

WAQF AS A MEANS OF PROTECTING THE INTEREST OF DESTITUTE RELATIVES WHO ARE NON-LEGAL HEIRS¹

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Abstract

Islam guarantees all rights to everyone within certain limitations. Such rights include fundamental rights and rights in family relationship for instance rights to filial relationship and rights to inheritance or succession. Nevertheless, there are a group of descendants or relatives who have no rights to inheritance such as the non-legal heirs or legal heirs who are not inheriting due to certain situations like being excluded from inheritance. For example, some relatives of the deceased from mother's or female's side (zawul arham). It will be worst if those relatives are destitute and poor. In such circumstances, Islamic law provides many other alternatives (other than succession's right) to protect the needs of destitute or poor families which include waqf, zakah, nafaqah, sadaqah, wasiyyah and hibah. This paper deals with waqf as one of the means of protecting the interest of destitute relatives who are not inheriting or non-legal heirs. The paper will examine among others on destitute relatives who are not entitled to inheritance under Islamic law and whether waqf to destitute relatives from non-legal heir is similar to waqf to the poor and needy in general. Examination extends to the significant of waqf as one of the means to protect the relatives' needs to property and relevant provisions under the Islamic law Enactment in Malaysia. The research will adopt qualitative research

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where the research will be mainly done in library. Finally, the paper will propose waqf as a means of security to the destitute relatives who are not inheriting and non-legal heirs where relevant and necessary.

Keywords: Waqf, Destitute Relatives, Non-Legal Heirs, Succession, Islamic Law

INTRODUCTION

It is undeniable that property is a necessity in life to continue survival. Islam enjoins acquisition of property through *halal* means and resources. Nevertheless, not all people are fortunate to earn good and sufficient income. There are poor families who are in need of property to sustain their living. *Kosmo Digital* (online newspaper) reported that Covid-19 pandemic has increased the poverty rate to more than 230,000 families in early 2022.² Islamic law enjoins and provides several ways where destitute people may be assisted, one of which is through succession of the deceaseds property. Being a legal heir, everyone is entitled to succession's right regardless of whether he is a rich or a poor. This seems to be guaranteed under all laws be it Islamic or civil. Under Islamic law, inheritance or succession is one of the rights that are guaranteed to all legal heirs as recognised under the law. Al-Quran as the main source of Islamic law has listed down a list of legal heirs who will inherit the property. Despite the recognition of everyone's right, there are situations where some relatives are not entitled to inheritance due to certain reasons such as being excluded by relatives who are closer in degree of blood relationship, or because they are non-legal heirs or in other circumstances because of non-existence of blood relationship (eg in the case of foster children) or due to differences in religion.

ISLAMIC LAW OF SUCCESSION AND LEGAL HEIRS

Succession (*'ilm al-mirath*) refers to the science or knowledge of the estate. Literally, *mirath* means lasting or transfer of something from someone to another. Terminologically, according to the author of *al-fiqh al-Manhaji*,

2 Muhd Afiq al-Hafiz Mat Yusof, makin ramai jadi miskin di Malaysia; *Kosmo* 3 March 2022, available at <https://www.kosmo.com.my/2022/03/03/makin-ramai-jadi-miskin-di-malaysia/> accessed 21 September 2022. See also Muhammad Amnan Hilbrahim, Kadar Kemiskinan Negara Meningkatkan 8.4 Peratus Pada 2020, *Sinar Harian*, 9 September 2021, available online at <https://www.sinarharian.com.my/article/160438/BERITA/Nasional/Kadar-kemiskinan-negara-meningkat-84-peratus-pada-2020>, accessed 21 September 2022.

mirath can be defined as a right that can be divided to those who are entitled to it, after the death of a person due to family relationship or of similar nature like marriage relationship or *wala'* (relationship that arises after a master freed his slave).³ Under Islamic law, succession is enjoined to all legal heirs as the Quran states to the effect:

From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large, a determinate share.⁴

