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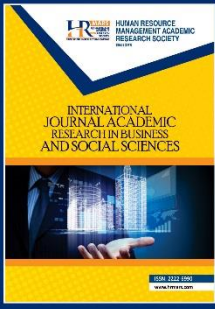
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## Discrepancy of Cash Waqf Meaning: A Critical Review with Special Focus on Selected Shariah Resolutions

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### Abstract

This paper aims to critically review the literature with respect to the meaning of cash waqf that reflects the formation of waqf structure and mechanism. Focusing on selected Shariah resolutions, the review intends to examine the juristic reasoning of such resolutions in identifying the discrepancy and addressing any possible gap. The outcome of the paper aims to foster a greater number of future research towards sustainable development of cash waqf. For this review, a range of documents have been collated and analysed to capsulize the essence of the scoping matter including the selected Shariah resolutions and standards. As such, the paper inclines to the fundamental analysis approach whereby the data will be comparatively reviewed for establishing a critical evaluation and outcome. The review indicates three connotations of the term used: (i) Cash or money as waqf asset – henceforth, the utilization may attract Shariah concern; (ii) Cash as waqf asset which then be converted into tangible asset – aside the usage of term *istibdal* by some for this conversion, the usufruct of the asset will be benefitted for waqf purposes. Thereby, the Shariah rules of waqf contract and *istibdal* is a concern accompanying the *maqsid* (objective) of such contract; (iii) Cash is gathered from more than a party via syndicated contribution or crowdfunding, to acquire the waqf asset – despite the used term, cash is not construed as waqf asset. Apart from the aforementioned interpretation, the term might be outlandishly used to indicate the donated money, which is accurately meant for *sadaqah*.

**Keywords:** Cash Waqf, Literature Review, Philanthropy, Sadaqah, Waqf

### Introduction

Waqf plays a significant role in the Islamic social framework. Acknowledging such concept applied long before in earlier civilization, for which Islamic Shariah heavily promotes waqf, so that the community or social sector including non-Muslim would benefit from it. It is regarded as an economic development tool particularly to fund the construction or acquisition of infrastructures and facilities for the public. Waqf does not only deliver the tangible presence, but also brings along the spiritual devotion of charitable giving. In other word, it can harness the potential of selfless charitable giving in an effective way for a better economic impact in the targeted social segments of society (Hassan et al., 2021).

Various definition had been given to the term waqf by the scholars (Al-Fiqhiyyah, 2006). In principle, waqf describes the preservation of the waqf asset and benefitting it perpetually for charitable purposes. This is based on the hadith of 'Umar RA, which Prophet SAW said (Al-Shafi'i, 2004, v.3 p.5; Al-Baihaqi, 2003, v.6 p.168):

حَبِّسِ الْأَصْلَ وَسَبِّلِ الثَّمَرَ

Preserve the origin, dedicate the benefit for charitable purposes

Asl in this hadith refers to the subject matter of waqf or waqf asset. It is also termed as *mawquf*. The waqf asset shall then be benefitted by the beneficiaries or so-called *mawquf 'alaih* for charitable purposes. The asset can be utilized for two main purposes, namely usage and investment. For the usage purpose, the benefit could be in a form of usufruct, whereas for the latter, the benefit could be in a form of cash or profit return, or in-kind.

Cash Waqf is the new contemporarily introduced term, indicating the monetary transaction for waqf purposes. In relation to this matter, the classical scholars had discussed the verdict of money or cash as waqf asset where majority of them prohibited it, while some others allowed it. Reason for their disputes echoed as a result of endowing something for waqf that perishes by consumption. Those who prohibited it argued that the money is perished by consumption as it is a medium of exchange. For those who allowed it, the money or cash could be benefitted from it while maintaining its value, for example, to use it for lending, and capital of investment or business venture (Al-Fiqhiyyah, 2006).

Notwithstanding, the term Cash Waqf could be interpreted into several connotations as follows

- i. Cash or money as absolute waqf asset (*mawquf*) – it is disputed by classical scholars as mentioned earlier, but its permissibility has been resolved by few contemporary Shariah bodies.
- ii. Endowed cash or money requires conversion into tangible or physical waqf asset – in order to obtain perpetual benefit; this fatwa has been enacted by many states in Malaysia.
- iii. Money or cash is gathered to construct or acquire waqf asset such as land and building – This is close to a sort of philanthropic crowdfunding or syndicated donation for waqf purposes donated by one or more parties.
- iv. Cash or money or is gathered for philanthropic purpose but by way of perishable consumption – this is merely normal Sadaqah and not waqf; perhaps due to the custom use of language.
- v. Other interpretation relates to the above either in a form of hybrid or component of overall asset etc. (as the case may be).

This paper presents the result of literature review regarding the discrepancy of Cash Waqf meaning. Despite of the Shariah arguments on the ruling of cash as waqf asset, this paper aims to comparatively examine the content of the previous research and Shariah resolutions, capsulize a structural overview to identify the discrepancy and gap to which future research might be oriented. The outcome might be significantly needed to eliminate the existing boundaries for sustainability development of cash waqf.

The paper is structured into two sections. The first section discusses the review of the academic literatures. Subsequently, the next section discusses the Shariah resolutions of the matter, which is the main concern of this paper. Then, the review summarizes the literature, identifies and clarifies the discrepancy and gaps.

