Synthesizing the Maqasid al-Syariah for the waqf property development

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Abstract. The development of Islamic religious related property under the waqf (religious endowment) has shown some progress in many countries. Waqf has propagated its significant towards enhancing the public interest through the supply of many beneficial developments regardless the religious or non-religious purposes. The practice of waqf is maintained under the Shariah rulings and fiqh principles that form the overall Islamic Laws. In relation to Maqasid al-shariah, it has become a fundamental element in seeking for the higher objectives and intents of Islamic Law. It is also known as the wisdom behind the Shariah rulings that the Almighty has imposed on the Muslims. Maqasid al-shariah has three hierarchy of purposes and five essentials to preserve under the Shariah rulings. Examined under the lens of Maqasid al-shariah, waqf is indeed matched with the purpose of Maqasid itself. Moving forward, this study is intended to propose maqasid for waqf property development, which is the extension from the existing studies of maqasid for waqf. This study was using content analysis to search for suitable essentials/components to add into the proposed maqasid of waqf property development. The proposed maqasid of waqf development still maintain the preservations of religion, property and life from the original Maqasid essentials as the primary objectives. But being reinforced with six additional essentials/components to be regarded as the secondary objectives. Through the lens of maqasid, it provides an extension and insight to acknowledge the objective of developing the waqf properties.

1. Introduction
In the context of built environment studies, lands that fall under the Islamic religious purposes are still not fully explored although those lands are carrying significant function as the factor of production. Waqf land becomes unique due to its permanence, inalienability and irrevocability characteristics that have been preserved by the Islamic jurisdiction. Data in 2013 from Malaysia has revealed that there were 14,356 lots of waqf land with 30,888.89 hectares in size [1]. Whereby 11.35% of it has been developed through out Malaysia with the cost of more than RM949.84 million. Meanwhile waqf in Indonesia as of March 2016 recorded 435,768 lots with the size of 4,359,443,170 sq.m and Singapore as of year 2017 has 156 properties with worth approximately S$769 million [2, 3]. In the Middle Eastern
region, the value of waqf assets has also accumulated, for instance Morocco has approximately $600 million, Algeria ($220 million), Libya ($250 million) and Qatar ($1.3 billion), which will continue to grow [4]. These figures have surely become evidence to gauge the latent potential of waqf if the structure of waqf development is properly established.

Depending on the deeds by waqf donors, the development of waqf land may not solely for religious purposes but may broadly serve the social needs across different social layers. It becomes one of the instruments in the third sector that able to facilitate the well-being of the society at large although mainly to cater the Muslims. Despite of its clear benevolent actions and benefits, people usually oversights to see the wisdoms or objectives of why Islam regards waqf as an important instrument through those dedications and sacrifices. This is where the matter should be observed through the lens of maqasid al-shariah that this paper would explore in the latter parts. The maqasid for waqf development will be proposed at the end of this paper.

2. Bridging the context of shariah, maqasid al-shariah, waqf and property development

Shariah principles can be described as the formal code of Islam that derived from the Quran and hadith [5]. Shariah has been explained as Islamic laws that are broad and wide-ranging to all aspects of human life by the Creator with purposes and objectives [6]. Moving forward, there is the Maqasid al-shariah, that is literally bring the meaning of intent, objective, purpose, aim and end-goal in any implemented Islamic law that people should understand [7]. Referred as the higher objectives of Islamic law, Maqasid al-shariah entails the principles that putting wisdoms behind rulings, thus could provide answers to various questions regarding the practice of Islam and to preserve people’s minds and souls [8]. It becomes a framework that outlines the purpose for Islam to become a system of life. It will rationalize all the needed values embedded upon divine revelation and Islamic epistemology to solve various issues and guide the Muslim’s life [5]. Also, it provides guidance and framework for the process of ijtihad (independent reasoning) by the Islamic jurists in solving the issues at hand while maintaining the compliance with the Islamic laws [9]. In short, maqasid al-shariah is to safeguard and protect the essential of human rights under the shariah framework during the lifetime in this world and facilitates the journey in the hereafter.

Waqf on the other hand is one of the optional contributions in Islam precedent from the Sunnah of Prophet Muhammad (ﷺ). Waqf is not explicitly spells out in the Quran, but it conforms with many Quranic verses that encourage the Muslims to do charity, generous help, benevolent and good deeds such as from the verse 261 of Al-Baqarah as below.

“The likeness of those who spend their wealth in the way of Allah, is as the likeness of a grain which grows seven ears, in every ear has a hundred grains. Allah gives manifold increase to whom He pleases. Allah is All-Embracing, All-Knowing.”

