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**DEVELOPING A MAQASID AL SHARIAH BASED
LEGAL FRAMEWORK FOR WAQF MUAQQAT: A
CASE STUDY OF SELECTED STATES OF
MALAYSIA**

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BY

**NOR ASIAH MOHAMAD (AIKOL)
Civil Law Department, AIKOL
MUHAMAD LAEBA (AIKOL)
Islamic Law Department, AIKOL**

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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Abstract

Temporary Waqf or *Waqf Muaqqat* is a subject of debate among the Muslim jurists and has received affirmative approval only from the Maliki school while other schools such as the Shafie school merely represents the minority opinion. The requirement of perpetuity of Waqf which gained consensus among the Muslim jurists bring about an interesting discussion which is divided into permissibility and disagreement on the position of temporary Waqf. In Malaysia, two states have simply mentioned temporary Waqf in their enactments while others remain silent. In addition to lack of clarity on the legal position of Waqf Muaqqat, there is no clear *fatwa* on temporary Waqf as well. This study seeks to determine the position of temporary waqf in Malaysia by analysing the Waqf Enactments as the Administration of Islamic Law Enactment, Waqf Regulation or Rules and other related laws providing for Waqf. This study argues that there is a need to hold to the minority view on temporary Waqf in upholding the *Maqasid al Shariah*. The rationale for this is the need to promote for more products or practices of Waqf as a basis to generate fund to develop the existing Waqf assets and promoting new Waqf hence distributing more Waqf benefits to the beneficiaries. The authorities from the Quran and Hadith, *fatwa*, opinions of the old and contemporary jurists will be deliberated on the basis of *Maslahah* and upholding the *maqasid al Shariah*. The findings from this study are necessary in developing a clear legal framework for temporary Waqf especially in the Malaysian context, where the *maslahah* (public interest) shows a crucial need for a more dynamic and flexible rules pertaining to Waqf, including temporary Waqf. This could be achieved by insertion of a clear provision for temporary Waqf in the Waqf enactment, or a *fatwa* at either State or national level and having clear guidelines through a Manual or Rules. Benchmarking the practices and application in other jurisdiction is necessary to assess the contemporary acceptance and application of temporary Waqf.

Keywords

Temporary waqf, waqf muaqqat, fatwa, Waqf Enactment, Maqasid al Shariah, Maslahah

INTRODUCTION

ولا يبطل الوقف على كل حال بل يكون مستمرا عليه (*Wa laa yabtilul waqif ;ala kulli hal bal yaku na mustamirran 'alaih*) “Waqf shall not become invalid but remains sustainable”.
(As-Syed Al-Bakri, *Hasyiah I'anutul At-Talibin*, Vol.3, Dar Al Fikr, 167)

Malaysia follows the teachings of Shafie school in all Shariah matters including Waqf. The majority opinion of the Muslim jurists including the Shafie hold to the opinion that Waqf must be perpetual in nature, irrevocable and inalienable. Nevertheless, one of the school of thought i.e. the Maliki School holds that Waqf can be temporary. It means, a *waqif* can determine the duration of the Waqf as the particular school views that

ownership of waqf properties is and remains with the *waqif* even though he has dedicated it as Waqf. This is in contrast to the majority opinion that once an owner create waqf, he distinguishes his ownership, and the property is transferred to the ownership of Allah, SWT.

Hence, temporary Waqf means giving of one's *manfaah* (benefit) of his property for a certain identified period for the benefit of others in order to get the blessing from Allah SWT (Zulkifli Hasan, nd). Upon expiry of the term, the subject matter of Waqf shall revert to the owner. Allah SWT in *Surah Al Baqarah* (2):261 describes the impact of giving for charity is like a growing seed that multiplies from a tiny seed into seven spikes where each contains a hundred grains. The growing benefit may be illustrated when a donor (*waqif*) plays its economic role in giving a charity to the beneficiary (*mawquf alaih*). The impact is manifested in manifold. Individually, he can get tax exemption, the beneficiaries will survive with their lives, a country will save its source of expenditure for other more pressing needs and the act fulfils all parties' duties in this world and hereafter.

While giving for charity is common for the rich who own with excess but the charitable or religious duty may be heavier for a poor Muslim though he is aspired to do so. In fact, donation is a sacrifice for someone left with only one property reserved for heirs or a small amount of money for food. This scenario could provide a simple justification why temporary waqf should be made permissible on the basis of *maslahah* or public interest. In Waqf *muaqqat* or temporary Waqf, the property shall revert to the owner when the determined period expires. He may also dedicate only as Waqf the 'manfaah' from his assets for a certain identified period. The practice of dedicating immovable property in Malaysia is common especially in the old days when lands are plenty, but becoming rare nowadays.

During the current economic competition or pandemic, a Mutawalli needs a *mawquf* which can easily be liquidized for development and may be replaced *via istibdal* for other forms of Waqf asset. Similarly, by upholding to the rule that temporary Waqf is not permissible would set a barrier for the dynamism of Waqf. In Waqf, the *manfaah* must be beneficial, valuable, and continuous or sustainable. The data on Waqf assets in Malaysia shows that many Waqf properties which are in the form of immovable property are left idle for many reasons such as non-strategic location, lack of capital for development and uneconomic sizes of the properties. By allowing temporary Waqf, capital may be raised through various means of other Waqf that may be used to raise fund to develop the existing Waqf, or promoting for new Waqf assets.

