

The Legality of Operating Short Term Rental Accommodation in Waqf Housing [2021] 2 MLJ Ixii

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THE **LEGALITY OF OPERATING SHORT TERM RENTAL** ACCOMMODATION IN WAQF HOUSING

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Short term rental accommodation ('STRA') has become more popular, especially when online hosting sites such as Airbnb have been introduced. STRA's critical popularity factor was based on the home-sharing economy. With the shared economy being a larger segment of the housing market, the discern conventional ways between activities to be regulated and activities that need to deal with without regulatory leniency. As there lacks regulation over **short term rental** accommodation business in Malaysia due to the technological

*convergence of platform operators has created an uneven playing field that threatens the position of conventional hotels in the market. The presence of STRA has also had an unprecedented impact on the Malaysian housing landscape due to the thrust of this business, including waqf housing. This paper proposed for the development of Waqf housing as a solution to balance the growth of the community and individual economy. Despite the unregulated STRA and issues surrounding, STRA has become an alternative source of income. This paper examines the concept and scope of **short-term rental** accommodation and analyse legal issues arising from the operationalisation of STRA in waqf housing. The research presents the inadequacies in present legislation and suggests relevant policies to address them.*

Keywords: Short term rental accommodation, sharing economy, *waqf* housing

INTRODUCTION

Short term rental accommodation services (STRA)² has gained popularity, particularly with the introduction of online hosting websites such as Airbnb. The Edge Property (2018) tracked more than 31,000 private home owners or their agents have listed landed and stratified properties on such websites and attract short-term travellers to rent for work or holiday purposes. Due to the mushrooming of such service, there lies a need to know real market demands for such services, particularly in big cities like Kuala Lumpur, Penang, Malacca and Johore — as they brought direct impact that may influence property pricing.

Despite such income opportunity, the existence of short term rental accommodation services has also brought about unprecedented impacts to the Malaysian housing landscape. Malaysian Productivity Corporation reported the issues arises in related to STRA as follows (Malaysian Productivity Corporation, 2018):

- (a) Lacks regulation over short term rental accommodation business led to digital convergence of platform operators has created an unequal playing field that endanger the position of traditional hotels in the market;
- (b) High objections from many homeowners due to safety concerns and public nuisance. Reports have shown that guest provide invalid background details to operator or host, which has led to fraud and theft to homeowners and property;
- (c) Rise of commercial activities of residential areas has diminished the neighbourhood's tranquilly and privacy;
- (d) Guest have illegally duplicated keys or access cards that are responsible for increasing break-in and security threats;
- (e) Guest suffered injury during their stay and Airbnb denied any claim under the liability of any occupancy because, as contrary to registered hotels and hostels, the services provided by the STRA do not constitute the Innkeeper's liability under Innkeepers' Act 1952.

In addition to the aforementioned issues of safety and public nuisances, unregistered short term rental accommodation services have caused possible tax losses to the government. Other registered hotels must pay business or tourism taxes which have been circulated to develop the industry further. It is therefore unfair for paying hoteliers to pay the industry's costs, but STRA's services is not necessary. On the other hand, the increase in the number of listing of residential property in one particular area may lead to a price war, when revenues from registered hotels in Malaysia were stolen from the industry (Xavier, 2019).

Hence, such may also affect housing price and rental in popular tourist spots where are locals no longer considered to be part of the neighbourhood and gradually move out of town due to the hike in property prices and rental. Some articles argued that STRA services has raise the cost of living for local renters. Harvard Research found that an increase in Airbnb listings was associated with an increase in rents (Barron et al, 2019). This also may lead to first homeowner's capability to own affordable housing as the living cost in such area is increasing, subsequently contributed to price hike in both rental and housing market. Such may totally affect local's capability

to rent and own affordable housing and this trend has started to materialise a decade ago.

