

VIABILITY OF CASH WAQF-LINKED *ŞUKŪK* IN MALAYSIA

Sherin Kunhibava

Faculty of Law, Universiti Malaya, Kuala Lumpur, Malaysia

Aishath Muneeza

INCEIF University, Kuala Lumpur, Malaysia

Zakariya Mustapha

Faculty of Law, Universiti Malaya, Kuala Lumpur, Malaysia

Maryam Khalid

Faculty of Law, Universiti Malaya, Kuala Lumpur, Malaysia

Thong Ming Sen

Faculty of Law, Universiti Malaya, Kuala Lumpur, Malaysia

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ABSTRACT

Purpose — This research examines cash waqf-linked *şukūk* (CWLS) and ascertains its viability in Malaysia under the relevant legal and regulatory frameworks of waqf (Islamic endowment) and *şukūk* (Islamic investment securities). This is explored with a view to a possible implementation of CWLS in Malaysia by Islamic social and commercial finance institutions.

Design/Methodology/Approach — The research adopts a qualitative methodology and uses content analysis in synthesising relevant data to determine the viability and prospects of CWLS in Malaysia. Semi-structured expert interviews were conducted, and data obtained therefrom was analysed alongside published literature on CWLS to identify issues in the applicable waqf and *şukūk* legal and regulatory frameworks that pertain to CWLS viability.

Findings — The combination of cash waqf with *şukūk* is potentially an impactful financing mechanism for mobilising funds whereby charity is linked with productive and income-generating economic activities. CWLS facilitates the development of alternative social financing instruments that expedite social welfare and economic revival in the aftermath of the COVID-19 pandemic, as Indonesia demonstrates. However, Malaysia's waqf legal and regulatory framework have established a decentralised system of waqf administration, which may impede the efficacy of the structure and operations of CWLS in the country. Hence the research proposes a reform of the framework to enable the establishment of a more capable and viable CWLS structure for digital, retail and institutional investors.

Originality/Value — This research discovers hindrances to the prospect of CWLS in the legal, Shari'ah and regulatory dynamics of waqf and *şukūk* in Malaysia that previous studies overlooked. This research provides an in-depth understanding of challenges to CWLS' implementation in Malaysia with invaluable insight for regulators, policymakers, practitioners and researchers, thereby contributing to practical knowledge in the area.

Keywords — Cash waqf, Malaysia, Social finance, *Şukūk*, Viability, Waqf

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INTRODUCTION

The COVID-19 pandemic negatively impacted the world economy. Since its advent, more focus has turned to social finance to revive the economy (Haji-Othman *et al.*, 2020; Rusydiana & Avedta, 2023; Siswanto & Ikhwan, 2023). Cash waqf is considered one of the alternative financing methods available for boosting the economy and helping to develop social welfare programmes, especially during times of crises (Haji-Othman *et al.*, 2020). Cash waqf linked *ṣukūk* (CWLS) is an innovative product that is developed from the combination of the principles of waqf (Islamic endowment) and *ṣukūk* (Islamic investment securities), two prominent mechanisms of Islamic social finance and commercial finance, respectively. While waqf is an Islamic social finance instrument that has been practised throughout Islamic history, *ṣukūk* is an Islamic financial and commercial instrument that has been recently reinvented and has gained prominence only with the practice of contemporary Islamic finance from the late 1990s (Ahmed *et al.*, 2019; Abubakar *et al.*, 2023). Despite its relatively recent development, *ṣukūk* has been one of the most popular and remarkable Islamic finance instruments, having attracted increasing attention from institutional investors and regulators in the world today (Al-Ali, 2019).

It is notable that even though cash waqf practice has promoted waqf in Malaysia, there is enormous potential for waqf to be developed further through innovations that would advance the Islamic social finance sector in the country (Suhaimi *et al.*, 2014; Ali & Markom, 2020; Rusydiana & Ali, 2023). In view of this potential, innovative efforts continued to advance waqf alongside Islamic commercial finance—hence the case for CWLS (Abd Rahman & Awang, 2018). CWLS connects the practice of cash waqf for socio-economic purpose with *ṣukūk* for investment and commercial return (Fauziah *et al.*, 2021; Hosen *et al.*, 2022; Setyomurni & Nashirudin, 2023). The bottom line of the CWLS innovation is to further the inclusiveness and development of Islamic social finance within Islamic commercial finance (Tamanni *et al.*, 2022; Kamaluddin *et al.*, 2023).

The practice of CWLS has turned out well in neighbouring Indonesia since its launch in 2020 (Hosen *et al.*, 2022; Rusydiana *et al.*, 2023). Although CWLS is yet to be practised in Malaysia, the prospects for its development in the country are promising. In 2017, Waqaf An-Nur Corporation offered 850 million waqf shares worth RM85 million (USD19.86 million) to wholesale and retail markets under a social enterprise model known as the Larkin Sentral Property Bhd. Proceeds from the issuance of the shares were utilised to finance the upgrading of Larkin Sentral Terminal. Through the scheme, subscribers endowed their shares together with all their rights and entitlements to a trustee, and the dividends from the waqf shares were used to help small traders from the low-income and single-mother groups to pay reasonable rental rates for the market's shop lots (Securities Commission Malaysia, 2017). This scheme, coupled with the emergence of CWLS as championed by Indonesia, could inspire the launch of CWLS and advance its practice and utility in Malaysia by leveraging on the country's robust Islamic finance infrastructure and global renown as an Islamic finance hub (DinarStandard, 2022; Abd. Wahab *et al.*, 2023).

