

The Concept of Waqf Sukuk and Its Ruling in Islamic Law

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Abstract: This is a study on Waqf Sukuk, which is a fairly new concept of waqf. The paper begins by first defining Sukuk and Waqf. The discussion then continues with an analysis of the meaning of Waqf Sukuk and how it may be applied in modern times. The study also looks into the mechanism, steps and rules for the issuance of a valid Waqf Sukuk. The research also studies the rules of Waqf Sukuk in the secondary market by explaining the rulings on temporary Waqf and discusses the opinions of scholars on the issue. In the analysis of primary sources relating to this issue, the researchers rely on inductive, descriptive and analytical methods of document analysis. The study concludes with a view that prefers cash Waqf and temporary Waqf and thus allows the issuance and trading of Waqf Sukuk.

Keywords: Waqf Sukuk, modern, Islamic Law.

INTRODUCTION

The institution of waqf is one of the most important sources of funding in Islam which has lasted throughout centuries. This was especially so during the time of the four Caliphs where the waqf institution provided various services to society in areas such as education and health. Most of the Waqf funds in the early stages of the Caliphate were fixed assets such as real estate. These funds were used to cover various needs of society. However, waqf involving movable assets were not prominent, as the prevailing jurisprudential opinion at that time was that waqf of movable property was inadmissible for waqf.

Nevertheless, the expansion of the Caliphate allowed many jurists to permit Waqf of movable properties such as books, pots and money, in order to meet the needs of the people. As a result, this kind of Waqf became more acceptable.

As time went on, lifestyles improved and life patterns became more complicated. Waqf of immovable properties and even some methods of Waqf of movable properties did not meet the needs of society. Consequently, scholars and researchers started to look for ways to improve Waqf which led to the permissibility of cash Waqf. Thus, new methods of Waqf have evolved, such as the investment of Waqf funds and Waqf Sukuk. These new methods have had an effective result on the development of Waqf institutions. In this context, this study aims to contribute to this field through a discussion on Waqf Sukuk, provide an explanation of its concept and mechanisms as well as declare a ruling on the issuance of Waqf and the trade of it in the secondary market. This study differs from previous studies on Waqf Sukuk, as Sukuk in the present study is represented by Waqf property, since the aim of a buyer is to obtain a reward. In contrast, Waqf Sukuk in other studies are not represented Waqf property, instead, it is deemed as a tool of investment with an objective to obtain profit.

Definition of Waqf Sukuk

The term Waqf Sukuk consists of two terms, namely 'Sukuk' and 'Waqf'. Thus, the discussion would be incomplete without a definition of both terms. The singular form of 'Sukuk' is 'Sak', which is a book where transactions, reports and facts of cases are written [1]. Jurists have used 'Sak' for every document that proves the existence of a right as a result of financial transactions, such as a sale and purchase or what a judge approves in court, such as in divorce and confession cases. Nonetheless, the definition of 'Sukuk' in an economic sense is "the division of capital into shares of

¹ Ministry of Awqaf and Islamic Affairs, 1989, the Encyclopedia of jurisprudence, Kuwait: 1st edition, vol. 7, p. 47.

equal value registered in the names of their owners as holders of common shares in the capital and what is turned into the proportion of ownership of each of them” [2].

As for the definition of Waqf, there are many definitions in classical jurisprudence books as well as contemporary research and studies. The most accurate one is the definition by Munzir Kahf who said: “A permanent or temporary dedication of some form of wealth with the aim of benefitting from it or from what it produces on a repeated basis and channeling such benefit to any form of private or public charity” [3].

Waqf Sukuk has been defined by Kamal Tawfiq as, “a representation of proof of the right to preserve the Waqf clause.’ This type of Sukuk represent deeds of title that are saved to avoid disputes and preserve the rights of the poor and other forms of Waqf. The modern meaning of Waqf Sukuk includes the previous definition of Sukuk in addition to other various meanings such as Waqf stocks, Waqf bonds and Muqaradah” [4]. It is observed that this definition relies on the traditional meaning of Sukuk in classical jurisprudence books, which means a way of preserving rights. However, it does not bring the meaning of Sukuk but only mentions some examples of types of Sukuk issued by some Waqf institutions, but it is not suitable to describe a contemporary definition of Sukuk.

