

The Development Of Principles In The Fiqh Of Awqaf The Principle Of Perpetuity Versus Temporality

Azizi Che Seman¹, Asiah Kamal² & Muhammad Nazmul Hoque³

Abstract

Discussions in development have moved from holistic theorisation towards more logical, empirical and inductive approaches. In development practice, there has been a parallel move towards participation by people which has produced very different and high level activities delivered and practiced in the prophetic era. This paper examined the prophetic words with some of the very particular walks of life by participatory development, a social capital formation based on waqf development. We argued that by focusing on two holistic sentences and actions on the value of waqf, which would be perpetual or temporal? Following from these divine sentences from the messenger of Allah, we advocated that a stronger emphasis on the nature of waqf would be used and continued in all actions of society, and we illustrated the opinions of many scholars. Finally, we tried to sum up our discussion on the importance of waqf in the hadith and the hidden meanings in it which can be reviewed from the aspect of permanence being in nature of waqf donation.

Keywords: *Concept and principle, Fiqh of Awqaf, Perpetuity versus Temporarily.*

1. Introduction

The concept and principles of waqf or endowment can be found in a hadith narrated by Imam Muslim and Imam Bukhari, often discussed amongst scholars when having a discourse on waqf principles and concepts. Some of the meanings of the hadith are as follows:

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- 1 Department of Shariah and Economics, Academy of Islamic Studies, University of Malaya, Kuala Lumpur, Malaysia.
 - 2 Department of Shariah and Economics, Academy of Islamic Studies, University of Malaya, Kuala Lumpur, Malaysia.
 - 3 Department of Shariah and Economics, Academy of Islamic Studies, University of Malaya, Kuala Lumpur, Malaysia.

Umar once said, “Oh Messenger of Allah (peace be upon him), I have acquired property that I have never had before and I would like to be close to Allah swt through it...and Messenger of Allah then replied, “keep the corpus intact and give its produce as Sadaqa”. So ‘Umar gave it (land acquired in Khaibar) as Sadaqa declaring that property must not be sold or inherited or given away as gift”. (1) (An-Nawawi, 1996)

Based on the above hadith, the phrase “keeps the corpus intact and give its produce as Sadaqa”(2) is the key when discussing waqf concepts. The next portion of the hadith which states waqf “must not be sold or inherited or given away as gift” (3) is the principle of waqf for the analysis in this study. Based on this hadith, there is a need to enhance the role of awqaf asset in social and economic development that we should pay attention to. This is an important issue in the Fiqh of Waqf which has been concentrated based on the principle of awqaf assets. However, it is essential to know whether waqf is perpetuity or temporality.

2. Debate on the concept of waqf from the aspects of language and terminology

2.1 From the linguistic perspective, waqf bears the same meaning as *Áabs* or *tasbÊl*, (al-Sharbini, 1997) which has multiple interpretations, including to stop, to restrict, or to prevent. There is however a slight difference between waqf, *al-Áabs*, and *tasbÊl*, where *al-Áabs* and *tasbÊl* are used for welfare works which operate within a time limitation, while waqf has a more specific objective and can be used for long term or permanently (Mohammad, 2014). The word “Waqf” has its roots in the Arabic word which is taken from the word *waqafa*, which basically means freezing specific assets (Manzur, 1990).

Fiqh scholars usually use the terms *al-waqf* or *al-Áabs* in explaining the meaning of waqf. The words *al-Waqf* and *al-Habs* have the same meaning as the word *amsÊkahu* or *al-Man`u* (Zabidi, 1966). Therefore, linguistically, waqf means to freeze or hold the property to take some benefits from it. The official dictionary defines the word waqf in two ways, firstly to refer to something given for the general use of the public as a donation to meet some religious needs or such similar needs, and secondly as a place of temporary rest (al-Fayrûzâbâdî, 2005). In brief, it is linguistically noted that the meaning of waqf can be summarised as a property which has been restrained (from use) or maintained from the original endowed asset, in which the benefits flow to the general public.

2.2 discussion on concept of waqf from the aspect of terminology. From the aspect of terminology, waqf means to hold assets in which the essence is permanent the benefits may be taken or used for the purpose of welfare or charity to be given to a specific person or place and cannot be utilised for general use, with the hope that this will bring the endower closer to Allah swt. Waqf has been given various interpretations by scholars as follows:

Table 1: Debate on Waqf from the aspect of terminology from four schools of Islamic thought (mazhab.)