### Review of Academic Literature

By default, the literature is confined to recent indexed or refereed journals where Cash Waqf is a primary subject. Initially, the preference is for the journal from juristic perspective, which especially falls under the Malaysian jurisdiction that are governed by various authorities. However, due to the unavailability of extensive and sole discussion from such perspective, some samples have been screened for this purpose whereas more focus will be presented in the subsequent section. In few cases, the screening criteria is extended to the older publication of max 10 years backward.

As a result, 22 journals have been identified, and their scope of discussion is depicted as follows

Table 1

#### *Scope of Discussion on Cash Waqf*

No	Author	Scope of Discussion on Cash Waqf
1.	Ali & Markom (2020); Rafiqi (2018); Asni & Sulong (2017); Ramli (2019)	Fundamental, Shariah, Law and Regulation: (Issues & Challenges); (Perpetuity); (Application in ASEAN Countries' Law); (Fatwa)
2.	Khamis & Salleh (2018); Mokhtar et.al (2015)	Management and Operation: (Efficiency); (Operation & Limitation)
3.	Tanjung & Windiarso (2021); Mohsin (2013)	Instrument: (Sukuk); (Financing);
4.	Ahyani et.al (2021); Ahmad (2015)	Development: (IR 4.0 era); (Historical evolution)
5.	Azrak (2022); Ab Shatar et.al (2021); Haidlir et.al (2021); Aldeen et. al (2021); Rusydiana et. al (2021); Ismail & Wahid (2021); Al-Harethi (2019); Salleh et.al (2019); Dennis et.al (2018)	Case Study: (Turkey); (IB, Malaysia); (Indonesia); (Indonesia); (Indonesia); (MARA, Malaysia); (Kedah, Malaysia); (IIUM, Malaysian); (Nahdatul Ulama, Indonesia)
6.	Rahmalan & Hussin (2021); Aldeen et. al (2020); Zakaria & Muda (2017)	Literature Review: (Waqf Sources); (Contemporary Issues); (Implementation);

Most of the above-sampled articles have described that, either by themselves or quoting from other authors or scholars, the cash waqf is an endowment by a party or donor (so-called waqif) in a form of money for waqf purposes. However, only few of them have elucidated the subsequent financial mechanism of such donation, as well as discuss about Shariah provision or enacted law for cash waqf.

According to Mohsin (2013), as she referred to Monzer Kahf's paper, there are two types of Cash Waqf, namely direct and indirect Cash Waqf. For direct Cash Waqf, the accumulated funds are channelled directly to re-develop any old waqf property using *istibdal* (exchange) rule. On the other hand, the latter is meant for investment where the profit will be channelled to the beneficiaries. Nevertheless, the author had only discussed from the

conceptual perspective without considering the feasibility of implementation in actual financial landscape vis-a-vis regulatory and Shariah-coded provision.

Similar concept had been discussed by Sulong (2017), where the authors mentioned the Cash Waqf from Shariah perspective and compiled the enacted law and fatwa in the ASEAN countries regarding the matter. Discussion on fatwa had also been discussed by Ramli (2019), where the fatwa issued by Shariah bodies was compiled and analyzed. However, both papers did not really criticize the existing enactments and fatwas that may restrict the development of cash waqf.

As such, this paper aims to complement the above literatures for the sake of providing inputs for future research in several areas. In this regard, it is essential to review the available Shariah resolution, standards and fatwa for a forward-thinking development of the sustainability of cash waqf, while taking into consideration the current financial and economic landscape.

### **Review of Shariah Resolution and Standard**

Several resolutions issued by some of the standard-setting or referral bodies have been reviewed to understand the interpretation of cash waqf, which then leads to different mechanisms applied. To serve this purpose, the Shariah resolution, fatwas and standards issued by the following bodies are selected:

- Majelis Ulama Indonesia (“MUI”) – Council of Indonesian Scholars
- Majma’ al-Fiqh al-Islāmī al-Duwalī - International Islamic Fiqh Academy of Organisation of Islamic Cooperation (“IIFA”)
- Accounting and Auditing Organisation for Islamic Financial Institutions (“AAOIFI”),
- Majelis Fatwa Kebangsaan, Jabatan Kemajuan Islam Malaysia (“JAKIM”) - National Fatwa Council, Department of Islamic Development Malaysia
- States Fatwa Institution in Malaysia

These bodies are selected pursuant to either the authority given to them or their influence drives market conduct.

#### *Resolution by Majelis Ulama Indonesia*

Among the earliest Shariah resolution issued by contemporary Shariah body is the fatwa title “Wakaf Uang” (cash waqf) issued by MUI in 2002. The fatwa states (MUI, 2002):

Table 2

*MUI fatwa on cash waqf*

Fatwa	[Translation]
1. Wakaf Uang (Cash Wakaf/Waqf al-Nuqud) adalah wakaf yang dilakukan seseorang, kelompok orang, lembaga atau badan hukum dalam bentuk uang tunai.	1. Cash waqf is the waqf that is executed by an individual, a group of people, an institution or legal entity in the form of cash money.
2. Termasuk ke dalam pengertian uang adalah surat-surat berharga.	2. Including in the meaning of cash is securities.
3. Wakaf Uang hukumnya jawaz (boleh).	3. The ruling for cash waqf is permissible.
4. Wakaf Uang hanya boleh disalurkan dan digunakan untuk hal-hal yang dibolehkan secara syar'iy (مباح مصرف).	4. Cash waqf can only be channelled for the purposes that are permitted by Shariah.
5. Nilai pokok Wakaf Uang harus dijamin kelestariannya, tidak boleh dijual, dihibahkan, dan/atau diwariskan.	5. The principal value of cash waqf must be secured in terms of its sustainability, cannot be sold, given and/or inherited.

