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Maqāṣid al-Sharī'ah and Waqf: Their Effect on Waqf Law and Economy

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Abstract: Often researchers mention the purposes of *waqf* for which a donation is made for a cause or a group of beneficiaries, such as building mosques, creating graveyards, schools, and feeding the hungry, etc. Recently Muslim thinkers have linked the Five Sharia Objectives to the *waqf*, which are helpful and enlightening. Other scholars have extended horizons further by introducing some fundamental and general objectives of *waqf* that may affect various aspects of it, including law and regulation, governance, socioeconomic goals of the Ummah and *da'wah Islāmiyah*. These works need consolidation and further review, as offered in this paper.

Keywords: *waqf*, *Maqāṣid al-Sharī'ah*, *maqāṣid* waqf, sustainable development

Abstrak: Kebanyakan pengkaji menyatakan bahawa waqf ialah derma yang diberikan kearah tujuan yang baik atau untuk menyediakan kemudahan kepada masyarakat seperti pembinaan masjid, tanah perkuburan, sekolah dan juga memberi makan kepada orang yang memerlukan. Pada masa kini, para pemikir Muslim telah mengaitkan Lima Objektif Syariah kepada waqf dimana ia dilihat sangat membantu menjelaskan konsep waqf. Walaubagaimanapun, para penyelidik lain telah meperluaskan konsep waqf dengan memperkenalkan beberapa objektif asas dan umum. Objektif ini memberi kesan dalam memenuhi pelbagai aspek keperluan Ummah termasuk undang-undang dan peraturan, tadbir urus negara, dan sosio-ekonomi serta *da'wah Islāmiyah*. Oleh itu, kajian ini akan membincangkan dan menganalisis perkara ini dengan lebih lanjut

Kata Kunci: *waqf* , *Maqāṣid al-Sharī'ah*, *maqāṣid* waqf , pembangunan mampan

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1 Introduction

This paper presents new thinking advanced by some scholars recently about the objectives (*maqāṣid*) of Sharī‘ah and objectives of *waqf*. The Jurisprudence of *waqf* is evolving because there are always new issues arising relating to the management of *ḥawqāf* assets, *ḥawqāf* businesses, the finance of *ḥawqāf* development projects, and the investment of such assets. These issues need new rules and rulings. To avoid confusion and inconsistency, there is a need for the existence of guiding principles. We attempt to consolidate some views on this topic and propose new ground for further thinking.

2 Maqāṣid al-Sharī‘ah or Sharī‘ah Objectives

Maqāṣid Shari‘ah or Sharī‘ah Objectives are the principles and wisdom (Ibn Ashur, 1978) or objectives of Sharī‘ah (al Fasi, 1993) for the benefit of humans (Yubi, 1998; Raisuni, 2010) or human interest addressed by the Lawgiver (al Ghazali, d. 505 AH).

The laws of Islām are instituted for specified purposes, some of which are very general and can include all laws, while others are specific to particular issues, both in their substantive and procedural forms, as well as in the sense of enactment, continuance, protection, and enforcement.

Two general purposes of Sharī‘ah are ‘*Ubudiyah* (worship to Allāh) as understood from al Qur’an (51:58), and *Karāmah Al-Insān* (human dignity), which al Khadimi (2001) referred to as human interest in this world and hereafter following the view of al Razi (d. 606). To al Shatibi (2, 539-40), all *aḥkām* (Sharī‘ah rules) include the *ḥaqq Allāh* (the right of Allāh) and *ḥaqq al abd* (the right of humans). *Ḥaqq Allāh* is to worship Him, and *ḥaqq al ‘abd* is human interests in this world and hereafter. However, we may consider ‘*Ubudiyah* to be part of human interest too, as it makes an agent attain pure intention of doing ‘*Tbādah* (Obeying Allāh) by sincerely and selflessly looking after the interests of others, regardless of personal benefit.

The principle of ‘*Ubudiyah* is learned from al Qur’an (51:56), that humans and *Jinns* are created to worship Allāh. This verse teaches us

that *'Ubudiyah* is embodied in all rules of Sharī'ah. Likewise, Allāh has "...created man in the best of stature" (Al Qur'ān 95:4) that He has bestowed humans with knowledge (al Qur'an, 52:3-5), and the capability to control natural resources (al Qur'an, 45:13). All these privileges show the dignity of humans as mentioned in al Qur'an, 17:70.

What we can understand from the above is that submission to Allāh (*'Ubudiyah*) is the liberation of humans from slavery to their ego and submission to others. Hence, submission to Allāh through the fulfillment of duties to Allāh and other humans constitutes human dignity (*Karāmah*).

Sharī'ah is revealed for the benefit of humans in this world and hereafter (al Ghazali, d. 505 AH); al Razi, d. 606 AH, vol 6, 97-108; Ibn Hajib, d. 646 AH, pp 192-3; Izz, d. 660, 1: 10; Tufi, d. 716 AH; al Shatibi, d. 790 AH, vol 1, p 50). Accordingly, all the benefits that humanity can get from Islām are summed into *ḍurūrī* (necessaries), *ḥaji* (needs), and *taḥsīni* (niceties or complementary), which are again subsumed in five or six objectives of Sharī'ah, according to al Juwaini and al Tufi, respectively. These objectives are the protection of religion, the protection of *nafs* or human person, the protection of *al 'aql* or the human mind, the protection of *nasl* or human lineage or regeneration, protection of property, and dignity (al *'Ird*). All these values are the fundamentals of all rules (*Aḥkām*) of Sharī'ah. We agree with al Juwaini, as we suppose *'ird* or human dignity is predicated on all five objectives.

All objectives of Sharī'ah, as displayed in Figure 1 and explained further in due course, have to be analyzed individually and collectively, as the relationship between each value and others is causal and interrelated, because the benefits of these values are related to each other. In other words, one may focus on religious value individually. However, when a Muslim achieves such a value perfectly or partially, his achievement will affect the achievement of the other four values proportionally. This relationship is real, as it will affect the inner self, and accordingly one's motivation and dedication to the achievement of the other values. On the converse, all values (i.e., sound rational thinking, safe life, protected human intelligence, continued generations of Muslims, and access to wealth) will affect the protection of religion. Al Ghazali (d. 505 AH, vol 4 p 372) explained this point at length in his discussions.