Hence, it is important to investigate and understand the operational parameters of the CWLS instrument in practice. This is to determine its prospects in Malaysia given the prevalence of waqf in the country and the significant role of *ṣukūk* and the Islamic capital market in the

economy (Zain & Sori, 2020; Aman *et al.*, 2022). Its prospects can only be determined by assessing the viability of the instrument and its structure in the light of relevant legal requirements, Sharī'ah parameters, and regulatory framework in the Malaysian jurisdiction and all possible issues related thereto. Likewise, expert viewpoints from specialists in waqf, *ṣukūk*, and Islamic social and commercial finance were sought to enable a proper understanding of the social and market impact of the innovation and determine the viability of CWLS in the Malaysian context. The term 'viability' used here refers to how CWLS would bring about desirable social and commercial outcomes for the benefit of all stakeholders involved, in both the short and long term.

This paper is organised as follows. Following the introduction, the next section reviews the literature and discusses CWLS and its components, the Sharī'ah compliance of CWLS, the permissibility of temporary cash waqf in Malaysia, and CWLS and its structure in Indonesia. The next section explains the methodology of the research. This is followed by a discussion on the introduction of CWLS in the context of Malaysia, identifying its potential challenges and proffering some relevant recommendations. The last section concludes the paper.

LITERATURE REVIEW

Components of Cash Waqf-Linked *Ṣukūk*

CWLS is a combination of two Islamic instruments which individually have diametrically opposite objectives (Fauziah *et al.*, 2021; Rusydiana *et al.*, 2023). It is the combination of *ṣukūk*, a for-profit Islamic capital market instrument, and waqf, which is a philanthropic endowment for social causes. With the combination of these two instruments, a new Islamic social finance instrument is created which mobilises capital for public and social causes. Before reviewing the structure of the CWLS, a preliminary note on the definition of the component instruments is considered here.

Ṣukūk has been defined by the Securities Commission Malaysia as certificates of equal value evidencing undivided ownership or investment in the assets using Sharī'ah principles and structures endorsed by the Shariah Advisory Council (SAC) (Securities Commission Malaysia, 2018). *Ṣukūk* is the Islamic alternative to financial bonds (Uluyol, 2023). To avoid interest while enabling investors to obtain a return on their investment, the issuance of *ṣukūk* requires an exchange of Sharī'ah-compliant underlying assets for a financial consideration through the application of various Sharī'ah contracts. In the case of CWLS, the waqf contract is applied.

Waqf is a sustainable, ongoing charitable endowment. The Government of Malaysia, on its official gateway portal, has defined and explained waqf as: '... a practice of surrendering owned property for the use and benefits of the public. Waqf is a religious act because the basic purpose of waqf is to be closer and gain the blessings of Allah by way of spending your wealth in the path to Allah. The waqf mechanism is a religious deed which has a strong religious foundation. Islamic law scholars believe that waqf has two fundamental objectives: (a) to contribute to the social development in a form of good deeds, (b) the waqf payer shall receive perpetual benefit in this world and the hereafter' (MyGovernment, 2021).

Waqf has been widely used throughout Islamic history to support and develop communities (Gaudiosi, 1988). A waqf endowment usually benefits the community by offering a service that is useful to society. The waqf asset (*mawqūf*) can be immovable or moveable. Cash

waqf is a moveable waqf wherein the waqf asset is money (Mohsin, 2009). Cash waqf can be direct or indirect. Direct cash waqf is where the cash donated is used by the state religious authorities, acting as the custodian or trustee (*nāzīr*), directly on a project or assets for the purposes of the beneficiaries (*mawqūf alaihim*). As custodians or trustees, the state religious authorities are tasked with the responsibility of taking care of the waqf properties. An indirect waqf, on the other hand, is where the cash donated as waqf is invested by the *nāzīr*, and the proceeds generated are earmarked for the use of the beneficiaries and to cover management fees (Fauziah *et al.*, 2021; Ascarya *et al.*, 2023).

Sharī'ah Permissibility of Cash Waqf-Linked *Ṣukūk*

Regarding the Sharī'ah permissibility of cash waqf, the 77th Muzakarah of the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia, which convened on 10–12 April 2007 in Kuala Terengganu, decided that cash waqf is permissible in Islam. Thus, the Committee resolved and proclaimed that 'waqf in the form of cash is permissible in Islam' (Centre for Management of Waqf, Zakat and Endowment, 2022). It may be noted that the majority of classical scholars considered waqf to be a permanent or perpetual endowment, whether in the form of immovable property or cash (Mohammad *et al.*, 2006). A minority, notably the Mālikī scholars, permitted temporary waqf whereby the original capital is returned to donors (Cizacka, 2016). Regarding this issue, Yayasan Waqaf Malaysia (Malaysian Waqf Foundation), a national agency, introduced and operates a cash waqf based on the classical structure which is permanent or perpetual in nature (Mokhtar *et al.*, 2015; Yayasan Waqaf Malaysia, 2021). Despite this initiative, the states in Malaysia could not uniformly adopt the same structure in their respective jurisdictions due to legal and regulatory peculiarities of waqf governance among them. It is noteworthy that in the commercial practice the structure of *ṣukūk* is mainly temporary. However, as will be examined subsequently, in Indonesia's pioneer CWLS structure, donors were allowed to donate their cash waqf on a permanent basis to be managed by the waqf body, or on a temporary basis with the cash being returned to the donor upon maturity of the *ṣukūk* (Hosen *et al.*, 2022).

