

Baitul Mal and Legal Constraint: Public Wealth Management in Malaysian Context

Bayu Taufiq Possumah

PhD Candidate, Islamic Economic, Institut Islam Hadhari, Universiti Kebangsaan, Malaysia

E-mail: btaufiq@gmail.com

Abdul Ghafar Ismail

Professor of Banking and Financial Economics, School of Economics, Universiti Kebangsaan
Malaysia

Email: agibab62@gmail.com

Abstract

Baitul-Mal is normally known as a charitable institution. This point is true because presently Baitul-Mal role is more prominent in terms of providing assistance and charitable contributions and donations to the public. In essence, the original scope of Baitul-Mal covers a wider role compared to the current concept of Baitul-Mal. If we view from the context of Baitul-Mal at the early Islam, it turns out that Baitul-Mal is the only and center for the treasury of the state, but in the Malaysian context, scope and functions of Baitul-Mal are limited by the legal constraint. This paper is aimed to analyze the legal constraint and propose some procedures to empower the function and resource mobilization of Baitul-Mal. This paper will also expose that to improve the functions it can be done by using Islamic financial instruments.

Keywords: Empowerment; Legal Constraint; Baitul-Mal; Public Wealth; Role of State.

Introduction

Wealth management is an important aspect in Islam. Since we are not the absolute owner of the wealth in this world, we have the duty or responsibility to manage it in the best way we can. This is because wealth management is closely related to individual and society's welfare. Currently, welfare in our society is still lacking and visible; and there is a need of new concepts that can improve the welfare of our society. It is necessary to come up with a new paradigm of thinking about the concepts of welfare in the society. However building a prosperous community requires an ideal conceptualization in order to create sustainable and equality in welfare, not a minus economy causes of poverty in the midst of people's lives.

Today we are living in a highly dynamic environment where changes are taking place on regular bases. These changes are creating new challenges for the Baitul Mal as a public sector organizations. In order to cope with these challenges of the contemporary world, highly

dynamic organizations are required. The public sector has to play a more positive and dynamic role in fulfilling the hopes and aspirations in response to environmental changes.¹

The success of Economic Development not just arise on how income and expenditure level, but also relies on how the wealth or property was managed, distributed and benefited to those who need to achieve justice and equality welfare of society. Thus, in order to strengthen the public wealth sector and to realize its full potential for the socioeconomic development the mobilization and distribution of the resource is of prime importance. The lack of focus on the public resources as a strategic tool and resource has greatly undermined the efficiency and effectiveness of public sector organization. Lack of investment in public resources contributes a great deal to the failure and disintegration of the economic welfare development. That's why in this present study, we propose to state as clearly as possible the point of view of Islam in this matter, such as we have been able to deduce from the Holy Qur'an, the Sunnah, and the scholarly thought to manage the Muslim public properties as sources of public finance and utilize it into maximum social advantage through out *Baitul Mal*.

Accordingly, the *Bayt al-Mal* acts as a treasury complemented with the task of planning and distributing society's wealth in the whole socio economic and political set-up of the nation. In fact *Baitul Mal* not just a social institution, but can move more than that as microfinance institution. Role of *Baitul Mal* can be more important and meaningful if the two functions are strengthened.

Therefore the objective of this research is to synthesize the role of *Baitul-Mal* in mobilizing resources throughout non-tax sources and how *Baitul Mal* stands up as financial institution to distribute the resources to be more benefited. Hence, in this paper we divided into six parts of the discussion. The first part is an introduction and the second part explains the role of the State in wealth management; the third part is Wealth Management in Islamic perspective including *Baitul-Mal* concept and History. In the fourth part, we revisited and analyzed *Baitul-Mal* in Malaysian context and in the fifth part we propose a procedure to empowering *Baitul-Mal* through some Islamic financial instrument. The last part is concluded.

Role of the State in Wealth Management

According to the Financial Dictionary, the process of wealth management can be broadly defined as follows:

*"In general, wealth management is more than just investment advice, as it can encompass all parts of a person's financial life."*²

¹S.K Sharma, "Development Administration: New Dimension in Changing Aspects of Public Administration", New Delhi, Macmillan India Limited, 1999, p. 43

²<http://www.atlanticfinancial.com/dictionary/wealth-management.htm>

From these definitions, we can say that a person's financial life should also be given a priority. For example, the establishment of basic infrastructure, and the provision of basic amenities and financial assistances to the public are part of the responsibility of the state and thereby of public sector organizations. The World Bank Report 1997 also argued that the state is central to economic and social development not as a direct provider of growth but as a partner, catalyst and facilitator³

The above responsibilities deal with public properties/wealth. Thus, it also deals with the finances of the public.⁴ The finances of the government include the raising and disbursement of government funds. It is concerned with the operation of the public treasury. The study of public wealth has assumed increasing importance in the recent decades.⁵ Several factors contribute to this trend. The money expenditures and the money receipts of the government may affect not only the pattern of production and the distribution of the total product among the various income receivers, but also the levels aggregate output and prices within the economy.

Since, the various aspects of government finance have been increasingly in reference to their effects on the economy as a whole, as well as their impacts upon the treasury. Hence, the role of the state in relation to managing the finances of government is important. The leading economist in public finance, Adolph Wagner, divides the role of the State into two different categories of objectives: Law and Power (Rechts- und Machtzweck)⁶ and Culture and Welfare (Kultur- und Wohlfahrtszweck).⁷ However, for our purpose it is important to divide the welfare aspect expressed in the other classification into two very different categories: the creation vs the distribution of income. The aim is to promote happiness and "increasing the size of the pie".

In Islam, an Islamic state defined as a state which believes and applies Islamic injunction in all spheres of life.⁸ The role of the state is modeled on the same way that the early companions implemented the affairs of state. Islam requires the authority of the state to act in the public interest, to maintain justice, to promote Islam internationally, and to redistribute wealth. The extent to which the state should rule people's affairs depends on the needs of the people. Sometimes larger government involvement may be needed and sometimes only a few. Islam does not prescribe anything like a state with huge control over industry but it is responsible for taking control of such basic utilities such as water rights if it is necessary to ensure that the basic needs of the population are met. The Islamic economy is a very free market economy restricted by the morals of the Muslims involved in the trading and general concerns over distortions to that freedom to trade. For example the existence of monopolies or other forms

³World Bank, "World Development Report 1997", Oxford University Press, p.1

⁴ It also synonym with the finances of government

⁵Since 1930, the various aspects of government finance have been increasingly in reference to their effects on the economy as a whole, as well as their impacts upon the treasury. Give the example of studies

⁶Reinert also has the same view, see Erik S. Reinert, The Role of The State in economic Growth, Journal of economic Studies, Emerald vol.26, 4/5, p.279

⁷Wagner in *HandwoÈrterbuch der Staatswissenschaften*, Vol. 7, 4th edition, Gustav Fischer, Jena, 1926, p. 773

⁸HailaniMujiTahir, Islamic Budgetary Policy: in Theory and Practice, Thesis PhD Aberdeen University, 1988, p. 42

of attempts to deceive people as to the would-be free market prices is something an Islamic government would attempt to eradicate.

