



ON
WAQF

WIEF-UiTM OCCASIONAL PAPERS

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UNIVERSITI
TEKNOLOGI
MARA





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FOREWORD

A global movement on *waqf* development was brought to the fore as governments, policymakers, economists, and many relevant stakeholders work relentlessly to steer the world towards sustainable and equitable growth. Eight years into the global financial crisis, recovery remains fragile and the world still faces all manner of uncertainty. This has prompted the global community to look beyond the existing economic platforms to secure stability and promote development through alternative means, including *waqf*.

Waqf is an Islamic instrument of wealth distribution with an economic significance. Contrary to the common understanding, *waqf* is more than just an avenue for Muslims to fulfil their religious obligations; it is in fact a comprehensive mechanism of public finance that is capable of bringing upon economic progress as well as social development – within and beyond the Muslim society.

When I look back into history, I am often overwhelmed by how much *waqf* had contributed to the success of the Ottoman Empire, one of the greatest civilisations of the past. Almost all social establishments such as schools, hospitals, shelters, as well as some infrastructure projects were fully

financed and managed by *waqf* institutions. As a consequent, not only did it help reduce the state's burden and expenditure, it also allowed the government to fully concentrate on other aspects essential for national development. With a thriving *waqf* system, the state administration became more efficient and people from all levels of the society were able to enjoy the benefits of the flourishing Empire.

In the 21st century, where the world is afflicted by all sorts of economic and social insecurity, there is certainly an urgent need to harness the benefits of *waqf*, which has unfortunately been overlooked over the past few centuries. The World Islamic Economic Forum Foundation has mobilised experts from around the world to help accelerate *waqf* development, looking into improving the *waqf* system so that it meets contemporary needs. Several initiatives are underway to provide *waqf* awareness, education, training and research and more importantly, practical projects.

The WIEF-UiTM Occasional Papers on *Waqf* is one such initiative to help raise the awareness and understanding of *waqf*. It is my sincere hope that this publication would help increase the global recognition of *waqf* as an important element in advancing socio-economic development and inspire more efforts to explore the vast untapped potential of *waqf* for the benefit of the global community.

Tun Musa Hitam
Chairman, WIEF Foundation

INTRODUCTION

Assalamualaikum wrt

It gives me great pleasure to write an introduction in the WIEF-UiTM's Occasional Papers on a topic that is currently much in vogue, namely *Waqf*.

This vignette explores the various aspects of *Waqf* in the hope that it will enlighten readers with regard to the topic. You will realise that there is much to be explored and learned about *Waqf* as a way forward in providing a better quality life to society. It is an instrument that should be embraced by Muslims as an Islamic economic tool to ameliorate the problems confronting Muslim society.

Another Islamic instrument with which Muslims are familiar is the *Zakat*. This is also a significant instrument which contributes towards providing assistance to the poor:

As we are all aware the global economic and financial system is undergoing a seemingly unabated crises of a major proportion with no relief in sight. With the current falling prices of oil that exacerbates further the fortunes of countries with fragile economies, the crisis had taken its unfortunate toll on the poor when the country's socio economic programs had to be drastically cut back in the wake of such economic calamities.

Many countries are now realising that conventional economics can no longer be relied upon as a viable instrument for ensuring equitable distribution of resources for the public good. *Waqf*, aside from *Zakat* and *Sadaqah*, may well be the ultimate solution for

mankind's economic woes. Many Islamic scholars are confident that *Waqf*, being an Islamic public finance instrument will be able to play a significant role in generating and amassing large pools of funds for the country and satisfying the needs of the ummah in addressing issues of economic inequality, increasing capacity building of the people, reducing illiteracy rate, increasing the level of education, improving medical and hospitalisation benefits, reducing unemployment and addressing many other social problems.

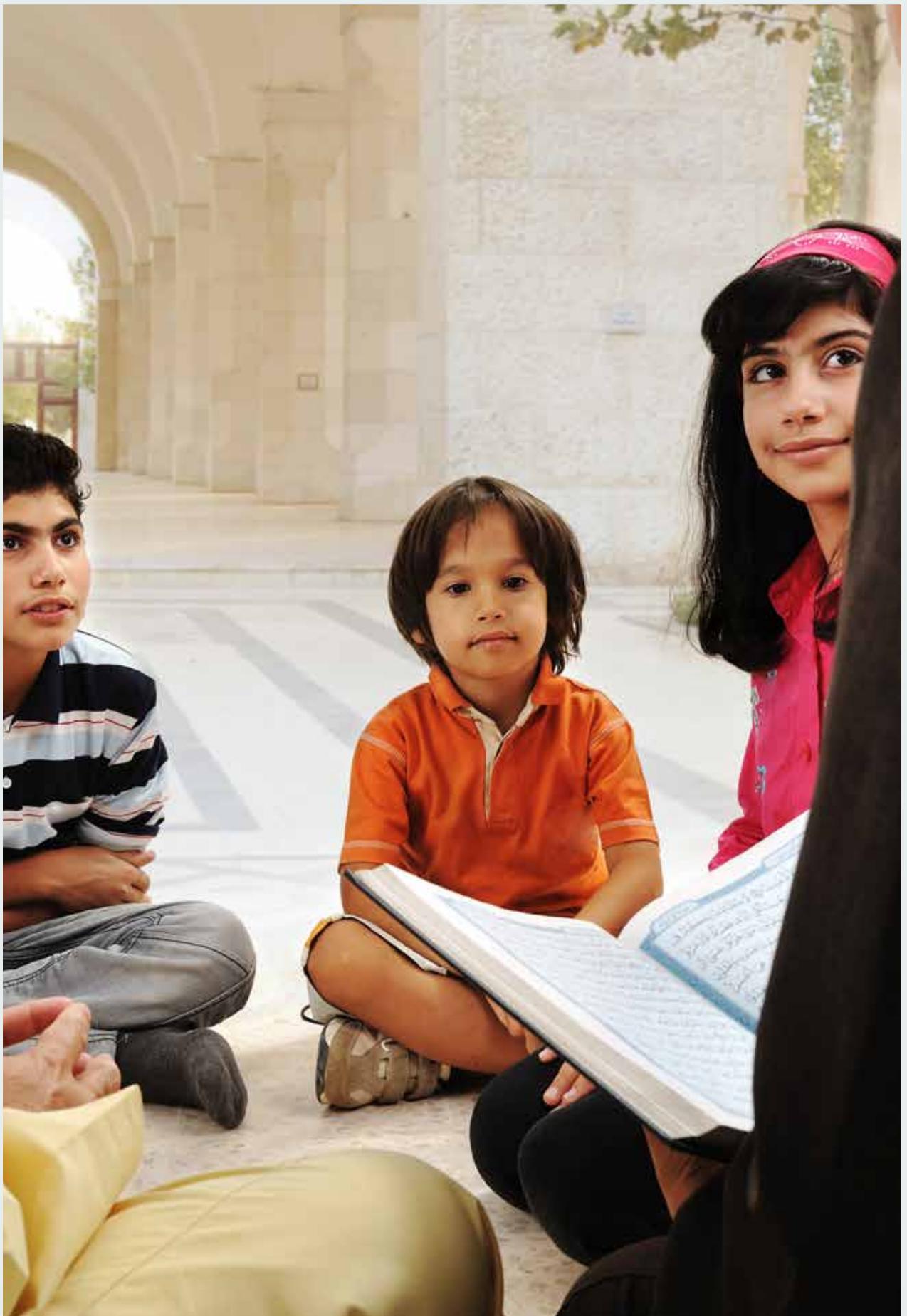
In this publication, you will be able to get insights from eleven eminent scholars and practitioners who have explored and deliberated in depth about the current challenges facing the empowerment of Muslim communities in *Waqf*, its implementation, and its applications. Many enlightening recommendations have been made to share with the readers on applications that may well help to achieve economic transformation among the Muslim world. Indeed these are timely suggestions as many parts of the world are now looking for pragmatic recovery measures from the global economic crisis so as to build a new economic order and a stable financial system for business and economics in their countries.

The contributors and editors need to be congratulated for successfully bringing out this volume. I would like to take this opportunity to congratulate the Editorial team who have worked relentlessly and tirelessly for this publication. I also would like to express my profound gratitude and appreciation to all the eminent scholars and contributors for sharing with the readers their valuable insights and findings.

May I wish you Happy Reading! And pray that this vignette fills you with new insights into the fascinating and enriching world of *Waqf*.

Thank you.

Tan Sri Dr Wan Mohd Zahid Mohd Noordin
Chairman
WIEF Education Trust



THE WAQF, ITS BASIC OPERATIONAL STRUCTURE, DEVELOPMENT AND CONTRIBUTION

An earlier version of this paper was presented on 21 January 2014 in Kuala Lumpur: Roundtable Discussion on Development of Waqf Properties in Malaysia, INCEIF-IDB/IRTI Workshop. The author would like to thank the participants of this roundtable for their comments.

Prof. Dr Murat Çizakça¹
INCEIF University, Kuala Lumpur, Malaysia

Abstract

As its name suggests, this article deals with the *modus operandi*, evolution and economic contribution of *waqfs*, one of the foremost institutional contributions of Muslims to humanity. It is hoped that after reading this article, Muslims will be inspired to modernise and then re-apply this institution in their own countries.

1. Prof. Dr Murat Çizakça received his Ph.D degree from the University of Pennsylvania in 1978 in economic history. Author of three books (in English) and more than 100 articles, he focuses on the history and evolution of Islamic financial/economic institutions and their modernisation. He is the former fellow of the Institute of Advanced Studies (Wissenschaftskolleg) in Berlin, Germany and a current fellow of the *Institut d'etudes avancées* de Nantes, France. He is also a member of the Executive Scientific Committee of the *Istituto di F. Datini* in Prato, Italy. He teaches currently at INCEIF University in Kuala Lumpur, Malaysia and is an adjunct professor at the Faculty of Law, Economics and Finance at the University of Luxembourg.

In Islam, accumulation of wealth and its redistribution are closely related. Once wealth is accumulated, Muslims are ordained to redistribute their wealth voluntarily. Income redistribution by resorting to taxation is not the preferred method; instead, helping the poor voluntarily, primarily through the *waqfs*, is definitively preferred (Cizakca, 2011). Charitable or philanthropic foundations are known in the Islamic world as *waqf* or *habs*. For westerners, not familiar with Islamic institutions, the traditional *waqf* can also be described, notwithstanding some differences, as a non-profit trust.²

Recommended and encouraged by Prophet Muhammad (pbuh), *waqfs* eventually became very popular. Indeed, Islamic economic history indicates that *waqf*, not *zakat*, was the most important institution for redistribution of wealth (Hodgson, 1974, II: 124). We have substantial historical evidence for this. For instance, during the 18th century, total revenue of *waqfs* in the Ottoman Empire equalled one-third to half of the total state revenues (Yediyildiz, 2003). Although some pre-Islamic civilisations were aware of *waqf*-like structures, for instance, the Roman *fideicommissum*, Islamic *waqfs* differed substantially from their predecessors.³

The origins of Islamic *waqfs* as we know them today are traced back to a statement by Prophet Muhammad (pbuh) known as *Thawab ba'd al Wafah* (reward after death). Abu Hurairah reported Allah's messenger as saying:

“When a person dies, all his/her acts come to an end, but three: recurring (ongoing) charity, or knowledge from which people benefit, or a pious offspring, who prays for him/her”
(Muslim, 1992).

Thus, a Muslim can continue earning rewards even after death. *Waqf* is the best instrument for facilitating this. Indeed, a *waqf* established as a *kulliyah*, a complete system, can combine all these three acts mentioned by the Prophet (pbuh): a mosque stands at the center of a *waqf-kulliyah* and whenever the faithful pray in it, the founder of the *waqf* is considered to have provided ongoing charity. A *waqf-kulliyah* can also provide free food for the poor; another very clear on-going charity. In the school/university of the *waqf*, knowledge is produced and disseminated.

Finally, the management of the *waqf* can be entrusted to the pious offspring, who would be paid a salary for his work and would be expected to pray for the soul of the founder.

It is also of interest that the root of the Arabic word *Kulliyah*, *kll*, was borrowed by the English language in the form of *cll* and evolved into the English word: college.⁴ Remarkably, a classical Oxbridge college, just like an Islamic *waqf-kulliyah*, provides a complete living environment for scholars and their students.

2. On the differences between the Islamic *waqf* and the Western trust see, Alias and Çizakça, 2014.

3. The Roman *fideicommissum* primarily served to preserve the family property for generations through successive trusts. Thus it corresponds, more or less, to the Islamic family *waqfs*. But an Islamic *waqf* had much greater applicability as will be explained below. On the *fideicommissum* see: (Buckland, 1931).

4. Western historians argue that “college” comes from the Roman “collegium”. But “collegium” was a very general concept and applied to any association with legal personality, whereas *kulliyah* was a far more specific institution corresponding to a complete living environment of a self-sufficient community of scholars and students financed by a *waqf*.

The *modus operandi* of a *waqf* is as follows: a privately owned property (in some countries also public funds), is endowed for a charitable, even philanthropic, purpose and the revenue, which the property generates, is allocated for this purpose in perpetuity.⁵

Ottoman *waqfs* were either managed directly by their founders or by the trustees appointed by them. During the 18th century, 67% of the Ottoman *waqfs* were managed by the trustees appointed by founders. The rest were appointed by courts after the appointed trustees had expired (Yediyildiz, 2003). This contrasts with modern Malaysia, where the sole trustee of all *waqfs* is the State Islamic Religious Council in every state. But this is an idiosyncratic case since, in the rest of the Islamic world, *waqfs* are managed by their own trustees appointed according to the criteria established by the founders. *Waqfs* are managed by centralised institutions only if their founders and trustees have passed away.

Waqfs, so structured, stand out as one of the great achievements of Islamic civilisation. All over the vast Islamic world, from the Atlantic to the Pacific, magnificent works of architecture as well as services vitally important to the society such as education, health and many others have been organised, financed and maintained for centuries through this system.

Historians have established that the Islamic *waqf* law was borrowed by Europeans, particularly the English during the crusades, when they “visited” the Middle East and become acquainted with Islamic culture.

An excellent example is Merton College of Oxford University established in 1264 (Gaudiosi, 1988). It is generally accepted that Merton College represents a threshold in the evolution of European universities. The Merton Foundation became a respected model in England and was emulated by the founding of Peterhouse, Cambridge University. Prof. Gaudiosi has argued that the endowment deed of Merton College was in such conformity with the Islamic *waqf* law that it would have been approved in the Islamic world by any learned judge. In the USA also, the top universities are either structured as *waqfs* (trusts) or they all have their own university endowments.

Returning back to the Islamic world, we note that according to the Hanafite law, when a privately owned property is endowed and is made the corpus of a *waqf*, it becomes Allah’s property. This has made it rather difficult for - but not entirely prevented - bankrupt and corrupt governments to confiscate *waqf* assets. Being relatively immune from confiscations, many *waqfs* with sound and sufficient endowments have survived for considerably longer than half a millennium and some even for more than a millennium (Crecelius, 1995).

Notwithstanding their longevity, the history of *waqfs* is a turbulent one. For centuries, the fate of this institution was closely linked to the fates of the states under which they functioned. Failing states and desperate revenue seeking rulers had always a lust for the rich, *waqf*-controlled assets. This provocation could have been curbed somewhat had *waqfs* paid taxes to the state. But there were no uniform rules on this, while the Central Asian

5. Historians do not usually distinguish between “charitable” and “philanthropic” but economists do. Accordingly, charity is given to the poor to help them for their immediate needs such as provision of food. Philanthropy, by contrast, aims at eradicating a problem altogether by enabling people to solve their own problems with hard work, such as providing scholarships to poor students, who with hard work escape poverty. For full details on this see; (Acs, 2013).

waqfs paid taxes depending upon their fiscal status before their establishment, neither the Maliki *waqfs* of Muslim Spain nor the Hanafite Ottoman cash *waqfs* of Bursa paid any taxes (Cizakca, 2000). Consequently, throughout Islamic history *waqf*-state relations have remained difficult. While on the one hand, the sultans established some of the greatest *waqfs*, on the other, the state often violated property rights of the *waqfs*, particularly if they were not legally sound.

Nowhere in this long history, however, did the *waqfs* experience the universal and deliberate destruction that was inflicted upon them during the 19th and 20th centuries, a fact which can be attributed directly to western imperialism or to the process of westernisation. Usurpation of *waqf* properties started under western pressure and continued under the indigenous modernists even after Islamic countries gained independence. Consequently, in most of the Islamic world today, *waqfs* are dilapidated. A new law to reform the *waqfs* is needed. Such a draft law has been prepared for Malaysia by INCEIF. Another draft law for other Islamic countries has been prepared by IDB/IRTI/KPF.⁶

The exact nature of the corpus leads to still another categorisation: the real estate or cash *waqfs* (*awqaf al-nuqud*). In the 20th century, cash *waqfs* have evolved into the *waqfs* of stocks. These are *waqfs* established with the stocks of incorporated joint-stock companies (Cizakca, 2000).

Waqfs and development

Traditional real estate *waqfs* functioned in a simple manner. They were either endowed in urban areas, where their endowment (corpus) would be in the form of residential buildings, shops, bath-houses or other rent yielding urban property, or in rural areas in which case their corpus would be in the form of cultivable land. In rural areas, the *waqf* land would be managed through sharecropping, *muzara'a*, with a certain share of the produce going to the land owning *waqf* and the rest to the cultivators. *Muzara'a* is the application of the classical *mudaraba* partnership in agriculture. In history, most arable lands in the Islamic world owned by *waqfs* were cultivated this way. In this arrangement, *waqf* provides the land and the produce can be shared between the *waqf* and the cultivator according to mutual agreement.

Hukr and muqata'a

Hukr constitutes another method to develop *waqf* properties. This is basically long term leasing of *waqf* owned land. The developer rents the *waqf's* land. The rent is determined by *ujr misl*, i.e. the level of rent paid for similar properties in the vicinity. Providing the developer does not fail to pay this rent, the building that he erects is considered his property. In *hukr* there is double ownership. While the *raqaba* (*dominium eminens*) of the land belongs to the *waqf*, the usufruct belongs to the developer. The developer obtains this right to use the property he builds on *waqf* land, in return for the

6. Islamic Development Bank/Islamic Research and Training Institute/Kuwait Public Foundation.

rent he pays. The building is his for as long as he pays the rent. The developer could even bequeath its usufruct to his heirs, providing they continue to pay the rent.

Hukr is a long term lease act (*ijarah tavilah*). It originated with the Hanbelite school and became accepted by all schools. Hanefite law normally limits leasing land to three years. But *hukr* constitutes an exception. The Lebanese law of real estate calls *hukr*, *muqata'a*, and defines it as a form of rent, which gives the tenant the right to build anything on the land of the *waqf* (Akgunduz, 1988, p. 392).

Some scholars have argued that in history, *hukr* or *muqata'a* was only resorted to when the *waqf* property on the land was destroyed and the *waqf* did not have the means to repair it and *istibdal* was also not possible.⁷ Under these conditions, the permission to resort to *hukr* or *muqata'a* had to be obtained either from a court or the ruler:

The *muqata'a waqf* was also used for urbanisation. When a city was conquered by a Muslim army, commanders quickly took over urban property with potential for development. They then transformed it into *waqf* and then using the *muqata'a waqf* system allowed new immigrants to build upon it. Since *hukr* or *muqata'a* is long term rent, the ability of the *waqf* to increase the rent was very important. The first condition was that the rent paid by the developer cannot be less than the prevailing rents for similar properties. Courts

did not take into consideration any increase in the value of land caused by the building erected by the developer. They did, however, consider any increase in value caused by the overall development of the district.

Waqf muqata'a enabled a *waqf* to utilise its asset (land) that had become useless. When tenants built upon it, the *waqf* gained new and valuable assets. When the tenants' descendants expired, assets reverted back to the *waqf*. On the downside, such long term leases diluted the property rights of the *waqf*. Indeed, if the lease contract did not clearly state the condition of *ujr misl*, rent quickly became insignificant. Moreover, if the prevailing currency was devalued, rent lost its value even more.

The *ijaratayn*

Frequent fires or devastating earthquakes constituted a serious danger for urban real estate *waqfs*. When that happened, and the corpus of the *waqf* was destroyed, the *waqf* simply failed to function. The solution found was the *ijaratayn*, or double rent. *Ijaratayn* (double rent) is defined by the current *waqf* law of Turkey as follows: *Waqf* assets leased without a fixed terminal date on the condition that a lump-sum payment (rent) nearly equal to the value of the asset is made upfront, in addition to the payment of annual rent. Nowadays, with modern Islamic finance providing *takaful*, this particular form has become redundant.

7. *Istibdal*, refers to the process of changing one *waqf* asset for another.

Marsad waqfs

If a *waqf* lost its income and its buildings were in need of repairs, the trustee could also borrow money. Such *waqfs* were known as *marsad*. In this case, the *waqf*, not the trustee, would be considered the debtor (this proves that *waqf* had judicial personality – an issue that had been rejected by some orientalist authors). With money thus obtained, *waqf* buildings were repaired and were then leased to the lender. The rent was then regularly deducted from the debt of the *waqf*. In our times, this is known as *musharaka mutanakisa*.

The problem with either *marsad* or *musharaka mutanakisa* is that if the rent was not sufficiently high, and the term was long, new repairs came to be needed again and the *waqf* failed to escape indebtedness.

Irsad waqfs

Classical Islamic law demands that a property to be endowed as a *waqf* must be privately owned. But, in time, lands belonging to the state were also endowed. This happened when the rulers allocated state lands to certain persons, who then donated these as *waqf*. Direct allocations by the rulers were also common. These were made in the form of *waqf* to ensure perpetuity. Two conditions were relevant: permission by the ruler and that the *raqaba* (*dominium eminens*) remained with the state while the usufruct belonged to the *waqf* in perpetuity.

The classical methods just mentioned constitute the origins of the surviving contemporary forms. The current law of *waqfs* in Turkey permits leasing *waqf* assets for restoration and repairs. Tenants are to pay a certain annual rent and are to keep the asset in their possession for a certain time. Details are decided in public auctions. The tenant chosen then returns the asset to the *waqf* at the end of the period in question. The maximum period allowed is 49 years and is granted in return for restoring the asset.

Two other popular forms are used by land owners in Turkey, which may be relevant for *waqfs* elsewhere: BOT and unit-sharing. The former – build-operate-transfer – is well-known and needs no further explanation.

Unit-sharing, on the other hand, involves the land owner and the developer agreeing to share the total number of units that the developer promises to build on *waqf* land. Usually, depending on the location of the land, a ratio of 50/50 or 40/60 is used. But whatever the ratio chosen, this is a risky process in view of the possibility that the developer may fail to complete building the units.

Thus, Islamic law is very flexible and provides many feasible alternatives to develop *waqf* owned assets. Moreover, these alternatives are not just in theory. Islamic economic history informs us that they were successfully put into practice in the past. This is confirmed by the survival of *waqf* assets over many centuries in excellent condition in some parts of the Islamic world. There are many lessons to be learnt from these historical predecessors when modernising *waqfs* today.

Waqfs from the macro-economic perspective

In order to fully understand the harm inflicted by the colonial and modernist policies directed against *waqfs*, the contribution of the *waqf* system to the economy must be well understood.

The *waqf* system has, throughout history provided a myriad of essential services such as health, education, municipal services, etc., to Islamic societies – to Muslims as well as non-Muslims. The system therefore contributes significantly towards that ultimate goal of so many modern economists i.e. with the *waqfs* providing the bulk of the financial needs of the service sector, there would be a substantial reduction in government expenditure. The reduction in government expenditure, on the other hand, would lead to a smaller budget deficit, which in turn, would lower the need for government borrowing.

This is precisely what the Chancellor of Germany, Angela Merkel, is trying to do in Europe today. She is forcing all member states to reduce government borrowing by not allowing the ECB to buy government bonds. In fact, she is simply telling them not to borrow! *Waqf* enters into the picture precisely here: it reduces the need for a government to borrow. Hence its modernity and relevance today is truly astounding!

Furthermore, a reduction in government borrowing would curb the crowding-out effect and lead to a reduction in the rate of interest, thereby curbing a basic impediment to private investment and growth.⁸

Obviously, reducing the rate of interest, preferably to zero, would also be the ultimate goal of an Islamic government. To the extent that the *waqf* system contributes to the reduction/elimination of interest, it becomes an important tool for Islamic macro-economics. The *waqf* could fulfil these functions by voluntary donations made by the well-to-do. Thus, privately accumulated capital is voluntarily endowed to finance all sorts of social services to the society.

At this point another extremely important function of the *waqf* becomes apparent. Not only does it help reduce government expenditure and consequently, the rate of the prevailing interest and pave the way for growth while fulfilling an Islamic requirement, it also achieves another modern economic goal: a better distribution of income in the economy. Moreover, this improvement in the distribution of income would be achieved essentially through voluntary donations and the need for taxation is reduced. Thus, the relatively low tax burden of an Islamic economy must be considered within a broader context that includes the *waqf* system. Indeed, the tax burden in an Islamic economy can be low because the bulk of the essential services should be provided by the *waqfs*. Tax revenues are earmarked primarily for defence. This is not just theory. Ottoman budget studies have confirmed that indeed this was the case (Barkan, 1954).

There are further implications as well: lower taxes would have a positive impact on aggregate production while at the same time reduce costs. Prices would come down and pave the way for non-inflationary growth.

8. Although nowadays, in the era of post sub-prime crisis, this argument may seem superfluous, it should be remembered that before the recent quantitative easing policies, the prevailing rate of interest used to be much higher impeding seriously the process of growth.

Thus those Islamic economists who argue for increasing taxation despite the Qur`anic injunctions, are missing the point. The Qur`an, mentioning just a small number of modest taxes, is actually giving us a message that the government should be small – a very modern concept! Thus, instead of trying to impose taxes that are not in the Qur`an, they should focus on reforming the *waqf* system because a well-functioning *waqf* system would allow the economy to function with minimum taxation. The Ottoman experience of channelling all tax revenues for defence and financing all essential services through *waqfs* confirms that this is possible.

One of the most important of these services is education. Education serves both growth and equity. Throughout history it was the *waqf* system which provided education and health in Islamic countries. These two are the most important components of human capital and this is the secret of the successes of countries such as Japan, Taiwan and South Korea, all without natural resources.

There is no doubt that centralisation and the damage inflicted upon the *waqf* system has been detrimental to the development of these services in the Islamic world. It is clear that the state provided education and health services have not been a match for the *waqf* provided one. At the very least, the *waqf* system is needed to supplement the state provided education and health sectors. Presently, in the aftermath of the 1967 reforms, there are 166 universities in Turkey. Of these 62 are *waqf* universities. In Istanbul, there are 42 universities. Of these, 33 are *waqf* universities. And Turkey, like Japan, South Korea and Taiwan, is also a country

without natural resources. Yet it has been achieving high rates of sustained growth. Much of this is thanks to its relatively healthy and well-educated workforce. This is, to a large extent, an outcome of the 1967 *waqf* reform.⁹

The positive impact of the *waqfs* on employment should also be acknowledged. Partly as a consequence, Western countries have now reversed their traditional hostilities to trusts/foundations. The French government, which used to be the most anti-*waqf* government throughout history, now subsidises 60% of the expenditure of French foundations. The result, all over the west, was a significant increase in employment. The non-profit sector accounted for an average of 13% of the net jobs added between 1980-1990 in France, Germany and the United States. In the U.S., the non-profit sector accounts for 6.9% of total employment. It has been reported that currently a massive “revolution” is taking place in the US philanthropy.¹⁰ Clearly, in addition to all the advantages mentioned above, the revival of the system would contribute to the solution to the problem of unemployment in the Islamic world as well.

Waqfs may also play a significant role in the democratisation of Islamic countries. This is because *waqfs* constituted for centuries civil society institutions *par excellence* for the Islamic world. Indeed, established with private capital, which was often pooled, they were decentralised, autonomous decision making units involved in local problems. It is quite possible that the incapacitating policies imposed on the *waqf* system for the last 200 years have deprived the Islamic world of its most potent democratic force.

9. Currently the Turkish *waqf* sector is stagnating and new reforms are urgently needed.
10. Lester Salamon, 2014.

Thus, lack of democracy is not, as some believe, an outcome of Islam as a religion, but a consequence of the last two centuries of institutional and economic history.

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CORPORATE WAQF – A PROPOSAL FOR CORPORATE REFORM TO BRIDGE DIVIDES AND UPHOLD ECONOMIC JUSTICE

A background paper for PowerPoint presentation at the WIEF-IDB Brainstorming Session on Waqf Products and Services, at the Medinat Jumeirah Conference Centre, Dubai, UAE on 29 October 2014

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I. Introduction: Critical economic challenges facing the Muslim Ummah

Seen from the business and corporate perspective, the Muslim Ummah today faces three critical economic challenges detrimental to their future. First, persistent poverty and deprivation of the vast majority of the Ummah. Once popularly blamed on their past colonisation by Western powers, poverty and deprivation has, however, persisted even after decades of self-rule, and in spite of the fact that many Muslim states are today relatively more prosperous and wealthy. A prolonged lack of economic capacity for dynamic and sustainable development has resulted in the Ummah's relative powerlessness and marginalisation, consequently diminishing popular perception of Islam as a contemporary civilisational force.

The second critical challenge arises from a general apathy towards business among the majority of Muslims, culminating in suspicion and distrust if not outright hostility towards business enterprise, in spite of Islam's fundamental pro-business worldview. If allowed to prevail, such disdain towards business will only alienate the vast majority of Muslims, especially young Muslims from pursuing business careers which is the key to solving their persistent poverty problem. This negative attitude is partly the outcome of perception gaps regarding the role of business, especially among many influential Muslims who allege that business is harmful due to its "materialistic" nature and "this-worldly" tendencies. Such a perception may have arisen from observing Muslim entrepreneurs

and businessmen conducting their business affairs in ways that are contrary to Islamic principles and teachings, often the result of them emulating and adopting un-Islamic business methods of global business. Needless to say, in today's business-driven economic climate, a persistent anti-business outlook among Muslims will only worsen and prolong their state of economic powerlessness, exacerbating the Ummah's economic marginalisation and dependency on others. The bigger challenge facing the Ummah today is therefore to find a creative, practical solution to successfully manage this paradox.

The third critical challenge is the way Muslims generally conduct their business affairs. Business has very deep roots in Islamic history.¹ Evidently these deep roots have not been taken advantage of by the Ummah. Muslim businesses are seldom organised and structured, or coherently networked, with the simple family-owned enterprises or small companies continuing to be the dominant type over centuries. The lack of organisational capacity and effective business network simply means Muslim businesses are weak and vulnerable, thus unsustainable in today's highly competitive global business environment. In the context of contemporary society being a "society of organisations",² an unorganised business culture diminishes Muslim organisational capabilities and managerial skills. Being unorganised has also resulted in a general absence of long-lasting large scale enterprises, undermining further the Ummah's competitive position, exposing them to prolonged economic subjugation or even re-colonisation, both deliberate or as an unintended consequence.³ Additionally, business

1. Islam was born in Makkah, an ancient city of traders, and Prophet Muhammad SAW was active in trade before his Prophethood. The significant role of business in Islamic history and its impact on religious and daily life is evident from so many passages in the Qur'an articulated using business terminology. Furthermore, trade and business had also played a very significant part in establishing Islam as a civilizational force throughout history. Islam came to the Malay world and was spread through trade in particular.

2. See, Peter F Drucker, "Innovation and Entrepreneurship", page 28.

3. Evidently there are MNCs that seek to exploit this vulnerability for corporate imperialistic ends, sometimes as part of a broader business-driven re-colonisation strategy. George Friedman in his book *The Next Decade* alluded to such corporate imperialistic tendencies, observing that "Corporations making deals with governments or warlords can get the job done much more cheaply, without taking the responsibility of governing. Today's corporate imperialism allows foreign powers to go in, take what they want at the lowest possible cost, and leave when they are done." See Friedman, page 220.

apathy and unorganised business methods have resulted in a serious shortfall in corporate critical mass and a pronounced under-development of entrepreneurial talent among Muslims. The outcome is greater dependency either on their governments, or worse, on predatory foreign enterprises and multi-national corporations (MNCs) to meet economic needs. Failure to address this organisational challenge will surely lead towards prolonged economic lethargy and greater social fossilisation of the Ummah.

All nations are today forced to integrate into the global economic system long dominated by Western powers through their highly organised and powerful corporations. Muslim states, including those with new sources of wealth emanating from oil and other resources, with their low-level business organisational skills are therefore no match in this corporate-driven and highly predatory capitalist arena. The end result is obviously tragic and very costly to the Ummah. The system had worsened their situation with widened income and wealth disparities, and aggravated socio-economic divides. Thus the Ummah have become highly divisive, mired as they are in internal contradictions, resulting in most Muslim states today being highly volatile, threatened by unrests, conflicts and uprisings. The Arab Spring, a spontaneous popular uprising with complex causes, can also be traced to the mass rejection of an economic system sustained by exclusive, uncaring regimes that had jumped blindly on to the Western capitalistic bandwagon, resulting in extreme concentration of power and wealth, consequently marginalising the masses.

Thus, Muslim communities that are extremely proud of their past traditions and heritage of glory; imbued with strong Islamic sense of righteousness and dignity and the high expectations for prosperity, *'adl* and social justice, are today finding themselves within a global, borderless system that is divisive, unabashedly materialistic, uncaring and often greed-driven. It is therefore extremely contrary to their life aspirations as Muslims. An Ummah regarded as "the best of peoples",⁴ who are also promised a position of power and civilisational prominence as "Khalifahs",⁵ is therefore expectedly less tolerant of such indignity. The contradictions in the global system vis-à-vis fundamental Islamic values demand that Muslim societies seriously re-examine their positions. Particularly consequent upon the uncertain outcomes of the recent Arab uprisings, it is obvious that Muslim nations cannot afford the luxury of doing nothing nor doing more of the same. There is no alternative to change; otherwise change will be forced on all of them with dire consequences.

This paper intends to focus on one business-driven institutional option available to contemporary Muslim societies to reform and reinvent their economic systems. In particular, it is aimed at meeting their need for an institutional formula that will enable them to harness the dynamics of wealth and value-creation required to eradicate poverty and prosper Muslim societies. More importantly, such an institutional formula must also be capable of empowering Muslim states economically, and at the same time enhance equality and translate into reality the ideals embedded in the Islamic precepts of *'adl* and social justice; hence the recommendation for the formation of business-driven *Waqf* Corporations.

4. Khaira Ummah". See Al Qur'an, Surah Ali Imran, 3:110.

5. See Surah Al An'am , 6:165, and Surah An Nur; 24:55.

Stephen B Young, Global Executive Director of Caux Roundtable, a global NGO, had described man's Khilafic mission as follows: "... I take very seriously the revelation that God created humans to serve as Khalifa ... Our ministry as individuals – both men and women, ... in any position of power or authority – is not to serve ourselves narrowly and selfishly, but to serve God's creation and make it more fruitful and just."

2. The Waqf Corporation as an institution for change and transformation

The approach taken in introducing an institutional innovation through corporate *waqf* is premised on the fact that Islam is pro wealth creation, as wealth is one of the fundamental dimensions of the *Maqasid Al Shariah*. Furthermore, Islam is absolutely pro-market, pro-trade and pro-business, and it is absolutely abhorrent towards *riba'* and intolerant of any system that will lead towards gross injustice and divisive economic disparities. Thus, imitating the west and duplicating their business methods and corporate institutions without concern for their after-effects is a formula for conflict, violence and disaster, as seen happening in many Muslim states. Consequently Muslim businesses and corporate leaders in particular, and governments in general, are duty-bound to creatively and innovatively transform business and corporate practice, and integrate the higher Islamic ideals of prosperity, *'adl* and social justice, into business and corporate.

The Ummah's general poverty, lethargy, dependency, subjugation and prolonged economic powerlessness call for an economic "jihad" and a "Business Jihad"⁶. Such a "Business Jihad" must be made a key motivational strategy in driving the Islamic economic transformation. A Jihadic mission in the pursuit of business success and economic empowerment implies full Shariah alignment and the integration of Islam's highest moral standards into business practice.⁷ The current

critical state of Muslim economic impotence indeed justifies a call for a jihadic response among Muslim businessmen, as persistent poverty and marginalisation had tarnished and diminished Islam, threatened the survival of the Ummah, and deprived the religion of its civilisational capability to deliver and spread Allah's Mercy for the benefit and salvation of all mankind and creation in this world and the Hereafter.⁸ Furthermore, a call for Business Jihad provides the business pursuit with a powerful source of "spiritual energy" and a higher motivational passion critical for success. The proposed adoption of corporate *waqf* as an institution is consistent with a business pursuit articulated in terms of a "jihad". There is a Quranic injunction for a jihadic mission, which calls for an organised, collective action.⁹ After all, a *Waqf Corporation* is one institution that has the potential to mobilise support of all members of the community, including the non-business sector.

In this regard, the initiatives taken by Muslims to make a success of Islamic Banking and Finance (IBF) are indeed laudable and must continue. However, it is also the contention of this paper that IBF reform by itself is inadequate for a total transformation. The time has come to focus the transformation process on to the wealth-creating core and the very heart of the capitalist system, namely the "Corporation". Banks and financial institutions are after all intermediaries, and the system is defined and shaped more by the architecture and behaviour of Corporations as the principal wealth creators in the "real economy". Furthermore, continued focus on IBF will not result in effective

6. Islam recognizes the undertaking of jihad through using possessions and wealth "in the path of God". If poverty, in the Prophet (SAW)'s words: "leads towards unbelief", then business action aimed principally at salvaging the Ummah from mass poverty is indeed a cause worthy of a jihad. In another hadith recorded by Tirmizi, the Prophet had further stated that the honest and faithful merchant (or businessman) will be exalted and shall join the ranks of the martyrs.

7. See Muhammad Ali Hashim, "Bisnis Satu Cabang Jihad" (Business as a form of Jihad).

8. Al Qur'an, Al-Qasas, 28:77.

9. Al Qur'an, Surah As Saf, 61:4: "Verily Allah loves those who fight in His Cause in rows (ranks) as if they were a solid structure." See also Surah Az Zukhruf, 43:32, "It is We who portion out between them their livelihood in the life of this world; and we raise some of them above others in ranks, so that some may command work from others. But the mercy of thy Lord is better than the (wealth) which they amass."

systems renewal, as global banks and multi-national financial institutions are capable of offering IBF products, thus depriving the Ummah of their initial competitive and strategic institutional advantage of leveraging on IBF for market leadership positioning and for system transformation.

Hence, there is an urgent need to focus on reforming Corporations. The thesis of this paper is that while it is critical for Muslims to successfully harness the capacity of Corporations to create wealth in overcoming mass poverty and marginalisation, it is also absolutely necessary for them to reinvent and redesign the Corporation to avoid the negative outcomes of global capitalism, namely socio-economic injustice and extreme economic divisions between the few rich and the poor masses.¹⁰ Redesigning and reinventing the Corporation in Islamic terms are essential in addressing extreme inequality and divisiveness. The Occupy Wall Street protest phenomena, growing anti-banks and anti-banker sentiments consequent upon the post-1998 Western economic crises, as well as the lower tolerance of inequality generated by Western capitalism also call for global institutional reform. More so when many Western countries, including Greece, Cyprus, Ireland, Portugal and Spain are still struggling for economic and political survival after being hit by systemic failures resulting in endemic crises generated by dysfunctional capitalism. In this regard, Islam surely has a critical role to play by offering alternative solutions.

Corporations established as Western-created legal entities are 'immortal' in the eyes of the law for as long as they are financially sustainable. Collectively, they have become powerful institutions dominating modern societies, influencing state policies and national priorities, as well as defining civilisation as we know it in business and corporate terms. Unfortunately, due to the ownership structure, corporate domination has resulted in extreme concentration of assets and wealth in the hands of a small minority of shareholders, unfairly giving them vast power and tremendous influence over affairs affecting the lives of the rest of humanity. As a consequence of corporate dominance, 2% of the world's richest now owns 51% of world assets. The poorest 50% owns only 1%.¹¹

Extreme wealth concentration has also caused irreconcilable global divides. Today, the world's ten largest MNCs "have annual sales of more than the GNPs of the 100 smallest, poorest countries in the world."¹² It is a fact that leading Corporations established and owned by the developed nations today wield more economic power and influence than governments of all developing countries, including Islamic countries. Leading MNCs' command and control over economic resources far exceed those of governments, including many of the Western states themselves. In the Western democratic system of government, especially under the Anglo-American liberal capitalist model, Corporations principally owned by individuals, and private sector interests are extremely "shareholder-centric", making them the root cause of skewed political hegemony, economic divisions and gross social injustice.¹³

10. Islam is categorically against concentration of wealth in the hands of a few, instituting *zakat, sadaqah and waqaf*, among others, to distribute wealth "in order that it may not (merely) make a circuit between the wealthy among you". See Al Qur'an, Surah Al Hashr, 59:7. This principle should equally apply to the global society of nations where wealth is highly concentrated in the hands of a few rich nations and among the super-rich in these nations.

11. From a study undertaken by the United Nations University. See David C Korten, "Agenda for a New Economy", page 55.

12. See Stuart L Hart, "Capitalism at the Crossroads", Prologue

13. Joel Bakan, in his book "The Corporation, the pathological pursuit of profit and power" described the Corporation as "a pathological institution, a dangerous possessor of the great power it wields over people and societies": "...corporations have amassed such great power as to weaken government's ability to control them." He added: "The trouble on Wall Street today, beginning with Enron's spectacular crash, can be blamed in part on the corporation's flawed institutional character..."

