

PRELIMINARY DISCUSSION ON THE POTENTIAL OF *ZAKAT-WAQAF* COLLABORATION IN THE PROVISION OF HOUSING FOR THE NEEDY MUSLIMS

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ABSTRACT

Zakat and *waqaf* are the two key instruments that focus on providing assistance to the needy. While they share similar aim but their approaches are different. *Zakat* has specific approach as prescribed in *Al-Quran* and *Al-Hadiths* whereas *waqaf* in general has no direct *Quranic* injunction except the various verses and *hadiths* that promote the practice of *infaq*. It is a known fact that within the Malaysian context, the employment of these two instruments have been relatively successful in fulfilling their respective roles and functions. However, few research have been done on the potential of these two instruments collaborating in specific endeavours for the benefit of the *muslim ummah*. Through desk study and discussions with experts, this paper explores the potential of *zakat* and *waqaf* to collaborate - in terms of their resources and within what is permissible under the *shari'ah*. The focus of this paper is on the collaboration between *zakat* and *waqaf* resources in the provision of low cost housing or its equivalent for needy *muslims*. The paper concludes with several issues and challenges that would require further and in-depth deliberations.

Keywords: economy, poverty, housing, *waqaf*, *zakat*

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1.0 INTRODUCTION

Islam emphasizes on the fair distribution of wealth, with the rich to help those in need.

Let a man of wealth spend from his wealth, and he whose provision is restricted - let him spend from what Allah has given him. Allah does not charge a soul except [according to] what He has given it. Allah will bring about, after hardship, ease.

(Al-Talaq:7)

Zakat and *waqaf* are the two key instruments that focus on providing assistance to the needy. While they share similar aim but their approaches are different. *Zakat* has specific approach as prescribed in *Al-Quran* and *Al-Hadiths* whereas *waqaf* has no direct *Quranic* injunction except the various verses and hadiths that promote the practice of *infaq*⁹⁶. *Zakat* is one of the five pillars in Islam (pillar no 3) and it is compulsory for all Muslims that fulfil all the requirements to pay *zakat* (in the amount and style as stated thereto) and that *zakat* are to be paid to eight categories of *asnaf* (recipient) as prescribed in *Al-Qur'an*⁹⁷.

Waqaf, in simple term refers to the act of surrendering one's own property so that the same is to be used and for the benefits of all Muslims. The key reason for a person to commit the ownership of his property to *waqaf* is to seek the blessings of Allah S.W.T. and to bring oneself near to Him. *Waqaf* may be in the form of land, building, house and cash.

Literal meaning of waqaf (plural awqaf) is detention, to prevent or to restrain. Meaning of waqaf in Islamic terminology is "a dedication of property either in

⁹⁶ *Infaq* in Arabic term is spending. Conceptually in the Islamic system, it means giving away for the betterment of the society and its members including the giver and her/his family. (For details, refer: http://monzer.kahf.com/papers/english/Infaq_in_the_Islamic_Economic_System.pdf)

⁹⁷ *Alms are for the poor and the needy and those employed to administer the (funds); For those whose hearts have been (recently) reconciled (to the truth), for those in bondage and in debt, in the cause of Allah, and for the wayfarer; (Thus it is) ordained by Allah, and Allah is full of knowledge and wisdom (9:60), in Abdullah Yusuf Ali, 1996.*

express terms or by implication, for any charitable or religious object or purpose recognized by Shari'ah law (Siti Mashitoh, 2015).

In the context of Malaysia the two commonly discussed *waqaf* are *waqaf am* (general *waqaf*) and *waqaf khas* (specific *waqaf*). Both *Zakat* and *Waqaf* are administered by the respective State Islamic Religious Councils (*Majlis Agama Islam Negeri-negeri* or MAINS). The Manual of Management and Distribution of Zakat, published by the Department of Waqaf, Zakat and Hajj (JAWHAR) of Prime Minister Office (PMO), stipulates that there are 32 schemes of *Zakat* Fund Assistance Scheme to *asnaf* and but the adoption and implementation by the State Islamic Religious Councils in Malaysia varies.

It is observed that the most critical problem currently facing Muslims in Malaysia is the lack of access to decent and affordable housing for the low and middle income families. The problem, relatively widespread, appears to be more acute among families residing in the cities and big towns due to higher costs of living, in contrast to those residing in the rural areas. Consequently, many of the low and middle income families have to endure staying in cramped and often unfavourable living conditions.

Available literature thus far suggested that lots have been done in terms of assisting the needy and eligible Muslim families including in the provision of housing via *zakat* and *waqaf* respectively (Khairuddin *et. al.*, 2014). The various MAINS have been very active in discharging their roles and performing their functions. In effort to boost services and expertise, the Government had, in 2004, established the *Jabatan Waqaf, Zakat dan Haji* (JAWHAR) or the Department of *Waqaf, Zakat and Haji*. JAWHAR is provided with administrators and funding to assist MAINS in coming up with methods to improve the administration of the states' *zakat* and *waqaf*.

In addition, the 32 *Zakat* Fund Assistance Scheme (*skim bantuan agihan zakat*⁹⁸) outlined by JAWHAR, particularly scheme 5 and 6 allocated for the purpose of providing housing needs for the eligible *asnaf*. Meanwhile, there were cases of *waqaf* land being developed to provide housing for the needy⁹⁹. Despite the efforts through *zakat* and *waqaf*, respectively, there still exist those Muslims and their families having to endure extreme hardship in the course of their daily lives. In addition, it is not uncommon for the public to be informed by the various media on the presence of Muslim families who are homeless or are staying in homes that are deemed indecent or hardly appropriate for them to live in (Khairuddin *et. al.*, 2014).

In terms of administration, broadly both *zakat* and *waqaf* are placed under one roof i.e. under the respective MAINS but rightly they are administered differently, the reason being *zakat* and *waqaf* have different set of objectives and recipients as prescribed by the injunctions in *Al Qur'an* and *Al Hadiths*. It is a known fact that within the Malaysian context, the employments of these two instruments have been relatively successful in fulfilling their respective roles and functions. However, few researches have been done on the potential of these two instruments collaborating in specific endeavours for the benefit of the *muslim ummah*. Hence, this paper focuses on the potential collaboration between *zakat* and *waqaf* resources in the provision of low cost housing or its equivalent for needy *muslims*, i.e; *asnaf faqr* and *misikin*.

