CHAPTER 3

TEMPORARY WAQF IMPLEMENTATION AND PERCEPTION IN THE SELECTED STATES IN MALAYSIA

In the second chapter of this research, the concept of *waqf* and temporary *waqf* are explained from the traditional and modern Islamic scholar perspectives. Analysis was conducted on the views of Islamic scholars from four prominent *madzhab* and few modern Islamic scholars such as Ab Rahman and Amanullah (2016a), Al-Maiman (2009), Al-Rifāᶜi (2006), and Qahf (2000), regarding the implementation of temporary *waqf*, which could conclude that the absolute view of Mālikī schools allows the *waqf* to be practised either temporarily or perpetually as per the donor's wish. In this chapter, the researcher discusses the implementation of temporary *waqf* in the selected states in Malaysia: Terengganu, Penang, and Perak. The discussion includes (1) the overview of the *waqf* establishment and management in Malaysia, (2) the statutory provisions and the fatwas relating to temporary *waqf* implementation in the selected states, (3) the *waqf* issues in the selected states, (4) the interview data analysis, (5) challenges to implement the temporary *waqf* in these selected states, and (6) the *maṣlaḥah* of temporary *waqf* in the development of *waqf* in Malaysia.

3.1. Overview of *Waqf* Establishment and Management in the Selected States in Malaysia

The advent of Islam in *Tanah Melayu* (Malaysia) was recorded when few artefacts were found, which include *Batu Bersurat Terengganu*, the text of *Hukum Kanun Melaka*, and the book of *ᶜAqā'id Al-Nafāsī*. These three artefacts were considered when the Islamic law was implemented in the community in the era of the advent of Islam in *Tanah Melayu* (Abdul Rahim et al., 2010). The Islamic teaching was believed to be disseminated by the Arab Muslim traders in the 10^{th} century. It is one of the factors of the application of the trial of *waqf* in *Tanah Melayu*. One of the earliest *waqf* implemented in the 19^{th} century is the *waqf* by Sultan Umar in Terengganu with the purpose to spread knowledge and nourish education to the society and public (Yaacob, 2013).

In the early implementation of *waqf* in *Tanah Melayu*, all the *waqf* activities practised by the Muslims were not recorded as they are in the current times. The Muslims who wish to perform *waqf* will approach the head of the village, who is also known as *Penghulu.* This situation indicates that the *Penghulu* in that era is the sole trustee of the *waqf* property. Provided that the management by the *Penghulu* of the *waqf* properties is not well documented, several problems in managing the *waqf* would occur during the *Penghulu*'s passing. At this point, the descendants of the heirs of the *Penghulu* are not informed that some of the property under the supervision of the late *Penghulu* is the *waqf* property. In this scenario, the descendants and the heirs of the *Penghulu* will consider all of the property left by the *Penghulu* private property or inheritance property (Yaacob, 2013). However, there is proof in any written documents on the *waqf* establishment before the 19^{th} century, as previously mentioned. However Nasution (2002) highlighted that two mosques had been built on the *waqf* land before the 19^{th} century in Penang. The first mosque established in 1801 on a sizeable portion of land in George Town is known as *Kapitan Keling* Mosque and was managed by the descendant of Cauder Mohudeen Maicar, Captain of Chulia. The second mosque is *Lebuh Acheh* Malay Mosque, which was built in 1808 and established by Tengku Syed

Hussain Al-Idid. Both of these mosques are recorded as among the earliest *waqf* in Malaysia.

Between 1957 and 1963, Tuanku Abdul Rahman Putra, the first Prime Minister of *Tanah Melayu*, advocated the need to combine the colonised states in Peninsular Malaysia and Borneo into a new independent Federation of Malaysia (Farid, 2012). According to the National Archives of Malaysia's official portal, the Federation of Malaysia was established on 16 September 1963. The Federal Constitution is the supreme law in the hierarchy of the legal system in Malaysia that has been applied until currently. Although most of the regulations that govern the Malaysian citizen are regulated in the Federal Constitution, all the issues about Islamic law are under state jurisdiction. Based on the List II-State List of the Ninth Schedule of the Federal Constitution, the following statement is presented:

> "*Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom*" (Federal Constitution, 2019).

Based on the provision above, all Islamic law matters including the law of succession, family law, the status of the legitimacy of the child, and charitable activities are under the state's jurisdiction. This condition indicates that each state and the Federal Territories have their respective provision that governs all Islamic matters, which include the management and the regulation of *waqf* in each state, as per the following table:

Table 1*:* The *waqf* provision of each state and Federal Territories in Malaysia.

Num	States	Provision
1	Kelantan	I. Council of Religion of Islam and Malay Custom, Kelantan Enactment 1994 (Section 61-66).
2	Terengganu	I. *Wakaf* (Terengganu) Enactment 2016. II. Administration of Islamic Religious Affairs (Terengganu) Enactment 2001 (Section 63-69)
3	Pahang	I. Administration of Islamic Law Enactment (Pahang) 1991 (Section 67-81).
4	Perak	I. *Wakaf* Enactment (Perak) 2015. II. Administration of the Religion of Islam (Perak) Enactment 2004 (Section 78-84).
5	Kedah	I. Administration of Islamic Law (Kedah Darul Aman) Enactment 2008 (Section 52-58).
6	Perlis	I. Administration of the Religion of Islam Enactment (Perlis) 2006 (Section 89-95).
7	Penang	I. Administration of the Religion of Islam (State of Penang) Enactment 2004 (Section 89-95).
8	Selangor	I. *Wakaf* (Selangor) Enactment 2015. II. Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Section 89-95).
9	Melaka	I. *Wakaf* (State of Malacca) Enactment 2005. II. Administration of the Religion of Islam (State of Malacca) Enactment 2002 (Section 77-83).
10	Johor	I. *Kaedah-Kaedah Wakaf* (Johor) 1983. II. Administration of the Religion of Islam (State of Johor) Enactment 2003 (Section 89-95).
11	Negeri Sembilan	I. *Wakaf* (Negeri Sembilan) Enactment 2005. II. Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003 (Section 89-85).
12	Sabah	I. *Wakaf* (State of Sabah) Enactment 2018. II. Majlis Ugama Islam Negeri Sabah Enactment 2004 (Section 51-57).
13	Sarawak	I. Majlis Islam Sarawak Ordinance 2001 (Section 51-54).

14	Federal Territories	I. Administration of Islamic Law (Federal Territories) Act 1993 (Section 60-71).

Sources:http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BM/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang , retrived May 27, 2022.

It could be seen from Table 1 that seven states employ particular *waqf* enactment to manage the *waqf* practice, namely Johor, Melaka, Selangor, Perak, Negeri Sembilan, Sabah, and Terengganu. The other seven states still regulate all the *waqf* matters through the State Administration of Islamic Law Enactment/Act, namely Kelantan, Pahang, Kedah, Perlis, Penang, Sarawak, and Federal Territories. Section 74 (1) of the Federal Constitution states that the Legislature of the State has the authority to implement any laws as shown in the following statement by Ninth Schedule:

> *"Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List."* (Federal Constitution, 2019).

Given that *waqf* is under state jurisdiction, all the matters related to the regulation, administration, management, and development of *waqf* properties are under the authority of the State Islamic Religious Council (SIRC), or known as *Majlis Agama Islam Negeri* (MAIN). Afendi, Rani, and Aziz (2010) stated in their study that the State Islamic Religious Council is the sole trustee of all types of *waqf* properties, which could be either specific or general *waqf* as per the statement by the State Administration of Islamic Law Enactment. For example, it is highlighted in Section 20 of the Council of Religion of Islam and Malay Custom, Kelantan Enactment 1994 and Section 89 of Administration of the Religion of Islam (State of Penang) Enactment 2004 that:

> *"Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting the same, the Majlis shall be the sole trustee of all wakaf, whether wakaf 'am or wakaf khas, of all nazar 'am, and of all trusts of every description*

creating any charitable trust for the support and promotion of the Islamic religion or for the benefit of Muslims in accordance with Hukum Shara'".

This clause establishes the SIRC as the exclusive trustee of all *waqf* in each state. Mohd Afendi and Asmah (2010) defended the provision, stating that appointing MAIN as the sole trustee of the *waqf* property secures its administration and efficiency and generates *waqf* to distribute its benefits to the beneficiaries specified by the donors in the *waqf* contract.

In Malaysia, all the matters related to Islamic law including *waqf* in each state follow the Islamic jurisprudence of Shāfiᶜiy schools except for Perlis. The following statement is extracted from Section 54 (1) of the Administration of the Religion of Islam Enactment (Perlis) 2006:

> "*The fatwa Committee shall follow the Al-Quran and or Sunnah Rasulullah Sallallahualaihi Wassalam*".

It was argued that the state of Perlis does not follow any of the four prominent Islamic schools in regulating Islamic law matters. In contrast, the other states highlighted that the *fatwas* or any issues related to Islamic law must be referred to as the absolute opinion of the Shāfiᶜiy schools. For instance, in Section 54 (1) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 shows the following statement:

> "*The Fatwa Committee shall ordinarily follow qaul muktamad (the accepted views) of the Mazhab Syafie*".

It was argued by the researchers that most Islamic law matters applied in Selangor were subject to the *qaul muᶜtamad* of the Shāfiᶜiy schools. This view also includes all the issues related to the *waqf*. As discussed in the previous chapter, the majority of the Islamic scholars, Ḥanafī schools, Shāfiᶜiy schools, and Ḥanbalī schools, stated that the *waqf* shall be valid only if the donor declares it as perpetual. Thus, most of the states in

Malaysia applied *waqf* in perpetuity as it refers to the absolute opinion of Shāfiᶜiy schools. However, certain states allow the application of temporary *waqf*, such as Johor, Terengganu, Sarawak, and federal Territories based on their respective enactment/act as follows:

Table 2: Temporary *waqf* provision in Johor, Sarawak, Terengganu, and Federal Territories.

Num	Enactment/Act	Provision
1	Section 17 of *Kaedah-Kaedah Wakaf* (Johor) 1983.	*"Wakaf masjid" and waqf for the purpose of mosque shall be perpetual and waqf other than mosque or for the purpose of mosque and waqf other than "wakaf ahli" shall be perpetual or temporary, and if the waqf unbinds it shall be perpetual or "wakaf ahli" shall be temporary and not exceeding 60 years from the date of the waqif's death or two generations not including waqif."*
2	Section 2 of Majlis Islam Sarawak Ordinance 2001	*""wakaf khas" means a dedication in perpetuity, or for a limited period, of the capital of property for religious or charitable purposes recognized by Islamic Law and the property so dedicated, the benefit and income of the property being given to specified persons or for purposes prescribed in the wakaf;"*
3	Section 18 (1) of *Wakaf* (Terengganu) Enactment 2016.	*"A waqif may create a wakaf irsod, wakaf muabbad, wakaf muaqqat, wakaf musya'or wakaf musytarak on any or all of his property."*
4	Section 2 of Administration of Islamic Law (Federal Territories) Act 1993.	*""wakaf khas" means a dedication in perpetuity or for a limited period of the capital of property for religious or charitable purposes recognized by Islamic Law, and the property so dedicated, the income of the property being paid to persons or for purposes prescribed in the wakaf."*

Sources:http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BM/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang , retrived May 27, 2022.

Based on Table 2, it was analysed that only Johor specified the property that could be endowed temporarily and the permissible duration to declare the *waqf* temporarily, while Sarawak and Federal Territories only allowed temporary *waqf* application on the *al-waqf al-khāṣ*. Discussion is made on the application of temporary *waqf* in Terengganu as it has been highlighted in the respective *waqf* enactment as well as Perak and Penang although temporaray *waqf* is not applied in their respective enactments.

3.2. Statutory Provision Relating to *Waqf* in the Selected States

An overview of *waqf* management and administration in Malaysia was presented in the previous section. Based on the previous discussion before, it is known that the management of *waqf* in Malaysia is under state jurisdiction as presented in the Ninth Schedule of the Federal Constitution. All the *waqf* properties are under the administration of the State Islamic Religious Council (SIRC). In this topic, the focus is placed on the discussion on the implementation of existing *waqf* and temporary *waqf* in the three states, namely Terengganu, Perak, and Penang.

In Terengganu, all the *waqf* properties are administer by the authority of *Majlis Agama Islam Dan Adat Melayu Terengganu*, which is known as MAIDAM. Historically, MAIDAM was established in 1946 to manage all the matters related to Islamic law and development of Muslim communities in Terengganu and to assist and advise *Sultan Terengganu* regarding Islamic law matters (Nadiah, Hairunnizam, & Sanep, 2015). To ensure that MAIDAM manages the *waqf* properties systematically, two respective enactments are applied, namely (1) Administration of Islamic Religious Affairs (Terengganu) Enactment 2001 and (2) *Wakaf* (Terengganu) Enactment 2016.

