

***Maqasidic* Approach in the Management of *Waqf* Property: A Study with Reference to Malaysian Contemporary Issues**

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ABSTRACT

In Malaysia, *waqf* is becoming a popular mechanism among Muslims to bequeath property to gain a reward from Allah. Hectares of *waqf* land given away for different purposes will certainly lead to many managerial issues. Some issues are easily resolved while others are not. Sometimes it is enough to resort to the legal provisions to solve the problems of *waqf* land. However, there are many other issues with no clear legal solutions as in the statutes. Without a clear statute, *maqasid al-shariah* (objectives of *Sharia*) may come into the picture to offer an alternative in addressing issues relating to *waqf* land. Among some of these issues is land that is donated for specific unrealistic purposes and land that cannot be developed because of lack of funding. Using the qualitative and policy-centred approaches as the method of research, this paper aims to entertain the issues by applying the principles of *maqasid al-shariah*. This paper examines the actual objectives behind the *waqf* rules (*fiqh al-waqf*) in Islam and those objectives will be used as the parameter and guideline to address contemporary issues relating to *waqf* land. The application of the said parameter can be recognised as the '*maqasidic*' approach.

Keywords: Contemporary issues, *maqasid al-shariah*, policy, *waqf*

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INTRODUCTION

The word *maqasid al-shariah* is derived from two Arabic words, *maqasid* and *al-shariah*. *Maqasid* is a plural word which means 'aims' (Majma', 2004), 'purposes' or 'goals' (Auda, 2008). Meanwhile, *al-shariah* means what is prescribed by Allah S.W.T for his creation by way of religious duty. The combination of the words *maqasid* and *al-*

shariah connotes whatever objectives that are aimed by the Quran and the *Sunnah* to be achieved through instructions, prohibitions and permission (Al-Qaradhawi, 2012).

There are three phenomenal types of *maqasid al-shariah* as introduced by Imam al-Haramayn al-Juwayni (Muhammad, 2007): *al-maqasid al-dhoruriyyah* (the essential objectives), *al-maqasid al-hajiyah* (the complementary objectives) and *al-maqasid al-tahsiniyyah* (the embellishment objectives). This categorisation is unequivocally embraced and accepted by Muslim jurists and is their focal point in discussing *maqasid al-shariah*. The essential objectives are the aims that are to be achieved for the religious and material well-being of individuals, failing which life would be chaotic and destructive in this world and thereafter, whereas the complementary objectives refer to the aims to remove hardship and severity of life, in which such hardship and severity are not to the extent of making life chaotic and destructive. The last type refers to the aim of beautifying and refining the customs and conduct of the people.

According to Imam al-Ghazali, *maqasid al-shariah* revolves around the five principles or objectives, namely, protection of religion, life, intellect, lineage and property (Muhammad, 2007). Some quarters have said that these five objectives are the extended categorisation for the *maqasid al-dhoruriyyah*, while some others have

said that these five principles are actually the methodology to find and establish the *maqasid al-dhoruriyyah*.

Waqf literally means 'to refrain', 'to restrain' or 'to stop' (al-Bustani, 1986). In Islamic legal literature it means, technically, dedicating a particular property that is transferrable and useable for a certain period and for the sake of Allah (Zain, 1982). Several purposes govern the principle of *waqf*: The first is charitable *waqf* (*waqf khairi*), which is property donated in perpetuity for general charitable and religious purposes. It is further divided into public *waqf*, which is specifically made for public and quasi-public (a particular group of individuals) use. The second is family *waqf* (*waqf dzurri*) is property donated in perpetuity for the benefit of the donor, his family and his descendants. The third is a combination of public and family *waqf* (*waqf mushtarak*), which is property that is partially donated as *waqf khairi* and partially as *waqf dzurri*. An example of this type is the donation of agricultural land for the benefit of the donors' descendants as well as for the benefit of the public (Laldin, Mahmud, & Sawari, 2008). The last is *waqf irsād*, which is the donation of moveable and immoveable property by the State of any property belonging to the Baitulmal for public interest such as mosques, schools, hospitals and others (Mahamood, Ab Rahman, Ahmad, & Muhamad, 2007).