Based on the above definition, there are four causes of succession in Islam, namely, lineal or family relationship, relationship out of marriage, relationship that arises due to the freeing of a slave (*wala'*), and relationship that arises out of religion (Islam) (eg *Baitul mal* will inherit the estate of a deceased who has no legal heirs for the benefit of the Muslims at large.).⁵

The legal heirs refers to legitimate heirs both male and female excluding illegitimate heirs. In general, the male heirs include:

- (a) husband;
- (b) son(s);
- (c) son's son (grandson) how low so ever;
- (d) father;
- (e) father's father (grandfather) or great grandfather;
- (f) germane/full brother (s);
- (g) consanguine brother (s) (paternal brother);
- (h) uterine brother (s) (maternal brother);
- (i) the son (s) of the germane/full brother (nephew);
- (j) the son (s) of the consanguine brother;
- (k) germane/Full uncle from the father's side;
- (l) the father's father's brother;
- (m) the son (s) of the full uncle;
- (n) the son (s) of the father's father brother; and
- (o) the master of a freed slave (*mawla*).

3 Mustafa al-Khin, Mustafa al-Bugho & Ali al-Sharbaji, *al-Fiqh al-Manhaji 'ala Mazhab al-Imam al-Shafi'i*, 4th Edition, Dar al-Qalam, Damascus, Syria, 2000, p 275.

4 See the Quran, Surah al-Nisa', 4: 7.

5 Mustafa al-Khin, at p 1006.

While the female heirs are:

- (a) the wife (s);
- (b) mother;
- (c) daughter(s);
- (d) son's daughter (granddaughter) how low so ever but must be agnatic (male) line;
- (e) full/germane sister(s);
- (f) consanguine (paternal) sister(s);
- (g) uterine (maternal) sister(s);
- (h) paternal grandmother or great grandmother (from the father's side);
- (i) the maternal grandmother (mother's mother); and
- (j) the female mawla (the woman who freed the deceased).⁶

The above legal heirs can be further classified into *quranic* or prescribed heirs (*ashab al-furudh*), and residuary heirs (*asabah*). The prescribed heirs are twelve who include father and mother, father's father how high so ever, husband and wife of the deceased, uterine brother, daughter, daughter's daughter, germane sister, consanguine sister, uterine sister and grandmother (how high so ever) of the deceased.⁷ Meanwhile, residuary heirs refer to those legal heirs who take the balance of the deceased estate after taken by prescribed heirs or if they are alone.⁸ Examples of residuary heirs are father, son and germane brother.⁹ Nevertheless, there are situations where legal heirs will not inherit the deceased estate ie they survive but are excluded (*mahjub*) ie when the deceased is survived by legal heirs who are closer in degree of blood relationship for example children. In this occasion, if the deceased is survived by a son and a brother, the brother will be excluded from inheritance by the son. Apart from that there are also group of relatives who are not entitled to inherit the deceased estate for example daughter's daughter how low soever (*zawul arham*), and son's daughters due to exclusion or whenever the son predeceased the deceased

6 See Muhammad Abdul Rauf, *Inheritance In Islam*, Al-Saadawi Publications, Beirut Lebanon, 2000, at pp 11-13.

7 See Dr Zakiy al-Din Sya'ban and Dr Ahmad Al-Ghandur, *Abkam al-wasiyyah wa al-Mirath Wa-alwakf Fi al-Syariah al-Islamiyyah*, Maktabah al-Fallah, Al-Kuwait, 1989/1410, at p 274.

8 See also Mustafa al-Khin, at pp 1015-1016.

9 See ZAKiy al-Din Sha'ban and Ghandur, at p 325.

person.¹⁰ In addition, children or relatives of different religion will not inherit and finally, non-blood relatives are non-legal heirs and are not entitled to inherit the property of the deceased due to the non-existence of the cause of inheritance for example adopted and foster children.