Waqf Sukuk has been defined in proceedings and recommendations of workshops on Waqf as, “valuable documents issued in the name of their owners in exchange for the funds they have given to a Waqf institution or its representative, with a view to implement and exploit a particular Waqf project in order to achieve the aim behind a project whether the project is social, economic and cultural in nature” [5]. This definition does not include the suitability of Sukuk for trading and contracts on which they are issued, nor does it indicate that it represents Waqf funds. The definition also includes a number of descriptions that are not basic elements of the definition, such as issuance in the names of owners and achieving goals and needs of Waqf.

Rabi’ah and Aishah have defined it as “documents representing the assets of Waqf, whether such assets are fixed such as real estate, buildings and other assets, or movable assets such as money, aircraft, and cars or rights such as copyrights and patents” [6]. Nevertheless, it is observed that this is a weak definition as it focuses on what Sukuk represents i.e. movable or immovable assets, but the definition does not include basic descriptions and features of Waqf Sukuk, such as the suitability of Sukuk for trading or the contracts on which it is issued.

Based on an analysis of these definitions, a better definition of Waqf Sukuk is hereby proposed. According to the current research, a Waqf Sukuk is “written documents of equal value issued by Waqf institutions or their representative, some of which are tradable and recoverable, representing Waqf funds and based on Waqf contracts”.

Mechanism of Issuance of Waqf Sukuk

Structured finance is one of the most modern means of financing, and one of the most important types of securitization which is the accumulation of financial assets that generates returns and converts them into securities sold to investors. Waqf institutions resort to the issuance of Sukuk certificates to establish and finance investment projects that use their capital and resources to spend on beneficial things. The Waqf issuance mechanism is vested in three principal parties: a Waqf Foundation, a Special Purpose Company and the Subscribers, who may also participate in the issuance of Sukuk. Other parties include rating agencies, underwriters, custodians and the head of a securities structure if the roles and functions of these parties require the process of issuing Waqf Sukuk. When issuing Waqf Sukuk, Waqf institutions need to follow the following steps:

- To develop a vision or proposal for a Waqf project, which includes specifying the project to be established, its financial costs, a feasibility study, legal, procedural and regulatory aspects, and establishing a regulation that defines the rights and duties of the parties involved in the issuance process [7].
- The Waqf institution shall establish a special purpose company, a financial company specializing in securitization which issues Sukuk, manages Sukuk portfolios and a Waqf project on behalf of a Waqf institution. At the same time,

²Islamic Fiqh Academy, 1988/1408, *sukukMuqaradah*, Journal of Islamic Jurisprudence, Jeddah, No. 4, Vol. 4, p 2161.

³Qahf, Monzer, Contemporary juristic issues concerning Islamic endowments, p. 21 http://monzer.kahf.com/books/arabic/qadaya_mo3asira_fil_awqaf.pdf.

⁴Hattab, Kamal Tawfiq, 2000, *Waqf Sukuk and its role in development*, p 9. <http://iefpedia.com/arab/?p=583>

⁵ International Organization for the protection of nature, 2009, *proceedings and recommendations of workshop on Waqf and Sustainable Development in Jordan*, p 52.

⁶Zaid, Rabi’ah and Aisha, 2013, *Role of Waqf Sukuk in Sustainable Development*, Journal of the performance of Algerian institutions, No. 2, p 222.

⁷Badran, Ahmad Jabir, 2014, *Sukuk as a mode of Financing between theory and practice*, Journal of Modern Muslim, No. 152, p 191.

the company acts as an agent for Sukuk holders to protect their rights [8].

