

CHAPTER 2

TEMPORARY WAQF CONCEPT FROM ISLAMIC PERSPECTIVES

In general, the term *waqf* could be understood as a measurement to channel the donation to people in need by preserving a specific property from any type of transaction that could offer benefits repeatedly. The *waqf* method has been recognised since the existence of social life, which is also known as social solidarity (*al-takāful al-ijtimā'iyah*). In the societal living system, volunteer in social service plays an important role to maintain a comfortable community life, especially among the people in need. It is common for wealthy people to contribute their properties to the society in need depending on the current necessity. During the advent of Islam, among the main purposes of Islamic law is to realise the interest (*maṣlahah*) that benefits the community, especially the Muslims according to the supreme Islamic sources of law, the Quran and Sunnah. In the matters of wealth development, Rasulullah S.A.W and the previous Islamic scholars (*tābi'īn* and *tābi' al-tābi'īn*) established a few systems that could benefit the Muslims community, such as *waqf*. In this chapter, the concept of temporary *waqf* is illustrated in detail, followed by the arguments of modern and traditional Islamic scholars on temporary *waqf* implementation.

2.1. *Waqf* Definition

Some words hold similar meanings with *waqf*, such as donation (*al-ṣadaqah*), gift, or present (*al-hibah*), and will (*al-waṣiyyah*). However, Islamic scholars technically

present different definitions of *waqf* (*isṭilāhiy*) while having different views on the conditions of *waqf*. In this case, it is crucial for researchers to precisely describe the literal and technical *waqf* definitions from the modern and traditional Islamic scholars' perspectives.

2.1.1. *Waqf* Literal Definition

In Arabic, the term *waqf* is a verbal-noun (*maṣdar*) from the word *waqafa*, which means 'stop', 'preserve', and 'hold' (Al-Jurjani, 1982; Ibrahim, Muntasir, Atiyyah, & Muhammad, 2004). Al-Qal'aji (2010) stated that *waqf* could be defined as mortmain, endowment, and charity. Therefore, it could be seen that the term *waqf* comprises multiple meanings depending on the use of the word. For example, the term *waqf* could be understood as an act of observing or the silence from providing any solution or answer. The application of the term *waqf* on the property indicates the preservation on the property to worship Allah S.W.T. In Arabic literature, *waqf* is a singular noun, while *awqāf* is its plural noun. For example, the donor will make a declaration to *waqf* land in his ownership by saying, "*I waqf this land in the cause of Allah S.W.T*" (Al-Nawawi, 2008; Qahf, 2000).

Thus, the term *waqf* could be literally understood as 'hold', 'preserve', 'detention', and 'stop'. In this research, the literal definition of *waqf* is applied by the researcher, which refers to the action of detaining or preserving a specific property from any transactions or its elimination and preserving the benefits of the property for the people in need and the beneficiaries. This literal definition is unanimous by prominent Islamic scholars (Ab Rahman & Amanullah, 2017b; Al-Zuhaili, 1984).

2.1.2. *Waqf* Technical Definition

As previously stated, Islamic scholars present various technical definitions of *waqf*. However, the general point based on all the definitions by the Islamic scholars from four major schools, namely Ḥanafī's sect, Malīkī's sect, Shāfi'ī's sect, and Ḥanbalī's sect, is that *waqf* is a form of alms-giving that is similar to foundation or charity. It also comprises specific principles, such as holding the property from any transaction, inheritance, and gift. The benefits of the property would be channelled to the beneficiaries to fulfil the public interest (*maṣlahah al-‘ammah*) or private interest (*maṣlahah al-khassah*) with the purpose to worship Allah S.W.T. The *waqf* technical definition by four prominent Islamic scholars would be described in detail.

Ḥanafī School

In *Al-Durr Al-Mukhtār Sharḥ Al-Tanwīr Al-Abṣār ma‘a Radd Al-Muḥtār*, Al-Ḥaskafī (2002) described Abū Ḥanīfah's definition of *waqf* as “*the detention of a specific property in the ownership of the founder (al-wāqif) while the benefits from the property is dedicated for a charitable purpose although in small quantity*”. However, Abū Yūsuf and Imām Muḥammad Hasan Al-Shayban's definition is slightly different from Abū Ḥanīfah's definition. Abū Ḥanīfah's disciples stated that *waqf* is “*the detention on a specific property in the ownership of Allah S.W.T while the benefits from the property will be given to the needy as stated by the founder (al-wāqif)*” (Al-Ḥaskafī, 2002). Based on these definitions, it was found that the difference is present in the property ownership status. Abū Ḥanīfah opined that the ownership of the property is

still present to the donor, which indicates the donor's right to perform any transaction on the *waqf* property whenever he wishes. According to Abū Ḥanīfah, *‘aqd jāiz*¹ is a type of *waqf* contract. Thus, the benefits of the *waqf* property belong to the beneficiaries, such as the poor and the needy, while the ownership of the property remains in the donor's ownership. However, exceptions are present in certain circumstances where the *waqf* property ownership will be changed. If the Qaḍi decides that the property ownership is changed to the beneficiaries' ownership, the donor's ownership of the property will be terminated. In other cases, if the donor declares that the property will be endowed after his death, it would take place through the application of the rule of wills (*al-waṣiyyah*) (Ibn ‘Abidīn, 2003).

Abū Yūsuf and Imam Muḥammad Ḥasan Al-Shayban stated that the ownership of the property belongs to Allah S.W.T. The *waqf* property is prohibited from any transactions, such as inheritance, wills, and selling. This definition is agreed by Imam Al-Tamartāshi in *Tanwīr Al-Abṣār*, who stated that the ownership of *waqf* belongs to Allah S.W.T physically, while the benefits of the property could be channelled to any individuals as per the donor's wish.

Mālikī School

Ibn ‘Abd Al-Salām, one of Mālikī's scholars, has defined *waqf* as “*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). On the other hand,

¹ *‘Aqd Jāiz* is a contract that established between two parties which can be invoked without the consent from both of the parties. For an example, the donor (*al-wāqif*) can reclaim the *waqf* property and inherited the property for his/her heirs.

Ibn ‘Arafah Al-Mālikī’s definition of *waqf* is to “contribute the benefits of the property as long as it exists while the ownership of the property still remains in the founder’s possession even assumingly” (‘Alish, 1979).

Based on these definitions, the researcher opined that Mālikī’s sect does not limit the *waqf* only in terms of the benefits from the fully-owned property. The donor is also permitted to *waqf* by contributing the benefits from the property owned through tenancy or the revenue from the owned property. The donor’s ownership of the *waqf* property would be terminated.

It was also found that *al-mauqūf* could be endowed according to Mālikī’s sect in three ways; 1) *waqf* the benefits on the full owned property; 2) *waqf* the benefits on the property owned through tenancy, and; 3) *waqf* the revenue of the property. The donor could also choose for the *waqf* want to be performed temporarily or in perpetuity.

Shāfi‘iy School

According to Al-Shirbīnī (1997) in *Mughniy Al-Muhtāj ilā Ma‘rifah Ma‘āni Alfāz Al-Minhāj*, Imam Al-Nawāwī Al-Shāfi‘iy described *waqf* as “the detention on the property which can benefit the mankind by terminating the ownership of the founder and contribute the benefits for a good purpose as well as to worship Allah S.W.T”. Besides, Imām Al-Baghāwī (1998) stated in *Al-Tahdzīb fī Fiqh Al-Imām Al-Shāfi‘iy* that *waqf* is “preserving the specific property, terminating the ownership and the right of *al-wāqif* to do any transaction on the property, and contributing the property benefits for good purposes and to worship Allah S.W.T”.

Based on these definitions, the researcher opined that the opinion of Shāfi'iy sect relatively similar to Imām Muḥammad Al-Shayban and Qāḍi Abū Yūsuf's *waqf* definition. It also could be understood that *waqf* should be performed in perpetuity, given that it is a compulsory condition in Shāfi'iy sect. If the *waqf* is declared temporarily, it is not valid. Besides, the ownership of *waqf* property will be terminated from the donor (*al-wāqif*) as it belongs to Allah S.W.T.

Ḥanbalī School

Imam Ibn Qudāmah in *Al-Mughnī* defined *waqf* as “the detention of the property and contributes the benefits of the property” (Ibn Qudāmah, 2005). This definition was extracted from the prophetic traditions upon *waqf* by Sayyidina Umar R.A on a piece of land in Khaybar, and Rasulullah S.A.W said:

{قال الرسول الله صلى الله عليه وسلم: إن شئت حبست أصلها وتصدق بها}

Transalation: The Prophet S.A.W said, " If you like, you can give the land as endowment and give its fruits in charity." (Hadith. Al-Bukhārī. Kitab Al-Waṣāyā. Bab Al-Waqf Kaifa Yuktab: Jil 10: #2587)

Al-Mardawī (1955) described *waqf* as:

“the detention of the property which can benefit humankind by the donor by terminating the ownership of the property from the donor (al-wāqif) and contributing the yield of the property for the good purposes as well as to worship Allah S.W.T.”.

Al-Bahūtī (2000) explained that this definition indicates that the endowed property must be preserved from any transactions and the right of ownership by terminating the ownership of the donor on the property. To illustrate this point, the declaration of *waqf* by the donor would change the property status of ownership. The researchers also opined that the *waqf* definition in the Ḥanbalī sect is relatively similar to the definition by Imām Muḥammad Ḥasan Al-Shayban, Qāḍī Abū Yūsuf, and the majority of Shāfiʿiy school scholars. However, Ḥanbalī schools stated that the ownership of the property belongs to the beneficiaries (*al-mauqūf ʿalaiḥ*).

Based on all the definitions from four prominent schools, it was observed that the Islamic scholars agree with the statement that a *waqf* is a form of alms-giving by physically preserving the property, contributing the property benefits, and terminating the right of *al-wāqif* to perform any transactions on the property. However, the Islamic scholars have different opinions regarding some aspects of *waqf*, such as 1) the declaration of *waqf* (*ṣighah*), 2) the ownership of the property (*milkiyyah al-mauqūf*), and 3) the implementation either temporarily or in perpetuity. Moreover, the Islamic scholars of Mālikī sect implied that the donor has the right to include a condition on the *waqf*. As an example, the donor sets a specific period on the *waqf*. The limitation of time specified by the donor could be considered valid.

Following the analysis of all the definitions, the Mālikī schools' definition was selected, which is as follows:

“...contributing the benefits from the property owned by the founder to the needy albeit by tenancy or lease based on the period declared al-wāqif” (Al-Dardīr, 2007).

This definition is flexible and comprehensive to be applied in the current times due to the situation of the donor and the beneficiaries, including the development of property

based on the current demand and situation. It also indicates that the donor could endow the benefits from the fully owned property, the yield of the property, and the property owned through tenancy. The donor is also allowed to make a choice either to declare the *waqf* in perpetuity or temporarily, which is a valid action.

2.1.3. *Waqf* Definition from Modern Islamic Scholars' Perspective

The definition of *waqf* terminology is divided by modern Islamic scholars into two definitions. The modern Islamic scholars in the first group have the tendency to analyse all the definitions from previous Islamic scholars of four prominent schools and show a preference (*tarjīh*) for a specific definition. For an example, in *Muḥāḍarāt fi Al-Waqf*, Abū Zahrah (1971) mentioned all the *waqf* definitions from the previous Islamic scholars. After he analysed all the definitions, the preferred definition was the definition by Ibn Qudāmah Al-Ḥanbali, which is “*the detention of the property and contributes the benefits of the property*”. This definition was also preferred by Nazih Hammad (2008) and Abd Al-Halim Umar (2011). It could be understood from this definition that the verse “*the detention of the property*” denotes that the ownership right of the donor would be terminated. Thus, the donor is prohibited to make any transaction on the property, inheritance, or give away the property as a gift. Meanwhile, the benefits of the property will be offered to the beneficiaries as per the donor’s wish. Nazih Hammad (2008) in *Muʿjam Al-Muṣṭalahāt Al-Māliyyah Al-Iqtiṣādiyyah fi Lughah Al-Fuqahā'* also stated the same technical definition of *waqf*.

The modern Islamic scholars prefer this definition as it is universal, and the scholars wish to prevent the *khilaf* among them. For example, the Islamic scholars present a view regarding the *waqf* property ownership, regardless of the property

belonging to Allah S.W.T, the beneficiaries, or in the donor's ownership. The second group of Islamic scholars create a new definition of *waqf*, which is relevant and suitable to be applied in this modern era without contradicting the understanding of previous Islamic scholars and the main principle of *waqf*. Qahf (2000), who revised and developed the new definition of *waqf*, defined *waqf* as follows:

"The detention of the property either perpetuity or temporarily, contributes the property physically or its benefits repeatedly and continuously for the good purposes generally or specifically, according to the condition determined by the donor, and complies to the Shari'ah laws restrictions."

As shown in the definition, the term "property" is described by Qahf (2000) in his book, *"Al-Waqf Al-Islami: Ta'awwuruhi, Idaratuhu, Tanmiyyatuhu"*. In this case, the *waqf* property could be a movable property, which includes vehicles, immovable properties such as land and garden, physical property such as weapons, and the benefits of the property such as a specific endowed property owned through tenancy. The definition also indicates that the *waqf* could also be declared by the donor either in perpetuity or temporarily. This definition was agreed upon by Dr. Wahbah Al-Zuhaili (1997) in *Ru'yah Ijtihādiyyah fi Al-Masā'il Al-Fiqhiyyah Al-Mu'āṣirah li Al-Waqf* to revise the understanding of *waqf* concept. This contemporary terminology of *waqf* also complies to the Shari'ah objective (*Maqāṣid Al-Sharī'ah*) for the development of the *waqf* property based on the current needs and situation.

After the analysis of both *waqf* definitions used by modern Islamic scholars, Mundzir Qahf's definition was found to be more flexible and comprehensive to be applied in this modern era. This definition appears to be related to and similar to Mālikī's sect definition. However, Qahf improvised the *waqf* definition and adapted to the current situation by adding a new element in the definition that was not applied in the

past. An example could be the *waqf* of the benefits of the property, which is either fully owned by the donor or the tenancy, or the yield of the property.

2.2. The *Waqf* Legality

In this topic, the discussion was divided into two sub-topics, namely 1) the provision and evidence of *waqf* legality and 2) the position of Islamic scholars upon the provision of *waqf* legality.

2.2.1. The *Waqf* Legality's Provision

In Islamic jurisprudence, four main sources were agreed upon by the Islamic scholars in extracting the law (*hukm*); 1) Quran; 2) prophetic tradition (*Sunnah*); 3) Islamic scholars' consensus (*Ijmā'*), and; 4) Qias. The proof of *waqf* legality could be highlighted through the Quran, prophetic traditions (*Sunnah*), and the consensus of Islamic scholars (*Ijmā'*).

Quran

(1) ﴿لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ

عَلِيمٌ﴾

Translation: "Never will you attain the good [reward] until you spend [in the way of Allah] from that which you love. And whatever you spend - indeed, Allah is Knowing of it". (Al-Quran. Āli Imran. 3:92)²

According to Imam Ibn Kathīr (1999) in *Tafsīr Ibn Kathīr*, the term {الْبَرَّ} means the paradise. This term indicates that the Muslims would be rewarded with the paradise if they spend and give away the property that they love the most as charity. Imam Al-Tabariy (2005) stated in *Tafsīr Al-Ṭabariy Al-Musamma Jāmi' Al-Bayān fi Ta'wīl Al-Qur'an* that the term {الْبَرَّ} also indicates that the Muslims who spend their property in the path of Allah S.W.T would be rewarded with paradise and be saved from the punishment of Allah in the hereafter. Besides, Imam Ibn Kathīr (1999) stated that after the emergence of this verse, one of the Companions, Abū Talḥah, endowed the property that he loved the most, which was the garden in Bairuḥa', to his relatives and the people in need. Based on these statements, it is indicated that charity is encouraged by Allah to all believers. *Waqf* is considered a type of charity in Islam.

(2) يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ

Translation: "O you who have believed, spend from the good things which you have earned and from that which We have produced for you from the earth. And do not aim toward the defective therefrom,

² All Quranic translations in this thesis are based on Şaḥeeḥ International. 2004. *The Qur'ān English Meanings*. Jeddah: Al-Muntada Al-Islami. Translations from other sources will be cited accordingly

spending [from that] while you would not take it [yourself] except with closed eyes. And know that Allah is Free of need and Praiseworthy". (Al-Quran. Al-Baqarah. 2:267)

This Quranic verse shows that Allah S.W.T commands all the Muslims to *infaq*, which means to donate and contribute the best property or wealth in their ownership to the poor (Ibn Kathīr, 1999). For instance, the wealth could be in the form of natural sources such as gold, the yield from the garden, and the profit from the business. *Waqf* is a type of donation (*sadaqah*).

Based on both of the previously highlighted Quranic verses, the practice of charity and donation is encouraged in Islam. Allah S.W.T commands all believers to spend and give away the property that they love the most and the best they have to the needy, the poor, and the relatives as a charity and donation. This encouragement should be highlighted, given that Allah S.W.T mentions in the Quran that the donors will be rewarded when the charity is performed with sincerity.

Prophetic Traditions (Sunnah).

1. {عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ بْنِ أَبِي طَلْحَةَ، أَنَّهُ سَمِعَ أَنَسَ بْنَ مَالِكٍ . رَضِيَ اللَّهُ عَنْهُ .

يَقُولُ كَانَ أَبُو طَلْحَةَ أَكْثَرَ الْأَنْصَارِ بِالْمَدِينَةِ مَالاً مِنْ نَحْلِ، وَكَانَ أَحَبَّ أَمْوَالِهِ إِلَيْهِ

يَبْرُحَاءَ وَكَانَتْ مُسْتَقْبَلَةَ الْمَسْجِدِ، وَكَانَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَدْخُلُهَا

وَيَشْرَبُ مِنْ مَاءٍ فِيهَا طَيِّبٍ قَالَ أَنَسٌ فَلَمَّا أُنْزِلَتْ هَذِهِ الْآيَةُ {لَنْ تَنَالُوا الْبِرَّ حَتَّى

تُنْفِقُوا مِمَّا تُحِبُّونَ} قَامَ أَبُو طَلْحَةَ إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ يَا

رَسُولَ اللَّهِ. إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى يَقُولُ {لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ}
وَأَنَّ أَحَبَّ أَمْوَالِي إِلَى بَيْتِخَاءٍ، وَإِنَّهَا صَدَقَةٌ لِلَّهِ أَرْجُو بَرَّهَا وَذُخْرَهَا عِنْدَ اللَّهِ، فَضَعَهَا يَا
رَسُولَ اللَّهِ حَيْثُ أَرَاكَ اللَّهُ. قَالَ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " بَخْ، ذَلِكَ مَالٌ
رَابِعٌ، ذَلِكَ مَالٌ رَابِعٌ، وَقَدْ سَمِعْتُ مَا قُلْتَ وَإِنِّي أَرَى أَنَّ تَجْعَلَهَا فِي الْأَقْرَبِينَ ". فَقَالَ
أَبُو طَلْحَةَ أَفْعَلُ يَا رَسُولَ اللَّهِ. فَقَسَمَهَا أَبُو طَلْحَةَ فِي أَقَارِبِهِ وَبَنِي عَمِّهِ. }

Translation: Narrated by Ishāq bin Abdillāh bin Abi Talhah, I heard Anas bin Mālīk saying, "Abu Talha had more property of date-palm trees gardens than any other amongst the Anṣār in Medina and the most beloved of them to him was Bairuḥā' well, and it was in front of the Mosque of the Prophet S.A.W, Rasūlullāh S.A.W used to go there and used to drink its nice water." Anas added, "When these verses were revealed: 'By no means shall you attain righteousness unless you spend (in charity) of that which you love.' (3.92) Abu Talḥah said to Rasūlullāh S.A.W: 'O Rasūlullāh S.A.W Allah, the Blessed, the Superior says: By no means shall you attain righteousness, unless you spend (in charity) of that which you love. And no doubt, Bairuḥā' garden is the most beloved of all my property to me. So I want to give it to charity in Allah's cause. I expect its reward from Allah. O Rasūlullāh S.A.W Spend it where Allah makes you think it feasible.' On that Allah's Apostle said, 'Bravo! It is useful property. I have heard what you have said (O Abu Talḥah), and I think it would be proper if you gave it to your Kith and kin.' Abu Talhah said, I will do so, O Allah's Apostle.' Then Abu Talhah distributed that garden amongst

his relatives." (Hadith. Al-Bukhārī. Kitāb Al-Zakāh. Bab Al-Zakāh
‘ala Al-Aqārib: Jil 5: #1392)

According to Ibn Hajar Al-‘Asqallāni (2001) in *Fatḥu Al-Bāriy fī Sharḥ Ṣaḥīḥ Al-Bukhārī*, the *ḥadīth* by Abu Talḥah shows that Muslims are encouraged to perform charity to their relatives and family members, as performed by Abu Talḥah. The researcher opined that this action could also be considered *waqf*, which is also a form of continuous charity. However, the Islamic scholars stated that the *waqf*, which is particularly for the family members and relatives, is categorised as family *waqf* (*al-waqf al-dzurriy*) (Al-Zuhaili, 1997).

2. { وَعَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِذَا مَاتَ
الْإِنْسَانُ انْقَطَعَ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ أَشْيَاءَ: صَدَقَةٌ جَارِيَةٌ أَوْ عِلْمٌ يُنْتَفَعُ بِهِ أَوْ وَلَدٌ صَالِحٌ
يَدْعُو لَهُ }

Translation: Abu Hurairah reported Rasulullah S.A.W as saying,
“When a man dies, no further reward is recorded for his actions, with
three exceptions: Ṣadaqa which continues to be supplied, or
knowledge from which benefit continues to be reaped, or the prayers
of a good son for his dead father.” (Hadith. Al-Muslim. Kitāb Al-
Waṣiyyah. Bab Mā Yulḥiqu Al-Insān min Al-Thawāb Ba‘da
Wafātihi: Jil 3: #1631)

Based on Imam Al-Nawawi (2001) statement in *Ṣaḥīḥ Muslim bi Sharḥ Al-Nawawi*,
Islamic scholars expressed through the aforementioned *ḥadīth* that all the actions and
the good deeds by the humankind would not be counted and rewarded after they die,

with the exception of three actions: the actions and the pious deeds of their children, the knowledge that they teach and compile through writings, and continuous charity which is *waqf*. Al-Nawawi (2001) also stated that this *ḥadīth* is proof of the validity and legality of *waqf* in Islam.

3. { وَعَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: مَنْ احْتَبَسَ فَرَسًا فِي

سَبِيلِ اللَّهِ إِمَانًا وَتَصَدِيقًا بَوْعَدِهِ فَإِنَّ شَبَعَهُ وَرِيَّهُ وَرَوْثَهُ وَبَوْلَهُ فِي مِيزَانِهِ يَوْمَ الْقِيَامَةِ }

Translation: Abu Hurairah reported Rasulullah S.A.W as saying, "If anyone reserves a horse in God's path with faith in God and belief in His promise, its food, drink, dung, and urine will be in his scale on the day of resurrection." (Hadith, Al-Bukhārī. Kitāb Al-Jihād wa Al-Siyar. Bab Man Iḥtabasa Farsan: Jil 10: #2698)

Based on Imam Ibn Ḥajar Al-ʿAsqallānī's (2001) description of this *ḥadīth* in *Fathu Al-Bāriy fī Sharḥ Ṣaḥīḥ Al-Bukhārī*, it is valid and permissible to endow the horse for the Muslims' use to protect themselves. The Islamic scholars also concluded from this *ḥadīth* that the *waqf* of movable property other than horses and immovable property is allowed and valid to be endowed. The researcher opined that this prophetic tradition is a provision on the legality and permission of *waqf* on movable and immovable property.

4. { عَنْ عَمْرِو بْنِ الْحَارِثِ: قَالَ مَا تَرَكَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ذِينَارًا وَلَا

دِينَهًا وَلَا عَبْدًا وَلَا أَمَةً، إِلَّا بَعْلَتُهُ الْبَيْضَاءُ الَّتِي كَانَ يَرْكَبُهَا، وَسِلَاحُهُ، وَأَرْضًا جَعَلَهَا

لِابْنِ السَّبِيلِ صَدَقَةً. }

Translation: "Narrated by ʿAmr bin Al-Ḥārith: Allah's Messenger S.A.W did not leave a Dinar or a Dirham or a male or a female slave. He left only his white mule on which he used to ride, and his weapons, and a piece of land which he gave in charity for the needy travellers." (Hadith. Al-Bukhārī. Kitāb Al-Maghāzī. Bab Marāḍa Al-Nabī ﷺ: Jil 14: #4192)

According to Imam Ibn Ḥajar Al-ʿAsqallānī (2001) in *Fathu Al-Bāriy fī Sharḥ Ṣaḥīḥ Al-Bukhārī*, this *ḥadīth* indicated that the land granted by Prophet Muhammad S.A.W to the needy travelers could be considered *waqf*. To illustrate this point, the benefits of the land remain a charity after the passing of the Prophet Muhammad S.A.W.

5. { حَدَّثَنَا يَحْيَى بْنُ يَحْيَى التَّمِيمِيُّ أَخْبَرَنَا سُلَيْمُ بْنُ أَحْزَرَ عَنْ ابْنِ عَوْنٍ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ أَصَابَ عُمَرُ أَرْضًا بِخَيْبَرَ فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمِرُهُ فِيهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ لَمْ أَصِبْ مَالًا قَطُّ هُوَ أَنفُسُ عِنْدِي مِنْهُ فَمَا تَأْمُرُنِي بِهِ قَالَ إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا قَالَ فَتَصَدَّقُ بِهَا عُمَرُ أَنَّهُ لَا يُبَاغُ أَصْلُهَا وَلَا يُبْتَاغُ وَلَا يُورَثُ وَلَا يُوهَبُ قَالَ فَتَصَدَّقُ عُمَرُ فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ وَالضُّعْفِ لَا جُنَاحَ عَلَيَّ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ }

Translation: Narrated by Ibn ʿUmar: ʿUmar bin Khaṭṭāb got some land in Khaibar and he went to the Prophet S.A.W to consult him about it saying, "O Rasūlullah S.A.W I got some land in Khaibar better than which I have never had, what do you suggest that I do with it?" The Prophet S.A.W said, "If you like you can give the land as endowment

and give its fruits in charity." So 'Umar gave it in charity as an endowment on the condition that would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the kith and kin, for freeing slaves, for Allah's cause, to the travellers and guests; and that there would be no harm if the guardian of the endowment ate from it according to his need with good intention, and fed others without storing it for the future." (Hadith. Muslim. Kitāb Al-Waṣiyyah. Bab Al-Waqf: Jil 6: #1632)

Imam Al-Nawawi (2001) described in *Ṣaḥīḥ Muslim bi Sharḥ Al-Nawawī* that this prophetic tradition is a provision in declaring the legality of *waqf* to be practised. The practice of *waqf* is entirely different from the practice during the *Jahiliyyah* era, which is also the view of the majority of Islamic scholars. The Islamic scholars unanimously agreed on the validity and permissibility of *waqf al-masājid* and wells.

Based on all of the aforementioned prophetic traditions, it could be concluded that the *waqf* has been practised by the Prophet Muhammad and the Companions. However, the actions are known as *infaq* and currently known as *waqf*, as described by Imam Al-Shāfi'iy (Al-Zuhaili, 1984).

The Consensus of Islamic scholars (Ijma')

The Islamic scholars from Ḥanafī, Malikī, Shāfi'iy, and Ḥanbalī sects were unanimous in the statement that *waqf* is permissible and recommended (*mandūb*) to be practised by all Muslims (Ab Rahman, 2017; Ab Rahman & Amanullah, 2017b; Al-Nawawi, 2008).

By presenting the evidence and proof from Quran and prophetic traditions (*Sunnah*), *waqf* is demonstrated to be the proof of *ṣadaqah* and practice encouraged by Allah S.W.T and Prophet Muhammad S.A.W for the Muslims. Besides, the Companions of Prophet Muhammad S.A.W practised *waqf* in their life either during or after Prophet Muhammad S.A.W's lifetime. One of the Rasulullah S.A.W's Companions, Jabir R.A, stated that none of the Companions R.A died unless all of their property and wealth has been endowed (Al-Raisuni, 2014; Al-Zuhaili, 1984). The *waqf* is continuously practiced by the Muslims entire world until nowadays as practiced by the Prophet Muhammad S.A.W and the Companions R.A.

2.2.2. The Islamic Scholars' Position on the Waqf Legality

Al-Soleh (2001) and Sabri (2011) stated that Islamic scholars have different views on the *waqf* legality. Three opinions are presented; 1) *waqf* is permissible and valid; 2) permissible and limited to specific property; and 3) *waqf* is prohibited and invalid. A discussion would be made specifically regarding the position of Islamic scholars upon the *waqf* legality.

First Opinion: Permissible and Valid

The majority of Islamic scholars from the Ḥanafī sect, Mālikī sect, Shāfi'iy sect, and Ḥanbalī sect unanimously agreed that *waqf* is permissible to be practised without being bound to any limitation according to the provision, as mentioned by the researcher. Based on this opinion, *waqf* is valid to any type of property, which could be movable or immovable, or be in the form of benefits such as cash and workforce. To illustrate

this point, the *waqf* is considered a part of the good deeds encouraged by Allah S.W.T and Rasulullah S.A.W for the Muslims.

Second Opinion: Permissible with Limitation.

Some Islamic scholars stated that *waqf* is permissible, although it is limited to a particular property (Al-Kubaisiy, 1977). The Islamic scholars who agreed with this opinion stated that *waqf* is only valid on movable properties such as weapons, vehicles, books, clothes, and all types of movable properties that last long and are not easily damaged. While some properties such as land and garden are immovable, they are not valid for endowment. This is the opinion of ʿAbdullah ibn Masʿūd R.A, Ali ibn Abī Ṭālib R.A, and Abdullah ibn ʿAbbās R.A.

{عن الشعبي قال: قال علي كرم الله وجهه: لا حبس عن فرائض الله إلا ما كان من سلاح أو كراع.}

Translation: Narrated by Al-Shaʿbiy: Sayyidina ʿAli Karrama Allahu Wajhah said: "No endowment upon the obligatory demand of Allah S.W.T except it is weapons or warhorses." (Hadith. Al-Zailaʿie. Kitāb Al-Waqf. Jil 4: #6184)

Third Opinion: Prohibited (manʿu) and Invalid

The Islamic scholars in this group opined that *waqf* is prohibited and invalid to be practised either towards movable or immovable property. This opinion was agreed by

Qaḍi Shuraiḥ³, a narration from Abū Ḥanīfah, and the general opinion of *Ahlu Al-Kūfah*.

The Islamic scholars who agreed with this opinion showed the following argument with the prophetic traditions:

{عن ابن عباس رضي الله عنه قال، قال رسول الله ﷺ: لا حبس عن فرائض الله عز وجل.}

Translation: Narrated by Ibn ʿAbbās R.A, Rasulullah S.A.W said:

"No endowment upon the obligatory demand of Allah S.W.T."

(Hadith. Al-Dāruqutni. Kitab Al-Farāid. Jil 5: #4062)

Preferred Opinion.

The first opinion was preferred, in which the *waqf* is permissible and valid without being bound to any limitation. The following explanations were presented to the preference:

- a) The evidence offered by Islamic scholars for the first opinion is clearer, reliable, and firm. The second opinion mentioned that *waqf* is permissible and only limited to the movable property only. The Islamic scholars who agreed with this opinion argued with the prophetic tradition narrated by ʿAbdullah ibn Masʿūd R.A, as highlighted in the previous topic. However, the provided *hadith* was supported by an unknown narrator, whose name was not stated in the *sanad*.

³ He is Al-Qāḍi Shuraiḥ bin Al-Ḥārith Al-Kindī, one of the famous Islamic scholars in the era of Al-Tābiʿīn. He is appointed as Qaḍi in Kufah during the era of Caliphate ʿUmar ibn Al-Khaṭṭāb, Caliphate Ali ibn Abi Ṭālib until the era of Al-Ḥajjāj bin Yūsuf Al-Thaqafi. Qāḍi Shuraiḥ become among the prominent qāḍi in the Islamic history. Qāḍi Shuraiḥ died in 78H/687M.

Besides, the statement provided by the Islamic scholars regarding Rasulullah S.A.W's unacceptance of any forms of *waqf* except warhorses and weapons is not reliable to support the *hadith* narrated by ʿAbdullah ibn Masʿūd R.A. To illustrate this point, the statement is in the form of the story and report instead of the structure of commandment or prohibition. Therefore, it cannot be considered evidence to support the prohibition of *waqf* other than warhorses and weapons.

The third opinion agreed that *waqf* is prohibited and invalid, which also offered arguments based on *dalīl ʿaqli* and *naqli* as evidence. However, the evidence was argued by other Islamic scholars, with the argument addressing *dalīl ʿaqli* about the *hadith* narrated by Ibn ʿAbbās R.A. The *hadith* applied by the Islamic scholars in this opinion was *daʿif*, while Ibn Ḥazm (2002) mentioned in *Al-Muḥallā bi Al-Āthār* that the prophetic traditions is *mauḍūʿ*.

- b) The first opinion is stronger compared to the other two opinions as it is supported by the majority of Islamic scholars. Besides, the majority of the Companions of Prophet Muhammad S.A.W have practised *waqf* by endowing their land and wealth, which has been an indisputable proof among Islamic scholars until currently.

2.3. The Types of *Waqf*

The previous Islamic scholars did not divide and categorise *waqf* into a specific group. Provided that *waqf* is a part of the charity, it is not categorised under *waqf khairiy* nor *waqf dzurriy*, given that the main purpose of charity is to worship and seek the blessings of Allah S.W.T (Abu Zahrah, 1971; Al-Soleh, 2001). The division of *waqf* into *waqf*

khairiy and *waqf dzurriy* took place with the growth of Islam to the entire world in the era of the Umayyad Caliphate (Abu Zahrah, 1971). The practice of *waqf* has grown drastically and is participated by individuals and rulers. This phenomenon could be seen in the era of Al-Ayyubiyyin's reign in Egypt when *waqf irṣād* is introduced (Abu Zahrah, 1971; Mat Rani, Mohammed Noor, and Othman, 2015; Sabri, 2011). The practice of *waqf* is developing until today.

The researcher opined that Islamic scholars have categorised the *waqf* into a few divisions based on the current development and situation. Some Islamic scholars categorised the types of *waqf* based on the eligibility of the *waqf* beneficiaries, while some other Islamic scholars categorised the *waqf* according to the property of the *waqf*. In this case, the focus was placed on the discussion on the types of *waqf*, which comprised four sub-topics: 1) the types of *waqf* based on the beneficiaries (*al-mauqūf ‘alaih*), 2) the types of *waqf* based on the property (*al-mauqūf*), 3) the types of *waqf* based on the period of time, and 4) the types of *waqf* based on the donor (*al-wāqif*).

2.3.1. The Types of *Waqf* Based on The Beneficiaries (*Al-Mauqūf ‘Alaih*)

Given that *waqf* is widely practised in Islamic countries, describing the division of the *waqf* beneficiaries is important. Muṣṭafā Al-Khin, Muṣṭafa Al-Bughā, and Al-Sharbaji (2015) stated in *Al-Fiḥ Al-Manhājiy ‘alā Madzhab Al-Imām Al-Shāfi‘iy* that *waqf* could be divided into three types, namely *al-waqf al-khairiy*, *al-waqf al-dzurriy*, and *al-waqf al-mushtarak*.

a) Philanthropy Waqf (Al-Waqf Al-Khairiy)

Al-Sarkhasi (1989) defined *al-waqf al-khairiy* as “the detention of the property by someone and contributes the benefits of the property towards the beneficiaries either non-continuous or continuous, for the virtuous and charitable purposes”. Sabri (2011) stated that this definition is a comprehensive definition of philanthropy waqf or *al-waqf al-khairiy*. According to the aforementioned definition, it could be understood that the benefits of the property endowed under *al-waqf al-khairiy* could be utilised by the beneficiaries, which could be continuous beneficiaries including the poor, the needy, the Muslim community, orphans and incapable people, or non-continuous beneficiaries such as family members, particular individuals, and particular organisations. This definition also demonstrates that the *waqf*, which is declared under *al-waqf al-khairiy*, is entirely different from *al-waqf al-dzurriy*.

Ab Rahman (2017) stated that *al-waqf al-khairiy* could be divided into two types, namely public (*al-khairiy al-‘ām*) and private (*al-khairiy al-khāṣ*). The public philanthropy waqf (*al-waqf al-khairiy al-‘ām*) can be defined as follows:

"The detention on a specific property that can benefit either the poor or wealthy communities without any limitations on the beneficiaries."
(Al-Sarkhasi, 1989; Ibn Qudāmah, 2005; Sabri, 2011).

An example could be the situation of an individual endowing his land to build a mosque. In this case, the contract would be declared as *‘aqd lāzim*, which is the contract is bind and irrevocable. This feature indicates that the ownership of the land would be terminated from the donor and it belongs to Allah S.W.T. To illustrate, the main purpose of the mosque being built for all the Muslims is for worshipping Allah S.W.T and performing five mandatory prayers as stated in Quran and *Sunnah* (Al-Sarkhasi, 1989; Al-Shirbīnī, 1997; Nur, 2017). Besides, the Islamic scholars are unanimous in the

prohibition of building the mosque solely for a specific individual to perform these prayers without allowing other Muslims (Al-Nawawi, 2008; Al-Sarkhasi, 1989; Al-Shirbīnī, 1997).

The private philanthropy *waqf* (*al-waqf al-khairiy al-khās*) could be defined as follows:

"The detention on a specific property for a particular purpose, which contributes the benefits and the yield of the property to the specific beneficiaries." (Abu Zahrah, 1971; Al-Kubaisy, 1977; Qahf, 2000; Sabri, 2011).

For example, the donor endows a building to build a *madrasah* for the orphans. Therefore, *waqf* is only allowed to be utilised by the orphans instead of the communities and other people. The practice of private philanthropy *waqf* was adopted through the action of Sayyidina ʿUmar Al-Khattab R.A who endowed his land in Khaibar for specific beneficiaries, namely the poor, the slaves (*al-riqāb*), *ibn sabīl*, and the visitor (*al-ḍaifi*) (Ab Rahman, 2017).

Sabri (2011) presented a different view on the division of philanthropy *waqf*. This *waqf* could be divided into pure religious philanthropy *waqf* (*al-waqf al-khairiy al-dīnī al-mahḍ*) and general philanthropy *waqf* (*al-waqf al-khairiy al-dunyawi*). The pure religious philanthropy *waqf* is the *waqf* that is specifically for building or developing the mosque, while the general philanthropy *waqf* includes all types of *al-waqf al-khairiy* except for the mosque. The example of general philanthropy *waqf* such as *waqf* for schools, hospitals, and accommodation for the poor. In the researcher point of view, the philanthropy *waqf* can be endowed as temporary with restriction such as philanthropy *waqf* in temporary is prohibited to be practice for the purpose of mosque and cemetery.

b) Family Waqf (Al-Waqf Al-Dzurriy)

Family waqf or al-waqf-al-dzurriy can be defined as:

" The detention on the specific property and preserve the usufruct of the property for the founder him/herself or for the specific individuals who could be described individuals, family members, or relatives."
(Ibn al-Humām, 2003; Ibn Qudāmāh, 2005; Sabri, 2011).

Based on this definition, family waqf was determined to be a form of waqf, in which the donor would preserve his property and contribute the usufruct of the property to the specific beneficiaries such as the donor him/herself, his descendant, or the family members. To illustrate this point, Muslims are encouraged to prioritise their family members and descendants over other individuals. Although family waqf is not clearly stated in the Quran and prophetic traditions, it could be practised through the recommendation and encouragement of Prophet Muhammad S.A.W to the Companions such as waqf of Abī Ṭalḥah as well in Bairuha' for his family member and relatives (Mohsin, 2010; Muhammad Abdurrahman Sadique, 2015; Sabri, 2011). The family waqf could be considered a social welfare between the family members, which is legal to be practised through the declaration by the donors: *"I have made this land as an endowment for myself, and for my children after I died, and the children of my children."* (Ibn Qudāmāh, 2005; Muhammad Abdurrahman Sadique, 2015). Khalil, Ab Rahman, Thaidi, Rahman (2021) have conducted a research that temporary waqf plays a big role in encouraging the application of family waqf nowadays.

c) Al-Waqf Al-Mushtarak

In the previous topics, the researcher has discussed philanthropy waqf and family waqf specifically. Al-waqf al-mushtarak is the combination of philanthropy waqf

and family *waqf*. The donor would contribute the benefits of the property (as determined by the donor) to *al-khairiy* beneficiaries and *al-ahliy* beneficiaries in one contract (*sighah*) (Al-Soleh, 2001). For instance, the donor endowed his land and half of the yield or contribute the usufruct of land to the poor or the public, while the other half of the land yield is offered to his family members, children, and relatives. Ab Rahman (2017) stated in his study that *al-waqf al-mushtarak* has been practised since the era of Prophet Muhammad S.A.W when Sayyidina ‘Umar Al-Khattāb R.A endowed his land to contribute the benefits of the land to the public, which included the needy, the poor, and family members. However, this *waqf* is not recognise *al-waqf al-mushtarak* during that time, while the action of Sayyidina ‘Umar R.A was regarded as alms-giving and charity. From the researcher’s point of view, the practice of *al-waqf al-mushtarak* is currently applied more often than *al-waqf al-dzurriy* in the community as it could benefit both parties, namely the family members and public. Besides, the donor could also spend their wealth and property to help the needy without abandoning their family members and relatives in need. This statement is in line with the command of Prophet Muhammad S.A.W to spend the wealth to help the needy without neglecting the family members in need to gain blessings from Allah S.W.T.

