özgün katkısı, kamu konutunun hukukî meşruiyetini tahsis, gözetim ve iade ekseninde değerlendiren analitik bir çerçeve önermesidir. Bu yaklaşım, kamu konutunun özel mülkiyet değil, kamu yararına bağlı bir intifâ düzeni olduğunu göstermekte ve kamu konutu ile sosyal konut arasındaki hukukî ayrımı daha açık hâle getirmektedir.

Anahtar Kelimeler: İslam Hukuku, Kamu Konutu, Beytülmal, Emanet, Maslahat.

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Introduction

Public housing in contemporary public administration functions not only as a form of accommodation but also as an institutional mechanism designed to support continuity, stability, and the public interest in the delivery of public services. Despite this operational significance, its potential grounding in fiqh-based principles has not been systematically examined in modern scholarship. This study, therefore, reconstructs the juridical foundations of public housing by situating the concept within the normative framework of classical Islamic law. In doing so, it explains how principles such as use-based allocation (*taḥṣīs*), accountability, proportionality, and public welfare acquire institutional meaning across legal systems. The study argues that public housing operates as a trust-based allocation regime whose legitimacy can be traced to the principles of *bayt al-māl* and *amāna*, while intersecting with modern administrative structures.

At this stage, the concept of legitimacy requires clarification. In the present study, legitimacy is used in a layered sense rather than as a single undifferentiated category. Moral legitimacy refers to the ethical justifiability of allocating and using public resources in a manner consistent with *amāna*, avoidance of *isrāf*, and the protection of collective rights. Legal legitimacy denotes conformity with the juridical grounds that authorize allocation, determine its limits, and regulate liability within fiqh and positive law. Administrative legitimacy, by contrast, concerns the procedural and institutional validity of allocation decisions, including registration, objective criteria, reviewability, and supervision. These dimensions are analytically distinct but normatively interconnected. In fiqh, legitimacy is not exhausted by formal legality; rather, a formally valid allocation may still lose legitimacy if it violates fiduciary purpose or public welfare. This tripartite distinction will guide the analysis below and help explain both the convergences and divergences between classical Islamic law and modern public law.

Although classical Islamic law contains no term directly equivalent to “public housing,” the concepts of *bayt al-māl* and *amāna* provide a coherent normative framework for regulating the management, supervision, and limits of public assets. Within this framework, such assets are treated as shared trusts rather than objects of private ownership. Principles of *maṣlaḥa*, justice, and collective welfare guide their administration.

To clarify these conceptual parallels, Table 1 maps classical fiqh categories onto their modern legal counterparts.

Table 1. Conceptual Mapping between Classical Fiqh and Modern Public Law

Classical Fiqh Concept	Modern Legal Counterpart	Conceptual Function
Bayt al-māl	Public treasury	Defines ownership and collective entitlement
Amāna	Fiduciary responsibility	Establishes duty-based management and accountability
Maṣlaḥa	Public interest	Grounds administrative decisions in welfare-based logic

In modern legal systems, public housing is structured as a duty-linked, time-limited, and

non-transferable form of use. Classical fiqh lacks an exact institutional analogue; however, the principles of bayt al-māl, amāna, and ḥaqq al-‘amma (collective public right) allow a meaningful analogical comparison. These principles provide a consistent logic for regulating public resources and for preventing their conversion into private assets.

Existing scholarship has produced a considerable body of research on bayt al-māl, public property, and the institutional structure of public finance in Islamic law. In the Turkish literature, these issues have been addressed in studies focusing on the legal nature and functions of the bayt al-māl, public property regimes, and the state's authority over collective assets. Notable contributions include the works of H. Mehmet Günay on public property in Islamic law, Mehmet Erkal's translation and analysis of studies on the role of the bayt al-māl in Islamic economic thought, Medine Sıcakyüz's comparative analysis of treasury institutions, Abdülkerim Öner's research on the bayt al-māl in the Prophetic period, Muhammed Tevfik Tortop's study on the juridical personality of the bayt al-māl, and Alpaslan Alkış's examination of the scope and limits of state authority over public property. Historical perspectives on the institutionalization of the bayt al-māl in the Ottoman context have also been explored in Ayşegül Çimen's research on public and private property claims in the early modern Ottoman Empire.

Parallel to these studies, a separate body of research in the fields of public administration, urban policy, and housing studies has examined public housing and housing policies in Turkey, including works by Gül Melek Bozkurt, Aytekin Bektaş, Fatih Altun, Yasemin Alkışer and Hülya Yürekli, and Ali Tosun, which address various aspects of public housing management, housing policy, and the institutional role of the state in housing provision.

Despite these valuable contributions, the existing literature generally treats Islamic legal doctrines on public property and modern public housing policies as separate fields of inquiry. A systematic comparative analysis that interprets public housing within an Islamic legal framework, particularly through the conceptual lenses of amāna, taḥṣīs, maşlaḥa, and proportionality, remains largely absent. This study seeks to address that gap by bringing these two bodies of literature into a single analytical framework.

This study addresses that gap by asking: To what extent can the allocation, use, and liability mechanisms of public housing be grounded in the principles of bayt al-māl and amāna, and where do these principles converge with or diverge from modern public law? The working hypothesis is that public housing constitutes a trust-based, non-proprietary allocation mechanism. Its legitimacy becomes visible through a principled comparison of classical fiqh doctrines and contemporary administrative structures. Public housing must therefore be distinguished from social housing at the definitional level. While social housing primarily addresses income-based housing needs of vulnerable groups, public housing represents a functional allocation linked to public office and designed to secure the continuity and effectiveness of public service.

In positive law, however, public housing is not merely a conceptual allocation but a legally defined category of immovable public property. Under Turkish administrative law, residences allocated to public officials fall within the regime of public property dedicated to a public service. Their ownership remains with the state, while their use is granted temporarily to public personnel in connection with the performance of official duties. Accordingly, the legal status of public housing is not determined by

socioeconomic entitlement but by functional necessity within the organization of public service. This distinction differentiates public housing from social housing schemes, which are designed for income-based eligibility and may operate through private-law contractual relations. Within this legal framework, the present study interprets public housing as a fiduciary usufruct allocation that operates simultaneously within the doctrinal categories of fiqh and the administrative property regime of modern law.

Methodologically, the study follows a comparative and analytical approach supported by clearly defined criteria. Its primary materials include authoritative fiqh sources from the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī traditions addressing public property, fiduciary obligations, allocation rules, and financial liability. These works were selected on the basis of doctrinal authority and historical relevance. The modern legal corpus consists primarily of statutory instruments, particularly Law No. 2946 on Public Housing, chosen for their regulatory significance.

The analysis proposes a multi-layered framework for examining public housing within Islamic law. This framework integrates classical juridical doctrines with modern regulatory structures and draws on key conceptual categories, such as amāna, maşlahā, taḥşīs, proportionality, and limits of israf to explain the normative principles governing allocation and liability. Although this framework supports systematic comparison, the study acknowledges its limitations: it does not reconstruct a historical sociology of public housing, does not assess empirical administrative outcomes, and confines its contemporary comparative focus to Turkey.

Findings are evaluated through interpretive measures that test normative coherence, identify convergence and divergence, map conceptual parallels, and assess the capacity of classical principles to support or critique contemporary administrative rationales. This methodological structure provides a more precise understanding of how public housing may be grounded in fiqh-based paradigms.

The contribution of the study is twofold. First, it reconstructs the fiqh-based legitimacy of public housing through the categories of classification (taşnīf), fiduciary responsibility (amāna), and public interest (maşlahā), demonstrating continuity between classical fiqh-based fiscal principles and modern administrative logic. Second, it integrates proportionality, normative thresholds of waste (israf), non-transferability, and financial liability into a unified theoretical model that links Islamic jurisprudence with administrative law. In doing so, the study provides one of the few systematic comparative analyses of public housing within an Islamic legal framework. It shows how a trust-based allocation paradigm both aligns with and critically interrogates modern public law.

