

Intellectual Discourse

Volume 26

Special Issue

2018



International Islamic University Malaysia
<http://journals.iium.edu.my/intdiscourse/index.php/islam>

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Exploring the Dynamics of Cash *Waqf*: A Critical Analysis of Its Implementation in Malaysia

Amilah Awang Abd Rahman and Abdul Bari Awang

Abstract: This paper explores the dynamics of the *waqf* institution in Islam, with special focus on cash *waqf* and its implementation in Malaysia. Its combined flexibility and accuracy is important to the real purpose of the *waqf* in its implementation. Its dynamics are first explored through its meaning and objectives as well as special features of *waqf* and cash *waqf* with special focus on the status of the endowed asset (*mawqūf*). The second part focuses on the critical evaluation of the current cash *waqf* practices in Malaysia. It is found that the special attention on the endowed asset ought to be maintained in order to preserve its original purpose. *Waqf* offers all kinds of assistance and is not confined to crisis management. Possessing the highest liquidity rate, cash *waqf* constitutes an important financial mechanism, especially given the current state of economic affairs. Its nature must be maintained, as suggested by those jurists who allow cash to be considered as an endowed asset (*mawqūf*) and also those who do not favour it, in order to maintain the perpetuity of the benefit. Only by adhering to this special arrangement, the real spirit of *waqf* and its dynamics can be preserved and further developed in order to fulfil the economic needs of society.

Keywords: Cash *waqf*, objective, dynamism, implementation in Malaysia

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Abstrak: Kajian ini akan meneroka kedinamikan institusi waqf dalam Islām khususnya kepada waqf tunai dan pelaksanaannya di Malaysia. Kombinasi fleksibiliti dan ketepatan amat penting dalam tujuan utama waqf dan pelaksanaannya. Kedinamikan waqf tunai ditemui buat pertama kali melalui maksud dan objektif serta keunikan waqf dan waqf tunai khususnya kepada status aset yang disumbangkan (*mawqūf*). Selain itu, kajian ini juga fokus kepada penilaian kritikal waqf tunai semasa yang dipraktikkan di Malaysia. Adalah didapati bahawa perhatian khusus terhadap aset waqf yang disumbangkan patut dikekalkan bagi memelihara tujuan asalnya. Waqf menawarkan semua jenis bantuan dan tidak terhad kepada pengurusan krisis. Ini kerana waqf tunai mempunyai kadar kecairan tertinggi, oleh itu, waqf tunai merupakan mekanisme kewangan yang penting jika melihat kepada keadaan ekonomi semasa. Konsep asas penting waqf mesti dikekalkan, seperti yang dicadangkan oleh ahli hukum yang membenarkan wang tunai dianggap sebagai aset yang disumbangkan (*mawqūf*) dan juga orang-orang yang tidak bersetuju dengan konsepnya, bagi mengekalkan keabadian manfaatnya. Oleh itu, kedinamikan dan konsep sebenar waqf perlu dipelihara dengan teguh dan seterusnya membangunkannya supaya ia boleh memenuhi keperluan ekonomi masyarakat sejagat.

Kata Kunci: Waqf tunai, Objektif, Dinamisme, Pelaksanaannya di Malaysia.

Introduction

The role of the *waqf* institution as a mechanism for maintaining the welfare of Muslim society does not need any further elaboration. *Waqf* has been discussed in great detail as a means of donating the yield of a certain property as pious endowment. It is also known to be an important catalyst for the development of the Muslim economy at the individual as well as communal level.

The history of *waqf* shows that activities of endowing *waqf* have been in practice since the time of Prophet Muhammad (ﷺ). *Waqf* constituted an established practice among the Companions of the Prophet (رضي الله عنهم). The earliest *waqf* recorded in Muslim history was the mosque of Qubā' in Madinah. Moreover, a man named Mukhayriq endowed his seven orchards to Prophet Muhammad (ﷺ) who turned them into charitable *waqf* for the benefit of the poor and the needy. Others were 'Uthman Ibn 'Affan (r.a.), Abu Bakr al-Siddiq (r.a.) who endowed his land for his son, and 'Ali (r.a.) who endowed his land in Yanbu'. Similarly, Zubayr

(r.a.) endowed his house in Makkah and Cairo for his son, Khalid Ibn al-Walid (r.a.) endowed his military tools, and the Bani Najjar endowed their garden in which the Prophet (ﷺ) built a mosque. Many more early endowments were made based on Jabir Ibn Zayd's testimony, "All the Companions who were [financially] capable made endowments" (Sabran, 2002).

Over the centuries, *waqf* has contributed to the welfare of Muslim society. *Waqf* has played, and continues to play, an important role in the development of Islāmic education, the well-being of the community and the nation as a whole— assisting the public and the government in their affairs. The benefits, among others, are the massive reduction in government expenditure, better distribution of wealth, and overcoming the problem of undersupplied public goods (Cizakca, 1997).