The fatwa defines Cash Waqf as a waqf that is executed in a form of money by individual or non-individual. In other word, the cash or money endowed for waqf is the waqf asset. The fatwa have not mentioned about the status of transaction using that money, for example, buying and selling the fixed, tangible or physical asset. However, it could be understood in the last item that the principal amount or value shall be preserved to meet the objective of waqf, despite any transaction that enters into.

In 2016, another fatwa was issued by Dewan Syariah Nasional-Majelis Ulama Indonesia (“DSN-MUI”) about waqf of the benefit of Islamic life insurance. The fatwa did not resolve the matter related to cash waqf, but there is a principle outlined that may also relate to the cash waqf. The fatwa states (DSN-MUI, 2016):

Table 3

*DSN-MUI fatwa on waqf of the benefit of Islamic life insurance*

Fatwa	[Translation]
<b>Memperhatikan:</b>	<b>Observation:</b>
1. Penjelasan para fuqaha mengenai Mauquf bih.  a. Wakaf adalah menahan harta yang dapat dimanfaatkan dan/atau di- <i>istitsmar</i> -kan tanpa lenyap bendanya, dengan tidak menjual, menghibahkan, dan/atau mewariskannya, dan hasilnya disalurkan pada sesuatu yang mubah kepada penerima manfaat wakaf yang ada.	1. Jurists' explanation on subject matter of waqf or waqf asset (mauquf bih).  a. Waqf refers to the preservation of wealth that could be benefitted and/or invested without perishing its object, either via sale, gift (hibah), or inheritance, whereby the outcome or yield is channelled into something permissible for the beneficiaries.
b. Syarat-syarat obyek wakaf menurut pendapat ulama, antara lain adalah: 1) harta yang diwakafkan harus harta yang berharga/bernilai secara syariah (mal mutaqawwam); 2) harta yang diwakafkan harus harta yang sudah jelas dan terukur (ma 'lum); dan 3) harta yang diwakafkan harus harta yang sudah menjadi milik penuh (milk tam) bagi wakif pada saat akad wakaf dilakukan.	b. The conditions of the waqf object according to the scholars, amongst others, are: 1) The wealth or asset should be valuable according to Shariah (mal mutaqawwamam); 2) The wealth or asset should be known and determined (ma'lum); and 3) The wealth or asset should be fully owned (milk tam) by the donor (waqif) upon executing waqf contract.

According to this outline, cash or money is allowed to be treated as waqf asset. It can be benefitted by the beneficiaries, and/or invested via Shariah compliant mode whereby the principal amount is preserved, and the investment yield is channelled to the beneficiaries. However, the fatwa have not detailed out the status of any tangible or physical asset traded under this investment portfolio using the cash waqf, nor the Cash Waqf is required to be converted into fixed, tangible or physical asset.

*Resolution by Majma' al-Fiqh al-Islami al-Duwalī*

Majma' al-Fiqh al-Islami al-Duwalī or International Islamic Fiqh Academy of Organisation of Islamic Cooperation ("IIFA") in its 15<sup>th</sup> meeting held on 6<sup>th</sup> to 11<sup>th</sup> March in 2004 in Oman, had resolved the Shariah aspect of investment in waqf. The resolution includes the matter of cash waqf that is stated as follows (IIFA, 2004)

Table 4

*IIFA fatwa on Cash Waqf*

[Translation]	Resolution
<p><b>Second: Cash Waqf:</b></p> <p>(1) Cash waqf is permissible from Shariah perspective, as the objective of Shariah for waqf is preservation of the origin and dedicating the benefit for charitable purposes. Furthermore, the cash is not determined based on any determination but rather the replacer will take its position.</p>	<p>ثانياً: وقف النقود:          ((١) وقف النقود جائز شرعاً، لأن المقصد الشرعي من الوقف وهو حبس الأصل وتسبيل المنفعة متحقق فيها؛ ولأن النقود لا تتعين بالتعيين، وإنما تقوم أبدالها مقامها.</p>
<p>(2) Cash waqf is allowable for the qardh hasan (benevolent loan) and investment; either in a form of direct investment, syndication with other donors in a single fund, or issuance of shares representing the cash waqf to encourage and achieve the collective participation in waqf.</p>	<p>((٢) يجوز وقف النقود للقرض الحسن، وللإستثمار إما بطريق مباشر، أو بمشاركة عدد من الواقفين في صندوق واحد، أو عن طريق إصدار أسهم نقدية وقفية تشجيعاً على الوقف، وتحقيقاً للمشاركة الجماعية فيه.</p>
<p>(3) If the money is invested into tangible/physical asset, for example, the superintendent buys or constructs the building or real estate using that money, then the asset is not construed as waqf asset that takes the position of money (cash waqf). Therefore, such asset can be traded for investment purposes, and that the waqf is the original value of the money.</p>	<p>((٣) إذا استثمر المال النقدي في أعيان، كأن يشتري الناظر به عقاراً أو يستصنع به مصنوعاً؛ فإن تلك الأصول والأعيان لا تكون وقفاً بعينها مكان النقد، بل يجوز بيعها لاستمرار الإستثمار، ويكون الوقف هو أصل المبلغ النقدي.</p>