The paper is structured into 5 parts: Part 1 introduces the concept of *zakat* and *waqaf* in Malaysia, its concepts, eligible recipients (*asnaf*) and the state of affairs of housing and affordability of *muslims* in Malaysia. Part 2 discusses the *shari'ah* injunctions, performance thus far in helping the *asnafs*, etc. Part 3, thereafter, deliberates on the on provisions, design, conditions, affordability of houses and houses and its surrounding

⁹⁸ Refer *Manual Pengurusan Agihan Zakat* (2009). *Jabatan Wakaf, Zakat dan Haji* (JAWHAR). Prime Minister's Department. Kuala Lumpur

⁹⁹ In August 2007 MAIN Pulau Pinang carried out Joint Venture development with JKP Sdn Bhd, an agency under Finance Ministry. The land previously occupied by squatter has turn into 34units of houses where it has increase the monthly rental as well as increase Muslim member of the area. (Refer http://www.academia.edu/3039437/Developing_Waqf_Land_Through_Joint_Venture_Malaysia_Experience)

environments (landscape, space, etc). Subsequently, Part 4 discusses the findings. Lastly, part 5, concludes the paper with recommendations for improvement.

The methodology adopted in the study combines extensive review of literature, content analysis and discussions with *Shari'ah* experts, *zakat* and *waqaf* administrators and construction practitioners.

2.0 ZAKAT AND WAQAF IN MALAYSIA

2.1. Zakat

Zakat is clearly mentioned in *Al-Qur'an*::

And establish prayer and give zakah and bow with those who bow [in worship and obedience]. (Al-Baqarah:43)

And remember We took a covenant from the children of Israel (to this effect): worship none but Allah, treat with kindness your parents and kindred, and orphans and those in need, Speak fair to the [people, e steadfast in prayer, and practice regular charity. Then did ye turn back, except a few among you and ye backslide (even now) (2: 83), in Abdullah Yusuf Ali, 1996.

Indeed, those who believe and do righteous deeds and establish prayer and give zakah will have their reward with their Lord, and there will be no fear concerning them, nor will they grieve. (Al-Baqarah:277)

In terms of its administration in Malaysia, *zakat* is administered by the MAINS. The various MAINS have been doing very well in terms of collecting and disbursing *zakat* to those that have been identified as eligible recipients. In addition, the various MAINS have been active in disbursing *zakat* monies not only in the form of cash for daily sustenance but also in the form of other assistance such as scholarships, building or repair of homes and religious schools, education and the likes.^{100,101}

¹⁰⁰ See for example Asnaf, terbitan 2/2013 published by Lembaga Zakat Selangor.

¹⁰¹ See Laporan Pengurusan Zakat Selangor 2012, p49.

However, there are criticisms such as the methods of disbursement are too bureaucratic, inefficiencies in collections, whether the disbursements have been effective to assist the needy in the shorter and longer terms (as defined by the *Al Qur'an*) and why is it that while collections have been on the rise and so too the disbursements year after year (see **Table 1** as an example) yet there are still surplus of *zakat* fund.^{102, 103}

Table 1: Collection and Distribution of Zakat Fund 2009 - 2013

Year	Collection (RM Million)	Distribution (RM Million)	Balance (RM Million)
2009	283.80	279.2	4.60
2010	336.7	364.9	- 28.20
2011	394.1	373.5	20.60
2012	451.3	401.7	49.60
2013	517.3	463.5	53.80

Source: Lembaga Zakat Selangor (2013)

The fact that there are surpluses in the amount of zakat money (i.e. annual collections higher than annual disbursements) led to *zakat* experiencing rich in cash, hence creating opportunity to be utilized in providing low cost housing for the needy muslims.

2.2. *Waqaf*

In contrast to *zakat*, the practice of *waqaf* is not specifically mentioned in *Al-Quran* and *Hadith* on the term *waqaf* (Siti Mashitoh, 2015). She added that *waqaf* is an *ijtihad* matter, exists more in the form of Muslim Jurist's opinions. However, references have been made to some general verses on *Quran* relating to spending/*inffaq* for charitable purposes, allocation of wealth/property to the poor and

¹⁰² See discussions in Asnaf, terbitan 1/2013 and 2/2013 published by Lembaga Zakat Selangor.

¹⁰³ See Laporan Pengurusan Zakat Selangor 2012.

trust and trusteeship responsibility, etc.¹⁰⁴ In addition, relevant Quranic verses and Hadith are:

O ye who believe! Give of the good things which ye have (honorably) earned. And of the fruits of the earth which We have produced for you ... (2:267), in Abdullah Yusuf Ali, 1996.

By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give, of a truth Allah knoweth it well (3:92), in Abdullah Yusuf Ali, 1996.

And spend [in the way of Allah] from what We have provided you before death approaches one of you and he says, "My Lord, if only You would delay me for a brief term so I would give charity and be among the righteous." (Al-Munafiqun:10)

Narrated by Muslim:

"Ibnu Umar r.a. also reported a hadith on waqaf from Rasulullah S.A.W. : 'Umar ibn al-Khattab gained possession of a piece of land in Khaibar; so he came to see the Prophet, peace and blessings of Allah be upon him, to consult him about it. He said, O Messenger of Allah! I have got a piece of land in Khaibar of which I have never obtained more valuable property than this; (Although I aspire to reach out to Allah AzzawaJalla) what is your advice or suggestion about it and the best course of action to take ? The Messenger of Allah p.b.u.h. said: "If you wish, make the property itself to remain inalienable, and give (the profit from) it to charity."

In the management of *waqaf* assets, any transaction activities are prohibited. There are 3 legal principles to be adhered:

- 1) *Waqaf* assets cannot be sold
- 2) *Waqaf* assets cannot be given as a gift
- 3) *Waqaf* assets cannot be inherited

However, the principle of *Istibdal*¹⁰⁵ is allowed in the case of necessity¹⁰⁶.

