

# The Using of Waqf Funds for Childcare Facilities: A Study of Its Permissibility and Implementation

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## Abstract

*In developed and developing nations including Malaysia, the governments provide financial assistance such as subsidies, tax deductions and financial assistance to help the households with children. However, limited government resources as well as focusing too much on economic growth in the region have restricted the assistance it can provide to the households. Thus, there are many private and charitable sources of funding that exist especially for those in need. For Muslims, there are numerous philanthropic organizations that regularly collect various charitable funds in different forms, such as Zakat, Waqf, Sadaqah, and Hibah. Waqf instrument plays an important role in Muslim societies as its support the aged, the poor, the orphans through provision of education, training and business activities. Waqf institutions have managed to provide social welfare services that many current states struggle to offer. The establishment of Waqf institutions all over the Muslim world was indeed the result of worship towards Allah. This study aims to find out the permissibility of using the Waqf fund for developing of childcare facilities and the best way of its implementation. This study employs a qualitative research methodology based on deductive method of analysis of jurisprudential and literature based-evidences. The conclusion that can be drawn from this research is; Waqf for child care is permissible and can be accomplished through Waqf's asset integration. This study also proposes the strategies of creation Waqf for childcare facilities through the modification of Waqf fund in few ways.*

**Keywords:** Waqf, Childcare, Istibdal, cash Waqf, Tawriq

## INTRODUCTION

Islam encourages Muslims to take care of their brothers and sisters by sharing and distributing their wealth to the different levels of the community. There are a few types of mechanisms that can be used to achieve this purpose. Nowadays, Islamic philanthropic institutions are known for the activities of collecting, managing and distributing either *Zakat*, *Waqf*, *Sadaqah*, *Hibah* and other types of Islamic charitable funds. These funds are entrusted to these institutions as parts of *amal jariah* (good deeds) as encouraged by Islam itself[1].

All Muslims are relatives and have been described as a supportive building to one another. The disclosure of the fraternity is not only in the form of energy or time aid, but Islam also teaches Muslims to help and assist one another with financial and material contributions. Financial and material aids are not for the sake of the worldly rewards, but it is for the sake of Allah. Apart from *Zakat*, *Hibah* and *Sadaqah*, Muslims are also encouraged to share their wealth with others through the implementation of *Waqf* [2].

Since the breadwinner of Muslim families is the husband, the responsibility of managing the child care matters is usually taken by the mother. The rise in child care costs has in many cases indicated that it is not feasible for both partners to work in the labour market. Mothers can go to work depending on their ability to manage their children's care. If they are able to find a suitable babysitter or a place where they feel comfortable and safe for their children, then the mother would be more convinced to go to work. For single mothers, the need to work is higher as they are the one who earns money to meet their family's living needs. However, the increasing of child care cost has been reported as a factor that impedes women from participating in labour market [3]. In addition, the poverty faced by some women, especially single mothers, can also be further exacerbated by issues such as illiteracy and lack of education or training. With low level of income, they will be incapable of supporting themselves or their families[4].

Furthermore, factors such as lack of ownership of land or other collateral, poor women are unlikely to qualify to obtain credit[5]. These circumstances prevent women from being able to work their way out of poverty. It has been reported that poverty among single mothers is often directly related to a lack of access to economic resources, including credit, land ownership, and inheritance, a lack of access to education and support services, and their marginalization and exclusion from the decision-making process[5].

As one of the important Islamic financial institutions, *Waqf* has been in existence since the early years of Islam. *Waqf* is the catalyst institution to the economy and the Muslim's development. These institutions also carry out the success of social warranty system in Malaysia besides other institutions like *Zakat* and *Sadaqah*. Basically, *Waqf* does not only play its role as part of *ibadah* (worship) to Allah SWT, but it also has a wider meaning especially as the agent for the financial growth of all Muslims.

