

DEFINITION OF WAQF

The word waqf generally means something donated for public use or for needs related to Islam. From a cultural aspect, waqf is better known as a small building that is used as a place to rest, especially among the East Coast Malay community. A Concise Encyclopedia of Islam (2002) defines waqf as a religious fund whose benefits are made permanently and the original property of the waqif (donor) cannot be used for purposes other than those prescribed by the waqif.

Waqf is any property to which the waqif retains the right to the property from any transaction, inheritance, hibah and will while maintaining its physical resources ('ain). The benefit of the endowed property is for general or specific welfare (which is prescribed) with the intention of getting closer to Allah SWT by the waqf.

Waqf According to Language

The word waqf comes from the term waqf or awqaf (plural word) in Arabic which means "withhold", "forbid" or "stop". Another word that has the same meaning as the word waqf is habs which also means "stop" or "withhold". Fiqh scholars agree on defining al-waqf in terms of language with the word al-habs, because this word is closer to the meaning in sharia. Among followers of the Maliki School in Morocco, Algeria and Tunisia, waqf is pronounced hubus (plural pronunciation of the word habs). The French have also accepted hobous as a legitimate term in their official language (Har et al., 1975).

Muhammad al-Syarbani (t.th) in his book al-Iqna mentions that when someone says "I endow something" it means "I withhold it". In other words, the term waqf means "freezing" of property rights for certain benefits. "Stop" means that the ownership ceases by handing it over in its entirety to Allah SWT.

Waqf According to Syarak

The term waqf is not mentioned directly in the Qur'an and hadith. This term is the result of interpretation by jurists based on the practice of sadaqah jariah which is also referred to as al-sadaqah al-muharramah. The purpose of its implementation is for the benefit of the heirs, or for the common good. There are differences in the views of fiqh scholars in presenting the definition of waqf. This is because the arguments from the Qur'an and hadith that discuss waqf are so limited and general in nature. Therefore, it is not surprising if there are differences of opinion among jurists when debating it, on the factors of their respective experiences and the influence of the local community.

a) Waqf According to the Maliki School

In the view of the scholars of the Maliki School, waqf means withholding from the matter of ownership of benefits, while the property still remains the property of the waqif, and can be utilized for charitable purposes. A person who waqf a piece of land or some tamar trees or a house to the poor, still has the right until he dies to manage the waqfed property either for rent or to distribute it to the poor. If the waqif has divided the waqf property to his heirs, then it becomes an inheritance and is no longer considered as waqf property. This is because the Maliki School does not require permanence or ta'bid as a condition for accepting waqf even if it is a mosque waqf.

b) Waqf According to the Hanafi School

According to Abu Hanifah, waqf of property means the detention of property ('ayn) owned by another party to obtain benefits from the property by means of charity, either for the present or in the future. Based on this definition, the position of waqf property still remains under the control of the waqif. The waqf of property does not occasionally abrogate the ownership of the waqf because it is a non-binding transaction (ghayr lazim) and its position is the same as the concept of borrowing ('ariyah), which is also ghayr lazim. Waqf applies only to that benefit, and does not involve 'ayn or property assets. Abu Hanifah required that his ownership

would lapse when the judge pronounced the property as waqf or upon the waqif's death.

This view is different from Abu Yusuf who is with the opinion that waqf happens even with verbal intent. According to Muhammad, the disposal of property rights occurred after the handover to the party that manages it.

c) Waqf According to the Syafi'i School

According to Mazhab Syafi'i, waqf is the permanent detention of property, and the property can be utilized, while the owner of the property will be deprived of his ownership rights. The property is used in the form of charity for individuals to get closer to Allah SWT. Imam al-Syarbini defines waqf as withholding property that remains in its form and can be utilized, where the proceeds from the property can be used for the intended purpose (mubah), to be handed over to a party determined by the waqif according to Shariah, without renouncing the original property.

The Syafi'i school condemns it as haram for a waqif to permanently possess property that has been waqf. The waqif however, can be appointed as the manager of the waqf property, so he has the right to divide and distribute proceeds of the waqf. Unless the waqif stipulates that the property can be used and utilized by him, or by his other heirs, the waqif cannot take advantage of the proceeds of his waqf property because he has lost his right by handing it over absolutely to Allah SWT.

d) Waqf According to the Hanbali School

According to Ibn Qudamah, waqf is to retain a property and to distribute the proceeds in the way of Allah SWT. Al-Bahuti, defines that waqf is the retention of the waqif or his representative's right to a beneficial property, but it no longer belongs to him. This is because waqf is not an 'aqd in the form of exchange but it abrogates property rights for the purpose of getting closer to Allah SWT.

The waqf is not allowed to take advantage of what is waqfed except in circumstances where the waqf stipulates that he can also take the benefit of the waqf based on the portion allocated to him, or in the event that the endowed property is for general use, such as waqf of mosques, cemeteries etc.

Waqf According to Law

The word "waqf" has been construed in all waqf laws, whether under the specific statutes of waqf, or the administrative statutes of the Islamic religion or the Islamic legislation of all states.. However, most of the definitions of waqf only touch on general and special property waqf including land which is categorized as immovable property and is not described in detail in most states in Malaysia except for Melaka, Selangor, Terengganu, Perak, Johor and Negeri Sembilan.

In the State of Johor, the Islamic Administrative Enactment (State of Johor) 2003, defines waqf as:

"A permanent gift of the property or part thereof by the owner of the property for the purpose of religion, according to Shariah".

