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**Article**

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# Cash waqf risk management and perpetuity restriction conundrum

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## Abstract

**Purpose** – The purpose of this paper is to comprehensively discuss the issue of risk *vis-à-vis* the perpetuity restriction principle inherent in waqf (Islamic endowment). Specifically, it attempts to consolidate the axioms in both conventional and Islamic finance, such as the risk-return trade-off and *al-ghunm bi al-ghurm* (liability accompanies gain), with the perpetual nature of waqf. Overall, this paper attempts to find a resolution to the dilemma of perpetuity restriction inherent in cash waqf against the natural occurrence of the risk.

**Design/methodology/approach** – This paper is based on the secondary research methodology; past literature encompassing journal articles, books, relevant financial axioms, fatwas (Islamic rulings) and state enactments is critically reviewed to present its case. In regard to state enactments, only Malaysian state enactments have been used, thus restricting the study to the Malaysian case only.

**Findings** – This study contends that the dilemma of the perpetuity restriction and the natural occurrence of risk can be resolved through the integration of waqf risk management, especially concerning cash waqf, with the Islamic spiritual approach. By implementing standard operating procedures that inculcate awareness on waqf risk management and Islamic spirituality in waqf stakeholders (*waqif* (donor), trustee and beneficiaries), the stakeholders may accept the reality of risk that is inevitable even after all efforts have been exhausted. In other words, the violation of perpetuity is exonerated given that mental faculties aligned with revealed texts have been exhaustively used beforehand.

**Practical implications** – Findings from this study may broaden the choice of investment avenues for waqf trustees while adhering to the perpetual restriction of waqf. More importantly, waqf trustees will not be forced to invest in interest-bearing securities or be involved in any usurious transactions just to obtain guaranteed returns and preserve the corpus of waqf.

**Originality/value** – This study offers a unique perspective on cash waqf risk management by re-analyzing the axioms and concepts of finance and waqf while observing the welfare of the beneficiaries.

**Keywords** Cash waqf, Irrevocable waqf, Islamic endowment, Islamic finance, Temporary waqf, Waqf

**Paper type** Conceptual paper

## Introduction

As a result of *ijtihad* (critical thinking), particularly *istihsan bi al 'urf* (juristic preference on the basis of custom), endowing cash as waqf (Islamic endowment) is now accepted in the Muslim world. It presents an opportunity for people of all income levels to endow waqf for

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even as low as one unit of currency. The acceptance of cash waqf has contributed to furthering the cause of waqf development, especially in the provision of social goods and services – an area where governments, in general, tend to face financial constraints. To name a few examples, cash waqf has contributed to the redevelopment of mosques in Singapore, created jobs in Sudan and helped orphans in Sri Lanka, the latter two under the auspices of the Awqaf Properties Investment Fund managed by the Islamic Development Bank (Mohsin *et al.*, 2016).

An important aspect of cash waqf is that it guarantees an infinite source of finance to the third sector because of its perpetual disposition. This means that issues such as poverty, unemployment and other societal problems can be addressed efficiently and sustainably. As a matter of fact, it may further relieve government expenditures in addressing societal problems, and thus, reduce government debt levels (Ambrose *et al.*, 2018a; Ambrose *et al.*, 2019).

However, cash waqf poses a new set of challenges to the concept of waqf; perhaps, the most obvious is how to guarantee that the corpus of waqf will remain perpetual. The corpus itself will reduce in value due to the time value of money. An apparent answer is to invest the corpus, gain a return and give that return to the beneficiaries while keeping the corpus intact. Nevertheless, any investment that is ideally Sharī'ah-compliant will always carry risks. In other words, instead of acquiring returns, there is also the possibility of incurring losses, even after due diligence has been exercised before investing. After all, the risk is a natural phenomenon.

Moreover, the systematic discussion on cash waqf risk management that simultaneously addresses the perpetuity restriction is scarce in the literature. This is unlike Islamic banking risk management that is more coordinated, albeit less sophisticated than in the case of conventional banks (Rahahleh *et al.*, 2019). Where Islamic banks have international regulatory institutions such as the Islamic Financial Services Board to set a standard for risk management, waqf organizations do not. Instead, waqf organizations need to independently come out with standard operating procedures (SOP) without proper official guidelines or follow the state jurisdiction where they reside.

As such, the objective of this paper is to deliberate on the issue of risk concerning the perpetuity restriction inherent in waqf and find a resolution. The paper involves four sections. After this introduction, the second section covers the literature review where the concepts of waqf and cash waqf, relevant financial axioms, risk management of cash waqf and important caveats are critically discussed. The third section consolidates the themes discussed in the literature to come up with a resolution. The final section concludes the paper.

