CHAPTER 30

Analysis of *Sukuk* Al-*Waqf* Structure for Financing BOT-Based Development Programs

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Introduction

Sukuk, also known as the Islamic Bond, is a certificate of ownership of a tangible asset or use of a project, investment or service (AAOIFI 2010). The use of *Sukuk* funding began in the traditional Islamic era when the paper was used as a title document. *Sukuk* financing has a huge effect on the funding of social and economic activities as well as on the self-benefits of its organization. The growth of Islamic finance contributes to the development of new financial instruments. *Waqf* is one of the organizations that secure the benefits of this latest financing instruments by

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M. M. Billah (eds.), *Islamic Wealth and the SDGs*,
https://doi.org/10.1007/978-3-030-65313-2_30

incorporating *Waqf* assets into *Sukuk* financing. Currently, there is an increasing number of *Waqf* projects financed by *Sukuk*. For example, the ZamZam tower *Waqf* project in Mecca financed by *Sukuk* al-Intifa'a worth US$390 million (Kholid et al. 2008); the *Waqf* property development by the Majlis Ugama Islam Singapura (MUIS) financed using Musharakah *Sukuk* worth SGD 35 million (Nagaoka 2016); and the recent *Waqf*-linked *Sukuk* for social investment developed in Indonesia (Dea 2019).

The Islamic ethical wealth industry has been innovative and continues to develop various structures of *Waqf Sukuk*. The main structures prevalent in the market include the equity structure [Mudharabah and Musharakah] such as the Singapore MUIS Musharakah *Sukuk*, the Mecca Usufruct *Sukuk* or *Sukuk* al-Intifa'a, the Indonesian *Waqf*-linked *Sukuk* for social investment. Most of these *Waqf Sukuk* structures have adopted financing based on the principle of Build Operate Transfer (BOT), the focus of the present chapter. In this arrangement, *Waqf* institution moves the *Waqf* property to the financial institution in a limited number of years to build it, operate it to recover its cost plus profit and return the complete project back to the *Waqf* institution. The structure may include several parts and contracts, for example, it may be the *Waqf* institution that leases the property to the second party and the second party that issues *Sukuk* to finance the property. Initially, there were Shari'ah issues raised regarding *Waqf Sukuk* financing based on the principle of BOT. For example, the objective of *Waqf*'s property is to provide perpetual benefits to society and transferring or leasing such *Waqf*'s property leads to holding up the benefits from society. Nevertheless, Kahf (1999) argues that pledging or leasing of such property is permissible if the property and its usufruct or income return to the beneficiary after a certain period so that the beneficiary continues to receive such benefits perpetually.

Overview of *Waqf*

Waqf is an Arabic word that means a prohibition, containment, or retention. In Islam, *Waqf* refers to the activities of holding and saving certain property for the benefit of benevolence. The property shall not be disposed of or used for any purpose other than the intended purpose (Kahf 1992). *Waqf* is suitable for the development of a country in a variety of areas, such as religious, socioeconomic, and cultural development. Throughout Islamic history, *Waqf* programs have been successful in providing social goods such as education and health; public goods that include roads, bridges, utilities (water and sanitation); religious services that include building and maintenance of mosques and, graveyards; civil services in terms of helping the poor and the needy; creating employment in sectors such as agricultural and other industrial sectors (Sadeq 2002). *Waqf* projects expanded during the Ummayad and Abbasid eras to cover almost all social services beyond building of mosques, houses, and wells. Meanwhile during the Ottoman Caliphate, the entire health, education, and welfare budget was funded from *Waqf* (Çizakça 2000). Furthermore, the estimated population of 700,000, living in Istanbul were fed on daily basis by charitable complexes established under the *Waqf* system (Barkan and Ayyerdi 1970).