Subsequently, IIFA in its 19<sup>th</sup> meeting held on 26<sup>th</sup> to 30<sup>th</sup> April in 2009 in UAE had resolved another matter on waqf. The matter relates to the waqf of shares, sukuk, intangible rights and usufructs where the resolution includes some portion of cash waqf, as follows (IIFA, 2009)



Table 5

*IIFA fatwa on waqf of shares, sukuk, intangible rights and usufructs*

[Translation]	Resolution
(1) The legal texts of the waqf are absolute, including permanent and temporary waqf, detach and joint, objects and usufruct and money, immovable and movable, because it is a kind of donation that is broad and desirable...	(١) إن النصوص الشرعية الواردة في الوقف مطلقة يندرج فيها المؤبد والمؤقت، والمفزر والمشاع، والأعيان والمنافع والنقود، والعقار والمنقول؛ لأنه من قبيل التبرع وهو موسع ومرغب فيه...
(3)(v) If the endowed money (waqf) is invested in buying the shares or sukuk etc., then those shares and sukuk are not construed as waqf that take the position of money (cash waqf), unless it is stipulated by the donor (waqif). Therefore, the shares and sukuk are allowed to be traded for investment in bringing benefit to the waqf. And that the preserved waqf is the original value of the money.	(٣)(د) إذا استثمر المال النقدي الموقوف في شراء أسهم أو صكوك أو غيرها فإن تلك الأسهم والصكوك لا تكون وقفًا بعينها مكان النقد، ما لم ينص الواقف على ذلك، ويجوز بيعها للاستثمار الأكثر فائدة لمصلحة الوقف، ويكون أصل المبلغ النقدي هو الموقوف المحبب.

Both resolutions have not specifically defined the Cash Waqf (*waqf al-nuqud*). However, it could be understood from such resolution that the cash waqf means endowing cash or money for waqf or becomes waqf asset. The cash is not required to be converted into tangible or physical asset but could be utilized for investment or lending etc. in achieving the objective of waqf from Shariah perspective. Indeed, any physical or tangible asset that is purchased or sold for investment purposes using that cash is not construed as waqf asset.

*Resolution and Standard by AAOIFI*

Shariah standard on waqf was initially issued by AAOIFI in 2007 (standard no. 33) – this standard was later superseded by Standard No. 60. However, the Cash Waqf was only mentioned in brief, as follows (AAOIFI, 2015, p.817; AAOIFI, 2017, p.826):

Table 6

*AAOIFI initial Shariah standard on Cash Waqf*

English Version	Arabic Version
3/4/3/2 Waqf is permissible in money. The income generated from the utilization of the money is to be spent, while retaining the principal amount. 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	٣/٤/٣/٣ يجوز وقف النقود، ويكون الانتفاع بها بما لا يؤدي إلى استهلاكها مع الانتفاع بها مثل: الإقراض المشروع أو استثمارها بالطرق المشروعة المأمونة غالباً مثل المضاربة بها، ويصرف نصيب الوقف من الربح في الموقوف عليه.

The Shariah basis that found this standard has stated (AAOIFI, 2015, p.833; AAOIFI, 2017, p.842)

Table 7

## AAOIFI initial Shariah basis for Cash Waqf

English Version	Arabic Version
Money can be donated as a Waqf because this is the original form of Waqf, as emphasized by Muhammad ibn Abdullah al-Ansari; the companion of Imam Zafar, and supported by Ibn Taymiyyah. Shares and Sukuk come under this type of Waqf.	مستند صحة وقف النقود أنه الأصل. وهو قول محمد بن عبد الله الأنصاري صاحب الإمام زفر، واختاره ابن تيمية. ونحوه وقف الأسهم والصكوك.

Subsequently in 2019, AAOIFI had issued a new Shariah standard on waqf (no. 60) in which this standard supersedes the previous standard no. 33. This new waqf standard covers the matter of cash waqf as stated in the following table

Table 8

## AAOIFI Shariah standard on Cash Waqf

[Translation]	Standard
<b>2/4/13 Cash waqf:</b> 2/4/13/1 Cash waqf is permissible even in a form of debt liability; for example: current account balances; and that the benefit could be obtained from it either in a form of Shariah permissible loan or investment, where the origin remains as waqf asset (mawquf) and the return goes to beneficiaries (mawquf 'alaihim). Therefore, the purpose of waqf fund, amongst others, is to gather the money for investment and loan.	١٣٢/٤/ ٢/٤/١٣/١ وقف النقود: مثل: أرصدة الحسابات الجارية، ويكون الإنتفاع بها إما بالإقراض المشروع أو استثمارها بالطرق المشروعة، ويبقى الأصل موقوفاً وتصرف عوائده على الموقوف عليهم. ومن ذلك استثمارها في تأسيس الصناديق الوقفية التي يكون الغرض منها جمع الأموال وتنميتها وإقراضها.
2/4/13/2 Waqf of investment account either permanently or temporarily is permissible, in which the rules of cash waqf is applied.	٢/١٣٢/٤/ يجوز وقف الحسابات الاستثمارية على سبيل التأييد أو التأقيت، ويجري عليها أحكام وقف النقود.
2/4/13/3 If the cash is invested, any purchasing asset of that cash is not construed as waqf asset, thus the asset sale for waqf profit is permissible. And that the origin (mawquf) is the value of the money.	٣/١٣٢/٤/ إذا استثمرت النقود الموقوفة، في شراء أصول فإن تلك الأصول لا تكون وقفا بعينها مكان النقد، ويجوز بيعها للاستثمار الأكثر مصلحة للوقف، ويكون الأصل الموقوف هو المبلغ النقدي.
2/4/13/4 There is no effect of purchasing power to the amount of cash waqf (change of value), hence; the donors are permissible to condition part of the profit to be retained with the principal.	٤/١٣٢/٤/ يعد النقد المسمى وقت الوقف هو الأصل الموقوف، ولا أثر لتغير القوة الشرائية على قيمة الأصول النقدية الموقوفة، ويجوز للواقف أن يشترط أن جزءاً من ريع الوقف يلحق الأصل النقدي الموقوف.

