



PALGRAVE STUDIES IN  
ISLAMIC BANKING,  
FINANCE, AND ECONOMICS



# FINANCING THE DEVELOPMENT OF OLD WAQF PROPERTIES

Classical Principles and Innovative  
Practices around the World



Magda Ismail Abdel Mohsin,  
Hisham Dafterdar,  
Murat Cizakca,  
Syed Othman Alhabshi,  
Shaikh Hamzah Abdul Razak,  
Seyed Kazem Sadr,  
Thamina Anwar, and  
Mohammed Obaidullah

*Edited By*

Magda Ismail Abdel Mohsin



2/2/202  
TDM  
FOC

**Palgrave Studies in Islamic Banking,  
Finance, and Economics**

**Series Editors**

**Zamir Iqbal  
World Bank  
Potomac, USA**

**Jahangir Sultan  
Bentley University  
Boston, Massachusetts, USA**

**Mehmet Asutay  
Durham University  
Durham, United Kingdom**

The aim of this series is to explore the various disciplines and sub-disciplines of Islamic banking, finance and economics through the lens of theoretical, practical, and empirical research. Monographs and edited collections in this series will focus on key developments in the Islamic financial industry as well as relevant contributions made to moral economy, innovations in instruments, regulatory and supervisory issues, risk management, insurance, and asset management. The scope of these books will set this series apart from the competition by offering in-depth critical analyses of conceptual, institutional, operational, and instrumental aspects of this emerging field. This series is expected to attract focused theoretical studies, in-depth surveys of current practices, trends, and standards, and cutting-edge empirical research.

More information about this series at  
<http://www.springer.com/series/14618>

Magda Ismail Abdel Mohsin • Hisham Dafterdar • Murat Cizakca •  
Syed Othman Alhabshi • Shaikh Hamzah Abdul Razak •  
Seyed Kazem Sadr • Thamina Anwar • Mohammed Obaidullah

# Financing the Development of Old Waqf Properties

Classical Principles and Innovative Practices  
around the World

PUSTAKA PERDANA



1013571

palgrave  
macmillan

Magda Ismail Abdel Mohsin  
INCEIF - The Global University of  
Islami  
Kuala Lumpur, Malaysia

Seyed Kazem Sadr  
INCEIF - The Global University of  
Islami  
Kuala Lumpur, Malaysia

Hisham Dafterdar  
Manama, Bahrain

Thamina Anwar  
Auckland, Auckland, New Zealand

Murat Cizakca  
Ucuncu Nilufer Caddesi  
No. 25, Dobruca Mahallesi  
Osmangazi, Bursa,  
Turkey 16090

Mohammed Obaidullah  
Islamic Development Bank Group  
Islamic Research and Training Institute  
Jeddah, Saudi Arabia

Syed Othman Alhabshi  
Kuala Lumpur, Malaysia

Shaikh Hamzah Abdul Razak  
INCEIF - The Global University of  
Islami  
Kuala Lumpur, Malaysia

Palgrave Studies in Islamic Banking, Finance, and Economics  
ISBN 978-1-137-58127-3 ISBN 978-1-137-58128-0 (eBook)  
DOI 10.1057/978-1-137-58128-0

Library of Congress Control Number: 2016950034

© The Editor(s) (if applicable) and The Author(s) 2016

This work is subject to copyright. All rights are solely and exclusively licensed by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use. The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made.

Printed on acid-free paper

This Palgrave Macmillan imprint is published by Springer Nature  
The registered company is Springer Science+Business Media LLC New York

332.1  
MAG

## FOREWORD

With poverty still a major issue across the world, a book on redeveloping waqf properties is certainly a timely call to action considering the historical antecedence of waqf in addressing poverty and inequality. This work will go a long way to creating the much needed awareness to redevelop ancient or idle waqf properties and help in activating such redevelopment in relevant countries.

Daud Vicary Abdullah  
PCEO INCEIF  
The Global University of Islamic Finance



## PREFACE

The institution of waqf is one of the redistributive institutions that played a significant socioeconomic role throughout Islamic history, from the time of the Prophet (Pbuh) until the end of the nineteenth century. Historically speaking, the institution of waqf played a great role in financing almost all services needed in the Islamic world, such as the agricultural and the industrial sectors, the education and the health sectors, basic infrastructure and transportation facilities, besides enhancing business activities by making young entrepreneurs.

