

## Development of Educational Waqf: A Case Study of Palestine

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### Abstract:

*There has been a revival of interest in utilizing Waqf or Islamic endowment structures by organizations across various jurisdictions as a mean to obtain long-term financing. Awaqf institutions have historically been instrumental in providing various public services such as education, health and municipal services among others, leading to major economic and social contributions. The wrong perception among Muslims that Waqf assets have to be real properties such as lands, buildings, prevented many to participate in Waqf endowments. The Islamic financial engineering aims at utilizing and packaging cash Waqf as an instrument to develop new developmental products that are shari'ah compliant and at the same time market competitive. This paper aims at examining and comparing various cash Waqf models as proposed by many Muslim scholars. As well, we investigated the potential of introducing cash Waqf as a mechanism of fostering high education and providing sustainable education Waqf through exploring the different structures of cash Waqf. In 2001, the Palestine Ministry of High Education established "Students' Loan Fund" to offer Qard Hassan to students. The Fund's source of capital is through grants from a number of insinuations. The methodology of this paper is a qualitative research through document analysis pertaining to cash Waqf models. This paper hinds that the appropriate model that fits the Palestine is the Cash Waqf Financial Institution Model.*

**Keywords:** Waqf, Cash Waqf, Waqf Shares Model, Corporate Cash Waqf Model, Deposit Product Model.

## 1. INTRODUCTION

There has been a revival of interest in utilizing Waqf or Islamic endowment structures by organizations across various jurisdictions. The institution of Waqf is a perpetual charity in the Islamic system (Nurrachmi, 2012). Awqaf institutions have historically been instrumental in providing various public services such as education, health and municipal services among others, leading to major economic and social contributions in the various territories of their establishment. At the same time, the Islamic financial institutions have an increasing role to be in Awqaf organizations and assets. Awqaf organizations have utilized Islamic modes of finance to obtain financing through, for example, Sukuk issuance.

Waqf (or habs), the plural is Awqaf; is an Arabic word, which means preventing something from movement. Literally the word means cessation or detention. In Shari'ah it refers to the act of making a property invulnerable to any disposition that leads to transfer of ownership, and donating the usufruct of that property to beneficiaries. The Waqf property can neither be sold, nor inherited, nor donated to anyone. After declared as Waqf, these properties are owned by Allah and not the donor. The beneficiaries can benefit from the proceeds of the dedicated property (Yusuff Jelili, 2016)

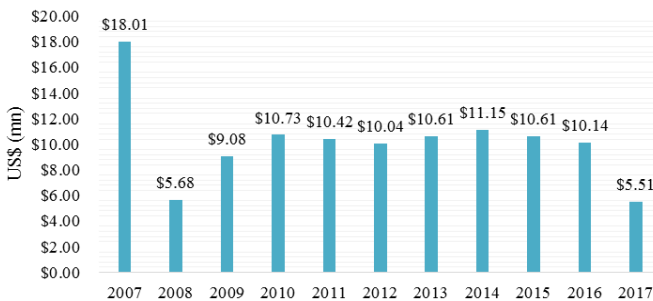
Awqaf is a legal and religious institution where a person dedicates some of his properties for a religious or charitable purpose. Historically, *Waqf* for religious purposes is the largest recipient for Waqf assets, whereas education comes the second largest recipient, which led to many positive outcomes, such as free education (Farhah binti Saifuddin, 2014).

Awqaf can be utilized for any productive purposes in the society as long as they comply with the principles of Shari'ah. Awqaf may be structured on real underlying assets which have productive use (for e.g. office complexes, residential buildings) or may be structured as a Cash-Waqf where financial assets are utilized to generate returns (e.g. investments in Islamic securities, Sukuk) and achieve the Waqf's purposes. Therefore, Awqaf institutions can pursue

achieve four main economic and social objective as follows(Shahedur, Chowdhury, Ghazali, & Ibrahim, 2011):

1. Generating growth
2. Income stream in perpetuity
3. Social redistributive attributes
4. Provision of public services

The latest statistics show that 96.3% of the population of Palestine is literate. Literacy Rate of Persons (15 Years and Over) in Palestine by Age Groups and Sex, 1995, 1997, 2000-2013'(UNDP, 2015). Loan fund for Undergraduates in Palestine has been established in 2001 by the Ministry of Higher Education to offer benevolent loans to undergraduate students who are in need. The sources of financing of the fund is based on donations are received from the numerous international and regional organizations. These donations are characterized by high volatility, which lead to instability of the amount of loans extended as Chart 1 presents.



