



Temporary *Waqf* Model for Islamic Private Retirement Scheme in Malaysia - A Proposal

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Abstract

Waqf is one of the important instruments in Muslim's economic development. *Waqf* properties which are properly managed will generate positive returns to the beneficiary. However, majority of the assets are still immovable and tangible in nature, resulting in a liquidity problem in developing and maintaining those assets, especially the *Waqf* lands. This article aims to solve this issue by applying the concept of temporary *Waqf* to Islamic Private Retirement Scheme (PRS) in Malaysia. Three mechanisms are being proposed to enable the adoption of this concept in PRS, namely *Waqf* by member in the form of units, or in the form of value of the units, or having PRS providers to dedicate specific numbers of units for *Waqf* purpose.

Keywords: *Waqf*, Temporary *Waqf*, Private Retirement Scheme

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1. Introduction

Referred to as a “sleeping giant” in Islamic finance, *Waqf* has undeniably a huge potential to grow in the future (Islamic Finance News, 2012). In the Arabic language, “*Waqf*” means to hold, confine, prohibit, detain, prevent, or restrain. Legally, it means “to protect something, by preventing it from becoming the property of a third person” (Mohammad, Iman, & Omar, 2005).

Nevertheless, experts think that *Waqf* is still woefully underutilized despite its huge potential. They believed that *Waqf* can offer a better investment product to the market due to its features of sustainability and consistent funding streams making it a stable revenue source for investment and public funding. This will indeed attract investors who are looking for a stable and low-risk investment product. It is estimated that the total worth of global *Waqf* assets could potentially reach over USD150 billion (Ernst & Young, 2010).

However, majority of the *Waqf* assets are still immovable and tangible in nature. This sparks off a liquidity problem in developing and maintaining those assets which leads to number of lands being neglected (Rahman, Omar & Shuib, 2016; Mahmood, Mustaffa, Hameed & Johari, 2017). Liquidity issue is common especially in the context of immovable *Waqf*. In Malaysia, records from Majlis Agama Islam Selangor showed that 95 percent of their *Waqf* assets are in the form of immovable assets such as buildings and lands (Mohd Noor, 2017). Similar situation is recorded in Indonesia whereby the immovable assets cover 3.4 million square meters of lands, which is the largest *Waqf* in the world. However, most of these lands are for the purpose of building mosques, graveyards and for the purpose of education (Badan Wakaf Indonesia, 2016). A study conducted by Hidayatullah (2006) concluded that only 23 percent of *Waqf* assets in Indonesia are productive in nature, while the remaining 77 percent are non-productive, being categorized as consumptive assets. Researchers concluded that this occurred due to the lack of public understanding about the dynamic of *Waqf*. *Waqf* is widely understood only as a perpetual dedication of immovable properties such lands and buildings (Mahmood et al., 2017). It is also suggested that lack of capable and well-trained officers contributed to the same problem (Mahmood et al., 2017; Rahman et al., 2016).

In this paper, we have identified a capital market product which is suitable for this purpose, namely Islamic Private Retirement Scheme Fund (PRS). It has demonstrated sustainable growth with a net asset value

(NAV) totalling to RM2.23 billion at the end of 2017, an increase of 46.71% compared to RM1.52 billion as at 31 December 2016 (Federation of Investment Managers Malaysia, 2018). Based on this statistic, it is believed that Islamic PRS has the potential to further grow in the future. As at 2017, there are 56 PRS in the market where 25 of them are Islamic funds.

Malaysia is second on the list after Saudi Arabia on the global ranking in terms of asset under management (AuM), representing 38 percent of the total global Islamic funds AuM (Islamic Financial Services Board, 2018). Despite being the second on the global list, it still represents only 21 percent of the total AuM locally. In terms of NAV of Islamic funds in Malaysia, Islamic unit trust funds stand at RM 77.78 billion, Islamic wholesale funds stand at RM 37.72 Billion and Islamic Private Retirement Schemes stand at RM 0.74 Billion (Securities Commission, 2018). This statistical figure indicates that Islamic asset management is still far behind the conventional counterpart. However, it has consistently increasing year after year.

The Islamic PRS is suitable for this purpose due to its liquidity and long-term investment instrument for those who seeks additional income for their post-retirement age. This will generate consistent cash flow to the *Waqf* fund. In this paper, a model will be proposed, the viability of the implementation of temporary *Waqf*.

This research aims to propose several models based on the concept of temporary *Waqf* into the current Islamic Private Retirement Schemes (PRS). This, in other words, is an effort to widen the scope of *Waqf* by allowing it to be made temporarily. This ought to increase the contribution rate from the public as they do not have to forego their properties permanently to contribute, instead, they can decide on the tenure of the contribution and after the end of tenure, they will regain the ownership of their properties and transact with it.

Focusing on moveable properties such as cash *Waqf*, the Islamic PRS will involve either cash or units in order to establish a *Waqf*. In understanding the concept of temporary *Waqf*, this article will also present the opinions of classical and contemporary scholars on its permissibility. This study will also depend heavily on the Disclosure Documents issued by PRS providers in order to understand its characteristics. This will provide a clear view on the mechanisms of PRS, thus assists the authors to suggest and propose suitable models.

This study will contribute to research and development team to structure a financial product in the finance sector such as capital market to start considering *Waqf* as one of the instruments and concept to be used. This study also explains the need of our society to adopt the temporary *Waqf* concept in our current and modern days where everything is not secured and are exposed to uncertainties. Temporary *Waqf* is highly potential to solve the issue whereby the public can still contribute and at the same time, will not lose any of their properties which they might need in the future.