However, from the beginning of the twentieth century, this institution faced many social and political challenges that led to its destruction towards the end of the Ottoman Empire. Since then, the institution became idle and unproductive in almost all Muslim countries, which translated into a negative socioeconomic impact in Muslim societies within the past century. Due to societal challenges, such as widespread poverty, lack of education and good health care, lack of quality shelter and employment for the majority of Muslims in different Muslim societies, it has been realized that there is a need to revive the institution of waqf to be a contributory factor towards solving many of these problems. Hence, within the last three decades, we have seen an optimized approach in galvanizing its socioeconomic role through the adoption of flexible shari'ah measures as well as innovative modes in redeveloping most of the old and idle waqf properties. This optimized approach urged the researchers to study these innovative modes of finance in a bid to show how the idle waqf properties have been transformed into income-generating waqf properties while

meeting the aspiration of the founders and the beneficiaries through the different modes of financing made available.

## METHODOLOGY OF THE RESEARCH

This research uses both primary and secondary data. Primary data was collected through meetings and structured interviews, which were useful in gathering the required data for the different cases under study. The secondary data was collected from published sources, including articles, journals, reports, books and websites where necessary.

## RATIONALE FOR THE BOOK

The rationale for this research is to present the various cases successful at pursuing revolution reforms aimed at transforming the idle waqf properties in Muslim and Muslim minority countries into productive waqf properties through classical and innovative modes of finance, such as *al-Istibdal*/Substitution, *Hikr*/Long Lease Right, *Musharakah Mutanaqisah*/Diminishing Partnership, Build-Operate-Transfer (BOT), Build-Lease-Transfer (BLT), *Istisna'a*/Construction Financing, Joint Venture, *Sukuk al-Musharakah*, *Sukuk al-intifq*, direct donation and self-financing. These reforms include providing services to the community, opening jobs for the majority of people, funding small entrepreneurs, educating the masses, taking care of the health of the people as well as sheltering the poor and needy in the different countries under study.

## ORGANIZATION OF THE BOOK

Overall, the book is divided into seven chapters. The first chapter deals with the legal framework for the institution of waqf, followed by the development and administration of the institution of waqf. Chapter 3 presents the role of waqf in modern economic development, and Chap. 4 presents the current developments of waqf properties and their socioeconomic roles in 11 countries: Turkey, Malaysia, Singapore, Sudan, Indonesia, Iran, New Zealand, Kuwait, India, Pakistan and Bangladesh. This chapter is followed by the experience of the Islamic Development Bank (IDB) in developing some of the waqf properties in the different countries. Chapter 6 is devoted to presenting the modus operandi as well as the structures of classical and innovative modes of financing waqf properties. This is followed by a conclusion.

### ***Chapter 1: Legal Framework of the Institution of Waqf***

This chapter presents an overview of the institution of waqf in which definitions, classifications, key restrictions, stipulations and the classical modes of investing and financing waqf properties have been presented.

### ***Chapter 2: Development and Administration of the Institution of Waqf (Past and Present)***

This chapter presents the development of the institution of waqf from the time of the Prophet (Pbuh) until the present time. It also highlights the socioeconomic dimensions of the institution of waqf in serving Muslim societies throughout history.

### ***Chapter 3: The Role of Waqf in Modern Economic Development***

This chapter addresses a range of topics starting from a historical review of the role of waqf in Muslim society, the status of waqf today, waqf organizations and their contribution to the economy. It also focuses on issues that are relevant for the integration of waqf into the mainstream of the Islamic financial industry and addresses matters of concern to regulatory authorities and all stakeholders.

### ***Chapter 4: Current Development of Waqf Properties and Their socioeconomic Roles in Various Countries***

This chapter provides various data on the current law and administration of waqf in Turkey, Malaysia, Singapore, Sudan, Indonesia, Iran, New Zealand, Kuwait, India, Pakistan and Bangladesh. It also shows the classical and innovative modes of financing the development of waqf properties. Ninety-five cases are presented showing how using the 13 classical and innovative modes of finance managed to transform the idle and the unproductive waqf properties into income-generating properties while having impact on the socioeconomic development of these countries. Among these modes of finance are *al-istibdal*/substitutions, *hikr*/long leases, *al-istisna'a*/construction financing, *Musharakah Mutanaqisah*/Diminishing Partnerships, BOTs, BLTs, Joint Ventures, Sukuk al-Musharakah/Partnership Bonds, Musharakah/Partnerships, Internal Funds/Self-Finance/Donations, *Waqf* Shares, Corporate Waqf and *Sukuk*

*al-Musharakah*/Partnership Bonds. For the new *Waqf* Entrepreneurship mode as in the case of Turkey, we believe it is a new mode worth attention and further research.