1. The Juridical Foundations of Public Housing

1.1. Legitimacy of Allocation and Use within the Principles of Bayt al-Māl and Amāna

The question of the legitimacy of allocation and use in Islamic law does not center on ownership. Rather, it concerns who may exercise authority over a given asset and within which legal limits. For this reason, determining the juridical status of property begins with identifying the nature of the right (ḥaqq) attached to it. According to Günay (1997, p. 27), classical fiqh literature generally classifies property into several categories: permissible (mubāh), private (khāṣṣ), waqf, property administered through the bayt al-māl (public treasury), and public ('āmm). This typology provides an analytical basis for

evaluating both ownership and the lawful use of property. In this context, legitimacy concerns not merely whether use is formally permitted, but whether it is morally justified, juridically grounded, and administratively confined to its designated public purpose.

A key textual foundation is found in the well-known ḥadīth governing the allowances of public officials. The Prophet instructs that an official may receive support sufficient for marriage, a servant, and a residence. He further states that any amount exceeding these needs constitutes “treachery or theft” (Abū Dāwūd, 1430/2009, 4/567). This report establishes the principle that allocations from the bayt al-māl operate as an amāna, a trust-based right of use limited by kifāya (adequate provision). Within this framework, benefits from public funds are understood not as profit but as essential support enabling the proper performance of public duties. Accordingly, executive officials, including the ruler or governor, may take only what is necessary for sustenance, clothing, and a suitable dwelling. The same rationale applies to the qāḍī, whose allowance is characterized as a publicly allocated stipend (rizq), rather than a contractual wage (Ibn al-Mawṣilī, n.d., p. 146).

Within this normative structure, al-Damīrī (d. 808/1406) states that a person may take from the bayt al-māl only what suffices for personal and familial needs. He explicitly excludes luxury and accumulation, grounding this limit in the principle of kifāya (al-Damīrī, 1425/2004, 10/199). The Shāfi‘ī tradition develops this reasoning further by noting that the ruler may possess certain amenities, such as horses, servants, or an adequately spacious residence, when these are required to maintain authority and safeguard public order. Jurists explain this allowance by observing that, unlike the Prophet, later rulers could not rely on the divinely supported aura of authority (ru‘b) that instilled deterrent awe among opponents (Zakariyyā al-Anṣārī, n.d., 4/296, 5/223). Ibn Ḥajar al-Haytamī (d. 974/1566) likewise considers it lawful for the imām to hold a residence and means proportionate to his office (Ibn Ḥajar al-Haytamī, 1357/1983, 10/133). Taken together, these texts demonstrate how the prophetic allowance for basic housing and service personnel evolved into an institutional doctrine governed by kifāya, amāna, and maṣlaḥa. This doctrinal evolution appears to provide an analogical foundation for the present study’s theorization of public housing.

The practice of taḥṣīṣ in classical fiqh was not codified as an independent contractual form. Instead, it was implemented through institutional mechanisms such as irsād (the earmarking of public assets for a designated public purpose), iqtā‘, waqf, iḥyā‘, and ḥisba.

The principle restricting administrative discretion is expressed in the maxim taṣarruf al-imām ‘alā’-ra‘iyya manūṭun bi’l-maṣlaḥa,³ meaning that the ruler’s actions toward the community are contingent upon public welfare (al-Suyūṭī, 1411/1990, p. 121). According to this rule, public property cannot be transferred as ownership. It may only be assigned as a trust-based, limited right of use that serves the public good. Modern administrative law reflects a comparable structure: the state may dedicate an asset to a public service through an administrative act, granting only a right of use while preserving public ownership (Onar, 1966, pp. 1340-1341).

Historical practice reinforces this institutional logic. From the Prophet’s community to ‘Umar’s establishment of bayt al-māl offices and centralized dīwān registers, allocations

³ تصرف الإمام على الرعية منوط بالصلحة

were managed through record-keeping, supervision, and structured accountability (Erkal, 1992, pp. 90-94). The Shāfi'ī school describes the bayt al-māl as jihatul-Islām, an institutional trust fund into which heirless estates revert and from which public needs are financed. Within this system, the ruler acts as a representative (‘aṣaba) of the community, exercising authority only within the limits of amāna and maṣlaḥa (al-Khaṭīb al-Shirbīnī, 1415/1994, 4/9, 12, 155, 163).

Practical cases illustrate how the limits of legitimacy were applied in classical jurisprudence. Allocations for widows' housing and the transfer of heirless estates to the state treasury show that the bayt al-māl served not only as a fiscal repository but also as a mechanism that responded to changing personal circumstances (al-Māwardī, 1419/1999, 9/258–259). Treasury support as a last resort in maintenance disputes (al-Khaṭīb al-Shirbīnī, 1415/1994, 4/204), the provision of housing during the ‘idda period (al-‘Imrānī, 1421/2000, 11/61), and subsistence assistance for divorced women (Ibn Māza, 1424/2004, 3/562) reflect the same pattern. The bayt al-māl also financed the needs of orphans, foundlings, prisoners, and indigent burials (al-Sarakhsī, 1414/1993, 26/118, 29/137, 11/21, 10/210, 15/130). Even the feeding of unclaimed animals fell within its mandate. This extended role highlights the treasury's combined fiscal and protective functions (al-Khaṭīb al-Shirbīnī, 1415/1994, 3/487).

A further set of examples concerns restitution and indemnity. Budget allocations for rebuilding damaged structures and replacing lost equipment (al-Damīrī, 9/296, 320), together with ‘Umar b. ‘Abd al-‘Azīz's restitution of unlawfully seized property indicates that the ruler's financial discretion was subject to principles of necessity and reparative justice (al-Sarakhsī, 1414/1993, 23/183). The indemnity regime reinforces this limitation. When judicial error affects public rights (ḥuqūq al-‘amma), compensation is paid from the bayt al-māl. In contrast, breaches involving private rights (ḥuqūq al-‘ibād) are compensated by the immediate beneficiary (al-Sarakhsī, 1414/1993, 9/50, 81). In this way, the treasury functions as a compensatory fund that absorbs the consequences of institutional error. This feature embeds the logic of amāna not only in allocation but also in reparation.

Additional procedural boundaries regulate the use of public resources. Military allowances (rizq/‘aṭā) cannot be sold before receipt or transferred as debt (al-Sarakhsī, 1414/1993, 14/47). Treasury assets may not be exchanged in transactions involving ribā (prohibited excess in exchange) (al-Sarakhsī, 1414/1993, 14/8). Profit margins in proxy sales are invalid (al-Sarakhsī, 1414/1993, 14/4). Supplementary rewards from the spoils of war (nafal) are permissible only when the amount is clearly specified to avoid uncertainty (gharar) (al-Khaṭīb al-Shirbīnī, 1415/1994, 4/163). When multiple claimants have equal entitlement, selection by lot (qur‘a) or administrative preference based on maṣlaḥa is valid, with priority typically accorded to Muslims (al-Khaṭīb al-Shirbīnī, 1415/1994, 3/510). Collectively, these procedural rules demonstrate that allocations from the bayt al-māl were designed to be reviewable, rule-bound, and welfare-oriented. This structure strengthens the analogy with modern public housing regimes.

The payment of salaries from the treasury aimed to prevent bribery and reinforce administrative independence. Luxury expenditure, by contrast, was treated as isrāf and therefore incompatible with the ethic of amāna (Niẓām al-Mulk, 1407/1986, p. 58, 99). In the Ḥanafī tradition, state lands were managed so that bare ownership remained with the polity while usufruct was delegated to individuals. Ibn ‘Ābidīn notes that the ruler may

intervene in such lands only out of necessity (Ibn 'Ābidīn, 1412/1992, 4/180-182). This model of state ownership, combined with delegated use, formed the classical basis of the Ottoman mīrī land system. It also parallels modern public housing, where ownership remains with the state and use is conditioned on public duty.