This study can also be considered an opening to other applications on temporary *Waqf* or even other types of properties to be dedicated as *Waqf*. For example, *Waqf* on copyright and *Waqf* on time and other properties that were non-existence before. These types of *Waqf* can generate more cash flow to the development and maintenance of *Waqf* properties. Consequently, *Waqf* has more to offer and efforts should be made to give as much opportunity to the public for them to contribute by providing them with ample of instruments to realise the good cause.

This study employs a qualitative research method by relying heavily on data gathered from secondary sources. It is based on literature and academic texts consisting of theses and articles including reading materials on the theoretical aspects of *Waqf*. The literature review consists of data gathered from books and numerous journals regarding temporary *Waqf* practices ranging from the four school of *Fiqh* which are *Shafie*, *Maliki*, *Hanafi* and *Hanbalie*. Secondary data is also used in analysing the terms and conditions stated in the disclosure documents release by the PRS providers in order to identify the proper mechanism to apply the temporary *Waqf* concept to it.

2. Literature Review

This section is provided to discuss about the relevant literature review as currently available.

2.1 Definition of *Waqf*

In the Arabic language, the word “*Waqf*” (pl. *awqaf*) literally means to hold, confine, prohibit, detain, prevent, or restrain. However, classical jurists differ in defining the legal meaning (*Al-Ma’na Al-Syari’i*) of *Waqf*. Majority of the jurists, *Shafites*, *Hanbalites* and some of *Hanafites* defined *Waqf* as “Detention of a permanent property that can be benefited and denying the founder nor any other person from transacting with

the property for permitted purposes or channeling its benefits to charity for the as a form of devotion to Allah SWT” (Az-Zuhaili, 2013). This definition implies that there is a transfer of ownership from the founder to Allah SWT thus the *Waqf* in their opinion inherited three characteristics which are inalienability, perpetuity and irrevocability. If the founder dies, according to the definition, the *Waqf* property will not fall under his estate, rather, it will stick to the purpose of the *Waqf* or to the beneficiaries.

Hanafites as suggested by Az-Zuhaili defined it as the “detention of a specific thing in the ownership of the founder and devoting its benefits to charity”. From this definition, we can conclude that *Hanafites* acknowledged that the ownership still remains with the founder, thus the *Waqf* property will be under his estate after the founder dies. It is also allowed for the founder to withdraw his *Waqf* and he might also sell it or give it away as a gift.

The third opinion concerning *Waqf* is the opinion of the *Malikites*. *Ibn Arafah* from *Maliki* school of *Fiqh* defined *Waqf* as “devotion of the usufruct throughout its existence with the ownership remains to the founder” (*Wizarah Al-Awqaf Wa Ash-Shuun Al-Islamiah* – Kuwait, 2006). Based on the definition given, it is inferred that the ownership of the property remains to the founder, however the founder’s right to benefit from the usufruct is denied. Since the nature of usufruct cannot be perpetual, they do not specified perpetuity as *Waqf* condition thus allowing temporary *Waqf*. However, in the case of building Mosques and dedicating the property for graveyards, *Malikites* are in the same opinion with the majority of the jurists that the ownership will be transferred to Allah SWT.

With the various definitions on *Waqf*, it can be concluded that all of the jurists agreed on the devotion of the usufruct as long as the property exist and prohibiting the founder to transact with the *Waqf* property. Some additions can be considered as the conditions of a valid *Waqf* according to respective definitions.

2.2 Permissibility of Temporary *Waqf*

“*Ta'qit*” means to determine a specific period or to state a particular time frame. The legal meaning of “*Ta'qit*” among the jurists is to state or limit on the beginning and the end of a particular action. Thus, *Ta'qit Al-Waqf* means the determination from the founder on the duration of the *Waqf* in which after the end of the stated period, the property will be returned to the founder thus is allowed to transact with it. This can be further enlightened by Ibn Abdul Assalam from the *Maikites* who defined *Waqf* as “to make the usufructs or benefits owned by the beneficiaries in specific period of time or as per founder intention” This definition approves a *Waqf* to be in the form of temporary or perpetual (Hiza’i, 2016). The jurists have divided opinions on the permissibility of temporary *Waqf*. The following sections provide detailed elaboration of the views regarding temporary *Waqf*

2.2.1 Opponents View

Majority of the jurists from *Hanafites*, *Shafiites* and *Hanbalites* disallow temporary *Waqf*. *Hanafites* are stricter in having perpetuity as the condition in order for a *Waqf* to be valid by obliging the founder to explicitly express it the *Waqf* declaration. Imam Ahmad Ibn Hanbal further stated that a *Waqf* will be invalid if the founder expresses a condition whereby the founder can at any time revoke the *Waqf*, sell or give it as a gift. *Shafiites* however permits a *Waqf* declaration without the founder stating the duration of the *Waqf* as for them *Waqf* is initially perpetual in nature.

Isfandiar (2008) has presented the main reference on the rulings of *Waqf* which the hadith from Ibn Umar which is he reported: “Umar acquired a land at Khaibar. He came to Prophet Muhammad ﷺ and sought his advice in regard to it. He said: Allah's Messenger, I have acquired land in Khaibar. I have never acquired property more valuable for me than this, so what do you command me to do with it? Thereupon he (Prophet Muhammad ﷺ) said: If you like, you may keep the corpus intact and give its produce as *Sadaqa*. So Umar gave it as *Sadaqa* declaring that property must not be sold or inherited or given away as gift. And Umar devoted it to the poor, to the nearest kin, and to the emancipation of slaves, aired in the way of Allah and guests. There is no sin for one, who administers it if he eats something from it in a reasonable manner, or if he feeds his friends and does not hoard up goods (for himself). He (the narrator) said: I narrated this hadith to Prophet Muhammad ﷺ, but as I reached the (words)" without hoarding (for himself) out of it." he (Prophet Muhammad ﷺ) said:" without storing the property with a view to becoming rich." Ibn 'Aun said: He who read this book (pertaining to *Waqf*) informed me that in it (the words are)" without storing the property with a view to becoming rich."