## Literature review

### *The concept of waqf*

Waqf is literally translated as “to stop” (Kahf, 2014). As a constituent of the third sector or voluntary sector, waqf is regarded as a vehicle to address poverty and other socio-economic problems (Iman and Mohammad, 2017; Abdullah, 2019). Three key restrictions govern its implementation, namely, irrevocability, perpetuity and inalienability (Mohsin, 2013; Othman, 2015). Irrevocability asserts that once an asset is professed as waqf, it will remain as waqf for infinity, so its status cannot be revoked. Perpetuity entails that the same asset shall remain intact, be non-perishable and last for eternity. Inalienability requires that the same asset cannot be sold, passed down as inheritance or be gifted to others. Inalienability originates from this prominent *ḥadīth* (tradition of the Prophet) on waqf:

Ibn 'Umar reported that 'Umar acquired a piece of land at Khaybar. He came to the Prophet (peace be upon him) to seek his advice about it. He said, "Messenger of Allah, I have acquired land in Khaybar. I have never acquired property more valuable to me than this, so what do you advise me to do with it?" The Prophet (peace be upon him) responded, "If you like, you may set aside the land itself and give its produce as charity. So 'Umar made a charitable donation of it, declaring that the property must not be sold or inherited or given away as a gift. 'Umar then devoted its [produce] to the poor, [his] relatives, to the emancipation of slaves, in the way of Allah and for guests. (Saḥīḥ Muslim, 2021)

However, the *ḥadīth* above did not use the word waqf; instead, it uses the word *ṣadaqah* (voluntary charity or donation). It is also common knowledge among Islamic economists that there is no specific Qur'ānic verse mentioning the word waqf and its decree, unlike *ribā* (usury or interest) (Ahmed, 2012). This indicates that much of the waqf laws are derived from *ḥadīth* and *ijtihād* (critical thinking) of Muslim scholars; the latter continuously evolves over time according to societal needs. Nevertheless, as was suggested by the above-mentioned *ḥadīth*, waqf stems from *ṣadaqah* and there are numerous Qur'ānic verses that enjoin this benevolent act. One example is Sūrah al-Baqarah (Chapter 2) verse 261:

The example of those who spend their wealth in the way of Allah is like a seed 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.

Those three key restrictions (irrevocability, inalienability and perpetuity) are partially adhered to in the case of temporary waqf and in unusual circumstances. Temporary waqf allows the founder to endow waqf for a short period, thus violating the restriction of irrevocability (Kahf, 2014; Rashid, 2018). As irrevocability becomes irrelevant, so too does inalienability. When the ownership of the corpus is returned to the founder, it is up to the founder to do whatever he wishes with it. However, an asset declared as waqf for a period of time cannot be revoked within that particular period; thus, it can be assumed to be adhering to the restriction of irrevocability. Similarly, the mentioned asset is also adhering to the restriction of inalienability, where it must not be sold, passed down as inheritance or be gifted to others during the said period. Along the same line of reasoning, the perpetuity restriction is applied within the waqf endowment period, infinite or finite.

The concept of temporary waqf is recognized by, among others, the International Islamic Fiqh Academy, the Accounting and Auditing Organization for Islamic Financial Institutions, the Selangor Fatwa Committee and the State Islamic Religious Council (SIRC) of Terengganu, the latter two both in Malaysia (Sulaiman *et al.*, 2019). This recognition shows that, despite the restriction of perpetuity that supposedly applies to waqf, temporality seems to also apply to it. Perhaps, as was expounded above, the perpetuity restriction is applied within the waqf endowment period.

Yet, a more concrete argument on this issue may be found in Imam Abū Ḥanīfah's definition of waqf, which allows temporality in waqf. He defined waqf as *'ariyah* (a loan of a benefit/usufruct), whereby it is deemed revocable and flexible, similar to other forms of voluntary acts as stipulated in the Ḥanafī code of law (Rashid, 2018). Although the dominant view in the Ḥanafī *madh-hab* is that waqf should be perpetual (based on the views of Imam Abū Yūsuf and Imam Muḥamad bin Ḥasan), it is unwarranted to dismiss the opinion of Abū Ḥanīfah; especially not when another *madh-hab*, namely, the Mālikī, views that waqf can be temporary (Rashid, 2018).

Furthermore, it is also crucial to notice that the perpetuity restriction is often beyond human control. To mention one example, the famous waqf of the Dar-al Hikmah Library was destroyed during the siege of Baghdad in the 13th century (Mahamood and Rahman, 2015). One will also observe, on a philosophical level, that everything in existence will reach

its end and cannot remain intact. Concerning irrevocability, [Kahf \(2014\)](#) believes that waqf may be revoked when the founder meets with unusual circumstances such as a natural disaster, terminal sickness and the like. Following this argument, even temporary waqf can be revoked within the waqf endowment period so that the corpus may be used to cope with the founder's unusual circumstances.

Still, it is important to mention the motivation behind the perpetuity restriction. Perhaps, it is best understood from the following *ḥadīth*:

When a man dies, all his good deeds come to an end except three: *ṣadaqah jāriyah* (ongoing charity), beneficial knowledge and a righteous child who prays for him ([Ṣaḥīḥ Muslim, 2021](#)).

In other words, the perpetuity restriction in waqf intends to serve as *ṣadaqah jāriyah* for the *wāqif* (waqf founder). This is to ensure that the *wāqif* shall receive continuous *ajr* (reward) even after death.

To sum up the whole discussion, it is to our belief that the best technical definition of waqf is given by [Kahf \(2021\)](#): “holding certain property and preserving it for the confined benefit of certain philanthropy and prohibiting any use or disposition of it outside that specific objective” (p. 2). Note that [Kahf \(2021\)](#) did not mention the waqf endowment period here but did include benefit (usufruct), which, as highlighted previously, was not recognized by every *madh-hab* with respect to waqf. He, thus, harmonized all the *madh-habs*' opinions and, moreover, highlighted the spirit behind waqf, namely, that it is for charity.