Given its proven contribution, Muslim jurists continue to venture into new endowment avenues. Introducing cash *waqf* constitutes a viable tool in enhancing the economic status of the *ummah*. This paper explores the dynamics of *waqf* in general and cash *waqf* in particular. It examines its features, conditions, and unique purpose of its activities, as well as the extent of its efficient implementation in Malaysia.

Meaning of *waqf*

Waqf constitutes a form of endowing charity involving a building, plot of land or other assets to the public use. It is derived from the Arabic verb *waqafa* which means to stop or to stand (Marbawi). And in this particular context denotes the freezing of one's ownership for a specific welfare without the intention of reclaiming it (Ibn Manzur, 1990). Another technical term for this practice is *habs* (mortmain property) derived from the Arabic verb *habasa* which means to hold, to confine, and to prevent (Ibn Manzur, 1990).

The source of reference of rulings pertaining to *waqf* is a prophetic tradition narrated from Ibn 'Umar (r.a.) who went to the Messenger of Allah (ﷺ) to seek his advice on a property which he had acquired in Khaybar. He said: 'O Messenger of God, I have acquired land in Khaybar which is more valuable than any land I have ever had. What do you advise me to do with it?' The Messenger of Allah (ﷺ) replied: 'You may keep the land if you wish and donate its produce as charity'. So 'Umar (r.a.) donated it as charity on the condition that it should not

be sold or inherited or given away. He dedicated it to the needy and near of kin, to free slaves and in the cause of Allah for travelers and guests. Islāmic rulings make it clear that there is no blame on anyone who is charged with the administration of waqf endowments if he eats a reasonable amount from it (Ahmad Zidan and Nina Zidan, 2002).

The judicial phrase *habasta al-asl wa sabbil al-thamarah* or *tasaddaqa al-thamarah* means “you hold the principle and proceed with the fruit (usufruct) or donate the fruit”. The first issue is that of *habs* (mortmain property) which determines the special characteristic of perpetuity of the endowed asset (*mawqūf*) and the second issue is its continuous benefit. The scholars of the different legal schools are quite consistent in defining *waqf*. The common definition is as follows:

Waqf concerns holding and preserving one’s assets by securing its benefits which are channeled or allotted to certain beneficiaries. The main categories of *waqf* are for the public or common good (*khayrī*) or specific beneficiaries including the descendants (*dhurī*). All jurists agree that the endowed asset (*mawqūf*) is not properly owned by any particular individual and therefore cannot be bought or sold, given away as gift, or inherited. Differences of opinion occur in the status of the asset: either by securing the ownership with the endower treating the asset like a borrowed asset, shifting the ownership to Allah, or shifting the ownership from the endower to a new owner (*mawqūf ‘alayhi*) (‘Ulaysh, 2003).

Many modern scholars such as Abu Zahrah maintained definitions given by the earlier jurists. Mundhir Qahf (2000) has the most comprehensive definition which mentions both the permanent and temporary *waqf*. He also highlights the continuous and repeated benefit aspect (*intifa’ mutakarrir*) (Qahf, 2000).

In order to correctly understand the special role of *waqf*, it is important to discuss the special role of *waqf* in relation to other activities involving material property or money such as *zakat* (almsgiving), *ṣadaqah* (charity), *hibah* (gift) and others. These activities are not merely mundane actions related to economics and human dealings, but are also part of Islāmic rituals. The Qur’an addresses these activities as part of pious actions, charity and worship. Some special features of *waqf* are as follow:

- i. Endowing *waqf* is a voluntary charitable action (*ṣadaqah tabarru'ah*), which is different from *zakat* as the latter is compulsory for those who fulfill certain criteria of capability in terms of their wealth. Two criteria are set by Islāmic law namely *nisab* (minimum amount owned) and *hawl* (one calendar year) for *zakat*. *Waqf* complements *zakat* in its role of offering welfare and charity to the economically weaker segments in society.
- ii. *Waqf* is not restrictive in any sense, which makes it different from *zakāh* primarily designed to give assistance to the needy. The recipients of *zakāh* are clearly specified in the Qur'an:

“Indeed, [prescribed] charitable offerings are only [to be given] to the poor and the indigent, and to those who work on [administering] it, and to those whose hearts are to be reconciled, and to [free] those in bondage, and to the debt-ridden, and for the cause of God, and to the wayfarer. [This is] an obligation from God. And God is all-knowing, all-wise.” – Surah al-Tawbah, 9:60

Hence, *zakāh* is meant to assist specific groups of people who face economic hardship. In other words, *zakāh* constitutes a mechanism for crisis management; while *waqf* is also a kind of charity but does not necessarily fulfil any specific basic need. Islām gives the mandate to the *waqif* to look for various ways to help the society, which was later on spelled out in the *sighah* (the description of intention). Since the endowed asset (*al-mawqūf 'alayhi*) is not prescribed by any source of Islām, the endowing party (*waqif*) is at liberty to decide the nature and scope of his or her endowment. It is the responsibility of the manager of the *waqf* property (*mutawalli*) to faithfully execute the wishes of the owner and not to misappropriate any part of the endowed property.