Infrastructure and public utilities followed the same rationale. Bridges, canals, and border defenses were financed from the treasury. Compulsory levies were permitted only when the bayt al-māl lacked sufficient resources (al-Sarakhsī, 1414/1993, 3/17-18, 10/20, 23/175, 23/203). When treasury resources were available, imposing new burdens on the public was prohibited (al-Sarakhsī, 1414/1993, 10/75). Access to rivers and roads, like access to sunlight, was generally free, although harmful use was restricted under the maxim lā ḍarar wa-lā ḍirār (al-Sarakhsī, 1414/1993, 14/91). The iqtā' system further distinguished ownership grants (tamlik) from non-proprietary use arrangements (istiḡlāl), grounding the distinction in possession and public welfare (al-Khaṭīb al-Shirbīnī, 1415/1994, 3/506). This distinction resembles the modern "public trust" doctrine. Under this doctrine, ownership remains with the state, while use rights are limited, reviewable, and tied to welfare objectives. The same rationale supports the fiscal foundations of the public housing model developed in this study.

Prophetic ḥimā practices, protected pastures reserved for war horses or zakāt camels, provide early precedents of non-proprietary, service-specific, and supervised use (Günay, 1998, pp. 52-54). These arrangements illustrate a form of "duty-linked yet non-personal use," a principle that modern public housing also reflects. In a comparable manner, Ḥanafī jurists describe similar state-managed assets as ḡhayr ṣaḥīḥ waqf, meaning allocations that serve public purposes without transferring ownership. Ebussu'ūd Efendi's (d. 982/1574) observation that "conditions in sultanic endowments are not binding, as these are established from the bayt al-māl or revert to it" (Ibn 'Ābidīn, 1412/1992, 4/437) reinforces this characterization. Such allocations were mechanisms designed to support the continuity of public services rather than to generate personal gain.

Al-Māwardī (d. 450/1058) conceptualizes the bayt al-māl as a collective trust representing communal welfare. Benefiting from it does not establish ownership but creates a need-based entitlement grounded in maṣlaḥa (1419/1999, 3/354). State-held properties endowed as ḡhayr ṣaḥīḥ waqf further exemplify this rationale (Günay, 1997, p. 66). The resulting structure parallels contemporary public-housing models in which bare ownership ('ayn/raqaba) remains with the state, while usufruct (intifā') is granted conditionally, for limited periods, and in connection with public duties.

Within the Ḥanafī school, rights in the bayt al-māl are articulated through the distinction between claims enforceable by adjudication (qaḍā'an) and obligations binding in conscience (diyānatan). A person who cannot obtain a rightful share through formal channels may, in conscience, take what is due; however, such recourse does not create ownership and remains temporary and need-based (Ibn 'Ābidīn, 1412/1992, 2/335-336). This understanding influenced Ottoman administrative practice, where allocations to officials were treated as entitlements linked to office rather than as personal gifts. Allowances ('aṭīyyāt) for soldiers and civil servants were institutionalized as non-contractual, maṣlaḥa-based public stipends rather than wages (ujra), thereby maintaining continuity in public trusteeship (al-Sarakhsī, 1414/1993, 21/62).

Shāfi'ī and Ḥanbalī sources add complementary dimensions. Their discussions of

ownerless or inalienable property indicate that administrative authority is constrained by *amāna* and *maşlaḥa* (al-Khaṭīb al-Shirbīnī, 1415/1994, 3/497; Ibn Qudāma, 1417/1997, 8/331). Al-Buhūfī (d. 1051/1641) defines the *bayt al-māl* as *jihatū'l-Islām* and notes that surplus property reverts to its rightful claimants if political order collapses (4/433, 6/60-61). Early precedents, such as 'Aṭṭāb b. Asīd's stipend after the conquest of Mecca and 'Umar's regulation of treasury-based commercial loans to his sons illustrate recurring concerns with accountability and non-ownership (al-Shaybānī, 1433/2012, 9/506; al-Ṭahāwī, n.d., 3/177). The *dīwān* system instituted under 'Umar displays a level of fiscal discipline that allows partial comparison with modern budgetary allocation (Dumlu, 2011, p. 227).

Al-Damīrī therefore argues that the treasurer of the *bayt al-māl* is not a personal delegate of the ruler but a fiduciary officer responsible for safeguarding public welfare (10/167). The continuity of this office arises from its institutional mandate rather than the identity of the ruler. Al-Qarāfī's (d. 684/1285) treatment of judicial registration (*isjāl*) and legally certified testimony (*shahāda*) likewise shows that transactions involving public assets require juridical oversight and certified witnesses (10/416). These requirements create an institutional structure in which allocations are formal, reviewable, and insulated from personal patronage. This structure supports the analogy with public housing, a system built on impersonal, accountable trusteeship.

Nizām al-Mulḳ's (d. 485/1092) *Siyāsat-nāma* (*Siyar al-Mulūk*) offers additional political-administrative insight. He prohibits coercive taxation, mandates the mobilization of treasury reserves for public welfare in times of crisis, and emphasizes that officials' subsistence should be provided from the *bayt al-māl* to reduce corruption risks (58, 99). These principles align with features of contemporary public-housing regimes, especially duty-linked allocation, non-transferability, and enforced accountability. These political-administrative principles are articulated doctrinally in early *fiqh* literature.

Within this broader doctrinal framework, early *fiqh* legitimized in-kind allocations analogous to public housing as grounded in *kifāya* (adequate provision), anti-bribery norms, and duty-oriented support. Al-Sarakhsī (d. 483/1090) notes that the ruler may allocate maintenance shares from the *bayt al-māl* to public officials, particularly judges, as necessary provisions for performing their duties rather than as personal benefits (16/94, 102). Shaykhīzāde (d. 1078/1677) similarly permits public servants to receive sustenance from the treasury at the level of *kifāya*, to reject substandard goods, and to contribute to service-related costs (2/151, 177, 488, 564). Imām Mālik (d. 179/796) also endorses the payment of officials and tax assessors from public funds and allows distribution fees to be drawn from the *bayt al-māl* when resources permit (4/310).

Based on these principles, the legitimacy of public housing in Islamic law can be conceptualized through three interrelated elements. First, classification (*taşnīf*): public housing represents a specific form of state property within the *bayt al-māl*; ownership remains with the state, while use derives from public office rather than personal entitlement (cf. Günay, 1997, p. 27; Onar, 1966, pp. 1340-41). Second, *amāna*: allocation conveys conditional usufruct, temporary, non-proprietary, and tied to duty, thereby preserving the fiduciary character of the treasury (see al-Suyūṭī, 1411/1990, p. 121). Third, institutional *maşlaḥa*: historical mechanisms of registration, oversight, and accountability link classical *fiqh*-based fiscal principles with modern administrative governance (cf. Erkal, 1992, pp. 90-94; al-Khaṭīb al-Shirbīnī, 1415/1994, 4/9, 12, 155, 163). Within this

conceptualization, public housing functions as a bayt al-māl allocation, with ownership remaining with the state. At the same time, usufruct is granted as a duty-linked, time-bound, and non-transferable right. Its legitimacy derives from preserving amāna, enabling public service, and promoting collective welfare.

1.2. The Position of Public Housing in Fiqh Contract Theory and the Modern Status Distinction

Classical contract theory does not explicitly define public housing. Nevertheless, it offers a conceptual framework for situating it through the criterion of consideration (‘iwaḍ), understood here as lawful countervalue. Within this framework, contracts are typically organized into three categories. The first includes liability-bearing agreements (‘uqūd al-ḍamān), such as sale (bay‘) and interest-free loan (qarḍ), which involve either the transfer of ownership or an obligation to repay. The second comprises trust-based contracts (‘uqūd al-amāna), including deposit (wadī‘a), loan for use (‘āriyya), and agency (wakāla), where possession is transferred without compensation. The third category consists of dual-character contracts, most notably lease (ijāra), in which the asset (‘ayn) remains under trust while the usufruct (manfa‘a) is granted for consideration (Keleş, 2022, pp. 18-19).

