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EVOLUTION IN *WAQF* JURISPRUDENCE AND ISLAMIC FINANCIAL INNOVATION

Mohammad Abdullah [1]

ABSTRACT

This paper aims to analyse the evolutionary process in the jurisprudential structure of modern *waqf* (Islamic endowment) and underlines the scope of Islamic financial innovation through the mechanism of *waqf*. The paper proposes the innovative models of parallel *waqf*, *waqf*-based social and financial instruments, *waqf*-based ṣukūk, micro-*takāful*, and *waqf*-based commodity bank. The research adopts the qualitative approach and employs socio-legal research methodology for the analysis. The paper relies on desk-based research. Compared to the classical structure of *waqf* which was confined within the domain of a perpetual charitable institution, this paper finds that modern *waqf* has ushered in several new dimensions into its fold. Modern *waqf* is in the process of re-evolution. *Waqf*, in the current scenario, has evolved into a financial product, a property-conveyance tool, an instrument of contract, an investment tool, a risk mitigation mechanism and an incorporated entity. The scope of this paper is limited to analyzing the jurisprudential evolution of *waqf* and its impact on the Islamic finance industry. It does not seek to discuss the overall role or impact of *waqf* on the society as a whole. This paper also does not endeavor to compare and contrast the mechanism and modalities of other philanthropic institutions vis-ā-vis *waqf*. This paper examines the jurisprudential underpinnings of *waqf* and their implications and applicability to the Islamic finance industry. The paper draws on the process of how the mechanism of *waqf* has already been employed to develop various innovative Islamic financial products and how this process can be a catalyst for further innovation in the Islamic finance industry. The main contribution of the paper is encapsulated in the analysis of how the jurisprudential structure of the modern *waqf* has been evolving in the last few decades to accommodate the modern needs of Islamic finance. It further enumerates a few innovative Islamic financial products which can be developed by exploiting the available flexibility in the evolved version of modern *waqf*.

Keywords: Waqf, Charity, Charitable Trust, Endowment, Innovation, Islamic Finance, Social Finance
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1. FAB, Siraj (Islamic Window of First Abu Dhabi Bank), nadwi.ab@gmail.com

I. INTRODUCTION

In its technical setting, the conceptual framework of *waqf* (Islamic endowment) is easily adaptable. The inherent flexibility of the *waqf* mechanism provides enough scope for the institution to be structured in multifarious ways. It is critically important that the flexible nature of *waqf* be adequately exploited to maximize the benefits to the community in line with modern needs and circumstances. From its jurisprudential perspective, *waqf* has an in-built capacity to transcend the limitations of other charitable institutions. *Waqf* can ably accommodate the legal and transactional intricacies of various non-profit institutions as well. In the current scenario, the institution of *waqf* has attained special relevance with reference to the newly emerged industry of Islamic finance.

The emergence of the Islamic finance industry has been instrumental in streamlining the institution of modern *awqāf* (pl. of *waqf*). *Waqf* and Islamic finance have a shared background in terms of their embedded *Sharīʿah* (Islamic law) principles and ethical foundations. In other words, the conceptual premises of Islamic finance corroborate the ideological underpinnings of *waqf*. In the context of Islamic finance, the role of *waqf* can be crucial both as a vehicle of property conveyance and as an instrument of contract (MIFC, 2014; Khaleel and Abdullah, 2016).

In the Islamic finance industry, the mechanism of *waqf* has already been employed to develop various innovative financial products. The list of *waqf*-based products includes *takāful* (Islamic insurance), micro-*takāful*, Islamic microfinance, Islamic microcredit, *qarḍ ḥasan* (benevolent loan) and Islamic unit trust (MIFC, 2014). In addition, the mechanism of *waqf* exhibits a far greater scope for the development of benevolence-oriented products such as *kafālah* (provision of security), *ḍamānah* (provision of guarantee), *amānah* (safekeeping) and *ʿāriyah* (loan of an item for temporary usage).

This paper aims at analyzing the process by which modern *waqf* has evolved, followed by a critical examination of how the evolved version of *waqf* can be used for Islamic financial innovation. Finally, this paper proposes innovative models of parallel *waqf*, *waqf*-based *ṣukūk*, a *waqf*-based commodity bank and micro-*takāful* based on the hybrid model of *waqf-wakālah-kafālah*.

II. LITERATURE REVIEW

2.1 Waqf and Islamic Finance

The phenomenon of Islamic finance has played a role in streamlining the institution of modern awqāf, and vice versa. Islamic finance and waqf share fundamental norms, values and ethical considerations, including the objectives of promoting equity, social justice and financial inclusion (ISFR, 2014). They differ in that Islamic finance is oriented to making profits while waqf is not for profit; however, theoretically both institutions endeavour to achieve similar ends (Çizakça, 1998, 2011).

Beside the possibilities offered by innovative waqf-based financial devices, the mammoth size of cumulative global awqāf presents a huge opportunity for Islamic finance, both on the assets and liability sides of the balance sheet (Budiman, 2011). Waqf can be rightly described as “the sleeping giant of Islamic finance” (Tamanni Views, 2013: 1). Islamic finance has substantial opportunities to invest in unproductive waqf properties on a profit-and-loss-sharing (PLS) basis. Islamic finance can deploy its funds only in *Sharīʿah-compliant* avenues; and on this front, waqf provides an ideal opportunity for Sharīʿah-compliant investments (MIFC, 2014). In this sense, awqāf can offer massive scope for Islamic finance in asset and liquidity management.

In general, awqāf need the services of Islamic financial institutions (IFIs) to secure short- and long-term financing as well as for asset management. For its part, Islamic finance may need awqāf for investment purposes. Table 1 elucidates the possible synergies between waqf and IFIs. It contains a list of potential avenues for collaboration between waqf and Islamic finance to further the cause of both industries.

Table 1.
Synergies Between Waqf and Islamic Financial Institutions

Waqf	Islamic Financial Institutions (IFIs)
Need for efficient asset management	IFIs can provide Sharīʿah-compliant asset management services.
Need for financial investment	IFIs can provide services to awqāf on the asset and liability sides of the balance sheet.
Need for financial products	IFIs can facilitate the issuance of Îukūk, equity (waqf share) and qarÌ Íasan.
Need for banking products	IFIs can provide safekeeping (wadīʿah) and muÌārabah accounts for awqāf deposit and investment purposes.
Intermediation between wāqif (endower) and waqf	IFIs can facilitate fund collection on behalf of awqāf (deposit).
Need for takāful for waqf properties	IFIs can provide takāful services to awqāf.