In such a dominant position of power, and as the most important institutions driving the global economic system, Corporations can therefore be said to actually “rule the world”. If, in the words of Al Qur’an, “mischief and corruption has appeared on the land and in the sea as an outcome of what man’s hand has wrought”,¹⁴ today greater mischief and corruption have been caused on a compounded, much larger scale by the huge corporate “hands”, especially those led by greed-driven entrepreneurs and capitalists with the support of their selfish bankers. Whatever their shortcomings, Corporations are here to stay and will remain powerful as institutions. The time has come for the Muslim Ummah, in the pursuit to redefine life in the new millennium in Islamic terms, to harness the dynamics of the Corporation. The imperative is to transform Corporations into institutions that are capable of translating high Islamic ideals and way of life into reality.

This paper conveys the conviction that Islam can offer and is indeed the solution to such extreme global challenges; hence the call to adapt the Corporation’s ability to generate wealth and add economic value, and incorporate it with an in-built capacity and capability to bridge divides. It is critical that the Corporation be reengineered with inherent capability to benevolently involve and protect the interests of society’s non-business and non-corporate larger community. The objective of this paper is to promote the formation of a powerful and innovative Islamic institutional reform, namely the “*Waqf Corporation*” - a corporation that is “community- and people-centric”, in contrast to

the conventional capitalistic corporations that are singularly private “profit- and shareholder-centric” which have effectively marginalised and crowded out people everywhere.

3. Brief outline of *waqf*’s role in history

Awqaf have played a unique, powerful and critical role in Muslim societies throughout history, especially as an instrument of state and social policy. *Awqaf*, preceded NGOs and as an institution created and legitimised by Islam, had a tremendous civilisational impact on the well-being of societies in the early days of Islam. Throughout Islamic history, *awqaf* were effective, institutionalised channels for bridging income transfers from the rich to the poor, purely in voluntary pursuit of spiritual merit and Allah’s Blessings.

Awqaf had also been known to be used to fund public projects and infrastructure development, and in this respect had therefore preceded state-initiated development programmes that were common practice in the second half of the 20th century. Roads and highways, especially under early Ottoman Turkish rule in the Balkans and other parts of Europe, had been built and maintained by *awqaf* to ensure a secured passage for traders and travellers.

Bazaars, caravanserais, or trading centres (the then equivalents of today’s malls, supermarkets and warehouses), with accommodation as well as safe and secure storage facilities for goods

14. Al Qur’an, Surah Al Rum, 30:41.

were built by *awqaf*, often adjacent to mosques, *medressas*, public baths and other public facilities. Rental and other incomes from the former were usually important sources of sustainable funding for the perpetuation of the latter. This is therefore one early example of a viable institutional concept of linking commerce to meeting the needs for economic, social, political and spiritual well-being of society, without excessive government or bureaucratic involvement. This is one dynamic feature of *waqf* that can be replicated and adapted to suit today's business-driven and corporate-dominated environment.

Awqaf had therefore served as a core, strategic institution for Islamic commerce, township development and urban settlement on the one hand, and the materialisation of Islamic civilisational achievements on the other. Thus the *waqf* institution offers Muslim societies tremendous potential for meeting today's challenges. What is needed is new, innovative ways to enhance *waqf*'s relevance to meet today's business- and corporate-driven global economic environment.

Unfortunately, today in most Muslim countries, including Malaysia, *awqaf* had degenerated due to neglect and poor management of their affairs. Thus, in the public eye, they are more often regarded as institutions of charity that serve the cause for 'after life', involving cemeteries, mosques, *medressas*, orphanages, and such. The other unfortunate outcome is the general 'fossilisation' of *waqf* management in Muslim societies, where *waqf* assets are left in the care of conservative and ill-equipped Islamic religious administrators.

4. The 'Corporate Waqf': Critical success factor

Corporate *Waqf* is an institutional innovation initiated by Johor Corporation of Malaysia through the establishment of Waqaf An Nur Corporation Bhd or WANCorp (described in detail under section 5) aimed at revitalising the powerful Islamic *waqf* institution by harnessing its dynamics towards adding value and creating wealth through sustainable business and corporate activities. In this manner, the *waqf* institutional energy can be mobilised towards enhancing the economic growth of Muslim societies, addressing poverty through business-driven methods and in the long run empowering the Ummah through cumulative economic impact.

The Muslim Ummah is always duty-bound to initiate measures and mobilise all resources to overcome challenges they face on matters that relate to the *Maqasid al Shariah* – especially when Muslim selves (or lives), faith, intellect, posterity and wealth are under imminent threat. Today, the Ummah is indeed under siege and threatened from all sides. Economically, in a business-driven world, Muslims have lagged behind and the majority of Muslim Ummah still lives in poverty and deprivation. Even in economically more advanced Muslim countries such as Malaysia, the Muslim majority generally lags behind in terms of income and wealth.

It is observed that this situation had arisen mainly due to Muslim's failure to make business "nine-tenth of livelihood" and, as highlighted in the

introduction of this paper; their failure to build capacity to compete and undertake business on an organised, sustainable basis. Corporate *Waqf* seeks to address this weakness in Muslim societies and to economically empower the Ummah as a matter of the highest priority. Economic empowerment is a critical pre-requisite to the realisation of the Ummah's other higher aspirations.

Established as a *waqf*, the *Waqf* Corporation can therefore serve as a community-based institution, mobilising community resources to become the principal driver for sustainable community-owned business. The critical success factor is for corporate *waqfs* to be fully business-driven, corporate-structured and entrepreneur-led at all times.

As a market-friendly and business-driven corporate entity, it cannot, by definition, be exclusive only to Muslims in its activities – an important consideration for multi-ethnic and multi-religious Muslim-majority societies such as Malaysia. Obviously, this inclusive feature of Corporate *Waqf* practice is also a very important consideration in the effort to empower minority Muslim communities living in majority non-Muslim states. Thus, in spite of its Islamic origin, its business and corporate focus will make corporate *waqf* an inclusive instrument for making a success of national economic development aspirations everywhere through business methods with the capability to harness entrepreneurial talent of all citizens.

One distinct strategic advantage of the *Waqf* Corporation is its longevity. This is critical to address the issue of maintaining corporate ownership of wealth and resources in community hands and to address leakages and erosion in ownership stakes. "Privatisation" to a *Waqf* Corporation instead of individual business interests has tremendous policy appeal, as conventional privatisation practices have often been regarded as an act of "transferring wealth from the poor to benefit the rich". This is an important consideration in countries such as Malaysia, where privatisation of valuable national or government-owned assets to individuals and private hands has been a major source of wealth divide as well as community ownership erosion. The presence of *Waqf* Corporations offers another option to privatisation, this time in an Islamic way entrusting ownership into community hands for the benefit of generations to come. As *awqaf* are by definition non-government, steps taken to 'privatise' assets to *Waqf* Corporations contribute directly to empower the non-corporate masses, thus adding the long term advantage of reducing the economic gaps and bridging social divides within society.

Just like traditional *waqfs* for charitable purposes, the *Waqf* Corporation is well suited to perform the 'equalising' role. Once critical mass is achieved, *Waqf* Corporations can also be expected to fund and support the development of social institutions as well as deserving social causes of NGOs. The attraction here is that such charitable and welfare acts (as seen in the case of WANCorp of Malaysia – see Section 5), can also be highly inclusive to benefit all citizens in terms of ethnicity as well as class and income levels.

5. The Waqaf An Nur Corporation Model

Waqaf An Nur Corporation Bhd is a company limited by guarantee established by Johor Corporation (JCorp) of Malaysia.¹⁵ Initially registered in 2000 as *Pengurusan Klinik Waqaf An Nur Sdn Bhd* to provide medical services at a charge of RM5 per treatment to low-income patients at clinics located in compounds of mosques financed by *waqf* funds, the company was elevated into a *Waqf* Corporate entity in 2006.

This had occurred on 3 August 2006 when JCorp took the bold step to endow into *waqf* US\$66 million or RM200 million (at Net Asset Value) of JCorp shares in three Malaysian Public Listed Companies (PLCs). The shares involved were in a palm oil plantation company, Kulim Malaysia Bhd (4.67% of issued shares valued at NAV RM142 million), a top Malaysian company involved in private healthcare delivery, KPJ Healthcare Bhd (9.25% valued at NAV RM45 million), and a leading property developer, Johor Land Bhd (3.54% at the then NAV of RM12 million). Johor Land Bhd shares were subsequently replaced through *istibdal* by Al Aqar KPJ REIT Bhd, a healthcare-related Islamic property trust company that is also listed on the Malaysian Bourse.

JCorp had subsequently also endowed into *waqf*, registered in the name of Waqaf An Nur Corporation Bhd, shares that represent controlling interests in several unlisted or non-PLC subsidiaries

of JCorp. This included companies owning travel and ticketing business for umrah and haj, and RM50 million (NAV) shares in a company that owns the Larkin Sentral shopping complex in Johor Bahru making it the first mall to be owned and operated by a *Waqf* Corporation in Malaysia.

Corporate Waqf: WANCorp's track record

WANCorp is an outstanding success when measured in terms of its track record of sustaining and enhancing value of equity endowed into *waqf*. The PLC *waqf* shares, valued at RM90.05 million (US\$30 million) at point of endowment, increased substantially in value by 173.8% to RM246.55 million (US\$82 million) based on market prices at 31 December 2010. (The value of RM90.05 million at point of *waqf* or endowment was much less than the RM200 million NAV registered because for most of the shares, the NAV at point of *waqf* were higher than the then prevailing market prices). At the end of December 2011, total WANCorp *waqf* asset value rose substantially to RM538.5 million (US\$179.1 million) – as a result of strong performance of its equity stakes at the Bursa Malaysia. At the end of December 2012, the market capitalisation value increased further to RM575.9 million (US\$191.6 million).

WANCorp is also a success in terms of the benefits distributed. The principal source of WANCorp income is the cash dividend payout by the PLCs as well as unlisted companies. In the case of WANCorp, 30% of all revenue, principally derived from dividends paid out were allocated for

15. JCorp is a highly successful, US\$5 billion (end 2010) state-owned corporate entity. One interesting prospect for the future of *waqf* Corporation as an institution for economic transformation, at least in the Malaysian context, is the endowment into *waqf* of all assets and businesses owned by JCorp as well as other Malaysian State-owned enterprises or GLCs. This is not impossible to envisage, subject to the presence of strong political will.

charitable causes and *fi sabillillah*. Among the major programmes carried out that have tremendous impact are as follows:-

- A chain of 21 *waqf* clinics and one *waqf* hospital (December 2013), located mostly at mosque compounds in five States throughout Malaysia (with professional and financial support of KPJ Healthcare Bhd). Cumulatively 961,148 treatments were given by doctors, mainly to poor patients (including more than 69,690 non-Muslims) at a nominal charge of RM5 per treatment. Dialysis centres located at these facilities also offer subsidised (free for many hard core poor) blood transfusion services;
- Financial support for 5 mosques built by JCorp and manned by WANCorp located mainly at malls;
- Establishment of a *waqf* brigade fully trained and equipped for disaster relief and humanitarian aid;
- Establishment of a fund offering *qardul hasan* micro-funding facilities for the poor to start small-scale businesses; and
- General financial assistance and aid for the needy.

Consonant with its Corporate *Waqf* objectives, 70% or the bulk of dividend payouts are to be reinvested in either new business start-ups or in entrepreneurial development or human capital enhancement of WANCorp for future corporate growth and expansion of the *waqf* base. WANCorp's track record proves the point that, properly structured, efficiently organised, entrepreneurially led and professionally managed,

the *Waqf* Corporation, like any other successful business corporation, can be expected to have the capacity and capability of enhancing value, creating wealth and cumulating valuable assets on a sustainable basis. At the same time, they would have an in-built mechanism to deliver the expected benefits to all stakeholders, including widening the social safety net as in the special case of *Waqf* Corporations – directly to the needy and the poor:

6. *Waqf* Corporation: An institution for economic transformation and the Ummah's social and political reform

The *Waqf* Corporation, based on Malaysia's WANCorp model is therefore a 'hybrid' institution structured to harness the dynamics of a Western-type corporate entity and embedding in it the intrinsic features of a *waqf* as defined by the Shariah. In the case of WANCorp, Malaysia had made full use of the Western legal provision by incorporating a company limited by guarantee under Malaysia's Companies Act. This company was then officially and legally recognised (through a formal Memorandum of Agreement entered into between WANCorp and the Johor State Religious Authority in 2009) as *maukuf alaihi* and *mutawalli* of *waqf* assets in the form of shares and securities. (The scope of Corporate *Waqf* status in the case of WANCorp excludes rights over *waqf* of landed property, real estate and other fixed assets).

The added advantage of incorporating *waqf* as a corporate entity is found in its ability to maximise all advantages from the dynamics of a corporate entity. Firstly, it has full access to the legal infrastructure that governs corporate practice. It can also benefit from the umbrella of guidelines, rules and regulations that govern a company, especially those that are public listed companies (PLCs). This is indeed important to WANCorp considering that the largest component of its assets that are endowed into *waqf* are in the form of PLC shares. Furthermore, it can take full advantage of the flexibility, agility and speed of action available to corporations, while adopting the highest corporate governance standards and best practices and instituting systems of corporate control, check and balances for effective risk management.

On the other hand, its *waqf* status, by Shariah definition, establishes it legally as a non-government and a non-private entity, but one whose ownership is “vested in the name of Allah” for the benefit of the Ummah and all mankind. One significant difference in the basic feature of a *Waqf* Corporation that distinguishes it from conventional *awqaf* is its lesser emphasis on pure charity and welfare objectives. Under the extremely vulnerable economic circumstances of the Ummah today, priority must be given to ensuring the success of “Business Jihad” through fast-tracking the building of Muslim owned global corporations and their *waqf* MNC equivalents. WANCorp’s priority is

to grow itself as fast as possible into a leading corporation in terms of strategic businesses, size, scale and market leadership positions. Hence, in the case of WANCorp, its *Waqf* Endowment Deed stipulates that 70% of annual profits and surplus cashflows be devoted to re-investment and growing the asset value owned under *waqf*. At the same time, a portion of the 30% dedicated to charity and *fi sabilillah* programmes is also expended on programmes to develop entrepreneurial skills among young executives. The focus is on building teams of “*Intrapreneurs*” or “*Amanah* Entrepreneurs” (as they are specifically referred to at WANCorp), enabling executives without access to personal wealth or capital to become entrepreneurs, who are highly trained and skilled in making business decisions, creating wealth and adding value to *waqf*-owned corporate assets motivated by empowering *amanah*.

Being “*waqf*-owned”, the long term impact of ownership vested in the community will ultimately benefit the society and the Ummah at large. Yet, being entrepreneurially-led, with *Intrapreneurs* at the helm, the full dynamics of corporate entrepreneurship can indeed be inculcated into the *waqf* organisation. These *Intrapreneurs* can be compensated according to market rates, without benefits contrary to *waqf* principles, such as stock options, MBOs or privatisation opportunities. The absence of “equity-based” perks and benefits is however compensated the fulfilment of higher

cause - achieving the “Business Jihad” mission. As seen in the case of WANCorp, such fulfillment is equally if not a more powerful motivational force than mere material rewards to get the very best especially from young Muslim *Intrapreneurs*.

It is the contention of this paper that *waqf*, once proven successful and begins to create an impact in the market, the process of transforming the unjust capitalist economic system adopted by all Muslim nations can begin. The collective impact from successful *Waqf* Corporations will, in the long run, shift the system away from its current narrow, shareholder-centric, materialistic and self-serving attributes to one that is more selfless, community-centric, morally and ethically founded; and hence the establishment of a humanistic, and sustainable system which is ultimately ‘*adl* and socially just.

7. Conclusion

Based on WANCorp’s track record, the *Waqf* Corporate model offers a viable option or solution that is able to meet the Ummah’s critical need to address poverty and economic powerlessness. In the case of Malaysia, *Waqf* Corporations can be expected to play a critical role in addressing the issue of equity, social justice, reducing economic gaps and social divides between ethnic groups.¹⁶ Furthermore, a study undertaken by The Said Business School, Oxford University, on *Waqf* An Nur Corporation Bhd (unpublished, December 2010), endorsed the viability of the *Waqf* Corporation concept. The study concluded

that JCorp’s “... Business Jihad, Corporate *Waqf* and intrapreneurship have been highly effective and have far exceeded what would have been likely achievable through using conventional development economic tools and known policy-driven methods.” Furthermore, “Corporate *waqf* seems to be emerging as both an innovative and effective mechanism for the functional, practical delivery of the benefits in line with the principles of *waqf*.”¹⁷ Additionally, Murat Cizakca in his book “Islamic Capitalism and Finance, Origins, Evolution and the Future” (2011) described *Waqf* An Nur Corporation in the following terms: “... a powerful *waqf* of stocks appears to be emerging in Malaysia ...”; “... an imaginative combination of charity, micro-finance, poverty eradication and sheer for-profit business.” In his chapter on “*Waqf* of Stocks” Cizakca concluded: “In sum, *waqf* of stocks will probably dominate the future of the *waqf* system.”

In the case of Malaysia, on more than one occasion the writer had also propagated for the transformation of principal GLCs in Malaysia into corporate *waqf* entities. Indeed, GLCs or state-owned enterprises play a central role in Malaysia’s business-driven economic system, accounting for more than 43% of market capitalisation value of all companies listed on Malaysia’s Bourse at end of 2013. The first move can be initiated by Johor Corporation itself, and the best and most practical way to achieve this is through legislation, enabling the conversion of JCorp from a state-owned GLC into a *waqf*-owned entity. In doing so, with one legislative stroke, a highly successful state-owned

16. A National Congress of Malaysian State Religious Authorities held in October, 2011 had adopted as one of its Resolutions the proposal for the establishment of a Malaysian National *Waqf* Corporation at the Federal level, and a state level *Waqf* Corporation respectively for each State. Additionally, Malaysia’s Prime Minister in his 2013 Budget Speech announced that the Department of *Waqf*, Zakat and Haj will draw up a Masterplan for the establishment of *Waqf* Corporations in Malaysia.

17. Said Business School, University of Oxford, “A Study of Johor Corporation’s Corporate *Waqf* Strategy in Malaysia”, December, 2010.

enterprise with asset value exceeding RM20 billion, and a highly capable team of more than 200 *Intrapreneurs* and more than 65,000 employees in more than 280 companies, can spearhead a *waqf*-driven corporate reform initiative in Malaysia, to be followed through by converting other Malaysian GLCs into *Waqf Corporations*. In the long term, the *Waqf Corporate* critical mass will also have to include the private and community-driven corporate *waqf* entities, which are incorporated, led and managed by outstanding and righteous entrepreneurs from the private sector. In any event, such transformation would require a thorough review of Malaysia's existing legislative regime concerning *waqf* matters.

The long-term objective is to have a successful business organisational reform, incrementally transforming Malaysia's business ecosystem from shareholder-centric to community-centric. The biggest advantage of the corporate *waqf* institutional approach is the fact that all these can be undertaken through financially self-reliant, competitive, market-friendly methods that are capable of sustaining and enhancing the pace of a private sector-driven national economic growth that is also inclusive in its long term impact.

It is recommended that the corporate *waqf* strategy be adopted at the national level in all Muslim states through the formation of a National *Waqf Corporation* (NWC). In light of the proposal by the Islamic Development Bank (IDB) to establish a World *Waqf* Foundation,¹⁸

it is also recommended that a global corporate *waqf* strategy be adopted by IDB to coordinate global corporate *waqf* initiatives, especially through NWCs, managing *waqf* assets at the global level, supporting and participating in *waqf* investment activities and developing corporate strategies and leveraging on synergies to enhance the Ummah's business and competitive position and general economic interests globally.

Properly structured, NWC can swiftly create the impact and achieve critical mass needed; not only to speed up the Ummah's economic transformation process, but more importantly, to economically empower the Ummah and begin to retrieve so much lost ground to reinstate Islam as a civilisational force for the benefit of all mankind.

18. Speech by H.E. Tan Sri Dr Ahmad Mohamed Ali, President IDB at the Langkawi Islamic Finance and Economics (LIFE) International Conference 3, Langkawi, Malaysia, 29th October, 2011.



ENTERPRISE WAQF FUND: WAQF AS A FINANCIER TO THE NON-PROFIT SECTOR FOR SOCIAL IMPACT

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Abstract

This paper presents the *waqf* as a financial intermediary between donors and social enterprises. The model is based on the cash *waqf* structure with the purpose of connecting donors with non-profit organisations that carry out social entrepreneurship to provide them with enterprise level equity financing. Non-profit organisations deal with societal issues and needs, they require scale in order to have impact. Most non-profit organisations are small or medium-sized as they do not have access to financing in order to grow their institution to scale or to become sustainable. In carrying out venture philanthropy as its mission, the Enterprise *Waqf* Fund employs venture capital ideas to select non-profit social entrepreneurs or enterprises and nurture the non-profit organisation's growth to a sustainable level within a specific time frame. In this paper, the author discusses how the *waqf* structure is combined with social entrepreneurship to create the model for the Enterprise *Waqf* Fund.

Keywords

cash *waqf*, social entrepreneurship, venture philanthropy, venture capital

1. Introduction

This paper discusses venture philanthropy as the primary purpose of the *waqf* whereby the *waqf* will act as a funder to non-profit social enterprises or entrepreneurs. A *waqf* is an endowment of property in accordance with Islamic principles; the income or the corpus of which is to be used for public benefit. Social entrepreneurship, according to Arthur Brooks (2009), is an undertaking or effort that uses entrepreneurial principles to achieve social outcomes.

Since most non-profits face financial challenges in terms of meeting operational expenses, the author would like to promote a method by which it would be possible for non-profit organisations to grow and then to stabilise themselves to a level of sustainability through support from a financial source that combines both the purposes of meeting public needs and the business processes of venture capitalism. The result will be the Enterprise *Waqf* Fund (EWF).

Section 2 of this paper is an overview of the concepts that lynchpin the EWF. Then the author discusses the business model of the Enterprise *Waqf* Fund in Section 3 followed by a description of how the model is to be operationalised in Section 4. The focus of the Enterprise *Waqf* Fund, i.e. its non-profit beneficiaries, is examined in Section 5 before concluding in Section 6.

2. Concepts

In this paper, the author proposes to combine two ideas (cash *waqf* and social entrepreneurship) in order to produce the EWF. For reasons of brevity, the author assumes the reader is familiar with the basic idea of a *waqf* and will not elaborate on the historical aspects or the legal justifications for these concepts, which can be found in other writings dedicated to the subject.

Waqf

The term *waqf* (pl. *awqaf*) means the endowment of property in accordance with Islamic principles. In Islamic literature and in Shariah, it means the endowment of property to be used for righteous purposes. Fundamentally, the *waqf* is an endowment of private property, and its income or usufruct is applied towards charitable or public purposes, without depleting the principal or corpus of the endowment.

According to a hadith of the Prophet¹ three things will carry on earning blessings to the Muslim after his death: knowledge from which people benefit, pious children who offer prayers for him and recurring charity. The *waqf* is an ideal instrument by which recurring charity can be operationalised.

Depending on the corpus endowed, there can be different types of *waqf*: real property *waqf*, moveable property *waqf*, cash *waqf* and *waqf* of stock. In Ottoman times, a cash *waqf* refers to the

1. Abu Hurairah reported Allah's messenger as saying: when a man dies his acts come to an end except 3 things, recurring charity, knowledge by which people benefit or pious offspring who pray for him. (Narrated by Abdel Raham in Sahih Muslim (Kitab al-Wassiyah) Hadith No 3084).

endowment of cash, whereby the revenue from the investment of the cash would be used towards charitable purposes (Cizakca, 2004) although in modern times this has evolved to include the endowment of shares in incorporated joint-stocks companies resulting in *waqf* of stocks.

Social entrepreneurship

Bill Drayton of Ashoka introduced the term “social entrepreneur” in 1981 (Sen, 2006). His organisation was set up to act as a catalyst or change agent for other non-profit organisations or individuals who identified social returns as their set goal. According to Arthur Brooks (2009), a social entrepreneur is an organisation or undertaking that addresses social problems or needs. It is motivated primarily by social benefit, works with and not against market forces, and seeks to be financially sustainable by generating revenue from trading. Thus, the “social” aspect is the prime focus for the venture and “entrepreneurship” refers to the process for achieving those goals in terms of recognition of opportunity, innovation, the quest for results and the discipline of the organisation for management, accountability and results.

Social entrepreneurship differs from traditional philanthropy. A social entrepreneur is not risk averse for he aims for explosive social returns and generally does not have established income resources. It also differs from for-profit ventures in that its goal is not to maximise financial returns (although financial returns are necessary for the organisation’s survival) but to maximise social returns. An example of social entrepreneurship is

the Clinton Foundation’s HIV/AIDS Initiative, which formed a purchasing consortium and negotiated with suppliers of HIV/AIDS medicine to supply drugs at a lower cost to the countries needing them. The Foundation had recognised and taken into account a disorganised public-goods market, where consumer knowledge was imperfect and underfunded (Rauch, 2007).

Therefore, the social entrepreneur must have the ability to recognise opportunity for making social impact, the energy and expertise to translate that social vision into practical action and the capacity to determine and acquire the resources and funds to fuel the action.

3. The Business Model of the Enterprise Waqf Fund

Holding these two concepts firmly at the back of our minds, we shift our focus on the business model of the EWF. There are three crucial components to this: mission, strategy, and tools. The EWF is a cash *waqf* that has the mission or purpose of carrying out venture philanthropy (which will be explained in the next paragraph) in a particular field or area. It applies the income that it has earned from investing its assets, to its mission or purpose. The EWF employs the strategy learnt from venture capitalists, but adapts it in accordance with the Shariah². One of its tools is portfolio management i.e. in order to attain its mission, it must search out and build a portfolio of suitable non-profits that carry out social entrepreneurship activities.

2. Shariah means the body of Islamic law as revealed to Prophet Muhammad (SAW) and recorded in the Quran and the Prophet’s sayings and conduct referred to as Sunnah and recorded as Hadith. See Mohamad Akram Laldin 2006. Introduction to *Shariah and Islamic Jurisprudence*, Kuala Lumpur: Cert Publications.

Mission: Venture philanthropy

The use of a philanthropic fund run on business principles to act as an intermediary connecting donors to non-profit beneficiaries is not a new idea and has been in use in the United States since 2000. It began with a Harvard Business Review article in March 1997, whereby authors Christine Letts, William Ryan and Allen Grossman (1999) suggest that foundations should emulate the business practices of venture capitalists in building companies when providing grants to other non-profits. This led to the founding of a number of philanthropy funds such as New Profit Inc. (Elias, 1999, Kaplan, 2000) and Venture Philanthropy Partners (one of whose founders, Mario Morino coined the term “venture philanthropy”) followed by many others such as the Silicon Valley Social Venture Fund, the Social Venture Partners and the Nonprofit Finance Fund³. In 2004, there were 42 venture philanthropy funds totalling US\$400 million (Pepin, 2004). These are all funders consisting of philanthropists who engage with charities over a long term and their donations are essentially their investments for which they expect not a financial but a social return. They also expect the organisations they engage with to demonstrate long-term sustainability in order to exit.

Through dialogues with the donor investors, Morino and Shore (2004) were able to identify the characteristics of these innovative philanthropists: commitment to the goal of addressing large societal challenges, realisation that undercapitalisation (of time and money) is as lethal to non-profits as it is to for-profits, a sophisticated and political approach towards engaging the government, a willingness to leverage their own networks and enter into joint

ventures and partnerships with other funders, an awareness of the need for an exit strategy, and plenty of patience to understand the needs of the non-profit beneficiaries.

As a venture philanthropist, the *waqf* has the advantage of a long-term horizon. Having a generally defined purpose allows flexibility for the *waqf* to accommodate the changing requirements and demands of society over the course of eternity. It is within such generally defined purposes that the founder would be able to set the goal for the *waqf* and for successive generations of trustees to effect strategies which will be relevant to changing times.

The *waqf* may choose to be involved in a number of fields, depending on the type of public good that is underprovided and the level of intrinsic motivation (i.e. altruism or selflessness) required in providing for that public good. Such choices include concentrating on new knowledge and applied knowledge, carrying out policy analysis, policy advocacy, initiating social movements, and improving service delivery (Prewitt, 2006). Strategic philanthropy is shown to improve the competitive context for the community in which the players are situated (Porter and Kramer, 2002). Thus the *waqf* may decide to fund activities that achieve such social impact as:

- Establishing strong connections to the local community and its needs. This includes innovation in the way it can supply social services, since it is usually created to serve groups of people with needs not recognised by public policies;

3. Nonprofit Finance Fund is a Community Development Financial Institution certified by the US Department of Treasury and established pursuant to the Reigle Community Development and Regulatory Improvement Act. 1994.

- Encouraging productive and entrepreneurial behaviour. Although a *waqf* does not distribute profit, it does not always need to assume a no profit perspective. The *waqf* can also pay attention to creation of new jobs or maintaining or improving quality of jobs especially for disadvantaged people;
- Engaging civic participation and volunteerism. Since the *waqf* does not aim at profit maximisation, it can be easily involved in productions entailing low profitability if it can rely on volunteers and resources derived from donations. Production costs might be reduced especially in the start-up phase. In this way, the *waqf* may provide for women the opportunity to offer their services on a voluntary or paid basis.

Strategy: Venture capital

Venture capital (VC) “is typically provided to new, high potential, growth companies in the interest of generating a return through a realisation event, such as an initial public offering (IPO) or a trade sale of the company. Venture capital investments are generally made in the form of cash in exchange for shares of venture company (invested company)” (Securities Commission Malaysia, 2008).

Gompers and Lerner (2001) argue that VC constitutes an important intermediary in the financial system as it provides financing and advisory services to companies that might otherwise encounter difficulty to attract capital. These companies are typically high risk and are unable to obtain financing from the traditional financial institutions as they are young and do not possess sufficient assets that would be eligible as collateral.

In spite of the acknowledged benefits of the VC industry, one issue that is characteristic to VC is the high failure rate of investee companies. Conservative figures estimate the mortality rate in the industry at 50% (Sahlman, 2010). So in order for the VC firm to provide a competitive return to its limited partners (i.e. the investors) the returns from the remaining investee companies in the portfolio should be sufficiently high to compensate for the losses incurred. In other words, the portfolio of investees is crucial for the overall success of the VC fund.

In order to gain alpha⁴ returns to the investment fund, the VC firm will carefully select the portfolio of investees⁵ (a typical VC firm invests in approximately 20 to 40 different ventures [Sahlman, 2010]). It then proceeds over the holding period (between five to seven years) to provide business guidance to the investee companies in order to increase value upon exit. In addition to providing money, venture capitalists provide three critical services to investees: (1) building the investee as an enterprise, (2) reviewing and formulating a business strategy and (3) filling in the management team (al-Suwailem, 1998). The most common interventions used by the VC firm are restructuring part or all of the business, changing the CEO and/or the CFO and effecting core improvements (Omar Shaikh, 2007).

In the Islamic context, when a VC firm invests in an investee company, the applicable structure would be a *musharaka* structure (i.e. the VC firm and the owners of the investee companies become partners/shareholders) coupled with an agreement for the investee company to accept advice from

4. In portfolio management terminology, alpha is an abnormal rate of return on an investment in excess of what would be predicted by an equilibrium model like the CAPM or APT. See Bodie, Z., Kane, A. & Marcus, A. J. 2009. *Investments*, New York, McGraw Hill.

5. See Sahlman, W.A. 2010. Risk and Reward in Venture Capital. *Harvard Business School Case*, on the importance of selection, as the US landscape reflects a mortality rate of higher than 50% for investee companies.

the VC firm through board representation or the retention of the services of a consultant related to the VC firm (*ijarah al'amal*).

Investee companies must pass through a Shariah screening process in terms of the *halal*-ness of their activities, processes, and internal governance and management. Halal is a concept by which activities, actions, processes and goods are measured as to their permissibility or licit-ness in accordance with Shariah requirements. In addition, the assets of the organisation must include real assets as opposed to purely cash or financial claims (debt)⁶.

Tool: Portfolio management of non-profit social enterprises

The role of the Enterprise Waqf Fund is to connect donors to non-profit beneficiaries. It would provide financing, information, skills and stewardship to the non-profits and in return, provide feedback to donors on the results delivered by the non-profits. In carrying out its function, the *waqf* would inject business ideas, financial expertise and planning in its dealings with the non-profits. It would also match the type of support required by the non-profit with the level of support provided by the donors. The objective would be to provide institutional building support in the form of long-term financing and business support to the selected non-profit.

Determining a small (between three to five organisations) but suitable portfolio of non-profits before approaching donors for funds will give

potential donors an indication of the kind of social entrepreneurs that the *waqf* would support. The criteria for the portfolio would be organisations with proven track record for delivering impactful social results, seeking to grow their organisations in order to expand the social impact and to achieve sustainability. The non-profit must also have the capacity to grow institutionally (Elias, 1999).

During the portfolio selection process, the promoters will invite prospective non-profit organisations to submit applications along a list of criteria and guidelines. Each application will undergo a due diligence process including site visits and interviews to ascertain suitability, after which the promoters' investment advisory team will shortlist and finally select the non-profits for the portfolio. They must specifically demonstrate their ability to deliver relevant and impactful public benefit. Programmes involving Islamic microfinance, social justice, education, health, civil society or volunteerism, development, and small-medium enterprises are suitable, but an organisation that is already carrying out social entrepreneur activities will be able to demonstrate the existence of structure and thus viability and potential long-term sustainability.

The portfolio is also useful for the promoters to estimate the level of funding that will be required for the enterprise level financing to the non-profits and the exit plan for each. Exit occurs at a targeted stage when the portfolio non-profit has attained the goal or target of sustainability based on a pre-agreed time or benchmark.

6. Most Shariah stock indices such as the Securities Commission Malaysia, the Dow Jones Islamic Index and the FTSE Islamic Index have introduced a benchmark by which various degrees of permissibility in income sources or mixed trading or activities companies may be allowed to be included in their respective index.

4. Operationalising Enterprise Waqf Fund

At this point, it might be useful to delve deeper into the organisational structure of the cash *waqf* and how to capitalise it.

Organisational structure

Ideally, two separate structures are required for operational purposes: (1) the primary *waqf* (“the *Waqf*”) and (2) a corporate subsidiary of the *Waqf* (“the *Subsidiary*”). At the initial stage, the promoters of the EWF will only establish the *Waqf* while the *Subsidiary* can be introduced at a later stage to add value to the *Waqf* and its work.

The *Waqf* will be endowed by donors in the form of cash, and attributed to two accounts. A large portion (97%) will form the corpus of the *waqf* and 3% will be a gift to the *Waqf* allocated to operations and unrestricted spending requirements. The *Waqf* should be incorporated with its own board of directors (as trustees) and, if permitted by the laws of the country, be able to apply for tax-exempt status. If the *Waqf* is not permitted to be incorporated by reason of lack of legal framework, then the trustee shall be an incorporated body i.e. either the relevant statutory body or an incorporated trustee. In any event, it is crucial that tax-exempt status be obtained. The stated purpose of the *Waqf* is to assist non-profit organisations to become sustainable in order to achieve large-scale social or public benefits through the provision of grants or *qard-ul-hasan* funding.

The *Waqf* will grant a *waqala* to the promoters as a *waqil* (manager or special agent) to carry out the day-to-day operations and these promoters will be supported by a fee of a percentage of the *Waqf* assets being managed.

The *waqil*'s duties include managing and investing the corpus of the cash *waqf* in order to generate sufficient income for its mission or purposes, monitoring the performance of the portfolio non-profits, and providing regular reporting to the donors. Since endowment or donations into the *Waqf* can also be made on a call basis, the *waqil* is also required to manage the rate of endowments being made by donors.

Capitalisation, asset management and investment

At the beginning of the EWF life cycle, the most important task of the *Waqf* is to ensure its own financial sustainability: asset accumulation, investment and income stream. The objective is to establish a cash *waqf* with endowments from several selected high net-worth individuals, companies or with generous support from the government. In order to invite and convince prospective donors to invest in the EWF, the promoters must be able to persuade them that this would be a more efficient and impactful method to carry out their philanthropy or corporate social responsibility than carrying it out themselves.

To ensure donors that their philanthropic monies will be utilised to maximum social impact, it is incumbent on the promoters to build up the portfolio of non-profits discussed earlier with the potential of delivering social results that would meet or exceed the expectations of the donor investors.

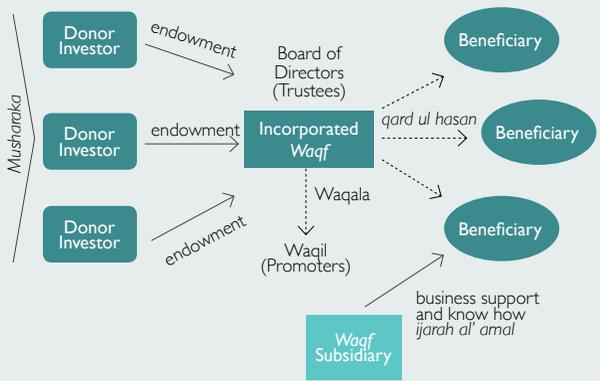
In addition to the principal endowment(s), continuous fundraising is important in order for the *Waqf* to build upon its asset base. Therefore, the *Waqf* must diversify its sources of income to include earned fees from services rendered, sales of goods, involving itself directly in business through social entrepreneurship and managing an investment portfolio. It should minimise reliance on the state or government as this only leads to clientelistic behaviour.

With respect to investment of the cash endowment(s), some avenues for the *Waqf* to participate in are private equity (Lahsasna, 2010), venture capital (Cizacka, 2011) or Islamic microlending (Ahmed, 2007), although in each of these the variability of returns and volatility of investments must be carefully considered.

All investment decisions must take into account cost-benefit and risk-returns in relation to the *Waqf*'s life duration (not all *awqaf* are perpetual in duration: the Maliki school permits the fixed-duration *waqf*). Risk management is part of good governance and is important so that significant risks are known. In this way, trustees and managers may make informed decisions and take timely action or make the most of opportunities with confidence (Charity Commission for England and Wales, 2010).

A simplified illustration of the *Waqf* mechanism is found in the following figure:

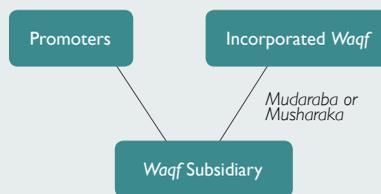
Figure 1: Enterprise Waqf Fund Model



The Subsidiary

Support and nurturing of the portfolio non-profits are provided simultaneously with funding from the *Waqf* in the form of consultancy (*ijarah al'amal*) by a subsidiary company wholly owned by the *Waqf* and the promoters on a *mudharaba* basis ("Subsidiary").

Figure 2: Shareholding of Waqf Subsidiary



The Subsidiary is formed by the *Waqf* together with the promoters using the *mudharaba* structure with the *Waqf* putting up a small capital and the promoters acting as the *mudharib*. The purposes for the Subsidiary is to provide research, arrange educational seminars, provide consultancy and support to other organisations (other than the portfolio non-profits) on the basis of *ijarah al-'amal* in return for fees. In this manner, the Subsidiary also builds intellectual capital that will benefit the non-profit sector as a whole. Such income that is earned by the Subsidiary is split between the *Waqf* and the promoters in pre-agreed profit sharing ratios. The Subsidiary will further act as a watchdog for the *Waqf* in respect of the portfolio non-profits.

5. The non-profit sector as a suitable beneficiary of waqf funding

Why is the non-profit sector suitable for this sort of funding? The non-profit sector has different connotations depending on the country. Broadly there are four concepts of the sector: the common law concept based on the principle of non-inurement⁷ providing charitable relief; the social economy which is based on mutual association and cooperatives; non-governmental organisations; and civil society (Anheier and Salamon, 2006). The common thread between these sectors is that each is funded primarily from voluntary giving or transfers, and provides goods and services to the public at no cost or at a price that has no effect on supply and demand for the supplied goods or services. However, the term non-profit does not

include any government imposed or managed social or employee provident funds, organisations or any form of mandatory taxes, social security or other form of compulsory contributions or impositions⁸.

Despite being large as a sector, most non-profits are small organisations. In the United States, non-profits' inability to access financial markets is due both to built-in industry weaknesses as well as unsuitable type or tenor for financial support received from donors and supporters (Kaplan and Grossman, 2010). They find it difficult to build themselves up as an enterprise at institutional level as there would be public outcry if they used public and government donations for non-programmatic purposes⁹.

Generally, few non-profits have access to funding in order to grow institutionally to scale and to become sustainable. They rely on continuous support of donors and the government, with a focus on donations and contributions for programmatic spending. As funds are limited, non-profits tend to keep administrative costs low and focus on short-term financial performance. Institution building is generally low on their list of priorities.

6. Conclusion

The Enterprise *Waqf* Fund that is based on the cash *waqf* structure is a financial intermediary model to connect donors with non-profit organisations to provide them with enterprise level equity financing. Adopting business techniques from

7. The principle of non-inurement refers to the non-profit constraint in that no profits or dividends are distributed to members, trustees or management.

8. For these reasons, an Islamic non-profit would not include the compulsory *zakah* institution, and other forms of taxes imposed by an Islamic government.

9. The American Red Cross was criticized for not distributing all of the US\$564 million Liberty Fund collected post September 11 terrorist attacks. Due to an excess of donations received by numerous non-profits, not all the funds were distributed, and the American Red Cross had decided to retain the excess for future and long-term organisational needs.

venture capitalists, the strategy of the Enterprise *Waqf* Fund is to nurture the selected non-profit organisation's growth to a new level so as to produce social impact within a specific time frame as a defined exit for the donor investor thus eliminating a dependency relationship. The key and challenge to developing the Enterprise *Waqf* Fund is finding and developing personnel with skill-sets such as financial modelling and planning, business and fund investment management, social entrepreneurship, and access to high net-worth as well as non-profit organisations.

