

CHARITABLE ENDOWMENT (WAQF) FOR THE BENEFIT OF PARENTLESS CHILDREN IN MALAYSIA: A PRELIMINARY STUDY*

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ABSTRACT

Children are part of the world population and the future of a Nation. Being weak and vulnerable subjects, children deserve full protection from all angles. Adequate protection of children population may guarantee potential and quality leaders for the global world in future. In Malaysia, children form part of the whole Malaysian population. Many children are parentless and having no guardian. These children are in need of protection in all forms. It is obvious that one of the means to protect parentless children is by safeguarding their welfare and benefit through charitable endowment (*waqf*) provision. This paper seeks primarily to examine charitable endowment (*waqf*) as a means of safeguarding parentless children's welfare and benefit. Examination focuses on theoretical framework of Islamic law relating to *waqf* in Malaysia as well as the concept and scope of parentless children. The research is a library research as it is a

* This research is funded by Ministry of Higher Education of Malaysia under FRGS Grant Scheme. The paper was presented in International Conference on *Waqf*, Trust and Endowment for the Global economy, RANEPa, Moscow, Russia, 28th – 1st Oct 2015.

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preliminary stage to provide a sound framework for a further study on instrument of *waqf* as administered by the States' Islamic Religious Council for parentless children's benefit in Malaysia. It is believed that the finding of this research will provide further avenue for future research on administration of *waqf* for the benefit of parentless children in Malaysia.

Keywords: child protection, charitable endowment (*waqf*), parentless children, children's benefit

WAKAF UNTUK KEMASLAHATAN KANAK-KANAK YANG TIADA IBUBAPA DI MALAYSIA: SATU KAJIAN AWAL

ABSTRAK

Kanak-kanak merupakan sebahagian dari penduduk dunia dan masa depan sesuatu bangsa. Sebagai satu subjek yang lemah dan rapuh, kanak-kanak berhak untuk mendapat perlindungan dari setiap sudut. Perlindungan kanak-kanak yang memadai akan menjanjikan seorang pemimpin yang layak dan berpotensi untuk mentadbir dunia pada masa akan datang. Di Malaysia, kanak-kanak merupakan sebahagian dari penduduk Malaysia yang mempunyai hak-hak tertentu. Ramai di antara kanak-kanak yang tidak mempunyai ibubapa dan penjaga. Kanak-kanak ini memerlukan perlindungan dari segenap segi. Jelas sekali bahawa salah satu cara untuk melindungi kanak-kanak yang tidak mempunyai ibubapa adalah dengan cara menjaga kebajikan dan kemaslahatan mereka. Makalah ini bertujuan untuk mengkaji wakaf sebagai sebagai satu mekanisma untuk memelihara kebajikan dan masalah kanak-kanak yang tiada ibu bapa. Kajian difokuskan kepada kerangka teori undang-undang Islam berkenaan dengan wakaf di Malaysia dan juga konsep dan skop kanak-kanak yang tiada ibubapa. Kajian pada asasnya adalah kajian perpustakaan memandangkan is adalah di peringkat permulaan untuk menyediakan satu kerangka yang kukuh dan jitu bagi kajian seterusnya tentang instrument wakaf seperti yang ditadbirkan oleh Majlis Agama Islam Negeri-negeri untuk kanak-kanak yang tidak mempunyai ibubapa di Malaysia. Ia menjadi satu kepercayaan bahawa hasil penyelidikan ini akan menyediakan satu peluang yang baru untuk penyelidikan yang akan datang tentang pentadbiran wakaf untuk tujuan kebajikan kanak-kanak yang tidak mempunyai ibubapa di Malaysia.

Kata Kunci: perlindungan kanak-kanak, wakaf, kanak-kanak tanpa ibubapa, kemaslahatan kanak-kanak

INTRODUCTION

The Malaysian Child Act 2001,¹ under the spirit of the Convention of the Right of the Child 1989 (CRC),² defines a child as a person under the age of eighteen years.³ Children are assets for the country and the link for the country's development in future. Recent statistic in 2017 shows that there were 9.4 million (29.4%) children out of 32.0 million Malaysian populations composing of 4.9 male children and 4.6 female children.⁴ The number indicates that some plans and efforts must be done to preserve and safeguard the children population as they are future leaders and generation.

Ratification of the Convention on the Rights of the Child (CRC) on 17 February 1995 demonstrates the commitment of Malaysian government in the protection of their children. The Convention focuses on the welfare and lives of children on four main aspects which are: survival, protection, development and participation of children. As a State Party to the CRC, Malaysia is very concerned and committed towards the responsibility to ensure the safety and welfare of the children who are the heirs and future generation of the country. In 2009, Malaysian government has developed National Child Policy and National Child Protection Policy. Those policies focus on the rights to survival, protection, development and participation of children, in order to enjoy the opportunity and space to achieve holistic development in a conducive environment. The main objectives of the policies are to ensure the following:

- First, every child has the right to live and to be given protection, care, compassion, health services, and support and social assistance;

¹ Child Act, 2001 (Act No. 611), s. 2.

² Convention on the Rights of the Child 1989, Art 1.

³ See Convention on the Rights of the Child, Art 1.

⁴ Department Of Statistics Malaysia, "Children Statistic, Malaysia 2017," accessed 26 September 2018, <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=WGlmVnppZ2J6b2hGZHFQMmxWQ2UwUT09>.

- Second, all children, including children with disabilities have a right to be protected from all forms of neglect, abuse, violence and exploitation; and then given habilitation, rehabilitation and to be integrated into their families and communities;
- Third, every child has the right to a holistic development in the aspects of physical, cognitive, languages, social-emotional, and spiritual character;
- Fourth, every child has the right to speak, to participate (participation) and to engage according to their capacity in matters relating to their best interests and well-being;
- Fifth that children, parents, care givers, communities and societies are made aware of children's rights to survival, protection, development and participation; and
- Sixth, finally, that research and development on the survival, protection, development and participation of children are conducted from time to time.⁵

The above policies are aimed at all children in Malaysia without any discrimination to children like the parentless or street children. Nevertheless, the challenges seem to be more in the case of parentless or street children due to lack of moral and financial support from parents or guardian.

SCENARIO OF PARENTLESS CHILDREN IN MALAYSIA

Despite government's effort of children protection, there are children in Malaysia who do not enjoy such rights of survival, protection, development and participation, as enshrined under the CRC.⁶ Such children are missing the opportunity and space to achieve holistic development in a conducive environment. These children include

⁵ Department Of Social Welfare, "National Child Policy", accessed 30 June 2015, http://www.jkm.gov.my/content.php?pagename=dasar_kanak-kanak_negara&lang=en.

⁶See the Convention of the Rights of the Child 1989, the Preamble.

parentless children who can be categorized into: orphans, illegitimate children, abandoned children and street children.

Orphans

The term ‘orphan’ basically refers to children bereaved of one or both of their parents.⁷ There is no recent data or statistic on orphans that can be simply referred in order to disclose the true number of orphans in Malaysia. Nevertheless, there is information indicating that there are orphan children in Malaysia especially based on the information from the orphanage or shelter institutions of child welfare and protection. The Star on September 4, 2014, reported, based on data provided by Orphan Care, an NGO specializing in finding homes for abandoned children, there are 90 registered private institutions for orphans and 117 for disabled children in Malaysia. In 35 government-run orphanages and homes, there are about 13,000 children living in registered institutions in the country. In addition, they estimate that at least 80% of the children living in registered institutions locally have a next of kin. However, there are many children’s homes which are not registered with the Government.⁸ Meanwhile, the Star Daily on June 17, 2014 reported, some 5,940 children below the age of 17 live in Orphan Care country’s orphanages. This consists of 1,440 children who live in government-run homes while the rest live in private registered institutions.⁹

⁷ See Webster’s New Dictionary and Thesaurus, DS MAX-Canada Inc. USA 1995.