In the hadith, it is understood by opponents on the permissibility of temporary *Waqf* that the saying of the Prophet Muhammad ﷺ “you may keep the corpus intact” shows that the nature of *Waqf* is perpetual. It is also understood from the action of Umar who disallowed the property to be sold, gifted away and to be inherited which means that the *Waqf* cannot be temporary. If *Waqf* can be temporary, Umar RA would not give the conditions in the first place. Although the conditions were given by Umar RA, Rasulullah ﷺ did not go against it suggesting that what Umar understood is not against the intention of the Prophet.

They also suggested that the word *Waqf* of *Habs* means perpetuity, repetition and continuity thus it does not represent any form of temporary meaning. This is supported by all the actions of the companions where the *Waqf* declaration they made never include any words or phrases leading to temporal declaration. Since *Waqf* is removal of ownership, analogical to freeing a servant, it is unimaginable that the transaction occurs only for a specific period of time. This is because in the case of freeing a servant, it is removal of ownership from the owner to Allah SWT. The same concept applies to *Waqf*.

2.2.2 Proponents View

However, *Malikites* have different view on the perpetuity of *Waqf*. They disagree on having perpetuity as one of the conditions of valid *Waqf*. According to the *Malikites*, it is valid to establish a *Waqf* within a specific period of time in which after the end of the stated period, the founder is able to transact with the subject matter. This is also the view held by Abu Yusuf as reported by Ibn Hammam, “If it is known that Abu Hanifah allowed the *Waqf* property to be given to the heirs, he should also allowed *Waqf* for twenty years because there is no difference (between both situations) at the very beginning” (Hiza’i, 2016) Ahmad Dardir stated “Perpetuity is not a precondition of a valid *Waqf*, thus it is valid for a period of time and after that the ownership returns to the founder”. Ad-Dasuqi further explained that since perpetuity is not the condition of a valid *Waqf* it is permissible to perform *Istibdal* (conversion of the subject matter to other subject matter which is equivalent in value). Al-Khatib Al-Shirbini on the other hand allow temporary *Waqf*, however, the founder must state the latter beneficiary after the former e.g; I dedicate this *Waqf* to Zaid for a year and after that to the poor. According to Al-Mawardi, Malik allow the founder to revoke and sell the property if the founder is in need of doing so based on the maxim “the condition of founder is equal to shariah ruling”. Al-Mawardi also added that if a person can donate part or all his property then it is also permissible for him to donate it entire time of part of it. (Al-Mausuah Al-Fiqhiyyah, 2006).

The proponents have different views on the previous hadith. Yes, it is true that the conditions expressed by Umar signals perpetual nature of *Waqf*. However, Rasulullah said “If you like” which signifies that how the declaration of *Waqf* made is depending on the founder. Thus, it does not imply impermissibility of temporary *Waqf*. The acknowledgment of Rasulullah on the conditions given by Umar does not necessarily mean that it is the only permissible way and others are impermissible.

Based on the views and arguments by both proponents and opponents, I would prefer second opinion over the former for the following reasons:

1. There is no specific text in the Quran or in Prophetic traditions which disallow temporary *Waqf*. Thus it is based on the *ijtihad* of the jurists from every *Mazhab*. This can be seen whereby there is some jurists in every *Mazhab* who explicitly or implicitly propose to the idea of temporary *Waqf* although their views are not the certified view in their *Mazhab* like Abu Yusuf from the *Hanafites*, An-Nawawi from the *Shafiites* and Al-Mawardi from the *Hanbalites*.
2. Since *Waqf* is a type of *Sadaqah*, then it can be in the temporary or perpetual form. From the hadith of Ibn Umar, it can be understood that a *Waqf* property cannot be sold, revoked during the period of *Waqf*. However, it does not prohibit temporary *Waqf*.
3. Some of the jurists allow moveable assets generally like *Shafiites* and some only allow moveable assets that were mentioned by Prophet Muhammad ﷺ such as horses and war instruments as the subject matter of *Waqf*. Moveable assets are temporary in nature. If the *illah* of *Waqf* is perpetuity, then moveable assets cannot be recognized as the subject matter at the first place. Thus, perpetuity is not the condition of a valid *Waqf* and it is up to the founder on how to manage and declare the *Waqf*.
4. The opinion allowing temporary *Waqf* is more suitable in our time. It will allow more people to perform *Waqf* as it does not bind them throughout the entire life. The dynamism of *Waqf* should be addressed well in order to maximize the potentials of *Waqf*.

2.3 Fatwas on Temporary *Waqf*

The different opinions of classical jurists on permissibility of temporary *Waqf* is reflected in the various fatwas on international level issued on the religious authorities. Islamic Religious Council of Singapore (MUIS) in their discussion on temporary *Waqf* in Singapore issued a fatwa against its permissibility in the year 1997 and 2000. They opined that *Waqf* should be made perpetual and its temporary dedication caused the *Waqf* to be invalid (Sulaiman & Hassan, 2017).

AAOIFI in their Shariah Standard No.33 on *Waqf* 2017, Section 3/1/4 allowed temporary *Waqf* by stating “In principle, *Waqf* should be eternal. Nevertheless, temporary *Waqf* is also permissible when the donor desires to get back his property after a specific period.” AAOIFI also acknowledged usufruct as a valid subject matter of *Waqf*. This is consistent with their view of allowing temporary *Waqf*. Section 3/4/6 of the same standard stated “*Waqf* can be a usufruct of an asset which the *Waqif* acquires through rent.