THE CONCEPT OF HAJB AND ZAWUL ARHAM (RELATIVES ON THE MATERNAL SIDE) — DISTANT KINDRED — OUTER FAMILY OR RELATIVES WHO ARE NON-LEGAL HEIRS

Al-Hajb (exclusion/blocking from inheritance)

Al-*Hajb* literally means hiding, blocking or exclusion. Terminologically, it means to block or exclude a potential heir from inheritance either his entire *mirath* or parts of it because of the survive of another heir.¹¹ In other words, *al-hajb* refers to a situation where the legal heirs from prescribed heirs or residuary heirs are excluded from inheritance in the presence of certain legal heirs.¹²

The *hajb* can be total exclusion (*hajb hirman*), ie the blocking of the total / whole *mirath* on a potential heir from inheriting because of the survive of another heir for example the survive of two daughters will block the *mirath* of son's daughter, or the survive of a son will block the *mirath* of son's son or a brother etc.¹³ A father's father is blocked for inheritance by the presence of a father, mother's mother is blocked by mother, and the brothers are blocked by the father etc.¹⁴

It follows that there are eight group of relatives that can be excluded or blocked from inheritance, namely;

- (a) father's father is excluded by father;
- (b) grandmother is excluded by mother;
- (c) remote paternal grandmothers (eg mother to the father's mother) can be

10 See Abdul Rashid Hj Abdul Latif, *Undang-undang Pusaka Dalam Islam: Suatu Kajian Perbandingan*, al-Hidayah Publishers, Kuala Lumpur, 2005, at pp 1–25.

11 Dr Zakiy al-Din Sya'ban and Dr Ahmad Al-Ghandur, *Abkam al-wasiyyah wa al-Mirath Wa-alwakf Fi al-Syariah al-Islamiyyah*, Maktabah al-Fallah, Al-Kuwait, 1989/1410, at p 353.

12 See Wan Noraini Mohd Salim, *Islamic Law of Succession; A Practical Guide to the Laws of Faraid*, 3rd Ed, CLJ; Puchong, 2022, at p 10.

13 Dr Zakiy al-Din Sya'ban and Dr Ahmad Al-Ghandur, at p 353.

14 Muhammad Abd Rauf, at pp 16–17.

- excluded by mother's mother if they survived the deceased;
- (d) son's son and children are excluded by the survival of a son;
 - (e) germane, consanguine and uterine brothers and sisters are excluded by son or son's son or father;
 - (f) children of germane, consanguine and uterine brothers are excluded by father, father's father, son, son's son, germane brothers and consanguine brothers;
 - (g) germane and consanguine paternal uncle are excluded by father, father's father, son, son's son, germane brothers, consanguine brothers, children of germane brothers, children of consanguine brothers, germane sisters who survive together with daughter or son's daughter; and
 - (h) consanguine sisters who survive together with daughter or son's daughter.

The *Hajb* can also be a mere reduction (*Hajab nuqsan*) ie reduction of the portion of an heir due to the survive of another potential heir. For example, the portion of a mother is reduced from 1/3 to 1/6 whenever they are survived with the children of the deceased or his or her brothers and sisters, or the reduction of the portion of a husband from 1/2 to 1/4, or the wife from 1/4 to 1/8 in the case the children or grandchildren of the deceased survive.¹⁵

There are only three categories of heirs who cannot be completely deprived of inheritance.

- (a) spouse of the deceased;
- (b) children; and
- (c) parents¹⁶

As regards *zawul arham*, the word *Arham* is the plural of *rahim* literally refers to all of a person's relatives whether they inherit or may not inherit from the deceased. It also signifies a blood relationship. However, under the law of inheritance, it refers to blood relatives who are not inheriting.¹⁷ In brief, *zawul arham* refers to group of relatives of the deceased who are related by blood, but they are neither prescribed heirs or residuary heirs. They have no fixed portion according to the Quran, Sunnah and Ijma' and they do not take any residue from inheritance.¹⁸

