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TOWARDS PROVIDING THE BEST *SHARĪ'AH* GOVERNANCE PRACTICES FOR *WAQF* BASED INSTITUTIONS

Rusni Hassan
Syed Musa Bin Syed Jaafar Alhabshi
Adnan Yusoff

Abstract

Waqf is the donation for the sake of Allah (s.w.t). Historically, it is proven that society can benefit from waqf assets. Waqf assets can be used for religious purposes like building mosques, public health, transportation and education and others. However, due to the limited regulatory framework and control over waqf institutions, there are many undesirable issues regarding the Waqf management authority. Most of the issues are due to inadequate management of waqf and their accountability towards the donors and beneficiaries. If these issues continue, the waqf institutions will have a negative public image and undermine the objective of the waqf leading people hesitant to donate to waqf. Thus, this paper highlights the negative issues in the waqf institutions and proposes the need for Shari'ah governance. This paper proposes that Sharī'ah governance practices for waqf institutions should be based on trust, accountability, God consciousness, hisbah, and mutual consultation. It is believed that this paper will alert the respective authorities and waqf management to issue a Sharī'ah governance framework.

Keywords: *Sharī'ah* governance, *Waqf*, Framework and guidelines

1.0 Introduction

Waqf is a word that is well documented in classical Islamic works, so it serves to do justice by looking into the literate and technical definitions of this term. Hold, confinement and prohibition are all words attributed to *waqf*.¹ Ihsan and Hameed² observed that *waqf* stems from the Arabic root word *wa-qa-fa*, meaning to hold or to stop. As stated by Abu Zahra, *waqf* is also defined as “the non-negotiability of property ownership which is of employable value, and the directions of its benefits to a certain charitable purpose, once and for all”. Qād Abū Yūsuf’s definition of *waqf* is among one of the classical definitions, where it is defined as “taking the corpus of any property, out of the ownership of oneself, transferring it permanently to the ownership of Allah (*s.w.t.*), and dedicating its usufruct to others”. Meanwhile, another definition of *waqf* is “the holding of an asset (*māl*) and preventing its consumption for the purpose of re-extracting its usufructs for certain righteous benefit as predetermined by the *waqf* founder (*wāqif*)”³. Imām Abū Ḥanīfah gave a much simpler meaning, stating that “*waqf* means the detention of specific thing in the ownership of *wāqif* and the devoting of its profit, products or other good objects for the poor”. As observed by Ismail and Possumah,⁴ both Imām Muḥammad, and Imām Abū Yūsuf said that “*waqf* signifies the extinction of the *waqf*’s ownership in the thing dedicated and detention of all the thing in the implied ownership of God”.

As witnessed in Islamic history, the socio-wellbeing of the Muslim community can be developed by the mean of *waqf* assets, which has been in practice since the time of the Prophet, peace be upon him, until this day and age. Due to the fact that the donated

¹ Monzer Kahf, “The role of *waqf* in improving the *ummah* welfare”, in International seminar on *Waqf as a Private Legal Body*, Islamic University of North Sumatra, Indonesia, (2003), 6-7.

² Hidayatul Ihsan and Shahul Hameed Hj. Mohamed Ibrahim, “*Waqf* accounting and management in Indonesian *Waqf* Institutions: The cases of two *Waqf* foundations”, *Humanomics*, 27, no.4, (2011), 252-269.

³ Monzer Kahf, “Financing the Development of *Awqaf* Property”, Seminar Paper, IRTI, (1998).

⁴ Abdul Ghafar Ismail and Bayu Taufiq Possumah, “*Waqf as Economic Matters but Being Left Out as Policy Tools*”, IRTI Working Papers WP-1436-01, (2014).

waqf assets were in the form of non-movable items such as land and buildings, historically it was rich Muslims who donated *waqf* assets. Furthermore, *waqf* institutions throughout most Muslim countries have not been managed well since the colonization era, with its role having deteriorated slowly. *Waqf* assets have been undermined due to lack of maintenance by the trustees. Nowadays, movable assets such as cash are more likely to be donated as *waqf* assets. Hence, unlike specific non-movable *waqf* assets, cash *waqf* assets are characterized as being more flexible in being invested and distributed to the beneficiaries. Despite their flexibility, compared to non-movable assets such as land, mismanagement can easily occur when dealing with cash *waqf* assets. This paper aims to project the major issues experienced by *waqf* institutions and to put forward a conceptual framework for the *Shari'ah* governance of *waqf* institutions.

2.0 Research Methodology

This research is an exploratory research, which was conducted to identify and accumulate existing literature and based on this information, further analysis and conceptual proliferation was performed in proposing the *Shari'ah* governance model or framework for *waqf* institutions. Secondary data collected from articles, books, and online resources are mainly used in this paper. The library research method is applied in collecting the data.

This paper is organized into six sections. Section two discusses the concept of *waqf* and its importance. Section three explains the issues related to *waqf*, whilst section four describes the importance of *Shari'ah* governance. Section five discourses the best practices of *Shari'ah* governance based on *waqf* institutions, and section six concludes the paper.