SHORT TERM RENTAL ACCOMMODATION SERVICES AND SHARING ECONOMY: THE ROLE OF DISRUPTIVE TECHNOLOGY

Short term rental had a humble start in 2007. There was an international design conference in San Francisco where conference delegates were looking for alternatives to expensive hotels prices. Two university graduates created a simple website to advertise an apartment in San Francisco and called it 'AirBed & Breakfast'. The idea was profitable and gradually developed into a successful business model that targeted major events. The website was re-launched in 2009 as Airbnb.com, and had its service expanded beyond shared accommodations to also include the **rental** of full residences. Since then, Airbnb has expanded in no time and offers booking of millions of room and nights for tourists around the globe (Guttentag, 2015). Interestingly, they were able to do this without owning a single asset — which is exactly what 'sharing economy' is all about.

The concept of sharing economy was defined in 2015 by the Oxford Dictionary as 'an economic system in which assets or services are shared between private individuals, either for free or for a fee, typically by means of the Internet'. The phrase 'sharing economy' applies to 'any marketplace using the Internet to put together distributed individual networks to share or trade otherwise underused properties' (Ramirez et al., 2016). In a shared economy, asset ownership is not transferred; people generate income by 'sharing' their surplus or underused properties, also known as collaborative consumption (Tussyadiah & Pesonen, 2018). In the collaborative consumption, peer economy or sharing economy, people use in common with others by renting, lending, trading goods and services (Mareike Möhlmann, 2015).

Schor classified sharing economy activities into four broad categories, namely: (1) recirculation of goods; (2) increased utilization of durable assets; (3) exchange of services; and (4) sharing of productive assets (Schor, 2014). Sharing economy is viewed in different ways, starting from a potential pathway to sustainability and finishing with a frightening form of neoliberalism. According to Martin, sharing economy is 'also considered a niche, a field of related innovations and the intermediaries who support and promote the development of these innovations' (Martin et al., 2015).

There are disagreements between service providers on whether they belong in the sharing economy ecosystem. For example, TaskRabbit, an 'errands' site, is often included in the sharing economy, but Mechanical Turk (Amazon's online labour market) were opted out. Airbnb has been practically synonymous with sharing economy, but traditional bed and breakfasts are left out as most of the hosts do not cater to breakfasts. Lyft — a ride service company, claims to be in the sharing economy. However, Uber, another ride service company, claimed that it does not belong in the ecosystem. In this regard, Schor went to suggest that it is open for the media and platform providers to claim whether they are part of the sharing economy (Schor, 2014).

Although there is nothing new in 'sharing', but sharing economy became popular when the Internet access expanded across the globe. In this regard, the sharing economy has created markets that were not seen before as possessions, which offers 'new ways to generate income'. People have shared many things such as cars (Lyft, Sidecar, Uber), spare rooms (Airbnb, Couchsurfing), dogs (DogVacay, Rover), food (Feastly), cars (RelayRides, Getaround), boats (Boatbound), houses (Airbnb, HomeAway), or power tools (Zilok) online (Rimer, 2017).

Rimer has classified the sharing economy activities, which is represented as follows (Rimer, 2017):

| | |
|--------------------------------------|----------|
| P l a t f o r m | Services |
| P r | |

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| | |
|---|--|
| o v i d e r s | |
| Li ft s h a r e | The United Kingdom's largest car-sharing system that pairs people undertaking similar journeys in order that they don't need to travel alone |
| U b e r | Created a mobile function through which people submit journey petitions to Uber drivers with their own cars who then transfer customers to their destination |
| E a t w i t h , E a t W i t h a l o c a l , M e a l S h a r i n g , o r C o o k e n i n g | People organize dining experiences for other people to pay in order to dine in private homes |
| V | Platforms where travellers search for experiences in their destination city while allowing local community to earn money for |

| | |
|---|---|
| a y a bl e , T o u r s b yl o c al s a n d T ri p f o r e al | giving guided tours in their hometown |
| A ir b n b a n d C o u c h s u rf in g | <u>Short term rental</u> accommodation sharing |

The European Commission regarding the Presence and the Size of the Collaborative Economy in Europe has assessed five broad sectors on collaborative economy across Europe. They were: (1) Peer-to-peer accommodation; (2) Peer-to-peer transportation: individuals sharing a ride, car or parking space with others; (3) On-demand household services; (4) On demand professional services; and (5) Collaborative finance (such as crowd-funding and peer-to-peer residential lending). The report estimated 'generated revenues of nearly Euro 4 billion and facilitated Euro 28 billion of transactions within Europe in 2015' and, assumes that at least '275 collaborative economy platforms have been founded' up to 2016 (Daveiro & Vaughan, 2016).