¹⁰⁴ Example: Al-Baqarah: 261, Al-Dzaruyat:19 and An-Nisa': 58

Similar with the administration of *zakat*, available literature pointed out that a lot have been done by all the MAINS to administer *waqaf* properties. Some MAINS have even developed *waqaf* land to build hotels and shop-lots which are then rented out to eligible entrepreneurs hence ensuring a steady income stream for the MAINS¹⁰⁷ or formed joint ventures with private companies and property developers to unlock the value of *waqaf* properties and to build low cost housing for eligible Muslim families.¹⁰⁸

However, literature also pointed out the many criticisms concerning the administration of *waqaf* such as while it appears that *waqaf* is rich in asset but they are poor in cash, large parcels of *waqaf* land including those in cities and big towns left undeveloped and the lack of expertise to manage the highly valuable land and other assets. For example, the *Majlis Agama Islam dan Adat Melayu Perak* (MAIN Perak) listed the following as problems of *waqaf* land in Perak¹⁰⁹ (originally in Bahasa Malaysia, translated by the authors):

- Uneconomical land size (fragmented parcels of land) and locational issues.
- Away from public concentration and road infrastructure.
- Lack of manpower and management resource to administer available *waqaf* land for the whole state of Perak.
- Lack of capital to develop available *waqaf* land.
- Trespassing and illegal occupation of *waqaf* land.
- Committees at the mosques, *suraus* and *SAR* not effective in managing assets under their care due to lack of capital and expertise.
- Inadequacies in the recording of information on *waqaf* land and *baitulmal*.

¹⁰⁵ Section 2(1) Wakaf (State of Selangor) Enactment 1999 (no.7 of 1999): To substitute a *waqf* property with another property or with money which is of the same or higher value than it either by substituting, purchasing, selling or any other means in accordance with *Hukum Syarak* (*Shari'ah* law)

¹⁰⁶ Significant in certain situations, i.e; to fulfil the *waqif*'s intention, to modify *waqif*'s stipulations, application of existing laws (eg.; LAA 1960), etc.

¹⁰⁷ <http://www.sinarharian.com.my/hotel-wakaf-pertama-di-terengganu-operasi-15-april-1.148262>.

¹⁰⁸ See for example www.thestar.com.my 28th April 2014, www.themalaymailonline.com 12th November 2013,

¹⁰⁹ For details, refer: <http://www.maiamp.gov.my/maiamp/maipk/index.php/profil-maipk/bahagian/maklumat-bahagian-hartanah-dan-pelaburan> accessed 23rd June 2014.

Consequently, some commentators believed that *waqaf*, as depicted by such a label, and coupled with poor management have led to critiques including that *waqaf* has not been able to realize its potential in terms of poverty alleviation of the *ummah* (Khairuddin *et. al.*, 2014).

2.3. Zakat-waqaf collaboration

It is a known fact that JAWHAR was established at the Federal level to coordinate the management of *waqaf*, *zakat*, *mal* and *haji/umrah* among the states religious authority. Under the same roof, *waqaf* and *zakat* are operated for the development of the *ummah*. In fact, Malaysian *Awqaf* Foundation (MAF) was established as a business arm to the JAWHAR. Since its inception in 2008, sixteen physical development projects and four non-physical were completed in kind of hotels, educational complexes, shop houses, rehabilitation center, haemodialysis center, Islamic complexes activity and orphanages. MAF operates on fund given by the government under the Ninth and Tenth Malaysian Plan i.e. RM256.4 million and RM72.76 million respectively (refer to fatwa MKI, 2007) and other sources of *waqaf*.

In addition, there exists collaborations between *waqaf* and *zakat* such as in the establishment of the Terengganu Culinary College. Through joint venture, MAF built Terengganu Culinary College on *waqaf* land, costing RM2.5 million. The collaboration involved *Majlis Agama Islam and Adat Melayu Terengganu* (MAIDAM) as client, the project financed and managed by MAF, GIATMARA as service provider (teaching staff) and *zakat* institution sponsors the fee for *asnaf*'s children. Another example of collaboration between *waqaf* and *zakat* is *Komplek Asnaf* on 3.4 acre *waqaf* land at *Kampung Pahang*, Kuantan. It comprises of 10 units of terrace houses, 2 terrace blocks, dining room and *surau* to accommodate *zakat asnaf*. However neither of the projects is using *zakat* fund to finance the construction of houses for the *asnaf*.

Based on the practice by *Lembaga Zakat Selangor* (LZS), *asnaf faqr*, *miskin* and *muallaf* can be given assistance in term of house rent, house repair, house building and group housing as shown in **Table 2** below:

Table 2: Housing-related *Zakat* fund assistances for relevant *asnaf*

Types of fund	<i>Faqr</i> (RM)	<i>Miskin</i> (RM)	<i>Muallaf</i> (RM)
House rent	2,388,405	3,446,244	2,182,172
House repair	1,117,127	2,777,345	NA
House building	3,256,320	9,076,663	955,425
Group housing	886,301	NA	NA
Sub-total	7,648,153	15,300,252	3,137,597
Total	26,086,002		

Source: LZS Annual Report, 2013

The disbursement of RM26,086,002 for the housing-related purposes constitutes 5.6% from the total RM463,472,826 of *zakat* money disbursed in 2013. Out of 30,950 *faqr* and *miskin* families in Selangor, only 3,368 (11%) family received housing-related assistances. It is recorded that there were a surplus of RM53,832,449 of *zakat* money in 2013. This could be due to the reason that an amount of RM126,139,390 *zakat* were paid in December 2013, hence presenting difficulties in the disbursement of the money collected, within the same year.

Available literature thus far suggested that a collaboration between *zakat* and cash *waqaf* as a macro financing to the needy is well known whereby the collaboration between *zakat* and *waqaf* land received less attention as far as the authors aware except Shawki Ismail (2006) used to suggest Islamic socio-economic infrastructure of low cost housing be funded by *zakat*. In *zakat* distribution, provision of group housing, repair, house rental is one of the schemes granted under the Manual of *Zakat* Distribution by JAWHAR. Thus, the collaboration of *zakat* and *waqaf* land is most welcomed to accomplish the house provision to the needy. Unit of houses developed on *waqaf* land using *zakat* money will made clear to *asnaf*, whilst unit of houses

developed on *waqaf* land with money other than *zakat* could benefit other needy category.