3.0 The Concept of *Waqf* and Its Importance

Despite the fact that Qur'an does not specifically mention the term *waqf* or its equivalent, there is though a Qur'anic verse where the concept of *waqf* can be implied:

“By no means shall ye attain righteousness unless ye give (freely) of that which ye love: and whatever ye give,

*Allah knows it well*⁵

Based on such and on the aforementioned definitions of *waqf*, it can be inferred that the process of making an asset into *waqf* transfers its ownership solely to Allah, where the *Sharī'ah* serves as a guide in allocating the usufruct for pious causes. Prophet Muhammad peace be upon him, states that when a human being passes away, his good deeds will be cut off except for three things: firstly: the endless charity (*sadaqah jāriyah*), secondly: Knowledge which benefits the people, and finally, the good son is who always supplicating for both his father and mother (Bukhari & Muslim).

Furthermore, *waqf* has been regarded by many scholars to be as an everlasting charity (*sadaqa jāriyah*) as indicated in the Prophetic narrations. It was not until later times in the history of Muslims that an activity where property is allocated for religious purposes, particularly to attain the pleasure of Allah, was mainly described as being *waqf*. *Waqf* serves the objective of establishing universal socio-economic welfare among the Muslim society, by cultivating a culture where the needy, poor, and helpless are entitled to a portion of the wealth in the possession of the wealthy.⁶ It is mentioned in the Holy Qur'an: "And in their wealth there is a due share for the beggar and the deprived."⁷

In addition to the revenue obtained from *sadaqa* (optional charity) and *zakāt* (compulsory charity), *waqf* is another Islamic-based method to alleviate poverty in society, serving as an effective system for poverty alleviation by improving non-income aspects such as education and health, while increasing access to tangible resources, facilities, and employment.⁸ History has witnessed that it was the norm in Muslim societies to rely upon *waqf*.

⁵ *Al-Qur'an*, 3:92

⁶ Qazi Mujahidul Islam Qasmi, "Waqf in Islamic Fiqh", in S. Khalid Rashid (Ed.), *Waqf Experience in South Asia*, (New Delhi, Institute of Objective Studies, 2002), pp.3-10; Hidayatul Ihsan, "An exploratory study of waqf accounting and management in Indonesian waqf institutions: the cases of Dompét Dhuafa and UII waqf foundations", PhD thesis, Kulliyah of Economics and Management Sciences, International Islamic University Malaysia, (2007).

⁷ *Al-Qur'an*, 51:19

⁸ Abul Hasan M. Sadeq, "Waqf, perpetual charity and poverty alleviation", *International Journal of Social Economics* 29, no. 1/2 (2002), 135-151

The *ummah's* social welfare was extensively uplifted as a result of *waqf*. As observed by Ihsan,⁹ following the era of Prophet Muhammad (s.a.w.s.), and his successors, rich kings and wealthy Muslims took on the responsibility of establishing *waqf* assets for the good of the society.

Among the key features of *waqf* is that any *waqf* used for purposes deemed to be immoral places it out of the scope of Prophetic practice, since *birr* is an important concept related to *waqf*. For this purpose, *birr* refers to doing charity out of good intention. Ahmed,¹⁰ observed that some types of *waqf* can be initiated for the general public's benefit, and is termed as being public (*'ām*) or philanthropic (*khayrī*), while other types can be specifically for the benefit of the family and descendants of the founder or another specific person, known as private (*khāṣ*) or family (*ahlī*) *waqfs*. Furthermore, some types of *waqf* can serve both purposes of serving the public on one side and serving the family and descendants on the other. The latter is a mixed/combined *waqf* (*waqf mushtarak*) since it functions with dual objectives in partly the public and partly serving the family and descendants.

In determining the ownership of *waqf* asset, many scholars state that God Who possesses the sole ownership, whereas the founder of the *waqf*, who is known in Arabic as the *wāqif*, sets how the *waqf* assets will be used, and more importantly determining the way in which the revenues and services of the *waqf* are distributed to the beneficiaries. As observed by Ahmed,¹¹ the *wāqif* has the right to determine the procedure governing the succession of managers, the way of managing the *waqf* assets, and the restrictions of *waqf* asset management at the *wāqif's* discretion. Prophet Muhammad peace be upon him, both enjoined the companions in founding *waqfs* and was engaged himself in doing so, due to which myriads of *waqf*

⁹ Hidayatul.Ihsan, "An exploratory study of *waqf* accounting and management in Indonesian *waqf* institutions: the cases of Dompet Dhuafa and UII *waqf* foundations", PhD thesis, Kulliyah of Economics and Management Sciences, International Islamic University Malaysia, (2007).

¹⁰ Habib.Ahmed, "Role of *zakah* and *awqaf* in poverty alleviation", (Jeddah: Islamic Development Bank, Islamic Research and Training Institute, 2004).