The sharing economy has proven to surpass the traditional hotel and lodging industry and become 'a deep socio-economic trend that is fundamentally changing the way we live our lives' (Daveiro & Vaughan, 2016). Such rapid development of sharing economy makes way for European sustainable development nevertheless 'poses

significant challenges for policy makers and regulators to keep up' (Daveiro & Vaughan, 2016). Platform providers such as Airbnb allow hosts to rent their spaces for short term at lower rate as compared to traditional accommodations. This creates an environment of win-win situation for all parties that take part in the sharing economy. However, most sharing economy platform providers face legal issues to validate their existence, in particular when they operate are across different jurisdictions (Guttentag, 2015).

The innovative approach to tourism accommodation promoted by Airbnb and other similar companies can best be viewed through the lens of disruptive innovation theory, which was proposed and popularised by Clayton Christensen in several seminal works (Bower & Christensen, 1995; Christensen, 1997; Christensen & Raynor, 2003). This theory describes a mechanism in which a disruption innovation changes a market, often to the point that previously dominant firms are broken down. A disruptive product will usually drift the main performance attribute(s) of prevailing products, but will deliver a distinct collection of benefits, typically based on being cheaper, more convenient, or simpler. Consequently, the innovative product appeals to the market's low-end, or creates a new market. This initial market is small in size and profit margins, so it is unattractive to leading corporations content to concentrate on their more lucrative markets and seek to marginally develop their goods by 'sustainable innovations'. Nonetheless, the innovation product progresses over time, making it appealing to more consumers, attracting growing levels of the mass market. It will eventually attract attention from leading firms, but by then the disruptive product may be so entrenched that previously leading firms struggle to compete.

This destructive innovation often refers to a 'perennial gale of creative destruction' driving business economies to meet consumer demands. Potential innovators are given the opportunity to compete on the market, and to take on the costly, challenging and dangerous task of designing and producing new goods and services (Ramirez et al., 2016). In other words, disruptive innovation theory describes how companies may hesitate not by falling behind the pace of advancement or ignoring their core consumers, but rather than disregarding the upward encroachment of a disruptive product that lacks in traditionally favoured attributes instead offers alternative benefits (Guttentag, 2015). This process of disruptive innovation can occur in any economic sector, and tourism is no exception. For example, Airbnb has more listings³ for short term accommodation than any of the world's largest hotel chains (Forbes, 2018).

WAQF HOUSING DEVELOPMENT

Waqf system has long history as part of the Islamic economic development. While the Holy Quran does not describe *waqf* explicitly or make any clear reference to it, it encourages Muslims to do charity. In Surah al-Baqarah, verse 245, Allah has promised multiple rewards for those who generously spend wealth in His path. After the rise of Islam, Muslims have voluntarily given away their resources to the profit of others in the form of *waqf*. In Islamic civilization history, it is evident that the reach, influence, magnitude and sustainability of *waqf* are much greater than any other volunteer Islamic institution such as *sadaqah*, *hibah*, *wasiyah*, *qard*, and *nadhr* (Khan, 2015).

Basically, there are two types of *waqf* purposes encompassing *Waqf Khairi* (welfare) and *Waqf Zurri* (family). While *Waqf Khairi* can be subcategorized into *Waqf Am* (general purposes) and *Waqf Khas* (specific purposes) and majority of *Waqf* real estate in Malaysia are mosques and obituaries. The distinction between the two is that the welfare *waqf* immediately benefits religious institutions or causes such as providing orphans with food, whereas a family *waqf* allows the donor to receive the endowment income during his lifetime and after his death (Abd Jalil et al., 2016). However, recently, *waqf* real estate has developed into movable and immovable assets. This enhancement of *waqf* real estate still surrounding the purpose of *waqf khairi* (welfare). Ultimately, according to Siti Nadiah and others, the *waqf* movement anticipations will resolve disparities in the development of urban housing (Ali et al., 2016).