- iii. *Waqf* means keeping the principle (*mawqūf*). The beneficiaries enjoy the usufruct, but do not own the endowed property or asset. This is different from any other charity including *zakāh*, donation and *hibah* where the recipients own the money or property and are at liberty to make use of them: selling it, handing it over to a third party or destroying it.

The perpetuity of *waqf* renders it the best continuous or perpetual charity in the spirit of the Prophet's teachings, which guarantees ongoing rewards long after the demise of the donating individual

Abu Hurayrah (r.a.) narrated that the Prophet (ﷺ) had said: "When someone dies, his deeds cease in effect, except three: regular charity, knowledge which he has imparted upon others, or a God-fearing son [or daughter] who supplicates for him" (Zidan and Zidan, 2003).

- iv. *Waqf* constitutes an official arrangement for a long-term duration. It is different from a single charity or donation given freely to specific individual(s) the donor wishes. *Ṣadaqah* is a straightforward exchange of ownership from the donor to the recipient and generally does not involve any official process. On the contrary, *waqf* constitutes an official act involving various parties: the *waqif*, the designated *mawqūf* bound by certain conditions, and the trustee. The law of *waqf* in Islām requires the office of a trustee (*mutawalli*) in charge of the *waqf* asset since it covers a long period of time. It is expected from the trustee to monitor the affairs diligently and be aware of his or her responsibilities which have a direct bearing on the public interest. The trustee has to preserve and maintain in good condition the *mawqūf*, so that it can be used by the beneficiaries and its yield justly distributed among the beneficiaries. It is also expected that the trustee ensures that the original objectives of the *waqf* are fulfilled. *Waqf* properties involving the economic benefits should generate profit to benefit the intended recipients. An unreliable trustee may ignore his duty of monitoring the endowed property and allow the property to be occupied for free or for a low nominal fee (unless it is designated for the poor) and fail to revise the rates over time.

Given its distinctive features, *waqf* is seen to be an important mechanism to assist Muslims in solving and improving their economic conditions. The open and generic nature of *waqf* needs to be further explored and newer mechanisms developed in order to meet current societal needs.

Cash *waqf* and the issue of perpetuity

Cash *waqf* is a type of *waqf* endowment restricted to a specific type of asset namely cash. This kind of *waqf* is relatively new. The cash

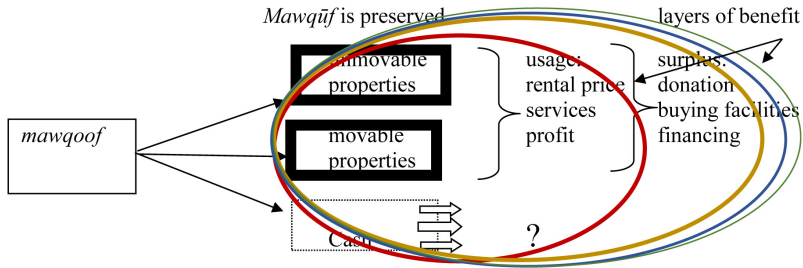
constitutes the usufruct or benefits from the other kinds of *waqf*, such as cash as benefits from the rental of buildings, houses or shops. Cash *waqf* has become increasingly important for several reasons. The first reason is that many people are not capable to endow lands or houses due to high prices whereas a cash endowment can be established with a limited amount. Second, cash money has now become a medium of investment and thus constitutes an important commodity, which can bring much benefit.

Cash money is defined as “money in coins or notes, as distinct from cheques, money orders, or credit”. It constitutes a possession that carries certain value. At the same time it is used as the medium of exchange. Cash money also counts as one of the *mithliyyah* assets (similar assets that can be exchanged for the same value at market price) which can be rendered into debts, however, not from value assets (*qimiyyah*) that can be rented and borrowed.

The first category of endowable property is the immovable assets; for example land, buildings, or houses. They are considered as immovable assets whose perpetuity of existence and benefit are guaranteed.

The second category of *waqf* is endowing movable assets. It is agreed that movable property can be endowed as long as it is not perishable, a known practice since the time of Prophet Muhammad (ﷺ). The basis of the ruling on the permissibility of endowing transferable assets is the Prophet (ﷺ) consenting to the practices of his Companions (Ibn Hajar). Khalid Ibn al-Walid was reported to have endowed his battle armor. The tradition says, “It is unfair for you to ask for alms from Khalid Ibn al-Walid as he is keeping his armor [to fight] for Allah’s cause.” Other examples given by Muslim jurists are endowing war horses and manuscripts for public use. The practice of *waqf* is even extended to cattle as well as weapons, such as, axes, saws, Qur’an manuscripts, books of *fiqh*, literature, etc. (Al-‘Ayni, 2001) This type of movable asset complies with the two conditions: of perpetual existence and benefit or usufruct. They are movable, can be clearly identified, returned after use, and their benefits are continuous. It is on this basis of perpetuity that the majority of jurists with the exception of Imam Malik agree that possessions that are perishable are not endowable since they do not fulfill the condition of perpetuity.