¹¹ Habib Ahmed, "Waqf-based microfinance: Realizing the social role of Islamic finance", *World Bank* (2007).

foundations were brought into existence, serving both charitable and religious purposes. It is well documented how the prophet peace be upon him, purchased a plot of land in Madinah to construction what is known today as the Prophet's Mosque, and serves as the first *waqf* created during the reign of Islam.¹² This act of nobility was followed by a communal project, motivated by the high price of drinking water in Madinah at that time. Hence, based on the suggestion of the prophet peace be upon him, wealthy Muslims, notably 'Uthmān bin 'Affān, bought this well and declared the water therein as free for the whole society, making it the second *waqf* in Madinah. Furthermore, many researchers document the deed of 'Umar bin Al-Khattab in following the prophet's advice by utilizing a land in the township of Khaybar to establish a *waqf*.¹³

By going over the history of *waqf*, no two people would differ that there are elaborative examples of amazing achievements realized by *waqf* foundations in enhancing general welfare and serving the needy, regardless whether they were public utilities *waqfs*, education *waqfs*, health care *waqfs*, or even research *waqfs*. To add to these types, history even records the existence of cash *waqfs* used to provide loans to entrepreneurs in need of financing, and grain *waqfs* in the form of seeds donated to needy farmers. As mentioned earlier, *waqfs* were also founded for the purpose of scientific research in field such as astronomy, pharmacology, physiology, and mathematics. Nevertheless, the most prominent type of *waqfs* to be found in Muslim history were those in the sector of hospitals and medicines.

These practices did not cease to exist in Muslim societies,

¹² Moshe Gil, "The earliest *waqf* foundations", *Journal of Near Eastern Studies*, 57, no.2 (1998), pp.125-140; Murat Çizakça, "A history of philanthropic foundations: The Islamic world from the seventh century to the present" (Istanbul: Boğaziçi University Press, 2000); A. B. As-Sadhan, "Al-Awqaf wa al-Mujthama': Al-Afaaq Al-Mustaqbilah li Al-Awqaf wa Wuroodiha fi Thamsuk", (Riyad: Marqaz Al-Malik Faisal li Al-Buhooth wa Dirasaath Al-Islamiyyah, 2006).

¹³ Muhammad Fazlul Karim, "Problems and prospects of Awqaf in Bangladesh: A legal perspective". Ahmad Ibrahim Kulliyah of Laws (AIKOL), International Islamic University Malaysia (IIUM), Jalan Gombak, Kuala Lumpur, Malaysia (2010); Saifuddin, Farhah Binti, Saim Kadibi, Refik Polat, Yahya Fidan, and Omer Kayadibi. "The Role of Cash Waqf in Poverty Alleviation: Case of Malaysia". *International Journal of Business, Economics and Law*, Vol. 4, Issue 1, (2014).

despite political and social changes over time. As recent as the beginning of the 20th century witnessed the founding of *waqf* based establishments in the form of health care centers and hospitals, such as the *Waqf* Children Hospital of Istanbul.¹⁴

These aforementioned actions form the core of Islamic teachings based on kindness, communal welfare, and *barakah*, making the establishment of *waqf* foundations a vital mean towards attaining calmness, peace, and prosperity in the society and in the *ummah* as a whole. Many Qur'anic verses implicitly enjoin this concept, as Allah (s.w.t.) said: "*You couldn't have achieved the kindness until you give away what you love most*"¹⁵, and Allah (s.w.t.) also said in another Qur'anic verse that: "*Oh believers spend the best things from what you had obtained and from what we had given out to you from the earth*"¹⁶. The Qur'anic verses clearly indicate to the divine command to spend on lawful channels from among the best things of wealth bestowed by Allah (s.w.t.) upon us, even if it were the seeds of fruits. A Prophetic narration recorded by Al-Bukhari and Muslim further stresses this fact, where the Prophet Muhammad peace be upon him, said when the sons of Adam (a.s.) pass away, their good deeds will be cut off, except for three things, and one of them is charity. There can be no better charity than an endless charity (*sada ah jāriyah*) in the form of a *waqf* foundation, as it constantly benefits people even after the death of its original owner, the *wāqif*.

4.0 Issues and Challenges to *Waqf*

4.1 Awareness Issues

There is limited awareness and knowledge on *waqf* by Muslims. Even if they do not know what the meaning of *waqf* is, the majority of them think that *waqf* donation is more towards religious purposes. This is because *waqf* assets, especially land, are historically donated

¹⁴ Habib Ahmed, "*Waqf-based microfinance: Realizing the social role of Islamic finance*", World Bank (2007); Muhammad. Zulfikar, "*Zakah According To Quran & Sunnah*", (Darussalam Publishers, 2011)

¹⁵ *Al-Qur'an*, 3:92

¹⁶ *Ibid.*, 2:267

to build mosques or cemeteries. *Waqf* assets are donated by wealthy Muslims because traditionally *waqf* assets are fixed assets. The donation of *waqf* assets seems to be well known among the wealthy community, whereas the middle class people do not think that they are able to donate *waqf* assets because they cannot afford to donate valuable fixed assets. However, *waqf* can also be moveable assets such as cash. Apart from religious purposes, *waqf* assets can be used for the socio-economic development of the community by providing public services such as education, health, transportation, interest free loans, and other services. *Waqf* assets can be used to build schools, universities, hospital, roads, bridges, water canals and so forth. One of the contributing factors that hinder the development of *waqf* and its awareness is the effect of colonization. For example, India is known as the *waqf*-rich country, but nowadays *waqf* assets are not well managed and the effectiveness of *waqf* assets has deteriorated.¹⁷