Concept of *Waqf* housing

Waqf was literally interpreted as 'to hold, confine, prohibit, detain, prevent, or restrain, avoid, contain, or preserve'. Technically, *waqf* means 'to protect something, by preventing it from becoming the property of a third person' (Mohammad et al., 2005). Numerous classic definitions of *waqf* are given, but Imam Mouhammad seems to prefer Abu Yusuf's⁴ definition, which has been endorsed by jurist from Shafi'i, Hanbali and Imami Schools. (Mohammad & Mar Iman, 2006).

While in term of subject matter of *waqf*, the majority of jurists especially among the Hanafi and Shafi'i, considered that it should be permanent, and the donation of land or other immovable property remained as *waqf* property. In the sense of land *waqf*, real estate was donated by the donor for the greater good of the community (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, used as a legacy or sold (Ali et al., 2016).

A *waqf* property is Allah's, and the corpus of the *waqf* is still intact. The outcome of the *waqf* may be used for a Shari'ah-compliant resolution. This is based on the famous hadith narrated by Ibn 'Abbas: 'The Messenger of Allah said: The one who takes back his gift is like the dog which vomits then goes back to its vomit'. Thus, this hadith increased the conviction that if a *waqf* property development is revocable by withdrawing a *waqf* donation, this will undermine the social value of *waqf* aspiring to solve the social despairs of the community (Ali et al., 2016).

Technically, the definition of these jurists reflects the characteristic of *waqf* housing in which it is an irrevocable gift of a corporeal property ('ain) for the benefit of a contributor's family or someone else or something, in perpetuity, as a charity promised and performed normally during a contributor's lifetime, which is incapable of subsequent transfer, gift and transmission.

Characteristic of Waqf housing

The general principles of *waqf* operations are laid down by a living man or woman, known as a *waqif* (founder/setter), who holds a certain property and perpetuates the *asl* (principal) of income-producing property. To do so, a trustee (*wali* or *mutawalli*) is placed under the property to ensure the confined *waqf* reaches the desired *Mustahiqeen* (beneficiaries) and that no sale, donated good and heritage is permitted (Suleiman, 2016).

The first character of *waqf* is irrevocable where, according to Abu Yusuf, *waqf* is effective and binding as soon as the declaration is made by the contributor without having to give the beneficiary possession. To him, the property is transferred from the property of the contributor to the 'ownership' of Allah and is therefore, irrevocable.

While, the second character of *waqf* is perpetuity. Most Muslim jurists agree on *waqf's* perpetuity. Hanafis made perpetuity a condition for *waqf* to be valid. *Waqf* formation could not be dependent on any third party's actions, nor was a conventional choice clause permissible (Mohammad & Mar Iman, 2006). The *waqf* is 'perpetual,' although the trust's specific object need not be permanent. To some extent, the perpetuity requirement referred to *waqf's* 'dedication of income' to charitable purposes. Where the particular reason for creating the trust ceases to exist, *waqf* income will be applied to a similar charitable purpose. Later, jurists have interpreted this rule as to prohibit temporal declaration of *waqf* (Suleiman, 2016).

The last characteristic based on the above definition is an inalienability. Inalienability means that, once a legal statement has been issued, the subject of the *waqf* extracts the ownership of the *waqif* and neither can the *waqif* or the *mutawalli* be alienated or transferred, nor can their heirs take it as their heritage (Mohammad et al., 2005). A *waqf* may not be subject to any sale, disposal, mortgage, gift, heritage or appointment, or alienation, irrespective of grounds. Under certain circumstances, however, Islamic jurists have shown some flexibility in this regard, and the property could be exchanged for equivalent property if the *waqf* reserved the right to do so, or if the original *waqf* property is in danger of ruin and stopped producing income, the property could be sold if the price received was reinvested in another property (Suleiman, 2016).