2.3.2. The Types of *Waqf* Based on the Property (*Al-Mauqūf*)

The asset or the property could be understood as a matter that physically exists, could be utilised, and is valuable according to Islamic law. In this case, the discussion was specified into three sections, namely immovable *waqf* property, movable *waqf* property, and profitable *waqf* form.

a) Immovable (Al-ʿAqārāt)

Immovable property or *al-ʿaqāriy* could be regarded as a type of property that cannot be relocated from its location to another location and should be perpetual (Ibn al-Humām, 2003; Ibn ʿĀbidīn, 2003). Examples of the property are the land and all the assets that are attached directly to the land, such as buildings, garden, and estate. The modern and traditional Islamic scholars agreed on the statement that its permissibility is to be practiced (Al-Nawawī, 2008; Al-Zarqā, 1997; Al-Zuhailī, 1984; Qahf, 2000). Thus, the donor is allowed to endow his/her land physically, its benefits, or the yield of the land and contribute it to the community or family members depending on the conditions determined by the donor. The researchers also opined that the *waqf* of immovable property has been practised since its legislation in the advent of Islam, as practised by Sayyidina Umar Al-Khaṭṭāb R.A.

b) Movable (Al-Manqūl)

The movable property or *al-manqūl* could be regarded as a type of property or asset, in which location could be changed and transferred to another location while either the physical or property could be changed or remain in its original form. Examples of this property are books, water dispensers, vehicles, weapons, Quran, and gardening tools. The majority of the Islamic scholars except Ḥanafī schools allow movable property to be endowed. Although most of the movable property characteristics are perishable and not perpetual, many advantages are present, which could currently benefit many people especially the needy and realise the public interest (*maṣlahah*). Thus, it was argued that the endowment of the movable property has been present since the era of the Prophet

Muhammad S.A.W through the action of the Companions who endowed weapons and warhorses.

c) Cash (Al-Nuqūd)

Also known as *al-waqf al-nuqūd* or *al-waqf al-darāhīm wa al-danānīr*, *waqf* is accepted to be practised in the form of cash. During the early advent of Islam, the practice of cash *waqf* was made through gold and silver coins, as discussed by the previous Islamic scholars regarding its permissibility in the Islamic jurisprudence book (Al-Maiman, 2009). In this modern era, Islamic scholars compare (*qias*) the value of banknotes with gold and silver in terms of their value (*naqd*). However, Islamic scholars have different opinions on the permissibility of cash *waqf*. The majority of Islamic scholars from Ḥanafī, Shāfiʿiy, and Ḥanbalī stated that cash *waqf* is prohibited and invalid to be practised. On the other hand, Mālikī schools and some Islamic scholars of Shāfiʿiy schools allow cash *waqf* to be practised as movable and immovable property.

d) Shared Property (Al-Waqf Al-Mushāʿ)

Muṣṭafā Al-Khin, Muṣṭafa Al-Bughā, and Al-Sharbaji (2015) stated in *Al-Fiqh Al-Manhājiy ʿalā Madzhab Al-Imām Al-Shāfiʿiy* that *al-waqf al-mushāʿ* could be understood as a *waqf* on an undivided share in a specific property. Sabri (2011) mentioned in *Al-Waqf Al-Islāmiy baina Al-Nazariyyah wa Al-Taṭbīq* that *al-waqf al-mushāʿ* is not permissible and invalid for the purpose of cemetery and mosque unless the property of *al-mushāʿ* could be divided. To illustrate this point, the *waqf* of the mosque is purely and sincerely for Allah S.W.T, making it unacceptable to turn the

mosque into another place after it has been built. The same case goes for the *waqf* of the cemetery. However, the Islamic scholars present different opinions about the permissibility of *al-waqf al-mushāʿ* for purposes other than mosques and cemeteries.

In the Ḥanafī schools, two opinions are related to the *al-waqf al-mushāʿ*. Imam Muhammad Al-Shayban stated that *al-waqf al-mushāʿ* is void and invalid unless the property could be divided and separated due to the acceptance of the property (*al-qabḍ*) that is considered a mandatory condition. Thus, the *waqf* is incomplete without *al-qabḍ*, while the undivided shared property cannot fulfil *al-qabḍ*. Meanwhile, Abū Yūsuf opined that *al-waqf al-mushāʿ* is permissible and valid, in which the property is acceptable to be divided or undivided. To illustrate this point, Abū Yūsuf argued that *al-qabḍ* is not considered a mandatory condition in determining the *waqf* validity. In this case, when one of the owners of the land endows the land, the *waqf* should be valid either before or after the land division (Al-Aini, 2000; Al-Kasani, 2002; Al-Sarkhasi, 1989; Ibn al-Humām, 2003).

The majority of the Islamic scholars, which include the Shāfiʿiy schools, Mālikī schools, and Ḥanbalī schools, adhere that the *al-waqf al-mushāʿ* is permissible and valid to be practised. These Islamic scholars also argue that *al-waqf al-mushāʿ* has been practised by the Companions since the era of Prophet Muhammad S.A.W (Al-Dardir, 2007; Al-Dusūqi, 1934; Al-Nawawi, 2008; Al-Shirbīnī, 1997; Ibn Hajar Al-Haitami, 2016; Ibn Qudāmah, 2005).

Based on the aforementioned Islamic scholars' opinions, the researcher preferred and adhered to the opinion of the majority of Islamic scholars, in which *al-waqf al-mushāʿ* is permissible and valid to be practised. To illustrate, it could broaden the benefits of *waqf* and does not contradict the main purpose of *waqf*, which is to seek

the blessings of Allah S.W.T by spending the wealth and property for pious and good purposes.

2.3.3. The Types of Waqf Based on the Period of Time

The previous Islamic scholars divided *waqf* into two types in terms of the period, namely perpetual and temporary *waqf* (Al-Kubaisiy, 1977; Al-Zuhaili, 1997; Sabri, 2011). To illustrate this point, Islamic scholars conducted an in-depth discussion on the period of *waqf* in the conditions of the declaration (*sihah*). Currently, the application of temporary *waqf* is growing rapidly in Islamic countries (Ab Rahman, 2017). Accordingly, the discussion will be made in this article regarding perpetual and temporary *waqf*.

a) Perpetuity (*Muabbad*)

The perpetuity *waqf* (*al-waqf al-muabbad*) is a type of *waqf* that is not bound to any period of time, which indicates that it is continuous and perpetual (Al-Zuhaili, 1984; Qahf, 2000; Sabri, 2011). After the declaration of the perpetual *waqf* by the donor, the property cannot be sold, inherited, and offered as a gift permanently. To illustrate, the declaration (*sihah*) of *waqf* will terminate the donor's ownership of the endowed property. The majority of the Islamic scholars stated that the main purpose of *waqf* declared in perpetuity is to continuously earn the rewards from Allah S.W.T as long as the asset and the property could be benefits by the beneficiaries. Qahf (2000) stated that the *waqf* in perpetuity could be applied to movable properties such as vehicles and books, and immovable properties such as land and garden as long as the donor declares

the *waqf* in perpetuity. On the other hand, Ab Rahman (2017) stated that the perpetuity *waqf* is only applicable to immovable properties such as land, garden, and buildings. To illustrate this point, the nature of the immovable property is perpetuity, which cannot be changed and moved physically. From these statements, the researcher opined that the only immovable properties that fulfil the principles of perpetuity are land and mosques, given that the ownership of the mosques belongs to Allah S.W.T.

b) Temporary (Muaqqat)

The temporary *waqf* could be defined as a type of *waqf* that is bound to a specific period of time determined by the donor in the *ṣighah*. This condition indicates that the *waqf* will be returned to the ownership of the donor, the donor's heirs, or will be continued as a *waqf* property after the date has expired. The traditional and modern Islamic scholars show different opinions on its implementation, although the implementation of temporary *waqf* is growing in most Islamic countries. The temporary *waqf* could be bound to the specific period of time, nature of property, and beneficiaries' generation level as stated by the donor (Hiza^c, 2006; Qahf, 2000).

2.3.4. The Types of *Waqf* Based on the Donor (*Al-Wāqif*)

The types of *waqf* in terms of the donor could be divided into three, namely individual, social, and government *waqf*. In this topic, the *researcher* will briefly describe these types of *waqf*.

a) Individual (Al-Fardiy)

The individual *waqf* (*al-waqf al-fardiy*) could be defined as the *waqf*, which is declared by an individual. The donor must comply with a few conditions, which will be discussed in the next topic.

b) Community (Al-Jamā'ie)

Al-Waqf Al-Jamā'ie or a *waqf* by the community could be defined as a form of *waqf*, which is built by a group of people or a public fund. Ab Rahman (2017) stated that this type of *waqf* has benefited the community, especially those who are not extremely wealthy. This type of *waqf* will broaden the opportunity for the public to give the alms depending on their capability albeit in a small amount. The alms could be collected as a fund and be used to realise the public interest and a relief to the needy.

c) Government (Al-Irşād)

Al-Waqf Al-Irşād or *waqf* by the government could be defined as the detention of specific state property by the government for the public interest, such as endowing a piece of state-owned land to build a school or hospital (Al-Zuhaili, 1984). Sabri (2011) defined *al-waqf al-irşād* as the detention of the property from *bait al-māl* as directed by the government to fulfil the public interest through the benefits of the property. Based on both definitions, the researcher opined that *al-waqf al-irşād* could benefit the community if the government could unveil the potential of undeveloped state property

through *waqf* for more significant use, which includes providing a residence for the needy and low-income group, schools, and mosque.

2.4. The Pillars (*Al-Arkān*) and Conditions (*Shurūṭ*) of *Waqf*

In this topic, accurate description and analysis are performed on the pillars and conditions of *waqf* from four prominent Islamic scholars, namely Ḥanafī schools, Mālikī schools, Shāfiʿiy schools, and Ḥanbalī schools. Notably, it is vital to ensure the validity of *waqf* declared by any donor (*al-wāqif*). Majority Islamic scholars from Mālikī, Shāfiʿiy, and Ḥanbalī schools mentioned that *waqf* comprises four pillars: 1) the declaration (*ṣighah*), 2) the donor (*al-wāqif*), 3) the beneficiaries (*al-mauqūf ʿalaih*), and 4) the property (*al-mauqūf*), while the Ḥanafī sect states that *waqf* only comprises one pillar which is *ṣighah*. In this chapter, the discussion is divided into four sub-topics: 1) the declaration (*ṣighah*), 2) the donor (*al-wāqif*), 3) the beneficiaries (*al-mauqūf ʿalaih*), and 4) the property (*al-mauqūf*).

2.4.1. The Declaration (*Ṣighah*)

The term *ṣighah* is an Arabic term that comprises various meanings depending on the structure of the sentence. It could be literally defined as a word, verbal expression, action, and appraisal (Ab Rahman, 2017; Nazih Ḥammad, 2008). In terms of *waqf*, *ṣighah* could be defined as either verbal or written expression, which indicates agreement and consent between two parties (*al-wāqif* and *al-mauqūf ʿalaih*) in signing a contract (Al-Qalʿaji, 2010; Nazih Ḥammad, 2008). Ab Rahman (2017) determined that *ṣighah al-waqf* is an expression through verbal, written, and action by the donor to

endorse the *waqf* contract. The Islamic scholars identify *ṣighah* as an offer and acceptance (*al-ījāb wa al-qabūl*). In this topic, the focus is placed on the discussion, which comprises two sections: 1) the offer and acceptance expression (*ṣiyagh al-ījāb wa al-qabūl*), and 2) the conditions of the declaration (*shurūṭ al-ṣighah*).

a) The Offer and Acceptance Expression (Ṣiyagh Al-ījāb Wa Al-Qabūl)

The Islamic scholars are unanimous in stating that the *waqf* contract shall not be valid without the offer expression from the donor in the *ṣighah* (Al-Nawawī, 2008; Al-Sarkhasī, 1989; Al-Shirbīnī, 1997; Al-Zuhailī, 1984; Ibn Qudāmāh, 2005). However, they also have different views regarding the acceptance expression as a condition that will determine the *waqf* contract validity. In this case, the conditions of the offer and acceptance expression in the declaration of *waqf* will be described and analysed thoroughly.

i) The Offer Expression (Ṣighah Al-ījāb)

The Islamic scholars separate the offer expression (*ṣighah al-ījāb*) into two forms, namely verbal and non-verbal.

Verbal Expression in *Waqf* Declaration

The majority of Islamic scholars from Malikī, Shāfiʿīy, and Ḥanbalī schools separate verbal offer acceptance into two types, namely clear statement (*al-ṣighah al-ṣarīḥah*) and vague statement (*al-ṣighah al-kināyah*).

Al-Ṣiḡḡah Al-Ṣarīḥah in *waqf* declaration could be performed through a few words such as "I endowed" (*waqaftu*), "I preserved" (*ḥabastu*), or "I give" (*sabbaltu*) (Al-Zuhaili, 1984). The majority of Islamic scholars of Shāfi'iy and Ḥanbalī schools stated that if the donor uses these terms in the *ʿaqd*, the contract would be valid and irrevocable upon the compliance to other conditions. To illustrate, these three terms are commonly used by the people if they want to sign the *waqf* contract (Al-Bahūti, 2000; Al-Nawawi, 2008; Al-Shirbīnī, 1997; Ibn Qudāmah, 2005). This statement is based on the *ḥadīth* of Rasulullah S.A.W on the *waqf* by Sayyidina ʿUmar R.A:

{ قَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا }

Translation: The Prophet S.A.W said, "If you like you can give the land as endowment and give its fruits in charity." (Hadith. Al-Bukhāri. Kitab Al-Waṣāyā. Bab Al-Waqf Kaifa Yuktab. Jil 10: #2587)

In Mālikī schools, the terms that are considered clear statements (*al-ṣiḡḡah al-ṣarīḥah*) are limited to "I endowed" (*waqaftu*) and "I preserved" (*ḥabastu*), and do not include the term "I give the charity" (*sabbaltu*) (Al-Nawawi, 2008; Al-Zuhaili, 1984).

Al-Ṣiḡḡah Al-Kināyah or vague declaration could be defined as a specific word or term expressed by an individual to expose the connotative meaning that is embedded in the word (Al-Jurjāni, 1982). This definition indicates that the interpretation of the words is subject to the intention of the donor (*al-wāqif*) or current situation. In the matter of *waqf*, various words have similar meanings to *waqf*. For instance, the donor could express "I give alms" (*taṣaddaqtu*), or "I prohibit the property" (*ḥarramtū*), or "I perpetuate my property" (*abbadtū*). The majority of the Islamic scholars of Malikī,

Shāfi'iy, and Ḥanbalī schools are unanimous in the statement that these three vague words do not affect the *waqf* contract unless there is proof that shows the word is related to *waqf*. To illustrate, these vague words involve various meanings that are commonly used by the community to portray their actual meaning. If the donor uses these words to make a declaration of *waqf* contract, the contract should not be considered a valid *waqf* contract except for one of the three elements that are mentioned by the donor during the declaration, which are as follows:

- a) The vague declaration must consist of these five additional words in the *ṣīghah*: *mauqūfah*, *muḥabbasah*, *muabbadah*, *musabbalah*, and *muḥarramah*. For instance, the donor could express "I give these alms as endowment (*mauqūfah*)", "I preserve (*muḥabbasah*) my property as a charity", "I make my property as perpetuate (*muabbadah*) charity", or "I donate my property as a prohibited (*muḥarramah*) charity".
- b) The donor must mention the character or the principle of *waqf* in the *ṣīghah*. Among the characteristics of *waqf* are continuity and perpetuity. For instance, the donor could express the declaration such as, "I give my property as a charity, and it cannot be sold, inherited, and offered as a gift".
- c) The vague *waqf* declaration could be determined through the intention of the donor, which could be seen through the expression either in written or verbal form. If the donor states that his charity is considered *waqf*, the charity would be valid to be considered as *waqf*, the principle, and the law of *waqf* that is applied to the charity.

The Ḥanafī schools do not divide the *ṣīghah* into clear statement (*al-ṣīghah al-ṣarīḥah*) and vague statement (*al-ṣīghah al-kināyah*), as shown by the majority of

Islamic scholars. The Ḥanafī schools only state that the *waqf* contract shall be valid if the donor expresses the declaration using the following words:

- a) *Waqf*: For instance, the donor will declare in *ṣīghah*, such as "*I endowed half of my property and not exceed from it to the poor*".
- b) *Sabbaltu*: For example, "*I give away my land to build the mosque for this village*".
- c) *Ḥabasa*: The donor will declare, "*I preserve my property as a charity*".
- d) *Ṣadaqah*: For example, "*I give my property as a charity, and it cannot be sold, inherited, and given away as a gift*".
- e) *Mauqūfah*: For example, "*I detent my property for the needy to be used for good*".

Based on the aforementioned words, the researcher opined that the first three words presented by Ḥanafī schools are in line with the clear declaration as categorised by the majority of Islamic scholars, while the other two words are considered vague declarations by the majority of Islamic scholars. This condition indicates that the Islamic scholars of Ḥanafī schools do not divide the *waqf* declaration into *al-ṣīghah al-ṣarīḥah* and *al-ṣīghah al-kināyah*, as offered by the majority of Islamic scholars. In Ḥanafī schools, the *waqf* declaration shall be valid as long as the donor uses specific words that have a similar meaning to *waqf*. The researcher opined that the difference between Ḥanafī schools and the majority of Islamic scholars in the offer expression is in the division of verbal declaration.

Non Verbal Expression in *Waqf* Declaration

Discussion was made on the verbal expression of *waqf* declaration in the previous topic. *Waqf* contract could also be declared through non-verbal expression. In the declaration of *waqf* contract, the non-verbal expression could be understood as an action taken by the donor with the intention to declare the *waqf* contract either through signal (*al-ishārah*), or written (*al-kitābah*), or action (*al-af'āl*), as followed:

- a) Signal (*Al-Ishārah*): Signal or sign language is usually applied by mute and deaf people. The declaration of *waqf* through sign language can be considered as valid as the verbal declaration. This is the opinion of the majority of Islamic scholars from four prominent schools (Al-Nawawī, 2008; Ibn ʿĀbidīn, 2003; Ibn Nujaim, 1997).
- b) Written (*Al-Kitābah*): The written contract is common in the current times. In the case of *waqf* declaration, the written *waqf* contract is considered valid to be practised either by normal people or the deaf. For instance, the written *waqf* contract would be offered by the *waqf* institution as a form to be filled by the donor to declare his property as a *waqf* property. The Ḥanafī and Mālikī schools argue that the *waqf* declaration through written contract is valid and permissible due to its similarity to the verbal declaration and common application by the community (Al-Dusūqī, 1934; Ibn al-Humām, 2003; Ibn Nujaim, 1997). Meanwhile, Shāfiʿiy schools mention that written contract is valid and permissible as long as it does not contradict the donor intention (Al-Shīrazī, 1996; Al-Shirbīnī, 1997). The Ḥanbalī schools highlight that the written contract is valid and permissible as the donor's desire would be stated in the contract,

which is similar to the characteristic of verbal *waqf* declaration (Al-Bahūti, 2000; Ibn Qudāmah, 2005).

- c) Action (*Al-Af'āl*): The *waqf* declaration could also be made through the action of the donor with the intention to endow his property without mentioning it verbally. For example, the donor endows his land, builds the mosque or schools, and grants permission for the people to benefit from the property. This action by the donor is considered a valid *waqf* although it is not declared verbally (Ab Rahman, 2017). The majority of Islamic scholars allow the declaration of *waqf* through action. The Islamic scholars of Ḥanafī schools state that the *waqf* declaration through action is permissible for the mosque and other purposes as long as it is recognised as *waqf* through the custom and tradition, and complies with the *shara'* (Ibn al-Humām, 2003; Ibn Nujaim, 1997). In Mālīkī schools, the declaration through action is allowed and permissible to any type of *waqf* (ʿAlish, 1979; Al-Dusūqi, 1934), while Shāfiʿiy schools demonstrate that the *waqf* is only valid if it is declared verbally. However, the exception is applied to the *waqf* of the mosque, which is permissible and valid to be declared through the action (Al-Nawawi, 2008; Al-Shirbīnī, 1997). To illustrate, the intention to build the mosque by the donor has been regarded as *waqf*. In Ḥanbalī schools, the *waqf* is considered valid through action as long as it is complying with the intention of the donor and the public interest (Ibn Qudāmah, 2005).

ii) The Acceptance Expression (*Ṣīghah Al-Qabūl*)

The offer expression (*ṣīghah al-ījāb*) was described in the previous topic. The four prominent Islamic scholars agree that it is a vital element in the *waqf* declaration

although the four prominent Islamic scholars differed whether the offer expression is compulsory to be done verbally or allowed through action, written, or signal. The *waqf* is invalid when *ṣīghah al-ījāb* from the donor is present, although it is a different case when the acceptance expression (*ṣīghah al-qabūl*) is concerned. The four prominent Islamic scholars have differed in stating the acceptance expression. In this topic, the researcher will analyse and describe the Islamic scholars' opinion on the acceptance expression of the general beneficiaries including the poor and the needy, and the specific beneficiaries.

The Acceptance Expression for The General Beneficiaries

The donor has the right to choose the beneficiaries of the endowed property. If the donor chooses to endow his property through several initiatives such as building a multi-purpose hall, cemetery, or mosque, it is not required for the public beneficiaries to perform the acceptance expression. The same situation goes for the general beneficiaries, such as the poor, the needy, and students. The opinion that the beneficiaries are not required to do the acceptance expression is by the majority of Islamic scholars (Al-Nawawi, 2008; Al-Shirbīnī, 1997; Al-Zuhaili, 1984; Ibn Qudāmah, 2005).

The Acceptance Expression for The Specific Beneficiaries

If the donor endows his property to specific beneficiaries such as Ahmad or Zaid, the Islamic scholars present different views regarding the acceptance expression. The Islamic scholars expressed two opinions. The first opinion expresses that if the donor

appoints a specific individual, such as Ahmad, as the beneficiary of the *waqf*, the beneficiary is required to state the *ṣīghah al-qabūl*. If the beneficiary is unsound of mind or still an infant, their guardians shall be their representative to express the *ṣīghah al-qabūl*. This opinion is expressed by majority of the Islamic scholars, including Ḥanafī, Mālikī, and Shāfiʿī schools (Al-Dusūqi, 1934; Al-Shīrazi, 1996; Al-Shirbīnī, 1997; Ibn ʿĀbidīn, 2003).