### ***Chapter 5: Waqf Development: The Islamic Development Bank Experience***

The chapter presents several activities, projects and programs carried out by the Jeddah-based IDB Group at strengthening the global waqf sector including a range of interventions, such as: creating a model law of waqf that is forward-looking along with the provision of technical and support services aimed at creating an enabling policy, legal and regulatory environment; undertaking cutting-edge research to document and disseminate good practices; building capacities through education and training of human resources; recovering lost waqf through proper documentation and legal steps; engineering waqf as part of its developmental operations to provide microfinance; and, finally, managing a fund to raise resources for asset development using state-of-the-art financial structures. Such initiatives are expected to further intensify, as waqf is fully entrenched in IDB's long-term growth strategy.

### ***Chapter 6: Modus Operandi and Structures of the Classical and Innovative Modes of Finance***

This chapter provides the modus operandi and structures of the classical and the innovative modes of finance for easier adoption by individuals, institutions, organizations, foundations and governments in different countries, in the redevelopment of their old and unproductive waqf properties and in activating waqf socioeconomic role. This chapter is followed by Chap. 7, the conclusion.

We hope the expected outcome from this research will create awareness on the current socioeconomic role of the institution of waqf and also serve as a reference book that can guide individuals, waqf institutions or waqf organizations in the different Muslim societies in redeveloping their old waqf properties by adopting any of modes of finance provided in this study to activate their socioeconomic role, which will benefit their societies.

## SPECIAL MESSAGE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

While charitable endeavours are often championed in times of economic prosperity, justifying their funding in leaner times can become more difficult. Yet, all the same, poverty, inequality, access to education or public resources and more are all issues that continue to affect lives regardless of how the economy is running at the moment. This makes the self-sustaining nature of waqfs, operating in perpetuity, all the more important.

As institutions that can stand the test of time, waqfs present an opportunity to provide lasting and useful contributions to society and communities. Property is dedicated by its owner into becoming a waqf, whereupon all revenues from the property, most often land, should be dedicated to a cause stipulated by the founder in perpetuity. The revenue earned from waqfs may serve any great number of purposes, including scholarship funds, mosque construction, cemeteries, healthcare and development of other *waqfs*. In Muslim minority countries, such as the case of New Zealand examined in this work, waqfs also present an avenue to empower those communities and alter their socioeconomic landscape with the services they provide, enabling greater access to education and creating social webs.

Across the world, the differing experiences of trustees operating waqfs enlightens us with solutions and innovations to problems experienced elsewhere. While the terrain of these different waqfs might differ, the various case studies examined within this work provide a starting point for

our understanding; for example, the details of documentation regarding waqf founders' intentions or the different goals the waqfs pursue. The rigorous documentation and auditing of waqfs in Singapore contrasts with the situation in Indonesia where many existing plots of land dedicated to use as waqfs only retain that status via verbal contracts. There, the usage of waqfs, rather than their scarcity, is cause for concern. Recognising the charitable endeavours that have been operating around the world and waqfs that have run in all these different environments is an important step to enabling greater research on the subject. The documented experiences in this work may spark the start of greater coordination between these communities the world over and waqfs and, we hope, will continue to improve their operations and provide a means to address social needs and issues.

Though waqfs have occupied a notable segment of history within Islamic finance, a lack of development regarding their structures or practices, in many cases, has led to much of the land dedicated as waqf property falling short of achieving its optimal productivity in serving community needs. Alongside the establishment of new waqfs, we should also contemplate how existing waqfs can be improved and brought up to more self-sustaining and efficiently run levels. Often, these charitable institutions fall into disarray due to poor management or organisation. As the goal of the *waqf* to operate in perpetuity is one of the most pertinent factors in its use as a tool to combat issues like poverty, investigating methods of their finance and operation are of much interest. Thus, the innovative new ventures being explored around the world in regards to developing and redeveloping waqfs would best be examined by anyone interested in their potential. The work of the Islamic Development Bank Group to rejuvenate them, as recounted in this work, may play some part in that development.