In both the Ḥanafī and Ḥanbalī traditions, subsistence allowances taken from the bayt al-māl are not treated as wages. They are instead classified as rizq, a publicly allocated stipend tied to the performance of public duties. The principle of kifāya justifies this support. It does not create ownership or proprietary rights (Ibn Muflīh, 1423/2003, 4/322, 327, 7/152, 154; Qudūrī, 1427/2006, 1/434; Ibn Māza, 1424/2004, 8/32). This doctrinal approach, therefore, supports interpreting public allocation as a use-right rather than a proprietary entitlement.

Because public housing does not transfer ownership, it cannot be classified under liability-bearing (ḍamān-based) contracts. When no payment is required, its structure aligns with the rules of ‘āriyya or amāna, since the occupant acquires a non-compensated right of use (manfa‘a). When rent or occupancy fees are imposed, the relationship assumes a dual structure comparable to ijāra. Safekeeping contracts, such as wadī‘a, do not provide an appropriate analogy because they involve possession without active benefit. Accordingly, the public-housing relationship may be understood either as a gratuitous usufruct (‘āriyya-type use) or as a compensated usufruct comparable to ijāra.

This theoretical model also clarifies the modern distinction between public housing and social housing. Although the two may appear similar in function, they diverge in purpose and legal structure. Public housing refers to immovable property owned by the state and allocated on a duty-linked, temporary basis to ensure the security and continuity of public services. Eligibility is based on holding public office rather than on socioeconomic criteria. The resulting right of use is non-transferable, non-inheritable, and incapable of maturing into private ownership.

Social housing, by contrast, targets individuals identified through income or vulnerability indicators. It typically operates through leases and, in some jurisdictions, may lead to ownership transfer. Administrative literature reflects the same distinction: public housing comprises state-owned dwellings allocated to public-sector personnel for operational purposes, whereas social housing provides tenancy or ownership mechanisms for low-income groups (Köse, 2023, pp. 13-14).

Read through a fiqh-based lens, the distinction becomes more precise. Public housing corresponds to a trust-based transfer of usufruct within an amāna framework. Social housing, however, functions within the structures of ijāra or ownership transfer. In this respect, the amāna–manfa‘a axis of classical contract theory provides a conceptual basis for understanding the modern administrative regime governing allocation and controlled use.

This distinction also shapes the juridical characterization of use-based allocation in Islamic law. Allocation does not convey ownership but instead creates a form of usufruct with two principal variants. In gratuitous allocation, the occupant holds the property in a trustee capacity (yad al-amāna) and incurs liability only in cases of impermissible excess (ta‘addī) or negligence (taqṣīr). In allocation by lease, the arrangement resembles the dual structure of ijāra, in which the ‘ayn remains under trust, while the manfa‘a is granted for consideration. Within this second structure, obligations such as ordinary maintenance, delivery conditions, and liability for damage become more explicitly defined in juridical terms.

1.3. Usage Limits, Transfer Prohibition, and the Liability Regime in Public Housing (Amāna-Maşlaḥa Framework)

The principles of amāna, taḥṣīs, and restrictions on the disposal of bayt al-māl assets provide an important normative framework for evaluating the legal nature of public housing in contemporary administrative systems. These principles help explain why public housing is treated not as private property but as a conditional and duty-bound allocation of usufruct. The Qur’ānic injunction “Render trusts to those to whom they are due” (Qur’ān, 4:58) provides a general normative basis for the use of public resources. Al-Māwardī’s statement that “everyone has a right in this property” indicates that bayt al-māl assets rest on communal right rather than communal ownership. Public allocation is therefore defined as a registered, reviewable form of use that does not confer ownership and remains confined to its designated purpose (al-Māwardī, 1419/1999, 13/350).

Where property is allocated for public service, its use is legitimate only for that specific purpose. Expenditures that exceed functional necessity, such as ornamentation or luxury expenses, are viewed as inconsistent with maşlaḥa. Al-Buhūfī (d. 1051/1641) explicitly restricts expenditures that surpass the stated purpose of allocation (al-Buhūfī, n.d., 4/267). Al-Baghawī (d. 516/1122) permits payments to officials from māl al-maşāliḥ (funds earmarked for public interests) only to the extent of actual need and when grounded in maşlaḥa (al-Baghawī, 1418/1997, 2/57-58). Al-Khaṭīb al-Shirbīnī (d. 977/1570) similarly holds that when the bayt al-māl is insufficient, expenses may be shared among beneficiaries. Such sharing, however, must remain within the limits of amāna, maşlaḥa, and proportionality (al-Khaṭīb al-Shirbīnī, 1415/1994, 6/328). Only legitimate claimants may benefit; in cases of doubt, ḥadd penalties are not applied (al-Khaṭīb al-Shirbīnī, 1415/1994, 5/472). Al-Ramlī (d. 1004/1596) limits the ruler’s personal benefit from treasury resources, whether involving horses, servants, or housing, to the level of kifāya. Extraneous or arbitrary uses require compensation (al-Ramlī, 1404/1984, 8/251).

In Ḥanafī doctrine, legal analysis of property turns on the distinction between the substance of the asset (‘ayn/raqaba), the benefit derived from it (manfa‘a), and the legal dominion (milk) attached to each. (cf. al-Sarakhsī, 1414/1993, 15/152) Usufruct (manfa‘a) alone does not constitute property but is a right derived from it. This distinction

reinforces the view that public housing transfers usufruct rather than ownership, placing it along the 'ariyya-ijāra spectrum. In the modern period, 'Alī al-Khafif's definition of ḥaqq as "any benefit lawfully acquired for its holder" assigns independent economic value to usufruct and strengthens this conceptual foundation (al-Khafif, 1990, 9).

The retention of conquered lands under bayt al-māl for collective use (al-Damīri, 1425/2004, 9/366) demonstrates a structure in which the underlying title (raqaba) remains public while a limited usufructuary right is granted for official public functions. By contrast, the sale of private houses in Mecca illustrates the legitimacy of individual ownership. Rights in state-provided housing, therefore, rest on function-linked usufruct rather than on title. Abū Ya' lā al-Farrā' (d. 458/1066) classifies such arrangements as iqtā' al-istiqlāl or iqtā' al-ijāra, authorizing the grant of usufruct (manfa'a) but not ownership of the corpus (raqaba) (Abū Ya' lā, 1421/2000, 229-231). This classification supports the principle of non-transferability. 'Umar's statement to Hind bt. 'Utba, "Had this property been mine, I would have given it to you; but it belongs to all Muslims" (Ibn al-Athīr, 1417/1997, 2/438), reflects the trust-based structure of state assets. Early practice consistently treated the bayt al-māl as a trust, with state discretion limited by oversight and maşlaḥa. 'Umar's prioritization of public benefit over private claims and the Ottoman mīrī land regime both illustrate this continuity (Çimen, 2023).

Auxiliary facilities associated with public housing follow the same trust-based logic. Their use is governed by moderation and proportionality (Qur'ān, 7:31). Operational and maintenance costs are ordinarily met from the bayt al-māl. When treasury funds are insufficient, temporary cost-sharing among beneficiaries is permitted (al-Damīri, 10/182, 199, 204, 252-257; al-Shīrāzī, n.d., 2/331). Al-Sughdī's (d. 461/1068) discussion of major rivers and al-Sarakhsī's treatment of roads and canals emphasize principles of balanced use, quality preservation, and limited cost transfer (al-Sughdī, 1404/1984, 2/623; al-Sarakhsī, 1414/1993, 23/175). Shaykhizāde's rule on remuneration for the qāsim (administrator of revenue distribution) provides a further example: priority is given to the bayt al-māl, and only when it is inadequate are costs shared among beneficiaries, subject to transparency and proportionality (Shaykhizāde, n.d., 2/488, 564). The amāna-maşlaḥa equilibrium thus governs not only allocation but also cost distribution.