### *Cash waqf*

Constructed from the definition of [Kahf \(2021\)](#), cash waqf refers to holding and preserving cash for the confined benefit of certain philanthropy and only using the cash for said philanthropic purposes. Cash waqf is not necessarily in the form of money only but can also be in the form of share certificates ([Mauluddin and Rahman, 2018](#)). The main basis for the permissibility of cash waqf stems from *istiḥsān bi al 'urf* (juristic preference on the basis of custom) as stipulated by the Ḥanafī *madh-hab*. The waqf of dinars and dirhams was widespread in Ottoman society ([Othman, 2015; Mauluddin and Rahman, 2018](#)). Although the most popular opinions in the Shāfi'ī *madh-hab* reject cash waqf because it cannot be kept intact, there are also opinions that do accept it as long as the cash provides continual benefit and the intrinsic value is retained ([Mauluddin and Rahman, 2018](#)). On the other hand, the Mālikī *madh-hab* disallows cash waqf. Regardless, Resolution No. 140 (16/6) of the International Council of Fiqh Academy states that cash can be endowed as waqf for it has the capability of keeping the principal intact and providing benefits ([Mohsin, 2014](#)).

It is now understood why cash can be endowed as waqf despite the diminishing of value over time. It is because benefits or usufruct can be extracted from cash. The usufruct of cash waqf can be extracted via investment and by giving *qard ḥasan* (benevolent loan) ([Mohsin, 2014](#)). The investment may be in the form of *muḍārabah* (profit sharing, loss bearing) or other Sharī'ah contracts ([Mohsin, 2014; Mauluddin and Rahman, 2018](#)). At the same time, it is crucial to ensure that the cash waqf investment does not manipulate Sharī'ah contracts to gain a fixed return akin to *ribā* (interest) as was practiced during the Ottoman period through the mechanism of *istighlāl* ([Othman, 2015](#)). On top of that, cash waqf may also be used to finance existing waqf properties and be substituted or change form into a fixed asset (*istibdāl*) ([Mohsin, 2013; Mauluddin and Rahman, 2018](#)). However, Resolution No. 140 (16/6) of the International Fiqh Academy states that assets purchased through cash waqf are not deemed as waqf.

It is important to mention that if the cash is endowed temporarily (temporary waqf), then the cash should be returned to the owner; but if the cash is endowed perpetually (irrevocable

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waqf), then the cash should not be returned. Although the corpus of cash may diminish in value due to the time value of money, it is not viewed as such from the Islamic perspective. A critical examination of the time value of money in Islam is given in the proceeding section.

#### *Related financial axioms and cash waqf risk management*

From the previous section, it has been determined that the usufruct of cash waqf can be extracted through *qard hasan* and investment, etc. In regard to this, it is crucial to review the basics of finance, namely, the financial axioms and the Islamic finance perspective on them. After all, investment and lending are governed by the law of finance. Building on the financial axioms, cash waqf risk management is then rigorously discussed in the subsequent subsection.

Consideration of the time value of money is vital whenever one is making an investment decision. After all, the time value of money is a fundamental concept in finance. It states that it is better to receive money now as opposed to later (Zutter and Smart, 2019). One of the reasons for this is when a person receives money now, they will be able to invest that money and earn extra returns in the future. Alternately, if one receives money in the future, they will not be able to do so. Along the same line, one is justified to receive additional payment (guaranteed return) for money loaned out and money deposited in a bank account for an extended period of time. This type of “guaranteed return” is called interest or usury, which is abhorred in Islam.

Interestingly, the time value of money is also recognized to a certain extent in Islamic finance. As critically discussed by Ahmad and Hassan (2006), the time value of money in Islam is only acceptable ex-ante and as such, acknowledged only when undertaking trade. To be clear, the return, if and when obtained from a business transaction, is the embodiment of the Islamic time value of money. As such, lending out money and receiving back the principal together with a “guaranteed return” is none other than interest. Similarly, it is unwarranted to force the time value of money notion when the trade suffers loss. This dichotomy exists because conventional finance views money as a commodity while Islamic finance does not. From a strict finance perspective, this is the main reason why it is rational for conventional finance to charge interest when Islamic finance does not (Ahmad and Hassan, 2006).

Based on the discussion of the time value of money, it is right that cash waqf be invested to gain returns or that it be loaned out as *qard hasan* only. After all, investment is a form of trade or a business transaction and is allowed according to the precepts of the Islamic time value of money. Then again, there is the question of risk. Irrevocable waqf should be perpetual in nature; meaning the principal of cash waqf should remain intact. Even in temporary waqf, the principal should also remain intact as the *wāqif* has a right to the principal when the waqf period is over. In other words, it seems that incurring loss under waqf investment must be avoided in all circumstances. Due to this concern, the discussion now turns to the second financial axiom, namely, the risk-return trade-off.