Basically, the role of state in Islamic economic has a rationality foundation, and based on the miraculous arguments; derivation of caliphate concept, consequences of collective obligation (*Fardh al Kifayah*), the existence of market failure in realizing *Falah*. Government is the trustee of Allah who runs the task in the collective welfare and justice (*al adlwa al ihsan*) as well as good life for all people. So, government is the agent of Allah or *Khalifatullah* to realize al *Falah*. As the sole fiduciary the existence and role of government has a solid grounding in the Qur'an and Sunnah, both explicitly and implicitly. The life of the prophet and *KhulafaarRasyidin* is a very good example for the existence of government.

The purpose of the state is not to impose Islamic teachings on society, but rather to establish and secure the general conditions that will facilitate the realization of the human mission (*Khilafah*). Hence, it is important here to distinguish the role and purpose of the Islamic state and the Ummah. While the latter purpose to foster the Islamic character and help the individual grow morally and spiritually, allowing him/her to define his/her role and objectives in life within the general framework of the Shariah, the former attempts to coordinate and direct the activities of the *Ummah* in ways that will enable a society to cope with economic and political challenges and to enhance the quality of life in the community.

There is a widely shared view that government should assist the poor and weak in society. This gives rise to a redistributive role for the government. There is debate about the nature and extent of this role. Some people, such as Robert Nozick (1974), argue that the government has no role in redistributing income and wealth. Others believe that the government's redistributive role should be limited to the avoidance of hardship where personal, family and voluntary resources are insufficient. Some other people think that the government should provide more extensive assistance such as to people with modest incomes or levels of wealth who do not face hardship. Still others believe that incomes and wealth should be distributed equally or close to equal. This issue can only be resolved through the political process although that process is far from perfect. Economists and other analysis can inform such decisions. The social goals discussed below point to a limited re-distributive role for the government that could be undertaken by central government or local government, or both.

Many distributional effects that arise from government decisions are incidental to the undertaking of its two main functions of maintaining order and facilitating the provision of public goods and services. Others may arise because it is inappropriate or infeasible to charge users directly for public goods and services. Certain distributional effects of council activities reflect the normal operation of markets. Firms, for instance, are not generally compensated if they lose business to their competitors. Some distributional effects may be small and of little significance from a public policy perspective.

Some of the scholars' view of the role of the state can be summarized as follows. The important roles of an Islamic state are working towards improving the material welfare of the society and

its individuals as much as possible within the limits of available resources. This includes objectives of economic stability, equality, increasing of employment, social and economic development, etc. And management of public properties for the benefit of all members of the society. Ibn Khaldun in his *Al-Muqadimah* defined the role of the Islamic state as ensuring that religion belongs to Allah and that the word of Allah is supreme (See Ibn Khaldun, 1930). Al-Mawardi defined the role of the Islamic state as safeguarding religion and managing the worldly affairs of the Muslim (See Al-Mawardi, 1398H). Siddiqi suggests that the Islamic state must guarantee the fulfillment of the basic needs of every human being within its jurisdiction. It must prevent the concentration of wealth. It must keep the country strong. Under contemporary conditions, it must ensure employment, stability and progress in science and technology (See Siddiqi, 1986).

From these functions according to Kahf (1991) the essential economic objectives of the Islamic state may derive as follows:

Achieving of economic capability necessary for strengthening the Islamic state in such a way as to allow it to be a safeguard of religion, the protector of the society and its values and a vehicle of spreading Islamic Da'wah in the world. This includes adequate level of performance especially in areas of economic development, science and technology, and military might.

Working towards securing economic satisfaction of the society in general and promoting general material welfare while guaranteeing the basic needs of its individuals. Maximization of the benefits of public properties, their expansion and use for the benefit of all people Obtaining necessary financial resources to run the government and spending in accordance with Shariah. Protecting the moral and legal framework and promoting a work environment conducive towards success in the hereafter. This includes ordaining what is good and preventing what is wrong.

Maintaining economic justice by preserving social and economic balances, achieving adequate employment for all members of the society and preserving the wealth and income of the people. Kahf also views that the Islamic state has a minimum role in the formulation of fiscal policy (See Kahf, 1990). He argues that the Islamic state is not empowered to pursue economic policies involving changes in the pattern of revenue and expenditure, nor is it allowed to impose economic, social or political limitations which may or may not violate the freedom and rights bestowed on the individual by Allah. Some other authors⁹ who studied the Islamic economic system emphasized on three broad economic objectives of Islamic state which are: social security, harmonious economic development and social equilibrium. Based on these objectives, the functions and activities public wealth management under the jurisdiction of what we call the Islamic state today have grown rapidly. While the list may have been shot

⁹ Such as M. Umar Zubair, *Role of the State towards the realisation of islamic economics objectives*, IRTI/IDB, K.S.A, 1998, and Mohammed Boudjellal, *Theory of Increasing Waqf*, Islamic Economic Studies Review, vol. 5 no.1, 1997, IRTI/ IDB, Jeddah

during the early period of Islam, the nature and significance of contemporary activities designated to the state have markedly expanded to include, for example, safeguarding religion, spreading the word of Allah, defense, social capital, meeting the basic needs of individuals, develop projects and programs, and so forth.

Revisit on Property Management in Islamic Perspective

Qur'an teaches us that all wealth belongs to God and man is only a trustee. The Quran says, *"To Him (God) belongs that is in the heavens and all that is on the earth, and all that is between them, and all that is under the soil."*¹⁰

The Quran further says,

*"... And give them something out of the wealth that God has bestowed upon you."*¹¹

This means that it is God who owns the wealth and that wealth has been bestowed by Him. Since God is the absolute owner, a man is just a trustee and this is evidenced in the Quranic verse,

*"Lo! We offered the trust unto the heavens and the earth and the hills, but they shrank from bearing it and were afraid of it. And man assumed it. Lo! He hath proved a tyrant and a fool."*¹²

The verses and similar explain that *all of life's acquisitions* existing in material form and having value, comprise wealth. However, the verses also give precise moral injunctions as to what are, and are not acceptable kinds of wealth. They point out how individual preferences on wealth formation ought to be utilized within the social meaning. And In each of the verses, recommended or permissible wealth is premised on the Moral Law. Thereby, the unity of the divine law (Tawhid = Oneness of God) becomes the endogenously inducing factor of learning and moral consciousness in the acquisition of wealth. Consequently, the recognition of the divine law underlying the acquisition of all material things indicates the criteria for permissible wealth. Moreover, conscious or unconscious avoidance of the Moral Law when acquiring wealth is judged by the same criteria.¹³

Islam appreciates property that is beneficial for the use of humankind. The benefit here means within the parameters approved by the *Shariah*. Nevertheless, there is a great similarity between Islam and other cultures in what can be regarded as beneficial or otherwise, since what is deemed beneficial, good or bad for human kind is universal. The Muslim jurist is of the view that a thing is considered a property or *a mal* when it is clean, beneficial and worthiness which they technical term as *mutaqawwim*.¹⁴ The meaning of property and its transaction are limited within these conditions. Clean and pure (*thahir*) take in two forms: physical and

¹⁰ QS.2:86

¹¹ QS.24:33

¹² QS.33:72

¹³ MasudulAlamChoudhury(undated) Dispensation Of Wealth In Islam, unpublished paper, Trisakti university, Jakarta Indonesia

¹⁴ Muhammad Abu Zahrah (1996), *al-MilkiyyahwaNazariyyah al-'Aqd fi al-Shari'ah al-Islamiyyah*, Egypt, (reprint), p.48

abstract. In the former, things viewed by the *Shariah* as impure such as swine, dog, liquor, animal's waste etc.¹⁵

In the latter, wealth acquired through illegal means such as theft, robbery, bribery, etc., similarly, a thing is not considered a property if it has no direct benefit to Muslim or its purpose is contradictory to the aims of the religion: in the former, things such as wild animals and in the latter, things such as musical instruments, playing cards etc. Worthiness (*mutaqawwim*) means such a thing must have value. Hence, a pebble or a handful of sand is not a property since they are of no value.

