A Scientific Definition of Distributive Justice within Waqf Context

N. A. Ismail¹, I. Omar ¹,²* and K. S. Jamaludin¹

¹Centre for Graduate Studies, Universiti Tun Hussein Onn Malaysia, 86400 Parit Raja, Batu Pahat, Johor, Malaysia 
*Email: ps@uthm.edu.my
Phone: +607-453 7757; Fax: +607-453 6111

²Faculty of Technology Management & Business, Universiti Tun Hussein Onn Malaysia, 86400 Parit Raja, Batu Pahat, Johor, Malaysia
*Email: ismailo@uthm.gov.my
Phone: +607-453 3806; Fax: +607-453 3613

ABSTRACT

Waqf can be a permanent protection instrument for ummah as it promotes income distribution. However, justice has been a critical issue in identifying waqf beneficiaries even most recipients had been stipulated in the waqf deed. In addition, since waqf ventures into property, several risk and pressures due to the market volatility need to be considered in exercising waqf income distribution. Thus, how should waqf distributive justice be defined? This paper offers an insight into proposed definitions of distributive justice within waqf context. Using semantic analysis, explore an insight on how justice being achieve in waqf context? Several series of the interviews with officers that represent State Islamic Religious Councils in Malaysia had been conducted, thus this paper concluded there are 4 strategically subjects of waqf income recipients portfolio to portray waqf distributive justice definition; Principle, Productive, Perseverance and Progressive. Hence, justice being achieved in waqf when its” ongoing charity” can naturally sustain to accommodate the society’s’ need.

Keywords: Waqf; Distributive Justice; Sustainable

INTRODUCTION

Waqf is an amazing philanthropic institution in Islam that had successfully build up Muslim civilizations for hundreds of years. Islahi,(1996) noted waqf is greater compared to other voluntary endeavour in Islam since its objectives are controlling and maintaining the assets pledged from being damaged or lost and channelling the benefits of the asset to the beneficiaries. Most scholars uphold three main characteristics of waqf; Perpetuity, Inalienability and Irrevocability. Mohammad and Mar Iman (2006) which brings property as an important asset class in waqf institution. Indeed, most definitions of waqf have reflected the property per se (Hasan, 2008). Yayasan Waqaf Malaysia (2016) reported although only 11.34% of waqf land had been improved, property is dominating
81.35% from the total value of waqf asset worth RM951.84 million. Holding and bearing a great number of waqf property is not so profitable. In fact, it grasps with a different form of costly challenges and risks for each of its life cycle (Omar et al., 2016).

On the other hand, justice is a common theme which dictates the traditions of law and accepted principles. In Islamic guideline’s justice means placing something in its rightful place (Abdullah, M. and Nadvi, 2011; Khalid Ismail, n.d.) Fleischer (2014) claimed philanthropists are likely to ignore justice as their emphasize is on enhancing efficiency and pluralism production in distribution. Hence, waqf are also smeared with justice issues. Kuran, (2012) claimed there was injustice existing in waqf which had finally become a reason why waqf are being unproductive and stagnant. Anderson (1952) revealed, most of the waqf revenues was distributed among the descendants had been abused and caused misappropriation of waqf. The issue is if justice is absent in waqf, how could waqf had been outstanding for several decades? Thus, this article explores the answers on how distributive justice applies in waqf context.

LITERATURE REVIEW

Çizakça, (2000) emphasizes waqf mean “to devote own’s property as a perpetual trust to some religious or charitable service under specific conditions by separating out his possession eternally. Waqf is effective and binding as soon as the declaration was made by the endower (Ambrose, Aslam, & Hanafi, 2015; Iman & Mohammad, 2014; I. Omar, 2015) There is clear a set of Islamic jurisprudential rules and laws that govern and regulate the terms and conditions of a valid Waqf, especially those that facilitate in accomplishing the distribution aims and functions. The distribution measures underlies four conditions or qualifying criterions :endower, beneficiaries, subject matter of Waqf and deeds/agreement of waqf (Ibrahim & Ibrahim, 2013; Zuhayli, 1997). Abu Yusuf noted a dedication to any object of utility is affected by the qawl of the endower as mentioned in the legal maxim “the intention of the endower is parallel as Islamic law”. It shows that the endower has the right to determine the direction of the waqf benefits distribution, to be either general waqf or specific waqf. The wakif also has the right to appoint the person or authority to administer the waqf assets. Sighah or endower’s pronounce when surrendering the assets for waqf purposes. It is one of the main components to ensure waqf is valid (Al-Sharbini, 1994). It also plays an important part as perpetuality determinant (Zahra, 1971). This waqf deeds specifies several distributions details such as waqf income uses and beneficiaries, the priorities of spending and also the administrators of the property including his power (Dallal, 2004).

Justice is one of the fundamental values of humanity. Even in the Quran justice is being written repeatedly 53 times (Abdul, 1981). (Ngaisah, 2015) analyzed the two terms of the Quran semantically and found that weltanschauung from the word al-adl not only involves a human relationship but that it is evidence of the existence of faith, piety and submission to Allah. Whereas one of the most famous American philosophers to focus on the topic of distributive justice was John Rawls(1921-2002) (Miller, 2018). However the Rawlsian theory of distribution does not always work properly as there are arguments between perceived the maximum satisfaction from utilitarian as well as effective
distribution by welfarism (Arneson, 2008). In waqf context, the justice definition from Islamic perspective is more applicable; act something in their appropriate place by taking into consideration the rules and regulation given in Al Quran and As Sunnah.