- The special purpose company shall prepare a prospectus, which includes the number of Sukuk, their categories, the value of one Sak, the total value of a Sukuk, the dates of offer, the close of subscriptions, the description of a Waqf project which uses the proceeds of a subscription to finance it, and an explanation to the beneficiaries of the project of the conditions of subscription [9].
- The special purpose company shall issue a Sukuk of equal value to an amount required for the establishment of a waqf project. It is also preferred to reduce the nominal value of a single Sak, for example RM50 to enable participation of many people [10].
- The special purpose company shall issue the Sukuk in a primary market for public subscription and collect its value from subscribers. The subscribers are those giving out the Waqf and the proceeds of the subscription is the Waqf fund [11].
- After the subscription and collection of the Sukuk value, the special purpose company will implement the investment of the Waqf project in accordance with the terms and conditions set out in the prospectus and manage the project and transfer its revenue and profits to the beneficiaries.
- Recovery of the value of 'Sak' is considered to be the last stage of securitization. Recovery means buying an investor's share in a Sukuk from investors on their due dates and then returning it to an investment vessel and then withdrawing money from it [12]. The redemption of a Waqf Sukuk means that the money that was given temporarily for Waqf has been sold to another maker of Waqf in the secondary market or the recovery of its value from a Waqf institution. The redemption of Waqf Sukuk is only envisaged in the category of recoverable Waqf (temporary Waqf).

Recovery can be done in two ways:

First Method: By trading Sukuk in a secondary market. When a Sukuk holder wants to recover his/her money, they sell the Sukuk in a secondary market for its nominal value. The seller withdraws from the portfolio of the Waqf investment project by temporarily recovering the Waqf fund and a buyer will replace him/her as a new Waqf maker.

Second Method: The Waqf Foundation establishes a Public Trust to manage the investment project financed by the total value of Sukuk offered for subscription. The Waqf Issuing Organization submits the money it collects to the Company in the form of a Benevolence Loan (Qard Hasan). The company establishes and manages the investment project, and then pays the loan taken to a Waqf Foundation in the form of profit and returns of investment. The Waqf Foundation in return pays this amount of money to holders of the recoverable Waqf at the end of a temporary period. This means that the founder of a Waqf (Waqif) has returned the temporary Waqf he has made. But holders of non-refundable Waqf Sukuk do not back their Waqf money, their Waqf is permanent and their profits are channeled into a fund called a Smart Waqf Fund [13].

Types of Waqf Sukuk

From the above methods of issuing Sukuk, it is clear that Waqf Sukuk is divided into two types. The first type of is known as a recoverable Waqf Sukuk. It is made up of written documents of equal value issued by a Waqf Foundation or its representative, which are negotiable and recoverable, representing the temporary Waqf fund and based on a Waqf contract.

The Second type is known as non-recoverable Waqf Sukuk. It consists of written documents of equal value issued by a Waqf Foundation or its representative, which are non-negotiable and non-redeemable representing a permanent Waqf fund and based on a Waqf contract.

Legality of Waqf Sukuk

An explanation on the legality of Waqf Sukuk requires a discussion about the ruling on the issuance of Waqf

⁸Hussain, Rahim, 2013, Securitization of Waqf Projects Product: A mechanism to promote the development role and support the efficiency of Waqf funds - The status of rural Waqf funds, a study presented to the Islamic Sukuk Conference and Islamic Finance Tools, Yarmouk University: Irbid, p. 15

⁹Negasi. Mohamed Ibrahim. 2013, Waqaf Sukuk and their role in economic development by means of training projects and the financing tradesmen and professionals, ISRA International Arabic Journal of Islamic Finance, Issue2, vol4, p98.

¹⁰ Hussain, Securitization of Waqf Projects Product, p. 13. Negasi. Waqaf Sukuk and their role in economic development by means of training projects and the financing tradesmen and professionals, p.99.

¹¹Negasi. Waqaf Sukuk and their role in economic development by means of training projects and the financing tradesmen and professionals, p.99.

