

THE POSSIBILITY OF DEVELOPING WAQF-BASED CHILDCARE CENTERS: A LITERATURE REVIEW

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Abstract: *Studies on the factors that determine women's participation in the labor market have been conducted centuries ago. Among the factors that are also discussed are child related factors; number of children, age of children, child health and child care costs. Some studies have also shown that rising living costs, including high childcare costs, have resulted in many women leaving the labor market. Losing women on the labor market will have an impact on the country to lose its human capital and the wealth of the country. Accordingly, in many developed and developing country include Malaysia, the government provide financial assistance such as subsidies, tax deductions and financial assistance to help the households with children. However, limited government resources, and more focused on economic growth in the region, restrict the assistance it can provide to households. To those in need, therefore, there are many private and charitable sources of funding that exist. For Muslims, there are numerous philanthropic organizations that regularly collect various charity funds in different forms, such as Zakat, Waqf, Sadaqah, and Hibah. Specifically in Waqf, the use of the Waqf fund has been found to be of great help to peoples in many aspects. Therefore, this study will focus on the possibility of Islamic law to implement Waqf in childcare. This study's input is gathered through the outcome and finding of previous studies, besides the Quran and the Hadith as the main guidance. The conclusion that can be drawn from this research is; Waqf for childcare is possible and can be accomplished through Waqf asset integration.*

Keywords: *Waqf, Childcare, labor force, cash Waqf, Tawriq*

Introduction

Islam encourages Muslims to take care of their brothers and sisters by sharing and distributing their wealth to the different levels of the community. There are a few types of mechanisms that can be used to achieve this purpose. Nowadays, Islamic philanthropic institutions are known for the activities of collecting, managing and distributing either *Zakat, Waqf, Sadaqah, Hibah* and other types of Islamic charity funds. These funds are entrusted to these institutions as part of *amal jariah* (good deeds) as encouraged by Islam itself (Nurul Aini, Nathasa Mazna, Syadiyah, & Muhamad Iqmal Hisham, 2016).

All Muslims are brothers and have been described as a supportive building to one another. The disclosure of the fraternity was not only in the form of energy or time aid, but Islam also taught Muslims to help and assist others with financial and material contributions. Financial and material aid are not for the sake of human reward, but it is for the sake of Allah. Apart from Zakat, Hibah and Sadaqah, Muslims are also encouraged to share their wealth with others through the implementation of Waqf (Ainul Kauthar, Arieff Salleh, & Azman, 2014).

Since the breadwinner is a husband, the responsibility of managing the childcare matter is usually taken by the mother. The rise in childcare costs has in many cases indicated that it is not feasible for both partners to work in the labour market. Mothers can go to work depending on their ability to manage their children's care. If they are able to find a kind-hearted babysitter or a place where they feel comfortable and safe, then the mother is comfortable going to work. For single mothers, the need to work is high so that they can earn money to meet their living needs. However, the increasing of childcare cost has been reported as a factor that impedes women from participating in labour market (Mohd Amin, P.Rameli, Othman, Ab Hasaan, & Ibrahim, 2017). In addition, the poverty faced by some women especially widows can also be further exacerbated by issues such as illiteracy and lack of education or training. With low level of income will renders them incapable of supporting themselves or their families (Amuda, Razak, & Ahmed, 2016).

Furthermore, factors such as lack of ownership of land or other collateral, poor women are unlikely to qualify to obtain credit. These circumstances prevent women from being able to work their way out of poverty (Amuda, 2013). It has been reported that the poverty of widows' is often directly related to a lack of access to economic resources, including credit, land ownership, and inheritance, a lack of access to education and support services, and their marginalization and exclusion from the decision-making process (Amuda, 2013).

As one of important Islamic finance institution Waqf has been exists since the early Islam. Waqf is the catalyst institution to the economy and ummah development. These institutions also carry out the success of social warranty system in Malaysia besides others institution like Zakat and Sadaqah. Basically, Waqf not only as *ibadah* (worship) to Allah SWT, but it also has a wide meaning and overwhelm as an agent to the growth of all Muslims.