The model mentioned in this paper is not a static one. It can be expanded to manage several new funds made through additional endowments from future donors and managed by one *waqf* structure, or it can be multiple stand-alone incorporated *awqaf* funds. Since its ground structure is that of a cash *waqf*, it is very flexible in that the investment of the *waqf* corpus could become the focus of activities (Lahsasna, 2010, Cizakca, 2004, Cizakca, 2011) which could be at least as important as carrying out its purposive or programmatic spending depending on metrics chosen by the *waqf*. In other words it is flexible, replicable, financially self-sustaining, potentially profitable, commercially viable, scalable up or down and can be adopted for a number of Shariah suitable purposes. It is also useful as a wealth management tool offered by private bankers to their higher net-worth customers, particularly if there are tax advantages to do so.

Finally, the true contribution of the Enterprise *Waqf* Fund is to the development of human capital through creating a new category of professional managers, building of intellectual capital through business support given to non-profits and enhancing connectivity between donors and their community. In achieving these results, the *waqf* itself becomes a social enterprise.

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THE INFLUENCE OF WAQF ON HIGHER EDUCATION IN AFGHANISTAN

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Abstract

The contribution of *waqf* to the development of higher education in Afghanistan is very minimal. Neither the public nor the private sectors have contributed their time and resources to develop the institution of *waqf* and relate it to education in Afghanistan. *Waqf* though did play an important role in influencing higher education in Afghanistan during the first century of Islam followed by the Ghaznavid and Timurid dynasties. Of these, the most significant is the reign of Sultan Husain Bayqara. However, the last one hundred years of Afghanistan's history do not provide any notable account of the development of *waqf* and the role of *waqf* in the educational institutions of Afghanistan. *Waqf* in Afghanistan still remains a weak institution, mainly concentrating on the organisation of hajj, and building and preservation of *masajid* and *maqabir*. *Waqf* in Afghanistan can play an important role in promoting higher education if new legal frameworks, which can promote and encourage the human values of giving and cooperation, are created.

Keywords

education, history, new laws, *waqf*

Introduction

In light of the classical definition of *waqf*, holding and preservation of property as common, the usufruct and revenues of which are exclusively utilised for specific aims and objectives, *waqf* in Afghanistan has contributed very little to the development, maturation and advancement of higher education. Both the public and private sectors did not contribute their time and resources to consider and analyse the benefits of developing the institution of *waqf* and relate it to education, especially higher education. Therefore, *waqf* in Afghanistan remains a weak institution mainly concentrating on the organisation of the hajj, and building and preserving *masajid* and *maqabir*. In order for *waqf* to play an important role in promoting higher education in Afghanistan, new legal frameworks, which can promote and encourage the human values of giving and cooperation, need to be created.

After reviewing literature on *waqf* in Afghanistan, I found some data about the Ghaznavid and the Timurid periods. In the Timurid era, especially during the reign of Sultan Husain Bayqara, *waqf* was developed as a workable institution and contributed to higher education in Afghanistan. In other periods and times, there were individuals who were involved in education and provided social services in their towns and localities, but they were not structured in the form of the *waqf*. With their passing, in almost all cases, these educational endeavours diminished and eventually disappeared.

To understand the importance of *waqf* and its influence on higher education in Afghanistan, this paper will first investigate *waqf* and education from the first century of Islam until 1970 when the first

waqf bylaws were enacted. Special attention will then be paid on the reign of Sultan Husain Bayqara, when *waqf* was at its peak. The second part of the paper will analyse the first official document, known as *Waqf* Bylaws, approved by the Ministers at their meeting on 1 February 1970 and published in the Official Gazette on 4 February 1970. Thereafter, I will analyse the second *Waqf* Bylaws published in the Official Gazette on 5 January 1976, which is still in force. By examining these documents, both the opportunities and challenges for establishing *Waqf* will be investigated and connected to the future prospects of *waqf* in Afghanistan. The paper will then discuss the possibilities of creating a workable document on *waqf* rules and regulations, and the challenges of creating a functioning *waqf* institutional framework.

From the first century of Islam to 1970

One expects that *waqf* in Afghanistan must be as old as the arrival of Islam in Afghanistan, but historical evidence shows that *waqf* was first institutionalised during the Timurid period (1370-1507). The evidence and remains of *masajid*, *madaris*, *maqabir*, *minarets*, and mausoleums during the Ghaznavid and Ghoorid periods are signs of advanced civilisation and education, but no evidence of *waqf*'s influence on education is available. The Ghaznavid period (962-1148), especially during the reign of Sultan Mahmud of Ghazna, was influenced and shaped by the Persian-Islamic tradition of maintaining state power and absolute monarchical rule. Even though the court of Sultan Mahmud was known for the development of Persian poetry and literature, it did not allow any alternative circles to work within the area of literature and education. This is evidenced in an ultimatum sent to the Ma'munid Khawarizmshah Abul-Abbas Ma'mun:

I have heard that there are at the Khwarizmshah's court several men of learning, each peerless in his science, such as so-and-so and so-and-so. You must send them to our court, so that they may have the honour of being presented there and that they may derive prestige (*mustazhir shawim*) from their knowledge and capabilities. We request this favour of the Khwarizshah (Bosworth, 1977, 132).

The public, the peasants, the artisans and the traders were expected to be obedient, respectful of the ruling elite, and pay their taxes to support the court life. Clifford Bosworth states that "there was the luxurious court life and the heavy superstructure of the bureaucracy, which was not flexible enough to cut back as the momentum of the empire ground to a standstill and then began to lose ground" (Bosworth, 1977, 67). The personnel and the bureaucracy, which collected revenues, ran the day to day affairs of the Ghaznavid period, and supported the sultans' lifestyle, were Persians who carried out and reinforced the Samanids principles of the secular power (Bosworth, 1977, 48-97). "At the opening of the Masud's reign, the monthly wage bill for the secretaries of the *Diwan-i Risalat* came to 70,000 dirhams" (Bosworth, 1977, 67). The revenues of the state were drawn from "crown land and private possession of the sultan, escheats to the crown and confiscations, tribute and presents from dependent ruler, governors, etc., war plunder, and normal taxation, i.e. the *kharaj*, and extraordinary levies" (Bosworth, 1977, 67). Despite all this, Ghazni was considered the political and cultural centre of Islamic civilisation and the Ghaznavids were famous for their Central Asian architectural style and Persian Literature. "Originally, there was no significant literary tradition in Ghazna and Zabulistan upon which to build. It is noteworthy that the great poets of the court of Ghazna all came from outside: Unsur

from Balkh; Asjadi from Merv or Herat; Ghadairi from Ray; Farrukhi from Sistan; and Manuchehihri from Damghan" (Bosworth, 1977, 133). Great mosques, palaces, mausoleums, and minarets were built during this period, some of which were also endowed to the public, but all these were the works of the Ghaznavid rulers. Mosques did play an important role in the education of the people, but they were run by the state. Sultan Mahmud "built in Ghazni a magnificent mosque of marble and granite. In close vicinity to it, he erected a university, and, after supplying it with books in various languages, and a fine museum, he endowed it for the benefit of the rising youth in the country" (Malleon, 1878, 71). The Ghaznavids also built four *eyvan* (large vaulted halls closed on three sides and opened on the fourth side to a court in the palace) in Lashkari Bazar, near Lashkar Gah. The *eyvans* were probably used for gatherings and discussions. One reason for the lack of *waqf* in the Ghaznavid period was the rulers' interpretation of the Hanafi school of jurisprudence. Non-Hanafites and Sufi orders were suppressed. Not only that there were no opportunities for individuals to establish *waqf* and independent learning and teaching institutions, people such as Ibn Sina (born in Balkh in 1080 CE) had to leave Afghanistan.

Similarly, the Ghooris, the Khwarazshahis, and the Saljuks built *masajid*, *madaris*, minarets, and great mausoleums, but there is little evidence of *waqf* at work and influencing higher education. The only institution of *waqf*, which had played an important role in providing and influencing higher education, was the famous Nizamiya masjid and *madrassa* built by Nizam al-Mulk during the Saljuk period in Afghanistan (Karimyan, 1998, 36-37).

During the Timurid period (1370-1507), there were numerous endowments and public facilities established by the state and individuals. The Timurids promoted religious thinking and civilisational elements that served their political tradition and cultural preferences. Of these, the

two important ones were the Hanafi School of jurisprudence of Sunni Islam, which made it easier to assign both movable and non-movable property as *waqf*, and the Naqshbandi Sufi order, which closely worked with the ruling elite. It is important to notice how the same school of jurisprudence is interpreted by two different sultans in two different periods. During the era of Timur and thereafter, the Timurids and their spiritual allies, the Naqshbandi Sufi order founded many *awqaf*. "These included Timur's endowment for the shrine of Shaikh Ahmad Yasavi, Ulugh Beg's *waqf* for his *madrasa* and *khanagah* in Samarqand, Sultan Husain Baiqara's endowment in Balkh and Herat, and the numerous *waqfs* of the leading late 15th century Naqshbandi *shaiikh*, Khwaja Ubaidullah Ahrar (d. 1490) in Marwarannah and Kabul" (Dale, 2010, 222). The Ahrari Waqf played an important role in the spread of the Naqshbandi Sufi order in Afghanistan, Central Asia, and South Asia.

Dale and Payind discuss the economic power and political influence of Khwaja Ubaidullah Ahrar and his Ahrari Naqshbandi Sufi order. The Ahrari Naqshbandi Sufi order trained their own students, but did not contribute to the educational upbringing of the general population. The Ahrari Waqf and the Naqshbandi Sufi order had strong economic bases, which enabled them to influence individuals in power and government policies. They possessed these institutional bases not only during the late Timurid period, but also during the reign of Zahir al-Din Muhammad Babur (1483-1530) in Kabul.

These institutions gave Ahrari Naqshbandis a base in Kabul to train their own cadre of students and, not so incidentally, made patronage appointments for family members and Naqshbandi pirs and disciples. In terms of Afghan history the most important effect of this endowment was to create a privileged propertied

lineage, which supplied many members of Kabul's social and economic and religious elite, from prosperous merchants to government officials, to al-Azhar-educated 'alims (Dale and Payind, 1999, 224).

Before the Ahrari Waqf was established in Kabul, Shah Rukh Mirza's wife Gauhar built a *masjid jami*, a *madrasa*, and a *khanagah* in Herat during the reign. The *masjid* is known as *Masjid Gauhar Shah* (Karimyan, 1998, 46). Similarly, the famous educational and charitable foundation and complex of *Ikhlasiyya* was established by the prominent literary figure Mir Ali Shir Nava-ee between 881 A.H./1476-77 CE and 886 A.H./1481-82 CE in Herat. According to Daulatshah, the private property, which Mir Ali Shir Nava-ee converted into *waqf*, amounted to approximately 30 buildings, both in Herat and Khorasan. The value of this property was estimated to be five million Kapaki Dinar. The type of endowments Mir Ali Shir Nava-ee constructed and then dedicated as *waqf* were not limited to *madaris*, but also included *masjid-i jami*, which also served as teaching institute, a *Khanagah* (hostel), a *darul-shifa* (hospital), and a *hammam* (public bath) (Samarqandi, 1987, 505). Based on her study of *Habib al-siyar* and *Vaqfiyya*, Maria Eva Subtelny in her article 'A Timuride Educational and Charitable Foundation: The *Ikhlasiyya* Complex of Ali Shir Navai in 15th-Century Herat and Its Endowment' states that:

As for the Madras, two pious religious scholars (*'alim*), one of whom was to lecture on Islamic jurisprudence (*fiqh*) and the other on the traditions of the Prophet (hadith), were to be appointed as professors (*mudarris*) to lecture in its eastern and western *estrades* (*suffa*). Since he exerted considerable influence in the appointment of

professors to other *madrāsas* in Herat, Ali Shir undoubtedly had great control over teaching appointments at his own *madrāsa*, particularly since he had the right to do as an endower (*waqif*). Despite the fact that 'Ali Shir's endowment provided for two professors to teach in his *madrāsa*, in the Makarim al-akhlaq, Khvandamir noted by 906/1501 (the year of 'Ali Shir's death), there were four scholars teaching there: Amir Burhan al-Din 'Ata'ullah Nishapuri, Qazi Ikhtiyar al-Din Hasan Turabti, Amir Murtaz, and Maulana Fasih al-Din Muhammad al-Nizami. Ali Shir further indicated that there were to be two study circles (*halqa*) of eleven students each, thus making the total number of students studying at the *madrāsa* who were supported by the endowment twenty-two (Subtelny, 1991, 47).

The shrine of the fourth caliph, Ali in Mazar-e Sharif was revived during the reign of Sultan Husain Bayqara. It was reported by Khwandamir that "the revival of the tradition began with the arrival of a certain Shams al-Din Muhammad at the court of Mirza Bayqara, the elder brother of the more famous Sultan Husayn Bayqara" (McChesney, 1973, 111). Sultan Husain Bayqara provided a large *waqf* grant to the Shrine of Ali or the *waqf* in Balkh. This *waqf* grant made the administrators and the guardians of the Shrine more or less independent. The Timurids and especially Sultan Husain Bayqara supported the intellectuals and the religious elite with grants and attracted the support of the Naqshbandi Sufi Order. "Waqf grants also provided a durable vehicle for carrying public policy in several areas. In the most obvious way, the establishment of large public *waqf* was a visible expression of support for a certain religious

and intellectual tradition" (McChesney, 1991, 37). At the same time the Timurids wanted the religious figures to have their own economic base. McChesney argues that:

By giving certain members of Naqshbandi establishment a stake in the economy, through naming them to administer the *waqf* in Balkh, the Timurid ruler, Sultan Husayn was accomplishing two things. He was committing himself to a currently fashionable intellectual viewpoint, and thereby allying himself with religious establishment, and secondly, he was making provision for future support from the Naqshbandis by directly linking their interests to the stability of the state (McChesney, 1973, 117).

Mohammad Burunduq was another prominent figure who built numerous building and structures, and then dedicated these as *waqf*. Burunduq was not only a rich man from the landed elite, one who had close ties with the ruling class, but he was also known as a great builder. He built the "caravanserai (*ribat*)" of:

Qush Ribat northwest of Herat on the Herat-Mary caravan route. The bequests (*mauqufat*) he made to this caravanserai as well as to the shrine of Abdullah Ansari at Gazurgah and to a *madrāsa* in Chichiktu, which are recorded in a *waqf* inscription (dated 905/1500) at the Gazurgah shrine, indicated that he possessed much landed property throughout Khorasan, including fields under cultivation (*mazraa*), garden parks (*chahar-bagh*), irrigation works, mills, shops and so forth (Subtelny, 1988, 492).

The rise and development of *waqf* during the Timurid period was mainly due to land grants awarded to prominent individuals by the state and the state's policy of exempting *waqf* property and some personal property of *waqif* from taxes. In some *awqaf*, individuals who dedicated their property as *waqf* were still entitled to receive benefits from these. Jo-Ann Gross quotes Molchanov in her article *The Economic Status of a Timuride Sufi Shaykh*:

Large-scale land ownership by *amirs*, intellectuals, and religious figures was on the rise in the 15th century. The acquisitions of Abd al-Rahman Jami, Ali Shir Navai, and Khwaja Ahrar are conspicuous examples of its tendency. Not only were Jami and Navai granted large amounts of land, but they were also exempted from tax on some of their private land as well. Sultan Husayn (1470-1505) suspended the *ushr* on Jami's private land, and another edict excluded several sections of Mir Ali Shir's state land from *kharaj* tax (Gross, 1988, 93).

At the same time, landed elite and wealthy individuals were worried that after their passing, their land and cash property may end up in the hands of the "wrong" state leaders. According to Maria Eva Subtelny's understanding of *Vaqfiyya* published in *Asarlar*,

in the endowment diploma (*Vaqfiyya*, dated 886/1481-1482) for the Ikhlasiyya complex, which he built in the northern part of Herat, Ali Shir states that Husain Bayqara had granted him a large tract of land on the Juy-i Injil in 881/1476-1477 and that it was on a portion of this that he built his

famous complex, which included a *madrassa*, mosque, college of Quran reciters (*dar al-huffaz*), a *khanaqah* (hostel), hospital, bath, and a private residence, called *unsiyya*, all of which he converted into a pious endowment of which he presumably remained the trustee (Subtelny, 1988, 491)

The Timurids' trend of *waqf* and the Naqshbandi Sufi activities and power continued into the end of the 16th century. The Naqshbandi Sufi order, their educational structure, and their power continued to flourish. Reflecting on historical time periods, McChesney's discussion of Khwaja Abdu Nasr Parsa's shrine shows the Timurids' continued dedication to the development of *waqf*. In discussing Khwaja Abu Nasr Parsa, a prominent sheikh of the Naqshbandi Sufi order, McChesney writes that:

within a year or two, the Timurid general Mir Mazid Arghun built at the grave a large domed mausoleum... at the same time Mir Mazid also built a *madrassa* "encircling" or "encompassing" (*madrass-i muhit*) the mausoleum and Abu Nasr's shrine, probably in the style of such complexes of the time (e.g., at Herat, Samarqand, and Shahr-i Sabz)... Between 1552 and 1574, Abd al-Hadi's brother and successor as Shaykh al-Islam, Khwaja abd al-Wali, built and endowed another *madrassa* adjacent to the shrine on its south side (McChesney, 2002, 78).

During the Mughul era, the Afghans started their resistance against the Empire. The Rokhani (Roshani) resistance movement was launched and led by Bayazid Ansari (1525-1585) known as Pir

Rokhan (Pir Roshan). From then on, the Afghans were busy fighting foreign intrusions, invasions, and occupations, and less involved in the development of their country and education. This scenario continued even after Ahmad Shah Abdali laid the foundation of modern Afghanistan in 1747. No attention was paid to the issue of *waqf* and its influence over education. The issue of *waqf* was neglected until 1970 when the first *waqf* law was enacted.

From 1970 to the present and future prospects

In analysing the Official Gazettes and the two *Waqf* Bylaws published by the Government of Afghanistan, there is some information on how many *madaris* were built, but none were stipulated as *waqf* either by individuals or by the state. They were all state-run institutions. In February of 1970 the Government of Afghanistan created the Department of *Waqf* in the Ministry of Justice and the *Waqf* Bylaws were officially instated. The Office of *Waqf* mainly dealt with building and maintaining *maqabir* and *masajid*, and the organisation of hajj. The Government of Afghanistan did not develop a working structure and/or create guidelines for *waqf*, which could have helped, influenced, or developed higher education, as was done in many other Muslim countries. Article 3 of the *Waqf* Bylaws states that the Office of *Waqf* had the following duties:

- According to the ordinance of the laws, in addition to building holdings, maintaining *waqf* buildings and holy places, the *Waqf* Office was also responsible for the organisation and control of *waqf* property
- The organisation and management of *masajid*
- The transportation of *hujaj* and providing assistance with pilgrimage procedures

- With the assistance of *jamiat al-ulama*, the organisation of Islamic principles
- The organisation of *zakat*, *sadaqah* and other charities (Official Gazette, 1970, 1)

The second *Waqf* Bylaws were published as part of the Civil Law on 5 January 1976. *Waqf* in this period had the same responsibilities as that of the 1970 Bylaws. The Bylaws elaborated on administrative and financial responsibilities, but did not provide any incentives for individuals to engage in *waqf* activities. Not only that, there were no incentives to attract people to establish *waqf* in Afghanistan, but the law sets out limitations on how much property one could dedicate to the *waqf*. Article 365 states that a *waqif* is not allowed to *waqf* more than one-third of his property to non-heirs, limited heirs, or charities (Official Gazette, 1976, 105).

Waqf as an important element of Islam's social and political institutions aimed at achieving social justice and providing ongoing benefits either to one specific group or to the general public did not develop as such in Afghanistan. The institution of *waqf* did not find any importance in the traditional way of life of the Afghan Muslims. The political and religious elites, the government, the administration, the businessmen, the economic strata, and the common man did not see *waqf* as an important element in their individual lives and social responsibilities. It was understood in a purely religious context. This is not to say though that *waqf* by individuals did not take place. Some people did dedicate their land or cash or both to build a *masjid* in their local area, because building a *masjid* was understood as building a house in Paradise. "Whoever build a mosque for Allah – be it large or small – Allah will build for him a house in Paradise" (Jami al-Tirmidhi, *Book of Salat*, Chapter 120). Therefore, *waqf* remained limited to the building and maintenance of *masajid* and *maqabir* and the organisation of hajj.

Waqf was seen as the government's sphere of influence and responsibility. This understanding of *waqf* created many misperceptions. The most important one by far was turning over of one's personal wealth and property to the government and bureaucracy. I had numerous discussions in Kabul and other parts of the country with various people about *waqf*, especially establishing *waqf* foundations for universities, scholarships, and aid associations. In almost all cases, I was told: "why should we turn the control of our property and money to the government?" There is the impression in Afghanistan that *waqf* is a government-controlled monopoly. Does this mean there are no possibilities or opportunities for *waqf* to develop in future? I say no. The above discussion should not be understood as obstacles to create *waqf* and *waqf* foundations. *Waqf* can indeed play an important role in general education, and especially higher education in Afghanistan, if practical guidelines and structures are created, the culture of giving and sharing is encouraged and promoted, and the governing laws of *waqf* are changed.

There are Afghans who are willing to dedicate their property as *waqf* if the necessary conditions are created. It must be noted that we do have a well-documented example of one Afghan who dedicated his property as *waqf* and promoted higher education in Afghanistan. It is the *waqf* established by the late Minister of Economic/Commerce Abdul Majid Zabuli in the United States. Mr. Zabuli created a *waqf* (Trust Fund) in the United States, stipulating that the income was to be transferred to Kabul University. Furthermore, after his wife's death, the three-thousand IBM shares she owned and which were managed by Washington, D.C. CITI Bank were also to be transferred to the *waqf*. Of the net income, 15% was to be re-deposited into the trust fund. From the remaining 85%, administrative fees, salaries to his family members, and salaries of the trustees were to be deducted first and the remaining balance

transferred to the Kabul University to provide free education, hostels, and scholarships. The transfer of these funds and the transfer of *waqf* were only to take place once the Soviet Union withdraw its troops from Afghanistan and an independent Afghan Government established through electoral and democratic process. Once the transfer took place, the existing trustees or people appointed by them become the new trustees in Afghanistan. The new board of trustees in Afghanistan would also include members of Kabul University. Detailed instructions were provided in his will for this selection process. Mr. Zabuli had also instructed in his will that Afghans living in Washington and California, who are members of the *waqf* (trust) and pay an annual due between US\$15 and US\$40 or more, should be assisted in purchasing land for Islamic cemeteries (Mudzda, 2008, 154-178). My latest inquiry and information indicate that his will has not been executed yet. The trustees of Zabuli's *waqf* and his family members do not consider Afghanistan free of occupation and the current Government in Afghanistan freely elected through real democratic means, and the electoral process representing the people of Afghanistan.

We have some historical and one recent example of *waqf* established by individuals. It is important that the Government of Afghanistan and people with religious, political, and social influence present *waqf* not only as a means of building and maintaining *masjid* and *maqabir*, but also as an institution involved in aiding the poor, the needy segments of the society, and supporting activities that will benefit and serve the society at large. *Waqf* needs to be presented to the common man as an act of good deed in the cause of Allah (SWT). It is stated in Surat al-Baqar: "*The parable of those who spend their substance in the way of Allah is that of a grain of corn: it groweth seven years, and each year hath a hundred grains. Allah giveth manifold increase to whom he pleaseth: And Allah careth for all and He knoweth all things. (2:261)*"

In the Muslim World, from the seventh century onward, education has remained the second primary focus of *waqf* and recipients of aid, after mosques. In Muslim countries, primary and higher education has been financed by *waqf*, charities and other voluntary contributions. The beneficiaries of *waqf* were not limited to students and teachers, but also included libraries, stipends, *khanaqas*, *karwansarais*, and *dar-ul shifas*. Considering these historical facts and the importance of *waqf* in Muslim societies, the Government of Afghanistan can build the institution of *waqf* as a functioning entity which, among other things, could help in the promotion and advancement of higher education. *Waqf*, as a religious and charitable institution should not only be designated as the source of building *masajid*, but also as a source of building and developing *madaris*, libraries, *khanaqas*, *dar-ul shifas*, and other learning and research institutions. At the same time, it should be made clear that *waqf* is not a substitute for government's responsibilities and obligations, but a supplement to help the state to fulfil its obligation of providing public services.

New rules and policies

The current governing laws of *waqf* in Afghanistan are designed to allow the state *waqf* office to maintain its traditional role of building and maintaining *masajid* and *maqabir*, and organising the hajj affairs. Furthermore, it is mainly directed towards the establishment of individual or family *awqaf*. There is very little direction or support for groups to organise and establish *waqf* foundations. In order to promote and develop *waqf* as an institution, which would include individuals and/or groups, new laws should be enacted to promote and give preference to *waqf* foundations. *Waqf* foundations will involve large segments of the community, which will assure the continuity of *waqf*. *Waqf* foundations, compared to *waqf* run by individuals and states, would be more self-sufficient, more accountable and transparent. The management team will be comprised of different

elements of the society, with different connections and power relations. They would be better equipped to raise funds and organise the affairs of the *waqf* more responsibly.

Waqf should be allowed by the governing laws to collect voluntary donations and generate revenues through fundraising or other legal activities. The management of *waqf* should be run by people who have at heart the interests of the beneficiaries and local communities. This would require a board of directors or supervisors, selected or elected from the representatives of the beneficiaries and local communities. Professionalism and managerial capacities need to be based on a criterion of professional economic cooperation. The current *waqf* bylaws in Afghanistan do not include these provisions.

The current *waqf* laws, aside from the permanent *waqf* i.e. *masajid* and *maqabir*, also have provisions for temporary *waqf*. The law states that "special *waqf* is temporary and more than two generations of *waqif* is allowed benefit from it" (Official Gazette, 1976, 102). The limitation of time in the laws discourages certain elements in the society to get involved in *waqf*'s activities. Private *waqf*, which is also referred to as special *waqf*, is an important aspect of social participation and individuals' contribution to the society. This type of *waqf* not only helps needy individuals, but also contributes to the growth and development of the community. Changes could be brought to the institution of *waqf*, if the laws include *al-Hasb fi Sabil Allah*, *Hasb Mawquf Sadaqa Mawqufa*, *Sadaqa Muharrama*, and *Permanent Waqf* (Brill Online). Even though the third type of *waqf* was contested by Imam Abu Hanifa, his disciples were in disagreement with him. Therefore, arguments could be made about the validity of the third type of *waqf*. Furthermore, Umar bin Al-Khattab's *Tasaddaqa* can further help create new rules. Peter Hennigan discusses the issue of *waqf* at great length. He quotes Ahmad b. Hanbal and states that:

“Umar gave away (the yields) as alms on the condition that it [the principal] not be sold, given away as a gift, or inherited. [Ibn Umar] said: Umar gave (the yield) away as alms for the poor, kin relations, slaves, the Holy War, travellers and guests. It will not be held against the one who administers it if he eats from it in an appropriate manner or gives something to a friend so long as he does not appropriate any of the property (*ghayr mutamawwilin fi-hi*)” (Hennigan, 2004, 115).

It is evident that the neglect of *waqf* since the end of the Timurid period has resulted in the abandonment of *waqf* properties, decline in education, and neglect of religious and social responsibilities toward the people and the society in Afghanistan. To avoid this neglect and decline in education and progress, the institution of *waqf* needs to be organised as individual trusts as well as corporation trusts. The objectives of *waqf* must be defined precisely and the assets must be permanently dedicated to *waqf* purposes. *Waqf* should not be allowed to participate in political campaigns or be used by individuals, administrators, politicians, and government for personal or political objectives. Provisions should be made to prohibit board members from enriching themselves unjustly from the assets and earnings of the *waqf*.

Conclusion

The history of *waqf* in Afghanistan provides evidence that while *waqf* had some limited influence on higher education during the Ghaznavid

period, it was during the Timurid period that *waqf* played a really significant role in influencing higher education. Since then, *waqf* has had no decisive role. The development of *awqaf* in the Timurid period has had no comparable examples in the history of Afghanistan. The exponential increase in the number of endowments during the reign of Sultan Husain Bayqara (837-911/1469-1506) made it impossible for a single administrator to oversee and regulate the affairs of *waqf*. Therefore, in order to manage the affairs of *waqf* professionally and responsibly, Sultan Husain Bayqara appointed several persons as the Sadr to oversee the affairs (Khwandamir, 1954-54, 321).

Changes are needed in the *waqf* laws and regulations to provide opportunities for Afghans to organise their charities more professionally. These changes should allow the administrators greater control and limit the government's ability to impose restrictions and control. With these laws and regulations in place, *waqf* would give the rich opportunities to alleviate poverty by promoting primary and higher education, establishing libraries, hospitals, hostels, and other charities. The political and economic elite and others of different religious and ethnic groups would also have the opportunity to pursue their education, especially higher education, and improve their economic status. New institutions of *waqf* would enhance and promote the development of education and the society at large and cater for the socioeconomic welfare of the Afghan people. There would be no more necessity for *madaris* and other learning and charitable institutions to be financially dependent on the government. Through their own efforts, sound financial planning, and the collection of zakat, organised entities will be able to create revenue-generating entities for a common cause.

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CASH WAQF: AN ALTERNATIVE SOURCE OF FUNDING FOR SHARIAH COMPLIANT MICROFINANCE BUSINESS IN MALAYSIA

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Abstract

Islamic economics is a value oriented system underscored by the core values of social justice (*adl*) and benevolence (*ihسان*). Poverty alleviation, establishment of socio-economic justice and equitable distribution of wealth and income are the primary goals of Islam which should be manifested via the Islamic economic system. Microfinance is an area that could be explored in an attempt to fulfil these social and moral objectives. The primary aim of this research is to engage the views of the Islamic finance practitioners in Malaysia as to whether cash *waqf* could present an alternative source of funding for Shariah compliant microfinance. It also aims to identify major constraints faced by the industry practitioners in carrying out the business, examine the general understanding of *waqf* and cash *waqf*, and assess whether cash *waqf* is a suitable product for Shariah compliant microfinance, particularly from funding and risk management perspectives. An online self-administered questionnaire survey was adopted as a tool to collect primary data from respondents who are largely employees of Islamic financial institutions responsible for key business areas such as product development, risk management, Shariah, legal and operational procedures. The survey reveals several important findings. Firstly, economic non-viability is identified as the major constraint in undertaking Shariah compliant microfinance on top of other constraints such as lack of funding and lack of skills in managing the business. Secondly, the level of understanding on the concept of *waqf* and cash *waqf* and their characteristics among the Islamic finance practitioners is good. Thirdly, cash *waqf* is deemed a viable alternative source to raise funds for Shariah compliant microfinance given its benefits and advantages. In addition, Islamic financial Institutions are seen as more suitable conduits for undertaking Shariah compliant microfinance due to the resources available within such established organisations as compared to newly formed Islamic Microfinance Institutions.

Introduction

Background

Islamic economics is a value oriented system underscored by the core values of social justice (*adl*) and benevolence (*ihsan*). Khan (1997) and Siddiqi (2004) describe these two values as the philosophical basis of the Islamic financial system. Chapra (1985) points out that the goals of Islam, which primarily stresses the alleviation of poverty, establishing socio-economic justice and ensuring equitable distribution of wealth and income, should be manifested via the Islamic economics system. Clearly, a Shariah compliant financial system is not solely about ensuring compliance to the legal aspects of Shariah – mainly avoidance of *riba* (usury) and *gharar* (uncertainty) – but emphasis is also put on fulfilling the social and moral objectives of Shariah in all financial transactions and economic activities. Siddiqi (2006) argues that the objectives of Shariah should be inherent in the operations and financial products of Islamic financial institutions. Microfinance is seen as one of many ways that could be explored by the Islamic financial industry in an attempt to achieve the social and moral objectives of the enterprise.

Several scholars have suggested establishment of *waqf*-based financing institutions for serving the poor and driving micro-enterprises. Zarqa (1988) points out that Islam has established various viable functioning institutions, which include *zakah*, *waqf* and *qard hasan*, to ensure equitable distribution of income and wealth to cater to the basic needs of all in the society. Cizakca (2004) proposes a cash *waqf* model to be employed as a means to serve the social dimension of Islamic finance in contemporary times. Elgari (2004) envisages the setting up of a non-profit oriented institution to provide interest free consumer finance to the less fortunate in the form of cash *waqf* sponsored by the wealthier sections in the society. Ahmed (2007) describes the social role of Islamic microfinance and suggests *waqf*-based microfinance practices.

This study explores the potential of Shariah compliant microfinance products in the Malaysian market via the Islamic financial institutions (IFIs) as the licensed and authorised providers of Shariah compliant financial products and services in the Malaysian financial system. The IFIs are deemed to be in a better position to provide Shariah compliant microfinance products given their entrusted role as guardians of public funds. Moreover, their financial operations are subject to sound regulatory and supervisory oversight by the central bank. Leveraging the existing infrastructure and human resources, Shariah compliant microfinance could serve as an additional range of product offerings by the IFIs. Nevertheless, there are also implementation challenges in undertaking Shariah compliant microfinance including securing sustainable sources of funding and finding suitable Shariah contracts to be applied in product structuring. This study investigates the main hindrances that limit the offerings of microfinance products in the market. It will examine the potential of cash *waqf* as an alternative solution for Shariah compliant microfinance resulting in a more promising and dynamic business and value proposition.

Objectives and research questions

The primary aim of this research is to examine and ascertain whether cash *waqf* could potentially present an alternative product for Shariah compliant microfinance. In addition, it seeks to achieve the following research objectives:

- To identify the existing Shariah compliant microfinance products in the market;
- To investigate major constraints in the offering of Shariah compliant microfinance;
- To examine the general understanding of *waqf* and cash *waqf*; and
- To assess whether cash *waqf* is a suitable product for Shariah compliant microfinance, particularly from funding and risk management perspectives.

The following key research questions have been developed to facilitate the attainment of the above objectives:

- “What are the existing Shariah compliant microfinance offerings in the market?”
- “What are the major constraints in the offerings of Shariah compliant microfinance?”
- “What are the features of *waqf* in general and cash *waqf* in particular?”
- “Can cash *waqf* be used to raise funds for Shariah compliant microfinance?”
- “From the risk management perspective, is cash *waqf* suitable to be used for Shariah compliant microfinance given the nature and risks of microfinance business?”
- “What are the benefits and constraints of using cash *waqf* in microfinancing?”

The research findings will give insights into the root causes of limited offerings of Shariah compliant microfinance products in the market as well as clearer view of the practical issues in implementing cash *waqf* despite its inherent benefits. These insights might be useful in designing further measures and tools to accelerate the development of Shariah compliant microfinance in the future.

Motivations and significance of the study

The contemporary Islamic finance industry has been severely criticised for alleged practices that diverge from the righteous path of Shariah, wherein great emphasis is given mainly on ensuring compliance on the legal form to the detriment of the ethical and social dimensions of Shariah which have been largely neglected in pursuit of a market driven growth and development. Clearly, this is against the principles advocated by the founders of Islamic economics. Grais and Pellegrini (2006a: 13) and Siddiqui (2009) describe the three facets of Shariah requirements for Islamic financial industry: firstly, to undertake financial transactions in adherence to the laws of Shariah, primarily

avoidance of *riba* and *gharar*; secondly, to promote social benevolence by conducting activities that foster societal objectives; and lastly, to develop an integrated Islamic financial system based on the principles and goals of Shariah. The Islamic finance industry seems to closely mirror the purely profit-oriented conventional financial system. This has caused great concern particularly among Islamic economists.

This research contributes to the existing literature in several ways. First, it supplements the existing studies in understanding the challenges in Shariah compliant microfinance business via investigating the major constraints facing the IFIs in the course of undertaking the business. Second, it sheds light on the practitioners’ awareness of cash *waqf* and their insights into its benefits and advantages as a tool for Shariah compliant microfinance that could potentially overcome the challenges.

Literature review & conceptual framework development

What follows is a detailed overview concerning the existing literature by relevant academics on the two main aspects of the study, namely microfinance and cash *waqf*.

Definition of microfinance

Microfinance generally refers to provision of financial services to low-income households. Otero (1991) describes microfinance as finance for microenterprise programmes implemented for the poor and low-income earners who are excluded from the radar of financial services of formal financial institutions. Ledgerwood (1999) defines the term as provision of financial services to low-income clients including the self-employed. Financial services provided are normally savings and credit but may also include insurance and payment services. Often microfinance is defined to include social intermediation initiatives such as group formation, development of self-

confidence and training in financial literacy in addition to financial intermediation (Ledgerwood, 1999). Furthermore, Rutherford (2000) suggests microfinance as money management services that help the poor turn their savings into usefully large lump sums, thus putting savings at the centre of financial services, rather than loans.

Definition of waqf, history and its characteristics

Waqf (plural: *awqaf*) is a voluntary charity and appears as one of the oldest charitable institutions in the world. According to a Prophetic tradition, Sayyidina Umar did so, providing that the land should not be sold or bequeathed, but become a source of income to be used for charitable purposes (Barnes, 1987, p.10). Barnes (1987, pp. 12-15) argues that the current institutional form of *waqf* descends directly from Byzantine practice. The Islamic civilisation embraced the concept and it quickly became a deeply rooted and flourishing institution. Records show that endowments were among the basic means of support given to the caliphate to meet the educational and health needs of society (Boudjellal, 1998, p. 4). In the contemporary world, some of the great institutions like the famous Oxford University were established by following the Islamic *waqf* model (Cizakca, 1988, p.11).

Waqf may be defined as the holding of certain physical assets and preserving it so that the benefits continuously flow to a specified group of beneficiaries. The dominant feature of *waqf* is perpetuity, and typically *waqf* assets are in the form of real estate. Hence, *waqf* commonly applies to non-perishable properties whose benefits or usufruct can be utilised without detriment to the property itself (Obaidullah: 2008). Such a definition covers several new forms of *waqf* which were not discussed in the classical literature such as *waqf* on financial rights and *waqf* on usufruct of rented property. These are however recognised and included under the definition of property (*maal*) according to the majority of scholars and

are expressly mentioned in the contemporary collective fatwa, especially those of the OIC Fiqh Academy (Kahf, 1998).

Bremer (2004) classifies *waqf* into two classes: firstly, *waqf* which is strictly for earmarked charitable purposes and secondly, family *waqf*, the benefits of which extend for both charitable purposes as well as for family members, while Obaidullah (2008) adds yet another class, namely religious *waqf*, which refers to provision of revenue to be spent solely on the maintenance and recurring expenditure of mosques and properties. The endower (*waqif*) would specify the asset to be endowed, how it would be transferred to *waqf*, how it would be managed, how the revenues derived would be used and how it would be governed. Some of the charitable purposes of *waqf* traditionally include sponsoring orphanages, educational institutions, and religious property such as mosques, graveyards and others. An appointed trustee (*mutawalli*) is entrusted with the management of *waqf* properties.

Rules governing *waqf* are well-documented and precisely elaborated. Essentially these rules are aimed at protecting *awqaf*, providing conditions for their development and expansion and ensuring that the income of *awqaf* is spent in accordance with the intentions of the endower while ensuring that the trustees perform their responsibility diligently and with integrity (Obaidullah, 2008). Firstly, the fundamental character of *waqf* property is perpetuity or permanence. Secondly, a *waqf* asset cannot be sold or transferred under normal circumstances. However, if it is highly desirable, scholars put strict conditions under which this may be carried out. It requires substituting the *waqf* property with another property of equivalent value with approval of the court. Upon completion of such a substitution (*istبدال*), the new property must be designated as *waqf* with the same purposes and beneficiaries as the former property. Thirdly, as *waqf* is a voluntary act of benevolence, conditions

specified by the founder must be observed as long as they do not contradict any Shariah rulings. This implies that revenues of *waqf* should be exclusively used for the designated objectives and in line with the founder's stipulations. Often the founder's conditions are stipulated in a *waqf* document. In case the objective of *waqf* becomes irrelevant, its revenue should be spent on a related alternative. If such an avenue is not available, then the revenue would be channelled to the poor and destitute. Finally, the management of *waqf* property by the trustee should be closely guided by the stipulations of its founder. The trustee is primarily responsible to preserve and protect the property and maximise the benefits or revenues for the beneficiaries.

Key features of cash waqf, benefits and advantages

Cash *waqf* is another form of *waqf* with cash as the corpus and not real estate as is the case in traditional property-based *waqf* (Obaidullah, 2008). The revenue derived from investment of the cash is channelled to charity. Cash *waqfs* have created controversy among scholars due to the fact that cash does not fulfil the perpetuity condition. Obaidullah (2008) states that the main line of argument against cash *waqf* is that ownership of the corpus once endowed lies with Allah. When the corpus of cash *waqf* is used for partnership (*mudarabah*) or distributed as *qard* (benevolent loan), the cash is inevitably distributed to the borrowers and this is not permissible since what belongs to Allah cannot be distributed to third persons. Nevertheless, cash *waqfs* became quite popular during the Ottoman era. Cizakca (1995) highlights the debates on this issue among the Hanafi scholars during the Ottoman period. Imam Muhammed al-Shaybani and Imam Abu Yusuf ruled based on *istihsan* (juristic preference) that cash *waqf* was permissible based on the following two principles: firstly, endowment of moveable assets belonging to an endowed real estate is allowed and secondly, cash as a moveable asset is acceptable. Imam Zufar also confirmed the above

ruling and even suggested that the endowed cash be regarded as capital of *mudarabah* partnerships and that any profit derived be spent in line with the intended purpose of the established *waqf*. This ruling was also made on the basis of an arrangement known as *istiglal* that ensures the right to utilise the *waqf* capital i.e. the usufruct was available only to the borrowers and not to the owners. The latter is protected by hefty collateral usually in the form of the borrower's house (Obaidullah, 2008).

