WAQF-Gaining the trust for social economic sustainability

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It gives me great pleasure to be here this morning, and to address this gathering of experts and proponents of waqf and Muslim endowments, which is a fascinating subject of real interest and importance to me.

I would like to begin by applauding the Ministry of Higher Education and the University of Malaya on the establishment of a Chair devoted to waqf studies, which draws attention to the many facets of endowments in the Islamic tradition that can be explored and optimised for the advancement of society as a whole.

My hope is that this positive development for waqf in Malaysia will encourage other government ministries, religious authorities, corporate bodies and individuals to consider this social finance instrument as a viable, sustainable funding option for socially beneficial projects, thereby reducing dependency on public funds.

Indeed, I look forward to the day when endowment-funded universities become the norm rather than the exception here in Malaysia, and I hope that the various state Islamic councils and universities can work hand in hand to make this vision a reality.

The general concept of waqf should be familiar to us as a predecessor of modern trusts and endowments. A donor endows a waqf with an asset and, in doing so, makes an irrevocable transfer of that asset, while also stipulating the intended charitable use of the funds it generates.

A waqf institution then spends its revenue in perpetuity on the fulfillment of public needs, according to the wishes and conditions established by the donor.

Once the asset is registered as waqf under Islamic law, it can no longer be inherited, sold or given as a gift. It is placed under three key restrictions: irrevocability, perpetuity and inalienability. In fact, the asset now belongs to the divine Almighty, Allah Subhanahu wa-Ta'ala (SWT), and remains intact or permanent.

This permanence points to the original sense of the Arabic word for waqf, which literally means "to freeze" or "to stop"; in other words, as the original asset is now "frozen", only its generated revenue can be channelled to the stipulated beneficiaries.

Although some have argued that the practice of waqf may have existed well before the advent of the Islamic religion, Islam was, in fact, the first religion to develop a comprehensive legal framework that promotes, guides and fosters the development of the institution of endowments and charitable trusts.

In a famous Hadith invoked by the Muslim ulama to legitimise the practice of waqf, the Prophet Muhammad Sallallahu 'alayhi Wassalam (SAW) said:

"When a human being dies, his or her good deeds also come to an end, save three things (that they leave behind): (first) a perpetual charity (sadaqa jariyah), (second) any beneficial knowledge, and (third) a pious child praying for him or her."

A notable example of a waqf property is the Well of Sayyidina Uthman Radiyallahu ‘anhu (RA) in Madinah, which was founded in the first year of Hijra during the Prophet’s own lifetime. The famous Well of Uthman originally belonged to someone who was selling water to the poor inhabitants of Madinah at an exorbitant price.

The Prophet SAW promised Paradise to the person who would buy the well and endow it to the residents of that city. Upon hearing this, Sayyidina Uthman at once set out for the owner and purchased the well in two instalments, paying a total sum of 38,000 silver dirham, which was a hefty sum of money at the time. He then registered the well as waqf and allowed everyone, Muslim and non-Muslim, to draw water for free.

Alhamdulillah, this well has remained “intact” to this day, and one can still witness water being pumped from it, albeit now using an electrical motor, to irrigate the surrounding farmlands. Indeed, many date palms and other trees thrive in the area.

Over the years, the authorities in charge of the waqf, the mutawalli, have invested the money received from the sale of farm produce as well as from other investments related to the original endowment. As of 2013, this investment income totalled 50 million Saudi riyal (RM52.24 million). As the enduring example of the Well of Uthman makes evident, waqf undoubtedly stands as one of the greatest contributions of Muslim civilisation.

Throughout the Islamic world, and across many centuries, waqf has led to the completion of magnificent works of architecture, and has allowed vital services — including education and healthcare — to be financed, organised and maintained, to the benefit of hundreds of thousands of individuals, Muslims and non-Muslims alike.

Waqf also provided a means of achieving a more equitable distribution of income and wealth, and of introducing sustainable and inter-generational social investments in society. Some of us today may not realise this, but for every conceivable enterprise for the advancement of public good across the Muslim world historically, there was always a waqf behind it.

Institutions of waqf reached their zenith during the 16th and 17th centuries, at the height of the Ottoman Empire. Indeed, the waqf system became one of the building blocks of the Ottoman economic and social order.