<p>2/4/13/5 It is essential to have Shariah-compliant mechanism* to protect the capital of cash waqf and mitigate the currency risk as prescribed in Shariah Standard no. 45: "Protection of Capital and Investments".</p> <p>[* Takaful/Islamic insurance, 3rd party guarantee, reserve, diversification of asset etc.]</p>	<p>٥/١٣٢/٤/ ينبغي التحوط بصيغ شرعية لحماية رأس مال الوقف النقدي، والتحوط من مخاطر فروق أسعار العملات وتغير قيمتها، وفق ما ورد في المعيار الشرعي رقم (٤٥) بشأن حماية رأس المال والاستثمارات.</p>
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The Shariah basis that found this standard has stated:

Table 9

*AAOIFI Shariah basis for Cash Waqf*

[Translation]	Resolution
<p>The basis on the permissibility of cash waqf: pursuant to the objective of Shariah for waqf itself. Furthermore, the cash is not determined based on any determination but rather the replacer will take its position. It is the allowed by a group of early scholars, namely Maliki school of law, later Hanafi and Hanbali scholars. This is also the basis of Shariah resolution by IIFA no. 140 (6/15). It is mentioned in Sharh al-Kharshī 'ala Mukhataṣar Khalīl.</p>	<p>مستند صحة وقف النقود: أن المقصد الشرعي من الوقف متحقق فيها، ولأن النقود لا تتعين بالتعيين وإنما تقوم أبدالها مقامها. وقال بوقف النقود جماعة من السلف وهو مذهب المالكية وقال به متأخرو الحنفية ومتأخرو الحنابلة، وبه صدر قرار مجمع الفقه الإسلامي الدولي رقم (١٤٠) (٦/١٥). وجاء في شرح الخرشبي على مختصر خليل: (المذهب جواز وقف ما لا يعرف بعينه كالطعام والدنانير والدراهم ونزل رد بدل ما انتفع به بمنزلة دوام العين).</p>

The outline for Cash Waqf under this standard and its Shariah basis aligns with the previously issued Shariah resolution by IIFA. Neither this standard nor its Shariah basis specifically defined the term cash waqf. In line with the aforesaid comment, it could be understood that the Cash Waqf means endowing cash or money for waqf or becomes waqf asset. In this sense, the cash as waqf asset could be benefitted by the beneficiaries via the mechanism of Shariah-compliant lending or investment. No conversion into tangible or physical asset is required, whereas any asset that is traded for cash waqf investment is not construed as waqf asset. However, these resolutions and standard (including two before) do not discuss the consequential impact of credit and investment risk that may attract Shariah concern.

*Fatwa by Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia ("Jawatankuasa Fatwa MKI") – Fatwa Committee of Malaysian National Council for Islamic Matter*

In Malaysia, the fatwa on cash waqf had been resolved at national level by Jawatankuasa Fatwa MKI in its 77<sup>th</sup> meeting held on 10<sup>th</sup> to 12<sup>th</sup> April in 2007. The meeting had discussed about the matters related to the development of waqf land, which included the discussion on Cash Waqf. However, there is no detail explanation provided by the fatwa. The fatwa states that

Table 10

*MKI fatwa on Cash Waqf*

Fatwa	[Translation]
<b>8. Wakaf Wang Tunai</b> Berwakaf dalam bentuk wang tunai adalah dibolehkan di dalam Islam.	<b>8. Waqf of Cash Money</b> Waqf in a form of cash money is permissible in Islam

*Fatwas of Malaysian State Authorities*

With regards to the Shariah affairs, Malaysian jurisdiction is quite unique where each state is given the autonomy for some matters including waqf. Therefore, each state has its own Islamic religious council and fatwa committee, in most cases. These are the fatwas that had been issued regarding Cash Waqf where some of them are specific for certain purposes.

Table 11

*Fatwa on Cash Waqf by Malaysian states authority*

State Fatwa	[Translation]
<b>Selangor: Jawatankuasa Fatwa Negeri Selangor</b>	
[Meeting no. 5/2017 held on 17th October 2017] Harus melaksanakan wakaf tunai sebagai harta wakaf dengan syarat-syarat seperti berikut: i. nilai asal wang yang diwakafkan hendaklah sentiasa dikembangkan dan meningkat; ii. sebarang pembelian aset hendaklah menepati hukum syarak; dan iii. lain-lain syarat yang ditetapkan dari semasa ke semasa oleh PWS. (Jabatan Mufti Negeri Selangor, 2017)	It is permissible to treat cash waqf as waqf asset subject to the following conditions: i. the original value of the money shall be expanded and increased ii. any asset purchasing shall fulfil the Shariah requirement iii. other conditions as stipulated by PWS from time to time
[Gazetted in 31 <sup>st</sup> July 2014] Harus menggunakan dana wakaf tunai daripada Wakaf Selangor Muamalat untuk membiayai kos operasi dan penyelenggaraan aset-aset wakaf mengikut keperluan. (Jabatan Mufti Negeri Selangor, 2014)	It is permissible to use cash waqf fund from Wakaf Selangor Muamalat to finance the operation and maintenance cost of waqf assets as deemed necessary.
[Meeting no. 3/2013 held on 6 <sup>th</sup> June 2013] Bersetuju meluluskan pelaburan saham menggunakan dana wakaf tunai dengan syarat-syarat berikut: i. Saham dalam bentuk aset; ii. Pelaburan yang dijamin oleh kerajaan; dan iii. Memastikan ada rezab yang mencukupi bagi menjamin nilai wakaf asal tidak berkurangan. (Jabatan Mufti Negeri Selangor, 2013)	Agree to approve the stock investment using cash waqf fund subject to the following conditions: i. Shares in the form of assets. ii. Government-guaranteed investment; and iii. Ensuring sufficient reserve amount to secure the principal value of waqf.
[Meeting no. 4/2008 held on 27 <sup>th</sup> August 2008]	