**METHODOLOGY**

This study adopts qualitative research approach. In providing an empirical insight on distributive justice in waqf context, it is necessary to find how does operational justice framework used by the current practitioner. The instruments for data collection are a meta-analysis, related document analysis, observation and unstructured interviews. The respondents chosen are based on purposive sampling technique; key person in Majlis Agama Islam Negeri, the data was analysis using systematic analysis in order to identify the relevant theme. The interview conversation was transformed into textual documentation for data interpretation purposes. Although the interactions with respondent is in their “natural settings,” the data was reported in term of range in order to protect the confidentiality of the information.

**DISTRIBUTIVE JUSTICE IN DISTRIBUTING WAQF INCOME**

The term justice is quite challenging to define because the Islamic guidance is broad. However in facilitating “placing something in its rightful place”, several key points on waqf distributive justice has been identified as follow:

**FLEXIBILITY IN DISTRIBUTION**

Although, waqif and waqf sighah is the main indicator in waqf distribution Muslim jurists (originated from the Hanafi scholars) had approved five(5) pairs of stipulations that provide waqf flexibility. (Ismail et al., 2016; Zahra, 1971; Zuhayli, 1997) It is noted that three pairs are relating to an alteration on waqf revenue composition while the other two modifications referred to physical waqf asset These stipulations are as ziyadah (increase) and nuqsan (decrease), idkal (addition) and ikhraj (removal), i’ta’ (granting) and hirman (dispossession), taghyir (replacement) and tabdil (conversion), as well as istibdal (substitution) and ibdal (exchange). The wisdom of these stipulations is they manifest the ultimate maqasid (objective) waqf. These stipulations on the waqf explicitly show there is room for improvement for waqf income utilization. However Khan, (2007) reminded if the mutawwali is the trustee of more than one endowments, he cannot apply his own motion to mix and match the profit derived from those waqfs unless the assets were endowed by the same endower with similar intention of waqf.
**DISTRIBUTIVE JUSTICE THROUGH ALLOCATION STRATEGIES**

Recently, most waqf literatures have emphasized heavily on waqf land development as part of strategic investment. This waqf evolvement had attracted Muslim scholars concerned about the libellous treatment of waqf as it had been seen as a new investment category (Thomas, Muhammad Musa, Mokhtar, & Gonsalves, 2016). Alias, (2012) & Suhaili, (2016) suggested allocation strategy is necessary to meet waqf property needs. In the context of waqf property, allocation strategy could be used to distribute the waqf income between the stakeholders as well as the sinking fund for the transactional and holding cost of the waqf property. Managing allocation are varied according to the institutions policy and the size of funds held by foundations, trusts and endowments (Ayuniyyah, Kamil & Haneef, 2014) This idea also was used by State Islamic Religious Councils in Malaysia in distributing their revenue as shown in Table 1.

**Table 1: Composition of income distribution using allocation strategy**

<table>
<thead>
<tr>
<th>Distribution of waqf income</th>
<th>Theme</th>
<th>Johor</th>
<th>Melaka</th>
<th>Negeri Sembilan</th>
<th>Selangor</th>
<th>Perak</th>
<th>Kedah</th>
<th>Pulau Pinang</th>
<th>Perlis</th>
<th>Kelantan</th>
<th>Terengganu</th>
<th>Pahang</th>
<th>Sarawak</th>
<th>Sabah</th>
<th>Federal territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deeds</td>
<td>P1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council</td>
<td>P2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset</td>
<td>P3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sinking Fund</td>
<td>P4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Waqf</td>
<td>P4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 1 clearly shows that different composition of waqf income distribution among the SIRCs in Malaysia. Most of the councils provide a higher percentage of meeting the wakif deeds which is parallel with the waqf jurisprudence. There is a significant need for the council to increase the income from waqf including to recruit more professional staffs to offer more professional waqf management as most of waqf assets are in real estate. Besides, the waqf asset also are mostly among the regular stakeholders from the waqf revenues as holding an asset is costly as mentioned in the previous paragraph. The most interesting is several SIRCs such as Pulau Pinang, Selangor and Negeri Sembilan had created another category that could represent new investment from the composition. From the analysis also, there are four different categories of portfolio being identified:

1. P1 Principle which represent meeting the waqf deeds
2. P2: Productive; the amount transferred to the council in order to make the asset productive
3. P3: Perseverance, the money spent for the waqf asset as to make sure the asset is properly functioning
4. P4: Progressive; the investment allocation that help the waqf grow.

CONCLUSIONS

Waqf property is not only an investment asset but also a retaining wall to the ummah. The rift in harmonization between waqf and the property investment philosophies may increase the burdens to the waqf sole trustees (SIRCs) as well as hindered waqf in meeting its objectives. Therefore, the definition of distribution justice relies on *mutawalli* judgement with the guidance of the Al Quran and As Sunnah.

ACKNOWLEDGEMENTS

We would like to wish Majlis Amanah Rakyat (MARA) congratulations and well done for organising iTEC2019 KPTM Kemaman on 26-27 September 2019 with overwhelming success and Universiti Malaysia Pahang (UMP) for endorsing the event in their annual academic calendar. We would like to extend our sincerest thanks and gratitude to KPTM Kemaman, MARA and UMP for accepting us as participants in iTEC2019 Kemaman and presenting our papers. It was indeed a very warm and lively event that ought to be kept in our fond memories. Thank you to all – admin, secretariat, moderators, staffs and students who were all very supportive throughout. May Allah swt bless us all for our endeavours.

REFERENCES