SCHOOLS OF ISLAMIC THOUGHT	INTERPRETATION
Shafi'i School of Thought	Waqf means holding assets which benefits can be used by preserving its essence by terminating the endower's right of management, and its produce used for the purpose of good and to have a closer relationship with God (al-Manawi, 1998).
Hanbali School of Thought	Waqf means physically restricting an asset and donating its benefits for the purpose of welfare, as well as having a closer relationship with God. The interpretation given by this school of thought is looser compared to the Shafi'i school of thought. This is because the word "Sadaqa" in this interpretation can also mean giving the waqf asset to the beneficiary, whereas the rule of waqf is that only the benefit or produce can be enjoyed (al-Husaini, 2012).
Maliki School of Thought	Waqf is giving to charity the benefit of a specific asset, for as long as the asset is in existence and constructively owned. This is based on a hadith which means, "Preserve the origin of the asset and stream its produce." The meaning of preserve or hold here is not to end the ownership of the endower and it would remain within his ownership. However, although the ownership of the asset remains with the endower, the ownership is restricted, in that he cannot sell the asset and most importantly, he cannot deal with the asset as he does with all his other assets (Magribi, 2002).
Hanafi School of Thought	Imam Abu Yusuf and Imam Muhammad bin Hassan defined waqf as holding an asset under Allah swt's power, where the ownership rights are transferred for the sake of Allah swt and the produce of the asset is used for the general good. The asset of waqf will become Allah's property and must therefore be used for good and for approved deeds ('Abidin, 2003).

Source: Mausūnah Al-Ém Al- Waqf Nala Al-Mazahibi al-Arba'ah by Ahmad IbrÉhÉm,(2009).

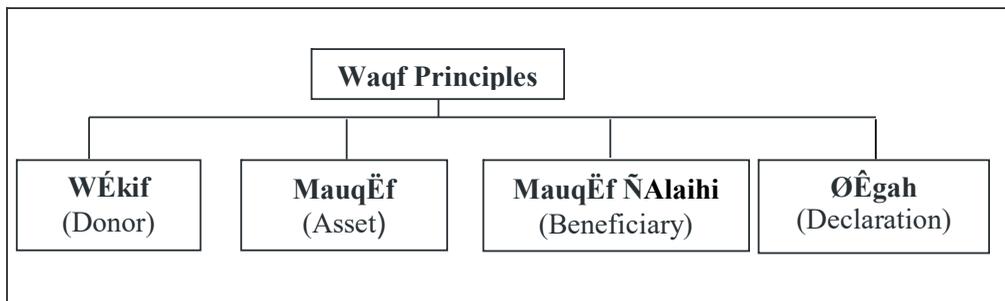
Based on the various definitions of waqf explained by the fiqh scholars above, it can be understood that the interpretation clarifies the rules determined by the respective schools of thought. In general, scholars of fiqh unanimously agree on the principle of holding the waqf asset and providing its benefit to those who are in need, but they differ in the rights of ownership and the permanence of property after it is endowed. The

MÉlikÊ School of thought sets out that the asset remains owned by the endower and the waqf is limited in time. Meanwhile, according to the HanafÊ School of thought, the endower is the owner of the asset and he only endows the benefit of the asset, and in fact he is able to revoke his endowment. Imam HanafÊ stated that waqf is not an obligation unless it is decided by law, while both ShafiÑÊ and HanbalÊ Schools of thought made it a rule that the asset is no longer the property of the endower at the time of the donation or endowment and also opined that the asset is permanent in nature (Ibrahim, 2009).

3. The rules of Waqf

The consensus of the scholars is that there are four rules of waqf which are: must have an endower (waqif), asset to be endowed (mawquf), the beneficiary (mawquf alaihi), asset to be endowed (mawquf), and declaration (sighah) (Mahdi, 2003). The meaning of each condition is briefly explained below:

Diagram 1: Waqf Pillars/Principles



Source: Nizamu al-Waqfi fi Tatbiqi al-Mu’asir by Mahmud Ahmad Mahdi, 2003.

3.1 Wóqif. Waqif is one who owns the asset and can manage it himself (Hassan, 1986). He must have a sound mind (al-Sharbini, 1997) and has matured in age (al-Kubaysi, 1997) and undertaken the waqf/endowment voluntarily and not by force or deception (al-Kubaysi, 1997).