Types of Waqf

Waqf is a mechanism for sharing one's wealth with others to obtain a blessing in life. In Islam, Waqf is stated as a voluntary act and it is highly recommended in Islam. However, Waqf can even be compulsory to do when it is becomes the will of the deceased. Equitable distribution of property to serve the interests of various parties is crucial to ensuring the stability and development of the economy and the country (Ainul Kauthar et al., 2014).

Giving charity out of our wealth does not decrease our wealth but instead Allah (SWT) increases it. Allah SWT says:

“Allah will deprive usury of all blessing, but will give increase for deeds of charity: for He loves not creatures ungrateful and sinner”. (Qur'an, 2: 276).

“The example of those who spend their wealth in the way of Allah is like a seed [of grain] which grows seven spikes; in each spike is a hundred grains. And Allah multiplies [His reward] for whom He wills. And Allah is all-Encompassing and Knowing” (Qur’an, 2: 261)

Infaq fi sabilillah in this verse means to give wealth in all forms of obedience to Allah. Thus, Waqf falls within the scope of the above sentence (Ibn Kathir, 1999).

Ibn ‘Umar reported: ‘Umar acquired land in Khaibar. He came to the Prophet Muhammad SAW and sought his advice in regard to it. He said; “Allah’s Messenger, I have acquired a land in Khaibar. I have never acquired more valuable for me than this, so what do you command I do with it?” Thereupon the Prophet (SAW) said: “If you like, you may keep the corpus intact and give its produce as Sadaqah declaring that the property must not be sold or inherited or given away as a gift”. And ‘Umar devoted it to the poor, to the nearest of kin, to the emancipation of slaves, to wayfarers or guests, and in the way of Allah (Narrated by Muslim)

This instruction is a clear form of Waqf. Apart from the above, Prophet Muhammad SAW in another hadith again mentioned about Waqf highlighted that Waqf is a form of continuing alms. According to Prophet Muhammad SAW: “When a man dies, only three deeds will survive him: continuing alms, profitable knowledge and a child praying for him.”(Narrated by Ibn Majah).

According to Farra Munna, Bayu Taufiq, Muhammad Hakimi, & Abd. Halim (2014) Waqf traditionally could be divided to three category based on the purpose and goals of the Waqf asset allocation as below:

- i. Religious Waqf: this types of Waqf asset used for religious purposes, such as for Imam’s salary, religious education, build a mosque and or to fund mosque’s running expenses and so on. It helps community to reach their religious satisfaction needs and to reduce the cost in providing religious facilities in the future.
- ii. Philanthropic Waqf: which its’ aim is to help the poor-society segment and support all the public facilities needs such as, public utilities, health services, public library, public transportation, public land-structure, and so on.
- iii. Family Waqf: in this type of Waqf, actually, let the family have the fruits and the revenue. If only the Waqf has surplus, then it is allowed to distribute to the poor.

Waqf on Movable Properties

The earliest contemporary study on the position of movable property as the subject of wakaf was done by Suhrawardy Al-Ma'Mun in 1911. According to Syahnaz & Aznan (2017), Suhrawardy (1911) has compiled a comprehensive collection of views and debates about the position of movable property as the subject of Waqf from various scriptures in the views of the Hanafi, Maliki, Shafi'i and Hanbali. Waqf on properties such as the Quran, books, craters, weapons and vehicles is considered a controversial topic among Islamic jurists because of its characteristics that are made up of movable property (Suhrawardy, 1911).

Suhrawardy (1911) focused his study on the position of money and company shares as the subject of Waqf as a comparison of food, perfume and candles which also had movable properties characteristics. Suhrawardy (1911) also cites a fatwa of Muhammad Bakhit al-Muti‘i on early as 1908 about the needs and eligibility of Waqf for financial instruments.