The second opinion states that it is not required by the specific beneficiaries to express the *ṣīghah al-qabūl*, given that the *waqf* would terminate the ownership of the property from the donor. Therefore, it is not necessary to show the acceptance expression for the specific or individual beneficiaries, according to the Ḥanbalī schools view (Al-Bahūti, 2000; Ibn Qudāmah, 2005).

It was stated that the first opinion, which is the view of the majority of the Islamic scholars, including Ḥanafī, Mālikī, and Shāfiʿī schools, was preferred. The acceptance expression is necessary as a precaution measure to prevent the misallocation of the benefits of the *waqf* property to the beneficiaries. It would also ensure the interest (*maṣāliḥ*) of the donor, the *waqf* property, and the beneficiaries. Currently, the offer and acceptance expression are solid proof that could prevent the *waqf* property from being abused by irresponsible parties.

b) The Conditions of the Declaration (Shurūṭ Al-Ṣīghah)

The offer and acceptance are among the mandatory pillars that should be fulfilled by the individuals who wish to *waqf* their property. Based on the discussion above, the researcher highlighted that the Islamic scholars agreed with the statement

that the offer and acceptance expression in the *waqf* declaration is mandatory. However, a few conditions should be fulfilled to ensure that the declaration is valid. In this topic, the focus separates the discussion into four sections: 1) the *ṣīghah* must be effective immediately (*jāzimah*) and is not bound to any conditions (*tanjīzan*); 2) the beneficiaries must be stated and appointed; 3) it must be perpetual, and; 4) must not contradict with the principle of *waqf*.

i) The ṣīghah must be effective immediately (jāzimah) and unconditionally operational (tanjīzan)

The Ḥanafī scholars determined that the *waqf* declaration must be effective immediately. The *waqf* declaration should not be valid if it is declared through promises (*al-waʿad*), considering that the contract is not binding. According to Ḥanafī schools, the *waqf* contract is not binding (*jaiz ghair lāzim*), which is the same case as the loan contract (*ʿaqd al-ʿāriyah*). However, the *waqf* contract is effective immediately (*jazam*) after the declaration (Al-Haskafi, 2002; Al-Kubaisiy, 1977; Ibn al-Humām, 2003). For instance, if the donor presents the offer expression “*I will endow my land to the poor and my family members*”, the *waqf* declaration would be invalid as it is not immediately effective. This condition is attributed to the donor’s statement “*I will endow*”. However, with the donor’s statement “*I endow my property to the needy*”, the *waqf* declaration would be valid due to the expression that shows that the *waqf* is effective immediately (*jazam*), with no uncertainty terms present in the expression. The Shāfiʿiy schools highlight that the *waqf* declaration must be binding (*ilzām*), considering that *ilzām* is among the compulsory conditions in the *waqf* declaration validity (Al-Nawawi, 1991, 2008; Al-Shirbīnī, 1997; Al-Zuhaili, 1984).

Based on the above discussion, both of the Islamic jurists of Ḥanafī and Shāfiʿī schools stated that *waqf* must be free from the condition option (*khiyār al-sharṭ*), which is applied in selling contracts (Al-Kubaisiy, 1977; Al-Soleh, 2001). The meaning of *khiyār al-sharṭ* in *waqf* is that the donor determines a condition on himself the right to revoke the *waqf* after a few days. This matter has been thoroughly discussed by the Islamic scholars. If the donor states in his offer expression, "*I endow my land to build mosque on it with condition option (khiyār al-sharṭ) for three days*", the Islamic scholars would state that the *waqf* is only valid for *waqf al-masjid*, while the condition stated by the donor shall not be considered valid (Al-Kubaisiy, 1977; Al-Nawawi, 1991; Al-Shirbīnī, 1997). However, the Islamic scholars have different opinions on the application of the condition option on the general *waqf* besides the *waqf* of the mosque.

Prior to a further discussion on *khiyār al-sharṭ* in *waqf* declaration, it is crucial to discuss, which denotes to unbind with any condition. *Tanjīz* is also a compulsory condition in the validity of the *waqf* declaration. Ibn Manzur (2007) defined *tanjīz* as a contract that is effective immediately without being bound to any conditions and not subject to any period of time in the future. According to this definition, it was found that Islamic scholars showed different opinions about the validity of *waqf* with *khiyār al-sharṭ*, which were separated into three opinions.

First Opinion: The *Waqf* is Invalid

The first opinion stated that the *waqf*, which is bound to any conditions or subject to a specific period of time, is invalid. The law is also applicable if the donor mentions *khiyār al-sharṭ* on his *waqf* except for *waqf al-masjid*, as previously mentioned in this study. To illustrate this point, the Islamic scholars that adhere to this

opinion determine that *tanjīz* is the compulsory condition in the *waqf* declaration. Besides, the Islamic scholars applied the analogy (*qiyās*) that *waqf* is similar as sale contract and emancipation of slave (*al-ʿitqu*), considering that it would terminate the right of the ownership of the donor on the property (Ab Rahman, 2017; Al-Kubaisiy, 1977; Sabri, 2011). Thus, any conditions or the determination of time applied on the *waqf* is not permissible, while the *waqf* is invalid. However, there is an exception where the *waqf* is valid although the donor has specified the condition. If the donor states that his property will be endowed after his death, the *waqf* will be valid and be subject to the law of will (*ḥukm al-waṣāyā*). This condition indicates that the property of the donor could only endow not more than one third of his property. Nevertheless, the donor is still able to revoke the contract during his life although it will bind after the donor's death.

The Islamic scholars argued that when the *waqf* contract has been sealed, consent would be achieved between the involved parties. With the presence of conditions or *khiyār al-shart* on the *waqf*, no consent would be achieved between the parties. Al-Shīrazi (1996) stated that *waqf* must not be bound to any conditions, given that property is spent for the good and benefits of the people. This opinion is of the majority of Islamic scholars from Ḥanafī schools, Shāfiʿiy schools, and Ḥanbalī schools (Al-Bahūti, 1983; Al-Nawawi, 1991; Al-Sarkhasi, 1989; Al-Shirbīnī, 1997; Al-Tarabulusi, 1981; Ibn Qudāmah, 2005).

Second Opinion: The *Waqf* is Valid but the Conditions Are Revoked

The second opinion expresses that the *waqf* bound with conditions is valid. However, the conditions are invalid and revoked. To illustrate this point, the *waqf*

contract would terminate the ownership of the donor on the property, which cannot be owned by anyone. This statement is similar to the emancipation of the slave. If an individual sets his slave free and states the *khiyār al-sharṭ* or other conditions, the emancipation would be valid by the conditions while the *khiyār al-sharṭ* would be revoked. Based on this argument, it was argued that the Islamic scholars who adhere to this opinion allow the *waqf* bound to the conditions by the donor, although the conditions would be revoked after the contract is sealed. This opinion was expressed by Ibn Suraij and Al-Qaffal from Shāfiʿiy schools, and Yusuf bin Kalid Al-Samti from Ḥanafī schools (Al-Kubaisiy, 1977; Al-Nawawi, 1991; Al-Tarabulusi, 1981). Based on this argument, the Islamic scholars showed a second opinion that the general *waqf*, which is bound by condition, is similar to the situation of *waqf al-masjid*.

Third Opinion: The *Waqf* and the Conditions is Valid

The third opinion states that the *waqf* is valid either as *tanjīz* or bound with specific conditions or a specific period of time. To illustrate this point, Islamic scholars that adhere to this opinion did not determine *tanjīz* as a condition in the validity of *waqf* declaration. This case is not the same as the emancipation of the slave, as stated by the Islamic scholars in the other two opinions. Therefore, if the donor determines a specific condition or binds the *waqf* with a specific period, the *waqf* and conditions are considered valid and the contract is effective immediately. This absolute opinion is presented by Mālikī schools and the opinion of Qāḍi Abū Yūsuf from Ḥanafī schools (Al-Kubaisiy, 1977; Al-Zuhaili, 1984). Mālikī schools do not determine *tanjīz* as the compulsory condition in the *waqf* declaration. Subsequently, Mālikī schools allow the temporary *waqf*. For an instance, if the donor states that he endows his land for one year

to his child, the *waqf* would be valid only for one year. Following that, the donor could make a decision either to endow his property to the needy for perpetuity or return the property to his possession (Al-Dardir, 2007; Al-Dusuqi, 1934; Al-Kashnawi, 1986).

Qāḍi Abū Yūsuf stated that the *waqf* and the conditions are valid and effective, given that the *waqf* contract does not transfer the ownership of the property to the beneficiaries. Beneficiaries are only allowed to benefit the usufruct of the property. Thus, if the donor mentions *khiyār al-sharṭ* or other conditions, the *waqf* and the conditions are permissible due to its similarity to the leasing contract (*al-ijārah*). (Al-Sarkhasi, 1989; Al-Tarabulusi, 1981).

Based on the aforementioned Islamic scholars' argument, it was argued that the third opinion is preferred, which is also the opinion of Mālikī schools and the opinion of Qāḍi Abū Yūsuf from Ḥanafī schools. As previously discussed, the Mālikī schools allow the *waqf* to be bound with conditions or any periods of time. To illustrate, the Mālikī schools view the *waqf* as a medium for the Muslims to be closer to Allah by spending their wealth although it is bound to a condition or time as long as it does not contradict the divine law, which includes the Quran and prophetic tradition (*Sunnah*). If the donor endows his property with a specific condition or for a particular period, the *waqf* contract is effective as per the donor's description. If the *waqf* contract is unbound to any conditions or time, the *waqf* would be regarded as *tanjīzan* and should not be sold, inherited, and offered as a gift (Ab Rahman, 2017; Al-Dusuqi, 1934). From the researcher's point of view, this opinion is more flexible to be implemented to develop the *waqf* property and encourage people to practise *waqf* albeit with a condition as long as it maintains the interest of the donor, the beneficiaries, and property, and complies to the *shara'*.

ii) The beneficiaries must be stated and appointed by the donor in the declaration

The Islamic scholars stated that the donor is required to mention the sensible beneficiaries during the declaration, which could be an individual or a group of people such as the needy, the poor, or the villagers. However, the Islamic scholars present a different view, which expresses whether the beneficiaries are required to be mentioned clearly (*al-taṣrīḥ*) during the declaration or not required to be mentioned by the donor. Two opinions are expressed on this matter.

First Opinion

The first opinion emphasised that it is mandatory to mention the beneficiaries clearly (*ṣarīḥah*) in the *waqf* declaration to ensure that the benefits of the property are given to the qualified beneficiaries, as determined by the donor. If the donor stated in the declaration "*I endow my land*" without mentioning the beneficiaries, the *waqf* would be invalid. To illustrate this condition, the beneficiaries of the *waqf* property are unknown and contradict one of the mandatory pillars of *waqf* that mention the *al-mauqūf ʿalaiḥ*. The *waqf* would also be invalid if the donor endows his property that is subject to the particular individual's desire. For instance, the donor stated "*I endow my property for those selected by Ahmad*" due to the ambiguity in determining the qualified beneficiaries to benefit the usufruct of the property subject to the donor's desire. However, if the selected individual by Ahmad is well identified by the donor, the *waqf* would be considered valid while the usufruct of the property could be benefited by the selected beneficiaries (Al-Kubaisiy, 1977). This opinion was expressed by the Shāfiʿiy

schools and Ḥanafī schools except for Qāḍī Abū Yūsuf (Al-Shīrazi, 1996; Al-Shirbīnī, 1997; Al-Tarabulusi, 1981; Ibn al-Humām, 2003).

The Islamic scholars that adhere to this opinion argued that it is vital to mention the beneficiaries in the *waqf* declaration, given that the *waqf* contract would determine the right to utilise the benefits of *waqf* property. Thus, if the beneficiaries are ambiguous and cannot be identified, the *waqf* would be invalid, such as sale and purchase, and *hibah* contract (Al-Shīrazi, 1996). The *waqf* would also be invalid due to the existence of ambiguity that may lead to the misallocation of the benefits of the property to the unqualified beneficiaries (Al-Māwardi, 1994; Al-Nawawi, 1991; Al-Sarkhasi, 1989; Al-Tarabulusi, 1981). Thus, it is crucial to clearly state the beneficiaries to prevent the vagueness and inconvenience in distributing the benefits of *waqf* property for greater good and seeking the blessings of Allah S.W.T.

Second Opinion

The second opinion stated that it is not compulsory for the donor to clearly state the beneficiaries in the *waqf* declaration, given that it is not mandatory. If the donor states “*I endow my land*” without clarifying the beneficiaries, the *waqf* would be valid. However, the land would be benefited by the poor and needy for good purposes, or the usufruct of the land would be distributed according to the custom of that state. To illustrate this point, the *waqf* contract would terminate the right of ownership of the property from the donor, and the property will belong to Allah S.W.T for charity purposes. Besides, if certain places or states are commonly used to declare *waqf* without clearly stating the beneficiaries as a common tradition (*al-urf*), the *waqf* could be considered valid given that the benefits of the property comply with the *shara*^c (Al-

Bahūti, 1983, 2000; Ibn Qudamah, 2005). This opinion is expressed by Abū Yūsuf from Ḥanafī schools, Mālikī schools, and Ḥanbalī schools (ʿAlish, 1979; Al-Bahūti, 2000; Al-Tarabulusi, 1981; Ibn al-Humām, 2003; Ibn ʿĀbidīn, 2003).

However, the Islamic scholars that adhere to this opinion express a different view on determining the beneficiaries of the *waqf* property if they are not clearly stated by the donor in the *waqf* declaration. According to the Mālikī schools, the benefits of the *waqf* property would be channelled according to the traditions and customs of the states upon appointing the beneficiaries. If the places or states are unfamiliar with the tradition of appointing the beneficiaries, the benefits of *waqf* property would be distributed to the poor and the needy (Al-Dusūqī, 1934). Abū Yūsuf from the Ḥanafī schools opine that the benefits of the property would be offered to the poor (*al-fuqara*), which is familiar in according to the norms of the particular states. Meanwhile, Ḥanbalī schools stated that the *waqf* would be given to the well-known people or groups such as family members and the donor's heirs (Al-Bahūti, 1983; Ibn Qudāmah, 2005).

Based on the previously highlighted opinions, it was argued that the first opinion, which is the opinion of Shāfiʿī schools and Ḥanafī schools, was preferred except for the opinion of Qāḍī Abū Yūsuf. The first opinion states the importance for the donor to clearly mention the beneficiaries. From the researcher's view, this action is important as it could prevent the benefits of the *waqf* property from being abused and misallocated by unqualified individuals, particularly in recent times. Besides, it could secure and ensure the interest (*maṣlaḥah*) of the *waqf* property and protect the conditions stated by the donor.

iii) The *ṣīghah* must be in perpetuity

Perpetuity is also known as *al-ta'bīd* in Arabic. The perpetual *waqf* could be defined as a *waqf* that is not bound to any specific period of time (Al-Qal'aji, 2010). For instance, when the donor endows his property or land for perpetuity, the land cannot be sold, inherited, or offered as a gift. Thus, the land or the property would remain a *waqf* property until the day of judgement. The opposite of perpetuity is temporary, which is also known as *al-ta'qīt* and *al-muaqqat*. This term denotes a task or a matter that is subject to a specific period of time from the beginning until the end (Abd Al-Rauf, 1990). *Al-Waqf Al-Muaqqat* or temporary *waqf* could be defined as a *waqf* that is bound to a specific period of time by the donor. When the *waqf* expires, the *waqf* property could be returned to the donor's ownership. In this case, Islamic scholars show different views that highlight whether view perpetuity is required as a mandatory condition or not required (Al-Jurjani, 1982). Thus, the *waqf* could be valid temporarily and in perpetuity based on the donor's wish. This condition would be discussed thoroughly in other topics. This is because this issue is the main discussion which is highlighted by the researcher in this research.

iv) The *ṣīghah* must not contradict with the principle of *waqf*

The Islamic scholars were in agreement with the statement that the *waqf* would be invalid if the donor states the conditions that contradict the principles of *waqf*. However, the Islamic scholars show two different opinions in stating the conditions that could be considered contradicting the *waqf* principles.

First Opinion: Majority of Islamic Scholars

According to the majority of Islamic scholars from Ḥanafī schools, Shāfiʿī schools, and Ḥanbalī schools, the conditions that could be considered violating and contradicting the *waqf* principle are as follows:

- a) All the conditions contradict the concept of perpetuity and the effectiveness of *waqf*. For instance, the donor mentioned a condition where he has the right to sell the *waqf* property, give it away to anyone as a gift, or claim back his *waqf* property. All of these conditions deny the perpetual concept of *waqf*.
- b) The donor presents the conditions (*khiyār al-sharṭ*) for himself on the *waqf* for three days, in which the *waqf* property could be revoked or returned to the donor's possession within those days (Al-Bahūti, 1983; Al-Māwardi, 1994; Al-Nawawi, 1991; Al-Sarkhasi, 1989; Ibn al-Humām, 2003; Ibn Nujaim, 1997; Ibn Qudāmah, 2005).

Second Opinion: Mālikī Schools

Based on the view of Mālikī schools, the conditions that are considered to contradict the *waqf* principle are as follows:

- a) If the donor determines that he has the right to sell the *waqf* property, give it away to anyone as a gift, or inherit the property from his heirs.
- b) If the donor states any specific period of time for his *waqf* and does not violate the *waqf* principle, which is prohibited to sell, inherit, and give away as a gift, during the period of *waqf*, it shall not be considered a condition that contradicts

the *waqf*. Furthermore, Mālikī schools did not state perpetual as a required and mandatory condition in *waqf*.

After the analysis of both opinions, the researcher opined that both sides of Islamic scholars agree that the conditions that shall be considered violating the principles of *waqf* are the conditions that deny the effectivity of the *waqf* contract (*luzūm al-waqf*) and give rights to the donor to sell, inherit, or give away the *waqf* property as a gift, and any types of action that would violate the *waqf* property functions. Overall, these conditions contradict the principles of *waqf*, which are agreed upon by the Islamic scholars from Ḥanafī, Mālikī, Shāfiʿiy, and Ḥanbalī schools. In the case of the period of *waqf*, the view of Mālikī schools is preferred, which allows the application of *waqf* in temporary. To illustrate this point, the period of *waqf* from the beginning until the expiration date does not deny the principles of *waqf*. The donor should abide by the principle of *waqf* along the period of *waqf* as stated in the *ṣiḡḥah*. Thorough discussion will be made on the temporary *waqf* in the next topic.

2.4.2. The Donor (*Al-Wāqif*)

The donor or known as *al-wāqif* is an individual who gives away their properties as alms to be benefited by the other parties. In relation to this, the conditions that must be fulfilled by the donor will be discussed in the following section.

i) The donor must be responsible (mukallaf)

The modern and traditional Islamic scholars state that the donor must be liable and responsible (*mukallaf*). The person could be considered responsible if they comply with these three conditions, namely sanity (*‘āqil*), maturity (*bāligh*), and independent (*ḥurran*).

The first condition for a donor is sanity. This is a precautionary measure to avoid the *waqf* from being ruined by an unsound donor. The four prominent Islamic scholars agree with the statement that sanity is a mandatory condition to validate all types of *mu‘amalah* contracts, marriage, and all religious practices. Thus, *waqf* shall be invalid and revoked if the donor is unsound before the contract or *waqf* is sealed, considering that an unsound person does not fulfil the capacity as a qualified donor. To illustrate, the *waqf* contract will terminate the ownership of the property from the donor and the unsound person is unqualified to have the right of ownership of property (Al-Bahūti, 1983; Al-Kāsāni, 2002; Al-Shirbīnī, 1997; Ibn Nujaim, 1997).

The second condition stated is maturity. The puberty of a person could occur physically through several phenomena including menstruation for women and wet dreams (*al-iḥtilām*) for men, or through the age of puberty as specified by the Islamic scholars. Thus, the *waqf* is invalid for the infant as they have not gained donor eligibility (Al-Kubaisiy, 1977; Al-Ramli, 2002; Al-Zarqā, 1997). The donor should also be independent. Therefore, the *waqf* declared by a slave would be invalid, considering that the slaves’ property is under the supervision and consent of their master (Al-Bahūti, 1983; Al-Kāsāni, 2002; Al-Shirbīnī, 1997).

ii) The donor must be voluntarily and willing intentionally (*mukhtār*)

The donor should endow their property voluntarily and intentionally. If the donor endows their property due to the force by any individuals in any situations, the *waqf* would be invalid and revocable. To illustrate this point, this situation would prevent the donor from deciding on the *waqf* independently. The consent of the donor is required as a fundamental element in the validity of any contracts including *waqf* and the coercion that contradicts it (Al-ʿAini, 2000; Al-Dusūqi, 1934; Al-Kāsāni, 2002; Al-Shirbīnī, 1997; Ibn Qudāmah, 2005).

iii) The donor must not incapacitate (*maḥjūran ʿalaih*)

The other condition for a donor is that they should not be categorised in a group of people who are restrained from administering their property due to their incapacities, such as absent-mindedness (*ghāfil*) and witlessness (*safih*). This condition could also be known as *maḥjūran ʿalaih*, which could be identified through the manner in which they spend their wealth and property. If the donor is *maḥjūran ʿalaih*, the *waqf* shall be considered invalid as they are not qualified for the donor eligibility. This opinion was expressed by majority of Islamic scholars from Malīkī, Shāfiʿīy, and Ḥanbalī schools (Al-Dusūqi, 1934; Al-Kashnawī, 1986; Al-Shirbīnī, 1997; Ibn Qudāmah, 2005). Meanwhile, Abu Hanīfah shows a different view in which the donor is only considered *maḥjūran ʿalaih* if they are mentally disordered (Al-Kāsāni, 2002; Ibn al-Humām, 2003; Ibn ʿAbidīn, 2003).