Obaidullah (2008) claims rigidity in the classical positions on perpetuity of *waqf* property unduly restricts certain acts of benevolence such as cash *waqf* and financial rights. He further argues that a cash *waqf* is feasible where the original endowment is kept intact and the returns generated from the endowment are used for the earmarked purposes. Kahf (1998) explains that this wider definition of property (*maal*) as agreed by the majority of scholars and recognised by the OIC Fiqh Academy has accorded permissibility of other *waqfs* including cash *waqf*, which were not discussed in the classical literature.

Success of cash waqf during the Ottoman period: an instrument for helping the poor

The practice of cash *waqf* during the Ottoman period started with creation of cash endowments by some wealthy people in the city of Bursa to help the poor. Cizakca (1995) highlights that cash *waqf* was extensively used and had greatly contributed to the social development and well-being of the society to the extent that health care, education and welfare were entirely financed by gifts and endowments. By the end of the 16th century, they had reportedly become extremely popular all over Anatolia and the European provinces of the empire. Cizakca (1995) further argues that cash *waqf* functioned primarily as institutions of capital redistribution rather than institutions of capital accumulation since the accumulated capital by the founders were voluntarily distributed to myriads of borrowers.

Cizakca (2004) discusses how these endowments were used for microfinancing. For ease of administration, the number of borrowers was kept small, usually less than 20. The borrowers were lent money and their houses were taken as collateral. They were allowed to stay in the house and in return required to pay rental to the *waqf*. The ownership of the houses remained with the *waqf* until the capital had been returned. The rent collected was allocated into three parts: one-third for covering the administrative costs, one-third for charitable purposes for which the endowment was established and the remaining was added to the original endowment to preserve the value from inflation.

Institutionalising microfinance programmes into financial institutions

The role of the informal sector was undeniably significant in the early era of microfinance and often conducted in two distinct forms; firstly, by individual moneylenders, traders and family members, and secondly, via traditional group-based practices such as rotating savings and credit associations (ROSCAs). These practices were normally characterised by the following features: character-based assessment, pragmatic and flexible concept of collateral (including non-collateralised lending), extremely simplified documentation requirements, small amount of credit or savings per transaction, rapid and decentralised approvals and easy accessibility to the client (Jackelen and Rhyne: 1991). Nevertheless, they faced serious limitations in mobilisation and allocation of financial resources and inability to diversify risks due to localised settings while in ROSCAs, capital is limited to the resources of participants.

Another category of players in microfinance are specialised microfinance institutions (MFIs) which are target-oriented financial institutions aiming at eradicating poverty. Tara S. Nair (2001) suggests a definition of MFIs as those who provide thrift, credit and other financial services of small

amounts, mainly to the poor in rural, semi-urban and urban areas to help them increase their income and improve their living standards. MFIs are synonymous with group-based lending policy and are faced with three main challenges in ensuring sustainability of business: firstly, mitigating credit risk, secondly, addressing moral hazard problems and lastly, ensuring economic viability of the business. Ahmed (2002) points out that conventional based MFIs have relatively resolved credit risk issues via the group-based lending policy. This serves as social collateral as non-repayment of a member would restrict borrowing by any other members in the same group. Hence, this fosters closer relationship among members of the group to ensure continuity of services from MFIs. A small weekly repayment scheme instead of a large lump sum is more convenient and easier for beneficiaries. However, the other two issues remain unsettled. Funds given by MFIs could be diverted to other than the intended purposes causing moral hazard problems (Rahman, 1999, p.75) while MFIs are forced to deal with high administration costs leading to non-viability of the microfinance business. Bennett (1998, p.116) reports administrative costs of five MFIs in South Africa range from 24% to more than 400% per dollar lent. Hashemi (1997) shows that in 1996, Grameen Bank had to increase its lending rate by an additional 21% in order to break-even without subsidies, based on a Subsidy Dependence Index developed by Yaron (1997).

Ahmed (2002) argues that the Islamic orientation of social capital derived from Islamic values motivates the beneficiaries to become better debtors as repayment of debt is considered a religious obligation. Hence this value orientation could further improve the profitability and viability of Islamic MFIs. Additionally, employment of various Shariah modes of financing contracts to suit the needs of the beneficiaries is suggested to address the moral hazard problem. For example, Islamic MFIs could acquire and provide the assets

required by the customer for his business instead of giving out cash. This mode would reduce the chances of diversion of funds for unintended purposes and decrease the potential of default (Ahmed, 2002). Nevertheless, Islamic MFIs are still saddled with the problem of economic viability. In this respect, Ahmed (2002) recommends that Islamic MFIs tap into various sources of income and use financial instruments which are under-utilised, such as *zakah*, *waqf* and other charities since funds from these institutions could be integrated into microfinance programmes to help the poor.

Jackelen and Rhyne (1991) further argue that the main features of informal sector microfinance practices could be adapted by the financial institutions in a cost effective manner and at a scale that commensurate with the needs of the informal sector. The viability of such an arrangement is based on major breakthroughs that have taken place in various cultural settings in the least developed countries, such as Grameen Bank in Bangladesh, Bank Rakyat Indonesia Unit Desa system in Indonesia and PRODEM in Bolivia where a non-profit organisation was transformed into a private sector commercial bank. Ahmed (2003) claims that Islamic banks are predisposed to provide Islamic microfinancing in a “win-win” situation. The synergy derived from the existing established branches and current management teams and professional employees could bring down operating costs to levels significantly lower than newly set-up microfinance institutions. Furthermore, given excess liquidity due to insufficient Shariah compliant investment instruments that are available in the market, Islamic banks could further benefit from lower financing costs (Ahmed: 2003). In addition, Islamic banks could channel the late payment penalties and other non-permissible income derived from its operations (for example income derived from investment in Shariah compliant stocks that turns non-compliant) to *waqf* funds that could be utilised for microfinance operations. Hence,

Islamic banks would be capable of addressing the economic non-viability issue of Islamic MFIs. In summary, Islamic banks appear to possess all the means and resources to manage the three issues of sustainability facing Islamic MFIs.

Another important area of microfinance is micro-insurance. Brown (2001) defines the term as insurance products designed to be beneficial to and affordable by low-income individuals or groups. Brown comments that most MFIs lack the key expertise and resources needed to provide micro-insurance products sustainably and profitably. Brown (2001) and Rhyne (2009) point out that this creates opportunity for a workable partnership between MFIs and established insurers as the client knowledge and distribution network in the micro market by the former will be complemented by the latter’s skill sets and resources. This has been exemplified by Zurich Financial Services Group and BancoSol, a private sector commercial bank in Bolivia which provides health insurance to low-income Bolivians for only US\$4 per month, while a tripartite partnership between ICICI Lombard (an insurance company), Shree Kshethra Dharmasthala Rural Development Project (an NGO) and Grameen Koota (an award-winning MFI in Karnataka, India) provides health care insurance to a huge number of clients of Grameen Koota with good network relationships between hospitals, staff and clients.

Conceptual framework and hypothesis development

Several contemporary studies have been conducted on the role of Islamic financial institutions with regard to Shariah compliant microfinance programmes in Malaysia particularly on the usage of cash *waqf*. Md Saad and Anuar (2009) highlight several shortcomings of Shariah compliant microfinance by the banking institutions in Malaysia, among others are stringent credit evaluation standards, reliance on a single mode of financing (namely *bai al-inah*), and missing the

actual target group of hard core poor. Md Saad and Anuar (2009) further suggest that cash *waqf* could be a possible solution to address the shortcomings of the existing practices of Islamic microfinance. Hashim (2007) studies the insurance sector in Malaysia as a viable vehicle in an attempt to attract participation of the younger generation and the middle class in *waqf* contribution in the country. His study demonstrates that *waqf* could be a successful model in overcoming the shortfalls of the traditional *waqf* collection and management by diversifying the donor base from all walks of life irrespective of age and economic background.

Based on the above, four theoretical hypotheses have been developed:

Hypothesis 1:

The main constraint in Shariah compliant microfinance offerings is lack of funding.

Hypothesis 2:

General understanding on *waqf* and cash *waqf* is low among the Islamic finance practitioners.

Hypothesis 3:

Despite the nature and risk of microfinance business, cash *waqf* is deemed a suitable tool for Shariah compliant microfinance given its benefits and advantages.

Hypothesis 4:

IFIs are deemed suitable vehicles for undertaking Shariah compliant microfinance as they possess the resources to address the sustainability issues of dedicated Islamic MFIs.

Research methodology

Preference for a qualitative research methodology

A qualitative research methodology is used to observe or investigate matters that relate and affect human behaviour (Kumar, 2008). As the current study aims at investigating a particular

aspect of human behaviour, namely the perceptions of Islamic finance practitioners towards cash *waqf* as an alternative source of funding for Shariah compliant microfinance, a qualitative approach is the most suitable methodology for this study.

Saunders *et al.* (2007), Bryman and Bell (2003) suggest either an inductive or a deductive research method for conducting social research. Bryman and Bell (2003, pg. 569) further define an inductive approach as “an approach to the relationship between theory and research in which the former is generated out of the latter”. For this research, an inductive approach is considered to be the most appropriate strategy since the data collected from observations will be used to form conclusions concerning the perceptions of Islamic finance practitioners on cash *waqf* as a potential funding solution for Shariah compliant microfinance.

Research strategy and design

This study adopts an exploratory stance since it attempts to discover the perceptions of Islamic finance practitioners towards cash *waqf* as an alternative source of funding for Shariah compliant microfinance.

Research method: data collection method and data analysis

For this study, primary data was assembled through a questionnaire as a research method instrument. The questionnaire consists of 15 questions, mainly close-ended with a few optional open-ended questions. The questionnaire is divided into three sub-sections. Section 1 deals with the existing state of the art of Shariah compliant microfinance, Section 2 measures the respondents' awareness on *waqf*, cash *waqf* and their characteristics, and finally Section 3 deals with the respondents' perceptions on the potential of cash *waqf* as a source of funding for Shariah compliant microfinance. All the questions are designed to correspond to the four hypotheses discussed.

Islamic finance practitioners could be broadly categorised into two: firstly, people who are directly involved in the industry, and secondly, people who are mainly providers of advice or opinions. The former category includes employees of Islamic banks, *takaful* operators and fund managers, while the latter may include legal advisors, Shariah scholars and Shariah consultants. A purposive sampling approach was selected as the best sampling method. The researcher used her personal judgement based on certain knowledge in deciding who would be part of the sample for the research (Burns and Bush: 2003). Employees of IFIs, including Islamic banks, *takaful* operators and development financial institutions, particularly the ones responsible for product development, risk management, Shariah, legal procedures and operations are identified as the sample respondents. Those identified are mainly located at the head offices of IFIs in the Klang Valley.

Limitations and difficulties

The findings of the study may not be generalised to the general population due to the use of purposive sampling which may not be suitable for other studies. However, this study provides useful information for various stakeholders, such as IFIs, policymakers as well as the consumers.

- **Resources** - Respondents are working under extremely tight schedules. However, with the advance of information technology, the web-based survey and emails provide convenience to the respondents, and reduced the time taken to complete the survey.

Empirical results

Snapshot of sample profile

The online questionnaire was sent out to more than 150 email recipients from 20 IFIs. All the responses received were deemed usable and fit for analysis. Table 1 shows the statistics of the sample profiles based on the category of IFIs and areas of responsibility.

There are two interesting findings from the questionnaire. Firstly, all the responses received were from Islamic banks (12%). This indicates that the level of familiarity and awareness of the subject is higher in Islamic banks when compared to other categories of IFIs. Secondly, there was no significant variance observed between areas of responsibility among the respondents.

Table 1: Snapshot of sample profile

Description	Respondent (%)	
	Frequency	Percentage
Category of IFIs		
Islamic banks	12	100
Takaful companies	nil	nil
Development finance institutions	nil	nil
Total	12	100
Areas of responsibility		
Product development	3	25
Risk management	2	16.7
Shariah	2	16.7
Legal	2	16.7
Operations	3	16.7
Total	12	100

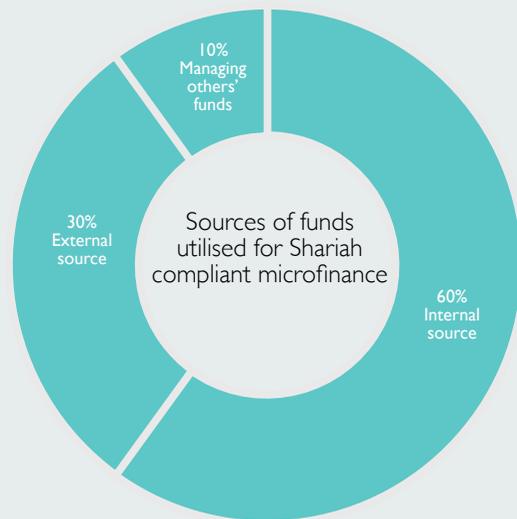
Existing state of the art of Shariah compliant microfinance in Malaysia

66.7% respondents indicated that their IFIs have some type of Shariah compliant microfinance products in the market. Financing products topped the list constituting 70% of Shariah compliant microfinance products as compared to savings, *takaful* and other products such as *ar-rahnu* (Shariah compliant pawnbroking). In respect of funding source, the majority of the respondents were utilising their internal sources of funds for the business (60%) followed by external sources (30%) while 10% indicated that they were managing others' funds. Table 2 summarises the prevailing types of microfinance products in the Malaysian financial market while Figure Y1 illustrates the respective utilisation of funds.

Table 2: Types of Shariah compliant microfinance products

Questionnaire	Respondent (%)	
	Yes	No
Q1: Does your financial institution currently offer any Shariah compliant microfinance products? (n = 12)	8 (66.7%)	4 (33.3)
Q2: If yes, could you provide description of the product(s)? (n = 10)		
Financing	7 (70.0)	3 (30.0)
Savings	1 (10.0)	9 (90.0)
Takaful	nil	
Others (including ar-rahnu)	2 (20.0)	8 (80.0)

Figure Y1: Sources of funds for Shariah compliant microfinance



On the discussion of issues in undertaking Shariah compliant microfinance business faced by IFIs, the majority of the respondents identified lack of economic viability due to high administrative costs as the highest rated constraint as compared to other constraints such as lack of funding and lack of expertise in managing the business.

Respondents' awareness of waqf, cash waqf and their characteristics

It was observed that the awareness level is apparently high whereby 100% of the respondents demonstrated good understanding of the subject and their characteristics. The majority of the respondents opined that the usage of cash waqf should not be limited to religious purposes and could be channelled to serve other beneficial purposes for the development and well-being of the society. They were also of the opinion that cash qualifies as waqf property as the perpetuity character of waqf property is subjective and there are also risk management tools that could be adopted so as to preserve the corpus of waqf property. Table 3 summarises respondents' feedback to Q5, Q6 and Q7.

Table 3: Respondents' Awareness on Waqf, Cash Waqf and Their Characteristics

Questionnaire	Respondent (%)	
	Yes	No
Q5: In your view, can waqf be in the form of cash?	12 (100%)	Nil (0%)
Q6: In your opinion, can waqf be used for other than religious purpose, such as for social development purpose?	12 (100%)	Nil (0%)
Q7: Do you think cash waqf fulfil the main requisite of waqf, i.e. permanency of the waqf property?	11 (91.7%)	1 (8.3%)

Respondents' perceptions of cash waqf potential as source of funds for Shariah compliant microfinance

Section 3 further explores the respondents understanding of *waqf* and cash *waqf*, and seeks to engage their perceptions as to whether cash *waqf* can form an alternative source of funding for Shariah compliant microfinance.

Most of the respondents were positive that cash *waqf* deposits could form an additional source of funds for Shariah compliant microfinance. Nevertheless, there were mixed views as to whether the principal of cash *waqf* deposits could be used for microfinancing given the nature and risk of such business. 91.7% of the respondents opined that there should not be any problems in utilising the principal of cash *waqf* deposits for microfinancing on two grounds. Firstly, at the onset, the donors are fully aware of the purposes and objectives of such deposits. This awareness would minimise potential disputes on the usage of the deposit pool. Secondly, proper risk management practice could reduce the likelihood and impact of depletion of the cash *waqf* principal.

It was also observed that the majority of the respondents indicated that cash *waqf* presents some benefits in respect of cheaper cost of funds and continuity of funding source for Shariah compliant microfinance. However, they also acknowledged that there are other challenges due to higher expectation to manage risks associated with the microfinance business. 83.3% of the respondents indicated high likelihood for cash *waqf* for Shariah compliant microfinance to be implemented by their respective IFIs. Notwithstanding this, they further highlighted other possible limitations that may hinder such implementation, for example, buy in from various stakeholders, alignment with the risk appetite of IFIs and detailed product structure (Table 4).

Table 4: Respondents' feedback on the usage of the principal of cash waqf for microfinancing, benefits and constraints of cash waqf and likelihood of its implementation

Questionnaire	Respondent (%)	
	Yes	No
Q8. From your observation, can cash waqf deposits form an additional source of funds for Shariah compliant microfinance products?	11 (91.7)	1 (8.3)
Q9: Can the principal of cash waqf be used for microfinancing given the nature and risks of microfinance business?	12 (100%)	Nil (0%)
Q11: In your view, what are the benefits and constraints of using cash waqf in microfinancing?		
Cheaper cost of funds	11 (91.7%)	1 (8.3%)
Continuity of funding source	11 (91.7%)	1 (8.3%)
Higher expectation on managing risk in microfinance business	9 (75.0)	3 (25.0)
Q12: Considering the benefits and constraints of cash waqf, would it be likely to be implemented by your institution?	10 (83.3)	2 (16.7)

Contextualisation of the findings

The findings are also compared to the existing key literature to determine similarities or differences of opinion.

Main constraints in undertaking Shariah compliant microfinance

Jackelen et. al (1991), Hulme et al (1996), Bennett (1998), Brown (2001) and Elisabeth (2009) identify major constraints in microfinance offerings such as lack of funding, lack of resources and skills in managing the business, economic non-viability of the business and lack of risk management tools to match the riskiness of microfinance business. The empirical findings of the current study identified "lack of economic viability due to high

administrative costs” as the primary and highest ranked constraint while lack of familiarity and skills in managing the business ranked second. The result contradicts the researcher’s expectation as lack of funding was ranked the lowest constraint since most of the participating IFIs funded their Shariah compliant microfinance programme using their internally generated funds. Despite differences in ranking, the combined effect of these factors have resulted in a limited range of Shariah compliant microfinance products in the market and only a small number of participating IFIs in the microfinance programme. These findings can also be associated with the nascent stage of Shariah compliant microfinance in the market.

General understanding on waqf and cash waqf among Islamic finance practitioners

Shariah compliant microfinance in the domestic market is still in its early stage; hence, it is assumed that the awareness level of Islamic finance practitioners on *waqf* and cash *waqf* would be relatively low. Nevertheless, the results of the questionnaire survey proved otherwise. Generally, the respondents have good understanding of the concept of *waqf*, cash *waqf* and their characteristics as well as the usage and purposes of *waqf* in the context of microfinance business. This study adds another dimension to the existing study by Md Saad and Anuar (2009) as it is able to deduce that from the perspective of Islamic finance practitioners, cash *waqf* is a practical and suitable contract for Shariah compliant microfinance.

Cash waqf is deemed an alternative tool to raise funds for Shariah compliant microfinance

Cash *waqf* presents an alternative tool for raising funds to support microfinance programmes. Underpinned by the concept of preservation of the corpus of *waqf* property, IFIs could be assured of the sustainability and continuity of sources of funding for this business segment, provided prudent investment strategies and good risk management practices are in place.

IFIs are deemed suitable conduits for Shariah compliant microfinance

The result of this study confirms the findings of the research conducted by Jackelen and Rhyne (1991) and also in line with the proposition by Ahmed (2003) that Islamic banks could offer Shariah compliant microfinance in a “win-win” position.

Notwithstanding this, IFIs are faced with challenges of execution. The findings also highlight a number of other issues that could hinder the development and growth of this business segment including: getting stakeholders’ buy-in, changing the mind-sets of the shareholders from absolute maximisation of profit to fulfilling social responsibility, and designing detailed product structures with pricing that suits the needs of the segment and yet creates profits.

Table 5 summarises the hypotheses, findings and decisions respectively.

Table 5: Review of the study

Hypothesis	Finding	Decision
Hypothesis 1: The main constraint in Shariah compliant microfinance offerings is lack of funding.	Lack of economic viability due to high administrative costs is identified as the primary constraint in Shariah compliant microfinance.	Reject H1
Hypothesis 2: General understanding on waqf and cash waqf is low amongst the Islamic finance practitioners.	Islamic finance practitioners have good understanding on the concept of waqf, cash waqf and their characteristics.	Reject H2
Hypothesis 3: Despite the nature and risk of microfinance business, cash waqf is deemed an alternative tool to raise funds for Shariah compliant microfinance given its benefits and advantages.	Findings confirm the hypothesis.	Accept H3
Hypothesis 4: IFIs are deemed suitable vehicles for undertaking Shariah compliant microfinance as they possess the resources to address the sustainability issues of dedicated Islamic MFIs.	Findings confirm the hypothesis.	Accept H4

Conclusion

Microfinance in a Shariah compliant manner is seen as an untapped area of finance, particularly in Malaysia, which could be further explored and developed by the Islamic finance industry in meeting its societal objectives. Since microfinance is commonly associated with high failure rates due to the inherent risk of the business segment and economic non-viability caused by escalating administrative costs, the study at hand explores a possible way to make it feasible under the flagship of Shariah compliant finance.

The main findings of the survey are:

- Firstly, economic non-viability is identified as the major constraint in undertaking Shariah compliant microfinance on top of other constraints such as lack of funding and lack of skills in managing the business;
- Secondly, the level of understanding on the concept of *waqf* and cash *waqf* and their characteristics among the Islamic finance practitioners is good;
- Thirdly, cash *waqf* is deemed an alternative source to raise funds for Shariah compliant microfinance given its benefits and advantages;
- Fourthly, IFIs are deemed suitable conduits for undertaking Shariah compliant microfinance due to the resources available within such established organisations as compared to newly formed Islamic MFIs.

Premised on the abovementioned findings, it can be concluded that cash *waqf* could form an alternative source of funds for Shariah compliant microfinance given its benefits and advantages including cheaper cost of funds from cash *waqf* deposits and continuous funding sources.

Implications for Islamic finance professionals

The study reveals that the awareness level among the industry practitioners on the subject matter is relatively high. It is also observed that the Islamic finance professionals demonstrated keen interest to search for practical and economically viable solutions for Shariah compliant microfinance business. Hence, the industry practitioners are urged to explore possible alternatives to meet the needs of this business segment and at the same time fulfil the societal objectives of Shariah.

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AN INNOVATIVE WAQF MODEL IN ISLAMIC INSURANCE FOR THE HAJJ

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Abstract

The practice of Islamic insurance is known with different names depending on the operators in the respective countries. Regardless of the different names, the concept of Islamic insurance is similar: The practice involves a variety of contracts or agreements between the Islamic insurance provider and the participant. One of the models used is the *waqf* model involving a single or multi contracts to enable a Shariah compliant product or service be offered. *Waqf* is initiated from a good deed in Islam involving the contribution of sums of money or assets called donation by the participants into a *waqf* fund. However, with a slight tweak to the conventional *waqf*, it can be utilised in providing financial protection for pilgrims during hajj. This paper provides an elaborate description of the *waqf* model to be considered by operators for implementation within the confines of Shariah rules. Apart from the benefits provided by the *waqf* model for both Islamic insurance providers and the hajj pilgrims, there is also an assurance of compensation which Islam allows for protection against any untoward events during hajj. A designated *waqf* model to be used in the Islamic insurance industry is put forth here.

Keywords

Islamic insurance, *waqf* model, *takaful*, hajj, insurance, restricted investment

Introduction

Islam is a way of life. It is a religion brought by Prophet Muhammad (PBUH) as the messenger of Allah, the creator of the whole universe. Islam encompasses everything relating to life, humanity, and the economy. The religion permits all economic activities for as long as it is not against the law and principles of Shariah. Islam has provided certain rules and regulations in the conduct of selling and buying, pawning, leasing and renting. One of the economic activities that have caught the attention of many Muslim scholars is insurance. The practice of insurance dates back to a few hundred years and could be traced back to as early as during the era of Prophet Muhammad (PBUH). Today, Islamic insurance is being practiced in countries where most citizens are Muslims not only to improve the countries' economy, but also for the benefit of their people. Insurance is a financial service that involves the participation of many parties. There are the operators (also known as the shareholders) or the *Al-Mudharib*, who are responsible in the management and the operations of the business on behalf of the participants. The other party are the participants, who are the policyholders or *Sahibul-Mal* who wish for protection and enhancement of their financial and economic resources. Two funds are developed from the above association, that is the shareholder's fund to run the business and the participant's fund to pay for compensation when a loss occurs.

Other than the parties who play different roles in Islamic insurance, there are also different models of contracts between the parties being practiced. As the importance of Islamic insurance have been made known and understood by many, it is also very critical that the participants must be made clear on its operations and to be kept away from elements in contradiction with Islam, such as *gharar*

(uncertainty or speculation), *maisir* (gambling) and *riba* (usury). As the alternatives to restricted elements in Islam, there are different models that could be employed in Islamic insurance. However, only one model will be discussed in great length and depth in this paper, which is, the *waqf* model. Utilising this model, the participants need not be worried about being involved in the restricted elements in Islam. To provide a better understanding of what are the restricted elements in Islam, this paper will also discuss the importance of keeping insurance according to Shariah law and an overview of the practice of insurance during early years of Islam. This paper seeks to uncover some of the restricted investment not allowed in Islam.

Islamic insurance

Many Muslim countries such as Malaysia, Pakistan, Iran, and Saudi Arabia have, through their laws and regulations, provided mechanisms to bring relief to their population especially during unsought occurrences. Hijazi (2007) said that it is believed that the acceptance of Islamic alternatives such as Islamic insurance would be prompt and absolute especially in the Muslim countries. In line with that, there are growing numbers of insurance providers offering a range of Islamic insurance products to cater to the needs of the people, especially Muslims. The estimated Islamic insurance market growth in Saudi Arabia, one of the largest Muslim countries was from US\$7 billion to US\$15 billion in 2009, and grew from 31% to 34% during the period of 2010 and 2011 (Islamic Finance News, 2012; Ernst & Young World *Takaful* Report 2012). The statistics of Islamic insurance and *takaful* contributions or Gross Written Premiums in Arab countries (from year 2003-2005) including Saudi Arabia are depicted in Table 1a. More recent statistics for selected countries in South East Asia, the Gulf States and Saudi Arabia is given in Table 1b.

Table 1a: Statistics of Islamic insurance/takaful in Arab countries

THE GULF REGION

Country	GWP in US\$ million			Total (%)		
	2003	2004	2005	2003	2004	2005
Bahrain	11.0	14.5	15.0	0.4%	0.4%	0.3%
Kuwait	42.6	53.6	82.9	1.5%	1.5%	1.4%
Qatar	16.7	24.7	33.6	0.6%	0.7%	0.7%
Saudi Arabia	669.4	646.8	755.6	23.4%	17.9%	17.6%
UAE	16.5	30.6	41.5	0.6%	0.9%	1.0%
GCC Total	756.2	770.2	928.6	26.5%	21.4%	21.1%

OTHER ARAB COUNTRIES

Country	GWP in US\$ million			Total (%)		
	2003	2004	2005	2003	2004	2005
Egypt	2.2	2.5	3.0	0.1%	0.1%	0.1%
Mauritania	0.2	0.4	0.4	0.0%	0.0%	0.0%
Sudan	93.4	130.9	132.6	3.3%	3.7%	3.1%
Jordan	11.6	12.9	14.5	0.4%	0.4%	0.3%
Lebanon	0	0	4.0	0.0%	0.0%	0.1%
Yemen	0.6	0.8	1	0.0%	0.0%	0.0%
Arab countries Total	108	147.5	155.5	3.8%	4.2%	3.6%

Source: WID Statistics the 3rd International Convention on *Takaful* and *Retakaful* in Malaysia 2007

Table 1b: Gross written Islamic insurance/takaful contributions for selected countries

(US\$ Millions)



Source: Ernst & Young World *Takaful* Report 2012

In the past, many Muslim countries' acceptance of Islamic insurance was lukewarm with various reasons cited, including the uncertainty of the elements involved. However, with the reconciliation of many regulatory bodies such as the Islamic Finance Services Board (IFSB), the AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions) and others around the world, the industry's acceptance has grown rapidly in the last decade in many Muslim countries.

Saudi Arabia, the third largest insurance market among Muslim countries in the Middle East and

North African region (MENA), had about US\$530 million in Islamic insurance contributions in 1993 which increased to US\$1,065 million in 2005. In 2010 the country had the largest amount (in comparison with other Takaful markets in the world) at US\$4.3 billion. The growth rate was between 13% to 16% during 1990 to 2005; and in 2011 it increased tremendously, to 34% (Table 2). According to Al-Awarof (2010), the DIFC Authority (Dubai International Financial Centre) noted that Islamic insurance will become one of the main players in the insurance/Takaful market in the world, outpacing conventional ones.

Table 2: Saudi Arabia gross Islamic insurance/takaful contributions growth (US\$ millions)



Source: Ernst & Young World Takaful Report 2012

The introduction as well as the establishment of Islamic insurance or Takaful was inspired by the growing demand of the product by Muslims in general. They demanded for an Islamic insurance protection that conformed to Shariah. In many countries, the insurance industry has become a valuable and necessary tool of the economy with some modifications made in the insurance policy to comply with Islamic law. Islamic insurance, therefore, will be a valuable instrument to be utilised for the growth and expansion of the economy in Muslim countries (Rahmani, 1997). Furthermore, there are real prospects today for the global Islamic insurance to realise the industry's vision and mission.

Risks and types of loss exposures during hajj

One of the five pillars in Islam is the requirement of each Muslim during his lifetime to perform hajj in Makkah, Saudi Arabia. During hajj, millions of pilgrims converge in this city to perform the ritual established since Prophet Ibrahim, *Alaihis Salam*. The Kingdom of Saudi Arabia (KSA) each year receives close to 3 million pilgrims from all over the world and from all walks of life. The Hajj Ministry and the Internal Ministry oversee the whole ritual to ensure pilgrims are safe and secure the moment they are on Saudi soil and until they return to their countries. Despite prior planning and measures taken ahead of the big event in the month of *Zulhijjah*, many untoward events do occur. Statistics of the types of risks are strictly confidential but the author managed to obtain data concerning this large gathering as provided in Table 3 below:

Table 3: Statistics on types of loss exposures during hajj

Year	Deaths	Injuries	Missing
2003	252	252	
2004	n/a	n/a	148
2005	345	n/a	n/a
2006	n/a	n/a	289

Source: *Al-Haramain Al-Sharifain* Institute, Saudi Arabia 1994-2004

Although the respective organisations authorised to look into the welfare of the pilgrims are many, and despite their efforts to ensure pilgrims are well taken care of during their stay, pilgrims are exposed to various kinds of natural and man-made risks. During the mass exodus of the five-day hajj ritual between the cities of Makkah, Mina, Arafah and Muzdalifah, the transportation, food, and other services are put to a rigorous test of efficiency and effectiveness to ensure the pilgrims arrive on time

on the designated dates and be able to perform the rituals according to the prescribed text of the Prophet and Al-Quran.

Many studies (Al-Sagheer, 1999; Alkr'awy, 2000; Badran, 2001; Asfar, 2002; Altras, 2003; Al-Amrym 2005; sources from the King Faisal Specialist Hospital and Research Centre, 2007) conducted during the pilgrimage have identified several loss exposures in Table 5 below.

Table 5: Loss exposures during hajj

Communicable Diseases	Transmitted from: animals, insects, humans during the animal slaughter; bites from dangerous insects, human contact in the places of worship, e.g. bird flu.
Food Contamination	Occurring during preparation, delivery and sale.
Accidents	Due to roads and traffic congestion, carelessness, negligence etc.
Man-made: thefts, rape, assault and battery	Due to defects in human behavior or influenced by Satan.
Crowded situations	Occurring during the conduct of the rituals, Tawaf, Sa'i, Stone Throwing in Mina etc.
Natural hazards: weather related	Due to extreme temperatures, unexpected floods, unnatural occurrences or phenomena e.g. hail storm etc.
Death or disabilities and injuries due to natural causes	Respiratory and heart failure, inherited diseases e.g. diabetes, etc.

The need for Islamic insurance during hajj

Pilgrims are a group of people bound together by a special mission to travel to a destination for the sole purpose of expounding their faith in Islam. Hence the need for some protection is especially great since exposure to the above potential losses is very real. Muslims performing hajj come from all walks of life: rich, poor, educated, uneducated and etc. To recommend some form of financial protection requires some buy-in; therefore, since *waqf* is a form of donation, which is understood by all, the *waqf* model is recommended for operators interested to provide this noble service.

Islamic insurance models

There are different types of contracts being applied by various operators around the world. These are: *mudharabah*, *wakalah*; *ji'alah*; hybrid or combination of two or more. From these contracts, there are different models that are compatible with Shariah being practiced, which are: pure cooperative model, *mudharabah* model, *wakalah* model, combination of *wakalah* and *mudharabah* model, and the *waqf* model.

The models mentioned here differ from conventional insurance. The differences rest in the way the risks are managed and handled, as well as how the Islamic insurance funds are managed. From the five models mentioned above, this paper looked into the operational detail of the last model, i.e. the *waqf* model and how it can be applied to cover risks or potential loss exposures of pilgrims during hajj.

Depiction of the *waqf* model in Islamic insurance

Waqf or endowment is of two types:

- Endowment on certain groups of people: this includes relatives or descendants of the endowers
- *Waqf* on public entities: where it is distributed to the public and not restricted to certain individuals only.

Building the Islamic insurance or *takaful* fund in the form of *waqf*

The *waqf* model involves the concept of *waqf* and *tabarru'* which are incorporated to eliminate *gharar* and gambling elements found in the conventional insurance. *Waqf* is a type of deed when someone

provides or leaves something valuable for the use of many people. In *waqf*, the sense of belonging among the providers is reduced and the sense of sharing is increased. On the other hand, *tabarru'* is an Arabic term for contribution in the form of donation. In Islamic insurance where *tabarru'* is involved, the participants (pilgrims in this case) agree to make a donation to the Islamic insurance fund for the purpose of mutual indemnity. The donation is made to the operator (shareholder), as their agent, known as *wakeel* in Arabic. The contribution is not made for the purpose of creating a commercial-profit driven contract between the participants and the operator, which is known as *mudharabah*. In *tabarru'*, there is no business venture occurring between them, rather a spirit of cooperation and solidarity and helping one another in times of need.

The *takaful* fund consisting of the contributions paid as *tabarru'* will be invested by the operator based on the principle of Islamic modes of trade in which the element of *riba* (interest) will be eliminated.

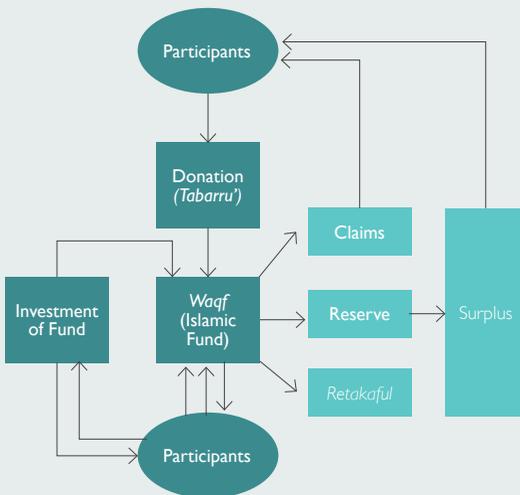
The *takaful* fund is independent from the funds of the operator; but the latter acts as administrator or *wakeel* (agent) managing the fund. To ensure independence of the fund and its sustainability, it should have a legal personality recognised by the system. However, the main problem that may hinder this is the ownership of the fund, i.e. the *waqf* fund belongs to the Almighty.

To overcome this problem, the operator must be allocated a sum of money (seed capital) to create an endowment fund. All pilgrims donate a certain sum to initially build and later accumulate the funds to a sustainable amount on its own. As the fund increases in size, pilgrims faced with the various forms of financial hardship prescribed in the *waqf* documents are paid as compensation to alleviate their suffering.

Residual from the fund that is not used to pay compensation is accumulated and put into reserves for the next round of hajj, for *retakaful* and for management expenses. The bulk of the funds are usually invested to achieve returns from Shariah compliant investments and this will further strengthen the fund for its main objective of taking care of the pilgrims.

Contributions by the participants which are not paid out as compensation are regarded as surplus and channelled back into the fund. The operator is also given sufficient incentives for efficient management of the fund through the returns on investment and management fees. The mechanism and process flow of the whole fund is illustrated in Figure 1 below. The following model or framework (Figure 1) exhibits the process and elements involved in a *waqf* model recommended for hajj.

Figure 1: *Waqf* model - Islamic insurance for hajj



Characteristics of Islamic Insurance

Halal is a term in Arabic that refers to things or actions that conform to Islamic rules and law. It is very important for each Muslim to ensure that their insurance protection complies to the Islamic law. It is more important for the operators to make sure that the service they provide does not go against the same law. Insurance is supposed to benefit not only one person, but a group of participants who make donations to the Islamic insurance fund. As stated in Malaysian Takaful Act 1984, the foundation of *takaful* or Islamic insurance scheme is the value inherent in it, as it creates the feeling of brotherhood among its members. It builds unity and mutual assistance that provide for joint financial aid to the participants in need, where the participants mutually agree to contribute for that purpose. As stated by Ali (2008), the concept of *takaful* involves the elements of mutual protection and responsibility.

Islamic insurance is not meant to deny divine pre-destination (*qada' and qadar*) because, Islam teaches the follower that no one can prevent or change divine destiny. Islamic insurance, on the other hand, is an attempt to reduce or remove the harm and hardship during the occurrence of the pre-destined events. Besides, Islamic insurance eliminates any form of gambling or game of chance. It only involves donors and the compensated recipients who are among the participants. A *waqf* model to be recommended for hajj is in line with the concept of brotherhood in Islam in that the unfortunate hardship of a few is being compensated by many people who are present during this period.

It was also noted that during hajj, many undesirable and unexpected events occur and with the presence of Islamic insurance to alleviate some of the financial burdens during this holy endeavour, it is anticipated that a *waqf takaful* would bring peace of mind to the pilgrims.

There are restrictions on the operations and investments in Islamic insurance. Therefore, the concept of *waqf* is very appropriate as nobody is forced to make donations, nor would anyone lose anything from the donations made. Islamic insurance ensures Shariah compliance not only on the operational structure and management of the company, but also to its investment policy. As the sums placed by the participants are called *waqf* or donation, the operator must avoid investing in traditional fixed-income securities due to the coupon interest payment involved. Instead, they are allowed to invest in *sukuk*, or the Islamic bonds where coupon payments take the form of a profit sharing on a particular enterprise. In addition, stock investments should avoid investments prohibited in Islam such as alcohol or gambling.

Conclusion

The practice of Islamic insurance is varied depending on the operators in different Islamic countries. However, there are similar concepts though they are called by different names. The principle of *takaful* or Islamic insurance is based on mutual co-operation, responsibility, protection, assurance, and assistance between participants and operators. According to Abdalelah and Zaid (2009), it is a type of mutual insurance. With the concept introduced in the *waqf* model, not only will participants or pilgrims receive such benefits, but the shareholders too, as the operator of the Islamic insurance entity or *waqf* fund. They will also get the benefit without taking advantage from the donations made by the participants but through

the proceeds from investments. Pilgrims, who contribute to the fund, sign a form that entitles them to become participants and automatically beneficiaries at the same time.

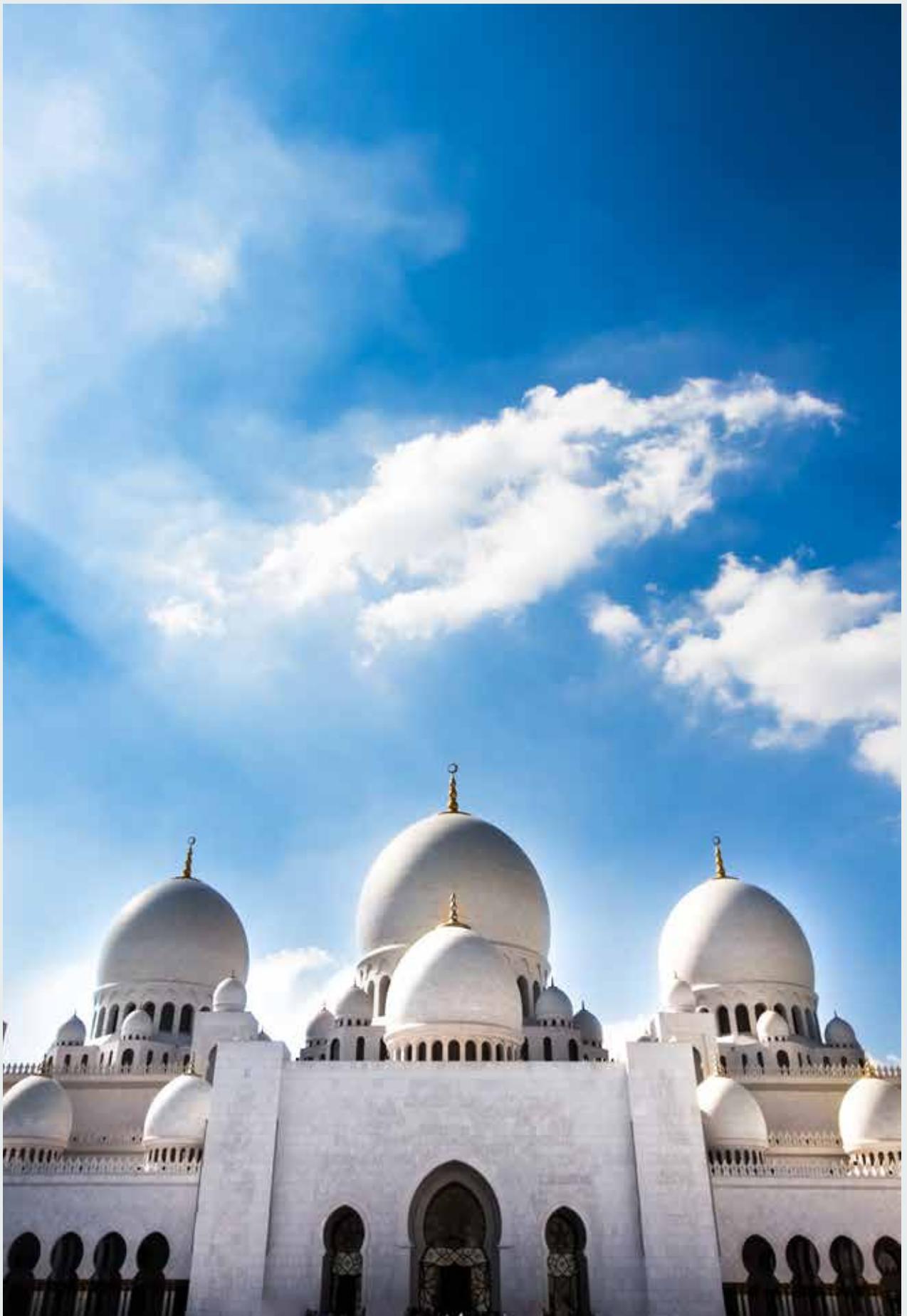
Since the Government of the Kingdom of Saudi Arabia is responsible for the hajj activities, the KSA can also be the legal supervisor to oversee the operations of the *waqf* Islamic insurance fund. Other than the capital provided for by the government or private Islamic insurance operator, the fund is raised by pilgrims' contributions and other legal investments. Most importantly, the fund should eventually reach the participants (pilgrims) during their time of need without outlandish rules and regulations.