15 Mustafa al-Khin, at p 1050.

16 Mustafa al-Khin, at p 1044.

17 M Abdul Rauf, at p 113.

18 Wan Noraini, at p 9. See also Mustafa al-Khin, at p 1125.

It follows that the Muslim jurists differ on whether *zawul arham* may inherit deceased property whenever there is no *ashabul furud* or residuary heirs survived the deceased. According to the view of Zayd ibn Thabit and a narration from Ibn 'Abbas, they are abstained from inheritance. This is also agreed by Mazhab Maliki, Awza'i, Abi Thur Shafi'i and Daud Ibn Jarir al-Tabari. They further view that *Bait al-Mal* deserves more right to inherit in the absence of prescribed and residuary heirs.¹⁹ The author of *al-fiqh al-manhaji* further discusses two conditions to be fulfilled by *zawul arham* if they are to inherit. According to the Shafi'i schools, firstly, there is no legal heirs from quranic heirs (*ashabul furud*) or residuary heirs ('*asabah*) other than the husband and wife. Secondly, Public treasury (*Baitul Mal*) is not properly administered. *Zawul arham* cannot inherit the property when the *Bait al-Mal* is properly administered since their rights to inherit is not mentioned either in the Quran or Sunnah of the Prophet s.a.w. Where *Bait al-Mal* is not properly administered, the property might not reach the rightful people, therefore if the property reaches *zawul arham*, it is best compared to those who are not having family relationship with the deceased.²⁰

The group of *zawul arham* based on priority include:

- (a) descendants of the deceased how low so ever from the female line. They are normally the daughter's daughter and her descendants how low so ever and daughter of the son's son how lo so ever;
- (b) ascendants of the deceased from the female line how high so ever. The relatives involved include for eg the mother's father or father of the mother's father;
- (a) the *Hawashi* (collaterals). The collaterals can be divided into several groups:
 - (i) children of the deceased sisters, the brothers' daughters or the children of the uterine brothers or the descendants of maternal siblings how low so ever;
 - (ii) uncles and aunties from female line and their descendants how low so ever;
 - (iii) grand uncle and grand aunties and their descendants how low so ever;
 - (iv) uncles and aunties of the grandfather and grandmother from the female line and their descendants²¹

19 See Solah Sulton, *al-Mirath wa al-Wasiyyah bayna al-Shari'ah wa al-Qanun*, Sultan Publishing; USA, 2006, at p 156.

20 See Mustafa al-Khin. At p 1126.

21 Abd Rashid, at pp 40–41.

Other family members who are non-legal heirs

There are also situations where there are family members are from non-blood relationship and have no rights to inheritance such as adopted and foster children. In many cases, these children are brought up together with biological children as part of family members. Nevertheless, adoption and foster parenting will not change their status which remains as strangers and non-legal heirs in case the adoptive families are dead. Islamic law as a comprehensive legal system that safeguards the interest of non-blood relatives through special means of property disposition which include, *wasiyyah*, *hibah* and *waqf*.

Further, parents or siblings and relatives from a different religion or illegitimate children are also non-legal heirs. They have no rights to inheritance but may benefit from *waqf* if the conditions are fulfilled.

The above discussion infers that there are a group of relatives and members who are accepted as family who will not inherit properties from the deceased upon the death of a person. These relatives can be poor families and destitute who are in need of properties to continue survival, to secure a living, for education purposes, to pay debt, to perform worldly activities and so forth. Even though they might not be entitled to inherit the property of the deceased through inheritance or succession, Islamic law has provided many other means of assisting them and safeguarding their rights to property. One of those means is through *waqf*.

Concept of *Waqf*

Waqf literally means retention. Terminologically, the Shafi'is define *waqf* as retention of wealth that can be benefitted from it while keeping its corpus from disposition, for the permissible and existing beneficiary.²² According to Sha'aban and Ghandur, the view of Imam Abu Yusuf, Muhammad al-Shaybani and strongest view of Imam Shafi'i and one report from Imam Ahmad, once a *waqf* is created, ownership of the property will not be transferred to anyone but to Allah the almighty. The benefit of the *waqf* property will only be devoted to the recipient or beneficiary of *waqf*. It follows that, according to this view, *waqf*

22 Al-Shirbini, Sham al-Din Muhammad bin Khatib, *Mughni al-Muhtaj Ila Ma'rifat Ma'ani al-Faz al-Munhaj*, Dar al-Fikr, Beirut-Lebanon, 1421H/2001, Vol 2, at p 510.