Administration of Waqf housing in Malaysia

In Malaysia, there are various *waqf* housing development introduces by the government.⁵ The power to administer *Waqf* and legislate *Waqf*-related acts and provisions are all contained solely in the Federal Constitution. Under the Ninth Schedule, Second List of the Federal Constitution provides that matters relating to religion, customs and practices, as well as land under the jurisdiction of states. *Waqf* is one of the issues expressly mentioned in the list and is therefore under the authority of the state. A number of the legal provisions including *Waqf* are created based on art 74(1)(2)⁶ empowering the State to enact legal provisions on the administration of matters relating to this matter. While art 80 ensures that the State has legislative power for the matters stated in item 1 of the Second List,

and hence, *waqf* shall fall within the competence of the State legislative power (Mohamad et al., 2012). Despite *waqf* under purview of the states, the federal government endeavour to the establishment of the National Wakaf Corporation under Malaysia's 11th Plan (2015-2020) and the Bumiputera Economic Council's allocation of another RM50m further indication the Federal Government 's ongoing efforts to support *Waqf*'s growth in Malaysia. Recently, under Budget 2021, the Federal Government announced the allocation of RM1.4 billion to empower Islamic matters which include strengthening *waqf* institutions and development.

The empowerment of State Islamic Religious Councils ('SIRC') expressly stated under Administration of Islamic Law Enactment 1989⁴ as institutionalised manager of *waqf*. For example, under s 4 of Wakaf (State of Selangor) Enactment 2015 where it recognised Majlis as sole trustee for all wakaf matters for the State of Selangor. The power of SIRC vested under art 3(2) of the Federal Constitution, Item 1 reflects that matters relating to Islamic religion fall under the jurisdiction of the Ruler or Yang di-Pertuan Agong (YDPA). The SIRC therefore assumes the position of advisor or assistant to the ruler in matters relating to Islam and Malay customs. This principles was codified in the respective states by administering Islamic Law Enactments (Mohamad et al., 2012).

In relation to the development of *waqf* land for the purpose of housing development, the process registering the titles, the development still under the purview of federal laws. Various states enactments concern only with the management and administration of *waqf*. In general, since Islam has prescribed clear guidelines on what constitutes *waqf* property and the manner of creating *waqf*, there should be no glaring difference in the procedures for creating *waqf* under Waqf State Enactments. However, with regard to the land registering process, there are three methods practiced by the SIRC in registering *waqf* land (Ghani et al., 2012). These three registration practices are as prescribed by the Land Office or in other words the rules meet the regulations contained in the National Land Code 1965 (Act 56) which forms the basis for the administration and management of land in Malaysia. Among the three ways are;

- (i) transfer of the property
- (ii) statutory vesting
- (iii) surrender the land to the government

Under the Islamic Religious Administration Enactment, the State Islamic Religious Council (SIRC) is the sole trustee for *waqf* properties located in a state. In terms of the name in the land title document, when the land is contributed then the land is located in the name of the SIRC as the sole trustee (the procedure on this matter is provided for in s 416C of the National Land Code) (Manaf, 2017). There are several *waqf* properties that are rented out to individuals for residential purposes. In these circumstances, SIRC plays the role of a 'residential owner' in the relationship of residential owners and tenants. While the tenants here should refer to the beneficiaries who received the benefits to lodge the *waqf* housing.

The registration process of *waqf* land is an important criteria in determining the locus standi and the legal interest of the parties in *waqf* housing in Malaysia. The rights and obligations of every parties such as *waqif*, *mutawalli*, *mustahiqeen* and *waqf* asset can be administered and protected. This also ensures the beneficiaries can enjoy quiet possession of the asset.

OPERATING SHORT TERM RENTAL ACCOMMODATION IN WAQF HOUSING DEVELOPMENT

Waqf was a source of growth, such as the construction of mosques, madrasah, colleges, bookshops, passenger lodges and inns. Its benefits are not limited to a Muslim group alone, but go beyond religious, ethnic, racial and religious boundaries. The concept of *waqf* housing development with a new and innovative framework should be emphasised on adapting the current trend in the use of housing as a source of income, not just for shelter. This indirectly enhances and maintains the quality of life and its sustainability aspects.