BACKGROUND

Waqf in the Muslim worlds has gone through various phases and challenges. The peak of the institution has seen its contribution in various fields and matches the slogan that Waqf is the third sector economy. The Islamic history has shown that Waqf has fulfilled the roles and effectively functioned as needed. Waqf has been practiced to fulfil religious duties towards oneself and God. It effectively functions as social catalyst that promoting societal economy, politically and religiously. Unfortunately, this institution could not stand the tides of colonialism, modernisation and capitalism. Various data and literatures have revealed the decrease of number and value of Waqf assets. This study seeks to understand the scenario, digging into previous findings and excavates to better understand the reasons based on the previous studies and literatures. It starts with the belief and acceptance of the relevancy of Waqf Muaqqat to be practiced in the current context.

Over times, the priority of people changes. The inclination to share their immovable assets is no longer their priority as portion of their belongings are getting smaller. Similarly, there are other types and classes of assets that are equally, if not better, in value than land or building. Shares, intellectual properties and services, expertise and times have turned out to be among the factors that create high net worth people on this planet, while gold remains as traditional way of security for all.

Although many may agree with those literatures and findings, the application of *waqf muaqqat*, may seem to be against the normal accepted opinion in waqf rules. In addition, the laws that provide the legal framework are also silent or uncertain. This scenario sounds familiar for Malaysia and some of other Shafie school countries. Nonetheless, Shariah principles have repeatedly emphasised on the need to move with the need of the people. As such, some countries like Indonesia and Singapore have immediately addressed this issue through their legal process. Unfortunately, the movement to liberalise and legalise Waqf Muaqqat is slow in Malaysia. This study investigates with specific objectives to understand and overcome the problem.

Currently there are only 7 states in Malaysia which legislate Waqf law (Enactments) while others merely rely on a few provisions for Waqf in the Administration of Islamic Law Enactment for their respective states. Out of 7, only three states have provision for temporary waqf, at least in their definition section (Sec 18 of Wakaf Enactment (Terengganu) 2016 and Section 2 of the Administration of Islamic Law Act (Wilayah Persekutuan) 1993 (Act 505) and Sabah has a provision which provides for Waqf Muaqqat for Waqf Khas. The state of Johor under the Waqf Rules 1983 (*Kaedah-Kaedah Wakaf* 1983) has a few provisions explaining about *Waqf Muaqqat*. Among others it provides that *Waqf Ahli* should not be more than 60 years or two generations excluding the period of *waqif*. The law also provides the circumstances how *Waqf Muaqqat* will end and provides for who shall own the property when the terms end.

Table 1: List of Laws on Waqf for States in Malaysia

Selangor	Wakaf (Selangor) Enactment 2015 Administration of Islamic Law Enactment No 1, 2003(sss89-95)
Johor	Administration of Islamic Law Enactment No 15, 2005 (ss 89-95) Wakaf Rules 1983
Perak	Administration of Islamic Law Enactment No 4, 2006 (ss 78-89) Wakaf (Perak) Enactment 2015
Sabah	Administration of Islamic Law Enactment No 13, 1992 Wakaf (Sabah) Enactment 2018
Sarawak	Ordinance Majlis Islam Sarawak No 4,2001. (Part V, The Establishment of Lembaga Baitul Mal of Wakaf, Baitul Mal, Wakaf Nazr (ss 60-71)
Terengganu	Administration of Religious Affairs and Custom, No 2, 2001, (ss 63-69) Wakaf (Terengganu) Enactment 2016
Kelantan	Enactment Majlis Agama Islam and Custom, No 4, 1994 (ss 61-66)
Pahang	Administration of Islamic Law Enactment No 3, 1991 (ss 67-81)
Kedah	Administration of Islamic Law Enactment (Kedah) No 5, 2008, (ss 52-58)
Perlis	Administration of Islamic Law Enactment No 4, 2004 (ss89-95)
P. Pinang	Administration of Islamic Law Enactment No 4, 2004, (ss89-95)
Melaka	Administration of Islamic Law Enactment No 7, 2002 (77-83) Wakaf (Melaka) Enactment, No. 5, 2005
N. Sembilan	Wakaf (Neg Sembilan) 2003 Administration of Islamic Law Enactment No 10,2003 (ss 89-95)

JURISPRUDENTIAL CONCEPT AND SCOPE OF WAQF MUAQQAT

As far as Waqf al-Muaqqat is concerned, it consists of two 'Arabic words a) al-Waqf, b) al-Muaqqat. The word al-Muaqqat is derived from a 'Arabic word 'Aqqata or Waqqata, which means limitation of time. Ibn Athīr says that al-Tawqīt and al-Taqīt means the time which has been set up for particular thing (Al-Rāzī, 1979, v.5, p.135).