Risk-return trade-off is basically the investor’s expectation of wanting higher risk for a higher return and vice versa (Smart et al., 2017). For the sake of clarity, the risk is simply the uncertainty of return from an investment. Specific to cash waqf and the topic of this paper, the risk is the uncertainty of retaining the capital or corpus of cash waqf. In the finance world, government securities carry the lowest risk, unit trusts carry moderate risk and derivatives carry the highest risk. This is important to be highlighted for there are suggestions that cash waqf be invested in Islamic capital market products to acquire returns (Securities Commission Malaysia, 2014). As a matter of fact, the Securities Commission Malaysia recently introduced a framework that shall integrate waqf in the offerings of

Islamic funds (Securities Commission Malaysia, 2020). In terms of direct investment in the business, a high risk investment would be in a business that has had poor financial performance and in start-ups, while a low risk investment is an opposite. What this means for cash waqf is, to expect higher returns for its beneficiaries, the cash waqf should be invested in higher risk investments.

In Islamic finance, there are two legal maxims that closely relate to the risk-return trade-off, namely, *al-kharāj bi al-ḍamān* (gain goes with liability) and *al-ghunm bi al-ghurm* (liability accompanies gain). These legal maxims are based on the *ḥadīth* of the Prophet (peace be upon him) as mentioned in Noor *et al.* (2018, p. 4): “indeed, profit is the reward for the readiness to bear the loss (al-Nasā’ī, 2001, Ibn Majah).” Most scholars of *fiqh* (Islamic jurisprudence) agree that these legal maxims elucidate that risk should be commensurate with sufficient returns. In short, the risks and benefits of transactions must be in equivalence (Noor *et al.*, 2018). Therefore, the concepts of *al-kharāj bi al-ḍamān* and *al-ghunm bi al-ghurm* are similar to the concept of risk-return trade-off in conventional finance.

From the brief translations of the legal maxims, it is obvious that these two legal maxims are a reflection of one another. Still, it is vital to gain a clearer meaning of the two legal maxims so that the connection with cash waqf can be dissected. A clearer meaning of *al-kharāj bi al-ḍamān* is “the benefit of an asset is the right of the one (usually the owner) who indemnifies it if it is damaged” (Laldin *et al.*, 2013, p. 156); while *al-ghunm bi al-ghurm* is “the owner of an asset has to bear all the risks and costs that attend ownership of the asset, as he is entitled to enjoy any benefit resulting from it” (Laldin *et al.*, 2013, p. 161). In the case of cash waqf, the owner is considered to be either the *wāqif* or God, depending on the *madh-hab*. As such, any loss in cash waqf should either be borne by the *wāqif* or God.

Yet, in *fiqh*, the word *ḍamān* refers to various meanings. Mālikī, Shāfi’ī and Ḥanbalī scholars are of the opinion that the word *ḍamān* refers to guarantee (*kafālah*), which needs to be fulfilled by a person to another person. Meanwhile, the Ḥanafī school views *ḍamān* as the obligation to compensate the damage (Elgari, 2003). As such, if the owner of the cash waqf has appointed a trustee to manage the cash waqf, then it is the responsibility of the trustee to bear all the risks associated with that cash waqf investment and receive returns from the cash waqf investment. Now, the latter seems paradoxical because returns from cash waqf are supposed to be the beneficiaries’ entitlement. This issue can be resolved using the continuation of the *ḥadīth* by Ṣaḥīḥ Muslim (2021), stated earlier in the previous section:

There is no sin for one who administers it if he eats something from it in a reasonable manner, or if he feeds his friends without hoarding [for himself] out of it. [The sub-narrator] said: I narrated this *ḥadīth* to Muhammad, but as I reached [the words] “without hoarding [for himself] out of it,” [Muhammad] said: “without storing the property with a view to becoming rich.” Ibn ‘Awn said: Someone who read the [waqf] deed informed me that in it [the words are] “without storing the property with a view to becoming rich” (Ṣaḥīḥ Muslim, 2021).

It is clear from the *ḥadīth* that the waqf trustee has the right to a modest amount of return from the cash waqf investment.

From the discussion of *al-kharāj bi al-ḍamān*, *al-ghunm bi al-ghurm* and the Islamic time value of money, it is ascertained that risk is unavoidable from the Islamic perspective. This is natural, for the order of Islamic economics is constructed upon taking a risk and sharing risk, so cash waqf should be too. As such, it would be impossible to ensure the perpetuity of cash waqf in absolute terms. However, through the concept of risk-return trade-off, a basic strategy to manage risk is suggested. The strategy in question is diversification.

The diversification strategy entails investments in different avenues, and all these investments combined become an investment portfolio (Smart *et al.*, 2017). The primary aim of an investor is to procure an efficient investment portfolio that delivers the most return for

a particular level of risk. To attain this, the return of assets in the said portfolio must move in the opposite direction or be negatively correlated (Smart *et al.*, 2017). As such, to manage risk, cash waqf should be invested in Sharī'ah-compliant assets that are negatively correlated with one another.

### Cash waqf investment strategy

A conjecture has now been reached based on the theoretical considerations from the previous section: it would be impractical to guarantee the corpus of cash waqf; at best, it can only be managed to a certain extent. To support these assertions, it is better to review relevant literature on cash waqf risk management strategies, view the methods used by waqf organizations to safeguard the cash waqf corpus, as well as examine fatwas and several state waqf laws to see provisions on cash waqf risk management.