4.2 Accountability and Disclosure Issues

The issue of accountability is one of the prime issues in *waqf* institutions. The *mutawallī* is the responsible person in the *waqf* institution. He has to be accountable and responsible for his duty, i.e. acceptance of *waqf* donations and distribution to the beneficiaries. The contractual relation between the *waqf* donator and the *mutawallī* is a trust relationship whereby the *mutawallī* is required to act on behalf of the *waqf* donator. Since the *mutawallī* is the trustee, not the real founder of the *waqf* asset (i.e. *wāqif*), he is responsible to inform the *waqf* donator and beneficiaries how the *waqf* assets are fully utilized to maximize the benefits for the beneficiaries. That is why the disclosure becomes the significant mean for the *mutawallī* to show how he discharges his responsibility as a trustee. However, there is no proper regulatory framework on disclosure regarding *waqf* institutions and no strict legal enforcement for not disclosing information on a timely basis.¹⁸ Many issues related to accountability and disclosure, which have been highlighted by prior

¹⁷ Latiff Azha, Sayin Baharuddin, Sayurno, S. S. Salahuddin, M. Rani Afandi and Hamid Afifah, H., "The Practice and Management of *Waqf* Education in Malaysia", *Procedia-Social and Behavioral Sciences* 90 (2013), 22-30

¹⁸ Ibid.

researchers. According to Siti-Rokayah,¹⁹ there are many loop-holes on reporting, such as the outdated or overdue annual reports, because the *waqf* management takes a few years (3 to 5 years) to complete the annual report although it should be on a yearly basis. In addition, more than half of the *waqf* managing bodies simply ignore their responsibility to provide an annual report since there is no penalizing action from the respective authorities. According to Abdul Rahman et al.²⁰, the worst-case scenario is that these *waqf* councils do not even keep up-to-date the information related to *waqf* assets. Furthermore, mistakes in recording the financial transactions in religious institutions are not being corrected immediately.²¹

4.3 Management Issues

Lack of proper management of *waqf* assets is another obvious issue faced by *waqf* institutions. There are many situations that results to ineffective management. Firstly, the *waqf* assets are not given attention by the regulatory bodies, as well as not being effectively monitored by the beneficiaries. Secondly, the *waqf* assets are not managed efficiently to generate revenue, even to cover the maintenance cost of the assets.²² Thirdly, there is a failure in utilizing the *waqf* assets in the commercial market, such as renting at the market rental rate, rather than at a very low rate.²³ Fourthly, the shortage of qualified and skillful staff in *waqf* institutions contributes

¹⁹ M. Z. Siti-Rokayah, "Determinants of financial reporting practices on Waqf by Malaysian state Islamic religious council in Malaysia". *Unpublished Masters dissertation, International Islamic University Malaysia* (2004).

²⁰ A. R. Abdul Rahman, Mohamad Daud Bakar, and Yusuf Ismail. "Current practices and administration of waqf in Malaysia: A preliminary study". *Awqaf Report* (1999).

²¹ Abdul Rahmin Abdul-Rahman and Andrew Goddard, "Accountability verstehen: A study of accounting in state religious councils in Malaysia", School of Management, University of Southampton, (2003).

²² Hasanuddin Ahmed, and Ahmadullah Khan, "Strategies to develop waqf administration in India", no.49, Islamic Research and Teaching Institute (IRTI), (1998).

²³ Rabitah, Harun, Zuraidah Mohamed Isa and Norhidayah Ali, "Preliminary findings on Waqf management practices among Selected Muslim Countries", in *International Conference on Economics Marketing and Management, Hong Kong*, (2012), 5-7

to inefficient management. Fifthly, the donation of *waqf* asset may be carried out orally, hence lacking the support of official documentation.²⁴ In this situation, when there is no witness left behind and the donator (i.e. *wāqif*) passes away, it is difficult to continue to manage the assets according to the will of the donator, which is not documented. Another issue that can arise is that the decedents of the deceased donator might ask for the assets since there is no proper documentation in donating.²⁵ Sixthly, perception towards the donated *waqf* land is low, and hence, eventually it ends with the underdevelopment of the land.²⁶ Finally, there is no structural administration with the absence of clear and consistent procedures, making *waqf* management ineffective.²⁷

4.4 Regulatory Issues

There is no specific regulatory framework to be referred in the case of disputes related to *waqf* assets. The situation worsens in non-Muslim countries where politicians do not give attention to *waqf* asset management. Some of the court cases relate to encroachments and illegal occupation of *waqf* assets, and limited supervision by the *waqf* trustee board. There is no central governing body at the federal level, and thus there is inconsistency in the regulation of *waqf* management. To compare this situation, *waqf* assets in Malaysia fall under the supervision of the respective states, since *waqf* is stated under the Islamic Religious Administration Enactment for states²⁸.

²⁴ Abul Hassan and M. A. Shahid, "Management and development of the awqaf assets", in *Proceedings from the Seventh International Conference—The Tawhidi Epistemology: Zakat and Waqf Economy*, Bangi, (2010), 309-328

²⁵ Dalila Daud, Rashidah Abdul Rahman and Zaluddin Sulaiman. "Waqf reporting to fulfill stakeholder attribution in *Waqf* Islamic Councils", *Business Management Quarterly Review*, 2, no.1, (2011), 38-53.

