

**ACADEMIC PAPER
PRESENTERS**

THE LEGALITY OF OPERATING SHORT TERM RENTAL ACCOMMODATION IN WAQF HOUSING

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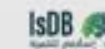
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01 Introduction

02 Short term rental accommodation services and sharing economy: The role of disruptive technology

03 Waqf Housing Development

- Concept of Waqf Housing
- Characteristic of Waqf Housing
- Administration of Waqf Housing in Malaysia

04 Operating Short Term Rental Accommodation in Waqf Housing Development

- First issue: The purpose of the formation of waqf housing development
- Second issue: The extend of enjoyment of waqf housing by beneficiaries
- Third issue: whether operating STRA on waqf housing should be allowed?

05 Conclusion and Recommendation


Introduction

Short term rental accommodation services (STRA) has gained popularity, particularly with the introduction of online hosting websites such as Airbnb.

More than 31,000 private home owners or their agents have listed landed and stratified properties on such websites and attract short-term travelers to rent for work or holiday purposes. (The Edge Property, 2018).



ISSUES ARISES IN RELATED TO STRA
(Malaysian Productivity Corporation, 2018)



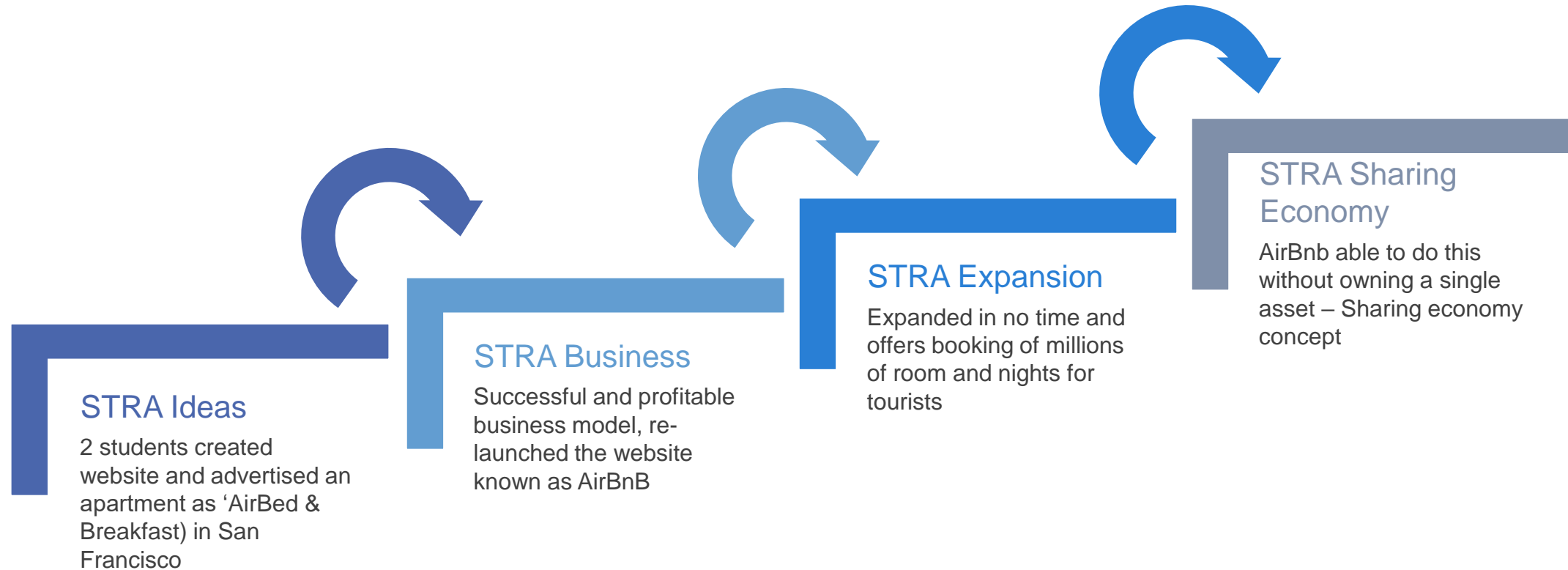
STRA's existence have brought about unprecedented impacts to the Malaysian housing landscape.

Increase in the number of listing of residential property in one particular area may lead to a price war between hotel providers and STRA hosts.

Increase in STRA Platform Provider's listings was associated with an increase in rents

First homeowner's capability to own affordable housing due to price hike in both rental and housing market

Short Term Rental Accommodation Services And Sharing Economy: The Role Of Disruptive Technology



Oxford Dictionary, 2015

Economic system in which assets or services are shared through Internet



Mareike Möhlmann, 2015

Collaborative consumption, peer economy or sharing economy - People use in common with others by renting, lending, trading goods and services



Ramirez, 2016

Any marketplace using the Internet to put together distributed individual networks to share or trade.