As for the literature, Mohsin (2013) suggested that only a portion of the cash waqf endowed be invested while the other portion be retained as a buffer in case of loss by adding it to the corpus. For the invested portion, Mohsin (2013) recommended that the investment go toward a mixture of low-risk and high-risk investments, a classic diversification strategy. The buffer for loss is certainly a good risk management strategy to ensure perpetuity. This is akin to a typical financial planning strategy in which a portion of the cash should be saved and not all is invested (or spent). There is one flaw; the invested portion still originates from the corpus. As such, if the invested portion suffers total loss from investment, the buffer will not be sufficient to compensate the total corpus value.

Another strategy that is currently adopted that can cushion loss is to reinvest a portion of the returns from the initial investment of cash waqf. This strategy is currently adopted by Awqaf Holdings Berhad (2018). By accumulating further returns, the corpus is better safeguarded than by only committing it to a one-off investment. Still, the invested cash waqf portion has the possibility of incurring a loss that is incommensurate to the retained portion. This disadvantage is even more pronounced when reinvestment is used, for the loss can be doubled. Should this situation occur, the corpus of cash waqf would be in jeopardy?

In an attempt to eliminate the mentioned problem, Majlis Ugama Islam Singapura (the Singapore Religious Council) and Wakaf Selangor Muamalat opted for a fund manager to safeguard the cash waqf capital (Securities Commission Malaysia, 2014). Fund managers have the knowledge, skills and vast experience in cash investment that would make one among them a natural choice for the role of a cash waqf trustee. For example, the fund manager has the skill to use exotic investment strategies such as hedging to better preserve the cash waqf capital. In other words, the cash waqf capital is better protected as it is managed by a professional. Nevertheless, the fund manager is still unable to absolutely guarantee that the corpus will not deplete.

Mohsin (2013) and Ambrose *et al.* (2018b) suggested that an organization should compensate any loss, thus guaranteeing the corpus of cash waqf. The said organization can be the government or the trustee of cash waqf itself. This suggestion seems problematic as it negates the risk-sharing that forms the basis of Islamic economics, the field of study under which cash waqf falls. However, there is a concept related to guarantee from the Islamic perspective, namely, *kafālah*, that may help. To pass a fair judgment, it is a must to analyze this concept further.

*Kafālah* literally means surety, bail, guarantee, responsibility or amenability (Khan and Ahmed, 2001; Ibn Rushd, 2006). Prophet Muhammad (peace be upon him) used the word *kafālah* as mentioned in the *ḥadīth* below (al-Bukhāri, 1987):



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Sahl ibn Sa'd narrated: The Prophet (peace and blessings be upon him) said: "I and the person who looks after an orphan and provides for him, will be in paradise like this." Putting his index and middle fingers together [ . . . ].

In the *ḥadīth* above, the phrase "who looks after an orphan" means a guarantor who becomes the guardian of the said orphan. In *fiqh* terminology, the guarantee means to assume obligation for another person's debt (Ibn Qudāmah, 1983). Thus, *kafālah* or guarantee in the context of the *ḥadīth* means to provide assertion that the guaranteed person will fulfill the commitment or liability.

*Kafālah* is also the root word of *takāful*, which means a joint guarantee. *Takāful* is the replacement for conventional insurance by using the concepts of brotherhood and cooperation that are highly encouraged in Islam (Fauzi *et al.*, 2016). Section 2 of the Islamic Financial Services Act (2013) of Malaysia defines *takāful* as "[. . .] a scheme based on brotherhood, solidarity and mutual assistance, which provides for mutual financial aid and assistance to the participants in case of need whereby the participants mutually agree to contribute for that purpose." On top of that, Section 2 of the Islamic Financial Services Act (2013) of Malaysia defines *takāful* business as "an arrangement based on mutual assistance under which *takāful* participants agree to contribute to a common fund providing for mutual financial benefits payable to the *takāful* participants or their beneficiaries on the occurrence of pre-agreed events." Generally, *takāful* is a pledge between members of a group who agree to enact a mutual fund and contribute money into the said fund. Second, the group members unanimously agree to guarantee one another should any unexpected stated loss happen. As a consequence, if any of the members suffer a stated loss or damage, the member will receive money as compensation from the mutual fund. The objective of *takāful* is mainly to share financial losses and to assist each other. Its underlying principle is that every person takes care of the well-being of others (Fauzi *et al.*, 2016).

To get back to the issue of guarantee, two pertinent questions have been addressed. First, is there such a thing as an Islamic suretyship (guarantee)? Second, can *takāful* be applied to mitigate the risk of loss in cash investment? *Takāful* is a form of risk mitigation by sharing the risk. The focus of *takāful* is only on unexpected events and covers pure risk, also known as absolute risk, which relates to a threat that is beyond human control and has only one possible outcome if it occurs, which is a loss. However, cash waqf investment falls under speculative risk, which is a category of risk that can be taken voluntarily, will result in either a profit or a loss and is a result of conscious choice. This means that cash waqf investment is a voluntary act, which exposes one to the risk and will not be covered by *takāful* or suretyship.

To avoid these dilemmas of guarantee altogether, Anwar (2017) recommended a precautionary approach of business analysis or feasibility study before any cash waqf investment decision is made. Undertaking this initiative is certainly called for to identify the risk level of any possible investment, and thus, help preserve the corpus of cash waqf. The feasibility study encompasses economic analysis, industry analysis and fundamental analysis. Although these analyzes are essentially part of security analysis that is used to gauge intrinsic share value, they can also provide a certain degree of insight on cash waqf investment (Smart *et al.*, 2017). For instance, economic analysis can show the current economic situation domestically and globally that may affect a business; industry analysis highlights the general background in which a business is operating; and fundamental analysis indicates the financial situation of a business (Smart *et al.*, 2017). In fact, Bank Waqf International does opt for these analyzes in selecting social impact businesses (Bank Waqf International, 2021). Moreover, Bank Waqf International (2021) provides advise to these businesses to increase the likelihood of generating profit.