Source: Author

Waqf incorporates a wide array of possibilities for all its key elements; i.e. wāqif (endower), mutawallī (trustee), beneficiaries and objectives. For instance, a waqf can be created by an individual, a group of individuals, a corporation, a non-profit institution, as well as a governmental body. Similarly, the modes of waqf

Table 2.
Possible Structures in Waqf

Modes of Waqf	Wāqif (Endower)	Mutawallī (Trustee)	Beneficiary	Objectives
Real estate	Individuals	Individuals	Individuals	Religious/Charitable/ Private
Cash	Group	Group	Group	Religious/Charitable/ Private
Stocks	Corporation	Corporation	Corporation	Religious/Charitable/ Community
Îukūk	Institutions	Institutions	Institutions	Religious/Charitable/ Private
Any Sharīʿah-compliant non-consumable property	Government bodies	Government bodies	Government bodies	Religious/Charitable/ Welfare/ Community

Source: Author

may include real estate (including commercial, non-commercial and residential buildings), agricultural lands, cash, stocks, Îukūk, waqf-share (certificate) and any other Sharīʿah-compliant non-perishable property/valuable. Also, the role of the mutawallī can be executed by any entity that is fit and qualified for making a waqf. Similarly, there is a wide scope for the potential beneficiaries of a waqf. Table 2 explains this further.

Table 3 contains the list of possible modes of waqf which are applicable in the contemporary time. Additionally, it provides an overview of the distinctive qualities and management features of different modes of waqf.

Table 3.
Trends in Modes and Management of Waqf

Modes of waqf	Management	Features
Real estate	Traditional mode of waqf, Individually appointed mutawallī, institutional mutawallī (new trend)	Illiquid, immovable, permanent, ideal for infrastructure and housing
Cash	A combination of traditional and contemporary mechanisms of waqf. Mostly managed by international charities	Liquid, movable, perpetual and temporary, investible, economies of scale
Modes of waqf	**Management**	**Features**
Stock	New model, mostly managed by corporate and institutional mutawallī	Liquid, perpetual cash flow, risk of fluctuation in the value of the capital as well as in cash flow
Îukūk	New mechanism of perpetual donation. Generally, managed by corporate and institutional mutawallī	Tradable, relatively less liquid, less fluctuation, continuous cash flow
Waqf-share	New model of perpetual charity, mostly managed by charities	Project-oriented, subscription-based donation, investible lump sum
Intellectual property	Innovative model, specific to contemporary world, managed by both individuals and institutions	Intangible asset, continuous revenue generating, non-tradable

Source: Author

Waqf of real estate constitutes a traditional model in which the endowed land or building is either placed for commercial lease and the related rentals are deployed for charitable purposes, or the given property, being residential, accommodates the waqf beneficiaries. The model of cash waqf, on the other hand, is a common phenomenon with national and international Muslim charities. They raise cash waqf funds and invest them in Sharīʿah-compliant avenues that generate proceeds which in turn are employed for serving charitable causes.

Similarly, the mechanism of waqf-share is utilised to provide the potential endowers with the opportunity to participate in a waqf pool by subscribing to an intended number of fixed-priced waqf shares; i.e. donation certificates, by contributing the given amount of money. The waqf of stocks, Îukūk and intellectual property are relatively modern phenomena where the endower can pledge the proceeds of his/her financial assets such as stocks of listed companies or Îukūk as waqf. In addition, waqf of intellectual property such as an author's pledge of accruing royalty for charitable causes can be a reality in the domain of modern waqf.

III. RESULT AND FINDING

3.1. Waqf: The Evolutionary Process

In their initial stages, the institution of *waqf* and Sharīʿah evolved together (Hennigan, 2004). Putting its spiritual merits aside, the increased relevance of *waqf* in its early phase of history may be ascribable to the restrictive regulations attached to the institutions of *zakāh* and *mawārith* (rules of inheritance), which are highly regulated Sharīʿah institutions. For instance, the main beneficiaries of *zakāh* are specifically defined in Sharīʿah (al-Qardawi, 1985). Similarly, for *mawārith*, the categories of the heirs and their respective shares are strictly determined. In this context, the flexible mechanism of *waqf* provided a middle way for both institutions. A deed of *waqf* can be structured to benefit whomsoever the *wāqif* wishes, including the members of his own family, friends, as well as the rich and the poor (Kahf, 1999). Similarly, through the mechanism of *waqf* a person can provide for his heirs and others according to their respective needs and not in a restrictively fixed proportion. *Waqf* in this capacity played a crucial role in providing a relaxed alternative to the narrowly regulated Islamic legal institutions such as *zakāh*, *waṣiyyah* (Islamic will) and *mawārith* (Çizakça, 1998).

The mechanism of *waqf*, perhaps due to its flexibility, was popular among the companions of the Prophet (peace be upon him). To this end, there are instances where the Companions employed the innovative mechanism of *waqf* to respond to unforeseeable contingencies (al-Khassaf, 1904). *Waqf* was used in early Muslim societies as a multi-purpose adaptable tool which served the purpose of indemnifying the named beneficiaries against their vulnerability to a future unfavorable event. This proposition is supported by the clauses of some Companions' *waqf* deeds. For example, Zubayr ibn ʿAwwām and Saʿd ibn Abī Waqqāṣ made *waqf* of their houses with the stipulations that their progeny, especially their daughters, would be entitled to reside in them in the event they had no shelter due to either poverty or divorce or widowhood (al-Khassaf, 1904: 17). Similarly, ʿĀʾishah and ʿUqbah ibn ʿĀmir endowed their properties with the condition that the residue would return to their most deserving relatives (al-Khassaf, 1904: 18). These instances demonstrate how the flexibility of *waqf* was effectively utilised by the early generations of Muslims to condition its usage for multifarious objectives.

The concept of *waqf* is based on the premises of *tabarruʿāt* (voluntary benevolent disposition). Though there are other devices of *tabarruʿāt* as well including the ordinary *ṣadaqāt* (plural of *ṣadaqah*, charity), *hadiyah* (gift) and *qarḍ ḥasan* (benevolent loan), these devices are not as flexible as *waqf*. Technically, the point of divergence between *waqf* and other *tabarruʿāt* is characterised by the treatment of their respective ownerships (Zuhayli, 1996; Abu Zahra, 1972). In other forms of *tabarruʿāt*, apart from *waqf*, the ownership of the given subject matter transfers from the donor to the beneficiary. In *waqf*, the ownership of the subject matter becomes suspended (Kahf, 1999). Due to this underlying divergence between *waqf* and other *tabarruʿāt*, there is relatively more scope for innovation and ingenuity through *waqf* than the other variants of charitable giving.