As the endowed fund owns all its monies including the contributions and the investment returns, the supervising body of the fund has the right to spend the surplus at the end of the financial year according to the interest and regulations that have been put in place before the fund begins its operations.

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WAQF AND ZAKAH AS SOCIAL SAFETY- NETS FOR POVERTY REDUCTION IN NIGERIA

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Abstract

The purpose of this paper is to explore the viability of *waqf* and *zakah* as social safety nets (SSNs) for poverty reduction in Nigeria. The increasing rates of poverty, unemployment, crime, trafficking in persons and ethno-religious conflicts provide justification for an ethical approach to economic development in Nigeria. In making a case for the two ultra-religious models, the qualitative research method was preferred relying on documentary sources. The information sourced from previous studies, Qur'an, Hadith, working papers, institutional documents and internet resources were critically analysed in relation with the socio-economic situation of Nigeria. The findings indicate that *waqf* and *zakah* models have potential as sustainable social safety nets for poverty reduction in Nigeria where the conventional social security system is failing or non-existent. The paper concludes by urging international development institutions, Islamic organisations and policymakers to explore the potential of *waqf* and *zakah* for delivery of welfare services and public goods to the citizens with a view to fast-tracking economic development.

Keywords

Nigeria, Poverty, Safety-net, *Waqf*, *Zakah*

Introduction

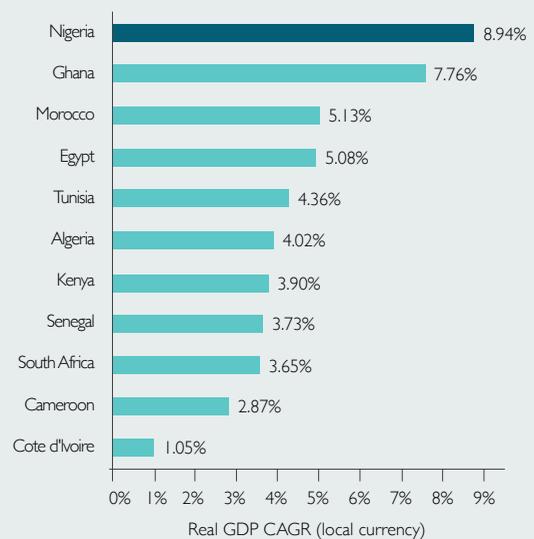
Nigeria is a country with tremendous potential for growth. It has a wide land area supporting thirty-six (36) states and a federal capital territory (Alkali, 2008; Akhueomonkhan et al. 2012). At present, its population is approximately 174.5 million (CIA Factbook, 2013). Geographically, Nigeria is located in West Africa on the Gulf of Guinea with a total area of 923,768 sq km, making it the 32nd largest country in the region. Analysts describe Nigeria as part of the SANE countries (South Africa, Algeria, Nigeria and Egypt) viewed as countries with a combined nominal Gross Domestic Product of US\$613 billion (Kasekende et al., 2006; Oshikoya, 2007). It is also part of the NEKS countries (i.e. Nigeria, Egypt, Kenya and South Africa) described as nations with large untapped market opportunities for foreign investment (Mahajan, 2009). With regards to economic growth indices, Nigeria has a nominal GDP of US\$272.6 billion and per capita income of US\$2,700, which ranks it as 176th among over 228 countries rated (CIA Factbook, 2013).

In spite of the encouraging socio-economic statistics of Nigeria, poverty, unemployment, crime, hostage-taking, kidnapping, human trafficking, debt crisis, ethno-religious conflicts and recently terrorism are social problems that the country is contending with. Poverty in Nigeria is the root cause, while other social ills are mere manifestations of endemic depravation and pauperisation facing the citizens. Development scholars have pointed out that 40% of the world's population are the poor, living on less than US\$2 per day (Todaro and Smith, 2012). Many of the identified poor people are from Muslim Majority Nations (MMNs, henceforth), where 44% of the 1.7 billion people live below the poverty line (The Nation, 2013; Raimi et al., 2014). The poverty rates among the biggest MMNs as reported by Mohsin (2013) are mind-boggling – Pakistan (24%), Afghanistan (53%), Indonesia (18%), Iran (18%), Bangladesh (45%), Sudan (40%), Yemen (45%), Algeria (23%), Egypt (20%) and Nigeria (70%).

Nigeria's poverty rate of 70% is further confirmed by other institutional data (National Bureau of Statistics, 2011; Central Bank of Nigeria, 2011). Nigeria's case is paradoxical because in spite of huge human and material resources the country remains poor! More worrisome is the fact that Nigeria was among the 50 affluent countries in the early 1970s, but in the 2000s, it suddenly became one of the 25 poorest countries among its peers (Igbuzor, 2006). Nigeria's former President Olusegun Obasanjo attributed this to the economic policies in the country, linking it to "the pursuit of a high growth rate in statistical terms" but failing to practically alleviate the social and economic deprivation facing large segments of the people (IMF, 2004:29).

Nigeria is not a poor country when its GDP growth rate is compared with those of other countries at the same level of development (see Figure 1), but the citizens have to contend with poverty caused by institutionalised corruption, ineptitude, greed, impiety, poor economic planning, self-conceit and diminishing value for the wellbeing of fellow humans.

Figure 1: GDP growth rate of eleven countries in Africa



Source: Pyramid Research (2010:22)

Factors precipitating poverty range from political issues to economic policies, social problems and cultural practices (Carney, 1992). In Nigeria and some African countries, there is a poverty-terrorism link. The Jama'atu Ahlis Sunnah Lidda'awati Wal-Jihad (People Committed to the Propagation of the Prophet's Teachings and Jihad) or Boko Haram sect emerged fighting for the introduction of Shariah law in northern Nigeria on the pretext that western-styled governance brought 'poverty and suffering' to the people in the region (Okpaga, Chijioke and Eme, 2012:82). Even though the intentions of the Boko Haram sect are misguided and diversionary, the literature did establish that poverty is linked to counter-productive governance policies, income inequality, unfulfilled citizens' expectations, backward culture, harsh climate, gender-related issues and constraint of markets (Khan, 2001; Carvalho, 2009; Raimi et al, 2013a). Similarly, the poverty-terrorism link has been identified in Somalia, where heterogeneous Islamic groups are fighting to establish Islamic rule because of what they describe as inefficient western governance (Baadiyoow, 2013).

Beyond violence, the scourge of poverty has forced many Nigerians into the illicit trade in persons called human trafficking (Raimi, 2012). Komolafe (2004) noted that Nigeria combines three elements of trafficking in persons; it is the source, a transit nation and a destination country for victims of illicit trade in persons. From Nigeria, victims of trafficking enticed with the promises of employment and better lifestyle abroad, are trafficked to Europe, the Middle East and other countries as forced labour, domestic servants and sexual workers (Raimi, 2012). From the watchdog agency, it was reported that the victims are forced to work long hours in food canteens as cooks, beer-attendants and waiters in hotels. In some instances, they become domestic servants

in people's homes and at times they are forced to work in illegal underground mines. The plight of trafficked women and girls is pathetic; they are taken to Italy, Russia, Middle East, Libya, Morocco and etc., where they are forced into the sex trade (Trafficking in Persons Report, 2010). Had *waqf* and *zakah* funds been in place, these dehumanised and debased Nigerians suffering the pangs of poverty would have been empowered irrespective of their religious and ideological beliefs.

This paper is premised on two specific objectives. The first objective is to make a case for the adoption of *waqf* and *zakah* models as sustainable social safety nets for tackling poverty and for the provision of public goods in Nigeria. The second is to propose a framework for its implementation in Nigeria. Apart from the introduction, this paper is divided into six parts. Part 1 gives an overview of poverty reduction efforts in Nigeria. Part 2 explores the literature for scholarly insights into the meanings of *waqf* and *zakah* and their legal structure. Part 3 provides theoretical grounding for *waqf* and *zakah* from the 'Theory of Revivalism and Faith-Based Model'. Part 4 develops a framework for implementation of *waqf* and *zakah* in Nigeria. Part 5 highlights the likely challenges to effective implementation. Part 6 concludes with research implications and contributions. With regards to methodology, this paper adopts a qualitative research method relying on secondary data sourced from previous scholarly works, working papers, institutional publications and relevant internet resources. The data were critically analysed. The findings that emerged from this analysis of Nigeria's socio-economic challenges provide the basis for adoption of *waqf* as a sustainable social safety net for poverty reduction in Nigeria. This conclusion is consistent with other research findings. (Mobolaji, 2012; Raimi, 2012; Raimi et al; 2013).

Part I: Overview of poverty reduction efforts in Nigeria

Looking at the socio-economic statistics presented above, a fundamental question that readily comes to mind is: Was there no attempt made in the past by the Nigerian Government to tackle poverty? Indeed, attempts to reduce poverty have consistently occupied the attention of the Nigerian government for several decades. In a Spatio-temporal analysis of Nigeria's economic development plans, Raimi et al., (2013) identified the following as some of the intervention programmes of the government which targeted poverty-reduction, job creation and wealth creation as key policy objectives.

- First National Development Plan (1962 to 1968) was designed to enhance welfare of the citizens and accelerate economic development;
- Second National Development Plan (1970-1974) featured Nigerian Enterprise Promotion Decree (1972) designed to create indigenous entrepreneurs thereby improving welfare, promoting self-reliance and tackling dependency poverty syndrome;
- Indigenisation Decree (1977) was a law enacted to increase participation of Nigerians in ownership of multinational companies;
- Third National Development Plan (1975-1980). Its components included the River Basin Development Authorities established to accelerate agriculture and rural development; Import Substitution Strategy, National Accelerated Food Production Programme, Nigerian Agricultural Cooperative Bank and Operation Feed the Nation;
- Fourth National Development Plan (1981-1985). Like the third plan above, its components included the River Basin Development Authorities, the Green Revolution and the Go-Back-To-Land Programme. All three schemes were farming intervention programmes created with the aim of boosting agricultural output;
- Era of Perspective Rolling Plans (1986-1999). Features of this Plan included: the establishment of the Directorate of Food, Roads and Rural Infrastructure, the National Agricultural Land Development Authority, the National Directorate of Employment, and the Better Life for Rural Women project;
- Structural Adjustment Programme (1986). This was one of the IMF's prescriptions for revamping the Nigerian economy. It was designed to block leakages in the economy and make the economy productive;
- The Vision 2010 Blueprint (1996). Its core elements included: Family Economic Advancement Programme, Family Support Programme and Petroleum Trust fund;
- Millennium Development Goals (2000). This was a UN agenda to which Nigeria was a signatory. Eight issues were targeted by MDGs including poverty eradication;
- National Economic Empowerment and Development Strategy (2004). Its policy objectives included: wealth creation, poverty reduction, value-re-orientation etc.;
- National Poverty Eradication Programme (2004). This was a well-funded organ of the government given the mandate to formulate and implement poverty reduction programmes;
- Microfinance Banking in Nigeria (2005). This was established to assist poor artisan and poverty-stricken petty traders improve their business and quality of life;
- The 7- Point Agenda (2007-2010). This was a comprehensive blueprint with job creation, wealth creation and poverty reduction as key focuses.
- The Vision 20:2020 Economic Blueprint (2009). This is an ongoing blueprint with the vision of making Nigeria one of the biggest economies by the year 2020.
- Economic Transformation Agenda (2011 to 2015). Its essential elements included: the Youth Enterprise with Innovation in Nigeria (You Win) Programme (2011), Subsidy Reinvestment

& Empowerment Programme or SURE-P (2012) and National Enterprise Development Programme or NEDEP (2013).

In spite of the laudable objectives of the intervention programmes briefly discussed above, they have been rendered ineffective by institutionalised corruption, poor implementation, ad hoc nature of the programmes and obvious bad governance (Young, 1999; Ukah, 2007; Raimi et al., 2010; Raimi et al., 2014). Apart from reasons advanced above, a stronger reason is lack of ethical consideration in policy formulation and implementation. In other words, there was no attempt to explore faith-based options in economic development. Non-inclusiveness of religious ethics in economic planning has always sabotaged the laudable objectives of most poverty reduction efforts of the government. Therefore, *waqf* and *zakah* have been proposed as viable models in Nigeria.

Part 2: Review of Literature

The *waqf*: forms and legal structure

For better understanding of the *waqf* model in Nigeria, it is imperative to explain its meaning, forms, beneficiaries and legal structure. According to Cizacka (1997), the term *waqf* (or *awqaf*, in plural) literarily means causing something to come to a halt or a stand-still, while technically it means dedication of privately-owned assets or physical property by a pious individual as a charitable endowment/foundation for perpetual use by the heterogeneous public (Muslims and non-Muslims). Similarly, Raimi et al., (2014) conceptualised *waqf* as dedication of assets as endowment or foundation by the legal owners purposely to provide free relief services to the vulnerable members of the society in fulfilment of a religious obligation. It could also be viewed as a “religious endowment, a property giving revenue, as regulated by Islamic law” (Saduman and Aysun, 2009:272).

The role of *waqf* is multidimensional and covers public goods, semi-public goods and social services. The international development agencies like UN-HABITAT (2005) acknowledged the potential of *waqf* in the contemporary times as a mechanism for welfare enhancement, funding channel for civil society organisation/NGOs for implementing their welfare agenda, wealth distribution tool, and template for improving the status of women in poverty ridden societies. Similarly, Hoexter et al., (2002) identified the role of *waqf* in bridging the urban gap between the rich and the poor in theory and practice as evidenced by several public endowments in Muslim countries which owe their origin to the *waqf* system of the classical era. The impactful role of *waqf* in Muslim societies is therefore linked to its potency as a mechanism for effective delivery of public goods, which are ‘non-excludable and non-rival’ to beneficiaries in strict adherence to the directives of the dedicator or *waqif* (Kuran, 2001).

Waqf can be a gift of money, estates/land property and other valuable items dedicated fully to charity. The gift could be monetised as a leasing facility for the purpose of earning sustainable income but cannot be sold. Agricultural produce and crops harvested from a field held as *waqf* could be sold and the proceeds distributed as charity, while the field itself is held intact as the original investment (Doi, 1990; Raimi et al., 2010). Imam Sha’fi and Imam Malik viewed *waqf* “as the extinction of the appropriator’s ownership in a property/asset dedicated and the detention of the property/asset in the ownership of Allah, in such a manner that its profits should be made use of for good of mankind from beginning to the end” (Raimi et al., 2010:132).

With regards to its legal structure, *waqf* is supported by Islamic family laws of inheritance, wills and gifts which gives the owners of the property the right to give out as much as he/she wills while alive. Once the property owners dedicate certain

assets, estates or land as *waqf*, a legal structure is established and recognised. Added to this is the declaration that the dedicated property be used permanently for specific purposes (UN-Habitat, 2005). Furthermore, Kuran (2003:12) explained that a *waqf* is presumed to have been established when immovable private property is given out as “an endowment to support any social service permissible under Islamic law.” These facilities could be a school, an orphanage, a clinic, a mosque, a lighthouse, a water supply outlet etc. The target end-users include Muslims and non-Muslims. A popular hadith provides further clarity on the unending benefit of *waqf* in Islam. In Sahih Muslim, it is stated that:

Abu Hurairah (Allah be pleased with him) narrated that: Allah’s Messenger (Peace be upon him) said: “When a man dies, his deeds come to an end except for three: a continuous charity (Sadaqatun Jariyatun); knowledge by which people derive benefit; and pious son who prays for him” (Sahih Muslim, Hadith 14, Bab 3).

Waqf from the above-quoted hadith fits into a continuous charity because all the dedicated assets earn the dedicators continuous good deeds after death. It is this understanding that motivates the Muslims to embrace this religious social-welfare institution.

The second legal structure is clarity on the forms of *waqf* and/or the intended beneficiaries. There are two forms of *waqf* with distinct beneficiaries in the literature, namely: *Waqf al-Ahli* or private/family endowment and *Waqf al-Khayri* or general endowment (Doi, 1990; Raimi et al. 2010; Raimi et al., 2013; UN-Habitat, 2005). The main distinction between the two forms is the intended beneficiaries. *Waqf al-Ahli* is a family endowment whose usage and income therefrom are strictly for the family and relatives of the dedicator. This type

is a social security for family members and near relatives of the dedicator (*waqif*).

Waqf al-Khayri on the other hand is the general endowment established for the poor, widows, orphans and disadvantaged members of the society (Raimi et al., 2013; Raimi et al., 2014).

The third legal structure is the nature of items being entrusted or endowed. The facilities for *awqaf* (endowments) are usually immovable assets like land, estates and related property; they are the best because they have likelihood of permanence and security in line with the principle of continuous charity when compared with movable assets like books, utensils, machines and furniture as well as farm equipment including animals (Cizakca, 1997; Kuran, 2003; Saduman and Aysun, 2009). Cash donations as *waqf* were approved during the Ottoman era for empowerment and settlement of debts for the poor (UN-Habitat, 2005).

The final legal structure of *waqf* is the administration of the endowments. In other words, identifying who qualifies to manage, control and account for the facilities. In Islamic law, the manager with the roles identified above is called *mutawalli* or *nazir* (Cizakca, 1997). The mandate is for the manager to administer, control and account for the facilities under his custody in accordance with the terms of the deed which set it up, particularly its charitable purposes, and according to the general expected standards of behaviour and values within Islam (UN-Habitat, 2005:9).

The zakah: legal structure and impact

Zakah is a divine obligation enjoined on wealthy Muslims by God. When viewed from the perspective of modern fiscal practice, it could be described as a taxation hinged on worship (Murtuza and Ghazanfar, 1998). According to Hassan and Ashraf (2010), *zakah* is a compulsory charity with fixed rates instituted as a redistributive mechanism for meeting the welfare needs of eight

categories of beneficiaries. When broadly viewed, it is one of the initiatives for poverty alleviation in the society. Similarly, Raimi et al., (2014) described *zakah* as a compulsory levy imposed on wealthy Muslims and payable at the rate of 2.5% from taxable wealth (*nisab*) benchmarked by Islamic law at 20 dinar or 200 dirham. In short, it is obvious that *zakah* is a fundamental obligation in Islam premised on the principle that financially capable Muslims provide assistance to the poor based on defined assessment, collection and disbursement procedures.

The importance of *zakah* is well documented in the literature. Firstly, it has been mentioned by Allah along with *salat* (five daily prayers) in eighty-two verses in the Glorious Qur'an (Adebayo, 2008). With specific reference to Qur'an Chapter 9 verse 60, Allah instituted *zakah* and defined the categories of beneficiaries (Raimi et al., 2010). Secondly, a functional *zakah* has the potential to increase government revenue from taxation which if effectively utilised would increase the level of productivity, employment and output in the economy (Hassan and Khan, 2007).

Like the *waqf* discussed earlier, a functional *zakah* has a legal structure from the Qur'an and the Sunnah. The textual reference that provides legal structure for *zakah* in Islam is contained in the statement of Allah that:

“The zakah are only for the fuqaraa’ (poor), and the masaakeen (the needy) and those employed to collect (the funds); and for bringing hearts together (for Islam); and to free the captives; and for those in debt; and for Allah’s Cause, and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise”
[Qur’an 9:60]

Similarly, Allah instructs:

“Take Sadaqah (alms) from their wealth in order to purify them and sanctify them with it, and invoke Allah for them”
[Qur’an 9:103].

From the Sunnah, the following are exhortations on *zakah*:

Narrated Abu Huraira: Allah’s Apostle said, “Whoever is made wealthy by Allah and does not pay the Zakah of his wealth, then on the Day of Resurrection his wealth will be made like a bald-headed poisonous male snake with two black spots over the eyes. The snake will encircle his neck and bite his cheeks and say, ‘I am your wealth, I am your treasure.’” Then the Prophet recited the holy verses: “And let not those who [greedily] withhold what Allah has given them of His bounty ever think that it is better for them. Rather, it is worse for them. Their necks will be encircled by what they withheld on the Day of Resurrection. And to Allah belongs the heritage of the heavens and the earth. And Allah, with what you do, is fully acquainted.” Al-Qur’an 3:180 (Sahih Bukhari: Book 2, Volume 24, Hadith 486).

With such strong edicts from the Qur'an and the Sunnah, it is clear that poverty alleviation is the cardinal focus of *zakah* because five out of the eight channels of *zakah* disbursement are linked to poverty reduction, namely: the poor, the needy, the debtors, the slaves in captivity and the travellers in need; the other three channels focus on administrative issues (Hassan and Ashraf, 2010). The contemporary relevance of *zakah* for poverty alleviation and bridging income inequality is not in doubt as evident by several articles on this

neglected but potent pillar of Islam. The next focus should be on *zakah* development and modality for its integration into economic policy of government (Beik and Arsyianti, 2013).

The impact of a well-coordinated *zakah* system is remarkable; Hafidhuddin and Beik (2012) reported that total *zakah*, charity and donation collected in Indonesia for 2011 was Rp. 1,729 trillion. For *zakah* to achieve all the lofty socio-economic roles stipulated above, including poverty reduction; there is need for regulations and guidelines. One, there is need for macroeconomic policies that enhance growth and also redistribute income to eliminate poverty. Two, *zakah* funds should be meaningful and impactful in tackling poverty and associated ills when the proceeds are deployed. Three, a sound governance structure must be in place for coordinated collection, disbursement and accountability (Ahmed, 2004; Huda, et al., 2014; Raimi et al., 2014).

Part 3: Theoretical Framework

The theological basis of *waqf* in Islamic law is not in doubt. It is a model which has survived centuries of relevance, decadence and reinvigoration (Baskan, 2002; Cizakca, 1997; Kuran, 2001). The two theories that provide the basis for the reinvention of a *waqf* in the contemporary context are: Theory of Islamic Revivalism and Faith-Based Model. The work of Jean-Paul Carvalho chronicles the transition of Muslims from pure elitism to Islamic orthodoxy (Carvalho 2009). In his work titled 'A Theory of The Islamic Revival', he argues that hitherto, religion was seen as a private affair. But Muslims across the globe are returning to the fundamentals of Islam, a trend which is evident judging by increasing participation of young and old in religious activities and preference for ethical values, lifestyles and traditions. Hitherto, an average Muslim saw religion as a private affair limited to the mosque, but this narrow perspective is changing. The shift from a liberal attitude on religion to sudden acceptance of

Islam as the viable solution to socio-economic and political issues facing Muslims is linked to poverty and depravation. Faced with hopelessness, a return to the orthodoxy or fundamentals of Islamic religion was viewed as a viable option (Carvalho, 2009). There are other theories of revivalism apart from Carvalho's. These include church-sect theory, cultural crisis theory, anti-cultural theory, counter-culture theory, depravation theory and Maududian affirmative interpretation of Islamic revivalism (Ali, 2012).

Maududian affirmative Islamic revivalism (Maududian theory, henceforth) lends credence to *waqf* and provides explanations for why people advocate Islamic options for socio-economic and political issues currently emerging in the Muslim World. According to Ali (2012), Maududian theory asserts that Muslims are motivated to revive their religion guided by the provisions of the Qur'an and the Sunnah. To sum up the implications of both theories of revivalism: the meaning deduced is that Islamic revivalism is a reaction to certain issues found undesirable, unethical and repulsive in society. These include: (a) negative onslaught of modernity and secularism on religion, (b) unfulfilled aspirations of the citizens and (c) increasing level of impoverishment/income inequality. Therefore there is a need among the people for a paradigm shift. The best option is to revive age-long Islamic practices and models. The theories of revivalism, when applied to the discourse on *waqf*, presumes that *waqf* as an ethical endowment is a positive development which emerges to bridge the gap created by failing public welfare programmes and social security systems. Revivalism has spurred the Muslims across the globe to develop preferences for ethical models, processes, economics, investments, products and services. They are careful about what type of investment they put their money; they are selective on the choice of school to enrol their children in and where they receive medical treatment. In essence, all social engagements of individuals and corporations are viewed with Islamic lenses.

Faith-based model

Faith-based model (FBM) is simply a discourse of the religious-oriented framework of Islamic Economics and its potential for enhancing the wellbeing of the people (Raimi and Mobolaji, 2008; Raimi et al., 2014). From another perspective, FBM is described as an intervention mechanism for complementing 'contemporary poverty reduction strategies (PRS) in use in many poverty-ridden nations where economic indicators have verified prevalence of poverty' in spite of the strategies directed at tackling the scourge (Raimi, Bello and Mobolaji, 2010:124). FBM is also a philosophy that all economic, social and political issues have solutions in Islam. Mobolaji (2012), appreciative of the strength on FBM, argued that corruption in Nigeria could be tackled using Islamic economic principles to augment the conventional approach. The basic argument of FBM is that Prophet Muhammad (PBUH) adhering to divine directives tackled poverty and other social ills using faith-based mechanisms. Some of Islam's monetary and fiscal mechanisms for maintaining social security and economic balance in the society include *baitul mal* (Islamic treasury), *zakah* fund (wealth accumulated from the annual obligatory tax paid by rich Muslims), *sadaqah* fund (wealth accumulated from voluntary tax paid by Muslims), *waqf* (immovable assets dedicated as endowment), *hibah* (assorted gift items), *jizyay* (wealth accumulated from annual obligatory tax paid by non-Muslims resident in Islamic states), *kharaj* (wealth accumulated from tax paid on produce for non-Muslims) and *'ushr* (wealth accumulated from tax on produce of the land paid by the Muslims (Doi, 1990; Raimi et al. 2011; Raimi et al, 2013).

Part 4: Framework for implementation of waqf and zakah

As argued earlier, *waqf* and *zakah* have potential to complement and augment public sector programmes and social security systems for poverty

reduction in pragmatic ways. The model would be useful for social services at the communal level and for complementing Nigeria's drive towards the actualisation of the Millennium Development Goals 1-8 MDGs. As earlier discussed, there is a template on which the proposed *waqf* and *zakah* models could be built.

The *Zakat* and *Sadat* Foundation in Nigeria is a case study. The Foundation came into existence in 2000, but was officially incorporated as a registered body with the Corporate Affairs Commission in Nigeria in 2006 to provide socio-economic and spiritual services to less-privileged people (Islamonline, 2014). The Foundation has core expertise in *zakah* collection and administration as evident by its antecedents. It went into partnership with a local government for construction of three boreholes powered with a 3.5KVA generator for the Migbewe Community in Makoko, Lagos, Nigeria (Yaba LCDA, 2012).

In 2012, it distributed N35 million *zakah* funds to over 180 beneficiaries in Nigeria, while in 2013, the Foundation distributed *zakah* funds of N41 million to the needy and less-privileged (National Mirror, 2013). In early 2014, the Foundation officially opened its Baytuz Zakat (Zakat House) and subsequently distributed empowerment materials and cheques worth N84 million to disadvantaged Nigerians. The materials included tricycles for empowerment, deep freezers for women empowerment, complete computer sets for schools/students in higher institutions, complete mechanical tools for artisans, wheel chairs for the physically challenged, washing machines for empowerment, shoe-making machines for empowerment, sewing machines for women empowerment, photocopier machines for schools, while cheques were issued to support the beneficiaries in the areas of education, health, welfare, debt relief and accommodation (Vanguards, 2014; National Mirror, 2014). There are other notable *zakah* foundations/Muslim relief

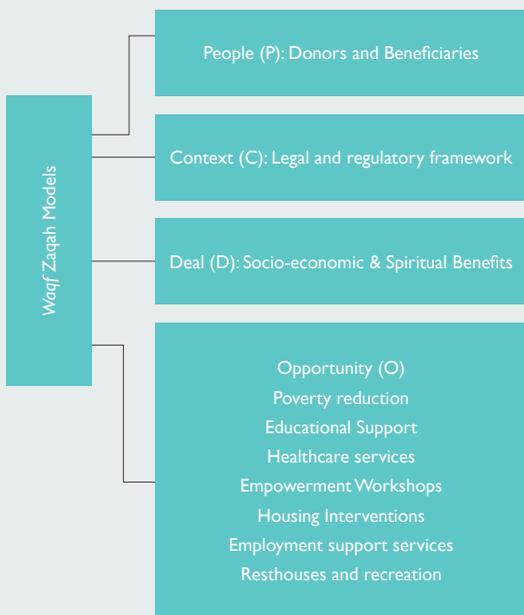
organs like Muslim Welfare Fund (MUWELF), NASFAT Zakat Committee, the Muslim Alumni of University of Lagos which focused on human capital development through scholarships for indigent Muslims etc.

On the template already built by ZSF and other Islamic organisations, the operational modality of the *waqf* and *zakah* models is premised on People-Context-Deal-Opportunity (PCDO) framework. Sahlman (1996:138) developed PCDO as a tool for effective management of human and material resources by entrepreneurial managers. PCDO is a four-dimensional acronym for people (P), context (C), deal (D) and opportunity (O). The four dimensions have mutually reinforcing relationships (Austin, Stevenson and Weiskillern, 2006). For better understanding, Teo and Tan (2013), describe the PCDO analytical framework as a management-focused model of entrepreneurship, which emphasises that entrepreneurial managers must recognise and acknowledge the interdependency of people, context, deal and opportunity in all situations. Since the proposed *waqf* and *zakah* models fall within the realm of social entrepreneurship, the PCDO is clearly viable. The adaptation of PCDO and further explanations are discussed below:

- Within the *waqf* and *zakah* model, the People (P) are the donors and the recipients of social services. The donors are the wealthy individuals, who pay *zakah*, *sadaqah* as well as dedicate their movable and immovable assets as endowment for providing public goods for the society, while the beneficiaries are the vulnerable, the poor and the less privileged (the recipients).
- Context refers to environmental factors beyond the control of the entrepreneurial managers, which make or mar operational performance. Context fits the legal and regulatory issues within

a business's operating environment. Within the *waqf* and *zakah* models, a context would refer to the legal and regulatory framework that governments would provide for these models to work. There are two frameworks, the first is the Islamic law and the second is the enabling legal backing for Islamic welfare funds (*waqf*, *zakah*) in Nigeria. Islamic banking and insurance in Nigeria operate with legal frameworks.

- Deal refers to the socio-economic and spiritual benefits that bring the donors and beneficiaries together within the social contracts perspective. In social entrepreneurship, Austin et al., (2006:5) identify components of a deal as "economic benefits, social recognition, autonomy and decision rights, satisfaction of deep personal needs, social interactions, fulfilment of generative and legacy desires, and delivery on altruistic goals." To the payers of *zakah* and donors of endowed assets, the deal is the continuous blessings from Allah as well as worldly benefits like enhanced status in the society and recognition from the people and the governments. The deal for the beneficiaries includes economic empowerment, social security, improved quality of life, poverty reduction and fulfilment of their basic needs.
- Opportunity within the PCDO framework connotes "any activity requiring the investment of scarce resources in hopes of a future return." The opportunity with the *waqf* and *zakah* models refer to activities that *waqf* and *zakah* funds could be used for. This includes the following: building hospitals for sick people, workshop and land space for those with creative ideas but lacking resources, development of clusters for small business, building modern incubation centres, assisting with micro-capital as start-up or expansion support capital, enhancing managerial know-how of small businesses etc. Others are endowment of schools, pipe-borne water, library, public toilets, housing, and construction resource centres for the unemployed.



Source: Adapted from Sahlman (1996)

Part 5: Challenges of Waqf and Zakah Models

As private projects, presently being undertaken by several Islamic organisations, charities and relief agencies, the proposed *waqf* and *zakah* models pose no challenge with regards to acceptance and implementation. However, as a complementary economic policy instrument for government, the main challenge is Islamophobia – fear by non-Muslims of Islamic models. The same Islamophobic reaction greeted the introduction of Islamic financial system (IFS) by the central bank of Nigeria, as some elements created unhealthy media debates and hair splitting controversies. It took a while with debates, education and sensitisation before the tension subsided. (Raimi et al, 2013b).

However, partnerships with the government by private Islamic welfare organisations is obviously the most effective means of ensuring optimal impact of *zakah* and *waqf* on poverty reduction.

This type of public-private partnership was tried out in Sudan in 1990; when the National Islamic Front government partnered with Islamic NGOs for better welfare enhancement in two ways, namely: Al-Tamkin and Al-Takaful. Al-Tamkin was an empowerment programme for Muslim minorities in regions like South Sudan and the Nuba Mountains, while the Al-Takaful scheme was a government initiative where a proportion of *zakah* in the custody of government was set aside as social solidarity fund which was distributed among Islamic NGOs to augment their *zakah* fund and boost their capacity to assist the poor people. Another funding source for Al-Takaful was distribution of a proportion of *waqf* revenue under the control of the government to the Muslim NGOs for further re-distribution to Muslim beneficiaries (Salih, 2002).

The second challenge of the proposed models is recognition by government and approval of a regulatory framework for *zakah* and *waqf* operations beyond the private initiatives. The upsurge in terrorism and emergence of militant groups with hidden sources of funding has put Islamic funds under suspicion. For instance, Manjoo (2008) reports that in South Africa, post September 9/11 legislation has made *zakah* and *waqf* integration difficult within the framework of microfinance at the informal level. Over a decade ago, Salihu (2002:2) wrote on the challenges facing Islamic NGOs:

“Not all African states have tolerated the emergence of independent voluntary associations, operating outside the state-sanctioned domains, particularly in development, which was seen as the monopoly of the state. In severely divided African societies, the state perceived the emergence of NGOs as a negation of the state-centred development hailed as the foundation stone of nation-building projects.”

From the perspective of the practitioner, Islamic welfare funds in the forms of *zakah*, *sadaqah* and *waqf* face myriad challenges. One, is the lukewarm attitude of wealthy Muslims towards payment of *zakah* when due. The *zakah* payers prefer self-assessment of their wealth in order to prevent third parties from knowing their real net wealth. Consequently, the amounts paid as *zakah* are often based on gross misreporting. Two, fund mobilisation for Islamic welfare services require sustained sensitisation, education and awareness campaigns on mass media like Radio, TV and print media, but the financial burden for this is enormous. Three, there is paucity of expertise on the management and administration of Islamic welfare funds (*zakah*, *sadaqah* and *waqf*). A dearth of professionals has limited the scope of collection, disbursement and management. The option of building the needed human capital is also very expensive. Four, poverty and moral corruption have encouraged fraudulent collection of Islamic welfare funds and their utilisation for different purposes. Fifth, there is impatience on the part of beneficiaries who are unaware that due diligence have to be taken before social services are rendered or funds released to genuine beneficiaries. The sixth challenge relates to compliance with the enabling tax regulations, procedure for money transfer and money laundering laws prevailing in a country (Islamonline Interviews, 2014; Manjoo, 2008; Obaidullah et al., 2008). With more research and consistent advocacy the challenges are surmountable.

Part 6: Conclusion/Implication/Contributions

The purpose of this paper is to investigate the possibility of adopting *waqf* and *zakah* models as sustainable social safety nets for poverty reduction in Nigeria. After critical analysis of the potential of *waqf* and *zakah* models in relation to the socio-economic challenges in Nigeria, it was found that both models are viable sustainable social safety

nets for poverty alleviation. This paper therefore attempts to contribute to the theory and practice of *waqf* and *zakah* models in a number of ways. One, the paper has situated *waqf* and *zakah* models within the realm of economic policy instruments for complementing conventional policy instruments. Secondly, the paper has provided operational framework for the implementation of the two models by adapting Sahlman's PCDO framework. This paper is just a preliminary study. Certainly, much more research needs to be conducted on the viability of the *waqf* and *zakah* models as well as the PCDO framework.

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EXPLORING POTENTIAL CASH WAQF CONTRIBUTION AMONG LOW INCOME GROUP IN MALAYSIA

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Abstract

Cash *waqf* is a trust fund established with money to support services for mankind's benefit in the name of Allah. The gifted capital is "transferred" to borrowers for a certain period, which is then spent for all sorts of pious and social purposes inclusive of investment objectives. It is recognised that there is a scarcity of research in the area of cash *waqf* especially for managing the *waqf* fund. Therefore, studies on the management of cash *waqf* is essential in order for the fund to be used efficiently. The objective of this article is to explore the relationship between income level and mode of contribution of cash *waqf* funds as well as the appointment of Islamic *waqf* banks as agents in collecting the funds. The methodology of this research is a quantitative research involving 231 respondents among Muslims in this country. The general finding of this article is that, with proper contribution methods and the appointment of Islamic *waqf* banks as agents in collecting cash *waqf* funds, there is a strong reason to believe that the Islamic *waqf* bank's operation will be run effectively and the aims in financing will be achieved.

Keywords

cash *waqf*, Islamic *waqf* bank, *Waqf*

Introduction

Cash *waqf* is a far more important type of *waqf* since it is more productive than land, buildings, books, cattle etc. This conclusion is supported by a number of research findings which confirm its profitability in the modern Islamic financial system. However, it must be emphasised that in cash *waqf*, the amount or value of the *waqf* is not a crucial issue. Rather, what is pivotal is its capacity to involve the whole Ummah in the process of *waqf* so that everyone, irrespective of financial standing, can be involved by contributing as little as one cent. Whether it is initiated by governments or private bodies, so long as it is conducted within the prescribed systems and in line with the guidelines for institutionalising the concept, everyone is entitled to participate. Thus it is not the sole preserve of the wealthy (Chowdhury et.al, 2011).

Many Muslims have doubts about cash *waqf* because of the wrong perception that *waqf* endowments should be restricted to land. The belief is that only land can fulfil the three conditions of *waqf*: perpetuity, irrevocability and inalienability. However, land assets may be subject to demolition, destruction due to natural calamity, and the *waqf* will cease to exist once its value is lost (Mohammad, 2008). Through proper cash *waqf* management, it is certainly possible to maintain and even enhance its value. Furthermore, those who do not have land can participate by contributing to cash *waqf*. Thus today people have more choices through inclusion of cash *waqf* as an option. Although there has been some controversy on the legality of cash *waqf* among Muslim scholars, this has not prevented the establishment of thousands of cash *waqfs*. It is noteworthy that cash *awqaf* received support from the Ottoman Sultans, who used these funds to finance the expansion of Islam in Europe (Cizakca, 2004, 2010).

The word *waqf* is derived from the Arabic root verb “*waqafa*” meaning ‘causing a thing to stop

and stand still’. It also means ‘detention’, ‘holding’ or keeping. *Waqf* (pl. *awqaf*) is called *Boniyad* in Iran and *habs* (pl. *Ahbas*) in North and West Africa. By taking its different meanings into consideration, *waqf* can be applied to non-perishable property whose benefit is extracted without consuming the property itself. Although *waqf* is not specifically mentioned in the Holy Quran, the concept of wealth distribution is strongly emphasised therein (Chowdhury et.al., 2011).

In fact, in the Quran, there are many verses which discuss and encourage Muslims to donate and give charity such as in Surah al-Baqarah (2: 261), al-Baqarah (2: 271), Ali Imran (3: 92), Ali Imran (3: 134), al-Lail (92: 18-21) and al-Hadid (57: 18) (Muhammad Ridhwan Ab. Aziz et al., 2014). Distribution of wealth is a key issue in the modern economy to make it more dynamic, prejudice free and entrepreneurial.

However, a hadith quoted by Abu Hurairah [may Allah be pleased with him (Ra)] is considered as the origin of this institution in the world of Islam. “Abu Hurairah (Ra) reported Prophet Mohammad [peace be upon him (PBUH)] as saying: “*when a man dies, all his acts come to an end, but three; recurring charity (sadaqah jariyah) or knowledge (by which people have benefited), or a pious offspring, who prays for him*” (Reported by Muslim, No. 4223).

From Shariah point of view, *waqf* may be defined as holding a *mal* (an asset) and preventing its consumption for the purpose of repeatedly extracting its usufruct for the benefit of an objective representing righteousness or philanthropy. This definition also covers several new forms of *waqf* that were not discussed in the classical literatures, such as the *waqf* of financial rights and *waqf* of usufruct. (Monzer Kahf, 1998). Contemporary jurists also justify the validity of the cash *waqf*, because it is in the interest of the *waqif* (the donor), its beneficiaries and the society (Tahir, 2011).