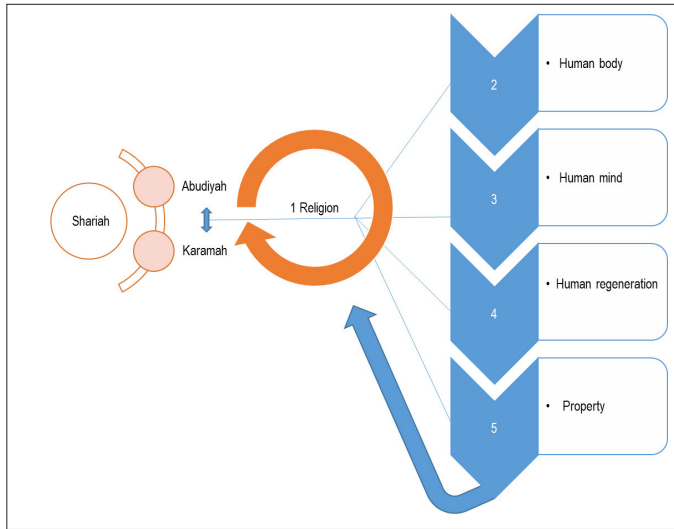


Figure 1: *Maqāsid al-Sharī'ah (Sharī'ah objectives)*

Understanding this effect makes one be a good citizen of Islām. The resultant action of good by Muslims may prove that indeed the religion of Islām is a perfect way of life that is above all other socioeconomic systems as mentioned in al Qur'an, 5:3.

3 Prioritization of Human Actions and the Five Sharī'ah Objectives

In the beginning of the formulation of the theory of Sharī'ah objectives, al Juwaini (d. 478.A. H, vol 1, p 206) then al Ghazali (d. 505 AH) and their followers divided *maqāsid* into three: *ḍurūrī* (necessary), *haji* (needed), and *taḥsīni* (niceties or complimentary). These are divided into five by al Juwaini and six by al Tufi (d. 716 AH), al Subki (d. 771 AH, p 92), and al Qarafi (d. 1228 AD, p 391). The performance or abstinence of an act or omission, related to an objective, may be for mere necessity or for more complex motives. These are explained below.

***Ḍurūrīat* (necessaries):** These refer to benefits that if neglected the whole human social order will be disturbed. For example, the duty to eat is necessary for the protection of human life, otherwise people will die.

***Hajiyat* (needed):** Sufficient food is the need of human body; otherwise, the given person will be weak and may cause the non-

fulfillment of other duties. This rule requires moderation, ease (*taysīr*) and prevention of difficulty (*al ḥaraj*). Where the fulfillment of duty causes hardship, such a duty will be waived due to the principle of ease (*taysīr*).

Tahsīnyat (niceties): these are neither *ḍurūrī* nor *ḥaji*; they are complimentary. They are for attracting any benefit that is for the good of man in this world or hereafter (Raḳīb, 2015). For example, though one may have sufficient food but to be healthy one may go for a variety of healthy foods.

Necessaries (*Ḍurūrīyat*) protect human needs in all Sharī'ah objectives, sometimes as a rule of general application, other times as an exception to a general rule. The above example of *taysīr* is an exception to an obligation of performing *ṣalāh* and fasting during the month of Ramaḍān. However, provision of a modest house or a wide accommodative house is no exception to the necessity of shelter from cold, heat, or privacy, but an improvement.

The rule is that *ḍurūrī* is the foundation for *ḥaji* and *tahsīni*, without which the other two may not exist. However, a *ḍurūrī* can exist without *ḥaji* and *tahsīni*. Accordingly, priority is given to the preservation of *ḍurūrīyat*, then *ḥajīyat*, and then *tahsīnyat*, in cases where two problems to be solved or the interests of two parties may clash.

It has to be noted that the five objectives may be textual or non-textual. The former refers to those when they are understood from the Qur'an and *Sunnah*, expressly or implied. The sources of Sharī'ah rules protect the fundamental objectives to the extent of the textual implications. Nontextual aspects are those not expressly mentioned in the Qur'an or *Sunnah*. Non-textual benefits are then divided into accepted, rejected, and unrestricted. Accepted benefits are those that can be included within the scope of the Qur'an or *Sunnah*. Imam Ghazali gives an example of all intoxicating substances being within the rule prohibiting drinking wine through *qiyās*. Rejected benefits are those who contradict al Qur'an and *Sunnah*. The unrestricted benefit is one, which is not expressed in the texts or implied from them. The rule is that these must be supportive of any of the five objectives of Sharī'ah. We follow this classification offered by Imam al Ghazali (d. 505 AH, p 173-174).

4 Synthesis between *Maqāṣid al-Sharī'ah* and *Waqf*

The purpose of the synthesis is to explain the extent of *ḥawqāf*'s (sing. *waqf*) role in the achievement of Sharī'ah objectives. In other words, the objectives of Sharī'ah may provide a guide to a philanthropist in defining the cause, object, and purpose of a *waqf* donation. Hence any donation in the form of *waqf* has to be for the protection of the objectives of Sharī'ah, regardless of whether these objectives are textual or otherwise, i.e., accepted human benefits (*maṣlaḥah al mu'abarh*) or unrestricted ones (*maṣlaḥah mursalah*).

As discussed previously, Muslim jurists have established that Sharī'ah protects the five basic human interests. Al Shatibi (d. 790 AH) opined that protection includes positive acts and prevention of threats to the existence of the five human interests (Raqib, 2015). Ibn Ashur (1978) asserted that the objectives of Sharī'ah are for attracting benefit to humans and the prevention of evil. In this regard, according to Rahhal and Sa'd (2013), *waqf* is for the protection of the benefits to humans. However, if we take all three categories of benefit regarding the main objectives, *waqf* can contribute both to the attraction of benefit and prevention of evil, all for the interest of humans. These ideas are explained in detail below.

4.1 Protection of religion (*al-dīn*)

Protection of the religion includes its propagation or *da'wah*, and protection of its applied systems and its followers. *Waqf* can protect these activities. For al Ghazali, (d. 505 AH) belief in Allāh, worshiping Him (*'Ubudiyah*), the performance of rituals and other obligations, learning and teaching, and educational centers are means of protecting Islām. To Raqib (2015) the promotion and propagation of Islām in gentle manner and good words (al Qur'an, 16:125; 41:33) is its protection. Al Ghazali, (d. 505 AH) considered the prevention of evil from Islām is achievable through the propagation of Islām (enjoining good and forbidding evil), and the enforcement of penalties against deviant groups and individuals. *Waqf* assets can be used for the above purposes following the order of priorities according to the three types of Sharī'ah objectives. The building of a mosque, for instance, may be viewed necessary (*ḍurūrī*), while its maintenance and appointment of imam and *mu'adhin* needed (*ḥajī*), and carpeting them, or lightning them may be considered good (*taḥsīniyat*). One may declare *waqf* for all those activities. Similar to the

view of al Ghazali, Ibn Izah (2015), and Rahhal and Sa'd (2013) thought that *waqf* for building religious schools helped in the propagation of Islām, its belief system, and ethics, and its preservation for posterity.