In Perak, all the matters related to the *waqf* administration and management are under the authority of the *Majlis Agama Islam dan Adat Melayu Perak*, which is known as MAIPk. Based on the official portal of MAIPk, *Majlis Agama Islam dan Adat Melayu*

Perak was formally established on 23 October 1946 during the reign of Shah Sultan Yussuf Izz. On the 1st of May 1952, the establishment of the law related to the administration of Islamic religious affairs and Malay custom in Perak was officially approved. In 1965, the law was revised and replaced with the Islamic Religious Administration Law in 1965. The replacement of the law was made again with the Administration of the Religion of Islam Enactment 1992 in January 1993. Following that, the enacted law was replaced with the Administration of the Religion of Islam Enactment (Perak) 2004 to form a uniformity throughout Malaysia. All the matters associated with Islamic law including *waqf* were included in the enactment. In 2015, the MAIPk established a specific enactment that governs all the issues related to *waqf*, which is *Wakaf* Enactment (Perak) 2015. Besides, the MAIPk established Wakaf Perak Ar-Ridzuan in the conference held on 18 December 2015 and provided the authority to Wakaf Perak Ar-Ridzuan to manage the administration and the development of *waqf* in the state of Perak based on the provision provided in the *Wakaf* (Perak) Enactment 2015 (Fidlizan et al., 2019).

In the state of Penang, the authority that manages and administers all the *waqf* matters is under the *Majlis Agama Islam Pulau Pinang*, which is known as MAINPP. According to the official portal of MAINPP, *Majlis Agama Islam Pulau Pinang* was established on 15 April 1959 and approved by Penang State Assembly. All the *waqf* matters are govern by Section 89 to 95 of the Administration of the Religion of Islam (State of Penang) Enactment 2004. There is no specific enactment provided in regulating all the *waqf* matters as presented in Terengganu and Perak. However, the oldest *waqf* in Malaysia was recorded in Penang as mentioned by the researcher in the previous topic of this chapter. Besides, many notable *waqf* issues are present, such as the *waqf* of *Masjid Shaikh Eusoff* and the *waqf* of Seetee Aisah, which could be discussed by researchers to gain firm information regarding the existing *waqf* implementation in Penang and relate it to the application of temporary *waqf*.

In this topic, the discussion is made on the implementation of *waqf* according to the respective enactment applied in the selected states. Focus is placed on the discussion of the four sub-topics: (1) the *madzhab* to be followed in *fatwas* and Islamic law matters; (2) the definition of *waqf*; (3) the types of *waqf*, and; (4) *waqf* provision: perpetual and temporary. The discussion of the following *madzhab* is made to decide on the *fatwa* as it could bind the court decision, which is similar to the enactment. The researcher focused the discussion on the other three sub-topics, considering that the term temporary *waqf* could usually be found in the definition of *waqf* and the types of *waqf*. Besides, the researcher explored the *fatwas* that appear to be related to temporary *waqf*.

3.2.1. The *Madzhab* to be Followed in Fatwas and Islamic Law Matters

The Fatwas and all the matters related to Islamic Law in each state in Malaysia except for Perlis follow the absolute opinion of Shāfiᶜiy schools. In Terengganu, Perak, and Penang, the provision associated with these matters can be referred to in their respective stipulation as follows:

Table 3: The provisions of followed *madzhab* in issuing the fatwas in the selected states.

Num.	Enactment	Provision
1.	Section 54 (1) of the Administration of Islamic Religious Affairs (Terengganu) Enactment 2001	*"In issuing any fatwa under section 50, or certifying an opinion under section 53, the Fatwa Committee shall ordinarily follow the accepted views (qaul muktamad) of the Mazhab Shafie."*

2.	Section 43 (1) of the Administration of the Religion of Islam (Perak) Enactment 2004	*"In issuing any fatwa under section 37, or certifying an opinion under section 42, the Fatwa Committee shall ordinarily follow the qaul muktamad (follow the accepted views) of the Mazhab Shafie."*
3.	Section 54 (1) of the Administration of the Religion of Islam (State of Penang) Enactment 2004	*"In issuing any fatwa under section 48, or certifying an opinion under section 53, the Fatwa Committee shall ordinarily follow the qaul muktamad (accepted views) of the Mazhab Shafie."*

Sources:http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BM/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang , retrived May 27, 2022.

Based on Table 3, it was found that the Fatwas and the Islamic law matters in Terengganu, Perak, and Penang follow the accepted views of Shāfiᶜiy schools recorded in the *ummahāt al-kutub* of Shāfiᶜiy schools. This situation could be seen in the daily life of Muslim practice in Malaysia, especially in the matters of worship such as the rule of performing *ṣalah*, fasting during Ramaḍan, and the practice of existing *waqf*.

Certain provisions are offered in the respective enactment of the selected states, which indicate the permission to follow other *madzhab* accepted views. The provisions are as follows:

Table 4: The provision that permits the Fatwa Committee to decide the fatwa based on the other madzhab views.

Num.	Enactment	Provision
1	Section 54 (2) and (3) of the Administration of Islamic Religious Affairs (Terengganu) Enactment 2001	*(2) If the Fatwa Committee is of the opinion that following the qaul muktamad of the Mazhab Syafii will lead to a situation which is repugnant to public interest, the Fatwa Committee may; follow the qaul muktamad of the Mazhab Hanafi, Maliki or Hambali.* *(3) If the Fatwa Committee is of the opinion that none of the qaul muktamad of the four Mazhabs may be followed without leading to a situation which is repugnant to public interest, the Fatwa Committee may make the fatwa according to*

		ijtihad without being bound by the qaul muktamad of any of the four Mazhabs.
2	Section 43 (2) and (3) of the Administration of the Religion of Islam (Perak) Enactment 2004	*(2) If the Fatwa Committee is of the opinion that following the qaul muktamad of the Mazhab Shafie will lead to a situation which is repugnant to public interest, the Fatwa Committee follow the qaul muktamad of the Mazhab Hanafi, Maliki or Hambali.* *(3) If the fatwa Committee is of the opinion that none of the qaul muktamad of the four Mazhabs may be followed without leading to a situation which is repugnant to public interest, the Fatwa Committee may make the fatwa according to ijtihad without being bound by the qaul muktamad of any of the four Mazhabs.*
3	Section 54 (1) of the Administration of the Religion of Islam (State of Penang) Enactment 2004	*(2) If the Fatwa Committee is of the opinion that following the qaul muktamad of the Mazhab Syafie will lead to a situation which is repugnant to public interest, the Fatwa Committee may follow the qaul muktamad of the Mazhab Hanafi, Maliki or Hanbali.* *(3) If the Fatwa Committee is of the opinion that none of the qaul muktamad of the four Mazhabs may be followed without leading to a situation which is repugnant to public interest, the fatwa Committee may make the Fatwa according to ijtihad without being bound by the qaul muktamad of any of the four Mazhabs.*

Sources:http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BM/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang , retrived May 27, 2022.

Based on Table 4, it was concluded that the State Fatwa Committee is allowed to refer to and decide the *fatwa* based on the opinion of another prominent *madzhab*. However, the enactment emphasize that the State Fatwa Committee are allow to choose the view of the other *madzhab* in the *fatwa* if the opinion of the Shāfiᶜiy schools could not realise the public interest and needs, such as the method that was applied in Malaysia to pay *zakāh al-fiṭrah*. According to the opinion of Shāfiᶜiy schools, *zakāh al-fiṭrah* must be paid through the staple food (*qūt*) for the majority of the citizen in the country. However, it would invalid if it is paid in value or cash. However, the *fatwa* has allowed the Muslims in Malaysia to pay *zakāh al-fiṭrah* through the value of the staple food (*qūt*), which is in the cash form due to the interest and acknowledgment of the current situation. The Fatwa Committee decided on this *fatwa* based on the opinion of Ḥanafī schools.

The Fatwa Committee has the authority to decide the *fatwa* through their independent reasoning (*ijtihād*) if there is no opinion from the four prominent *madzhab* that could realise the public interest and current needs. For instance, according to the official website of JAKIM, the 80th conference of *Muzakarah* of the National Fatwa Committee, which was held from 1 to 3 February 2008, determined that the investment in *Amanah Saham Berhad* (ASB) and *Amanah Saham Nasional* (ASN), which includes the dividends or bonus earned from both of the unit trust, is allowed. Therefore, it is indicated that the Fatwa Committee is allowed to decide the fatwa based on independent reasoning if there is no opinion from the four prominent *madzhab* that is suitable to be applied.

3.2.2. The Definition of *Waqf*

Considering that each state presents its stipulation as described by the researcher, it is crucial to analyse the *waqf* definition in Terengganu, Perak, and Penang based on their respective enactment. The definitions of *waqf* in these three states are as follows:

Table 5: *Waqf* definitions in Terengganu, Perak, and Penang in their respective enactment.

Num	Enactment	*Waqf* Definition
1	Section 2 of the *Wakaf* (Terengganu) Enactment 2016.	*"wakaf" means—* *(a) to surrender the title of any property from which its benefit, usufruct or interest may be enjoyed;* *(b) to surrender the benefit, usufruct or interest which may be enjoyed from any property;* *or (c) to contribute the expertise and services from which its benefit or interest may be enjoyed,* *whether as wakaf am or wakaf khas, pursuant to Hukum Syarak*
2	Section 2 of the *Wakaf* Enactment (Perak) 2015.	*"wakaf" means any property from which its usufruct or benefit or both may be enjoyed for any charitable purpose whether as wakaf am or wakaf khas according to Hukum Syarak,*
3	Section 2 of the Administration of the Religion of Islam (State of Penang) Enactment 2004	*"wakaf" means any property from which its benefit or interest may be enjoyed for any charitable purpose whether as wakaf am or wakaf khas in accordance with Hukum Syarak,*

Sources:http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BM/Portal%20E-Syariah%20Carian%20Bahan%20Rujukan/Portal%20E-Syariah%20Undang-Undang , retrived May 27, 2022.

Based on Table 5, it was found that the *Wakaf* Enactment (Perak) 2015 and Administration of the Religion of Islam (State of Penang) Enactment 2004 had a similar *waqf* definition. The *waqf* definition from both of the enactments indicates that *waqf* is a form of charity through the dedication of any property that could benefit the beneficiary in line with Islamic law. The phrase "*any property from which its benefit or interest*" shows that all types of property are either movable or immovable. Besides, as long as they are valuable and beneficial, the property is valid to be declared as *waqf*.

Besides, the phrase "*any charitable purpose whether as wakaf am or wakaf khas in accordance with Hukum Syarak*" shows that the endowed property must not be against the parameters determined by the Islamic law, which is either for *al-waqf al-ᶜām* (*waqf* for general beneficiaries and purposes) or *al-waqf al-khas* such as *waqf* for schools, Islamic institutions, and hospital. Based on the researcher's viewpoint, the *waqf* definition presented in the *Wakaf* Enactment (Perak) 2015 and Administration of the Religion of Islam (State of Penang) Enactment 2004 is similar to the definition presented by the Shāfiᶜiy schools, which is as follows:

> *"The detention on the property which can benefits the mankind by terminating the ownership of the founder and contributes the benefits for the good purpose as well as to worship Allah S.W.T."* (Al-Shirbīnī, 1997).

This definition was presented by Imam Al-Nawawi as recorded by Al-Shirbīnī (1997) in *Mughniy Al-Muḥtāj ilā Maᶜrifah Maᶜāni Alfāz Al-Minhāj*. However, it was found that the *waqf* definition in the both enactments did not mention the phrase *"by terminating the ownership of the founder"*. Thus, the researcher opined that the *waqf* definition presented in both enactments is not precise, as stated by the Islamic scholars of Shāfiᶜiy schools.

In Terengganu, the *waqf* definition stated in section 2 of the *Wakaf* (Terengganu) Enactment 2016 is different from the other two states, as shown in Table 5. According to the aforementioned definition, it was concluded that the *waqf* definition in section 2 of the *Wakaf* (Terengganu) Enactment 2016 includes an additional criterion for endowment, namely the validity of the property advantages to be regarded as *waqf*. This argument indicates that the *waqf* in Terengganu is not only limited to the physical property, which comprises immovable and movable assets. Besides, the benefits and the usufruct of the asset that can benefit humans are also considered the *waqf* property, while the expertise and services from any experts and volunteers shall be valid to be considered as *waqf*. From the researcher's point of view, this definition is similar to the *waqf* definition of Mālikī schools by Ibn ᶜAbd Al-Salām, which is as follows:

> *"Contributing the benefits from the property owned by the founder to the needy although by tenancy or lease based on the period declared al-wāqif* (Al-Dardir, 2007)*"*

Based on this definition, it was argued that the *waqf* in the Mālikī schools is not only limited to the full ownership and its physical endowment. The donor is also allowed to endow the benefits and the usufruct of the property although it is owned through lease or tenancy contract and any types of benefits such as the expertise and services.