3.2 Waqf assets (mawqōf). Assets are divided into three:

3.2.1 Movable assets. Movable assets are properties that can be moved from one place to another as needed. Scholars determined that the movable assets which have been endowed must be original, permissible, stay put, and do not disappear because of use, such as animals, vehicles, and carpets (Zayani, 2014).

3.2.1 Immovable Assets. Fixed assets are assets which are not possible to be moved around from one place to another such as land, building, and similar items.

The scholars have unanimously agreed that fixed assets are valid as they fulfil the first condition of waqf, which is that the assets should be permanent. This is based on the practice of waqf as carried out by the Prophet (peace be upon him) and his companions who used fixed assets as the mawqġf. In addition, there are statements which support that no properties were endowed at that time except for land and building. For movable assets, differences in view exist amongst scholars as these assets are not permanent in which they can be easily destroyed or spoiled. As viewed by Imam Shafiġ, each asset could be sold and endowed, as long as the benefits can be enjoyed by the beneficiaries and received indefinitely.

This view is also explored by the ġambalġ and Mġlikġ Schools of thought. For the ġanafġ School of thought, it notified that movable assets which are tied with immovable assets can be endowed as they will also contribute towards the purpose of the waqf. In this matter, Abu Yusuf opined that to endow the movable properties separately, it will invalidate the waqf unless it involves horses and war accessories, seeing as there are evidences that waqf like those existed as contained in the ġadith by the Prophet (peace be upon him) himself (Borham, 2011).

The majority of fiqh scholars agreed that it is valid to endow both movable and immovable assets. However, they disagreed on determining the waqf of movable assets. Maliki did not make it a prerequisite for the asset to be permanent in nature. Hence, the waqf will still be valid even though it is for a specific period. Other than that, Syafiġ and ġanbalġ Schools of thought conversely allow the endowment of movable assets because the essence of the waqf is the permanence of the property. In this matter, Syafiġ School of thought takes the view that the permanence of movable assets is seen from whether the assets can still be used and would not be terminated by its destruction, but can be replaced with another asset (al-Sharbini, 1997). According to Ibn Qudġmah, every waqf asset either movable or immovable can be sold, purchased, and used. He further stated that the permanence of the asset means a continuous stream of permanent nature such as prayer mats, household contents, and various other immovable properties which have the same features (Qudamah, 1972)

From such statements, the author does not fully support the view that the physical permanence of an asset is required in conducting a waqf. The author opined a view which is similar with some contemporary scholars who set the prerequisite to waqf as being permanent in nature. Conversely, some contemporary scholars do not agree

with the view on the concept of physical permanence of waqf, as the concept can be interpreted in different ways. Some also illustrated the importance of waqf in the hadith and the hidden meanings in it, which can be reviewed from the aspect of permanence being in the nature of waqf donation (Sabit, 2014).

3.3 Beneficiary of Waqf (mawqōf űalaih)

The beneficiary of waqf comprises two groups:

3.3.1 Specific beneficiary of Waqf. The specified beneficiaries of waqf are individuals or specific groups which have been determined by the owner. Hanafi school of thought takes the view that the declaration of the waqif in declaring intention does not determine whether an endowment is valid and irrespective of the beneficiary in being specific or otherwise. Hence, a waqf will be deemed to have validly occurred once the wĒqif verbalises his intention without a need for response from the beneficiary. The scholars of ShafiĒ, MĒlikĒ, and part of űambalĒ have set that the declaration (of acceptance) from the beneficiary of the waqf will be a prerequisite when the waqf is for a specific individual. If the acceptance is not received from the beneficiary of the waqf, then it will be transferred to another person who is identified by the wĒqif (endower) (Mahdi, 2003).

3.3.2 A general beneficiary of Waqf. Beneficiaries that are not specific or general include groups such as the poor, scholars, students, etc. These waqf do not require any declaration of acceptance (qabĒl) from the beneficiary and are only considered complete after the intention of the endower is achieved. In addition, the űanafĒ and űambalĒ Scholars emphasise that there is no requirement for the beneficiary to declare acceptance because the declaration of making the endowment from the endower is sufficient (Ibrahim, 2009).

Thus, waqf can be done digitally or electronically such as through the ATM machine, internet transaction or deduction of pay, as the endower is not required to determine the assets to specific beneficiaries.