Prevention of evil from Islām may be achieved if the income of waqf is distributed among non-Muslims (i.e., *al mu'allaf*) following the rules applicable to Zakāh. Currently, Muslims are weak, Islāmophobia is prevalent, all non-Muslims attack Islāmic values, and as a result, Muslims are not free to perform their obligations in various societies. Distribution of income from waqf assets may help to change the mindset of non-Muslims and prevent the threat of prevailing Islāmophobia to an extent. The recent Fatwā of Selangor State regarding Zakāh for the *mu'allaf* is timely and welcomed. A similar approach can be taken about *waqf* income. If needed, interpretation of *waqf* rules can be reviewed, so that it can strengthen the call for Islām as a religion for all humans, and the best system for them so that they will have no argument against it (al Qur'ān, 2:150).

4.2 Protection of the human person (*al nafs*)

This objective protects humans from death, individually, or collectively. This protection includes preventive measures and retributive penalties. The last is the weakest of all, despite fuqahā' emphasis on it. Other preventive measures include the provision of food, clothing, and place of abode or shelter; prevention of disease; and prohibition of participation in activities resulting in the death of the risk taker (Ibn Ashur, p 303). To Imam Ghazali (d. 505 AH, 2, 27) the recommendation of marriage is for sustained human regeneration, therefore killing of children is prohibited. Food for sustenance and seeking knowledge and fulfillment of obligation is another way for the protection of human person (al Ghazali, d. 505 AH, 2, 20). Al Ghazali (d. 505 AH) allows prohibited acts for both degrees of necessity and needs to have food, clothing, and shelter (Shifa al Ghalil, 245). Izz (d. 660 AH, 2, 159) and al Zarkashi (d. 794 AH, 2, 317) agree with him. Following al Shatibi, (d. 790 AH) this will be an accepted interest or *maṣlahah mu'tabarrah* (accepted benefit) as it comes with the permission of eating blood and swine if necessary.

Waqāf have provided for all preventive measures leading to the safety of humans and their lives and pursuits throughout the history of Muslims. These also include medical treatment and medicines, and prevention of men and women from fire and drowning (Rahhal &

Sa'd, 2013). Education of people about the preventive and retributive measures in the area of *fiqh* and law would be another aspect of *waqf* to provide for the protection of human persons.

4.3 Protection of the human mind (*al 'aql*)

The protection of the human mind may be achieved through education, thinking, experimentation, prohibition of intoxicants and penalizing those who commit this sin (i.e., assaulting their rational capacity by consuming intoxicants or other poisons). All these are upheld to enable the human mind to operate at maximum (Ibn Ashur, 1978). This objective is about the intellectual development of the human mind. Al Ghazali (d. 505 AH), considered knowledge and thinking, or rather critical thinking, to be protecting the development of human mind. He divided knowledge or education into several types: the necessary, the needed, and the additional. To him, education of Islām is necessary, while secular knowledge for the benefit of humans is needed.

Waqf, therefore, can be for schools and universities, knowledge of the religion and other sciences, books and facilities, for the wellbeing of humans. The provision of *waqf* for schools and universities enables academic autonomy, and therefore education and research were historically available to all citizens in all Muslim states without any discrimination (Rahhal & Sa'd, 2013).

4.4 Protection of the human race (*al nasl*)

Following the teaching of the Prophet (S.A.W) (al Bukhari, Kitab al Hajj, 1655) Shari'ah protects human lineage and regeneration (Raqib, 2015). The sanctity of human blood is the means to the protection of human race and its sustained regeneration. Human regeneration will keep the earth and its resources developed (Rahhal & Sa'd, 2013), and is also needed for the protection of the religion and security of humans. Al Ghazali (d. 505 AH, 2, 21; 4, 20) recognized marriage to be the means for protection of continuous regeneration of humans; commensurately, he underscored the prohibition of adultery. Although adultery is not preventing regeneration, it may, however, result in disputes that could then result in murders. Adultery also has consequences affecting the next generations, which could be physical or psychological, as the lack of parenthood causes ineffective upbringing of children and their exclusion from inheritance.

For the sustenance of one's children, charity on family as well as *waqf* on family is permitted. Additionally, the use of *ḥawqāf* income for helping needy couples to marry, and to protect widows and divorcees, is an historical fact. These enable these marginalized and disadvantaged groups to protect themselves from vice and earning in a haram way, thereby preventing fatherless children and promoting kindness and compassion in society.

4.5 Protection of individual property (*al mal*)

The protection of property may be assumed a prerequisite of achieving other Sharī'ah objectives in all three types, *ḍurūrī*, *ḥajjī*, and *taḥsīnī*. Qur'ān and Sunnah recognize the institution of property. To al Ghazali, (d. 505 AD, 3, 363) the positive personal and social utilization of wealth is morally good; but its misappropriation or used for evil purposes is the converse of it. Property is protected from loss, being used to harm others, and it has to be grown and enhanced (Raqib, 2015). The Prophet (S.A.W) said, "Never mind the wealth of the righteous. And for those who fear, health is better than wealth, and happiness is better than luxuries." (Sunan Ibn Majah, Kitab al Tijarat, 2141). In this vein, Sharī'ah promotes seeking wealth through trade, labour, invention, inheritance, alms, gifts, and *waqf*. On the other hand, Sharī'ah prohibits the taking of property of others without just cause, which comprises prohibited dealings, wastage and irresponsible use of one's property, such as keeping it unproductive. Sharī'ah also provides compensations in return for an injury to someone's property and the penalty for theft.

Waqf in this sense provides for the poor and needy, as often provided by the endower (*waqif*). Both *waqf am* (general *waqf*), and *waqf khas* (*waqf* for specified purpose or beneficiaries) can be created for the benefit of the poor and needy. Regardless of whether the *waqf* is in cash or immovable property, the proceeds of them after a *mu'amalah* (investment dealing) are distributed among the deserving individuals. Put simply, productive cash and landed assets can be used for this purpose.