¹²QuraDaghi, Muhyadeen, 2004, Lease Sukuk their characteristics standards, Islamic Fiqh Academy: Journal of Islamic Jurisprudence, No. 4, Vol. 4, Jeddah, p. 236

¹³ ISRA, (2016), Report on Temporary and Permanent Cash Waqf Sukuk Structure for Awqaf New Zealand, p15.

Sukuk and the trade of them in a secondary market. It also requires an explanation on the ruling of issuing Waqf Sukuk in terms of its permissibility or otherwise. In doing so, there is a need to explain two things. First is the fulfillment of the elements of Waqf and second is the extent of the legality of cash Waqf as the process of issuance means cash Waqf.

On the issue of fulfilling the elements of Waqf, it is argued that by scrutinizing the steps of the issuance of Sukuk, the elements of Waqf contract are realized. The participants in the Sukuk are the founders of a Waqf, and the beneficiaries of the Waqf, as stipulated in a prospectus, are deemed to have carried out good deeds. Moreover, the proceeds of the subscription of money is the Waqf money, and the form of a Waqf contract is included in a prospectus.

Meanwhile, on the issue of the extent of the legality of cash Waqf, scholars in the past have had differing views. Therefore, the paper now turns to the issue of the legality of cash Waqf based on two opinions.

The first opinion is based on the views of most Maliki jurists and some Hanafi jurists, as well as a few Hanbali and Shafii jurists [14]. These jurists believe that cash Waqf is permissible based on the following reasons:

- It was narrated that Abu Hurairah (may Allah be pleased with him) reported that the Messenger of Allah (peace and blessings of Allah upon him) said: “When a man dies, his acts come to an end, but three, recurring charity, or knowledge (by which people benefit), or a pious son, who prays for him (for the deceased)” [15]. The point of significance from this hadith is that it is generally permitted to put up any form of property for Waqf and nothing will bar the inclusion of cash Waqf in the generality of charity [16].
- The majority of jurists have permitted the Waqf of movables that can be used with continuous existence of its origin, and this is applicable to money, because it is among the term ‘movables’ [17].
- The holders of the third view rely on custom. Thus, whatever people give out as Waqf from movable assets based on custom, it is allowed based on Istihsan to use for Waqf, such as saws and axes. It’s important to note that money is included [18].
- The purpose that Waqf has been legalized is to be realized in cash Waqf for the presence of a standard and because of the existence of a legitimate beneficial advantage [19].

The Second opinion is based on the view that cash Waqf is not permissible. This is the view of the majority of Shafii and some Hanafi jurists, as well as a few Maliki jurists [20] due of the following reasons [21]:

- The essence of Waqf is continuous of an original commodity which benefits from rent or fruit. This is not achieved by money because it is consumed.
- Money was created to be a measure of price and was not created for the purpose of its own benefit.
- Working by the practice of the Prophet’s (peace be upon him) era and the righteous Caliphs (may Allah have mercy on them), only fixed assets such as land and real estate used to be given out as Waqf.

Discussing the opinions of the jurists and selecting the best one

This part of the paper provides a counter argument to the views of the jurists that do not allow the concept of cash Waqf.

- The argument of those who oppose cash Waqf opine that cash Waqf will perish and the origin of Waqf is the

¹⁴ Ibn ‘Abdīn, Mohamed Amīn, 1998, Rad al-Muhtār‘Alā al-Dur al-Mukhtār, Bayrout: Dārihyā al-turāth al-‘Arabī, 1stedition, Vol. 6, p. 434. Al-Kharshī, Mohamed ‘Abdullah, 1997, Hāshiyat al-Kharshī, Bayrout: Dār al-Kutub al-‘Ilmiyyah, 1stedition, Vol. 7, p. 365. Al-Muṭī‘ī, Mohamed Najīb, 1995, Takmilat al-Majmū‘, Bayrout: Dārihyā al-turāth al-‘Arabī, Vol. 16, p. 247. Ibn Qudāmah, al-Maqdisī, 1996, al-Mughnī, al-Qāhirah: Dār al-Hādīth, 1st edition, Vol. 6, p. 618.