At the international level, temporary waqf has been recognised by global Sharī'ah bodies and standard-setting institutions under the following contemporary resolutions: (a) the International Islamic Fiqh Academy's Resolution No. 181 (7/19), at its 19th meeting in 2009, held in the United Arab Emirates (International Islamic Fiqh Academy, 2021); (b) AAOIFI Shariah Standard No. 33, Clause 3/1/4 (AAOIFI, 2022).

At the national level, waqf in Malaysia legally comes under the jurisdictional purview of state authorities as designated in List II or the State List under the Ninth Schedule of the Federal Constitution of Malaysia. Therefore, the 13 states of Malaysia and the Federal Territories will govern their waqf institutions independently under their respective enactments, and each one will have its own ruling on the permissibility of temporary waqf. Out of the 13 states and Federal Territories, seven have passed specific waqf regulations—notably, Sabah, Perak, Johor, Selangor, Negeri Sembilan, Terengganu and Malacca—whereas the State Assemblies of the remaining six states and the Federal Territories have enacted provisions on waqf in their respective general administrative regulations for Islamic matters. For instance:

- section 17 of the Kaedah-kaedah Waqf 1983 of the State of Johor recognises both permanent and temporary waqf,
- Fatwa 1/2014, 4, of Selangor Fatwa Committee,
- section 18 Wakaf (Terengganu) Enactment 2016, and
- section 2 Administration of Islamic Law (Federal Territories) Act 1993.

All these provisions have recognised temporary waqf (Rashid, 2018; Sulaiman *et al.*, 2019; Ambrosea & Peredaryenko, 2022), and this research accordingly opines that cash waqf, whether permanent or temporary, is generally acceptable and permissible in Malaysia. It is noteworthy that temporary waqf is an important instrument for social impact whose potential has been recommended for further exploration by the World Bank and contemporary Islamic finance research institutions of high repute (The World Bank Group *et al.*, 2019).

Cash Waqf-Linked *Şukūk*: The Indonesian Example

Indonesia pioneered the introduction of CWLS in 2020 to support its National Waqf Movement, which aims to assist in the development of social investment through productive waqf in the country (Hafandi & Handayati, 2021). CWLS was used to meet the Indonesian government's short-term investment needs, especially the construction of social facilities/infrastructure and other social causes beneficial to the public (Fad, 2021).

Under the Indonesian CWLS structure and programme, several parties and/or stakeholders were involved, namely:

- (i) the *wāqif* as the donor who donated the funds, either temporarily or permanently;
- (ii) the Ministry of Finance as the *şukūk* issuer;
- (iii) Badan Wakaf Indonesia (BWI) (Indonesian Waqf Board) as the waqf supervisor and *nāzir*;
- (iv) LKS PWU [Lembaga Keuangan Syariah Penerima Wakaf Uang] (Islamic financial institutions receiving cash waqf) and non-LKS PWU (non-Islamic financial institutions) that collected the cash waqf from the donors as the *nāzir*'s fundraising partners;
- (v) BWI administering partners who manage the waqf assets financed from the *şukūk* and coupon payments; and
- (vi) other BWI distributing partners who distribute the *şukūk* coupons to beneficiaries or to social causes regularly.

At the very outset, an MOU was signed between BWI, Bank Indonesia, Ministry of Finance, and the Ministry of Religious Affairs with the intention of commitment and cooperation among the stakeholders (Bank Indonesia, 2021, p. 27). **Table 1** states the role of the various stakeholders.

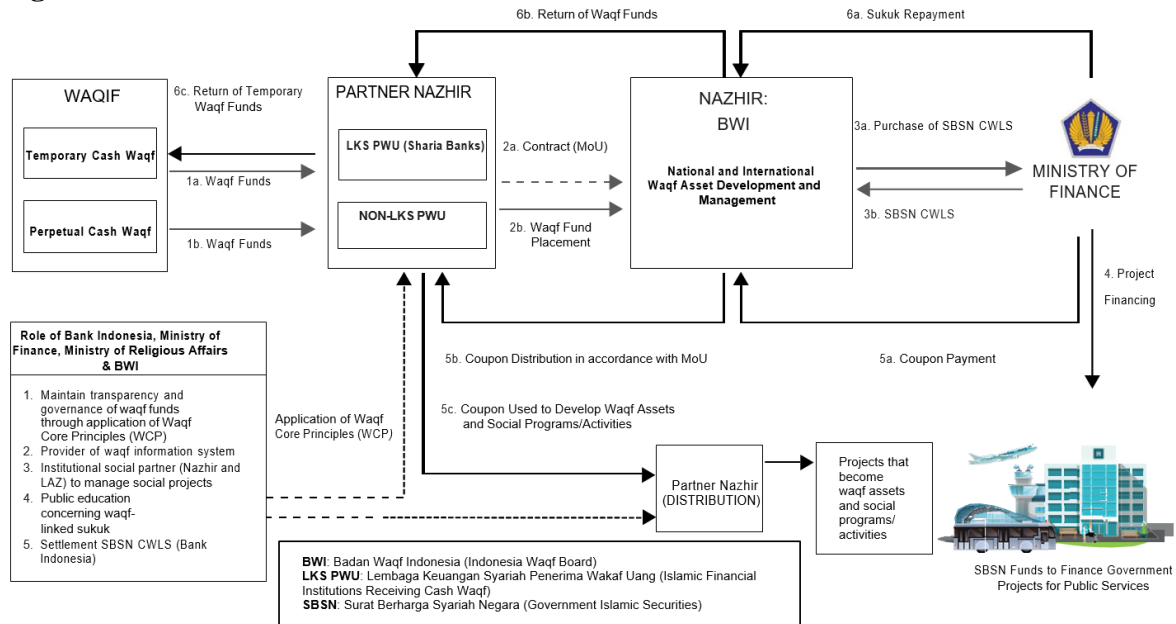
Table 1: Role of Different Authorities/Institution in CWLS Implementation