In addition, *waqf* assets can also be immoveable or moveable (e.g. cash *waqf*). In cash *waqf*, *al-Waqif* (donor) endows cash instead of real estate. Cash *waqf* began in primeval Mesopotamia, Greece and the Roman Empire. In fact, in the eighth century, Imam Zufar approved cash *waqf* in the Islamic World for the first time. According to him cash *waqf* would be invested through *mudarabah* and profits would be spent for charity. Nevertheless, cash *waqf* did not expand and mature until the 16th century and after that, it became popular, especially among the Ottomans.

Literature review

Many studies of cash *waqf* were done by several researchers in recent times. Murat Çizakça (1998) explains that historical evidence indicates that the cash *waqf* has really exciting potential. The *waqf* system has provided throughout Islamic history all the essential services at no cost to the state and a successful modernisation of the system implies a significant cut in government expenditure and other associated benefits including downsizing the state sector and a reduction or elimination of *riba*. Cengiz Toraman *et.al.* (n.d.) concludes that in a society where health, education and welfare were entirely financed by gifts and endowments, the cash *waqf* carried serious implications for the very survival of the Ottoman empire.

Islahi (1992) states that the internationalisation of the voluntary institution of *waqf* is needed nowadays, by setting up a non-government Muslim foundation which should provide public goods on a large scale and which attempts to combat illiteracy, sickness and lack of technical know-how. Monzer Kahf (1998) explains the importance of *waqf* for socioeconomic development, which consists of creating and developing a third sector distinct from the profit-motivated private sector and the authority-based public sector, and charging this

third sector with the responsibility of performing a group of tasks whose nature will enable better results. This third sector would focus on education, health, social and environmental welfare. Furthermore, in many instances, it can provide defence services and finance public utilities.

Chowdhury *et.al.* (2011) explains that cash *waqf* would also help to reform the present institutional setup and their networking throughout the country with a view of increasing their performances. According to Muhammad Ridhwan Ab. Aziz (2012), *waqf* in education is not a new development in Islam. Looking at the history, it can be observed that since the beginning of Islam, in the early seventh century, many educational activities were financed by *waqf* and voluntary contributions. It is a historical fact that Muslim society depended considerably on *waqf* for the funding of education at all levels. For instance, it is reported that, under Islamic rule, the island of Sicily had 300 elementary schools. All of them were built by *waqf* and provided with *waqf* revenues for payment of teachers and school supplies.

In fact, the provision of *waqf* for education is probably responsible for the healthy independent mentality noted in scholars that kept them away from being influenced and manipulated by certain quarters. This has contributed in enhancing the integrity of the scholars and academia as a whole and also contributed to the reduction of the socio-economic differences by offering education based on merit, rather than on ability to pay for educational services. Therefore, the economically underprivileged people in the society will be assisted to reach the socioeconomic pathway faster. In order to advance in the educational field and revive the glory of the Muslim society, the International Islamic University Malaysia (IIUM) in 1999 established the IIUM Endowment Fund (IEF) (Muhammad Ridhwan Ab. Aziz, 2012).

Moreover, Tahir (2010) explains that the *waqf* bank can be considered as the bank of the poor: It is permissible in Islam based on the validity of cash *waqf* and the need for *waqf* by its beneficiaries as well as the society. Therefore, if there is favourable political will and strong support from the government, the institution of *waqf* through the establishment of *waqf* bank will contribute significantly to the society.

Tahir & Hamid (2006) explain that the new formulation of *waqf* may be realised by making a distinction between the perpetuity of the physical assets and a 'dedication' of benefits. New forms of *waqf* can be declared in the non-traditional way. Old *waqf*, however, may still remain subject to the old conditions as long as the greater interests of the *waqf* are not threatened by these conditions.

Wafa (2010) explains that the impact of developing *waqf* for education in Malaysia not only promotes the significant rule of *waqf* towards the country, but also will (1) promote the third sector of Islamic financing, (2) establish economic activities through several projects and businesses, (3) complement government aid with other benevolent and educational programmes, and (4) promote the oneness of society.

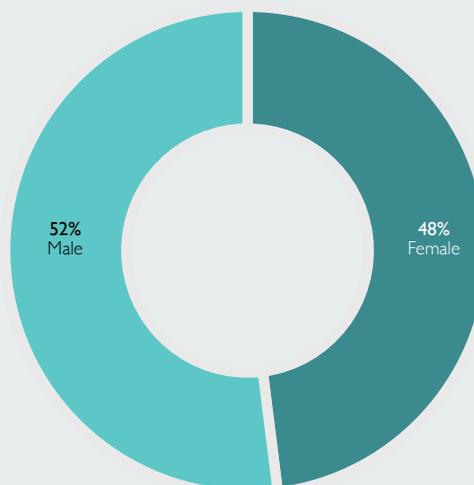
Research methodology

The research methodology used by the researchers in this study is quantitative method. Questionnaires are used throughout the research since the use of questionnaires allows us to get information in the most accurate way. Questionnaire forms were printed and distributed directly to each of the 231 respondents in the Klang Valley area. Each respondent was asked to answer all the questions in the form in less than 10 minutes. The researcher would randomly choose

respondents from various industries. After a thorough survey, data from respondents' answers were analysed statistically through the use of SPSS version 17. This study analysed the frequency of each variable in the survey questions, since each respondent has his/her own evaluation on the issue. The analysis will determine the level of assessment of each respondent on various aspects of this study. The reliability of the scale was tested using the Cronbach alpha - a coefficient alpha that is higher than 0.7 was considered to be good (Nunnally, 1978). All questions were tested through Cronbach alpha, and the results show 0.77 and above and confirm the internal consistency of the instrument (Nunnally, 1987).

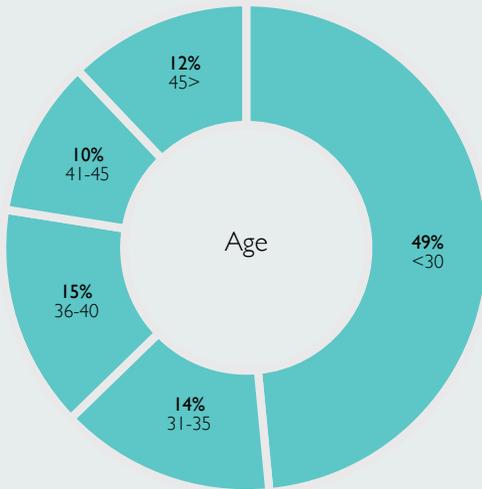
Discussion and findings

Pie Chart 1.1



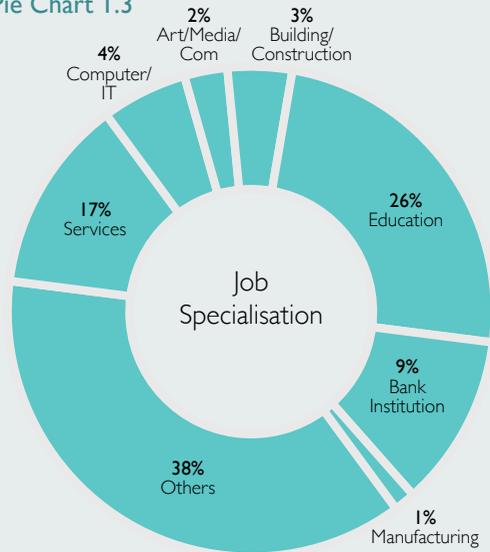
The pie chart 1.1 above shows that there were 120 male respondents, which is 4% higher than female respondents (111 persons).

Pie Chart 1.2



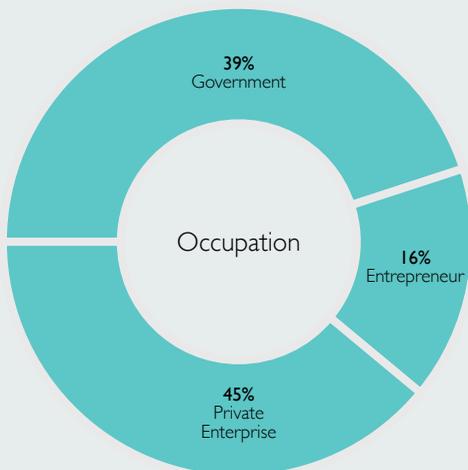
The pie chart 1.2 is an analysis of the respondents according to age. It shows that the age group 30 years and below form the majority (112 people or 49%). The next numerous group is the 36-40 year-olds (34 respondents or 15%). This is followed by the 31-35 year-olds (33 persons or 14%). 12% or 28 respondents are from the 45+ group while the 41-45 year-olds comprise the last group with 10% or 24 respondents.

Pie Chart 1.3



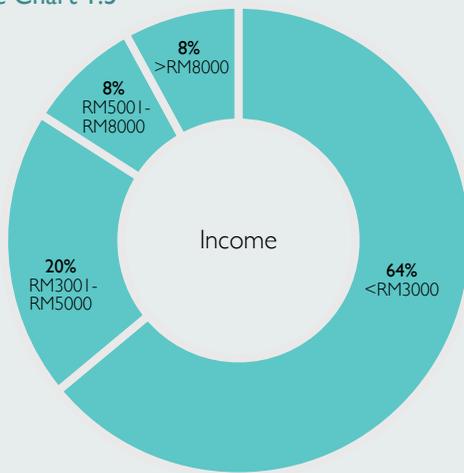
The pie chart 1.3 on job specialisation indicates that the majority of participants are from unspecified specialisations (87 people comprising 38%). This is followed by the education sector (59 persons or 26% from the total respondents). Next, is the service sector (17% which accounts for 40 persons). The banking sector with 9% or 22 respondents is followed by computer, building construction, art and media, and manufacturing sectors which are 4%, 3%, 2% and 1% respectively.

Pie Chart 1.4



The pie chart 1.4 shows that the majority of participants are from private enterprise and the government sector which are 45% and 39% respectively. On the other hand, entrepreneurs consist only 16% of respondents.

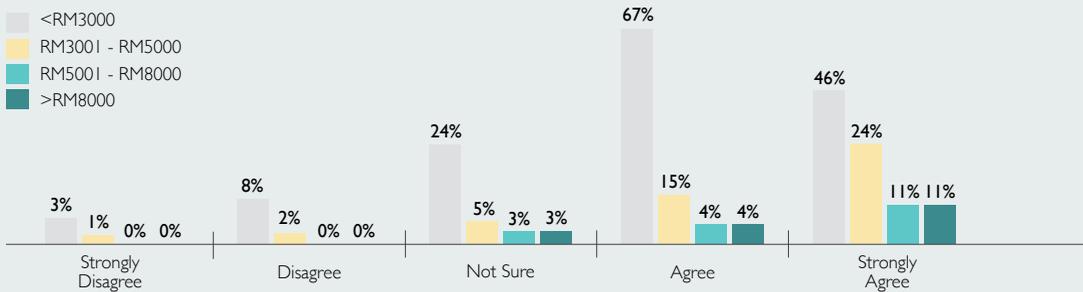
Pie Chart I.5



Based on pie chart I.5, the majority of respondents have incomes less than RM3000 per month which is 64% from 231 total respondents, followed by respondents who have incomes between RM3001 to RM5000 comprising of 20%. Next, are respondents who have incomes between RM5001 to RM8000 and respondent who have more than RM8000, each with 8% of the total respondents.

Bar Chart I.6

Income Vs electronic methods appropriate for individual contributors



The above bar chart I.6 indicates that there is strong readiness among the respondents to use electronic methods in contributing to Islamic *waqf*. Respondents who have incomes less than RM3000 show strong readiness to use electronic methods in contributing. There are only three participants who strongly disagreed to the use of electronic methods and eight respondents who disagreed. Perhaps, they seldom used electronic devices in their daily activities and do not have confidence to use it. 24 respondents are not sure about using

electronic methods in contributing to Islamic *waqf* bank possibly because they do not have sufficient knowledge about *waqf* and how to use electronic devices for donating to this fund. There are 67 respondents who agreed and 46 respondents who strongly agreed to contribute to Islamic *waqf* bank.

Moreover, respondents with incomes of between RM3001 and RM5000 also showed strong readiness to contribute to Islamic *waqf* bank. Only

one person strongly disagreed and two persons who disagreed on the use of electronic methods in contributing to the Islamic *waqf* bank. Conceivably, they were confused about the mechanism for collecting the fund. Five respondents were not sure how to use electronic methods in contributing, maybe because some of them did not use electronic devices. 15 respondents agreed and 24 respondents strongly agreed to contribute to Islamic *waqf* bank.

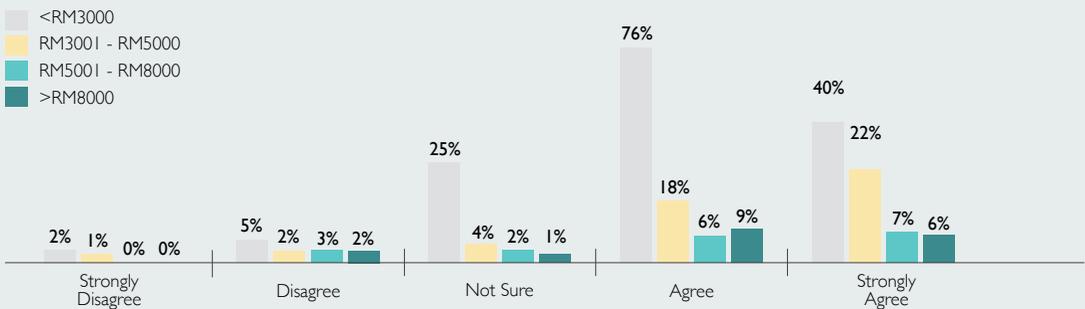
In addition, respondents with incomes between RM5001 and RM8000 also have strong readiness

to contribute to this fund. Three respondents were not sure whether to use electronic methods due to lack of general knowledge about *waqf* itself. Four other respondents agreed and eleven more strongly agreed to use electronic methods in contributing to Islamic *waqf* bank.

Furthermore almost all respondents with incomes of more than RM8000 agreed to the use of electronic methods in contributing to Islamic *waqf* bank. Perhaps three respondents were not sure because they did not have a clear picture about the operation and flow of Islamic *waqf* banks.

Bar Chart 1.7

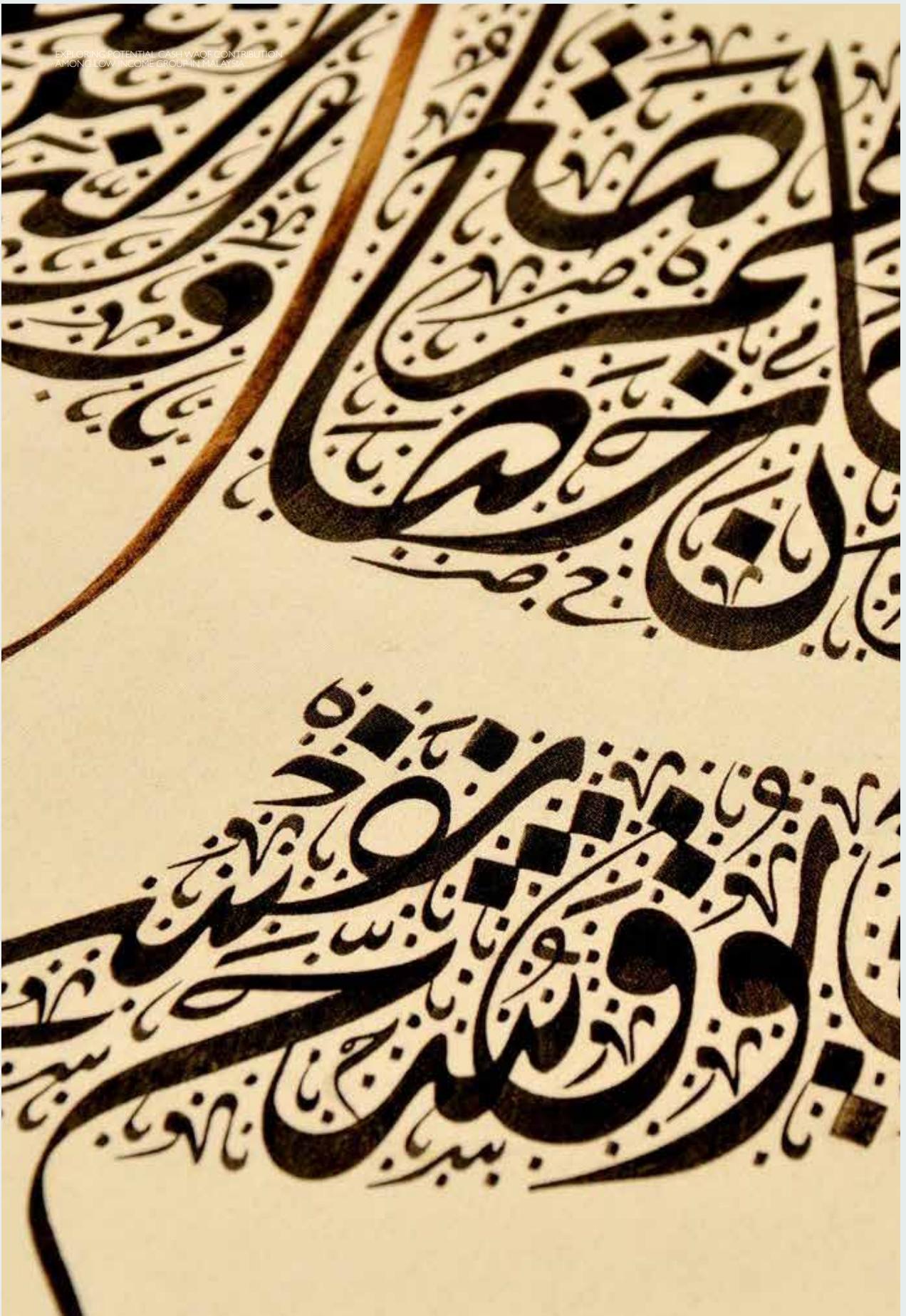
Income Vs appointing an agents for *waqf* bank is crucial in meeting public needs



Bar chart 1.7 reveals that there is strong readiness to appoint agent for collecting *waqf* funds and it is crucial in meeting public needs. Respondents who have incomes less than RM3000 show strong readiness to appoint an agent for collecting *waqf* funds. There were only two participants who strongly disagreed and five respondents who disagreed to appoint an agent for collecting *waqf* funds perhaps because they did not trust the agent that the bank hired for collecting the funds. There were 25 respondents who were not sure whether to appoint an agent for collecting *waqf* funds possibly because of insufficient knowledge about

waqf and how the Islamic *waqf* bank operates. There were 76 respondents who agreed and 40 respondents who strongly agreed to appoint an agent for collecting *waqf* funds.

Respondents with incomes of between RM3001 to RM5000 also showed strong readiness to appoint an agent for collecting *waqf* funds. Only one strongly disagreed and two persons disagreed. Possibly they were confused about the mechanism for collecting the fund. There were four respondents who were not sure maybe because they were more comfortable to give donations



directly to the poor. There were 18 respondents who agreed and 22 respondents who strongly agreed to appoint an agent for collecting *waqf* funds.

Respondents with incomes of between RM5001 and RM8000 also have strong readiness to appoint an agent for collecting *waqf* funds. There were only three respondents who disagreed and two respondents who were not sure, maybe because they preferred to use electronic banking making it easier for them to contribute. The other six respondents agreed and seven respondents strongly agreed to appoint an agent for collecting *waqf* funds.

Furthermore, all but three respondents with incomes of more than RM8000 agreed to the appointment of an agent for collecting *waqf* funds. The two respondents who disagreed and the other who was not sure based their responses on security concerns.

Exploratory factor analyses

A set of questionnaires was created and distributed to all respondents. The questions focused on four characteristics: understanding of the *waqf* concept, readiness to contribute, method and agent for collecting the cash *waqf*. Table 1.1 shows the standard deviation from the highest to the lowest attribute to the establishment of Islamic *waqf* bank for education.

Table 1.1 Exploratory factor analyses from the highest to the lowest

No	Item	Standard Deviation
Cronbach Alpha=0.807 From highest to the lowest (min = 0.763, max = 1.259)		
1	Understand that contributors of <i>waqf</i> bank rewarded by Allah	1.259
2	Agree <i>waqf</i> for student higher education	1.061
3	Electronic method appropriate for individual contributors	0.933
4	Establishment of <i>waqf</i> bank boosts economics as individuals have free education	0.926
5	Appointment of agents for <i>waqf</i> bank would be needed	0.888
6	Establishment of <i>waqf</i> bank to help student be free from debt	0.882
7	Direct debit method appropriate to corporate contributors for continuous contribution	0.867
8	Tax exemption given to contributors of <i>waqf</i> bank	0.857
9	Understand concept of <i>waqf</i>	0.848
10	<i>Waqf</i> bank should invest its fund for multiplying its economic value	0.841
11	Individuals with stable incomes should contribute to <i>waqf</i>	0.836
12	Corporate companies should contribute to <i>waqf</i> bank	0.834
13	I am willing to donate to Islamic <i>waqf</i> bank	0.817
14	Government should give incentives in assisting establishment of <i>waqf</i> bank	0.771
15	<i>Waqf</i> bank operation must be transparent and accessible to the public	0.769
16	Establishment of <i>waqf</i> bank should be implemented as soon as possible	0.763

From the above table, the five most important attributes for the readiness among Muslims in contributing cash *waqf* to the Islamic *waqf* banks are: the understanding that contributors to *waqf*

banks will be rewarded by Allah; agreement that the objective of the Islamic *waqf* bank is for financing higher education; electronic methods are suitable for each contributor; the establishment of Islamic *waqf* bank will boost the economy as individuals will have free education; and the appointment of agents for *waqf* banks is needed.

Conclusion

From the above discussion, the general finding of this article is that there are many advantages to Muslim society in contributing cash *waqf* through Islamic *waqf* bank. There are contribution methods and structures for Islamic *waqf* bank that can be implemented in the future for the success of Islamic *waqf* bank. Again, the discussion regarding cash *waqf* needs to be more extensive in order to find out the best method and structure of administration to be established. The permissibility of cash *waqf* and suitability of the capital structure of Islamic bank can be considered as a viable *waqf* instrument in solving the financing problems of the needy especially in financing education.

Acknowledgement

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HIBAH, TABARRU' AND WAQF APPLICATION IN TAKAFUL

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Abstract

This research provides its readers with an insight into the development and challenges of *hibah* (gift) or more precisely *tabarru'* in *takaful*. The methodology employed in this research is meta-analysis approach. The study delved into classical Islamic literature as well as Islamic contemporary works to understand the applications of *tabarru'*, *hibah* and *waqf* during Prophet Muhammad's time. Thereafter, different applications of the aforementioned Shariah concepts were investigated to understand the basis behind their respective permissibility and the extent they may be applied. The three aforementioned concepts are classified under the gratuity contract category when applied to *takaful* and become extremely contentious as they have been engineered to behave like exchange transactions. Since there are many views on the proper methodology of conducting *tabarru'* or *hibah*-backed transactions, the study used two important tools in finding the most suitable solution and structure to be applied to *tabarru'*, *hibah* and *waqf*. The two tools mentioned are Maqasid Al-Shariah and Qawaid Fiqhiyyah. Based on the analysis conducted on *tabarru'*, *hibah* and *waqf* application in *takaful*, the study established that *tabarru'*, *hibah* and *waqf* are to be treated differently when applied to *takaful*. *Takaful* models based on the aforementioned Shariah concepts were found to be very much in compliant with the Maqasid Al-Shariah form and substance due to its nature of *ta'awun*.

Introduction

Definition of tabarru', hibah and hadiyyah

The terms *hibah*, *tabarru'*, *sadaqah* and *hadiyyah* are used interchangeably to refer to the act of giving out of goodwill. Although they may be essentially the same, they have their own distinct features that make them unique to Islam.

Imam Al-Shafie defines *hibah* as possession without reciprocation, while its better half *hadiyyah* has been described by Imam As-Shafie as an amalgamation of ownership with the notion of carrying or bringing to its "Al-Mawhoob" i.e. receiver; the generosity from the giver. *Sadaqah*, on the other hand, is the transfer of ownership (of a certain matter) to the needy and disadvantaged persons with the objective of obtaining nearness to Allah Ta'ala and seeking rewards in the hereafter (النووي 2005).

Imam As-Shafie added that *hadiyyah* is more commendable than *hibah* due to the aforementioned feature of *hadiyyah*. However, he affirmed that despite those little features that make them distinct from one another, *hadiyyah* and *sadaqah* are essentially *hibah* (النووي 2005).

Ibn Taymiyyah gave a deeper insight on both *sadaqah* and *hadiyyah*. It was reported that when asked which one is more commendable between the two, he stated that the former is given in the name of Allah with the sole purpose of worship, without any other intentions or ulterior motives and with the condition that *sadaqah* be given to Ahl Al-Hajaat i.e. those who are needy. He further explained that the latter, however, is an act of giving with the intention to glorify and honour a certain person either out of love, charity, or seeking a favour. Furthermore, he elaborated that Prophet Muhammad did not accept *sadaqah* as it is a mechanism for man to purify themselves from their sins (النووي 2005).

Going back to the question of which of the two is more commendable, Ibn Taymiyyah answered that both *sadaqah* and *hadiyyah* are commendable depending on the contexts they are being applied. Although it may seem that *sadaqah* is much more praiseworthy in a lot of instances, *hadiyyah* is best used when one intends to strengthen relationship with his or her relatives because it is much more blessed by Allah (مركز الدراسات القحفية والاقتصادية، 2005).

A more modern approach can be found in the ISRA (2010) Compendium for Islamic Financial Terms Arabic – English which defines *tabarru'* as follows:

Literally, "tabarru' is defined as a voluntary act; a gift which is not preceded by a request". Technically, it has been defined as "grant of an asset or usufruct by a mature and responsible person, either immediately or at a later time, without compensation, with the intention of charity. Contracts of this kind are called tabarru'at (gratuitous contracts). They include endowment, gifts, donations, loan of assets accompanied by gifts of their yield, and other good deeds".

It is interesting to note that *hibah* and *rishwah* (bribery) have been defined under the same context as follows (ISRA, 2010):

"Hibah is wealth transferred to another person without a counter value, whereas rishwah (bribery) is what is given to void a right or validate a false claim. Both involve the transfer of wealth to another person, but no

compensation is sought for a *hibah*; it is a voluntary contribution and praiseworthy act. On the other hand, a bribe is given to seek benefit from the recipient, which is its counter-value. It is an unlawful act and an illicit wealth (ISRA, 2010).” “*Hibah* is wealth transferred to another person without a counter value, whereas *rishwah* (bribery) is what is given to void a right or validate a false claim. Both involve the transfer of wealth to another person, but no compensation is sought for a *hibah*; it is a voluntary contribution and praiseworthy act. On the other hand, a bribe is given to seek benefit from the recipient, which is its counter-value. It is an unlawful act and an illicit wealth (ISRA, 2010).”

Dr Zuhayli classified *hibah* into the following categories (Zuhayli, 2003):

- Presents given to please the recipient; and
- Charities given to please Allah

His definition of *hibah*, which has been collectively agreed by Al-Khatib Al-Shirbini, Ibn Qudamah, Ibn Al-Humam, and Ibn Abidin is: “A voluntary contract that results in uncompensated ownership transfer between living individuals”. The Hanbalis however, has a slightly different take on the understanding of *hibah*, and has defined it in a more precise manner, that is, “it is a contract initiated by an eligible party to transfer ownership of existent and deliverable properties to another without compensation. The properties may be known or unknown, but they must be conventionally given as gifts, and the contract language must specify that it is a gift or a property transfer, etc.” (Zuhayli, 2003).

Rasban and Abu Hassan define *hibah* in the following manner (Rasban & Abu Hassan, 2010):

“An Islamic contract to transfer one’s (a Donor’s) ownership, with free will, of a property to another (a Donee) without any exchange for the transferred property. This can happen during the lifetime of the Donor or it can occur upon death when *sadaqah* (donation) is given to the deceased’s (previously donor) dependants (spouse, children). There is no *iwad* (counter value/equivalent/exchange) to the gift made to the Donor. There is no expectation by the Donor to receive a return of the gift made to the Donee. But if the Donee chooses to reciprocate with another gift, then it is perfectly permissible for the Donor to receive a gift in return.”

Rasban and Abu Hassan (2010) attempted to define *hibah* holistically by inserting elements of *hibah*’s modern application and practice. Firstly, the term ‘free will’ was incorporated to the notion of ‘ownership transfer’ to indicate that *hibah* must be given out of free will, without the giver being coerced into parting with such gift. Secondly, Rasban and Abu Hassan (2010) recorded in their definition of *hibah*, that its occurrence can take place during the lifetime or after the death of the giver. Thirdly, Rasban and Abu Hassan (2010) spelt out the permissibility of reciprocation of *hibah* without any expectation from the giver. Although the definition is comprehensive and all encompassing, Rasban and Abu Hassan (2010) may have been hasty in introducing the concept of *hibah mu’allaqah* i.e. conditional *hibah* into the definition as definitions are generally supposed to be “introductory” in nature. Since conditional

hibah is a disputed and controversial practice, it would have been prudent to omit it from the definition, as the definition may provide readers without *fiqh* expertise an unclear view of the issue at hand.

Rasban and Abu Hassan (2010) define *sadaqah* as “a gift made to the poor or the needy, with the intention of getting closer to Allah, and in the hope of being rewarded in the Hereafter.” They explained that *sadaqah* is irrevocable and can be created at the time of death. An example given is when a company gives to the spouse of its deceased staff *takaful* or insurance claim proceeds. Furthermore, Rasban and Abu Hassan (2010) classified *infaq* differently from that of *sadaqah*. They defined it as “a gift made to an organisation or individual with the intention of spending in the path of Allah”, and stated that it is not revocable (Rasban & Abu Hassan, 2010).

In line with Ibn Taymiyyah's understanding of *hadiyyah*, Rasban and Abu Hassan (2010) defined *hadiyyah* as follows:

“It is a gift made to someone, with the intention of showing respect to an individual, for example, a gift of a home to a daughter who has just got married.”

According to Shafee, the terminology of *hibah* is derived from the term “*huboub al-reeh*” which means gusts of wind or the passing of the wind. Technically, *hibah* carries the meaning of *al-tabarru'* or donation, or favouring others by way of giving property or other assets. Shafee (2002) deliberated on the definition and explained that *hibah* is the act or display of favouring an *al-ihsan* (with a thing) by way of giving a gift (*al-mawhoob*), i.e. from a person (*al-wahib*) or giver to another person (*al-mawhoob lahoob*) or recipient of the

gift. He further explained that *hibah* is considered acts that are carried out in the name of goodness because there is the intention of giving without any consideration, giving preference to others over oneself (demonstration of selflessness). *Hibah* exemplifies the most beautiful of acts carried out by mankind for the sake of goodness (2002 شافي).

According to Al-Masri, *hibah* is “an ownership transfer of a subject matter without any consideration.” He added that *hibah* is best executed among kinsfolk for one simple reason; there exists a “*silaturahm*” bond. He recorded that *hibah* may be classified into two categories, namely, *hibah* of subject matter, and *hibah* of usufruct. He explained that *hibah* of usufruct belongs under the former as this is already categorised under the contract of *al-ariya*. *Al-Ariya*, on the other hand means ownership transfer of usufruct, free of charge according to the Hanafis. The Shafies have a slightly different take on *al-ariyah* defining it as “the permissibility of benefiting from a subject matter while maintaining its form” (2005 المصري).

Shafie recorded a long list of definitions of *hibah* spelled out in the form of legal acts of various Arab countries in the following manner (2002 شافي):

1. Lebanon – Article 504 – “المراء لشخص آخر عن كل أمواله أو عن بعضها بلا مقابل الهبة بين الأحياء بمقتضاه يبتفرغ”
Hibah is transacted between the living, where a person reduces his property partially or wholly without consideration.
2. Egypt – Article 486 and Syria – Article 849 – “الهبة عقد يتصرف بمقتضاه الواهب في مال له دون عوض”
Hibah is a contract that is transacted by Al-Wahib i.e. the giver of his property without consideration.
3. Iraq – Article 601 – “الهبة هي تملك مال لآخر بلا عوض”
Hibah is having ownership over some else's property without any consideration.

Definition of waqf

Imam As-Shafie in his *Fiqh* Literature, *Rawdhah At-Talibeen* had unequivocally categorised the philosophy of giving, referring to it as *al-'atayaa*. The term *al-i'taa'* which is a subjugation of the verb *a'taa*, which means give (Wehr, 1976). He described *al-a'tayaa* as "a man giving his wealth to another". This description is followed by the categorisation of *al-'atayaa* which are as follows (النووي, 2005):

- "A man giving his wealth to another" subject to the giver's death which is *wasiyyah* i.e. will or bequest; and
- "A man giving his wealth to another" executed during his life time. This category is then divided into the two following sub-categories:
 - Full ownership which consists of contracts such as *hibah* and *sadaqah*
 - *waqf*

The *Fiqh* Jurists have utilised two terms interchangeably throughout history, namely, *habs* and *waqf* (in their noun forms) or *habasa/ahbasa* and *waqafa/awqafa* (in their verb forms) to denote *waqf* i.e. philanthropic endowment. It is stated in *Al-Mu'jaam Al-Waseet* that *habs*, *habasa* or *ahbasa* signify *Al-Man'u* and *Al-Imsaak*, and when put into the *Fiqh* context, it is defined as follows:

وفقه (الشيء) لا يباع ولا يورث
” وإنما تملك غلته ومنفعته

“He gave it as waqf, it cannot be sold nor can it be inherited, its proceeds and benefits on the other hand are transferred and delivered” (Anis, Montaser, As-Sowalehie, & Ahmed, 1972).

The term *waqf*, *waqafa* or *awqafa* also imply *Al-Man'u* and *Al-Imsaak* as recorded in *Al-Mu'jaam Al-Waseet*:

حبس العين على ملك الواقف
” أو على ملك الله تعالى

“The Confinement of al-ayn (property) to the ownership of waqif (the person who gave endowment) or Allah Ta'ala.” (Anis, Montaser, As-Sowalehie, & Ahmed, 1972)

According to Mohsin (2009), both terms i.e. *waqf* and *habs* literally mean to stop, to prevent, and to restrain. She further explained that the term *waqf* is commonly used in countries such as Lebanon, Israel, Jordan, Iraq, and United Arab Emirates. The term *habs* on the other hand is generally used in North Africa (Mohsin, 2009). Monzer Kahf (2006) concluded that the two terms contain three elements, namely, *Al-Man'u*, *Al-Imsaak*, and *Al-Tammakkoth*. The three words represent the refrainment from consumption, sale, and every kind of disposal. It also includes the refrainment from using its benefits for objectives other than that specified by the *waqif* (Kahf, 2006).

In the West and in the English language, *waqf* is classified and quantified as endowment, foundation, corporation or trust. Endowment is defined as the act of permanently endowing revenue to any object. Monzer Kahf (2006) added that if the elements of *البر* (philanthropy) and *الخير* (charity) are incorporated into the aforementioned terms, then their nature can be similar to that of *waqf* (Kahf, 2006).

Technically, *waqf* has been defined by An-Nawawi Ash-Shafie as "endowment of wealth that may give benefit (to the endower) while preserving its being/ essence by cutting off the power of disposition of the endower and others in its usage whereby it is utilised for the sake of goodness to be closer to Allah". The constitution of Sudan defines it as "holding and preservation of wealth under authority of Allah whereby its benefits and proceeds are given to charity (Kahf, 2006).

Monzer Kahf (2006) gives a more contemporary definition of *waqf* as he takes into consideration many perspectives, mainly its legal reality and applicability, as well as its role in the economic structure. This definition is as follows:

“The temporary and lifelong holding and preserving of wealth or an estate for its recurrent benefit of fruitfulness to be devoted for the sake of the masses or a few” (Kahf, 2006).

There is no specific injunction in either the Quran or the Sunnah that does not permit the act of *waqf*, and since *waqf* is a form of charity, it has been allowed based on the following:

“لَنْ تَتَّالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ
وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ”

“By no means shall you attain Piety/ Righteousness unless you spend (in Allah’s cause) of which you love; and whatever good you spend, Allah knows best” (Ali Imraan 3:92).

“إِنَّ الَّذِينَ اشْتَرَوْا الْكُفْرَ بِالْإِيمَانِ لَنْ
يُضْرُوا اللَّهَ شَيْئًا وَلَهُمْ عَذَابٌ أَلِيمٌ”

“It is not Piety/Righteousness that you turn your faces towards east and (or) west in prayers; but it is Piety/ Righteousness (the quality) the one who believes in Allah, the Last Day, the Angels, the Book, the Prophets and gives his wealth for love of Him, to the kinsfolk, to the orphans, to the poor, to the wayfarer, to those who ask, to set slaves free, performs solat

and gives the *zakat*, and who fulfil their covenant when they make one, and who are patient in extreme poverty and ailment and at the time of fighting. Such are the people of the truth and they are Al-Muttaqoon” (Al-Baqarah 2:177).

The permissibility of *waqf* is also evidenced in the Sunnah as follows:

“إذا مات الإنسان انقطع عمله إلا من
ثلاثة إلامن صدقة جارية، أو علم
”ينتفع به، أو ولد صالح يدعو له”

“When a man dies, his acts come to an end, except three things, recurring charity, or knowledge (by which people benefit), or pious offspring, who pray for him”.

It has been reported by Magda Abdul Mohsin (2009) that the actions taken by the companions of the Prophet Mohammad S.A.W., as recorded in the Seerah of Prophet Mohammad S.A.W., demonstrated that the act of *waqf* is permissible as well as encouraged by the Prophet S.A.W himself. The Seerah puts forth a famous incident of Bi'r Roomah or the Roomah well (which was the main source of water for many Muslims). This well provided drinking water to Muslims, hence, making it very important to them. The owner of the well-used to charge them excessively and due to this, the Prophet Mohammed S.A.W. encouraged the companions to buy the said well. The Prophet S.A.W said:

“من يبتاع بئر رومة، غفر الله له”

“Whosoever buys the Roomah Well,
He will be granted Allah’s forgiveness”.

Upon hearing this, Uthman R.A who was well-known for his generosity jumped at the opportunity and bought the well. He then made the well into a *waqf* for the use of general masses (Mohsin, 2009).

Definition and history of takaful

The notion of insurance or insurance-like scheme can be traced back to the Chinese traders of 3000 B.C. They practised an insurance-like scheme to protect themselves against trade losses when crossing large rivers such as Yangtze and Hwang Ho. This scheme required them to place their cargo in many boats that were sent out for maritime adventure. In the event of loss to one boat, the traders' loss would be very minimal as their cargoes were distributed on many boats. The more boats that were sent out for these adventures the lesser the losses. (Abdul Rahman & Redzuan, 2009).

Archaeological findings of the Babylonian era, particularly the Code of Hammurabi, confirmed the existence and practice of a *takaful*/insurance-like scheme which was later called the Contract of Bottomry or the Bottomry Loan. This indemnity system was introduced to reduce the risk of piracy, robbery, or plunder and capture for ransom by replacing goods lost, destroyed and stolen during the times when the Babylonian Merchants were involved in trading expeditions. Although this scheme was designed before the Quran was revealed, it was found that this mutual guarantee arrangement was free from usury or interest-based transactions. This scheme was later borrowed and perfected by the Phoenicians as well as the Hindus. In the 9th century and 10th century B.C., the Greeks adopted this system from the Babylonians and adapted it by incorporating the practice of interest charging. The Romans too adopted it and, like the Greeks, incorporated the element of interest. (Abdul Rahman & Redzuan, 2009).

The notion of *takaful*, however, emerged during the pre-Islamic period among the pagan Arab tribes in the Arabian Peninsula. This system of mutual risk sharing was a common practice to indemnify losses, prevent further losses and avoid prolonged tribal wars. The Arabs during that time were known for their entrepreneurial spirit and also their love for tribalism, living within the harshness of their geographical location. They therefore designed three mutual risk sharing systems to control extensive losses and long-lasting disputes (Aziz & Hoss, 2008).

The *hifl* system was established to assist traders and also their families in the event the traders fall victim to natural disasters or hazards. The Arab traders were also protected from losses caused by bandits and pirates with a mechanism called Daman Khatar *al-Tariq*. Another common scheme, approved by the Prophet Mohammed S.A.W. and later incorporated into Muslim society, was called Al-Aqila, or better known as Diyat or Blood Money (as coined in the English language). This practice was extremely useful to circumvent further bloodshed in the Jahiliyya society by indemnifying the clan or family for the death of their family member due to combat and murder (intentional and also unintentional) with a compensation of money or camels. The aforementioned schemes, namely, Daman Khatar *al-Tariq* and also Al-Aqila were accepted and adopted by the Muslims during the lifetime of the Prophet. These practices were not commercial transactions, neither were they meant to bring in profit (Aziz & Hoss, 2008).

It has also been recorded that Umar Al-Farouq [Radhiallahuanhu, (R.A)] pioneered this scheme of mutual risk sharing system by formulating a mechanism similar to that of *Al-Aqila* called Qasamah. This mechanism provided compensation to families of the victims of murder in the event the killers could not be identified. He designed it

to be very systematic and efficient, and insisted that names of Muslims in all parts of the state be registered in a *diwan* (register). Those registered in the *diwan* were required to provide mutual help to one another and also contribute towards compensation for death caused by a member of the community (Abdul Rahman & Redzuan, 2009).

Legality of takaful

With the emergence of Islamic finance, the concept of indemnifying for damages has evolved. Takaful emerged in the form of *ta'awun* and *tabarru'*. There are no specific and direct injunctions in the Quran or the Sunnah permitting the practice of *takaful*. Scholars however have deduced its basis from general indications given in the Quran, the Sunnah as well as Islamic legal maxims:

وَالْعُدْوَانَ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ
وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ

“Help you one another in righteousness and piety, but help you not one another in sin and rancor, fear Allah, for Allah is strict in punishment.” (Al-Maidah 5:2)

Takaful is also supported by the famous hadith of the Prophet Mohammed S.A.W. whereby a Bedouin was about to leave his camel untied. He then asked the Bedouin: “Why don’t you tie down your camel?” The Bedouin answered: “I put my trust in Allah”, The Prophet then responded: Tie your camel first, then put your trust in Allah” (Ali & Odierno, 2008).