¹⁵ Al-Nawawī, Yahya sharaf, 1930, Shrah Sahih Muslim al-Qāhirah: al-Matb‘ah al-Masriyyah, the book of wills, chapter: what reward reaches a man after his death, 1st edition, vo11, p.85.

¹⁶ Al-Maḥmadī, ‘Alī Yusuf, 1422, waqf and its rulings and types, paper presented to waqf conference which organized by Ummulqrah University, p. 163

¹⁷ Ibid, p. 163.

¹⁸ Ibid, p. 162.

¹⁹ Ibid, p. 162.

²⁰Ibn al-Humām, Mohamed ‘Abdulwāhid, 1995, SharḥFath al-Qadīr, Bayrout: Dār al-kutub al-‘ilmiyyah, 1st edition, Vol. 6, p. 203. Al-Muṭī‘ī, Takmilat al-Majmū‘, Vol. 16, p. 247. Ibn Qudāmah, al-Mughnī, Vol. 7, p. 618. ‘Awjan, WalīdHuwaamil, Cash Waqf and its Investment methods, paper presented in Islamic Business Researches Center, p.3. <http://www.kantakji.com/fiqh/Wakf.htm>.

²¹ Ibn Qudāmah, al-Mughnī, Vol. 7, p. 618. Abu Suud, Muhammad Muhammad Mustafa Imadi, RisālahfiJawāz Waqf al-Nuqūd,, Verified by Abu AshbalSagīr Ahmad Shagīf Pakistani, Beirut: Dār Ibn Hazm, 1st Ed., 1417 A.H., p. 41, ‘Awjan, Cash Waqf and its investment formulas, p. 5.

continuous existence of property is unacceptable due to the following reasons:

- a) Even though cash may perish when given as Waqf, something else can replace it, which is allowed in Waqf according to jurists as they said it can be replaced in cases of theft or destruction [22].
- b) It is not realistic to say cash is not beneficial to be given as Waqf because it perishes just like food and drink because cash has the power of purchase and has financial valuation of goods and services [23].
- c) Investment and growth of money ensures continuity over time, perhaps more than the duration of continuity of land and real estate. Thus, consideration is placed on its management and not the type of Waqf. Indeed, mismanagement can destroy both cash and non-cash Waqf [24].
- There is an argument that cash is meant to be a price and not for a benefit in itself. Although this statement is generally true, it is not acceptable, as cash Waqf does not mean taking away its prescribed function which is a price, but it is utilizing the price. If not for the price, it would not be given out as Waqf. That is the reason why it can be invested to earn profits which will be for the beneficiaries of a Waqf. But where it is given as a loan, it is clear that a borrower will use its price to satisfy his/her needs and then pay it back later [25].
- Furthermore, as for the argument that there was no cash Waqf in the era of the Prophet (peace be upon him) and the Caliphs, this is unacceptable. The fact that Waqf was entirely based on fixed assets in the early days of Islam is not evidence to prevent the inclusion of other items. The correct view is that Waqf is not limited to fixed assets, although it was prevalent then. Khaled ibn al-Waleed gave his shield and other equipment as Waqf and they were movable assets. His actions were approved by the Prophet (Peace by upon him). In line with this, it's important to note that cash is a type of movable asset [26].
- Finally, the jurists relied on custom to substantiate their argument. This needs to be rejected because custom varies with time and place. Thus, if time changes and people need to perform Waqf in cash, the rule changes depending on the change of custom. Thus, cash Waqf is permissible because there is no evidence of its prohibition [27].