Imperial waqfs established by the Ottoman sultans were some of the largest economic and social institutions of the time, holding vast agricultural land holdings and diverse income-yielding real estates, managing extensive budgets, and providing not only religious services, but social and educational projects too.

In the language of economists, these imperial waqfs also functioned as redistributive institutions. They collected income from different rural regions, and channelled the funds into town economies, redistributing this income through the purchase of food and other goods, the provision of charitable services, the upkeep of buildings, and even through maintaining the salaries of their employees.

As well as contributing to the economic development of the Muslim world, moreover, historians have shown that the law governing waqf was borrowed by Europeans, and by the English, in particular, following the Crusades in the Holy Land (1095-1291), when they became acquainted with Islamic jurisprudence and culture.

A famous example of this — something I was privileged to witnessed during my days at Oxford University — is Merton College, which was established with a financial endowment in 1264.

Scholars have argued that the original endowment deed which established the college was based on Islamic law through waqf deeds common at the time.

This endowment has, of course, facilitated centuries of scholarships, learning and teaching, and has safeguarded and fostered the freedom of thought and expression which is so essential to the university system today.

We might draw a parallel with the earlier Nizamiyyah College of Baghdad, founded in 1065; this institution's independence and self-government, made possible through its waqf endowment, created the intellectual environment which, in turn, produced luminaries of the Muslim world, such as the great Imam al-Ghazali (d. 1111). Indeed, the historical significance of waqf is highlighted by the fact that the founding of Merton College is now generally viewed as a milestone in the evolution of European and Western universities.

In the United States of America, meanwhile, most of the top universities have their own endowments. The Harvard Endowment, which is Harvard University's largest financial asset, is made up of more than 13,000 individual funds invested as a single entity.

The endowment's returns have enabled leading financial aid programmes, promoted groundbreaking discoveries in scientific research, and funded hundreds of professorships across a wide range of academic fields.

Distributions from the endowment provide a critical source of funding for Harvard. At the end of the fiscal year of 2017, the endowment paid out US$1.8 billion (RM7.1 billion), contributing over a third of Harvard's total operating revenue in that year — to put this into perspective, this is larger than the government budget of Afghanistan, Montenegro, and Barbados, for example (figures taken from The World Factbook — Langley: CIA, 2016).

This endowment, which has facilitated so much discovery and learning, is ultimately modelled on the Islamic waqf system.

It is, I believe, a testament to the contribution that the concept of waqf has made to progress and development worldwide, and it also demonstrates the immense potential of the waqf instrument to generate funds for international public good.

Despite these success stories in the East and the West, both today and in the past, the prevailing view is that more could and should be done, to ensure that waqf institutions are managed effectively to achieve broader socio-economic objectives.

In Malaysia today, most of the waqf properties are connected to religious institutions: mosques, madrasas, and cemeteries. Very little of these waqf land generate income for the waqf's sole authorities, the mutawallis, which are the respective state Islamic councils here in Malaysia (i.e. the Majlis Agama Islam Negeri).

These properties and lands are underdeveloped, and this is due in large part to their location, as much of the waqf land is rural, scattered across large areas, with little potential for development. Current statistics indicate that of Malaysia's nearly 13 and a half thousand hectares of waqf land, only two per cent of the total area has actually been redeveloped.

In addition to the challenge posed by the location of these waqf lands, the state Islamic councils also face problems in relation to the registration of waqf land titles. In cases where the land was bequeathed many generations ago, the titles for waqf land cannot always be identified. Without these titles, it is almost impossible for these councils to develop the land.

More broadly, waqf is under-utilised as a viable instrument for social economic sustainability simply because of a widespread lack of understanding about its operational structure, and about the applicable, permissible ways of channelling its benefits.

Many stakeholders, as well as members of the general public, remain unaware of the different ways in which the waqf system can be harnessed to generate revenues to be distributed to beneficiaries.

Perhaps the biggest impediment to the development of the waqf system, however, is the perceived poor management of waqf institutions, as a result of limited regulation and supervision mechanisms.

Of the various challenges to the waqf system that I have mentioned, it is this last point which I wish to focus on today, as I believe that strong governance and professionalism are the keys to inspiring public trust in waqf institutions, which will, in turn, generate greater vibrancy within the system, thereby addressing many of the other problems I have outlined already.

I am delighted to observe that the past three decades or so have witnessed the creation of a comprehensive and dynamic ecosystem in the world of Islamic finance.