Maqasid Al-Shariah in Charitable Transactions

There is a plethora of mechanisms in donation, for instance, *hibah*, *sodaqah*, *wasiyyah* and *waqf*. According to Ibnu A'shur (2001), generally, the objectives of *Sharia* with regard to charitable transactions are as follows:

- a) *Al-takthir* (Augmentation): *Sharia* has paved the way for mankind, through charitable transactions, to augment donation in order to be disciplined against greed and to gain a reward from Allah.
- b) *Tayyib al-nafs* (Sincerity of the soul): Charitable transactions in Islam open the way for those who sincerely want to donate on recommendable basis which eventually purifies one's soul.
- c) *Al-tawassu'* (Dilation): This refers to diversification in the methods of donation. This objective is to complement the first objective (*al-taksir*) as mentioned above.
- d) *Ghair zaria'h li idhoa'ti mal al-ghair* (Not to be a tool to oppress others): The regulation on charitable transactions is not to oppress others. For example, the right of the creditor will be preserved before the will is executed and the right of heirs will also be preserved by limiting the amount in the will to not more than one third.

Maqasid Al-Shariah for Waqf. It is pertinent to note that *waqf* has its objectives and it also works as a tool to achieve or protect *maqasid*

al-shariah. *Waqf* has two main objectives, *Al-qurbah*, which is for the sake of submission and obedience to Allah, and *Al-a'thoya*, which in fact, is a gift for the people for any purpose. Besides that, *waqf* plays an important role in preserving *al-maqasid al-dhoruriyyah* (the essential objectives), *al-maqasid al-hajiyyah* (the complementary objectives) and *al-maqasid al-tahsiniyyah* (the embellishment objectives).

Waqf in Preserving al-Maqasid al-Dhoruriyyah

Al-maqasid al-dhoruriyyah protects five essential areas, according to Imam al-Ghazali:

1. Protection of religion: There are several specific objectives under the umbrella of protection of religion that can be achieved through the establishment of *waqf*: (i) Propagation of the religion of Islam, for example, donations towards the *da'wah* movement; (ii) Enjoining good and eliminating evil, for example, the establishment of mosques; (iii) Implementing Islamic-based education, for example through development of Islamic schools and universities; (iv) Eradicating apostasy and deviant teaching; this objective complements the first objective; and (v) Islamic scholarship, for instance, the foundation of research centres.
2. Protection of life: There are several specific objectives in ensuring protection of life through *waqf*: Firstly, maintaining health among individuals

and in society, for instance, through the establishment of public hospitals and health centres. Secondly, taking care of orphans and widows, for example, through establishment of orphanages to protect their interest and prevent them from being exploited.

3. Protection of intellect: Usually, *waqf* plays the role of protecting the intellect by providing an avenue for education and research. *Waqf* on education generally is an entrenched method to pave the way for donations for contemporary modern society. In Malaysia, this kind of *waqf* can come up to a whopping amount without help from the government.
4. Protection of lineage: There are many ways in which *waqf* can play an important role in protecting lineage, for example, *waqf* can create an avenue for marriage among the poor by providing a venue or financial support for the wedding.
5. Protection of property: This is the main objective of *waqf* as *waqf* is a property-related endowment.

Waqf in Preserving al-Maqasid al-Hajiyyah

This functions to avoid hardship in society. The endowment of property should be encouraged. Islam prescribes that property should be acquired through lawful (*halal*) means and obligations attached to the ownership of property that should be duly fulfilled such as the obligation to pay *zakat* and other taxes. However, in exceptional

circumstances or in the interest of equitable distribution or social justice, the authorities can impose certain limits or exceptions on *waqf* property for the *maslahah* of the people at large. In the field of *muamalah* (*Shariah*-compliant transaction), there are many mechanisms that are regarded as tools to address *al-maqasid al-hajiyyah*. It is observed that *waqf* can co-exist with *al-maqasid al-hajiyyah* mechanisms in order for *waqf* to be seen as preserving *al-maqasid al-hajiyyah*. For example, Muslim jurists agree that *al-ijarah* (Islamic lease) is regulated and allowed by *Sharia* in order to achieve *al-maqasid al-hajiyyah*. Therefore, *waqf* property can be managed through *al-ijarah* to make it fully beneficial. Hence, indirectly, *waqf* can also be involved in the process to attain *al-maqasid al-hajiyyah*.

Waqf in Preserving al-Maqasid al-Tahsiniyyah

This functions seeks to attain refinement and perfection in the customs and conduct of the people at all levels. The *tahsiniyyah* is important in managing and developing *waqf* since its main purpose is the attainment of refinement and perfection in all aspects. Therefore, specific laws and policies governing the management and development of *waqf* are necessary.