The Best View

After careful consideration of the opinion of the two groups and their evidence and discussion, it seems that the best view is that cash Waqf is permissible for the following reasons:

- There is no provision in the Qur'an or the Sunnah regarding the ruling on cash Waqf and whether it is forbidden or allowed. The issue is based on *ijtihad*, and each group has its own evidence. Those who prohibit it rely on mental evidence and the conditions that place emphasis on the form of a contract and the fact that Waqf property can be utilized without consuming it completely. However, cash Waqf does not conflict with these two conditions as benefits are realized for the founders of a Waqf and the beneficiaries. Indeed, Waqf property will not be consumed but will remain through investment and growth [28].
- All the purposes and wisdom behind the permissibility of Waqf can be achieved through cash Waqf and even more so than Waqf of fixed assets. The most important of these purposes is to benefit a founder, beneficiaries and society. As for the benefit of a founder, it is achieved through opening the door to contribute Waqf where every individual in society will participate either a big or small amount. The rewards are ongoing even after death, as long as a Waqf project persists.
 - a) Moreover, the benefit of beneficiaries will be achieved through giving Waqf via a big amount of money, more than Waqf of fixed assets, as cash. The Waqf may provide support and assistance for those in need.
 - b) The interests of the community can also be achieved by stimulating the economy by creating jobs and employment opportunities by establishing investment projects in various fields such as agricultural, industrial and service projects [29].
- There is evidence from the Sunnah that supports the permissibility of cash Waqf. Khalid (may Allah be pleased with him) gave Waqf of his shield and other equipment and his actions were approved by the Prophet (peace and blessings of Allah upon him) when he said: "But you are unfair in asking Zakat from Khalid as he is keeping his

²² Ibn 'Abdīn, *Rad al-Muhtār* 'Alā al-Dur al-Mukhtār, Vol. 6, p. 428.

²³ Abulayl, Mahmoud Ahmaed, Sultan al-*ulama* Mohamed Abdulrahim, 2001, Investment of endowments in Islamic jurisprudence, Kuwait: Journal of Islamic Jurisprudence, No. 13, Vol. 2, p 18.

²⁴ Duniyā Shawqī Ahmad, 2001, Cash Waqf, an introduction to activate the role of the Waqf in our contemporary life, Kuwait: Journal of Islamic Jurisprudence, No. 13, Vol. 1, p 513

²⁵ Al-*hasan*, Khalifah Babikir, 2000, Investing endowments resources, Riyadh: Journal of Islamic Jurisprudence, No. 12, Vol. 1, p 85.

²⁶ Duniya, Cash Waqf, an introduction to activate the role of the Waqf in our contemporary life, No. 13, Vol. 1, p 512.

²⁷ Abu Suud, *Risālah fī Jawāz Waqf al-Nuqūd*, p.26.

²⁸ Al-Thamalī, Abdullah Muslih, 2013, Waqf al-Nuqūd, p. 11, <http://iefpedia.com/arab/?p=20103>.

²⁹ Al-Mahmadi, waqf and its rulings and types, p.163. Al-Thamalī, Waqf al-Nuqūd, p. 14.

armor for Allah's Cause (for Jihad)" and they are movable, and cash is also movable [30].

From the above argument on the permissibility of cash Waqf, we can conclude that the issuance of Waqf Sukuk and subscribing to them is allowed as this method is a new form of Waqf.

The discussion will now turn to the explanation of the ruling of trading Waqf Sukuk in the secondary market and whether or not it is permissible. The answer to this depends on the ruling of temporary Waqf, as trading of Sukuk is only an example of temporary Waqf. Jurists have two different opinions on the issue:

The first view is the view of the majority of jurists from Hanafi, Shafii and Hanbali schools who do not approve of temporary Waqf [31], due to the following reasons:

- Waqf can only be permanent because it takes away ownership. Thus, if it is temporary, its goal will not be achieved, which is why timing is not allowed, just like timing in a sale contract [32].
- The aim of Waqf is to get closer to Allah and the word itself means to take away ownership completely [33].
- Waqf is relinquishing ownership of Waqf property, but not to just anyone, and that cannot be temporary [34].