Etymologically, the word muaqqat is a derivative of 'ta'qīt or tawqīt' which literally means to set a time limit for something or to determine a specific period of time or to state a particular time frame. The literal meaning of muaqqat could be derived from the following verse:

إِنَّ الصَّلَاةَ كَانَتْ عَلَى الْمُؤْمِنِينَ كِتَابًا مَوْقُوتًا

Allah says to the effect: "for such prayers are enjoined on believers at stated times."

Discussion on ta'qīt or tawqīt shows that the word is used in the context of time or period hence refers to stating or limiting the beginning and the end of a particular action. It has also been defined as a boundary between two things, one known earlier and the other known later.

Technically, from the perspective of the *fuqahā*, *t'aqīt* refers to the determination the time period of any work from the beginning to the end. In this scene, *Ta'qīt al-Waqf* (temporary in Waqf) means that founder of Waqf determines the particular time for his/her Waqf, once this particular time will be completed, Waqf would be back to the ownership of Wāqif and no longer will be for the purpose of Waqf.

Moving on the premise of the above concept, this study promotes that the permissibility of temporary Waqf as held by the Maliki school and also a minority of the Shafie school should be legalised. The temporary or temporal Waqf fits to the current needs and circumstances where there are many sections of the societies fall under the category of 'survival' but being Muslim, the culture of giving is a norm as part of 'ibadah or submission to Allah. Giving is an opportunity to live better and being blessed by Allah SWT.

It is equally emphasised that there are also minority opinions of the jurists among the Shafie school who share the same view with the Malikis.¹ Furthermore, to give on temporary basis is also viable for those who wants to keep property for future generation.

The basis for Shari'ah is that all rulings must benefit the society as the paramount consideration as promoted by the leading scholar on *maqasid* i.e. Imam al Ghazali (d. 1111). The five basic principles of the Shariah are to safeguard their faith (*din*), their human self (*nafs*), their intellect (*'aql*), their posterity (*nasl*) and their wealth (*mal*). While promoting the perpetuity of Waqf is generally understood as the way to protect Waqf assets, Waqf or Temporary Waqf is not only addressing and upholding the protection of *mal* but also the life and protection of religion. In this study, it seeks to prove Waqf Muaqqat is an answer for sustainability of Waqf. The benefits, though, for a specified period, is meaningful and impactful if a right step is taken to generate the *manfaah*. Whenever a legal ruling impinges on any of the five basic values, the ruling would have to be revised so that public interest always prevails.

In the context of Waqf, the requirement of perpetuity or perpetuity of Waqf is very much in line with the Maqasid al Shariah. This study offers practical solution to the practice of temporary waqf and addressing the loopholes in the existing laws. It seeks to suggest for amendment or providing additional provisions in the Waqf enactment emphasizing about the validity of Waqf as well as identifying a set of procedures to be adopted in the implementation of Waqf. Alternatively, which is much easier, to provide for a legal ruling or fatwa allowing as such.

This noble effort must start with the interested parties such as *waqif*, *mutawalli*, lawyers must have clear guidelines on the validity of temporary Waqf. Dissemination of knowledge on Waqf must be initiated through a strategic plan. Any lawyer plays a role to guide the clients who are interested to make Waqf especially temporary Waqf. A clear term of the contract must be prepared, with clear guidelines on the right of both parties. The agreement or *sighah* must state clearly the rights of the Waqif, the Mutawalli or trustee, the position of the properties whether it shall go back to the waqif or fall under the property of the *Waqif*.

The *maqasid* approach is ideal in delineating the scope of Waqf in its comprehensive sense, focusing more on the welfare of the members of the society, individually or in group thus the suggestion for the amendment or introducing the existing law is always made for the benefit of the people.

أقال أبو العباس ابن سريج :
يجوز الوقف المؤقت " لأنه لما جاز له أن يتقرب بكل ماله وبيعضه جاز له أن يتقرب به في كل الزمان وفي بعضه .قال
أبو العباس وإن قيل فهذه عارية وليست وقفا .الحاوي 9/521

A look at other Muslim countries approach on temporary Waqf is encouraging. Egypt has permitted Waqf Muaqqat with clear provision on the duration. Qatar and Kuwait for example, have provisions for the legality of Waqf. Kuwait law clearly determine that Waqf for mosque and graveyards shall be a Waqf in perpetuity while others may be temporary (*muaqqat*). Although legalisation of Waqf Muaqqat may create some legal procedural challenges especially on the details of the contract, regulatory matters and duties and responsibilities if the manager of Mutawalli, these challenges may be overcome with the advancement of technology and adoption of the artificial intelligent including computerisation and blockchain. Technological advancement taking place in Islamic social finance should be treated equally if not more with other social finance or Islamic finance itself.