2.4.3. The Beneficiaries (*Al-Mauqūf ʿAlaih*)

The beneficiaries are among the mandatory pillars in *waqf*, which could be defined as a group of people that benefit the usufruct of the *waqf* property. These people could be family members, any particular individuals, the needy, and other communities, according to the conditions determined by the donor (ʿAlish, 1979; Al-Dimyāṭi, 2008; Al-Mardawi, 1955). In this case, discussion is made on the conditions of the beneficiaries.

i) The beneficiaries must spend the waqf property for the good purposes (jihah bir)

The Islamic scholars determined that the donor is only allowed to endow their property or wealth to the trusted people. Thus, it is prohibited for the donor to appoint the beneficiaries of their *waqf* property to the forbidden parties such as bandits and abbeys. However, Islamic scholars have shown two different opinions on the requirement of the righteous parties as a mandatory condition in the validity of the *waqf* beneficiaries.

First opinion: The righteous beneficiaries is mandatory as a validation requirement

The first opinion stated that the beneficiaries must be appointed by righteous and trusted people. To illustrate, the main purpose of the legality of *waqf* in Islam is to seek blessings and rewards from Allah. Ibn al-Humām (2003) and Ibn ʿĀbidīn (2003) stated that among the conditions of the beneficiaries (*al-mauqūf ʿalaih*) is that they must be categorised as truthful and righteous, such as the poor and the needy. Besides, the beneficiaries should be capable of benefitting the *waqf* property as permissible by the

shara^c. According to Ibn Qudāmah (2005), if the donor endows the property to the unknown and untruthful parties, the *waqf* shall be revoked and become invalid. The *waqf* would be invalid if the Muslims endow their property for people who are categorised with disobedience by the *shara*^c, such as the enemy of Islam (*ahlu al-ḥarb*) and abbeys (*al-kanīṣah*). To be specific, this characteristic contradicts the purpose of *waqf*, which is to encourage people to perform good deeds through wealth. However, if non-Muslims endow their property for the purpose of building the mosque for the Muslims, the *waqf* shall be valid as it is considered a pious act by *shara*^c. The first opinion adheres to the Islamic scholars from Ḥanafī schools and Ḥanbalī schools (Al-Bahūti, 1983; Al-Tarābulusi, 1981; Ibn al-Humām, 2003; Ibn ʿĀbidīn, n.d.; Ibn Qudāmah, 2005).

The Islamic scholars from Ḥanafī schools and Ḥanbalī schools were found to agree on the *ahl al-zimmi* as the beneficiaries as long as it is for good purposes and does not contradict Quran and prophetic traditions (*Sunnah*).

Second opinion: Not required to appoint the righteous beneficiaries

The second opinion states that the righteous beneficiaries are not a requirement in the validity of *waqf*. However, the Islamic scholars that adhere to this opinion state that the donor is required to appoint the beneficiaries who are not identified with disobedience. To explain this point, *waqf* is considered a form of charity that brings the Muslims closer to Allah S.W.T (*al-qurbah*), making it valid when the donor chooses the beneficiaries among *ahl al-zimmi* or the rich people. This opinion was expressed by Mālikī schools and Shāfiʿiy schools (ʿAlish, 1979; Al-Dardir, 2007; Al-Dusūqi, 1934; Al-Ramli, 2002; Al-Shirbīni, 1997). The Islamic scholars in Mālikī schools mention that the *waqf* offered

to people with disobedience is invalid, such as the endowment of vineyard for wine production (Al-Dardir, 2007; Al-Dusūqi, 1934). In the Shāfi'iy schools, it is allowed for the donor to endow their property to the rich people, *ahl al-zimmiy*, and the *fāsiq* although the *waqf* for these people is not considered the *al-qurbah* (Al-Nawawi, 2008; Al-Shirbīni, 2019). However, the Islamic scholars from both schools are unanimous in the statement that the *waqf* given to the beneficiaries should not be utilised for disobedience and contradiction to the *shara'*.

Based on the discussion of both opinions, it was argued that the first opinion was preferred, which is required to appoint the righteous beneficiaries. To explain this point, the main purpose of the legality of *waqf* in Islam is to seek blessings and bring oneself closer to Allah S.W.T through property and wealth. The explanation can be referred to through the prophetic traditions and the action of the Companion R.A, as recorded by the previous Islamic scholars.

ii) The beneficiaries must be competent in the ownership of property (*ahlan li al-tamalluk*)

The Islamic scholars from Ḥanafī, Malikī, Shāfi'iy, and Ḥanbalī schools unanimously state that the competency of the beneficiaries in the ownership of the property is a mandatory condition in the *waqf* validity. The beneficiaries' competency of the ownership could be determined whether it is *ḥaqīqiyyan* such as particular individuals, family members or heirs, and the poor, or *ḥukmiyyan* such as mosque (*masjid*), schools, *ibn al-sabīl*, and other general groups (Al-Dusūqi, 1934; Al-Mardawi, 1955; Al-Māwardi, 1994; Al-Ramli, 2002; Al-Sarkhasi, 1989; Al-Shirbīni, 1997; Ibn al-Humām, 2003). In relation to this, the main purpose of *waqf* is to offer the benefits and the yield

of the property to the beneficiaries to keep the interest (*maṣlahah*) of the public (Al-Māwardi, 1994; Ibn Qudāmah, 2005). Based on this argument, the researcher found that the *waqf* is invalid if the beneficiaries are animals, slaves, corpses, and other parties that do not have the competency for owning the property.

iii) The beneficiaries must not the donor himself

According to Ab Rahman (2017), the Islamic scholars state that the yield and the usufruct of the *waqf* property are prohibited to be returned to the donor (*al-wāqif*). This statement indicates that the donor is not allowed to endow the property to himself. In this case, the Islamic scholars show a different view stating whether the *waqf* is valid on the donor himself or the *waqf* is considered invalid.

First opinion: The *waqf* for the donor himself is invalid

The first opinion states that the *waqf* that is declared by the donor for himself is invalid for the following reasons:

1. Based on the *ḥadith* about *waqf* by Sayyidina ʿUmar R.A, the Prophet Muhammad S.A.W said to Sayyidina ʿUmar R.A that he could preserve his land in Khaybar as endowment and give the yield of the property as a charity. The term ‘preserve the land’ in the *ḥadith* indicates that it is prohibited for the donor, which is Sayyidina ʿUmar R.A, to take the benefits from the *waqf* land (Al-Dusūqi, 1934; Al-Kubaisiy, 1977; Al-Zuhaili, 1984). Thus, the donor is not allowed to endow the property for himself.

2. The Companions R.A did not endow their property for themselves (Al-Qarāfi, 1994), which shows that the *waqf* for the donor himself is not permissible and not performed by any Companions during their era..
3. *Waqf* is a form of recommended alms-giving (*ṣadaqah taṭawwuʿ*). Thus, the alms-giving or the charity is invalid to be channelled to the donor himself (Al-Māwardi, 1994), considering that the donor becoming a beneficiary at the same time is an unthinkable situation.
4. The *waqf* contract would terminate the right of the donor's ownership of the property. Thus, it is invalid for the donor to endow the property for himself as the contract would prohibit the donor from any transaction and action on the property. The *waqf* is also invalid as the *waqf* property cannot be returned to the ownership of the donor after the *waqf* contract has been sealed. The situation of the ownership of the property being transferred to the donor by the donor himself is unthinkable (Ibn Qudāmah, 2005).

This opinion adheres to the majority of the Islamic scholars, Imām Muḥammad bin Ḥasan from Ḥanafī schools, Mālikī schools, Shāfiʿiy schools, and Ḥanbalī schools.

Second opinion: The *waqf* for the donor himself is valid and permissible

The Islamic scholars who adhere to the second opinion state that the *waqf* declared for the donor himself is valid and permissible, as shown in the following argument:

1. The main objective of *waqf* is to seek blessings and bring the Muslim closer to Allah S.W.T. Thus, the *waqf* determined for the donor himself could also be considered a good deed, which is parallel to the following *ḥadith*:

{وَعَنْ جَابِرٍ: أَنَّ رَجُلًا مِنَ الْأَنْصَارِ دَبَّرَ مَمْلُوكًا وَلَمْ يَكُنْ لَهُ مَالٌ غَيْرُهُ فَبَلَغَ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ: «مَنْ يَشْتَرِيهِ مِنِّي؟» فَاشْتَرَاهُ نَعِيمُ بْنُ النَّحَّامِ بِثَمَانِمِائَةِ دِرْهَمٍ. مُتَّفَقٌ عَلَيْهِ. وَفِي رِوَايَةٍ لِمُسْلِمٍ: فَاشْتَرَاهُ نُعَيْمُ بْنُ عَبْدِ اللَّهِ الْعَدَوِيُّ بِثَمَانِمِائَةِ دِرْهَمٍ فَجَاءَ بِهَا إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَدَفَعَهَا إِلَيْهِ ثُمَّ قَالَ: «أَبْدَأْ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَهَكَذَا وَهَكَذَا» يَقُولُ: فَبَيْنَ يَدَيْكَ وَعَنْ يَمِينِكَ وَعَنْ شِمَالِكَ }

Translation: “Jābir said that a man of the Anṣār declared that a slave would be free after his death, but he had no other property, so when the Prophet heard of that he said, “Who will buy him from me?” and Nu‘aim b. an-Nahham bought him for eight hundred dirhams. A version by Muslim says Nu‘aim b. ‘Abdallah al-‘Adawi bought him for 800 dirhams which he brought to the Prophet S.A.W, when he had handed them over to the man, said, “Spend first on yourself giving yourself sadaqa if anything is left over give it to your family; if anything is left over when they have received something, give it to your relatives; and if anything is left over when they have received something, do this and thus,” meaning that it should be distributed in front of him, on his right and his left.” (Hadith. Al-Tibrīziy. Kitāb Al-‘Itqu. Bāb I’tāq Al-‘Abd Al-Mushtarak wa Shirā’ Al-Qarīb wa Al-‘Itq fi Al-Maraḍ, Faṣl Al-Awwal. Juz’ 2: #3392)

The *ḥadith* above demonstrates that Rasulullah S.A.W encouraged Nu‘aim bin ‘Abdullah R.A to prioritise the charity for himself first before distributing it to the

needy. Based on this prophetic tradition, it could be seen that the donor (*al-wāqif*) is allowed to endow the property for himself.

2. The *waqf* contract will terminate the ownership of the property from the donor and the property will belong to Allah S.W.T. If the donor states a condition that some or all the benefits of the property are for himself, it is valid and permissible. To illustrate, the ownership of the property belongs to Allah S.W.T and the benefits could be utilised by the donor himself. For instance, the donor endows his land as a cemetery with a condition that he will be buried in his *waqf* land after his death (Al-^cAini, 2000).

This opinion was expressed by Qāḍī Abū Yūsuf from Ḥanafī schools and Imām Aḥmad of Ḥanbalī schools. It has also been selected in the fatwa of Ḥanafī schools and practised in the Ḥanbalī schools (Al-Mardawi, 1955; Ibn ^cĀbidīn, 2003), considering the presence of interest (*maṣlahah*) and necessity to encourage the people especially the Muslims to practice the *waqf*.

Based on the arguments of both opinions, the second opinion was preferred where the *waqf* made for the donor himself is valid and permissible. The arguments and evidence offered by Islamic scholars that adhere to this opinion indicate that the *waqf* set up by the donor for himself as the beneficiary could be considered a good deed, a charity for himself, and a method to encourage the Muslims to practise *waqf*. However, the researcher opined that this type of *waqf* is not suitable to be declared perpetual, given that the main purpose of the *waqf* is to aid the community and fulfil the public interest.

2.4.4. The Property (*Al-Mauqūf*)

Three pillars of *waqf* were discussed, namely the declaration (*ṣighah*), the donor (*al-wāqif*), and the beneficiaries (*al-mauqūf ʿalaiḥ*), and its conditions in the previous topics. The final pillar discussed by the researcher focuses on the property (*al-mauqūf*). In the *waqf* principles, the *waqf* property should be detained and held from any transactions such as selling, inheritance, and offering as a gift in order to seek the blessings of Allah S.W.T. In relation to this topic, the Islamic scholars' opinions on the conditions of *waqf* property would be thoroughly analysed.

i) The property must be the valuable asset

The Islamic scholars were unanimous in the statement that the property must be a valuable asset. The Islamic scholars also state that property or asset should be a matter that comes with benefits and may be acquired or possessed by any qualified individuals (Ab Rahman, 2017). The Islamic scholars have different views regarding the concept of property (*al-māl*), which are as follows:

Ḥanafī Schools

In Ḥanafī schools, specific characteristics or measures are taken into account for a matter to be considered a property, which are as follows:

- i. The property should be a matter that could be possessed and acquired. Thus, a matter that cannot be possessed shall not be considered property, such as scenery, wind, and health.

- ii. The property can be capitalised, financed (*al-tamawwal*), or benefited. Therefore, a matter that cannot be capitalised such as a seed of grain shall not be considered property or asset.
- iii. The property can be preserved or stored to be used when necessary.
- iv. It should be a matter that mankind is naturally inclined to and the rule of expenditure can be applied.
- v. The property must be something beneficial according to *syara*^c and fulfil the interest and the necessity of humankind.

These characteristics of property have been highlighted by Al-Sarkhasī (1989) in *Al-Mabsūṭ*, Al-°Aini (2000) in *Al-Banāyah fi Sharḥ Al-Hidāyah*, Ibn Nujaim (1997) in *Baḥr Al-Rā'iq Sharḥ Kanz Al-Daqā'iq*, and Ibn °Abidīn (2003) in *Radd Al-Muḥtār °ala Al-Durr Al-Mukhtār Sharḥ Tanwīr Al-Absār*. In this case, if the characters of the goods contradict the concept of the property laid down by the Islamic scholars of these schools, it is not considered valuable property. For instance, the benefits or usufruct of the goods shall not be considered property as it cannot be preserved and stored. The same case goes for the debt, considering that debt cannot be possessed and the rights of the ownership cannot be applied to the debt. The same condition is applied to wine (*khamr*) and animal carcass (*al-mayyitah*), considering that they are prohibited and deemed as *najs* by the *syara*^c. For this reason, the property that is qualified in *waqf* based on Ḥanafī schools is the evaluated property (*al-māl al-mutaqawwim*), with a condition that it must be the immovable property such as the land, garden, and building, or movable property such as cash, books, and axes (Al-Marghīnānī, 1997; Ibn al-Humām, 2003).

Mālikī Schools

The Islamic scholars in Mālikī schools have laid down the specific character for the goods to be considered valuable property. The concepts and characteristics of the *waqf* property based on Mālikī schools are more extensive than the other three prominent Islamic schools, which are as follows:

- i. The goods are things that are valuable and can be capitalised on.
- ii. The goods should be able to be utilised and possessed either physically or for the benefit of the property.
- iii. It can be benefitted according to the *shara'* albeit in a small amount. Thus, the prohibited goods (*al-muḥarramāt*) would not be considered as property (Abd Al-Wahhāb, n.d.; Al-Dardīr, 2007; Al-Dustūqī, 1934; Al-Shayban & Al-Sarkhasi, 1997).

Based on the aforementioned characters, the benefits of the property are valid for *waqf* in Mālikī schools, considering that Mālikī schools allow the temporary *waqf* (*al-waqf al-muaqqat*) as discussed in the previous topic. Besides, the Islamic scholars of these schools regard the benefits of the property as a type of evaluated property (*al-māl al-mutaqawwim*).

Shāfi'iy Schools

The characters of the property in Shāfi'iy schools are as follows:

- i. The property must be valuable, exchangeable, and could be benefited by humankind.

- ii. The property that is qualified for *waqf* must be fully owned by the donor, be well-known, and be specific. Besides, the property ownership should be qualified to be transferred to the other parties.
- iii. The property must be perpetual physically and the benefits of the property should be able to be leased.
- iv. The property can be utilised and benefit humankind continuously as long as it complies with *syara*^c.

Based on these characters of *waqf* property in Shāfi'iy schools, it is indicated that the *waqf* should be perpetual and continuous. The goods are not qualified to be endowed if they do not fulfil the aforementioned conditions. For example, the property is not valid to be endowed if it is excessively small in amount. The cash (*al-darāhim wa al-danānīr*) would not be qualified as the *waqf* property in this schools, given that it is not perpetual physically (Al-Nawawi, 1991; Al-Ramli, 2002; Al-Shirbīnī, 1997; Ibn Hajar Al-Haitami, 2016).

Ḥanbalī Schools

In Hanbali schools, the property is qualified and valid to be *waqf* with the following conditions:

- i. The property should be able to be benefited by humankind.
- ii. The property must be permissible and allowed to be utilised by the *syara*^c. Thus, all the prohibited things are not qualified to be endowed.
- iii. The property should be valuable and beneficial to mankind. Thus, any non-valuable properties such as a seed or grain are not qualified to be endowed.

- iv. The property must be specific and well-known. It should also be perpetual physically and could be benefited continuously, such as the yield of the garden.

Thus, the *waqf* of immovable and movable properties including livestock, furniture, books, and weapons is valid and qualified according to Ḥanbalī schools. Besides, the Islamic scholars of Ḥanbalī schools also allow the *waqf* on shared property (*waqf al-mushāʿ*) (Al-Bahūti, 2000; Al-Mardawi, 1955; Ibn Qudāmah, 2005).

ii) The property must be determined specifically and exist

One of the mandatory conditions in *waqf* is that the endowed property should exist, be specific, and be well-known. Thus, the *waqf* would be invalid if the donor endows a matter that does not exist nor is unknown. For instance, if the donor states “*I endow something on my land*”, the *waqf* should be void, considering that the donor does not specify the property that he wishes to endow. Furthermore, the *waqf* would also be invalid if the donor endows an unthinkable matter, which includes the air, wind, and scenery (Al-Bahūti, 1983; Al-Māwardi, 1994; Al-Shirbīnī, 1997; Al-Tarabulusi, 1981; Ibn Nujaim, 1997). This condition is mandatory primarily for the prevention of any harm or damages to the *waqf* property, ambiguity, and inconvenience among the involved parties. Besides, the ambiguity in *waqf* is one of the factors that will affect the validity of *waqf*. The unknown and unspecified property cannot be approved as *waqf* property nor be benefited from, although several exceptions are present. If the donor commonly endows his property that is well-known among the community in that particular place, the *waqf* shall be considered valid although the donor does not specify the property that he wishes to endow. If the *waqf* is not familiar and uncommon, the

waqf would be invalid and the donor should clarify the property that he wishes to endow (Al-Bahūti, 2000; Al-Shīrazi, 1996; Al-Tarabulusi, 1981; Ibn al-Humām, 2003).

iii) The property must be fully owned by the donor

The origin of *waqf* is that the endowed property must be fully owned by the donor before the *waqf* declaration is made. To illustrate this point, the principle of *waqf* is to transfer or terminate the ownership of the property from the donor's possession. This process cannot be performed if the property is not in the donor's possession. However, the majority of Islamic scholars from Ḥanafī, Shāfi'iy, and Ḥanbalī schools state that this process is a mandatory requirement for the donor to fully own the property during the declaration of the *waqf* being made (Al-Bahūti, 1983; Al-Kubaisiy, 1977; Al-Nawawi, 1991; Al-Ramli, 2002; Al-Shirbīnī, 1997; Ibn al-Humām, 2003; Ibn Nujaim, 1997). Meanwhile, the Mālikī schools state that it is not required for the donor to fully own the property during the declaration of the *waqf* (Al-Dusūqī, 1934; Al-Kubaisiy, 1977).

iv) Possession of the Property (Al-Qabd)

The Islamic scholars presented two opinions in determining the acceptance of the property by the beneficiaries, which are as follows:

First opinion: The acceptance (*Al-Qabd*) to possess is not required in the completion of *waqf*

The Islamic scholars who agree with the first opinion state that *al-qabd* is not required to complete and bind (*luzūm*) the *waqf* contract. To illustrate, the *waqf* property is not owned by any individuals, and the contract would terminate the donor's ownership of the property. The Islamic scholars with the same opinion argue that based on the *ḥadīth* of Sayyidina ʿUmar R.A's *waqf* in Khaybar, the Prophet Muhammad S.A.W did not order Sayyidina ʿUmar to *al-qabd* on his *waqf*. This situation has proven that *al-qabd* is not required in completing the *waqf* contract. Besides, the Islamic scholars in this opinion used to apply analogical reasoning (*qiyas*) on the *waqf* contract with the emancipation of slaves. To explain this situation, the *waqf* property is prohibited to be sold, inherited, and offered as a gift, which is the same as the emancipation of slaves. This opinion was expressed by Abū Yūsuf from Ḥanafī schools, Shāfiʿiy schools, and Ḥanbalī schools (Al-Bahūti, 2000; Al-Marghīnānī, 1997; Al-Nawawī, 1991; Al-Sarkhasī, 1989; Al-Shirbīnī, 1997; Ibn Qudāmah, 2005).