Khazanah Nasional acknowledges the vital and pertinent work in this field being conducted by INCEIF, and it has been our duty and privilege to provide some material support.

We hope that this book may help shed more light on an institution that should be revitalised and recognised for all the good it may achieve, *insyaAllah*.

Tan Sri Dato' Azman Hj Mokhtar  
 Managing Director  
 Khazanah Nasional Berhad

## ACKNOWLEDGMENT

First and foremost, we must thank Almighty Allah, the Most Gracious and the Most Merciful, for enabling us to complete this work on time despite our busy schedules.

Second, we would like to express our profound thanks and gratitude to Khazana for granting us the funds to undergo such immense research.

Third, we wish to express our deepest gratitude to all the research students engaged in this research who suffered joyful pain while gathering the data needed, conducting the interviews and taking some of the recent photos of waqf properties from the different countries under study. In this regard, we would like to thank the students from INCEIF, students from other universities in Malaysia and students from other countries. Notable thanks goes to INCEIF's students: Ahmad Alshammari, Asharaful Mobin, Aulia Hasnan, Fasih Ahmad, Ghaith Mahaini, Hameedah Muhammad, Khazirah Hanim bt. Abdul Wahab, Mohammed Mahmoud Mantai, Mohammad Moazzem Hossain, Muhammad Jawad Vohea, Nurmariah Binti Sanusi, Sulaiman Saidu and Zainab Ahsan. Similarly, we would like to thank Amirhossein Karbalaei of the University Technology Mara (UiTM). Special thanks goes to students overseas: Dorukhan Selcuk of Marmara University, Istanbul. Hiba Saeed from the University of Khartoum, Sudan, Mahmoud Ghalib Elmaghrabi from the University of Science and Technology, Sudan (SUST) and Abd Elbadee Saeed from Sudan University of Science and Technology, Faculty of Mechanical Engineering Sudan. Last but not least, thanks also goes to all interviewees who helped in giving the data and answering our questions; without them, this work would not see the light.

For those previously mentioned, I have this to say, "*May Allah Reward Them All.*"



# CONTRIBUTORS

## Editor

*Magda Ismail Abdel Mohsin* is an associate professor of Islamic economics and finance at the International Centre for Education in Islamic Finance (INCEIF), Malaysia. She holds a doctorate in Islamic Civilization/ Islamic Economics from the Institute of Islamic Thought and Civilization (ISTAC) of the International Islamic University Malaysia (IIUM).

## Writers

*Magda Ismail Abdel Mohsin*; as above. Her contribution in this work are: chapters 1, 2, 6 and 7 the conclusion. For chapter 4 she contributed 7 cases including Singapore, Sudan, Indonesia, Kuwait, India, Pakistan and Bangladesh besides editing the whole book.

*Murat Cizakca* is an emeritus professor of comparative economic history and Islamic finance at the International Centre for Education in Islamic Finance (INCEIF), Malaysia. He holds a doctorate degree in Economics/ Economic History from the University of Pennsylvania, United States of America. Currently he teaches only on part time basis at the Luxembourg School of Finance, Luxembourg University. His contribution in this work is the case of Turkey in chapter 4.

*Kazem Sadr* teaches Islamic economics and macro-economics for Islamic finance at the International Centre for Education in Islamic Finance where he is an emeritus professor. He holds a doctorate in Agricultural Economics & Rural Sociology from the Ohio State University, United States of America. His contribution in this work is the case of Iran in chapter 4.

*Shaikh Hamzah Abdul Razak* is an Associate Professor at International Centre for Education in Islamic Finance (INCEIF) lecturing Islamic Wealth Planning and Management as well as Takaful and Actuarial Practices (Islamic Insurance). He obtained his Doctorate in Business Administration from Universiti Science Malaysia. He is the co-author, together with Datuk Alhabshi, for the case of Malaysia in chapter 4.

*Syed Othman Alhabshi* is a professor of Islamic Economics, Takaful and Econometrics at the International Centre for Education in Islamic Finance (INCEIF), Malaysia where he also doubles as the Deputy President Academic. He holds a doctorate in Econometrics from University of Birmingham, United Kingdom. He is the co-author, together with Dr. Shaikh, for the case of Malaysia in chapter 4

*Mohammed Obaidullah* is a Senior Economist and Training Specialist at the Islamic Research and Training Institute of the Islamic Development Bank (IDB) Jeddah, Saudi Arabia. He also currently holds the 2nd Yayasan Tun Ismail (YTI) Chair Professorship in Islamic Finance at the Islamic Sciences University Malaysia (USIM) at Kuala Lumpur, Malaysia. He holds a doctorate degree from India and the author of chapter 5 in this book.