**Figure 1: Value of Extended Loans by Loan Fund for Undergraduates in Palestine (2007-2017)**

In this paper we aim to investigate the potential of introducing Waqf Sukuk as a mechanism of fostering high education and providing sustainable education Waqf through:

- Exploring the different structures of cash Waqf
- Review the different legal and institutional frameworks available

### **Research Problem**

The main research problem of this paper is whether the cash Waqf financial institution (CWM) can be implemented in Palestine to offer education services?

### **Research Questions**

This paper aims to tackle the research problem through answering a set of research questions:

- 1) What is the institutional framework of cash Waqf organization in Palestine?
- 2) What is the legal status of cash Waqf organization in Palestine?
- 3) What are the proposed model of educational cash Waqf model that can be implemented by Palestinian higher education organizations?

The paper is organized as follows. Section 2 discusses the nature of Waqf in general and highlights the cash Waqf as one type of Waqf. The various models of cash Waqf are discussed. Section 3 argues that that the Cash Waqf Financial Institution Model is the best model for the Palestinian education organizations. Section 4 concludes the paper.

## **2. LITERATURE REVIEW**

### **2.1. WAQF**

Waqf is defined as a confinement of a property (immovable or movable) from the ownership and the dedication of its usufruct to charitable purposes. Islam has encourage the giving of sadaqat that maintain the generation of benefits to its recipients. Waqf is created through the transfer of an asset that have feature of perpetuity on a permanent basis. Therefore, Waqf is a binding commitment. The legality of Waqf has been emphasized by Quran, the Sunnah (Prophetic traditions) and Ijma'a (consensus of Muslim jurists).

As any contract in Islamic finance, Waqf has basic elements which are:

### **1) Waqif (Donor)**

The donor (waqif) can be a natural or legal person. The donor (waqif) must be legally eligible to dispose of their property. Waqf is the decision of a person whose legal competence is restricted because insanity is invalid, except when they declare their property as Waqf for themselves as long as they are alive. The validity of the Waqf decision of a person whose legal competence is restricted because of indebtedness depends on the position of their creditors. When the creditors refrain from confirming the Waqf of the indebted person, the Waqf becomes invalid (CIZAKCA, 1993a).

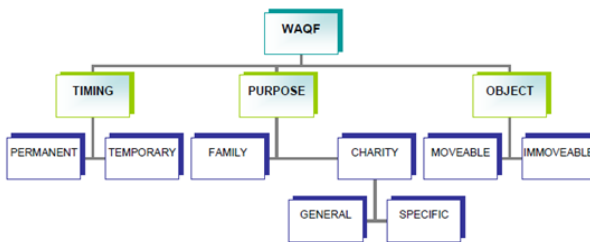
### **2) Beneficiary of the Waqf**

The Waqf should be made only for Shari'ah compliant purposes. As well, the Waqf can also be made for the benefit of the rich. It is not necessary that the Waqf beneficiary should be present at the time of declaring the Waqf. In case where the beneficiary of the Waqf is no longer existent, the benefits of the Waqf should go to charity.

### **3) Form of the Waqf:**

The form of Waqf includes **only 'offer'** and it does not necessitate 'acceptance'. If someone offers a property as Waqf, it is accepted even if a legally competent beneficiary rejects the Waqf that has been earmarked for them. In case of rejection by the beneficiary, the Waqf shall still remain valid and the share of the rejecting beneficiary should go to charitable purposes. Awaqf can be formed verbally, in writing, or in any form of disposition which is normally considered as indicating it. A Waqf can be declared as effective starting from a future date, as when the donor declares their property to become Waqf starting from the following year. In principle, Waqf should be eternal. Nevertheless, temporary Waqf is also permissible when the donor desires to get back their property after a specific period.