⁸ Sharmila Nair, “Of The 8 Million Kids In Institutions Worldwide, More Than 90% Aren’t Orphans,” *The Star*, 25 July, 2014, updated, via Features, accessed 2 October 2018, <http://www.thestar.com.my/Lifestyle/Family/Features/2014/07/25/Of-the-8-million-kids-in-institutions-worldwide-more-than-90percent-arent-orphans/>.

⁹ Sheila Sri Priya, “A Home For Every Children,” *The Star*, 17 June, 2014, updated, via Community, accessed 2 October 2018, <http://www.thestar.com.my/News/Community/2014/06/17/A-home-for-every-child-Orphans-deserve-to-grow-up-in-a-family-setting-says-OrphanCARE-chairman/>.

Illegitimate Children

Illegitimate children are children who are born out of wedlock or as result of illicit sexual relationship.¹⁰ Based on the available reports and statistics on registration of illegitimate children in Malaysia since several years back, it shows that the numbers are increasing and alarming.¹¹ Even though the latest statistics cannot be obtained, the statistic from the National Registration Department recorded 159,725 births of children out of wedlock between 2013 and 2015.¹² The Malay daily Berita Harian reported that there were 53,492 illegitimate children in 2013, 54,614 in 2014, and 51,169 in 2015.¹³ Besides that, the number of children born out of wedlock in Malaysia from 2009 to 2012 showed an increase. It follows that there were 52,378 babies in 2009, 52,982 babies in 2010, 53,788 babies in 2011 and 58,715 babies in 2012.¹⁴

Additionally, the Ministry of Health statistics revealed that there were 16,270 cases of teenage pregnancies out of wedlock between 2012 and 2015.¹⁵ Based on the statistics, the three states which had recorded

¹⁰ See Islamic Family Law (Federal Territories) Act 1984, Act 313, s. 2. See also Najibah Mohd Zin et al., *Islamic Family Law in Malaysia*, (Subang Jaya: Thomson Reuters Sdn Bhd, 2016), 303.

¹¹ See for example Dewan Rakyat Parlimen Ketiga Belas Penggal Keempat Mesyuarat Ketiga, Bil. 50, 21 November 2016 accessed 30 March 2017, <http://www.parlimen.gov.my/files/hindex/pdf/DR-21112016.pdf> at 130.

¹² Dewan Rakyat Parlimen Ketiga Belas Penggal Keempat Mesyuarat Ketiga, Bil. 50, 21 November 2016

¹³ NRD: Not all 159,725 illegitimate children born since 2013 are Muslims, *Malay Mail Online*, 14 September 2016, accessed 18 April 2017, <http://www.themalaymailonline.com/malaysia/article/nrd-not-all-159725-illegitimate-children-born-since-2013-are-muslims>.

¹⁴ Bernard Cheah, Chew: Increase in children born out of wedlock, *The Sun Daily*, 3 December 2014, accessed 18 April 2017, <http://www.thesundaily.my/news/1257530>.

¹⁵ Lebih 500,000 anak luarnikah didaftar dalam tempoh 10 tahun, *Malaysian Digest*, 11 November 2016, accessed 30 March 2017, <http://www.malaysiandigest.com/bahasa-malaysia/642470-lebih-500-000-anak-luar-nikah-didaftar-dalam-tempoh-10-tahun.html>.

the highest number of teenage pregnancies aged between 10 to 19 years old were Sarawak with 5,246 cases, Johor with 2,427 cases and Selangor with 1,603 cases.¹⁶ In 2014 alone, there were about 18,000 teenage pregnancies recorded by the Health Ministry.¹⁷

Abandoned Children

Abandoned children are basically children who are found abandoned without any parent or guardian. The Child Act 2001 seems to define abandoned children as those who have been abandoned by their parents or guardian and, after reasonable inquiries, the parent or the guardian cannot be found.¹⁸ According to an anthropologist, the term abandoned child usually refers to a baby who is abandoned by a parent or care giver with the obvious intention of creating permanent separation and situation where a parent places a child in a residential institution without the intention of relinquishing the child permanently.¹⁹ In the context of Malaysia, the Department of Social Welfare Malaysia understands ‘abandoned children’ as children who are found lost and has no parents or guardian, and new born babies who are abandoned by their parents or guardian.²⁰ The reasons of abandonment can be due to the child being lost or born out of wedlock. This is evident when the report indicates that there are certain percentages of abandoned children who are from illegitimate children. For example, the report from the Royal Malaysian

¹⁶ Dewan Rakyat Parlimen Ketiga Belas Penggal Keempat Mesyuarat Ketiga, Bil. 50, 21 November 2016, n. 11.

¹⁷ Dewan Rakyat, n. 11. See also, Adrian Phung, Teenage pregnancy rate in Malaysia alarming: MoH, *The Sun Daily*, 17 September 2015, accessed 21 April 2017, <http://www.thesundaily.my/news/1555812>.

¹⁸ See Child Act 2001, s. 17 (1e)(ii) .

¹⁹ See Catherine Panther Brick, “Nobody’s children? A reconsideration of child abandonment”, in Catherine Panter Brick and Malcolm T. Smith (edit.), *Abandoned children*, Cambridge University Press, United Kingdom, 2000, p. 2.

²⁰ See Azizah Mohd, Protection and Adoption of Abandoned Children in Malaysia, (Petaling Jaya: International Law Book Services, 1998), 26-27.

Police that the number of abandoned babies in the country between 2011 and June 2015 included 432 cases of pregnancies out of wedlock.²¹

Regarding statistics and report on cases of children abandonment, *Sinar Harian* June 19, 2014 reported total of 26 cases of abandoned babies were reported in the first quarter of 2014.²² The statistics of the cases of abandoned babies issued by Royal Malaysian Police (PDRM) showed 396 cases recorded from 2005 to 2014. It shows a generally increasing trend, with an exception of 2007 where there was a decrease. A total of 67 cases were reported in 2005, 83 cases in 2006 which dropped to 65 cases in 2007, 102 cases in 2008, 79 cases in 2009, and 91 cases in 2010. For the year 2011, the trend increased severely when 34 babies were found abandoned and reported in major newspapers in Malaysia in January.²³ *Free Malaysia Today* reported in August 2013 that the country's first baby hatch has received 82 babies since it started operating in May 2010. In addition, Bukit Aman Police Station statistics reported that there are around 80 to 100 cases in which children were found abandoned per year. However, no one knows the real statistics. Unfortunately, half of those babies were found dead.²⁴ These reports of abandoned children reflect a direct information on reliable numbers of parentless children or children without guardian. These cases require attention especially on means of protection of these innocent children.

²¹ Dewan Rakyat Parlimen Ketiga Belas Penggal Keempat Mesyuarat Ketiga, Bil. 50, 21 November 2016, n. 11.

²² Bernama, "2014: 26 Kes Buang Bayi Dilaporkan," *SinarHarian*, 19 June 2014, accessed 2 October 2018, <http://www.sinarharian.com.my/nasional/2014-26-kes-buang-bayi-dilaporkan-1.291594> .

²³ "Statistik Pembuangan Bayi," *Perak Kini*, accessed 30 June 2015, <http://www.perakini.net/artikel/statistik/397-statistik-pembuangan-bayi.html> .

²⁴ Alyaa Azhar, "Baby Hatch: 82 Babies So Far," *Free Malaysia Today*, 10 August 2013, accessed 9 July 2015, <http://www.freemalaysiatoday.com/category/nation/2013/08/10/baby-hatch-82-babies-so-far/> .