OBJECTIVES OF RESEARCH

This study is carried out with a concrete justification on the needs to legalise and develop *waqf muaqqat* within the structure of Waqf in Malaysia on the basis of sustainability and *maslahah* against the common generally accepted principles of perpetuity of Waqf (*muabbad*) as advocated by the Shafie school of laws. Although it is strongly agreed that the element of perpetuity of Waqf is the generally accepted method to achieve and preserve sustainability of waqf, as the circumstance changes, it is much appropriate for the Muslim jurists to be more innovative in developing *hukm*, searching for *illah* and justification to expand the law so that application of *waqf muaqqat* shall not defeat the very purpose of the institution of Waqf. Hence, the working of *waqf muaqqat* should not be deliberated in isolation with other principles of management and strategic planning in asset and property management. Recognising Waqf as *ijtihadi* product of the Muslim jurists is also another mercy for the *ummah*. Objectives of Shariah for protection and preservation of *deen*, life, lineage and *mal* require further deliberation in determining the priorities.

The objectives of research are as follows:

- To study the position of temporary Waqf under the existing laws relating to Waqf, in particular Waqf Enactment;
- To analyse the jurists' view about the applicability of Waqf in view of the contemporary practices of waqf;
- To determine the best mechanism of upholding public interest (*maslahah*) in legalizing temporary Waqf in Malaysia's
- To examine and compare the practices in other selected jurisdictions
- To recommend for a clear provision on the permissibility of waqf in the Waqf Enactment or a clear guideline through the issuance of fatwa on Temporary Waqf;

Research Questions:

- What is the position of *Waqf Muaqqat* according to Waqf law in Malaysia;
- What are the Muslim jurists view on the application of the Waqf in view of the contemporary development of waqf practices in the Muslim world;
- What are the practices of *Waqf Muaqqat* in other countries and their performance?
- What are the most appropriate ways to promote temporary waqf in the current context?

In general aims to digest on:

- a. understanding of the concept of waqf and their laws in Malaysia;
- b. understanding the main rules governing *maqasid al shariah* and propagating for a new objective from “protection” and “preservation” to “development” and “right” as a basis to recommend for promoting temporary waqf as a commonly accepted type of Waqf;
- c. assessing the enhancement and prioritisation of the objectives al shariah and its methodology in developing a more contemporaneous principles of law governing waqf in particular *waqf muaqqat* in the Malaysian context.

RESEARCH METHODOLOGY

1. Doctrinal Analysis of documents:

Analysis of all the related laws such as the existing waqf enactment, the administration of Islamic law enactment, the fatwa as well the Rules and Regulations on Waqf. This process aims to analyse and identify the gaps in existing laws in order to suggest for amendment or to introduce clear provisions as well as policies on *waqf muaqqat*.

2. Since not all states in Malaysia have a set of laws on Waqf, the policies and practices may be developed from various other statues or books with authority on Waqf. Thus, this study carries out surveys and interviews of the person in charge in order to identify their stands and policies or best practices for each state in Malaysia. It shall involve selected states in Malaysia.
3. To achieve the aim to dvelop an applied *Maqasid al Shariah* based of Waqf *Muaqqat* this study examines the principles of *Maqasid al Shariah* establish a clear vision, values, principles and identify challenges, thus apply and adopt into the policy. This may involve harmonization of the law and principles towards Shariah compliant of process and products;
4. Analysis of the Quranic ayahs, *hadith* and *fiqhi* principles relevant to waqf is necessary. The primary materials include scholarly texts on Quran, hadiths as well as *fiqhi* books, compilation of fatwa at State and National levels, locally and internationally;
5. This study seeks to compare the law, policies and practices of *Waqf Muaqqat* in other jurisdictions such as Singapore, Indonesia, Egypt and Kuwait. These jurisdictions for various justification such as the *fiqh* development (Egypt) the

contemporary waqf practices (Kuwait) as well as the background and dynamism of waqf practices and laws (Singapore and Indonesia).

6. The information and data gathered from the primary and secondary materials will be analysed using the following methods:
 - (i) Content analysis
 - (ii) Contextual analysis
 - (iii) Doctrinal analysis
 - (iv) Comparative overview

This article adopts doctrinal and comparative legal methodology. A doctrinal legal approach is employed to identify the laws which are applicable to waqf administration and regulatory in various states in Malaysia. Meanwhile, by comparing the laws with the Shariah in particular from the perspective of *maqasid al Shariah* will lay out in details the common thresholds of waqf in fulfilling the salient objects of Shariah. Most of the statutory documents and reports are obtained online. By reviewing the documents using comparative legal methodology, this article highlights the new approach of maqasid and its application in developing the new flexible principles of waqf to benefit the ummah.

FINDINGS

1. The review of the literatures shows that there is a substantial prospect of the implementation of *Waqf Muaqqat* socially, economically, legally as well as from Shariah perspective. Interestingly, mathematically, a research shows that *Waqf muaqqat* may be implemented in arriving perpetual benefits rather than perpetual *mawquf*.
2. Analysis on *Maqasid al Shariah* shows that there are new interpretation of protection and preservation of al Mal as one of the objectives of Shariah— the literatures show that there are also many earlier researches which emphasised on the practice of Waqf as a way to protect al mal. This protection has in many cases left Waqf land especially under developed or idle. Too caution in protecting so that the land or value shall not decreased has resulted some lands are left idle. In this study, the concept of protection is further explained on practice of *Waqf Muaqqat* as an alternative to achieve protection of Waqf taking into account the current status of the members of the society as a waqif, protection and sustainability of property and its classes in the world of IT and artificial intelligence. Functional interpretation of objectives of Shariah is necessary to be the basis of policy. Again, mathematical proof above supports the finding.
3. Adopting a different school of thought opinion is not foreign in Malaysian legal development. It has been done in adopting Wakaf Tunai or cash Waqf. Originally, based on Shafie school of thought, only immovable properties are

used as Mawquf. Nonetheless, the Muslim jurists in most part of the world have recognised the need to recognise cash as a form of *mawquf*.