Based on the discussion above, it was concluded that the *waqf* definition stated in *Wakaf* Enactment (Perak) 2015 and Administration of the Religion of Islam (State of Penang) Enactment 2004 is near the definition of Shāfiᶜiy schools. It is indicated that the *waqf* in both states is only permissible to be practised perpetually as the Shāfiᶜiy schools only allow *waqf* in perpetuity. Meanwhile, the applied *waqf* definition in *Wakaf* (Terengganu) Enactment 2016 appears to be similar to the *waqf* definition from the Mālikī schools, as previously discussed. Therefore, it is indicated that the types of the property accepted for *waqf* are more extensive.

3.2.3. The Types of *Waqf*

In the chapter two, a discussion was made on the matters related to the types of *waqf* based on the previous Islamic scholars' perspectives. In the traditional Islamic jurisprudence books, most of the previous Islamic scholars have categorised *waqf* into two categories, namely philanthropy *waqf* (*al-waqf al-khairiy*) and family *waqf* (*al-*

waqf al-dzurriy) (Al-Dardir, 2007; Al-Kashnawi, 1986; Al-Nawawi, 2008; Al-Shirbīnī, 2019). Various types of *waqf* have been implemented in the selected states' separate enactments. In Penang, two types of *waqf* are stated in their respective stipulation. According to Section 2 of the Administration of the Religion of Islam (State of Penang) Enactment 2004, the types of *waqf* that have been recognised in the enactment are *wakaf am* and *wakaf khas*, as shown in the following statement:

> *"Wakaf am" means any wakaf that is created for general charitable purpose according to Hukum Syarak; "wakaf khas" means a wakaf that is created for specific charitable purpose according to Hukum Syarak"*

Based on this provision, the researcher opined that the categories of *waqf* stated in Administration of the Religion of Islam (State of Penang) Enactment 2004 are general. In the stipulation, the interpretation of *wakaf am* indicates that the donor endows his property for general purposes and beneficiaries. For example, the donor endows his garden to be utilised by any individuals in need. In contrast, *wakaf khas* in the stipulation denotes any *waqf* declared by the donor for particular purposes and beneficiaries. The examples of this condition include the donor endowing his house to his children, his land to build a mosque, or many buildings to build schools for the orphanage. Besides, the researcher opined that *al-waqf al-dzurri* is categorised under *wakaf khas* according to the Administration of the Religion of Islam (State of Penang) Enactment 2004.

In Perak, *"wakaf am"* and *"wakaf khas"* are stated in Section 2 of the *Wakaf* Enactment (Perak) 2015. The definition in the enactment is identical to the definition in the Administration of the Religion of Islam (State of Penang) Enactment 2004, as discussed previously. However, the state of Perak has also included additional types of *waqf* in the *Wakaf* Enactment (Perak) 2015. Section 10 (1) of the *Wakaf* Enactment (Perak) 2015 presents the following statement:

> *"A waqif may create wakaf ahli, irsad, musyak, musytarak, wakaf shares or wakaf takliq to his property."*

According to this provision, it was found that the state of Perak has mentioned *"wakaf ahli"*, which indicates its respective definition compared to Penang. According to Section 10 (2) of *Wakaf* Enactment (Perak) 2015, *"wakaf ahli"* could be defined as *"a wakaf dedicated by the waqif to his family or a specific person or persons for the purpose of charity"*. Based on this definition, it was argued that family *waqf* or *"wakaf ahli"* is a *waqf* declared for the donor's family members or relatives, or any specific individuals. This definition appears to be parallel to the definition provided by Ibn Al-Humam (2003) in *Sharḥ Fatḥ Al-Qadīr* as described in the second chapter of the topic of Family *Waqf*. However, the definition by Ibn Al-Humām (2003) stated that the *waqf* declared for the donor himself is also considered family *waqf*. As previously mentioned, the family *waqf* factor is not included nor applied in Administration of the Religion of Islam (State of Penang) Enactment 2004.

"Wakaf irsad" could be defined as *"a property endowed by the State Authority, corporation, institution, organisation or other bodies according to Hukum Syarak"*. Al-Zuhaili (1984) stated in *Al-Fiqh Al-Islāmiy wa Adillatuh* that *waqf al-irṣād* is a type of *waqf* established by the government for the sake of public interest, which includes endowing a land to build schools or hospitals. In the second chapter, the researcher has categorised *waqf al-irṣād* under the types of *waqf* based on the donors. Given that *waqf al-irṣād* is considered a type of *waqf*, Al-Shirbīnī Al-Khatīb (1997) stated in *Mughniy Al-Muḥtāj ilā Maᶜrifah Maᶜāni Alfāz Al-Minhāj* that the government is a representative of the Muslims and *al-wāqif*. Thus, it is valid for the government to endow the property

from *Baitulmal* to realise the public interest either for general or particular purposes as long as it complies to the Islamic law.

The other type of *waqf* mentioned in *Wakaf* Enactment (Perak) 2015 is *"wakaf musyak"*. Based on the Perak *waqf* stipulation, this *waqf* is defined as *"to endow any rights of any property which is jointly owned and cannot be divided"*. For example, this type of *waqf* commonly occurs upon an individual's desire to endow a land owned by two parties or more. In this case, Islamic scholars showed different opinions on stating the validity to practise this *waqf*. As discussed in the first chapter of the topic of *al-waqf al-mushā*ᶜ, the researcher adhered to the opinion of the majority Islamic scholars and the Shāfiᶜiy schools. Based on the researcher's point of view, this type of *waqf* is categorised under the types of *waqf* from the perspective of *waqf* property.

"Wakaf musytarak" is stated in *Wakaf* Enactment (Perak) 2015, which is defined as the *"consolidation of several waqf including any waqf created by way of istibdal and waqf shares"*. The previous Islamic scholars stated that *al-waqf al-mushtarak* is a *waqf* established by the donor and specifies the benefits of the *waqf* property into two types of beneficiaries. For example, half of the benefits of the *waqf* property contribute to the category of *al-khairiy*, such as the poor and the needy, while the other half of the *waqf* benefits would be channelled to the *al-ahliy* categories, such as family members and any particular individuals (Al-Dusuqi, 1934; Al-Ramli, 2002; Ibn ᶜAbidīn, 2003). This type of *waqf* has been practised since the early advent of Islam through the practice of the Companions of Prophet Muhammad S.A.W, such as the *waqf* by Sayyidina ᶜUmar R.A (Al-Zuhaili, 1984; Qahf, 2000).

In *Wakaf* Enactment (Perak) 2015, *"wakaf shares"* and *"wakaf takliq"* are considered the types of *waqf* applied in Perak. According to the enactment, *"wakaf* *shares"* is known as *"to endow paid-up share held in any company or business or trust shares or other financial instruments"*. This definition indicates that cash *waqf* is allowed to be applied in Perak. An interview was conducted on 10 January 2022 with Dr Luqman Abdul Mutalib, a member of the Fatwa Committee of the state of Perak. As a representative from Perak Mufti Department, he stated that cash *waqf* is permissible to be practised. However, the collected cash *waqf* should be converted into a tangible property or a matter that benefits the community. Meanwhile, *"wakaf takliq"* in the stipulation is *"a wakaf which only comes into effect upon conditions determined by the waqif are fulfilled"*, which indicates that *waqf* will be enforced when all the donor's conditions have been fulfilled. In section 9 (2) of the *Wakaf* Enactment (Perak) 2015, it is stated that if the donor determines that the *waqf* is effective after his death, the *waqf* shall be valid only for one-third of his property as it is regarded as will (*wasiyyah*). However, Section 15 of the *Wakaf* Enactment (Perak) 2015 elaborates that *"wakaf takliq"* shall be void and revoked if (a) the condition determined by the donor is contradicting with *syara*ᶜ and any written law, (b) the condition stipulated by the donor does not occur, or (c) any of the condition is made for self-benefit and will harm the other beneficiaries.

In Terengganu, the type of *waqf* stated in *Wakaf* (Terengganu) Enactment 2016 appears to be similar to Perak and Penang. Section 14 of the *Wakaf* (Terengganu) Enactment 2016 mentioned that:

> *"The types of wakaf which may be created under this Enactment are;*
> *(a) wakaf am, and (b) wakaf khas."*

Based on the researcher's point of view, these types of *waqf* have been highlighted in the *Wakaf* Enactment (Perak) 2015 and Administration of the Religion of Islam (State of Penang) Enactment 2004, as previously discussed in the research. However, additional types of *waqf* have been highlighted in the Terengganu *waqf* enactment. In Section 2 of the *Wakaf* (Terengganu) Enactment 2016, cash *waqf* is defined as *"any cash contribution, gold value or those similar thereto from any person for any purpose of wakaf"*, which indicates that the state of Terengganu has allowed the application of cash *waqf*. Based on the researcher's point of view, cash *waqf* is categorised under the types of *waqf* from the perspective of property (*al-mauqūf*). Section 18 (1) of the *Wakaf* (Terengganu) Enactment 2016 stated that:

> *"A waqif may create a wakaf irsod, wakaf muabbad, wakaf muaqqat, wakaf musya'or wakaf musytarak on any or all of his property."*

The description regarding *"wakaf irsod"*, *"wakaf musya'"*, and *"wakaf musytarak"* in the *Wakaf* (Terengganu) Enactment 2016 is similar to the Perak *waqf* stipulation. Thus, the researcher opined that it is unnecessary to make further discussion on the aforementioned types of *waqf*. However, it was found that the *Wakaf* (Terengganu) Enactment 2016 mentioned *"wakaf muabbad"* and *"wakaf muaqqat"*. Subsequently, the types of *waqf* will be extensively discussed in the next topic.

3.2.4. *Waqf* Provision: Perpetual and Temporary

Analysis was conducted on the enactment related to the *waqf* matters of the selected states. The temporary *waqf* was not implemented in these selected states except for Terengganu based on their respective *waqf* enactment. Although the application of *waqf* in the selected states is mostly allowed in perpetuity, there is no specific provision that clearly states the requirement to implement *waqf* solely in perpetuity. Following is the statement in Section 4 (2) of the *Wakaf* Enactment (Perak) 2015:

> *"A wakaf which has come into operation shall not be sold, transfered, given by way of hibah or inherited by any person."*

Based on the above statement, *waqf* property is not allowed to be sold, transferred, given away to others as *hibah*, or inherited. This phrase also indicates that the *waqf* is only permissible to be implemented in perpetuity. Furthermore, it was argued that this phrase is based on the prophetic traditions regarding the *waqf* of Sayyidina Umar R.A, which is followed by most Islamic scholars in the statement that *waqf* is only allowed to be practised in perpetuity (Al-Nawawi, 2008; Al-Zuhaili, 1984). However, there is no specific phrase or provision in the *Wakaf* Enactment (Perak) 2015 that specifically mentions that *waqf* is mandatory to be implemented perpetually.

The application of *waqf* based on *Wakaf* Enactment (Perak) 2015 similar to the *waqf* application in Penang based on the Administration of the Religion of Islam (State of Penang) Enactment 2004. Although the existing *waqf* implementation in Penang is only allowed in perpetuity, there is no specific provision or clause stated clearly on the requirement to solely practise the perpetual *waqf*. As previously stated by the researcher, the interpretation of *"wakaf am"* and *"wakaf khas"* based on Section 2 of the Administration of the Religion of Islam (State of Penang) Enactment 2004 solely highlights the purpose of the creation of *waqf*, which could be for general or particular purposes. In some states, it is highlighted that there is a type of *waqf* that could be declared in perpetuity and temporarily based on the donor's desire. Moreover, there is a type of *waqf* that is only allowed to be implemented perpetually. For example, the practice of *"wakaf khas"* in Sarawak is allowed to be implemented either in temporary or perpetuity, as stated in Section 2 of Majlis Islam Sarawak Ordinance 2001:

> *""wakaf khas" means a dedication in perpetuity, or for a limited period, of the capital of property for religious or charitable purposes recognized by Islamic Law and the property so dedicated, the benefit*

and income of the property being given to specified persons or for purposes prescribed in the wakaf;"

The provision above indicates that the donor could decide to declare the *waqf* either in perpetuity or for a specific period if the *waqf* is categorised under *"wakaf khas"*. This provision is in line with the Federal Territories based on Section 2 of the Administration of Islamic Law (Federal Territories) Act 1993, as described in the previous topic. Based on this provision, it was argued that Penang only defines *waqf* in general without clearly stating whether the *waqf* is only allowed in perpetuity or temporarily.