According to Syahnaz & Aznan (2017), Suhrawardy (1911) also quoted fatwas from the Great Mufti of Egypt including Muhammad Bakhit al-Muti'i, Al-Azhar Mufti Mosque which was released as early as 1908. These fatwa have granted Waqf funding through financial instruments such as government securities, shares, bonds and trading company Shares that have been introduced by the European community. This opinion is also based on the common practice of the local people (*ta'amul*) in some Muslim areas such as Turkey and India

While, Muhammad 'Abdullah al-Ansari suggested that money can be converted into Waqf funds by investing it into any form of business or investment. The profit from the investment or business can be given as a charity or Waqf. At the same time, the income derived from the sale of items such as food also can be invested as the Waqf funds for charitable purposes (Wizarah al-Awqaf wa al-Shu'un al-Islamiyyah Kuwait, 1993).

Based on this, the recent studies on Waqf of movable properties mostly focused on its application in types of (i) cash Waqf and (ii) changing the fixed asset into cash or security of cash liquidity (Tawriq).

Cash Waqf

Cash Waqf has been in practice as early as the 8th century and it was well managed during Uthmani Empire. Cash Waqf is one type of backing one another in Waqf which is known as *Mu'adadah* (Alenezi & El-Omari, 2015). It is the most suitable form of donation where the pooled donations are used to build immovable assets. With such scheme, the institution of Waqf can finance public infrastructure such as roads, schools and hospitals, etc. (Ahmed, Abdul Ghafar, & Muhammad Hakimi, 2017; Fuadah et al., 2015).

According to Farhana, Asmak, & Sabitha (2014), the legality and permissibility of cash Waqf has been asserted internationally by the Islamic Fiqh Academy during the 15th summit held in Muscat, March 2004, and locally in Malaysia at the 77th National Council of Islamic Affairs' Fatwa Committee, April 2007. Cash Waqf scheme enables all levels of the community to bequeath Waqf and overcome the difficulty in individually acquiring and bequeathing fixed assets, such as land and buildings. Therefore, cash money also can be accepted as one of Waqf fund (Fuadah, Muhammad Ridhwan, Wan Abdul Fattah, Muhammad Aunurrochim, & Abdullah, 2017; Fuadah, Wan Abdul Fattah, Muhammad Aunurrochim, Abdullah, & Idris, 2017).

The implementation of Cash Waqf as one of the forms of movable property has created variations of Waqf instruments in contemporary forms such as Waqf Shares and Shares Waqf. Factors related to the validity of the subject of Waqf in modern financial instruments such as shares and bonds have been traced since the early 20th century (Ali, 1965; Wilson, 1912). It was later found to have been executed in Turkey in 1967 through the Waqf Shares companies by Vehbi Koc (Siti Mashitoh, Asmak, Azizi, Suhaili, & Nor Aini, 2009).

The evolution of Waqf subjects in the form of movable properties such as cash Waqf has also created Waqf Shares that have been widely implemented in most states of Malaysia (Naziree, 2010; Siti Mashitoh, Asmak, Azizi, Suhaili, & Nor Aini, 2009). Siti Mashitoh et al. (2009) explained that the implementation of the Waqf Shares and the Cash Waqf have played an important role in providing the source of funds for the development of the Waqf assets, as well as fostering a culture of community devotion.

Whereas Naziree (2010) suggested that the corporate sector in Malaysia put aside the material benefits aspect instead of focusing on social welfare through the Waqf. Therefore, the synergy between the corporate sector and the State Islamic Religious Council is also capable of transforming Waqf's development efforts to a more dynamic level without relying on government funds (Syahnaz & Aznan, 2017).

Diversify Waqf's Assets through Tawriq's Approach

According to Fuadah et al. (2018), the concept of al-Tawriq was introduced by Datuk Dr Mohd Daud Bakar in April 2016. Al-Tawriq is a process of converting or diluting of non-productive Waqf's assets into cash and used that revenue for the maintenance of other Waqf assets and its development. Generally, the decision of selling Waqf assets (except the Mosque) is permissible by the majority of Muslim jurist except al-Shafi'ie.

Although al-Shafi'ie does not allow the sale of Waqf assets, he gave a permission to change the function of the non-productive assets in other forms that are more productive (Al-Zuhaili, 1998).