In a capitalistic economy, wealth is almost anything of monetary value that one accumulates in sufficient quantity. Rights to wealth determine the relative power and rank of a person. As a result, primary concepts are actually the generic concepts with philosophical themes, either based on laissez faire (capitalism), socialism or Islam, as described in Figure 1. When these primary concepts are stratified, it will help to develop a particular overview of wealth management as a whole. It can be translated into wealth planning in every stage of creation, accumulation, protection, distribution and purification of wealth.

Figure 1. Primary Concept of Wealth in Various Perspectives

Concept	Capitalism	Islam	Socialism
Wealth/Resources	Scarcity of Resources	Bounties of God and no scarcity	Scarcity of Resources
Ownership	Individual freedom	A Trust (Amanah)	The source for the exploitation of labor
Objective	Personal Satisfaction (needs and wants)	Prosperity (Al Falah)	Welfare Equality among the workers

Therefore, wealth management in Islam can be looked from different perspectives. These include the *Ziswaf (Zakat, Infaq, Waqaf, and Shadaqah)* management, inheritance, wills and testaments, estate planning, natural resources investment and disbursement, managing cash and saving, managing of tax and state duty, and different business transactions.

In general, wealth should be used to meet the needs of human, whether individual, family, society or country. Positive benefits derived from wealth/assets in returned will be blessed, while negative benefits will render pain and suffering on the Day of Judgment, as illustrated in *Surah al-Baqarah, 2:261 and Surah Ali-Imran, 3:186*. According to Abdullah (2004), *halaal rizq*, will be blessed on this earth while *haram (prohibited) rizq* will result in anxiety and uneasiness

¹⁵ Muhammad ibn al-Khatib al-Syirbini (n.d), *Mughni al-Muhtaj*, Beirut: Daral-Ma'rifah, volume II, p.16

on this earth, and more than that, on the Day of Judgment, he will be punished in hell, as the saying of the Prophet s.a.w.

*"It is not wealth due to bountiful assets owned, rather real wealth are those that result in serenity and tranquility in life"*¹⁶

*"A person will not enter paradise, if his growth is derived from haraam or illegal means/efforts"*¹⁷

According to Yahaya and Azhar (2005), assets can be accumulated through three means: through exploration of earth natural resources, e.g. agriculture, animal husbandry and mining.

- through commercial efforts or trade or buy and sell, *tijarah* and *bai'un* in Arabic.
- through gifts, such as donations or *sadaqah*, *zakat* (Islamic tax system), *ghanimah* (assets from non-Muslim taken legally (e.g. won in a war), *jizyah* (tax imposed on non-Muslim in return for protection) and inheritance passed down from generation or family line.

If we consider the injunctions of the Holy Quran in accumulation of wealth, we should also consider in distribution of wealth by Qur'an. Thus, it would appear that the system for the distribution of wealth laid down by Islam envisages three objects¹⁸:

A) The Establishment Of A Practicable System Of Economy

The first object of the distribution of wealth is that it would be the means of establishing in the world a system of economy which is natural and practicable, and which, without using any compulsion or force, allows every individual to function in a normal way according to his ability, his aptitude, his own choice and liking, so that his activities may be more fruitful, healthy and useful. And this cannot be secured without a healthy relationship between the employer and the employee, and without the proper utilization of the natural force of supply and demand. That is why Islam does admit these factors. A comprehensive indication of this principle is to be found in the following verse:

The condition of "proper utilization" has been assumed because it is possible to make an improper use of forces, and it has been the case under Capitalism. Islam has struck at the very root of such an improper use and has thus eradicated the unbridled exploitation of private property.

*"We have distributed their livelihood among them in worldly life, and have raised some above others in the matter of social degrees, so that some of them may utilize the services of others in their work."*¹⁹

¹⁶Hadith narrated by Bukhari & Muslim

¹⁷Hadith narrated by Imam Ahmad

¹⁸Mufti Muhammad Shafi, *Distribution of Wealth In Islam*, Read at the International Islamic Conference, Rawalpindi, Pakistan on February 13, 1968. Published by Begum Aisha Bawany Wakf, Karachi, 6th edition 1979

¹⁹QS.43:32

B) Enabling Every One To Get What Is Rightfully Due To Him

The second object of the Islamic system of the distribution of wealth is to enable everyone to get what is rightfully his. But, in Islam, the concept and criteria of this right is somewhat different from what it is in other systems of economy. Under materialistic economic systems, there is only one way of acquiring the right to "wealth", and that is a direct participation in the process of production.

In other words, only those factors that have taken a direct part in producing wealth are supposed to be entitled to a share in "wealth", and no one else. On the contrary, the basic principle of Islam in this respect is that "wealth" is, in principle the property, of Allah Himself and He alone can lay down the rules as to how it is to be used. So according to the Islamic point of view, not only those who have directly participated in the production of wealth but those to whom Allah has made it obligatory upon others to help, are the legitimate sharers in wealth. Hence, the poor, the helpless, the needy, the paupers and the destitutes - they too have a right to wealth. For Allah has made it obligatory on all those producers of wealth among whom wealth is in the first place distributed that they should pass on to them some part of their wealth. And the Holy Quran makes it quite explicit that in doing so they would not be obliging the poor and the needy in any way, but only discharging their obligation, for the poor and the needy are entitled to a share in wealth as a matter of right. Says the Holy Quran:

"In their wealth there is a known right for those who ask for it and those who have need for it."²⁰

In certain verses, this right has been defined as the right of Allah. For example:

"And pay what is rightfully due to Him on the day of harvesting."²¹

The word "right" in these two verses makes it clear that participation in the process of production is not the only source of the right to "wealth", and that the needy and the poor have as good a right to "wealth" as its primary owners. Thus Islam proposes to distribute wealth in such a manner that all those who have taken a part in production should receive the reward for their contribution to the production of wealth, and then all those too should receive their share that Allah has given a right to "wealth".

C) Eradicating The Concentration Of Wealth

The third object of the distribution of wealth, which Islam considers to be very important, is that wealth, instead of becoming concentrated in a few hands, should be allowed to circulate in the society as widely as possible, so that the distinction between the rich and the poor should be narrowed down as far as is natural and practicable. The attitude of Islam in this respect is that it has not permitted any individual or group to have a monopoly over the primary sources

²⁰ QS.17:24-25

²¹ QS.6:142

of wealth, but has given every member of the society an equal right to derive benefit from them. Mines, forests, un-owned barren lands, hunting and fishing, wild grass, rivers, seas, spoils of war etc., all these are primary sources of wealth. With respect to them, every individual is entitled to make use of them according to his abilities and his labor without anyone being allowed to have any kind of monopoly over them.