(Surah Al-Baqarah, 2:261)

After the arrival of Islam, the starting of waqf practice could be inferred by the action of building up the Quba Mosque by the Prophet himself soon after His arrival in Medina during the event of migration from Makkah. It then has been practiced under the purview of Islamic jurisprudence, whereby the waqf doctrinal legitimacy was stemmed from several hadith that recorded the Prophet’s advices or encouragements to His companions and family to bequeath their assets for the long-lasting benefits to others [10–14]. As the time goes by after the demise of the Prophet, waqf has expanded tremendously and require for the additional rules to handle the emergence issues. That included the addition of new categorisation of waqf assets and dedications, the validity of the waqf, the condition of the waqf pillars, the appointment of mutawalli and contemporary waqf instruments, just to name a few. All of that require for Islamic jurists to formulate the rules through the process of ijtihad (reasoning) based on their understanding from the text of Quran and Sunnah [15, 16]. As of today, the Shariah rules for waqf are fairly well-developed and would open the subject to progress in line with the needs of the Muslim community [17]. The development of Shariah principles or rules for waqf that mostly furnished by the process of ijtihad entails greater relationship to maqasid al-shariah.
Property development, which this paper confines the scope within the waqf land entails the effort of providing the improvement on the land. The type of the development and the expected benefits must in accordance to the waqf deeds of the donors. It is not necessarily for religious purposes, but could be any development that the Shariah would allow. The donors could outline the intended development in specific or general in their deeds for the mutawalli (trustee/manager) to materialize. Overall, the development must be beneficial to the specified beneficiaries and conform with the regulated laws in the country to ensure the public’s harmony and safety. The idea of maqasid could be instilled in the waqf property development so that everything is aligned with the purpose of waqf.

3. Methodological Approach
The study intended to synthesis the components of maqasid as specified in the Islamic shariah framework into the application for waqf development. Although the context of maqasid al-shariah has been well-developed to accommodate every aspect of shariah ruling, but this study felt that waqf needs for a specific maqasid to attain the purpose of developing the waqf properties in more detail. Extending the works from several scholars who had studied the maqasid for waqf, this study was scrutinizing the maqasid within the context of waqf property development.

The process to identify the maqasid for waqf property development required the study to conduct the content analysis from several text, articles and references related to maqasid al-shariah. It includes the area of muamalat because waqf also categorised under the same scope. The consideration was mainly to extend the original essentials of preservation under the Shariah rulings and create the secondary layer of essentials which tailored to the waqf development context.

4. Analysing the Maqasid

4.1. Maqasid al-shariah under its traditional classifications
Maqasid al-shariah was developed after the Prophet Companions’ era in between the third and fifth Islamic century but only clearly developed in between the fifth and eight Islamic century by many Islamic scholars such as Al-Tirmidhi al-Hakim, Abu Zayd al-Balkhi, Abd al-Malik al-Juwayni, Abu Hamid al-Ghazali, Abu Ishaq al-Shatibi and many others [8, 18]. The level of necessities under the traditional concept of Maqasid al-shariah is illustrated in

Figure 1.

Figure 1: Traditional Classifications of Maqasid – Three levels of necessity [8]

Maqasid al-shariah has three levels of necessity known as the dharuriyyah, hajiyiyah and tahsiniyyat that translated as the necessities, needs and luxuries (embellishment/complementarities). Al-Dharuriyyat (necessities) is the essential to achieve spiritual and material well-being, whereby the missing of these essentials would bring imbalance, corruption, disturbance and destruction in people’s lives [9, 15]. Al-
hajiyyat (needs) functions to alleviate or relieve hardship and difficulty, and to create ease and comfort in life [7, 19]. Meanwhile Al-tahnisiyah (luxuries) is for ‘beautifying purposes’, facilitate the quality of life and would make human well-being more comfortable [8, 9].

Although the classification is notable, but these levels are actually overlap on each other, where each level serves and protects the lower level [8]. Inversely, the subordinate level will function to consolidate and advance the realizations and preservations of the main purpose of the Shariah [9]. However, in order to address the contemporary socio-cultural realities, the contemporary scholars, especially in the twentieth century have searched for the improvisations, thus witness the maqasid to evolve over the centuries [8]. Under the modern environment, the maqasid should get enhancement in its dimension and becomes more versatile in the modern context without suppressing its fundamentals.

4.2. Studies on maqasid of waqf

Waqf under the maqasid of religion preservation connects with doing, mobilize and spread the good deeds to people regardless the Muslim or Non-Muslim, animals and environment, which need to be carried out in any way at all times and places [19]. It proposes that through the good deeds, waqf may fulfills all the five necessities (dharuriyyat) of preserving faith, soul, mind, wealth and lineage while maintaining the needs (hajiyyat) and luxuries (tahnisiiyat). Having said that, waqf according to Ibn ‘Ashur is the hajiyyat because it provides ease to the people’s hardships and bring comfort to the people’s necessities [7]. It is reasonable because waqf functions as an optional contribution that become secondary after the dharuriyyat but may become vital supports in preserving the necessities at the dharuriyyat level.