Institution	Role
BWI	Single buyer Sukuk Wakaf Indonesia (SWI) Transaction operationalisation with Ministry of Finance and LKS-PWU Design of CWLS business model/instrument Determine the <i>nāẓir</i> 's partners and the allocation of the CWLS returns Formulated CWLS marketing programme
Bank Indonesia	Recording SWI in Bank Indonesia–Scripless Securities Settlement System (BISSSS) Design of CWLS business model/instrument Facilitator of product marketing and training of trainers/communication process with Indonesian Council of Ulama (MUI) concerning the Sharī'ah perspective of the first CWLS issue
Ministry of Finance	Issuer of SWI Design of CWLS business model/instrument Setting the corpus benefit of waqf Facilitator of product marketing and training of trainers
Islamic financial Institutions	Settlement of <i>wāqif</i> /investor transactions Facilitation of investment in CWLS CWLS product marketing

Source: Bank Indonesia (2021)

The roles of each stakeholder, as depicted above, clearly shows how the various institutions cooperated for the successful deployment of the CWLS for social causes. The structure of CWLS is shown below in **Figure 1**.

Figure 1: Structure of CWLS



Source: Bank Indonesia (2021); Badan Wakaf Indonesia (2021)

Based on the above structure, the following is the flow of events:

- 1a & b: Waqf funds are donated by the *wāqif*, who may choose the temporary or permanent cash waqf option. LKS PWU (Islamic financial institutions) and non-LKS PWU (non-Islamic financial institutions) are the *nāzīr*'s fundraising partners that collect the cash waqf from the *wāqifs*.
- 2a & b: The *nāzīr*'s fundraising partners then enter into an MOU with the *nāzīr* (the Indonesian Waqf Board (BWI)) and place the funds with BWI.
- 3a & b: BWI buys the *şukūk* or Government Islamic Securities (SBSN) from the Ministry of Finance with a private placement mechanism; *şukūk* ownership documents are given to BWI.
- 4: The funds received by the government from CWLS issuances are subsequently used to fund government projects for public services. At this stage, in its capacity as SBSN administrator, Bank Indonesia records the ownership and engages in SBSN clearing and settlement.
- 5a b & c: The government pays the return to BWI in the form of a discount or coupon, which is distributed to the *nāzīr*'s distributing partners to fund social projects or activities. The initial discount received at the beginning of the investment is used to develop the waqf asset, such as a religious school, health clinic and social infrastructure. The discount received from the first CWLS series was used for medical equipment and building of an eye hospital in Serang, Banten (Bank Indonesia, 2021). The coupon received from the first CWLS series was used to meet the operational expenses of the eye hospital in Serang, Banten. The coupon received periodically was used to implement non-physical social programmes, such as those targeting orphans and the poor, free healthcare, economic empowerment for those at the bottom of the pyramid, and other social programmes. Investment in CWLS generates competitive returns because BWI is tax-exempt (Bank Indonesia, 2021; Badan Wakaf Indonesia, 2021).
- 6a b & c: At maturity, the Ministry of finance repays the cash to BWI, which refunds the temporary cash waqf to the *nāzīr* (via designated partners) who will return it to the donors who opted for temporary waqf, or it is further managed by BWI in the case of a permanent cash waqf (Bank Indonesia, 2021; Badan Wakaf Indonesia, 2021).

In this CWLS structure, the donors could choose to get a financial return on their investments, or they could forgo the principal if they chose to make the cash waqf permanent. The objective of the donors was largely to earn spiritual rewards. The cash donated was used to fund the *şukūk* projects designated by the Indonesian government for the improvement of public infrastructure and other amenities, and the proceeds were used in the development of waqf assets for the benefit of beneficiaries (Hosen *et al.*, 2022; Maulina, 2022).

These are among the social and economic benefits that Indonesia has derived from the CWLS, whereby the donors and beneficiaries alike obtained both monetary and spiritual benefits from the CWLS programme. It is worth noting that a centralised waqf administration system is crucial in establishing the harmony and cooperation needed among all the stakeholders of the CWLS and was thus a key element of making the initiative successful (Maulina, 2022).

RESEARCH METHODOLOGY

The objective of this research is to investigate issues pertaining to CWLS and its viability in Malaysia. This is an exploratory legal research and uses a qualitative methodology with the doctrinal approach in appraising issues relevant to the subject being investigated. The doctrinal approach is the most common approach employed in undertaking law research; it focusses on the letter of the law and the resultant action or conducts from the dictate of the law in order to provide tailor-made solutions to practical problems (Cownie & Bradney, 2013). This involves analysing legal principles and their implications on the conduct of transactions in accordance with the law to provide a ready guide for all stakeholders to understand the law vis-à-vis particular affairs of the people (Pradeep, 2019). Also, semi-structured expert interviews were conducted whereby practical oriented data from subject experts were obtained for the research (Hutchinson & Duncan, 2012). Thus, alongside the doctrinal approach, content analyses were performed as an essential component of the approach (Mayer, 2015). Through these processes—provisions of relevant Malaysian laws, the data from the interviews, and published literature relevant to CWLS—the data were analysed and construed (Kyngas, 2020). This enabled a proper identification and understanding of the issues and constraints that arise in the implementation of CWLS and, accordingly, an assessment of the viability of its application in Malaysia.