5 Maqāshid Waqf

Apart from the *Maqāshid al-Sharī'ah* and their synthesis with purposes for which *waqf* donations are dedicated, a separate theory of *waqf* has been developed by contemporary scholars that includes the purposes of *waqf* for which a donation is made. It can be for a cause or the benefit

of a group, such as building mosques, creating graveyards, schools, and feeding the hungry, etc. These scholars have extended the theoretical horizons of *waqf* further by introducing some fundamental principles that may define *ḥawqāf* by its elements, system, and general or specific purposes. These purposes, in our opinion, should affect various aspects of *waqf* including law and regulations, governance, socioeconomic goals of *Ummah*, and the propagation of Islām (*da'wah Islāmiyah*). These works need consolidation and further review, which is offered below.

Waqf has several objectives including religious, social, well-being, and sciences (Rahhal & Sa'd, 2013). The following is a summary of the opinions of Qaradaghi (n.d.) who has divided them into general and specific. We explain their general parameters below.

5.1 Submission to Allāh ((SWT)) (al "Ubudiyah)

'*Ubudiyah* consists of two cognitive acts: *Tawhid* (belief in the Oneness of Allāh) and *ta'abbud* (submission to Allāh). With these, humans are liberated from miserliness (Raqib, 2015) and self-interest. Qaradaghi (n.d.) opined that the first objective of *waqf* is economic '*Ubudiyah* or submission to Allāh. This view conforms with the Qur'anic verses about *ṣadaqah*. Therefore, the purity of one's intention to create *waqf* is required solely for the sake of Allāh (SWT) (al Qur'an, 6:162). Early scholars referred to them as a charity (*al bir*) that is to be for the sake of Allāh and righteousness (*taqwā*), and which comprises all aspects of good to others (*Ihsān*). Qaradaghi requires three elements to exist for ascertaining '*Ubudiyah*. The first is that the donation shall be purely for the sake of Allāh or the intention of the donor is purely religious. Second, the beneficiary should use the *waqf* for some positive end, or at least not a sinful one. The third is that the *waqf* shall have full philanthropical values, such as sincerity and religious virtues (*ikhhlās/ taqwā*), and the donated property ought to be the best of the donor's property (al Bukhari, 2: 50) and highly beneficial (Qaradaghi, n.d.).

The principle of submission to Allāh (SWT) could guide jurists and judges in matters relating to *waqif* (donor or settlor), the *mawqūf* (the subject matter of endowment), *mawqūf alaihi* (purposes and beneficiary), and the *nāzir* (trustee/ supervisor/ manager) on matters of validity and

interpretation of *waqf* deeds. The '*Ubudiyah* of the *waqif* can be proven by the quality of the *mawqūf* (the subject matter of *waqf*) as it would affect the quality of its administration. The *nāzir* would be expected to adhere to the same principle. The qualities of '*adālah* (righteous behavior), *amānah* (trustworthiness), and *kifāyah* (qualification and skill to manage the *waqf*) of a *nāzir* are related to '*Ubudiyah* and can improve the quality of usufruct of the subject matter of *waqf*. '*Ubudiyah* in this sense may have legal as well as ethical consequences. Ethically, the *nāzir* with such qualities would be expected to manage *waqf* in its optimum sense.

5.2 Trusteeship (*al-khilāfah*)

Fulfilling the mandate of divine trust on earth is another objective of *waqf*. This objective is in line with Qur'ānic concept (al Qur'ān, 2:30). To Qaradaghi (n.d.), the effect of this objective is to make all *awqāf* function according to the general objectives of Sharī'ah in societal development and national productivity. To him, for this reason, the donation of landed properties is better than movable property, as the former is more consonant with the human mandate on earth. To him, the development of landed property is a tool that anchors the perpetuity of *awqāf* compared to moveable assets, therefore such endowments should be kept in a good state of upkeep and repair, protected from ruin and dilapidation forever.

We may agree with the above sense of trusteeship to an extent, but this principle is more general than the above explanation. Trusteeship is effective after one has the sense of '*Ubudiyah*, and if these are together, we think, the nature of the *mawqūf* seems immaterial. Regardless of the nature of *mawqūf*, if there is trusteeship based on '*Ubudiyah*, the perpetuity of *waqf*, largely, can be expected for generations to come. After all, *khilāfah* (trusteeship) and *tanmīyah* (development) can be guaranteed not only by having immovable property but also by other means of production, such as goods, cash, and labor. As far as the perpetuity of *waqf* is concerned, the significance of land is questionable, as there were millions of *awqāf* in the Islāmic world in the past that have disappeared now. In any case, perpetuity should be maintained with principles of trusteeship based on '*Ubudiyah*, good governance, and laws that can keep the *nāzir* and others in check.

5.3 Development (*al tanmīyah*)

Development is about realizing comprehensive human growth, as explained under *khilāfah*. Qaradaghi in proposing development as an objective of *waqf* supports his view with the historical achievement of *waqf* regarding socio-economic needs, scientific know-how, and cultural achievements. He thinks that *waqf* is for the comprehensive development of humans. All resources such as land, cash, goods, and services can help in achieving full socioeconomic development of the ummah.

5.4 Financial sustainability (*ta'min mawrad mali*)

Waqf properties and assets can be used in the longest possible way. The *nāzir* must protect *waqf* capital that neither shall be transferred to others nor misappropriated (Raḳīb, 2015). *Waqf* is also viewed as unlocking of unproductive capital for the use of comprehensive human development, cooperatively among different people, for different needs of society, and providing a halal financial resource to the needy through *qard hasan* (benevolent loan) (al Raḳīb, 2015). Therefore, *waqf* can secure a stable financial resource for the present and future generations of the Islāmic Ummah. This attribute of *waqf* is clear from the *waqf* of the conquered lands of Iraq, when Umar (r) did not distribute them among Muslims of his time (al Bukhari, Ḥadīth 4235); rather he kept them for future generations, based on the suggestion of Mu'adh bin Jabal (Qaradaghi, n.d.). The fuqahā' of Islām considered it *waqf*, and to Qaradaghi, similar attributes are available in every *waqf* asset generally, which sustains current and future generations of Muslims. The effect of these principles is that:

1. The subject matter of *waqf* to have recurrent or sustainable benefit.
2. The *awqāf* and their income shall be used for providing necessities (*durūrat*), needed (*ḥajiyat*), and complementary (*taḥsīnyat*) benefits to the majority of the community.
3. *awqāf* to be made a tool for achieving independence of Muslims in many projects, without relying on others. For this reason, *ulama* have different perceptions about cash *waqf*. Those who accepted it to be capital for loans and *muḍārabah* allowed it, and those who cannot see such benefit did not allow it.