In the State of Melaka, Section 2 (1) of the Waqf (State of Melaka) Enactment 2005 has provided for waqf as:

"Surrendering of any property to enjoy its benefits for charitable purpose, whether as a general waqf or a special waqf in accordance with Shariah, but does not include a trust as defined under the Trustee Act 1949 [Act 208]" .

The meaning of "property" has been detailed under the definition of property in the same Section, namely:

"Property" includes movable or immovable property and any interest in any movable or immovable property, right, interest, title, claim, right in action, whether present or future or otherwise having value, according to Shariah " .

A more or less similar interpretation is also found in the Waqf (Negeri Sembilan) Enactment 2005, defining waqf as;

“To surrender any property to enjoy future benefit, interest or profit”.

The same interpretation is also found in the waqf statutes in other states in Malaysia. As for the Waqf (State of Selangor) Enactment 2015, it was found that the interpretation of property made under it is broader, which covers the contribution of expertise and services as follows:

"Waqf" means:

- a. To surrender any property to enjoy future benefit or interest;
- b. To surrender benefits or interests that may enjoy future benefit from any property; or
- c. Contribute expertise and services that may give future benefit or interest.

Whether as a general or a special waqf, according to Shariah, but does not include a trust defined under the Trustee Act 1949 (Act 208), in line with the interpretation of waqf, property can be further defined as:

"Property" includes:

- a. Movable, immovable or intellectual property;
- b. Any benefit or interest in any movable, immovable or intellectual property;
- c. Any right, interest, title or otherwise, relating to movable, immovable or intellectual property; and
- d. Valuable expertise and services that is in accordance to Shariah ”.

Waqf Provisions

Waqf is one of the instruments of alms based on tabarru', where the reward is everlasting. Waqf has its own wisdom and advantages if sincerely done for the sake of Allah SWT. Among the purpose and wisdom of waqf legislation are:

- a. Getting closer to Allah SWT (taqarrub ilallah);
- b. Manifesting devotion (ta'abbud) to Allah SWT;
- c. Earn the reward of lasting charity of a lifetime, and after death;
- d. Sharing the benefits of waqf property among the Muslim community such as building mosques and schools to liven up Islamic teachings and scientific activities;
- e. Strengthen the unity of the ummah; and
- f. Ensuring the retention of ownership and sharing of assets of Muslims.

Waqf should be seen according to the perspective of the Qur'an and hadith as the basis and main reference. Evidences about waqf from the sources of the Qur'an and hadith show that it is a very noble practice and is highly sought by Islam.

Waqf from the Perspective of the Quran

The Qur'an has provided a solid foundation in encouraging the practice of waqf through verses on the concept of almsgiving, which is associated with the purpose of getting closer to Allah SWT (taqarrub), and doing good deeds with the ultimate goal of obtaining the reward promised by Allah SWT in the Hereafter. The words of Allah SWT which means:

“Who is the person who (wants) to give a loan to Allah, as a good loan (sincere) so that Allah multiplies his reward by doubling the amount? Remember that Allah is the One who narrows and expands (the provision) and to Him you will all be returned” (Surah al-Baqarah 2: 245).

Allah SWT also doubles the reward to anyone who spends his wealth in the way of Allah SWT. The words of Allah SWT which means:

“The comparison of the reward of a person who spends his wealth in the way of Allah is like a seed that grows seven stalks, and on each stalk there are a hundred seeds and Allah multiplies (the reward) for whomever He wills. And Allah is All-Embracing, All-Knowing ”(Surah al-Baqarah 2: 261).

Those who spend the best wealth they have in the way of Allah SWT is a noble practice and is highly demanded by Islam. The words of Allah SWT which means:

“You will never reach virtue (perfect) until you spend some of the wealth you love. And whatever you spend, Allah is Knowing ”(Surah Ali‘ Imran 3: 92).

The practice of waqf is highly encouraged in Islam and the good deeds one have done will never be denied. The words of Allah SWT which means:

“And whatever good they do, then they will never be denied (in vain or barred from getting the reward). And (remember) Allah is ever Aware of the state of the righteous ”(Surah Ali‘ Imran 3: 115).

Waqf from the Perspective of Hadith

There are many hadiths that show that Rasulullah SAW not only encouraged the practice of waqf, but also, the Prophet SAW himself practiced it diligently so that he became a leading example to the companions and the Muslims. Among the most popular hadith is from Abu Hurairah RA that the Prophet SAW has said:

“When the son of Adam dies, his deeds come to an end except for three things : Sadaqah Jariyah (continuous charity) ; A knowledge which gives benefit, or a righteous child who prays for him (the deceased).” (Narrated by Muslim).

According to the scholars, the meaning of sadaqah jariyah in the above hadith is the practice of waqf, which is highly encouraged by Islam, where it can give a permanent and lasting reward to the waqif as long as the waqf property can be used permanently by the recipient (mawquf 'alaih) either involving general or special waqf.

The basic concept of the implementation of waqf in the time of Rasulullah SAW and his companions can be seen clearly based on the hadith from Ibn 'Umar narrated by Muslim. According to Ibn 'Umar, his father' Umar al-Khatthab had acquired a piece of land in Khaybar and immediately met the Prophet SAW to seek the Prophet's advice for him to do his best on the land. The Prophet SAW said:

"You can keep the property if you like, but donate the the income from it". According to Ibn 'Umar:" The land is not sold, not made an inheritance (not inherited) and not transferred to another person (hibah). All the produce of the land was distributed to the poor, the family, my servants, fisabilillah, ibn sabil and to support the guests. It is not an offense for the trustee of the waqf land to take reasonable proceeds of the waqf land to cover his livelihood or to treat the guests, as long as do not turn them into ones private property "(Narrated by Muslim).