Tussyadiah & Pesonen, 2018

People generate income by 'sharing' their surplus or underused properties, also known as collaborative consumption

Short Term Rental Accommodation Services And Sharing Economy: The Role Of Disruptive Technology

Schor, 2016

- recirculation of goods
- increased utilization of durable assets,
- exchange of services
- sharing of productive assets

Disagreements between service providers

- TaskRabbit, an “errands” site often relate to sharing economy
- Mechanical Turk only servicing platform
- AirBnb synonymously to sharing economy concept

Destructive innovation

Theory describes a mechanism in which a disruption innovation changes a market, often to the point that previously dominant firms are broken down.



Destructive innovation often refers to a "perennial gale of creative destruction" driving business economies to meet consumer demands

Waqf Housing Development

Concept of Waqf Housing

The waqf movement anticipations will resolve disparities in the development of urban housing (Ali et al., 2016)

Waqf Khairi

Waqf real estate has developing into movable and immovable assets. This enhancement of waqf real estate still surrounding the purpose of waqf khairi (welfare)

Technical meaning

Technically, waqf means “to protect something, by preventing it from becoming the property of a third person”

01

02

03

04

Literal meaning

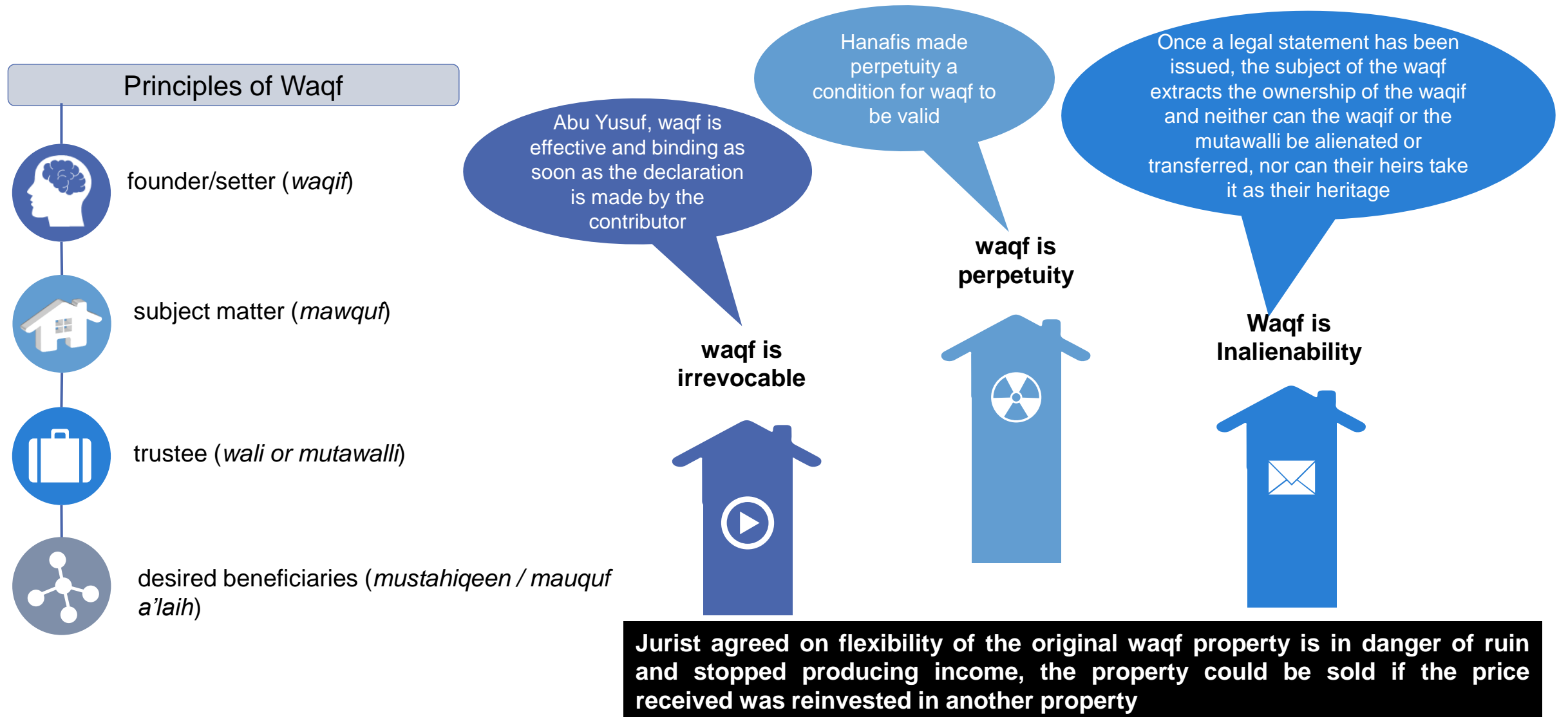
Waqf literally interpreted as "to hold, confine, prohibit, detain, prevent, or restrain, avoid, contain, or preserve".