Street Children

Street children are other categories of children which, to a certain extent, are within the parentless children category. They can be referred to as children who are living on the street and having no home. UNICEF database defines street children as “any girl or boy who has not reached adulthood, for whom the street (in the broadest sense of the word, including unoccupied dwellings, wasteland, etc.) has become her or his habitual abode and/or sources of livelihood, and who is inadequately protected, supervised or directed by responsible adults”.²⁵ According to Humanium, an international child sponsorship NGO, street children refer to minors who live and survive on the streets. They often grow up in public landfills, train stations, or under the bridges of the world’s major cities. Due to conflicts with their family, these children do not want to or cannot return home.²⁶ In Malaysian context, about 500 children are left to loiter at Chow Kit, Jalan Bukit Bintang, Jalan Raja Laut and Kampung Baru of Kuala Lumpur City Centre. Some are as young as six-years old. Some have no home to go to. Others cannot go home because their mothers work as prostitutes.²⁷ Other reasons are poverty, ignorance, and tight work.²⁸ Until May 2015, the number of street children living in Sabah, according to sources from the Philippines and Indonesia, are approximately 50,000 and 150,000 children respectively.²⁹

²⁵ See UNICEF database, A study on Street Children in Zimbabwe, accessed on 28 September 2018, https://www.unicef.org/evaldatabase/files/ZIM_01-805.pdf.

²⁶ See Humanium, Street Children, <https://www.humanium.org/en/street-children/> accessed 1 December 2018.

²⁷ Jasbant Singh, “Helping Malaysia’s Street Children,” *Al-Jazeera*, 6 August 2007, via Asia Pacific, accessed 2 October 2018, <http://www.aljazeera.com/news/asia-pacific/2007/07/2008525172813676892.html>.

²⁸ Melati Mohd Ariff, “Hear The Suffering of KL Street Children,” *The Brunei Times*, 23 July 2009, accessed 1 July 2015, http://www.bt.com.bn/focus/2009/07/23/hear_the_suffering_of_kl_street_children.

²⁹ Fizah Yusof, “Streets Kids No. ID No. PR,” *Sayang Sabah*, accessed 6 July 2015, <http://www.sayangsabah.com/en/street-kids-no-id-no-pr/>

CHILDREN WELFARE HOMES AND STAGES OF PROTECTION

The Government of Malaysia has provided several centres for children protection. These include Rumah Tunas Harapan, Child Protection Centre and Rumah Perlindungan Ehsan for Street Children in Kota Kinabalu.³⁰ There are 121 Child Protection Centre and Children's Activity Centre run by government and registered under the Social Welfare Department of Malaysia in 2015. There are 4 in Perlis, 13 in Kedah, 9 in Pulau Pinang, 15 in Perak, 14 in Selangor, 9 in Negeri Sembilan, 8 in Melaka, 8 in Johor, 11 in Pahang, 14 in Terengganu, 2 in Labuan, 5 in Sabah, 9 in Sarawak, and no Child Protection Centre and Children's Activity Centre run and registered in Kuala Lumpur and Kelantan.³¹ In addition, there are 144 orphanages run by Non-Governmental Organizations (NGO). There are 4 in Perlis, 8 in Kedah, 8 in Pulau Pinang, 14 in Perak, 40 in Selangor, 10 in Negeri Sembilan, 8 in Melaka, 10 in Johor, 7 in Pahang, 4 in Terengganu, 5 in Sabah, 6 in Sarawak, 17 in Wilayah Persekutuan, and 3 in Kelantan.³²

The Social Welfare Department of Malaysia (SWD) has cooperated with the state government, the government agencies, corporate, Voluntary Welfare Associations (PSK) and the local community regarding to finance the construction cost and land, maintaining, facilities and other types of support.³³

³⁰ Department Of Social Welfare, "Types of Children's Services," accessed 6 July 2015, http://www.jkm.gov.my/content.php?pagename=jenis-jenis_perkhidmatan_kanak-kanak&lang=en.

³¹ Department Of Social Welfare, "Senarai Pusat Perlindungan Kanak-Kanak Dan PusatAktiviti Kanak-Kanak", accessed 1 July 2015, http://www.jkm.gov.my/content.php?pagename=senarai_pusat_perlindungan_kanak-kanak_dan_pusat_aktiviti_kanak-kanak&lang=bn.

³² Rumah Anak Yatim (144)", accessed 1 July 2015, <http://www.amaljariah.org.my/senarai/rumah-anak-yatim/>

³³ Department Of Social Welfare, "Rumah Tunas Harapan", accessed 6 July 2015, http://www.jkm.gov.my/content.php?pagename=rumah_tunas_harapan&lang=en.

The Government of Malaysia has given assistance to Voluntary Welfare Organizations every year. In 2013, the Government has granted RM 28,011,613 to 254 Voluntary Welfare Organizations. These include orphanages, disabled person, poor families, senior citizens, single mothers, and disaster victims. RM 8,147,800 from the grants are granted to orphanages.³⁴ In 2012, RM 7,406,312 were granted to orphanages which is 29% of the total grants (RM 25,960,605).³⁵ In 2011, the government granted RM 7,893,821 to orphanages from the total grants of RM 28,254,587.³⁶ In 2010, RM 8,518,968 were granted to orphanages from the total grants of RM 17,975,397.³⁷ Lastly in 2009, RM 7,760,042 were granted to orphanages from the total grants of RM 17,291,578.³⁸

In general, children without families will be taken care of by the Social Welfare Department until they reach the age 18 years old.³⁹ There are cases where some children in welfare homes are given for adoption or fostering to adoptive or foster families before they reach 18 years old. For example, there were 2,234 applications for registration of adoption through the National Registration Department of Malaysia (JPN) and application for legal adoption through the courts in 2013,⁴⁰ 2,141 in

³⁴ Department Of Social Welfare, “Geran Kepada Pertubuhan Sukarela Kebajikan (PSK)/Grant To Voluntary Welfare Organizations”, accessed 6 July 2015, http://www.jkm.gov.my/file/file/Statistic_2013/BHG_B_15-PSK.pdf.

³⁵ Department Of Social Welfare, “Geran Kepada Pertubuhan Sukarela Kebajikan (PSK)/Grant To Voluntary Welfare Organizations”, accessed 6 July 2015, http://www.jkm.gov.my/file/file/Statistic_2012/BHG%20B%2016%20-%20PSK.pdf.

³⁶ Department Of Social Welfare, “Geran Kepada Pertubuhan Sukarela Kebajikan (PSK),” accessed 6 July 2015, http://www.jkm.gov.my/file/file/Statistic_2011/BHG%20B%2016%20%20PER TUBUHAN%20SUKARELA%20KEBAJIKAN.pdf

³⁷ Department Of Social Welfare, “Geran Kepada Pertubuhan Sukarela Kebajikan (PSK),” n. 35.

³⁸ Department Of Social Welfare, n. 35.

³⁹ See the Child Act 2001, s. 30 (1(d & e)).

⁴⁰ Department Of Social Welfare, “Permohonan Pendaftaran Pengangkatan Dan Permohonan Pengangkatan Kanak-Kanak/Child Adoption,” accessed 6 July

2012,⁴¹ 1,697 in 2011,⁴² and 1,451 in 2010.⁴³ Thus, their futures are with their adoptive parents. Children who are not fostered or adopted by individual families will stay in Welfare homes until they reach 18 years old.⁴⁴ After that they supposed to leave the children protection centre and to live on their own. This indicates that the future of parentless children in welfare homes is uncertain. Research has shown that babies left in orphanages face negative effects such as low self-esteem and the odds are stacked against them after they turn 18. Some turn up to become gangsters and sex workers.⁴⁵ Some of them do not have Malaysian citizenship. Malaysia Kini reported in June 2012 that a total of 1,758 children who have left the centres of children protection run by the Social Welfare Department of Malaysia do not have Malaysian citizenship.⁴⁶

2015, http://www.jkm.gov.my/file/file/Statistic_2013/BHG_B_5-ANAK_ANGKAT.pdf .