Although *zakat* and *waqaf* are operated under the same roof of JAWHAR at the Federal level, in term of *zakat* money to be used by Malaysian *Awqaf* Foundation for housing construction is not viable at the moment because JAWHAR has limited power on MAINS. Guidelines provided by the JAWHAR are advisory in nature because religious matter is under state jurisdiction. Realizing this fact, JAWHAR in its strategic plan 2012-2016 laid down few strategies like *Tabung Zakat* National targeting RM1 million a year to be used by the Federal agencies. Apart from that, JAWHAR is proposing *Suruhanjaya Diraja Zakat* under the *Majlis Raja-Raja* and enhancing a partnership with Government Link Company (GLC), banks, non-government organisations (NGO), High Network Individual Muslim (HNIM) and private companies for *waqaf* development.

Preliminary discussion with the *zakat* and *waqaf* experts (JAWHAR and *Lembaga Zakat* Selangor) indicates that collaboration between the two entities on the provision of low cost housing or its equivalent for needy *muslims* has never taken place and it is a possibility. Our discussion suggested that there is no injunction that prohibits the two entities to collaborate and there is no clear indication that the two entities have been collaborating for the purpose of developing a new model of low cost housing nor addressing the current state of housing for the needy.

According to the Ministry of Urban Wellbeing, Housing and Local Government (2013) there are a total of 71,662 registered squatters awaiting housing resettlement in Malaysia. Assuming that half of them are *muslims*, approximately 35,831 units of houses are required by the low income *muslims* or eligible *asnaf faqr* or *miskin*.

Supposing that one unit of houses is costing about RM42,000.00 to build¹¹⁰, therefore RM1.5 million is required to build the houses to cater for their needs. This can be supported either in full or partially by using the surplus from *zakat* fund (after scheduled distribution). Through collaboration between *zakat* and *waqaf* entities, the houses can be built by utilizing *waqaf* land. Theoretically, this collaboration can help to reduce cost, hence creating opportunities for the provision of more housing for the said *asnaf*.

3.0 THE STATE OF HOUSING, FOCUSING FOR THE NEEDY IN MALAYSIA

Shelter is, the foremost, human basic needs. Without it, one may not be able to feel happiness, secure, productive and life fulfilling. Census 2010 revealed the total population of Malaysia was 28.3 million, compared with 23.3 million in 2000. The average annual population growth rate for the period 2000 – 2010 is 2%. The state with the highest growth rate for the period 2000-2010 was W. P. Putrajaya (17.8%), followed by Selangor (2.7%), Melaka (2.6%) and Sabah (2.1%). Among the states which experienced lower growth rate were Terengganu (1.4%), Perak (1.4%), W. P. Labuan (1.3%) and Perlis (1.2%). Islam was the most widely professed religion in Malaysia with the proportion of 61.3% in 2010.

The growing number of population indicates that providing housing for the nation goes beyond the physical dimension. It encompasses economic, social and political factors. The economic activity can be stimulated with good housing development and ownerships programmes. Many studies have come to an agreement that functional and satisfying house conditions added with healthy housing environment can achieve social well-being of the people. Subsequently, political stability can also be realized. Due to this phenomenon, the Malaysian government has continuous vested interest in fulfilling the most fundamental need of the people through housing. As a result,

¹¹⁰ Maximum price of a *Projek Perumahan Rakyat* (PPR) is RM42,000.00

housing policies, rules and regulations have been reviewed accordingly in order to make it right for the people, particularly for the needy.

It is on this score, the Malaysian government, under the Seventh (1996-2000) and Eight (2001- 2005) Malaysia Plans is committed to provide adequate, affordable and quality housing for all Malaysian. It is during these periods, the low-cost housing was introduced for low income group and the medium and high cost housing are for the upper income group. Continuous effort and strategic policy were undertaken during the Ninth Malaysia Plan (2006-2010) period to ensure that Malaysians of all income levels will have access to adequate, quality and affordable homes. Private sector would be encouraged to build more low and low-medium cost while the public sector continued to focus on building low-cost houses for the needy as well as houses for public sector employees (Idrus, N and C.S., Ho, June, 2008).

Despite of all the efforts made by the public sector to build low cost houses for the needy, the issues and challenges of low cost housing remains critical, among others are affordability, increase of construction costs and materials, land matters, quality, equity and ownership, and sustainability.

3.1 Affordability vs. Ownership in low-cost housing

In the housing industry, affordability gap is simply recognized when many buyers are unable to get on to homeownership due to high price of houses. The increase of costs in building up the houses has not been in tandem with the increase of purchasing power of Malaysian house buying. The factors contributing to the increase of house price are reflected in the higher costs of production (material and labour costs), rising land prices and costs of compliance and interest charges. In fact, the affordability gaps claimed by Michael Yam (2013) have widened even further due to the increased costs (Yam, M 2013).

This scenario has somehow affected the low-cost housing particularly in maintaining the house selling price of RM 30,000 to RM 35,000 under the *People's Housing Programme* or *Program Perumahan Rakyat* (PPR) built by the Ministry of Urban Wellbeing, Housing and Local Government (MUWHLG), formerly known as Ministry of Housing & Local Government (MHLG). The construction of the low cost housing under the Program Perumahan Rakyat (PPR) is carried out by the National Housing Department (*Jabatan Perumahan Negara*; JPN) in Kuala Lumpur since 1998. More priority is given to those living in the urban areas, since urban squatter is a serious issue faced the governmental officials of the local and planning authorities (Azlinor and Nor Asiah, 2009). About 600 million of urban dwellers around the world have low income and live in homes and neighbourhoods with poor quality. (Md Wahid, Md Mahadi, Md Saiful and Md Mahmudul, 2014). **Table 3** shows the range of low-cost housing price structures based on location and target groups.

Table 3: Low Cost Housing Structure Based On Location and Target Groups

House Price Per Unit (RM)	Location (Land Price Per Square Meter)	Monthly Income Of Target Group (RM)
42,000	City Centre & Urban (RM 45 and above)	1,200 – RM 1500
35,000	Urban & Sub-urban (RM 15 – RM 44)	1,000 – 1,350
30,000	Small Township & Sub-rural (RM 10 – RM 14)	850 – 1,200
25,000	Rural (below RM 10)	750 - 1000

Source: Ministry of Housing and Local Government, 2002

Table 4 shows the distribution of the low cost houses committed by the public and private sectors under the PPR's projects. The highest number of unit houses (54%) was located in Kuala Lumpur.