Waqf Land

Real estate was donated by the donor for the greater good of ummah in the name of Allah (SWT). Thus, once property is donated for charity (waqf), it cannot be reimbursed by the original proprietor to be donated or used as a legacy or sold

Waqf Housing Development

Characteristic of Waqf Housing



Waqf Housing Development

Administration of Waqf Housing in Malaysia

01

Jurisdiction:

Ninth Schedule, Second List of Federal Constitution provides that matters relating to religion, customs and practices, as well as land under the jurisdiction of states

02

Power:

Article 74(1)(2) empowering the State to enact legal provisions on the administration of matters relating to this matter.

Article 80 ensures that State has legislative power for the matters stated in item 1 of the Second List

03

State Islamic Religious Councils:

Expressly stated under Administration of Islamic Law Enactment 1989 as institutionalized manager of waqf. Later, embedded under State Enactment such as section 4 of Wakaf (State of Selangor) Enactment 2015 recognized Majlis as sole trustee for Wakaf matters.

04

Waqf land for the purpose of housing development:

The process registering the titles, the development still under the purview of federal laws

05

Consistent procedure with NLC requirement:

With regard to the land registering process, there are three methods practiced by the SIRC in registering waqf land (i) Transfer of the Property, (ii) Statutory Vesting, (iii) Surrender the Land to the Government

Registration process of waqf land is importance criteria in determining the locus standi and the legal interest of the parties

The rights and obligations of every parties such as waqif, mutawalli, beneficiaries and waqf asset can be administered and protected

Ensure the beneficiaries can enjoy quiet possession of the asset.



Operating Short Term Rental Accommodation in Waqf Housing Development



The concept of waqf housing development with a new and innovative framework should be emphasized on adapting the current trend in the use of housing as a source of income, not just for shelter. Indirectly enhances and maintains the quality of life and its sustainability aspects.

Several issues in allowing the beneficiaries to enhance the enjoyment of waqf housing:

Purpose of the waqf formation

This will relate to the original purpose of waqf housing development

01

Extend of enjoyment of waqf housing

Whether by allowing the beneficiaries to capitalise the use of waqf housing will contradict the original purpose of waqif.

02

Operating STRA in waqf housing

Whether by operating STRA in waqf housing will amount to deviation from the original purpose

03

Operating Short Term Rental Accommodation in Waqf Housing Development



Purpose of the waqf formation

- Waqf housing developments expected to be less expensive in the local housing market than conventional housing developments (Ali et al., 2016).
- In line with the focus of National Housing Policy in ensuring housing quality, improve access and affordability to own a home, Ensuring quality and coherent neighbourhoods, improve coordination between housing development and transportation for better quality of life, Strengthening institutional capabilities to implement National Housing Policy (2018-2025)
- This principles in line with the purpose of establishing the waqf housing to accommodate the life of people either through economy, social and wellbeing.



Extend of enjoyment of waqf housing

- Waqf is a tool for sharing one 's resources with others. There are those in the economy that distributed wealth assets to others (Rahman, 2009)
- As waqf is a form of charity with special characteristics of permanence and continuity, so beneficiaries can benefit from waqf property for years, generations or even centuries.
- The enjoyment of the beneficiaries in waqf housing limited according to the mutawalli discretion and waqif original intention.
- In the context of economic development and advancing waqf assets to achieve the desires of waqif, the rights and obligations of mutawalli and beneficiaries should not violate waqf regulations



Operating STRA in waqf housing

- In principle, the success of the implementation of the redistribution of wealth in Islam is indeed engaged in the pleasure and piety of Allah, not merely the rational behavior of mankind (Surah Muhammad,verse 38)
- By allowing the beneficiaries to capitalise the use of waqf housing in leveraging their household's economy should not be considered manipulating or deviating from the objective of waqf.
- Operating STRA in waqf housing does not fall under the category of the waqf property to be sold or transfer or inherited. STRA only permit another person to share the use of waqf housing for temporarily.
- However, there must be a proper process for the beneficiaries to apply consent from mutawalli before operating STRA in waqf housing

Conclusion and Recommendation

01

Operating STRA in Malaysia currently facing many legal issues yet, their existence cannot be denied in increasing income opportunity to households

02

Waqf housing is anticipated to assist and increase the affordability of household income in purchasing or renting a house in line with National Housing Policy vision.

