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### Full Length Research Article

## UNLOCKING VALUE OF WAQF PROPERTY USING HIBAH MUDHARABAH: A CASE STUDY OF COMMERCIAL BUILDINGS IN KEDAH, MALAYSIA

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#### ABSTRACT

This paper explores the application of Islamic concept of *Hibah Mudharabah* in managing *waqf* commercial properties in the state of Kedah, Malaysia as a wealth redistribution mechanism instead of the present welfare mechanism role. In the past, the traditional practice of *waqf* properties is that pieces of lands were handed over to mosques in owners' neighbourhood for *waqf* uses and the State Islamic religious affairs council was the trustee. There should be a change in the management of *waqf* institutions in Malaysia which include the management of this untapped potential in *waqf* properties so that the owner and public can benefit from this new wealth redistribution role.

*Hibah Mudharabah* is a form of partnership where one of the contracting parties, the *rabb-al-mal* (the financier), provides a specified amount of capital and acts like a sleeping partner, while the other party called the *mudarib*, provides the entrepreneurship and management for carrying on any venture, with the objectives of earning profits. The principles are applicable for profit and loss sharing, which are widely used in Islamic finance.

A *waqf* is a charitable endowment which is used in Islam used for philanthropic purposes without consuming the property itself. *Waqf* not only acts as a welfare mechanism but also plays an important role in the economic development and advancement of Muslims society just like during the golden era of the Muslim civilization. It is hoped that this exploratory study on unlocking the value of *waqf* property development in Kedah, Malaysia will offer regional experiences of *waqf* properties as a productive resource. New information will help create a new paradigm shift as well as provide input to unexplored issues on *waqf* properties in Malaysia. It is hoped that this research will be a springboard for more in depth studies in Islamic real estate in the future.

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#### INTRODUCTION

*Waqf* property may grow in trillions, if it is regulated properly and managed according to sound principles by *waqf* institutions. First, in order to unlock the value of *waqf* property, there is the need for accepting *waqf* property in Malaysia property market. Unlocking value is maximizing the income generated by *waqf* property. Mohamad Tahir (2005) mentioned two issues regarding the potential enhancing value of *waqf* property by *waqf* institutions, which include reforming the management style of *waqf* organization and the enactment of law that provides an environment conducive for the growth of *waqf* activity.

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Thus, this study tries to explain the management of *waqf* property as a strategy for economic transformation of Muslims in Kedah. Also, it is hoped that it will help to create a new paradigm shift as well as awareness of this special type of real estate properties that is *waqf* properties, by examining the management of the *waqf* properties by Religious Council of Kedah, Malaysia since 1962. It includes the management of *waqf* commercial properties in the state of Kedah as a wealth redistribution mechanism instead of the present welfare mechanism role. The practical relevance of this issue is that, in the past, the traditional practice of *waqf* property is that pieces of land were handed over to mosques in land owners' neighbourhood for *waqf* use and State Islamic Religious Council (SIRC) became the trustee. Today, it is managed by *waqf* department which is part of the State Islamic Religious Council (SIRC), which is one of the powerful charitable instruments managed by state governments in each state in

Malaysia. Thus, Muslims today and future generations need to be aware of new *waqf* concept of wealth redistribution. In Malaysia, there are many factors that contribute to the problems in developing *waqf* properties and to encourage Muslims to donate their properties and cash. Among the factors are lack of knowledge of *waqf* among the public, absence of documentation and systemic database, inadequate skillful professionals in *waqf* management, absence of a good structural *waqf* management and absence of a clear consistent procedures about the registration and initiative to use code system. Furthermore, almost all *waqf* properties are fixed and naturally the *waqf* institutions are cash-strapped (Mohammad Tahir, 2005). Many of the *waqf* properties are barren or unproductive and undeveloped due to lack of funds and the *waqf* institutions struggle to find suitable financial mechanism for its development. Thus, in order to unlock the value of these properties, the *waqf* institutions should play a role in uplifting the pride, dignity and supremacy of Islam. This institution must be managed professionally with the best standard of practice and contemporary management system to project the excellence of Islam. It is high time that the management of *waqf* be transformed to make it more efficient and effective. The management of *waqf* properties in Malaysia should find ways to the solve the existing problems.