4. There were two main issues revolving the cash Waqf. Firstly, the issue of perpetuity, which is donating cash periodically, regularly and repeatedly to the cash waqf fund. Ibn Humam (n.d.), Ibn Abidin (1992) and Ibn Nujaim (n.d.) questioned the capability of cash waqf to meet perpetuity requirement when the cash waqf is used in *mudarabah* transaction and then the generated profit is given to charity. Here, since the returns from *mudarabah* are unpredictable as it can also be a loss, a perpetuity criterion is put to question.
5. Secondly, the issue of giving cash waqf as capital for business and expectation of an extra amount to be donated is equivalent to renting out cash. Since cash works as medium of payment and storage of value, it's function in the current society is similar to usage of gold during the Prophet time. With that, it is classified among the *ribawi* items, which have to be exchange on spot and hand-to-hand in order to avoid *riba*. This is an issue in the Shafi'e School, which views waqf objects as something of uninterrupted existence, and capable of being utilized.² These issues nonetheless have been discussed and resolved by the National Fatwa Council in 2007. Hence, adopting temporary waqf is also possible, following the same legal process. The more importance is to have a concerted effort and consensus of the Muslim jurists in Malaysia in recognising temporary waqf. There should be a fatwa endorsing temporary waqf followed by the incorporation of specific provision of temporary waqf in the Waqf Enactment. For the states are without Waqf Enactment, it is sufficient to apply temporary waqf through the issuance of fatwa in the state. The best mechanism is to detail out the terms and procedures for adopting cash waqf either through Rules or Regulation or by having a specific Form as well as standard operating procedures at the State Islamic Religious Council or Majlis.
6. The opinion of the Muslim jurists on Waqf Muaqqat is also full of challenges. Although in Malaysia, the opinion of the Shafie school of thought are dominant which sets the foundation for the Shariah or Islamic law practices, this study shows that there are a few minority opinions among the Shafie jurists which permits the application of *Waqf Muaqqat* as upheld by Imam An Nawawi and Imam Ibn Shurayj. (References: Article 1). The permissibility of temporary waqf is continuously debated among the jurists of the four schools of law.

² Al Mawardi. *alHawi al-Kabir*. Vol. 3. Beirut: Dar al-KutubalIlmiyah, 1999.; Sabit, Mohammad Tahir. "Towards an Islamic Social (Waqf) Bank". *International Journal of Trade, Economics and Finance*, Vol. 2, No. 5.(2011)

The dispute in this matter stems from two statements:

a. The first group argues that the act of endowment must be perpetual or forever. It cannot be made on temporary basis. This is the view of the majority of jurists from the Hanafi, Shafie and Hanbali schools. Ibn Qudamah said in *Al-Mughni*: “The condition that he sells it whenever he wants, gives it, or takes it back, neither the condition nor the endowment is valid. There is no dispute about it because it contradicts the requirement of the endowment.” Perpetual is not temporary so that it returns to the owner “*Al-Waqif*”. They cited the hadith narrated by ‘Abdullāh ibn ‘Umar RA (may Allah be pleased with him): ‘Umar acquired a piece of land in Khaybar, so he came to the Prophet SAW to know what he should do with it. He said: "O Messenger of Allah, I have acquired a piece of land in Khaybar, and I have never acquired a property more precious to me than that. What do you command me to do with it?" He said: "If you wish you can keep its origin as an endowment, and give its yield in charity." So, ‘Umar RA gave the land in charity (i.e as an endowment on the condition that the land would neither be sold nor given as a gift, nor bequeathed). He gave its yield as charity to the poor, the relatives, for emancipation of slaves, in Allah's cause, and for the travellers.

The inference from this is that Omar RA endowed the land permanently, so it would be a permanent charity for the duration of the land's life and if the waqf was temporary, it would be permissible through sale and gift and transfer by inheritance.

It is narrated on the authority of Imam Ahmad bin Hanbal that he said: “If there is any mention of sale in waqf, then it is not a valid endowment, and that is because the waqfs created by the companions are only perpetual, and the condition in it is that they are neither sold nor donated...” So, he believed that it was a consensus of the companions of the Prophet SAW since their waqfs are only permanent, and it was not reported from them that the waqf was specifically for a period of time.

b. The second view belongs to the Maliki School and those who are in agreement with them, including Imam Abu Hanifah who viewed Waqf as similar to a’riyah. Ibn Shurayj from the Shafie school also is of the view that Waqf can be temporary. This group believed that waqf may be temporary, and it is not required that it has to be ‘in perpetuity’ for its validity. So, the endower may identify a specific period for the endowed asset (*mawquf*), and if this period expires it returns to the owner (*waqif*).