03

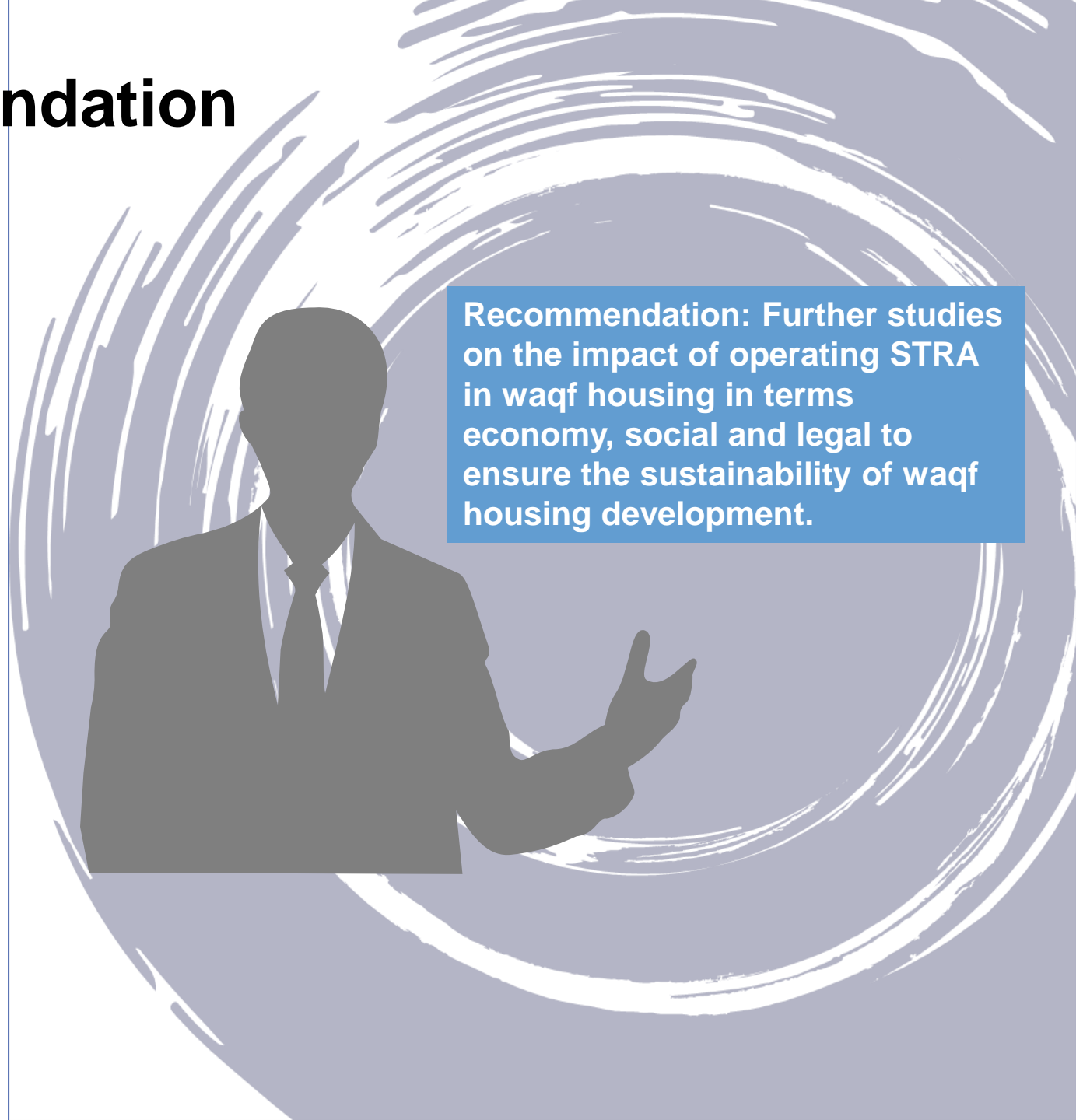
The principles of waqf asset is also similar to shared economy assets where asset ownership is not transferred; people generate income by 'sharing' their surplus or underused properties

04

In legalising the operating of STRA in waqf housing, the purpose of waqf housing to be developed i.e., the intention of waqif should be precedence objective for the mutawalli to consider in giving consent for the waqf housing can be operated as STRA

05

Although, the administration of waqf is under the purview of the State, operating STRA still subjected to other local laws



Recommendation: Further studies on the impact of operating STRA in waqf housing in terms economy, social and legal to ensure the sustainability of waqf housing development.



THANK YOU