The same opinion is held by the International *Fiqh* Academy in their conference on 30 April 2009 which concluded that stating specific period of *Waqf* is permissible for all types of *Waqf*. It is also highlighted by the *Fiqh* Academy that *Waqf* is one of the widest topics in *Fiqh* and it is heavily based on the *ijtihad* of the jurists. It is related to the *Maqasid Shariah* in which the purpose of it is to accommodate the needs of the public (International *Fiqh* Academy (2009).

In the case of Malaysia, Islamic jurisdictions falls under the authority of the State Religious Council (SRC) and the SRC for respective states is the sole trustee for *Waqf* properties (Rahman, 2009). As stipulated in the Malaysian Constitution [section 74 (2) and (3)], the religion of Islam has been identified as within the jurisdiction of the state (Abdul Rahim & Goddard, 1998). Thus, any issue arises in Islamic affairs will be referred to them. SRCs in Malaysia has divided opinion on the permissibility of *Waqf*. Since the official *Mazhab* in Malaysia is *Shafie*, thus majority of the SRCs still defined them according to the view hold by *Shafites*.

Majority of the SRCs defined the types of *Waqf* which are *Waqf Khas* (Specified *Waqf*) and *Waqf Am* (General *Waqf*) but not the *Waqf* itself. Among the states that defined the meaning of *Waqf* is Negeri Sembilan which stated that *Waqf* means (1) dedicating ownership of properties in which its usufructs, benefits and return can be enjoyed (2) dedicating usufructs, benefits or return that can be enjoyed from any properties or (3) dedicating expertise and services in which its usufructs, benefits and return can be enjoyed (Enakmen Wakaf Negeri Sembilan, 2015). This definition approved usufruct and expertise as the subject matter. It is in a way acknowledging temporary *Waqf* as usufruct is temporary in nature. This is also the definition held by Negeri Selangor (Enakmen Negeri Selangor, 2015)

The state of Perak did not explicitly allow temporary *Waqf*. However, it does not stipulate that the *Waqf* must be perpetual. It defined *Waqf* in their enactment in 2015 as “Any property that its usufructs, benefits or both can be enjoyed for any philanthropic purposes whether in the form of *Waqf Am* or *Waqf Khas* which are in accordance to Shariah but it does not include trust as defined under Trustee Act 1949 (Act 208)”. This definition implies that the *Waqf* might be temporary as it does not stipulate perpetuity as a condition for establishment of *Waqf* (Enakmen Wakaf Perak, 2015).

Johor on the other hand explicitly stated that *Waqf* must be perpetual. In its enactment in 2003, they defined *Waqf* as “Perpetual dedication of property or part of it from the owner for the purposes compliant to Shariah but it does not include trust as defined under Trustee Act 1949 (Act 208)” (Enakmen Wakaf Johor, 2003). Pahang also stated clearly in their definition of *Waqf Am* and *Waqf Khas* that they only acknowledged perpetual dedication of property in order for it to be considered as valid *Waqf* (Enakmen Negeri Pahang, 1991).

From the definitions given by various SRCs, we can conclude that the states which have revised their enactment on *Waqf* recently did not regard perpetual as a condition for a valid *Waqf*. This can be seen from the enactments of Negeri Sembilan, Perak and Selangor which were issued in the year of 2015. While other states such as Johor and Pahang relied on their definitions of *Waqf* since 2003 and 1991 respectively. Since *Waqf* jurisdictions are founded mostly by *Ijtihad*, I believe that the definitions of *Waqf* should be revisited once in 5 years’ time in order to maximize its potential thus extending the benefits to the society.

3. Findings and Discussion

This section provides the findings and discussion as found by the researchers.

3.1 Proposed Models

As discussed earlier, *Waqf* has not been utilised to its maximum potential in order to extent its benefits. One of the factors contributing to the slow pace in the *Waqf* growth is lack of understanding of *Waqf* itself. *Waqf* is widely understood to be meant for immovable asset such as buildings or lands and perpetual dedication which limits the contribution rate for *Waqf*. Records from Majlis Islam Selangor showed that 95 percent of their *Waqf* assets are in the form of immovable assets such as buildings and lands (M. Noor, 2017). The application of temporary *Waqf* in PRS hopefully can maximize the contribution rate for *Waqf* funds thus solving the lack of liquidity problem in maintaining *Waqf* assets.

PRS so far has a penetration of 2 percent since its inception in 2012 which amounts to 251,000 members as recorded by Securities Commission as at December 2015. This is relatively low for a scheme which has been there for 6 years. However, if it is seen on different perspective, PRS has a huge market to explore. It has demonstrated sustained growth with net asset value totaling RM2.23 billion at the end of 2017, an increase of 46.71% compared to a total NAV of RM1.52 billion as at 31 December 2016 (Federation of Investment Managers Malaysia, 2018). Based on this statistic, it is believed that PRS has the potential to grow in the future.

In Malaysia, the Islamic State Religious Council (SIRC) is the sole-trustee for *Waqf* properties who act as Nazir Am. However, in some states like Terengganu, Perak and Selangor, this function can be delegated to third party under the consent of the council (Mohamad, 2018). In her study, there are five states that have already revised established their own *Waqf* Law namely Perak, Selangor, Terengganu, Melaka and Negeri Sembilan. There are few revisions made by the respective states for instance, broadening the definition of *Waqf* to include Temporary *Waqf* and *Waqf Musytarak*. Based on her observation, there also some revisions on the types of *Waqf* properties which now includes immovable properties and intangible properties such as intellectual rights. This is indeed a positive development to further maximize the potential of *Waqf*.