⁴¹ Department Of Social Welfare, “Permohonan Pendaftaran Pengangkatan Dan PermohonanPengangkatan Kanak-Kanak/Child Adoption,” accessed 6 July 2015, http://www.jkm.gov.my/file/file/Statistic_2012/BHG_B_5-ANAK_ANGKAT.pdf .

⁴² Department Of Social Welfare, “PermohonanPendaftaranPengangkatan Dan PermohonanPengangkatan Kanak-Kanak/Child Adoption,” accessed 6 July 2015 http://www.jkm.gov.my/file/file/Statistic_2011/BHG%20B%205%20%20PERMOHONAN%20ANAK%20ANGKAT.pdf .

⁴³ Department Of Social Welfare, “Permohonan Pendaftaran Pengangkatan Dan Permohonan Pengangkatan Kanak-Kanak/Child Adoption,” accessed 6 July 2015, http://www.jkm.gov.my/file/file/Statistic_2010/BHG%20B%205%20%20PERMOHONAN%20ANAK%20ANGKAT.pdf

⁴⁴ See Child Act, 2001, s. 30 1(d).

⁴⁵ Alyaa Azhar, “Baby Hatch: 82 Babies So Far,” *Free Malaysia Today*, 10 August 2013, accessed 9 July 2015, <http://www.freemalaysiatoday.com/category/nation/2013/08/10/baby-hatch-82-babies-so-far/> .

⁴⁶ Zulaikha Zulkifli, “Anak Jagaan JKM Tiada Status Warganegara,” *Malaysia Kini*, 1 June 2012, accessed 2 October 2018, <http://www.malaysiakini.com/news/199608> .

The main cause of the problem is because the Social Welfare Department of Malaysia is no longer responsible to the children after they came out from the centre of children protection i.e. when they are at the age of 18 years when they have to leave and find their own life direction. Thus, they would have no shelter and no money.

To further protect the children who have become independent after turning 18 years old, the government has established an organization named 'Pertubuhan Bekas Penghuni Institusi Di Bawah Jabatan Kebajikan Masyarakat Malaysia (J'keb Malaysia)'. Nevertheless, it is said that this organization does not play a proper role in managing the welfare of the members as many of the children continue to be stateless even after they came out from that institution.⁴⁷ There is also another NGO named 'Pertubuhan Kebajikan dan Sosial Malaysia' (PERBAK) or the Malaysian Social Welfare Association. PERBAK, among others, provide further protection for former children who came out from the protection Centre run by the Social Welfare Department of Malaysia. They have solved several cases concerning the welfare of their members for example by fighting for their proper documentation⁴⁸ and citizenship as many of them are illegitimate and abandoned children who are stateless.⁴⁹

⁴⁷ The Social Welfare Department, "PertubuhanBekasPenghuniInstitusi-institusiDibawah JKM (J'keb Malaysia), accessed 2 October 2018, <http://mycorporatecare.jkm.gov.my/society/display?id=336> . See also, Zulaikha Zulkifli, "Anak Jagaan JKM Tiada Status Warganegara," *Malaysia Kini*, 1 June 2012.

⁴⁸ See New Straits Times, Welfare Department to Issue Special ID Card for Stateless Children under Its Care, accessed on 1 December 2018, <https://www.nst.com.my/news/nation/2017/09/285266/welfare-dept-issue-special-id-card-stateless-children-under-its-care> .

⁴⁹ Persatuan Pengguna Islam Malaysia, "Anak-Anak JKM Dilepaskan Tanpa Warganegara," accessed 7 July 2015, http://ppim.org/portal/index.php?option=com_content&view=article&id=637:anak-anak-jkm-dilepaskan-tanpa-warganegara&catid=65:aktiviti&Itemid=295 . See also Zulaikha Zulkifli, 'Kes JKM Buktikan Dakwaan PKR Benar, Malaysia Kini, 4 Jun 2012, accessed on 1 December 2018, <https://www.malaysiakini.com/news/199862>.

In a nutshell, the problem of parentless children (orphans, illegitimate children, abandoned children and street children) is a serious problem that needs immediate attention. The above statistic is known and recorded. We believe that there were many more unknown or unrecorded cases. Moreover, the future of the children who are placed in welfare institutions after eighteen years of age need to be seriously addressed so as to further safeguard their welfare. This preliminary study wishes to examine *waqf* as one of the instruments to provide ultimate protection to parentless children so that their interest, welfare and benefit may be best safeguarded.

THE CONCEPT OF CHARITABLE ENDOWMENT (*WAQF*)

The provision of *waqf*, or ‘charitable endowment’, is a long-standing Islamic tradition. It generally refers to the dedication of some valuable goods for the benefit of others. The goods are considered to belong to Allah The Almighty God and cannot be bought or sold after the dedication. The profits which are generated from this endowment are given away as charity. *Waqf* is a form of disposition of property that can benefit the donor, the recipient, the entire Muslim community and the government. The donor is rewarded because the *waqf* is a form of flowing charity (*sadaqah jariyah*), while the recipients and the public can enjoy the benefits of the donated property, and the government receives some relief of its financial burden because *waqf* provides assistance and facilities to the community.⁵⁰

Literally, *waqf* (وقف) means ‘*al-habs*’ (الحبس). In Arabic language, it is an infinitive noun which basically means ‘stop’, or ‘shut up’. When the word is connected with property such as land, animals and others, it means freezing property rights for certain benefits.⁵¹

Technically, Imam Abu Hanifah defines *waqf* as the appropriation of property in such a way that the donor’s right in it shall continue and the

⁵⁰ See Ahmad al-Raysuni, *al-Waqf al-Islami: Majaalaatuhu wa Ab’aduhu*, (Cairo, Dar al-Kalimah, 2014), pp. 20-23.

⁵¹ Ibnu Manzur, *Lisan al-Arab*, (Beirut: Dar Sader, 2008), vol. 15, 263.

advantage of it goes to some charitable object.⁵² Based on this definition, *waqf* does not eliminate the ownership of the donor and it is valid for the donor to withdraw the *waqf*. The Maliki jurists define *waqf* as detention of property from disposition while its ownership remains with the proprietor and donates its income to any person intended by proprietor or to any charitable institution.”⁵³ According to Imam Abu Yusuf and Imam Muhammad al-Shaybani from the Hanafi school, the preferred view of the Shafi’is and one view from the Hanbali school, *waqf* refers to detention of property in Allah’s (the Almighty God) ownership and donating its benefit towards charity and welfare for an immediate effect or the future.⁵⁴

In Islamic history, the institution of *waqf* was enjoined in the 7th Hijrah year in the reign of Caliph ‘Umar after the Battle of Khaybar.⁵⁵ Imam Al-Shafi’i used to say, “*Waqf* is a special feature of Islam which is never known during the period of ignorance (*jahiliyah*).”⁵⁶ There are several verses in the Quran that enjoins charity. For example, the Quran states: “And in their wealth and possessions the right of the needy, him who asked, and him who was prevented.”⁵⁷

According to al-Suyuti, ‘and him who was prevented’ in the above means one who does not ask because of his self-restraint.⁵⁸ Sayyid Qutb,

⁵² See Wahbah al-Zuhaily, *Mausu’ah al-Fiqh al-Islam Wa al-Qadaya al-Mua’siroh*, vol.9 (Damascus: Dar Al-Fikr, 2012), 151-154.

⁵³ Zakiy al-Din Sha’ban et al., *Ahkam al-Wasiyyah wa al-Mirath wa al-Waqf al-Shari’ah al-Islamiyyah*, (Kuwait: Maktabah al-Fallah, 1984/1404H), 458.

