

**THE POTENTIAL OF TEMPORARY WAQF: A STUDY IN
SELECTED STATES IN MALAYSIA**

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UNIVERSITI SAINS ISLAM MALAYSIA

**THE POTENTIAL OF TEMPORARY WAQF: A STUDY IN
SELECTED STATES IN MALAYSIA**

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Nilai

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AUTHOR DECLARATION

بسم الله الرحمن الرحيم

I hereby declare that the work in this thesis is my own except for quotations and summaries which have been duly acknowledged.

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In the name of Allah, the Most Gracious and the Most Merciful

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ABSTRAK

Wakaf merupakan satu bentuk sedekah jariah. Para fuqaha' telah berbeza pendapat pada menyatakan bahawa adakah wakaf sah dan dibenarkan dilakukan secara bertempoh atau hanya sah dilakukan secara berkekalan. Sebahagian besar negeri-negeri di Malaysia hanya mengaplikasikan wakaf secara berkekalan berpandukan kepada pendapat muktamad madzhab Shāfi'iy. Justeru, tujuan utama kajian ini dijalankan adalah untuk mengkaji secara terperinci perspektif fuqaha' tradisional dan juga moden terhadap pengaplikasian wakaf bertempoh, menganalisa konsep wakaf bertempoh yang sedia ada serta pengaplikasiannya di negeri-negeri yang terpilih di Malaysia, dan mengusulkan satu bentuk garis panduan pelaksanaan wakaf bertempoh untuk negeri-negeri yang terpilih di Malaysia. Kaedah kajian kualitatif telah diadaptasikan di dalam kajian ini dan data kajian telah dikumpulkan melalui kaedah kajian dokumentari serta kaedah temubual separa berstruktur bersama wakil Jabatan Mufti Negeri dan Majlis Agama Islam Negeri bagi negeri Terengganu, Perak dan Penang. Kaedah analisa kandungan secara induktif dan deduktif serta kaedah analisa hermeneutik telah digunakan untuk menganalisa data-data bagi kajian ini. Hasil kajian menunjukkan bahawa pengaplikasian wakaf bertempoh ini adalah dibenarkan menurut pendapat muktamad madzhab Mālikī. Pengkaji juga menemukan bahawa wakaf bertempoh ini dapat dikenalpasti dalam tiga bentuk iaitu; wakaf bertempoh dari sudut sīghah, wakaf bertempoh dari sudut penerima wakaf, dan wakaf bertempoh dari sudut harta wakaf. Pengkaji mendapati bahawa wakaf bertempoh juga mampu merealisasikan kemaslahatan awam, meningkatkan kemampuan dan potensi wakaf, serta menjaga kebajikan dan kemaslahatan pihak yang terlibat di dalam melaksanakan wakaf. Oleh itu, pengkaji menyarankan kepada Jabatan Mufti Negeri agar menyemak semula fatwa berkenaan wakaf bertempoh dan wakaf bertempoh perlu digubal di dalam undang-undang wakaf khususnya negeri-negeri yang terpilih. Pada akhir kajian ini, pengkaji telah mengusulkan kerangka teori pelaksanaan wakaf bertempoh yang boleh digunakan Majlis Agama Islam Negeri di masa akan datang.