The second view is from some Maliki and Shafii schools who permit temporary Waqf because Waqf provides the benefit of Waqf property to beneficiaries. Thus, since it is permissible on a permanent basis, then it should be even more permissible on a temporary basis [35].

Discussion and selection of the best view

The reliance of those who prohibit temporary Waqf based on legal analogy (Qiyas) is based on two things; i.e. taking away ownership and the analogy with a sale. As for the former, it can be rejected, as losing the ownership of Waqf by a founder is subject to dispute between the jurists; it is permissible based on the view that ownership is not lost.

As for the analogy of Waqf with a sale i.e. that it requires perpetuation of ownership, this is also rejected because what is transferred in a sale is the real commodity. Nevertheless, what is transferred in Waqf is a benefit, which does not require a founder to own real property, but it is enough for him to own a benefit which does not require perpetuation. Their argument is based on the condition of perpetuation which is subject to disagreement between the jurists [36].

After presenting the evidence of the two opinions and discussing them, it seems to the researcher that the best view is the permissibility of temporary Waqf based on the following:

- A lack of evidence from the Qur'an and Sunnah on the prohibition of temporary Waqf, and evidence on the permissibility of Waqf in general which cannot be specified except with evidence.
- The present situation is different from that of the past, because a vast amount of wealth today is not represented by fixed assets such as buildings and agricultural land. Instead, it is represented by movable assets such as cash balances in banks, stocks, bonds, land, air and sea transport fleets, service companies and professions such as medicine, law and engineering. In fact, the owners of these movable assets are the rich people of today and they are the ones capable of giving Waqf and can carry out its tasks and achieve its objectives [37].
- Permissibility of temporary Waqf will open door to owners of fixed and movable assets who cannot perform permanent Waqf to earn rewards. It will also ensure the interests of the community and the beneficiaries of Waqf. This will allow the potential of the community to be maximized to generate benefits and services for the beneficiaries of temporary Waqf, instead of wasting the benefits [38].

³⁰ Bukhari, Sahih Al-bukhari, book of Zakah, Chapter: The Statement of Allah ﷻ {وفي سبيل الله}, hadith: 1468, p199.

³¹ Ibn al-Humām, Sharḥ Fath al-Qadīr, Vol. 6, p. 198. Ibn 'Abdīn, Rad al-Muḥtār 'Alā al-Dur al-Mukhtār, Vol. 6, p. 420. Al-Muḥīṭī, Takmilat al-Majmū', Vol. 16, p. 259.

³² Ibn al-Humām, Sharḥ Fath al-Qadīr, Vol. 6, p. 198.

³³ Ibid. p.198.

³⁴ Ibid. p.198.

³⁵ Al-Kharshī, Ḥāshiyat al-Kharshī, Vol. 7, p. 385. Huza'i, Majidah Mahmoud, Temporary Waqf, Research on Comparative Jurisprudence, presented at 2nd Conference on Waqf on Future Forms and vision of Waqf, Makkah, UmmulQura University, 1427 A.H., p. 13

³⁶ Huza'i, Temporary Waqf, Research on Comparative Jurisprudence, p.14.

³⁷ Omar, Muhammad Abdul Halim, Methods of Islamic Financing of Small Projects, Unpublished, p. 9 <http://www.hrdiscussion.com/hr9082.html>.

³⁸ Huza'i, Temporary Waqf, p. 16, Omar, Methods of Islamic Financing of Small Projects, p. 10.

Thus, if we accept the permissibility of temporary Waqf, we can conclude that from a Shari'ah perspective, it is permitted to trade Sukuk in a secondary market, because the owner of a Sak (Waqif) sells his Sak to a buyer, he ends the duration of a Waqf and obtains the property back. The buyer of a Sak becomes the new founder (Waqif) after buying a Sak. The money a buyer pays for the price of a Sak will become the Waqf fund. From a practical aspect, it is up to economy and financial market specialists to clarify the possibility of trading Waqf Sukuk in a secondary market.