⁵⁴ See Zakiy al-Din Sha’aban and Ahmad al-Ghundur. *Ahkam al-Wasiyyah wa al-mirath wa al-Waqf fi al-Shari’ah al-Islamiyyah*, (Kuwait: Maktabah al-Fallah, 1410/1989), 458.

⁵⁵ Manna’ al-Qattan, *Tarikh al-Tashriq al-Islam*, (Cairo: Maktabah Wahbah, 2014), 132.

⁵⁶ Al-San’ani, *Subul As-Salam*, vol. 3, (Cairo: Dar Al-Fajr Lil Turath, 2005), 118-119.

⁵⁷ Al-Quran, al-Dhariyat (51): 19.

⁵⁸ Jalal al-Din al-Mahalli & Jalal al-Din al-Suyuti, *Tafsir al-Jalalayn*, trans. by Feras Hamza (Amsterdam: Fons Vitae, 2008), 505.

while commenting the above verse, states that it indicates the attitude of the righteous who will give a rightful share of their possessions to the one who asks and the one who is deprived. By giving away his property for charitable purpose, the giver aims at achieving God's pleasure and seeking His blessings.⁵⁹ Giving away property for charitable purpose in this verse can be done through charitable endowment or *waqf*.

In another verse, the Quran states:

“They ask thee what they should spend (In charity). Say: Whatever ye spend that is good is for parents and kindred and orphans and those in want and for wayfarers. And whatever ye do that is good, - Allah knows it well.”⁶⁰

In commenting the above verse, Ibn Kathir quoted Muqatil ibn Hayan who said that the above verse was revealed about those who spent voluntarily. The verse also provides an answer to the question of those who asked Allah's Messenger (pbuh) about the recipients of such spending. It is authentically narrated in the Hadith that: “(You should spend on): your parents, your sister and brother, then the nearer in kin and kith.”⁶¹

The Quran further states to the effect; “By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give, of a truth Allah knows it well.”⁶² According to Ibn Kathir, righteousness in the above verse refers to paradise. He cites the following narration:

“It was narrated that Abu Talhah was the most endowed with date-palm trees (garden) in Madinah, and the most beloved to him of them was Bairuha garden, and it was in front of the mosque of The Prophet (pbuh). He (pbuh) used to go there and used to drink its nice water. Anas added: “When this verse was revealed: [By no means shall ye attain righteousness unless ye give (freely) of that which ye love], Abu

⁵⁹ Sayyid Qutb, *In the Shade of the Quran*, trans. by Adil Salahi, vol.16, (Leicestershire: The Islamic Foundation, 2009), 136.

⁶⁰ Al-Quran, al-Baqarah (2): 215.

⁶¹ Ibn Kathir, *Tafsir Ibn Kathir (Abridged)*, trans. by Muhammad Anis Gad Khalil (Jeddah: Dar al-Manarah, 2007), vol. 1, 127-128.

⁶² Al-Qur'an, Ali 'Imran (3): 92.

Talhah said to Allah's Messenger (pbuh), "O Allah's Messenger (pbuh)! Allah, the Exalted and Most Honored says, [By no means shall ye attain righteousness unless ye give (freely) of that which ye love]. No doubt, Bairuha garden is the most beloved of all my property to me. So I want to give it in charity in Allah's Cause. I expect its reward from Allah. O Allah Messenger! Spend it where Allah thinks it is feasible." On that Allah's Messenger (pbuh) hailed him saying, "Well done! It is profitable property. It is profitable property. I have heard what you said (O Abu Talhah), and I think that it would be proper if you give it to your kith and kin." Abu Talhah said, "I will do so, O Allah's Messenger. Then Abu Talhah distributed that garden amongst his relatives and his cousins."⁶³

The Quran also states to this effect:

"O Ye who believe! Give of the good things which ye have (honorably) earned, and of the fruits of the earth which We have produced for you, and do not even aim at getting anything which is bad, in order that out of it ye may give away something, when ye yourselves would not receive it except with closed eyes. And know that Allah is Free of all wants, and worthy of all praise."⁶⁴

Ibn Kathir, in commenting the above verse, again states that Allah the Almighty God commands His believers to give charities from their best legally earned wealth; of gold, silver, and of what they grow of fruits and plants. Ibn 'Abbas said that Allah ordered them to spend of the best and most valuable of their wealth; not its worst and the undesired thereof; as Allah is good, and that He accepts only what is good.⁶⁵

There are also several *hadith* of the Prophet (pbuh) and practices of the companions that promotes provision for charity. For example, in one *hadith*, the Prophet (pbuh) said:

"When a man dies, his deeds come to an end except for three things: Flowing charity (*Sadaqah Jariyah*); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)."⁶⁶

⁶³ Ibn Kathir, *Tafsir Ibn Kathir* (Abridged), trans. by Muhammad Anis Gad Khalil (Jeddah: Dar Al-Manarah, 2007), vol.1, 237

⁶⁴ Al-Qur'an, al-Baqarah (2): 267

⁶⁵ Ibn Kathir, *Tafsir Ibn Kathir*, vol.1, 172, n.99.

⁶⁶ Reported by Muslim, no. 4199.

One of the flowing charity as mentioned in the above *hadith* is charitable endowment or *waqf* where the rewards will not cease upon the death of its giver.⁶⁷

Another *hadith* that was reported relating to charitable endowment is the donation by ‘Umar ibn Al-Khattab of his most valuable land in Khaybar upon the advice of the Prophet (pbuh) who told him ‘to retain the corpus of the property and devote its benefits for religious purposes’.⁶⁸ According to Muslim scholars, this is the first *waqf* in the history of Islam⁶⁹ that reflects the procedures and conditions of *waqf*.⁷⁰

In the practice of the companions of the Prophet, there were several donations made that implicate charitable endowment (*waqf*). For example, donation of a well (*Rumah Well*) bought by ‘Uthman ibn Al-‘Affan to be used by public, including himself, for drinking water and household needs.⁷¹ According to al-Shawkani, the *hadith* shows that it is permissible for the donor to take benefit from his *waqf*.⁷² Another example is the donation of land by Bani Najjar for building the Quba’ Mosque by the Prophet (pbuh) after he migrated to Madinah. They said, “We do not ask its price except from Allah.”⁷³

Ibn Hajr al-‘Asqalani in his commentaries of the *hadith* mentioned the view of Ismai’li who elaborates that Bani Najjar in the above *hadith* refused to accept any payment of the land and gave it to the Prophet (pbuh) as a site where Quba’ mosque was built. Whilst Imam Malik views that ‘We do not ask its price except from Allah’ is an invalid

⁶⁷ Al-San’ani, *Subul al-Salam*, vol. 3, (Cairo: Dar al-Fajr li al-Turath, 2005), 118-119.

⁶⁸ Reported by al-Bukhari, no. 2738.

⁶⁹ Al-San’ani, *Subul al-Salam*, vol. 3, (Cairo: Dar al-Fajr li al-Turrath, 2005), 120.

⁷⁰ Ibn Hajr al-‘Asqalani, *Fath al-Bari*, vol.5, (Lebanon: Dar al-Kutub al-Ilmiyah, 2003), 501.

⁷¹ Reported by al-Bukhari, no. 2769.

⁷² Al-Shawkani, *Nayl al-Awtar*, vol.2, (Lebanon: Dar al-Ma’rifah, 2002), 1237-1239.

⁷³ Reported by al-Bukhari, no. 3932.

pronouncement of *waqf*. On the other hand, al-Bukhari views that *waqf* is valid with any pronouncement either merely pronouncement or presumption pronouncement.⁷⁴

Another example is the donation of a garden by Abu Talhah to his relatives after the advice of the Prophet (pbuh).⁷⁵ The Hadith shows the permissibility of *waqf* from the donor to his family and relatives.⁷⁶

The above *ahadith* of the Prophet (pbuh) and the practice of the Companions indicate the enjoinder and legality of *waqf* in Islamic law for religious purposes, public need, and family protection. This shows that *waqf* is a very suitable and significant instrument to be administered for the benefit and interest of parentless children.