Other changes include the revision on the position of the ISRC as the sole-trustee for the *Waqf* properties. The new enactments in states such as Selangor, Perak dan Terengganu contain specific sections on the SIRC's authority to appoint third party as the superintendent of *Waqf* manager (seksyen 4(e) Enakmen Wakaf Terengganu, seksyen 27(2)(a)(b) Enakmen Wakaf Perak, dan seksyen 4(1)(b)(c) Enakmen Wakaf Selangor) (Mohamad, 2018). She opined that previously ISRCs were to exclusive and defensive in terms of delegating the authority to third party which is not practical in our times as more and more institutions and corporate entities have engaged in *Waqf*.

In our discussion, the Trustee for PRS funds can be also appointed as the superintendent of the Fund. Temporary *Waqf* can be applied on Islamic PRS in few ways as listed below:

1. *Waqf* by Member in the form of units
2. *Waqf* by Member in the form of value of the units
3. PRS Provider dedicating specific numbers of units for *Waqf* purposes

3.1.1 *Waqf* Dedication on Units

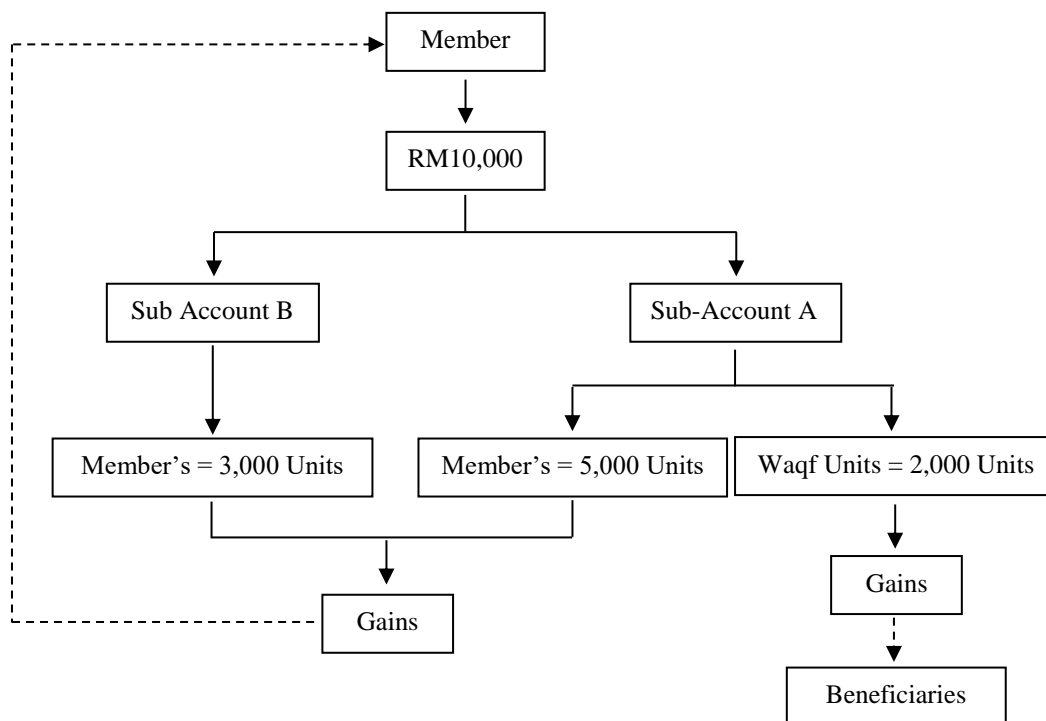
A Member can dedicate units to be the subject matter of *Waqf*. In this case, the member will be specified number of units that he intends to have it as *Waqf* and the duration of the *Waqf* period. The Member then inform the Trustee to hold the units on behalf of the Member. Since the units are the subject matter of *Waqf*, during the period of dedication, the dedicated units cannot be sold nor traded until the end of the tenure. However, the benefits or gain from the units should be dedicated to charity via respective SIRC. This is highlighted by the International *Fiqh* Academy in Jeddah in their resolution on Share *Waqf* and Sukuk *Waqf* which stated:

“The general ruling in share *Waqf* is by retaining it and channeling the income to the objectives of *Waqf* and not for the purpose of trading in the stock exchange, thus the superintendent (*An-Nazir*) is not supposed to transact with it (shares) except for a genuine interest (*Al-Maslahah Ar-Rojihah*) or by conditions stipulated by the founder thus the ruling (of Share *Waqf*) is subject to the Shariah ruling in substitution (*Al-Istibdal*)”.

In this form of *Waqf*, the Founder (Wakif) is the Member, the *Waqf* property (Mauquf) will be the units and the beneficiaries (Mauquf Alaih) will be SRIC of respective states. Suppose a member placed RM10,000 in PRS fund and intended to dedicate 2,000 units for the purpose of *Waqf*, the RM10,000 will be divided into two sub-accounts, namely A and B. Assuming that the price for one unit is RM1, the total units held by the member will be 10,000 units after conversion from cash. Sub-account A constitutes 70% which is equivalent to 7,000 units and Sub-account B constitutes 30% of the total amount which equals to 3,000 units. From 7,000

units in Sub-account A, 2,000 of the units will be dedicated to *Waqf* thus any gains by 5,000 units will be benefited by the member while gains from 2,000 units will be benefited and channeled to the beneficiaries until maturity date specified by the member. This can be illustrated below:

Figure 1: *Waqf* Dedication on Units



3.1.2 *Waqf* Dedication on Value of Units

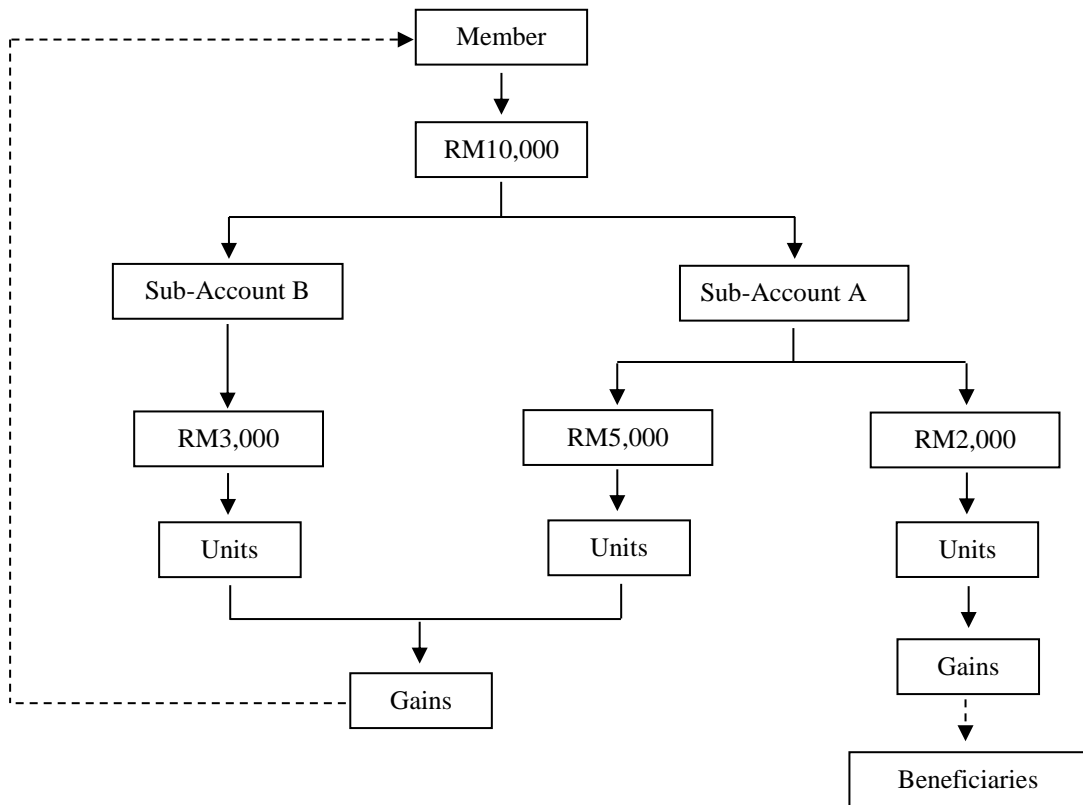
In this form of *Waqf*, members dedicate the cash corresponds to the price of the units which represents its value as the subject matter of *Waqf*. This means that the subject matter of *Waqf* is not the units instead the value of the units. In this case, only the value of *Waqf* should be preserved thus trading of units such as switching between funds or between PRS providers is allowed as long as the principal value is preserved. This form of *Waqf* gives freedom to the superintendent to transact with the units by the way of trading it or switching it in order to generate more income to be given to the beneficiaries. The International *Fiqh* Academy address this issue by stating:

“If the cash is the subject of *Waqf* and it is to be used to purchase shares, sukuks and others, they are not considered the subject matter of *Waqf* instead of cash as long as the founder did not put it as a condition. It is permissible to be invested to ensure better streams of benefits for the *Waqf*. Thus, the value of cash must be preserved.”

In this form of *Waqf*, the Founder (Wakif) is the Member, the *Waqf* property (*Mauquf Alaih*) will be the cash and the beneficiaries (*Mauquf Alaih*) will be SIRC of respective states. Suppose a member placed RM10,000 in PRS fund and intended to dedicate RM2,000 units for the purpose of *Waqf*, the RM10,000 will be divided into two Sub-accounts namely A and B. Sub-account A constitutes 70% which is equivalent to RM7,000 and Sub-account B constitutes 30% of the total amount which equals to RM3,000. From RM7,000 in Sub-account A, RM2,000 will be dedicated to *Waqf* thus any gains by RM5,000 will be benefited by the member while gains from RM2,000 will be benefited and channeled to the beneficiaries until maturity date

specified by the member. This can be illustrated below:

Figure 2: *Waqf* Dedication on Value of Units



3.2.3 Dedication of *Waqf* units by PRS Provider

PRS Provider can allocate certain number of units that are dedicated for the purpose of *Waqf*. Members who intend to perform *Waqf* can purchase these units for a stipulated period of time then sell it at the time of maturity. For example, a member can purchase 1,000 units of *Waqf* units and sell it after 6 months. If there is no buyer after sale of the units, PRS Provider should repurchase the units. In this form of *Waqf*, a specific *Waqf* cycle can be established. For example, the shortest period for *Waqf* is 3 months and if one intends to have a longer period of *Waqf*, it can be extended to any multiply of 3 months ie; 6,9,12 months. In the end of the *Waqf* tenure, if there is no member who intends to make a temporary *Waqf* dedication, the PRS provider will repurchase the units and become the *Waqf* founder for the period of 3/6/9 months or until there is a new *Waqf* dedication by members. This form of *Waqf* required a fixed number of units that are dedicated for *Waqf* and this form of *Waqf* will ensure consistent stream of inflow to the *Waqf* beneficiaries.

We suggest that the units dedicated for *Waqf* are from sub-account A. This is to ensure a proper management of the funds since the units from sub-account A can only be withdrawn under certain circumstances that will be discussed further in its dedicated section. Units in sub-account B on the other hand which constitute 30 percent of the total contributions can be withdrawn by the members once in one calendar year.