Waqf also played significant role in the development of Islamic cities. There were constructions and development of bakeries, grinders, shops, market places, religious, cultural and social institutions, libraries, hospitals, bath (*hamam*), roads, water and sanitation, among others. Prominent cities developed by *Waqf* were Fustat and Cairo in Egypt and Baghdad (Barkan and Ayverdi 1970) and other Islamic cities such as Istanbul, Bursa, and Edirne in Turkey were entirely financed from *Waqf* (Öztürk, 1995). Several land projects were also funded from *Waqf*. The economically productive land in the Ottoman Caliphate and later three-quarter of arable land in modern Turkey was controlled by *Waqf* institutions (Saduman and Aysun 2009). Beside land properties, Cash *Waqf* was also used for developing *Waqf* projects. According to (Çizakça 2000), healthcare, education, and welfare activities during the Ottoman Caliphate were funded from cash *Waqf*. To conclude on the role of *Waqf* toward the socioeconomic development of Muslim societies, Yediyildiz (1996) states:

Thanks to the *Waqfs* that flourished during the Ottoman Chaliphate, a person would have been born in a *Waqf* house, sleep in a *Waqf* cradle, eat and drink from *Waqf* properties, read *Waqf* books, taught in a *Waqf* school, received his salary from a *Waqf* administration, and when he dies, he is placed in a *Waqf* coffin and buried in a *Waqf* cemetery. In short, it was possible to meet all one's needs through goods and services mobilized by *Waqf* institution.

Overview of *Sukuk*

Sukuk in the plural “Sakk” means the certificate or document of the act. In financial terms, *Sukuk* is the security that is backed by the asset (Wijnbergen and Zaheer 2013)*Sukuk*, also known as the Islamic Bond, is a certificate of ownership of a tangible asset or use of a project, investment, or service (AAOIFI 2010). Based on the International Islamic Financial Market (IIFM) *Sukuk* Annual Report 2019, global *Sukuk* issuances during the year 2018 stood at USD 123.2 billion, which is a modest increase of 5.5% over 2017 primary market *Sukuk* issuances of USD 116.7 billion. The report also revealed that 90.44% of the USD 443.78 billion *Sukuk* outstanding globally are issued from few well-established markets namely Malaysia, Saudi Arabia, UAE, Indonesia, and Bahrain while other countries like Turkey, Pakistan, Qatar, Oman, and regions such as Africa in particular are likely to gradually increase their market share in the coming years.

The origin and significance of *Sukuk* are shown from the traditional Islamic era (700–1300AD) in which financial and commercial activities, such as trade, were carried out using paper as a means of recognition of the title (Karan et al. 2016). Those papers were issued following Surah Al-Baqarah (2:282) recommending the need to write down the contract. *Sukuk* financing has a significant impact on the financing of social and economic activities as well as on the self-benefits of its structure (Abdulkareem et al. 2019; Fathurahman and Fitriati 2013; Zolfaghari 2017).

The difference between the Islamic Bond and the conventional bond is that the *Sukuk* is the title of the asset and the conventional bond is the title of the debt to enable it to be traded on the secondary market. For *Sukuk* to be negotiable on the secondary market, interest on the actual asset should be borne more than liabilities or obligations. Some scholars suggest that the *Sukuk* asset structure can take up to 33% of the face value, while others propose that 51 and 70% of the underlying asset be tangible assets (Latham & Watkins 2014). *Sukuk* is issued by the originator and purchased by investors structured in different contacts that can be one or multiple contacts in compliance of Shari’ah which may include the sale and repurchase, lease, and partnership (Lewandowski et al. 2015). Although *Sukuk* has largely been issued by the Islamic Banking and finance industry, there are increasing issuance by Islamic social finance institutions, especially *Waqf*.

Before the evolution of *Waqf Sukuk*, there were five traditional models of financing of *Waqf* property. As explained by Kahf (1998), *Waqf* was financed by increasing the *Waqf* principle by adding new *Waqf*, Istibdal with higher usufructuary assets, borrowing on *Waqf* and repaying *Waqf* net revenue, al-Hukr and lease with dual payment. Permission to use the *Waqf* property to issue *Sukuk* should be based on the consensus of scholars on the intent. For example, if the *Waqf* institution issues Musharakah *Sukuk*, it is confusing, because if it is to be real Musharakah, it means that the title of the *Waqf* property will be in a partnership that is contrary to the nature of the *Waqf* (Mohammad Tahir Sabit 2005). The general rule of Shari'ah does not permit the property of *Waqf* to be sold, disposed, gifted, inherited, or used differently from what is decreed by the founder of the *Waqf* (Kahf 2016). However, upon the approval of the court, when it has determined that the *Waqf* property is not productive, it may be exchanged with a productive one in the process known as Istibdal (Laldin et al. 2013).