5.5 *Wealth distribution or redistribution and economic justice (i'adah aw tawzi' al thurwah)*

Another objective of *waqf* is to distribute wealth from the rich to the poor and throughout present and future generations. This objective is closely related to economic justice, which is in line with al Qur'an (59:7) and the suggestion of Mu'adh bin Jabal to think about the current and future generations of Muslims (al Bukhari, Ḥadīth 4235). This view may be true about the conservation of public property under control of the state. In the case of individuals, however, redistribution of wealth is achieved through *waqf*, whereby the wealth of the rich is disseminated to the unemployed, low-income earners, and the weak.

5.6 *Islāmic solidarity (al takāful)*

All Muslims are brothers, and they are expected to feel each other's pain (al Bukhari, Kitab al Adab, Ḥadīth 5688). *awqāf* realize this principle of Muslim unity and solidarity by donation of assets to relieve others from the pain of poverty and need (Qaradaghi, n.d.; al Raqib, 2015). The effect of this principle is that *awqāf* need sound planning for achieving such solidarity, both on family and on societal levels (Qaradaghi, n.d.).

5.7 *Protecting human dignity (himayah al malhufin)*

Qaradaghi (n.d.) referred to it as the protection of vulnerable and needy from humiliation, demoralization, and failure. We may include honor or *al-'ird* propagated by al Qarafi (d 648 AH) and others, while not excluding all other Sharī'ah objectives that promote human respect and dignity. Human indignation arises due to lack of principles of social and economic justice and due to discrimination based on race, class, sex, wealth, and others. Consequently, work and employment opportunities may not be available to disadvantaged groups. Qaradaghi thought *waqf* protects the dignity of the needy and vulnerable groups, such as the aged, widowers, and orphans. We may add to the list minorities, women in general, and others who are discriminated against in the current socioeconomic organization of society. In all these cases we think that *waqf* protects human dignity by redistributing wealth from privileged groups to the underprivileged, providing them with the skill and knowledge to be productive members of the community, and hence bestowing on them human dignity and respect among the community, according to the principles of justice in Islām.

5.8 Altruism (*tīhār*)

awqāf promotes or teaches Muslims the principles of altruism. Donors give the best of their property, even though they may need it, to fully comply with the proscription of al Qur'an about giving undesirable assets (al Qur'an, 3:92). This principle is related to the principles of '*Ubudiyah* and *tanmīyah*'; altruism in the sense of '*Ubudiyah* is helpful to the *waqif* and altruism with *tanmīyah* is for the benefit of the cause or purpose of the *waqf*, whereby the *nāzīr* is guided to pay maximum attention to the optimum use and revenue of the subject matter. It may also be related to the principle of choosing the best and highest utility that applies to both the *waqif* and *mawqūf alaihi*.

5.9 Choosing the highest and best utility (*ikhtiyar al ahsan wa akthar naf'an*)

This principle is from Qur'an (3:92) that is to choose the best asset to get the best benefit (Muhammad et al., n.d.; Qaradaghi, n.d.) for the specified groups of the society (al Qur'an, 2:215). This principle may apply to *waqif*, *mawqūf*, and *nāzīr*. For the *nāzīr*, because Muslims under this principle are educated to donate their best property, hence, it is expected that the *nāzīr* obtain the highest social utility from the property. In our view, this can be achieved both from social and economic *waqf* (productive and income generating). This view is in line with the words and practice of the Prophet ((S.A.W)), who allowed the donation of properties capable of recurrent benefit and income. Considering the term *thamar* (ثمر) and keeping in view the income of cash, higher utility from *waqf* assets can be obtained if cash is invested soundly and fixed assets are made capable of higher yield and use by developing them efficiently and optimally. For the sake of greater need of societies now and in future, the productive aspect of *waqf* needs prioritization.

5.10 Protection of the principal objectives of *Sharī'ah* (*himayah al kuliyyat al khamsah*)

These objectives include the protection of religion, the human mind, the human person, property, and family or lineage, as discussed previously and synthesized with the objectives of *awqāf* below.

6 The Integration of the Maqṣid Waqf

Provision for the poor and needy, especially orphans and others, on one hand depends on the submission to the *ubudiyyah* and the *khilāfah* principle on the part of the donors, while on the part of the needy it is a social security (*takāful ijtimā'i*) facilitated by the *waqf* system (al Sadhan, 2001). Ibn Kathir (d. 774 AH), when explaining verse 2:30, reports from Ibn Jarir a relationship between *Khilāfah*, '*Ubudiyyah*, and *ta'mir*: *khalifah* is the enforcement of the divine law, being succeeded by generation after generation, praying to Allāh day and night, and developing the land. The last is also understood from another Qur'anic verse relating to keeping the earth developed and productive (al Qur'ān, 11: 61). This idea may then support the full concept of sustainability under *awqāf* mandates.

Based on the above we integrate the above *waqf* objectives into three main principles, each of which may contain one or more components. For example, the '*Ubudiyyah* principle may include altruism as its subclasses, while the *khilāfah* principle can include development and the highest and best utility sub-principles. *Karāmah*, or human dignity, may include financial sustainability, Islāmic solidarity or *takāful*, and economic justice. Figure 2 shows the integrated objectives of *waqf*.

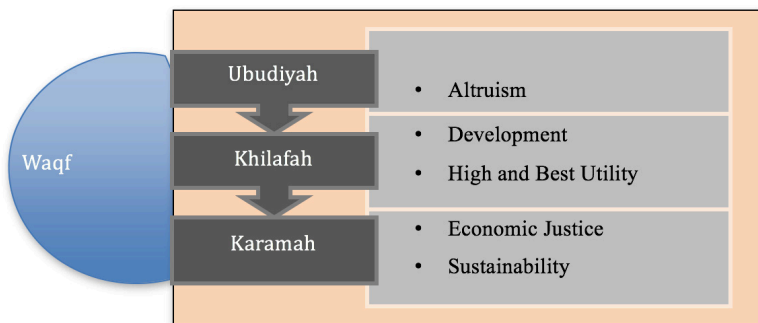


Figure 2: Integrated objectives of *waqf*

7 The Effect of Synthesis between Maqāṣid Waqf and Maqāṣid al-Sharī'ah

The effect of synthesis between *Maqāṣid al-Sharī'ah* and *maqāṣid waqf* may be a guide for Muslims in viewing *waqf* and its benefits for the

Ummah. This implies the broadness of the scope of *waqf* as a means of fulfilling obligations under the concepts of *'Ubudiyah* and *khilāfah* for the good of humans. To consider *waqf* a tool of utilization of wealth as a trust that will bring him the pleasure of Allāh and assist fellow humans, beginning from close family members to any other person, Muslim or otherwise (and indeed animals and plants). The *waqif* and the *nāzir* help Allāh's slaves, which brings divine rewards.