Second opinion: The acceptance to possess is required in the *waqf* completion

The Islamic scholars in the second opinion state that *al-qabd* is essential in completing and binding the *waqf* contract. Imām Muḥammad bin Ḥasan from Ḥanafī schools mentions that *al-qabd* is the binding condition in *waqf* (Ibn al-Humām, 2003; Ibn ʿĀbidīn, 2003), while the Mālikī schools state that *al-qabd* is essential in completing the *waqf* contract and could be performed on either the possession of the property through legal possession (*ḥauz ḥukmiy*) or physical possession (*ḥauz ḥissiy*) (Abd Al-Wāḥhab, n.d.; Al-Dusūqi, 1934). This opinion is in line with Imām Aḥmad (Al-Bahūti,

1983; Al-Sarkhasi, 1989; Ibn Qudāmah, 2005). According to the Islamic scholars who adhere to this opinion, the *ḥadīth* of Sayyidina ‘Umar R.A’s *waqf* in Khaybar elaborates that Sayyidina ‘Umar R.A passed his *waqf* property to his daughter, Ḥafṣah R.A, to accomplish the *waqf* contract. This situation indicates that *al-qabd* is required for completing and binding the *waqf* contract (Al-Sarkhasi, 1989). Besides, the Islamic scholars that adhere to this view also argue that in order to accomplish the right of Allah S.W.T in the matter of *waqf*, the property must be delivered to the beneficiaries to keep the interest (*maṣlaḥah*) of the public. To illustrate, everything in this world belongs to Allah S.W.T (Ibn Nujaim, 1997). The other argument is that the Islamic scholars have compared this *waqf* with gift (*al-hibah*) and will (*al-waṣiyyah*), considering that *waqf* is a form of alms-giving that is similar to *hibah*. Provided that the donation or alms-giving will terminate the ownership of the property from the donor, the binding would not take place without possessing (*al-qabd*) the property (Al-Bahūti, 2000; Ibn Qudāmah, 2005).

Based on both opinions and arguments, the researcher opined that the first opinion was preferred, which is the opinion expressed by Abū Yūsuf from Ḥanafī schools, Shāfi‘ī schools, and Ḥanbalī schools. The first opinion stated that *al-qabd* is not essential and not considered compulsory in the *waqf* validity. To illustrate, the *ḥadīth* of Sayyidina ‘Umar R.A’s *waqf* in Khaybar is clear and understandable, indicating that further explanation of the *ḥadīth* is not necessary. The second argument states that *waqf* would terminate the ownership of the property from the donor without transferring the ownership to other parties, which includes the emancipation of the slaves. Besides, Ibn Qudāmah (2005) stated that the analogical reasoning (*qiyas*)

between *waqf* and the emancipation of slaves is preferred over the analogical reasoning between *waqf*, *hibah*, and *waṣiyyah*.

2.5. Temporary *Waqf* Definition

Temporary *waqf* comprises two words, namely “temporary” and “*waqf*”. In Arabic, it could also be known as *al-waqf al-muaqqat*. The word *al-muaqqat* is built from the word of *aqqata* or *waqqata*, which indicates a period of time (Abu Jaib, 1988; Ibn Manzur, 2007). According to *Muʿjam Al-Taʿrīfāt*, *al-waqf* could literally be defined as the situation denoting the present, which does not pertain to the future and past (Al-Jurjāni, 1982). Provided that *al-muaqqat* could also be understood as *al-taʿqīt* or *tauqīt*, the meaning of *al-taʿqīt* indicates determining a specific period of time for performing an action by stating the period (Ibn Manzur, 2007), such as the limitation of time for a matter by clarifying the period during the declaration. Subsequently, it was concluded that the etymological definition of *al-taʿqīt* is to bind something with specific period of time by stating the expired date.

Technically, *al-taʿqīt* denotes the delimitation of time for performing an action from the beginning until the stated expiry time (Abū Al-Baqāʾ, 1998). This term is also applied in worship matters, such as the specification of five times of prayer, the obligation of fasting during Ramadan, and the obligation of Hajj during the sacred month. Furthermore, the term *al-taʿqīt* has been applied in *muʿāmalah* (Islamic transaction) matters. According to *Mukhtar Al-Ṣiḥāḥ*, *al-taʿqīt* could be understood as an action of determining the limitation of performing an action by stating the expired time (Abū Jaib, 1988; Al-Rāzi, 1986). Following both of the technical definitions, the

first definition highlights that *al-ta'qīt* involves the beginning of time until its end. Meanwhile, the second definition demonstrates that *al-ta'qīt* only determines the expiry time without mentioning the beginning. The first definition was agreed upon in this research as *al-ta'qīt* could occur at the beginning or the end.

In the traditional Islamic jurisprudence book, the Islamic scholars did not specify the definition of temporary *waqf*. However, Al-Kashnāwī (1986) stated in *Ashal Al-Madārik Sharḥ Irshād Al-Sālik fi Fiqh Imām Al-A'immah Mālik* that *al-waqf al-muaqqat* is a *waqf* that is bound to any specific periods of time determined by the donor, while the *waqf* property would be transferred from family *waqf* (*al-waqf al-dzurriy*) to philanthropy *waqf* (*al-waqf al-khairiy*), or the property will be returned to the donor's possession. Based on the definition of *waqf* by Ibn ʿAbd Al-Salām Al-Malikī, the permissibility to practise the *waqf* for any specific period of time is determined by the donor during the declaration (Al-Dardir, 2007).

Mundzir Qahf (2000), one of the modern Islamic scholars, defined *waqf* as the detention of a specific property from any transactions, in which the benefits and the yield of the property could be utilised repeatedly either in perpetuity or temporary for good purposes. This factor is subject to the conditions determined by the donor who complies with the law of *waqf*. Based on the definition offered, the term “temporary” denotes the limitation of time on the *waqf* contract by keeping the *waqf* property perpetual or subject to the conditions stated by the donor. Therefore, it is indicated that the temporary *waqf* could be implemented either through property or the declaration (*ṣighah*).

Based on these definitions, it could be seen that the temporary *waqf* is only mentioned in the definition of *waqf*. Thus, Ab Rahman (2017) has built a comprehensive definition of temporary *waqf*, which is as follows:

“A form of waqf that allows the founder (al-wāqif) the right to set up any specific conditions, which is either bound to a specific period of time or to a specific group of the beneficiaries (al-mauqūf ‘alaih) based on the principles and laws provided by The State Islamic Religious Council or State Waqf Institution, as long it is allowed by shara^c and guarantees the welfare of the founder, the beneficiaries, and the property of waqf”.

Based on this definition, the researcher opined that temporary *waqf* is allowed to be applied as long as it is in line with the *shara^c*, *waqf* regulation, the interest and welfare of the donor, the beneficiaries, and the *waqf* property. It is also suitable to be implemented in Malaysia and enacted in the State Administration of Islamic Law Enactment/Act and State *Waqf* Enactment.

2.6. Temporary *Waqf* from Islamic Scholars Perspective

In the previous topic, the pillars and conditions of *waqf* were described from the perspective of Islamic jurists. The definition of temporary *waqf* was found to be a *waqf* that is bound to a specific period of time as determined by the donor, and the *waqf* property will be returned to the donor's possession after the *waqf* contract has reached the expired date. Considering the discussion on the term temporary in *waqf*, which is also known as *al-ta'qīt al-waqf*, it is not only limited to the declaration of *waqf* (*ṣīghah al-waqf*). This research divided the discussion into three main topics: (1) the temporary *waqf* declaration; (2) the temporary *waqf* beneficiaries, and; (3) the temporary *waqf* property.

2.6.1. The Temporary *Waqf* Declaration (*Ṣighah*)

The issue related to the perpetual and temporary *waqf* are included in the discussion of the *waqf* declaration pillars or considered a part or compulsory element in the *waqf* contract. *Ṣighah* could be understood as an expression or action by the donor that indicates his consent through the contract. In this case, the views of traditional and modern Islamic scholars are described, in which the *waqf* is either valid to be declared for a specific duration or only valid in perpetuity. Subsequently, the Islamic scholars express two opinions: (1) *waqf* is valid to be declared temporary, and; (2) *waqf* is only valid in perpetuity.

First Opinion: Waqf is permissible to be declared temporary

The previous Islamic scholars who adhere to this opinion state that temporary *waqf* is permissible and valid. When the *waqf* contract has reached the expiry date as determined by the donor, the *waqf* property would be returned to the donor's possession if the donor is alive or to the donor's heirs if the donor is dead. To illustrate, the Islamic scholars in this opinion do not identify perpetuity as one of the compulsory conditions in *waqf*.

a) An Opinion from Abū Yūsuf Al-Hanafī

Qadi Abū Yūsuf did not determine perpetuity as a mandatory condition in the validity of *waqf*. This situation indicates that if the beneficiaries of the *waqf* are categorised as non-continuous beneficiaries, the *waqf* property should be returned to the donor's possession if the donor is still alive. If the donor is dead, the *waqf* property will be

returned to the donor's heirs. Abu Al-Ma'ālī (2004) mentioned in *Al-Muḥīṭ Al-Burhānī fī Al-Fiqh Al-Nu'mānī* that Abū Yūsuf did not consider perpetual as a condition that determine the *waqf* validity. In *Sharḥ Faṭḥ Al-Qadīr*, Ibn Al-Humām (2003) highlighted Abū Yūsuf's argument that the main objective of *waqf* is to bring the Muslims closer to Allah S.W.T by spending their property for pious purposes. Thus, if the *waqf* is an action to worship and seek the blessings from Allah S.W.T, it could be performed either to the non-continuous or continuous beneficiaries, and the *waqf* shall be valid and permissible. Non-continuous beneficiaries comprise a group of people or any parties who are not categorised as perpetual or continuous, such as any particular individuals and the donor's child. Based on this statement, Qāḍī Abū Yūsuf was found to allow the practice of temporary *waqf*.

b) The Absolute Opinion (*Al-Mu'tamad*) of Mālikī Schools

In the Mālikī schools, perpetuity is not considered a mandatory condition to be fulfilled in determining the *waqf* validity. The *waqf* is valid and permissible to be declared perpetual and temporary that is subject to the donor's condition and desire. If the donor endows his property temporarily, the property will be returned to the donor's possession or his heirs after the period of *waqf* is expired, as determined by the donor. This statement is in-line with the *waqf* definition based on these schools, which is "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). According to Al-Dusūqī (1934) in *Ḥāshiyah Al-Dusūqī 'ala Sharḥ Al-Kabīr*, Al-Dardir stated that perpetuity is not a mandatory condition in determining validity of *waqf*, given that temporary declaration is valid and permissible. After the date of *waqf* expires, the property would be returned to the donor's possession.

c) The Opinions of Some Islamic Scholars of Shāfi'iy Schools

Several opinions allow the practice of temporary *waqf*. The *waqf* will be stopped when the date of *waqf* expires, as determined by the donor. According to Al-Nawawi (1991) in *Rauḍah Al-Ṭālibīn wa 'Umdah Al-Muftīn*, if the donor declares the *waqf* to take place for a year, the majority of Islamic scholars would deem the *waqf* invalid and revoked. However, some of the Islamic scholars in Shāfi'iy schools state that the *waqf* is valid and will be stopped after the expiry date is reached. To illustrate, the *waqf* that does not require the acceptance expression (*al-qabūl*) shall not be revoked although it is temporary. According to Al-Khatīb Al-Shirbīnī (1997) in *Mughni Al-Muhtāj ilā Ma'rifah Ma'ānī Alfāz Al-Minhāj*, temporary *waqf* is permissible and valid to be practised. However, there is a condition that must be fulfilled by the donor: the final beneficiaries must be appointed from continuous beneficiaries such as the poor and the needy. For instance, the donors endow their property to their children until all of the children reach 21 years old. Following that, the property will be endowed to the poor and the needy. Notably, this temporary *waqf* is valid and permissible according to Al-Khatīb Al-Shirbīnī (1997). Abū Al-'Abbās Ibn Suraij also allows the temporary *waqf* to be implemented and practised. To illustrate this point, *waqf* is considered one of the pious acts to bring the Muslims closer to Allah S.W.T and seek blessings from Him. In *Mughni Al-Muhtāj ilā Ma'rifah Ma'ānī Alfāz Al-Minhāj*, Ibn Suraij stated that temporary *waqf* is valid and allowed to be implemented, considering that it is one of the pious acts. Thus, this action could be conducted either when the donor endows all of his property or some of the property, which is similar to the duration of the *waqf* where the donor has the right to choose either to declare the *waqf* for perpetuity or only for a particular period of time (Al-Shirbīnī, 1997). Al-Imām Al-Māwardi (1994) presented

a similar view that temporary *waqf* is valid to be practised. In *Al-Ḥawī Al-Kabīr fī Fiqh Madzhab Al-Imām Al-Shāfiʿī wa huwa Sharḥ Mukhtaṣar Al-Muzani*, the donor is allowed to sell his *waqf* property, claim to return the property, or utilise the yield of the property during emergency or urgent times. This statement is in line with the following *hadīth*:

{المسلمون على شروطهم}

Translation: “The Muslims are stick to their conditions” (Hadith. Al-Bukhārī. Kitāb Al-Ijārah. Bab Ajr Al-Samsarah. Jil 3: #2154)

d) An Opinion of Ḥanbalī Schools

Al-Mardawī (1955) stated in *Al-Inṣāf* that temporary *waqf* is valid and permissible. In *Al-Inṣāf*, if the donor declares that the *waqf* takes place for only a year, it would be valid. This opinion was expressed by Ḥanbalī schools, Al-Mardawī (1955) highlighted Ibn Manjā’s statement that the law has been confirmed in *Al-Nazham* and *Al-Talkhīṣ*. It was mentioned in *Al-Furūc*, *Sharḥ Al-Ḥārithī*, *Al-Khulāṣah*, *Al-Riʿāyatin*, and *Al-Ḥawī Al-Ṣaghīr* that the *waqf* could be considered valid and the *waqf* would be transferred to the continuous beneficiaries after the *waqf* expiry (Al-Mardawī, 1955). It was argued in this research that Ḥanbalī schools hold the same views as Shāfiʿī schools in this matter.

e) The Opinions of Some Modern Islamic Scholars

Some modern Islamic scholars unanimously agreed with the principle of temporary *waqf*. Sheikh Abū Zahrah (1971) stated in *Muḥādarāt fī Al-Waqf* that Egypt allows the implementation of temporary *waqf*. It is highlighted in the Law of *Waqf* Egypt 1946, section 48, that *waqf khairī* or philanthropy *waqf* is allowed to be declared temporarily

and in perpetuity. If the donor chooses to declare the *waqf* temporary, the duration of the *waqf* must not exceed 60 years or not more than two generations.

Ab Rahman and Amanullah (2016b) stated that this opinion has been preferred by Ahmad Ibrahim Buk, Muhammad ʿUbaid Al-Kubais, Zakiyuddin Shaʿbān and Ahmad Al-Ghundūr, and Hajah Tjek Tanti. All of the modern Islamic scholars mentioned that temporary *waqf* is permissible and valid to be practised, as highlighted in the Mālikī schools. However, modern Islamic scholars did not agree about generalising the implementation of temporary *waqf*, which includes *waqf al-masjid*. Mundzir Qahf (2000) also stated that temporary *waqf* is permissible and valid to be implemented with the purpose to develop the *waqf* property and enhance the practice of *waqf*. Besides that, Qahf (2000) stated that the implementation of temporary *waqf* in this modern area could have a positive impact on the community, particularly the Muslims. To explain this condition, temporary *waqf* could realise the interest (*al-maṣāliḥ*) related to *waqf* and could broaden the opportunities for the Muslims to spend their wealth and property for good and righteous purposes. Other than that, temporary *waqf* could also assist the community to fulfil the needs in a particular circumstance for a specific period.

Muṣṭafa Al-Zarqā (2006), Ḥasan Muḥammad Al-Rifaʿi (2006), Majidah Maḥmūd Hiza (2006), Muḥammad Yahya Al-Nujaimi (2006), and Muḥammad bin ʿAbd Al-ʿAzīz bin ʿAbdullah (1996) adhered to the opinion that allows the application of temporary *waqf*. To illustrate, the temporary *waqf* could broaden the beneficiaries of *waqf* to utilise the benefits and usufruct of *waqf* property. Temporary *waqf* could also expand the function of *waqf*, which could not be performed through the perpetual *waqf* principle.

Second Opinion: Waqf only valid in perpetuity

The Islamic scholars who adhere to this opinion stated that *waqf* is only valid in perpetuity and considered compulsory in the *waqf* validity. Thus, the *waqf* is invalid if it is declared for a specific period of time. This opinion was expressed by the majority of Islamic scholars, which are as follows:

a) Ḥanafī Schools

In Ḥanafī schools, Imām Muḥammad bin Al-Ḥasan stated that perpetual is a mandatory condition in determining the *waqf* validity. Thus, the *waqf* is invalid if it is temporary. Al-Sarkhasi (1997) stated in *Sharḥ Al-Sīr Al-Kabīr* that perpetuity is a compulsory condition in the *waqf* validity from Imām Muḥammad bin Al-Ḥasan's view. To illustrate, the *waqf* is known as the continuous charity and is considered an owned charity (*al-ṣadaqah al-mamlūkah*). In this case, continuous charity is not permissible to be declared temporarily. Ibn Nujaim (1997) in *Bahr Al-Rā'iq Sharḥ Kanz Al-Daqa'iq* mentioned that if the donor endows his land for a day or a year, it would be invalid and not permissible because it is not considered perpetual. Imām Muḥammad also emphasises that it is compulsory for the donor to state the perpetual term during the expression and declaration of the *waqf* contract to avoid ambiguity and unclear statements from the donor. The *waqf* declaration could be understood as either perpetual or temporary. The principle applied by Imām Muḥammad in this matter is "*the absolute expression not indicates the perpetuity*" (Ibn al-Humām, 2003). Thus, the *waqf* declaration must be made clear by stating the perpetual term in the offer expression by the donor.

b) Shāfi'iy Schools

In Shāfi'iy schools, perpetuity is a mandatory condition in determining the validity of *waqf*. If the *waqf* is declared as temporary or bound to any particular period of time, the *waqf* shall be considered invalid and revoked. Al-Shīrazi (1996) mentioned in *Al-Muhadzdzab* that *waqf* is not permissible to be declared temporarily as the property is preserved and spent for pious purposes. Thus, *waqf* is not allowed to be bound to any specific period, such as the emancipation of slaves and charity. The donor also does not allow the endowment of his property to non-continuous beneficiaries, such as specific individuals or the donors themselves. If the donor does not express the term perpetuity when the expression is offered for the *waqf* declaration, the *waqf* will also be considered *waqf* in perpetuity. Besides, perpetual is considered one of the fundamental principles of *waqf* in Shāfi'iy schools. According to Imām Al-Nawawī (2008) in *Al-Majmū'*, if the donor does not mention the perpetual term in the *waqf* declaration, the *waqf* would also be considered perpetual. This condition is slightly different from the opinion of Imām Muḥammad from Ḥanafī schools as described by the researcher.

If the donor states that the *waqf* is bound to a long period of time through several actions such as endowing the land for 1000 years, the *waqf* would be valid and the condition would be revoked. This situation implies that the *waqf* is valid and will be perpetual and not bound to 1000 years, as mentioned by the donor during the declaration. In this case, the declaration made by the donor is not considered a temporary *waqf*, but it will be considered *waqf* in perpetuity and continuous. To explain this condition, no human beings are able to live for up to 1000 years. As stated by Al-Dimyāti (2008) in *I'ānah Al-Ṭālibīn*, if the donor mentions that he endows a land to the

poor for 1000 years or longer, the *waqf* would be valid as the declaration made by the donor is perpetual instead of temporary.

c) Ḥanbalī Schools

The Islamic scholars in Ḥanbalī schools described ‘perpetual’ as one of the mandatory conditions and also one of the fundamental principles of *waqf*. Thus, *waqf* would be invalid if it is bound to any specific period of time, sold, offered as a gift, or claimed for return to the donor’s possession. Ibn Qudāmah (2005) stated in *Al-Mughnī* that if the donor mentions the right to sell the *waqf* property, gives away the *waqf* property as a gift, or returns the *waqf* property to the donor’s possession, the *waqf* and the stated conditions would be revoked and invalid. To illustrate, all these conditions are not in line with the fundamental principle of *waqf*, as previously mentioned in this research. Imām Aḥmad ibn Ḥanbal showed the same view as the Shāfi‘iy Schools regarding the *waqf* declaration. In this respect, the *waqf* shall be in perpetuity although the donor does not mention the perpetual term in the *waqf* declaration. As mentioned in *Al-Kāfi fī Fiqh Al-Imām Aḥmad Ibn Ḥanbal* by Ibn Qudāmah (1994), if the donor endows his property to a person without mentioning the word ‘*perpetual*’ from the *ṣiḡhah*, the *waqf* should be valid and be perpetual. Imam Ahmad also mentioned in the same source that any transaction that involves the transfer of the ownership of the property to the other party’s possession is not permissible and prohibited on *waqf*, given that perpetuity is one of the fundamental principles of *waqf*.