Waqf can be made for a number of purposes including: religious purpose such as establishing a mosque, or social purposes such as establishing school, digging of river/canal. Literature has classified Waqf into a number of different categories based on three main dimensions: Timing, purpose and object of the Waqf (Farhah binti Saifuddin, 2014)



**Figure 2: Categories of Waqf in Islamic Jurisprudence**

Muslim jurists have agreed on three features of Waqf (Ibrahim & Ibrahim, 2014):

- **Irrevocability:** Waqf cannot revoke the dedication if the property has already been declared as Waqf. Accordingly, the Waqf property will continue to benefit the beneficiaries and at the same time the founder will continue to get rewards from Allah even after death. However, Imam Abu Hanifah is of the opinion that the founder of the Waqf has the right to return the Waqf property to their ownership and can also sell it (i.e. the Waqf property is revocable by its Waqf,).
- **Perpetuity:** The majority of Muslim jurists believe that the Waqf must be perpetual once it is created. This is to ensure that no confiscation of Waqf property will take place either by the government or by individuals and those regular and continual areas such as mosques, hospitals, orphanages, schools, etc., of the Muslim society will stay there forever.
- **Inalienability:** The property of Waqf is transferred to Allah, although the usufruct derived from it can benefit man. All Muslim jurists agree that no one can ever become the owner to alienate it and that Waqf property is thus in nature, like a 'frozen asset'. It cannot be the subject of any sale, disposition, mortgage, gift, inheritance, or any alienation whatsoever.

## 2.2. Cash Waqf

In Cash Waqf, al-waqif (donor) endowed cash instead of real estate. The first time that cash Waqf have been approved by Islamic scholars was in the eighth century, when Imam Zufar had approved Cash Waqf. According to him, Cash Waqf would be invested through Mudarabah and profits would be spent for charity. Although there

was controversy on the legality of Cash Waqf among the Shariah scholars but thousands of Cash Waqf continued to be endowed. In particular, Cash Waqf was supported by the Ottoman Sultans, because funds were financed in the expansion of Islam in Europe (CIZAKCA, 1993b).

Contemporary Fatwa authorities at the international level including International Islamic Fiqh Academy under the Organization of Islamic Corporation (OIC) and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has allowed cash Waqf as follows: "Waqf is permissible in money. The income generated from utilization of the money is to be spent, while retaining the principal amount(Ahmed, 2007). The utilization may include, for instance, Shari'ah based lending as well as permissible and safe investments like Mudarabah where the profit share owned by the Waqf goes to beneficiaries". The Fatwa Committee of the National Council for the Religion of Islam of Malaysia has also confirmed the legality of Cash Waqf as follows: "In Islam, performing Waqf in the form of cash is allowed" (CIZAKCA, 1993a).

In brief Waqf is transferring personal properties into public properties. Sadeq (2002) mentioned in his paper that Waqf asset cannot be disposed, its ownership cannot be transferred, only its benefits are to be used for the specific purpose(s), which is (are) mainly charitable in nature, and It is a voluntary charity characterized by perpetuity(Man & Salihu, 2011).

There are two types of Waqf, namely land Waqf and cash Waqf. Land Waqf is already well known in the society however cash Waqf is not so familiar. Cash Waqf is also utilized to fund project which beneficial for the society. The endowed cash used to be invested or loaned out to earn income, and target projects were financed by earned income(Nurrachmi, 2012). The cash Waqf is a form of certificates with different denominations to raise money against the planned projects. The issued certificate will be bought by a number of individuals or institution to finance the planned projects. Separate cash Waqf will be raised for each individual Waqf activity. Prior proceed with the process of cash Waqf, previous paper examined that the history of cash Waqf started during the period of eight-century until the fifteenth. In the Islamic world, there was a huge gap of knowledge concerning the history of this type of Waqf. (CIZAKCA, 1993a)stated in his paper that during Ottoman economy, Cash Waqf

played important role. Further, during that time cash Waqf has a function as a capital distribution for the borrowers who were mostly come small consumers(CIZAKCA, 1993b).

The awareness of people, government regulatory framework and the management of Waqf institutions are primary indicators of the allocation of cash Waqf remains an obstacle of Waqf development in Indonesia (Al-Salahat, 2005). According to Siswantoro & Dewi (2002) the main constraint to raise a cash Waqf is its unpopularity of cash Waqf among Muslims in Indonesia. There are at least two reasons why the Waqf institution in Indonesia has not been effective. First, the government does not perceive that Waqf fund can be potential source of income to support high economy growth. Second, most Indonesian people still assume that Waqf is only limited in the form of fixed assets such as land and building, without knowing that actually there is cash Waqf that is based on cash certification, as other variety of Waqf (Siswantoro & Dewi, 2002).

The cash Waqf is a special type of endowment which differed from the ordinary real estate Waqf in that its original capital, asl al-mal or corpus, consisted purely or partially, of cash (CIZAKCA, 1993b).