²⁶ Zulkifli, Hasan and Muhammad Najib Abdullah, "The Investment of Waqf Land as an instrument of Muslims: Economic development in Malaysia", in *The Dubai International Conference on Endowments' Investment*, (4-6 February, 2008), 4-6

²⁷ Ibid.

²⁸ Nor Asiah Mohamad, Syed Abdul Kader, Sharifah Zubaida, and Zuraidah Ali, "Waqf lands and challenges from the legal perspectives in Malaysia", IIUM-Tokyo Joint Symposium 2012. Sustainable Built Environment: lesson learned from Malaysia and Japan (2012).

Since authority is given to the state, there will be some variation in *waqf* management supervision from one state to another state.

Many litigation cases are not settled within a reasonable period. For instance, In India, the litigations take a long time, and in some cases even some years. In most of the cases, it involves the huge values of the estates. There has been a tremendous increase in the number of litigation cases. Similarly, in Bangladesh, there are hundreds of *waqf* related disputes in the various courts as well as in the *waqf* administrator's office, with these court cases increasing day by day.²⁹

4.5 Islamic Jurisprudence (*Fiqh*) Issues

Views among Muslim scholars are variant pertaining to *waqf* and its concept. According to Kahf,³⁰ some of the issues need to be revised, for instance, the management of *waqf*, the ownership of *waqf* assets and their legal entity. Furthermore, various issues arise from the use of *istibdal* as a financing instrument to develop *waqf* properties for socio-economic development. Views on the concept of *istibdal* are not uniform among Islamic jurists. As stated by Bin Sulong,³¹ this is related to the absence of any direct reference to *istibdal* in Qur'anic verse and Prophetic narrations.

5.0 The Importance of *Shari'ah* Governance

Having a good governance system, fortified by efficient auditing and transparent financial information disclosure is a vital way to resolve the issues mentioned above, which leaves governance an unquestionable aspect of success institutions. By looking back into the historical development of conventional corporate governance, Cadbury Report in 1992 in United Kingdom is regarded to be among

²⁹ Reazul.Karim, "Zakat and Waqf bank for Social Development and Improved Management of Endowments", in *International Waqf Conference, Cape Town, South Africa*, (2007), 17-18

³⁰ Monzer Kahf, "Towards the revival of *awqaf*: A few *fiqhi* issues to reconsider", in *Harvard forum on Islamic finance and Economics*, vol.1, (1999).

³¹ Jasni bin Sulong, "Permissibility of *Istibdal* in Islamic Law and the Practice in Malaysia", *Journal of US-China Public Administration*, 10, no. 7 (2013), 680-689.

the earliest. The European Corporate Governance Institute³² observes that today as many as 99 countries have provided good practices for governance. This is at the level of countries, but also there are trans-national establishments, such as the Organization for Economic Co-operation and Development (OECD) and the Common Wealth Association, who have produced corporate governance guidelines for their member countries to follow. On the other hand, one can count the cases of the Lehman Brothers and the Enron Corporation as corporate failures that stress the vital need for good governance practices.

For a religious based institution, there is a call for a special code of governance that is aligned with the objectives of such institutions.³³ Waqf institution is no exception in this regard. Not only they have to observe good corporate governance practices but also to align such practices with the *Sharī'ah* principles and thus the need for *Sharī'ah* governance. In this context, the *Sharī'ah* governance framework for Islamic Financial Institutions is a good model to be considered. Ensuring that the business activities of Islamic financial institutions are in conformity with *Sharī'ah* guidelines is the ultimate aim of the *Sharī'ah* governance framework. Guidelines for best corporate practices in accordance with *Sharī'ah* governance have been proposed by a few international organization bodies, such as the Islamic Financial Services Board (IFSB) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). Countries like Malaysia have already worked with Islamic financial institutions to come out with a common *Sharī'ah* governance framework for different types of financial institutions including Islamic cooperatives.³⁴ All in all, adequate governance practices cannot be achieved without the implementation of auditing and the support of high quality financial information

³² “European Corporate Governance Institute”. 2014, accessed July 24, 2017, [http://www . ecgi . org /codes /all _codes .php](http://www.ecgi.org/codes/all_codes.php).

³³ Aishath Muneeza and Rusni Hassan, “*Sharī'ah* corporate governance: the need for a special governance code”, *Corporate Governance*, Vol. 14 Iss.1, (2014), 120 - 129

³⁴ Muhammad Issyam Itam@Ismail, Rusni bt Hasan and Syed Musa Alhabshi, “*Sharī'ah* Governance Framework for Islamic Co-Operatives as an Integral Social Institution in Malaysia”, *Intellectual Discourse*, Special Issue (2016), 477–500.

disclosures.