## RESEARCH METHODOLOGY

This study using descriptive analysis based on deductive method of analysis of jurisprudential and literature based-evidences. Some important references regarding *Waqf*, and other Islamic philanthropy instruments, are used. Furthermore, this study looks at the issue of childcare expenses among Muslim family in Malaysia. The purpose of this study is to uncover the uses of *Waqf* fund for childcare facilities and expenses in Islamic perspective. This study also try to suggest the way to spend *Waqf* fund for childcare expenses according to Islamic rules. This descriptive qualitative

study interprets and elaborates the data concerned with the situation and phenomena regarding to the issues of *Waqf* for childcare.

### CLASSIFICATION OF WAQF

*Waqf* is a mechanism for sharing one's wealth with others to obtain blessings in life. In Islam, *Waqf* is stated as a voluntary act and it is highly recommended in Islam. However, *Waqf* can even be compulsory to do when it has become the will of the deceased. Equitable distribution of property to serve the interests of various parties is crucial to ensuring the stability and development of the economy and the country [6].

Giving charity out of our wealth does not decrease our wealth but instead Allah (SWT) increases it. Allah SWT says:

*"The example of those who spend their wealth in the way of Allah is like a seed [of grain] which grows seven spikes; in each spike is a hundred grains. And Allah multiplies [His reward] for whom He wills. And Allah is all-Encompassing and Knowing"*

*"Allah will deprive usury of all blessing, but will give increase for deeds of charity: for He loves not creatures ungrateful and sinner".*

*Waqf* properties can be classified according to its beneficiaries and form of its properties. According to Moshin [7], regarding to *Waqf* beneficiaries, *Waqf* properties is divided into three types: *Waqf khayri* (public *Waqf*), *Waqf dhurri* (family *Waqf*) and *al-Waqf al-mushtarak* (mixed *Waqf*). While *Waqf* in form of its properties could be classified as *Manqul & Ghair Manqul* (Movable and Immovable), *Sahih & Ghair Sahih* (Sound and Unsound) and *Mubashir & Ghair Mubashir* (Direct and Indirect) as show in Figure 1.