In a hadith narrated from Anas ibn Malik, he narrated that Abu Thalhah was an Ansar who owned a lot of property in Medina. As soon as the revelation came from Allah SWT which means:

"You will never reach virtue (perfection) until you spend some of the wealth you love. And whatever you spend, Allah is All-Knowing", Abu Thalhah immediately declared to Rasulullah SAW by saying: "Indeed, the property I love the most is Bayruha 'and I give Bayruha' as charity because of Allah SWT. I hope for His goodness and savings from Allah SWT. Determine the alms as you like, O Messenger of Allah ". Then Rasulullah SAW said: "That is a profitable property. Really, that's a lucrative property. I have heard what you said about Bayruha '. Indeed, I think that you should donate it as charity for relatives".

Waqf According to the Perspective of Athar and Ijma'

From the event of waqf made by Saidina Umar, Imam Syafie 'narrated that 80 companions of the Prophet SAW from the Ansar have also made waqf, including Saidina Ali who waqfed his house and land in Egypt. Waqf by Saidina Umar has created followers, and basis for the existence of general waqf. In fact, the practice of waqf has become a practice of snatching among the companions of the Prophet SAW and the Muslims as Jabir RA said:

“None of Prophet SAW companions who are affordable, except to give waqf. This has become ijmak (consensus), so indeed the people who are able to waqf property have done so, and it is well known because no one objected to it, making it ijmak”.

The majority of scholars agree that waqf must be agreed upon by consensus. This can be seen through the many hadith narrated by the companions.

General Principles of Waqf

The implementation and management of waqf property must meet the general principles set by the Shariah, that it cannot be sold, non-transferrable and not to be inherited. Majority of fiqh scholars are of the view that the main principle in the concept of waqf is, the transaction is final, permanent and non-transferable.

a) Irrevocability

The ultimate principle of al-mu'tamad or irrevocability means that the waqf process takes effect as soon as the declaration is made by the waqif. The ownership of the waqf is forfeited as soon as the property is waqfed, and immediately moved to the interest of mawquf 'alaih (with absolute submission to Allah SWT). The waqf is not to be revoked or being revoked. Nevertheless, Imam Abu Yusuf recognized waqf on a periodic basis (muaqqat) and did not accept the ultimate principle except with the permission or order of a court. This opinion is similar to the view in the Maliki School, whereby, This opinion is similar to the

view in the Maliki School, that is, the property that has been waqfied can be owned by the waqif or his descendants upon expiration of the waqf period.

b) Sustainability

Permanence (al-ta'bid or perpetuity) means the property to be waqfied must be permanent and durable, such as land and houses. On this principle, property that cannot last long or is easily damaged such as food, and drink cannot be waqfied.

The principle of permanence is a law of waqf that must be fully complied with except in some circumstances such as damage caused by disasters or accidents beyond human ability or due to waqf performed periodically (muaqqat) or due to the need to implement the istibdal process..

c) Non -Transferable

The principle of non-transferability (al-ilzam or inalienability) is very similar to the principle of permanence. Property that has been waqfied cannot be transferred in any form whether sold, mortgaged, inherited or made into a hibah by the waqif, mutawalli or the recipient. This principle is taken from the hadith on the story of waqf of a piece of land in Khaybar by Saidina 'Umar RA. Based on this principle, scholars prohibit trustees from mortgaging or pledging waqf properties as security for loans. However, there are legal exceptions to this principle, if the waqf property is exchanged or replaced with other suitable property, subject to current requirements and legal provisions for reinvestment.

In short, the process of waqf of property will only be perfect when the conditions of waqf are complied with:

- i. Waqf must be permanent in nature;
- ii. For special waqf, the purpose and intent of the waqf must be clearly stated;
- iii. The waqfied property shall be immediately effective, irrevocable, no changes in its purpose, and shall not be subject to other conditions to the contrary.

Waqf and Maqasid Syariah

Maqasid is the plural word for maqsad which is derived from the Arabic word which means the main objective or the culmination of the goal. Maqasid legislation of Shariah on mankind includes the preservation of religion, soul, intellect, honor and property. The provisions of Islam on human beings are as good in this world and in the hereafter. According to fiqh scholars, human interests are guaranteed by Shariah through four main essences:

- a. Jalb al-Masalih which is to ensure welfare;
- b. Dar 'al-Mafasid which is to avoid damage;
- c. Sadd al-Dharar which is preventing harm;
- d. Taghayyur al-Zaman is a consideration of the factors of the passage of time.

There are three levels of human needs and welfare in this world, which include dharuriyyat, hajjiyyat and tahsiniyyat.

- a. Dharuriyyat is a major maslahah that involves the basic needs of every human being such as water, air etc;
- b. Hajjiyyat is a maslahah that is not basic but still needed to ensure convenience and comfort in living life such as shelter, vehicles and so on; and
- c. Tahsiniyyat is a maslahah that is needed as perfection and satisfaction like a big and comfortable house or a high-powered vehicle.

The discussion on wakaf can be categorized into the concept of hifzul mal which is the preservation of property as part of dharuriyyat, which collectively means the need to fulfill the trust of kifayah in line with the goals and requirements of Shariah.

a) The Relationship between Waqf and Maqasid Syariah

To appreciate the maqasid of waqf we need to first understand the concept of waqf formulated by fiqh scholars as "holding capital and developing it to take advantage of its profits". Waqf assets are permanent and can be invested in various forms for ongoing benefits. The Islamic arguments that mention infaq fisabilillah, al-birr, al-ihsan, sadaqah jariah or the like, clearly prove the provision

of waqf and explain to us that waqf is the voluntary giving of property for public benefit, especially those related to religious needs. This is very important to meet the needs of society who are poor and need help to make ends meet, as well as meeting one's needs to face the reckoning in the Hereafter.