Proper financial recording is not a new concept to Islam, as it can be traced in the very Qur'anic scriptures, as indicated in the following Qur'anic verse:

“O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses – so that if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be [too] weary to write it, whether it is small or large, for its [specified] term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction, which you conduct among yourselves. For [then] there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is [grave] disobedience in you. And fear Allah. And Allah teaches you. And Allah is knowing of all things.”³⁵

This aforementioned Qur'anic verse, known as the verse of the loan (*Āyah Al-Dayn*) is a reminder to be conscious of Allah Most Exalted and Majestic in discharging duties, and serves also as a guideline for managements in fulfilling their responsibilities towards both Allah Most Exalted and Majestic and fellow human beings. As long as the fear of Allah Most Exalted and Majestic is present, then everyone

³⁵ *Al-Qur'an*, 2:282

will conduct their duties accordingly. The Qur'anic verse further elaborates the way to attain justice in this regard, namely by removing dispute and doubt between the contracting parties with supported with sources of documents and the presence of trustworthy witnesses and recording.

Endowing the auditor with the authority to express whether financial statements are prepared in accordance with *Sharī'ah* rules and principles in all material respects is the objective of the financial statements audit.³⁶ The auditor is also expected to possess qualities of confidentiality, due care, fairness, honesty, independence, integrity, objectivity, professional behavior, professional competence, righteousness, trustworthiness, as well as being well versed in the technical standards. A particular type of auditing termed as *Sharī'ah* audit is defined by Sultan,³⁷ as “the examination of an IFI’s compliance with *Sharī'ah*, in all its activities particularly the financial statements and other operational components of the IFI that are subjected to the risk of compliance including but not limited to products, the technology supporting operations, operational processes, the people involved in key areas of risk, documentations and contracts, policies and procedures and other activities that require adherence to *Sharī'ah* principles.” Drawing back onto the topic of this paper, the compliance of *waqf* institutions with *Sharī'ah* and the *Sharī'ah* compliance audit are both essential elements due to the fact that the *waqf* institution is an Islamic institution.

6.0 Best *Sharī'ah* Governance Practices for *Waqf* Based Institutions

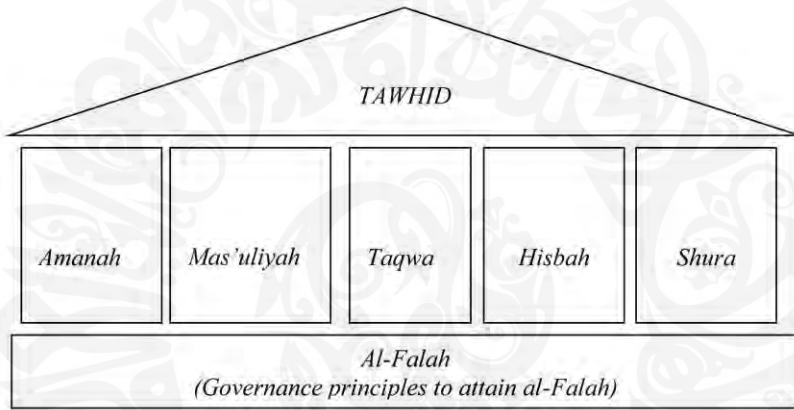
Based on the Islamic principle of *tawhīd* (i.e. Islamic monotheism), which serves as the core of the Islamic creed, Muslims are enjoined to follow the *Sharī'ah* which discusses the permissible and prohibited in daily transactions, with the higher aim of attaining *falāḥ* (eternal happiness) in this world and the Hereafter. These are the utmost principles and objectives that need to be observed, particularly in the case of Islamic based institutions such as *waqf*. As such the core

³⁶ AAOIFI, Accounting. "Auditing and Governance Standards for Islamic financial institutions". (2010).

³⁷ Sultan, Syed Alwi. "Shariah Audit", (Kuala Lumpur: *CERT Publications*, 2007)

concepts of governance for *waqf*-based institutions should always be derived from the sources of *Sharī'ah* such as the concept of *amanah* (trustworthiness); *mas'uliyah* (accountability); *taqwa* (God consciousness); *hisbah* (enjoining good and preventing evil) and *shura* (mutual consultation). Each of these concepts are touched upon in the following subtitles. It is anticipated that the development of a governance framework for *waqf*-based institutions (figure 1) can be developed around these concepts.

Figure 1: Governance Framework for *Waqf* Based Institutions



6.1 The Concept of *Amānah* (Trustworthiness)

There is no doubt that Allah provided humankind with natural resources without scarcity, as He is the Creator of all. However, one must take into account that future generations also have a share in these resources. Following the creation of the heavens and the earth, Allah blew the spirit into the first human being and assigned him the trustee over all created everything. Prior to assigning this responsibility to human kind, none of His creations even contemplated the thought of taking on this trust. This indicates that human beings have only delegated ownership, whereas the right of absolute ownership is with Him the Creator. Many researchers have established that this trust necessitates that the resources bestowed upon humankind must be utilized in accordance to the will of the

Creator, since human beings are His trustees.³⁸ In parallel, trustees (*mutawallī*) are not the absolute owners of the assets in a *waqf* institution; rather, their task is to abide by the will of Allah by observing the requests of the donors, or the *wāqif*.