3.2 Possible Stream of Benefits

As stated earlier, the nature of *Waqf* is philanthropic thus we need to ensure that the beneficiaries will benefit as much as possible. As defined by *Malikites* in acknowledging the permissibility of temporary *Waqf*, for them, *Waqf* is defined as “devotion of the usufruct throughout its existence with the ownership remains to the

founder". The question arises here is what are the possible kinds of benefits that can be realised in application of temporary *Waqf* in PRS? In answering this question, we can look further at the following points:

a) Expenses Components

Fees and charges vary for every PRS providers. However, the types of the fees and charges are similar from one to another. The following are the fees and charges applicable to a PRS.

i) Trustee Fee

Trustee Fee is a fee payable to the trustee annually for the custodian service rendered by the Trustee. This role of the Scheme Trustee includes to act honestly, fairly and in the best interest of the members as a whole, to carry out any instructions properly given by the PRS Provider or the fund manager, to provide compliance and monitoring mechanism for regular review and other roles as stipulated by the guidelines issued by Securities Commission (SC).

ii) Management Fee

Management fee is a fee payable to the PRS provider annually for managing the investment of the funds according the disclosure documents and as stipulated in the trust deed. They also have the obligation to report to PPA, notify on the changes made to the funds if any, facilitate the opening of Members' accounts and other roles as stipulated in the guidelines by the SC. A PRS Provider is required to maintain a website incorporating information relating to the PRS Provider and any fund under the Schemes.

iii) PPA Fee

PPA fee is a fee payable to PPA annually for the service rendered in performing the functions of record keeping, administration and customer service for members in relation to contributions made in respect of a PRS and such other duties and functions as may be specified by the SC.

b) Income Components

i) Capital Gain

Capital gain is one of the income components in PRS investments. If the scheme is performing well, the value of one unit will increase. However, if the investment is not performing well, then it is called capital loss if the NAV per unit is less than its initial price.

ii) Income Distribution

In PRS, the distribution will be declared (if any) on every financial year end (FYE) for every scheme. The distribution will be paid subject to availability of realised income or realised gains. Since PRS is for post-retirement purposes, the distribution will be automatically reinvested into the funds in units (Securities Commission,2017).

The sum of capital gain and income distribution is the total return of the fund. The income generated for the period of one year will be represented by the income distribution of the fund while capital gain will be reflected in the changes of the scheme's units' prices. From the components that have been listed above, it can be concluded that the stream of benefits can be gain from either from the income generated by the schemes or in the form of waiving the fees payable by the funds.

If the *Waqf* is in the form of cash which means the price of the units instead of the units itself, the benefits can be realised by the capital gain of the units. Since the subject matter is in the form of cash, any increase in the price of the units will be translated as return on top of the principal amount. This return can be channeled to the beneficiaries after the end of the *Waqf* period. Apart from the capital gain, the dividend distribution amount is also channeled to the beneficiaries. This form of *Waqf* has more benefits for the beneficiaries, however, a mechanism to preserve the principal must be established to avoid capital loss.

However, if the *Waqf* is in the form of units, the possible stream of benefits can be in the form of income distribution (if any). This income distribution can be distributed to the beneficiaries after the end of *Waqf* period. This form of *Waqf* on the other hand does not need to have a mechanism to preserve the value of the units bought as the subject matter here is the units thus only the amounts of units should be preserved and not the value.

The other possible stream of benefits can be gained from the waiver of fees payable by the funds. The PRS provider or the Trustee can waive their fees on the for the *Waqf* units which corresponds to the percentage of the fees as stipulated in the trust deed and disclosure document. The waived fees are then mobilised and distributed to the beneficiaries. This type of benefits can add on the existing benefits gained which are capital gain and income distribution.

3.3 Withdrawal of The Fund

The purpose of PRS is to increase the savings for post-retirement uses. It act as a complement to the existing scheme under Employees Provident Fund (EPF), a statutory requirement which provides retirement benefits for members through management of their savings in an efficient and reliable manner (EPF,2018). Since the purpose of the scheme is for post-retirement uses, there will be a huge portion of the contribution will be reserved to serve the purpose and a smaller portion is allowed to be withdrawn for pre-retirement with certain terms and conditions.

As stated earlier, PRS will divide the contribution into two accounts namely Sub-Account A and Sub-Account B which constitutes 70 percent and 30 percent of the contribution respectively. There are two types of withdrawal that are allowed in PRS. Pre-retirement withdrawal is a withdrawal from any fund under a private retirement scheme that occurs prior to a member reaching the retirement age and for the following reasons: a) upon the death of a member; b) permanent departure of a member from Malaysia; c) permanent total disablement; d) serious disease; e) mental disability; or f) withdrawal of any accrued benefits from sub-account B as maintained by PRS Providers for each member. The second will be post retirement withdrawal which is made after the day the Members reached the retirement age. Currently, the retirement age in Malaysia as determined by SC is 55 years old.

Below are the permitted withdrawals as stated in SC Guidelines No. 11.37A:

Table 1: List of Permitted Withdrawals

No.	Circumstances for withdrawal	Extent of withdrawals
(a)	Upon reaching retirement age	Partial or Full
(b)	Pre-retirement withdrawals from sub-account B of a Scheme	Partial or Full
(c)	Death of a member	Partial or Full
(d)	Permanent departure of member from Malaysia	Full
(e)	Withdrawals due to permanent total disablement, serious disease or mental disability	Full

Upon reaching retirement age, the members are allowed to make a full or partial withdrawal of their contribution. As the member has already reach the retirement age, the total amount from sub-account A and B can be withdrawn fully or partially since it has served the purpose of the scheme. However, of the member still want to invest their contribution by making only partial withdrawal or no withdrawal, they will still invest in the scheme.