Many Muslim countries has been practiced the current application of cash Waqf including Malaysia (Mohsin, 2009). Among the current application of cash Waqf was the application of Waqf shares model, Waqf takaful model, direct cash Waqf model, mobile cash Waqf model, corporate cash Waqf model, deposit cash Waqf model, co-operative cash Waqf model and Waqf mutual fund model (Mohsin, 2009).

According to Ismail (2009) cash Waqf carries several advantages which give great benefit to all parties, including the financial institutions, investor and societies (Alias, Johari, & Sabri, 2013). Typically, Waqf usually focused on the land or building, but not many people or the donors have the asset to do Waqf and therefore, cash Waqf has come as a great alternative for individual who do not have a movable asset but rather have immovable assets i.e cash for donating. Thus, everyone can do a charity in form of cash Waqf as long as they want to do it voluntary only for the sake of Allah s.w.t blessing (Sahari & Aziz, 2013). Antonio Shafii (2002) further explains that cash Waqf is easy and does not require a lot of wealth, and is therefore suitable for the poor (Khademolhoseini, 2012). Consequently



everybody can contribute to cash Waqf. In addition, Waqf through cash money could generate more funds, which could be used to develop assets such as undeveloped Waqf land and other abandoned land for business and agricultural purposes(Duasa, 2016).

It has been said that cash Waqf has a big potential that could be used as a financial tools for a development of Muslim countries. In fact, the historical factor have proof that cash Waqf has contributed a lot to the development of Muslim societies. The cash Waqf system has provided throughout the Islamic history all the essential services at no cost to the state, historical indicate that the real exiting potential lies in the cash Waqf (CIZAKCA, 1995). Research has revealed that in the Ottoman economy, more than a quarter of the cash Waqf established in the city of Bursa survived for more than a century and 81% of these surviving Waqf owed their resilience to capital enhancement realized either by reinvestment of profit or receiving further donations from various other smaller cash Waqf (CIZAKCA, 1993a)

### **2.3. Cash Waqf Models**

A number of cash Waqf models have been practices by the Muslim countries. These models can be grouped under the following(Hassan, Abdul-Rahman, & Yazid, 2018):

- 1) Waqf Shares Model (WSM)
- 2) Corporate Cash Waqf Model (CCWM)
- 3) Deposit Product Model (DPM)
- 4) Cooperative Model (COM)
- 5) Waqf Mutual Fund Model (WMFM)
- 6) Wakalah with Waqf Model (WWM)

#### **2.3.1. Waqf Shares Model (Public Waqf )**

Under this model, the shareholders (Waqif) buy buy Waqf shares (cash Waqif certificates) from a specified Waqf institutions. In return, the Waqif endow the shares to the religious institution which acts as the Waqf Mutawali (manager). The revenues generated from the use of the endowed funds are used for charitable purposes.

#### **2.3.2. Waqf Taqkaful Model**

According to this model, the Waqif makes periodic monthly cash contribution to the plan. The contribution is divided between two

accounts: Participants account (PA) and Participants special account. The profit that are accumulated from investing the amounts allocated to the participants account will be paid to the beneficiaries specified in the Waqf declaration form upon the death of the waqif or the maturity of the plan.

### **2.3.3. Deposit Product Model (DPM)**

The Waqif deposits a stated sum of money into a cash Waqf based account. The bank manages the account on behalf of the waqif based on a mudarab contract. The resulting profits will be used for charitable purposes specified by the Waqif.

### **2.3.4. Cooperative Model (COM)**

This model represent a hybrid model of Waqf concept and Ta'wan concept. This model has been introduced in 1992 to provide the basic needs of each district. Under this model, citizens of each district endow cash to a cash Waqf fund in their district. The District Cash Waqf institution (mutawali) manages the funds and the generated profits are used to finance development project in the district(Tutuko, Hudaifah, & Zulfakar, 2017).

### **2.3.5. Waqf Mutual Fund Model (WMFM)**

According to this model the investors (Waqif) buys shares in mutual funds that specify that the specific percentage of the annual return to be directed to charity projects. The mutual fund is to invest the contributed capital in a portfolio of low risk financial securities (fixed income).