However, there are several issues in allowing the beneficiaries to enhance the enjoyment of *waqf* housing. First issue with regard to the purpose of the *waqf* formation. This will relate to the original purpose of *waqf* housing development. Second, the issue on whether by allowing the beneficiaries to capitalise the use of *waqf* housing will

contradict the original purpose of waqif. Thirdly, whether by **operating** STRA in *waqf* housing will amount to deviation from the original purpose.

First issue: The purpose of the formation of *waqf* housing development

The current practice in housing industry where the housing investors strive to maximise their earnings on housing purchases such, neglected the accessibility to shelter particularly among low-income households. Various literature has highlighted the income disparity among low-income households that lead to housing affordability issues (Liew & Haron, 2013; Rahim & Munaaim, 2008; Sohaimi et al., 2015). According to Siti Nadiah, *waqf* housing developments, on the other hand, will be less expensive in the local housing market than conventional housing developments of a similar type (Ali et al., 2016). This approach will assist the policymakers and regulators resolve the problem of affordability and house prices in particular in addressing the needs of low-income households.

With the aim of *waqf* as an instrument to solve community economic woes,' *waqf* housing schemes' will be able to fill the void of providing affordable safe and comfortable housing for the target groups in tandem. This in line with the aspiration of National Housing Policy to ensure every citizen to have a conducive shelter either by purchasing or renting the house. There are five focuses of National Housing Policy (2018–2025) as follows:

| | |
|----------------------------|--|
| F O C U S 1 | Ensuring quality housing for all |
| F O C U S 2 | Improve access and affordability to own a home |
| F O C U S 3 | Ensuring quality and coherent neighbourhoods |
| F O C U S 4 | Improve coordination between housing development and transportation for better quality of life |
| F O C U S 5 | Strengthening institutional capabilities to implement National Housing Policy (2018-2025) |

(Source: Jabatan Perumahan Negara, 2019)

Based on the above focuses, it could be illustrated that the future housing policy of Malaysia, not only ensuring shelter but enhancing the quality of living. This principles in line with the purpose of establishing the *waqf* housing to accommodate the life of people either through economy, social and wellbeing. Generally, the formation of *waqf* housing development is dependant upon waqif intention. Ultimately, the benevolence from Allah is the primary reason why people contribute for the formation of *waqf*.

Second issue: The extend of enjoyment of *waqf* housing by beneficiaries

Waqf is a sunnah practice and is required to be implemented when executed by virtue of a will. As Muslims want to be Allah-conscious, *waqf* is a tool for sharing one 's resources with others. There are those in the economy that share their wealth assets with others, it is really important because it can support a country's economic growth (Rahman, 2009). According Rahman, as *waqf* is a form of charity with special characteristics of permanence and continuity, therefore, beneficiaries can benefit from *waqf* property for years, generations or even centuries.

As mentioned earlier, depending on the type of registration of titles, the rights and obligation and the relationship between *mutawalli* and *mutahiqeen* will determine the extend of enjoyment attached to the asset. For example, if the *waqf* housing is rented the relationship between them is landlord and tenant. Thus, the rights and obligation between *mutawalli* and *mutahiqeen* is limited to relationship landlord and tenant, for example obligation to pay for the rent, to take care of the rented *waqf* housing and not to constitute subtenant without the consent of *mutawalli*. The same principles apply to *mutawalli*, for example, they cannot evict the tenant (beneficiary) without going through proper procedure. However, the characteristic of irrevocable *waqf* become the ultimate limitation to the *waqf* housing. As such, the enjoyment of the beneficiaries in *waqf* housing limited in accordance to the *mutawalli* discretion and waqif original intention.

Third issue: Whether operating STRA on *waqf* housing should be allowed?

Sharing wealth with others so that those in need may feel the comfort and well-being of their wealth because of their faith and belief in Allah. God emphasizes motivation to share wealth with others, and warns those who are *bakhil* as Allah's statement in Surah Muhammad (47:38): 'Here you are, being invited to donate a little in the cause of Allah. Still some of you withhold. And whoever does so, it is only to their own loss. For Allah is the Self-Sufficient, whereas you stand in need of Him. If you still turn away, He will replace you with another people. And they will not be like you'. Based on this verse, Allah encourage people to share their wealth and avoid being miserly. 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.