Table 4: Distribution of the low cost houses (PPR) in Malaysia

No.	States	Units	Percentages (%)
1	Kuala Lumpur	34,106	54
2	Sabah	10,671	17
3	Johor	6,952	11
4	Pahang	3,650	6
5	Kedah	1,894	3
6	Selangor	1,580	2
7	Sarawak	1,496	2
8	Perlis	1,228	2
9	Pulau Pinang	698	1
10	Perak	682	1
11	Negeri Sembilan	420	1
TOTAL		63,377	100

Source: National Housing Department, 2005

The rising land price has impacted the locality, pricing, affordability levels and preferred type property (suitability) for the low cost housing to be built for the needy. This may also leads to logistic problem for the low income group to commute to their working place.

On the same note, the provision of 30% quota for low- and low-medium-cost housing at capped selling prices for the lower-income group, and a minimum of 30% *Bumiputra* quota at discounts of 5% to 15% depending on state and type of property regardless of price have led to no-takers and caused difficulty for the developers in meeting these quotas. This is simply because there is a lack of demand for low-cost and *Bumiputra* properties in the targeted market segments. Consequently, the commitment shown by the private entities to build more low-cost housing has

declined and the suggestion made by them to the government is to build more affordable house rather than low-cost housing, which has higher ceiling price (Yam, M 2013).

3.2 The state of conditions of low cost housing

Many contemporary Islamic scholars believe that house design in a neighborhood context should emphasise the teaching and values of Islam (Kamaruddin Mohd Noor, 2000, Akeel Nouri, 2000, Spahic Omer, 2002). A house design should be based on function, nature of family, and its social role (Kamaruddin Noor, 2000 as cited in Asiah, A. R., 2009). These include privacy, seclusion and segregation of women. In the context of the neighborhood planning and design of housing, safety and comfort should be promoted to the occupants while maintaining tidiness, cleanliness, simplicity, a pleasant odour, and modesty. In short, Islam emphasizes the quality of housing design and its environment as these factors affect the individuals' quality of life. The quality of a housing development is on the other hand subjected to the residential and neighbourhood satisfaction. The factors that determine their satisfaction are important inputs in gauging the success of housing projects.

In the past, a typical low cost housing in Malaysia has built-up area of maximum between 650 sq. ft. and 600 sq. ft. per unit with a minimum of 3 bedrooms. Under the People Housing programme or PPR, the maximum built area is 700 sq. ft. with 3 bedrooms, 2 bathrooms, a kitchen, a yard for drying clothes and tiles floor. Facilities such as community halls, children's playgrounds, kindergartens, shops, stalls, surau, car-parking bays and other public spaces are provided to ensure the quality of life and a healthy living environment are enhanced. It must be noted that the majority of the people living in this typically low-cost housing are from the low income group (i.e. needy) and the majority is needy Muslims. Therefore, to what extent the current development of the PPR is able to provide quality living environment? Embracing from the perspective of Islam, the concept of good housing is addressed in the *sura al-Nahl*: 80. "*It is Allah Who made your habitations homes of rest and quite for you...*".

Thus, the interpretation of a healthy house is a place to rest, relax body and mind, enjoy legitimate worldly delights, worship, teach, learn and make dakwah (Spahic, 2009). There is a provision in the Ninth Malaysia Plan (2006 – 2010) that aimed to provide affordable housing with healthy living environment to the low cost income group (Chapter 21).

An assessment of residents' satisfaction in newly designed public low-cost housing in Kuala Lumpur, Malaysia was carried out by Abdul Mohit, M, *et. al.* (2010) using Multiple Linear Regression (MLR) found that the highest dissatisfaction were noted on facilities and maintenance by the local authority such as management of security control, perimeter roads, cleanliness of garbage house and garbage collection. Moderate dissatisfaction was expressed by the residents on the floor size area of the low cost unit with high occupancy rate of bedroom (i.e. crowded). Suggestions were made by the residents to adopt a policy to build different sizes of units to cater the needs of residents with large families in order to enhance quality of life of the low-income urban community in the country. Other suggestions expressed by the residents include to provide better support and public facilities to enhance residential satisfaction of the inhabitants and the location of low-cost housing estates which should be closer to the shopping centers.

Research carried out by Goh associates, (2013) described fourteen (14) factors that determine quality housing for the PPR low cost flats in Kuala Lumpur. Importantly, the landscape contribution of public amenities (e.g. convenient shops, parking space, lamp post and pathway) is agreed as the second most important factor influencing the quality of PPR houses, while the landscape contribution of surrounding environment (e.g. noise, water and air pollutions) is agreed as the fifth important factor. In general, Authority (47%) has the highest importance in determining quality of PPR house, followed by Design Element (34%) and finally, Quality of Living (19%). This suggests that the effective control and enforcement of the Authorities are essential to guarantee better housing quality for the residents.

Similar study carried out by Bakhtyar and associates (2013) highlighted that the landscape design has upgraded the living condition of the PPR at the Balakong District, Selangor. The low cost high-rise flats with 11 storeys buildings are developed on an area of 45,000 sq ft having 242 unit houses. The total built up area is 17,000 sq ft, while 23,000 sq ft is provided for car park. The remaining 5,000 sq ft is allocated for both open space (e.g. badminton court and playground) and commercial land uses (e.g. mini market). Here, the policy of 10% (4,500 sq ft) open space from the total development is correctly observed in the development. Review summarises that bigger parking area and security space are essential for better living environment. However, the parking spaces provided are not enough since 23,000 sq ft is relevant to 180 unit houses only.

Both studies have significantly addressed the issues found parallel to the National Housing Policy's vision of Thrust 6; to enhance the level of social amenities, basic services and liveable environment. So, there are evidences indicating that healthy living environment of the low cost houses can be associated with *types, size and elements* of the landscapes provided. Perhaps, based on the 1) Landscape Design Principles, 2) Islamic Principles, and 3) NLP Principles, a module for quality living environment of low cost housing (PPR) can be proposed.

4.0 DISCUSSIONS

Referring to the above-mentioned scenarios, the authors strongly believe that the agency such as Department of *Waqaf, Zakat and Hajj* (JAWHAR) under the Prime Minister's Department to play a significant role to initiate collaboration between the two entities: *zakat* and *waqaf* to help the needy by extending the role and functions of Schemes no 5 and no 6 of The Manual of Management and Distribution of Zakat. This proposition may lead to greater advantages:

1. A collaboration between *zakat* and *waqaf* would fill in the significant gaps particularly on matters pertaining to land and financial (e.g. getting lands

through *waqaf* and monetary assistance through *zakat*) typically faced by others private developers in delivering the low-cost housing. The issue of affordability and ownership among the low-income group i.e. the needy would subsequently be addressed through this collaboration.