*Hisham Daftardar* is a consultant-partner at Jeyad Advisory, Bahrain, an advisor with the International Islamic Institute of Waqf, Malaysia, the chairman of the Board of Trustees of Waqf Australia, the director of Waqf New Zealand and the founding director of National Waqf Foundation of Canada. He held senior positions in the Treasury and Islamic Financial Services departments of the Islamic Development Bank, Jeddah, Saudi Arabia and represented the Bank on company boards, on international committees and at conferences. He is the author of chapter 3.

*Thamina Anwar* is a doctoral student at UKZN. Her thesis is entitled 'Islamic Gift Economy: Waqf (Endowment); A Vehicle for Social Entrepreneurship in Muslim Minority Countries (A case study of Australia, New Zealand and South Africa)'. She is an INCEIF certified chartered Islamic finance professional and holds an MBA from Cranfield School of Management. Her contribution in this work is the case of New Zealand in chapter 4.

# CONTENTS

<b>1</b>	<b>Legal Framework of the Institution of Waqf</b>	<b>1</b>
<b>2</b>	<b>Development and Administration of the Institution of Waqf (Past and Present)</b>	<b>13</b>
<b>3</b>	<b>The Role of Waqf in Modern Economic Development</b>	<b>21</b>
<b>4</b>	<b>Current Development of Waqf Properties in Selected Countries and Their Socioeconomic Roles</b>	<b>37</b>
<b>5</b>	<b>Waqf Development: The Islamic Development Bank Experience</b>	<b>221</b>
<b>6</b>	<b>Modus Operandi and Structures of the Classical and the Innovative Modes of Finance</b>	<b>237</b>
<b>7</b>	<b>Conclusion</b>	<b>257</b>
	<b>Index</b>	<b>261</b>



## ABBREVIATIONS

ACO	Awqaf and Charity Organization
APIF	Awqaf Properties Investment Fund
BLT	Build-Lease-Transfer
BOT	Build-Operate-Transfer
FIANZ	Federation of Islamic Association of New Zealand
GDV	Gross Development Value
GDP	Gross Domestic Product
IDB	Islamic Development Bank
IFSD	Islamic Solidarity Fund for Development
IRTI	Islamic Research Training Institute
JAWHAR	Department of Awqaf, Zakat and Hajj
JAIS	Jabatan Agama Islam Selangor
JKR	Jabatan Kerja Raya/Public Works Department
KAPF	Kuwait=Awqaf Public Foundation
Koperasi Pulau Lumut	Lumut Island Co-operative
KUIS	Selangor Islamic University College
LL	Long Lease
LWB	Local Waqf Body
LIBOR	London Interbank Offer Rate
SPV	Special Purpose Vehicle
MAIWP	Federal Territory Islamic Religious Council
MAIDAM	Trengganu Islamic Religious and Malay Customs Council
MAIPk	Perak Islamic Religious and Malay Customs Council
MAIM	Malacca State Islamic Religious Council
MAINPP	Penang State Islamic Religious Council
MAIS	Selangor Islamic Religious Council



## LIST OF FIGURES

Fig. 6.1	<i>Al-Istibdal</i> /Substitution (Source: Abdel Mohsin)	239
Fig. 6.2	<i>Hikr</i> /Long lease right (Source: Abdel Mohsin)	240
Fig. 6.3	<i>Istisna'a</i> /Construction financing (Source: Abdel Mohsin)	241
Fig. 6.4	<i>Musharakah Mutanaqisah</i> /Diminishing partnership (Source: Abdel Mohsin)	243
Fig. 6.5	Build-Operate-Transfer BOT (Source: Abdel Mohsin)	244
Fig. 6.6	Build-Lease-Transfer (Source: Abdel Mohsin)	246
Fig. 6.7	Joint venture (Source: Abdel Mohsin)	247
Fig. 6.8	<i>Musharakah</i> /Partnership (Source: Abdel Mohsin)	248
Fig. 6.9	Internal funds/Self-finance/Donation (Source: Abdel Mohsin)	249
Fig. 6.10	Waqf share structure (Source: Abdel Mohsin)	250
Fig. 6.11	Corporate Waqf (Source: Abdel Mohsin)	252
Fig. 6.12	Takaful Waqf model (Source: Abdel Mohsin)	253
Fig. 6.13	<i>Sukuk al- Musharakah</i> /Partnership bonds (Source: Abdel Mohsin)	255