The legal requirements of *waqf* distinguish it from an absolute *ṣadaqah* in many aspects. These distinctions can be summarised in the following five points:

(1) The subject matter of *waqf* cannot be owned in absolute terms, while the subject matter of *ṣadaqah* is fully owned by the beneficiary.
(2) The stipulations of the *wāqif* must be adhered to. In contrast, the stipulations of the donor of *ṣadaqah* do not enjoy this status. Instead, any such stipulations would be taken merely as *mashwarah*[2] (suggestion) and not as mandatory condition (al-Shaybani, 1997: 250).
(3) If the *wāqif* becomes an apostate, his *waqf* would become void whereas the apostasy of the donor of *ṣadaqah* would not affect the legal status of *ṣadaqah* in any way (Ibn ʿĀbidīn, 2010).
(4) The subject matter of a *waqf* could never be employed by the *mutawallī* for Sharīʿah non-compliant purposes; however, a *ṣadaqah* could possibly be used by its new owner in any manner.
(5) *Waqf* constitutes the property of the whole community, while *ṣadaqah* belongs to a particular individual.

In terms of its objectives, the device of *waqf* covers several possibilities. It may be employed for religious, philanthropic, public, private and other charitable purposes. The possible subject matter of *waqf* may include a property which either generates usufruct/fruits or revenues. For instance, as shown in Figure 1, a *wāqif* may choose to endow a usufruct-bearing subject matter such as a well/canal that provides drinking/irrigation water to the intended beneficiaries; or an orchard/agricultural land which bears fruits/grains to be directed towards serving charitable purposes. Similarly, Figure 1 shows that there is an equal possibility of endowing a revenue-generating subject matter as *waqf*, such as a commercial building which is to be leased, or a cash *waqf* which is to be invested to generate proceeds.

The classical *awqāf* mostly constituted immovable properties. The most significant diversion from this mode of donation came when *waqf* of movable properties such as cash, jewellery, seeds and agricultural equipment was permitted by the early Ḥanafī jurist Imām Zufar (Ahmad, 2015). The relaxation of the jurisprudential prohibition of *waqf* of movable properties paved the way for further evolution of *waqf*. The possibility of employing *waqf* as a financial product

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2. Al-Shaybānī argues that "if a donor gives away his house to someone with the stipulation that the latter would reside in it, the stipulation of the donor would be taken as a suggestion only. Similarly, the stipulations of a *mūṣī* too would be considered as *mashwarah*" (1997, p. 250). This raises the question of the basis for the necessary requirement of its adherence to *waqf*. If the *ḥadīth "al-muslimūn ʿalā shurūṭihim"* (Muslims are bound by the conditions they make) provides the basis for *waqf*-related axioms, why is the same not applied to other institutions as well? The answer lies, perhaps, in the nature of ownership of a *waqf*.

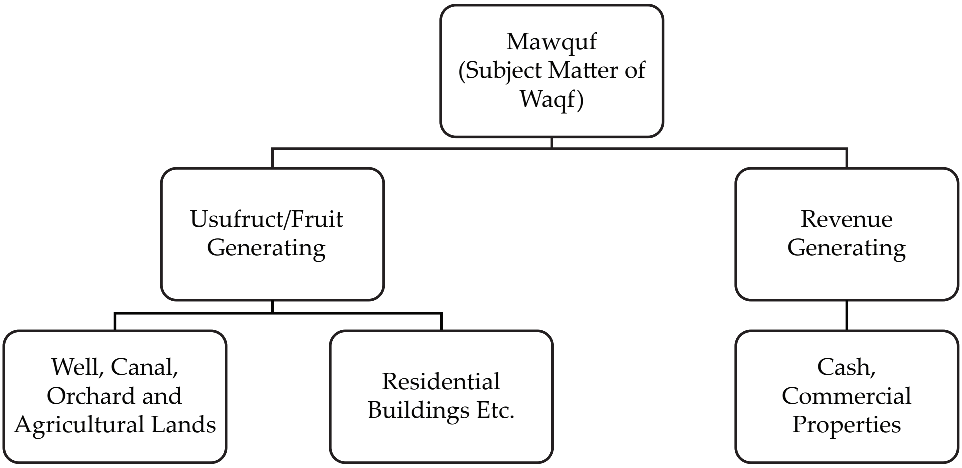

Figure 1.
Subject Matter of *Waqf*

is ascribable to this jurisprudential position of Imam Zufar, which was supported by some Mālikī jurists as well (Ahmad, 2015).

With reference to early Islamic financial services, it is argued that it was through the pools of cash *waqf* that such services were provided for the community (Çizakça, 1998). The most vivid examples of such *waqf* pools can be traced back to the 16th and 17th century. For example, during the Ottoman era, Muslim communities widely practised *waqf*-based financial services. The *waqf* pools comprising numerous cash *waqf* donations from different individuals were employed through the mechanism of *istighlāl*[3] to finance various clients (Çizakça, 2000: 47-48). Additionally, *waqf* pools were vital in providing the seed capital to small and medium enterprises (SMEs) on *muḍārabah* basis as well as for providing funds for consumption purposes (Çizakça, 1998). Notwithstanding this development, for a long period of its history, the Sharīʿah permissibility of cash *waqf* remained fiercely disputed (Islahi, 2013; Çizakça, 2000; Mandaville, 1979). The permissibility of cash *waqf* gradually received acceptability outside Ottoman Turkey but not in a global sense. Jurists in countries such as Egypt, Iran and the Indian sub-continent remained reluctant to approve the permissibility of cash *waqf* till as late as the beginning of the 20th century (Çizakça, 2013). The progress of evolution in *waqf* continued, and by the early 20th century, precisely in 1907, *waqf* of "company shares as well as European perpetual bonds" was permitted by some leading scholars (Çizakça,

3. *Istighlāl* was, apparently, a fictitious sale contract wherein "the borrower handed over to the lender a piece of real estate, supposedly as a sale, but actually in a pawn. If the borrower redeemed his debt after a year, the asset reverted to him. In the meantime, the lender leased the asset to the borrower (so that the borrower could go on using it)" and would pay the rent (Çizakça, 2000: 46).

2013: 7-8). The history of *waqf*-based associated companies can be traced back to 1967 in Turkey (Çizakça, 2013).