is a type of binding disposition once it is validly created, it cannot be revoked. This is also the view of the Maliki and the Hanbali jurists.²³

According to the majority of Muslim jurists, there are four pillars of waqf namely, the creator or donor of *waqf* (*waqif*), the beneficiary or recipient of *waqf*, the subject matter of *waqf*, *sighah* (*ijab* and *qabul*). Therefore, for a *waqf* to be valid, all the conditions are to be fulfilled. There are mainly two types of *waqf*; namely, *waqf Khayri* and *waqf Zurri*.²⁴ *Waqf Khayri* refers to *waqf* which is created for a general charitable purpose such as *waqf* for a mosque, hospital, school, university and leaning institution etc. *Waqf Zurri* or *waqf ahli* is a *waqf* which is created for specific person whether they are relatives and non-relatives. and who are legal heirs and non-legal heirs.²⁵ It is also interesting to note that *waqf* is a kind of voluntary distribution of wealth which can also be created for non-Muslims or relatives of different religion so long as it is for public benefit, assisting the needy or family members. Nevertheless, *waqf* to non-Muslims must not be contrary to Islamic principles such as for evil purposes or construction of non-Muslims place of worship.²⁶

Legality and wisdoms of *Waqf*

Waqf is recognised and enjoined among others based on the verses of the Quran and Sunnah as well as *Ijma'* of the Muslim scholars.

As regards the Quran, the Quran states generally to the effect:

By no means shall you attain righteousness unless you give (freely) of that which you have, and whatever you give of a truth, Allah knoweth it all.²⁷

The above verse provides in general that Muslims are encouraged to donate for the sake of Allah the properties that they love most out of love to Allah s.w.t. Further, the Prophet s.a.w. also stated to the effect:

23 Zaki al-Din Sha'aban and Ahmad al-Ghandur, *Abkam al-Wasiyyah wa al-Mirath wa al-Waqf fi al-Shari'ah al-Islamiyyah*, *Maktabah al-Fallah*: Kuwait, 2nd Ed, 1989, at pp 458–459.

24 See 'Akramah Said Sobri, *al-Waqf al-Islamiy bayna al-Nazariyyah wa al-Tatbiq*, Dar al-Nafais; Jordan, 2008, at p 91

25 Ibid. p 105.

26 Ahmad Farraj Hussain, *Abkam al-Wisoyah wa al-Awqaf fi al-Shari'ah al-Islamiyyah*, Dar al-Jami'ah al-Jadidah, 2003, pp 260–261.

27 The Quran, Surah al-Imran: 92.

Abu Hurairah r.a. stated that the messenger of Allah s.a.w said “ If a person dies, his deeds are cut off from him except for three; ongoing charity or knowledge that benefits him or a righteous son who prays for him.²⁸

According to Al-Nawawi, al-Shawkani and al-San’ani, the meaning of ongoing charity refers to *waqf*. Furthermore, *waqf* is continuously practiced since the period of companions. Imam al-Shafi’i said, from the information that he received, about 80 of the companions from the Ansar have created *waqf*. On that basis, he called *waqf* as *Sadaqat muharramaat* ie the *waqf* that cannot be disposed of.²⁹

Waqf is basically a ritual deed with the religious purpose to come near to Allah s.w.t. The benefits and wisdoms of *waqf* are obvious namely safeguarding the interest of religion, family, society, the country and the nations as a whole. The wisdom of *waqf* for religion is to safeguard the religion of Islam in terms of its preaching, propagating, sustaining the religious institution like mosques, religious departments, religious schools and religious activities. *Waqf* for the benefits of the society and nations includes *waqf* for the orphanages and single mothers, disable people, parentless and street children. Finally, *waqf* for the benefits of family members is especially meant for securing life, survival, welfare and education for the destitute family members or relatives, Indeed, *waqf* is so general to the extent that any kind of benefits can be transferred to family members.³⁰

How *Waqf* may protect destitute relatives who are non-legal heirs

The concept and features of *waqf* shows that *waqf* can be a very significant alternative to distribute properties to relatives who are not inheriting, non-legal heirs and who are blocked from inheritance. *Waqf* seems to be free and easy and much relevant and practical as it does not limit the recipient of *waqf* to legal heirs or non-legal heirs. Further, *waqf* may offer numerous benefits to relatives especially in terms of education and living security for certain period of time.