Types of Waqf

Generally, there are two types of *waqf* which are Family *Waqf* and Charitable *Waqf*. For family *waqf*, the benefits of *waqf* are designated for the donor's children and their off-spring. However, these beneficiaries cannot sell or dispose of the property which is the subject-matter of *waqf*. Meanwhile, in the case of charitable *waqf*, the benefits of *waqf* are meant for charitable purposes. For example, *waqf* for construction of the hospital,⁷⁷ which is made for the benefit of the community at large. Therefore, it may also include provision of *waqf* for the benefit of the poor and the needy as well as the parentless children.

Charitable *waqf* is typically used to finance mosques, shelters, schools, and universities. There are two types of charitable *waqf* which are general and specific *waqf*.⁷⁸ General (charitable) *waqf* is a *waqf*

⁷⁴ Ibn Hajar al-'Asqalani, *Fath al-Bari*, vol.5, (Lebanon: Dar al-Kutub al-Ilmiyah, 2003), 513.

⁷⁵ Reported by al-Bukhari, no. 2769.

⁷⁶ Al-Sayyid Sabiq, *Fiqh al-Sunnah*, vol. 3, (Amman: Dar al-Fath, 2000), 259.

⁷⁷ Ahmad Farraj Hussin, *Ahkam al-Wisayah wa al-Awqaf fi al-Shari'ah al-Islamiyyah*, (Iskandariyyah: Dar al-Jami'ah al-Jadidah, 2003), 240-241.

⁷⁸ See Wahbah al-Zuhaili, *Mawsu'ah al-Fiqh al-Islam wa al-Qadaya al-Mua'sirah*, vol. 9, (Damascus: Dar al-Fikr, 2012), 159.

established by the donor for general purposes and for the benefit of Muslims as a whole such as facilities and economic development for the Muslim community through a variety of activities to be carried out in accordance with Islamic law. The donor does not specify the purpose of the property except for charitable purposes. In contrast, specific (charitable) *waqf* is a *waqf* established specifically by the donor for the benefit of Muslims according to Islamic law such as endowment of land for the purpose of building mosques, hospitals, religious schools, cemeteries and others as specified by the donor.⁷⁹ Regarding the problem of parentless children, charitable *waqf* seems to be very much relevant and practical since *waqf* is a permanent distribution of benefit. Therefore, it will serve as social security to safeguard the welfare and interest of parentless children.

Beneficiaries of *Waqf*

Commonly, *waqf* beneficiaries can be either determined whether one or two people or more or unspecified whether from individuals or charitable organizations. There is a consensus among Muslim jurists that *waqf* is valid to beneficiaries who has the capacity to possess property. They differ on *waqf* to people who do not exist, who are not known to exist, and *waqf* to one's self. According to Maliki scholars, *waqf* is valid to eligible persons who is either existing or will exist (such as a fetus). In contrast, the Shafi'i scholars viewed that *waqf* to fetus is invalid because the fetus did not exist when the *waqf* is made. According to Abu Yusuf and some others from Hanafi school of law, it is valid to make *waqf* to one's self. This is in contrast with the opinion of majority of scholars. As to the unspecified recipients of *waqf*, there is a consensus among the Muslim jurists that they must be known as charitable organization.⁸⁰ Therefore, it is undeniable that parentless children can be one of the beneficiaries for *waqf*.

⁷⁹ See Wahbah al-Zuhaili, n.74, 159.

⁸⁰ See Wahbah al-Zuhaili, n. 74, 187-191.

THE GENERAL COMMANDMENT TO HELP AND PROTECT CHILDREN

Islam enjoins helping the needy and the poor or children in need of protection through whatever means. There are several verses in Al-Quran that enjoin helping and protecting children. The Quran states: “Did He not find you an orphan and give you shelter (and care)? Therefore, treat not the orphan with harshness”⁸¹

According to Sayyid Qutb, the above verse contains a touch of tenderness and mercy. It is a message of affection; a benevolent hand which soothes pains and troubles and generates an air of contentment and hope.⁸² The Surah relates to the Messenger of Allah (pbuh) entirely. One of the tenderness, mercy, and kindness of Allah to him, i.e. the Prophet (pbuh) is when he is related to the verse, “Did He not find you an orphan and give you shelter (and care)?” With that, Sayyid Qutb concluded that Almighty Allah took the opportunity of mentioning the Prophet’s (pbuh) earlier orphanhood, error and poverty in order to instruct him and all Muslims to protect every orphan, to be charitable to every beggar and to speak of the great favors they enjoy from Allah, the first of which is guidance to the religion of Islam. “Therefore, do not wrong the orphan, nor chide away the beggar, but proclaim the goodness of your Lord.”⁸³

In another verse, the Quran warns those who refuse to help orphans and the needy as the Quran states: “Have you seen him who denies our religion? It is he who harshly repels the orphan and does not urge others to feed the needy.”⁸⁴

According to Sayyid Qutb, “indeed the one who denies faith is he who wickedly repels the orphan, humiliating him and hurting his feelings, and who does not care for the needy or their welfare.”⁸⁵

⁸¹ Al-Quran, Aa-Duha (93): 8-9.

⁸² Sayyid Qutb, *In the Shade of the Qur'an*, (London: MWH London Publishers, 1979), vol.30, 199-203.

⁸³ Sayyid Qutb, *In the Shade of the Qur'an*.

⁸⁴ Al-Quran, al-Ma'un (107): 1-3.

⁸⁵ Sayyid Qutb, n. 78, 316-317.

The Quran further warns the believers about their duties to show kindness to the orphans and needy and states:

“No indeed; but you show no kindness to the orphans, nor do you urge one another to feed the needy. You devour the orphans’ inheritance greedily, and you love wealth passionately.”⁸⁶

The Prophet (pbuh) also reminds the Muslims about their responsibility as he stated:

“Indeed each of you is a shepherd and all of you will be questioned regarding your flock. The commander who is in authority over the Muslims is responsible and he will be questioned regarding his responsibility. The man is responsible over the inhabitants of his house and he is the one who will be questioned about them. The wife is responsible in her husband’s house and she will be questioned about it. The slave is responsible regarding his master’s property, and he will be questioned about it. Indeed each of you is a shepherd and each of you will be questioned about his flock.”⁸⁷

Mustafa al-Khin, while commenting on the above *hadith* said that, firstly, responsibility in Islam will be questioned before Allah on the Day of Judgment. For example, a leader will be questioned regarding what he has done with his responsibilities in the world. Secondly, there is a general responsibility carried by every Muslim in Islam no matter what his position in the society is. Thirdly, all parents are responsible to educate their children especially in matters of religion.⁸⁸

In one *hadith* of the Prophet (pbuh), a story was narrated as follows:

“A woman came to ‘Aishah and ‘Aishah gave her three dates. She gave each of her two children a date and kept one date for herself. The children ate the two dates and then looked at their mother. She took her date and split it into two and gave each child a half of it. The Prophet, (pbuh) came and ‘Aishah told him about it. He said, ‘Are you surprised

⁸⁶ Al-Quran, al-Fajr (89): 17-20.

⁸⁷ Reported by Al-Tirmidhi, no.1705.