Waqf Sukuk is the integration of a contract based on *Sukuk* and *Waqf*. In this contract, *Waqf* institutions issue to investors commercial certificate of equal monetary value (Ramli 2014). The structure of *Waqf Sukuk* is not different from that of *Sukuk* for other investments, except for the objectives of their issuance. The objectives of the *Waqf Sukuk* are motivated by a desire for eternal life and the blessings of Allah to serve the public interest, while in the case of *Sukuk* for other investments, an investor intend to generate profits from the project (Umar and Aliyu 2019). From the Shari'ah perspective, the objectives of the *Waqf* are largely charitable rather than commercial. Whenever there is a profit, the profit is exempt from tax and should be channeled for the sake of public interest (Ismal et al. 2015). Below is a case of *Waqf Sukuk*.

Sukuk *Al-Musharakah: Majlis Ugama Islam Singapura (MUIS)*

The Majlis Ugama Islam Singapura (MUIS) is the institution in Singapore which is responsible for the religious affair of Muslim community such as the halal certification, managing zakah, *Waqf*, hajj, mosques, and madrasah. For *Waqf*, MUIS is responsible for the management of *Waqf* funds, distribution of Waqf income, upgrading of *Waqf* properties, and promoting the creation of new waqf. MUIS has come up with several innovative ways to develop *Waqf* assets and enhance their income in a Shari'ah-compliant manner. MUIS issued *Sukuk* al-Musharakah based in two tranches. The first portion was SDG25 million for the purchase of a building at 11 Beach Road and the second tranche was the raising of USD35 million for the development project at Bencoolen Street.

Musharakah Sukuk *Structure for 11 Beach Road*

This *Sukuk* was issued in 2001 on the basis of Musharakah or partnership between MUIS and the investor for the purchase and renovation of a 6-storey commercial property. The capitalization was made through SPV1 (Fusion Pte Ltd) which raised SGD 34 million. Out of this, SGD 9 million was funded from *Waqf* Fund obtained from the disposal of 43 *Waqf* properties that were unproductive. The fund was merged into the project. The remaining SGD25 million was funded by the investors. The profit-sharing ratio was 26.5% for the *Waqf* institution and 73.5% for the investors (Nagaoka 2016). Fusion Pte Ltd rented the property to SPV2 (Freshmill Pte Ltd) which is a subsidiary and fully owned by MUIS. Freshmill promised to manage the property and guarantee the rental income of SDG 1,190,000 p.a. paid semi-annually up to 2006 (Abdullah and Saiti 2016). This means that the *Sukuk* investors received SGD 875,000 and MUIS received SGD 315,000 per annum.

Musharakah Sukuk *Structure for Bencoolen Street*

The area in Bencoolen Street was very potential for commercial activities. MUIS decided to develop the land known as Lot 19 Town Division owned by the merchant named Shaikh Ali B Omar Aljunied. The project was 104 apartments, 6 storeys, and mosque. The estimated cost was SDG 39.7 million (Hasan 2014). Warees contributed SDG1,000 and *Waqf* Fund amounted to SGD 4,719,000 (comprising SGD 4,200,000 in property and SGD 519,000 in cash) both owned by MUIS and *Sukuk* Musharakah was issued by MUIS to raise SGD 35 million from *Sukuk* Investors (Abdullah and Saiti 2016). The profit-sharing ratio between MUIS and *Sukuk* investors was 11.88 and 88.12%, respectively. A leasing agreement followed between the Special Purpose Vehicle (SPV) and Ascott International Pte. Ltd with the agreement of 10 years. After the renovation of the land, the annual profit increased to $19,000 per year to gross income level of $5.3 million in 2006. The *Waqf* institution took possession of the commercial unit and mosque after completion. MUIS retained the income generated from the mosque and the commercial unit equivalent to 11.88%, and part of the apartment was vested to Warees.

Both financings used *Sukuk* al-Musharakah. This structure is based on the share of ownership of the asset. The Hanbali school define Musharakah as sharing the rights to collect benefits from or to deal in the properties of the partnership (Al-Zuhayli 2001). From this definition, it is obvious that the structure of the financing might be suitable but may not be suitable for BOT-based structure. This is because the BOT based contract gives the right to both parties on the property owned. Therefore, they will share the ownership of the property. Such arrangement contradicts the conditions of *Waqf* property which require the asset not to be owned, sold, transferred, or inherited (Kahf 2016). There are some arguments that the beneficiaries of *Waqf* property are entitled to receive continuous benefits from the property all the time when the property exists. Putting the property under the *Sukuk* financing will hold the benefit because during this time the beneficiaries will be cut off to receive any benefit. Hasan (2014) argued that during the development of *Waqf* property if the benefit will be put on hold then the *Waqf* institution should provide the means that the beneficiaries will continue receiving their benefits. Kahf (1999) argues that scholars consider the difference between the current *Waqf* institution and the Charitable Institution (Sadaqa). If *Waqf* pledges the income or usufruct of the asset for a specific time and after that, the asset, usufruct, and income return back to the owners then *Sukuk* al Musharakah will be suitable for financing *Waqf* property, though it may not be suitable for BOT-based financing.