In principle, both kinds of *waqf* can be made to destitute relatives from legal heirs or non-legal heirs. Therefore, to protect destitute relatives who are non-legal heirs, the *waqif* (creator of *waqf*) may create *waqf zurri*, which benefit of *waqf* is rather specific only for destitute relatives who are not inheriting, non-legal heirs or who are excluded from inheritance as well as other family

28 Narrated by Muslims.

29 Al-Sharbini, Vol 2, at p 510

30 See Akramah, at pp 78–88.

members from fostering or of different religion. The *waqif* may also create *waqf khayri* where in this case the destitute relatives who are non-legal heirs or non-inheriting etc as listed before can be among the recipient (*mawquf alayh*) of the benefit of *waqf*. For example, creating *waqf Khayri* for the poor, education and health etc. In this case, if the relatives are no longer surviving or inexistence, the *waqf* can be distributed to other beneficiaries.

THE LAW IN MALAYSIA

Malaysia consists of thirteen states (Eleven in peninsular and two in East Malaysia ie Borneo) and Federal Territories of Kuala Lumpur, Labuan and Putrajaya.³¹ Matters relating to Islamic religion is governed by each state law while federal law governs federal territories. *Waqf* is a subject matter under Islamic law relating to personal law of a Muslim and therefore is governed by each individual state.³²

So far, there are five states in peninsular Malaysia that have enacted *waqf* enactment of respective States namely Selangor,³³ Melaka,³⁴ Perak³⁵, Terengganu³⁶ and Negeri Sembilan³⁷. And one *waqf* enactment in East Malaysia which is the state of Sabah.³⁸ With respect to the state of Johor, it outlined a set of *waqf* rules ie Johor Waqf Rules 1983.

For the purpose of discussion under this subheading, reference will be made to Wakaf (State of Selangor) Enactment 2015 ('the WSE 2015') to represent Peninsular Malaysia and Wakaf (State of Sabah) Enactment 2018 ('the WSA 2018').

Both the WSE 2015 and WSA 2018 define *wakaf* as:

- (a) to surrender the title of any property from which its benefit and interest may be enjoyed;

31 See Negeri dan Wilayah Persekutuan di Malaysia, available online at https://ms.wikipedia.org/wiki/Negeri_dan_Wilayah_Persekutuan_di_Malaysia accessed on 25/10/2022. See also *MyGovernment* available online at <https://www.malaysia.gov.my/portal/content/134>. Accessed 25 October 2022.

32 See Federal Constitution of Malaysia, Ninth Schedule, List II — State List. Item no 1.

33 See Wakaf (State of Selangor) Enactment 2015, No 15 of 2015.

34 See Wakaf (State of Malacca) Enactment 2005, No 5 of 2005.

35 See Wakaf Eanctment (Perak) 2015, No 9 of 2015.

36 Wakaf (State of Terengganu) Enactment 2016.

37 See Wakaf (Negeri Sembikan) Enactment 2005, No 2 of 2005.

38 Wakaf (State of Sabah) Enactment 2018.

- (b) to surrender the benefit or interest which may be enjoyed from any property; or
- (c) to contribute the expertise and services from which its benefit or interest may be enjoyed,

whether as *wakaf am* or *wakaf khas*, pursuant to Hukum Syarak, but does not include a trust defined under the Trustee Act 1949 [Act 208];

Under both the WSE 2015 and the WSA 2018, *wakaf* is further divided into two; *wakaf am* and *wakaf khas*. *Wakaf am* means any *mawquf* created for the purpose of general benevolent pursuant to *Hukum Syarak*; while '*wakaf khas*' means any *mawquf* created for the purpose of benevolent or specific party pursuant to *Hukum Syarak*.³⁹