Datuk Dr Mohd Daud Bakar has outlined six principles or *'illah* behind the permissibility of Tawriq's implementation, (Fuadah et al., 2018) namely:

- i. Waqf assets fail to function as intended
- ii. There is a problem in performing the asset function and there is a witness to its failure.
- iii. Waqf's assets has deteriorated
- iv. There is value in the non-productive Waqf assets
- v. Sales should be implemented to prevent greater harm as stolen or ruined
- vi. Unused Waqf assets will eliminate the features of Waqf properties.

The implementation of Tawriq is considered to be very important after studying the fundamental impact of Waqf. The sale of Waqf assets has a significant impact on maintaining the principle of retaining the original assets and distributing Waqf revenue (*Habsul Asal wa Sabbil al-Thamarat*). Generally, al-Tawriq can exist in two situations:

- i. Converting or selling assets to cash.
- ii. The liquidity in the form of securities, such as the instrument that drives a variety of assets including secured debt with the change of debt to credit. It is then offered to the public to minimize risks and to ensure continuous liquidity of cash flows.

Emerging Waqf with another Funds

The revival of Waqf is crucial for the country and the Ummah in order to step up to the desired status in all aspects of life Therefore, there is a suggestion that Waqf can also be developed along with other Islamic funds such as with Zakat and Sadaqah for public benefit purposes including in the education and health sectors. This view is taken into account in Western countries such as the United States and Great Britain. These countries have developed and implemented their endowments funds in various activities to the maximum level. Syed Mohd. Ghazali Wafa (2010), urged that this approach has provided the best benefits and facilities in various aspects for the well-being of the people in these countries.

Health care system in German is one of the most successful and effective systems in the world. It relies on 240 insurance providers, consist of private, non-profit, or for-profit insurers that are tightly regulated. Over 90% of Germans are covered by non-profit "sickness funds". The remaining 10% are mostly higher income individuals who opt to pay for private health

insurance. Since the insurance system heavily relies on non-profit funds, the average per-capita health care costs are less than half of the costs in the U.S. Education (DPE, 2016). The emerging between Waqf and the health and education sectors offer many advantages to the people and can leverage them (Nasr, Hasan, & Atah, 2018).

The most popular example of educational Waqf was in Al-Azhar University, Egypt. Al-Azhar continues this function successfully for centuries. Al-Azhar has provided free education for local and international students, with provision for accommodation. Waqf funds also used to cover lecturers and staff salaries and allowances. Many Malaysian students have also been given a free air ticket to return to Malaysia on completion of their studies in Al-Azhar University. Therefore, Waqf has a remarkable impact as a macro-credit support for the Egyptian Government in times of need (Siti Mashitoh & Asmak, 2015).

There are many examples of universities in other countries such as the University of Al-Qurawiyin in Morocco; the University of Al-Muntasiriyyah in Iraq; the University of Cordova in Spain; the King Abdul Aziz University in Saudi, the Islamic University of Indonesia and almost 68 Waqf universities in Turkey. The initiative of at least five universities in Malaysian is also worth mentioning here as they have established their own Waqf-based university concept in their higher education operations including welfare services and academic or professional programmes and activities. These universities are namely; the Putra University of Malaysia-UPM, the National University of Malaysia-UKM, the International Islamic University of Malaysia-IIUM, the Islamic University of Malaysia-IUM and the Albukhary International University, Malaysia-AiU (Siti Mashitoh & Asmak, 2015).

The Permissibility of Waqf for Childcare

The literature review has shown that the Waqf has high potentials in redressing socio-economic inequities and enhancing the quality of life. As one of the social security systems, Waqf help individuals collectively can ease the financial burden of a country. It plays a very important role in poverty alleviation, health services, education, orphanage centre, mosques, shelter and residences for the needy, and others as long as it is complies with Shariah (Azliza Azrah, Rose Ruziana, & Zurina, 2013).

Waqf institution in Malaysia seems to be lacking in maximum capacity and due to this situation, it causes certain constraints. The element "help" does not achieve the objective. Farra Munna et al. (2014) urged that Malaysian government must overcome this constraints, increase the Waqf awareness among citizens and also make a brand new concepts to see the Waqf institution in Malaysia thrive through around the globe.