In terms of its global acceptability, the resolution of the International Islamic Fiqh Academy (IIFA), Jeddah, on the Sharīʿah permissibility of cash *waqf* has confirmed that the modern *waqf* has come of age by evolving into a financial product (IIFA, 2013; 15/6, 140). Notably, the permissibility and possibility of cash *waqf* has significantly widened the scope of further evolution of modern *awqāf* (Mohsin, 2013). In the modern context, cash *waqf* potentially can be employed for a plethora of schemes (Mohsin, 2014; 2009). The concept and mechanism of cash *waqf* has ignited a great amount of interest from the various stakeholders of *waqf* institutions including the Islamic finance industry. The nature, technicalities and nuances of banking and financial products are more compatible with the cash version of *waqf* than with its other illiquid variants.

Awqāf in the contemporary scenario have received many innovative reformations. For instance, the domain of *fiqh* has been extended to accommodate some new trends and developments in the *waqf* industry. Compared to the traditional *awqāf*, which mainly constituted real estate, new *awqāf* comprise *waqf* of cash, stocks, securities, intellectual property rights and other liquid and illiquid financial instruments by individual, institutional and corporate *wāqifs* (Suhaimi, Rahman and Marican, 2014; Hamad, 2015). Though the jurisprudential debate over the Sharīʿah basis of corporate *waqf* [4] is still going on among modern jurists, the practice of corporate *waqf* is not new. For instance, the first noted corporate *waqf* was created by Koc Holdings in Turkey as early as 1967 (Çizakça, 2011b). The Turkish corporation declared a *waqf* of its 10,000 shares and appointed its own subsidiary Koc Foundation as the *mutawallī* of the *waqf* (Çizakça, 2011b).

In the contemporary *waqf* literature, the concept of corporate *waqf* received new interest with the creation of *waqf* by a Malaysian corporation, Johor Corporation (JCorp), which dedicated its shares worth RM 200 million as *waqf* in 2006 (Ramli and Jalil, 2013). Interestingly, the initiative of JCorp is not limited only to the creation of *waqf* by a corporate body but also involves the administration of the given *waqf* by another corporate body, namely WANCORP, a subsidiary of JCorp (Mohsin, 2009)

From the *fiqhi* (jurisprudential) perspective, the case of corporate *waqf* seems exceptionally interesting given the fact that in this case the practice evolved prior to the proper conceptualisation of its legal basis in Sharīʿah. While the modern Sharīʿah jurists are yet to reach a consensus on whether a legal entity can be a *wāqif* or not — which is the case with corporate *waqf* — the practice of corporate *waqf* is on the rise. In the recent development on the issue, while "recent Turkish law of *waqfs* clearly grant legal personality to *waqfs*'' (Çizakça, 2013: 9), a new framework of *waqf* law has been jointly prepared by the Islamic Development Bank/Islamic Research and Training Institute (IDB/IRTI) and the Kuwait Public Foundation (KPF) which

4. The concept of corporate *waqf* is still a little blurred, as the term has not been precisely defined in the available literature on *waqf*. In the contemporary *waqf* literature, the term corporate *waqf* possibly refers to two phenomena, namely, a *waqf* by a corporate body in the form of its shares and a *waqf* managed by a corporate body as the *mutawallī* (trustee) of *waqf*.

proposes the Sharīʿah permissibility of incorporating *awqāf*. According to the draft *waqf* law of IDB/IRTI and KPF, the incorporated *waqfs* are defined as ''*waqfs* that enjoy full corporate status. Thus they can sue and be sued. They also provide full owner and entity shielding to their trustees" (Çizakça, 2013, p. 5).

Not only these, what signifies a new trend of evolution in the modern *fiqh* of *waqf* is that the Sharīʿah acceptability of temporary *waqf*, which was once advocated by "the new IDB/IRTI and KPF draft law" (Çizakça, 2013: 12), has already been accepted. The new standard on *waqf* issued by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) holds ''In principle *Waqf* should be eternal. Nevertheless, temporary *Waqf* is also permissible when the donor desires to get back his property after a specific period'' (AAOIFI 33/3/1/4). The proponents of temporary *waqf* ascribe its permission to be based on the analogy of a voluntary benevolence, the benefit of which recurs. For instance, according to Kahf (1999) the jurisprudential scope for voluntary charity is extensively open in Sharīʿah, and thus there seems no valid reason why a *waqf* shall be necessarily perpetual. In this regard, the closest proximate for the analogy of temporary *waqf* can be found in the Sharīʿah-prescribed benevolent loan (*qarḍ ḥasan*) with the only difference that while the latter entails the transfer of ownership of the subject matter with the condition of its equal return after a while, the former warrants the suspension of the ownership for a defined period of time (Abdullah, 2015). Thus, apparently, the concept of temporary *waqf* (*waqf muʾaqqat*) is not in conflict with jurisprudential rulings on *waqf* (Kahf, 1999; Manjoo, 2012). Thus, the mechanism of time-bound *waqf* is well-poised to sharpen the scope and prospects of innovation in Islamic finance through *waqf*.

Modern *waqf* is gradually evolving into a multidimensional institution. Due to the incorporation of several new features into its structures and mechanisms, modern *waqf* implies as much a financial product as a charitable institution. Figure 2 exhibits, from bottom to top, the evolutionary process of *waqf* from a mechanism of benevolence to representing a corporate entity. As shown in the diagram, though contemporary *waqf* has turned into an institution of multifarious usage, in general, it is more inclined towards covering the features of a financial institution. This phenomenon creates a new pitch of collaboration between *waqf* and Islamic finance.

The evolution of *waqf* into a corporate entity as well as into a legal personality has further widened the scope of innovation for the institution (Çizakça, 2013; Mohsin, 2014; Hamad, 2015). In a nutshell, in the current scenario, "*waqf* can create a company and a company can also create *waqf*" (Abdul-Karim, 2010, p. 19). The implications of this evolutionary progress of *waqf* are many, particularly in the context of Islamic finance.