ABSTRACT

Waqf is a form of charity which the Islamic scholars have determined whether it is allowed to be declared as temporary and perpetual, or solely perpetual. Most of the states in Malaysia practise and implement *waqf* based on the absolute opinion of the Shāfi'iy schools, which is valid in perpetuity. This research aims to critically examine the classic and modern Islamic jurists' perspectives on temporary *waqf*, analyse the existing concept of temporary *waqf* and its implementation in selected states in Malaysia, and propose a theoretical framework for the implementation of temporary *waqf* in selected states in Malaysia. A qualitative methodology was adopted, and data was collected through documentary research and semi-structured interviews with the State Mufti Department and State Islamic Religious Council of Terengganu, Perak, and Penang. Subsequently, the data were analysed through inductive and deductive content analysis and hermeneutic analysis. The research results demonstrated that *waqf* is allowed to be declared either permanently or temporarily based on the absolute opinion of Mālikī schools. Temporary *waqf* could be recognised through the *ṣighah* of the *waqf*, the beneficiaries, and the *waqf* property. The donor is allowed to determine the duration to practise the *waqf*, while the stipulation shall be valid and bind the contract. Given that temporary *waqf* could realise the public interest, enhance the potential of the existing *waqf*, and keep the interest of the involved parties in the *waqf* contract, it is recommended that the State Mufti Department revises the *fatwa* relating to *waqf*, and the temporary *waqf* should be enacted in the respective *waqf* enactment of the selected states. It is also suggested that a theoretical framework for the SIRC implements a temporary *waqf* in the future.

(الملخص البحث) AL-MULAKHKHAŞ AL-BAḤTH

الوقف نوع من أنواع الصدقة، وقد اختلف الفقهاء في صيغة الوقف، وهل يجوز التأقيت أو لا يجوز إلا بالتأييد. ويعتمد معظم الولايات في ماليزيا على المذهب الشافعي في استنباط الأحكام الشرعية، منها ما يتعلق بالوقف. بناء على ذلك، يكون عمل الوقف بالتأييد مطلقا موافقا للمذهب الشافعي. ويركز الباحث في هذه الدراسة على ثلاثة أهداف، وهي؛ إجراء دراسة معمقة عن آراء الفقهاء المتقدمين والمعاصرين في حكم الوقف المؤقت، وتحليل مفهوم وتنفيذ للوقف المؤقت خصوصا في الولايات المختارة في ماليزيا، وكذلك استعراض ضوابط خاصة لتطبيق الوقف المؤقت في هذه الولايات المختارة. وقد استخدم الباحث منهج البحث النوعي وجمع المعلومات عن طريق البحث الوثائقي والمقابلات الشخصية عن طريقة المقابلة غير المقننة مع وكلاء قسم المفتي الولاية ومجلس الديني الإسلامي الولاية خصوصا بولايات ترينجانو وبيراي وبينانج. وحلل الباحث البيانات عن طريق تحليل المحتوى استقرائيا وتحليليا، وكذلك تحليل التأويلي. ودلت نتائج البحث على أن الوقف يجوز سواء كان بالتأقيت أو بالتأييد حسب ما يراه الواقف في المذهب المالكي. ويتضمن الوقف المؤقت على ثلاثة طرق؛ التأقيت في الصيغة، والتأقيت في الموقوف عليهم، والتأقيت في الموقوف. ويجوز للواقف أن يحدد مدة معلومة للوقف حسب ما يراه. وشرط التأقيت في الوقف يعتبر شرط من الشروط الصحيحة. الوقف المؤقت يمكن أن يحقق مصلحة الناس، يوسع الإستطاعة و مبدء الوقف، ويحفظ المصلحة ذوي الشؤون في الوقف. لذلك، إقترح الباحث لقسم الإفتاء في الولايات المختارة أن يعدلوا الفتوى المتعلقة بالوقف، وينبغي للولايات المختارة القيام بتشريع الوقف المؤقت في قانون الوقف. وأخيرا، إقترح الباحث عدة توجيهات لمجلس الديني الإسلامي بولايات المختارة لتطبيق الوقف المؤقت في مستقبل.