Waqf property can work to provide a better life. It is not accurate to think of *waqf* property as being for the provision of necessities only. It can also benefit the people in other ways. For instance, through *waqf*, the public are given the opportunity to do charity and benefit from investment.

Waqf can be developed in many ways. However, to make *waqf* property beneficial at the utmost expense is considered as attaining refinement and perfection only and it is not as crucial as avoiding harm.

Maqasid Al-Shariah as a Guidance in Framing Policy on Waqf. There are many issues pertaining to waqf property that require innovative managerial and administrative policy. However, it is an obligation to observe *Sharia* principles relating to *waqf* in order to ensure any new policies pertaining to *waqf* comply with *Sharia* principles. In addition, *maqasid al-shariah* also can be a parameter in scheming the solutions to solve any waqf issues. It is comprehended that to preserve the rights of Allah and the interests of human beings, the regulations or policy must not only be *Sharia*-compliant but also *maqasid al-shariah*-compliant. This paper analyses *waqf* issues and suggests the *maqasidic* solution as policy. The very first issue to be addressed pertains to huge *waqf* land that is donated for specific purposes. For example, in Perak 1,613 acres of land are donated for use as a Muslim graveyard (Shakrani, Noor, & Ali, 2014). The purpose is clear but it does not serve the maximum objective of the charitable transactions and *maqasid al-sharia* as outlined above. This is because the graveyard does not need such a huge area of land. It only requires 10 to 20 acres for several generations. It would be a waste if the remaining land does not bring benefit to the Muslim community or the donors. If left undeveloped, the general objectives

of *Sharia* for charitable transactions as discussed above would not be served. Even the intention of the donors, which was likely to augment doing good and to gain a reward from Allah, would have been in vain. The function of *waqf* to preserve *maqasid al-dhoruriyyah* would also be neglected. The neglect of *maqasid al-shariah* would marginalise the rights of Allah and the interests of the people.

To avoid such occurrences, Muslim scholars have allowed diversion from the original purpose of donating *waqf* land to new purposes such as developing the land in order to protect *maqasid al-shariah* (the interests of the people and donors). The benefit from the development of the *waqf* land will impact society and allow for its maintenance (<http://e-muamalat.gov.my/>, 2015). The decision to allow the development of *waqf* land was actually a *maqasidic* policy (policy based on *maqasid al-shariah*). According to the Pahang Fatwa Council, the main thing to be preserved in framing the development of *waqf* land is to protect the five areas of *maqasid al-shariah*, namely, religion, life, intellect, lineage and property land (<http://mufti.pahang.gov.my>, 2015).

Besides that, it is strongly urged by certain quarters that the State Religious Councils (Majlis Agama Islam Negeri (MAIN)) as a trustee for *waqf* property to propose comprehensive rules to sub-manage and sub-develop *waqf* property. Meaning to say that it is suggested that MAIN should have the power to privatise and corporatise *waqf* land in order to optimise

the nation's assets for the benefit of the nation, generally, and *waqif*, specifically. Nowadays, there are no specific laws that govern the privatisation and corporatisation, in terms of management, of *waqf* property.

The fact is MAIN does not have enough manpower to oversee the development of the abundance of *waqf* land. This is due to the lack of staff and expertise. However, despite all the obstacles, MAIN are reluctant to give up their authority to develop this land because of certain sensitive issues like the erosion of the power of the sultan and the state as well as its internal problems. That is why this suggestion requires strong political will. Moreover, the laws for the corporatisation of *waqf* land must ensure the preservation of the power of the sultan and the state.

Corporatisation is suggested here because it is very much accommodative in achieving the first and third *maqasid al-shariah* in conducting charitable transactions as mentioned above. Through corporatisation, *waqf* property can be expanded in terms of capital, profits and benefits. This addresses the first *maqasid, al-taksir*. In addition, corporatisation of *waqf* will allow benefits from *waqf* property to be diversified, and this achieves the third *maqasid, al-tawassu'*.

CONCLUSION

Waqf as a concept is provided for by Islam to achieve certain objectives known as *maqasid al-sharia*. There are general and specific objectives of *waqf*, which

can be a guideline in the management of *waqf* property. *Maqasid al-sharia* ensures that any innovation with regards to the management and development of *waqf* is *Sharia-compliant*.

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