3.4 Withdrawal of *Waqf* Dedication

As mentioned earlier, we have suggested that the units dedicated for *Waqf* are only from sub-account A. This will prevent any possibility of pre-retirement withdrawal except for three circumstances as stated in the previous section. These circumstances allow the members to withdraw all their contribution from sub-account A and sub-account B. This leads to the question if these circumstances within the *Waqf* tenure, can it be revoked? In this section, we will analyse the scholars' views on the permissibility to revoke *Waqf* dedication.

Death will not end *Waqf* dedication according to the *Malikites* as it is considered as a binding contract. The conditions that lead to termination of *Waqf* are more towards looking at the state of the *Waqf* properties and the existence of the beneficiary. The state of the founder however is not discussed. This is no surprise as majority of the scholars agreed that *Waqf* is a binding contract or *Aqd Lazim*. This means that once dedication has been made by the founder, it is irrevocable. This is very crucial to answer in applying Temporary *Waqf* to PRS especially if the death of the member occurs within the *Waqf* period and if the member is facing hardship for instance, permanent disability. If the *Waqf* is revocable, it means that the founder or the heirs can benefit from the *Waqf* property.

However, in the *Hanafī Fiqh* School, opinion from Imam Abu Hanifah stated that *Waqf* is not a binding contract thus it is subject to withdrawal. If the founder dies, then the *Waqf* property will be returned to the heirs and treated under the founder's assets subject to *Faraid*.

Egypt addressed this issue in their laws on *Waqf* (Az-zuhaili, 2013). According to section No. 11 of Egyptian Law of *Waqf* 1946 which discuss on the revocability of *Waqf* stated that:

“The founder is permitted to revoke the *Waqf* fully or partially like he is permitted to change the beneficiaries and the conditions eventhough he has prevented himself on doing so, however, it cannot be executed except within the boundary of this Law.”

This law gives two conditions in order to revoke the *Waqf* which are: 1) It must not be a mosque, or anything attached to it and 2) It must be made explicitly (*sorih*). This approach by Egyptian Authority acknowledged the opinion of the *Hanafites* which allows to revoke *Waqf*. The *Waqf* Law in Egypt is closer to achieving the *Maqasid* Shariah as it permits the *Waqif* to revoke the *Waqf*. This is when the founder undergo hardship such as financial hardship during the *Waqf* tenure, revoking the *Waqf* and acquiring back the *Waqf* property will eventually help them to survive. This is also in line with the maxim “*Al-Masyaqqah Tajlibu At-taisir*” (Hardship begets facility) where the founder is in hardship. However, in the Egyptian Law, it does not state any conditions relating to the current condition of the founder in order to permit the revoke which means that the right to revoke the *Waqf* is always available to the founder.

The permissibility on revoking a *Waqf* dedication for the reason of hardship can be applied on the cases of permanent total disablement, serious disease or mental disability. Since they are the owner of the *Waqf* asset after the tenure, they have the right to revoke it if it can make them survive. However, in the case of Malaysia, despite acknowledging the permissibility of temporary *Waqf*, the enactment does not allow the founder to revoke the *Waqf* thus it needs some amendments on the enactments to allow it (Enakmen Wakaf Terengganu, 2016; Enakmen Wakaf Selangor, 2015 & Enakmen Wakaf Perak, 2015).

It is preferred to adopt Egyptian Law for three cases that full withdrawal is permitted prior retirement which are death of the member, permanent departure from Malaysia, permanent total disablement and serious disease or mental disability under the name of public interest and hardship faced by the founder or the heirs. This however needs to be provided with relevant documents supporting their position and needs.

Malikites who approved temporary *Waqf* acknowledge *Waqf* as a binding contract thus disallow to revoke the dedication. *Hanafites* on the other hand treated *Waqf* a non-binding contract which can be withdraw anytime. Hence, I would prefer that the primary ruling is it is not permissible to withdraw the *Waqf* dedication to respect the opinion from the *Malikites*, however, in some proven circumstances as mentioned earlier, we can adopt the opinion from the *Hanafites*.

Temporary *Waqf* in monetary form can also be considered as a lending contract. Taking this into consideration, a lender, in this case the *Waqf* founder is allowed to seek for his properties anytime he desires. In consideration of this view, it is permissible for the *Waqif* to withdraw his properties consistent with the four conditions where full withdrawal is allowed. However, it should follow the conditions of a lending contract whereby any gain cannot be distributed to the lender, in this case, the *Waqf* founder.

It is worth to note that in the Guidelines on PRS issued by the SC did not consider the four cases of pre-retirement full withdrawal as a compulsory, rather the Guidelines treated it as ‘permitted withdrawals’ as stated in their Guidelines No. 11.37A. This implies that the founder or the heirs can choose whether to withdraw or to continue investing in the funds.

4. Conclusion

Overall, this research has achieved its purpose which is to propose models in applying the concept of temporary *Waqf* on Islamic PRS. This is to solve the lack of liquidity problems in managing and maintaining *Waqf* properties. Further research can be done in this area in applying the same concepts to other possible financial instruments. However, despite having achieved the purpose of the research, temporary *Waqf* still lacks in term of literatures and applications in financial instruments. It is no surprise that in the case of Malaysia, enactments in states slowly acknowledge temporary *Waqf* as a form of valid *Waqf* dedication.

It can be concluded that the definitions of *Waqf* should be revisited once in 5 years’ time in order to maximize its potential thus extending the benefits to the society. This article also suggested three mechanisms to adopt this concept in PRS namely *Waqf* by member in the form of units or in the form of value of the units or having PRS Provider to dedicate specific numbers of units for *Waqf* purpose. It is proposed that the units dedicated for *Waqf* are from sub-account A since the units can only be withdrawn under certain circumstances. It is also suggested that the stream of benefits can be gained from either from the income generated by the schemes or in the form of waiving the fees payable by the funds.

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