The above discussion shows that *Maqāṣid al-Sharī'ah* facilitates the strong and the weak in the society to acquire property, and protects it. It also implies that *waqf* as a tool assists the weak to receive property without working for it. In this vein, *waqf* is complementary to *Zakāh* and other forms of charity, hence it is a sustainable means for social solidarity of Muslims and others, if used according to the principle objectives of *Sharī'ah*.

Rahhal and Sa'd (2013) stated that the objectives of *Sharī'ah* provide guidelines for the donors related to their conditions imposed on distribution of *waqf* income. In other words, the validity of the condition a *waqif* is to be judged by their conformity with *Maqāṣid al-Sharī'ah*. *Sharī'ah* objectives also guide the *nāzir* to invest *waqf* assets in one or more activities that relate to such objectives.

As we relate the objectives and principles of *waqf* with *Maqāṣid al-Sharī'ah*, a fresh perspective needs to be formed when thinkers are envisioning the economic role of *waqf* and interpreting the *Sharī'ah* texts and *fiqhi* reasoning on *awqāf*. The scholars of *fiqh*, statutory drafters, and judiciary would be expected to pay attention to such principles. This must be coupled with understanding of the fundamental concepts of *waqf*, as a consumptive and productive charity, in the way of Allāh, for sustainable public good and a source of socioeconomic public goods, products and services.

Waqf should not be viewed in isolation from the Islāmic economic system. Within such integrative approach, the *faqih* or *mufti*, whenever wishing to understand the intent of the texts of Qur'ān and *Sunnah al mutahhrah*, has to view *waqf* as one of the tools to demonstrate the completeness of *Sharī'ah*, and the only accepted religion to Allāh (al Qur'ān, 3:19). This is to show that Islām is the right or leading religion (al Qur'ān, 30:30), and the perfect way of life (al Qur'ān, 5:3).

Islām is to be followed, and not imitate other systems. Having this principle in mind, Muslim jurists need to allow the development of *waqf* theories further, so that a real effective comprehensive and inclusive socioeconomic system of Islām rule Muslim societies. This perspective may guide them even when they interpret one text of Qur'ān or *Sunnah* through another such texts. Such textual understanding concerning *waqf* issues needs to be subjected to the belief in the perfection of Islāmic systems, as understood from Qur'ānic verses (3:19; 5:3). Without the above perspective, it is feared that they may issue Fatāwā that would have negative impact on the universality and perfection of Islāmic systems, particularly of *waqf*.

Waqf is capable of being the foundation for a comprehensive socioeconomic system that can play a role in matters relating to public and private sectors. It makes the Islāmic economic system independent from others, self-sustained, and self-sufficient for future generations. The economic independence achieved through *waqf* provides for other liberties of Muslim communities from forces outside *Ummah*. For this purpose, it could fund public and private projects as needed by the *Ummah*. Jurists and lawgivers need not neglect this aspect of *waqf*.

Based on the role of *waqf* as social solidarity fund, it should be viewed as a financial institution. As such, legal and economic experts should secure such institutional sustainability. They should treat it as such, by focusing on the productive aspects of *waqf* and hence develop financial tools for maintenance, renovation, revival, and redevelopment as well as finding sound, safe, and less risky investment projects for liquid assets, while managing risks (if any).

Based on the above rationale, it can be suggested that the jurists and economists can make decisions based on the following precepts:

1. *Tawasi'* (broadening the scope of *waqf*)
2. *Takthir* (maximization of usufruct and income of *waqf*)
3. *Yusr wa Raf' al haraj* (ease and suppression of distress); and
4. *Jalb al aslah wa al anfa'* (seeking the most suitable and beneficial in the declaration of Fatāwā about *waqf*). Similarly,
5. *Tatbiq al shurut al waqif* (compliance with the conditions of the *waqif*)

7.1 *Tawasu'* (Broadening the Scope of Waqf)

Broadening the scope of *waqf* (*tawasu'*) means extending the conceptual boundaries of *waqf* through removing rigidity from its essential components (declaration, subject matter, donors, beneficiaries, and purposes). To do this, following are suggested.

(1) On Declarations, jurists and judges are to allow flexible interpretation of the *waqf* declarations and permitting new matters being included therein.

(2) For the capital or subject matter of *waqf*, it is suggested that all forms of donations need to be accepted. The property can have the capacity of perpetuity or *perpetualization* (the capital to be sustained by *nāzir* for generations through other means).

The above has to be understood in the light of Qur'anic verses and Ḥadīths of the Prophet ((S.A.W)) on doing good (*al khair*; *al birr*; *al Ihsān*, *infaq*, and *ṣadaqah*). Further, the Ḥadīth of the Prophet ((S.A.W)) declaring that the "The most beloved of the people to Allāh are the most beneficial for the people ... " (Tabrani), has to be followed. This will allow us to help the *waqif* get more *khair* or reward of the Almighty, and the beneficiaries of *ḥawqāf* get more benefit or income. The permissibility of all *ḥawqāf*, such as the Prophetic Mosque, the well of Rumah and others, allow us to understand that *waqf* property can be used for the consumption or use of goods and the capital of *waqf* can be productive property, services and products. Hence, no emphasis is made on a specific type of property in the following explanation.

For the principle of *tawasu'* on subject matter we refer to the words of Imam al Shāfi'ī during his debate with Imam Muhammad about the *waqf* of a slave, and infer his vision of a *waqf* property. According to Hanafis, the *waqf* of a slave is not permitted, unless he is added to the *waqf* of land or a building. When Imam Muhammad was asked for the reason, he replied that slaves could die or run away, thereby their benefit for the *waqif* would be terminated. Imam al Shāfi'ī replied that land and buildings can also be ruined; what remains from such property is *waqf*, and we are not committing any wrong if it is ruined because Allāh ((SWT)) willed so. Similarly, the loss of a slave or his death is not our action. These statements of Imam Shāfi'ī show that he did not expect full perpetuity of the subject matter of a *waqf* declaration.

Accordingly, this implied perpetuity of *waqf* should not be taken very strictly to the extent that a moveable property is declared impermissible *waqf*. Imam Shāfi'ī also allowed the declaration of *waqf binding* without requirement of delivery of possession. In both cases, Imam Shāfi'ī agreed with Imam Abu Yusuf and hence both can be considered to have widened the scope of *ḥawqāf* declaration. Similarly, the Maliki School, by allowing both perpetual and temporary *waqf*, has widened the validity of *awqāf*.