The third category of endowable property includes assets that are not permanent. The nature of the property is such that the corpus is used together with the benefit.



The above diagram illustrates that both the immovable and movable properties come with perpetual benefits since the corpus is maintained. It cannot be properly owned, therefore cannot be sold, given to others, and the like. It is preserved for the public benefit either with or without monetary implication. If without income, the perpetuity of benefit for the public is good enough to be enjoyed without any pay. In the case where the property generates additional sums of money, it can be used in other forms of benefits to the public.

Therefore, the mechanism of *waqf* generates perpetual benefits from the permanent assets. A successful example is the *waqf* hotel next to the Masjid al-Ḥarām in Makkah being the usufruct of other *waqf* property. The longer the endowed property can be preserved, the more layers of benefit it can produce, for example in the form of developing additional properties. Herein lays the dynamism of *waqf* in Islām.

The legal opinions differ in respect to movable property that is diminished by use such as cash, seeds and the like. Cash endowments have remained controversial due to the fact that the physical nature of the cash money is not permanent. It is transferred from one hand to another upon usage and therefore cannot be held or maintained as a possession in its original form.

The legal disagreement is caused over the same concern, perpetuity, but has different connotation of perpetuity or permanent status of *al-mawqūf* -- either in its actual piece or according to its value. Those jurists who emphasize the aspect of perpetuity of the piece of *al-mawqūf* as a condition for legitimate *waqf* as mentioned in the *Ḥadīth* are of the

opinion that cash cannot be endowed as it does not constitute a permanent and perpetual asset. They argue that the purpose of the endowment is to maintain its exact piece and to extract the benefits from its yield, which does not happen in the case of cash money. According to Ibn Qudamah (2004), endowment is not "those which are impossible to gain benefit from and maintaining its physical nature are dinars [gold coins], dirhams [silver coins], food items, candles, etc." Another argument is that money was invented to be a value measurement, not for deriving any benefit from itself (Al-Hasan, 1999); this is also supported by Ibnu Qudamah (2004) who said that, "to improve something is not the main purpose of the value measurement".

On the other hand, several other jurists understand that the replaced physical property of the same value can be considered like the original property. Its replacement is permanent and therefore they consider cash *waqf* as permissible based on the fact that its benefit can be maintained even though the actual piece of movable property is replaced (Ibn Qudamah, 2004). Among the scholars who allow the cash *waqf* are Imam al-Shafi'i (Al-Mawardi, 1999), the Hanafite al-Ansari, Ibn 'Abidin al-Haskafi (2000), and Ibn Taymiyyah (1998). Ibn Taymiyyah supports his view by quoting from Abu al-Barakat who said: "Currency endowment (*waqf al-athman*) is permissible". (Ibn Taymiyyah, 1998) The overall argument on the permissibility of cash *waqf* is that, besides being useful and beneficial, cash possesses the permanent characteristic of perpetuity benefit.

This shows that the perpetual and permanent nature of an endowed asset is central in *waqf*. In order to maintain the perpetuity of the benefit, all jurists, those who deem it as permissible and those who do not, maintain that the endowed asset must be preserved and consider it as the primary condition of its permissibility. The endowed asset is first characterized to be permanent in nature and not to be changed or owned so that it continues to give benefits to the beneficiaries and has unique usage in terms of the original ruling of the endowed asset that cannot be owned, inherited, sold or changed. Replacement or changing of nature can only be allowed under a special method called *istibdāl* which involves several conditions. According to the jurists who permit cash *waqf*, at least the value or amount endowed should be maintained (or at least transferred temporarily to another form) and traced back or withdrawn when needed.

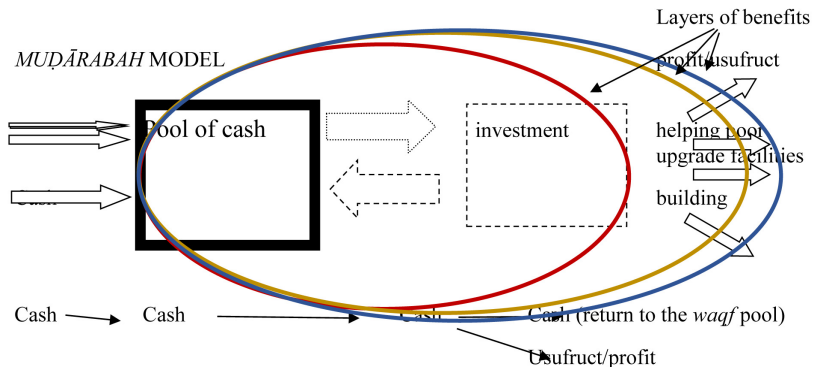
Types of cash waqf implementation suggested by the jurists

1. *Muḍārabah*

Muḍārabah (profit and loss sharing) takes place when someone hands over his or her property to someone else with the purpose of investing it. The profits are shared equally between both parties. (al-Khin, 1992) In the implementation of *muḍārabah*, the cash money is invested profitably. The surplus or profit of the share is divided between the investment expert and the rest shared by the eligible recipients. The cash is maintained in the form of shares.