3.4 űôgah. ŐĒgah is a form of making a declaration on the asset being endowed. It is also the most important condition in determining if a waqf is valid. With ŐĒgah, one can differentiate whether a donation is charity or waqf. It also assists to determine the intention of the endower. ŐĒgah is divided into four:

3.4.1 Written. The endower can surrender his assets in writing to the beneficiary, irrespective of whether the beneficiary is a nazir or as determined by the endower.

3.4.2 Oath/Declaration. The endower can give his assets by declaration, both *ÎarÊÎ* (Clearly) or *kinÊyah* (implied).

3.4.3 *ØarÊÎ* (clear) declaration. This is a declaration made very clearly and expressed where the only meaning is that the asset is being endowed (al-Kubaysi, 1997). The declaration can be understood clearly without requiring any assistance. When the endower uses this method of declaration, it requires intention to make it valid. There are three types of declaration such as *al-waqf*, *al-Îabs*, and *al-tasbÊl* (al-Kubaysi, 1997). An example of a *ÎarÊh* is “I endow a piece of specified land for the benefit of Muslims”.

3.4.4 *KinÊyah* declaration. *KinÊyah* declaration is one that does not bear the meaning to endow. In this situation, intention is required to determine whether the *waqf* is valid when using *KinÊyah* declaration. An example of the *KinÊyah* declaration is “I donate (*taÎaddaqtu*), I forbid (*Îarramtu*), preserve (*abbadtu*) (al-Kubaysi, 1997). An example of the declaration also would be to “use my assets forever”, accompanied with the intention to make *waqf*.

- *Signal: The endower can surrender waqf asset to the beneficiary by using signs for those who are disabled. For example, a mute endower can carry out his waqf by using sign language or other appropriate methods.*
- *Conduct: The endower can also give his asset as waqf by construct, such as an endower constructing a mosque for public use.*

There are four types of surrendering *waqf* assets. Scholars agree that *ÎÊghah* by *ÎarÊh* declaration is the best medium of surrender. However, other methods of giving *waqf* cannot be rejected in view of the many sophisticated technology available today, which clearly shows that the endower intends to make *waqf*. Therefore, other methods should be accepted (Harasani, 2015).

4. Conditions for Endowment

Fiqh scholars opined that there are a few conditions that required to be fulfilled properly to carry out the *waqf* validly in Islam. Among them are:

4.1 Valuable property in the eyes of *SharÊÑah*. The property that will be endowed must be one that has benefits which can be applied by the beneficiaries. It is not valid to endow illegal items, because *waqf* is to bring one’s self closer to God (al-Kubaysi, 1997).

4.2 Identifiable assets. Assets which are to be endowed must be clear and identifiable. It is not a valid waqf if an asset is not clearly known. This is crucial to avoid any disputes in the future (al-Kubaysi, 1997). The waqf asset must be known clearly and shall be undisputed. The asset must be identifiable by ascertaining measurement, such as 1000 metres or to determine the portion of the asset such as half of the land by determining the location. It is not legal to endow any assets which are unclear in its position or its existence unknown as this can invite issues in the future. Thus, when an endower declares that he endows a part of his assets, but does not the rate or portion them, this waqf would be void. Similarly, when the endower declares that he endows one of his houses without stating which one specifically, this will also be void (al-Sharbini, 1997).

4.3 Perfect ownership. Waqf means there is a transfer of ownership from the original endower (al-Sharbini, 1997). It would not be valid if a person tries to endow a property that he does not fully own (al-Zuhayli, 2004). For instance, the asset must be legitimately owned by the endower. The fiqh scholars take the view that the waqf asset must be completely and perfectly owned by the endower. However, there is a difference in opinion on whether or not the assets should be owned by the endower at the exact time of handing over to the waqf. Besides that, the MalikÉ school of thought said that waqf assets need not be owned by the endower at the time of the endowment, but the majority of the scholars stated that the asset must be properly and completely owned at the time of endowment (al-Kubaysi, 1997).

4.4 Benefits of Waqf Assets. An asset of waqf must have value or benefit that can be utilised by the beneficiary. It is not valid to endow assets that will not provide any value or benefits to its beneficiary (al-Sharbini, 1997).

5. Principle of Waqf

Waqf has its own principles that set it aside from other types of charity in Islam. It is different from the terms foundation, endowment (although used here for the purpose), and trust as a normal donation understood and accepted by society today. This simply means that waqf has its own principles differentiating it from other donations or other forms of welfare. Among the principles of waqf assets can be seen from this hadith:

“So ‘Umar gave it (land acquired in Khaibar) as Sadaqa declaring that property must not be sold or inherited or given away as gift”.