CASH WAQF-LINKED *ṢUKŪK* FOR MALAYSIA

The introduction of CWLS in Malaysia using the structure implemented by Indonesia as a model would bring similar social and economic benefits for Malaysia. The involvement of Islamic financial institutions in the structure of CWLS would, to a large extent, champion financial engineering to further the development, expansion and inclusivity of Islamic social finance in Islamic commercial finance (Tamanni *et al.*, 2022). In this regard, CWLS has a promising prospect in Malaysia by leveraging on the country's well-established Islamic finance infrastructure and huge *ṣukūk* potential (Adeyemi *et al.*, 2016; Fauziah *et al.*, 2021). This would enable connecting the practice of cash waqf for socio-economic goals with *ṣukūk*, an income-generating investment, for commercial returns (Tamanni *et al.*, 2022; Hosen *et al.*, 2022). The CWLS would build a supportive machinery for socio-economic development by unlocking the potentials of waqf further through cash waqf while leveraging on *ṣukūk* (Musari, 2019). Moreover, CWLS would motivate charity and stimulate investment among people while offering opportunities for commercial return and socio-economic impact (Cahyono & Hidayat, 2022). CWLS would also revitalise underutilised waqf assets and reactivate them to secure their socio-economic potentials for Malaysia (Azizan *et al.*, 2021). It would, thus, further promote waqf and enable waqf institutions to expand the Islamic social finance sector in Malaysia (Suhaimi *et al.*, 2014; Ali & Markom, 2020).

Challenges in Introducing CWLS in Malaysia

In furtherance to the analysis made on results drawn from the relevant published literature, this section examines possible challenges to the implementation of CWLS in Malaysia. It also comes up with further findings based on the analysis of primary data collected from the interviews with experts in the fields of waqf and *ṣukūk*. The challenges are examined from a number of perspectives, as follows:

Legal and Regulatory Framework

In the previous section, it was mentioned that the Malaysian waqf framework falls within the jurisdictional purview of the states. Thus, under article 74(2) of List II of the Federal Constitution, there are currently 14 separate pieces of waqf legislation (13 states and one federal territory) governing waqf matters. This is a peculiar legal and regulatory framework for waqf which establishes an exclusively decentralised waqf governance system that will potentially hinder the prospect of CWLS. The issue that arises here is consistency in applying the law with regard to waqf matters. This establishes the fact that the current legal and regulatory frameworks do not provide for a uniformly comprehensive legislation in regulating and administering all waqf matters as previous studies attested. On this note, it is important to highlight the fact that there is no unanimous legal definition of what amounts to cash waqf in Malaysia. Out of the 13 Malaysian states and Federal Territories, only two, the states of Selangor (section 2 Selangor Wakaf Enactment, 2015) and Terengganu (section 2 Terengganu Wakaf Enactment, 2016), have defined cash waqf. Regardless, since cash waqf is permissible in Malaysia, states that do not specifically define cash waqf are also able to implement cash waqf programmes (Abd Rahman & Awang, 2018).

Given the different state laws and considering their application in cash waqf matters, there will inevitably be different interpretations and understandings of the subject matter (Ngadimon, 2015; Rahman & Amanullah, 2017; Jalil, 2020). Therefore, it is essential to have a clear definition of cash waqf within the various pieces of legislation for an efficacious implementation throughout Malaysia. The lack of comprehensive legislation in regulating and administering waqf matters could be a possible impediment to the effective introduction of CWLS in Malaysia. Effective construction of CWLS ecosystem should start with a clear definition of what cash waqfs are. Clarification of this point would facilitate the consistent application of waqf regulation to all regulated entities and other stakeholders throughout Malaysia.

Waqf Administration and Management System

As earlier mentioned, the administration and management of waqf affairs in Malaysia lies with the states (Article 74(2), List II, Ninth Schedule, Federal Constitution of Malaysia). This system has established a decentralised regulatory architecture that puts the waqf administration and governance under the State Islamic Religious Councils (SIRCs). In order to unify waqf administration and develop waqf institutions, the Malaysian government established Jabatan Wakaf, Zakat dan Haji [Department of Awqaf, Zakat and Hajj]—officially abbreviated JAWHAR—in 2004 (Department of Awqaf, Zakat and Hajj, n.d.). However, JAWHAR was given limited or no power in administering or managing waqf assets; thus, it cannot address issues arising from the decentralised waqf governance and administration system (Ali & Markom, 2020; Ismail *et al.*, 2023).

Decentralised Waqf Governance and Administration System

The decentralised administration and management of waqf has resulted in slow and fragmented development of cash waqf as a precursor to CWLS in the country. In reference to this system of waqf administration and management, previous studies have established that the SIRCs have not been able to effectively manage the waqf assets due to several factors, including inefficient

administration and poor management know-how, insufficient funds and lack of knowledge about the effect of the applicable laws (Kamaruddin *et al.*, 2018; Khamis & Salleh, 2018; Ali & Markom, 2020). Furthermore, JAWHAR as the national agency only plays the role of planning coordination, without any authority to administer and manage waqf assets, a power that lies solely in the SIRC's (Kamaruddin *et al.*, 2018). Previous studies have also established the fact that there is insufficient certified and/or experienced human capital in JAWHAR, even in cash waqf matters (Khamis & Salleh, 2018). These comprise impediments to upscaling, expanding and advancing the general waqf operations in Malaysia in this regard.