An example of profit and loss sharing using *waqf* property is mentioned by Imam al-Zuhri (Al-‘Aini, 2001). An individual endowed 1,000 gold dinars in the path of Allah by entrusting the sum to a trader to invest it in his business, and declared that the profit accruing from the money invested would be given to charity.

Ibn al-Humam (2003) noted that al-Ansari acknowledged the method of *muḍārabah* as one of the ways to implement cash endowments. According to al-Ansari, it is permissible to endow dinars in *muḍārabah*, the profits being shared by the intended beneficiaries. Ibn Taymiyyah (1998) used the term *tanmīyah* which means to expand the property when describing the method of implementing *muḍārabah* of the cash *waqf* by maintaining the original capital.



A modern way of investment can also be considered such as *sukuk* (bond). The capital in the *sukuk* activity is generally maintained unless it suffers loss. The profits are generated from selling the assets

(Ngadimon, 2009). However, a research must be conducted to ensure that the investments are really profitable.

Investments are of course also subject to loss. It is the responsibility of the trustee (*Mutawallī*) to make good and profitable investments and seek expert advice. In the unlikely event of loss even after consulting financial experts, it is the view of the writer to consider “the wear and tear” of the process. Many properties are also subject to “wear and tear” including buildings where the trustee (*Mutawallī*) should find ways to solve the problem including utilizing other ways of generating profit. It is not acceptable that the activities of cash *waqf* and maintaining cash are rejected in the face of possible loss, while neglecting the other potential it possesses. Today, investments are empowered and can take many forms such as various types of *sukuk*, which are potentially profitable.

2. *Al-Ibda‘*

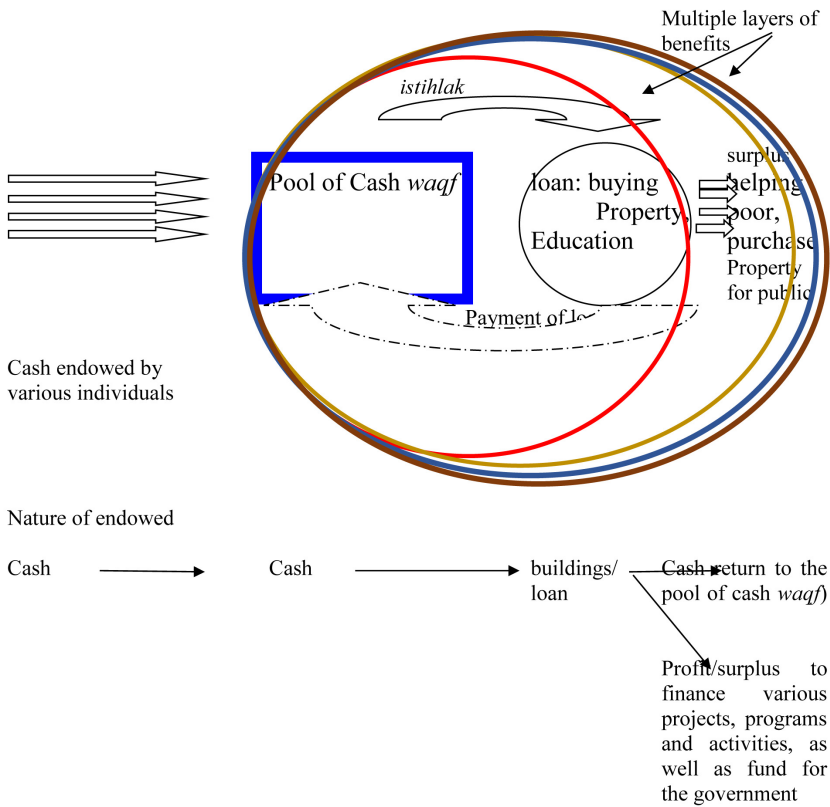
The jurists also suggest a type of investment called *ibda‘*. *Al-Ibda‘* is a type of investments run by workers, investors or businessman voluntarily without taking any wages from his efforts, this is done by using other people’s capital in the investment, and if any profits are gained, the profits belong to the owner of the capital (Ibn ‘Abidin). The procedure is done by handing over the endowed cash money to a businessman who would not ask for any wages and the profits from his efforts, and with the condition that all the profits belong to the owner of the capital (the endowment party), and the profits are used by the endowment party for those who are eligible to get the endowment. The model of *al-Ibda‘* is similar to the investment scheme of *waqf*.