The position of waqf in the ijtima'i sector is very important as is the practice of zakat and other alms, which is to transfer part of the wealth from one group of society for the benefit of another group of society in need. Although the implementation of waqf is categorized as part of the element of perfection (mukmilat), it still contributes to the integrity of dharuriyyat. This is because, although the law of waqf in principle is supererogatory, but in general it can be a compulsion. In other words, as explained by the scholars of usul fiqh, if the practice of waqf is ignored by all Muslims, then it becomes obligatory to every Muslim, until there exist a group that implemented it.

Based on the above statement, the scope of waqf is wide, as long as it brings benefits to the whole world whether for humans, animal welfare, environmental sustainability, etc.

b) Characteristics of Waqf and Maqasid

The main uniqueness or privilege of waqf practice lies in the concept of separation between the right of ownership and the right of use, the concept of long-lasting charity (jariah) and the concept of its purpose which is only for charity:

i. Separation between Ownership Rights and Usage Rights

For most scholars, the practice of waqf will cause the power of ownership of property from its master to be erased. The waqif can no longer own the property that he has waqf-ed in any way, except to be the administrator of the waqf property, in which case the waqf property has been returned absolutely to Allah SWT. Waqf must be performed without any conditions or options (khiyar) to continue or cancel the waqf. Therefore, once the waqf is declared, it cannot be withdrawn. It needs to be implemented immediately without delay. For that reason too, the original owner has no right to act (tasarruf) on the property he waqf-ed, cannot sell or give it to others.

ii. Permanent Giving

Waqf is in principle a permanent property management contract. This not only enables the waqif to receive continuous rewards, but those who receive the waqf also receive continuous benefits. Those who rely on waqf property, especially critical institutions, can effectively plan the financial planning of their institutions for the long run.

iii. Aimed at Charity

The use of waqf property must be used for reasons that are allowable by syara' which include charitable purposes. However, it is not necessary for a waqf to set the purpose or group of people that will benefit from the waqf. Suffice to say, for example: "I waqf this property for the sake of Allah SWT". Sheikh Muhammad Abu Zahrah in *Muhadarat fi al-Waqf* once stated that the practice of waqf is not limited to the construction of mosques, but includes all forms of practices that occur in charity such as the practice of endowing land, construction of hospitals, orphanages and buildings for the poor. This can help towards the socio-economic development of the ummah.

c) The Role of Maqasid in Determining the Law of Waqf

Generally, almost all legal debates regarding waqf are based on ijihad. The history of the implementation of waqf has proven that there are various types of property endowed by Muslims. The purpose of the waqfed property also varies according to the wishes of each as the waqif. There are various new categories related to waqf, either in terms of the type of property endowed or the purpose of a property endowed. Various new terms and methods regarding the implementation of waqf were also introduced from time to time.

Similarly, in the context to the current implementation of waqf, which is growing and integrated with the current financial ecosystem, new terms appear in the implementation of waqf either from the material point of view of waqf or from the waqf instruments point of view, such as corporate waqf, sukuk waqf, royalty waqf, waqf of intellectual property, waqf of takaful etc. In this regard, the role of maqasid is very big in determining the legal decision on waqf.

PILLARS AND CONDITIONS OF WAQF

Jurists divided the pillars related to the worship of waqf, into four; namely waqif (waqif); endowed property (mawquf); beneficiaries of waqf property (mawquf 'alaih); and a statement of waqf desire (sighah) or also referred to as justification of waqf. The practice of waqf becomes invalid if all or one of the four things in the pillars are not complied with (Wahbah al-Zuhaili, 2011).

Waqif

Waqif or waqf giver is a person who surrenders or hands over his property to be used as waqf property. To enable the waqfed property to be valid according to syarak, the waqif must be:

- a. A person who is intelligent and old enough (puberty);
- b. An independent and real owner of the property to be endowed;
- c. A person who is intelligent and not under the restriction of law (mahjur 'alaih) by reason of bankruptcy or the like; and
- d. A person who is able to manage his property.

A waqif who is in a state of near death (maradul maut) is only allowed to waqf not more than one-third of his property to preserve his own interest to receive the spiritual reward after his death. According to Imtiaz Ahmad Khan (1988), a waqif can consist of individuals, organizations or governments that do so for charitable purposes according to Shariah. Non-Muslims are also included in the group eligible to give alms, and their waqf is valid even if the property is donated to be used as a mosque (Mustofa al-Khin et.al., 2005). In this case, the validity of almsgiving does not depend on intention because the condition of intention is Islam. For non - Muslims, they only get worldly rewards, as mentioned in a hadith which means:

“Allah will not ignore the goodness of the believers and will be rewarded in this world and in the hereafter. Disbelievers will receive the reward of the good they did while in the world because in the hereafter no more reward will be given to them ”

(Narrated by Muslim).