TABLE OF CONTENTS

AUTHOR DECLARATION	ii
ACKNOWLEDGEMENT	iii
ABSTRAK	iv
ABSTRACT	v
AL-MULAKHKHAS AL-BAḤTH (الملخص البحث)	vi
TABLE OF CONTENTS	vii
LIST OF TABLES	xi
LIST OF FIGURES	xii
LIST OF STATUTES AND REGULATIONS	xiii
LIST OF APPENDICES	xv
LIST OF TRANSLITERATIONS	xvi
LIST OF ABBREVIATIONS	xvii
 CHAPTER 1: RESEARCH BACKGROUND	 1
1.1. Introduction	1
1.2. Problem Statement	4
1.3. Research Questions	6
1.4. Research Objectives	6
1.5. Methodology	7
1.5.1. Research Design	7
1.5.2. Data Collection	9
1.5.3. Data Analysis	11
1.5.4. Data Reporting and Presentation	12
1.6. Literature Review	13
1.6.1. The Concept of Temporary <i>Waqf</i> (<i>Al-Waqf Al-Muaqqat</i>)	13
1.6.2. Temporary <i>Waqf</i> Application in Malaysia	16
1.6.3. Suggested <i>Waqf</i> Model in Malaysia	21
1.7. Significance of the Research	24
1.8. Scope and Limitation	25
 CHAPTER 2: TEMPORARY WAQF CONCEPT FROM ISLAMIC PERSPECTIVES	 26
2.1. <i>Waqf</i> Definition	26

2.1.1. <i>Waqf</i> Literal Definition	27
2.1.2. <i>Waqf</i> Technical Definition	28
2.1.3. <i>Waqf</i> Definition from Modern Islamic Scholars' Perspective	33
2.2. The <i>Waqf</i> Legality	35
2.2.1. The <i>Waqf</i> Legality's Provision	35
2.2.2. The Islamic Scholars' Position on the <i>Waqf</i> Legality	43
2.3. The Types of <i>Waqf</i>	46
2.3.1. The Types of <i>Waqf</i> Based on The Beneficiaries (<i>Al-Mauqūf ʿAlaih</i>)	47
2.3.2. The Types of <i>Waqf</i> Based on the Property (<i>Al-Mauqūf</i>)	51
2.3.3. The Types of <i>Waqf</i> Based on the Period of Time	55
2.3.4. The Types of <i>Waqf</i> Based on the Donor (<i>Al-Wāqif</i>)	56
2.4. The Pillars (<i>Al-Arkān</i>) and Conditions (<i>Shurūṭ</i>) of <i>Waqf</i>	58
2.4.1. The Declaration (<i>Ṣighah</i>)	58
2.4.2. The Donor (<i>Al-Wāqif</i>)	77
2.4.3. The Beneficiaries (<i>Al-Mauqūf ʿAlaih</i>)	80
2.4.4. The Property (<i>Al-Mauqūf</i>)	87
2.5. Temporary <i>Waqf</i> Definition	95
2.6. Temporary <i>Waqf</i> from Islamic Scholars Perspective	97
2.6.1. The Temporary <i>Waqf</i> Declaration (<i>Ṣighah</i>)	98
2.6.2. The Temporary <i>Waqf</i> Beneficiaries	107
2.6.3. The Temporary <i>Waqf</i> Property	113
2.7. The Issues Relating to the Determination of Conditions of <i>Waqf</i> by The Donor (<i>Al-Wāqif</i>)	117
2.7.1. Valid Stipulation (<i>Sharṭ Al-Ṣaḥṭh</i>)	118
2.7.2. Defect Stipulation (<i>Sharṭ Al-Fāsīd</i>)	120
2.7.3. Void Stipulation (<i>Sharṭ Al-Bāṭil</i>)	123
2.8. The Issues on The Ownership of the <i>Waqf</i> Property	126
2.8.1. The Ownership of the <i>Waqf</i> Property Remain in The Donor's Possession	127
2.8.3. The Ownership of the <i>Waqf</i> Property Belongs to Allah S.W.T	128
Conclusion	129

CHAPTER 3: TEMPORARY WAQF IMPLEMENTATION AND PERCEPTION IN THE SELECTED STATES IN MALAYSIA 132

3.1. Overview of <i>Waqf</i> Establishment and Management in the Selected States in Malaysia	132
3.2. Statutory Provision Relating to <i>Waqf</i> in the Selected States	139