In Terengganu, the *waqf* could be applied either in perpetuity or temporary. Section 18 (1) of the *Wakaf* (Terengganu) Enactment 2016 states that the donor can declare the *waqf* either as *"wakaf muabbad"* or *"wakaf muaqqat"*. In Section 18 (2) (b) (c) of the *Wakaf* (Terengganu) Enactment 2016, *"wakaf muabbad"* and *"wakaf muaqqat"* is defined as follows:

"(b) "wakaf muabbad" means giving as wakaf in perpetuity;"
"(c) "wakaf muaqqat" means giving as wakaf for a certain period;"

Based on this provision, it was argued that *"wakaf muabbad"* can be known as a *waqf* that is not bound to any specific period. Therefore, if the donor declares the *waqf* as *"wakaf muabbad"*, it is not allowed to be bound to any particular time. The *waqf* will be perpetual and complies with the absolute opinion of Shāfiᶜiy schools as stated by Al-Shirbīnī (1997) in *Mughniy Al-Muḥtāj ilā Maᶜrifah Maᶜāni Alfāẓ Al-Minhāj*. Meanwhile, *"wakaf muaqqat"* can be perceived as a type of *waqf* that is bound with a specific period of time as specified by the donor in the *waqf* contract. However, the *"wakaf muaqqat"* stated in *Wakaf* (Terengganu) Enactment 2016 is excessively general. For instance, the application of temporary *waqf* in Johor based on the respective stipulation is precise, as stated in Section 17 of *Kaedah-Kaedah Wakaf* (Johor) 1983:

> *""Wakaf masjid" and waqf for the purpose of mosque shall be perpetual and waqf other than mosque or for the purpose of mosque and waqf other than "wakaf ahli" shall be perpetual or temporary, and if the waqf unbind it shall be perpetual or "wakaf ahli" shall be temporary and not exceeding 60 years from the date of the waqif's death or two generations not including waqif."*

Based on the provision stated, the *waqf* could be declared temporary if it is other purpose of *waqf* than mosque. The researcher also opined that *al-waqf al-khairiy* could be expressed either in perpetuity or temporarily, while *al-waqf al-dzurri* can only be declared temporary. The provision also highlights that all the *waqf* that is declared as temporary must not exceed 60 years or two generations without including the donor himself. From the researcher's point of view, the application of temporary *waqf* is parallel to the absolute opinion of Mālikī schools. However, the previous Islamic scholars did not specify the time limitation on the temporary *waqf*. This research highlighted the importance of revising the existing provision regarding the temporary *waqf* to be implemented systematically and minimising the risk of managing the temporary *waqf* enforcement.

3.3. Interview Data Analysis

In conducting this research, the qualitative research method was adopted due to its compatibility with the nature of this research, as mentioned by the researcher in the first chapter of this article. Saldana (2011) stated that qualitative research is a term that can be described as a way to study natural social life with various approaches. Taylor, Bogdan, and DeVault (2016) claimed that this method is commonly applied to research that aims to produce descriptive data. The data could be obtained through people's thoughts either in the form of written, spoken, and observable behaviour. Creswell and

Creswell (2018) stated that one of the characteristics of qualitative research includes multiple sources of data, such as interviews, observations, documents, and audiovisual information. In this research, interviews were conducted to gain data related to the temporary *waqf* implementation for the selected states. In the interview session, a few respondents were approached as the representatives from the State Islamic Religious Council and State Mufti Department, which are as follows:

Table 6*:* The respondents for the interview session.

Symbol	Respondent	Date/Time
IV1	Tuan Haji Yaacob bin Abdullah. Senior Assistant Secretary (*Wakaf dan Sumber Am*) *Mal* Management, *Majlis Agama Islam dan Adat Melayu Terengganu* (MAIDAM).	2 November 2021 8:50 am
IV2	Haji Talib bin Abdul Rahman. *Pegawai Penyelidik,* *Jabatan Mufti Negeri Terengganu.*	9 November 2021 10:00 am
IV3	Tuan Munawir bin Mohamed Noh. *Pegawai Tadbir,* Division of *Wakaf* and *Mal* Management and Development, *Majlis Agama Islam dan Adat Melayu Perak* (MAIPk).	4 January 2022 2:30 pm
IV4	Associate Professor Dr. Luqman Abdul Mutalib. Fatwa Committee of Perak, *Jabatan Mufti Negeri Perak.*	10 January 2022 2:30 pm
IV5	Tuan Haji Fakhruddin bin Abd Rahman. *Pegawai Tadbir,* Division of Property Development and *Wakaf* Property, *Majlis Agama Islam Pulau Pinang* (MAINPP).	12 October 2021 8:30 am

Sources: Author's declaration.

To arrange the interview session with the targeted respondent, the targeted SIRC and the State Mufti Department were targeted to make inquiries regarding the procedure to organise the interview sessions. As directed by the SIRC and the State Mufti Department, the application letter was distributed to the targeted respondents to notify and ask for their consent to organise the interview session and negotiate the date and time with the interviewees.

The interview session was conducted in the Malay language, considering that all the respondents were Malay native speakers. The researcher asserted that it is critical to separate the language barrier between the interviewees to obtain accurate information and a thorough comprehension of the research central theme. Creswell and Creswell (2018) mentioned that the qualitative interviews are valid to be conducted with participants face-to-face, through phone calls, or in focus group interviews. As the interview session was conducted during the outbreak of SARS-Cov-2, or known as COVID-19, all the interviews were held through phone calls and online platforms to replace face-to-face interviews such as ZOOM, Microsoft Teams, and Google Meet. All the interview sessions were conducted to gain crucial information and data for this research.

According to Daniel and Turner (2006), the qualitative interview design could be applied in three formats: (1) informal conversational interview; (2) general interview guide approach, and; (3) standardised open-ended interview. The standardised open-ended interview was performed to gain the respondents' data. According to Saldana (2011), the open-ended interview holds the potential to generate more than one-word responses from the participants, who are allowed to fully express their opinions, ideas, and experiences (Daniel & Turner, 2006). In this case, analysis was conducted on the data from the interview session held by the researcher from 12 October 2021 until 10 January 2022. The interview data were separated into three main themes, which are (1) the types of *waqf* and the applied *madzhab* as islamic legal sources in the states, (2) the application of temporary *waqf*, and (3) the principle of temporary *waqf* implementation. All of these themes will be discussed thoroughly in the next subtopic.

3.3.1. Part One: The Types of *Waqf* and The Applied *Madzhab* as Islamic Legal Sources in the Selected States

The researcher focused on the first theme of the interview session, specifically various types of question *waqf* that were applied in the selected states. Based on the previously discussed enactment, the types of *waqf* were divided into two types: a) *"wakaf am"* and b) *"wakaf khas"*. In the interview session, the researcher focused the question on the application of *"wakaf khairi khas"* and *"wakaf dzurri"*, to which the respondents gave the following answers:

Table 7: Interview data analysis.

Res.	*"Wakaf Khairi Khas"*	*"Wakaf Dzurri"*
IV 1	*"There are no issues on the "wakaf khairi khas". It is already implemented and practised in Terengganu."*	*"There is a problem in practising the "wakaf dzurri". The problem occurs when it comes to the management and enforcement stages. Thus, it is difficult for MAIDAM to endure and manage "wakaf dzurri".* *"If there is any person came to us to waaf their property as "wakaf dzurri", we will recommend for them to establish and declare the waqf as "wakaf khairi khas" or "wakaf khairi" for the mosque, or "wakaf khairi" which the benefits of the property can be contributed to the public.*

		"If we observe, there are many other countries that have not applied "wakaf dzurri" because it is hard to manage and has a lot of problems."
IV 2	*"The term that we used in MAIDAM is "wakaf khas". Thus, "wakaf khas" is existed and applied in Terengganu."* *"If the waqf has been specified and declared for a mosque, then the mauqūf is only allowed for a mosque. This is because it is subject to the well-known Islamic legal maxim which is "sharṭ al-wāqif ka al-naṣṣ al-shāriᶜ"."*	*"The establishment of the waqf depends on the desire and conditions determined by the donor. For instance, sometimes the practice of "wakaf dzurri" also can be known as "wakaf khas".* *"If the waqf is declared by the donor as "wakaf dzurri", the benefits of mauqūf are only be distributed to the donor's children or other specific individuals. The benefits of the property cannot be channelled to other parties or for other purposes."*
IV 3	*"Basically, the waqf assets in Perak have been classified into; firstly, cemetery, secondly is the worship house such as mosques and surau. The third is the Islamic religious schools. Other than that is the orphanage welfare centre, the folks house centre. All of these waqfs are considered "wakaf khas"".* *"There is about 4500 lot of waqf land were preserved for mosque, cemetery, schools, and so on".*	*""Wakaf Dzurri" is existed and has been recorded in the enactment. However, we in MAIPk are incapable enforcing and practising it. We have to pay attention to manage about 4500 lot of waqf land in Perak which is for the cemetery, mosque, schools, and so on".*
IV 4	*""Wakaf khairi khas" basically can be known as general waqf (al-waqf al-ᶜām) with a specific purpose."* *"In my opinion, basically waqf can be divided into two types which is "wakaf am" and "wakaf khas". If the waqf declared and categorised as "wakaf khairi khas", the waqf also will be considered as "wakaf khas", which means the waqf benefits will be contributed to the specific beneficiaries."*	*""Wakaf dzurri" can be categorised as "wakaf khas". Basically, when the waqf is declared as "wakaf dzurri", the property as well as the benefits of the property will be contributed to the donor's children, family members, and heirs.*
IV 5	*"Basically, there are two types of waqf that has been practised in Penang, which are "wakaf am" and "wakaf khas".*	*"In the matter of "wakaf dzurri", there is a case where the donor clearly stated that his heirs are the beneficiaries of the waqf."*

	"We in MAINPP will categorise the waqf as "wakaf khas" when the waqf is declared for any specific purposes by the donor." *"For an example, the establishment of waqf Seete Aishah in Penang. The Fatwa Committee of Penang has concluded that the waqf of Seete Aishah is considered "wakaf khas" because the donor has mentioned the desire and the purpose of waqf specifically.*	*"In 1896, there was a trust of waqf specified for the donor's heirs and family members to further their study. This waqf can be considered as "wakaf dzurri"."* *"In the matter of "wakaf dzurri", I want to refer to the case of waqf Seete Aishah. The contract stated that the waqf is for the maintenance of the mosque, the utilities of the mosque, and so on. The extra of the benefits of the waqf property will be contributed to the donor's low-income family members".*

Sources: Author's declaration.

Based on Table 7, the researcher could conclude that the practice of *waqf* in the selected states can be divided into two types, which are *"wakaf am"* and *"wakaf khas"* as stated in their respective stipulation. All the respondents shared similar views on the application of *"wakaf khairi khas"* or *"wakaf khas"*. It has been permissible and practised in the selected states until currently. Based on the table above, the respondents agreed that *"wakaf khairi khas"* is a type of *waqf* that is preserved for specific purposes and beneficiaries, as specified by the donor in the *waqf* contract. Although it has been applied in the selected states, it was found that State Islamic Religious Council faced difficulties in managing the *waqf* properties that are categorised under *"wakaf khairi khas"*. For example, IV 3 mentioned that MAIPk is not able to enforce and practise the *"wakaf dzurri"* at the moment due to their obligation to manage the existing *waqf* land that could be considered *"wakaf khairi khas"*, such as the *waqf* for land to build the mosque, schools, and cemetery. Given that the *"wakaf khairi khas"* is limited to specific purposes and beneficiaries as desired by the donor, it will narrow the opportunities for the SIRC to expand the potential of the *waqf* property for more significant advantages in the future. To illustrate, the SIRC is unable to develop and maintain some *waqf* lands in the manner anticipated by the donor due to the current situation and demands.

"Wakaf dzurri" was classified by some respondents as *"wakaf khas"*. As shown in the table above, IV 2 and IV 4 stated that *"wakaf dzurri"* could also be considered *"wakaf khas"* as the benefits of the *waqf* property could only be utilised by the donor's family members, children, and heirs. However, the application and the practice of *"wakaf dzurri"* are different in the selected states. In Penang, *"wakaf dzurri"* has been applied and practised, as stated by IV 5 in Table 7. The respondent clearly said that the application of *"wakaf dzurri"* in Penang has been recorded since 1896. Besides, the respondent mentioned that the practice *"wakaf dzurri"* could also be referred to in the case of *waqf* Seete Aishah when some of the benefits of the *waqf* property were allocated to the donor's low-income family members. However, the researcher opined that the establishment of *waqf* Seete Aishah can be categorised as *al-waqf al-mushtarak*, given that the benefits of the *waqf* properties are allocated for general welfare such as the maintenance of the mosque and for the use of low-income family members as mentioned by IV 5 in Table 7.

In Perak and Terengganu, the provision about *"wakaf dzurri"* has been highlighted in *Wakaf* Enactment (Perak) 2015 and *Wakaf* (Terengganu) Enactment 2016, as described in the previous topic. However, IV 1 and IV 3 stated that the *"wakaf dzurri"* is yet to be practised in Perak and Terengganu. As seen in Table 7, IV 1 mentioned the difficulty faced by MAIDAM to manage the *"wakaf dzurri"* at the moment. It was also stated that if any individuals wish to perform *"wakaf dzurri"*, MAIDAM would suggest that the donor declares the *waqf* as *"wakaf khairi"* or *"wakaf khairi khas"*. In the state of Perak, IV 3 mentioned that MAIPk is unable and not ready to practice *"wakaf dzurri"* yet. As mentioned in Table 7, IV 3 highlighted the focus of MAIPk on developing *"wakaf khas"* land. Based on these statements, it was concluded that although the provision of *"wakaf dzurri"* has been mentioned in the respective *waqf* enactment of both states, *"wakaf dzurri"* is yet to be established and practised systematically. Currently, there is no comprehensive guideline that the State Islamic Religious Council can refer to develop *"wakaf dzurri"* systematically. Thus, the researcher argued that it is crucial to employ a guideline or framework to draw the potential of *waqf* through the temporary *waqf* concept.