In support of the *tawasu'* principle, we may also take clue from various Ḥadīth of the Prophet ((S.A.W)), including the phrase: *habis aslaha wa sabil thamarataha* (detain the corpus of it, and let its fruit [be used in the way of Allāh]). We could infer from this phrase the broadness of the concept of productive *waqf*, cash or fixed assets implied by the word *thamar*. Other Ḥadīths reported from the Prophet ((S.A.W)) have allowed beneficial *ḥawqāf*, which were not in the form of fixed assets. The early *fuqahā'* understood them to be capable of recurrent use. Considering all *aḤadīth* therefore weakens the concept of perpetuity and allows the principle of *tawasu'* or broadened concept of the subject matter of a *waqf*. This view is good for the *waqf* system and it is good for the religion of Islām as a perfect religion.

(3) *Tawasu'* also may allow the inclusion of new classes of beneficiaries and purposes for the sake of the propagation of Islām (*da'wah*). All five objectives of Sharī'ah can guide donors, which can include the protection of the poor and needy and others such as the rich, Muslim or otherwise, protection of animals, provision of universal good that can help in the sustenance and preservation of human regeneration for centuries to come. In the above context, the *waqf* could be for all types of Sharī'ah objectives: *ḍurūrīath*, *ḥājīyat*, and *taḥsīniyat*.

The above flexibility can be justified based on linking *waqf* with '*Ubudīyah*, *khilāfah*, *al 'ird or Karāmah*, *ta'mir* and *tanmīyah*. These concepts make it clear that development is a *wājib kifayi* of the Ummah (al Qur'ān, 73: 20; 30: 9; 11: 61). This has to be understood in the context of today's conditions, when, on one hand, the drive for self-interest cast doubt on the effectiveness of private and public sectors to work for the benefit of general masses. On the other hand, *waqf* is the creation of selfless individuals, and hence there is the possibility of truth in what Ibn Bayah, (n.d.) thought that it can play a balancing role,

considering the imperfect roles of public and private sectors today. In other words, the *wājib* imperative to develop land and help citizens is not fulfilled perfectly by the conventional public and private sectors instituted by modern states. This imperfection, therefore, gives way to the role of *waqf* per se. However, to accept this idea, *waqf* concepts need to be reviewed so that it can cope with its rediscovered importance, and for that, to fulfill the obligation of the development of land. If these wider objectives were achieved, the *waqf* system would be a testament to the perfection of the Islāmic concept of *waqf*, and this would help in the propagating of Islām.

The historical success of *waqf* over many centuries and the failure of current economic systems to cater to the needs of the poor and the underprivileged make *waqf* economy necessary. *Waqf* could be an excellent tool that could enable us to fill the gaps in the current economic system if we could be flexible in our thinking about it; after all, *waqf* is an *ijtihādi* matter.

Filling the gap of modern economic system according to the litter and spirit of Sharī‘ah is a duty of the experts of law and economics. For this, *waqf* may be treated as a tool for the performance of the *wājib kifayī*, i.e., land and human development or filling the gaps of modern economic system. The *fuqahā*’ long ago explained the juristic principle ‘that without which a *wājib* may not be performed is *wājib too*’. This rule may apply to *waqf* today, though it is originally treated as *mustahab* or recommended for donors, in its original form, when Islāmic society was not introduced to a system promoting self-interest. Due to this urgency, if we accept *waqf* to be the effective tool of Islāmic economics, then the duty is multifaceted and for this reason the concept of *waqf* has to be broadened.

For applying the principle of broadened concept of *waqf*, a skilled group of people may help members of society to develop their mindset philanthropically; others may help develop tools for *waqf* economy and *waqf* development. Jurists can work on legal reasoning to find conducive principles of permissibility, and economists the experts on economy and entrepreneurship can help the *Ummah* to perform their duties using *waqf* system for better performance in developing lands and consequently the human development regarding societal, economic and other needs. All these we proposed because the area of *waqf* is

rational or *ijtihādī*. Therefore, only Qur'ānic verses and Ḥadīths of the Prophet (S.A.W) can limit its scope. Limitation of *waqf* may happen if it goes just beyond the general principles of Islāmīc law and economy.

7.2 *Takhīr al Manfa'ah (Maximization of Waqf Capital and Income)*

The principle of broadened concept of *waqf* could help attract more funds and extend *waqf* purposes, and hence, mostly related to the donors and subject matter of *waqf*. The principle of maximization of capital and income refers to the first principle, but they are not the same. This principle affects the subject matter of *waqf* when managed by the *nāzīr* of *waqf*.

Effort needs to be made to enable the *nāzīr* in the creation of larger fund through *tawṣī'* and then maximization of it through capital enhancement technics, and optimization of use and income, for the protection of Muslims. The creation of a larger development fund for the needs of the large segment of society is the need of the Ummah. It is obvious that prevailing development models did not help the majority of Muslim and non-Muslim masses; hence, *waqf* funds in a Muslim population may avert foreign charity seeking attitude of some or such overburdening financial aid and investment loans by other states. Due to prevailing poverty and political uncertainty, self-sufficiency in this aspect is to be a priority of every thinking Muslim. This could liberate the Muslim mind from submission to others and prevent the chaos from some other ideologies in Muslim communities.

The attraction of large *waqf* capital can be possible if the legal environment of Islāmīc law could facilitate every Muslim (or indeed non-Muslim) to donate according to their wealth and ability. This would also include accepting all properties and valuables as the capital of *ḥawqāf*, provided they are capable of recurrent use and income. The next most important and perhaps often neglected aspect of *waqf*, the duty of the *nāzīr*, has to be reviewed afresh and developed according to the principle of *tawāsu'*. The emphasis of the early scholars on the duties of *nāzīr* have to be revived and extended to new cases, so that the protection of *waqf* properties, enhancement of capital, and maximization of their usufruct and income is treated equally and enforced, without any excuse and compromise, despite the complexity of circumstances encompassing law, politics, economy, and social mindsets.

The principle of maximization has a close relation to the two interconnected concepts of *khilāfah* and *tanmīyan*. According to al Fasi (1993), the general objective of Sharī‘ah is building on earth, and having a system of coexistence on earth, with sustained improvement and progress for its residents, through fulfilling the duties of establishing justice, integrity, reform, and land and resources development and management for the benefit of all.

