



**FROM “PROTECTION” AND “PRESERVATION” TO “DEVELOPMENT” AND “RIGHT”:  
A NEW APPROACH OF OBJECTIVE OF SHARIAH VIA *WAQF MUAQQAT*.**

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# Objectives



- Analyse the main objectives of Shariah and its application in *waqf*.
- Study the new dimension of protection and preservation in the perspective of the importance of human development and property rights of *waqf* practices in Malaysia with special reference to *Waqf Muaqqat*.
- Seek to expand the scope of the objective with justification to facilitate the *ijtihadi* basis in ensuring sustainability of *waqf*.
- It is argued that a new dimension of protection and preservation of *mal* as the objective of Shariah is necessary in relevantisation of *waqf* locally and globally.
- The findings show that the employment of *ijtihad* and *fatwa* would serve to contribute for a more clear, flexible and sustainable legal framework for *Waqf Muaqqat* especially in Malaysia

# Conceptual Framework of the Paper

- Shariah refers to a Code of life which consists of ideology, faith, akhlaq (behaviour), obligations and rights
- Maqasid al Shariah (MaS) is objectives of the Shariah that is to preserve the social order of the community and to ensure healthy progress of the society
- Objective of Shariah can be divided into THREE and the highest is dharuriyyah- the necessity which can be divided into 5:
- Protection of Mal –
- The core element of MaS is the Maslahah or public interest.
- Imam Al Shatibi – Maslahah refers to what produces benefit for the people, collectively or individually, acceptable to human being for its benefit in human life

# Preservation and Protection of Wealth as one of the primary Objective of Shariah – with special reference to Waqf Muaqqat

- Hypothesis – Clear Framework for Waqf Muaqqat promotes for sustainability of Waqf
- Theoretical Framework:
- General Principles based on the majority view of Waqf is: perpetual, irrevocable and inalienable
- As a result, most laws provide for perpetual waqf, or mentioning of waqf muaqqat but no clear legal frameworks
- Traditionally, waqf must be preserved and protected, result in a very restrictive policy for waqf laws – strict rules with regard to istibdal, periodic or temporary waqf, waqf meant to be forever.
- Though lack of capital for development, but waqf laws shall not be ‘sold’;
- Many land are left idle for being a not-demanding property for development for many reasons

# Relevantisation of Waqf Muaqqat – development and right



- Rationale – Waqf is IJTIHADI – basis of Ijtihad is maslahah hence sustainable waqf works through development not making the assets idle or stagnant
- The basis for the development is the Maslahah – interest of the public
- Jurisprudentially, the development begins with ijtihad
- Imam Shatibi – Make Maqasid al Shariah as part and parcel of ijtihad..
- Preservation of property must be for sustainable development-
- Macro Objective of Waqf is providing for ‘rights’ of the people– poverty alleviation, health, education, shelter, and infrastructure –water,

WAQF RULES IN MALAYSIA	OTHER OPINIONS ON WAQF	MOVING FORWARD RULES FOR WAQF MUAQQAT
Follows Shafie school of laws; enactments, fatwa	Other schools of law, contemporary views or guidelines such as IRTI, SAC	Adopting a new flexible rules based on Maslahah. Other mazhap may be adopted, incorporated via statutes or fatwa
<p>Waqf is perpetual, cannot be revoked</p> <p>Position of temporary Waqf is not clear</p> <p>Perpetual is part of the meaning of waqf</p>	<p>Maliki and some of Hanafi jurists view waqf as temporary</p> <p>No evidence that the Prophet was against it</p> <p>Ibn Shurayj- a Shafie jurist viewed that waqf can be temporary</p> <p>An Nawawi do not oppose temporary waqf</p>	<p>Waqf can perpetual or temporary. Duration may be statutorily guided.</p>
Extinction of Ownership; waqf belongs to Allah	<p>Waqf is still belongs to the owner, can revoke, revert to owner</p> <p>Temporary waqf is allowed</p>	<p>Waqf may be revoked unless expressly provided otherwise by the waqif or upon death or ghaib of the waqif.</p>

# Dynamism and Sustainability of Waqf through Waqf Muaqqat

Waqf should be Governed by the principles of Shariah Compliant, hence sustainability of waqf arises from :

- Clear, Flexible and fair rules -contract, right and duties, remedies.
- Empowerment of the parties (voluntary)
- Dispute Resolution
- Clear Jurisdiction
- Professionalism, ethical and values
- Good governance
- Everyone can do waqf, rich or poor, Muslim or non Muslim

# CONCLUSION



- Good and supportive waqf ecosystem will ensure the sustainability of Waqf
- Waqf Muaqqat should be allowed to be practiced along with Waqf Mu'abbad
- The law, policies and guidelines (manual) , must be clear – duties and remedies
- Waqf Muaqqat provides avenues for doing waqf without feeling worry about the losing the properties
- Mutawalli has a role to be more creative to ensure the benefits of waqf muaqqat is sustainable and can be enjoyed till hereafter.