## LIST OF TABLES

Table 4.1	Statistics of Waqf Land until 2014	62
Table 4.2	Endowments managed and supervised by the Waqfs and Charity Organization (ACO), 1393/2014	124
Table 4.3	The number and use of the properties selected for reinvestment	126
Table 4.4	Annual growth rate of the ACO's alternative sources of revenues	127
Table 4.5	Commercial and non-commercial projects in Hazrat Ma' souch (AS) endowments	133
Table 5.1	Status of Waqf rejuvenation in various Balkan countries	225
Table 5.2	APIF participants and their contribution in the paid-up capital as at end 1434H (US\$ million)	229
Table 5.3	Asset composition as at 29th Dhul Hijjah, 1434H (US\$ '000)	232
Table 5.4	Financial indicators (US\$ '000)	235



# Legal Framework of the Institution of Waqf

Waqf is a financial charitable institution established by withholding immovable and movable properties to perpetually spend its revenue on fulfilling public or family needs, depending on the preferences of and conditions set by the founder. Once the property is created as waqf, it can never be given as gift, inherited or sold. It belongs to Allah (swt), and the waqf property always remains intact. Only its generated revenue is channelled to the beneficiaries. The main motivation for a founder to create waqf is clearly stated in both the *Quran* and the *Sunnah*.

As highlighted in *Surah Al-i-'Imran* (3:92), the creation of waqf is a way for founders to attain righteousness:

By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give, of a truth God knoweth it well.

As highlighted in the *hadith* reported in Sahih Muslim, the creation of waqf is one of the ways to generate continuous rewards for the founder even after his death. Abu Hurairah (ra<sup>4</sup>) reported Allah's messenger (Pbuh) as saying:

When a man dies his acts come to an end, except three things, recurring charity, or knowledge (by which people benefit), or pious offspring, who pray for him.

Therefore, in this regard, the institution of waqf is a unique and everlasting financial institution that provides endless goods and services to Muslim societies, on the one hand, and compounds reward to its founders in the Hereafter, on the other (Mohsin 2015). The main objective of this chapter is to present an overview of the institution of waqf.

## 1.1 DEFINITION OF WAQF

The terms, waqf (plural *awqaf*) and *habs* (plural *ahbas*), are *masdar* (verbal nouns in Arabic), and literally they both mean (*al-habs wa al-man*): to stop and to prevent. The word *tasbil* is also used in the same sense, (*fi sabil Allah*): devoting to the way of Allah. In English, the term waqf is translated as ‘religious endowment’, but this translation may not convey the sense of devotion and grace to which waqf is associated in Islam. Although the terms waqf, *habs* and *tasbil* carry the same meaning, different countries prefer different usage. For example, the term waqf is used in Lebanon, Israel, Jordan, Iraq and the United Arab Emirates, while the term *habs* is more commonly used in North Africa. In Turkey, the term *wakif* (plural *evkaf*) is used, and in Malaysia the term waqf is spelt as wakaf (plural *awkap*). All these terms have the same meaning, which is the holding and preservation of a certain *sadaqah jariyah*: a continuous charity with the intention of prohibiting any use or disposition of the property outside the specific purposes to which the property is dedicated and in a way that it cannot be bequeathed or sold (al-Zubidi).

There is a consensus among Muslim jurists regarding the definition of these terms. According to them, all these terms mean the confinement of the property from the owner and the dedication of its usufruct to charitable purposes. However, they disagree on the permissibility and revocability of waqf. The disagreement in opinion between Muslim jurists in this regard created an unclear interpretation in certain Muslim countries. This occurred to such an extent that contemporary Muslim jurists used it as a way to abolish the waqf, especially during the end of the nineteenth century and the beginning of the twentieth century. This position acted as a catalyst in destroying the role of the institution of waqf during that time until its recent revival of this institution. Hence, we need to shed some light on this point of disagreement since our call is for the development of all old waqf properties in the various Muslim and Muslim-minority countries.