In support of this finding and buttressing the point being made here, Dr Mohamed Eskander of Hamad Bin Khalifa University, when interviewed online on 17 October 2022, stated:

...the only problem is that **we didn't scale it out at a much higher level**...Unfortunately, **we are trying to do Islamic social finance through a central system**...and we do not want to let go of the current system. (Emphasis added)

The reference to a 'central system' here is with respect to the power that is given solely to the SIRC as obtainable in each state under the current system in Malaysia. As there is no unified system for the whole country, the point here is that, in introducing CWLS, the management will lie in the 14 different SIRC's, and it would be hard to scale up under this decentralised system as there is no consistency in the applicable state laws.

When asked about the challenges of cash waqf, another expert, Dr Ayaz from CIMB Islamic Malaysia, interviewed online on 4 October 2022, stated that the main challenge is the management and administration of waqf. In his words:

... there are a lot of challenges that I think you'll be quite familiar with, i.e., **the challenges in the waqf ecosystem as well as** the constitutional challenges that the SIRC's are to see to its administration, **and that everything is under their purview**. (Emphasis added)

Dr Ayaz further highlighted the difficulty of the waqf institution collaborating with other counterparties to boost the utilisation of waqf funds:

...the difficulty is how do we get involved in it? How do we [Islamic banks] become part of the waqf ecosystem when **the ecosystem itself is not quite developed ... and the banking system here is quite sophisticated**? I think there are a lot of people who would like to get involved, but **the barrier is the waqf institution itself; it is not ready to accept very sophisticated institutions** such as banks [for collaboration]. (Emphasis added)

Thus, based on the two experts' viewpoint above, it can be said that the current system of a decentralised administration and management of waqf would be a challenge to introducing CWLS because the waqf ecosystem is not yet ready to upscale and collaborate with another platform for the utilisation of waqf funds which largely remain idle for a long time with the SIRC's.

SIRC as Mutawallī (Manager of the Waqf Funds and Assets)

Under the current waqf legal framework, an SIRC is not only the *nāzīr* (sole trustee) for the waqf funds and assets but also acts as *mutawallī* (manager) for each waqf (Abdullah, 2010). For better management in this regard, the Selangor SIRC established a subsidiary institution, the Perbadanan Wakaf Selangor (Selangor State Islamic Religious Council, n.d.), similar to one established by the Federal Territories Islamic Religious Council, the Wakaf Centre (Islamic Religious Council of Federal Territory, n.d.). Other corporations and selected non-profit organisations are appointed as *mutawallī* for this purpose as well (Abd Mutalib & Maamor, 2016; Yunus *et al.*, 2023).

Another expert, Mr. Ahmad Hafiz Abdul Aziz, from World Bank Global Knowledge, Malaysia, in a face-to-face interview conducted on 4 October 2022, compared the *mutawallī*'s position in Indonesia and Malaysia to underscore the need for a competent *mutawallī* in waqf. In his words:

The development of Islamic social finance in Malaysia is not as far as it is in Indonesia and Singapore. Here, we have 13 states, which means 13 different regulators. If you compare with Indonesia, everything is reported to the President. So, they have, in terms of standardisation, only one authority. For example, if we look at the concept of *mutawallī*, ... **in Indonesia, according to the law, individual people can be *mutawallī*, can collect and distribute, but you cannot find that here in Malaysia. Here, banks are allowed to collect cash waqf, but distribution is subject to the *bayt ul-māl*. So, the *bayt ul-māl* will check and determine when to carry out the distribution.** (Emphasis added)

Cognisance of this fact has led the SIRC to appoint several *mutawallīs* to handle the relevant role. However, the focus in doing so has been more on getting easier access to the public to donate funds as waqfs and evidently boost the waqf collection (Awqaf Holdings Berhad, 2019). In terms of distribution, such duty goes back to the *bayt ul-māl*, which is an entity under the SIRC (Mahadi *et al.*, 2018). Therefore, even though the rate of cash waqf collection is high, there is still the issue of inefficient distribution. Thus, this will be another challenging step to go through when CWLS is introduced in Malaysia.

Waqf Literacy and Awareness

Previous studies have established a general lack of awareness and of proper understanding of waqf in Malaysia (Marzuki *et al.*, 2012; Osman, 2014; Puad *et al.*, 2014; Adeyemi *et al.*, 2016). The earlier findings in this regard came mostly from conceptual and theoretical studies. However, findings by more recent empirical studies have supported this conclusion and the fact that it continues to prevail (Jalil, 2020; Laallam *et al.*, 2020; Mohd Thas Thaker *et al.*, 2020; Khan *et al.*, 2022; Laila *et al.*, 2022; Ab Rahman *et al.*, 2023). It is vital to note that such low literacy and awareness in the community on cash waqf reduces people's motivation to participate in waqf (Sasongko *et al.*, 2021), hence making cash waqf an unfavourable medium for charity.