2. An opportunity to provide a procurement model (finance, design and ownership) for low-cost housing development that is *shari'ah* compliance as elements of *shari'ah* can be imparted and implemented directly in the design, planning, financial and house ownership.
3. An opportunity to design and create a physical model of low-cost housing scheme that is comprehensive and *shari'ah* compliance for the needy. The existing conditions and environment of low-cost housing can be enhanced by integrating the characteristics and elements of a house in the neighborhood from Islamic perspectives. These include providing a house design that satisfies the personal and inter-personal spaces, functional and appropriate forms for a *Muslim* family. Neighborhood planning and landscaping from the Islamic perspective that integrate good facilities and amenities for the Muslim community.

In short, the commitment to provide affordable quality houses with healthy living environment to the low in-income earning group should be the aim of *zakat-waqaf* collaboration. Issues of sustainability that lead to healthy living environment can be addressed from the perspectives of Islam, landscape design and existing policy (NLP) enjoyed by all levels of society, particularly the needy.

Khairuddin *et. al.* (2014) discussed the challenges in materializing the collaborations, which are three dimensional in nature: how the administration of *waqaf* and *zakat* could be innovated so that they could be utilized effectively towards helping the low to middle income Muslim families having access to affordable housing. To address the challenges, they proposed a model whereby the administrators' of *waqaf* and *zakat* and real estate developer may form a tripartite joint venture to appropriately develop

waqaf land, the objective being to address the issue of affordable housing of the low to middle income families.

They added that, traditionally, the immediate thought would be to form a three-partite joint venture i.e. between *waqaf*, *zakat* and real estate property developer. However, such an endeavor would mean that there would be separation between the design, construction and maintenance and the issues on funding, availability of expertise and the running of the completed premises would be fragmented. In addition, risks would be difficult to manage and this would not be appropriate for entities like *waqaf* and *zakat*.

Consequently, a more modern approach in project funding and delivery coupled with a more secured joint venture agreement between the key parties, with risks properly identified and appropriately distributed among the parties considered most able to handle them and deemed appropriate for entities such as *waqaf* and *zakat* is herein proposed. The full idea of the proposal is designed along similar lines to a typical concession contract and to be undertaken on the basis of Design-Built-Finance-Operate-Maintain (DBFOM).

Principally, a joint venture is to be formed on the basis of the *waqaf* and *zakat* authorities becoming the key shareholders: *waqaf* by way of its land being put into the venture as its portion of the share and *zakat* being rich in cash would provide the necessary capital injection to the project. In effort to increase the marketability of the venture and minimize project and funding risks to the key partners, it is recommended that these two entities: *waqaf* and *zakat* form a joint venture in the style of a Special Purpose Vehicle (SPV) with other professionals, contractors and funders. It would be the SPV that would undertake the project via the DBFOM style of project implementation. The partners to the SPV will sign a joint venture agreement among

themselves. Under the DBFOM arrangement, there will be a concession agreement between *waqaf* as the Principal and the SPV as the concession holder. The SPV will be paid the costs associated with the DBFOM and profit based on agreed terms including carefully crafted and defined Key Performance Indicators (KPIs). Full descriptions on the style of the joint venture and the concession agreement are as illustrated in Figure 1.