Comparison between Waqf Sukuk in the present Study and Sukuk applied in Waqf Institutions

There have been several studies on Waqf Sukuk, which include studies by Hattab, Rabi'ah, Khairun Nisa, and Muhammad Khalid. There are also applications for Waqf Sukuk to finance Waqf projects such as Sukuk issued to finance a ZamZam tower on the land of King Abdul Aziz for the benefit of two Holy Mosques [39] and Musharaka Sukuk to finance the Bancolin Mosque project in Singapore [40]. In fact, these Sukuk are not Waqf Sukuk, but are investment Sukuk issued on the basis of exchanged based contracts such as Ijara, Mudarabah, and Musharaka. Thus, calling them Waqf Sukuk is not appropriate, but these Sukuk do not represent Waqf funds. Instead, they represent investment funds because the goal of a subscriber of buying a Sak is profit. Nonetheless, Waqf Sukuk in the present study are unique new innovative tools and one of the most important financing tools for Waqf projects. They represent Waqf funds and are issued on the basis of Waqf contracts, where the required funds for the establishment of a project would be divided into equal parts in the form of Sukuk and then presented for subscription. The subscribers are underwriters and the proceeds of a subscription is a Waqf fund. This type of Sukuk has not been implemented by Waqf institutions. However, there are strong efforts to apply it by some Waqf institutions such as the New Zealand Waqf Foundation. Workshops and panel discussions were also held to study it and the extent of its applicability in reality. The comparison between these two types of Waqf can be summarized as follows:

First: Similarities

- The applied Sukuk and the proposed Sukuk in this study are documents of equal value.
- Both shall be based on a contract that is in accordance with the provisions of Shari'ah law.
- Both are issued by Waqf institutions or their representatives.
- Both finance Waqf projects.

Second: Differences

The differences are as follows:

Sukuk Applied in Sukuk Institutions	Proposed Waqf Sukuk in this Study
1- It represents the invested funds	1- It represents the Waqf funds
2- Based on exchange-based contracts such as Ijarah	2- Based on Waqf contracts
3- Traded in the secondary market	3- Some are tradable in the secondary market and some are non-tradable.
4- Holder of a Sak is an investor	4- Holder of a Sak is a founder (Waqif)
5- Subscriber's goal is profit	5- Subscriber's goal is reward
6- It has a specific period of issuance and after its expiry, it is recoverable.	6- Some do not have a specific period of issuance and it is non-refundable.
7- Is a method of investment	7- Is a method of Waqf
8- The holder of a Sak must pay Zakat	8- The holder of a Sak does not have to pay Zakat

CONCLUSION

In conclusion, the study achieved several results. The most important result is that the controlled definition of Waqf Sukuk are written documents of equal value issued by reputable institutions or their representatives, some of which are tradable and recoverable, representing Waqf funds and based on Waqf contracts. Accordingly, the best view is one that allows cash Waqf. Therefore, it can be said that the issuance of Waqf Sukuk is permissible because it is a method of applying cash Waqf. Based on this opinion, it is permissible to trade Waqf Sukuk in a secondary market because it is a form of temporary Waqf. Finally, the possibility of practicing Waqf Sukuk to finance Waqf projects is permissible in Shariah. However, its application on the ground is to be left to financial market specialists and economists.

³⁹ King Saud University Endowment, 2009, Endowment models, A specialized journal issued by King Saud University Endowment, No.1, p.22.

⁴⁰Musari, Khairunnisa, (2016), Waqf-Sukuk, Enhancing the Islamic Finance for Economic Sustainability in Higher Education Institutions, a paper presented at the 2nd World Islamic University Leaders Summit (WICULS2016), 14-15 November, Neegri Sembilan: Universty Sains Malaysia (USIM) and the Higher Education Leadership Academic (AKEPT), p6.