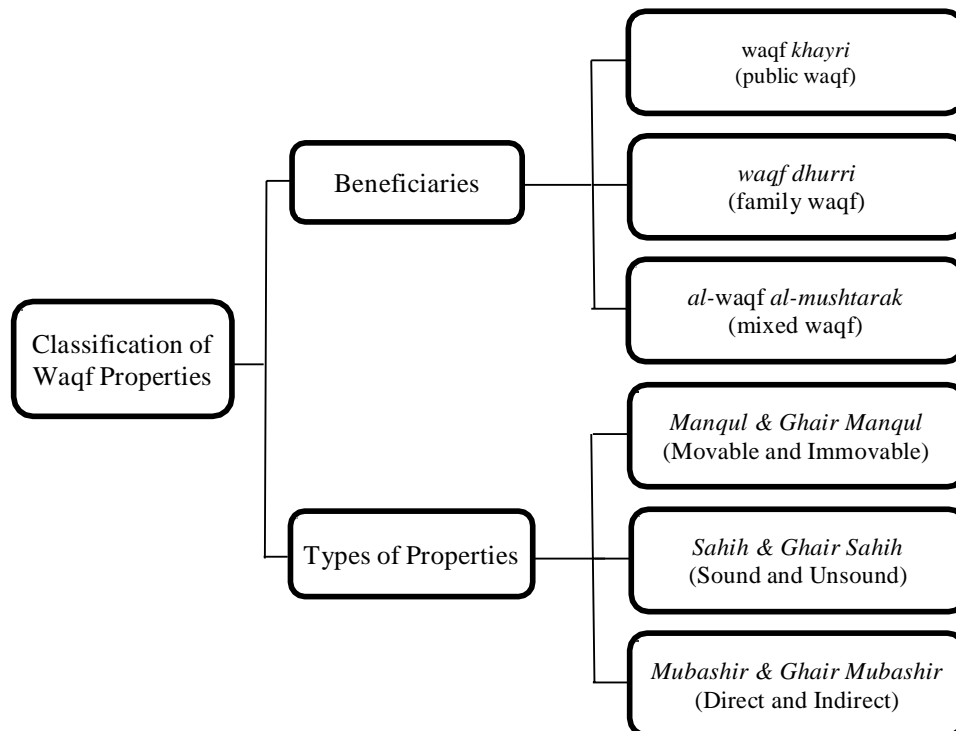


Figure 1: Classification Waqf Properties

## THE PERMISSIBILITY OF WAQF FOR CHILD CARE

The literature review has shown that the *Waqf* has high potentials in redressing socio-economic inequities and enhancing the quality of life. As one of the social security systems, *Waqf* helps individuals collectively to ease the financial burden of a country. It plays a very important role in poverty alleviation, health services, education, orphanage centre, mosques, shelter and residences for the needy, and others as long as it complies with the *Shariah* [8].

*Waqf* institutions in Malaysia seem to be lacking its maximum capacity and due to this situation, it causes certain constraints. The element of "assisting" does not achieve the objective. Farra Munna [9] stated that the Malaysian government must overcome this constraint by increasing *Waqf* awareness among the citizens and also make a brand new concept to assist the *Waqf* institutions in Malaysia in thriving through around the globe.

Traditionally, the level of development of *Waqf* in Malaysia is regarded as mere worship. However, when the *Shariah* advisory committee of Islamic financial institutions began to evaluate the products of *Waqf* application, it was found that the products of *Waqf* application are able to absorb all the elements and compete. The study also rejected the superficial notion that the application of *Waqf* would cause economic collapse.

Relentless efforts to introduce new concepts and refinement to the concept of *Waqf* will open greater opportunities to *Waqf* institutions in Malaysia as well as strengthening the role of *Waqf* in this country. There are many forms of *Waqf* investment that can be undertaken and developed by *Waqf* institutions with the help of financial institutions in Malaysia. These include (i) improvements to the abandoned or underdeveloped *Waqf* property, (ii) combining existing *Waqf* assets to generate the same or more revenue, (iii) lending for waffle operation requirements and costs to improve the function of the *Waqf* property and (iv) leasing the *Waqf* property.

## THE IMPLEMENTATION OF WAQF CHILDCARE THROUGH WAQF PROPERTIES

Generally, there are not much contribution of *Waqf* in form of childcare expenses. In Malaysia, this type of *Waqf* were considered as a new way of *Waqf* expenses. There for, *Waqf* properties that's contributed in their limited purposed cannot be used for childcare directly. Childcare facilities needs a lot of funds and also the asset that can be utilized as childcare centre. There are a few ways that's seem suitable to fixed this situation such as Cash *Waqf*, *Istibdal*, *Tawriq* and merging with other funds.

### Cash *Waqf*

Cash *Waqf* has been practically in use as early as the eighth century and it was very much overseen during the Uthmani Empire. As a kind of support among individuals, cash *Waqf*, which is also called *Mu'adaqah* [2], is deemed as the most reasonable type of donation where the pooled collections are utilized to fabricate immovable assets. By practicing this kind of system, *Waqf* organizations can fund the development of general infrastructure, for example, road networks, learning institutions, health centers, and so on [10].

As indicated by Farhana, Asmak, and Sabitha [11], the legality and permissibility of cash *Waqf* has been attested universally by the Islamic Fiqh Academy during the 15th summit organised in Muscat, March 2004, and locally in Malaysia at the 77<sup>th</sup> National Council of Islamic Affairs' Fatwa Committee, April 2007. The cash *Waqf* system empowers all degrees of the network to pass on *Waqf* and beat the trouble in separately by securing and handing down fixed assets, for example, land and structures. Subsequently, cash money can be acknowledged as one of *Waqf* funds [2].

The implementation of Cash *Waqf* as one of the forms of movable property has created variations of *Waqf* instruments in contemporary forms such as *Waqf* Shares and Cash *Waqf*. Factors related to the validity of the subject of *Waqf* in modern financial instruments such as shares and bonds have been traced since the early 20th century. It was later found to have been executed in Turkey in 1967 through the *Waqf* Shares companies by Vehbi Koc [2].