3.2.1. The <i>Madzhab</i> to be Followed in Fatwas and Islamic Law Matters	141
3.2.2. The Definition of <i>Waqf</i>	144
3.2.3. The Types of <i>Waqf</i>	147
3.2.4. <i>Waqf</i> Provision: Perpetual and Temporary	152
3.3. Interview Data Analysis	155
3.3.1. Part One: The Types of <i>Waqf</i> and The Applied <i>Madzhab</i> as Islamic Legal Sources in the Selected States	158
3.3.2. Part Two: The Application of Temporary <i>Waqf</i>	164
3.3.3. Part Three: The Parameters of Temporary <i>Waqf</i> Implementation in the Selected States	171
3.4. The <i>Waqf</i> Issues in the Selected States	178
3.4.1. The Undeveloped <i>Waqf</i> Land	179
3.4.2. Insufficient Fund	181
3.4.3. Limitation in Practicing and Developing the <i>Waqf</i>	182
3.5. The Challenges in Implementing Temporary <i>Waqf</i> in the Selected States	184
3.5.1. The Existing <i>Waqf</i> Legislation	185
3.5.2. The Followed <i>Madzhab</i> in the <i>Fatwa</i> Decision	187
3.5.3. Comprehensive Guideline and Parameter to Practice Temporary <i>Waqf</i>	189
3.5.4. The Donor's Perception Towards <i>Waqf</i>	190
Conclusion	191

CHAPTER 4: THEORETICAL FRAMEWORK OF TEMPORARY WAQF FOR SELECTED STATES IN MALAYSIA 193

4.1. <i>Waqf</i> and Temporary <i>Waqf</i> Definition	194
4.2. The Types of <i>Waqf</i>	196
4.2.1. The Framework of Temporary <i>Waqf</i> for “ <i>Wakaf Khas</i> ” and “ <i>Wakaf Dzurri</i> ”	198
4.2.2. The Framework Temporary <i>Waqf</i> for “ <i>Wakaf Mushtarak</i> ”	201
4.3. The <i>Waqf</i> Property	202
4.3.1. Only for Perpetual	202
4.3.2. Accepted to be <i>Waqf</i> in Temporary and Perpetual	203
4.4. Temporary <i>Waqf</i> Termination	204
4.5. <i>Şīghah</i> of Temporary <i>Waqf</i>	206
4.6. The Restriction of Temporary <i>Waqf</i>	208
4.7. The Status of the Ownership of the Property	209
Conclusion	211

CHAPTER 5: CONCLUSION	213
BIBLIOGRAPHY	217
Article in Journal/Proceedings	217
Books	220
Internet	225
APPENDICES	226
APPENDIX A	226
Publication	226
APPENDIX B	228
Interview	228
APPENDIX C	300
Proofreading	300

LIST OF TABLES

Tables	Pages
Table 1 The <i>waqf</i> provision of each state and Federal Territories in Malaysia	135
Table 2 Temporary <i>waqf</i> provision in Johor, Sarawak, Terengganu, and Federal Territories	133
Table 3 The provisions of followed madzhab in issuing the fatwas in the selected states	141
Table 4 The provision that permits the Fatwa Committee to decide the fatwa based on the other madzhab views	142
Table 5 Waqf definitions in Terengganu, Perak, and Penang in their respective enactment	145
Table 6 The respondents for the interview session	156
Table 7 Interview data analysis	158
Table 8 Interview data analysis	162
Table 9 Interview data analysis	165
Table 10 Interview data analysis	167
Table 11 Interview data analysis	169
Table 12 Interview data analysis	171
Table 13 Interview data analysis	175
Table 14 Summary of the interview data on the implementation of temporary <i>waqf</i> of the selected states	178

LIST OF FIGURES

Figures	Pages
Figure 1 Crucial instrument of temporary <i>waqf</i> implementation	194
Figure 2 Framework for temporary <i>waqf</i> implementation on " <i>wakaf khas</i> "	198
Figure 3 Framework for temporary <i>waqf</i> implementation on " <i>wakaf dzurri</i> "	200
Figure 4 Framework for temporary <i>waqf</i> implementation on " <i>wakaf mushtarak</i> "	201
Figure 5 Interview session with the representative of Majlis Agama Islam Negeri Pulau Pinang, Tuan Fakhruddin	228
Figure 6 Interview session with the representative of Jabatan Mufti Negeri Perak, Dr. Luqman Abdul Mutalib	228
Figure 7 Interview session with the representative of Jabatan Mufti Negeri Terengganu, Haji Talib Abdul Rahman	229
Figure 8 Interview session with the representative of Majlis Agama Islam dan Adat Melayu Perak, Tuan Munawir Mohamed Noh	229
Figure 9 The receipt of proofreading	300