The problem starts with the State Islamic Religious Council (SIRC) which inherits the *waqf* properties but these properties are managed by unqualified *muttawali* or supervisors. The *waqf* lands are even managed by non-Muslims, many are left idle and there are *waqf* properties given out orally without any registration and documentation, thus affecting its development. Besides the problems listed earlier, it was estimated that RM38 billion worth of inheritance assets have failed to be distributed due to improper estate planning in Malaysia (Willieuddin Lim, 2008). The *waqf* issues are long standing, chronic and need to be given full attention. Under the provision of the State Islamic Affairs Administration Enactment, the role in managing the *waqf* properties comes under Religious Councils of each state as the sole trustee. Then why are there such issues? This is because generally SIRCs are also embroiled in their own shortcomings that affect the development and progress of *waqf* properties. SIRCs do not have sufficient staff to manage the *waqf* properties despite the load of problems. There are three options which can be taken; additional staff for the *waqf* management division; outsourcing; and corporatization of *waqf* properties.

However, the suggestion on additional staff is easier said than done due to the various levels of procedures and bureaucratic processes that need to be overcome. The second strategy is outsourcing part of the *waqf* activities. This means that part of the *waqf* properties can be privatized or tendered out to other parties or consultant in the field. This includes properties like burial ground or mosque cleaning projects, minor repairs and servicing of assets. Rental collection can also be the privatized but this will give rise to other impact especially in the collection capability and the legal aspect. The legal limitation of *waqf* properties is that Muslims think that *waqf* requires immovable property to be donated. This has prevented many good-hearted individuals from donation. At the same time, this has caused *waqf* properties to be idle or difficult to be redeveloped. The *waqf* institutions are dependent on the

government for financing its development. The private sector are unwilling to finance due to this limitation. However, the state of Selangor has been commended for being the first state in Malaysia that has instituted a *waqf* enactment to better manage and administer all the *waqf* properties in the state (Anuarul Perai, 2005). Section 52 of the National Land Code (Act 56 of 1965) specifies the use of lands according to "agriculture", "building" or "industry". Furthermore, Section 51 of the same National Land Code (Act 56 of 1965) states that lands above the shore-line be classified as town land, village land and country land. In spite of these two provisions of classifying lands according to uses and geographic locations, *waqf* lands in Selangor are categorized based on their localities and their uses. In contrast, in other states in Malaysia, *waqf* lands are commonly associated with cemetery lands and the building of mosques and Islamic religious schools. According to reports by Islamic Religious Council of Selangor (IRCS), *waqf* lands in the state are categorized according to the specified purpose of the *waqf*.

Mohamad Tahir (2005) mentioned that there should be major changes to the laws of *waqf*. *Waqf* should be recognized as a legal person and based on its classification, where it includes two types of management structures: one in the hands of the Islamic Religious Councils and the other in the hand of a corporate-like entities. However, some of the Islamic Religious Councils in other states in Malaysia are not interested on this arrangement as it may exposed their secret and strategy to outside parties. One strategy as a corporate entity is by privatization, which also required SIRCs to have strong financial standing. So what about the corporatization of *waqf*? This is a new issue and it will be amazing if it can be realized. Currently, the issues are yet to be accepted by the SIRC policy makers and top management. Although there are evidence that corporatization of *waqf* is successful in six states in Malaysia such as Federal Territory, Penang, Selangor, Pahang, Melaka and Negeri Sembilan, certain states feel that the time has not come for the corporatization as it is deemed as giving up the management to outside parties. However, there is a way to carry it out. This is through the set up of a wholly-owned company of SIR under the Companies Act 1965. Other corporatization approach is through the set up of State *Waqf* Foundation (SWF) which is welfare-oriented organization. The status qualifies the SWF to obtain zakat on business and corporate tax exemption. So it is up to SIRCs to choose the best approach to take.