User modifications are evaluated through the interplay of permission, possession, and harm. Movable additions may be removed without causing damage. Fixed additions, such as built-in cabinets, showers, or balcony glazing, that cannot be removed without causing harm, give rise to financial liability. Unauthorized alterations constitute khiyānat al-amāna (breach of trust). The administration may retain improvements for public benefit, yet the occupant cannot claim an increase in value and remains liable for any damage. Necessary expenses, such as plumbing repairs, are reimbursable when authorized and documented. Voluntary or luxury expenditures, however, cannot be charged to public funds.

The trust principle "the trustee is not liable except in cases of deliberate misuse or negligence" further structures the liability regime. Ordinary wear and tear resulting from permitted use (istihlāk) does not give rise to liability. By contrast, ta'addī (exceeding lawful authority) or taqşir (neglect) triggers financial liability (al-Māwardī, 1419/1999, 3/227; Ibn Qudāma, 1417/1997, 12/550; al-Ḥaddādī, 1322/1904, 1/356). Liability is established through three components: harm, fault, and causal nexus (Keleş, 2022, 28-30, 41). Within contractual relations, breaches or negligent use give rise to ḍamān al-'aqd.

Outside a contract, unauthorized occupation or refusal to vacate constitutes *ḍamān al-yad*. In such cases, both rent equivalent and material damage must be compensated. Causation is determined by distinguishing direct acts (*mubāshara*) from indirect causes (*tasabbub*). If an independent intervening factor breaks the causal chain, liability ceases.

Shāfi'ī sources further distinguish between harm arising from official duties and damage resulting from exceeding authority. When no 'āqila (kin group) bears responsibility, financial loss may be borne by the *bayt al-māl*. Harm resulting from obligatory functions, such as *ḥadd* or *qisās* punishments, is not compensable, as it is considered an inherent consequence of lawful public duty (al-Shāfi'ī, 1422/2001, 7/214-215, 430-432; al-Māwardī, 1419/1999, 7/434). Ibn al-Qayyim (d. 751/1350) similarly notes that damage incurred in the course of authorized pursuit of public welfare may be indemnified by the *bayt al-māl* (Ibn al-Qayyim, 1428/2007, 1/142). The treasury, therefore, functions not only as a disbursement authority but also as an institution of compensatory trust.

When official duty ends, the effective legal cause ('illa) for allocation lapses, and the right of use terminates. Continued occupation thereafter constitutes unlawful possession (*iḥtilāl*) and *ta'addī*, entitling the owner to compensation for resulting harm. Within this integrated framework, public housing is defined as a non-transferable, recallable, trust-based usufruct linked to an office. Conditions of registration, authorization, agency, and fair valuation (al-Qarāfi, 1414/1994, 10/365-366, 376-377; Ibn 'Ābidīn, 1412/1992, 4/180-181, 5/335, 6/598) form the classical foundations of proportionality, record-keeping, and oversight in modern administrative law. The *waqf maxim*, "its corpus may not be sold, gifted, or inherited; only its yield may be used" (al-Sarakhsī, 1414/1993, 12/31; Ibn Rajab, 1419, 2/299), represents an early articulation of this trust logic and underpins the juridical structure of public housing.

1.4. Irregular Use and the Requirement of Actual Residence

In Islamic law, the allocation of public housing can be understood as resting on two interrelated principles: 'illa and *maṣlaḥa*. Within this framework, actual residence becomes the central condition for determining legitimacy. The dwelling must be genuinely inhabited so that public service can be performed securely and without interruption. This functional link provides both the juridical and ethical basis for the allocation.

When a public official rarely occupies the residence without a valid excuse or resides primarily elsewhere, the effective legal cause ('illa) that justified the original allocation weakens. According to the maxim "when the cause lapses, the ruling lapses" (al-Juwaynī, 1424/2004, 3/181; Abū Ya'ālā al-Farrā', 1410/1990, 3/823; al-Shīrāzī, n.d., 1/514; al-Ghazālī, 1417/1997, 2/267), continued occupation no longer aligns with the aims of *maṣlaḥa* and the trust-based nature of *amāna*. In such cases, extended use becomes inconsistent with the purpose for which the dwelling was allocated.

In classical jurisprudence, the notion of *kifāya* (adequate provision) functions as a normative threshold that limits excessive benefit from public resources. While this concept provides an ethical and juristic orientation, modern administrative systems typically translate such standards into measurable criteria. Contemporary public housing regulations, therefore, rely on objective indicators such as the number of household members, the functional requirements of the office, building standards, and spatial capacity. These indicators do not replace the normative concept of *kifāya* but

operationalize it within an administrative framework. In this sense, kifāya serves as a guiding principle that prevents both deficiency and excess, while positive law expresses this balance through technical parameters, such as housing type, service rank, and occupancy rules, defined in statutory and regulatory provisions.

Determining whether “actual residence” exists requires objective indicators rather than self-declaration. Such indicators may include the size and category of the allocated residence, the number of occupants registered in the household, and the compatibility between the dwelling’s spatial capacity and the functional requirements of the assigned public office. Relevant indicators include residency registration, observable signs of habitation, and atypical patterns of water or electricity consumption, whether unusually high or unusually low. The presence of other personnel with an established housing need may also serve as contextual evidence. When evaluated collectively, these indicators offer a structured basis for assessing whether the allocation continues to fulfill its intended purpose. Once the causal link ceases, reassignment to another eligible individual becomes consistent with both maṣlaḥa and amāna.

The frequently cited claim that “acquired rights cannot be revoked” (Onar, 1966, p. 1239; Doğu, 1980, p. 170) does not determine the outcome in this context. An acquired right persists only as long as the underlying conditions remain. Public housing is not ownership; it constitutes a duty-linked, time-bound usufruct. When the nexus between duty and residence dissolves, continued occupation no longer fits the legal nature of the allocation. It instead leads to the use of public resources for purposes other than their intended use (see Kaplan, 2004, pp. 123-134). Consequently, the absence of actual residence, or evidence indicating irregular use, requires termination and reallocation of the dwelling on grounds of equity, efficiency, and maṣlaḥa. Retrospective examination may also be necessary to determine whether the use has crossed the normative threshold for isrāf or resulted in unauthorized possession.

This reasoning parallels the Mālikī view that an iqtāʿ is contingent upon effective use or lawful reclamation (iḥyāʿ). Al-Qarāfī’s rule, “if the condition is not fulfilled, the allocation passes to one qualified for it” (al-Qarāfī, 1414/1994, 4/154), reinforces the analogy with public housing. Legitimacy arises not from permanence but from the continuity of the allocation’s condition. In this context, a triad consisting of actual residence, connection to public duty, and fiduciary responsibility preserves the balance at the core of allocation rules.

1.5. Termination of Office and Evacuation

Public housing constitutes a duty-bound, temporary, and conditional usufruct (taḥṣīṣ al-manfaʿa) within the amāna-maṣlaḥa framework of fiqh. When the office that serves as the basis for allocation ceases, the effective legal cause (ʿilla) also lapses. As a result, the right of use terminates without the need for a separate act. Continued residence after this point no longer aligns with the trust-based nature of the arrangement and is treated as unauthorized use falling outside its intended public purpose (al-ʿImrānī, 1421/2000, 3/440).