"So that this wealth should not become confined only to the rich amongst you".²²

Beyond this, wherever human intervention is needed for the production of wealth and a man produces some kind of wealth by deploying his resources and labor, Islam gives due consideration to the resources and labor thus deployed, and recognizes man's right of property in the wealth produced. Every one shall get his share according to the labor and resources invested by him. Says the Holy Quran:

"We have distributed their livelihood among them in worldly life, and have raised some above others in the matter of social degrees, so that some of them may utilize the services of others in their work".²³

But, in spite of this difference among social degrees or ranks certain injunctions have been laid down in order to keep this distinction within such limits as are necessary for the establishment of a practicable system of economy, so that wealth should not become concentrated in a few hands. Of these three objects of the distribution of wealth, the first distinguishes Islamic economy from Socialism, the third from Capitalism, and the second from both at the same time.

Baitul-Mal -Concept and History

The role of the state can only be well functioning, if there is an organization that will be given a trust and mandate to perform that tasks. In recognizing the importance of this organization, *Baitul-Mal* or public treasury, according to some view,²⁴ was founded by Prophet of Islam himself when he established Islamic state at Al-Madinah. But this view is not supported by majority of the scholars of Islamic history for the reason that in the reign of the Prophet the income of the state was meager which never exceeded its expenses and hence the need of *Baitul-Mal* was never felt. According to more current and dominant view,²⁵ *Baitul-Mal* was first established during the reign of Abu Bakr who succeeded the Prophet in the year 632, A.D. as First caliph of the Islamic state. With the conquests of Iraq, Syria and other countries there was considerable increase in the revenues of the Islamic state which necessitated the establishment of public treasury.

²² QS.59:7

²³ QS.43:32

²⁴ Such as Abdul Qadir Zallum, 'al-Amwal Fi Dawlah al Khilafah', p.15

²⁵ Nicolos P. Aghnides: Muhammadan Theories of Finance, Lahore: United printing Press, 1961

In the early days of Islam, *Baitul-Mal* is not so prominent and importance. Because the economic development at that time was limited and there was not much revenue for the state, hence there is no difficulty to manage it. Problem of surplus also does not arise, because the earned income equals to the amount spent. In short, the *Baitul-Mal* during the early days of Islam, and also during the prophet time can be summarized as no specific place to saving the property; limited sources; ad-hoc funds are exist; and simple allocation and distribution procedure, there is no necessary to store it. However, *Baitul-Mal* took its real shape on permanent footing during the rule of Umar *al Farooq*, the second caliph of Islam. It is during his time that the treasures of countries conquered from former Iranian and Roman empires started pouring into Muslim capital which made the institution of *Baitul-Mal* a powerful and very important department of the state.

It is better to explain the concept of *Baitul-Mal*, as envisaged by early Muslims who founded it, before we proceed to expand upon sources of its income and heads of its expenses. "Every property which belongs to Muslims in general and not to any Muslim in particular constitutes a part of the assets of the public treasury (*Baitul-Mal*). It is not necessary that the property should be actually in the vaults (*Hirz*) of the treasury for it to be considered an asset of the treasury, because the conception of *Baitul-Mal* refers to the destination of the property, not to its actual location. Therefore, every expenditure which must be incurred in the interests of the Muslims in general is a liability of *Baitul-Mal* and when it is made, it is considered to have been made by it, whether or not it has actually been paid out of the vaults of *Baitul-Mal*; this is for the reason that a revenue which has gone into the hands of the public collectors or has been directly spent by them is really a part of the income and expenditure of the *Baitul-Mal* itself, and therefore, subject to the regulations governing the same.²⁶

Dictionary of Islam defined *Baitul-Mal* as National treasury who received the money collected by the state from various sources such as Zakat, Waqf, etc.²⁷ Zallum(1983) in his book, '*al-Amwal Fi Dawlah al Khilafah*' defines *Baitul-Mal* as the competent authority in charge of all the State's revenues and all the expenditures for which the Muslims are eligible. This definition conform *Baitul-Mal* as treasury of the state. So every property, be it land, buildings, minerals, money, or merchandise for which the Muslims are entitled, according to the divine rules, but the person entitled to its ownership has not been designated though the area upon which it is spent is determined; such property would be a rightful property of Muslims' Treasury, regardless of whether it is already in the sanctuary of the Treasury or not. Likewise, every property due to be spent upon its beneficiaries and rightful owners, or in the interests of the Muslims and their affairs, or in carrying the Islamic *Daw'ah*, all such funds area duty upon the treasury, regardless of whether the funds are spent or not. Therefore, the *Baitul-Mal* in this context is the competent authority.

Imam Al-Sarakhsi, the well-known Hanafi Jurist, says in his work "Al-Mabsut": "The *Baitul-Mal* has any rights and obligations which may possibly be undetermined." In another place the same

²⁶Nicolos P. Aghnides: *Muhammadan Theories of Finance*, Lahore: United printing Press, 1961

²⁷Patrick Thomas Huges, 1964, *Dictionary of Islam*, Lahore Premier Book House, Lahore, p. 35

author says: "If the head of an Islamic state needs money to give salaries to his army, but he finds no money in the Kharaj department of the *Baitul-Mal* (wherefrom the salaries are generally given) he can give salaries from the Shadaqah (Zakah) department, but the amount so taken from the Shadaqah department shall be deemed to be a debt of Kharaj department."

The revenues which accrue to the *Baitul-Mal* of state have been placed by the classical jurists of Islam under three categories. They are: (i) The 'Zakat' and 'Shadaqah' revenues; (ii) the 'Ghanimah' revenue or spoils of war; (iii) the 'Fai' revenues such as Jizyah and Kharaj. These revenues have already been discussed in detail by Abu Ubaidin his book *al Amwal*. Since the revenues falling under the second and third category are no longer available to a modern Islamic state, the same would be substituted by the modern taxes.

The above mentioned classes of revenue are maintained distinctly under separate heads or titles by the *Baitul-Mal* as the items of expenditure to which they can be allocated are different in Shariah. The zakat and Shadaqah revenues can be applied to the heads of expenditure as prescribed by the Qur'an²⁸ which relate mainly to the welfare of the poor; whereas other revenues are spent by the Islamic state at its discretion to fulfill its multifarious responsibilities such as establishment of law and justice, defense, civil administration, transport and communication, economic development, education and health and social action program.

A full-fledged proper organization of *Baitul-Mal* existed during the Muslim rule right from the time of Umar Farooq, the second caliph of Islam. Central *Baitul-Mal* existed in the capital of the empire under the direct control of the caliph, whereas at the provincial level the *Baitul-Mal* was controlled by the governor of the province. There were no commercial banks or central bank during those times. It appears that all the requirements and needs of the government and the society used to be met by *Baitul-Mal* which supervised public revenues and public expenditure, helped the poor and performed almost similar functions which the ministry of finance performs today. In addition to that, it also performed the functions of a central bank except in: issuing the currency, and controlling credit and utilizing interest rates as policy tools.

Baitul-Mal in Malaysian Context: What Does the Law Say?