### Definition of *Waqf*

A *waqf* is a term originated from the Arabic verb "*waqafa*" which means to hold, prohibit/ detain something of someone's property to be benefited by others whether for general or specific purposes (Al-Khatib, 1997). Literally, *waqf* means to stop, contain or to preserve. In *shariah*, it means a voluntary, permanent, irrevocable dedication of a portion of ones wealth-in cash or kind to Allah. Once a *waqaf*, it never gets gifted, inherited, or sold. It belongs to Allah and the corpus of the *waqf* always remains intact. The fruits of *waqf* may be utilized for any *shariah* compliant purpose. The religious origin of *waqf* in Islam started with a story of the second caliph Omar Ibn el Khattab when he was granted gardens after opening *Khaiber* and came to the prophet asking him about the best

way to make the poor benefit from the land. The prophet Mohammed advised him to eternally withhold the land and spend its revenue on the poor without being subject to be sent, nor donated nor inherited to anybody. Since this incident, *waqf* has been spread among Muslims at the time of the prophet and continued after him for long centuries. Theoretically, once the properties are dedicated in the name of Allah and endowed to *waqf* they are perpetual, irrevocable and inalienable and thereby once a *waqf*, it always remains a *waqf*. According to Ismail (2011), *awaqf* is a charitable endowment which is used in Islam with the meaning of holding a specific property (not used by the *waqif*) which is permissible to be used for philanthropic purposes without consuming the property itself. However, Ahmad (1998) asserted that there is no equivalent word or expression in English to convey the Islamic concept and definition of *waqf* in the true sense of the term. Kahf (1998) defined *awaqf* as an act of holding certain properties and preserving them for the confined benefit of certain philanthropic purposes that disallows any use or disposition of them outside the specific objectives. Hence, *waqfis* a term which continuously changes through time. Mohamad Tahir (2005) proposed that the definition of *waqf* as the dedication of a valuable, the value of which is amortised subsequently, and its proceeds or revenues are later spent on welfare of the named beneficiary.

## Literature Review

Birol Baskan (2002) provides the economic theory of redistribution in a society. His model views individuals and governments as redistribution agents. He states that the *waqf* system had been one of primary redistribution mechanisms throughout the history of the Islamic world. The *waqf* system can be a mechanism to deal with poverty and income inequality. The success of the redistribution of wealth is a product of state and individual cooperation in the *waqf* system. In the end, redistribution stems from individual altruistic behavior. For an institution to survive, it must be administered in accordance with the people's interest instead of self-interest. Therefore the *waqf* system should be an institutionalization of a value system. Shahrul Hameed, Abdullah and Hidayatul (2001) explores the issues of accountability and transparency in *waqf* institutions among Muslims countries. *Waqaf* used to be a significant element in the development of Muslims society. It was first laid down by Prophet Muhammad, later during the period of *Khalifah Islamiyah*, *waqf* was still one of the important parts of the Muslims's life.

However with the passage of time, *waqf* has become less popular among Muslims society. Moreover, colonialism has made the situation worse. The study suggests four ideas which could be applied in order to improve *waqf* institution, (1) internal financial control, (2) transparency, (3) management of funds and (4) code of good governance. There is also a need for legal reformation of *waqf* by reevaluating *waqf* acts. Furthermore, educational institutions have a role pertaining to educate people to be aware of creating better society. Ahmad Zaki (2006) studies *waqf* institutions of education which include all 105 religious schools in Malaysia. The results show that the most important factor that affect the *waqf* development in education are the administration aspect, financial management, marketing aspect and teaching aspect.

Recently, there is an increasing interest in reviving the *waqf* institutions. Several international conferences on *waqf* have been held in recent years, for example at Harvard in 2006 and 2008, South Africa in 2007, Singapore in 2008, Kuwait in 2008 and Iran in 2008. Muslim communities have organized the *Waqf* within the framework of their local legal system example in India, Sri Lanka, Myanmar and Kenya. Others operate under laws governing trust foundation and non-profit organizations. Kalf (1998) expresses concerns about capacity for the preservation and protection of *waqf* properties under these non-*waqf* legislation and further suggests that Muslim communities take initiative to develop *waqf* acts within the legal system. The following are examples of how *Waqf* institutions are being managed. In India, Islam was first introduced as early as the 7<sup>th</sup> century. The first mosque was built during the lifetime of Prophet. In 2008 there were 154 million Muslim and the establishment of *Waqf* is one of main contribution to Muslim in India. In fact, a separate Ministry of *Waqf* was set up in the State government and there were 250,000 *Waqf* properties, which is valued at US\$75 billion and potential for generating US\$3 billion in revenue. A *Waqf* Act was introduced 1954 (Masoud 1999)