From this hadith, the principles of waqf can be distilled to three main principles in practicing waqf. The three basic principles as agreed by the majority of scholars are:

Firstly, the asset must be one that has a permanent element. Voluntary transfer from the original owner to waqf the asset results in the asset being restricted from sale.

Secondly, the transfer of the waqf asset to others such as gift or inheritance is not allowed. Thirdly, the endower is not allowed to revoke the waqf or cancel it once the decision to waqf the asset has been made.

In addition, the condition for validity of the waqf asset is divided into two categories, the condition of the asset before it is transferred as waqf, and the condition on the asset after it has been endowed. Through the observations made, there appears to be a *khilaf* (disagreement) about the conditions of validity of the assets, being the physical aspects of the asset. *Shafi'i* and *Maliki* schools of thought require the waqf asset to be one which is permanent in nature. The asset is categorised as a fixed asset such as house or land. The wisdom of this condition is that the enjoyment or benefit from this asset can be enjoyed for a long time, from one generation to the succeeding generation and consequently to guarantee the continuous rewards for as long as the asset exists.

The *Maliki* and *Anafi* Schools of thought stated the waqf asset need not be something permanent as long as it can give benefit to others. The endower is given room to waqf other movable assets such as cash. Moreover, they also suggest changing the assets in a movable form to assets in fixed forms to enable long periods of utilisation of the benefits. Furthermore, the waqf must be something that carries benefit in the eyes of *Shar'iah*. The assets also must specify the type, rate, number, width, or measurement to ease future transactions. The main condition for assets that are under waqf is that it is properly and perfectly owned by the endower. The second category is that the property has changed hands. There are three arguments put forward on whether the waqf assets revert to Allah's ownership, or owned by the endower, or owned by the beneficiary. However, transactions of sale, revocation of waqf or division remains prohibited (Mahmood, 2013).

Based on the above principles, several negative effects have arisen, such as:

The negative effects can be seen from the dearth of liquid assets which must be available to manage the waqf asset. Ahmad Zaki Bin Hj. Abd. Latiff expressed the view that insufficient liquid asset leads to waqf assets being abandoned and inactive, making waqf an ineffective player in the development of the nation (Muhammed, 2011).

Thus, the principle of permanence in waqf must be reviewed and studied. Tahir Sabit and Abdul Hamid stated that the principle of permanence in waqf is not clearly stated in the hadith, and the principle is formulated by the scholars from the Prophet's hadith

on waqf from Sayyidina Umar (r.a) that the land is not meant to be sold, bought, gifted, or inherited. The hadith can be reinterpreted in many ways without disregarding its original meaning of endowing assets.

Firstly, the hadith of Umar (r.a) in relation to *Áabs* explains that it is a form of charity and if read together with the hadith on sadaqah, it would be clear that sadaqah is repeated after the death of the giver known as *habs* for as long as the donation or charity benefits Muslims. Based on the hadith, Kahf determines the permissibility of permanent and periodic waqf.

Thus, we cannot claim that the permanence element on the asset of waqf is a general rule that all assets must comply with. The recognition of periodic waqf should not be excluded.

Secondly, the statement in the hadith must be read comprehensively and together with the statement as follows:

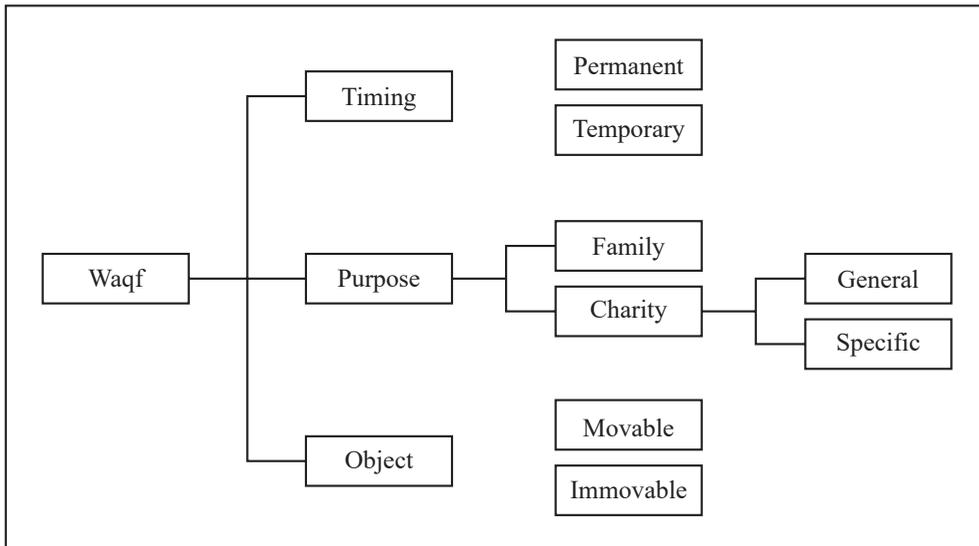
“if you like, you may keep the corpus intact and give its produce as Sadaqah”.