As previously mentioned, the selected states highlighted in the respective enactments that *fatwas* on Islamic law matters shall be decided based on the accepted views of Shāfiᶜiy schools. The researcher also questioned the respondents regarding whether all the *fatwas* agreed upon by the state *fatwa* committee are compulsory to follow the accepted opinions of Shāfiᶜiy schools, or the *fatwa* could be decided based on the other *madzhab* accepted views. The respondents' answers to these questions are as follows:

Table 8: Interview data analysis.

Res.	Statement
IV 2	*"In the Administration of Islamic Religious Affairs (Terengganu) Enactment 2001, generally, all the fatwas must be decided according to the madzhab Shāfiᶜiy views. However, in some situations and cases, maybe the views of madzhab Shāfiᶜiy are not suitable to be followed and implemented. Thus, the State Fatwa Committee are allowed to decide the fatwa according to the views of another prominent madzhab. For instance, based on the opinion of madzhab Shāfiᶜiy, the zakat fiṭrah must be paid through the staple food (qūt) for the majority of the citizen in that country. But we pay the zakat fiṭrah in cash based on the views of madzhab Hanafi because of interest (maṣlaḥah)."*

IV 4	*"This matter has been written and stated in the enactment. According to the Administration of the Religion of Islam (Perak) Enactment 2004, the State Fatwa Committee shall declare the fatwa by following the absolute opinion of madzhab Shāfiᶜiy. It means, the State Fatwa Committee must decide on any fatwa parallel to the opinion of madzhab Shāfiᶜiy as mentioned in the enactment. Practically, the State Fatwa Committee of Perak certainly refers to the absolute opinion of madzhab Shāfiᶜiy in issuing any fatwas."* *"However, based on section 43 (2) of the same enactment, it is stated that the decision of the fatwa can be changed to another prominent madzhab if the opinion of the madzhab Shāfiᶜiy contradicts with the public interest (maṣlaḥah). It shows that the Fatwa Committee is restricted to the opinion of madzhab Shāfiᶜiy. In certain situations, the fatwa can be changed to the opinion of another madzhab when it is necessary. However, there is a step that must be followed in constructing the fatwa if the absolute opinion of madzhab Shāfiᶜiy does not realise the public interest. Usually, we refer to the qaul marjūḥ or qaul muqābil al-aṣah of madzhab Shāfiᶜiy. If it is not relevant to be implemented, we will refer to the accepted views of another prominent madzhab. If no reliable opinion can be accepted, the Fatwa Committee Council will meet among them to decide the fatwa that will keep the public interest."*
IV 5	*"This question is supposedly for the Mufti Department. Although the enactment has mentioned that the fatwa must be decided according to the opinion of madzhab Shāfiᶜiy, it does not mean that the fatwa is only restricted to the opinion of madzhab Shāfiᶜiy. This can be referred to as the enactment. Thus, some fatwas that have been decided based on the opinion of another prominent madzhab."*

Sources: Author's declaration.

Based on Table 8, it could be concluded that the *fatwas* in the selected states were decided based on the absolute opinion of *madzhab* Shāfiᶜiy. As described by the researcher in the previous topic, it is highlighted in the Administration of Islamic Law Enactment of each state that any issued *fatwa* should be decided based on the accepted views of Shāfiᶜiy schools. Based on the presented data, IV 2, IV 4, and IV 5 highlighted that the State *Fatwa* Committee would refer to the absolute opinion of *madzhab* in deciding any *fatwas*. In the case when the absolute view of the *madzhab* Shāfiᶜiy contradicts the public interest and needs, the Fatwa Committee will refer to the less preferred opinion of *madzhab* Shāfiᶜiy, as mentioned by IV 4 in the Table 8.

The Fatwa Committee of the selected states is allowed to decide the *fatwa* based on the opinions of the other *madzhab* if there is no opinion stating that *madzhab* Shāfiᶜiy could realise the public interest and needs, as mentioned by the respondents. Based on Table 8, IV 2 stated that the rule for paying *zakāt al-fiṭrah* represents the view of Ḥanafī schools due to the existence of *maṣlaḥah* based on the current situation and needs. This statement indicates that the *fatwa* could be decided and changed to the opinion of the other *madzhab* whenever necessary to realise the public interest and needs.

Accordingly, the researcher opined that there is no issue in the application of the temporary *waqf* from the perspective of Islamic law, considering that it is allowed by the absolute opinion of the Mālikī schools. Based on the statement presented by the respondents and the provision from the State Administration of Islamic Law Enactment, it is suggested that the State Mufti Department revises the *fatwa* regarding the application of temporary *waqf*, given that it is parallel to the opinion of Mālikī schools. Besides, there is an interest in the development of *waqf* in Malaysia, especially in these selected states.

3.3.2. Part Two: The Application of Temporary *Waqf*

In this section, emphasis is placed on the questions regarding the consequences of temporary *waqf* implementation in the selected states. Following are the opinions of the respondents on this matter:

Table 9*:* Interview data analysis.

Res.	Statement
IV 2	*"Based on the opinion of the majority Islamic scholars, there is no tauqīt in waqf. When the property has been preserved for waqf, the ownership of the property will belong to Allah S.W.T permanently. If I am not mistaken, there is a madzhab that allows the donor to take back the waqf property into his possession if it is necessary. In the opinion of madzhab Shāfiᶜiy, this action is not permissible. Thus, in my opinion, it depends on a certain situation. For example, if the beneficiaries cannot utilise the benefits of the property, the waqf property may be allowed to be returned to the donor's possession. However, for your information, we in Terengganu do not practice and apply waqf muaqqat."*
IV 3	*"In my personal opinion, I have a positive view of the waqf muaqqat application. This is because the previous Islamic scholars allowed waqf muaqqat to have their fundamental arguments"*
IV 4	*"In Malaysia, there are many seminars to discuss the application of temporary waqf because there is interest (maṣlaḥah)."* *"However, I cannot deny that the temporary waqf has pros and cons. Among the advantages of temporary waqf is that it will give the donor the opportunities to spend their wealth on righteous deeds without terminating their property ownership. For example, the donor endows his beloved house for 50 years, and after that, the house will be returned to his children's possession. Applying temporary waqf encourages the donor to spend his wealth for righteous deeds, at least for 50 years."* *"The disadvantages of temporary waqf can be discovered when it is applied to the agencies or any institution. For example, the donor endows land for three years to a particular agency or institution, and the agency determines to develop something on the land, such as a factory or something else. In this situation, the temporary waqf will stunt the effort to develop the land and maybe will cause a great loss to the agency."* *"In the matter of waqf, I assume that either it is perpetual or temporary, we must focus and consider the interest and the needs of the beneficiaries in the first place."*

IV 5	*"There is a madzhab that allows the application of temporary waqf based on the maṣlaḥah. For example, some people can endow their property for now and maybe they can take back their property if they need it one day in an urgent situation."* *"However, in terms of implementing the temporary waqf, the problem will occur when it comes to the registration and management of the waqf property."*

Sources: Author's declaration.

The data in Table 9 demonstrate the respondents' agreement with the statement that the application of temporary *waqf* is allowed if it is based on interest and needs. As mentioned by IV 2, although temporary *waqf* is not applied in Terengganu, it is clear that the temporary *waqf* has the upper hand in a particular situation. Examples could be the cases when the *waqf* property cannot be developed or the benefits of the property can no longer be utilised by the beneficiaries. In these cases, the *waqf* property is allowed to be returned to the donor's possession. An example presented by IV 2 is similar to the issue that occurred in Johor. The representative of *Majlis Agama Islam Negeri Johor* stated that when the donor declares a *waqf* of a mosque, it would become perpetual. However, the mosque can no longer be utilised and be benefited by any individuals, and it is difficult for MAIJ to manage and develop the property. In this situation, the representative of the MAIJ opined that the temporary *waqf* could solve this problem (Ab Rahman, 2017).

IV 3 and IV 4 stated that temporary *waqf* comprises its role and advantages. IV 4 also mentioned that many seminars were held in Malaysia to introduce the temporary *waqf* concept due to the current interest and need for *waqf* development. Based on the table above, IV 4 emphasised that temporary *waqf* could allow the donor to practise the *waqf* without terminating the ownership of the property. Other than that, temporary *waqf* also encourages the Muslims to *waqf* their wealth and property for good deeds, albeit for a certain period. However, IV 4 and IV 5 stated the disadvantages of temporary *waqf*, in which it could restrict the growth of *waqf* for a long-term period and cause problems related to the registration of the *waqf* property and the management. Based on this statement, the researcher opined that it is necessary to systematically construct a guideline to implement the temporary *waqf* for the selected states.

The researcher also enquired about the respondents' views on the temporary *waqf* implementation based on *Kaedah-Kaedah Wakaf* (Johor) 1983 and the Law of *Waqf* Egypt 1946. The responses from the respondents are as follows:

Table 10*:* Interview data analysis.

Res.	Statement
IV 2	*"We in Terengganu never have an issue regarding this matter and we never bring it into a discussion for now. This is because each state has its rights. If they observed that maybe temporary waqf could realise the interest of their states, it is their right to decide. Thus, for the state of Terengganu, we did not discuss anything related to temporary waqf yet. They allowed the temporary waqf in Egypt and I've read about it."* *"All of these issues are related to the management. This is because if we observe the interest and necessity, it can be applied if it is not against the fundamental law. It is according to the legal maxims "ṣarf al-imām manūṭun bi al-maṣāliḥ"."*
IV 4	*"If the purpose of the waqf does not involve the public needs, such as waqf for the orphanage. For example, we endow land to the orphanage for 50 years, and they can utilise the land as they want for 50 years. The yield or usufruct from the waqf land can be utilised for the expenditure and the management of the orphanage. For this type of waqf, it can be declared in taʾbīd, or taʾqīt. It depends on whether we want to determine the period, as mentioned in this question which is 60 years for waqf dzurri. All of these matters depend on the needs and interests. No naṣ that determine specifically the relevant period of temporary waqf."*

IV 5	*"Okay, even before this I am not inclined to discuss temporary waqf's issue. This is because we are not ready to apply it, especially the instrument. In this issue, we cannot narrow the discussion only to the field of fiqh. We also must consider the implementation and its practicality. Okay, if we are ready to implement it one day, we will adhere to the opinion of Islamic scholars that allow the temporary waqf. But we must ensure that we are truly ready. The instrument and the mechanism must be clear."*

Sources: Author's declaration.

Based on the data presented in Table 10, the respondents argued that the permission to apply for temporary *waqf* in the state of Johor and Egypt is based on the current needs and the public interest. IV 2 stated that the application of temporary *waqf* in Johor and Egypt is permissible as it could realise the interest of *waqf* in those states. Besides, IV 2 also argued that temporary *waqf* is allowed to be applied as long as there is *maṣlaḥah* and it does not contradict the basis of Islamic law.

IV 4 opined that temporary *waqf* is relevant to be applied to certain types of *waqf*. For instance, the purpose of the *waqf* is not for public usage, such as in mosques and cemeteries. It was also added that there is no provision from the Quran, *Sunnah*, and consensus of the Islamic scholars on the specific duration to declare the temporary *waqf*. The temporary *waqf* duration in *Kaedah-Kaedah Wakaf* (Johor) 1983 and the Law of *Waqf* Egypt 1946 is determined based on interests. IV 5 emphasised that it is necessary to have a clear instrument and mechanism to apply temporary *waqf* in Penang. Therefore, the researcher argued that the selected states are able to apply temporary *waqf* due to their interest in the *waqf* development. However, it is also crucial to construct a guideline to systematically implement the temporary *waqf*.

The researcher referred to a *fatwa* issued by the National Fatwa Committee on 13 October 2004, which addressed the permission to *waqf* the leasehold land in the final question of this theme. Based on this *fatwa*, the researcher enquired the respondents regarding the sign of the permission to practise the temporary *waqf* or not the sign to practice temporary *waqf*. The responses from the interviewees are as follows:

Table 11*:* Interview data analysis.