This classification of *waqf* under both state enactments seem to differ from types of *waqf* as discussed by the Muslim jurists. It appears that *waqf khas* in one way is similar to *waqf zurri* and in another way is similar to *waqf khayri*. This is because it can be created for charitable purpose as well as for the specific person. On the other hand, *waqf am* is more general which is similar to *waqf khayri* as it can be created for general charitable purpose. Both Enactments define *Hukum Syarak* as *Hukum Syarak* according to Mazhab Shafie or according to any one of the Mazhab Hanafi, Maliki or Hanbali.⁴⁰

Thus, in Selangor and Sabah, a *waqf* to relatives may be created through *wakaf khas* subject to the permission by the Majlis (religious council of respective State). Where the *waqf* is created without the permission of Majlis, it is considered void and invalid.⁴¹ In Sabah, any *waqf* that is created without permission of the Majlis is an offence and will subject to certain penalty.⁴² Both Enactments further recognise creation of *waqf* to heirs or non-heirs.⁴³ As regards creation or formation of *waqf*, both enactments also regulate on creation of *waqf*. The WSE 2015 provides that:

- (1) Except as provided otherwise in this Enactment, any person who —
 - (a) have attained the age of eighteen years;
 - (b) is of sound mind;

39 See Wakaf (State of Selangor) Enactment 2015, s 2; Wakaf (State of Sabah) Enactment 2018, s 2.

40 Ibid. s 2.

41 Ibid, ss 14 and 11.

42 See Wakaf (State of Sabah) Enactment 2018, s 42.

43 See Wakaf (State of Selangor) Enactment 2015, ss 31(1) and 32(1); Wakaf (State of Sabah) Enactment 2018, ss 32(1) and 33(1).

- (c) is not declared a bankrupt; and
- (d) is willingly, may surrender his property as a mawquf for any purpose of benevolent pursuant to Hukum Syarak.(2) A wakaf shall be created by way of sighthah before two witnesses pursuant to Hukum Syarak.

It further provides that:

The types of wakaf which may be created under this Enactment are wakaf am and wakaf khas.⁴⁴ The similar provisions on creation of *waqf* is provided under the WSA 2018.⁴⁵

Therefore, in Malaysia, a *waqf* can be created to destitute relatives. Nevertheless, it is subject to the permission of the Majlis or religious council since the Majlis in respective state is the sole trustee of the *waqf* that is created in such state.⁴⁶

CONCLUSION

Islam is a comprehensive religion that protects the Muslim rights in many ways. Rights to inheritance is obvious to all legal heirs. However, non-legal heirs are not denied the rights to property or to be endowed with property. It is among the wisdoms of succession law ie to safeguard the family ties and relationship after the death of one family member and to realise social balance and security in the family as the property of the deceased will provide many benefits to the relatives of the deceased.⁴⁷ Thus, relatives of the deceased who are inheriting will benefit from the estate of the deceased while relatives who are not inheriting or non-legal heirs may benefit from the property of their family members through other means which include *waqf*.

It follows that, under Islamic law, *waqf* seems to be a very significant means to assist the destitute relatives. This is because *waqf* has no restriction as regards to its disposition as it can be created to both legal heirs and non-legal heirs. Furthermore, in the context of *waqf*, the property is protected while what is transferred is only the benefit of the property whereby the beneficiary will continuously receive the benefit from the *waqf* property. In one way, this is a form of social security to destitute relatives that may guarantee their needs in

44 See Wakaf (State of Selangor) Enactment 2015, ss 11 and 12.

45 Wakaf (State of Sabah) Enactment 2018, s 9.

46 See Wakaf (State of Selangor) Enactment 2015, s 4; Wakaf (State of Sabah) Enactment 2018, s 3.

47 See Mustafa al-Khin, p 999.

terms of survival and education. In addition, in the case where the relatives are no longer exist, the *waqf* can be extended to *waqf 'am* to further protect the property.