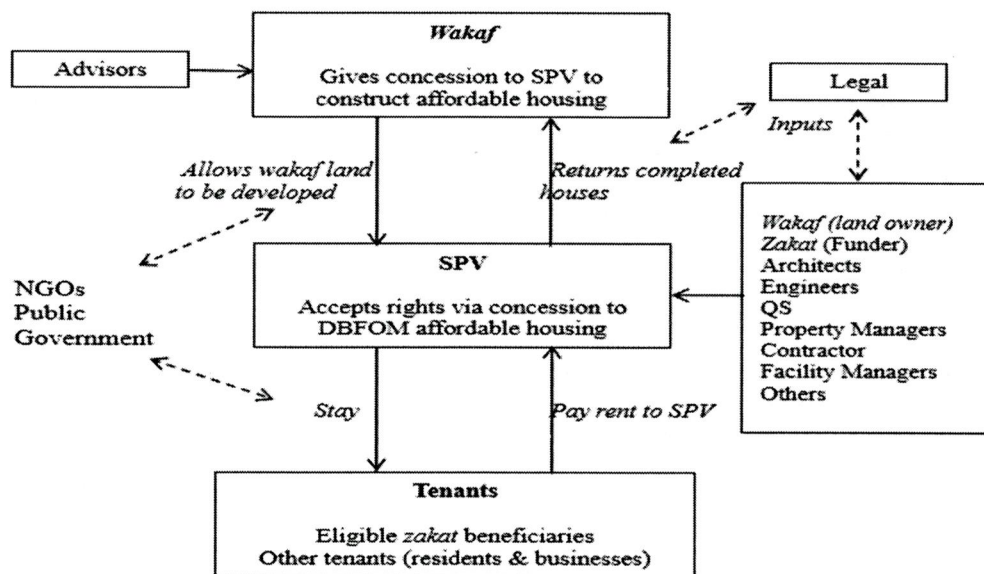


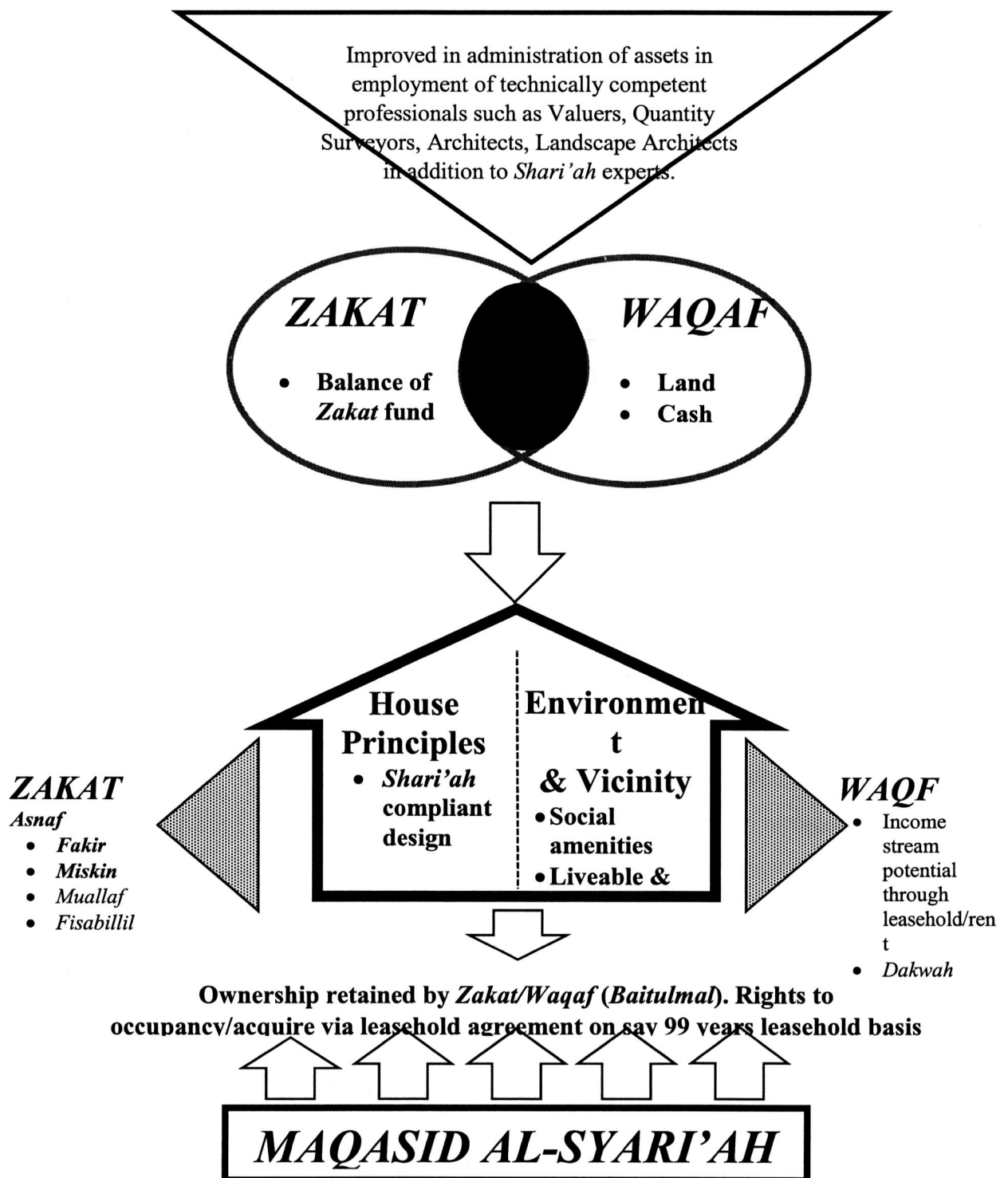
Figure 1: Proposed *Waqaf-Zakat-SPV* DBFOM model for affordable housing

Source: Khairuddin et. al (2014)

1. *Waqaf* authority agrees for its land to be developed for the construction of affordable housing
2. *Waqaf* and zakat authorities plus other key players form Special Purpose Vehicle (SPV). The joint venture agreement between the parties forming the SPV must recognize the two key partners namely *waqaf* (share in the form of the land) and zakat (share in the form of capital injection for the project). The proportion of the housing units between *waqaf* and zakat and the level and style of risk and profit sharing should be spelled out in the agreement. The presence of these other tenants would increase the marketability of the venture and potentially increases the income stream of the SPV. The business premises offer conveniences to residents

3. *Waqaf and SPV sign concession agreement. The ownership of the land remained with waqaf in perpetuity but waqaf allows the SPV legal possession for the purpose of Design, Build, Finance, Operate and Maintain (DBFOM) a building thereon. SPV is given permission to collect rents to cover costs for DBFOM plus agreed profit based on agreed KPIs.*
4. *Profits would be distributed among the partners in the SPV agreement*
5. *Upon completion of construction, the SPV manages and maintains the building*
6. *The houses and commercial units will be rented out to residents comprising of zakat beneficiaries, other residents and commercial tenants*
7. *Zakat beneficiaries stay free, payment to SPV made on their behalf by zakat. Selection of tenants would be done by zakat authority based on eligible criteria. Other residents and businesses pay rent to SPV*
8. *Upon expiry of the concession agreement, the land and building are surrendered to waqaf. The duration of the concession agreement will be contingent upon factors such as capital injection, maintenance level of services, etc.*
9. *Zakat, thereafter, may want to consider renewing the lease with waqaf so as to ensure zakat beneficiaries can continue staying or they may want to enter into shot term rental agreement*
10. *Waqaf, at the end of the concession period, continues to own the land plus the building sitting on it*

In a nutshell, the idea proposed for collaboration between *Zakat* and *Waqaf* for housing may be represented by a conceptual model as shown in **Figure 2**.



4.1. Potentially critical issues arising from the joint venture, the concession agreement and their solutions

Issue 1- Ownership of waqaf land

The ownership of *waqaf* land remained with the *waqaf* authority. Under the concession agreement, the SPV is given legal possession to occupy and develop the site for the duration of the agreement only. Upon the conclusion of the concession agreement, the land and the building sitting on it will become the property of *waqaf*. In addition, during the concession period, i.e. after the building has been completed, potential income from the rental of the premises will also become part of the income of *waqaf* as *waqaf* is a shareholder in the SPV.

Issue 2 – Fragmentation of *waqaf* land and difficulties to secure a more appropriate site

In effort to ensure marketability of the venture due to the lack of potentially ‘good’ site or available land are fragmented in size it is proposed that land substitution via the application of the concept of *Istibdal*¹¹¹ is used. However, to avoid unnecessary difficulties, it is proposed that the concept is only applied to land belonging to *waqaf am* (general *waqaf*).

Issue 3 – Can *zakat* money be used as capital in the venture?

The *Al Qur'an* has provided clear guidance on how *zakat* money should be spent. It is not the intention of the authors to meddle with what has been practiced thus far. However, in examining in detail the amounts of *zakat* collected and *zakat* disbursed there seemed to be surpluses, i.e. collection is more than the amount disbursed and the situation happened almost on an annual basis.

¹¹¹ Discussion on *Istibdal* is not within the scope of this paper.