Prior to a discussion on *Waqf Sukuk* for financing BOT-based *Waqf* programs or projects, it is desirable to facilitate the discussion by providing an overview of BOT. Build Operate Transfer (BOT) is the process of transferring ownership of the project from the government or project company to the private sector to return the project to the government or project company upon maturity or specified period (Markom et al. 2012). This is typical of most private sector investment in public infrastructure. The project is transferred to the private sector that builds, operates, and transfers it to the project company (Ozdoganm and Birgonul 2010). The advantage of BOT is that the project company reduces risk and does not incur liabilities in the balance sheet beyond the cash flow of the project (Salman et al. 2007). Islamic financing in BOT is a new type of financing based on the Shari'ah and used to fulfill the need for developing modern infrastructure (Markom et al. 2012). The contracts used to finance BOT are the same as those common in Muamalat, such as Mudarabah, Murabahah, BBA, Ijara, Musharakah, Intifa, Hybrid *Sukuk*

(Hasan 2014; Lahsen 2018). Below is a case of Ijarah *Sukuk* used to finance BOT-based project.

Sukuk *Al-Ijarah Lebuhraya Kemuning-Shah Alam (LKSA)*

The Lebuhraya Kemuning–Shah Alam (LKSA), is 28.7 km (17.8 mi) highway in Malaysia which is also known as Bulatan Darul Ehsan Interchange. The construction began in 2007 and took 24 months to construct. It was completed in the middle of 2010. The expressway was opened to traffic on May 18, 2010. The financing was structured using *Sukuk Ijarah* based on BOT project which utilizes the Islamic financing principles to form the partnership between the originator and the investor until the completion and transfer of the project back to the originator. While operating on behalf of the originator, Projek Lintasan Shah Alam Sdn. Bhd. (PLSA) invited other investors, *Sukuk Ijarah* holders (the lessors) to participate in the construction and development of the Project (Markom et al. 2012). The project succeeded under the Ijarah *Sukuk* contract structure. The lessee pays rent and uses the part of proceeds to cover his cost.

Waqf has adopted the BOT framework for financing its projects through the use of *Sukuk* financing and benefits from risk, cost, and opportunity (*Revital. Waqf Socio-Economic Dev. Vol. I* 2019).

Waqf Sukuk Structure and BOT-Based Projects

The development of Islamic finance fosters the development of new financing instruments. In the last two decade *Sukuk* has become an important financing instrument and is structured in different ways. *Sukuk* for financing BOT-based project has become among the viable models because it helps to reduce the risk and uncertainty of the developer. *Waqf* institutions are among those institutions which have adopted this model to finance what is called *Waqf Sukuk* for financing BOT-based projects. This is in addition to other non-BOT-based projects that are financed by *Waqf Sukuk* as discussed previously. Therefore, there are currently several projects financed BOT-based and non-BOT projects that are financed by *Waqf Sukuk*. Below are some selected cases.

Sukuk *Al-Intifa'a: ZamZam Tower*

Sukuk al-Intifa'a is a document of ownership of usufructs from leased property or asset over time (Rafay et al. 2017). *Sukuk* al-Intifa'a is not much different from the Ijarah *Sukuk*. It is an extension of Ijarah *Sukuk* based on time-sharing on segment ownership of leased property. In Saudia Arabia, this *Sukuk* was used instead of normal Ijarah *Sukuk* due to the reason that the law of Saudia Arabia does not allow foreigners to own real estate in the holy cities of Makkah and Madinah (Lahsasna et al. 2018). The *Sukuk* was issued to build the apartment and the high tower named ZamZam Tower on the land of King Abdul Aziz *Waqf* (KAAW) near to the Masjid Al-Haram in Makkah, Saudi Arabia.