Unfortunately, feasibility studies and business advise cannot predict with certainty whenever shocks happen to a cash waqf investment or any investment for that matter. The occurrence of the coronavirus pandemic is one glaring example. Mainstream experts and academicians were not able to guess that the coronavirus would progress from an epidemic to a pandemic. According to [McKibbin and Fernando \(2020\)](#), the world will face a drop in gross domestic product and consumption, etc. These economic factors will certainly affect cash waqf investment just as any other investments will be affected.

So far, no matter what the risk management strategy is, nullifying all risk is impossible. In this case, the discussion shall now turn to lending cash waqf through *qarḍ ḥasan* to ascertain whether the corpus of cash waqf can be retained. Although in principle the corpus of waqf is indeed retained when the beneficiary returns back the cash, it is wise to discuss the matter in depth.

Taking one real-life example, the Fa'el Khair waqf microfinance program had recycled the corpus of cash waqf 5.25 times as of January 2014 ([Mohsin et al., 2016](#)). This real-life success of keeping the corpus intact provides further validity to the manager's decision. Moreover, the capability of the cash waqf fund to be recycled means benefit can be extended to a broader pool of beneficiaries. As such, not only is the cash waqf manager able to retain the corpus of the cash waqf, but the manager is also able to extend the corpus' benefit to other beneficiaries. This truly subscribes to the spirit of continuous charity that is inherent in irrevocable waqf.

However, the fact of the matter is that giving *qarḍ ḥasan* can also be risky. First, there is always the possibility, no matter how remote, that a loan will not be paid back. In this case, *qarḍ ḥasan* originating from cash waqf is given to the poor and destitute, who, by banking standards, do not have a credible credit background. This practice leads to a high possibility of low loan repayment rates. To overcome this risk, banks will usually impose interest over the principal amount of loans. It is indeed true that certain microfinance banks do impose risk mitigation measures such as group guarantees, compulsory savings and financial advisory services (even charging high interest rates). Despite this, there is often a certain percentage of non-performing loans ([Hassan, 2002](#)). Going back to the case in the discussion, the beneficiary may suffer a loss from his business (given that the *qarḍ ḥasan* is used to start a business) and be unable to pay back the *qarḍ ḥasan*. Herein also lies the risk of not keeping the corpus intact. Clearly, from the academic literature point of view, avoiding all risks is impossible.

From the fatwa standpoint, cash waqf risk management is discussed most comprehensively in Resolution No. 140 (15/6) of the International Islamic Fiqh Academy. The strategies include performing feasibility studies, avoiding high-risk investments, diversifying investments and ensuring transparency in cash waqf investment ([Mohsin, 2014](#)). Avoiding high-risk investments and promoting transparency in cash waqf investment are strategies that were not contained in the literature standpoint discussed earlier. As was already explained, high-risk investments cover derivatives, businesses with poor financial performance and start-ups. Indeed, derivatives are a contentious issue in the Islamic finance circle, and it is obvious that businesses with poor financial performance should be avoided. As such, the paper will not proceed with the discussion of these two aspects.

On the other hand, high-risk investments will certainly increase the likelihood of corpus depletion. However, start-ups are a different matter. Although classified as high-risk, the same Resolution No. 140 (15/6) allows cash waqf to be invested in *muḍārabah* and other permissible Sharī'ah contracts. Therefore, if the cash waqf trustee forms such contracts with a start-up, it is still allowable. It is in such cases that feasibility studies should be

especially used beforehand. Should the feasibility study of a start-up indicate positive results, then investing in that start-up should not be assumed as high risk. Besides, Resolution No. 140 (15/6) requires diversification in investment, so a cash waqf manager needs to find other investment avenues to combine with the start-up investment. Despite all the various strategies, the cumbersome issue of absolute risk avoidance still lingers. With regard to transparency, albeit it is usually performed after cash waqf investment, thus missing the point of risk avoidance, it still constitutes an excellent strategy. A cash waqf fund manager will perform due diligence on the investment, hence lowering the possibility of a complete loss in corpus.

From the standpoints of both the literature and fatwas, it is beyond doubt that cash waqf investment and loaning out cash waqf as *qard hasan* are still risky despite precautionary measures and other risk management strategies taken. It seems that the only way to a risk-free cash waqf is to use the cash waqf to finance existing waqf properties or through the mechanism of *istibdāl* to build new properties. Indeed, the former can sustain existing waqf properties and help retain the corpus value, a complete risk-free venture. This method of extracting the usufruct of cash waqf is being applied in Singapore through a fund called Building and Mendaki Fund, which is used to redevelop mosques all across the country (Mohsin *et al.*, 2016). Meanwhile, converting cash waqf into waqf property has been accomplished by Dompot Dhuafa Republika, which initiated the Tabung waqf Indonesia (TWI), a cash waqf fund. Partly through TWI, several buildings were constructed on waqf lands to provide entrepreneurship training for the poor and unemployed (Mohsin *et al.*, 2016).