The Malaysian experience in establishing the Baitul-Mal can be seen from the legal basis. In Malaysia there are two fractions to manage properties of the state, ministry of finance and *Baitul-Mal*. *Baitul-Mal* has been established as a public institution and trustee group by the state based on the Jadual Kesembilan [Perkara 74, 77] Senarai Perundangan; Scenario II – Senarai Negeri Perlembagaan Persekutuan, establishment of *Baitul-Mal* jurisdiction of Majlis Agama Islam Negeri (MAIN) and generally, the administration of each Islamic state in Malaysia has outlined matters pertaining to *Baitul-Mal*, including the source of *Baitul-Mal* funds as below:

"Kecuali mengenai Wilayah Persekutuan Kuala Lumpur, Labuan dan Putrajaya, hukum syarak dan undang-undang diri dan keluarga bagi orang yang menganut agama Islam, termasuk

²⁸ QS.9:60

hukum syarak yang berhubungan dengan pewarisan, berwasiat dan tidak berwasiat, pertunangan, perkahwinan, perceraian, mas kahwin, nafkah, pengangkatan, penjagaan, alang, pecah milik dan amanah bukan khairat; wakaf dan takrif serta pengawal seliaan amanah khairat dan agama, pelantikan pemegang amanah dan pemerbadanan orang berkenaan dengan derma kekal agama dan khairat, institusi, amanah, khairat dan institusi khairat Islam yang beroperasi keseluruhannya di dalam negeri; adat Melayu; zakat, fitrah dan baitulmal atau hasil agama Islam yang seumpamanya; masjid atau mana-mana tempat sembahyang awam untuk orang Islam, pewujudan dan penghukuman kesalahan yang dilakukan oleh orang yang menganut agama Islam terhadap perintah agama itu, kecuali berkenaan dengan perkara yang termasuk dalam Senarai Persekutuan; keanggotaan, susunan dan tatacara mahkamah syariah, yang hendaklah mempunyai bidang kuasa hanya ke atas orang yang menganut agama Islam dan hanya berkenaan dengan mana-mana perkara yang termasuk dalam perenggan ini, tetapi tidak mempunyai bidang kuasa berkenaan dengan kesalahan kecuali setakat yang diberikan oleh undang-undang persekutuan, mengawal pengembangan doktrin dan kepercayaan di kalangan orang yang menganut agama Islam; penentuan perkara mengenai hukum dan doktrin syarak dan adat Melayu”.

Structure and Management of property located under one agency identified as Majlis Islam. Majlis act as a caretaker in the property management. Section 81 (1) Enakmen Pentadbiran Agama Islam Selangor 2003 (EPAIS) describes the development of a money institution, called *Baitul-Mal* in Selangor. Section 81 (3) also explained that all money and property in the *Baitul-Mal* is entitled under the management of Majlis Islam. However, there are states separate *Baitul-Mal* functions to a specific institution. For example Perbadanan Baitul Mal Sabah established under the Sabah Enactment 1998. Section 3 of the Enactment mentions the establishment of Perbadanan *Baitul-Mal* Sabah. The effort of Sabah *Baitul-Mal* to corporatize the *Baitul-Mal* was commended, this because almost all Enakmen Pentadbiran Negeri has provided to Majlis Islam the power to establish the corporations. An example is in Section 8 (1) EPAIS authorizing the Majlis Islam to set up and govern a corporation.

Next article 97 (1) of the federal Constitution requires that all revenues received by the Federation shall include in the Federal Consolidated Fund. While article 97 (2) is requiring that all revenue received by the State shall be entered into the Consolidated Fund of the state. Interestingly, article 97 (3) also provide for any Islamic wealth, including Baitul-Mal, Zakat, Fitrah and the Similar shall be included in a separate fund and only be issued by related law concerned (Islamic Law). The allocation is as follows:

“Jika mengikut undang-undang Negeri...apa-apa zakat, fitrah, Baitulmal atau hasil agama Islam, yang seumpamanya adalah didapatkan, maka hasil itu hendaklah dibayar masuk ke dalam suatu kumpulan wang yang berasingan dan tidak boleh dikeluarkan kecuali di bawah kuasa undang-undang Negeri..”

Separated fund contemplated in article 97 (3) that describes the scope of the Baitul-Mal or Islamic revenue is normally designated as “ Kumpulan Wang Baitul-Mal”. In carrying out its

functions, the Baitul-Mal revenue will cover all matters which related to Islamic Law in the state as follows:

“...hukum syarak dan undang-undang diri dan keluargabagi orang yang menganut agama Islam, termasuk hukum syarak berhubung dengan mewarisi harta berwasiat dan tak berwasiat, pertunangan, perkahwinan, perceraian, mas kahwin, nafkah, pengambilan anak angkat, taraf anak, penjagaan anak, pemberian, pembahagian harta dan amanah bukan khairat; wakaf Islam dan ta’arif serta peraturan mengenai amanah khairat dan khairat agama, pelantikan pemegang-pemegang amanah dan perbadanan bagi orang-orang mengenai pemberian agama Islam dan khairat, yayasan, amanah, khairat dan yayasan khairat yang dijalankan, kesemuanya sekali dalam Negeri; adat istiadat Melayu; zakat, fitrah dan Baitulmal atau hasil ugama Islam yang seumpamanya;...”

The principle of separation of Islamic revenue and its financial account of the state (Consolidated Fund) Kumpulan Wang Disatukan Negeri) are also included in article 86 which provides

(1) Tertakluk kepada Fasal (3) Duli Yang Maha Mulia hendaklah berkenaan dengan tiap-tiap tahun kewangan menyebabkan supaya dibentangkan dalam Dewan Negeri suatu penyata anggaran wang masuk dan perbelanjaan bagi Negeri bagi tahun itu...”

(3) “Anggaran wang masuk yang hendaklah ditunjukkan dalam penyata tersebut tidaklah termasuk apa-apa jumlah wang yang diterima melalui zakat, fitrah dan Baitulmal atau hasil yang seumpamanya di sisi agama Islam...”

In several enactment of an administration Islamic law of the states explain that Islamic properties submitted to *Baitul Mal* are:

“Baitu-Mal hendaklah terdiri daripada semua wang dan harta, alih atau tidak alih, yang menurut hukum Syarak atau dibawah Enakmen ini atau peraturan-peraturan atau kaedah-kaedah yang dibuat dibawahnya, terakru, atau disumbangkan oleh mana-mana orang, kepada Baitulmal.”

The federal territory, Section 60 (1), the administration of the Islamic law act (Akta Pentadbiran Undang-Undang Islam) 199320 has been provided that:

“Suatu Kumpulan Wang yang dikenali sebagai Baitulmal adalah dengan ini ditubuhkan. Kumpulan wang itu hendaklah terdiri daripada semua wang dan harta, alih atau tak alih, yang menurut hukum Syarak atau di bawah peruntukan-peruntukan Akta ini atau kaedah-kaedah yang dibuat dibawahnya terakru, atau disumbangkan oleh mana-mana orang, kepada Kumpulan Wang.”

In perak, Enakmen Pentadbiran Agama Islam (Negeri Perak) 1992 Peruntukan 7521 explained;

“Sumber am Baitulmal termasuk sumbangan dan pemberian; fidyah dan kaffarah; wang dan harta orang Islam yang tidak dituntut; Wasiat am; harta pusaka yang tidak diwarisi; Harta harta tercicir (luqatah); dan lain-lain sumber Baitul-Mal mengikut Enakmen ini atau hukum Syarak.”

Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) 2001 Seksyen 58 (2):

“Kumpulan Wang Majlis hendaklah terdiri daripada semua wang dan harta, alih atau tak alih, yang menurut Hukum Syarak atau di bawah Enakmen ini atau peraturan-peraturan atau kaedah-kaedah yang dibuat di bawahnya, terakru, atau disumbangkan oleh mana-mana orang, kepada Kumpulan Wang Majlis”

Enakmen Pentadbiran Undang-Undang Islam (Sabah) 1992, Seksyen 43 (1) state:

“Suatu kumpulan wang yang dikenali sebagai "Kumpulan Wang Baitulmal" adalah dengan ini ditubuhkan. Kumpulan Wang Baitulmal itu hendaklah terdiri daripada semua wang dan harta, alih atau tak alih, yang menurut Hukum Syarak atau di bawah peruntukan-peruntukan Enakmen ini atau kaedah-kaedah yang dibuat di bawahnya terakru, atau disumbangkan oleh mana-mana orang kepada Kumpulan Wang Baitul-Mal”

According to the provisions of the Federal Territory Act and Enactment in Terengganu state and Sabah state, the meaning of allocation is same as in Selangor, Negeri Sembilan, Melaka, Johor and Penang. Reflect all sources of similar property, either from a source determined by the Act and Enactment itself or from other general resources through donations. No further details about the assets in general.²⁹

Meanwhile the enactment of Perlis, Kelantan and Sarawak State clarifies the resource of Baitul-Mal, for instance Sarawak, Ordinan Majlis Islam (Sarawak) 2001, Seksyen 45 (2) provides that *Baitul-Mal* consists of:

segala harta pusaka atau harta si mati beragama Islam yang, mengikut Undang-Undang Islam atau di bawah Ordinan ini atau kaedah-kaedah yang dibuat di bawahnya, terakru kepada Baitulmal;

segala fi, wang, zakat dan fitrah yang dipungut dari semasa ke semasa oleh Lembaga masing-masing mengikut Bahagian ini dan Bahagian VII;

segala caruman yang dibuat atau kena dibayar oleh mana-mana orang kepada Baitulmal;

apa-apa pemberian, alang, derma, caruman atau apa-apa jumlah wang lain yang diterima dari mana-mana sumber;

apa-apa jumlah wang yang dipinjam oleh Majlis di bawah seksyen 7;

segala wang dan harta Baitulmal;

segala harta dan aset daripada wakaf khas dan nazr am;

²⁹ See Enakmen Pentadbiran Agama Islam (Negeri Sembilan) 2003, Seksyen 81(2); Enakmen Pentadbiran Agama Islam (Negeri Melaka) 2002, Seksyen 69(2); Enakmen Pentadbiran Agama Islam (Negeri Johor) 2003, Fasal 81(2); Enakmen Pentadbiran Agama Islam (Negeri Pulau Pinang) 2004, Seksyen 81(2).

Actually, scope of *Baitul-Mal* embrace Zakat, waqf, charity, and all Muslims common property, where the common property is the estate (harta pusaka), wills (*wasiat*), grants (*Hibah*), charity, usury of money, *luqathah*, *Fidyah* money, insurance money, rotten debts which are not prosecuted, the charter (fruit of *Ijarah*), the results of resurfacing, votive (*Nazar*) and *Kaffarah*. According to Department of Awqaf, Zakah and Hajj (*Jawhar*) the types of property which can be listed as a general source of property in Islam are:

General inheritance

Will

Charity

Individual donation

Interest

Insurance

Luqatah: Items that have been found.

Fidyah: Penalty for declining to fast during Ramadhan or with certain reason or delay in replacing fasting days.

Kaffarah: Penalty for minor transgression.

Outstanding debt: Debts that are not paid due to certain reasons such as death/missing/bankrupt/insane or if the debts are not claimed by the heirs.

Rent money: Income from things that are rented by the State Islamic Council to an individual/company and so on.

Investment: Investment for certain business.

Nazar: Promise to God (*Nazar*) that is made has to be done once the target is achieved.

Other potential wealth is also considered to be in this scope of general source of property.

Section 25 of the Civil Law Act 1956 stated that the administration of a Muslim's property should be in accordance with the Islamic law. It provides that nothing in Part VII (devolution and disposal) of this statute shall affect the disposal of any property according to Muslim law, native law and custom. This provision shows the personal law of Muslims regarding with the administration of property is Islamic law and as clearly stated in Part VII on the disposal and devolution of property. Section 25 gives clear provision that the principles of English Law relating to the property's administration do not apply to Muslims who are governed by Islamic law. As regards to the jurisdiction of the courts, although the Islamic law is applicable to the law of property for Muslims, the cases will be handled by the civil court and not the Shariah court. The Federal Constitution provides that the civil court has jurisdiction to deal with the procedural aspects of the administration of Muslims' estates and the Shariah court only deals with minor jurisdiction such as the issuance of "distribution certificate or *sijil faraid*".

In addition, all assets in the *Baitul-Mal* may be invested from time to time. In accordance with Section 81(4) EPAIS clearly express that all assets or Fundvested in the Majlis may be sold or invested. In fact, Section 81(5) also states that the Council with the approval of the Sultan may make regulations for the collection, administration and distribution of all *Baitul-Mal* properties. In terms of governance and the position of *Baitul-Mal* are also modified, and if we compare with its initial appearance in the early history of Islamic Civilization, there are significant

differences. The western colonialism causing vary and separate according to their respective states. Base on that case, means *Baitul-Mal* in Malaysia goes through contingency in its scope and function as a source of fund of the Nation. This situation is due to several factors that led to lack of empowerment in *Baitul-Mal* institution as a whole both inside and outside factor in an across of the country. Briefly the differences between *Baitul-Mal* concept and contemporary practical in Malaysia are:

Diminution function of Baitul-Mal

Malaysian Law states that Baitul-Mal still locally applicable of regions, not nationally (as listed in Jadual Kesembilan [Perkara 74, 77] Senarai Perundangan; Senarai II – Senarai Negeri Perlembagaan Persekutuan), so that the policies of Baitul-Mal also vary between the regions. In that position *Baitul-Mal's* function and its sources of fund become smaller and tighter.³⁰ To change this application, the seventh part of Peruntukan-Peruntukan Kewangan and Jadual Kesembilan, Perlembagaan Persekutuan should be changed.

Islamic revenue versus civil revenue.

Baitul-Mal only received the revenue from Islamic properties under Shariah law and cannot receive other properties from the regions even under the authority of the state. The *Baitul-Mal* yield compared to the State/Federal: List the total *Baitul-Mal* revenue conclusively distinguishes it from the State or Federal revenue still vague and not expressly provided in the laws of the State, or Federal law, especially when it involves Islamic banking, Islamic funds and others. To change this position, the enactment of the *Baitul-Mal* or the method of collection, administration and distribution of treasury should be drafted. Coordination with other agencies (such as Bank, Amanah Raya Bhd. (ARB), *Kumpulan Wang Simpanan Pekerja* (KWSP) etc., is necessary. Also required references to the Federal Court if involves the issue of the Federal Constitution.

Waqf and Zakat fund no longer regarded as Baitul-Mal revenue and recorded on their own account.

Baitul-Mal placed under the administration of the institution known as the Islamic Council (Majelis Agama Islam Negeri/MAIN) which is differ from the state Executive Council (Majelis Mesyuarat Kerajaan Negeri/MMKN). But still there is ambiguity in the Baitul-Mal management between the MAIN and MMKN (e.g. MMKN approval is required to estimate the annual budget and any loan of MAIN). This shows that the MAIN still does not have absolute power in the administration of Baitul-Mal. As another example some Baitul-Mal revenue such as fee of Shariah Court is revenue of the state.