In addition, there are scholars categorizing *zakat* into immediate and progressive. Immediate *zakat* is the kind of *zakat* that must be disbursed immediately. However, progressive *zakat* is an amount of *zakat* money that could be used for the purchase of tools that could be used in an employment that subsequently would enable the beneficiaries to earn a living.

It is proposed that, after careful study and detailed consideration, that only the amount in surplus could be used in the affordable housing venture and that such use is categorized under the category of progressive *zakat*. Consequently, beneficiaries of *zakat* only, to be determined by the *zakat* authority that can be allocated units in the completed housing scheme under the allocation accorded to the *zakat* authority as defined in the joint venture agreement.

Issue 4 – The potential of *zakat* experiencing short of cash and in need of cashing in their shares in the joint venture

In the unlikely event, unlikely because prior to the venture being given the go-ahead the relevant authorities must conduct an in-depth feasibility study and due diligent, that *zakat* requires cashing in their shares in the joint venture then a provision of “buy-back” should be incorporated into the joint venture agreement. Parties that are able to take over the shares allocated to *zakat* should be identified in advance and a provision to that effect should be among the terms and agreement of the contract. The possibility of cashing in by *zakat* could not be ignored because an event might occurs leading to the *zakat* collection becoming negative vis-à-vis disbursement and an amount is urgently required to ensure that payment for immediate *zakat* would not be delayed or compromised.

Issue 5 – Sustainability of the project beyond the concession period

As mentioned in Issue 4, a detailed feasibility study must be conducted and that a very suitable site identified. In addition, the project should have longer term issue on

sustainability built in such as the presence of appropriate commercial units and the likes. Such steps must be taken so that not only the project could unlock the real value of the otherwise idle *waqaf* land and provides accommodation to the needy Muslim families who are beneficiaries of *zakat* but the project should be viable in the longer term for the benefit of the Muslim *ummah*.

Issue 6 – The problem of lack of expertise in MAINS

The various MAINS are entrusted with assets worth billions and that the value of some of the assets worth much more if effort to unlock their values and potential are undertaken in the most appropriate and professional manners. In addition, the cost of living continues to move upward implying that that people deemed *fakir* and *misikin* now might not be able to move out of that categories in the future (assuming others remained constant) and perhaps more might join in should such upward trend continues unabated.

Consequently, more funds would be needed; bearing mind that inflation would also be on the rise. Thus more effort to develop *waqaf* properties, to address unproductive *waqaf* assets, reducing costs associated with the collection of *zakat*, etc. need looking into and involvement of experts trained in the fields related to property development, asset management and businesses and accounting, among others, could not be continuously ignored. MAINS should consider either importing the services of experts such as Quantity Surveyors, Property Managers, Facility Managers, Architects, Engineers, Lawyers and Accountants or to have them employed as in house experts.

Issue 7 – Allocation of affordable housing units to eligible *zakat* beneficiaries

On the completed and available units in the proposed model, the units allocated under the *waqaf* portion would not be much of an issue as the units would be rented out in

accordance to the prevailing market rate (albeit appropriate for low income households).

However, for the units allocated under the *zakat* portion, a systematic selection and allocation procedures must be designed and put in place. A potential baseline model would be the system used in the identification and allocation of low cost housing units maintained by the Ministry of Housing and Local Government. This is to ensure the target group would not be overlooked, transparency, accountability and fairness to all prevails.

Issue 8 – Delays and abandoned project

Among the many issues concerning property development is delays and abandoned projects. Much has been written about this and a variety of systems have been put in place to combat the problem. In short, the authority entrusted to undertake the project must ensure that strict rules and regulations must be followed and that defaulters must be appropriately and severely punished. Experts in construction procurement should be among the expert to be consulted to ensure the smooth running of the procurement processes. In addition, MAINS should also consider establishing a dedicated project management team to professionally manage all projects under their care.

5.0 CONCLUSION

The paper discusses *zakat* and *waqaf* as means to help the needy muslims in sustaining a decent living. Separately, these two entities have been providing various types of assistance for that particular purpose. This paper addresses the issue of enhancing the function of *zakat* and *waqaf* institutions through collaboration efforts.

The focus of this paper is on the collaboration between *zakat* and *waqaf* resources in the provision of low cost housing or its equivalent for needy muslims. The

methodology adopted is selected literature review, desk study and analysis as well as discussions with experts in the field of *Zakat* and *Waqaf*. This paper explores the potential of *zakat* and *waqaf* to collaborate - in terms of their resources and within what is permissible under the *shari'ah*. The existing conditions (house and landscape design, facilities and amenities) of low cost housing environment are reviewed and become the base case to establish a comprehensive model and framework in propagating the collaboration effort between the two entities *Zakat* and *Waqaf*.

The authors conclude that there is clear prospect for the two entities; *Zakat* and *Waqaf* to collaborate. The collaboration is pertinent as it means to reduce poverty in the *muslim* community, the funds and assets donated should be wisely utilised to support, alleviate and change the lives of the poor. Poverty can be dangerous, since it may implicate the productivity and environment of a country (Md Wahid, Md Mahadi, Md Saiful and Md Mahmudul, 2014). "*Satan threatens you with poverty and orders you to immorality, while Allah promises you forgiveness from him and bounty. And Allah is all encompassing and knowing*". (*al-Baqarah*: 268).

findings indicate that the construction of the low cost housing should be rigorously developed. It is essential to fulfil the need of the poor (in particular the *muslim*) by not depriving their right to enjoy quality living environment. For instance, this includes providing adequate landscape spaces for recreation and social interaction focusing on good well-being (National Landscape Policy; NLP). It is therefore pertinent that the collaboration of both *zakat* and *waqaf* to be pursued and materialised. In our endeavour to address the said issue. This paper has identified what the authors consider as a workable model based on the joint ventures between *waqaf* and *zakat*. However, projects identified are to be implemented under the more modern and all-encompassing concession contract via the Design-Build-Finance-Operate-Maintain (DBFOM) approach in procurement.

It is acknowledged that the model proposed herein is still at its infancy. In addition, the study is not without its limitations, particularly the methodology adopted, skills and knowledge to understand *fiqh* and the lack of available and published materials. Thus, there would be issues and challenges, both from the practice and *Shari'ah* perspectives that require further studies, deliberation and fine-tuning. The authors welcome constructive comments and criticisms.

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