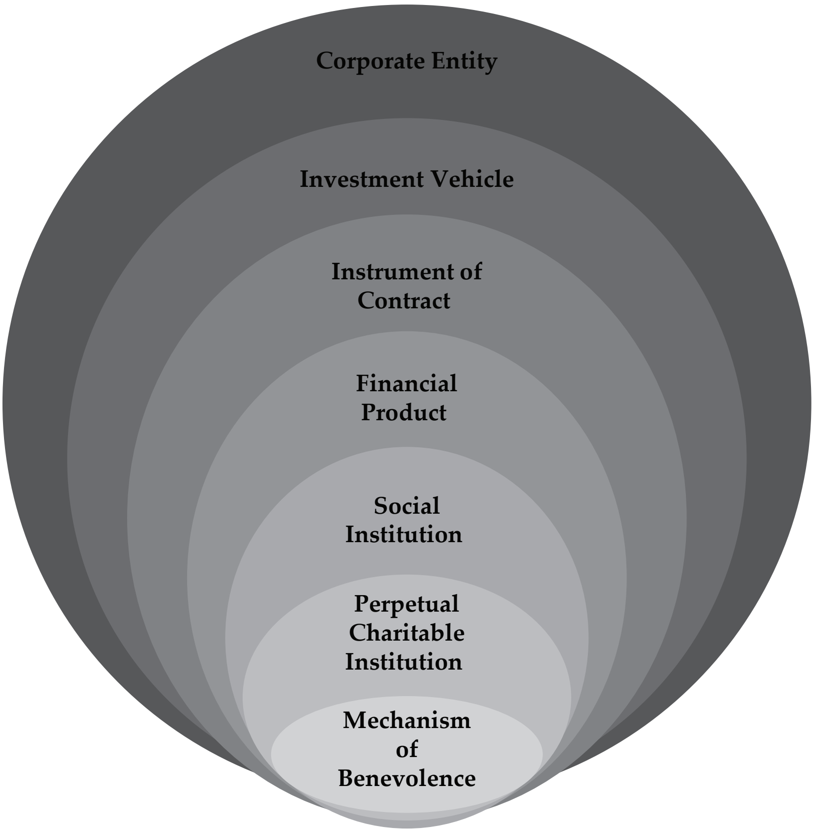

Figure 2.
Evolved Versions of *Waqf*

3.2 The Factors of Evolution in Contemporary *Waqf*

The speedy pace of evolution in the jurisprudence of *waqf* as witnessed in the last few decades is largely unprecedented. This phenomenon can be ascribed to several possible factors. One key factor appears to be the closer involvement of national and international bodies of Islamic scholars—such as the IIFA, AAOIFI, and others—in re-analysing the doctrines of *waqf* in the light of modern needs. This process gathered considerable vitality after the de-colonisation of the Muslim world. This process can be considered a manifestation of globalization, which provided the platform for various stakeholders of *waqf* from different jurisdictions to collaborate. The major impetus for the modern evolution of *waqf* jurisprudence is linked with the belief of the community that the jurisprudential basis of *waqf* needs further exploration for innovative tweaking (Kahf, 2004; Joseph, 2014).

In hindsight, the contemporary approach of *ʿulamā* (Islamic scholars) to expanding the domain of *waqf* jurisprudence is largely dependent on three *fiqhi* principles: *ʿurf* (customary practice), *maṣlaḥah* (benefit of the community) and *istiḥsān* (juristic preference). A composite of these principles lays the jurisprudential basis for the application of fresh reasoning in the existing *waqf* jurisprudence which entails accommodation of the emerging trends in modern *waqf*. The Sharīʿah permissibility of corporate *waqf*, for example, is vividly based on *ʿurf*. The permissibility of *ḥikr* or *ijāratayn* (long-term *waqf* lease) and *istibdāl* (swap) of *waqf* properties in modern times are deduced from the application of *maṣlaḥah* (Wizārat al-Awqāf wa al-Shuʾūn al-Islāmiyyah, 2006). In the same vein, the concept of *waqf muʾaqqat* (temporary *waqf*) as well as *waqf al-nuqūd* (cash *waqf*) can be permissible only in the light of *istiḥsān* (Ellias, Kadir and Harun, 2015). Interestingly, the modern evolutionary revisiting of the *fiqh* of *waqf* is greatly characterised by the implicit integration of *waqf*-related rulings from different schools of jurisprudence. For instance, while the permissibility of *waqf al-nuqud* (cash *waqf*) is derived from the opinion of the classical Ḥanafī jurist Imam Zufar, the basis for the validation of *waqf muʾaqqat* (temporary *waqf*) is being sought in the light of the Mālikī opinion. Similarly, while the ground for *istibdāl* of *waqf* properties lies in the opinion of the Ḥanbalī School of jurisprudence, the opinion of the Shāfiʿī School is resorted to for arguing the permissibility of endowing movable assets independently as *waqf* (Kahf, 2004).

In a nutshell, in the early Islamic societies, *waqf* functioned in a simple but limited structural setting. The identity of *waqf* in this phase of history remained as a tool of voluntary charity that took almost one-and-a-half centuries to evolve into a full-fledged charitable institution. For the modern *waqf*, the mechanism of *waqf*-based microfinance, microcredit, qarÌ Íasan and others demonstrate examples of *waqf's* evolution into a financial product.

3.3. *Waqf*: An Instrument of Contract

The institution of *waqf*, by its very nature, extends an informal or non-contractual form of *takāful* (Islamic insurance) cover to the vulnerable people residing in its vicinity. Be it a need for emergency relief or a recurring form of financial or socio-economic suffering of the vulnerable, the existing *awqāf* of given localities have been traditionally envisaged to extend material and non-material assistance. However, in the current scenario, the evolution of *waqf* into a device of contract has made it possible to provide *waqf*-based *takāful* schemes in a formal and professional manner.

Waqf as an instrument of contract is already being employed in the *takāful* industry (Rahman and Ahmad, 2011). According to Al-Humoudi (2012: 112), "The only application of *takāful* which completely complies with Sharīʿah, and receives no objection among the Islamic experts, is the *takāful* with *waqf* model". To simplify it, it is worth underlining that the concept of *tabarruʿ* is critically important to resolve the problem of contract in *takāful*. In other words, a *takāful* contract that is bilateral between the participant and the operator is deemed Sharīʿah-repugnant (Wan and Rahman, 2011). The underlying reasoning for the Sharīʿah non-compliance of such a bilateral *takāful* contract is the involvement of *gharar* (ambiguity) and *maysir* (gambling) in it (Bakar, 2009). This technical issue has been meticulously remedied by the employment of the *waqf* mechanism. Since a *waqf* is a unilateral donation, its usage for the *takāful* pool adequately resolves not only the contractual problem of *takāful* but also the problem of surplus distribution (Ali, Odierno and Ismail, 2008).

Similarly, *waqf* is suggested to be employed as a mechanism of contract for Sharīʿah-compliant pension funds (Manjoo, 2012). As per the proposed model, the mechanism of *waqf* can be employed for collecting the contributions from the pension applicants or any third party *wāqif*. The pool of the collected sum is invested and the nominated beneficiary receives the pension benefits from the pool in line with the specifications of the *waqf* deed (Manjoo, 2012).

3.4. *Waqf*: An Investment Vehicle

The evolution of *waqf* into an investment vehicle is characterised by the consistently growing interest in revival and renovation of existing *awqāf* through profit-oriented investment schemes. A huge number of *awqāf* need financing for the purpose of either revival or renovation. This positions the institution of *awqāf* as a promising Sharīʿah-compliant investment avenue for Islamic financial institutions. The intensity of modern *awqāf's* financial needs is unprecedented in the history of the institution. This phenomenon may best explain the evolution of modern *waqf* into a financial investment vehicle.