This group cited the previous hadith of Ibn Omar RA, in the saying of the Prophet SAW to Saydina Omar RA, the sentence “If you wish,” there is evidence that the matter is left to the choice of those who want to make waqf and is not limited to a specific thing. They also inferred that the endowment is a type of charity that may be temporary and permanent, and there is no explicit evidence related to the endowment that prohibits it from being temporary.

After reviewing the statements of both arguments and stating their evidences, the research inclines for the second group's opinion including the statement of the Malikis and those who agreed with them - that perpetuity is not required in a waqf, and both, permanent and temporary waqf are allowed based on the following:

- The statement that a temporary waqf is permissible corresponds to the requirements and Maqasid of Shariah. Sheikh Abu Zahra says: "We observe that the majority viewed perpetuity is part of the meaning and concept of waqf, but a few jurists are of the view that perpetuity is not part of the meaning of waqf, so it is permissible both temporarily and permanently. And they derive their opinions from the meanings and significance of the Shariah.
- There is nothing in Shariah which prevents or goes against the permissibility of temporary waqf. The Prophet Muhammad SAW and the honourable companions did not expressly stipulate perpetuity in creation of the waqf. As for the claim of actual consensus from the companions, there is an anecdote about the issuance of the endowment from them for life, and there is no evidence that perpetuity is a condition for validity of a waqf.
- Even in the opinion of the Shafie school, there is a minority view such as Ibn Shurayj and al Nawawi which do not oppose *waqf muaqqat*.

In addition, rules on *Waqf muaqqat* may be derived from the above discussion as well as reference to the law as practiced in some of the Muslim countries.

The Muslim jurists hold the view that Waqf must be:

	Waqf must be perpetual	Waqf can be subject to certain periods
Schools /Jurists	Majority view: The jurists of Ḥanafī (Ibn ‘Ābidīn, 2000, v.6, p. 518; Al-Kāsānī, 2002; Al-Khassāf, 1999, p.18); Shāfi‘ī (Al-Shīrazī, n.d, v.2, p. 326); and One opinion by Ḥanbalī (Ibn Qudāmah, 2005)	Imam Malik and Maliki School Mālikī school (Al-Ḍardīr, 2007) and one opinion in Ḥanbalī schools (Al-Mardāwī, 1955) (Ibn ‘Ābidīn, 2000, v.6, p. 518; Nizām, 2000, v.2, p. 357). This view of Imām Mālik is one Riwayah (narration) of Imām Abu Yūsuf from Ḥanafī school and also adopted by Aḥmad Ibrāhīm, Muḥammad Abu Zohra and Muṣṭafa al-Zarqa (Yūsuf, 2006; Haza, 2006).
Dalil	<p>a. Hadith of Saydina Umar and his land in Khaybar. The use of “Habs al-ashli and <i>la yuba’u wala yubahu wala yurasu.</i>” indicate the permanent the saying of the Prophet Muhammad (SAW) “you may keep the corpus intact” shows that the nature of Waqf is perpetual. Keeping ‘in tact’ means to preserve it.</p> <p>b. It is also understood from the action of Umar RA who disallowed the property to be sold, gifted away and to be inherited which means that the Waqf cannot be temporary. The prohibition is for the purpose to protect waqf properties from any dealings so as to make the Waqf loose its characteristics.</p> <p>c. Their argument moots that if a Waqf can be temporary, thus Umar RA would not make the conditions in the first place. Although the conditions were given by Umar RA, Rasulullah (SAW) did not go against it suggesting that what Umar</p>	<p>1. According to the Maliki, it is valid to establish a Waqf within a specific period in which after the end of the stated period, the founder is able to transact with the subject matter. This is also the view held by Abu Yūsuf as reported by Ibn Hammam, “If it is known that Abu Hanifah allowed the Waqf property to be given to the heirs, he should also allow Waqf for twenty years because there is no difference (between both situations) at the very beginning”.</p> <p>2. Ahmad Dardir stated that perpetuity is not a precondition of a valid Waqf, thus it is valid for a period of time and after that the ownership returns to the founder”.</p> <p>3. Ad-Dasuqi further explained that since perpetuity is not the condition of a valid Waqf it is permissible to perform Istibdal (conversion of the subject matter to other subject matter, which is equivalent in value).</p> <p>4. Al-Khatib Al-Shirbini on the other hand allow temporary Waqf, however, the founder must state the latter beneficiary after the former</p>