<p>Mesyuarat Jawatankuasa Fatwa Negeri Selangor memutuskan seperti berikut:</p> <p>(i) Harus menggunakan wang saham wakaf untuk membiayai segala keperluan bagi mewujudkan sesuatu aset;</p> <p>(ii) Harus menggunakan wang manfaat wakaf untuk membiayai segala kos penyelenggaraan berkaitan keperluan bangunan;</p> <p>(iii) Pihak MAIS disyorkan agar mempergiatkan usaha untuk menyuburkan harta-harta wakaf yang telah diwujudkan supaya hasil atau manfaat wakaf yang diterima akan lebih memberi keuntungan;</p> <p>(iv) Pihak MAIS hendaklah memastikan terlebih dahulu sesuatu harta yang diterima untuk tujuan diwakafkan adalah merupakan harta milik sempurna yang tidak ada sebarang tanggungan.</p>	<p>Jawatankuasa Fatwa Negeri Selangor in its meeting resolved as follows:</p> <p>(i) It is permissible to use the money of waqf share to finance the needs in producing any asset;</p> <p>(ii) It is permissible to use the money of waqf benefit to finance the maintenance cost relating the building;</p> <p>(iii) MAIS is recommended to foster the effort to develop the waqf properties to gain the more profit or benefit;</p> <p>(iv) MAIS must ensure that the received property for the purpose of waqf is a perfect ownership without any liability.</p>
<p>[Meeting no. 4/2006 held on 5<sup>th</sup> September 2006]</p> <p>i. Hasil daripada wang Skim Saham Wakaf Selangor hendaklah dibelanjakan bagi tujuan pembelian atau pembiayaan aset kekal. Manakala Wang Manfaat Wakaf Selangor boleh dibelanjakan untuk memberi bantuan dan perbelanjaan lain yang difikirkan sesuai oleh Majlis Agama Islam Selangor.</p> <p>ii. Majlis Agama Islam Selangor disaran untuk mengasingkan antara pecahan perbelanjaan aset wakaf dengan perbelanjaan wang Manfaat Wakaf yang keseluruhannya sebanyak 22 item sepertimana yang dicadangkan, agar penggunaanya nanti lebih tepat dan jelas. Di samping itu, hendaklah dipastikan bahawa item yang telah termasuk dalam asnaf zakat seperti fakir, miskin dan fii sabilillah tidak terkandung dalam item perbelanjaan Wang Manfaat Wakaf</p> <p>(Jabatan Mufti Negeri Selangor, 2006)</p>	<p>i. Income from the money of Skim Saham Wakaf Selangor shall be spent for purchasing or financing the permanent asset. Meanwhile, Wang Manfaat Wakaf Selangor could be spent for providing assistance and other expenses as deemed suitable by Majlis Agama Islam Selangor.</p> <p>ii. Majlis Agama Islam Selangor is recommended to segregate the expenses of waqf asset and expenses of cash benefit of waqf that consist of 22 items as proposed for the purposes of accuracy and clarity. In addition to that, it shall be ensured that the item included in the zakat asnaf such as faqir, miskin and fi sabilillah is excluded from the expenses of cash benefit of waqf.</p>
<p><b>Kelantan:</b> Jemaah Ulama' Majlis Agama Islam</p>	
<p>[Meeting held on 9<sup>th</sup> June 2013]</p>	