According to the definition of waqf given by the four schools of Islamic law, the first definition given by Imam Abu Hanifah, the founder of the Hanafi school of law, is “the detention of a specific property from the ownership of the founder of the waqf, and dedicating its revenue to charitable purposes in the manner of a loan” (al-Hanafi). According to Imam Abu Hanifah, the founder has the right to return waqf property to his ownership. The owner can also sell it, i.e. the waqf is revocable (al-Sarakhsi). Moreover, his opinion regarding movable properties being dedicated as waqf is not valid (Zaidan). In consideration of these views, it means that a founder who created a waqf can reclaim and can sell it. Besides, no movable properties, such as books, weapons, horses or even money, can be created as waqf. In contrast to Abu Hanifah’s opinion, his disciple Abu Yusuf developed a system of legal doctrines that became the Hanafi definition of waqf (Al-Zuhaili). Abu Yusuf stated that waqf is only valid if it is irrevocable, i.e. cannot be reverted back to the founder, but made in perpetuity (al-Hanafi). Regarding the movable properties to be endowed as waqf, Abu Yusuf agreed that no movable property can be endowed as waqf, but weapons of war, cattle and implements of animal husbandry attached to the dedicated waqf land and books can be dedicated as waqf (ibn ‘Abidin). He based his opinion on the following *hadith* of the Prophet (Pbuh): ‘The Prophet (Pbuh) said; Khalid b. al-Walid has appropriated his horse and armor for the cause of Allah’ (al-N’isa’i). According to him, waqf of movable property is valid only if it was customary during the time of the Prophet (Pbuh) (al-Tarabulsi). In contrast to the latter view, another disciple of Abu Hanifah Imam Zufar approved all movable properties to be dedicated as waqf (al-Dhaahabi). He also included the waqf of *dirham* (pl. *darahim*) and *dinar* (pl. *dananir*), i.e. waqf *al-nuqud* (cash waqf) (ibn-‘Abidin). Moreover, Imam Zufar deduced that jewelry could also be dedicated as waqf. He based his opinion on the act of Hafsah, the wife of the Prophet (Pbuh) and the daughter of ‘Umar b. al-Khattab, who dedicated her jewelry to her relatives (abu al-Su‘ud). In addition, both Imams Muhammad and al-Sarakhsi had approved all movable properties subject to not only customary law during the Prophet’s (Pbuh) time but also customs arising in other times and countries (Cizakca 2000a, b).

For the second school of law, Imam Malik b. Anas, the founder of the Maliki School of Law, considered waqf as confinement for the cause of Allah, which agrees with the view of Abu Yusuf in terms of the irrevocability

and perpetuity of waqf. Moreover, Imam Malik also agreed on both immovable and movable properties as a subject matter of waqf even if it is cash waqf (al-Amin). With respect to the other two schools of law, both Imam al-Shafi'i and Imam Ibn Hanbal defined waqf as: 'the confinement of the property and the pledge of its usufruct in perpetuity for the cause of Allah'. They both agreed on the validity of creating both immovable and movable properties as a subject matter of waqf (Abu Zuhrah).

From the previously mentioned and considering the different views of the Muslim jurists, we realize that, in general, all four schools of law agreed upon the irrevocability and the perpetuity of the waqf once it is established. Moreover, movable properties as a subject matter of waqf is also accepted by the majority of Muslim scholars since it gives the right to different categories of people to create waqf in the form of cash. This (waqf) right is needed at the present time as a means of fundraising and capital accumulation, generating the much-needed financing to provide different goods and services within Muslim societies.

## 1.2 CLASSIFICATION OF WAQF PROPERTIES

Various schools of Islamic law classified waqf properties in different ways. In this chapter, the classification of waqf properties is divided into two: *al-mawquf 'alaih*m/the beneficiaries and *al-mawquf*/endowed property.

### 1.2.1 Classification Based on *al-Mawquf 'Alaih*m/the Beneficiaries

According to this type of classification, waqf is divided into three types: waqf *khayri*/public waqf, *waqf al-hurri*/family waqf and *al-waqf al-mushtarak*/mixed waqf (Imam).

Public waqf is an endowment made by the founder to support the general good and welfare of the poor and the needy in society. Usually the founders create such waqfs in the form of buildings, such as mosques, schools, hospitals, orphanage houses, guest houses, or in the form of basic infrastructure, dedicated books, land for cemeteries, wells and dedicated weapons.