Mawquf

In principle, Mawquf or the endowed property must be property that is legally owned by the waqif, derived from a halal source, permanent or durable, and not easily damaged, and have the value or benefits as required by Shariah. In addition, the mawquf must be:

- a. Property that is an object and can be clearly defined (ta'yin);
- b. Legally owned by the waqif, transferable, no duplication of ownership to others, and not trustee property of other parties such as property of a bankrupt, or property belonging to orphans, leased or mortgaged property, loan or rental property and so on;
- c. Property that can be used indefinitely or can be utilized in the long run; and
- d. Property whose use is allowable under Shariah. It is illegal to waqf property that can only function for prohibited items such as neglectful entertainment equipment.

The scholars of Mazhab Syafie are of the opinion that Islamic leaders can waqf state-owned land or Baitulmal-owned land irsod which brings good to Muslims. Irsod waqf (endowed land by any corporation, institution, organization or other bodies according to Islamic Law) is exempted from the condition of ownership by the waqif. Some scholars of fiqh are of the view that apart from the obligation to endow immovable property ('aqar) such as land, houses and gardens; movable property such as the Quran, books, household appliances, equipment, weapons and animals can also be endowed as long as the movable property can bring benefits.

Mawquf 'Alaih

Mawquf 'alaih or waqf recipient is an individual or organization that receives the benefits of waqf property, whether the recipient has been specifically determined (mu'ayyan), for example: limited only to the descendants of the waqif; or not clearly specified (ghayr mu'ayyan), example: endow to any poor fakir, orphan, mosque, school and so on. The main conditions of mawquf 'alaih or the recipient of wakaf and its benefits are:

- a. The acceptance must be for the purpose required by the Shari'ah in seeking the pleasure of Allah SWT and to get closer to Him;
- b. Exists and can be clearly identified;
- c. Can and is eligible to receive ownership of benefits;
- d. It is not waqfed solely for the self-benefit of the waqif; and
- e. Not an immoral, kafir harbi or apostate.

In addition, waqf property can also be given to non-Muslims provided they are not kafir harbi, not apostates and not for the purpose of immorality.

Sighah

Sighah waqf which is also referred to as hujjah waqf or hasrat waqf must contain the elements of offer (ijab) and acceptance (qabul). Ijab is a pledge or utterance uttered by a waqif either in clear form (sorih) and figurative or insinuation (kinayah).

Scholars have determined that every mawquf or property to be endowed must be accompanied by the word ijab to determine the validity of the waqf. However, the waqf contract is still valid even without the word acceptance or acceptance by the mauquf 'alaih. The conditions of sighah are:

- a. Must clearly state and determine the waqf property (mawquf), and contain the element of permanence (ta'bid);
- b. The implementation of sighah waqf must be finalized, that is, immediately effective, cannot be revoked, its purpose cannot be changed and cannot be subject to other conditions that can invalidate the waqf; and
- c. Clearly state or spell out the recipient of the waqf (mawquf 'alaih).

An example of a clear sighah wakaf (shorih) is the clear use of the word waqf and direct, such as "I am fulan bin fulan hereby endow my land of one acre holding on to the ownership of... Lot. 1111, Mukim/Township/City... in District... State... to the state islamic religious council ... effective from... for public welfare purposes ". While the example of sighah wakaf in the form of allegory or satire (kinayah) is when there is no clear and direct use of the word waqf, but there are elements that carry the

meaning of waqf such as "My property is a permanent charity to the poor" or "I forever hand over my property to the poor".

CLASSIFICATION OF WAQF

Waqf can be divided into three main aspects, from the mawquf perspective, mawquf 'alaih, and waqf methods.

Classification based on Mawquf

There are two main categories of waqf classification from the mawquf point of view, namely movable, and immovable waqf property.

a) Movable Waqf Property

Movable waqf property or manqul, is property and wakaf assets that can easily be carried, transferred or be changed from their original place, and can be immediately be benefitted such as cash, shares and sukuk, books, clothing and equipment, livestock and vehicles, intellectual property, etc. The debate on movable property is elaborated further in Chapter 6: Waqf of Movable Property.

b) Immovable Waqf Property

Immovable waqf property or ghair manqul is waqf property and assets that cannot be moved or transferred or altered from its original place such as land, and buildings. Discussion on immovable wakaf is explained further in Chapter 7: Wakaf of Immovable Property.

Classification Based on Mawquf 'Alaih

Generally, the classification of waqf from the mawquf 'alaih point of view is divided into two, waqf ahli or waqf khayri.

a) Wakaf Ahli

Waqf Ahli, which is also referred to as waqf zurri, is dedicated only to the welfare and interests of family members or descendants of the waqif, determined by the waqf himself.

b) Waqf Khairi

This waqf is done solely for the purpose of welfare and public interest. Waqf khairi

is divided into two categories, namely general and special waqf.

i. General Waqf

General waqf is a waqf created for the purpose of general charity permissible by syarak, such as for religious use or economic development of Muslims or the like. In this context, the trustee of the waqf can develop it with any shariah-compliant activity that brings positive results or benefits without being tied to a particular type of welfare or form of development, while the benefits can be distributed to any form of welfare whose rewards can continue to be enjoyed by the waqif.

ii. Special Waqf

Special wakaf is defined as a waqf created for certain charitable purposes that are permissible by syarak, such as for madrasahs or orphanages or the like. In this context, the trustee of the waqf needs to develop it as per the sighth of the waqif only. The benefits too, must be distributed as intended by the waqif.