The evolution of *Waqf* subjects in the form of movable properties such as cash *Waqf* has also created *Waqf* Shares that has been widely implemented in most states in Malaysia. Siti Mashitoh [12] explained that the implementation of the *Waqf* Shares and the Cash *Waqf* has played an important role in providing the source of funds for the development of the *Waqf* assets, as well as fostering a culture of community devotion.

Whereas Naziree [13] suggested that the corporate sector in Malaysia puts aside the aspect of material benefits instead of focusing on social welfare through the *Waqf*. Therefore, the synergy between the corporate sector and the State Islamic Religious Council is also capable of transforming *Waqf*'s development efforts to a more dynamic level without relying on government funds includes the childcare[14].

According to Mizanur Rahman & Nurul Islam Sohel [15], the implementation of Cash *Waqf* Bank Deposit and Certificate in Bangladesh has been monetizing the Islamic voluntary sector and helps accumulate social capital and national wealth, socio-economic development, and poverty alleviation of the country. While the indirect tax system of the country is favorable to its growth, political will is needed for the success of this form of *Waqf*.

### Diversifying *Waqf* Assets through the *Istibdal* and *Tawriq* Approach

*Ibdal* is the actual selling of non-profitable *Waqf* property, while *istibdal* is the purchase of another property to replace a *Waqf* property. This is an extremely important stipulation, which can be applied by the founder or trustee, with the permission of the chief justice, even if the founder did not include it in his written deed. This stipulation gives the trustee the right to exchange unprofitable *Waqf* property with another property, which is profitable. Thus, it is very important to inform new founders to put this stipulation in their *Waqf* deeds, since from the Islamic law perspective, if the founder does not include this stipulation in his deeds, the chief judge and the trustee, for example, cannot switch the distribution of *Waqf* revenue to other beneficiaries[7]. Hence, this stipulation will give flexibility whenever the need arises within a society or whenever changes in the *Waqf* properties are needed as show in Figure 2.

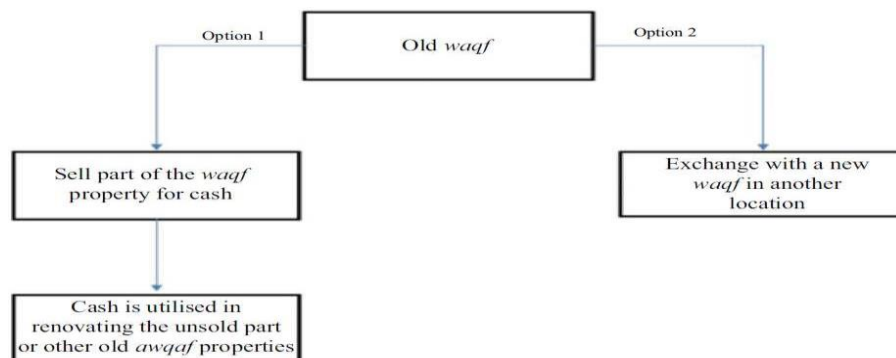


Figure 2: *Waqf* Substitution or al-Istibdal Model

Option 1 in Figure 2 was known as *al-Tawriq*. According to Fuadah [16], the concept of *al-Tawriq* was introduced by Datuk Dr. Mohd Daud Bakar in April 2016. *Al-Tawriq* is a process of converting or diluting of non-productive *Waqf*'s assets into cash and used the revenue for the maintenance of other *Waqf* assets and its development. Generally, the decision of selling *Waqf* assets (except the mosque) is permissible by the majority of Muslim jurists except al-Shafi'ie.