LIST OF STATUTES AND REGULATIONS

Statutes	Pages
Administration of Islamic Law (Federal Territories) Act 1993	5, 136, 138, 154
Administration of Islamic Law (Kedah Darul Aman) Enactment 2008	135
Administration of Islamic Law Enactment (Pahang) 1991	4, 135
Administration of Islamic Religious Affairs (Terengganu) Enactment 2001	135, 139, 141, 142, 162, 214
Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003	5, 135
Administration of the Religion of Islam (Perak) Enactment 2004	135, 142, 143, 163, 214
Administration of the Religion of Islam (State of Johor) Enactment 2003	135
Administration of the Religion of Islam (State of Malacca) Enactment 2002	135
Administration of the Religion of Islam (State of Penang) Enactment 2004	3, 25, 135, 136, 140, 142, 143, 145-149, 151, 153, 185, 214
Administration of the Religion of Islam (State of Selangor) Enactment 2003	5, 135, 137
Administration of the Religion of Islam Enactment (Perlis) 2006	135, 137
Federal Constitution	2, 5, 134, 136, 139, 185
<i>Kaedah-Kaedah Wakaf</i> (Johor) 1983	5, 6, 135, 138, 154, 167, 168, 175, 183, 203, 205, 206, 298
Council of Religion of Islam and Malay Custom, Kelantan Enactment 1994	4, 135, 136
Law of <i>Waqf</i> Egypt 1946	101, 167, 168, 175

Majlis Islam Sarawak Ordinance 2001	135, 138, 153
Majlis Ugama Islam Negeri Sabah Enactment 2004	135
National Land Code (Act No. 56 of 1965)/National Land Code 1965	168, 183
<i>Wakaf</i> (Negeri Sembilan) Enactment 2005	5, 135
<i>Wakaf</i> (State of Sabah) Enactment 2018	5, 135
<i>Wakaf</i> (Selangor) Enactment 2015	5, 135
<i>Wakaf</i> (State of Malacca) Enactment 2005	5, 135
<i>Wakaf</i> (Terengganu) Enactment 2016	3, 5, 135, 138, 139, 145-147, 151, 152, 154, 161, 182, 186, 187, 189, 191, 192, 195, 196, 214
<i>Wakaf</i> Enactment (Perak) 2015	3, 5, 140, 145-153, 161, 182, 186, 191, 214

LIST OF APPENDICES

Appendices	Pages
Appendix A : Publication	226
Appendix B : Interview	228
Appendix C : Proofreading	300

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LIST OF TRANSLITERATIONS

'ā	ا/ء
b	ب
t	ت
th	ث
j	ج
ḥ	ح
kh	خ
d	د
dz	ذ
r	ر
z	ز
s	س
sh	ش
ṣ	ص
ḍ	ض
ṭ	ط
ẓ	ظ
ʿ	ع
gh	غ
f	ف
q	ق
k	ك
l	ل
m	م
n	ن
u/w	و
h	ه
y/i	ي

LIST OF ABBREVIATIONS

et al;	and others
JKSM	<i>Jabatan Kehakiman Syariah Malaysia</i> /Department of Syariah Judiciary Malaysia
R.A	<i>Raḍiya Allahu ʿanhu</i>
S.A.W	<i>Ṣallahu ʿalaihi wa Sallam</i>
SIRC	State Islamic Religious Council
S.W.T	<i>Subḥānahu wa Taʿālā</i>
n.d.	no date
no.	number
pp.	pages
vol.	volume