3. *Interest-Free Loans*

Incurring a debt is understood as the act of giving the ownership of one’s property to another person on the condition that the debtor will return it without any addition to the amount. If there is any addition involved in the debt, it is prohibited based on the legal concept: “Every loan with an addition is considered usury (*ribā*)”. (al-‘Asqalani, 1992) In reference to the concept of an interest-free loan, the cash endowment is implemented by giving this cash money as a loan to the needy, then after returning the money with the same value, this cash money will be loaned to others in a similar manner. Ibn Taymiyyah (1998) even noted

in his *Majmu' al-Fatawa* that “the Malikites say that it is valid to endow cash to be made as interest-free loan”.

The endowed cash money used as a loan has the risk of delayed return payment on part of the debtors or their incapability to repay the loan altogether. Thus, the cash endowment may decrease over time or even cease to exist altogether. However, there are ways to overcome this risk, for example by including guarantees and guarantors.



The implementation of cash *waqf* in the form of loans has the risk of the decreasing value of the money rate as the buying or purchasing power decreases from time to time. But, it is still beneficial if compared to the potential of cash in the current situation. Interest-free loans are needed as capital for various economic activities, on the condition that the main capital is preserved.

Implementation of cash *waqf* in Malaysia

The Council Committee gave its ruling on the permissibility of cash *waqf* in its 77th meeting (*Majlis Jawatankuasa Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islām Malaysia kali Ke-77*) from the 10th – 12th April 2007 at Primula Beach Resort, Kuala Terengganu. The practice of cash *waqf* is approved provided that it is converted into or used towards creating permanent benefits. The Religious Department (*Jabatan Wakaf, Zakāh Dan Haji*) was formed in order to coordinate the management of monetary activities among the Islāmic Religious Councils of the states including the *waqf* management. Other than the Islāmic Religious Councils of the states, a central national *waqf* management was also created, the *Yayasan Wakaf Malaysia* (YWM) under JAWHAR in 2009.

Cash *waqf* in Selangor

The Islāmic Religious Affairs Department of Selangor (MAIS) was the first to introduce cash *waqf*. The Fatwa Council of Selangor ruled on 5th of September 2009 that “Any outcome from the Selangor Share Endowment should be used to purchase permanent assets. Benefits from the Selangor *waqf* scheme can be spent to extend financial assistance to the public and other usage that is deemed as acceptable by MAIS”.

Selangor ventured into cash *waqf* in the form of the Selangor Shares Endowment Scheme (*Saham Wakaf Selangor*). It was first managed by the Religious Affairs Council of Selangor (*Majlis Agama Islām Selangor*). In 2011, the state’s *waqf* management was placed under a new unit called *Perbadanan Wakaf Selangor* (PWS) in order to enhance the management of *waqf* in Selangor. In 2012, Bank Mu’āmalāt Malaysia Bhd and PWS joined together in order to enhance the collection of *waqf* under the *Wakaf Selangor Mu’āmalāt* scheme.

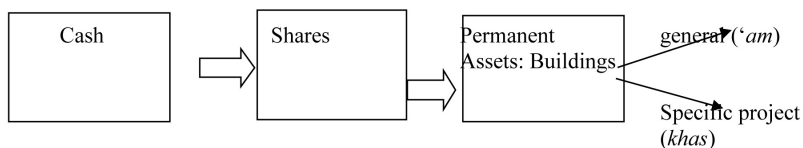
Selangor Shares Endowment is a scheme of endowment through cash money through the purchase of share units offered by MAIS. These share units are endowed to MAIS to benefit the Muslim community. Participation in this scheme is open to all Muslims, the minimum limit being RM10.00 (per unit) with no maximum limit. The Selangor Shares Endowment has been successful in attracting a considerable amount of contributions which continue to increase every year. In 2005 and 2006, more than RM 2 million were collected, followed by another 3 million in 2007.

As stipulated in the *fatwa* issued by the Fatwa Council of Selangor on 5th September 2009, the outcomes (profits) of the Selangor Shares Endowment Scheme should be used to buy permanent assets. Its proceeds may be spent for charity purposes and other transactions that benefit the public as approved by the Majlis Agama Islām Selangor. A number of projects were successfully funded by this cash *waqf* fund.

The collected cash money through shares was used to finance several main projects related to immovable assets such as the construction of the Tengku Kelana Jaya Petra Mosque, Taman Bandaran Kelana Jaya, Selangor (RM8 million), and the reconstruction of the An-Nur Mosque, Kampung Kunci Air Buang Tanjung Karang (RM350.000) and the construction of the Sekolah Rendah Agama at Pulau Indah (RM2 million). Covering a part of the construction cost, five units of shops at Bandar Bukit Puchong were purchased (RM 1.05 million) and subsequently rented out. Among the fund's renovation projects are: Surau Taman Dato' Bandar, Meru Klang; Surau At-Taufiqiah, Shah Alam 2; Surau Al-Hidayah, Desa Coalfield Sg. Buloh Petaling; Surau Al-Muhajirin, Taman Kajang Utama, Kajang; Surau Taman Alam Nyata, Kapar Klang; Surau An-Nur Bandar Puteri Klang; Surau Al-Khairiah Bukit Beruntung, Rawang, which cost RM10.000 each. Projects of upgrading facilities within the mosque compound were also financed through the cash *waqf* share scheme such as the meeting room of the Kampung Permatang Mosque, Kuala Selangor. Other initiatives for the public welfare focused on the health sector such as the opening of the Klinik *wakaf* in Gombak.