³⁰ See Zakariah Abd Rashid, "Baitulmal : Konsep Asal Dan Amalan Masa Kini, dlm: Nik Mustapha Haji Nik Hasan(P)(2003) , *Ke Arah Pembangunan Baitulmal Kebangsaan* , Kuala Lumpur: IKIM, h.57-64

Revenue of Baitul-Mal and revenue of Islamic State Council (MAIN) are obscure and not separated. It is necessary to separate the Baitul-Mal revenue, which is a trust fund owned by Muslims from income or assets of MAIN which is a corporation that can own their own assets (non-trust funds). Baitul-Mal income including Zakat and Waqf is not Taxable, only Council income can apply this tax. Separation is needed to differentiate between properties which can be traded solely by the MAIN and the property subject to the trust as Waqf, Zakat, Nazr, etc. Baitul-Mal is not an institution that has a corporate entity and own Locus Standi, but it is just a group of fund administered by a main corporation. Baitul-Mal did not like the Kumpulan Wang Simpanan Pekerja (KWSP) which is a group of fund and have own body and law. To empowering Baitul-Mal as an institution, the law should be changed by state, without need to involve the amendment the constitution.

Strategizing the Wealth Management in *Baitul Mal*: A Proposal

Strategy formulation comprises the articulation of a mission, a set of long term objectives to be achieved within the stated mission, and an action plan specifying how the mission and objectives will be realized. Therefore we propose some empowerment effort that aims to make *Baitul-Mal* as a capable institution in the creation of more positive social economic development and regulate steady state and financial system. The proposed strategy covers two sides, enhancement of income sources and distribution of income, as below:

Enhancement of Income Sources

Several efforts to strengthening *Baitul-Mal* as an institution able to shaping positive economic and arranged Islamic finance system are:

To enrich the *Baitul-Mal* income sources especially charity sources trough new interpretation of Zakah sources such as gold, silvers, crops, business result and the result of mining
Re-exploring the opportunities and resources for developing new strategic fund development potential.

Identify the outcome of activities do not comply with Shariah finance industry which can be a sources to the existence of money laundering/money *syubhah* from the banking sector, capital markets and Takaful/insurance.

Establish procedures in claiming and payment of unclaimed money, disposal and the inquiry of its existence and modify legislation of management.

Charity product branding, *Shadaqatul jariyah*, and endowment (Waqf)

Distribution of Income

The distribution exercises can be done by various channels:

Charitable Donation

Charitable donation is indeed commendable and encouraged in Islam. This is done whether the needs of a person and his family have been satisfied or not. The Prophet Muhammad *Shallallahu 'Alaihi Wa Sallam* and His Companions were said to have donated most of their properties towards the cause of Islam and barely left them with provisions. In normal circumstance, donation is taken from the surplus. It is also commendable to gift present to close relatives and friends. Gifts can also be given to orphans, travelers and others who are in need. These are deeds of piety and do not have any contractual consequence.

Islamic Microfinance

We proposed some Islamic funding instruments which can be used for various *Baitul mal* projects:

For credit-based financing, we suggest the use of Qardhul Hasan financing. *Qardhul Hasan* (Benevolent loan) is a condition for the loan agreements between borrowers and creditors. However creditors are not allowed to ask more to the borrower, but they are encouraged to receive any grants from the borrower only as an appreciation. As a result, Zakat has no cost, and it is not received from loan sources from third parties, and the goal is an expense, the charge for the facilities issue did not arise. Borrowers only need to pay the operating costs (service charge) average 1% - 2% of total loans. This is in line with the ruling of the Malaysia National Islamic Council. For example, if the Qardhul Hasan loan is RM10, 000 and service charge is 2% the borrower only pays RM200 only once in early. When borrowers accept this offer, the money must timely manner. Collection system should consider the *Baitul-Mal* through the creation of its mechanism or outsource this function to the private sector and due diligence process must also be conducted to ensure the borrower able to conduct business.

Ar Rahn. The purpose of this scheme is to extend the loan or to get money fast and easy way to make the asset as collateral. This scheme is not to make profit but to provide facilities to the needy business. It also serves to produce the entrepreneurs in the long term. And any failure of market risk should not be trusted to the traders involved. To address the risk, *Baitul-Mal* ombudsman should establish mechanisms to ensure that borrowers do not misappropriate the money lent.

In the contemporary world, it is argued that *Baitul-Mal* may have an important role in managing *Waqf* funds and using in establishing an effective welfare system, assisting in resource mobilization and redistribution, and strengthening civil society. In case of *Waqf* properties, there are Three types of the *Waqf*:

Religious *Waqf*: The majority of mosques in the Islamic world is kind of religious *Waqf* that they have been found by well-meaning. In addition the property has been allocated for mosques and religious schools are kind of endowments.

Philanthropic Waqf: in humanitarian Waqf, benefits are allocated to the public for the support poor and also promote social activities. For instance the library, educational centers, health care, animal care, takes care of Environment, development activities of the green space, and roads are kind of benefits.

Family Waqf: the third kind of Waqf is pointed to Waqf from the parents to children and Heir. So that the extra income will be spent for poor people (Kahf, 2000)

Some of these Islamic investment instruments, according to Mohammad Tahir Sabit (2006) can be applied in Waqf projects as follows:

Build-lease-transfer (*Ijarah muntahia bit tamleek*). Through this instrument, the financier would build the buildings on the Waqf lands. After completion, the Waqf institutions would lease these buildings for a period of time, in which by the end of the tenure, the financier would have recovered its funding and the desired profits. At the end of the lease period, the ownership of the buildings will be transferred to Waqf either through sale, gift, or mere disposal by way of abandonment.

Asset-based *mudarabah*. Under this mode, the Waqf institution lets the financier construct a building on Waqf land, while the developer exclusively manages the project. Upon completion, the building is rented to a third party. The rental is shared between the institution and the developer. The Waqf institution uses the revenue from the rental of the building to increase its share in the building and to distribute it among the beneficiaries. This mode is suitable to finance “building” and “industrial” types of Waqf lands because the cost of construction is usually high. The proceeds from the rental of these types of buildings will be sufficient to pay for the high cost of constructing these buildings.

Securitization of project (shares and *sukuk*). Under equity participation financing mode, either via *mudarabah* equity or *musharakah* equity, through a single project Waqf holding corporation, assets relating to a project can be unitized, with a nominal value for example, RM1 per unit, representing a share in the physical assets of the project. These shares can be sold and purchased easily in the open market by the interested public, hence providing liquidity in the said investment. Concerning *sukuk*, two types of asset-backed bonds can be structured, namely *muqaradah* bonds and *ijarah* bonds. Under *muqaradah* bonds, the *nazir* who is also the *mudaribor* the fund manager, issues bond certificates to the financier in return for cash deposits. These cash deposits are used to carry out development projects on the Waqf lands. Unlike equity participation, the financier or the bondholder is only entitled to the benefits or *manfa'ah* of the attached assets, and not to the capital appreciation.

The results of Waqf can be expressed to humanitarian projects, cultural, economic, health, education and training, and many other social welfare. For example Waqf of the spring water for public consumption, building houses for deprived, the place free place for an impecunious traveler, preserving bridges, organize the funeral of the dead who were poor, helping the handicapped, financing the marriage young people in need, and maintenance orphanage and the homes of the seniors' instances of use of Waqf property and assets. There are many

instances of benefices use in the fields of health, treatment, education and training .For example hospitals and

Mobile medical rescue groups who are travelling village to village are managed through the property and assets of the Waqf (Krafess, 2005).