Res	Statement
IV 3	*"The National Land Code 1964 can be considered as the primary reference for all the matters relating to the law of the land in Malaysia. Although it has been mentioned in section 4 of the National Land Code 1964 that all the matters relating to waqf are not included under the Land Code, we (MAIPk) have to deal with the authorised body regarding land management such as Pejabat Tanah dan Galian. In matters related to the land, they have to refer to the National Land Code 1964. Thus, any land of waqf, or land in the form of waqf irṣād in Perak, we are still working to make an application to change the ownership of the waqf property into perpetual without being bound to the 99 years of the lease."*
IV 4	*"In my opinion, it is not waqf muaqqat. It is waqf muabbad. The buyers and the owners still fully own the asset although it is a lease for 99 years. Even though the law has stated that the asset must be leased for 99 years, based on the ᶜurf, the land still belongs to us and we have the full rights of the ownership of the property. Since we have the ownership of the property, we are allowed to waqf the assets even if it is waqf muaqqat. This is because one of the waqf's conditions is that the property is eligible to be endowed, and it must be fully owned."*
IV 5	*"In the matter of 99 years of leasehold land, based on the decision of the National Fatwa Committee, it is not a problem for me to consider it as temporary waqf. This is because we must understand the basis of the ownership of the waqf property. It depends on the status of the land itself. If the ownership status on the land is leasehold, and the owner of the land desires to waqf the land, then it is up to the owner himself. This is because the ownership itself is temporary and not determined by the donor. It is a different case if someone intends to waqf a freehold land but with the muaqqat contract."*

Sources: Author's declaration.

Based on the response shown in Table 11, the respondents expressed different views regarding the *fatwa* of *waqf* leasehold land. IV 3 and IV 4 stated that the validity of *waqf* leasehold land, as decided in the *fatwa* by the National Fatwa Committee, is not a sign that temporary *waqf* is permissible to be practised. IV 4 emphasised that the *waqf* of leasehold land is also considered *waqf* in perpetuity (*al-waqf al-muabbad*) as the donor fully owns the land even for 99 years of the lease. In this case, the land is allowed for *waqf* as stated by IV 4. Meanwhile, IV 5 opined that the *waqf* of leasehold land could be considered temporary *waqf*, considering that the land ownership is temporary and is bound to 99 years of the lease. IV 5 also stated that the scenario could be different if the status of endowed land is freehold.

Based on the statement above, the researcher opined that the *waqf* of leasehold land could be considered temporary *waqf* if the *waqf* purpose and beneficiaries are relevant to be applied as temporary *waqf*. According to the *Muzakarah* of the National Fatwa Committee judgement on 13 October 2004, the status of the *waqf* on leasehold land would change to freehold due to the explicit exemption for *waqf* property in section 4 (2) (e) of the National Land Code (Act No. 56) of 1965, which is as follows:

> *"Except in so far as it is expressly provided to the contrary, nothing in this Act shall affect the provisions of- any law for the time being in force relating to wakaf or bait-ul-mal;"*

Thus, the SIRC will have full ownership of the *waqf* property for perpetuity as all the *waqf* property will be registered under SIRC.

3.3.3. Part Three: The Parameters of Temporary *Waqf* Implementation in the Selected States

Provided that the State Islamic Religious Council of the selected states is yet to implement and practise temporary *waqf*, it was found that determining the principle of temporary *waqf* is important to enforce it in the future. In this theme, focus was placed on the question and discussion of the main principle of temporary *waqf*, which includes (1) the *ṣighah* of temporary *waqf*, (2) the types of *waqf* that are allowed to be declared temporarily, and (3) the property that permissible to be *waqf* for temporary.

Table 12*:* Interview data analysis.

Res.	Statement
IV 1	**(3).** *"For the waqf property, the donor must clearly state if he wants to declare it for muaqqat. Not all the waqf property can be declared as muaqqat like what you have mentioned before such as mosques, and cemeteries. However, I leave this issue to the decision of fatwa for the types of property that are permissible to be declared in temporary waqf. I don't want to go beyond the fatwa decision. This is because, I think that there is no fatwa yet regarding the property that is permissible to be endowed as temporary waqf."*
IV 2	**(2).** *"Regarding waqf mushtarak. Waqf mushtarak has been established in the other country and it does not seem to be a problem. This is because if the wāqif declares the waqf as "wakaf khas" and it is perpetual. The donor declares the waqf as "wakaf dzurri" and suddenly the heirs, which are the beneficiaries are not continuous. Thus, the benefits of the waqf property will not be utilised and benefits by anyone. So, as a preventive measure to this issue, the waqf mushtarak was established, which means a combination between "wakaf dzurri" and "wakaf am". By applying waqf mushtarak, the donor's heirs can utilise the benefits while they are still alive and exist. After the donor's heirs are not continuous, the benefits of the waqf property automatically will be channelled to the public as desired by the donor."* **(3).** *"Pardon me. It is hard for me to comment on this issue because it does not exist in the law (ḥukm) for now. Maybe it is only written in the enactment. If we want to discuss it,*

	we will discuss it when we want to establish it. For now, I don't think that the waqf property can be endowed for muaqqat because the ownership of all the waqf property will belong to Allah ﷻ, "la yūba[c] wa la yūhab wa la yūrath". The waqf property cannot be sold, given away to other people, and inherited. Thus, how come it can be endowed temporarily? So, I cannot answer this question because we have not established temporary waqf yet for now."
IV 3	**(1).** *"In my view, I am not a law expert. But if it wants to be mentioned in the enactment, it is sufficient if there is a clause that provides about temporary waqf. That is for enactment. The explanation of what has been mentioned in the enactment should be described precisely through the guideline. The enforcement of the temporary waqf should be tagged along with a comprehensive guideline, which starts from the beginning of the waqf process, the background of the waqf, and the SOP flow chart, etc."*
IV 4	**(1).** *"In Perak, if they want to approve the application of temporary waqf, they have to amend the enactment by stating clearly that waqf can be declared in perpetuity and temporary. If the existing enactment does not mention that the waqf must be done only in perpetuity, it is sufficient with the fatwa decision. If the statement of waqf in the enactment is general, meaning that it is not bound with the perpetual term, the enactment does not need to be amended. It is sufficient with the fatwa decision. Suppose the enactment clearly states that the waqf must be declared only in perpetuity. In that case, the enactment needs to be amended to implement the temporary waqf in Perak. This is my opinion."* **(2).** *"In my opinion, the terms and conditions of the waqf either perpetual or temporary are similar. If we accept and approve the application of temporary waqf, the condition is still the same; the property must be valuable and beneficial. That is followed by the condition of wāqif, the beneficiaries, and others."* **(3).** *"If we want to establish the temporary waqf, I opined that not all types of the property are permissible to be endowed for temporary. As we discussed before, some of the property has high value and it is necessary to the public. So, if this type of property is allowed to be endowed temporarily, it will retard the waqf programme and the development for the public interest. Thus, the legislative body must observe and decide the types of property that are mandatory to be endowed in perpetuity, especially the*

	mosque. The mosque is mandatory to be endowed in perpetuity."
IV 5	***(1).*** *"In Penang, we are now working to legislate the waqf enactment. In the draft of our waqf enactment, I remembered that we honour the opinion and the importance of temporary waqf. But, how do we want to protect the temporary waqf for the duration of the waqf? This is important because if we do not have a clear instrument from the law perspective, the temporary waqf system is vulnerable, still can be argued, deviated, and others. So, if we want to approve and practice temporary waqf, we have to ensure that the instrument of the waqf registration through the National Land Code has been set up. So, make sure the contract and the declaration are clear and the instrument and the enforcement are clear."* ***(2).*** *"For me, there is no problem to apply waqf mushtarak. This means the donor begins the waqf by appointing his family members as the beneficiaries, and then the benefits of the waqf will be given to the public. There is no problem applying it as long as the principle and process are clear."* ***(3).*** *"For me, the fundamental principle of the temporary waqf is that the endowed property must not be diminished and wear off. The benefits of the property are not depleted and finished. There is no issue with immovable property such as houses and land. However, we must be careful when it comes to movable property. The property must not be depreciated."*

Sources: Author's declaration.

As seen in Table 12, the respondents expressed different views in determining the temporary *waqf* principles if it is supposed to be implemented. In terms of the *ṣīghah* of temporary *waqf*, the state of Perak and Penang emphasises that it is crucial to have a specific clause or provision in the *waqf* enactment that clarifies the permission to practise the temporary *waqf*. According to IV 4, if the enactment does not clarify that *waqf* must be declared in perpetuity, the *fatwa* decision would be sufficient as permission to practise temporary *waqf*. If the enactment clearly states that *waqf* must be declared in perpetuity, the enactment should be amended to preserve a specific provision for temporary *waqf*. IV 3 and IV 5 also stated the necessity to have a clear instrument and guideline to systematically establish and manage the temporary *waqf* by SIRC.

The respondents also expressed different views regarding the types of *waqf* that could be applied as temporary *waqf*. As described in the previous topic, the *waqf* stipulation of the selected states has divided the *waqf* into two categories, namely *"wakaf am"* and *"wakaf khas".* The *waqf* enactment of Perak and Terengganu also highlights other types of *waqf*, such as *"wakaf ahli", "wakaf khairi",* and *"wakaf musytarak".* To illustrate, the researcher presented an example of the establishment of *al-waqf al-dzurriy* in Lebanon, which could only be performed temporarily. Based on this illustration, the respondents from the state of Penang and Terengganu, namely IV 5 and IV 2, indicated that *al-waqf al-dzurriy* is reasonable to be applied temporarily as the character of the beneficiaries of *al-waqf al-dzurriy* is not continuous. Thus, IV 5 and IV 2 stated that the benefits of the property of *al-waqf al-dzurriy* could be utilised continuously by other beneficiaries through the application of *"wakaf musytarak"* as the beneficiaries of *al-waqf al-dzurriy* are not continuous and do not perpetually exist. In Perak, IV 4 stated that the temporary *waqf* could be applied to any type of *waqf* if it does not contradict the principle of *waqf*, the condition of the donor, and the interest of beneficiaries and *waqf* property.

Regarding the *waqf* property for temporary *waqf*, the respondents from all of the selected states agreed that not all types of property are allowed and permissible to be endowed temporarily. As seen in the table 12, IV 1 mentioned that temporary *waqf* is not suitable for all types of property, such as mosques and cemeteries, while IV 4 emphasised that the mosque must be endowed in perpetuity. Based on these statements, it was argued that Terengganu and Perak specified that mosques and cemeteries are not permissible to be endowed temporarily. For the state of Penang, IV 5 opined that temporary *waqf* could be applied to property that does not depreciate, such as land and house. Thus, it was concluded that not all types of property are allowed to be endowed temporary.

The interview session was conducted by asking the respondents about the duration of temporary *waqf*. As previously discussed, the previous Islamic scholars who allowed the application of temporary *waqf* did not mention and determine the specific duration. However, the Law of *Waqf* Egypt 1946 highlights that the duration of temporary *waqf* is only valid in a particular period that does not exceed 60 years. Meanwhile, *Kaedah-Kaedah Wakaf* (Johor) 1983 states an additional term on the application of family *waqf* where the application must not exceed two generations, which do not include the donor. Thus, this research narrowed down the question to (1) the relevant duration of temporary *waqf* to be practised, (2) the measures to end the temporary *waqf* and the possibility to return the property to the donor's possession after the *waqf* is expired, and (3) the restriction on the temporary *waqf* practice. The following responses were presented by the respondents:

Table 13: Interview data analysis.

Res.	Statement
IV 4	**(2).** *"The temporary waqf will be ended when the period of the waqf was expired as specified by the donor. If the waqf is declared only for 20 years, then the waqf will end after 20 years. Secondly, the waqf will be ended when the waqf property is perished, damaged, and cannot be benefited. The third is when the beneficiaries are discontinued. This is for "wakaf khas". The waqf will be ended if the beneficiaries are not continued. For example, the donor's heirs."* *"In the situation where the beneficiaries are not continued, there are two opinions in the madzhab Shāfiᶜiy. The first*

	opinion stated that the waqf property will be given to the other beneficiaries who are close to the appointed beneficiaries as determined by the donor. The second opinion expressed that the waqf property will be given to the donor's family members and relatives."
IV 5	***(1)**. "For the reasonable duration in declaring the temporary waqf, firstly, we must determine the minimum period. Based on the previous issue, we have managed the matters relating to the tenancy, in which the minimum period of the tenancy is three years. If it exceeds three years, then the contract will become a lease contract for immovable property. I think the State Islamic Religious Council never prepares the instrument for the movable property. If the SIRC wants to do the same on the movable property, then it is necessary to have a good system to manage it. Thus, in my view, the minimum period is three years. I think it is better to standardise it in the law and enactment for the maximum period. If we do not do that, the conflict will occur."* ***(3).** "The donor is not allowed to take back the waqf property before the waqf period ends as determined in the contract. It must be mentioned in the enactment and it is mandatory."*

Sources: Author's declaration.

Based on Table 13, Penang has stated that it is necessary to determine the minimum and maximum period for temporary *waqf*. Furthermore, IV 5 stated that the minimum period relevant for practising the temporary *waqf* is three years and does not mention the maximum period. However, IV 5 emphasised that it is vital to standardise the maximum period to practise temporary *waqf* in the enactment and prepare the comprehensive instrument to perform temporary *waqf* on the movable property. The researcher opined that it is crucial to consider the suggestion proposed by IV 5 to ensure that the application of temporary *waqf* is stable and systematic.