Regardless the level of necessities of dharuriyyat, hajiyyat and tahnisiiyat, scholars still referring the earlier mentioned five necessities as the component of fulfillment. For instance, waqf is viewed to be more specific into preserving the religion and property. But in some countries, the management of waqf is quite lacking. Thus, calling for the establishment of maqasid for waqf management [21]. It is consistent with the notions from many scholars who urging for better management structure for waqf as mechanism to uphold the overall maqasid [22, 23].

![Figure 2: The Maqasid of Waqf](image1.png)

![Figure 3: Maqasid al-Muamalat](image2.png)
The *maqasid* of *waqf* also has been proposed by Razali Othman [24] as illustrated in . He has firmly stated that the philosophy of *waqf* was originated from the Islamic *tasawwur* (Islamic worldview) that stands from the *Quran*, *hadith* and *ijma’ ulama* (Islamic scholars’ consensus). Thus, rejecting the notion that *waqf* was influenced or inspired by the practice of religious giving in the society before the arrival of Islam or from the Near Eastern civilization territories like Rome. He then outlined the objectives of *waqf* under the context of preservation of property (*hifz al-mal*) and coupled with the intention to do good deeds and to get nearer to Allah [24]. It establishes the vertical and horizontal relationship through the relationship between human and Allah as well as the relationship between humans in order to induce harmony in the whole society.

Taking the perspectives broader than the traditional *maqasid al-shariah*, *waqf* could be viewed under the context of *maqasid al-muamalat*, that refers to dealings [22]. Al-Mubarak had included five Ibn ‘Ashur’s *maqasid* for financial transaction and contracts with three inclusions from Abdullah bin Bayyah to associate with *waqf* (Refer Error! Reference source not found.). In his elaborations, *waqf* is an instrument to circulate wealth (*rawaj*/*tadawul*) from the donor, that involves ownership transfers (*tamlik*) to Allah for the enjoyment of the public. Its perpetuity characteristic requires for preservation of its property/corpus (*hifz al-mal*) and involves in activities that can generate sustainable benefits or incomes, thus serve the objective of permanence and sustainability (*thubat*). Developing *waqf* assets would usually involve construction projects, thus meets the objective of constructing the civilization (*i’mar al-ard*). Transparency (*wuduh*) and good governance would ensure the trustworthy of *mutawalli* in protecting people’s equity (*’adl/’adalah*) and build up the social inclusion in the *waqf* sector.

5. **Proposing the *maqasid* of *waqf* development**

Synthesizing the input from other studies, this study would like to propose the *maqasid* of *waqf* property development from the context of preservation of religion (*hifz al-din*), property (*hifz al-mal*) and life (*hifz al-nafs*) as the primary objectives towards getting the blessings of Allah and realizing the development. Then reinforced by six essentials that form as the secondary objectives (Refer Figure 4).
Figure 4: The maqasid of waqf development

The preservations of religion, property and life are regarded as vital in maqasid of waqf development. The preservation of religion is core considering waqf exists due to the Islamic religion encouragements on good virtues, which in exchange with tawheedic spiritual enrichment and manifold rewards as promised by Allah in verse 261 of Surah Al-Baqarah and verse 7-8 of Surah Al-Bayyinah. It entails the essentials of getting closer to Allah and take up the encouragement of doing good deeds.

The preservation of property has become the central objective considering that the number of undeveloped waqf lands is huge and need for urgent but careful attention. It entails the objectives of maintaining the sustainable aspects of waqf properties and to help for the construction of civilization.

Meanwhile the preservation of life outlining the benevolence and equity or justice objectives. The benevolence actions together with equality or justice would internally enrich people towards achieving a greater and blessed civilisation. Moreover, waqf development projects would bring comfort and increase the quality of life.

6. Conclusion
Shariah and its maqasid can evolve within the allowable parameters to meet the challenges of contemporary environment but of course it cannot deny the needs of certain verifications. The effort to develop waqf properties would automatically uphold the spirit of Islamic components and at the same time would either provide necessities in peoples’ life, lifting difficulties or providing fulfilments through various benefits from waqf properties. But waqf development need to be guided under specific maqasid. It should have its own maqasid or objectives that can portray a better reasoning of the practice. Especially when dealing with new expectation or the contemporary needs in the society. This study successfully proposing the maqasid for waqf development, but it stills open for expansion and contention through future studies.

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