The *Sukuk* was structured under the forward lease contract *(Ijarah Mawsufah fi dhimma)* (Hasan 2014). The *Waqf* land of KAAW was leased to Binladin Group under the concept of BOT. The Binladin Group was required to build the apartments shops and tower and receive payment from leasing. The Binladin Group then enter into another contract with Munshaat Real Estate Projects KSC from Kuwait. The Munshaat Real Estate Projects KSC required to construct such project and operate it and transfer back to Binladin Group after 28 years. To be able to finance this project, Munshaat Real Estate Projects KSC issued *Sukuk* al-Intifa'a with the value of US$390 million for 24 years. The *Sukuk* was time-sharing based and the usufruct was divided into weekly basis (Kholid et al. 2008). The *Sukuk* holder was given the right to sell, inherit, grant, and invest the *Sukuk* (Lahsasna et al. 2018).The *Sukuk* was structured as follows:

- KAAW leased the land to Binladin Group for 28 years
- Binladin Group subleased the land to Munshaat Real Estate Projects KSC
- Munshaat Real Estate Projects KSC issued *Sukuk* al-Intifa'a for 24 years valued at US$390 million
- The *Sukuk* holder bought the usufruct of the asset based on time-sharing and paid the forward lease rental which paid to Munshaat Real Estate Projects KSC to be used for the construction cost
- Munshaat Real Estate Projects KSC paid the lease of the land to KAAW.
- Binladin Group transferred the project to KAAW after 28 years.

The project of the seven towers with the highest tower of Royal Clock that stood 601 m above the ground was started in 2004 and completed in 2012. The project is helpful for the tourists and those who are visiting the holy cities of Makkah and Madinah. The financing shows success and there is no Shari'ah contradiction between the objectives of the *Waqf* institution, and the investors. The contract structured on *Sukuk* al-Intifa'a allows sharing of ownership of usufruct, there are no sales of the actual asset. Among conditions of *Waqf* property is the prohibition of selling (Markom et al. 2012). *Sukuk* al-Intifa'a becomes suitable for *Waqf* financing based on BOT, although another reason for the success of using this type of *Sukuk* is the fact that Saudia Arabia do not allow ownership of land to the foreigners (Hasan 2014).

Cash *Waqf* Linked *Sukuk* Structure

In addition to *Sukuk* al-Intifa'a, which has suitable structure for financing *Waqf* BOT-based project, another *Sukuk* structure that recently evolved looks promising. The Cash *Waqf* linked *Sukuk*, which is developed in Indonesia, is a form of social investment. In this structure, endowments of money are collected by the *Waqf* Board as Nazhir and deposited to the bank after consultation from the Shari'ah advisory board (Dea 2019). The structure of *Waqf*-linked *Sukuk* is similar to project-based *Sukuk* which aimed at the real development of society. This *Sukuk* is utilized to enhance interaction between the real sectors and financial sectors (Ismal et al. 2015). The structure of this *Sukuk* is the idea of Indonesia government. It encourages economic growth reflected in GDP with emphasis on the real sector. The issuance of *Sukuk* is developed from the *Waqf* asset whether it is productive or non-productive. The asset can be used for commercial purpose, i.e., developing the asset or used as the underlying asset for originating *Sukuk*. The government uses the results of the issuance of the *Sukuk* to finance the state budget, including to finance the construction of public service such as infrastructure development on the *Waqf* land, educational institutions, and helping projects relating to the *Waqf* objective. The structure involves various parties including government sector, non-government sectors and investors. The following are the salient steps in the structure, which is also shown in Fig. 30.1.

- The National *Waqf* board (3) and Ministry of finance (2) are responsible for identifying the infrastructure that can be developed