According to Rahman, *waqf* property cannot be sold, cannot be given (*hibah*) to others and cannot be inherited (Rahman, 2009). In the context of economic development and advancing *waqf* assets in order to achieve the desires of waqif, these three principles must be taken into account so that *mutawalli* and *mutahiqeen* does not violate *waqf* regulations. Allowing the *mutahiqeen* to capitalise the use of *waqf* housing in leveraging their household's economy could not be considered manipulating or deviating from the principles of *waqf* property.

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. Principally, the sharing concept of STRA is not against the rules of *waqf*. However, there must be a proper process for the *mutahiqeen* to apply consent from *mutawalli* before operating STRA in *waqf* housing.

CONCLUSION AND RECOMMENDATION

Economic development involves several elements namely sustainable self-growth, structural changes in production, technological enhancement, social modernization, politics and institutions as well as improvements to wellbeing. In this modern era, various mechanisms have been introduced by many stakeholders to promote sharing economy. Short term rental accommodation (STRA) has been identified as the new concept of sharing economy. Though, the operating STRA in Malaysia currently facing many legal issues yet, their existence cannot be denied in

increasing income opportunity to households. However, this STRA also one of the factors changing the housing landscape in Malaysia including *waqf* housing.

The development of *waqf* housing in Malaysia is not new. *Waqf* housing is anticipated to assist and increase the affordability of household income in purchasing or renting a house. This also in line with the aspiration of Dasar Perumahan Negara (2018–2025) to provide better housing quality to the citizens of Malaysia. This also in line with the role of *waqf* to share the wealth amongst people in order to achieve the benevolent from Allah. 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. According to Schor, sharing economy activities categorised into four, namely: (1) recirculation of goods; (2) increased utilization of durable assets; (3) exchange of services; and (4) sharing of productive assets. This classification also similar with the concept of sharing wealth in *waqf*.

However, 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 a primary objective for the *mutawalli* to consider in giving consent for the *waqf* housing can be **operated** as STRA. Though, the *mutahiqeen* should be able to enjoy the quiet possession of the *waqf* housing yet, still it is limited to intention of *waqf* housing formation and *mutawalli* pre-requisite conditions as an institution managing the *waqf* property in Malaysia. Although, the administration of *waqf* is under the purview of the State, **operating** STRA still subjected to other local laws. As such, this paper also recommends 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.

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² According to European Commission, households sharing access to unused space in their home or renting out a holiday home to travellers using online platform is known as peer-to-peer accommodation. In New South Wales, activities related to the renting of the whole or part of a private home by its owner to a person through a digital platform for holidays purposes referred as **short term rental** accommodation. However, in Malaysia, a residential accommodation that is rented for a relatively **short** period of time where homeowners **operate short term rental** and listed their residential accommodation on a digital platforms such as Airbnb, Inc., Agoda, HostAStay, MyCribBooking.com, etc, defined as **short term** residential accommodation (STRA). (European Commission, 2013).

³ Airbnb, an online community marketplace where people can list and book **short-term** lodging accommodations around the world, was founded in 2008 and has grown rapidly at a time when plenty of other industry-disrupting platforms have flourished, including Uber, Craigslist, and Spotify. Airbnb offers listings in 191 countries, and its total number of listings — 4 million — is higher than the top five major hotel brands combined.

⁴ Abu Yusuf is one of the scholars from Hanafi's School of Thought.

⁵ The establishment of the Department of Awqaf, Zakat and Hajj (JAWHAR) on 27 March 2004 indicated that the growth of the *Waqf* real estate sector in Malaysia had cut a niche. The formation of JAWHAR led to the creation of the Waqf Foundation, officially incorporated under the Trustees Incorporation Act 1952 (Revised 1981) JAWHAR.

⁶ Federal Constitution which provides for Parliament and the State Parliament to have the power to make laws on matters set forth in the Ninth Schedule of the Federal Constitution.

⁴ Previously, this has been enshrined in the laws relating to the administration of Islamic law and Malay adat, known as 'Laws for Administration of the Religion of Islam 1952'.