In addition, Waqf can be more effective in eliminating poverty programs and realizing comprehensive methods. In the past benefices had been used for construction and equipping the shrine, maintenance and established training centers and the fields of health and treatment, preparing food for poor, But now Waqf in addition cases can be use of drinking water supply for urban or rural areas, city protection, pay taxes of neighbors, supply of food for children and etc. In recent years' cash Waqf in many Islamic societies (any country, such as Bangladesh) is more common and some of the Muslim capitalists, give specific funds in cash as a loan to applicants in return the loans will be used for social services for vulnerable strata (Cizakca, 1995).

Unfortunately, in Malaysia According to the reports, up until December 2008, out of a total of 616.5225 acres of registered Waqf lands, 503.798 acres were still allocated for mosques, 50.5805 acres for schools and 2.592 acres for cemeteries³¹. Table 1 below shows the sizes of Waqf lands according to the above categorization as of December 2008.

Table 1

No.	Use of Waqf Land	Size (acres)	Percentage of Total Waqf Land
1.	Mosque	462.6238	75.04%
2.	Surau	41.1742	6.68%
3.	Cemeteries	2.5920	0.42%
4.	Schools	50.5805	8.20%
5.	Charities/Orphanages	11.3647	1.84%
Total			92.18% ³²

Based on Table 1, it can be seen that the Waqf lands for religious purposes constitute more than 80% of the total Waqf lands whilst Waqf made for charity purposes constitute the least. Such classification of land use makes it unattractive for both investors and donors. This can also explain one of the main reasons why some of these Waqf lands remain undeveloped. Several financial instruments have been employed by MAIS to raise its financial resources so as to enable the institution to manage all its Waqf properties. However, most of these Islamic investment modes have been used on these Waqf lands arbitrarily without matching them to the land use and their strategic locations. In fact, one does not need to innovated Islamic investment modes in a situation where over 80% of the land is reserved for religious purposes,

³¹Waqf land per December 2008 by MAIS

³² The remaining 7.82% are Waqf lands for general benefit/MAIS

this of course, chance for Baitul-Mal institution to be more creative and courage in using the resources for Ummah prosperity in the future.

Sukuk Investment

Based on the capacity of the *Baitul-Mal* may invest according to what is outlined in the Act, it may be the one main role of *Baitul-Mal* is to invest excess of funds in these financial instruments. This can be done by the whole surplus *Baitul-Mal* funds in the country combined to become large sum of funds to purchase the Sukuk. Profit through this investment can be channeled back to the group of funds to be distributed to the Zakat recipient. But if the money is a general source can be distributed to charitable Muslims in general.

There are several types of Sukuk structure that can be used by *Baitul-Mal* to raise funds and apply for financial economy. It depends on the appropriateness of the projects to be carried out and focus on risk. *Baitul-Mal* may be submitted the fund in the application of *Ijarah* and *Musharakah* structure. From the point of Sukuk development, there are two basic Sukuk structures, *first* based on the asset backed securities (ABS) which is Sukuk formed based on assets. Among the requirements of this structure are the form of assets pledged to the formation of Sukuk must involve direct selling to a special purpose company (special purpose vehicle/SPV). While the second structure, based on the assets (the Asset Based Securities), Sukuk based on this form can be formed with its indebtedness and sharing.

Apart from making the investment, *Baitul-Mal* can also serve as trigger the development of fixed assets and income flow channeled back to him as a source of income to *Baitul-Mal*. If it is general, this income included in the general account. However, if the *Baitul-Mal* is the trust of Waqf (endowment), the benefit is extended to beneficiary. *Baitul-Mal* can take their part as a fee management. The larger the amount of revenue generated the larger income of *Baitul-Mal* as manager. It thus can provide better space management and enhance highly skilled duties.

Social Security

Social security expenditures are important to the development process, particularly in protecting the welfare of the most disadvantaged and vulnerable groups. This type of spending can also help achieve long-term growth and poverty reduction by improving the productivity of the poor. There are synergies between social protection and pro-poor agricultural growth.

Social security based on public properties may be provided through several main techniques: social insurance, social assistance, income security, and apart from them, certain allied

measures may also be included under social security schemes. The techniques may cover by the Distributional Scheme of Social Security under *Baitul-Mal* Management as following³³:

Direct Assistance
Needy and Poor
Food Assistance
Financial Assistance
Medical Assistance
Educational Scholarship
School Uniform Assistance
Assistance during the month of *Ramadhan*
House rent Assistance
Emergency Assistance
Mother's Nature Assistance
Marriage Assistance
Business Assistance
Skills and Entrepreneurial Assistance
Building/Repairing Home Assistance
Shelter Assistance
Assistance for the disabled
Cloth Assistance
House Equipment Assistance
Muallaf
Educational Assistance
Training Assistance
Printing/Publishing
Preaching activities
Place of study assistance
Home assistance
Emergency assistance
Assistance for the Muslims
Assistance for the new Muslims who just convert to Islam
Assistance to strengthen the faith
Assistance to the Muslims who stay at the border of enemy's country
Assistance for the Muslims whom we need their help in order to collect the *zakat*.
Amil
Directly (*amilfitriah*) and HartasuciSdnBhd
Indirectly (the *Baitulmal*workers and the organizations under it)
Al- Riqab
Expenses to help lead them out from ignorance of the religion
Expenses for the Muslims who are under the enemy from the aspect of physical and mental.

³³ We benefited all these schemes from Muhammad Ma'shum Billah in His unpublished paper "Administration of Zakat for the Poverty Alleviation in Malaysia"

Expenses for those within the environment of prostitution

Al-Gharimin

Assistance for the debt of food

Assistance for the debt of education

Assistance for the medical debt

Assistance for house rent

Assistance for death management

Assistance for the debt of business

Assistance for household supply (not yet offered)

Fisabilillah

Individual *da'wah*

Educational Assistance

Islamic growth

Assistance for the place of study

IbnuSabil

Assistance for those who cannot afford to go back to their original country

Assistance for those who cannot afford to start their journey

Indirect Assistance

Islamic Medical Center

Baitulmal Training and Skills Center

Baitulmal Professional Institute

DarulKifayah

Darussadah

Patient Treatments Fund Assistance

Health Assistance

Educational Assistance

Abused Children Fund

Students Societies Assistance Programs

In Plan Indirect Assistance

Islamic Hospital

Society's Sanctuary Complex

Home for Abused Women and Wives

Dar Al-Quran

The Islamic Council of Wilayah Persekutuan's Graduates Fund Assistance in Institute of Higher Learning

Hostel for the factory workers

Conclusion

Based on the history and analysis in this article, basically Baitul-Mal has the right and potential power to manage and administered Islamic wealth or property. Islamic law supporting and statutory provisions may be used to implement this goal. Government commitment also necessary through laws enforcement to back up and to realize the Baitul-Mal function as a guarantor and provider of welfare to the community.

Therefore, empowering the *Baitul-Mal* is agenda. In line with the rapid development of Islamic finance, the *Baitul-mal* should not be left out in parallel with the development of the economic sector. Although not covering the role of *Baitul-Mal* as per the history, but it can be strengthened and can play an effective role in generating economic community with proactive movement. The success of *Baitul-Mal* institutions in Malaysia is not only a supporter of the existing Islamic financial system, but it can also be a factor to be proud of Malaysia as a country that can improve the overall comprehensive Islamic financial to reduce the poverty in community.

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