Waqf Classification Based on Waqf Method

Waqf can be done through various shariah-compliant approaches that continue to evolve over time according to ijthad. There are various classifications of waqf according to waqf methods, such as waqf irsod, waqf muaqqat, waqf musytarak, waqf musya', shares waqf, corporate waqf, and sukuk waqf.

a) Waqf Irsod

Waqf irsod means the surrender of any property as waqf by any State Authority, Federal Government or corporation, institution, organization or other bodies in accordance with Shariah. This type of waqf is a waqf that is handed over to the government administration for public interest, such as schools and hospitals. This law is permissible even though there are differences of opinion among scholars who state that it is not called waqf irsod, but only referred to as al-Irsod.

b) Waqf Muaqqat

Waqf muaqqat is waqf for a certain period only and not to last forever. There are differences of opinion among scholars in discussing the necessity of the implementation of waqf muaqqat. Imam Abu Yusuf recognized the concept of waqf on a periodic basis and did not accept the principle of al-Muktamad on waqf except by court decision. This opinion is similar to the view in the Maliki School, that is, the waqfed property will become the right of the waqif or his descendants when the waqf period expires.

c) Waqf Musytarak

Wakaf musytarak is a combination of several types of waqf into one, such as waqf created through a combination of waqf shares with istibdal, or a combination of waqf ahli or zurri with waqf khayri or the like.

d) Waqf Musya'

Waqf musya' means to endow any right over a part of any property owned jointly

with other parties that cannot be divided. For example, two parties have rights over a house or a car. If one of the owners endows his share, according to Mazhab Syafie and Hanbali, this waqf is valid.

e) Waqf Haq Irtifaq

Haq al-Irtifaq is all kinds of property in the form of 'aqar which serves as a facility towards another' aqar, then the facility of another 'aqar is hindered. According to the scholars of Mazhab Syafie and Hanbali, this waqf is allowable because the property is valuable and can be traded. For example, a person who endowed only one floor of a building consisting of several floors, or an example of land used to make a path to a mosque, or an example of a roof used for shelter and so on.

f) Wakaf al-Iqtifa'at

This waqf is land controlled by the government which is handed over to residents who have obtained permission for the land to be used for public purposes, but the ownership of the land is still subject to the government. Majority of scholars state that waqf of this type is invalid because it is not real property.

g) Wakaf al-Ain al-Muajjir

Wakaf al-Ain al-Muajjir is based on the concept of waqf of property that is being rented. The scholars of the Syafie and Hanbali schools say that this type of wakq is invalid because the endowed property should be permanent, while the Maliki school allows the waqf of benefits and does not require permanent nature of the endowed property.

h) Waqf of Shares

Waqf of shares means endowing shares in a company a person owns or endowing them through the purchase of new shares from a company.

i) Shares Waqf

Shares Waqf means the units of shares offered by any institution such as state islamic religious council to encourage Muslims to waqf through cash by purchasing and waqfing the waqf share certificates forever because of Allah SWT for the benefit and welfare of Muslims. Generally, shares waqf will be offered to the public for immediate collection of contributions as a special fund to fund any waqf project that is being undertaken.

j) Corporate Waqf

Corporate waqf is an innovation as a result of adaptation of share waqf which is done in the form of musytarak waqf with the concept of combination between member waqf and khayri waqf and between special waqf and general waqf. Its implementation concept is when a corporate company (waqif) endows part of its shares (mawquf) to a subsidiary established under it (mawquf 'alaih) with a specific purpose subject to the sighth used, where part of the benefits are reserved for member subsidiaries and some of the other benefits are for the distribution of public welfare.

In this context, the subsidiary acts as the manager and administrator of the waqf (either as a mutawalli, nazir, or qayyim) and at the same time, as the beneficiary (mawquf 'alaih) of the proceeds of the waqf shares.

k) Sukuk Waqf

The meaning of sukuk according to The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) is a certificate that has a corresponding value. It represents the value of shares as a whole in the ownership of tangible assets, as well as services for a project or equity for investment activities. Sukuk also represents ownership rights over a particular investment or project that is backed up by underlying assets. There are three categories of sukuk distribution in general, namely government sukuk, corporate sukuk and quasi government sukuk.

Wakaf sukuk is a method of waqf through a written agreement between the sukuk issuer and the sukuk holder, which states the deferred payment of capital as an investment, with the return of a certain proportionate amount of profit until the end of maturity. The entire payment of the capital invested by the investor must be settled by the sukuk issuer when the maturity period of the sukuk expires.

Waqf is an act of supererogatory worship that is prescribed and highly encouraged in Islam. The reward is huge and continuous as long as the endowed property is still taken advantage of. It is an imperfect possession because the selection of 'ain (endowed goods) belongs to Allah SWT. Meanwhile, the benefit or result of the wakaf belongs to the mawquf 'alaih, that is, the party who is determined to receive the benefits of the waqf. The verses of the Qur'an and hadith mention a lot about the encouragement to perform waqf and the benefits obtained to the waqif.

Verses from Surah al-Baqarah: 195

And give (your property) in the Way of Allah (to others) and do not throw yourselves into danger and become the best of the best, surely Allah loves the good-doers (“Muhsinûn” those who have submitted their physical bodies to Allah). (Surah al-Baqarah: 195)

Verses from Surah al-Baqarah: 219

They ask you about wine and gambling. Say: “In both of them there is a great sin and (some) means of benefit for the mankind, but the sin of them is greater than their benefit”. And they ask you what they ought to spend (for the sake of Allah)? Say: “That which is beyond your needs”. Thus Allah explains to you the Verses, so that you may ponder (over the wisdom contained in them.

(Surah al-Baqarah: 219)

It was narrated that the Prophet (peace and blessings of Allaah be upon him) said:

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثٍ : صَدَقَةٍ جَارِيَةٍ أَوْ عِلْمٍ يُنْتَفَعُ بِهِ أَوْ وَكْدٍ صَالِحٍ يَدْعُو لَهُ .