⁸⁸ Mustafa al-Khin et al, *Nuzhatul Muttaqin Syarh Riyadh al-Solihin*, vol.1, (Cairo: Dar al-Mustafa, 2006), 284.

at that? Allah will show her mercy because of her mercy towards her child.”⁸⁹

Regarding showing mercy to children, the Prophet (pbuh) said:

“The best women are the riders of the camels and the righteous among the women of Quraish. They are the kindest women to their children in their childhood and the more careful women of the property of their husbands.”⁹⁰

Finally, the Prophet (pbuh) also said:

“He who helped in alleviating the suffering of a believer from the distress of the world, Allah would relief him from distress of the day of Resurrection. He who makes things easy for one who is hard pressed, Allah will make things easy for him in both in this world and the hereafter, and he covers (the failing of) a Muslim, Allah would provide him covering in this world and in the hereafter. Allah would come to help of a servant as the servant had been coming to help his brother...”⁹¹

From the above verses and *hadith*, we can understand that Islam encourages its people to help each other in doing righteousness which’s benefits will return to themselves whether in this world or in the hereafter. This includes helping children in need of protection such as parentless children.

To date, there are a number *waqf* projects that are already in place in Malaysia like cash *waqf*, *waqf* kaki, land *waqf* that may directly benefit parentless children. Such *waqf* that seems to aim at, among others protecting orphans and the poor children, plays a very significant role in protecting orphans that include providing food and shelter as well as financing their education. *Waqf* property is also to provide financial supports to existing orphanages and welfare homes.⁹² Cash *Waqf* is basically a *waqf* of certain amount of money to financially support a

⁸⁹ Reported by al-Bukhari, no.89 (in al-Adab al-Mufrad).

⁹⁰ Reported by al-Bukhari, no.5082.

⁹¹ Muslim, *Sahih Muslim*, vol. 4, (npp:Dar al-Fikr, n.d.), 233.

⁹² See Asmak Abd Rahman, Peranan Wakaf Dalam Pembangunan Ekonomi Umat Islam dan Aplikasinya Di Malaysia, *Jurnal Syariah* 17, No. 1 (2009) 113-152, at 143.

charitable work or a development project, managed by a trustee (*mutawalli*).

In some states, Cash *Waqf* was introduced by States Islamic Religious Council (SIRC/MAIN) for example in Selangor, the State of Selangor Islamic Religious Council (MAIS) has introduced ‘*waqf* shares scheme’. Similarly, in Johor, Penang, Terengganu and Malacca.⁹³ In Johor, Waqaf an-Nur, Johor Corporation which, among others, employed cash *waqf*⁹⁴ specially to provide financial support for its beneficiaries including orphans, the poor and the needy.⁹⁵ One interesting *waqf* project is called the *Wakaf Kaki* Scheme that was employed by Wakaf Department of Islamic Religious Council of Kedah (MAIK). This *waqf* scheme was introduced in Kedah in 1960s based on the idea of the Chief Qadhi of Kedah, Dato’ Syeikh Abdul Aziz Bin Awang Besar. Since then, charitable lands were developed through the *Wakaf Kaki* Scheme throughout Kedah. Apart from that, it was widely practised in Kedah specially to accommodate and provide opportunity for the low-income group people to create *waqf*.⁹⁶ The *Wakaf Kaki* scheme⁹⁷ was also

⁹³ See Che Zuina Ismail et al. Challenges and Prospects of Cash *Waqf* Development in Malaysia, *Journal of Basic and Applied Scientific Research* 4, No.2 (2014), 340-348, p. 340-341.

⁹⁴ See for example Prof. Dr Hj Md. Som Sujimon, Transformasi Pengurusan Endowment dan Wakaf Tunai, accessed 16 December 2018, <https://www.mainpp.gov.my/index.php/nota-kursus-latihan/category/9-dana-wakaf?download=41:transaformasi-pengurusan-endowment-dan-wakaf-tunai-paper>, pp. 10-12.

⁹⁵ See Waqaf an-Nur, accessed 16 December 2018, <http://www.wancorp.com.my/aktiviti-wancorp.aspx?content-cat=5>.

⁹⁶ Dr Alias Azhar and Wan Suhairan Wan Ahmad, Peranan Bahagian Wakaf Majlis Agama Islam Negeri Kedah Dalam Pelaksanaan Skim *Wakaf Kaki* : Satu Tinjauan, *Journal of Humanities, Language, Culture and Business (HLCB)* 1, No. 4 (September 2017) 151-162, p. 156.

⁹⁷ To make *waqf* on certain property for welfare purposes in such a way that the *waqf* administrator (*mutawalli*) will buy the whole property while the *waqif* will pay certain amount based on certain portion of property he agrees to make *waqf*. See Zulkifli bin Mohamad al-Bakri, *Wakaf Dalam Islam*, (2012, Kuala Lumpur: Bank Muamalat Malaysia Berhad) p. 19. See also Rohayati Husin et al, Skim *Wakaf Kaki*: Merealisasikan Impian Anak Yatim dan Miskin Untuk Pendidikan

employed by many organizations in Malaysia like Orphans Welfare Organization of Malaysia (PEYATIM) and Educational *Waqf* Foundation for Malaysian Orphans or the Poor (YAWATIM).⁹⁸

PEYATIM acts as the main body that coordinates programmes and activities of 67 orphanages in all states in Malaysia. The main objective of PEYATIM is to build and develop potential orphan children and children of the poor to become independent one day. In its mission, through an integrated curriculum and education, PEYATIM wishes to upgrade the educational level of the orphans and the poor and to increase professionals and the experts among them.⁹⁹ Its main strategy is to achieve its objective through education with the establishment of Bestari Technology College and Bestari Skill Institute. Bestari Technology College (KTB) that was built on 320 acres of land in the district of Setiu, Terengganu and was established on 14th of June 1998 to give orphans, children of poor families and public a chance to further their studies in a higher learning institute. While the Bestari Skill Institute (IKB) was established on 26th September 2002 to give chance to orphans, children from poor families and public that are interested in various skilled training.¹⁰⁰ In relation to that, the President of PEYATIM who is also an Executive Chairman of YAWATIM, Prof Dato' Dr. Haji Tengku Mahmud Mansor commented that the future of orphans and children of the poor will be guaranteed and safeguarded through education and that

Tinggi, Ins. Mohd Solahuddin Shahrudin et al (Eds.); *Sinergisme Wakaf Pendidikan Tinggi Di Malaysia*, First Edition, (Shah Alam: UITM; 2016). Available online accessed 11 December 2018, https://www.researchgate.net/publication/309177707_SKIM_WAKAF_KAKI_MEREALISASIKAN_IMPIAN_ANAK_YATIM_DAN_MISKIN_UNTUK_PENDIDIKAN_TINGGI .

⁹⁸ See Rohayati Hussin et al., *Skim Wakaf Kaki: Merealisasikan Impian Anak Yatim Dan Miskin Untuk Pendidikan Tinggi*, p.3.

⁹⁹ PEYATIM Malaysia, HATI, Serving the Community, accessed 16 December 2018, <http://www.hati.my/children/peyatim-malaysia/>

¹⁰⁰ See Wakalah *Waqf* UKTB Blog, Wakaf Pendidikan Anak Yatim/Miskin Malaysia, accessed 16 December 2018, <https://waqalahwaqafuktb.wordpress.com/2009/09/17/waqaf-pendidikan-anak-yatimmiskin-malaysia-yawatim/> .

they can be successful both in this world and the hereafter.¹⁰¹ YAWATIM was established in 2011 to fulfill the legal requirement for accepting cash deposit from the public in the *waqf* project 'land *waqf* scheme' for University College Bestari. The fund collected from that project was used to finance education of the orphans and the poor children when they continued their study in University College Bestari or the education institutions under PEYATIM.¹⁰²

Further *waqf* project was managed by Department of *Waqf*, Zakat and Haj (JAWHAR)¹⁰³ which was established under Prime Minister Department in 2004. Together with Yayasan *Waqf* Malaysia (YWM), JAWHAR works among others to unite and harness *waqf* resources and to cooperate with State Islamic Religious Councils (SIRC/MAIN).¹⁰⁴ One of *waqf* project by JAWHAR and SIRC is development of land *waqf*.¹⁰⁵ Based on a study conducted by Norinah Mohd Ali et al in 2011, JAWHAR of Malaysia estimated that there are 11,091.61 hectares of *waqf* land consisting of general and specific *waqf* all over the country which was expected to be valued at RM 4 billion in 2017. Since 2005, there had been a rapid development of *waqf* land by JAWHAR, YWM

¹⁰¹ See Rohayati Hussin, p. 5.