Although al-Shafi'ie does not allow the sale of *Waqf* assets, he gave a permission to change the function of the non-productive assets in other forms that are more productive. Datuk Dr. Mohd Daud Bakar has outlined six principles or '*illah*' behind the permissibility of *Tawriq*'s implementation [16] namely:

- i. *Waqf* assets fail to function as intended
- ii. There is a problem in performing the asset function and there is a witness to its failure
- iii. *Waqf* assets have deteriorated
- iv. There is value in the non-productive *Waqf* assets
- v. Sales should be implemented to prevent greater harms such as stolen or ruined assets
- vi. Unused *Waqf* assets will eliminate the features of *Waqf* properties

The implementation of *Tawriq* is considered to be very important after studying the fundamental impact of *Waqf*. The sale of *Waqf* assets has a significant impact on maintaining the principle of retaining the original assets and distributing *Waqf* revenue (*Habsul Asal wa Sabbil al-Thamarat*). Generally, *al-Tawriq* can exist in two situations:

- i. Converting or selling assets to cash
- ii. The liquidity in the form of securities, such as the instrument that drives a variety of assets including secured debts with the change of debt to credit. It is then offered to the public to minimize risks and to ensure continuous liquidity of cash flows

### Emerging *Waqf* with other Funds

The revival of *Waqf* is crucial for the country and the Ummah in order to step up to the desired status in all aspects of life. Therefore, there is a suggestion that *Waqf* can also be developed along with other Islamic funds such as with *Zakat* and *Sadaqah* for public-benefit purpose including in the education and health sectors. This view is taken into account in Western countries such as the United States and Great Britain. These countries have developed and implemented their endowments funds in various activities to the maximum level. Syed Mohd. Ghazali Wafa [17] claimed that this approach has provided the best benefits and facilities in various aspects for the well-being of the people in these countries.

Health care framework in German is one of the world's best and powerful frameworks. Depending on 240 insurance providers; comprising private, non-profitable, or revenue driven insurers that are firmly directed, more than 90% of Germans are secured by its non-profitable "sickness funds". Meanwhile, another 10% are generally higher-income earners who choose to pay for their private medical coverage. Since the protection framework intensely depends on non-profitable funds, the normal per-capita health care services costs are not exactly 50% of the expenses in the U.S. Training. The rising of *Waqf* and the health and education divisions offer numerous focal points to the individuals who are benefited by their presence .

The most well-known case of educational *Waqf* was in Al-Azhar University, Egypt that has been practicing this capacity effectively for quite a long time. Al-Azhar has given free educational lessons to its local citizens as well as foreign students, with arrangement for convenience. *Waqf* funds are also additionally used to cover its educators' and staff's wages and remittances. In addition, numerous Malaysians have

likewise been given free flight tickets back to Malaysia upon their graduation from the university. Hence, this has clearly shown how *Waqf* has an exceptional effect as a macro-credit support for the Egyptian Government in the midst of hardship[18].

In relation to this, it is also important to note that there are numerous instances of higher learning institutions in different nations that practice *Waqf* in its operation, for example, the University of Al-Qurawiyyin in Morocco; the University of Al-Muntasiriyyah in Iraq; the University of Cordova in Spain; the King Abdul Aziz University in Saudi, the Islamic University of Indonesia and just about 68 *Waqf* colleges in Turkey. In Malaysia, there are at least five *Waqf*-based higher learning institutions built that generally promote charitable functions and scholarly or professional programmes. These colleges are; the Putra University of Malaysia-UPM, the National University of Malaysia-UKM, the International Islamic University of Malaysia-IIUM, the Islamic University of Malaysia-IUM and the Albukhary International University, Malaysia-AiU [18].

## DISCUSSION

There are certain restrictions on the creation of cash *Waqf* that need to be considered when examining how it can be applied in the context of providing assistance to women and also single mothers. Muslim jurists agree that once a cash *Waqf* is created, it is irrevocable, but it is permissible for the founder to benefit from its generated profit. In addition, once created, the cash *Waqf* must also be in a state of perpetuity, as there must be sustainable and continuous support from the revenue generated from the cash *Waqf*. Furthermore, the cash *Waqf* must be inalienable, meaning that once money is created as *Waqf*, no one can become the owner to alienate it. These conditions and restrictions will ensure a sustainable and continuous cash generation towards helping people not just in the present, but on a sustainable basis in the future[19].