Meaning:

"When a human being dies then all his deeds are cut off, except for three things, namely charity jariah, knowledge that is utilized, or a pious child who prays for him."

(Narrated by Muslim)

In another hadith, the Prophet SAW said:

إِنَّ مِمَّا يَلْحَقُ الْمُؤْمِنَ مِنْ عَمَلِهِ وَحَسَنَاتِهِ بَعْدَ مَوْتِهِ عِلْمًا عَلَّمَهُ وَنَشَرَهُ وَوَلَدًا صَالِحًا تَرَكَهُ وَمُصَدَّقًا وَرَثَةً أَوْ مَسْجِدًا بَنَاهُ أَوْ بَيْتًا لِابْنِ السَّبِيلِ بَنَاهُ أَوْ نَهْرًا أَجْرَاهُ أَوْ صَدَقَةً أَخْرَجَهَا مِنْ مَالِهِ فِي صِحَّتِهِ وَحَيَاتِهِ يَلْحَقُهُ مِنْ بَعْدِ مَوْتِهِ .

Meaning:

“Indeed, among the things that will accompany a believer from his deeds and goodness after his death are (seven things): Knowledge learned and then taught to others and continued to spread, pious children left behind and the Quran inherited or the mosque (s) he built, the houses of travelers on the journey he built, the tributaries he flowed or the alms taken out of his property when he was healthy and the life that accompanied him after his death.”

(Narrated by Ibn Majah)

Also the words of the Prophet SAW:

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا قَالَ : أَصَابَ عُمَرُ أَرْضًا بِخَيْبَرَ , فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمُرُهُ فِيهَا , فَقَالَ : يَا رَسُولَ اللَّهِ , إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ لَمْ أَصِبْ مَالًا قَطُّ هُوَ أَنفُسُ عِنْدِي مِنْهُ , فَقَالَ : إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا , قَالَ : فَتَصَدَّقَ بِهَا عُمَرُ , وَأَنَّهُ لَا يُبَاعُ أَصْلُهَا , وَلَا يُبْتَاعُ وَلَا يُورَثُ وَلَا يُوهَبُ قَالَ فَتَصَدَّقَ عُمَرُ فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنَ السَّبِيلِ وَالضَّيْفِ لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ مَالًا .

Meaning

“From Ibn Umar RA he said: Umar got a piece of land in Khaibar then he came to the Prophet SAW to ask for guidance on how to manage it, he said: O

Messenger of Allah! I have got a piece of land in Khaibar. Never have I acquired a better property than this. He said: If you like, hold on to the land (i.e., endow the land) and you donate its benefits. Then Umar gave alms from the land on the condition that his land could not be sold and bought and inherited or gifted. Umar gave alms of the proceeds to the poor, the relatives and to free the slaves also for those who jihad in the way of Allah as well as to provide for those who were on their way and to be a meal for guests. The person who manages it can eat some of the produce in a good way and can feed his friends simply.”

(Narrated by Bukhari and Muslim)

WAQF IN MALAYSIA

The State Islamic Religious Council (MAIN) as the Sole Trustee of Waqf

MAIN is the sole trustee for all waqf property as stipulated in the State Islamic Religious Administration Act, Ordinance or Enactment and the State Waqf Enactment. As the sole trustee, MAIN is responsible for administering all waqf property whether involving movable or immovable property which includes the following:

- a. All waqf, whether general or special waqf.
- b. All general vows; and
- c. All types of trusts that create any charitable trust to support and advance the religion of Islam or for the benefit of Muslims in accordance with Shariah.

Waqf in the Federal Constitution

The legal policy of waqf has been codified in the Federal Constitution of Malaysia under List II, State List, Ninth Schedule where wakaf has been listed along with matters of Shariah and personal law for Muslims:

“Shariah, personal and family law for persons professing Islam, including Shariah relating to inheritance of testamentary trust and intestate property, engagement, marriage, alimony, adoption, legality, child custody, bestowal, division of property and non- khairat, wakaf and the definition and rules of khairat and khairat religious trusts, appointment of trustees and corporations for persons on the granting of Islam and khairat, trust institutions and khairat institutions”.

Waqf in accordance to State Legislation

When the matter of waqf is placed under the State List, then only the state has the jurisdiction to enact laws thereon as has been provided for under Article 74, Federal Constitution. Based on the above legal facts, laws to govern waqf have been introduced in all states in Malaysia under the State Enactments as well as the Act for the Federal Territories and the Ordinance for Sarawak, the main principle of waqf that

can provide a legal solution for any matter arising in managing a wakaf property. So far, there are only five states that have introduced specific waqf laws:

- a. Waqf (State of Selangor) Enactment 2015 (Enactment 15).
- b. Waqf (State of Melaka) Enactment 2005 (Enactment 5).
- c. Waqf (Negeri Sembilan) Enactment 2005 (Enactment 2).
- d. Waqf (Perak) Enactment 2015.
- e. Waqf (Terengganu) Enactment 2016 (Enactment 1).

For other states without a waqf enactment, reference is respectively made to the statutes of Islamic administration and Islamic legislation. It is hoped that the states that still do not have a specific waqf law can create it where the law that has been introduced earlier be used as a reference. The Waqf Legal Model Management Manual that published by JAWHAR can be used as a guide.