7. Legal Analysis Finding - Some states have mentioned clearly in their enactments the permissibility of Waqf Muaqqat (Terengganu and Johore, Sabah) and rules on Waqf. The lacking is on the guidelines and awareness on its implementation. The study found out that some Waqf enactments or Administration of Islamic Law Enactments are either silent on Waqf Muaqqat, or the impermissibility may be inferred from the use of the word perpetual act in the definition of Waqf. It is further revealed that the Enactments are either ‘not using the word perpetual act’ in the definition, or in explaining the types of Waqf. Interestingly, despite the variety of the definition of waqf or clarity of the terms Waqf Muaqqat, almost all Waqf Enactment have a specific provision with regard to effect of Waqf
8. Some States, although have not clearly stated the position of Waqf Muaqqat in their laws, but they also do not use or define Waqf as an act of confining a property in perpetuity, while some states mentioned otherwise. This would provide a basis for the Majlis to set the policy either based on fatwa or the law. In fact, despite having a clear word of ‘perpetuality’ or perpetual act, the Waqf enactment or the Administration of Islamic Law enactment have a provision relating to the
9. For the states which do not have specific enactment of Waqf, they shall refer to some of general provisions in the Administration of Religion of Islam or Administration of the Islamic Law Enactment. Hence, when there is loophole in the law, the use of fatwa is important to make certain the rules and practices of Waqf in their states.

Table 1: Summary of Provisions on Waqf in various states and jurisdiction

Country	Law	Provision for Waqf Muaqqat	Provision for Waqf must be Muabbad or Perpetual	Duration	Types of Waqf which can be Muaqqat	Types of Waqf must be Muabbad
Egypt	Egyptian Law No. 48 of 1946	Art 5	Yes	2 generations	Waqf Am and Waqf Khas can be perpetual or muaqqat	Waqf of Mosque
Kuwait	Qanun al Waqf, 1951; Manual Wakaf 2014	Yes Art. 19 Qanun Waqf 1951	Yes: Waqf Khairy/Am can be Muabbad or Muaqqat	Waqf Khairy: 10-60 years Waqf Ahli: 10-60 years or	Waqf Khairy, Waqf Ahli, Waqf Mushtarak	i. Waqf of Mosque ii. cemetery iii. waqf in which waqif has died and there is no

			Waqf Ahli-only muaqqat	2 generation but not less than 1 generation Waqf Mushtarak: Minimum 5 years		provision for the revocation (ar ruju': mawquf to be returned to him iv. Waqf which has been adjudged as permanent by the court
Indonesia	Law 41/2004 Government of Republic Indonesia (Wakaf) No 42, 2006	Art.1 Chap. 1, waqf can be muabbad or muaqqat	Yes, duration must be mentioned in sighth waqf	No	Movable properties can be muabbad and muaqqat	Immovable properties must be muabbad except for the use or right of properties built on land can be muaqqat
India	Waqf Act 1954 Model Waqf Act 2006 Waqf Reform Act 2013	S 2 of Model Waqf Act 2006 - waqf as permanent dedication of property	Yes	no	silent	silent
Selangor	Selangor Waqf Enactment 2015	Silent. The definition of Waqf does not mention perpetuality.	Silent	No	no	no
Johor	Wakaf Rules 1983	Yes	S 17	S 17	other than mosques can be Waqf Muabbad and Muaqqat. Waqf family must be	Waqf for mosque must be Muaabbad Waqf Khairy other than mosque can be muabbad

					Waqf muaqqat	or muaqqat.
Terengganu	Waqf Enactment (Terengganu) 2016	Yes S 18	Silent	No	general	general

10. Comparative analysis findings between jurisdictions – While Indonesia is a Shafie school country that practises and upholds almost a similar basis of fiqh or Hukum on Waqf with Malaysia, the country has opted for a more flexible hukum relating to *Waqf Muaqqat*. Applying the *ijtihad* and *ijma'*, *Waqf Muaqqat* is made permissible and has become part of their laws with clear provisions on the duration and types of Waqf. Indonesia also has made a dynamic and moving forward initiative by introducing the Waqf Core Principle (WCP) and adopting the Waqf Manual introduced by AAOIFI in which there are several provisions on *Waqf Muaqqat*.

A reference to a more experienced country applying *Waqf Muaqqat* such as Egypt and Kuwait, *Waqf Muaqqat* has been applied with a clear determination of the period involving Waqf Am and Waqf Khas especially on family Waqf. Nonetheless, Egypt has stopped the permission to create Family Waqf since 1952. The existing family Waqf has been restricted to 2 generations after which the property will become Waqf Am or back to the waqif or next of kin of the Waqif.

CONCLUSION AND RECOMMENDATION

From the foregoing discussions, it can be concluded that *waqf muaqqat* is valid and relevant in the context of Malaysia though the majority of the Shafie school does not permit *waqf muaqqat*. It is mooted in this paper that the basis for the adoption of the minority view of the Shafie school and the main view of the Maliki school is *maslahah*. Upholding the *maslahah* and prioritising the rights and needs of the *ummah* based on *maqasid al shariah* are vital. Attaining the *maslahah* or public good is among the main objectives of Shariah in protecting property or religion of Islam. So long as the view does not contradict to any principles of Islamic law, hence, it should be permitted. Hence, the application of *Waqf Muaqqat* may be legalised through fatwa or adoption of the minority view of the Shafie jurist on the basis of *Maslahah*.

The view and approach of the contemporary society on the concept of *mal*, the concept of *mawquf* for *waqf* which has moved from tangible to intangible, immovable to also include movable and the recognition of *manfaah* or usufruct as the *mawquf* must be welcomed and promoted. Wealth is measured not only on how big is the size of land or

building but also the value of shares or intellectual properties, thus, the temporary nature of an asset should also be considered as valuable for *waqf* so long as the beneficiaries can enjoy the benefit.