<p>1. Bahawa berwakaf dalam bentuk wang tunai adalah dibolehkan dalam Islam.</p> <p>2. Mesyuarat juga menetapkan dalam menguruskan wakaf tunai ini pentadbiran Majlis Agama Islam Kelantan hendaklah memastikan bahawa wang tunai yang diwakafkan itu digunakan untuk pembelian aset kekal. Ini disebabkan wang tunai secara fizikal tidak boleh dikekalkan dalam bentuk yang asal tetapi pengkalan ini masih boleh dilaksanakan dengan menukarnya kepada harta lain bersifat kekal. Dengan itu ia menepati konsep wakaf iaitu menahan sesuatu harta yang boleh digunakan tanpa susut fizikalnya.</p> <p>(Jabatan Mufti Negeri Kelantan, 2013)</p>	<p>1. Waqf in a form of cash money is allowed in Islam</p> <p>2. The meeting had also resolved that in managing the cash waqf, the administration of Majlis Agama Islam Kelantan shall ensure that the endowed money is utilized for purchasing the permanent asset. It is due to the inability of the physical cash money to be maintained in its original form but this can still be carried out by converting it into another permanent asset. Therefore, it complies with the waqf concept, which is to preserve the wealth that could be utilized without depreciating it.</p>
<p><b>Terengganu:</b> Jawatankuasa Fatwa Negeri Terengganu</p>	
<p>[Meeting on 31<sup>st</sup> January 2007]</p> <p>i. Supaya syarat minimum RM 10.00 tidak dikenakan. Ini bermakna mana-mana orang boleh menyumbang seberapa banyak wang untuk disumbangkan kepada Majlis untuk membeli Harta Wakaf.</p> <p>ii. Penyertaan wang berjumlah RM 10.00 dan ke bawah darinya dalam Skim ini tidak perlu dikeluarkan sijil.</p> <p>iii. Sighah lafaz dipinda kepada lafaz : Saya mewakili kepada MAIDAM untuk mewakafkan mana-mana harta kekal melalui cek/Bank Draf/Wang Pos/Tunai di atas nama Skim Wakaf Tunai Terengganu sebanyak RM ..... untuk diri saya/ Almarhum/ Almarhumah/ ..... demi kebajikan dan kepentingan Agama Islam dan umatnya kerana Allah SWT selama-lamanya.</p> <p>(Jabatan Kemajuan Islam Malaysia, 2007).</p>	<p>i. Minimum requirement of RM10.00 contribution is not allowed. This means that anyone is able to donate any amount to Majlis for purchasing waqf asset.</p> <p>ii. Certificate is not required to be issued in this scheme for participation less than RM10.00</p> <p>ii. The form of waqf is amended to: I appoint MAIDAM as the agent to endow any permanent asset via cheque/Bank Draft/Postal Order/Cash on the name of Skim Wakaf Tunai Terengganu with the amount of RM..... for myself/ Almarhum/ Almarhumah for the sake of the welfare and the importance of Islam as well as its ummah, endlessly for Allah SWT.</p>
<p><b>Perak:</b> Jawatankuasa Fatwa Negeri Perak</p>	
<p>[Meeting no. 209 held on 22 August 2016]</p> <p>1) Mesyuarat memperaku dan bersetuju supaya digunakan wang wakaf tunai bagi projek wakaf bot di bawah tabung dana Wakaf Perak Ar-Ridzuan (WPAR)..</p> <p>2) Mesyuarat bersetuju wang tersebut diserahkan kepada pihak koperasi yang bertindak sebagai pengurus projek dan</p>	<p>1) The meeting acknowledged and agreed that the money of cash waqf shall be utilized for boat project under Wakaf Perak Ar-Ridzuan (WPAR)</p> <p>2) The meeting agreed that the money shall be transferred to the cooperative that acts as the project manager and</p>

<p>dipantau oleh pihak Majlis Agama Islam Dan Adat Melayu Perak (MAIPk).</p> <p>3) Kaedah pengendalian wakaf bot ini dikehendaki menepati kaedah asas berkaitan wakaf seperti berikut:</p> <p>a) Tidak dijual, tidak dihadiahkan dan tidak diwarisi;  مَأْنَهُ لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ  “Sesungguhnya ia tidak dijual, tidak dihadiahkan dan tidak boleh diwarisi. (HR.Bukhari)”.</p> <p>b) Pihak koperasi hendaklah menyelia projek mengikut terma dan syarat yang telah diletakkan oleh Majlis Agama Islam Dan Adat Melayu Perak (MAIPk).</p> <p>c) Sewaan bot hendaklah diberikan kepada nelayan dan ahli koperasi yang berkemampuan, berkemahiran dan amanah bagi menjamin kelangsungan harta wakaf.  إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ  “Sesungguhnya orang yang paling baik yang kamu ambil untuk bekerja (pada kita) ialah orang yang kuat lagi dapat dipercayai”.(Al-Qasas:26).</p> <p>(Jabatan Kemajuan Islam Malaysia, 2016)</p>	<p>monitored by Majlis Agama Islam Dan Adat Melayu Perak (MAIPk).</p> <p>3) The conduct of boat waqf project shall adhere to the basic methods of waqf, as follows:</p> <p>a) It cannot be sold, given and inherited: “Indeed, it cannot be sold, given and inherited” (Narrated by al-Bukhari).</p> <p>b) The cooperative shall supervise the project according to the terms and conditions set by Majlis Agama Islam Dan Adat Melayu Perak (MAIPk).</p> <p>c) The boat should be leased out to the fishermen and cooperative members who are capable, skilful and trusted in ensuring the sustainability of waqf asset. “Verily, the best of men for you to hire is the strong, the trustworthy” (al-Qasas:26)</p>
<p><b>Penang:</b> Jawatankuasa Fatwa Negeri Pulau Pinang</p>	
<p>[Meeting no. 3/2008 held on 16<sup>th</sup> October 2008]</p> <ol style="list-style-type: none"> <li>Meluluskan cadangan kutipan wakaf tunai bagi tujuan pembangunan tabung dana wakaf pendidikan ISDEV, USM.</li> <li>Hasil dari kutipan wakaf tunai itu hendaklah dibelanjakan kepada perkara-perkara yang kekal.</li> <li>70% dari hasil kutipan wakaf tunai itu boleh digunakan untuk pembelian perkara-perkara yang kekal sahaja. Lafaz akad wakaf tunai itu diputuskan seperti berikut: “<i>Saya wakilkan kepada ISDEV untuk mewakafkan 70% dari wang ini sebagai wakaf am kerana Allah</i>”.</li> <li>30% dari hasil kutipan wakaf tunai itu tidak menjadi wakaf kerana ianya dibelanjakan kepada perkara-perkara yang tidak kekal.</li> </ol> <p>(Jabatan Mufti Pulau Pinang, 2019, p.23)</p>	<ol style="list-style-type: none"> <li>Approved the proposal to collect the cash waqf for the development of ISDEV, USM education waqf fund.</li> <li>The cash waqf collected shall be utilized for permanent matters.</li> <li>70% of the collection could be utilized to purchase only the permanent matters. The form of cash waqf contract is decided as follows: “<i>I appoint ISDEV to endow 70% from this money for general waqf for Allah</i>”</li> <li>30% of the collection is not construed as waqf as it is utilized for non-permanent matters.</li> </ol>