Based on the arguments, the majority of the previous Islamic scholars except for Mālikī schools stated that *waqf* must be declared and practised in perpetuity, while the invalid *waqf* is temporary. Besides, the previous Islamic scholars who adhered to this opinion also specified that perpetuity is one of the fundamental principles that should

be fulfilled to ensure the validity of *waqf*. If the donor states any conditions that contradict the perpetual concept, such as allowing the *waqf* property to be sold, offered as a gift to another person, or returned to the donor's possession, the *waqf* shall be invalid and revoked.

d) Some of the Modern Islamic Scholars

The modern Islamic scholars who adhered to this opinion preferred the opinion of Ḥanafī schools, which indicate that the *waqf* could only be declared in perpetuity or with any terms that convey a similar meaning to perpetuity. If the *ṣiḡḥah* presents the terms or any elements implying that if the *waqf* is temporary or bound to any specific duration, the *waqf* shall be invalid. To be specific, the *waqf* definition from the modern Islamic scholars' perspectives is continuous charity, while the temporary concept is against the perpetual concept. This opinion was expressed by most modern Islamic scholars, such as ʿAbd Al-Wadūd Al-Sarītī (1997), Muḥammad Kamāl Al-Dīn Imām (2012), ʿAbd Al-Jalīl ʿAbd Al-Rahman ʿAshub (2000), and Ahmad Al-Raisūnī (2014).

Following the arguments, the researcher opined that the first opinion was preferred, in which the *waqf* is permissible and valid to be declared either as temporary or perpetual as the donor's wish. In the *ḥadīth* of Sayyidina ʿUmar R.A, Rasulullah S.A.W stated, "*if you like you can give the land as endowment and give its fruits in charity*". This phrase indicates that Rasulullah S.W.T gave the opportunity to Sayyidina ʿUmar R.A as *al-wāqif* to decide what he wished to do with his *waqf*. This phrase also proves that perpetual *waqf* is not a mandatory condition that determines the validity of *waqf*. Thus, the *waqf* could be declared either in temporary or perpetuity based on the donor's desire to preserve the interest (*maṣlaḥah*) of the beneficiaries. Besides, the

application of temporary *waqf* does not contradict the Islamic law nor against the principle and the main purpose of *waqf*, which is to worship and bring Muslims closer to Allah S.W.T by spending their property for pious purposes.

2.6.2. The Temporary *Waqf* Beneficiaries

Some Islamic scholars specified that the beneficiaries of *waqf* should be from continuous beneficiaries, such as the poor and the needy. If the donor endows his property to any non-continuous beneficiaries, the *waqf* would be considered temporary. The non-continuous beneficiaries are divided into three categories, namely non-continuous in the beginning, non-continuous intermediate, and non-continuous in the end. Specifically, the non-continuous beneficiaries in the beginning could be understood in a situation where the donor endows his property to his unborn children. It is also regarded as such when the children are yet to be present. The non-continuous beneficiaries in the middle could be understood in a circumstance where the donor endows his property to any particular individuals and distributes it to the poor and needy. Following that, the non-continuous beneficiaries in the end denote the phenomenon when the donor endows his property to non-continuous beneficiaries as the last and final beneficiaries. For instance, a donor endows his property to Ahmad, followed by his wife and his children as the last and final beneficiaries. In the case of non-continuous beneficiaries, Islamic scholars presented two opinions, which would be discussed in the following section.

First opinion: The beneficiaries are required to be continuous and perpetual

Some Islamic scholars determined that it is compulsory for the *waqf* beneficiaries to be perpetual and continuous. The Islamic scholars who adhered to this opinion stated that perpetuity (*al-ta' bīd*) is a mandatory condition to ensure the validity of *waqf*. This opinion was expressed by Abū Ḥanīfah and Imām Muḥammad from Ḥanafī schools, Shāfi'iy schools, and Ḥanbalī schools. As discussed in a previous topic related to the conditions of *al-mauqūf 'alaih*, Shāfi'iy schools stated that it is not required for the donor to mention the perpetual beneficiaries during the *'aqd*, considering that *waqf* is perpetual in nature. The benefits and usufruct of the *waqf* property would be offered to the perpetual and continuous beneficiaries despite not being clarified by the donor in the *'aqd*. Meanwhile, Abū Ḥanīfah and Imām Muḥammad from Ḥanafī schools stated that it is compulsory for the donor to mention the perpetual beneficiaries in the *'aqd* as the general expression in *'aqd* could be interpreted as temporary *waqf*.

a) The opinion from Abū Ḥanīfah and Imām Muḥammad from Ḥanafī schools

According to Abū Ḥanīfah and Imām Muḥammad, perpetual is a compulsory condition in the *waqf* validity. Thus, the *waqf* should be considered invalid if the donor does not state the continuous and perpetual beneficiaries, such as the poor, the needy, and the *masjid*, as the final beneficiaries. As stated by Al-ʿAini (2000) in *Al-Bānayah Sharḥ Al-Hidāyah*, if the donor appoints the beneficiaries who can be considered non-continuous beneficiaries, the *waqf* shall not be available as perpetuity is the principle of *waqf*. If the *waqf* is temporary, it would be invalid. A situation that could cause this invalidity is when the donor states that the *waqf* is only for 20 years. Al-Mauṣili (1937) stated in *Al-Ikhtiyār li Taʿlīl Al-Mukhtār* that the *waqf* would be invalid and not permissible if the final beneficiaries are non-continuous beneficiaries. This opinion was also expressed

by Abū Ḥanīfah and Imām Muḥammad, indicating that the final beneficiaries must be the continuous and perpetual beneficiaries. Besides, if the donor does not clarify the continuous and perpetual beneficiaries as the final beneficiary, the *waqf* shall be considered invalid (Al-Kāsāni, 2002; Al-Sarkhasi, 1989).

b) Shāfi'iy schools.

According to Shāfi'iy schools, *waqf* in perpetuity takes place when the donor endows his property to the continuous beneficiaries, such as the poor and the needy. Imām Al-Nawawi (2008) stated that the term “continuous beneficiaries” could be discovered through either of the two aspects namely non-continuous in the beginning or non-continuous in the end. According to Al-Khatīb Al-Shirbīnī (2019) in *Al-Iqnā' fi Ḥalli Alfaz Abī Shujā'*, *waqf* must be declared in perpetuity and the beneficiaries must be continuous and perpetual, such as the poor and the Islamic scholars. In *Mughni Al-Muḥtāj ilā Ma'rifah Ma'āni Alfāz Al-Minhāj*, Al-Khatīb Al-Shirbīnī (1997) also stated perpetual is a mandatory condition that will determine the validity of *waqf*. For an instance, the donor endows his wealth to a group of people that will remain exist continuously until the day of judgement such as the poor and the needy, the *waqf* shall be valid.

c) Ḥanbalī schools.

In Ḥanbalī schools, the *waqf* provided to the non-continuous beneficiaries in the beginning shall be considered invalid and void. An example of this condition is when the donor endows the property for himself or his unborn child. According to Ibn Qudāmah (2005) in *Al-Mughnī wa yalihi Al-Sharḥ Al-Kabīr*, if the donor endows his property to the non-continuous beneficiaries in the beginning, such as the prohibited

parties, the donor himself, his slaves, the church and temple, or any unknown individuals, the *waqf* shall be void and invalid although the beneficiaries are not stated by the donor during the declaration.

Based on the arguments, the researcher opined that the Islamic scholars who adhered to this opinion determined that it is compulsory for the donor to endow the property to the continuous and perpetual beneficiaries, such as the poor, the needy, and the mosque.

Second opinion: The beneficiaries are not required to be continuous and perpetual

The Islamic scholars who adhered to this opinion stated that it is not required to *waqf* the property only to the perpetual and continuous beneficiaries. The donor is allowed to endow the property to the non-continuous beneficiaries, followed by the transfer of the property to the perpetual and continuous beneficiaries as the final beneficiary. The non-continuous beneficiaries could be present in three situations as previously stated by the researcher, namely the beginning, the middle, and the end. This opinion was expressed by Qāḍi Abū Yūsuf from Ḥanafī school, and also the absolute opinion of Mālikī schools, some Islamic scholars from Shāfi'iy schools, and Ḥanbalī schools.

a) The opinion of Qāḍi Abū Yūsuf from Ḥanafī schools

Qāḍi Abū Yūsuf allows donors to endow the property to non-continuous beneficiaries, followed by the transfer of the *waqf* to the continuous beneficiaries, such as the poor and the needy, as per the donor's wish, after the non-continuous beneficiaries stop. Al-Sarkhasi (1989) mentioned in *Al-Mabsūṭ* that Abū Yūsuf did not determine perpetuity as a mandatory condition to assure the *waqf* validity. If the donor endows the property

to the non-continuous beneficiaries, the *waqf* shall be considered valid although the donor does not appoint the continuous beneficiaries as the final beneficiary. According to Al-Kāsānī (2002) in *Badāi' Al-Ṣanāi' fi Tartīb Al-Sharā'ī* and Al-Mauṣilī (1937) in *Al-Ikhtiyār li Ta'ālil Al-Mukhtār*, Abū Yūsuf stated that perpetuity is not considered a condition in the *waqf* validity. The *waqf* is still considered valid although the donor endows the property to the non-continuous beneficiaries, and will be transferred to the poor and the needy after the non-continuous beneficiaries are stopped although it is not mentioned by the donor during the *ʿaqd*. Ibn Nujaim (1997) stated in *Bahr Al-Rā'iq Sharḥ Kanz Al-Daqā'iq* that if the donor endows the property to the non-continuous beneficiaries, the property will be channelled to the other parties in two ways after the passing of the non-continuous beneficiaries. In this case, the property may be first returned to the donor's heirs. Then, the property will be transferred to the poor as the continuous beneficiaries.

b) The absolute opinion of Mālikī schools

The Mālikī schools did not determine perpetual as a mandatory condition that will affect the validity of *waqf*. This is an absolute opinion that was applied in the Mālikī schools. Thus, the *waqf* is valid if the donor declares it either as a perpetual or temporary subject as per the donor's wish and stated by the researcher in the topic of temporary *waqf* declaration (ʿAlish, 1979; Al-Dardir, 2007; Al-Dusūqi, 1934; Al-Qarāfi, 1994).

c) Some Islamic scholars from Shāfiʿiy schools.

In Shāfiʿiy schools, it is allowed for the donor to endow the property to non-continuous beneficiaries with a condition that the *waqf* property must be transferred to the continuous beneficiaries, such as the poor, after the non-continuous beneficiaries pass

on or stop. According to Al-Dimyāṭi (2008) in *Iʿānah Al-Ṭālibīn* and Al-Shīrazi (1996) in *Al-Muhādhdzab fī Fiqh al-Imām Al-Shāfiʿiy*, that the donor must endow the *waqf* property to the continuous beneficiaries such as the poor. If the donor endows the property to the non-continuous beneficiaries, the donor must appoint the continuous beneficiaries as the final beneficiary after the non-continuous beneficiaries stop. An example of this situation is when the donor endows the property to his children, followed by any particular individual, and finally to the poor.

d) Hanbali schools

In Hanbali schools, the donor is allowed to endow the property to the non-continuous beneficiaries in the end. As stated by Al-Mardawī (1955) in *Al-Inṣāf* and Ibn Qudāmah (2005) in *Al-Mughnī wa yalihi Al-Sharḥ Al-Kabīr*, it is permissible and valid for the donor to endow the property to the non-continuous beneficiaries in the end with a condition that the beneficiaries in the beginning and middle are connected and continuous.

Based on these arguments, it was found that the second opinion is preferred, in which the beneficiaries are valid to be appointed as either continuous or non-continuous. To illustrate, the main purpose of *waqf* is to worship and seek the blessings of Allah S.W.T by spending and contributing the property to the needy. The needy people could fall under the category of non-continuous beneficiaries, such as family members and relatives. This opinion could broaden the beneficiaries who could utilise the benefits of the *waqf* property. Besides, the *sharaʿ* does not prohibit the donors from endowing the property to the non-continuous beneficiaries despite the encouragement by the *ḥadīth* of the Prophet Muhammad S.A.W for the Muslims to provide charity and help the family members and relatives.

2.6.3. The Temporary *Waqf* Property

Based on the previous topic regarding the conditions of *waqf* property, the most important condition that will determine the validity of *waqf* property is that the property must be a valuable asset and could be benefited by people without contradicting with *shara*^c. According to Islamic scholars, *waqf* property could be divided into two types, namely immovable (*ʿaqār*) and movable property (*manqūl*). The immovable property could be interpreted as a matter that cannot be transferred and removed from its origin to another place, while the property must be perpetual. Ibn Al-Humām (2003) in *Sharḥ Fath Al-Qadīr* and Ibn ʿĀbidīn (2003) in *Radd Al-Muḥtār ʿala Al-Durr Al-Mukhtār Sharḥ Tanwīr Al-Abṣār* stated that that land is the only property to be regarded as immovable. Meanwhile, the Mālikī schools have broadened the concept of immovable property by stating that a matter that is attached to the land would also be considered immovable property, such as buildings and gardens (Al-Dardir, 2007). The Islamic scholars unanimously agreed that immovable property is valid and permissible to be endowed, such as the land, buildings, and garden. The researcher opined that the immovable property is perpetual in nature, while the benefits of the property will be distributed to the beneficiaries in perpetuity and continuously without being bound to any period of time. Thus, the researcher argued that it is not necessary to conduct a long discussion on the immovable property, given that it is perpetual in nature.

While the movable property is temporary in nature and could be transferred to another place, some of the property could change their form from time to time. In this case, the Islamic scholars have differed in allowing the donor to endow the movable property into two opinions.

First opinion: The movable property is valid and permissible in waqf

a) The Islamic scholars in Ḥanafī schools

Two Islamic scholars in Ḥanafī schools, namely Abū Yūsuf and Imām Muḥammad, have placed a limitation on allowing movable property in *waqf*. Both of these Islamic scholars opined that the movable property is only valid to be considered *waqf* property if it is well recognised by the community in that state as a *waqf* property, or the property is a matter that is attached or built on the land. For example, the *waqf* of the Quran to the mosque commonly occurs in Malaysia and is regarded as a movable *waqf* property and the buildings, considering that it is a property that is attached to the land. Abū Yūsuf and Imām Muḥammad stated that the permission of movable property in *waqf* is subject to the provision from the *naṣ*. As stated by Al-Kāsānī (2002) in *Badāi' Al-Ṣanāi' fi Tartīb Al-Sharā'i*, the permission of immovable property (*ʿaqar*) in *waqf* is subject to the provision from prophetic tradition. This condition is similar to the movable property that is commonly used to be endowed and utilised by the community as per the opinion of Imām Muḥammad, such as axe, adzes, saw, and funeral tools. Al-Kāsānī (2002) also stated that the *waqf* of movable property that is attached to the land is also valid and permissible as per the opinion of Abū Yūsuf, such as the donor who endows a land with the yield, livestock, and tools to harvest the yield from the endowed land.

b) The Islamic scholars in Mālīkī schools

In Mālīkī schools, *waqf* is allowed for both types of property, which are movable and immovable. According to Ab Rahman (2017), the definition of *waqf* according to the Mālīkī schools indicates that movable and immovable property are allowed and valid

to be considered *waqf* property. Ibn ʿArafah stated in the definition of *waqf* that *waqf* distributes the benefits of the property based on the life expectancy of the property (ʿAlish, 1979). This definition implies that endowment is permissible based on the property lifespan as the Mālikī schools do not determine perpetuity as a mandatory condition in the *waqf* validity. Al-Dusūqī (1934) stated in *Hāshiyah Al-Dusūqī ʿala Sharḥ Al-Kabīr* that *waqf* is valid for all types of movable property and is absolute (*al-muʿtamad*) in the Mālikī schools. The researcher opined that Mālikī schools allow the *waqf* of movable property without any limitations as long as it complies to the *sharaʿ*.

c) Shāfiʿiy schools

The Islamic scholars in Shāfiʿiy schools stated that movable property could be known as something that could be moved or transferred from one place to another place. This property includes the property attached to the land, such as buildings, trees, and the property that is not attached to land including the animals, weapons, pottery, and minerals. All the property could be regarded as movable property. As mentioned by Imām Taqiyyuddin (2008) in *Kifāyah Al-Akhyār fi Halli Ghāyah Al-Ikhtiṣār*, the donor is allowed to endow a young slave or young donkey (*al-jaḥshi*), the leasehold land, and the extorted property. Al-Shirbīnī (2019) stated in *Al-Iqnāʿ fi Halli Alfaz Abī Shujāʿ* that the *waqf* of movable property is valid, such as slave and clothes. However, the Islamic scholars in Shāfiʿiy schools stated that food cannot be considered as a *waqf* property and is invalid to be *waqf* (Al-Dimyāṭi, 2008; Al-Nawawi, 1991).

d) Ḥanbalī schools

The Islamic scholars in Ḥanbalī schools have allowed the movable property to be considered *waqf* property, which includes animals and livestock. According to Al-

Bahūti (2000) in *Sharḥ Muntahā Al-Irādāt* and Ibn Qudāmah (2005) in *Al-Mughnī wa yalihi Al-Sharḥ Al-Kabīr*, the movable property is allowed and permissible for *waqf*. An example of this situation is when the donor endows the horses to the soldier for the war or endows the furniture such as carpets for the mosque.

The previously mentioned arguments indicate that the majority of Islamic scholars allow the *waqf* of movable property to be practised. However, Qāḍi Abū Yūsuf and Imām Muḥammad from Ḥanafī schools place a limitation on some types of movable property, which are allowed to be endowed as per discussion. The Shāfi'iy schools allowed the *waqf* of movable property, which does not include food and a matter that cannot perish nor be utilised repeatedly. The Mālikī schools allowed the *waqf* of movable property without limitation, which includes all types of movable property that could be benefited.

Second opinion: The movable property is invalid in waqf

Imām Abū Ḥanīfah opined that the *waqf* of all movable property is void and invalid. As Imām Abū Ḥanīfah stated that perpetuity is a mandatory condition for the *waqf* property, the land is the only immovable property that is permissible and valid for *waqf*. According to Ibn ʿAbidīn (2003) mentioned in *Radd Al-Muḥtār ʿala Al-Durr Al-Mukhtār Sharḥ Tanwīr Al-Abṣār*, the reason that the movable property is void and invalid in *waqf* is that the movable property is not perpetual nor continuous. However, these two conditions are mandatory in *waqf*. In *Badāʾiʿ Al-Ṣanāʾiʿ fī Tartīb Al-Sharāʾiʿ*, Al-Kāsānī (2002) stated that the movable property is invalid and void in *waqf*, given that the character of movable property is not perpetual and could perish. Besides that,

the *waqf* of weapons and warhorses is also void and invalid in the view of Imām Abū Ḥanīfah (Al-Kāsānī, 2002).

After the analysis of both of the arguments, it was found that the opinion of Qāḍī Abū Yūsuf and Imām Muḥammad from Ḥanafī schools, the view of Shāfi'iy schools, and the opinion of Mālikī schools were preferred, which states that the *waqf* is valid for immovable and movable property. To illustrate this point, there is no restriction and prohibition from the *shara'* for the donor to practise the *waqf* by endowing the movable property. The *waqf* of movable property was also practised by the Companions of Rasulullah S.A.W, in which the property includes warhorses, weapons, and animals. Besides, the main purpose of *waqf* is to contribute the benefits of the property to the beneficiaries. By allowing the *waqf* of movable properties, the current *maṣlahah* and needs of the beneficiaries could be widely acknowledged. Thus, the researcher stated that *waqf* is not supposed to be restricted to immovable property (e.g., the land) to broaden the potential of *waqf* and realise the interest of the donor and the beneficiaries.

2.7. The Issues Relating to the Determination of Conditions of *Waqf* by The Donor (Al-Wāqif)

As previously discussed, the donors have the right to determine any conditions on the *waqf* that they have declared as long as they are not against the *shara'* nor contradicting with the principle of *waqf*, which states that the *waqf* property cannot be sold, inherited, and given away as a gift. The conditions determined by the donors are valid to be stated during the distribution of *waqf* property, which could take place either verbally, or through the written contract or the action of the donors. The majority of the Islamic scholars unanimously agreed on the validity of the conditions stated by the donors on

the *waqf* through all of these mechanisms (Al-Mardawi, 1955; Al-Ramli, 2002; Al-Sarkhasi, 1989). All of the conditions mentioned by the donors are placed under the types of the *ʿaqd* where the Islamic law of transaction principles was applied. It is also compulsory to keep and obey the conditions stated by the donors based on the legal maxims (*al-qawāʿid al-fiqhiyyah*), which include "the stipulations of the donor are like the provision of the law giver" (*sharṭ al-wāqif ka-naṣṣ al-shāriʿ*) (Al-Nawawi, 2008; Ibn ʿĀbidīn, 2003). The legal maxims indicate that it is prohibited to violate the donor's stipulations as long as it does not contradict with *sharaʿ*. However, the Islamic scholars showed a different view regarding the conditions that could be considered permissible and compulsory, including the conditions that are against Islamic law or contradict the principle of *waqf*. In this case, the discussion is divided into three parts, namely the (1) valid stipulation (*sharṭ al-ṣaḥīḥ*), (2) defect stipulation (*sharṭ al-fāsid*), and (3) void stipulation (*sharṭ al-bāṭil*).