In view of the foregoing, Dr Ayaz from CIMB Islamic Malaysia further clarified in his interview the challenges of introducing CWLS to the Malaysian public. He opined that the issue of the lack of awareness and understanding contributes to the low culture of donation under the waqf concept, as follows:

Whether the individuals, the investors are familiar with it; whether they accept it because there are some commercial considerations are issues that come into the picture....If we were to introduce it in a different way, **whether through another platform or through other means for them to contribute, the issue still stands, because the waqf culture is still very small.** So, when we are introducing something new, it is not merely about introducing a platform. It is actually about the need to address **the issue that the culture for it is not there in the first place.** (Emphasis added)

Another point was raised by Mr. Ahmad Hafiz when he made a comparison with Indonesia on the need to better promote the waqf culture in Malaysia. He said:

So, when you have more players, with NGOs as in Indonesia, for instance, they will indirectly create awareness, bring creativity and capacity building. But here in Malaysia, if you are to do the same, the Majlis Agama [SIRCs] would be asking questions, because you know **the power to do that still belongs to the state, so one would not have that much freedom and flexibility.** (Emphasis added)

Thus, the Malaysian waqf management and administration system concentrates the requisite power only in the SIRCs which, for the reasons identified, have so far not been able to effectively wield the power in creating awareness and cultivating the waqf culture in the country. Consequently, it is expected that there will be low market penetration of the CWLS product in Malaysia. Lack of understanding of waqf, specifically cash waqf, would be a significant challenge in introducing CWLS in Malaysia.

RECOMMENDATIONS

It is evident from the foregoing discussions and analyses that cash waqf is a very significant component of CWLS. While cash waqf has been in practice, CWLS is a product yet to be introduced in Malaysia. Regardless, it is established that when it is introduced, it would have positive prospects in the country. However, for the viability of the product, reforms are desired in Malaysia's waqf legal and regulatory framework.

It has been noted from the experience of issuing CWLS in Indonesia that the country's centralised waqf administration system has significantly influenced the success of the product. Therefore, the reform is to ensure consistency and uniformity in the 13 states' and Federal Territory's waqf laws that would enable a centralised CWLS governance and administration. This reform should be made to transcend and accordingly transform the system of waqf administration in the country in favour of CWLS. In this regard, it is recommended that the reform should enable JAWHAR, as the national waqf parastatal organisation, in collaboration with the Malaysian Ministry of Finance, to lead the initiative to launch a national CWLS programme via a centralised and uniform legal and regulatory framework. An amendment needs to be made in the JAWHAR establishment law to enable it to play a unified role to plan, coordinate, administer and manage waqf.

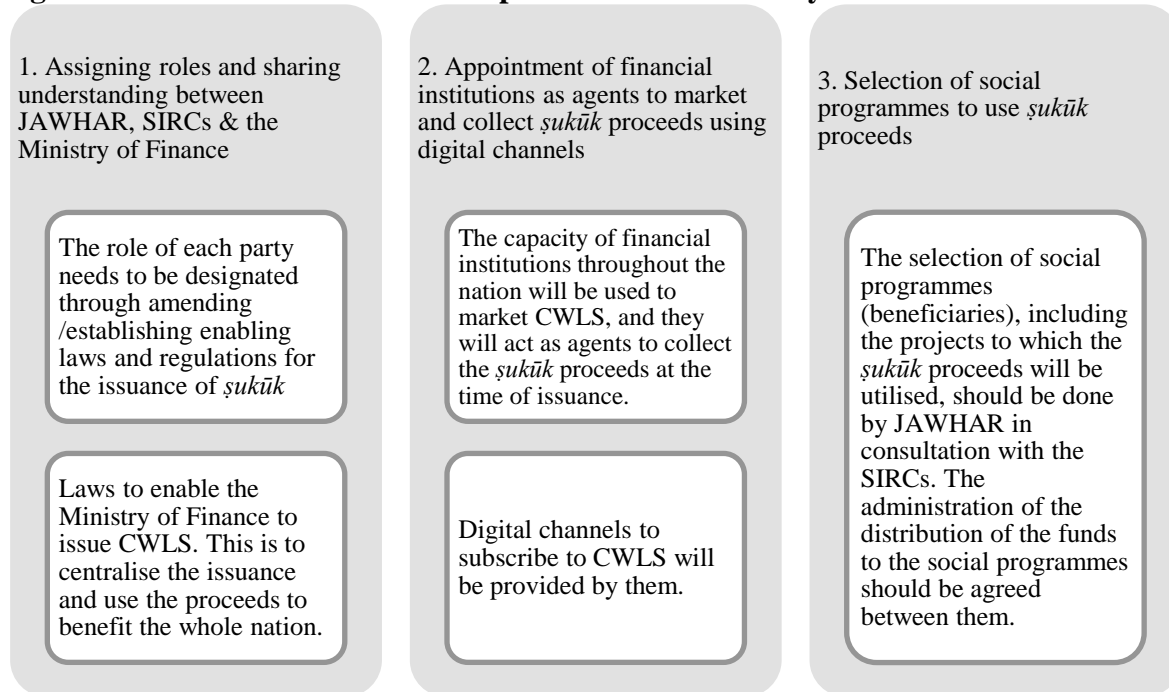
Also, a corresponding amendment needs be made in current state waqf laws and Islamic religious regulations to address the differences in state laws on the administration of waqf and enabling SIRCs to partner and collaborate with JAWHAR and the Ministry of Finance in matters of waqf within their respective jurisdictions. This would enable SIRCs to delegate waqf assets

securitisation, digitisation and issuance of *ṣukūk* therefrom to JAWHAR and the Ministry of finance. The reform in this regard should also enable collaboration with Islamic and conventional financial institutions to market CWLS and collect the proceeds therefrom in Malaysia. This would empower JAWHAR to maximally generate and utilise waqf assets under respective SIRC’s jurisdictions across Malaysia. Thus, while individual states in the country can issue CWLS in their domains (decentralised), the centralised approach would enable a more inclusive and uniform utilisation of CWLS proceeds for key projects across the country. This is important for the development and viability of CWLS.