Apart from the main laws above, there are also states that have enacted subsidiary laws for waqf where the statutory provisions are applicable in the administration of waqf in those states in addition to the principal (primary) laws made in the form of rules or methods. Examples of these laws are the Johor Wakaf Rules 1983 (JPU 51/85), Wakaf Administration Rules (Waqf Forms) 2001, Selangor (Sel.PU5/2001) Zakat and Fitrah Regulations, Business Wakaf and Baitulmal Negeri Melaka 1982 (MPU 5/82).

Jurisdiction of MAIN as Sole Trustee

Based on the laws in force in Malaysia, MAIN is the sole trustee of all waqf property, involving general waqf and special waqf, whether it is movable or immovable property.

Section 32 (Council as sole trustee), Waqf (State of Melaka) Enactment 2005 for example provides:

“Notwithstanding any provision contained in any instrument or declaration creating, controlling, or affecting a waqf, the Council shall be the sole trustee of all waqf, whether it is general waqf or special waqf, located in or outside the State of Melaka”.

The same provision is also found in all laws related to waqf in all states in Malaysia. In connection with the above provisions, the appointment of any private trustee is invalid and void as it is contrary to the existing laws in the states.

Section 58 (Revoking appointment of trustees other than that from the Council), Waqf (Negeri Sembilan) Enactment 2005 has provided that:

“In respect of a waqf made before the commencement of this Enactment, any person appointed as a trustee other than that from the Council, the appointment of that person is void and shall be revoked within six months after the commencement date of this Enactment or when the mawquf is registered, whichever comes first ”.

Similarly, all matters and operations of waqf such as collection of waqf funds, development and other activities must be made by MAIN in the respective state. Its management by other parties is only allowed with the written permission of the MAIN concerned. In the above context, a provision has been codified under Section 45 (administering or managing general waqf or special waqf without the permission of the Council or Corporation), Waqf (State of Selangor) Enactment 2015 which provides:

“Any person who administers or manages a general waqf or special waqf without the written permission of the Council or the Corporation, commits an offense, and shall on conviction be liable to a fine not exceeding one thousand ringgit, or imprisonment for a term not exceeding six months or both”.

“Corporation” in the above provision refers to the Selangor Wakaf Corporation (PWS) which is authorized to manage and develop waqf property in the State of Selangor. It was established through the Selangor Wakaf Corporation Establishment Order 2011 (Sel.P.U.8/ 2011) and Section 8, Administration of the Religion of Islam (State of Selangor) Enactment 2003 amendment 2008.

Through the provisions of the law, it can be understood that the existing law does not prevent anyone or institution other than MAIN to handle the management of waqf, providing it is made through written permission from the Council. Failure to comply

with it is an offense under the law, which if convicted can be punished. A provision under Section 4 (1) (Council as sole trustee for all waqf) it is stated that:

“The Council shall be the sole trustee for all waqf located in the State of Selangor and shall have the authority to:

- a. Creating a Corporation;
- b. Appoint or give written permission to any person to be an administrator or manager, and hold any mawquf on his behalf; and
- c. Recognize the appointment of any administrator or manager in a situation where the waqif has already appointed his own administrator or manager, subject to the terms and conditions set by the Council.”

The provisions of Section 4 (1) (c) above are in accordance with Shariah under the principle of Syart al-Waqif ka al-Nass al-Syari 'which is "the conditions set by a waqif as prescribed by Shariah" where any conditions imposed by a waqif, including in relation to the appointment of an administrator or manager who handles the affairs of his waqf, must be adhered, unless it is clearly contrary to Shariah and there are obstacles to implement it. Generally, MAIN as the sole trustee of the waqf property plays the role of the waqf administrator who is responsible for preserving, developing and managing the waqf properties in their respective states in an optimal and professional manner. This includes operating waqf property, defending and taking court action, collecting and collecting revenue, claiming rent for occupied waqf property and managing the distribution or handing over of the waqf proceeds and benefits to heirs reserved by the waqif or for various charitable purposes.

In short, all matters related to the establishment and management of waqf must obtain advanced approval from MAIN, and each waqf property must be registered under MAIN in accordance with MAIN's function as the sole trustee for all waqf property in the state as stipulated in the Act or Shariah Enactment in the individual states. This is important to ensure that the wishes and trust of the waqif can be maintained as well as to avoid various problems that may arise in the future.

Appointment of Waqf Administrator

The wakaf administrator is the party who manages and maintains a waqf property (mawquf) without having the right to the property because each waqf property has been handed over by the waqif absolutely to the path of Allah SWT. The waqf administrator may consist of an individual or a body appointed under a waqf deed to manage and administer matters relating to a waqf property as nazir, mutawalli or qayyim. The waqf administrator can be appointed either by the waqif or by the authorities. A waqif can also name the party who will replace him after his death.

As the sole trustee of waqf property, MAIN has the authority to appoint or give written permission to any party to manage and administer any waqf property on its behalf, whether as nazir, mutawalli or qayyim. In addition, MAIN also has the power to recognize the appointment of any waqf administrator in circumstances where the waqif has already appointed it himself. Similarly, to terminate the appointment of any party whose appointment has been appointed or recognized by MAIN from managing and administering any waqf property on its behalf.

Advantages of Fulfilling Waqf

The advantages gained from wakaf worship are:

- i. Manifesting devotion to Allah SWT.
- ii. Getting closer to Allah SWT.
- iii. Get lasting welfare during life and after the waqf dies.
- iv. Sharing benefits among the Muslim community such as building mosques and schools to liven up Islamic teachings and scientific activities.
- v. Strengthen the unity of the ummah.
- vi. Ensuring the preservation of the thinking and sharing of the assets of Muslims.