6.2 The Concept of *Mas’uliyah* (Accountability)

Accountability is only naturally a consequence from this responsibility. It is stated in the Holy Qur’an that:

*“Who is it that provides you with sustenance out of heaven and earth, or who is it that has full power over [your] hearing and sight? And who is it that brings forth the living out of that which is dead, and brings forth the dead out of that which is alive? And who is it that governs all that exists?” And they will [surely] answer: “[It is] God.”*³⁹

The Qur’anic verse clearly indicates that the only One Creator of the heavens and the earth is Allah, making humans eternally indebted to Him for His creation. Following His will by ensuring all actions in all spheres of life are in compliance with the *Sharī’ah* is expected from human kind, since they are accountable to Him for how these entrusted resources are utilized in this world. Primary accountability is the term used to describe this type of accountability, where on the Day of Judgment everyone will be asked, as this following verse reveals:

*“On the Day when every soul will be confronted with all the good it has done and all the evil it has done, it will wish there were a great distance between it and its evil. But Allah cautions you (to remember) Himself. And Allah is full of kindness to those that serve Him”*⁴⁰

³⁸ Hakim Rahmad, and Elvan Syaputra, “Business As Al-Amanah And The Responsibilities of Islamic Business Managers”, *La_Riba*, 6, no. 2 (2013), pp.199-210; F. Sarraf, and A. Nikouei. "Islamic Morality an Integral Part of Modern Accounting". *Indian J. Sci. Res* 4, no. 6 (2014), 458-463.

³⁹ *Al-Qur’an*, 10:31

⁴⁰ *Ibid.*, 3:30

Furthermore, the scope of responsibility is not confined to the scope of the Creation-Creator relationship, but also involves how the creation, namely human kind, deal with one another in their daily transactions, making it a must to discharge all assigned duties of contractual relationships between fellow human being. Secondary accountability is the term used to describe the nature of this accountability between human beings. Hence, as established by many researchers,⁴¹ dual accountability is borne by human kind, as indicated in the teachings of Islam, where the awareness of accountability ought to be maintained while performing responsibilities and tasks:

*“Surely! Every one of you is a guardian and is responsible for his charges: The Imam (ruler) of the people is a guardian and is responsible for his subjects; a man is the guardian of his family (household) and is responsible for his subjects; a woman is the guardian of her husband’s home and of his children and is responsible for them”*⁴²

When examining the aspect of accountability in relation to *waqf* institutions, the trustees (*mutawallī*) accept the responsibility assigned to them by the donators (*wāqif*), and that makes them accountable, in addition to the fact that the owners donate their assets as *waqf* for Allah’s sake, making *waqf* unique in nature since these assets are no longer under the control of the donators. Once these assets have been declared as *waqf*, they are totally owned by Allah Most Exalted; hence, the trustees (*mutawallī*) are directly managing assets entrusted by the donators, which makes their responsibilities in

⁴¹ Sulaiman, Maliah, Mohd Akhyar Adnan, Megat Mohd Nor, and Putri Nor Suad. "Trust me! A case study of the International Islamic University Malaysia’s *waqf* fund". *Review of Islamic Economics* 13, no. 1 (2009): 69-88; Najwa Mordhah, "Self Accountability: The link between self-accountability and accountability in Islam", *International Journal of Humanities and Social Science* 2, no.5, (2012); Azhar Abdul Rahman and Abdullah Awadh Bukair, "The influence of the *Shari'ah* supervision board on corporate social responsibility disclosure by Islamic banks of Gulf Co-operation Council countries". *Asian Journal of Business and Accounting*, 6, no.2, (2013).

⁴² Bukhari, vol.9, 89:252

managing *waqf* institutions very heavy.

6.3 The Concept of *Taqwā* (God Consciousness)

God consciousness can be regarded as the English equivalent to the Arabic term *taqwā*. One of the fundamental beliefs in Islam is His Name, the Omniscient, which simply means that nothing can be hid from Allah as His knowledge encompasses everything and is absolute and complete. Radzi et al.,⁴³ state that when humans being sense in their mind that Allah is watching and foster fear towards Him, they will discharge their responsibilities with due care as per the framework of *Shari'ah*. As a result, a conflict of interests will seize to exist due to following the teaching of Islam:

*“But as for him who feared (khawf) standing before his Lord, and restrained himself from impure evil desires and lusts.”*⁴⁴

In relation to *waqf* institutions, the donators have no right to interfere with the management of *waqf* assets, since management is totally delegated to the trustees. This shows the absence of a monitoring system where the performance of the trustees is looked upon by the donators. This puts forth the possibility of agency conflicts between donators and trustees, whereas these conflicts can be minimized when the trustees possess God consciousness during their discharging of responsibilities.