<b>Kedah: Jawatankuasa Fatwa Negeri Kedah</b>	
[Meeting on 31 <sup>st</sup> Mac 2009] Perlaksanaan WAKAF TUNAI di negeri Kedah dibolehkan dengan konsep wakalah dengan lafaz seperti berikut: "saya memberi wang RM100.00 wakil kepada tuan untuk membeli harta wakaf bagi pihak saya".  (Majlis Agama Islam Negeri Kedah, 2009)	The implementation of cash waqf in Kedah state is allowed via the concept of wakalah with the following form: "I give the money RM100.00 to you as wakeel to purchase the waqf asset on my behalf"

Those fatwas have not specifically defined the term Cash Waqf (or 'wakaf tunai' in the Malay language). However, it could be understood from some of them that cash waqf means endowing money or cash for waqf purposes. Not even that, different descriptions are also given to the subsequent mechanism of such financial transaction.

Except for Selangor and Kedah, all fatwas and public information that can be obtained from respective Islamic religious council have described that it is mandatory for cash waqf to be converted into permanent or unperishable asset. By substance, the mechanism is like a philanthropic crowdfunding or syndication by donors to acquire waqf asset where money is just a medium to achieve that purpose. In this scenario, two essential aspects should be observed:

- Waqf sighah – it should be made clear that the cash is not the absolute subject matter of waqf even the term used is cash waqf. In some cases, the cash might be invested prior to such conversion.
- The rule of conversion or *istibdal* (for those who use this as basis) – matching the asset valuation of the exchanged subject that is impacted due to financial factors. The nature of asset and its accounting treatment should be taken into consideration, especially from the perspective of financial management, such as depreciation etc.; as the money does not shrink its value except due to economic factors such as inflation.
- Investment asset and transaction – the requirement restricts the ability for investment as any acquisition of asset will be regarded as waqf asset. Hence, it cannot be traded. Therefore, profit can only be generated via certain function e.g., rental etc. and not capital gain.

In the case of Selangor, the latest fatwa describes that cash waqf should be expanded; portraying that cash could be regarded as the waqf asset and is not required to be converted. However, it does not prevent from any possible conversion. Should the *istibdal* come into picture, then it attracts the abovementioned concern. Meanwhile for Kedah, the mechanism used is wakalah. Therefore, cash is not a waqf asset but considered as a medium for the representative to acquire the permanent waqf asset. So, it is just like the third connotation that is mentioned earlier. And the third concern on investment also applies.



## Conclusion

### *Summary of the academic literature*

The literature review discussed in this paper demonstrates that most of the studies, either by themselves or quoting from others, have described the cash waqf as endowing cash or money for waqf purposes. Only few of them have discussed the subsequent mechanism of such cash waqf, in which it gives the full meaning of cash waqf and different impact for future development. However, the matter is either conceptually discussed or is not critically reviewed for regulatory or Shariah provision. Henceforth, this paper serves the purpose of complementing the existing literature.

### *Summary of the Shariah resolution*

In one aspect, most Shariah resolutions have described the cash waqf as endowing the cash or money for waqf purposes. Following this focal point, there is a discrepancy on the subsequent mechanism which gives impact to the full meaning of Cash Waqf and its development structure as mentioned earlier.

On the one hand, some Shariah resolutions; mainly from non-Malaysian Shariah bodies, have described the cash or money as subject matter of waqf or waqf asset that can be benefitted from it via any possible way such as Shariah-compliant lending or investment. Thus, any trading that occurs to acquire asset using these funds is not construed as waqf asset but rather deemed as investment asset. However, neither one of these resolutions nor standards have deliberated on the credit or investment risk that is essential and may attract Shariah concern.

On the other hand, most of the Malaysian authorities have described the mechanism as conversion into permanent or non-perishable asset as the money is perishable. Even if another contract is applied, such as wakalah; and no conversion or *istibdal* is applicable, the ultimate is to construct or acquire the permanent asset. Therefore, the use of cash waqf term does not reflect the cash or money as the subject matter of waqf or waqf asset by substance. And that requires several observations that may attract Shariah concern. Henceforth, should the money be utilized for investment purposes, there is a restriction on the investment activities where the profit of capital gain is not possible as the asset acquired or constructed is deemed as waqf asset and not investment asset. And that requires forward-thinking from financial management and economic perspective towards sustainable development of cash waqf.

### *Identified gaps for future research*

In a nutshell, the above gaps that have been commented and become apparent in the literature shall be disclosed in future research to further promote prudent Cash Waqf and its sustainability, taking into consideration the current financial and economic circumstances. Perhaps, this literature review might assist researchers in identifying interesting areas as well as the direction for future research related to Cash Waqf.

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