Traditionally, the level of development of waqf in Malaysia is regarded as mere worship. However, when the Shariah advisory committee of Islamic financial institutions began to evaluate the products of Waqf application, it was found that the products with this Waqf application are able to absorb all the elements and compete. The study also rejected the superficial notion that the application of Waqf would cause economic collapse (Mohamad Zaim, Khadher, Mohd Farhan, & Muhammad Ikhlas, 2013).

Relentless efforts to introduce new concepts and refinement the concept of Waqf will open greater opportunities to Waqf institutions in Malaysia to strengthen the role of Waqf in this country. There are many forms of Waqf investment that can be undertaken and developed by

Waqf institutions with the help of financial institutions in Malaysia. These include (i) improvements to the abandoned or underdeveloped wakaf property, (ii) combining existing wakaf assets to generate the same or more revenue, (iii) lending for waffle operation requirements and costs to improve the function of the wakaf property and (iv) leasing the wakaf property (Mohamad Zaim et al., 2013).

There are certain restrictions on the creation of cash Waqf that need to be considered when examining how it can be applied in the context of providing assistance to women and also widows. Muslim jurists agree that once a cash Waqf is created, it is irrevocable, but it is permissible for the founder to benefit from its generated profit (Marzuki, 2012). In addition, once created, the cash Waqf must also be in a state of perpetuity, as there must be sustainable and continuous support from the revenue generated from the cash Waqf (Amuda, 2013). Furthermore, the cash Waqf must be inalienable, meaning that once money is created as Waqf, no one can become the owner to alienate it. These conditions and restrictions will ensure sustainable and continuous cash generation towards helping peoples not just in the present, but on a sustainable basis in the future (Mohsin, 2013).

The sale of equity shares representing usufruct or beneficial interest in the business centre can be used to generate funds that can be channelled into financing large scale long-term investment in commercial projects that create sustainable revenue for the Waqf fund. However, equity shares cannot represent ownership in Waqf assets as there cannot be transfer of ownership of the Waqf. Thus, the shares would only represent benefit/usufruct rather than ownership in assets (Amuda et al., 2016).

To ensure sustainability and perpetuity of cash Waqf funds, a certain portion of the Waqf donations can be invested in an Islamic equity investment. However, to reduce investment risks that may be detrimental to the value of the fund, the investment needs to be well diversified to maximize the return and ensure minimal exposure to risk. The investment of the Waqf fund can be diversified into several productive and promising Islamic investment instruments expected to generate positive returns (Marzuki, 2012).

Part of the business centre can also be leased out to other private business owners so that the business centre earns monthly rental income. Rental income from leasing of retail space at the business centre can be used for payment of wages of those women employed by the Waqf fund for administrative positions (Jalil & Ramli, 2011).

Returns from equity investment in Islamic shares as well as profit revenue from capital investments can be invested into the development of a business centre. Thus, the group of poor people can set up their own businesses using capital provided through the micro-financing arm of the Waqf fund. They can also be provided with business management support to fledgling businesses via the support structures set up by the Waqf institution.

Employment opportunities can also be created at the business centre by employing women for administrative, management, and service positions at the centre for everyday business and administrative activities. The business centre could also offer childcare services to enable women (includes widow) with young children the freedom to pursue business ventures and employment opportunities. At the same time, it is also creates new employment positions in the childcare centre for them (Amuda et al., 2016).

Conclusion

Once the Wakaf Fund has accumulated, then the use of Waqf funds can be allocated to those who need. The purpose of liquidating the Waqf Fund requires a strict guideline to maintain the sustainability and development of this funds. It is important, especially for a cash Waqf Fund that can be used for a variety of purposes. Therefore, this study concluded that the use of Waqf funds and assets for childcare purposes is permissible. It can be accomplished through the use of existing fix assets or movable assets. At the same time, the permissibility to change and amend non-productive Waqf assets should be utilized in many other ways including the spending on childcare based on Islamic principles. However, in order to ensure that the use of Waqf funds is not misused, there must be an institution or body that controls it. As well, it is very important to ensure that Waqf funds from the contribution of Muslim people, do not mix with unauthorized financial sources.

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