This hadith gives the freedom to the owner of assets to preserve his bequeath as waqf assets and use the benefits towards welfare.

In this *×adith*, other waqf methods are not restricted. Those who claim that other waqf methods that are not allowed are not supported by any text on *Áadith* or anywhere else save in their mind. The spread of this idea as a rule is because traditionally, society practised giving waqf using fixed assets such as land, constructing mosques, or burial ground. It then became an understanding that waqf is only in the form of fixed assets. It is a requirement in the society today to allow all those forms of waqf to not be mentioned in classical fiqh text and expanded based on the same concept and principle of waqf. Therefore, waqf is for the good of the ummah and there is no restriction on the endower to contribute in the form of waqf, and all types of waqf are permissible and allowed.

6. Categories of Waqf in Islam

Based on the above discussion, waqf can therefore be divided into several categories, arising from the current development and existence of various instruments of waqf to achieve the aim of spurring economic development. This can be seen from the aspect of success and advances in Islamic civilization. According to Sheikh Mustafa Zarqa, waqf principles established in the fiqh are the result of consensus and discourse to set the boundaries (az-Zarqa, 1947) The divisions can be explained further below:

Diagram 2: Categories of waqf in Islam

Source: Adapted from Md.Shahedur Rahman Chowdhury, Mohd Fahmi Ghazali and Mohd Faisol Ibrahim, (2011)

Waqf based on time limitation is divided into two parts, which are:

6.1 Permanent waqf: This type of waqf takes place when the waqf asset is having in its nature a permanent element such as land or a movable asset which has been determined by the endower to be a permanent and productive waqf where some of its produce is distributed, in line with its objective as a waqf although the balance may be used to maintain the waqf (Md.Shahedur Rahman Chowdhury, 2011).

In other words, permanent waqf is known as perpetual in waqf which means that once a property is decided for waqf, it will remain so until the day of judgment and nobody can change it in the future. On the other hand, some kinds of perpetual waqf are temporal. Therefore, some conditions are required:

6.1.1 Decided perpetual waqf property need to be appropriate for its nature, legal status, and its accounting treatment. For instance, land can be the only asset which is perpetual with its nature.

6.1.2 The condition for a perpetual waqf would be related with the will of WÉqif. It requires direct or indirect expression of will from the wÉqif to make it perpetual. All classic Islamic schools of thought do not accept this condition, except one group of the MÉlikÊ School of thought who accept it temporarily with the virtue of waqif. Nonetheless, the MÉlikis do not accept giving a mosque as waqf temporarily.

6.1.3 The third condition the objective of waqf should be perpetual. This objective sometimes could be general based on supporting the poor or needy.

Therefore, the principle of perpetuity in rulings of SharĤĤah, is always given the priority based on the need of people for social objective, given revenues for establishing and generating permanent assets. Rulings of SharĤĤah for the principle of perpetuity protect it from any kind of sale or other changes or transfer of waqf profits from one objective to another objective, but associated objective should exist, thus, the assets can be remained as the domain of waqf (Kahf, 1999).

6.2 Temporary Waqf which is waqf that is not permanent in nature, whether due to the form, or due to the wishes of the endower himself (Kahf, 2000).

Waqf based on objective is further divided into two:

6.3 Waqf dzurri (member) is waqf which is aimed to provide benefit to family members, descendants, or specific people without looking at whether the person is rich or poor, healthy or otherwise, or old or young.

6.4 Waqf khairi is a waqf with the objective of general benefit, divided into two which are the general waqf without specific mention of use, and special waqf where the use has been determined.