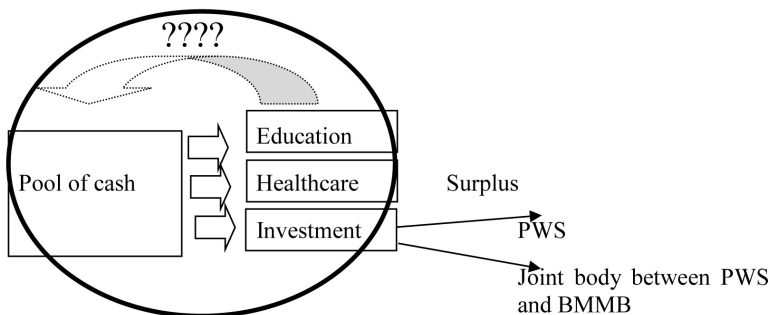
On 3rd February 2011, the *Perbadanan Wakaf Selangor* was formed to effectively organize and manage the *waqf* administration in Selangor. It introduced gold *waqf* and art *waqf*. The *waqf* share scheme constitutes one of the successful endeavours of the PWS that resulted in the collection of a large amount of money. The official website of wakaf in Selangor (wakafselangor, 2018) reported that in 2012 it collected more than RM 7.6 million in general *waqf* (*waqf 'am*) and RM4 million in specific *waqf* (*waqf khas*), in 2013 RM11.8 million and RM6.2 million, in 2014 RM18.3 million and RM8 million, in 2015 RM25.3 million and RM7 million, and in 2016 RM35 million and RM7.8 million respectively. The *waqf* distribution (Agihan Sumbangan SWS) focuses primarily on permanent assets such as mosques. With it were financed the construction of Masjid Diraja Tengku Ampuan Jemaah, Bukit

Jelutong Shah Alam (RM25.5 million), Masjid al-Falah (RM2 million), Masjid Temasya Glenmarie, Shah Alam (RM12.5 million), Masjid Puncak Alam (RM21 million), Masjid al-Ikhlas, Seksyen 13, Shah Alam (RM12 million), Masjid al-Mustaqim, Taman Nirvana Ampang (RM10 million), Masjid Batu Kariah Sg Sekamat (RM5 million) and Masjid Perodua, Rawang (RM9 million). (Zakāh Selangor, 2018).



It should be noted here that general and specific *waqf* (*wakaf am* and *wakaf khas*) as termed by the PWS distinguishes between the different purposes of *waqf*. The general *waqf* (*al-‘am*) or *al-waqf al-khayrī* according to the jurists, al-Sarakhsi (1993) for example, is endowing and preserving the property for the public and donate its benefits without time limit. In fact, the jurists generally agree that the benefit of the general *waqf* can also be enjoyed by non-Muslims if it is made public. Specific *waqf* (*al-waqf al-khas*) is primarily dealing with descendants whereby a specific group of people receives the benefits from the deceased’s endowed property. This is different from the implementation of PWS, where *waqf ‘am* is used for any unspecified project, whereas *waqf khas* is when it is for a specific project.

PWS has devised a new mechanism to promote the collection of cash *waqf*. In collaboration with the Bank Mu’āmalāt Malaysia Bhd it created the *Wakaf Selangor Mu’āmalāt*. This *waqf* focuses on two main areas of development: healthcare and education, and investment (Ashraf and Jalil, 2014).

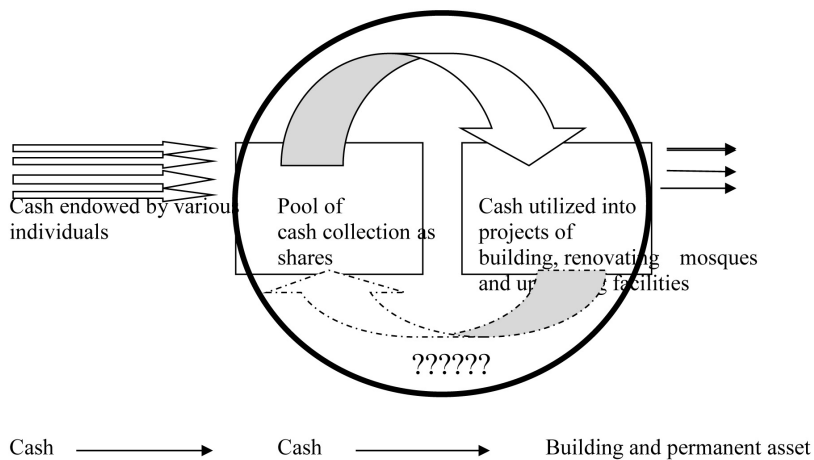


It is observed that this practice does not fulfill the expected model of cash *waqf*. The cash (*mawqūf*) is not preserved. The pool of cash is not maintained, even in a general sense where no activities bring back the cash to the original pool of money. The objectives seem to be like normal donation which straight away given to the beneficiaries. This is indeed defeat the purpose of the real concept of cash *waqf*, and affects the dynamic nature of *waqf* where only one cycle of usage is produced.