Finally, from the standpoint of state enactments, several strategies highlighted earlier in this section have already been chartered. As Johor, Melaka, Negeri Sembilan, Selangor and Perak are the Malaysian states that are deemed to have progressive laws, the following discussion shall only review these states (Kader, 2016). In Section 26 of Wakaf (State of Selangor) Enactment 2015 and Wakaf Enactment (Perak) 2015, as well as Section 20 of Wakaf (State of Malacca) Enactment 2005, any corpus that has been destroyed may be redeveloped using waqf funds, *bayt al-māl* (Islamic treasury), and other permissible sources according to Sharī'ah. That is, the corpus of waqf can be guaranteed using these three sources. Interestingly, Section 32 of Wakaf (Negeri Sembilan) Enactment 2005 stipulates that the SIRC of Negeri Sembilan as a waqf trustee is not obligated to guarantee the corpus in case of *force majeure*. This is neither mentioned in the literature nor in the previously cited fatwa.

In Section 39 of Wakaf (State of Selangor) Enactment 2015, Section 29 of Wakaf (Negeri Sembilan) Enactment 2005 and Section 37 of Wakaf Enactment (Perak) 2015, statement of accounts of the waqf fund must also be prepared and audited. That is, the transparency of waqf is to be ensured. However, it is noted that Section 95 of Administration of the Religion of Islam (State of Johor) Enactment 2003 was not clear regarding the audit. This transparency strategy was already discussed from the literature and fatwa standpoints.

### Important caveat

Thus far, this paper has been focusing on the structure of waqf and its relationship with finance (both conventional and Islamic) while disregarding the substance or spirit of waqf – its philanthropic purpose. If the corpus of waqf cannot be retained, the beneficiaries will be adversely affected. Similarly, if the corpus of waqf is forced to be retained, it could also cause a negative impact on the beneficiaries. Not to mention, a *wāqif* or trustee might be pressured to use instruments such as *istighlāl*. Should these situations come to pass, the *ṣadaqah* spirit of waqf would become void.

To illustrate the issue, assume hypothetically that a *wāqif* or waqf manager lends out cash waqf as *qard ḥasan* to the impoverished for, say, purchasing basic necessities. When the time of repayment arrives, the lender is unable to return the cash waqf because the lender still does not have the financial means to do so. It would be cruel to demand payment or use other means like collateral simply to ensure that the corpus is regained. These actions would further impoverish the poor. The end result could be a beneficiary that is trapped in debt.

Now assume another hypothetical situation. A particular cash waqf fund is engaged with a beneficiary through a *muḍārabah* contract where the cash waqf manager supplies the capital (as the *rabb al-māl*) and the beneficiary becomes the entrepreneur (as the *muḍarīb*). The manager considers this arrangement for two reasons. One, it would not burden the beneficiary, for unlike the case of *qard ḥasan*, the beneficiary would not be required to pay anything if the business incurs a loss. Should the business obtain profit, then the beneficiary should only pay a certain percentage that is dependent on the profit value and agreed beforehand. Second, this *muḍārabah* investment mode can help the beneficiary who is unemployed to start a business and acquire income streams. However, because the business suffers a consistent loss, the *muḍārabah* investment becomes an unsuccessful venture and the corpus of waqf would not be retained.

A way out from this dilemma would be the inclusion of Islamic spirituality, aside from Islamic financial mechanisms, in waqf. In particular, [Tahir \(2019\)](#) re-introduced the Islamic spiritual approach (ISA) to eradicating poverty, the ultimate aim of waqf. The spiritual component consists of *imān* (belief), *taqwa* (cognizance of Allah), contentment and placing all trust in Allah, *dhikr* (remembrance) and being grateful to Allah. By inculcating ISA, the *wāqif* and trustee will not be overwhelmed by the state of the corpus, whether it is preserved or not. Simultaneously, the beneficiary will also not be overwhelmed by his or her financial situation. The *wāqif*, trustee and beneficiary will put their utmost trust in the following Qur'anic verse (42:27):

If Allah were to grant His plentiful provision to [all] His creatures, they would act insolently on earth, but He sends down in due measure whatever He will, for He is well aware of His servants and watchful over them.

Nevertheless, it should be emphasized that risk management strategies for cash waqf are also of importance. This is in accordance to a *ḥadīth* narrated by Al-Tirmidhī that was cited in [Tahir \(2019\)](#), pp. 58–59):

A man once left his camel untied outside the *masjid* and asked the Prophet (ṣal-Allāhu 'alayhi wa sallam) if he should leave his camel outside the masjid without tying it and place his trust in Allah or if he should tie it and put his trust in Allah. The Prophet (peace be upon him) told him to tie it and put his trust in Allāh.

In other words, the cash waqf manager must first put in effort by using risk management strategies before putting his trust in Allah; that is to leave it to Allah to determine whether or not the corpus shall be preserved after having adopted the necessary measures to preserve the cash waqf corpus. The same goes for the beneficiaries: efforts to pay the *qard ḥasan* or gain profit from an enterprising initiative must be deployed first.