Permanency of asset may be achieved by having repeated benefits for the society, hence, having multiple benefits from *Waqf Muaqqat* will certainly serve the same purpose. It is recommended that all states in Malaysia should have (at least) a clear provision on *Waqf Muaqqat* in their Waqf Enactments. Alternatively, if there is no Waqf Enactment, hence, a fatwa on that matter is necessary. Ratification of the Waqf Core Principles (WCP) is a moving forward effort to be initiated by the Government authority such as JAWHAR. The document has incorporated the provisions for *Waqf Muaqqat*.

Specific Recommendation includes:

- b. A need for a clear fatwa on *Waqf Muaqqat* or temporary Waqf.
- c. A need for incorporation of a clear provision for *Waqf Muaqqat* in the Enactment or Rules on the execution of cash Waqf. The rules should provide for the duration, the terms of entry and exit of the contract, the remedies for breach, the perpetuity of Waqf in the case of death of parties, the power of the Mutawalli to make decision and the means and authority to resolve dispute if parties does not choose court as the means of resolving their disputes.
- d. A standard form of agreement may be devised in order to minimise problems of regulating, interpreting and enforcement of the waqf practices and products;
- e. The application of temporary Waqf shall not be only for the application to religious waqf such as mosque, cemeteries. It has to be extended to all types of family including family waqf, waqf for movable and immovable assets.
- f. The SIRC should facilitate the creation of *Waqf muaqqat* by providing a Manual for reference.
- g. Specific duration may be determined by the SIRC in order to minimise variation in the implementation thus reduce the possible disputes or problems.
- h. A special Waqf Board has to be established at the SIRC level to oversee the implementation of Waqf especially *Waqf muaqqat*. The members must consist of experts from various field including lawyers, shariah experts, economists, accountants etc.
- i. A standard form of contract (*waqfiyyah*) should be devised.
- j. Ratification of WCP by Malaysia is necessary and timely towards promoting a standardization of Waqf practices and rules.

OUTPUT OF RESEARCH

1. Chapter in Book
 - i. Nor Asiah Mohamad, Amer Hazim Haron (2021) Perpetuity of Waqf in *Past Present and Future*, Nor Asiah et. Al (eds), Series: Waqf past, present and future. International Islamic University Malaysia, Global Waqf Conference, Kuala Lumpur, Malaysia, pp. 61-75 . ISBN 978-967-2641-80-3
 - ii. Isa, Abdul Razak Sarumi & Nor Asiah Mohamad (2021), Understanding the Legality of Waqf Muaqqat: A Shariah Perspective in *Past Present and Future*, Nor Asiah et. Al (eds), Series: Waqf past, present and future. International Islamic University Malaysia, Global Waqf Conference, Kuala Lumpur, Malaysia, pp. 76-82. ISBN 978-967-2641-80-3
2. Publication in A Peer Reviewed Journal and Refereed E-Journal
 - i. Nor Asiah Mohamad, Muhammad Laeba, Omar Hamdan (2021). From “protection” and “preservation” to “development” and “right”: Anew approach of objective of shariah via waqf muaqqat. *Journal of Contemporary Business and Islamic Finance*, 1 (1). , 0 pp. 1-10
 - ii. Hesham Mahmoudi, Muhammad Laeba & Nor Asiah Mohamad (2021) The Temporary Waqf And Its Role In Facing Economic Crises. Vol 24, No 2 , pp 51, <http://al-qanatir.com>

FUTURE PLAN OF THE RESEARCH

1. A study using Quantitative survey on the application of Waqf Muaqqat involving all states in Malaysia
2. Case study on Waqf Muaqqat which have been practiced locally and internationally in order to show the mathematical proof that the more Waqf Muaqqat the more perpetuality of Waqf may be achieved.

Limitation of This Study and Justification

In the first phase of research, the authors plan to conduct interview with Majlis or the State Islamic Religious Council or their delegated authorities. Emails sent was not responded. In one meeting between the Local Auhtority and SIRC, the principal researcher had an opportunity to ask one CEO on having a new product such as Waqf Muaqqat. Not to our surprise, the response was, they work within the provisions of their laws. A message is clear, awareness is far on the way. The openness and willingness of

the SIRC is actually, the first step of the 1000 miles of journey, even for Waqf Muaqqat. The next step should be to approach SIRC which has the readymade law allowing Waqf Muaqqat. Questions as to What and How are still a challenge.

The appointed Research Assistant has requested for postponement for all works as he has to go back working due to the prolonged pandemic. Until now, he has yet to come with any research outputs. As such, the researchers have continued on their own and rely more on doctrinal analysis. Although, the qualitative research verified with interviews are the best mode, it is submitted here the study is adequate to lay down a functional policy for the implementation of Waqf Muaqqat in Malaysia.

The amount of Fund provided for this research has been utilised for the translation of some of the Arabic materials. It has been justified by having 4 research outputs.

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