The above idea is clear from various discussions of fuqahā’ on the economics of usufruct (*manfa’ah*), and income (*ghallah*) or *thamar*, following the words of our Prophet ((S.A.W)). For example, all Ḥadīths on *waqf* make us understand *waqf* in two main economic senses: productive and consumable. The Ḥadīth of Ibn Umar may Allāh be pleased with him, (al Bukhari; al Baihaqi), and the view of Imam Zufar and others, may Allāh bless them, regarding the permissibility of cash *waqf* (*dirham* and *dīnar*) support the first concept. Ḥadīths regarding *waqf* of water, mosque, war animals and tools indicate the economics of consumption goods.

Hence, it is clear that both consumption goods, as well as income generating property, are important for Muslims. Accordingly, the managers of *ʿawqāf* assets are required to focus on maximization of usufruct of consumption goods and properties and in the cases of income generating assets on the maximization of capital and income. Both, if put to optimum use, will be good for the satisfaction of the needs of many rather few. For this, emphasis must be put on saving costs and expenses, and saving more, avoiding greater risks within the framework of *fiqh al mu’āmalāt*, and choosing from among such transactions those that are more beneficial and more income generating, provided the custom and *‘adah* of the professional property managers support such decisions.

Researchers and thinkers of Islāmic economy should use the above principles to find ways to facilitate the benefits of *waqf* and its utilization for various economic and social solutions, and business organizations, both on macro and micro levels and both for big and small enterprises, whether for profit or not for profit. Where *waqf* assets are put to maximum use and high profits, the same as any normal business asset, the income will be still used for social needs of the Muslims, only this time for a larger number of recipients, without the *waqf* withering on the vine.

7.3 *Yusr wa Raf' al Haraj (Ease and Suppression of Distress)*

The principles of ease and suppression of distress are understood from Qur'ānic verses (al Qur'an, 22:78; 30:30). These principles are generally understood to be the exceptions to other prohibitive rules of Sharī'ah, for instance, the proscription of eating swine, and the prescription of it in time of distress, e.g. starvation; or praying as prescribed in an ordinary day, but making it shorter in the time of a specified traveling. We do not intend these rules and exceptions here.

We propose here that the principle of *yusr* to imply not imposing restrictive rules relating to the permissible of *waqf* donations and its management. The implication of the Ḥadīth of Prophet ((S.A.W)) regarding the land of Umar (r) on *waqf* could be understood broadly, and the precedents of Imam Malik, Imam Abu Yusuf, and Imam Shāfi'ī have to be used as a guide. This approach might help secure the best interests of *waqf* and greater numbers of beneficiaries.

In the context of the greater need for *ḥawqāf* funds to be used for socio-economic development of *Ummah*, which entails a large burden, the principle of ease is required. Ease in the management of *waqf* fixed assets may pertain to investment in such assets, or investment of cash assets, distribution of income on *ḥawqāf beneficiaries*, and the use of *waqf* assets for purposes not mentioned by the *waqif*. However, the ease in fulfilling the above obligation of *nāzir* must be balanced by the need of the *waqf* and beneficiaries, balancing acceptance of risk and expectation of income, diversification, and the general welfare of *Ummah*. Additionally, *yusr* may entail *waqf* managers distributing income of investment and productive fixed assets to reinvest it in new projects for the aversion of risks, keeping the value of assets and avoiding fund depreciation over time, making it sustainable and productive for the next generation of beneficiaries.

7.4 *Jalb al Anfa': The Attraction of Greatest Benefit*

When things are complicated, priority has to be given to that which is most beneficial to waqf in its utility and distribution of income or benefit to its beneficiaries. This principle is linked to the principle of *takthir* and maximization of income. However, it may apply restrictedly to minor and specific issues not directly linked to the collection of funds or their management. On the other hand, the *fuqahā'* and the *nāzir* must prevent any harm befalling waqf assets.

7.5 The Protection of Waqif Conditions

All conditions imposed by *waqif* during the declaration of *waqf* are binding on the *nāzir* and courts. The words of the *waqif* are considered the words of the Lawgiver according to the views of all jurists. That is the interpretation of such words must be to discover the intention of the donor and in strict compliance with *fiqhi* rules. However, where the conditions of *waqif* prove to be detrimental to the interest of *mawqūf* or the *waqf* itself, jurists allow *nāzir* or the court not to follow them. These have to be followed flexibly.

8 Summary

Islām is the religion Allāh has revealed to the Prophet ((S.A.W)) for the benefit of humans. If one believes in it and submits to Allāh in his affairs, he or she will be selfless and look for the good of others, seeking the Countenance of Allāh.

Islām has protected five fundamental human rights: religion, person, mind and its faculties, lineage, and property. These five fundamental interests of humans are protected in various ways including the use of the property. *Waqf* is one of such tools, which requires donors to be selfless and offer it to many in their time and after that. The five values are considered to be the objectives of *waqf* for the *waqif* and the activities in which the *nāzir* can invest *waqf* assets.

The effect of the five objectives of Islām is evident in the concepts developed recently. Qaradaghi's ten *waqf* objectives, therefore, show a mix of the Sharī'ah objectives and a reflection of the nature of *waqf*. When the Sharī'ah objectives and the objectives of *waqf* are combined, the expected results of such conceptualization are as presented in the preceding review of existing literature and expert opinion. For this, it is proposed that the principles of *tawsi'*, *takthir*, *jalb al manfa'ah* and compliance with *waqf* conditions are also needed.

The synthesis of *waqf* and Sharī'ah objectives should be the guiding rules for the legislature, Fatāwā, and courts in the proclamation of new rules and laws, or permissibility of actions and omissions of *nāzir*, and managers of *ḥawqāf* properties. These rules may also help in the interpretation of new or old *waqf* certificates (*waqf iyat*) for finding the conditions of *waqif* and his intention. Fatāwā that adhere to strict perpetuity, as held by leading scholars of a given *madhhab*, can be avoided

in circumstances where such strict application of perpetuity rule leads to freezing of cash *waqf*, non-compliance with the intention of *waqif*, numbing cash capital and therefore crippling the *waqf* institution and preventing it from contributing to the welfare of many Muslims.

This does not mean we have to abandon the perpetuity principle in general, as was clear from the views of Imam Shāfi'ī and Imam Abu Yusuf or Imam Malik. We may also learn from the use of cash *waqf* in *muḍārabah* and *mu'amalah* by *fuqahā'* to be the normal method of cash-waqf-based transactions. Despite the risk of loss of capital, the permissibility of *muḍārabah* transaction for *ḥawqāf* could be understood if we allow flexibility in the validity of *ḥawqāf* declarations and non-generalization of the rule of perpetuity beyond the literal meaning of the Ḥadīth relevant to perpetuity.

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