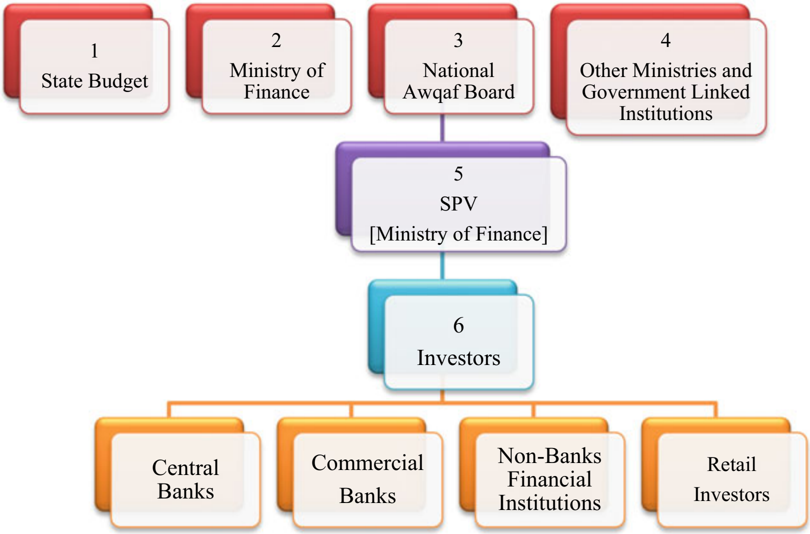

Fig. 30.1 Cash *Waqf* linked *Sukuk* structure (*Source* Authors' illustration)

using *Waqf* asset. In cooperation with the ministry of finance, other ministries (4) identify projects that are related to the *Waqf* asset that conform to their development targets.

- The Ministry of Finance establishes the SPV (5) which fulfills the Shari'ah-compliant requirement necessary for the issuance of the *Sukuk*.
- The investors (6) which comprise the central bank, commercial banks, non-bank financial institutions (NBFIs), and retail investors are attracted to invest in the Cash *Waqf Sukuk*.

This structure is proposed in Indonesia, to combine 3 sectors: Islamic capital market, National Awqaf board, and government sectors. Ismal et al. (2015) explained how the different contracting parties can benefit from the *Sukuk* structure shown in Fig. 30.1. Investors are expected to benefit from the returns generated by the projects the *Sukuk* is funding. Meanwhile the Cash *Waqf* linked *Sukuk* are deemed as liquid instruments, because of their sovereign class, for the banks, and the central bank may use the *Sukuk* as a monetary tool or retrench the assets through securitization process using the *Sukuk* inventory as the underlying assets. Furthermore, Islamic banks and non-bank financial institutions would use the acquired *Sukuk* for liquidity management purposes (e.g., as a secondary reserve requirement) in the inter-Islamic bank money market or with other financial institutions for the same liquidity reasons (Ismal et al. 2015).The structure seems interesting and sets direction for more innovations in *Waqf Sukuk*. The impact and benefits are diversified and the structure is incorporated into the development strategies of various ministries in the government. The investor base is also diversified.

Notwithstanding these merits of the structure, few pertinent questions arise to the extent of *Waqf* objectives that this structure has achieved. Secondly, what are the intentions or motives of the different contracting parties and how are they related to *Waqf*? For example as explained by Ismal et al. (2015) the central bank will use the *Sukuk* as policy instrument, and the commercial banks will use them for liquidity management. How then do these objectives relate to the objectives of *Waqf*? Thirdly, the inclusion of SPV in the *Sukuk* structure shows that the over-riding concern is investment. There is therefore a need for further research or at least explanation to respond to some of these queries. Otherwise it is a misnormer to call it *Waqf Sukuk* when the structure is still predominantly the conventional *Sukuk* structure. The main difference is that such *Sukuk* is used for the purpose of developing *Waqf* properties. In that case, any other Shari'ah compliant *Sukuk* can fulfill the requirement without the need of calling it *Waqf Sukuk*. Most of the current structure used for *Waqf* project are still the normal *Sukuk* and according to Chik (2012), there are six fundamentals of *Sukuk* structure.

- Funds raised must be used for Shari'ah-compliant (halal) activities.
- Fundraised may be used to finance needed tangible assets.
- Income received by *Sukuk* holders (investors) must be derived from the cash flows generated by the underlying.
- *Sukuk* holders have a right to the ownership of the underlying asset and its cash flows.
- Clear and transparent specification of rights and obligations of all parties to the transaction, the originator (customer) and *Sukuk* holders.
- No fixity in returns.

Conclusion

Waqf institutions have shown good track records in history in financing *Waqf* related projects. These projects covered various sectors related to religious, social and economic development of Muslim societies. The projects included mosques, graveyards, educational institutions, libraries, health care centers, hospitals, roads, parks, shops and animal and bird feeding places, among others. The modes of financing evolved over time with the needs of the society. In the past these modes included direct financing, leasing, and Istibdal. Most projects funded through *Waqf* showed successful completion without facing the problem of deficiency in fund. This was made possible due to generous contributions from the public who clearly understood that objectives of the *Waqf* institution are to serve public interests rather than make profits.