6.4 The Concept of *Hisbah* (Enjoining Virtue and Preventing Evil)

From a literal perspective, advocating good and preventing evil is known in traditional Islamic literature as *hisbah*. The aggregation of the aforementioned concepts discussed above leads to this current concept. As observed by Saleh,⁴⁵ humans will avoid bad deeds and

⁴³ Radzi, Husni Mohd, Lilie Zahara Ramly, Sapora Sipon, and Khatijah Othman. "The Influence of God Consciousness and Religiosity in Coping with Anxiety at Workplace among Malaysian Muslim Professionals". *International Journal of Social Science and Humanity* 4, no. 4 (2014), 316

⁴⁴ *Al-Qur'an*, 79:40

⁴⁵ Fauzen Saleh, "The Institution of *Hisbah*: Its Role in Nurturing Fair and Just

strive to perform good deeds when they have a God-conscious mind and Islamic accountability, and realize their role as trustees of Allah. As indicated in the Prophetic narration, attaining *falāḥ* (eternal happiness) in this life and the afterlife is associated with the effective implementation of *ḥ sbah*:

“Whosoever among you sees an act of wrong should change it with his hands. If he is not able to do so, then he should change it with his tongue. If he is not able to do so, then with his heart, and this is the weakest of faith.”⁴⁶

In regards to *waqf* institutions, outsiders’ access to transparent financial and non-financial information needs to be provided as this encourages the trustees to perform their tasks with full integrity. That way, transparent information demonstrates how the trustees discharged their responsibilities according to the wills of donators.

6.5 Practice of *Shūrā* (mutual consultation) in Decision Making

Islam encourages its followers not to make individual decisions; rather it takes the opinions of group members into consideration, where mutual consultation forms the foundation of any decision, as this is the essence of *shūrā* decision making.⁴⁷ This is further elaborated by Walker,⁴⁸ who states that this form of decision-making is not new to the Muslim community and has been in practice since the time of the Prophet peace be upon him. The following Qur’anic verse serves as a cornerstone in enjoining this form of decision-making and affirms its validity:

“Those who hearken to their Lord, and establish regular

Economic System in Islam”, in *Seminar Ekonomi Islam Peringkat Kebangsaan*, (2009), 1-10

⁴⁶ Muslim, also cited in *An-Nawawi’s Forty Hadith*, trans. by Ezzeddin Ibrahim and Denys Johnson-Davies, (Cambridge: The Islamic Texts Society, 1997), *hadith* no.34, 110

⁴⁷ Shavit, Uriya, “Is Shura a Muslim form of democracy? Roots and systemization of a polemic”, *Middle Eastern Studies* 46, no. 3 (2010), 349-374.

⁴⁸ A.H. Walker, “*Shura*: Mutual Consultation”, accessed July 24, 2016, <https://www.alislam.org/topics/khilafat/Shura.pdf>.

Prayer; who (conduct) their affairs by mutual Consultation; who spend out of what We bestow on them for Sustenance”⁴⁹

Times of war were also no exception to *shūrā* decision making, as such was the practice of the Prophet peace be upon him:

*“It is part of the Mercy of Allah that thou dost deal gently with them. Wert thou severe or harsh-hearted, they would have broken away from about thee: so pass over (Their faults), and ask for (Allah’s) forgiveness for them; and consult them in affairs (of moment). Then, when thou hast taken a decision put thy trust in Allah. For Allah loves those who put their trust (in Him)”*⁵⁰

Unlike individual decision-making, a collective decision demonstrates less likeliness to show bias. Furthermore, solidarity between followers and the leader is one vital advantage attained from *shūrā* decision-making. In the case of *waqf* institutions, advice from other stakeholders, experts, and even other personnel working in the same institutions ought to be obtained by the trustees (*mutawallī*). Modern needs place *waqf* institutions in a situation where they influence the economic and social development of a country; therefore, *waqf* institutions might face new situations, such as whether to sell the existing *waqf* assets and replace with other assets, or make investment in shares, making mutual consultation necessary for any decision that should be made. For the *waqf* institution to receive more donations it is very important to uphold public confidence in the institution, since *waqf* is after all a voluntary donation. There is no doubt that public confidence in the *waqf* management team will be boosted when they know that the *waqf* foundation follows a transparent, *shūrā* decision making process in its overall *Shari’ah* governance exercises.⁵¹

⁴⁹ *Al-Qur’an*, 42:38

⁵⁰ *Ibid.*, 3:159

⁵¹ Nor Razinah Binti Mohd Zain, Izyan Farhana Binti Zulkarnain and Rusni Hassan; “*Shari’ah Corporate Governance Structure of Malaysian Islamic Banking and Finance: The Traces of Shura*”, *Journal of Islamic Banking and Finance*, Vol.3, No.1, (June 2015), 26-34.

7.0 Conclusion

Waqf is important to enhance the socio-well-being of the community, as such has been proven in Islamic history. *Waqf* assets are used to provide free education, medicine, transportation and so forth. Due to the improper management of *waqf* assets, many undesirable issues have resulted. This paper has discussed the negative issues related to the limited awareness of Muslims on *waqf*, the lack of accountability and adequate disclosure, ineffective management, insufficient regulatory framework, and various *Sharī'ah* issues in *waqf* practices. It is believed that introducing best *Sharī'ah* governance practices will minimize these issues to certain extent. Subsequently, this paper suggests that *Sharī'ah* governance practices should be founded on *amānah*, Islamic accountability, *taqwā*, *ḥsbah*, and *shūrā* decision-making. The proposed concepts for *Sharī'ah* governance guideline can be used as a stepping-stone for future research. Thus, it will be the interest of researchers, regulators and *waqf* managements in particular, as well as to the general public.