Waqf shares in other states

Saham Wakaf Johor was launched by the Majlis Agama Islām Johor. Among its successful projects is counted the construction of a Malaysian student hostel in Cairo, Egypt (MAIJ, 2018). Other more recent projects are the partial contribution to the construction of religious school buildings amounting to RM322 million, the construction of the Dār Al-Furqān for religious classes, the purchase of a building serving as a Malaysian student hostel in Amman, Jordan, and the purchase of healthcare equipment (dialysis machines). The Waqaf an-Nur Corporation Bhd launched Waqaf An-Nur Hospital at Pasir Gudang and two mobile clinics in Johor.

As is clear from the above mentioned projects, the share benefits are invested into projects that benefit the Muslim public. Some projects cannot be considered as complete *waqf* property since they are joint-venture programs in collaboration with other departments or other units under MAIJ.



The above diagram shows that the endowed cash is successfully converted into permanent assets which support the spirit of perpetual benefit of the *waqf*. However, it does not fulfill all the *waqf* criteria as the endowed property (*mawqūf*) in whatever nature is required to be maintained, the benefit is required to be perpetual and constitute a unique contribution to the people. In this sense, not all endowed properties generate the same benefits. In addition, the originally endowed property, that is cash, is not retrieved back. Instead, the usufruct of the buildings is wholly channeled to the public. Therefore, the original dynamism of *waqf* is not fully materialized.

Conclusion

Waqf possesses a unique characteristic to contribute to the public welfare, mainly through economic activities. The jurists agree that its most important criterion is the perpetuity of the endowed property (*mawqūf*) and its benefits. This means that the most important task of the trustee (*Mutawallī*) is to maintain the endowed property, whether immovable or movable.

Those jurists who agree on the permissibility of the cash *waqf* consider that maintaining its benefits also means ensuring its perpetuity while those who do not agree on its permissibility argue that only property that constitutes a corpus can be considered as *waqf* property, and therefore cash cannot be considered an endowed property. Another area of disagreement is whether the property (*al-mawqūf*) in all circumstances is maintained in the name of the owner (*waqif*), or the beneficiaries (*al-mawqūf 'alayhi*) or the trustee (*Mutawallī*). Again, the primary concern is to maintain its perpetuity. Therefore, maintaining this spirit of perpetuity is mandatory without which a permissible *waqf* cannot be established and without which it also does not achieve its objectives.

The efforts of the institutions in Malaysia to expand the *waqf* activities beyond the traditional practice of endowing lands, houses and estates and including cash has to be regarded as a praiseworthy initiative. Among the most active institutions are those in the states of Selangor and Johor. Introducing endowment shares is no doubt an honorable effort that should be supported by the Muslim public. This scheme constitutes essentially a recurring charity (*ṣadaqah jāriyah*) albeit created in a new form to allow Muslims at all levels of prosperity to participate. This and

similar schemes can empower the *ummah's* economy. The Malaysian initiative is in accordance with the spirit of Islām which encourages those in power and entrusted with the affairs of state and government to serve the public interest and benefit (*maṣlahah*), for the welfare of society.

It is the writer's humble suggestion that *waqf* institutions in Malaysia should review their legal opinion on the usage of cash *waqf*. They should also find ways to boost the community's interest to benefit from these cash endowments as they have proven to support economic activities and provide loans in education, well beyond their traditional scope of building mosques and providing certain services in healthcare and education. What is more important, this kind of mechanism allows the money to flow back into the collection pool, which, over time, leads to doubling and tripling of its value. Various alternative ways and models that comply with the eminent legal opinions can be devised, tested and introduced that possess the potential for meeting the various needs of the public. It is further suggested that the trustee (*Mutawallī*) should focus on long-term projects and projects with multiple benefits for the sake of the future economic well-being of the Muslim public.

The existing problems in cash *waqf* can be resolved by forming independent advisory boards that can monitor its process involving auditors and legal experts in Islāmic law and finance in order to curb any unhealthy activities of the trustees and at the same time develop standard procedures in the utilization of *waqf* revenues while exploring the additional potential of cash *waqf*.

In conclusion, the true dynamic character of Islām is only realized by acknowledging and actualizing the real nature and purpose of each system of governance. Our aim and purpose should not be to opt for its most liberal and loose practice and interpretation. The inaccurate implementation of any system is prone to lead to a dead end. Not adhering to the Islāmic way will ruin its beauty and practical benefit to Muslim society.

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ISSN 2289-5639 (Online)