¹⁰² Rohayati Hussin, p. 6-7.

¹⁰³ JAWHAR is not an authority but rather is an active complimentary agency which aims to coordinate and facilitate the development of *waqf*, zakat and mal in Malaysia and also undertakes *waqf* development projects which are funded by the Government. See Azri Ahmad et al., Education Development Through *Waqf*, accessed 16 December 2018, <https://ywm.gov.my/images/media/penerbitan/IAIS-EDUCATION-DEVELOPMENT-THROUGH-WAQF.pdf>, p. 4.

¹⁰⁴ SIRC is the sole trustees of *waqf* in their respective state.

¹⁰⁵ For example in the State of Selangor, land *waqf* is also allocated for orphanage, See Norhaliza Mohd Nor & Mustafa Omar Mohamad, Categorization of *Waqf* Lands and their Management Using Islamic Investment Models: the Case of the State of Selangor, Malaysia accessed 16 December 2018, http://www.academia.edu/1419346/Categorization_of_Waqf_Lands_and_their_Management_Using_Islamic_Investment_Models_the_Case_of_the_State_of_Selangor_Malaysia .

and SIRC, where the beneficiaries include the orphans and the poor children.¹⁰⁶

In general, *waqf* development under JAWHAR can be divided into five areas namely education, economy, healthcare, religious and shelter (accommodation). Under this project, A Female Orphan Hostel (Darul Aitam Wal Masakin Sultanah Haminah binti Hamidon), Alor Setar, Kedah was established. This development cost RM 2 million and was fully funded by JAWHAR. The orphanage was built for the housing of 50 school-going female orphans to provide a conducive environment with hostel rooms, infirmary, dining hall, prayer room, warden quarters and administrative facilities besides other amenities.¹⁰⁷ A male orphan hostel and administration was then built in Machang, Kelantan costing about RM 1.5 million to accommodate 50 students.¹⁰⁸

Based on the above, the SIRC and JAWHAR as well as other *waqf* institutions may play a very significant role in contributing for the establishment and development of *waqf* whether in the form of cash *waqf* or *wakaf kaki* for the benefit of parentless children. It seems that so far, other than *waqf* for orphans, there is no other specific *waqf* that is developed specifically for the benefit of parentless children in Malaysia.

¹⁰⁶ See Norinah Mohd Ali et al, *Waqf Land Development in Malaysia: Studies of the Needs of the Beneficiaries*, Advanced Science Letters 24, No. 7, (July 2018), pp. 5132-5135.

¹⁰⁷ See Azri Ahmad et al. p. 9-10. See also Dahlia Ibrahim & Haslindar Ibrahim, Revival of *Waqf* Properties in Malaysia, Conference: 5th Islamic Economics System Conference (iECONS 2013), "Sustainable Development Through The Islamic Economics System", September 2013, accessed on 12 December 2018, https://www.researchgate.net/publication/281268791_REVIVAL_OF_WAQF_PROPERTIES_IN_MALAYSIA, p. 16.

¹⁰⁸ See Datuk Haji Anan C. Mohd, *Pembangunan Wakaf Menerusi Pendanaan Kerajaan dan Kerjasama Institusi Kewangan dan Korporat: Hala Tuju, Cabaran dan Harapan*, Muzakarah Wakaf anjuran JAKIM, Sansana Kijang, Bank Negara Malaysia, 12 November 2015, p.12.

CONCLUSION: HOW *Waqf* MAY BENEFIT AND PROTECT PARENTLESS CHILDREN

The above discussion seems to reveal that the preliminary aspects of children welfare and concept of *waqf* corresponds to each other. This is because parentless children have no financial support i.e. maintenance (*nafaqah*) from their prospective parents and relatives. As parentless children are in need of help, assistance and support, that can be accommodated by *waqf*. Therefore, *waqf* would be beneficial to parentless children in many ways which include providing shelter and home until they become independent. *Waqf* may also provide financial support to up bring and maintain parentless children. Through *waqf*, their chances to education are brighter and more promising. Similarly, their chances for higher education and training may be further guaranteed. This is also supported by the fact that among the purposes of *waqf* are to support learning institution and the establishment of library, to assist student's learning and education, to provide scholarship, to support the Islamic Research Institution as well as assisting the orphans and the poor.¹⁰⁹

During the Abbasid era, Ibn Jubayr, the Andalusian historian, wrote a diary on his trip for *Hajj*. He recorded his observations on the universities in Damascus and Alexandria Egypt and said that they were giving their overseas students stipends, housing with separate quarters for single and married students, special Turkish bathrooms, a special hospital, doctors and medical care and servants to help in all their affairs. He added that the scholarships were so generous that he felt he should encourage Andalusian students to go eastward for study. All that was financed mainly from *waqf*, partially from *zakat* and the governor instructed the managers that he should be informed of any shortage in order to finance it from his own money.¹¹⁰

In addition, in the 20th century, Al-Quds (Jerusalem) had 64 operating schools (incidentally, with a lesser number of mosques) that were supported by revenues of *waqf* lands in Palestine, Turkey and Syria.

¹⁰⁹ See Monzer Kahf, *al-Waqf al-Islami, Tatawwaruhu, Idaratuhu, Tanmiyyatuhu*, (Beirut, Lebanon: Dar al-Fikr al-Mu'asir, 2006), p. 156.

¹¹⁰ Monzer Kahf, "Islamic History of Awqaf," accessed 9 July 2015, <https://www.amanahawqaf.org/history/>.

In addition to the education being offered in mosques, schools and universities were established throughout the Muslim world. In Sicily, under the Muslim rule, there were more than 300 elementary schools for young pupils and one school in Central Asia had more than 3,000 students; all were built and operated on *waqf* properties and from revenues of *waqf* lands. Al-Azhar in Cairo Egypt was built around the year 330 H as the first university in the world, along with its subsidiary system of schools starting from elementary to high schools. This extensive educational system spread throughout Egypt and sometimes extended abroad was, and is still, financed by *waqf* property.¹¹¹

History proves that *waqf* seems to be one of the best means to safeguard parentless children welfare for example the poor and orphans. It is recorded that in Baitul Maqdis Palestine, *waqf* for Orphans Shelter home which is known as *Darul Aytam al-Tankaziyyah* which was built in 1328. In 1382, another Orphans Shelter Home was established in Quds named *Darul al-Aytam bi Tashtamariyyah*. In 1937, the Islamic school of orphans in Quds (*Madrasah al-Aytam al-Islamiyyah bi al-Quds*) is a subject *waqf* especially created by the Mufti of Palestine in which continues to benefit orphan children in Quds until today.¹¹²

Not limited to the above, *waqf* may guarantee all kinds of assistance to parentless children including funding of their marriages, business, investments and so forth. It is highly believed that through *waqf*, the future of parentless children in Malaysia will be brighter and their welfare and interest will be better protected. It is hoped that through *waqf* parentless children will develop to be a good future leader and to provide further benefits to the Muslim Ummah even though they are parentless and having no relatives.

¹¹¹Monzer Kahf, "Islamic History of Awqaf",.

¹¹² See Akramah Sa'id Sobri, *Al-Waqf al-Islami bayna al-Nazariyyah wa al-Tatbiq*, (Amman: Dar al-Nafais, 2008), p. 490-491.