### Resolution

To reach a verdict, it is best to align the philanthropic purpose of cash waqf with its structure that closely relates to finance. From the deliberation in previous sections, the structure of cash waqf consists not only of the corpus but also of the *wāqif*, trustee and the

beneficiaries. It is also obvious from the critical discussion in the previous section that perpetuity of the corpus cannot be absolutely guaranteed. Nonetheless, risk management efforts must be taken and the interests of the waqf stakeholders (*wāqif*, trustee and beneficiaries) must be considered. Therefore, an SOP to derive the usufruct of cash waqf should be designed as follows:

#### *Wāqif awareness*

First and foremost, a *wāqif* must recognize the various risks involved in the extraction of the usufruct of cash waqf. Extraction of the usufruct via investment and *qard ḥasan* poses the highest risk while extraction via *istibdāl* and financing old waqf properties is the lowest or possibly even risk-free. It must be made clear to the *wāqif* that risk is defined as the depletion of cash waqf capital. In addition to that, the *wāqif* must note the nature of the beneficiaries' needs. Are the beneficiaries in dire need? What specifically does the beneficiary require? Is it to buy basic necessities or education or to have a source of income? These are some aspects to consider. Depending on nature, then only the *wāqif* should decide whether to endow the cash as a temporary waqf or irrevocable waqf and choose the most effective method to extract the usufruct of cash waqf. Should the *wāqif* employ a cash waqf trustee, then it is the trustee's responsibility to educate the *wāqif* on the matters mentioned and gain the *wāqif*'s consent. On top of that, the trustee must spell out the risk management strategies so that the *wāqif* understands and appreciates the precautions taken in extracting the usufruct. Also, the *wāqif* can easily come to terms with the reality of the perpetuity restriction should corpus depletion happen.

#### *A detailed risk management strategy*

The risk management strategy opted must be rigorous. First, as before, the beneficiaries' nature of need must be investigated to ascertain the appropriate manner of usufruct extraction. If the manner chosen is cash waqf investment, then the risk management strategy must be as follows: a feasibility study in the form of economic analysis, industry analysis and fundamental analysis must be performed to choose the appropriate investment avenues. It goes without saying that the investment avenues must be Sharī'ah-compliant. Then, an efficient portfolio for investment should be formed. Only a portion of the cash waqf corpus is invested while the other portion is kept as a cushion for loss. For all this to be done efficiently, a professional fund manager must be hired by the cash waqf trustee. The return from the cash waqf investment – if obtained – may be distributed as a whole to the beneficiaries. The cash waqf trustee may also opt to reinvest a portion of the return to further cushion for loss. In the event of corpus depletion, and if and only if the cash waqf trustee is able, the trustee should guarantee the corpus using internal funding.

Should the cash waqf investment be a *muḍārabah* contract formed with a beneficiary as the *muḍarīb*, the risk management strategy becomes different. As the *rabb al-māl*, the trustee must take an advisory role by suggesting an appropriate business venture, business strategies and others to help the business succeed. As for *qard ḥasan*, there is no particular risk management strategy. However, *qard ḥasan* must only be granted to beneficiaries who require immediate aid and lack basic necessities such as food.

Finally, the trustee must produce complete reports on the cash waqf activities; whether it be investment, *muḍārabah* investment, *qard ḥasan*, *istibdāl* or financing existing waqf properties. Also, no matter the method of corpus extraction, the trustee should stress that the corpus cannot be guaranteed in case of *force majeure*. *Force*

*majeure* should also include loss from investment where meticulous risk management strategies were used beforehand (i.e. the risk management strategies of cash waqf investment detailed earlier), failure of repayment from *qardḥ hasan* and loss from a *muḍārabah* investment that is formed with a beneficiary as the *muḍarīb*.

#### *Beneficiary awareness*

Aside from the *wāqif*, the beneficiary should also be made aware that there is a possibility that the corpus will be depleted. Should this situation occur after all necessary precautions have been taken, the beneficiary should also come to terms with it. By being aware of this possibility, the beneficiary will not totally rely on cash waqf but also attempt other means to alleviate his or her condition. After all, humans cannot know the outcome of the future for certain as elucidated in this Qur'ānic verse: “[He is] Knower of the unseen, and He does not disclose His [knowledge of the] unseen to anyone” (Qur'ān, 72:26).

#### **Conclusion**

To sum up, the violation of perpetuity is unavoidable when mental faculties aligned with revealed texts are exhaustively used in cash waqf risk management. This is because risk is a natural phenomenon, similar to any unavoidable circumstances such as natural disasters. As has been seen earlier in this paper, one example of waqf that was destroyed is the Dar-al Hikmah Library. This lends support to the fact that a cash waqf manager is not entirely at fault for not being able to maintain the corpus value, as long as meticulous risk management strategies have been used beforehand. The risk management strategies must also include an examination of the beneficiaries' level of need for assistance. Should unfavorable situations occur (depletion of corpus and beneficiaries cannot enjoy its usufruct) due to *force majeure*, then the *wāqif*, trustee and beneficiaries must invoke the ISA to come to terms with the depletion of the corpus.

Finally, it is to be noted that this research is not without limitation. It would have been better if the authors had gained access to waqf enactments outside of Malaysia to enrich the literature on the practice of cash waqf risk management. As such, for further research, it is suggested that waqf enactments from various countries be examined to see the practice of cash waqf risk management. Through this endeavor, a more comprehensive cash waqf risk management strategy could be proposed and further address the perpetuity dilemma.

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