On the practical side of it, the typical example of how the modern *awqāf* has been treated as an investment avenue is embodied by the IDB subsidiary APIF (Awqaf Properties Investment Fund). APIF invites subscription capital from the member countries for investing in dilapidated *awqāf* on a *muḍārabah* basis, and it distributes the shares of the underlying profit from the given projects among the capital providers (IDB, 2015). Figure 3 explains how APIF treats *awqāf* as an investment vehicle.

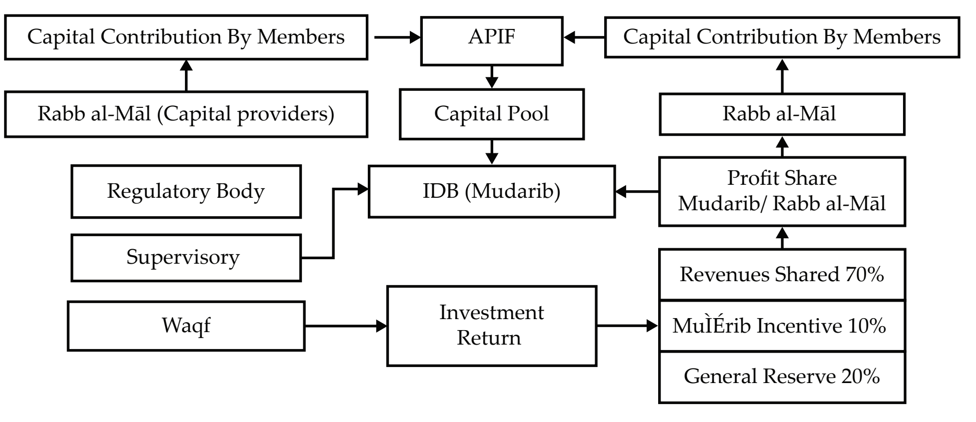

Figure 3.
Awqāf as an Investment Vehicle

As per Figure 3, APIF identifies the *waqf* properties which require investment for their development. APIF raises a specific amount of funds by inviting the member institutions to contribute capital as *rabb al-māl*. APIF appoints the Islamic Development Bank (IDB) as the *muḍārib* and delivers the allocated pool of capital to it for investment in the underlying *waqf* properties. The proceeds generated through the project are divided into three sections: general reserve, *muḍārib* share, and revenues to be shared among the capital providers (*rabb al-māl*). Thus, *waqf* in such scenarios offers a good investment avenue.

3.5. Waqf: An Instrument of Benevolence

The institution of *waqf* is envisaged to play a critical role in poverty alleviation through *waqf*-based microfinancing schemes (Alpay et al., 2015). A *waqf*-based microfinance scheme can ideally be helpful in resolving the two primary challenges of the sector: profitability and sustainability. Given the charitable as well as perpetual nature of *waqf*, both issues can be easily tackled in *waqf*-based microfinance schemes (Ahmad, 2007; Shirazi, 2014). In other words, since *waqf* constitutes a non-profit institution, there is a minimal scope for the factor of profitability through *waqf*-based microfinance schemes. Similarly, since the original nature of *waqf* invokes perpetuity (although temporary *waqf* is also permissible), *waqf*-based capital is better pitched for sustainability.

Similarly, employment of the *waqf* mechanism can be critically significant for micro-*takāful* operations. For the purpose of providing micro-*takāful* cover to the extremely poor, it can be proposed that some wealthy individuals subscribe to the *waqf*-based schemes in favour of such beneficiaries. For example, if a micro-*takāful* scheme for the health of poor persons or the crops of small farmers requires the participant to contribute USD 50 a year, the scheme may be subscribed to by a third person (the potential *wāqif*) in favour of a random or specific beneficiary. A donor could subscribe to the scheme for as many potential beneficiaries as he may wish. For example, to provide the *waqf*-based micro-*takāful* service to five beneficiaries, the donor would contribute USD 250. In an alternative scenario, by contributing USD 250 a donor may wish to provide the *takāful* cover to just one beneficiary for five years. The *waqf*-based *takāful* operator, which would underwrite the *takāful* contract, would hold back any surplus or investment return in the *waqf* pool. In case a deficit occurs in the *waqf* pool, the operator may invite an existing or potential *wāqif* to further contribute to the pool in order to maintain the sustainability of the *waqf* capital. In this regard, *takāful* schemes based on a hybrid of *waqf*, *wakālah* and *kafālah* can be structured.

The following terms may be used by the *wāqif* to favour specific individuals for the hybrid of *waqf-wakālah-kafālah* for micro-*takāful*:

- *Ṣilat al-raḥm takāful* scheme (for the provision of micro-*takāful* to the financially vulnerable blood relatives of the *wāqif*)
- *Birr al-wālidayn takāful* scheme (for the economically marginalised friends of the *wāqif's* parents)
- *Ḥusn al-jār takāful* scheme (for the needy neighbours of the *wāqif*)
- *Kafālat al-yatīm takāful* scheme (for the education and provisions of an orphan).

Figure 4 illustrates the functions of such a *waqf*-based *takāful scheme*.