In United Kingdom, for over two decades, Islamic relief has been providing emergency aid and long-term assistance to world's most deprived people. In the year 2000, *waqf* future fund was set up, aimed primarily at reviving a great tradition for charity for benefits of needy of future generations which supports numerous projects in the future ([www.islamic-relief.com](http://www.islamic-relief.com)). Today, besides religious purposes, *waqf* land has also been used for infrastructure development, education sector, healthcare and public amenities, among others. Among the prominent education institutions that were founded and maintained using *waqf* lands are the Al-Azhar University in Egypt, University of Cordova in Spain and Universitas Islam Indonesia in Jogjakarta, Indonesia (Ahmad Zaki *et al.*, 2008). While in the healthcare sector, one of the famous hospitals built on *waqf* land is Al Noori Hospital in Damascus, which has been in operation for seven centuries and, in fact, some parts of the hospital are still in use today (Islamic Relief UK). Furthermore, many mosques in Islamic countries are built and operated using *waqf* lands (M. Sadeq, 2002). The central roles of the *waqf* lands were also prominent during the last Muslim Caliphate in Turkey. *Waqf* lands were used extensively, among others, for infrastructure development, agriculture, education and public amenities (Hoexter, 1998).

Researchers all over the world have discussed how *waqf* institutions have been revived in many parts of the Muslim world at the international, national and organizational levels. The Islamic Development Bank (IDB) describes, in its organization profile, that as an international body, it has established the World *Waqf* Foundation (WWF) in 2001, in collaboration with *waqf* institutions, governmental organizations, NGOs and philanthropists from the private sector, to promote *waqf* to contribute to the development of cultural, social and economic of the member countries, as well as to alleviate poverty and to extend technical assistance and support to *waqf* institutions. At the national level, a few Muslim countries have established ministries and state bodies to manage their *waqf* institutions. For example, the Kuwait *Awqaf* Public Foundation (KAPF), a state body under the

Ministry of *Awqaf* and Islamic Affairs was founded in 1993. According to Ibrahim (2009), KAPF is innovative in its approach to *waqf* development. Time Endowment was introduced to raise awareness on the importance of volunteering time for the benefits of others. An example of organizationally-run *waqf* institution is the Majlis Ugama Islam Singapura (MUIS), which, under the Administration of Muslim Law Act (AMLA) 1966, has been authorized to administer all *waqfs* in the country (Ramli and Sulaiman, 2006). Its subsidiary, WARESS Investment Pte. Ltd. was later established to focus on the commercial aspects of *waqf* development. In Malaysia, similar to Kuwait and Turkey, the role of the government is prominent in *waqf* management. According to Dato' Jamil Khir bin Baharom, Minister in the Prime Minister's Department, the Malaysian government, in 2004, has established the Jabatan *Wakaf, Zakat dan Haji* (JAWHAR) at the national level to oversee the management of *waqf* resources in the country. In addition to JAWHAR, the State Islamic Religious Councils have roles in specific management and administration of *waqf* properties within the individual states, as enacted in the Ninth Schedule of the Federal Constitution of Malaysia.

## Case Study and Findings

### Historical Development of State Islamic Religious Council of Kedah (MAIK)

Shortly after Malaysian independence, in 1959, the ordinance was replaced by the Muslim Law Administration Enactment, 1959. The Enactment was substituted in 1962 with the State Administration of the Kedah Muslim Affairs Enactment. The Enactment set up a Muslim Religious Council to advise the Sultan on the affairs of the religion and to carry out duties and legal enforcement stipulated by the Enactment. Among the ambit of duties of the Council under the Enactment was the administration of the *waqf* properties. According to Section 92(1) under the Enactment, the Council is to be the sole trustee for all the *waqf* properties, be it public *waqf* or family *waqf*. However, there are some legal practitioners who maintained that this section contradicts *Syariah* law and the Federal Constitution which gives the power to the state government to legislate laws on Muslims affairs.

The strategies adopted by MAIK in managing the *waqf* land include optimization of its resources by leasing and renting existing land and buildings, improving internal and external expertise, selecting and upgrading potential lots, effective cost management and better tenancy management through the establishment of Izzah Management Sdn Bhd in 2002. The second strategy is maximizing value through maximizing development potential of some of the *waqf* land in Kedah. The methods used are upgrading development and joint venture development through partnership with developers to develop housing projects and business buildings. These development strategies are used to unlock the value of *waqf* land in Kedah. Financial statement report of MAIK for the period of 2000 to 2010 is shown in Table 1. The above figures show a very high increase in each financial items selected in the income statement and balance sheet of MAIK. The income statement measures the amount of profits generated by a firm over a given period of time.