The sale of equity shares representing usufruct or beneficial interest for the business community can be utilized to produce funds that can be directed into financing large scale long-term investment in business extends that would produce practical income for the *Waqf* funds. Notwithstanding, equity shares cannot denote ownership in *Waqf* assets due to restriction for any transfer of ownership of the *Waqf*. In this manner, the shares would just symbolize the profit/usufruct as opposed to possession in the assets [5].

A specific part of the *Waqf* collections can be utilized for an Islamic equity investment in order to guarantee manageability and interminability of cash *Waqf* funds. In any case, to lessen the investment chances that might be negative to the estimation of the fund, the investment should be all around enhanced to amplify the return and guarantee negligible exposure to risk. The investment of the *Waqf* fund can be differentiated into a few profitable and promising Islamic investment instruments expected to produce positive returns[1, 17, 18]

Some portion of the business place can likewise be rented out to other private entrepreneurs so the business entity would gain income from the rental on monthly basis. Consequently, the rental pay from the renting of retail space can be utilized for the instalment of salaries for the women who are working under the *Waqf* funds.

Subsequently, the development of a business center may be further operated utilizing the returns from equity investment in Islamic shares and the profit revenue from capital investments. Thus, the group of poor people can set up their own businesses using capital provided through the micro-financing arm of the *Waqf* fund. They can also be provided with business management support to fledgling businesses via the support structures set up by the *Waqf* institutions.

Employment opportunities can also be created at the business center by employing women for administrative, management, and service positions at the center for everyday business and administrative activities. The business center could also

offer child care services to enable women (including single mothers) with young children the freedom to pursue business ventures and employment opportunities. At the same time, it is also creates new employment positions in the child care center for them[4].

In terms of distribution, Zakat funds could be spent through finance aid programmes. These programmes were in place before the distribution of Zakat, but it has been adapted to fit the specific considerations of Zakat rules. When distribution in cash is not possible, Zakat will be given in-kind. By ensuring peoples immediate needs, finance aids helps prevent those who are restricted from working from facing severe hardships and enables them to address their needs according to their own priorities. It also helps them in improving their social networks by repaying loans borrowed from family, neighbors, and landlords which therefore reduces household tensions. Additionally, it benefits the local economy by injecting cash that enables poor's to pay at local shops, markets and for local services. Vulnerable families are often headed by women alone who often face cultural, legal and childcare obstacles when looking for work. Providing them with finance assistance helps prevent them from resorting to desperate survival strategies such as pulling children out of school and child labour.

The *Waqf* fund can also be used to finance the cost of constructing a building to serve as a child care center. The operating costs of institutions that provide child care services such as monthly bill payments, maintenance costs, facility purchase costs and workers' compensation costs can also be done using the *Waqf* funds. When the cost of providing child care has been reduced, child care providers should be able to reduce the cost of services that parents have to pay. Another alternative is by providing subsidies to working mothers who send their children for care. The subsidy assistance from this *Waqf* source is believed can reduce the financial burden of households and thus gives the mothers an opportunity to stay in the labor market.

## CONCLUSION

Once the *Waqf* fund has accumulated, then the use of its fund can be allocated to those who are in need. The purpose of liquidating the *Waqf* fund requires a strict guideline to maintain its sustainability and development. This is undoubtedly important, especially the cash *Waqf* fund which can be used for a variety of purposes. Therefore, this study concluded that the use of *Waqf* funds and assets for child care purposes is permissible. It can be accomplished through the use of existing fix assets or movable assets. At the same time, the permissibility to change and amend non-productive *Waqf* assets should be utilized in many other ways including the spending on child care based on Islamic principles. However, in order to ensure that the use of *Waqf* funds is not misused, there must be an institution or body that controls it. In addition, it is very important to ensure that *Waqf* funds are only obtained from the contribution of Muslims and should be clear from any unauthorized financial sources.

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