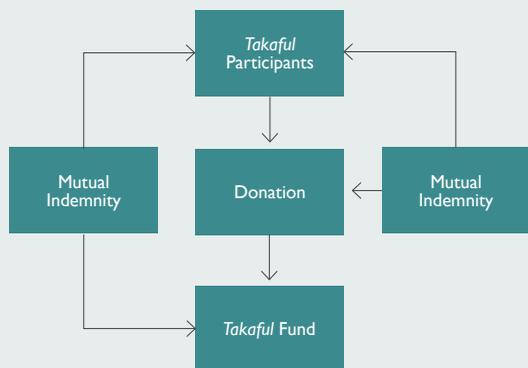
Islamic Scholars have also linked *takaful* to the legal maxim which states:

الضرر يزال
“damage or harm is removed”

The notion of *takaful* embraces all the unwritten wisdom behind the aforementioned quotations. The verse mentioned above promotes “*ta'awun*”, helping one another in doing good, and this can be seen and reflected in the *takaful* practice whereby participants of a fund pool money to help unfortunate participants in times of need. Another important element of *takaful* found in the Hadith mentioned above is the act of mitigating risk. The Prophet S.A.W encourages Muslims to mitigate risk before leaving it to Allah. Takaful's important component i.e. risk mitigation through collective sharing of risk entails the sharing of harm and risk among members covered by the fund. The burden of the risk is lessened by it being shared by a large number instead of just an individual. The maxim also requires Muslims to remove harm in the event it took place, which is another important element in *takaful* practice (Ali & Odierno, 2008).

Modus operandi of takaful

Tabarru' is the underlying contract between the participants of a *takaful* scheme. Mutual indemnity is created among participants by way of *tabarru'* or donation. *Tabarru'* is the mechanism that brings the participants together to mutually help and jointly guarantee one another against defined losses and perils (Ali & Odierno, 2008). Below is the basic structure of a *tabarru'* model (Ali & Odierno, 2008).



The *takaful* industry as a whole uses the term *tabarru'* in a general manner without specifying the type of contract used to describe the donation. The contract applied in *takaful* schemes could either be *hibah* or an endowment arrangement i.e. *waqf*, but of late a few *takaful* schemes have described their *tabarru'* component as a *waqf* arrangement. We shall not go into the details of other contracts involved but they shall be mentioned briefly due to the relevance to the models or structures that are offered in the market today (Ali & Odierno, 2008).

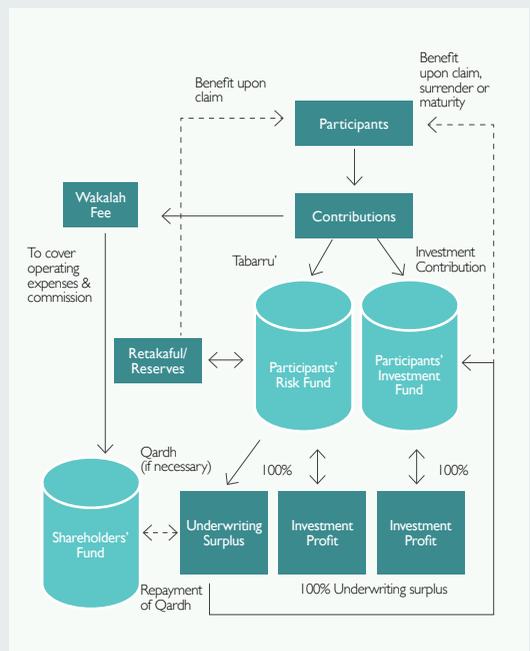
The structured *takaful* scheme we have today has been around since 1979 when the first Islamic Insurance Company was established, the 1st Takaful Company by Faisal Islamic Bank of Sudan (Aziz & Hoss, 2008). To operationalise the business, a number of Takaful models were introduced, namely, *Wakalah Model*, *Modified Wakalah Model*, *Mudharabah Model*, *Hybrid (Wakalah-Mudharabah) Model* and *Wakalah-Waqf Model*.

These models were introduced to accommodate certain needs of a *takaful* company for it to be able to function in compliance with the principles and rules of Shariah, not only as an operator i.e. *wakeel* but also as partner in investment. The *Wakalah-Waqf Model* was introduced and developed in Pakistan and has gained popularity in South Africa (Aziz & Hoss, 2008). The model was initiated to resolve the problem of ownership of the *tabarru'* fund as well as the possibility of the injection of *qardh hasan* (interest-free loans) into the said fund. As of today, the *tabarru'* fund belongs to the participants who make contributions on the grounds that it is contingency gift (applicable to all five aforementioned models) which entails no separation of legal entity.

Wakalah Model

In the *Wakalah Model*, the *takaful* participant appoints a *takaful* operator as an agent, i.e. *wakeel*, to handle all *takaful* operations as well as investments of the funds namely risk funds and investment funds (only for family *takaful*) on behalf of the participant. In return for services rendered by the *takaful* operator, a pre-agreed *Wakalah* fee, inclusive of administration and investment fee is paid up-front to the *takaful* operator as a form of remuneration. In this arrangement, the *takaful* operator does not share in the investment profit or underwriting surplus. However, in the event of deficit of the risk fund, the *takaful* operator is obliged to give *qardh hasan* to cover unexpected claims; the repayment of this loan will be made out of future surpluses. The time and amount, for repayment is not specified. Figure 1 (Frenz & Soualhi, 2010) depicts this process.

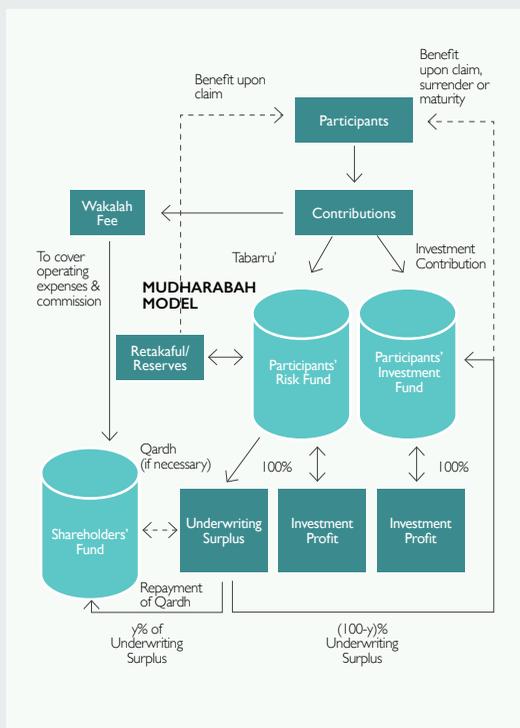
Figure 1: Wakalah Model



Modified Wakalah Model

The Modified *Wakalah* Model or *Wakalah* Model with performance incentive operates exactly like the normal *Wakalah* Model. The only difference is that this model adopts the sharing of surplus. Any surplus from the risk fund is shared on the basis of *hibah* (gift), *ju'ala* (commission/reward), or *tanazul* (waiver or surplus). Many scholars have criticised this approach as the *takaful* operator shares only the underwriting surplus (derived from the donations) and does not share in underwriting loss, depicted in Figure 2 below, (Frenz & Soualhi, 2010).

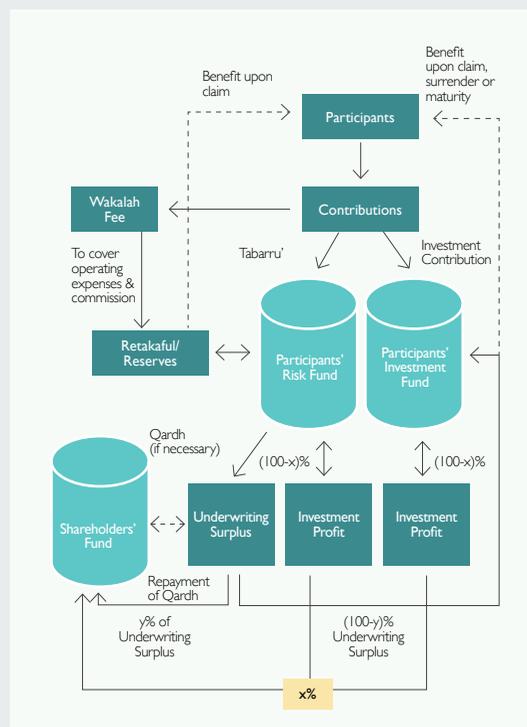
Figure 2: Modified-Wakalah Model



Mudharabah Model

The *Mudharabah* Model is based on the classic profit sharing approach. The participants as *rabul mall/sahibul mal* (owners of funds) appoints the *takaful* operator as a *mudharib* (fund manager). The *takaful* operator employs his knowledge and expertise to manage the *takaful* operations as well as the funds. There is no remuneration such as *Wakalah* fee paid to the *takaful* operator as he gets a pre-agreed percentage share of the profit. Any pecuniary loss will be borne by the participants. The risk fund and the individual investment fund are managed on the basis of *mudharabah*; any profit gained from the two funds will be shared accordingly as depicted in Figure 3 (Frenz & Soualhi, 2010).

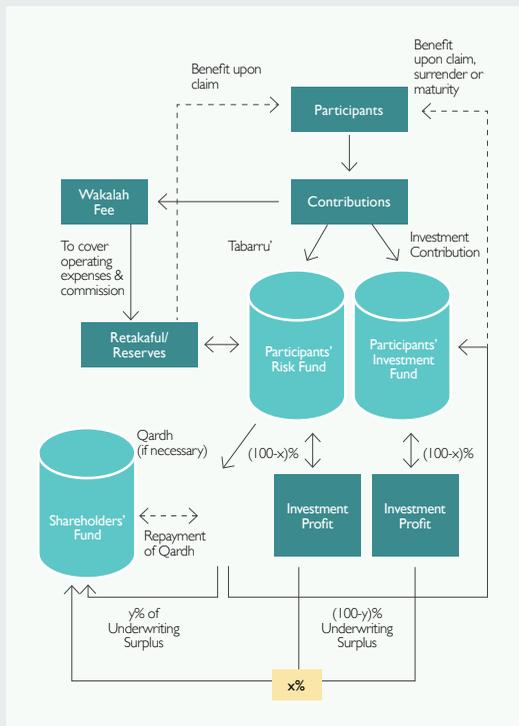
Figure 3: Mudharabah Model Hybrid Model



Hybrid Model

The Hybrid Model, better known as *Wakalah-Mudharabah* Model, is a combination of *Wakalah* and *Mudharabah* Models. The *wakalah* portion is operationalised for underwriting activities while the *mudharabah* portion is applied to the investment of funds. The *takaful* operator does not only receive *wakalah* fees but also a share of the investment profit as depicted in Figure 4 below (Frenz & Soualhi, 2010).

Figure 4: Wakalah-Mudharabah Model



Wakalah-Waqf Model

The *Wakalah-Waqf* model is unique in the sense that the ownership of the risk fund belongs to Allah, and the participants of the plan themselves are eligible for any benefit that may arise from it. Unlike the *Wakalah* model, the ownership of the *tabarru'*/donation goes to the *waqf* fund as it belongs to Allah. The *Wakalah* model encourages the participants to give *hibah* or donate on a conditional basis, i.e. it becomes *hibah* or *tabarru'* upon claims. The proportionate ownership of the *hibah* or *tabarru'* remain with the participants unless it is not used for payment of claims (Wahab, Lewis, & Hassan, 2007).

Shareholders of a *takaful* company would initially cede their donation into a fund to establish the *waqf* fund. Once the *waqf* fund is established, the shareholders would lose their ownership over the *waqf* fund. The initial cede donation is invested in safe and secured Shariah compliant investments to bring profits and to strengthen the fund. The returns are used for the benefit of the participants i.e. payment of claims. The objective of the *waqf* fund's establishment is not confined to only extending financial assistance to its members in the unfortunate event of losses but also to provide *takaful* benefits as stipulated in the *waqf* deeds and to donate to charities approved by the Shariah board of the *takaful* operator (Wahab, Lewis, & Hassan, 2007) (Usmani, 2007).

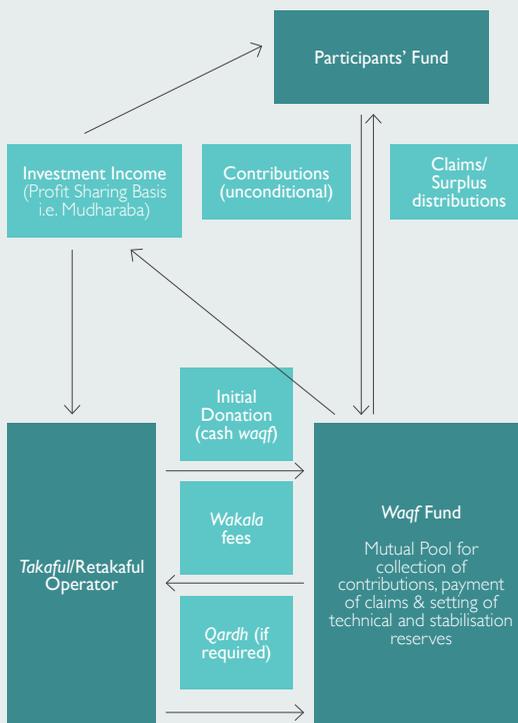
This model eliminates any kind of direct relationship between the *takaful* operator and the participants. The relationship of both parties is directly with the *waqf* fund. The *takaful* operator acts as *wakeel* and also *mudharib* for the *waqf* fund while the participants have to sign a proposal form, subscribe to a certificate contract and pay a one-side non-conditional donation to become members of this fund with entitlement of *takaful* coverage (Wahab, Lewis, & Hassan, 2007).

All donations contributed by the participants belonging to the *waqf* fund. Although the relationship between the participants and the *waqf* fund is based purely on donation/*tabarru'*, the principles of *waqf* do not hinder the members i.e. participants from enjoying its benefits. In this case, the *takaful* operator's function is to collect the donation given by the participants on behalf of the *waqf* fund and deposit it into the fund. Unlike the *Wakala* model, the ownership of the donation is transferred to the *waqf* fund automatically making it the Almighty's. Since the *waqf* fund is a legal entity, it is able to stand on its own, hence having the ability and the capability to possess, making its functions no longer confined to the functions of a *tabarru'* fund. It provides benefits to both the participants as well as the *takaful* operator. All remunerations, which are inclusive of operator fees and *mudharabah* investment profit, that are payable to the *takaful* operator would originate from this fund (Wahab, Lewis, & Hassan, 2007). Its surplus could be treated in the following manner:

- Kept in the *waqf* fund to cover future losses and deficits (Usmani, 2007)
- Distributed among the participants (Usmani, 2007)
- Donated to charitable organisations approved by the Shariah board of the *takaful* operator (Usmani, 2007)

Although the *waqf* fund may distribute its surplus as mentioned above, it is in no way obligated to do so. The *waqf* fund is also allowed to receive *qardh hasan* from the shareholders' funds. The shareholders may give a unilateral undertaking to give *qardh hasan* for the *waqf* fund to continue providing protection and giving *takaful* benefits to its members. This is depicted in Figure 5 (Usmani, 2007).

Figure 5: Waqf-Takaful Model advocated by Usmani (2007)



Shariah Observation and Analysis

Wakalah-Waqf Model

The elements that must exist in the establishment of *waqf* are as follows (Cizakca, 2000):

- Founder
- Beneficiary(s)
- Trustees
- Endowed Capital Corpus

The founders of the *waqf* fund of a *Takaful Wakala-Waqf* Model are shareholders of the *takaful* company/operator. They then appoint themselves as trustees of the *waqf* fund and would hand over the responsibility of managing the *waqf* fund to their company. As trustees they are entitled to receive fees for services rendered by them. Additionally, they are entitled to obtain a portion of the profit as they provide effort and expertise in investing the funds. The beneficiaries in this particular scenario are the participants who donate to the *waqf* fund as well as the founders/trustees themselves (Mohsin, 2009). The participants are entitled to *takaful* coverage and benefits while the founders/trustees are entitled to the aforementioned remunerations as has been allowed by scholars based on traditions of the companions (Mohsin, 2009). The endowed capital corpus is in the form of cash as this has been classified as cash *waqf*. The key restrictions of *waqf* are: irrevocability, perpetuity and inalienability (Mohsin, 2009).

As reported by Abdul Wahab, Lewis, and Hassan (2007), “the shareholders would lose their ownership rights of the *waqf* fund” and “ownership by the participants (donors) would be lost as soon as they pay donations to the *waqf* fund, for the monies would become the property of the *waqf* fund” indicating the irrevocability and inalienability of this *waqf* fund. Sheikh Imran Usmani (2007) explained that in the event that the *waqf* fund is liquidated, it shall be used for charitable purposes after all payables and dues are deducted, and its regularity and continued support, i.e. perpetuity for charitable organisations or any other organisations, has been guaranteed.

The deed of *waqf* is extremely pivotal to the creation of *waqf* or *waqf* fund. A *waqf* deed must contain certain stipulations in order for the

trustee of the *waqf* to “switch the distribution of the revenue from the *waqf* property to the beneficiary” (Mohsin, 2009). The researchers stipulate ten (10) principles approved by the Hanafi School of Law and accepted by other schools of law (Cizakca, 2000) and outlined below. They have been structured and paired up as follows: (Cizakca, 2000)

- *Ziyada* (Increase) and *Nuqsan* (Decrease)
- *Idkhal* (Addition) and *Ikhrāj* (Removal)
- *I'ta'* (Granting) and *Hirman* (Dispossession)
- *Taghyir* (Replacement) and *Tabdil* (Conversion)
- *Istibdal* (Substitution) and *Ibdaal* (Exchange)

The nature of *takaful* itself explains its adherence to the ten stipulations. Its adherence to the first pair, namely *Ziyada* and *Nuqsan*, is in the payment of claims and *takaful* benefits. The payment may differ as the amount of claims made by members of the *waqf* fund may vary. *Takaful* benefit paid to the members may also range in amount as different *takaful* plans offer different benefits. The second pair of stipulations, namely *Idkhal* and *Ikhrāj*, is applied to the membership of the *waqf* fund. A participant may request membership by filling in and signing a proposal form, and paying a non-conditional donation (Usmani, 2007). A participant's membership may be nullified and cancelled in the event of non-payment of donation or fraud. This action is standard practice of *Takaful* and insurance. The latter is therefore classified as *Ikhrāj* and the former *Idkhal*.

The third pair of *waqf* deed stipulations, namely *I'ta'* and *Hirman*, applies to the distribution of surpluses. As has been explained before, the founder has the sole right to where and whom the surplus is to be distributed (Usmani, 2007). It can be channelled to charity, be given to the

members of the fund or kept as reserve (Usmani, 2007). Most *takaful* companies would distribute it to the participants so as to attract more people to become members of the fund which results in increase in income for the *takaful* operators. The fourth pair of stipulations, namely *Taghyir* and *Tabdil*, can be seen in the usage of the *waqf* fund. If at any time a particular product does not do well, the function of the *waqf* fund may be changed, for instance, from covering mortgage to covering personal accidents. The fifth pair of stipulations, namely *Istibdal* and *Ibdal*, is not applicable to the *Wakala-Waqf* Model as it is relevant to immovable *waqf* property and not cash *waqf* (movable *waqf*).

This alternative model has been introduced to address the problems of ownership of risk funds, conflict of interest, *qardh hasan*, distribution of surplus, sharing of profits in the *tabarru'* fund and many more. It was established to replace the *tabarru'* fund without affecting the outcome (to the participants) which would arise in a *Wakala* Model. The Shariah Advisory Council (SAC) of Central Bank of Malaysia (BNM), in its Shariah Resolutions dated 23 June 2009, has permitted the establishment of *waqf* funds, in a *Wakala* Model in the practice of *takaful* provided that the conditions of *tabarru'* contributions remain the same as other models (Bank Negara Malaysia, 2010). All contributions paid by participants must be in the form of *tabarru'* and do not become part of the *waqf* in which its ownership is transferred from the participants to the *waqf* fund (Bank Negara Malaysia, 2010).

The *takaful* operator remains as *wakeel* (as all other models) that represents the participants by managing the *takaful* operations. The *takaful* operator is further recommended to contribute a 'cede amount' in forming a *waqf* fund which will remain perpetual and prohibited from being revoked or transferred. Although the SAC has

approved the application of the *Wakala-Waqf* Model in the *Takaful* industry, no stipulations were made to protect the *waqf* capital corpus in the event the *takaful* operator goes out of business. In the case of Malaysia, the matter of *waqf* is handled by the state Shariah court which results in the non-uniformity of jurisdiction as there are 13 states with different rulings on the establishment of *waqf*. Additionally, Madzlan Mohamad Husain (2009) reported that *waqf* for countries like Malaysia, Pakistan and the U.K is governed by the Trustee Act which is conventional and liberal in nature, which may not be consistent with the roles and responsibilities of trustees under the *waqf*-deed.

Many *takaful* experts have raised the issue of the applicability of *waqf* to *takaful*. One very important and relevant concern is that *takaful* is no longer *takaful* as its basis of *ta'awun* does not exist in the *Wakalah-Waqf* Model. According to them, the principle of mutuality is not observed because indemnity and financial assistance would come from the *waqf* fund in which the donation paid by the participants belongs to the fund. They added that *takaful* operators that apply this model behave like any normal conventional insurance. They further critiqued this model by stating that the problem of *qardh* still persists because the issue of fairness is problematic as *qardh* is being covered by future participants, not by the participants that caused the fund to go deficit (Archer, Abdel Karim, & Nienhaus, 2009).

They also raised the concern that participants' temporary membership based on term contracts with the *waqf* fund would make illicit the nominal capital contributed by the shareholders' to establish the *waqf* fund. Another important concern that was raised is concerning the ownership of surplus being transferred to the fund in totality which results in unfairness of treatment towards the participants as they have no say over the underwriting surplus (Archer, Abdel Karim, & Nienhaus, 2009).

Hibah, tabarru' and waqf application in takaful within the framework of Qawaid Fiqhiyyah

Islamic Scholars have also associated takaful to the following legal maxims (Ali & Odierno, 2008):

الضرر يزال

“damage or harm is removed”

الضرر يدفع بقدر الإمكان

“Harm is to be removed as much as possible”

This notion of *takaful* embraces all the unwritten wisdom behind the aforementioned maxims. The Prophet S.A.W encouraged Muslims to take precautions to mitigate risk before leaving it to Allah. The first legal maxim mentioned requires Muslims to remove harm in the event it happens, but in the event it could not be removed completely, the harm must be removed as much and as far as possible based on the second legal maxim. The harm is removed by people collectively pooling funds for the purpose of providing mutual indemnity in the case of losses incurring to anyone (Ali & Odierno, 2008).

Conclusion

Hibah, tabarru' and waqf application in takaful within the framework of Maqasid al-Shariah

To increase gifts and donations so that they may benefit the public as well as individuals

The whole *takaful* industry in general, regardless of the model a *takaful* operator adopts, uses *tabarru'* as a mechanism for a group of participants to mutually indemnify one another against defined losses and perils based on the concept of *ta'awun*

(Ali & Odierno, 2008). A fund would be created either based on *takaful* or *waqf* for the purpose of assisting one another in times of need (Lahsasna A. , 2013). *Takaful* experts have criticized the *Wakalah-Waqf* model for it is not based on the foundation of *ta'awun*. The reason for this negative perception of *Wakalah-Waqf* model is due to the *waqf* concept itself, whereby once the participants make their *tabarru'* to the *waqf* fund, the *tabarru'* monies no longer belong to the participants but the ownership is transferred to the fund. Any claims that come out of the *waqf* fund would come directly from the fund itself without any connection that could be traced back to the original donor (Archer, Abdel Karim, & Nienhaus, 2009).

If we go back to the legal maxim “consideration in contracts is to be given its meaning”, we will understand that the basis of *ta'awun* is still there in the *Wakalah-Waqf* model even though the *tabarru'* fund has been replaced with a *waqf* fund. This means that the notion of *takaful* itself and its permissibility is based on *ta'awun*. Hence its applicability in *takaful* remains in force regardless of the model used to run the business. In fact, since the *Wakalah-Waqf* model is established on a *waqf* fund, where the participants have no ownership over the conditional *tabarru'* or *hibah*, it is more Shariah friendly as no inheritance issue will be raised.

Gifts and donations must be voluntary and free from any reservation

In general, *tabarru'* made by participants is considered voluntary as it is up to the participant to take part in the *takaful* scheme regardless of the model that is adopted by the *takaful* operator. In the event the participant stops paying his *tabarru'*, his *takaful* coverage will be automatically ceased.

There must be tolerance and flexibility in the validation of donation contracts according to the wishes of the donor

The principles of *waqf* that was introduced by the Hanafis include *i'ta'* (granting), *hirman* (dispossession), *taghyir* (replacement) and *tabdil* (conversion). The first two principles, namely *i'ta'* and *hirman*, apply to the distribution of surplus. Based on these principles the founder has the sole right to where and whom the surplus is to be distributed to (Usmani, 2007). It may even be channelled to charity, or be given to the participants of the fund or kept as reserve for future *takaful* claims (Usmani, 2007).

The other two principles, namely *taghyir* and *tabdil*, can be seen in the usage of the *waqf* fund. If at any time a particular product does not do well, the function of *waqf* fund may be changed, for instance, from covering personal financing to covering personal accidents. The principles of *taghyir* and *tabdil* give the founder the flexibility to change the purpose of the *waqf* fund based on the needs of the business and *takaful* participants'.

This is also applied to the practice of *takaful* in general, regardless of the model it adopts. Upon entering a *takaful* arrangement, the customer or potential participant is given an option of benefits to choose from. The customer will only give his contribution based on the benefits chosen from the sum covered. The more the benefits and the sum covered, the higher the contribution is. Thus the customers have flexibility in the option of benefits and amount of sum covered.

The act of donation does not cause loss of rights and suffering to others such as heirs and creditors

The *takaful* concept is very much in line with the Maqasid Al-Shariah on protection of life. Its purpose is not to protect the life of the deceased, but protect the livelihood of those the deceased left behind. Looking after the wellbeing of the family left behind by the deceased is a clear concept approved by the Prophet S.A.W himself. When the Prophet S.A.W was asked by Sa'ad Ibn Abi Waqqas on how much he is allowed to donate as he only had one daughter. The Prophet S.A.W answered: "One third is much. Indeed to leave your heirs well-off is better than that you should leave them dependant on and beg from people" (Lahsasna A. , 2013).

Lahsasna (2013) highlighted an important Maqasid Al-Shariah or objective of Shariah pertaining to *waqf* which is giving help and assistance to those in need in the society. The *waqf* fund coupled with the *takaful* concept of *ta'awun* and *tabarru'* given by participants, would benefit the heirs of the participants after their demise. The concept of *takaful* itself ensures that the rights of the beneficiaries of the participants are protected and secured.

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REVIVING WAQF IN YEMEN

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Abstract

This paper aims to shed light on the status of *waqf* in Yemen and its role in the socio-economic development of the country. Dating back to the times of Prophet Muhammad, *waqf* contributed significantly to economic and social development, including social and infrastructure projects, the redistribution of income and wealth and the fight against poverty. However, *waqf* has lost a lot of its importance in the last decade, and its role in the Muslim community due to the weaknesses in the management system. Seeing the huge problems in Yemen, including poverty and unemployment among the youth, there appears to be some awareness and commitment in reviving the *waqf* system to solve the current socio-economic problems. This paper examines some of the challenges of the *waqf* system in Yemen and makes some suggestions for the way forward.

Keywords

Waqf, awqaf, waqif, endowment.

Introduction

The concept of *waqf* is as old as humanity. Some ancient nations practiced many kinds of financial transactions which coincided in some of their goals and meanings with the objectives of the Islamic *waqf* while diverging significantly in other areas like religious ideology and humane civilisation. *Waqf* has emerged as an Islamic economic tool with the potential of increasing and improving the socio-political wellbeing of the Ummah (Nurrachmi, 2012).

In this arrangement, Muslims are encouraged to give *sadaqah* that keeps producing benefits or revenues to achieve its targeted objectives even after the demise of the donors. This type of *sadaqah* is termed “*sadaqah jariyah*” or “continuous *sadaqah*”. The *waqf* created by a donor giving away an asset reaps benefits on a permanent basis. These can have a purely religious dimension like establishing a mosque, or a social dimension like building a house for the wayfarer or digging a canal. Thus a *sadaqah* donated during the benefactor’s lifetime continues to be beneficial after his/her death (Ahmed, 2007).

Defining *waqf*

‘*Waqf*’ (singular) or ‘*awqaf*’ (plural) in Arabic means stand still, detained or confined (Chachi, 2012). A *waqf* is an inalienable religious endowment in Islam which can be defined as an endowment of a certain property kept in perpetuity and dedicated for specific charitable purposes. It cannot be sold off, nor gifted away, nor can it be inherited. Once given, the donor has no longer any claim to it, nor can he ever reclaim ownership. Moreover, once in operation, *waqf* identified for a certain charity cannot be used or employed for purposes other than what has been specified. This definition applies not only to the perpetual *waqf* but also to the type of *waqf* that remains in force as long as its assets last i.e. for the beneficial life of the assets (Kahf, 2003). This is something that

has been agreed upon by the four schools of Islamic *fiqh*. In these circumstances, to supplement Kahf’s definition, *waqf* should be identified as the perpetual dedication of benefits of an asset, the value of which is subsequently amortised and its proceeds and revenues spent for the welfare of the designated beneficiaries.

Waqf history

Perhaps the most prominent and clearest evidence on the existence of *waqf* in pre-Islamic times was the Kaaba in Mecca. Kaaba was built by Prophet Ibrahim - father of the prophets (PBUH), as the first religious *waqf*. It was reputed to be a sanctuary and safe place for people. Later, the Arabs took custody of the premises and began to bestow Qurban to Kaaba and put idols around as symbols of worship and religion.

The *waqf* system in Islam, however, began from the time of Prophet Mohammed (PBUH) and came to be regarded as one of the best acts of worship to draw closer to Allah. There are a lot of Quranic verses and Hadith confirming its status as one of the best acts of worship. Historians have identified the first religious *waqf* in Islam was the Mosque of Quba which was founded by Prophet Mohammed (PBUH) at the beginning of his Hijrah from Mecca to Medina (Kahf, 2003). The first charity *waqf* during the era of Prophet Mohammed (PBUH) was in Al Madinah after the battle when a Jew called Mokhaireek fought with Muslims in Uhud. He gave instructions that should he be killed, all his property (seven orchards) would go to the Prophet. He was in fact killed during the battle and the Prophet (PBUH) took the seven orchards and declared them to be a *waqf* for the poor, needy and *Mujahideen*. Since then several other properties were pronounced as *waqf* during the lifetime of the Prophet (PBUH) and after his death, his companions continued the practice, disbursing *waqf* for the benefit of the public and people who were in need.

Waqf in Yemen - like other Arab and Muslim countries - dates back to the era of the Prophet (PBUH). Perhaps the first Islamic *waqf* in Sana'a was the great Mosque of Sanaa built by order of the Prophet in the sixth year of Hijrah. This was the third mosque in Islam after the Quba Mosque and the Prophet's Mosque in Al Madina, and in fact the first mosque outside Al Madina (Al Razi, 1465).

The role of *waqf* in Yemen

Al Faran (2005) stated that the prosperity of *awqaf* (endowments) during specific periods was in tandem with the economic and cultural prosperity in the society. In other words, political stability and economic boom led to the prosperity of the endowments and their proliferation in many fields. However, economic recession and decline of business activity, as a result of political crisis inevitably led to the decline of charitable endowments (Yemen Encyclopaedia, 1992). Deguilhem-Schoem (1986) has emphasised that despite the chequered history of a country, the *waqf* played a central role in Islamic society. It touched almost every aspect of economic, political and social life in the Islamic world.

In Yemen, *waqf* has for ages been invested in properties. The proceeds of *awqaf* in their several forms of investment bring relief to the beneficiaries provided they are legitimately maintained and administered in line with the economic and social principles governing these endowments (Al Faran, 2005). This should ensure the continuation of those charities in accordance with the terms of the *waqf* donor, taking into account the need to develop the revenues of certain *waqf* properties. The revenues would then be continuous and unbroken throughout the life of the property. The current status of *waqf* has very often been a reliable indicator of the economic and political situation of a country. Therefore, wherever the institution of *waqf* is in decline, every effort should be made to restore it to its original state of prosperity.

Current status of *waqf* in Yemen

The Ministry of *Waqf* in Yemen can take many steps to utilise *waqf* and create new models which can contribute in reducing the unemployment rate and alleviating poverty. According to El Asraj (2011), *waqf* is playing an important role in economic development by providing the basic needs for the poor: clothes, food, public services and building manpower capacity by developing their skills. All these will result in increased production.

Political, social and economic developments in Yemen have led to increased recognition of the importance of *waqf* and its role in development as well as in combating poverty and unemployment. *Waqf* in the past helped the public and private sectors in building schools, clinics, hostels for students as well as assisting poor families, orphans and widows. *Waqf* in Yemen needs to be revived and returned to its original purposes by becoming a third-sector, working in tandem with the government and private sectors. Only then can it regain its former vitality.

Fields of *Waqf* in Yemen

In Yemen, a large part of *waqf* revenues are most frequently spent on mosques and the rest on thirteen other fields as displayed in Figure 1. Currently, these fields are not mobilised effectively and revenues from them are not efficiently used. *Waqf* in Yemen can be improved and developed to build shopping complexes and commercial centres which will help in creating new jobs for youth and reduce unemployment. Income from these activities could be used for financing other projects.



Figure 1: The 13 fields of *waqf* in Yemen

Source: Ministry of Waqf in Yemen - Website

Reasons for the decline of *waqf*

According to the reports of the Ministry of Waqf in Yemen, the extent and scope of *waqf* in the country is considerable. However, it is not managed in a beneficial and productive way to help improve the economic situation.

In addition, the Head of Investments Department in the Ministry of Waqf believes that in the last few years the income from *waqf* has been declining. Moreover there are no new endowments forthcoming. Crippling political conflicts since 2011 has made the situation in Yemen unstable. This has affected *waqf* income because many people have refused to pay money for *waqf* on the grounds that they do not recognise and trust the regime. This has led to the undermining of government authority over *waqf* and, in consequence, in the overall weakening of the system.

Al Faran (2005) stressed that *waqf* has been in decline in the current period, especially after the intervention of the state. There are many contributing factors for this state of affairs:

- Weakness in religious faith among the people;
- The government channelled considerable *waqf* funds to provide for, among others, education, health and social care;
- Widespread mismanagement of *waqf* funds leading to weakness in the efficiency and performance of the endowments;
- Various administrative challenges which contributed in preventing *waqf* from carrying out social functions while impeding development and bringing into question the credibility of these funds.

All these factors resulted in the deterioration of the *waqf* real estate situation – revenues decreased, there was manipulation of funds, and people were reluctant to donate. Thus the lack of charities and munificence, not adhering to the concept of comprehensive development, and the restriction of *waqf* to buildings and cheaply rented land (Al Faran, 2005) could not but bring about extensive deterioration to this once glorious institution.

Moreover, according to the Ministry of Waqf Reports (2012), the last 10 to 15 years saw a drop in the *waqf* capital. This drop was especially notable in the last 3 years with the country deep in crisis.

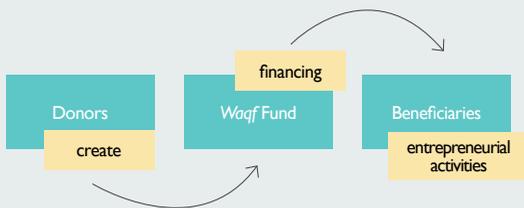
This naturally affected the value and income of *waqf*. The economic situation of the country has deteriorated and the number of endowers to *waqf* has decreased. Some people have even withdrawn their sponsorships.

One important issue is the limited number of models of effective *waqf* management. According to the Head of Investments Department in the Ministry of Waqf (2013), *waqf* in Yemen, is not utilised efficiently and effectively. The system is also not managed in ways that would enable improvement and expansion. Much more research and work is needed to improve distribution of *waqf*. There may be need for predictive analysis. The perspectives of the Ministry of Waqf have to be taken into account.

Recommendations

It would be beneficial for the Ministry of *Waqf* to design and adopt a model that is suitable for many types of *waqf*. This could form the basis for action to increase funds. A possible *waqf* model is produced in Figure 2.

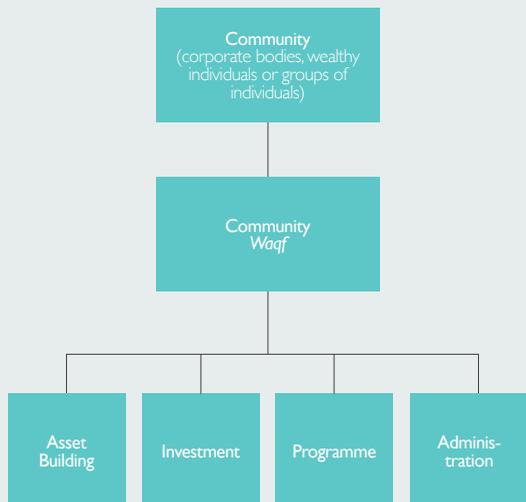
Figure 2: The *waqf* model



The Ministry of Waqf in Yemen can establish some projects and enterprises which will create new income to support and develop the current *waqf*. The income from these projects can be used to finance new projects as well as maintain other *waqf*

properties. For example, Baitul Mukarram shopping complex in Dhaka city provides employment to a large number of people and finances a publication house, a large auditorium for various activities, and the national mosque (Sadeq, 2002). Some of the *waqf* revenues can be allocated to support entrepreneurs, the unemployed, or poor people through various programmes. To create sources of income, the *waqf* administration can invest the *waqf* fund in real estate, property or equity. This is summarised in Figure 3.

Figure 3: Enterprise *waqf* model (Adapted from Alias, 2011)



The Ministry of Waqf can learn from the experience of other countries (such as Malaysia, Bangladesh, Singapore, Turkey, Kuwait etc.) in improving *waqf* by implementing new models.

The creation and administration of cash *waqf* is one way to generate income. This is done by mobilising public funds to be pooled as a *waqf* asset

(endowment) and managed in such a way that it can generate steady income while maintaining and even increasing its initial value or at least maintain its sustainability. The income generated from investing the funds can then be distributed to the beneficiaries. Preserving the perpetuity of *waqf* is a very important factor in managing *waqf* assets, including cash *waqf* because this is the essence of *waqf*. In this regard, it is very important to design an evaluation instrument for *waqf* assets.

Conclusion

The history of Islamic *waqf* goes back to the time of Prophet Mohammad (PBUH) and *waqf* in Yemen is reported to have been also founded during the time of the Prophet Mohammad (PBUH). However, *waqf* or endowments shares a rich history not only in the earlier Islamic civilisations of the Andalusian and the Ottomans but also in the Christian and the European civilisations where some of the models that we see today were inspired by the Islamic tradition.

The *waqf* is not only notable for its spiritual and religious aspects, but also for its important role for overall development. Throughout the ages a clear trend has been that when there is growth and stability in the economic and political arenas, there is also increase in charitable endowment. The reverse is also true. *Waqf* in Yemen has seen a decline in the efficiency and administration of *waqf* management but has been exacerbated by the recent economic and political turmoil in the country.

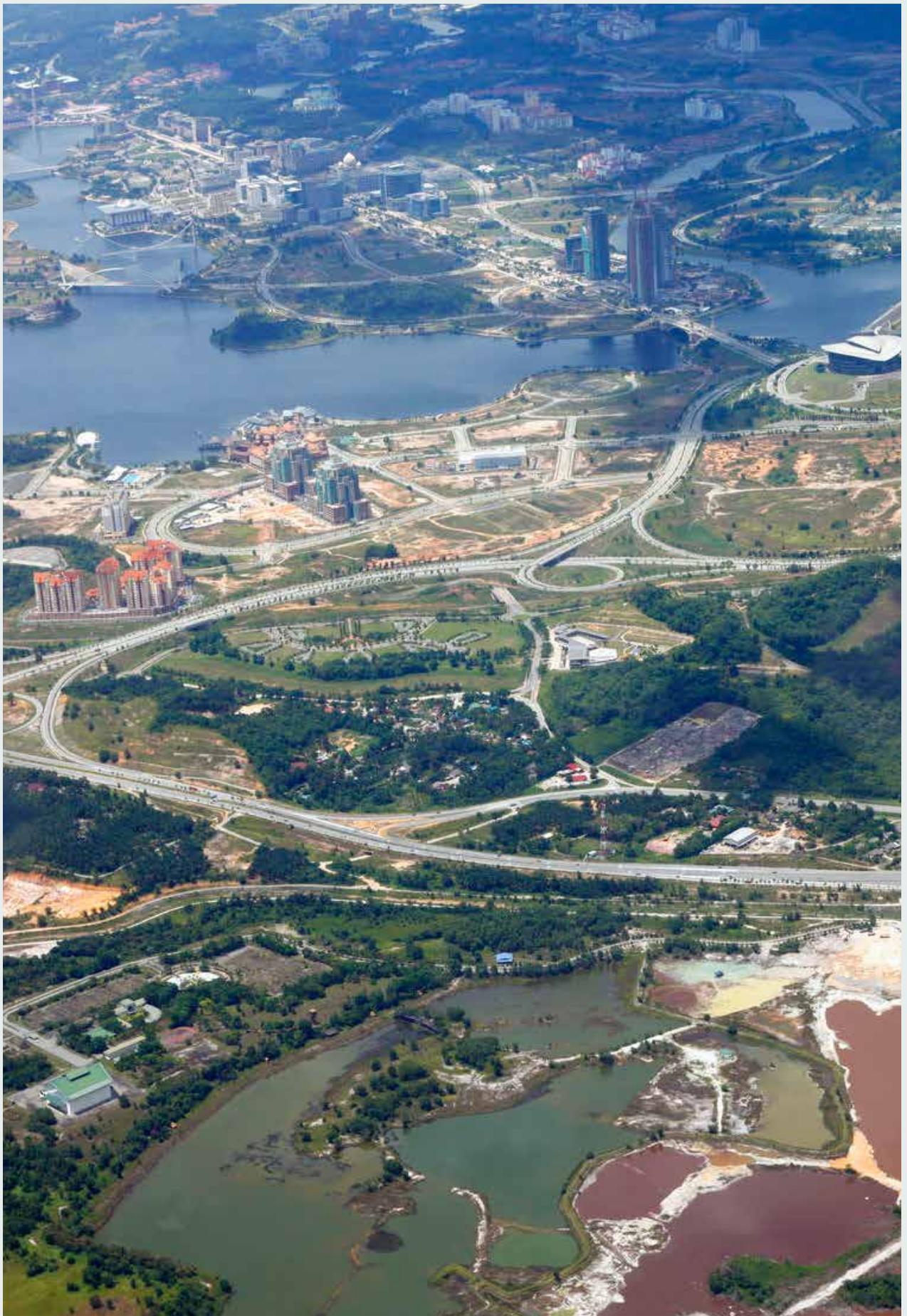
The institution of *waqf* has played an important role in wealth distribution, poverty alleviation and socio-economic development of many societies throughout history, and thus it is imperative that the system in Yemen be revived to realise its true potential and to provide solutions to some of its most critical economic and social issues.