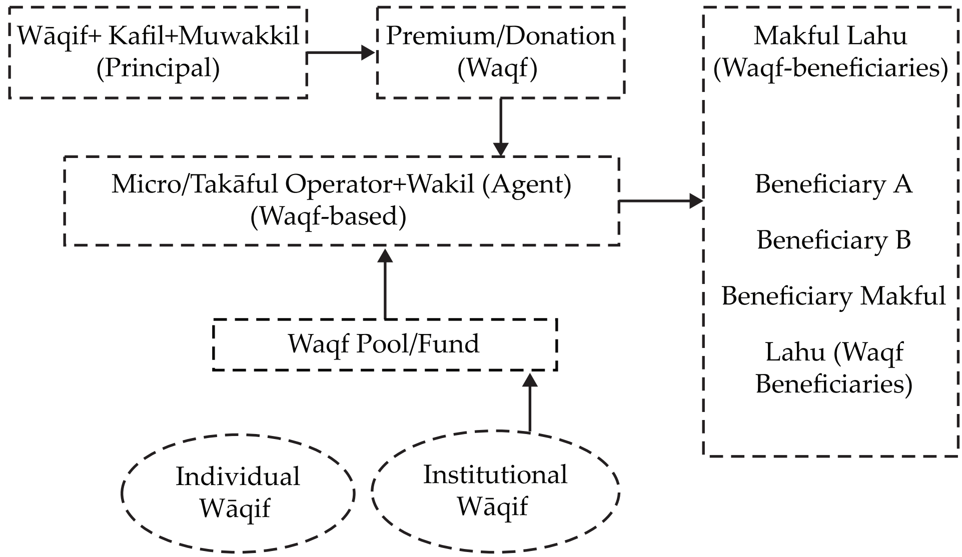

Figure 4.
Waqf-Based *Takāful* Scheme

As per Figure 4, a *wāqif* voluntarily takes the responsibility of specific beneficiaries/*makfūl lahū* by acting as his/her *kafīl*. He/she contributes the given sum of money to a *waqf* pool/fund for the purpose of providing micro-*takāful* cover to the intended beneficiaries. The *takāful* operator divides the endowed sum into investment and claim management buckets. Investment returns shall be first directed to maintain the corpus of the *waqf* capital and the rest is apportioned to the claim management pool. In case a deficit occurs in the pool, an existing or new *wāqif* (individual or institution) can be invited to further contribute to the pool. Since the invited new *wāqif's* contribution helps protect and maintain the corpus of an existing *wāqif's* capital, the new *wāqif* shall be inspired for expected double reward.

3.6. Parallel *Waqf*: A Proposed Model

In line with the religious spirit of a *wāqif's* volunteerism, a nominated beneficiary may as well participate in the spiritual benefits of *waqf*. For this, the concept and practice of parallel *waqf* [5] can be endorsed and promoted. To this end, a financially stable beneficiary of a family *waqf* (*waqf ahli*) may seek a parallel *waqf* model to benefit either a specific or common needy or poor. This model can be practised by resorting to the Mālikī School of jurisprudence. According to the Mālikī School,

5. The term 'parallel *waqf*' can be defined as a *waqf* made by a family *waqf*-beneficiary (*mawquf alayh*) by passing his/her established beneficial rights in the underlying *waqf* to a poorer third party for the purpose of securing reward of a *wāqif*.

it is permissible to endow the usufruct (*manfaʿah*) of a given property as *waqf* (Zuhayli, 1996; Kahf, 1999). Thus, since the nominated beneficiary of a family *waqf* is entitled for the beneficial ownership of the related *waqf*, he/she may exercise his right to transfer the given benefits to others on a temporary or permanent basis.

3.7. *Waqf*-Based Social Sukūk: A Proposed Structure

In addition to *waqf*-based microfinancing and micro-*takāful* instruments, the mechanism of *waqf* could possibly be used for developing *waqf*-based capital market products as well. A new model of *waqf*-based *ṣukūk* structure can be proposed in this respect to raise funds for social and charitable purposes.

Though there is no existing model of *waqf*-based *ṣukūk*, there is good scope for the development of one. A proposed structure of *waqf*-based *ṣukūk* is illustrated in Figure 5 below.

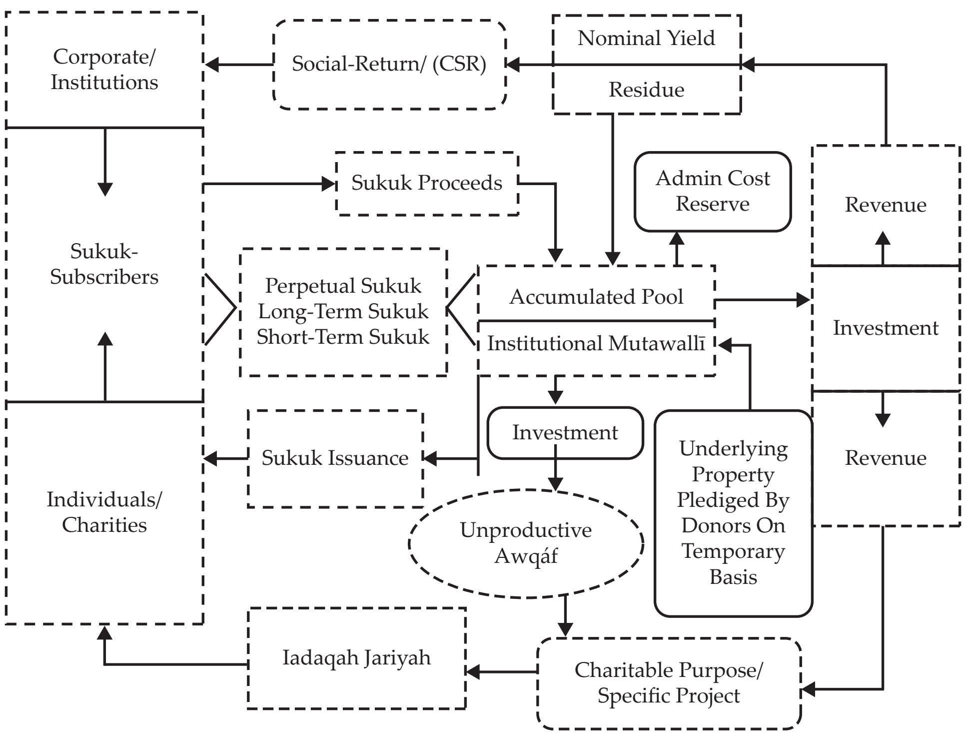

Figure 5.
Proposed Structure of *Waqf*-Based Sukūk

In this proposed model of *waqf*-based *ṣukūk*, the institutional *mutawallī*—which could be a charity organisation or a non-profit institution or a corporate or a governmental body—may issue the *waqf*-based *ṣukūk* for the purpose of social financing. For assurance and credit enhancement, an institutional *mutawallī*—e.g., charity organisation, governmental body, corporation or high net worth individual—could pledge specific underlying assets to the special purpose vehicle

(SPV) on a permanent or temporary basis. The lead issuer issues *waqf*-based *ṣukūk* and the underlying funds are mobilised. The target clients for the *ṣukūk* may include individuals, a group of individuals, corporations, non-profit organisations, governmental bodies and charities. The proceeds are invested in the specific projects of *awqāf* development. In addition, a certain proportion of proceeds are invested in a portfolio of capital market instruments and properties. The accrued revenues from the investment are used to fund charitable and social causes. The objectives of different subscribers may differ according to their public or private profile. For individual subscribers, the motivation for subscription to *waqf-ṣukūk* may be purely religious and altruistic. In comparison, for a corporate investor, the stimulus may come from the perspective of corporate social responsibility (CSR). For other institutions and charities, the decision of *ṣukūk* subscription may be informed by their interest in social return and also in improving their public profile.