**Table 1. Financial Statement Report of MAIK 2000 -2010**

Income Statement/Year	2000	2010
Net income	4,969,697	40,525,772
Balance Sheet	19,806,667	48,941,223
Cash flow statement	13,422,766	29,118,739
Investment in <i>mudharabah</i>	12,010,876	26,546,603
Investment in stock	861,999	1,555,209

Source: Financial Statement Report of MAIK 2000 -2010

Net income which represents the firm's profit or loss for the period shows a positive high increase. The balance sheet item also shows a very high increase. Items such as assets represent the resources owned by the institutions, whereas liabilities and shareholders' equity indicate how the resources are financed. Investment in *mudharabah* nearly doubled during that ten year period. Investment in stock includes long term investment in CIMB, while others include *An-najah* BIMB, SRIDE-I MAYBANK, Islamic Structured Growth Fund (ISGF) CIMB and Islamic Market RIDER (NID\_i).

### The Concept of Mudarabah

In principle, *mudarabah* is an agreement between the capital provider (bank) and customer (entrepreneur), to enable the entrepreneur to carry out business projects. The bank acts as fund provider and its customer acts as fund manager. The customer determines the amount of profit sharing in advance and the details are as agreed when opening the account. Therefore, the customer acts as a financing partner, while the bank is the managing partner. The bank pools all investment deposits and searches for suitable investment opportunities in compliance with *Syariah*. The bank does not guarantee the depositor that the investment will be profitable although the bank will conduct the investment on best effort basis to ensure it is profitable. The return on investment, whether positive or negative, is then shared with the depositors, after the bank has deducted its own costs and a previously agreed fee for its efforts. In the event of a loss, only the depositor will bear the loss.

### The Concept of Hibah

This is a token given voluntarily by a debtor to a debtor in return for a loan. Hibah usually arises in practice when Islamic banks voluntarily pay their customers a 'gift' on savings account balances, representing a portion of the profit made by using those savings account balances in other activities. It is important to note that while it appears similar to interest, and may, in effect, have the same outcome, *hibah* is a voluntary payment made (or not made) at the bank's discretion, and cannot be 'guaranteed', akin to dividends earned by shares. However, it is not time bound but is at the bank's discretion. The opportunity of receiving high *hibah* will draw in customers' savings, providing the bank with capital necessary to create its profits. If the ventures are profitable, then some of those profits may be gifted back to its customers as *hibah*. The following is the *hibah* calculation which is the accumulated daily average method.

1. The MADB is the total balance for one month divided by the actual number of calendar days in the month of calculation.

2. Profit rate is the rate derived by the bank for profit distribution.

Number of days are the actual number of calendar days in the month of calculation. The calculation for Monthly Average Daily Balance of the Month (MADB) is as follows:

MADB = total of end of day balances for the entire month  
number of days in the month

Profit Amount for the Month = MADB x profit rate x number  
of days in the month

365

The figure below is an example of a *waqf* commercial property located in Alor Setar, Kedah, Malaysia, which has been in the administration of MAIK since 1996.

Lease proceed commercial Waqf	4,000,000 .00
Hibah Mudharabah (1997-2011)	1,956,972 .52
Total	5,956,972.52
15% Adminstrative charges (1997-2011)	(293,545.86)
Withdrawal (1997-2011)	(2,461,264.80)
Principle + Hibah till 2011	3,202.161.86

## Conclusion

This study is undertaken to create awareness of this special real estate properties (*waqf*) and explore the application of Islamic concept of *Hibah Mudharabah* in managing *waqf* commercial properties in the state of Kedah, Malaysia as a wealth redistribution mechanism instead of the present welfare mechanism role. The practical relevance is that in the past, the traditional practice of *waqf* properties is that lands were handed over to mosques in owners' neighbourhood for *waqf* use and the state Islamic religious affairs council becomes the trustee. There should be a change in the management of *waqf* institutions in Malaysia which includes the management of this untapped potential in *waqf* properties so that the owner and public can benefit from this new wealth redistribution role. Lastly, wealth in Islam is visualized as an instrument to lead life in accordance with *syariah*. It is hoped that future studies would explore the methods of calculation of value of *waqf* land in the Malaysian property market.

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