7. Types of Waqf

Waqf is one of the forms of sadaqah in Islam and there are many types of assets that can be turned into waqf assets in the practice of waqf. Wahbah Zuhayli explained about the types of waqf assets based on the views of the fiqh scholars below: (al-Zuhayli, 2004)

7.1 Waqf al-ĤĤAqqar. It is a kind of fixed assets such as land, gardens, orchards, schools, hospitals, and such matters;

7.2 Waqf al-Manqul. This type of waqf is a movable waqf. The majority of scholars other than the Hanafi School of thought allow a person to endow movable assets, such as prayer mats, mats, other things for using in mosques, vehicles, farm animals, books, and others.

7.3 Waqf al-MushaĤĤ. Waqf al-MushaĤĤ is to endow assets that cannot be divided but can be shared ownership with others such as two owners of a car, one of whom has endowed his portion. This is according to most scholars of waqf who accepted this kind of waqf (other than the ĤĤanafĤĤ School of thought).

7.3 Waqf al-Haq al-Irtif'iq. This type of waqf is used to endow a portion of a building comprising of several floors such as endowing two floors of a building without endowing the whole building. The Shafi'i and Hambali schools of thought allow endowing one's assets according to this waqf.

7.4 Waqf al-Iqt'iq. Waqf al-Iqt'iq is land owned by the government given to a portion of society to be developed and tax has been determined on it, and the land remains as the property of the government. Shaf'i school of thought explains that the leader of the government can endow as waqf Baitul Mal land.

7.5 Waqf Ar'iq al-Huz is a land owned by several individuals who are not capable of developing it and are instructed by the government to develop it or to work the land, and the produce is thereafter used for public benefit. This waqf is not valid as it is not the property of the government.

7.6 Waqf al-Ir'iq is waqf which the government uses for public benefits such as to endow a piece of land to build a school and others. This type of waqf asset is permissible and allowed.

7.7 Waqf al-Marhun, Hanafi school of thought allows one to endow his property which has been lost or charged because of land ownership. However, the majority of fiqh scholars other than the Hanafi forbid the endowment of a pawned asset.

7.8 Waqf al-Nain al-muajjarah. The majority of Fiqh scholars view waqf of rented property as a tenant that can endow the property that is being rented. This differs from the Maliki school of thought which disagrees with this view. However, the Maliki school of thought allows the tenant to utilise the benefit of the property that he is renting, while this is forbidden by the majority of the fiqh scholars.

8. Waqf of cash

Other than movable waqf assets, fiqh scholars also differ on viewing cash as waqf. There are some differences in opinion caused by the expansion of waqf assets, which is based on time being conducted through rental. Some scholars forbid cash waqf because it will be consumed and disappeared after consumption by spending it. Meanwhile, the main spirit of waqf is to have the permanent produce continuously and flowing without ending at the first use. In fact, cash is used as a currency for the transaction and not to be taken as a benefit.

Waqf of cash has been practiced since the 2nd century after Hijrah. As narrated by Imam Bukhari who said Imam Zuhri took the view, dinar and dirham could be used

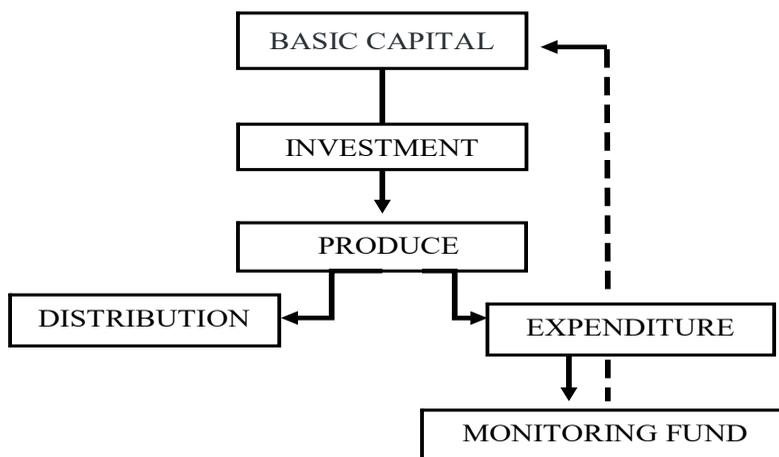
as waqf assets as capital and then the produce of the profit shall be distributed to the beneficiary (mawquf'alah) (Muhammad, 1997). The Mutaqaddimin of \times anaf \hat{E} allow the endowment of dinar and dirham as an exception to the principle of istihs \hat{E} n bi al-urf. This is because of many have been using cash in transaction ('Abidin, 1966). In the book of al-Hawi al-Kabir, Ali bin Muhammad bin Habib al-M \acute{E} ward \hat{E} and fiqh scholars from the Shafi \tilde{N} \hat{E} school of thought also allow dinar and dirham to be endowed (al-Mawardi, 1994). Waqf in the form of cash and shares have been known to occur from the time of the Mamluks and scholars have unanimously agreed to allow it. Today, waqf in the form of cash is accepted widely in Muslim countries such as Turkey, Egypt, India, and others (Cizakca, 1998).