With some fundamental variations aside, the model of this *ṣukūk* works similar to the charity-based fundraising model; i.e. investors subscribe to it as a means of charity and social investment. Given the differences in the underlying appetites and capacities of the *ṣukūk* subscribers, there may be three variants of the *ṣukūk*: long term, short term and perpetual. For those *ṣukūk* holders who are religiously motivated, the spirit of the spiritual return would suffice; however, for others, along with the social return, there can be a provision of nominal investment-share yield as incentive. Whereas the short- and long-term *ṣukūk* would be redeemable at the maturity date, the perpetual would not. As proposed by Manjoo (2012), the tradability of the *waqf* certificate/*ṣukūk* can be validated by employing the opinion of Abū Ḥanīfah, who draws an analogy between waqf and *ʿāriyah*. At the end of the maturity date for short- and long-term *ṣukūk*, the underlying pledged assets would return to the original owner. The proposed model can be tweaked and adjusted with the consultation of experts to meet regulatory requirements.

Alternatively, the *waqf ṣukūk* can be structured on a *muḍārabah* or *mushārakah* basis as well. Since *muḍārabah*/*mushārakah ṣukūk* are structured on the basis of the profit or loss of the underlying business, there is no requirement to transfer ownership of the underlying *ṣukūk* assets to the SPV in this model. Thus, the legal and Sharīʿah constraint on exposing the *waqf* properties to the risk of diminution or transfer of their ownership can be avoided in this structure of *waqf ṣukūk*.

3.8. *Waqf* Bank: A Proposed Model

The flexible nature of *waqf* entails not only innovative financial tools, but it also stretches to cover the functions of a full-fledged Islamic bank. In this regard, a proposal for a *waqf*-based social bank has been advanced (Mohammad, 2011). The proposed model of *waqf*-based social bank functions similarly to a full-fledged Islamic bank with the only difference that the profit of such a bank becomes part of the *waqf* (IRA, 2015). The revenues of the proposed *waqf* bank, according to Mohammad (2011), would then be deployed to provide microfinancing to the poor and to meet the financial needs of existing *awqāf*.

Compared to this proposal, there is another variant of *waqf* bank in its non-technical sense. The model of this *waqf* bank, which is functional in New Zealand, is based on collection and recycling of the unclaimed parts of the *qurbānī* animals (slaughtered during the Īd al-Aḍḥā festival). The skins are particularly valuable after processing. The products are sold and the resultant proceeds are deposited into a charity pool, which is termed an *awqāf* bank. Finally, the collected funds are deployed for social and charitable causes (Obaidullah, 2014).[6]

In comparison to these two models of *waqf* bank, there could be a proposal for another version of *waqf* bank in its non-technical sense. According to this model, in order to meet the multifarious needs of the potential beneficiaries, region-specific asset/usable commodity-based *waqf* banks could be established for the purpose of public utility. In other words, the functions of this proposed *waqf* bank can be similar to the functions of a food or blood bank. The given *waqf* bank would not collect only cash-*waqf* donations but also accept a pool of diverse usable, reusable, machineries, technical instrument, chattels and other valuables. The donors of these items would donate these items perpetually. The nature and characters of the acceptable donated items may vary in accordance to the specific needs of rural and urban areas. For instance, in an urban area the range of the donated items may include:

1. Used and unused electronic tools
2. Useful machines
3. Various useful equipment
4. Computers
5. Books, etc.

As far as the rural areas are concerned, the potential list of donated items for *waqf* bank may include:

1) Cultivators
2) Bicycles
3) Rickshaws
4) Spades
5) Sewing Machines
6) Ropes/String
7) Buckets
8) Seeds, etc.

The institution playing the role of the *mutawallī* may collect all these donated items along with cash and other forms of *waqf*. Whereas the investment of the cash *waqf* would provide continuous returns to meet the administrative and wear-and-tear costs, the *waqf* of tangible assets would benefit the community at large. The donated *waqf* items may be dispensed by the bank to whosoever needs them (from the locality) based on *ʿāriyah* (usufructuary loan) or *qarḍ ḥasan*. The bank may apply a minimum administrative charge on the borrowed items.

To sum up, if applied properly, the proposed mechanism of *waqf* bank may serve the purpose of a useful repository for various donated items, fulfilling the diverse needs of the community in an easy and cost-effective manner.

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6. According to the given data of this New Zealand *Waqf* (NZ) Bank, the total number of animals required for *qurbānī* each year in the western world is almost 5 million. On average, one sheep in New Zealand gives almost 5.6 kilograms of wool. The price of one kilogram of wool is NZ$2. Thus, 5,000,000 x 5.6 x 2 means that the *waqf* bank can potentially make NZ$56,000,000 (Obaidullah, 2014).

IV. CONCLUSION

Contemporary *awqāf* have taken on new relevance with the emergence of the Islamic finance industry. *Waqf* and Islamic finance have a shared background in terms of being Sharīʿah-based and have similarities in their ethical orientations. *Awqāf* and Islamic finance can play complimentary roles for each other. The mechanism of *waqf* promises huge possibilities for Islamic financial engineering and contractual innovation. The device of *waqf* has already been employed to develop a number of innovative instruments for the Islamic finance industry. The list of *waqf*-based financial products includes *takāful*, micro-*takāful*, microfinancing, *wakālah*, *waqf*-based unit trust and *qarḍ ḥasan*.

The modern *waqf* has already evolved to serve a multitude of purposes through its diversified functions and applications. It can be employed as an instrument of finance, a mechanism of legal contract, a vehicle for investment and as a corporate entity. This paper provided an analysis of how the contemporary *waqf* is in the process of speedy evolution followed by the detailed critical discussion on how the flexibility of *waqf* mechanism can be deployed to further develop innovative Islamic financial instruments.

Since the last two decades, the pace of evolution in *fiqh al-awqāf* (jurisprudence on *waqf*) has been breathtaking. Due to the consistent momentum of evolution in *fiqh al-awqāf*, the modern *waqf* is ready to embrace the structure of corporate *waqf*, temporary *waqf*, cash *waqf* and *waqf* of intangible assets such as waqf of intellectual rights.

This paper explored the possibilities of further financial innovation through the effective and diligent employment of the *waqf* mechanism. The *waqf*-based products which have been proposed in this paper include *waqf*-based *ṣukūk*, parallel *waqf*, hybrid of *waqf-wakālah*-plus-*kafālah* for micro-*takāful*, and *waqf* bank. Lastly, as noted, there is still an existing gap in the literature on how *awqāf* and Islamic finance can achieve greater collaboration both conceptually and practically. *Awqāf* and Islamic finance can mutually contribute to each other's progress, provided better communication and knowledge-sharing occur between the two industries.

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