In Ḥanafī jurisprudence, mīrī land illustrates this logic clearly. Bare ownership remains with the state, while usufruct is granted only for a designated and authorized purpose. Ibn ʿĀbidīn (d. 1252/1836) states that land left uncultivated for three years or transferred without authorization is repossessed because the original basis of allocation has ceased.

By analogy, once an official's service ends, the right of use in public housing expires. Remaining in the residence thereafter constitutes ta'addī (Ibn 'Ābidīn, 1412/1992, 4/180-182).

Al-Sarakhsī further explains that, in the case of immovable property, evacuation (takhliya) serves the legal function of physical delivery. He notes that "the completion of a gift in immovables requires evacuation," a rule justified by istihsān (juristic preference) (al-Sarakhsī, 1414/1993, 11/74). This suggests that evacuation in public housing is not merely an administrative formality; rather, it is the act that legally completes restitution and returns the trust to its proper institutional locus.

Classical doctrine also addresses the costs of evacuation and enforcement. The bayt al-māl assumes these costs when doing so preserves maşlahā. If this is not feasible, costs may be borne by the requesting party or, where resistance occurs, by the occupant. In certain situations, enforcement expenses may again fall on the treasury (al-Damīrī, 1425/2004, 10/204, 252-257; al-Shīrāzī, n.d., 3/365).

Early Islamic fiscal principles, particularly budgetary balance and the redistribution of surplus, discourage the indefinite privatization or personal appropriation of public assets (Erkal, 1992, pp. 90-94). These principles align with modern administrative requirements that mandate evacuation upon completion of duty. Failure to vacate aligns with iḥtilāl (unlawful occupation) in civil law and, in fiqh, may amount to ghaşb (usurpation).

Unauthorized continued use beyond entitlement triggers ḍamān al-yad. The occupant becomes liable for the fair rental value (ajr al-mithl) and for any material damage. This rule reflects fiqh's dual commitment to protecting entrusted property and preserving public welfare. Comparable reasoning appears in classical juristic discussions on ghanā'im (spoils of war): temporary use of spoils before their formal distribution was permitted only in cases of necessity and required restitution to the bayt al-māl once hostilities ended (Qudūrī, 1427/2006, 11/5835-5837; 12/6221). Similarly, the ruler's responsibility to record public assets and to pay indemnities for erroneous punishments from the treasury illustrates the dual role of the bayt al-māl as both allocator and compensatory institution (al-Sarakhsī, 1414/1993, 9/50).

In this framework, prompt evacuation, restitution, and, where required, compensation constitute essential components of the fiqh-based model of public housing. Continued occupation after the cessation of official duty disrupts the balance between amāna and maşlahā. Protecting public rights and reallocating resources to eligible beneficiaries follows from this structure and reflects the normative expectations embedded within the classical jurisprudential system.

2. Comparative Dimension: Modern Law and Fiqh

Although modern public law and classical fiqh emerge from different normative traditions, both frameworks converge on one analytical point. Immovable property allocated for public service is treated as a duty-bound, time-limited usufruct rather than as a transfer of ownership. In modern administrative law, public housing functions as a budgetary and institutional tool. It secures continuity in public service and provides officials with accommodation linked to their place of duty (Sıcaküz, 2022, p. 50). Classical fiqh performs a similar role through the bayt al-māl, which covered essential needs of public officials, such as subsistence, mounts, assistance, and housing. This

practice constituted an early model of duty-related support (Ibn Māza, 1424/2004, 3/562; Öner, 2019, pp. 79, 90).

In both systems, use-based allocation is regulated not as a personal entitlement but as a trust-based form of use. Its operation is governed by *amāna*, *maşlaḥa*, and *kifāya*. Modern administrative structures ground this regulation in statutory authority and sovereignty. By contrast, *fiqh* bases administrative action on fiduciary responsibility. This rationale is reflected in the legal maxim stating that the ruler's actions toward the community are contingent upon public welfare (al-Suyūṭī, 1411/1990, p. 121). Consequently, both modern law and *fiqh* conceptualize public housing as non-proprietary, accountable, and linked to official duties.

The modern legal concept of *taḥşîş*, dedicating property to a defined public function and integrating it into the public domain, has a substantive parallel in *fiqh*. In classical jurisprudence, the assets of the *bayt al-māl* are directed toward *maşlaḥa* and placed under institutional oversight. The underlying justificatory logic, however, differs. Modern law frames public interest through administrative rationality and efficiency. *Fiqh*, in contrast, situates it within the context of justice, trust, and the ethical accountability of public authority. Despite this divergence, both systems share a common principle: public property should not be converted into private ownership, and its use must remain supervised and purpose-bound. This shared commitment indicates a structural continuity and a measurable normative alignment between the two traditions.

2.1. The Framework of Turkish Legislation

In Turkey, the legal framework governing public housing is primarily set out in Law No. 2946 on Public Housing and the accompanying Public Housing Regulation. Under Law No. 2946, public housing comprises residences allocated to public personnel under duty-based, service-based, and queue-based categories. Under these instruments, use-based allocation refers to the assignment of immovable property, whether owned or leased, to specified officials. The criteria for determining eligibility are based on two factors: the significance of the public service and the rank or title of the personnel involved (Law, arts. 2-3; Regulation, arts. 7-8).

The right of use is limited to the duration of public service. When an official's duty ends, the residence must be vacated within two months (Law, art. 8; Regulation, art. 33). During the period of occupancy, users are responsible for expenses such as electricity, water, heating, minor maintenance, and any damage resulting from misuse. Certain categories of official residences constitute exceptions due to their specific administrative functions (Law, art. 6; Regulation, art. 28).

Modern legislation also establishes explicit restrictions on transfer and commercialization. Public residences may not be assigned to third parties, sublet, or used for commercial purposes (Law, art. 13; Regulation, art. 18). When considered together with the time-bound character of the right of use, these provisions indicate that Turkish law defines public housing as a duty-linked and non-proprietary form of allocation within the public domain.

Table 2. Structural Framework of Law No. 2946

Legal element	Regulation in Law No. 2946	Functional meaning
Types of public housing	Duty housing, service housing, queue housing	Classification of allocation
Allocation criteria	Office, rank, service necessity	Functional eligibility
Duration	Limited to the duration of office	Non-proprietary use
Transferability	Prohibited	Protection of public property
Expenses	Occupant responsible for utilities and minor maintenance	Conditional usufruct
Evacuation	Mandatory after duty ends	Recallable allocation

2.2. Normative Convergence of Fiqh Principles

Classical Islamic law lacks a direct analogue to “public housing,” yet several fiqhī principles exhibit structural similarities to modern public housing regimes. Ibn ‘Ābidīn’s analysis of *irsād* illustrates this point. When the ruler allocates property from the *bayt al-māl* to a madrasa, mosque, or public official, the act is classified as *irsād* rather than *waqf*. As a result, it does not generate immutable stipulations. Adjustments, such as increases, reductions, or modifications, remain permissible as long as they serve changing *maṣlaḥa*. What remains constant is the designated purpose of the allocation (Ibn ‘Ābidīn, 1412/1992, 4/437).

Public housing reflects a comparable logic: it is a conditional allocation of public assets that becomes subject to administrative reassessment when its underlying duty or *‘illa* expires. Continued occupation after that point constitutes *ghaṣb*. Transfer to third parties is treated as *khiyānat al-amāna*, and excessive personal benefit is associated with *isrāf*. These fiqhī categories correspond to modern administrative principles such as duty-linked use, mandatory evacuation, non-transferability, responsibility for auxiliary expenses, and compensatory mechanisms.