### **2.3.6. Wakalah with Waqf Model (WWM)**

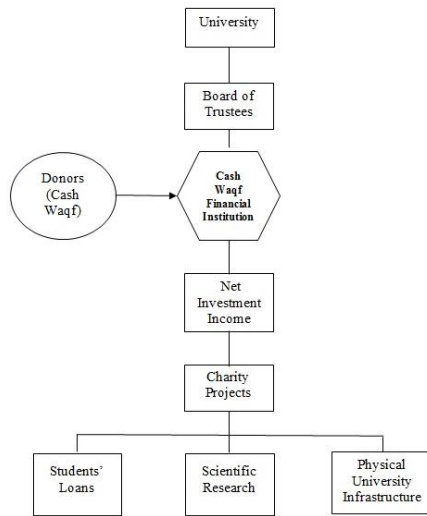
The Shareholders would initially make a donation to establish the Waqf fund. The donation can be of any reasonable amount (Shariah scholars may specify such an amount). After the creation of the Waqf fund the Shareholders would lose their ownership rights on the Waqf fund and would become the property of the Waqf fund. However, they will have the right to administer and develop rules and regulations of the fund(Azri Ahmad, 2012). The original donation of the Waqf fund needs to be invested in a very safe Shariah compliant investment and its returns would be used for the benefit of the participants. The idea being that the Waqf fund should remain intact with high likelihood.

Company would take this donation on behalf of the Waqf fund as administrator of the fund and deposit this in the fund. The donations received from the participants, seeking Takaful protection, would also be a part of this fund and the combined amount will be used for investment and the profits earned would again be deposited into the same fund. As per Waqf principles, a member (donor) can also benefit from the Waqf fund(Shahedur et al., 2011).

### **3. PROPOSED MODEL TO EDUCATIONAL CASH WAQF IN PALESTINE**

Based on the analysis of the institutional framework in Palestine, we recommend the Cash Waqf financial institution framework. Under this model an independent institution is assigned the responsibility to management the cash Waqf operations. This Waqf Administration Body (WAB) is a special purpose entity (SPE) that will be incorporated as non-for profit entity(Mannan, 2000). Its main function is to issue certificates to the donor in different denomination - small, medium and high. Lastly, the certificate will be offer to individual, institution and company to raise fund. At the same time, its main duty is to manage the accumulated cash Waqf through development of an investment management institution. The institution is to invest the accumulated contributions in Shari'ah compliant investment vehicles generate continuous and regular income that enables it to perform its educational development activities, which include:

- A. Students' loans: The investment income generated from investing capital will partially will be used to grant students' loans to undergraduate as well as graduate students.
- B. Scientific research: Part of the investment income will be allocate to the scientific research in different areas. As well, this part includes participation in the equity seed capital for the projects that are established by students.
- C. New Infrastructure: The income proceeds will be used to develop the physical infrastructure of a university, such as establishing new campuses, new Labs, and new other facilities. This model is illustrated as follows:



**Exhibit 3: Proposed Cash Waqf Financial Institution Model**

This model is most appropriate for the development of educational Waqf that serves multiple purposes such as granting students' loans, supporting the scientific research projects, and the development of the infrastructure of the university. The success of this cash Waqf scheme depends on two major factors (Che Zuina Ismail, 2014):

- 1) **Stakeholders Management:** The Waqf fund needs to develop very transparent policies and procedures in dealing with all its stakeholders with a particular emphasis on the founders (Al Waqif). The proposer's governance mechanisms include a well-established and diversified board of trustees. The stakeholder's management guarantees the continuous flow of funds to the Waqf that increases the funds under management by the Waqf operations.
- 2) **Investment Management:** a major success factor of the fund is the establishment of a well-balanced investment strategy that generates investment income and at the same time produces capital appreciation. Therefore, a professional money management is essential for the continual growth of the Waqf assets (Yusuff Jelili, 2016). Efficient Management From the stakeholders perceived how they look the efficiency of the Waqf institution because it also influences the donor or waqif to donate (Beatty, 2007; Frumkin & Kim, 2001).

#### 4. CONCLUSION

Palestinian higher Education Organizations can benefit from Waqf organization to develop its infrastructure and its operations. Cash Waqf offers a new scheme of Waqf through which these institutions can raise flexible funds to use it in building an income producing investment portfolio. A number of cash Waqf scheme have been proposed. However, we found that the most appropriate model that fits that the nature of the Palestinian institutional framework is the Cash Waqf financial institution scheme. This model offers the flexibility needed to decide on the investment opportunities and at the same time guarantees the good governance practices through the existence of the special purpose vehicle.

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