In ending the contract of temporary *waqf*, the state of Perak presents three ways to end the temporary *waqf*. As mentioned by IV 4 in the table above, a temporary *waqf* may be terminated through (1) the life expectancy of the *waqf* property, (2) the physical condition of the *waqf* property, and (3) the availability of the beneficiaries. Based on this statement, it was argued that there is no issue if the temporary *waqf* is ended through the first and second methods, considering that the property cannot be utilised and benefit the beneficiaries. If the temporary *waqf* ends through the third method, an issue would be present in the status of the *waqf* property. In this case, IV 4 stated that two opinions are present in the Shāfiᶜiy schools. The first opinion highlights that *waqf* property would be given to other beneficiaries who need the benefits from that *waqf* property. For example, the donor endows a van for the usage of the kindergarten in a particular place. After five years, the kindergarten at that specific place is closed due to the children population. Thus, the van will be given to other kindergartens or schools in need, while the second opinion of the Shāfiᶜiy schools states that the *waqf* property would be returned to the donor's possession, family members and relatives, or heirs.

Besides, the state of Penang opined that a restriction should be placed on the practice of the temporary *waqf*. This restriction aims to ensure that temporary *waqf* could be applied and practised without any conflicts or problems for the involved parties. As shown in the table above, IV 5 stated that it is vital to have a specific provision that prohibits the donor from retracting the *waqf* property before the expiry date. The researcher agreed with IV 5's recommendation to safeguard the management and establishment of the temporary *waqf*. It is also critical to protect the beneficiaries' interests and SIRC's role as the sole trustee of the *waqf* property in each state.

Based on the interview session and the gained data, it can be summerised that each states have their own view on the implementation of temporary *waqf*. The researcher concludes all the views from the respondents as follow:

Table 14*:* Summary of the interview data on the implementation of temporary *waqf* of the selected states.

Themes	Terengganu	Perak	Penang
Special *Waqf* Enactment.	Yes.	Yes.	No.
Legal Provision for Temporary *Waqf*.	Yes.	No.	No.
Legal Provision for Types of *Waqf*	Yes.	Yes.	Yes.
Types of *Waqf*.	Applied *"wakaf am"* and *"wakaf khas"*.	Applied *"wakaf am"* and *"wakaf khas"*.	Applied *"wakaf am"*, *"wakaf khas"*, and *"wakaf mushtarak"*.
Followed *madzhab*.	*Madzhab* Shāfiᶜiy.	*Madzhab* Shāfiᶜiy.	*Madzhab* Shāfiᶜiy.
Permission to follow other madzhab	Yes with conditions.	Yes with conditions	Yes with conditions
View on Temporary *Waqf*.	Positive.	Positive with restriction.	Positive with restriction.
Guideline of Temporary *Waqf*.	Complusory.	Complusory.	Complusory.

Source: Author's declaration.

3.4. The *Waqf* Issues in the Selected States

In the previous topic, analysis was conducted on the data from the interview session with the representative of the State Islamic Religious Council and State Mufti Department of the selected states. In this topic, the focus was placed on the *waqf* issues that occur in the selected states. According to the researcher, it is crucial to determine the problem with the existing *waqf* concept in the selected states. To illustrate, all of the selected states are yet to implement the temporary *waqf*, although the state of Terengganu has endorsed it in their respective *waqf* enactment. Ab Rahman and Amanullah (2017c) and Qahf (2000) agreed that temporary *waqf* could stabilise and enhance its potential of *waqf*. In this research, the discussion was divided into three sub-topics: (1) the undeveloped *waqf* land, (2) insufficient funds, and (3) limitations in practising and developing the *waqf*.

3.4.1. The Undeveloped *Waqf* Land

Based on the interview data analysed in the research, among the *waqf* issue faced by the SIRC of the selected states is the large number of *waqf* lands that cannot be developed, which the donors declared as *"wakaf khas"*. Tuan Munawir bin Mohamed Noh, the representative of *Majlis Agama Islam dan Adat Melayu Perak* (MAIPk), stated during the interview session that MAIPk is unable to practise *"wakaf dzurri"* due to the obligation for developing a large amount of current *waqf* land, while the majority of the land has been declared as *"wakaf khas"* including the cemetery and mosque. Generally, the development of *waqf* land not an issue if the location of the *waqf* land endowed by the donor is relevant and competent to be developed, as determined and desired by the donor. However, the problem occurs when the land cannot be developed, as stated by the donor in the contract. For instance, the donor performs *waqf* on the land and wishes to build a mosque on it for the use among the Muslim community in a particular village. Nevertheless, two mosques have been constructed in the village, which is sufficient for the Muslim community use. MAIPk is unable to build the mosque on the land as desired by the donor, given that it is essential for the village and contradicts Islamic law.

Based on the situation above, the researcher opined that this issue could be solved by implementing the temporary *waqf*. Considering the existing *waqf* concept and application in the selected states are in perpetuity, the SIRC as the sole trustee of the *waqf* property should manage and develop the *waqf* land based on the condition stated by the donor perpetually. As previously mentioned, the representative of MAIPk stated that most of the *waqf* lands cannot be developed due to the donor's declaration of the *waqf* as *"wakaf khas"* and it is perpetual. By applying the temporary *waqf* concept, the land could be developed based on the situation and the demand without denying the donor's interest, the beneficiaries, the property, and SIRC as the sole trustee. For example, the donor could declare that the land is endowed to build the mosque in the *waqf* contract. Provided the MAIPk is not able to build the mosque on the land in 10 years by presenting any reasonable justification that complies with *sharaᶜ*, the *waqf* status will be converted to *"wakaf am"*. MAIPk holds the authority to develop the land according to the situation and public interest.

An emphasis was placed on the case regarding a piece of *waqf* land in Johor. Ab Rahman (2017) studied the application of *waqf* Johor with the representative of *Majlis Agama Islam Negeri Johor* (MAIJ). In the research, the representative of MAIJ stated that a piece of *waqf* land in Pengerang, Johor was endowed by the donor to build a mosque for perpetuity. However, the mosque can no longer be utilised nor benefit the beneficiaries, and MAIJ struggles to manage the land. Hence, the representative of MAIJ opined that the temporary *waqf* is a solution for this matter. If the endowed land is temporary, the land could be returned to the donor's family members and relatives or converted to *"wakaf am"* perpetually after the temporary *waqf* contract expires (Ab Rahman, 2017). Therefore, the researcher opined that the temporary *waqf* concept could prevent the interest of the *waqf* land or property from being abandoned and enhance *waqf* land productivity. The primary purpose of *waqf*, which is to worship and seek the blessings from Allah S.W.T, can be achieved as the *waqf* land and property could be utilised permanently and realise the interest of the needy.

3.4.2. Insufficient Fund

The fund is an essential element for the SIRC in developing and maintaining the *waqf* property. Several designated governments have encountered difficulties in developing the *waqf* property due to the insufficient fund. Tuan Munawir bin Mohamed Noh stated that approximately 4,500 lots of land in Perak need to be developed. Among the issues faced by the MAIPk in developing all of this land is the insufficiency of the fund. Accordingly, modern Islamic scholars have proposed many methods of developing the *waqf* property. One of the mechanisms employed by MAIPk to generate and maintain the *waqf* property is to rent it to any individuals, organisations, and institutions to conduct economic operations on the *waqf* property. The income gained from the rental of the *waqf* property would be used to develop and maintain the other *waqf* property. For example, if an individual performs *waqf* on 10 acres of land for a cemetery, MAIPk would preserve two acres of the land and offer any organisations or institutions the opportunities to rent the *waqf* land and any activities that could generate the economy. MAIPk will also utilise the rental payment to maintain and improve essential facilities for the cemetery, such as the gate, guard-house, and others.

According to Qahf (1999), the *waqf* fund could be generated through the application of temporary *waqf.* To illustrate, the concept and the temporary *waqf* system are flexible and comply with the public interest and current needs. Nowadays, the SIRC of the selected states has allowed cash *waqf* applications. Based on the interview session with the representative of the SIRC of the selected states, it could be concluded that cash *waqf* is an essential element in funding most of the *waqf* activities as the cash is flexible. Tuan Munawir bin Mohamed Noh stated that the establishment of cash *waqf* in Perak is used to fund a few *waqf* projects for community welfare and other *waqf* activities. According to Ab Rahman (2017), cash could also be considered one of the temporary *waqf* products as it is not tangible property and could be perished. The Shāfiᶜiy schools do not allow the *waqf* in the form of cash, given that it is not perpetual as immovable property (Al-Zarqā, 1997). Thus, it is suggested that SIRC explore the advantages of temporary *waqf* due to its potential in improving the existing *waqf* system in Malaysia and broadening the ways to generate the *waqf* fund.

3.4.3. Limitation in Practicing and Developing the *Waqf*

The researcher asked the respondent about the *"wakaf dzurri"* application in the selected states in the interview session. It was analysed that most of the selected states did not practise the *"wakaf dzurri"* yet. Although the provision for *"wakaf dzurri"* was mentioned in the *Wakaf* (Terengganu) Enactment 2016 and *Wakaf* Enactment (Perak) 2015, the representative of the SIRC from both of these states stated that *"wakaf dzurri"* is yet to be applied. Tuan Haji Yaacob bin Abdullah specified that it is difficult for MAIDAM to manage *"wakaf dzurri"*. Besides, the respondent mentioned that MAIDAM would suggest that the donor declare the *waqf* as *"wakaf khairi"* or *"wakaf khairi khas"*. In Perak, Tuan Munawir bin Mohamed Noh stated that MAIPk was yet to apply and practise *"wakaf dzurri"* due to MAIPk obligation to manage and focus on developing *“wakaf khas”* land. Based on these statements, the researcher opined that the SIRC could not systematically manage *“wakaf dzurri”* due to the absence of a clear guideline to manage it.

In Penang, Tuan Haji Fakhruddin bin Abd Rahman stated that the practice of *“wakaf dzurri”* has been recorded by MAINPP. In 1896, a *waqf* was established, in which the donor specified that a portion of the *waqf* property would be preserved for the donor’s offspring, while the rest of the *waqf* would be made available to the public. Based on this situation, the researcher opined that this *waqf* is suitable to be named *al-waqf al-muahtarak* as the benefits of the *waqf* property are preserved for specific types of beneficiaries, namely the donor’s children and the public. Thus, the researcher opined that MAINPP could manage this *waqf* as it is *al-waqf al-muahtarak*, which indicates that the public could still utilise the benefits of the property.

Based on the aforementioned scenario, it was concluded that the existing *waqf*, which is in perpetuity, places a barrier and limitation for the SIRC to expand the practice of other types of *waqf*. The researcher opined that the SIRC needs to develop a guideline to practise and manage various types of *waqf* with low risk and systematic. Thus, it is suggested that SIRC implements temporary *waqf*. According to Ab Rahman and Amanullah (2017c) and Qahf (2000), the character and concept of temporary *waqf* are flexible and could broaden the *waqf* function. As previously stated, some of the selected states did not apply *“wakaf dzurri”* due to the difficulty faced by the SIRC to manage it permanently. To illustrate, SIRC does not have any suitable and effective mechanism to address the *“wakaf dzurri”*. Moreover, it was argued that SIRC could manage the *“wakaf dzurri”* through temporary *waqf*. For example, in *Kaedah-Kaedah Wakaf* (Johor) 1983, *“wakaf dzurri”* is allowed to be applied temporarily, which is specifically for 60 years without exceeding two generations. From the researcher's point of view, the application of *"wakaf dzurri"* is preferable despite being temporary rather than not being applied. At a minimum, the benefits of the *"wakaf dzurri"* could be contributed to the appointed beneficiaries as per the donor's wish. Provided the donor wishes to declare the *"wakaf dzurri"* for perpetuity, it is suggested that the SIRC advises the donor to declare it as *"wakaf musytarak"* as practised by MAINPP. To be specific, the advantages could be distributed to the less fortunate individuals and the general public without jeopardising the donor's children, family members, and relatives.

Applying temporary *waqf* with a proper guideline could offer opportunities to the donor and SIRC as a sole trustee to plan the structure of the *waqf* systematically. The flexibility of the temporary *waqf* concept could encourage the Muslim community to practise *waqf* albeit for a specific period, as stated by the representative of the Mufti Department of Perak in the previous topic. Thus, the application of temporary *waqf* is able to enhance the potential of *waqf* system, especially in the selected states.