Additional parallels appear in Ibn Muflīh’s justification of *rizq* allocations to public servants and in Ibn Rajab’s distinction between public ownership and the grant of usufruct. Together, these discussions emphasize a non-proprietary, duty-related benefit regime and the prohibition of ownership transfer (Ibn Muflīh, 1423/2003, 11/309; Ibn Rajab, 1419, 2/299). The fiqhī treatment of *bayt al-māl* allowances as *rizq*, temporary, need-based, and tied to designated functions (Ibn Muflīh, 1423/2003, 4/322, 327, 7/152, 154; Ibn Māza, 1424/2004, 8/32), further indicates a structural similarity to contemporary approaches in which public housing is conceptualized as an expenditure linked to official service.

The *bayt al-māl* also operates as an institutional actor rather than a passive treasury. Its responsibility for foundlings and for specific forms of *diyāt* (financial compensation for

homicide or bodily injury) illustrates its role as a guarantor of public obligations and collective liability (al-Sarakhsī, 1414/1993, 8/113), and the permissibility of borrowing during fiscal shortages to maintain essential public services (al-Shīrāzī, n.d., 2/313), illustrate principles of allocation, proportionality, and compensation. Al-Sarakhsī provides several examples: 'Umar's use of orphan funds through muḍāraba arrangements to preserve their value, and the authorized evacuation of real estate for public safety with compensation provided by the bayt al-māl (al-Sarakhsī, 1414/1993, 22/18, 23/5). These cases demonstrate applications of rules that also appear in modern systems governing duty-linked allocations and state responsibility for compensatory justice.

Administrative procedures show further points of correspondence. Al-Qarāfī requires a sequence of fair valuation (qīmat al-mithl), expert testimony (khibra), and official registration within the dīwān when dealing with public immovables (al-Qarāfī, 1414/1994, 10/365-366, 376-377, 416). This sequence resembles contemporary processes involving valuation, allocation committees, and formal handover or evacuation. Each step reflects a procedural emphasis on transparency, oversight, and institutional accountability.

Taken together, the fiqhī principles of use-based allocation (taḥṣīs), fiduciary responsibility (amāna), public interest (maṣlaḥa), financial liability (ḍamān), proportionality, and non-transferability form a framework that shares significant structural features with modern public housing. Both systems treat public assets as duty-linked and condition-bound. Both also require ongoing oversight and procedural safeguards. These points of correspondence indicate not identity but conceptual proximity between classical jurisprudence and contemporary administrative practices.

From the perspective of modern administrative law, these fiduciary principles are not applied in an abstract ethical sense but are translated into enforceable legal rules. Statutory provisions concerning evacuation periods, prohibition of transfer, and financial responsibility transform the moral logic of amāna into concrete administrative obligations. In this way, positive law limits the discretionary sphere of public officials and converts the fiduciary ethos emphasized in classical fiqh into a system of legally enforceable constraints.

2.3. Convergence and Divergence

Classical fiqh and modern public law emerge from distinct conceptual traditions, yet they address comparable administrative concerns. Both systems aim to safeguard the continuity of public service and to prevent the misuse of state resources. In each framework, public housing is defined as a duty-bound and temporary usufruct rather than a transfer of ownership. Disciplinary and compensatory mechanisms, intended to deter isrāf and su' isti'māl (improper or unauthorized use of entrusted assets), operate within this structure (Sıcakyüz, 2022, pp. 53-54).

Their principal divergence lies in their respective normative foundations. Modern law regulates public housing within a secular administrative framework grounded in statutory authority and public interest. Its sanctions, such as eviction or compensation (ajr al-mithl), function within procedural and institutional boundaries. Fiqh, by contrast, conceptualizes these issues through categories such as amāna, ḥaqq al-'amma, ḥaqq al-'ibād, and maṣlaḥa. These categories introduce ethical and eschatological dimensions

absent from modern administrative models. Consequently, an act that modern law treats solely as a financial liability may, in fiqh, also constitute a breach of trust (khiyānat al-amāna) or an infringement of protected rights (ta'addī upon ḥuqūq al-'ibād or ḥuqūq al-'amma).

Despite these different points of departure, both systems rely on functional principles such as public welfare, purpose-bound use, and accountability. The fiqhī framework, however, situates these principles within a broader juridical and moral context. This perspective does not replace modern administrative rules but provides an additional analytical lens through which their rationale and limits can be understood.

3. Practical Challenges and Governance Implications

Although classical fiqh and modern administrative law contain parallel conceptual elements, several operational challenges arise when trust-based allocation models are implemented in contemporary public institutions.

First, the potential for misuse of authority persists in both traditions. Jurists observed that discretion over bayt al-māl could lead to favoritism, unnecessary expenditures, or irregular allocation—outcomes inconsistent with the normative constraints of amāna and maṣlaḥa (al-Māwardī, 1419/1999, 9/258-259; al-Damīrī, 1425/2004, 10/199; Zakariyyā al-Anṣārī, n.d., 4/296, 5/223; Ibn Ḥajar al-Haytamī, 1357/1983, 10/133; Ibn 'Ābidīn, 1412/1992, 4/180-182). Modern administrative systems exhibit similar risks. When eligibility criteria, waiting lists, and objective indicators of residence are unclear or inconsistently applied, public housing allocations may become vulnerable to informal influence. The fiqh-based requirement that allocation correspond to actual need, as defined by the principle of kifāya, provides a guiding principle; however, its practical effectiveness depends on institutional capacity and procedural design.

Second, accountability mechanisms remain uneven across systems. Classical fiqh situates responsibility within a combined moral–legal framework. Breaches of trust may generate both financial liability and an ethical violation binding in conscience (khiyānat al-amāna) (Abū Dāwūd, 1430/2009, 4/567; Ibn al-Mawṣilī, n.d., p. 146; al-Qarāfī, 1415/1994, 10/416; al-Suyūfī, 1411/1990, p. 121; Erkal, 1992, pp. 90-94). Modern administrative law relies primarily on procedural tools such as restitution, eviction, and disciplinary measures. Translating the ethical emphasis of fiqh into operational governance mechanisms presents difficulties. Without systematic auditing, consistent documentation, and independent review, the fiduciary discipline emphasized in classical sources may not be fully reflected in practice.

Third, the supervisory architecture governing allocation and use is frequently limited. Historically, inspection and audit (muḥāsaba), documentation through official registration and record-keeping (isjāl/diwān), and public testimony (shahāda) served as mechanisms to prevent irregularities (al-Māwardī, 1419/1999, 3/354, 9/258-259; al-Khaṭīb al-Shirbīnī, 1415/1994, 4/9, 12, 155, 163; Erkal, 1992, pp. 90-94). Contemporary public housing regimes often lack supervisory structures of comparable breadth, particularly for verifying actual residence or detecting unauthorized transfers of use. Incorporating periodic audits, digital monitoring tools, and transparent reporting procedures would better align with the fiqhī insistence on continuous oversight and reduce the risk of misallocation.

Fourth, both systems face challenges in delineating the scope of legal liability. Fiqh distinguishes between liability arising from ta'addī or taqṣīr and liability consequences arising from the lapse of the effective legal cause (ʿilla) (al-Damīrī, 1425/2004, 10/199; al-Māwardī, 1419/1999, 3/227; Ibn Qudāma, 1417/1997, 12/550; al-Ḥaddādī, 1322/1904, 1/356). Modern administrative law, by contrast, frequently applies a uniform compensation model. This difference may generate practical questions, such as whether an occupant who delays evacuation should pay the full rent equivalent (ajr al-mithl) or a reduced amount when good-faith error is demonstrable. A calibrated approach informed by fiqhī principles, such as harm-based proportionality and the distinction between direct (mubāshara) and indirect (tasabbub) causation, may provide more nuanced outcomes.

Taken together, these challenges do not undermine the conceptual framework developed in this study. Instead, they highlight the institutional conditions necessary for the effective operation of a trust-based allocation model. Convergence between classical fiqh and modern administrative law, therefore, requires not only doctrinal alignment but also regulatory implementation that incorporates safeguards against misuse, ensures procedural transparency, and applies proportional and clearly defined standards of liability.