2.7.1. Valid Stipulation (*Sharṭ Al-Ṣaḥīḥ*)

Known as *sharṭ al-ṣaḥīḥ*, valid stipulation represents any conditions specified by the donors on the *waqf* who comply with the Islamic normative text (*nuṣūṣ al-sharīʿah*), or the conditions that acknowledge the purpose of *waqf* and appraise the right of the beneficiaries (*al-mauqūf ʿalaiḥ*) (Al-Dusūqi, 1934; Al-Mardawi, 1955; Al-Māwardi, 1994; Ibn ʿĀbidīn, 2003). All the conditions that are not contradicting with the Islamic law and maintain the right and the interest (*maṣlaḥah*) of the beneficiaries are mandatory to be obeyed and established (Ibn Al-Qayyim Al-Jauziyah, 2002). Usually, the stipulations made by the donors on their *waqf* consist of the management in distributing the *waqf* benefits, the characteristic of the eligible beneficiaries, the

durations to utilise the benefits of the *waqf* property, and the amount of *waqf* property that the donors desire to endow (Al-Maiman, 2009). Abū Zahrah (1971) stated in *Muḥādarāt fi Al-Waqf* that some of the Islamic scholars identified the conditions as 10 stipulations, namely increase (*al-ziyādah*), decrease (*al-nuqṣān*), addition (*al-idkhāl*), removal (*al-ikhrāj*), granting (*al-iṭā'*), dispossession (*al-ḥirmān*), replacement (*al-taghyīr*), conversion (*al-tabdīl*), substitution (*al-istibdāl*), and exchange (*al-ibdāl*).

Azniza Hartini, Mohamed Aslam, and Hanira (2018) stated that *al-ziyādah* and *al-nuqṣān* provide the founders with choice and opportunities to prioritise various eligible beneficiaries' rights for utilising the benefits of *waqf* property. *Al-Idkhāl* and *Al-Ikhrāj* could provide space to the donors or the trustee to appoint and include the beneficiaries in need and exclude the existing beneficiaries who no longer need the benefits of the *waqf* property. Besides, *al-iṭā'* and *al-ḥirmān* offer permission to the donors to endow all or a portion of the property to any individuals they target and dispossess the appointed beneficiaries of the property. *Al-Taghyīr* offers rights to the donors to replace the function of the *waqf* property with another purpose, while *al-tabdīl* allows the donor to change the property to another property for further benefits of the *waqf*. *Al-Istibdāl* substitutes the original *waqf* property with another property through the purchase, while *al-ibdāl* sells the undeveloped or unproductive *waqf* property, and the earnings from the selling would be contributed to the development of another *waqf*. However, Abū Zahrah (1971) emphasised that all of these 10 stipulations shall be omitted and changed by the *nāẓir* with the permission of the *qāḍi* if it contradicts the *Shari'ah* law and does not maintain the interest of the beneficiaries and the *waqf* property.

2.7.2. Defect Stipulation (*Sharṭ Al-Fāsid*)

Sharṭ Al-Fāsid, or known as the defect stipulation, represents any conditions that are not against the main purpose of *waqf* nor contradict the principle and the law of *waqf*, although the stipulations could bring harm to the *waqf* or the beneficiaries (Ab Rahman, 2017). The Islamic scholars allow the revocation of all the defect stipulations to be changed to any stipulations that could realise the *maṣlahah* of the beneficiaries and the *waqf* property. This opinion adheres to the Islamic scholars of Hanafī schools, Mālikī schools, and Shāfi'iy schools. However, the Islamic scholars showed different opinions in stating the defective stipulations, which are as follows:

Ḥanafī Schools

- i. If the donors state in the *waqf* conditions that their children must be appointed as the *mutawallī* and *nāzir* of the *waqf*, and they have the right to manage the removal and appointment of the beneficiaries including the matters relating to the *waqf* without appointing the *Qāḍi* or *Sulṭān* as the *Nāzir*. In this case, the stipulations shall be void and revoked. To illustrate this point, the stipulation contradicts the *shara'*, abandons the *maṣlahah* of the beneficiaries, and could bring damage to the *waqf*. All the stipulations that are against the *shara'* shall be void and revoked (Ibn 'Abidīn, 2003).
- ii. If the donors state in the *waqf* condition that the *Qāḍi* or *Sulṭān* has no rights to resign or fired the appointed *mutawalli*, the stipulations cannot be applied. The *Qāḍi* or *Sulṭān* has the right and permission to resign and fire the appointed

mutawallī if the *mutawalli* breaches the law of the *waqf*. This condition is void and revoked, considering that it is against the *shara*^c (Ibn Nujaim, 1997).

- iii. If the donors state that the *Qāḍī* or *Sulṭān* does not have any rights to regulate or make any decision on the *waqf*, the condition shall be void and revoked and the *waqf* would still be valid. The *Qāḍī* or *Sulṭān* has the right in regulating or deciding any matters as long as it is for the general interest (*maṣlahah ʿāmmah*) of the *waqf* (Ibn Nujaim, 1997).

The *nāẓir* has the right to change and determine the conditions specified by the donors if the conditions are considered to be defect stipulations to the better stipulations that will preserve the *maṣlahah* of the beneficiaries, the *waqf* property, and the donors (Ibn ʿĀbidīn, 2003).

Mālikī Schools

- i. If the donors state in the *waqf* contract that the maintenance of the *waqf* property is under the responsibility of the beneficiaries, the stipulation would be revoked and void while the *waqf* shall be valid. The maintenance of the *waqf* property must be performed through the yield of the property (Al-Dusūqi, 1934).
- ii. If the donors determine that the *waqf* property is not allowed to be renovated, repaired, or maintained, the conditions shall be revoked when there is a need to be renovated or maintained. To be specific, the benefits of the property should benefit the beneficiaries in a long term. This condition is also applied when the donors endow the animals that need to keep their maintenance. If the donor states that the animals are not compulsory to be treated or maintained, the

condition shall be revoked and void, while the *waqf* is still considered valid (Al-Dusūqi, 1934).

- iii. If the donors state that *nāẓir* has the right to any actions on the *waqf* property without limitation, the condition would be defected and revoked as it contradicts the *Shari'ah* law. It is mandatory for the *nāẓir* to examine and discover the interest of the *waqf* property, the beneficiaries, and the donors. Thus, the *nāẓir* must manage the *waqf* property and preserve the *maṣlahah* of *waqf*. If the donor states that the benefits of the property could only be utilised by the unmarried, the priority leans more to the married individuals due to the higher expenditure and needs among the married people. However, the priority depends on the situations and the current needs based on the views of *nāẓir* (Al-Dusūqi, 1934).

Shāfi'iy schools

- i. If the donors stated that the *waqf* property are not allowed to be leased, this stipulation defect and shall be revoked because it prohibits the eligible beneficiaries to utilize the benefits of the property (Al-Nawawi, 1991).

If the donors stated that the *waqf* property is not allowed to be leased, this stipulation would be defected and revoked as it prohibits the eligible beneficiaries from utilising the benefits of the property (Al-Shirbīnī, 1997).

2.7.3. Void Stipulation (Sharṭ Al-Bāṭil)

Known as *sharṭ al-bāṭil*, the void stipulation denotes any conditions set by the donor that could harm the *waqf* and the beneficiaries, and contradict the Islamic law and the principle, purpose, and spirit of *waqf* (Ibn ʿĀbidīn, 2003). The Islamic scholars showed different opinions regarding the donor's stipulations that could void the *waqf* contract, which are as follows:

Ḥanafī schools

The Islamic scholars of Ḥanafī schools showed different statements in the law if the donor determines *khiyār* for himself for a specific period on the *waqf*. For example, the donor endows his land to the poor with a condition that the donor has the right of *khiyār* in three days on his/her *waqf*. In this situation, Qāḍi Abū Yūsuf opined that the *waqf* and stipulation are considered valid, given that it is not compulsory for the *waqf* to be completed through *al-qabd*. Thus, the *khiyār* for a specific period of time stated by the donor on his/her *waqf* is valid (Ibn al-Humām, 2003; Ibn ʿĀbidīn, 2003).

Imām Muḥammad showed a different opinion from Qāḍi Abū Yūsuf on this issue, in which the *waqf* is void if the donor determines *khiyār* on the *waqf*. To illustrate this point, it is mandatory for the *waqf* to be accepted by the beneficiaries to terminate the ownership of the donor on the *waqf* property. Therefore, the determination of *khiyār* in the *waqf* contract by the donor will lead to a void and invalid *waqf* (Ibn al-Humām, 2003; Ibn ʿĀbidīn, 2003). Ibn al-Humām (2003) mentioned in *Sharḥ Faṭḥ Al-Qadīr* that the Islamic scholars in Ḥanafī schools unanimously agreed that the *waqf* and the stipulations are void and revoked if the donor determines the *khiyār* in the *waqf* contract

without specifying the duration and period of the *khiyār*. Al-Tarabulusi (1981) stated in the *Al-Is‘āf fī Ahkām Al-Awqāf* that the *waqf* remains valid while the stipulation is revoked and becomes void.

The other stipulation is considered void if the donor states the yield, the return from the *waqf* property must be used to pay the donor's debt, or the donor determines that he/she has the right to take the benefits from the *waqf* property. Ibn ‘Ābidīn (2003) mentioned in *Radd Al-Muhtār ‘ala Al-Durr Al-Mukhtār Sharḥ Tanwīr Al-Abṣār* that if the donor determines in the *waqf* contract that the donor has the right to revoke the *waqf*, sell the *waqf* property, make the *waqf* property as collateral, or give the right to anyone or the donor's heirs to revoke the *waqf* contract, the *waqf* shall be void and invalid.

Mālikī schools

In the Mālikī schools, the *waqf* is considered void if the donors determine that the *waqf* is for the *ḥarbī*, the purpose of *ma‘ṣiyyah* and other religion rituals. Besides, the *waqf* would also be void if the donor states that the donors have the right to claim and return the *waqf* property into their possession whenever they wish, sell the *waqf* property, and give away the *waqf* property as *hibah* (Al-Dardir, 2007; Al-Dusūqi, 1934).

Shāfi‘iy schools

In the Shāfi‘iy schools, the *waqf* with the void stipulation would be considered void and invalid. Imam Al-Nawawi (1991) stated in *Rauḍah Al-Tālibīn wa ‘Umdah Al-Muftīn* that the *waqf* shall be void and invalid if the donor determines *khiyār* on the *waqf*, or

the donor has right to return the *waqf* property into his/her possession or sell the *waqf* property. Besides, the preferred opinion in Shāfi'iy schools expresses that the *waqf* shall be void if the donor determines in the *waqf* contract that the donor has the right to utilise the benefits of the *waqf* property or use the yield and the benefits of *waqf* property to pay the donor's debt (Al-Ramli, 2002; Al-Shirbīnī, 1997).

Ḥanbalī schools

According to Ibn Qudāmah (2005) in *Al-Mughnī wa yalīhī Al-Sharḥ Al-Kabīr*, if the donor states in the *waqf* contract that the donor has the right to sell the *waqf* property whenever they wish, give away the *waqf* property as a gift, or return the *waqf* property to the donor's possession, the stipulations as and the *waqf* shall be void and invalid. According to Al-Mardawi (1955) in *Al-Inṣāf*, if the donor determines *khiyār* on the *waqf*, the *waqf* shall be void and invalid, considering that it is against the principle of *‘aqd* for *waqf*: The donor's possession on the *waqf* property will be terminated and the property will belong to Allah S.W.T after the contract has been sealed. Besides, the *waqf* would also become void and invalid if the donor stipulates that the beneficiaries are not allowed to utilise the benefits of the *waqf* property. The other stipulation that leads to a void *waqf* is when the donor determines in the *waqf* contract that he has the right to remove the eligible beneficiaries and add or appoint the other individuals who are ineligible as the *waqf* beneficiaries. This stipulation is against the principle and purpose of *waqf* (Al-Bahūti, 1983; Al-Mardawi, 1955).

Based on the aforementioned arguments, it could be concluded that the Islamic scholars unanimously agreed that the main purpose of *waqf* practice is to seek the

blessings and worship Allah S.W.T, and to realise the *maṣlahah* of all the parties who are involved in *waqf*. In the discussion regarding the Valid Stipulation, the researcher agreed with Sheikh Muṣṭafā Al-Zarqā's (1997) statement that all the conditions specified by the donors shall be valid as long as (1) the conditions are not contradicting the *shara'*; (2) not against the principle and the main purpose of *waqf*, and; (3) do not harm the beneficiaries and the *waqf* itself. Based on this statement, it was stated that the application of temporary *waqf* does not contradict the *shara'* nor is it against the principle and the purpose of *waqf*. The temporary *waqf* could broaden and enhance the current potential and advantages of *waqf*, realise the interest of the beneficiaries, and encourage the Muslims to practise *waqf* albeit for a particular period of time.

2.8. The Issues on The Ownership of the Waqf Property

Given the main discussion of this research regarding the temporary *waqf*, the researcher opined that it is necessary to perform an in-depth discussion on the status of the ownership of the *waqf* property after the contract of the *waqf* has been made. As previously discussed, the temporary *waqf* is a type of *waqf* that offers the right to the donor to determine the specific period for establishing the *waqf*. After the expiry of the period of the *waqf* as per the donor's wish, the *waqf* property is allowed to be returned to the donor's possession. Subsequently, it is determined whether there is a need for a clear description of the status of the ownership of the *waqf* property in this topic.

2.8.1. The Ownership of the *Waqf* Property Remain in The Donor's Possession

The first opinion stated that the ownership of the *waqf* property would remain in the possession of the donor. However, the donor does not have the right to any transactions on the *waqf* property, such as selling the *waqf* property, giving away the *waqf* property as a gift, or inheriting the *waqf* property from the donor's heirs. The Islamic scholars who adhered to this opinion argued that the term of *ḥabasa* in the *ḥadīth* of *waqf* Sayyidina ʿUmar R.A indicates that the detention of the *waqf* property does not denote the termination of the donor's ownership of the *waqf* property, but it is the ratification on the preservation of the donor's ownership on the *waqf* property (Abū Zahrah, 1971). Besides, the donor is the owner of the *waqf* property before the *waqf* contract is made. Thus, the ownership of the property remains in the possession of the donor, except for the origin of the *waqf* property that is bound to the condition in achieving the main purpose of *waqf*, which is to give away the benefits and yield of the property as charity. This statement is in line with the legal maxims (*al-qawāʿid al-fiqhiyyah*): “the origin of a thing shall remain as it was before until there was a thing established” (*al-aṣl baqāʾ mā kāna ʿalā mā kāna ḥattā yathbutu mā yazīluhā*) (Ibn al-Humām, 2003).

The aforementioned opinion was expressed by Mālikī schools, Ibn Humām of Ḥanafī schools, Imām Shāfiʿiy, and Imām Aḥmad (ʿAlish, 1979; Al-Dusūqi, 1934; Al-Nawawi, 2008; Ibn al-Humām, 2003; Ibn Qudāmah, 2005).

2.8.3. The Ownership of the *Waqf* Property Belongs to Allah S.W.T

The third opinion expresses that the ownership of the property will be transferred to Allah S.W.T's possession when the *waqf* contract has been made. Imām Muḥammad and Qāḍi Abū Yūsuf from Ḥanafī schools stated that when the donor endows his/her property, the ownership of the property will be transferred to Allah S.W.T's possession, given that He is the true proprietor of all subjects (Abū Zahrah, 1971). Al-Kāsānī (2002) mentioned in *Badā'ī' Al-Ṣanā'ī' fi Tartīb Al-Sharā'ī'* that the ownership of the *waqf* property will be terminated from the donor's possession and ownership of the property does not belong to the beneficiaries. Imam Al-Nawawī (2008) stated in *Al-Majmū' Sharḥ Al-Muhadzdzab li Al-Shīrāzī* that the preferred opinion in Shāfi'iy schools expresses that the ownership of the *waqf* property will belong to Allah S.W.T, which indicate that the ownership will be terminated from the donor's possession after the *waqf* contract has been declared. Ibn Qudāmah (2005) stated in *Al-Mughnī wa yalīhī Al-Sharḥ Al-Kabīr* that if the donor endows the property to the general beneficiaries, the ownership of the property will be terminated from the donor's possession and not belong to the beneficiaries, while the ownership of the property belongs to Allah S.W.T possession.

This opinion was expressed by Imām Muḥammad and Qāḍi Abū Yūsuf from Ḥanafī schools, which was also the preferred (*al-rājiḥ*) opinion by Shāfi'iy schools and Ḥanbalī schools (Al-Kāsānī, 2002; Al-Nawawī, 2008; Al-Shirbīnī, 1997; Ibn Qudāmah, 2005).

Based on the arguments, the researcher opined that the third opinion was preferred, in which the ownership of the *waqf* property belongs to Allah S.W.T when the donor endows the property for the general purposes (*al-waqf al-ʿām*) and perpetuity.

An example of this property includes the *waqf* of the mosque and the cemetery. Thus, the donor's right to the ownership of the property will be terminated permanently while the *waqf* belongs to Allah S.W.T. This is the opinion expressed by Imām Muḥammad and Qāḍi Abū Yūsuf from Ḥanafī schools, which was also the preferred (*al-rājiḥ*) opinion by Shāfi'iy schools and Ḥanbalī schools.

If the donor chooses to endow the property for a specific period of time, the first opinion would be preferred in which the ownership of the *waqf* property remains in the donor's possession. To illustrate, while the donor does not endow the property for perpetuity, the *waqf* is bound to a particular period of time. When the period of the *waqf* expires, the *waqf* property would be returned to the donor's possession, as expressed through the opinion of Mālikī schools and previously discussed in this research. Although the ownership of the *waqf* property remains under the donor's possession, the donor is prohibited to perform any transaction on the *waqf* property, such as selling the *waqf* property, giving away the *waqf* property as a gift, and inheriting the *waqf* property along the duration of *waqf* as determined in the *waqf* contract.

Conclusion

Based on the discussion presented in this chapter, it could be concluded that the traditional and modern Islamic scholars have their respective definitions of *waqf*. The researcher opined that the comprehensive definition of *waqf* is the definition provided by Mundzir Qahf (2000), which is as follows:

"The detention of the property either perpetuity or temporarily, contributes the property physically or its' benefits repeatedly and continuously for the good purposes generally or specifically,

according to the condition determined by the donor, comply to the Shari'ah laws restrictions" (Qahf, 2000).

This definition appears to be similar to the definition of *waqf* in the Mālikī schools that has been previously discussed. Furthermore, the permission and legality in the implementation of *waqf* are supported by the provision from the Quran, Sunnah, and the consensus of Islamic jurists (*Ijmā'*). Following that, the types of *waqf* are discussed, which are divided into four categories: (1) the beneficiaries; (2) the types of property; (3) the period of *waqf*, and; (4) the donors. In relation to the pillars of *waqf*, the majority of the Islamic scholars argued that four pillars should be fulfilled in determining the validity of *waqf*, namely: (1) the donor (*al-wāqif*); (2) the beneficiaries (*al-mauqūf 'alaih*); (3) the property (*al-mauqūf*), and; (4) the declaration (*ṣighah*). The researcher also has precisely discussed the conditions of each pillar of *waqf* by presenting the opinion of Islamic jurists from four prominent schools.

The discussion was followed by the description of the definition of temporary *waqf*. It was argued that the previous Islamic scholars did not have any specific definition of the temporary *waqf*. Thus, Ab Rahman and Amanullah (2016a) developed a comprehensive temporary *waqf* definition, which is as follows:

"A form of waqf that allows the founder (al-wāqif) the right to set up any specific conditions either it is bind to a specific period of time or to a specific group of the beneficiaries (al-mauqūf 'alaih) based on principles and laws as provided by The State Islamic Religious Council or State Waqf Institution, as long it is allowed by shara' and guarantees the welfare of the founder, the beneficiaries, and the property of waqf." (Ab Rahman & Amanullah, 2016a).

Based on this definition, the researcher opined that this definition is suitable to be applied in the State *Waqf* Enactment or State Administration of Islamic Law Enactment/Act in Malaysia. It was also argued that the implementation of temporary *waqf* does not contradict the *shara'* nor it is against the principle of *waqf*. It could

broaden and enhance the potential of *waqf*, and preserve the interest of all the involved parties in *waqf*.

The discussion regarding the application of Islamic scholars in the view of Islamic scholars was divided into three parts: (1) the declaration (*ṣiḡḥah*), (2) the beneficiaries (*al-mauqūf ‘alaiḥ*), and (3) the *waqf* property (*al-mauqūf*). Considering that the main discussion brought by the researcher is related to the temporary *waqf*, the issues associated with the stipulations by the donors in the *waqf* contract were discussed, which also addressed (1) the valid stipulation, (2) the defect stipulation, and (3) the void stipulation. The final topic in this chapter determined whether it is compulsory to conduct an in-depth discussion on the issues related to the ownership of the *waqf* property. It could be concluded that the ownership of the *waqf* property would be terminated from the donor's possession if the *waqf* is for general purposes, such as for the needy and poor, the mosque, and the cemetery. The property will belong to Allah S.W.T after the *waqf* has been declared. If the donor decides to practise the temporary *waqf*, the *waqf* property would remain in the donor's possession with a condition that the donor is prohibited to sell the *waqf* property, give away the *waqf* property as a gift, and inherit the *waqf* property along the duration of *waqf* as determined in the *waqf* contract. This statement is in line with the opinion of Mālikī schools.