3.5. The Challenges in Implementing Temporary *Waqf* in the Selected States

In the previous topic, the *waqf* issue was discussed in the selected states and proposed a solution to solve the problem. This research also addressed the potential of temporary *waqf* in solving some of the *waqf* issues and its advantages in improving the existing *waqf* application. However, the temporary *waqf* is yet to be implemented in the selected states. The SIRC in the selected states is faced with a few challenges to implement the temporary *waqf*. In this topic, the discussion is divided into four sub-topics: (1) the existing *waqf* legislation, (2) the followed *madzhab* in the *fatwa* decision, (3) comprehensive guidelines and precise instruments to practice temporary *waqf*, and (4) the donor's perception towards *waqf*.

3.5.1. The Existing *Waqf* Legislation

In Malaysia, all the matters related to Islamic law, including *waqf*, is under the state jurisdiction as mentioned in the List II-State List of the Ninth Schedule of the Federal Constitution. Considering that *waqf* is under state jurisdiction, each state in Malaysia comprises its respective version of enactment and act that govern all the Islamic law matters including *waqf*, as described in the previous topic. In the case of the selected states, it was found that only Perak and Terengganu employ a specific enactment that governs all the *waqf* matters. There is no particular *waqf* enactment in Penang. Section 89 until 95 of the Administration of the Religion of Islam (State of Penang) Enactment 2004 addresses all the *waqf* problems. Previously, the *waqf* provisions of the selected states were examined, leading to the result that the states varied significantly in terms of *waqf* definition, the categories of *waqf* that have been recognised, and the application of *waqf* in perpetuity and temporary. However, it was also emphasised that it is vital for the state of Penang to provide a specific *waqf* enactment to manage and govern all the *waqf* matters systematically.

Based on the previous topic, it was found that the *waqf* definition of the selected states is excessively general. From the researcher's point of view, the *waqf* definition offered in the respective legislation of the selected states is extremely broad. It is not clearly stated that either the *waqf* is only allowed to be practised in perpetual or it is allowed to be declared as perpetual or temporary. The researcher opined that this ambiguity could affect the *waqf* management and the understanding of the involved parties, especially the donors. In Terengganu, it was found that Section 18 of *Wakaf* (Terengganu) Enactment 2016 has presented the definition of *"wakaf muabbad"* and *"wakaf muaqqat"*. However, the description of *"wakaf muaqqat"* is excessively general and ambiguous, leading to the suggestion that the legislative body in the SIRC of the selected states should precisely revise the *waqf* definition, given that the definition of the *waqf* will portray the entire identity of the *waqf* and the method of practising it.

It was also found that only Terengganu has made a provision about temporary *waqf* in the *Wakaf* (Terengganu) Enactment 2016, as discussed under the topic of *Waqf* Provision in this chapter. In Perak, the temporary *waqf* is not stated in the *Wakaf* Enactment (Perak) 2015. Similarly, Penang also does not have any provision that mentions the temporary *waqf* as these states did not apply temporary *waqf*. Although temporary *waqf* has been stated in the *Wakaf* (Terengganu) Enactment 2016, it does not state the minimum and maximum *waqf* period, the property permissible to be *waqf* temporarily, and the types of *waqf* that are allowed to be practised temporarily. Based on the researcher's point of view, it is vital to have an explicit provision that specifies the rule to be obeyed by the involved parties in practising the temporary *waqf*. This action could assist the SIRC in managing and administering the *waqf* property without being interrupted by the other parties.

To practise the temporary *waqf*, a clear property ownership status is important whether it remains in the donor's possession or the ownership of the property would belong to SIRC as per usual. In this matter, the SIRC focuses on the status of the ownership of the immovable property, such as land, buildings, and houses, if the donor desires to apply the temporary *waqf*. All matters related to immovable property, especially land, are subject to the National Land Code 1965, as stated by Tuan Munawir bin Mohamed Noh during the interview session. The Yayasan Wakaf Malaysia organised an online *waqf* seminar that was titled "*Perundangan Wakaf: Wakaf Bertempoh dan Kemelut Wakaf Tidak Berdaftar*" in 26 November 2021. In this seminar, one of the respective panels, Associate Professor Dr Siti Mashitoh, stated that it is crucial to construct specific legislation that governs all immovable *waqf* property. This action could help SIRC manage all the *waqf* lands or other immovable property systematically and adequately.

3.5.2. The Followed *Madzhab* in the *Fatwa* Decision

In the previous topic, an analysis was conducted on the Administration of the Islamic Law Enactment of the selected states. Subsequently, it was stated that in issuing any *fatwa*, the *Fatwa* Committee of the states must follow the absolute opinion of Shāfiᶜiy schools, which is one of the challenges faced by the SIRC of the selected states in implementing temporary *waqf*. To illustrate this point, the application of *waqf*, according to Shāfiᶜiy schools, is only allowed to be declared in perpetuity. If the donor binds the *waqf* for any specific time, the *waqf* would be invalid and revoked. Thus, the application of *waqf* in the selected states is perpetual although *Wakaf* (Terengganu) Enactment 2016 has a provision regarding the temporary *waqf*. Based on the interview data, the representative of the Mufti Department of Terengganu, Haji Talib bin Abdul Rahman, highlighted that Terengganu applies *waqf* in perpetuity and does not apply the temporary *waqf*. To explain this situation, the absolute opinion of Shāfiᶜiy schools does not allow the *waqf* bound to any specific period, which is the same case in the state of Perak and Penang. However, it was not argued that there is a view among the Islamic scholars that permits the *waqf* to be practised temporarily or perpetually. Nevertheless, the Mufti Department of the Penang, Perak and Terengganu still adhere to the opinion of Shāfiᶜiy schools and never discuss temporary *waqf* in detail.

Based on the provision in the Administration of Islamic Law Enactment of the selected states, the State *Fatwa* Committee is allowed to decide any *fatwa* based on another prominent *madzhab* if the view of the Shāfiᶜiy schools is against the public interest. For instance, all of the selected states have allowed the application of cash *waqf* although it is not allowed in the opinion of Shāfiᶜiy schools. Furthermore, Haji Talib bin Abdul Rahman stated that the permission to pay the *zakāt al-fiṭrah* in the form of cash is based on the opinion of Ḥanafī schools due to the need to realise the public interest and comply with the current needs. In the matter of temporary *waqf*, the representative of the selected states emphasises that temporary *waqf* gains the upper hand in some situations and the advantage of realising the public interest. According to Dr Luqman Abdul Mutalib, temporary *waqf* could provide opportunities for the Muslims to practise *waqf* albeit for a specific period of *waqf*. Haji Talib bin Abdul Rahman stated that temporary *waqf* offers an advantage in cases where the *waqf* property is no longer beneficial to the beneficiaries. Thus, the property could be returned to the donor, which relieves the duty of SIRC to manage the other *waqf* holdings.

Based on the statement above, the researcher opined that there is an interest to implement temporary *waqf* in Malaysia, especially in the selected states. Thus, it is recommended that the selected states' Mufti Department alters the *fatwa* authorising the temporary *waqf* activity. Additionally, the researcher discussed Islamic scholars' position on temporary *waqf*, particularly in the second chapter. Provided that the authority to practise and apply temporary *waqf* is a definite opinion of Mālikī schools, it was concluded that temporary *waqf* does not contradict the Sharia and is consistent with the public interest and current needs in the selected states.

3.5.3. A Guideline and Parameter to Practice Temporary *Waqf*

All of the selected states does not implement temporary *waqf* although they had the possibility to draw the true potential of *waqf*. Although Terengganu has mentioned the temporary *waqf* in the *Wakaf* (Terengganu) Enactment 2016, it is yet to be practised. In the interview session with the representative of MAIDAM, Tuan Haji Yaacob bin Abdullah declared that temporary *waqf* is yet to be practised in Terengganu. Haji Talib bin Abdul Rahman, the representative of Mufti Department of Terengganu, expressed that the temporary *waqf* is solely mentioned in the enactment and is not being practised in Terengganu in the current times.

In Perak and Penang, temporary *waqf* is not applied, which has been clearly noted as it is not mentioned in their respective enactment. However, Perak and Penang expressed their readiness to accept and implement temporary *waqf* if a guideline and precise instrument that can be referred to is constructed. To illustrate, the temporary *waqf* could realise the public interest, encourage the Muslims to practice *waqf* even for a specific period, and keep the interest of the *waqf* property, the beneficiaries, and the donor. During the interview session with the representative of MAINPP, Tuan Haji Fakhruddin bin Abd Rahman emphasised that MAINPP is ready to implement and practise temporary *waqf* as it could improve the productivity of *waqf*. However, the respondent highlighted that it is crucial to have a precise instrument and comprehensive guideline before implementing the temporary *waqf* as a precaution against the interference and challenge by irresponsible parties. Tuan Munawir bin Mohamed Noh also expressed the same opinion as Tuan Haji Fakhruddin.

The researcher opined that it is vital to building a guideline or theoretical framework for the SIRC as a reference in implementing and managing the temporary *waqf* systematically without being interfered with by other parties.

3.5.4. The Donor's Perception Towards *Waqf*

In managing the practice of the current *waqf*, the SIRC of the selected states has faced a few cases that challenge the status of the *waqf* property. This situation occurs when the donors or the donors' heirs lack knowledge about *waqf* and have a wrong perception of the current *waqf* concept. It was also noted that once the donor declares the property as a *waqf*, it is prohibited for the donor to retract the property, seld, inherit, and give away the property as a gift to other parties. However, some of the donors still challenge the SIRC to perform this action for the donor in need. In Penang, Tuan Haji Fakhruddin bin Abd Rahman highlighted a case where the donor's heirs claim that they have the right to retract the *waqf* property. As a result of this situation, the SIRC of the selected states is not ready to implement the temporary *waqf*. In Perak, the Muslim community is used to apply *waqf* in perpetuity. As stated by Tuan Munawir bin Mohamed Noh, the *waqf* practice in Perak is currently perpetual and commonly practised by the Muslim community. Thus, if the MAIPk desires to apply temporary *waqf*, misunderstanding among the donor and damage to the *waqf* system will occur.

According to the researcher's assessment of the circumstances, the SIRC should consult with the donor before sealing the *waqf* contract. This action is vital for educating the donors on the *waqf* concept, its principle, and its limitations. Additionally, the researcher wishes to underline the importance for the SIRC to accurately record all the declared *waqf* paperwork for future reference.

Conclusion

It can be concluded that the existing *waqf* in the selected states is applied in perpetuity. The researcher began the discussion by addressing the statutory provision that governs all the *waqf* matters in the selected states. In this topic, the focus was placed on the debate on four issues: (1) the *madzhab* to be followed in fatwas and Islamic law matters, (2) the definition of *waqf*, (3) the types of *waqf*, and (4) *waqf* applications: perpetual and temporary. Based on the discussions, the researcher found that each of the selected states comprises two main provisions in governing all the matters related to *waqf*, namely (1) the Administration of Islamic Law Enactment, and (2) *Wakaf* Enactment. However, only the states of Penang were yet to employ the *Wakaf* Enactment. It is recommended that the SIRC of Penang should have a specific enactment that governs all the *waqf* matters accurately, which is a crucial action for sustaining the *waqf* management in Penang. In terms of the endorsement of the *waqf* application, it was analysed that only the state of Terengganu mentioned *"wakaf muabbad"* and *"wakaf muaqqat"* although it is a general definition.

After the researcher described the practice of *waqf* from the legislation perspective, the representative of SIRC and the Mufti Department of the selected states was interviewed. According to the interviewees, the SIRCs of the selected states do not practise all of the *waqf* categories listed in the statute. For example, although the *Wakaf* (Terengganu) Enactment 2016 and *Wakaf* Enactment (Perak) 2015 have stated *"wakaf* *dzurri"*, the representative of the SIRC of both states prefer to not practise *"wakaf dzurri"* as of now. In the *Wakaf* (Terengganu) Enactment 2016, a provision generally addresses *"wakaf muaqqat"*. However, the representative of MAIDAM stated that *"wakaf muaqqat"* is not being practised in Terengganu. As a result, the researcher found that not all types of *waqf* authorised in the *waqf* enactment are applied and practised by the SIRC. As a result of this situation, it was argued that the SIRC of the selected states lacked a proper guideline for managing the *waqf* systematically and properly.

The researcher highlighted the current *waqf* issues in the selected states due to the management, followed by a solution. Some of the problems can be solved through the temporary *waqf* concept and system, such as the undeveloped *waqf* land and the limitation in practising various types of *waqf* and developing the *waqf* in the selected states. Besides, it was also stated that temporary *waqf* could improve and diversify the ways to generate the fund. Thus, the SIRC could develop the *waqf* rapidly in the future. However, to implement the temporary *waqf*, a few challenges are faced by the SIRC of the selected states. The researcher emphasised that among the challenges include existing *waqf* legislation, the followed *madzhab* in deciding the *fatwa*, a guideline and parameter to implement temporary *waqf*, and the donor's perception toward *waqf*. Based on these challenges, the researcher opined that the biggest obstacle in implementing temporary *waqf* in the selected states is the guideline that suitable for the reference of SIRC. In the next chapter, a theoretical framework that covers all the matters related to temporary *waqf* is discussed.