3.1. Maqāṣid al-Sharīʿa as a Normative Framework of Legitimacy

The foregoing analysis may be more clearly systematized within the framework of maqāṣid al-sharīʿa. Although the present study has relied primarily on the concepts of bayt al-māl, amāna, maṣlaḥa, and proportionality, these concepts gain further coherence when read in light of the higher objectives of the Sharīʿa. Public housing is not merely a technical question of allocation; it also concerns the preservation of institutional justice, the proper use of collective resources, and the prevention of arbitrary privilege.

From a maqāṣid al-sharīʿa perspective, the legitimacy of public housing cannot be reduced to a single objective. It is certainly connected to the protection of māl, a core objective of the Sharīʿa frequently emphasized in classical maqāṣid literature (see al-Ruhūnī, 1422/2002, 4/103; al-Shāṭibī, 1417/1997, 4/348; al-Zarkashī, 1414/1994, 7/266; Ibn Imām al-Kāmiliya, 1423/2002, 5/285; Ibn Amīr Ḥājj, 1403/1983, 3/152; al-Ḥamawī, 1405/1985, 1/318), since state-owned residences belong to the collectively protected fiscal sphere and may not be appropriated for private gain. Yet its legitimacy also depends on preserving amāna in the management of public resources, ensuring fairness in the allocation of public housing to eligible beneficiaries, and maintaining the institutional continuity of public service. In this sense, regulatory principles such as actual residence, non-transferability, proportional use, and restitution upon lapse of duty function not merely as administrative conditions but as maqāṣid-oriented safeguards against abuse, waste, and arbitrary privilege.

Within this maqāṣid framework, the provision of adequate resources for public officials has traditionally been justified in Islamic political jurisprudence as a means of preserving justice (ʿadl) and ensuring the proper functioning of public administration. Jurists held that officials responsible for public duties may receive sufficient maintenance from the bayt al-māl so that they can perform their responsibilities without hardship or corruption (see al-Māwardī, n.d., 297-321; Ibn Taymiyya, 1418/1997, 24-51; Rahmawati & Satrio, 2024, pp. 89-99). These regulatory principles may therefore be understood as maqāṣid-oriented controls designed to secure adequate provision, prevent waste, and maintain fairness in distribution.

This maqāṣid-based perspective also clarifies why the article distinguishes between moral, legal, and administrative legitimacy. Moral legitimacy corresponds to the ethical orientation of the Sharī'a toward amāna and the avoidance of isrāf; legal legitimacy concerns the juristic grounds that define entitlement and liability; administrative legitimacy concerns the institutional procedures required to implement justice and prevent abuse. In this sense, maqāṣid does not replace the doctrinal analysis undertaken above, but rather integrates its dispersed elements into a more systematic normative account. It shows that the fiduciary allocation of public housing is justified only so long as it serves public welfare, remains proportionate to actual need, and remains within a transparent and reviewable governance structure.

3.2. Institutional Oversight and Enforcement Mechanisms

For the proposed legitimacy protocol to function as an operational governance model, it must be supported by clearly defined institutional oversight and enforcement mechanisms. In contemporary public housing systems, the supervision of allocation and use is typically carried out by the administrative units responsible for personnel and property management within public institutions. (see Bozkurt, 2014, pp. 9-65; Günel, 2014, pp. 838-849; Özkaya Özlüer, 2022, pp. 282-299; Tosun, 2024, pp. 700-706).

Determining actual residence may appropriately rely on a combination of administrative and objective indicators. These include population registration records, utility consumption patterns, periodic inspections conducted by authorized administrative staff, and documentary verification of household occupancy (Regulation on Public Housing, 1984; see Akyılmaz, 2011, pp. 61-77; Bozkurt, 2014; Gözler, 2019). Such indicators function as evidentiary tools rather than discretionary judgments, thereby limiting arbitrariness in enforcement.

When irregular use is detected, modern administrative law provides a graduated structure of consequences (Regulation on Public Housing, 1984; see Akyılmaz, 2011, pp. 61-77; Bozkurt, 2014; Gözler, 2019). Minor procedural violations may lead to administrative warnings or requests for rectification, whereas persistent or deliberate misuse may trigger mandatory evacuation, financial liability for rent equivalent (ajr al-mithl), or disciplinary measures under applicable public service regulations.

The distinction between good faith and bad faith is particularly relevant in this context. Temporary or incidental non-compliance arising from administrative delay or a reasonable misunderstanding should be treated differently from intentional misuse or concealment of residence status. Classical fiqh recognizes a comparable differentiation through the distinction between innocent error (khaṭa') and deliberate transgression (ta'addī) (see al-Sarakhsī, 1414/1993, 10/72, 27/25; Ibn al-Rif'a, 1410/2009, 15/327; Haydar Efendi, 2017, 1/182-183). Translating this principle into modern governance allows administrative authorities to apply proportional sanctions while preserving the fiduciary character of public property.

Through these mechanisms, the ethical logic of amāna is transformed into an enforceable administrative framework. Supervision, documentation, and proportionate sanctions ensure that the trust-based allocation of public housing remains transparent, reviewable, and consistent with the public interest.

Conclusion

This study seeks to examine the legitimacy and liability framework of public housing in Islamic law, exploring whether its core principles, *bayt al-māl*, *amāna*, and *maşlahā*, display notable points of convergence with modern public housing regimes. In both systems, public housing operates as a non-proprietary, duty-bound, and time-limited form of usufruct. Its juridical basis in *fiqh* lies between *ʿāriyya* (loan of use) and *ijāra* (lease). Within this dual structure, use is regulated by the principles of *kifāya* (adequate provision) and proportionality. Transfer, inheritance, and commercialization are prohibited to preserve the asset's trust-based character.

Actual residence functions as the primary indicator of the effective legal cause (*'illa*) of the allocation. When the residence ceases, the usufruct right lapses automatically. Continued occupation thereafter constitutes *ihtilāl* (unlawful possession), amounting in some instances to *ghaşb* (usurpation), triggering compensation and the payment of *ajr al-mithl* (rent equivalent). In this respect, the *bayt al-māl* serves as both an allocating authority and a compensatory institution.

From a comparative perspective, modern administrative mechanisms for allocation, supervision, and evacuation closely align with *fiqhī* principles of trust, accountability, and public welfare. Although the two systems derive legitimacy from different normative foundations, administrative rationality in positive law and fiduciary ethics in *fiqh*, both frameworks endorse temporary, supervised, and duty-linked use of public resources. Based on this overlap, the study outlines a legitimacy protocol grounded in verifiable residence, proportionality, and transparent oversight. These criteria provide a structured basis for assessing compliance and preventing the misallocation of public assets.

The study's principal scholarly contribution is the conceptualization of public housing as an "amāna-usufruct model," further systematized through a *maqāsid al-sharī'a* framework that connects fiduciary ethics, public welfare, and administrative accountability. This model integrates *fiqh*-based trust principles with modern administrative doctrines, framing public housing as a fiduciary entitlement contingent on service, need, and demonstrable residence. By articulating this framework, the research addresses a gap in both *fiqh* studies and administrative law. It offers a coherent normative basis for evaluating allocation, supervision, and liability in historical and contemporary settings.

The model also provides policymakers and scholars with an analytical tool for assessing duty-linked use, proportionality standards, and compensatory mechanisms. It translates classical *fiqh* insights into operational criteria to inform governance practices, particularly when ethical oversight and resource accountability are central to institutional performance.

This study is doctrinal and normative in focus. It does not empirically test the proposed framework. Future research may analyze institutional records to evaluate how residence-based legitimacy criteria function in practice, conduct comparative studies across different madhhabs and national legal systems, or assess the model through compliance audits and cost-benefit analyses. Such investigations would refine the applicability of the *amāna-usufruct* approach and contribute to the development of more robust administrative governance structures.

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