Today, the modes of financing *Waqf* projects include *Waqf Sukuk*. The various structures of *Waqf Sukuk* are used to fund several construction projects, infrastructures, and development projects. They are used in both the old and new projects. *Waqf Sukuk* structures vary in terms of contracts such as Mudarabah, Musharakah, Ijarah, and Intifa'a. They also vary in relation to BOT-based financing and non-BOT-based. A critical review of the literature shows that most of these *Waqf Sukuk* structures are basically the normal conventional *Sukuk* structures that are also used to finance other projects that are not related to *Waqf*. Yet some of them vary to the extent to which they achieve *Waqf* objectives. For example, the *Sukuk* al-Itifa'a used to fund the ZamZam tower is closer to the objectives of *Waqf* in terms of fulfilling the requirement of ownership. On the other hand, the structure of the Cash *Waqf* linked *Sukuk* introduced in Indonesia seem have larger socioeconomic benefits, which are in line with *Waqf* objectives, yet there are also over-riding commercial objectives which makes the intentions of the contracting parties ambiqious.

The Way Forward for New *Waqf Sukuk* Structure

Integrating the structure of *Sukuk* and the objective of *Waqf*, the existing structure which is also used to finance other projects seems to be successful in the objectives of *Waqf* institution. Based on the discussion above, it is obvious that not all *Sukuk* structures are suitable for *Waqf* financing. For example, the Mudarabah or Musharakah *Sukuk* used to finance *Waqf* projects have issues related to fulfilling the conditions of the ownership of the *Waqf* properties. Mudarabah *Sukuk* requires rab al-Maal and Mudarib to agree on sharing profit (Al-Zuhayli 2001). In contrast to such arrangement, the requirement of the *Waqf* property is to contribute social good for the welfare of the society and not for making a profit. Similarly, Musharakah *Sukuk* requires the contracting parties to contribute capital, have control over the capital and property under the partnership and share profit and loss (Saleem 2013). But the Ownership of *Waqf* property is limited to the Awqaf institution and can not be for sale, disposal, gift, inheritance or used differently as decreed by the founder of the *Waqf* (Kahf 2016). So this also makes the Musharakah *Sukuk* not ideal for financing *Waqf* projects.

Sukuk al-Intifa'a used to finance the ZamZam Tower project seems to be suitable in financing *Waqf* projects. The financing shows success and there is no Shari'ah contradiction between the objectives of the *Waqf* institution and the investors. The structure allows sharing of ownership of usufruct, there are no sales of the actual asset. Among conditions of *Waqf* property is the prohibition of selling (Markom et al. 2012). Meanwhile, as discussed earlier, the structure of the Cash *Waqf* linked *Sukuk* have larger socioeconomic benefits, which are in line with *Waqf* objectives, were it not for the over-riding commercial objectives the structure embodies.

What is the way forward? One interesting proposition that could drastically change the structure and align the intention of the investors to the objectives of *Waqf* is if they forego their profit portion in the project, and surrender it as charity for social good because *Waqf* is not a profit-making venture. As a start, it may be a good idea to integrate the structure of *Sukuk* al-Intifa'a with the structure of Cash *Waqf* linked *Sukuk*. The new *Sukuk* could still use the various government ministries in their structure. The originator and the investors will share the ownership of usufruct of the projects. There will not be the sharing of the actual asset. This will ensure the true objective of Awqaf properties to maintain the ownership of the actual asset. Therefore, the main components of the structure would consist of the originator, the SPV, the contracts and the investors, as follows:

- **Originator**: can comprise various government ministries and *Waqf* board who would identify the *Waqf* assets to be developed.
- **SPV**: can be determined and appointed from the ministries [preferably Ministry of Finance] or other efficient external body. The SPV would be responsible for issuing the *Sukuk* and mobilizing the funds

required for the project. Otherwise a trustee can be appointed for the task of managing the fund.

- **Contracts**: the underlying contracts will include Ijarah, al-Intifa'a which will enable the parties to share the usufruct of the project on a time basis, and Sadaqah for the investors to forego a portion of their profit for the sake of *Waqf*
- **Investors**: This will comprise mainly investors who fully understand the objectives of *Waqf*. The investors would use the usufruct or sublease of the asset, and surrender their profit as Sadaqah.

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