Family waqf is an endowment made by the founder for his children, grandchildren, relatives or for other persons he specifies. If the beneficiaries specified by the founder are no longer alive, then only in this case will the waqf property be transferred to public welfare purposes.

Mixed waqf is a waqf created by a founder to support both the public and his family, i.e. the founder dedicates a portion of his property to his family and another part to the public.

### 1.2.2 *Classification Based on al-Mawquf/Endowed Property*

This type of waqf is divided into three: *Manqul & Ghair Manqul*/Movable and Immovable, *Sahib & Ghair Sahib*/Sound and Unsound and *Mubashir & Ghair Mubashir*/Direct and Indirect.

#### 1.2.2.1 *Manqul & Ghair Manqul/Movable and Immovable*

Movable waqf is an endowment made by the founder in the form of movable properties, such as cattle and implements of animal husbandry, books, crops, weapons and currency as well as shares of joint-stock companies.

Immovable waqf is an endowment made by the founder in the form of immovable properties, such as lands, fields, farms, buildings in the form of mosques, schools, hospitals, or basic infrastructures, such as bridges, roads, water supply, etc.

#### 1.2.2.2 *Sahib & Ghair Sahib/Sound and Unsound*

Sound waqf is the waqf that is founded upon *mulk* land, i.e. upon privately owned freehold property over which the owner held complete rights of alienation. In contrast, unsound waqf is the waqf that is founded on state land.

#### 1.2.2.3 *Mubashir & Ghair Mubashir/Direct and Indirect*

Direct waqf is an endowment made by the founder to serve the people directly (Kahf 1998a, 21). For example, this could be building mosques for people for prayer, building schools to educate the masses, building hospitals to provide health care services, etc. To sustain this direct waqf, the creation of indirect waqf is needed in order to provide the running expenses for them, i.e. direct waqfs. For example, revenue-generating shops, houses, agricultural lands, etc. could be dedicated so that the revenue generated are channeled towards supporting the direct waqfs.

## 1.3 KEY RESTRICTIONS FOR THE CREATION OF WAQF

Once a property is created as waqf, it should be placed under three key restrictions: irrevocability, perpetuity and inalienability.

"Though the institution of waqf goes back to the beginnings of Islam, its treatment as an important component of modern Islamic finance has been largely left out. This book discusses the role of waqf in Islamic civilization and analyses the recent innovative modes of financing for waqf properties. Readers will find this book an essential compendium to the growing literature of Islamic finance."

—**Azmi Omar**, Director General, Islamic Research and Training Institute, Islamic Development Bank Group, Saudi Arabia

"A praiseworthy contribution. . . This book contemporizes the concept of waqf in present social settings of a number of countries. Recommended to all who are in search of alternative means of strengthening social solidarity, a more just wealth distribution, and poverty reduction."

—**Abbas Mirakhor**, First Holder of Islamic Finance Chair, International Centre for Education in Islamic Finance (INCEIF), Malaysia

"By examining contemporary waqf practices, the authors demonstrate how these charitable institutions can play an important role in modern societies. This volume is a significant empirical contribution to the literature on waqf that draws together diverse experiences."

—**Rodney Wilson**, Emeritus Professor, Durham University, UK, and International Centre for Education in Islamic Finance (INCEIF), Malaysia

This book presents successful case studies in Muslim and Muslim minority countries that have revolutionized the redevelopment of idle waqf properties into productive land trusts. The revival of this institution over the last two decades shows the growing optimism in galvanizing the socioeconomic role of waqf by adopting its flexible shariah measures. Innovative ways of financing redevelopment allow Muslims to extend these roles to include new beneficiaries. New uses for these properties include providing services to the community, opening jobs for the majority of people, funding small entrepreneurs, educating the masses, providing health care, and sheltering the poor and needy. Countries under study include Sudan, Turkey, Malaysia, Indonesia, Singapore, New Zealand, Kuwait, Oman, Qatar, and Iran. Additionally, the book examines the International Development Bank's role in financing the development old waqf properties in different countries.

**Magda Ismail Abdel Mohsin** is Associate Professor of Islamic economics and finance at the International Centre for Education in Islamic Finance (INCEIF), Malaysia. She holds a doctorate in Islamic Civilization/Islamic Economics from the Institute of Islamic Thought and Civilization of the International Islamic University, Malaysia.

palgrave  
macmillan

ISBN 978-1-137-58127-3



9 781137 581273

www.palgrave.com