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THE IMPLEMENTATION OF LAND ACQUISITION ACT 1960 AND ITS NEGATIVE IMPACT ON THE DEVELOPMENT OF WAQF (ENDOWMENT) LAND IN MALAYSIA

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Abstract

The Land Acquisition Act 1960 has long been used in respect of land acquired by force in Malaysia. This article attempts to identify the extent of implementation of land acquisition by the government based on the Land Acquisition Act 1960; whether it is consistent with Shariah, particularly involving Muslim *waqf* land. A few suggestions towards Islamisation of the Act have been put forward taking into account the principles and methods governing the Shariah so that every national development can be carried out in a more dynamic and comprehensive manner in tandem with modern needs.

Introduction

Land acquisition has always been considered a sensitive issue and it may cause controversies and dissatisfaction among the people. The usual question put forward is the rationale of the land acquisition towards public interest, or whether the reason for land acquisition is in tandem with public interest. As stated in the Article 13(1) of the Federal Constitution, no one may be deprived of their property. The guarantees provided in the Federal Constitution are to ensure that private property rights are protected in Malaysia.

The government have drawn up a law of land acquisition with clear procedures so that all actions undertaken by the authorities are consistent with the law, particularly for land acquired by force or without consent of the land owners, in exchange of adequate compensation as guaranteed in Article 13 (2) of the Federal Constitution. Even though land acquisition is legal in Islam, the rule is not absolute. In addition, it may involve trust property that benefits Muslims. There are a few aspects that need to be analysed and refined without acting arbitrarily or taking easy steps that may cause loss to the *waqif* and the trust holders. The right to preserve the benefits of the *waqif* is included in the category of "specific rights". The rights should never be put aside even though the basic rulings require "general rights" be placed first before "specific rights".¹

Law of land acquisition in Malaysia

According to Article 13 of the Federal Constitution, no person may be deprived of property save in accordance with law. Therefore, land acquisition by force is not opposed to Article 13 because the power and the process of land acquisition are carried out according to law under the Land Acquisition Act (LAA) 1960. If the land acquisition is against the law, the action is said to be illegal or void or could be a subject of dispute. State Authority (SA) is the only entity that is given the authority pertaining to land within the State, and the rights to minerals and rocks located on and inside the State land, provided that it has not been excluded by the State Authority (SA).²

Section 2 of the LAA (1960) includes the roles of King or Sultan, or the Governor and the Federal Territories of the King. Their roles commence from the time decision was made to acquire the land it is vested in him or her, or the land is withdrawn from the acquisition process. If the land is required for public development purposes such as building of hospitals, schools, highways, bridges, dams, ports, airports, the Land Acquisition Act will be invoked by the SA or the Federal Government or any of their agencies in need of the land. Based on Article 13 of the Federal Constitution, as well as guarantees and provisions contained in the 1960 Act, land acquired by the government should not be construed as an act of plunder or that the

1. The National Land Code, 1965.

2. Article 13 of the Federal Constitution, Sec. 40 The National Land Code, 1965; Sec. 2, the Land Acquisition Act (LAA) 1960.

government does not recognise the right of the people to their property. The law requires that compensation be assessed at market value. This right is consistent with the concept of “adequate compensation” as guaranteed in Article 13 of the Federal Constitution.³

The Land Acquisition Act 1960

In essence, land is a matter of the State as enshrined in the Federal Constitution and it is within the jurisdiction of the executive of each State Government. However, Article 76(4) of the Federal Constitution allows Parliament to formulate a law for the purpose of ensuring uniformity and equality of policies among the States. The law in question is the LAA 1960 (Act 486) amended in 1997. This Act came into force on 13 October 1960 for the entire Federation of Malaya. For Sabah, the law governing the acquisition of land is the Land Acquisition Ordinance 1950, and in Sarawak, it is the Sarawak Land Code 1958. The LAA 1960 was enacted by Parliament in accordance with Article 76(4) of the Constitution. Before the LAA 1960 became effective, there were eight written laws and they have undergone several amendments and modifications. They provided guidance on matters of land acquisition, such as land acquisition procedures, the parties involved, the compensation paid and the method for determining compensation.⁴

The LAA 1960 practised in Malaysia was inherited from India’s Land Acquisition Act (India) 1894. The main purpose of this Act is to establish uniformity

of law in the States in connection with land acquired by force. It is also intended to include the acquisition of lands owned by any person or body by force for public purposes, its evaluation, compensation for the land, and any matters arising from the acquisition.⁵

According to Salleh Buang, prior to the enactment of the Act, local laws related to land consists of four systems:⁶

- The Malay Customary Land Law (*Undang-undang Tanah Adat Melayu*);
- English Deeds System enforced in Penang and Malacca;
- Dutch Grants, applicable only in the vicinity of Kota Melaka; and
- Islamic Land Law (*Undang-undang Tanah Islam*).

With the existence of LAA 1960, public interest will prevail over individual interest. Government development programmes can be carried out quickly and easily, even though the affected land is a registered land and owned by individuals who may refuse to cooperate in the process of land acquisition. This shows that the existence of LAA 1960 is to facilitate the acquisition of land by the Government. The law eliminates the concept of exclusive use and enjoyment under Section 44 of the Land Code, as well as the concept of ownership under Section 340 of the same Code. This is because in most cases, the process of buying and selling between individuals and the government failed to reach an agreement on its importance and value of land.

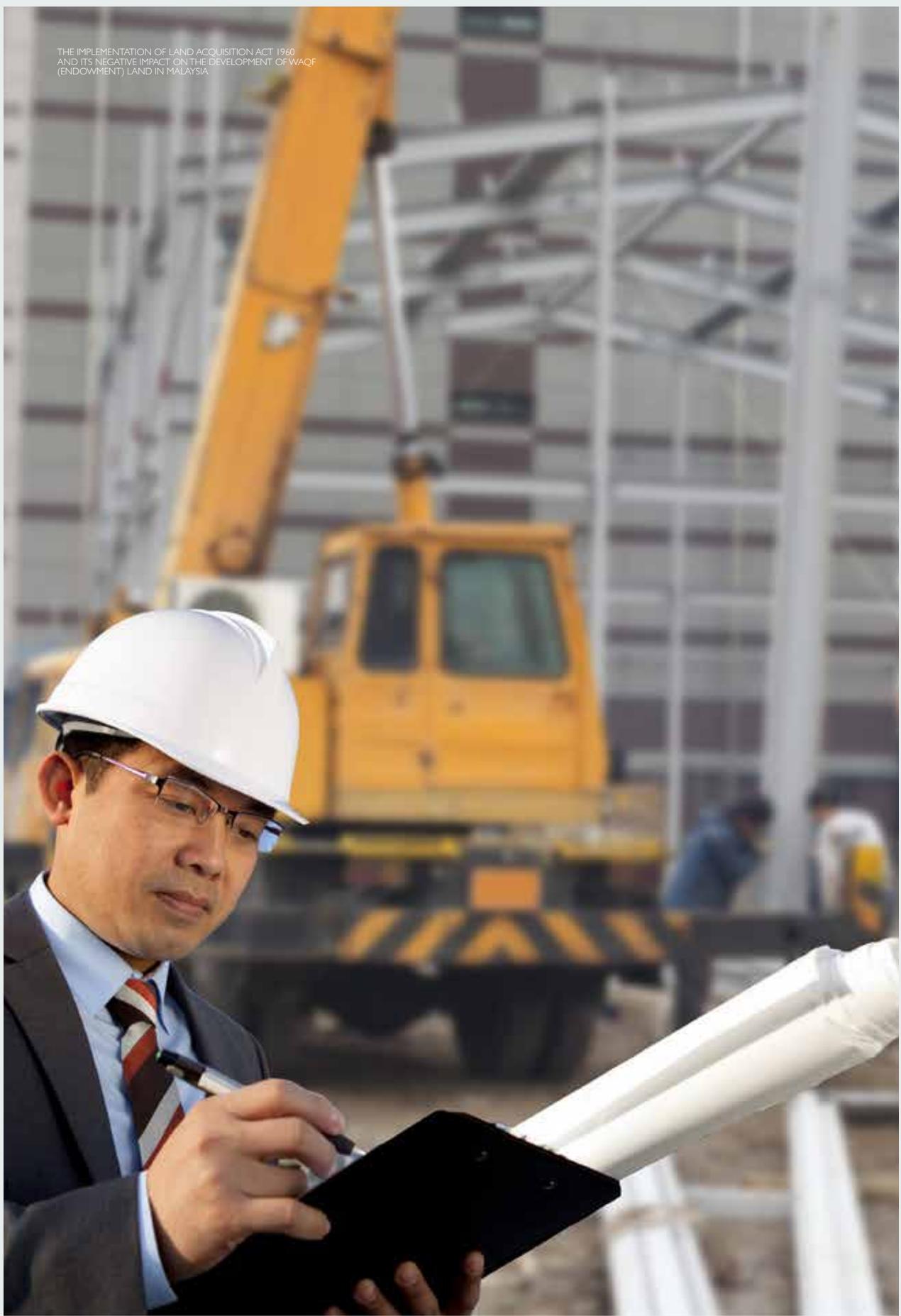
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Land acquisition by force in Islamic law and its application in the National Land Code

Acquisition of lands by force occurred during the time of the Prophet (PBUH) and practices implemented by the Companions were intended for public interest or *maslahah 'ammah*. Normally, dispossessed lands were taken for the construction or expansion of mosque sites, grave sites and the expansion of roads. The purpose and justification for taking over such land were not debated or disputed by Muslim jurists. Compulsion of the rulings was clear and not disputed by any parties. Indeed, the matters mentioned are set as fundamental needs of society in any country. In fact, their absence would lead to hardship and inconvenience to the community and Muslims in particular. In addition, to a certain extent the level of needs is at the level of *daruriyyat* and no longer *hajjiyyat* and *tahsiniyyat*. In cases where the site of a *masjid* or graveyard is too small to accommodate the ever growing population, or there is a lack of roads for public access, or other basic necessities, it becomes the responsibility of the authorities to provide proper facilities to ensure the comfort and happiness of the public.⁷

Previously, not many problems arose due to land acquisition because at that time there was abundant state-owned land and the population density was low. Most acquired lands belong to the Government, which could always be replaced by other land or by financial compensation. It is very different today where land acquisition is

not only for construction of public facilities like roads, mosques and cemeteries, but also includes development projects. Among the projects are the construction of factories, housing developments, shopping complexes and other profit-oriented businesses. Nowadays, real estate investments are seen as highly profitable business prospects than other forms of investment.⁸

An amendment to the 1960 LAA in 1991 brought major changes to the concept of land acquisition implemented by the government.⁹ Though the amendments only involved specific sections, the impact on the land acquisition laws in the country is significant. The amendment resulted in controversies among the people who saw it as detrimental to landowners and a seizure of people's rightful property. Amendments made to the 1960 LAA were to realise the government's intention to implement a privatisation policy, which was expected to accelerate the pace of economic growth through the contribution of public sector. The policy was announced by the then Prime Minister of Malaysia, Dato' Seri Dr Mahathir Mohamad in 1993.¹⁰

The amendment to Section 3 of the LAA 1960 empowers SA over land acquisition. The power conferred is absolute and final, where any alienated land taken by the State Authority is not bound by or subjected to any terms and conditions other than those provided by the Act. All decisions made by them cannot be disputed and challenged in any court. According to Section 42 of the Land Code 1965, land is under the absolute jurisdiction of and belongs to the government. Therefore, SA is the

7. Al-Samhudi, Nur al-Din 'Ali b. Ahmad (n.d.), *Wafa' al-Wafa*, Vol.2, Beirut: Dar al-Kutub al-'Ilmiyyah, pp.482-483.

8. Ismail Omar (2002), *Pelaburan Harta Tanah*, Kuala Lumpur: Dewan Bahasa dan Pustaka, p.19.

9. Roslan bin S. Ismail (2000), *supra*, p.2.

10. Mohd Afandi Mat Rani (2008), *Pengambilan Tanah Wakaf Oleh Pihak Berkuasa Negeri: Analisis Menurut Hukum Syarak dan Aplikasinya di Malaysia*, PhD Thesis, Shari'ah and Law Department, Universiti Malaya Kuala Lumpur, p.176.

only qualified party and authority on the eligibility and right to take any alienated land by force.

According to Section 3 (1) of the LAA 1960, the government in the interest of the public and country's economic development may take away individual property by force. However, in today's reality, the government allows private entities to acquire individuals' land for development and commercialisation. This matter needs to be looked into seriously as there is a threat of fraud and abuse of power that could erode the positive meaning of public and national economic development, and invite various arguments from the landowners. It also gives a long term impact on the development of *waqf* property in Malaysia. Among the matters raised, is the question of land acquisition by eligible party and the various forms of development projects. Other than that, the purpose of land acquisition or public interest is up to the government to decide. The worst situation is that whatever decision made by the SA, it cannot be disputed by any parties, be it the landowners or the court.¹¹

The confiscation of property by force in the country's land law is found in Islam. However, the procedures adopted by the land administrator based on the LAA 1960 are seen to be in contrast with the concept of land acquisition in Islam. What sets the two apart is in respect of the implementation where a number of weaknesses and defects must be address to achieve justice for both the landowner and the agencies that want to take the land.

Application of the concept of public interest (*maslahah 'ammah*) and public purpose in *waqf* land

The acquisition of *waqf* land in Islam is based on the concept of *maslahah*, which emphasises the importance of its purpose and care of the *waqifs'* benefits which is taken by force. Therefore, when acquired *waqf* property, the government must take into account several aspects as these must be applied from the concept of *maslahah*. They are:

- The purpose of acquisition of *waqf* land is based on the urgent need in terms of religious, educational, economic and social criteria.
- The implications of the land acquisition itself to the *waqif* and trustee, and the benefits derived from it.
- Other alternatives, such as looking for another place in lieu of or other considerations in favour of both parties (the owner of the land and the taker of the land).
- The opinions and views of authoritative parties need to be considered as a study in determining the status / compulsory status.

Section 3(a)(b) of the 1960 Act provides for the same thing where the SA may acquire any alienated land for public purposes and it may also be given to individuals or bodies to carry out economic activities in the interest of or "beneficial" for economic development of the country. Furthermore, the interpretation of "beneficial" in section 3(b) is broad. Provisions contained in the

11. Syed Omar bin Abdul Rahman Taha Alsaqqaf & Anor lwn. Government of Johore, [1979] 1 MLJ 49.

12. Al-Syatibi, Abi Ishak (tt.), *Al-Muwafaqat fi Usul al-Syariah*, Vol. 2, Beirut: Dar al-Kutub al-Ilmiyyah, p.275.

section are not just for economic development but more than that. It also includes social, cultural and religious activities. The meaning of economic development is provided in Section 3(b) of the Act, which shall include the benefits for:

- Economic development of Malaysia;
- Economic development of parts of the people of Malaysia;
- Civilians as a whole; and
- Civilians of all ages¹³

Hence, it is not contrary to the aim of the Act where Section 13 (a) states that private land can be acquired by the Government for the purpose of erecting churches, temples, or other houses of worship.¹⁴ However in practice, until this study is done, there has been no case of the SA applying Section 3 (a) for the purpose of building houses of worship other than Islam which involved *waqf* land. If the SA considers acquiring *waqf* land for the construction of churches or temples, this does not conflict with the Act, while any objection or protest is against the law (Section 36).

There is a change in the concept of land acquisition after the amendments to Section 2(3) of the Act in 1991. The parties whose lands are taken cannot argue on the purpose of any acquisition made. The right to determine whether it is for public interest or individual interest belongs entirely to the SA. State Religious Councils (SRCs) have no right to question the purpose of any specific or general *waqf* land affected by land acquisition by the SA

whether it is reasonable or not. SRCs have no jurisdiction in any acquisition law and anything related to it. In 1992, there was a suggestion made that the Act should be amended to disallow *waqf* lands (especially for *masjid* or *madrrasah*) to be taken by the government for whatsoever purposes. Land administrators will not accept or entertain any objections from any parties wishing to object in terms of the purpose of land acquisition. The then Deputy Minister of Land and Cooperative Development, Dr Goh Cheng Teik had advised the state government not to abuse their power by acquiring people's land for private projects. The ministry developed a revised proposal to the Council of the National Land Code (MKTN) in 1995. The ministry was willing to negotiate with the State government if there was land taken for development by the private sector and would ask for a report to be made to the ministry if there was such a case.¹⁵

The LAA of 1960 does not provide any protection to land owners to void or prevent their land from being taken when Form A was gazetted.¹⁶ The LAA 1960 does not provide a precise definition of 'public purpose'. The government is the only authority to determine whether the acquisition is for public purpose or otherwise, and its decision cannot be challenged by any parties in court. Therefore, the provisions in the LAA 1960 made are in favour of land applicants to use the method of coercion to acquire lands especially involving non-urgent land development or simply taking an easy way to acquire strategic land for development.¹⁷

13. Helmi Hussain (1999), *supra*, p.56.

14. *Ibid*.

15. Berita Harian, 25 Nov 1996.

16. Sec. 4, The Land Acquisition Act 1960.

17. *Yew Lean Finance Development (M) Sdn Bhd v Pengarah Tanah dan Galian Pulau Pinang* [1977] 2 MLJ 45.

The 4th Assembly of the Fiqh al-Islamy Council held in Jeddah on the 6 April 1988 passed a few resolutions pertaining to the forcible removal of ownership for the benefits of the public. One of the resolutions was that land taken by force from the owner, cannot be used for the purpose of investment whether for the public or individuals. Based on this resolution, authorities must distinguish between the acquisition of land for public purposes and land intended for investment.¹⁸

Standard of benefit (*maslahah*) in *waqf* land acquisitions

Rulings based on the mechanism of *maslahah* require clear guidelines or procedures, especially in a constantly changing world, where any confusion and obscurity of this mechanism could affect the current *maslahah* rulings. The *maslahah* concept has become the benchmark in applying the law either with stern prohibitions or allowing certain conditions, or to take a moderate approach by relying heavily on decisions made by the government.

The acquisition of *waqf* lands for public interest must solely be made for public interest (*haqiqiyyah*) or *qat'iyyah* rather than for interests that are *wahmiyyah*. The implementation of land acquisition made by the government for the purpose of constructing roads, hospitals, airports, mosques etc. are obviously for the benefit of the people on the basis of necessity. Actions that have been taken here adhere to what is meant by *maslahah haqiqiyyah* or *qat'iyyah* as discussed

by Muslim jurists. Acquisition can bring benefits to the public and the proposed projects are deemed necessary.¹⁹

The lawful concept of land acquisition based on *maslahah 'ammah* according to Shariah rulings need to be taken into consideration to ensure the interest of all parties. Even though this approach is seen to mean the same as public purpose provided in the national civil land law, the interpretation between the two are different from each other, especially for *waqf* land with its own legal basis, as opposed to other general owned lands, in terms of usage and ownership rights. The concept of public purpose in Islam takes into account limitations and boundaries in accordance with Islamic legal maxims. Similarly, if there is a clash between two interests (*maslahah*), priority should be given to the public.²⁰

Contradiction between benefit (*maslahah*) and harm/damage (*mafsadah*) in *waqf* Land acquisition

Land acquisitions by force are often open to abuse by interested parties. Therefore, a conflict exists between *maslahah* and *mafsadah*, in many aspects of *waqf* land acquisition, especially in respect of the purpose and procedures of acquisition.

Based on Islam's guideline, when one acquires a piece of land, priority should be given to resolving conflicts or issues that may arise from the acquisition before considering the benefits it

18. Mohd Afandi Mat Rani (2008), *supra*, p.212.

19. Al-Zuhayli, Wahbah (1989), *Usul al-Fiqh al-Islam*, Vol.2, Damascus: Dar al-Fikr, p.1029.

20. Al-Zarqa, Saykh Ahmad b. Saykh Muhammad (1989), *Syarh al-Qawa'id al-Fiqhiyyah*, Damascus: Dar al-Qalam, pp.187-188.

brings. This procedure complies with the Islamic legal maxim that “*dar’u al-mafasid awla min jalb al-masalih*” (removing damage takes priority over promoting benefit). Hence, for the *waqf* land acquired by force by the SA and is not replaced with other land, it may lead to *mafsadah*, not only to the *waqif* but also to Muslims in general.²¹

In resolving the predicament mentioned above, the method of *tarjih* (more appropriate and selected opinions) based on the concepts of *rajih* (stronger) and *marjuh* (weaker) can be implemented. These concepts are based on two features: *maslahah* and *mafsadah*. The advantages and disadvantages of a land acquisition will be measured, and they will be used to determine the rulings between prohibition and command. For example, a *waqf* land is acquired to build a public housing estate, which is categorised as *maslahah wahmiyyah* or in public interest, is initially believed to bring benefits to national economic development, but when examined in detail it may appear to give long term detrimental effects to the alienated lands. Among the lawful conditions of land acquisition including *waqf* land is that the land acquired is for public use (*al-kulliyat*) and should not benefit only a small number of individuals.²²

In addition, the construction of housing estates by the government today is generally dominated by certain groups consisting of corporate members who earned enormous profits from selling the houses. The buyers of the houses are however, not from the low income group or people who are in need, but are high income people who can afford to buy the houses at a high price.

Requirements of land acquisition application

In Islam, governments are only entitled to acquire lands by force for the benefits of the public. According to Dr Bakr b. ‘Abd Allah Abu Zayd, *waqf* lands acquired by force are bound by Shariah. If the lands acquired are not for the purpose of public interest, such action is considered as “merciless”, which is prohibited in Islam.²³

According to Section 3(b) of the Act, everyone is eligible to acquire land but the authority lies solely with the State Land Authority (SLA) regardless of the applicant’s religion and social status. The word ‘any person’ brings about a major implication to individuals, companies or any eligible parties entitled to acquire lands. ‘Any person’ does not mean it is specified to only eligible land owners, it also includes parties who only use the land for economic development. The Act does not state specifically who can apply to acquire land.

Therefore, *waqf* land can be acquired by any parties, individuals or corporations, and objection to any land acquisition by force is considered an offence. Provisions contained in the Act are in contrast to the methods of land acquisition in Islam.²⁴ Eligibility to apply for a parcel of land in Islam is being considered from a more practical and rational perspective. If *waqf* land is acquired for profitable projects, priority must be given to the major (*kubra*) *maslahah* rather than a small (*sughra*) *maslahah*. Therefore, the best approach is to prioritise the *maslahah* that has less adverse effects²⁵ than the *maslahah* that brings enormous adverse effects.²⁶

21. Ibid., pp.205-206.

22. Mohd Afandi Mat Rani (2008), supra, p.122.

23. Mahmud Syamam (1988), *Intiza’ al-Milkiyyah li al-Maslahah ‘Ammah*, Mu’tamar Majma’ al-Fiqh al-Islamic, No., IV, Vol. 2, Jeddah, p.1089.

24. The Land Acquisition Act 1960.

25. Ridzwan Bin Ahmad (2004), “Metod Pentarjihan *Maslahah* dan *Mafsadah* dalam Hukum Islam Semasa”, (Proceeding National Seminar on *Usul Fiqh* (SUFI), Kolej Universiti Islam Malaysia (KUIIM), 15-16 December 2004, Institut Latihan Keselamatan Sosial KWSP (ESSET), Kajang Selangor, p.346.

26. Ridzwan Bin Ahmad (2004), “Metod Pentarjihan *Maslahah* dan *Mafsadah* dalam Hukum Islam Semasa”, (Proceeding National Seminar on *Usul Fiqh* (SUFI), Kolej Universiti Islam Malaysia (KUIIM), 15-16 December 2004, Institut Latihan Keselamatan Sosial KWSP (ESSET), Kajang Selangor, p.346.

With the lack of restriction from the government, it is a concern that *waqf* land would become forfeited assets as 'developments' in the name of public interest are on the rise. The Malay Reserve Land (MRL) is such example. According to Ahmad Nazri Abdullah, in a span of 23 years (1947-1970), the Malays lost as much as 674,906 hectare of MRLs or on average 29,344 hectares per year. There is a provision to replace the acquisition of MRL, but in reality it is not implemented at all.²⁷

Method of determining land compensation

Land acquisition by force with sufficient compensation has been agreed by majority *fuqaha*²⁸. Islam has laid down general rules in determining the amount of compensation that should be given to the landowner by emphasising the concept of justice (Al-Quran, Surah *al-Nahl* 16:90) and agreement between the two parties (*al-rida bayna al-tarafayn*). In the property valuation profession, a decision to determine the value of a property is not an easy task.²⁹ The most accurate valuation and reasonable compensation is usually a result of a thorough, responsible and informed exercise.³⁰

The specific methods and rules would depend on *siyasah al-syar'iyah* and the wisdom of the ruler. The authorities should make every possible effort to achieve these policies by not taking for granted or doing it half-heartedly as well as being irresponsible until it leads to injustice and cruelty to the parties whose land is being acquired.³¹

The LAA of 1960 has allocated compensation and methods of compensation in the First Table of the LAA 1960 under Sections 12, 35, 46 and 47. The first table of the Act becomes a formal (written) regulation for valuers, land administrators and applicants in setting a fair value for compensation. Under the provision of the LAA 1960, there are some matters that would need to be studied as they are against Shariah rulings, practised by land administrators. The LAA 1960 is said to be a barrier to fair payment of compensation to landowners. According to the Deputy Director General of Valuation and Property Services Department (VPSD) Mani Usilappan, the LAA 1960 needs to be amended to enable fair compensation payments to be made to landowners whose lands are acquired for development purposes. The government also promised with the amendment of LAA 1960 (amendment 1997) that the LAA will become fairer and beneficial to the people. However, research shows that the issue of the value of compensation is the main factor for grievances of landowners when their land is involved in the acquisition. For example, land acquisition in Hulu Perak for the widening of the Gerik-Pengkalan Hulu route have resulted in major differences in terms of land valuation between Malay and non-Malay landowners. Malay landowners were paid between RM5,000 to RM6,000 compared to non-Malays, RM40,000 to RM50,000.³²

Land acquisition procedures adopted by the land administrator today do not facilitate the concept of bargaining between both parties in determining the amount of compensation or reimbursement.

27. Ahmad Nazri Abdullah (1984), *Melayu dan Tanah*, Kuala Lumpur: Media Intelek Sdn Bhd, pp.217-218; Berita Minggu, 5 Sept. 2004.

28. Al-Abbad, 'Abd al-Salam (2000), *Intiza' al-Milkayyah al-Khassah li al-Manfa'at al-Ammah, Mu'tamar Majma' al-Fiqh al-Islamy*, No. IV, Vol.2, Jeddah, p.7.

29. Suhaimi bin Hj Mamat (2001), *supra*, p.2.

30. Ismail Omar (2002), *Pelaburan Harta Tanah*, *supra*, p.19.

31. Ismail Omar (2005), "Tidak Mengambil Berat Pentadbir Tanah dalam Prosedur Pengambilan Tanah", Working Paper in Standardization of Land Acquisition, Costa Rica Port Dickson, Negeri Sembilan, 3-4 March 2005.

32. Utusan Malaysia, 18 April 2001; Berita Harian, 24 September 1991.

There is no consultation between the two sides to reach an agreement. As a result, two different claims occur between the landowner and land applicant. The landowners would demand for high compensation and the land applicant would prefer to settle with lower compensation. Section 12 of the LAA 1960 provides authority to the land administrator to carry out a full inquiry to secure the required details to determine the award. Therefore, the compensation given is often not sufficient and contrary to the market price. This is because the market price is the price landowners are willing to accept and without coercion from the buyer through bargaining. Section 37 of the LAA 1960 has given the power to landowners or SRCs to appeal to the court about the payment of compensation. However, the legal cost is high and it takes a long time to settle, which brings loss to SRCs as transpired in the case of *waqf* land acquisition in the State of Melaka.

The status of *waqf* land and the rights to demand compensation

The principle of *al-ta'bid* or “sustainability” is explained by *fuqaha* in the section on conditions of *sighah waqf*.³³ As agreed by the majority of *jumhur*, determining or limiting the duration of the *waqf* land would deny the rulings of *waqf*. This is one of the principles that differentiate between *waqf* properties and other properties. In this case, there are views that *waqf* land holds “permanent” status as an absolute condition that cannot be tied to any specific period of time. The *Shafi'i Madhhab* suggests permanence as the main condition in

giving properties to *waqf*. Therefore, removable properties cannot be endowed (*waqf*) unless it remains part of permanent properties (*'aqar*).³⁴

In Malaysia, some States designate the site for cemeteries and mosques sites under Section 62 NLC 1965 as public reserved land and regulated by the Religious Department or Religious Commissioner. In essence, the government or the SA gives reserve status to this land to avoid *waqf* land from changing to freehold land. If the government requires that land for development, the government has to bear a high cost for compensation of land registered as freehold. But by categorising it as reserved land, the government only needs to cancel the reserved status, and indirectly the lands become government-owned without it having to pay any compensation. Land laws in Malaysia deny the *waqf* land rights given by the government since it is known as *tanah kurnia* or bounty land; whereas in property endowments in Islam, land given by the government for the purpose of religious activities is categorised as *waqf irsad*, which is also recognised as *waqf*.³⁵

It is suggested that the SA should look into the issue of land acquisition for development and give it a serious consideration as increasingly *waqf* lands like *masjid*, *surau* and cemetery are being changed from their reserved status. The NLC 1965 also needs to be referred to as well in order to standardise the law in all states, to exclude mosque, *surau* and cemetery land from reserved status. This means all lands use for religious activities like mosque, *surau* and cemetery should be categorised as *waqf* land, which is also known

33. Abu Zahrah, Muhammad (1971), *Muhadarah fi al-waqf*, Cairo: Dar al-Fikr al-'Arabi, p.63.

34. Mohd Afandi Mat Rani (2008), *supra*, p.29.

35. Sec. 62, The National Land Code 1965.

as *waqf irsada*. *Waqf irsada* is state owned properties that were endowed by the government or the authority for public interest and it has freehold status.³⁶

It is opportune for all states to undertake changes by looking at the example introduced in the State of Kedah. More than 20 acres of land reserved for mosque, *surau* and cemetery were taken by the government without paying any compensation. If the SA pays the compensation; surely the SRCs would be able to buy lands as replacement. Indirectly, this incident also invites negative perceptions from the public that SRCs do not defend mosque and Muslim cemetery lands until they were taken away by the government for the purpose of development. It may also allow people to conclude that SRCs share profits by surrendering the land to the government. All these negative perceptions will affect the good name and credibility of SRCs in the eyes of the public.³⁷

In this case, with reference to the provisions of Shariah, if lands are endorsed for masjid/*surau* and cemetery by *waqif* to the government and reapplication is not made by SRCs, then the SA must pay compensation equal to the original value or more than the original value. Assets (compensation) will be included under the category of "*waqf istibdal*" replacing the first asset. All revenues and earnings must be applied for the same purpose as determined by *waqif* and in accordance to endowment rulings which do not allow any transaction on it i.e. it cannot be sold, given as gift or inherited. In the state of Johor, all lands that were given for religious purposes are placed under the Johor Islamic Religious Council

administration (MAIJ). Therefore, reserved lands for public use like mosques, *surau*, cemeteries are placed under the control of Johor Islamic Religious Council. These types of land need to be registered under the ownership of MAIJ. Similarly in Malacca, most of the *tanah kurnia* or bounty lands have been registered under the ownership of the Melaka Islamic Religious Council (MAIM).

Alternative of replacement of land for land (*ta'wid'bi al-aqar*)

The rulings of land acquisition by force in Islam do not only focus on the benefits to the public. The jurists agree that any land acquired shall be accompanied by replacement or valuation, better known in Arabic as *ta'wid* or *qimah*. Replacement either in the form of money or similar type is not determined by *fuqaha* because it depends on the needs and benefits of the ruler at any one time.³⁸

In this case, it is the right of the property owners to get a just replacement or compensation (*ta'wid al-adl*). If the *ta'wid* is given in the form of money that brings justice to the owners, this is considered better and just to the landowners. However, not all situations can be resolved with money as replacement. It depends on the needs and requirement of the landowners that are different from one another. Perhaps for individual landowners, they believe that replacement of money is a better option based on their needs. In our view, looking at the needs for land that is scarce and difficult to replace, *ta'wid* for *waqf* lands taken and compensated by government, money is deemed unjust.

36. Siti Mashitoh Mahamood (2006), "Perundangan Wakaf dan Isu-isu Berbangkit", *Konvensyen Wakaf Kebangsaan 2006*, Anjuran Jabatan Wakaf Zakat dan Haji, Legend Hotel, Kuala Lumpur, 12-14 September 2006.

37. Mohd Afandi Mat Rani (2008), *supra*, p.241.

38. Al-Abbadi, 'Abd al-Salam (2000) *supra*, p.33.

In today's context, the concept of *ta'wid* is better known as compensation. Lands taken by force by the government are paid by money as compensation to the landowners. Article 13(2) of the Federal Constitution provides that adequate compensation must be paid to the person deprived of their property. The amount of compensation must be paid as soon as possible after the land administrator conducts an investigation. Even though the compensation paid is deemed enough, but the concept of justice is sometimes overlooked. Land administrators who are assigned to take the land do not give any options to landowners to make a choice either to receive compensation money or other lands as replacement.³⁹

This provision is contained in Section 15(1) LAA 1960 which gives full authority for land administrator to negotiate for an agreement with the rightful person for compensation. Arrangements can be made either as:

- Replacement of compensation with money or;
- Replacement of compensation partly with money and partly by other means.

Based on the provision of Section 15(1), the land administrators can use their discretion to either give compensation by money and land, or replace it with other land without any other compensation. In addition, the land administrator can also substitute it in the form of shares in a company or residence. Prior to materialisation of the LAA of 1960, the land administrator would use his discretion to make arrangements with interested parties, where the acquired land could be replaced with another land.

The provision of Section 15(1) of the Act is not applied fully by land administrators in carrying out their duty in land acquisition. The provision has not been debated by any party. There is a need to amend Section 15(1) of the Act. Thus, practically all lands whether they are individually owned or SRC's *waqf* lands, are compensated with money. The land administrators usually prefer the easier method by just making enquiry and pay the compensation with money. This is the simplest method practised by the land administrators which might not be in favour to the land owners.

This is against the government policy that wishes to develop *waqf* lands and encourages Muslims to *waqf* their property in order to increase the amount of *waqf* lands to facilitate economic development of Muslims as a whole. Therefore, looking at the current needs, especially for *waqf* lands, it is important to give options to SRCs to determine the kind of compensations as provided in Section 15(1) of the LAA 1960. The Legal Department of the Office of the Director-General of Lands and Mines (DGLMD) must examine and provide the extent of the appropriateness of this section so that it will stay relevant to current needs and provide benefits to all parties.⁴⁰

Implementation of exchange of land (*Istibdal*) to the acquired *waqf* land by the state authority

Istibdal or in exchange of *waqf* land according to Shariah is seen as one alternative method or an alternative to solve *waqf* land acquisition by the SA from the viewpoint of Imam Ahmad ibn

39. The Federal Constitution, Sec. 12(1) LAA, 1960.

40. Sec. 15(1), The Land Acquisition Act 1960.

Hanbal. *Istibdal* in this context is an alternative to the lawful rulings based on *maslahah ammah*. After *waqf* land is acquired by the SA, implementation of the *istibdal* mechanism is no longer an alternative, but it is obligatory to be implemented by the responsible party.⁴¹

If *istibdal* is carried out, the action that gives permission to the SA to acquire *waqf* lands by force is against the methods and principles of property endowment in Islam. This is because what is understood about lawful *waqf* land acquisition is that, the concept of *istibdal* can help re-establish a second set of assets as *waqf* through replacement and exchange. With *istibdal*, the action of *waqf* land acquisition by the SA does not contradict the hadith that *waqf* property cannot be sold, used for making *hibah* or inherited.⁴²

Results of the study through an interview with the State of Terengganu Director-General of Lands and Mines (DGLM) found that there are a few approaches suitable for the implementation of the concept of *istibdal* without involving many parties. If it is difficult for SRCs to acquire land as replacement, then SRCs should make a claim to the agency/company that acquires the land so that the acquisition would result in the replacement of land and not with money. In this case, the agency is given full responsibility to secure other lands as a replacement. Under the land law, an agency that acquires land using the normal application method is provided with one of the following mechanisms:

- To apply for government land from the SA
- To buy private land from the proprietor/owner
- To take any land by force through the legal process

Through the first mechanism, the agency will apply for government land from the SA. In this case, the effort of the agency to replace the *waqf* land needs to be supported by the SA. Moreover in some states, the Head of SRCs comprises the Chief Minister or Head of State of the respective States. Similarly, the State Executive Member or EXCO may also be appointed as Member of the Board of Directors which can take the initiative by providing land before any acquisition is made by the SA. The SA or state government should take this matter seriously because it involves the SRC's interest, an institution under the administration of the state government.

If the first mechanism cannot solve the problem, the agency needs to purchase a private property near the *waqf* land. If both of these solutions are not available, the last option is to acquire the land by force through provisions in the LAA 1960. The decision to accept or reject the land to be replaced depends on the SRCs, and does not represent an automatic replacement. The outcome from an interview with the land administrator suggests that they encourage SRCs to take this approach to avoid the detrimental effects of declining numbers of *waqf* land due to development. In most cases, land administrators do not agree to the acquisition of *waqf* lands and will try not to involve them in land acquisition,

41. Mohd Afandi Mat Rani (2008), *supra*, pp. 135-148.

42. Al-Nisaburi, Imam Abi Husayn Muslim al-Hajjaj al-Qusyairi (1997), *Sahih Muslim, Bab al-Waqf*. Vol. 3. Mu'assasah 'Iz al-Din, p.453.

unless they have no other choice but to act by force.⁴³ In this case, claim or application must be made to a particular agency and not directly to the Land and Mineral Office (LMO). This is because LMO is a party that administrates and manages land acquisition or its disposal. PTG has no financial provision to pay compensation for involved lands. Therefore, the agency or company must be responsible to find a suitable land for replacement.

If it involves Federal projects such as road construction, road widening, airport development etc, the agency needs to make an application to the Director-General of Lands and Mines Department (DGLMD) where the application can be made at the state LMO for a State government project. There is the probability that land replacement for state government projects is easier because the land is owned by the state. DGLMD as well as LMO will provide support so that the application should be approved by the State government. If the land is individually owned, the agency needs to work hard and to discuss with the landowners to get an agreement to sell the land. If the landowner refuses and there are no other choices, the government will use the LAA 1960 by way of forced acquisition for the purpose of development.⁴⁴

Conclusion and recommendation

Islam has laid a clear and strong basis in respect of revocation of individual property rights. This concept is discussed in the section of *intiza' al-milkiyyah li manfa'ah 'ammah* that refers to the concept of *maslahah*, which is taken from methods of *fiqh* as a mechanism to make it lawful to acquire ownership by force in Islam. However, the concept of *istibdal* fulfils the Shariah need and requirement of current development that *waqf* lands can also be taken by force if there is an extreme necessity or *darurah*. All these must be carried out by fulfilling the conditions contained in Shariah. Consequently, the main goal of Islam related to promoting national economic development is social justice.

From a policy standpoint, the policies and the implementation of property development in Malaysia needs to be coordinated and adapted to Islamic values.

The LAA of 1960 which is the main instrument for land acquisition in Malaysia and applied by land administrators needs to be studied, evaluated, and coordinated with Shariah methods, especially when it involves trust endowment property owned by Muslims.

43. Interview with Mr. Suhaimi Hj Mamat, Director, Terengganu Land and Minerals Department, 16 January, 2012, Kuala Terengganu.

44. The Land Acquisition Act 1960.

45. Mahmud Syamam (1988), *supra*, p.1089.

46. The Land Acquisition Act 1960.

Islam forbids all actions that can interfere with the rights of others or violations of ownership. Such action is contrary to the principle that a person's ownership must be protected, preserved, and guaranteed in Islam.

In an effort to improve the LAA 1960, any efforts and recommendations towards Islamisation of property laws need to be given serious consideration by the relevant parties so that it can sustain the needs of current development.⁴⁶

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