Additionally, given the Malaysia’s success in its issuance of Sukuk Prihatin during the COVID-19 pandemic (Ministry of Finance Malaysia, 2022), the proposed amendment should facilitate the development and issuance of digital CWLS for target impact so that both institutional and retail investors can invest therein. In Sukuk Prihatin, which was issued as part of the government’s recovery efforts following COVID-19, 95 Sukuk Prihatin holders opted to waive their principal subscription amount. The Government channelled the entire contribution, totalling RM2,599,400, to Akaun Amanah Bencana, which supported, among others, the repair of damaged infrastructure and public facilities as well as the provision of financial relief for victims of natural disasters (Ministry of Finance Malaysia, 2022).

The CWLS should be handled by the financial institutions onboard to market the issue throughout Malaysia. Also, the CWLS should provide its holders with the option to donate their principal and/or profit to a social cause. This will encourage the *ṣukūk* holders to do good for a social cause. Furthermore, the CWLS should be tax exempted as an incentive for those who invest in them. **Figure 2** shows the salient features of the proposed CWLS in Malaysia.

Figure 2: Salient Features of the Proposed CWLS for Malaysia



Source: Authors’ own

CONCLUSION

In conclusion, the analysis and discussion in this research have made it clear that CWLS has significant prospects in Malaysia but that the full potential will be difficult to realise in the current environment. This is due to challenges and issues arising mainly from the legal and regulatory inhibitions that concentrate waqf management and administration in states' authorities in the country. The research accordingly proposes tailor-made reforms in the Malaysian waqf legal and regulatory frameworks as well as the waqf governance system. This research's analyses and the reforms it proposes will pave the way towards a better understanding of the issues that the introduction of CWLS in Malaysia will bring about and more thoughts on how to address them, especially by emulating the practice (in terms of structure and implementation) of CWLS in Indonesia. The research argues that the social and economic benefits that Malaysia stands to gain from CWLS would make the proposed changes worthwhile. It is thus anticipated that the findings and recommendations of this research will assist regulators and policymakers in Malaysia to take requisite actions and consider issuing CWLS for socio-economic empowerment/development of the country.

LIST OF INTERVIEWEES

- Dr Mohamed Eskander Shah, Associate Professor College of Islamic Studies, Hamad Bin Khalifa University, Qatar, *Online Interview*, Monday 17 October 2022.
- Dr Ayaz Mohamed Ismail, CIMB Islamic, Malaysia, *Online Interview*, Tuesday 4 October 2022.
- Mr. Ahmad Hafiz Abdul Aziz, The World Bank Group Global Knowledge, Malaysia, *Face-to-face Interview*, Tuesday 4 October 2022.

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ABOUT THE AUTHORS

Sherin Kunhibava, PhD, is a senior lecturer at the Faculty of Law, Universiti Malaya, Malaysia. Her areas of expertise are in commercial law, fintech regulation and Islamic finance law. Apart from her fifteen years of teaching experience in academia, Dr Sherin has also worked at Pacific Bank Bhd., International Shari'ah Research Academy for Islamic Finance (ISRA) and Wisdom Management Consultancy Sdn. Bhd.

Aishath Muneeza, PhD, is a professor and the associate dean for students and internationalization at INCEIF University, Malaysia. She has held many positions over the years, including the first female Deputy Minister of Ministry of Islamic Affairs in Maldives; Deputy Minister of Ministry of Finance and Treasury in Maldives; Head of Islamic Finance of the Capital Market Development Authority of Maldives; member of Islamic Fiqh Academy (National Fatwa Council of Maldives); first chairman of Hajj pilgrimage fund, Maldives Hajj Corporation Limited.

Zakariya Mustapha, PhD, serves as a graduate research assistant at the Faculty of Law, Universiti Malaya, Malaysia. He is as an advocate and solicitor of Nigeria's Supreme Court since 2008. He specialises in legal and Sharī'ah issues in Islamic finance and offers legal and Islamic advisory services regarding regulatory framework, dispute resolution and Sharī'ah-compliant product development in Islamic finance. He is the corresponding author and can be reached at zakariyamustapha@gmail.com.

Maryam Khalid, PhD, is a senior lecturer at the Faculty of Law, Universiti Malaya, Malaysia. Previously, she practised as an Islamic financial corporate lawyer and has experience in advising clients on banking product developments and financial regulatory reforms. Her areas of interest are mostly in financial and fintech regulatory developments.

Thong Ming Sen is a PhD student at the Faculty of Law, Universiti Malaya, Malaysia. His thesis revolves around the use of blockchain for financial regulatory compliance, Islamic finance and financial inclusion. His areas of expertise are in capital markets law, blockchain technology and fintech regulation.

DECLARATION

Credit Authorship Contribution Statement

- Sherin Kunhibava wrote on the Sharī'ah permissibility and CWLS explanation in Indonesia.
- Aishath Muneeza wrote about the challenges in introducing CWLS in Malaysia.
- Zakariya Mustapha wrote the introduction, literature review and conclusion.
- Maryam Khalid wrote the recommendations.
- Thong Ming Sen wrote part of the literature review.
- All the authors were involved in the conduct of the interviews for the research.

Declaration of Competing Interest

The authors declare that they have no known competing financial interest or personal relationships that could have influenced the research work.

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Data Availability

The interview data and all other data are kept on the authors' google drive and are available on request from the authors.

Appendix

None