Currently, waqf as properties can be distinguished between that with material value, and that which have implied/ intrinsic value. Examples of the waqf asset with material value are endowment of academic works, rights of discovery, and business licenses. For instance, new forms of waqf assets from the perspective of implied value are service related assets such as to endow the service of transport, to waqf service without paying to waqf the service of rental, or rental of houses, land, and others. Based on the view, the distinction of waqf must necessarily be expanded to allow variety in completing waqf and for all level of society to participate (Kahf, 2000).

9. Basic capital operation for Waqf fund

Waqf of cash can operate by generating basic capital for the waqf fund to ensure continuity of waqf in line with the established concepts and principles.

Diagram 3: Operation of basic capital for waqf fund



Based on Diagram 3, the operation for basic capital for cash waqf shows that the flow of capital will always be maintained and can be invested for growth. The diagram indicates that only the basic capital will be maintained and preserved continuously. This may happen when there is a monitoring fund which will always support the basic capital so that it will not be depleted. Subsequently, the basic capital will be invested and the result will be distributed and used as operational expenses.

10. Conclusion

The development of waqf instruments today has been growing from the basic concept and principles that have not changed until this contemporary era. The development of concepts and principles of waqf is suitable to meet the demands of modern times which have grown out of the changing financial instruments, and there would certainly be differences between today's financial instrument and before. It would be a great loss to the Muslims if we do not understand the meaning and objective of the Prophet's (peace be upon him) hadith and only view it formally without appreciating and without understanding the concepts and principles of waqf. Waqf is also the best form of Islamic finance reform as the results are not only limited to Muslims. In fact, waqf is the best instrument which can complete all other charitable deeds.

Types Of Waqf	Meets The Concept And Principles Of Waqf
Waqf Investment	√
Fixed assets	√
Movable assets	√

Based on the above discussion, it can be concluded that waqf can be used as investment asset which illustrates the objective of the prophet's hadith, as well as can be used as fixed and movable assets to meet the concept and principle of waqf.

Notes

1. This Hadith reported by Umar, narreted by Imam Muslim, translation by Abdul Hamid Siddiqui, Volume: the Book of Bequests (Kitab Al-Wasiyya) Hadis No: 4006, Shekh Shuaib al-arnawut and shekh AlbÉni classified as hadith sahih. This hadith has been narrated on the authority of Ibn ÑAun with the same chain of transmitters up to the words:” Or he may feed the friend without hoarding from it” and he made no mention of what follows.

2. This main matan of this sentence has been found in KitÉab as sunan al kubrÉ under chapter of al waqf, al muÑjamul awsaĀ under chapter of bÉb al Ñain,bÉb al alif, bÉb

al mim. At-talkhĤs al khabir under chapter of waqf, sunan abu dawĤd under chapter of al-waĤayĤ, sunan 'ibn mĤjah under chapter of al 'ahkĤm, sahih alBukhĤarĤ under ash-shurĤĬ, al-waĤĤy. Fathu al-bĤrĤ under chapter of al-waĤĤyĤ.

3. This main matan of this sentence has been found in KitĤab as sunan al kubrĤ under chapter of al waqf, al muĤjamul awsaĬ under chapter of bĤb al Ĥain, bĤb al alif, bĤb al mim. At-talkhĤs al khabir under chapter of waqf, sunan abu dawĤd under chapter of al-waĤayĤ, sunan 'ibn mĤjah under chapter of al 'ahkĤm, sahih alBukhĤarĤ under ash-shrĤĬ, al-waĤĤy. Fathu al-bĤrĤ under chapter of al-waĤĤyĤ.

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