Yet, while waqf can undoubtedly benefit from this ecosystem, there are peculiar factors relating to waqf which need to be addressed through specific measures. In order to strengthen governance within the waqf infrastructure, and to develop a broader strategy to revive the use of waqf as a platform for Islamic social finance, it may therefore be necessary for the institution of waqf to develop its own formal governance framework.

This framework may include a clear specification of the roles and responsibilities of the waqf trustee and the waqf authority, as well as a code of conduct outlining the need for the trustees to act in good faith, with prudence and fiduciary care, and in the best interest of the donors and beneficiaries.

For this reason, I believe that the internal governance of the waqf authorities must not be neglected, and that there should be adequate internal controls put in place, including risk management protocols and regular audits.

Good governance also involves strengthening engagement with the relevant stakeholders.

Waqf authorities should continuously engage with different stakeholders, while also establishing an effective communication policy to manage these relationships.

In terms of communication with the wider public, meanwhile, I believe transparency is another essential requirement, especially for the environmentally-aware millennial generation, who are the champions of the Environment, Social and Governance (ESG) Criteria that underpin ethical finance.

As the potential founders and donors of years to come, these young people really do represent the future of waqf. We should pay attention to their demand for alternative financial products, and seize this as an opportunity to demonstrate to them and others the true potential of the ESG financial governance mechanisms that have already started to emerge, for example, under the institutions of both zakat (tithes) and waqf.

To establish effective governance, we must further ensure that all waqf governing bodies have the experience and expertise required in this asset-management role. This includes ensuring that waqf authorities possess the necessary understanding of the Islamic principles and laws which govern waqf.

Officers of waqf authorities and their trustees should, therefore, undergo regular training in this area, which would also allow them to remain up-to-date with the latest developments in relevant areas, such as the Islamic finance industry.

To unlock the full potential of waqf assets, meanwhile, the state Islamic councils should also collaborate with the private sector to tap into the latter's wealth of experience in commercial property development. Such collaboration proved highly beneficial, for instance, in the case of the first commercially-developed waqf land project in Malaysia — the headquarters of Bank Islam Malaysia in Kuala Lumpur.

Implementing and maintaining a robust governance framework for the management of waqf may seem a daunting and onerous undertaking, but it is an absolute imperative if waqf authorities are to gain and reinforce stakeholders' trust and confidence, thereby ensuring the sustainability of waqf as a key component of Islamic social finance, and of the social economy as a whole.

In this day and age, when noble and benevolent intentions are sometimes given in to our own selfish desires, or even exploited by irresponsible parties, it is more important than ever that the institution of waqf remain unblemished and beyond reproach.

While improving waqf governance is essential, other mechanisms also exist which could help to restore waqf to its former prominence. Indeed, there are examples of some of these already in action.

Take, for instance, the recent call for the revival of idle, immovable waqf assets through the adoption of new innovative contracts of Islamic finance. These contracts, such as Musharakah Mutanaqisah (Diminishing Partnership) and Build-Lease-Transfer arrangements, succeed not only in transferring the idle and unproductive waqf holdings into modern buildings, but also in providing job opportunities for large numbers of people in building and construction projects.

The creation of movable waqf assets — including cash waqf models such as waqf shares, mobile waqf and corporate waqf — is another encouraging recent development. Among other benefits, these cash waqf models have enabled the setting up of clinics and dialysis centres to improve healthcare, and the provision of qard al-hasan, an interest-free loan that is extended by a lender to a borrower at goodwill, to allow the impoverished and needy to begin small businesses.

We must also, of course, consider the ways in which the waqf system can work alongside and complement other instruments of Islamic finance. For instance, Islamic financial institutions, potentially with the support of government, could be more active and creative in developing waqf assets through the issuance of sukuk to increase participation from the public.

In this regard, the Securities Commission Malaysia has already established a regulatory framework to facilitate the issuance of Sustainable and Responsible Investment (SRI) Sukuk. The objective is to spur the growth of the Syariah-compliant SRI Sukuk segment, leveraging on similarities in the underlying principles of the Syariah and SRI.

Of particular relevance to today's event is the fact that one of the categories eligible for SRI projects under this framework is the development of waqf assets. This should help to unleash the potential of waqf as a mechanism for undertaking Syariah-compliant SRI projects of a significant size. I, therefore, urge Islamic financial institutions and related stakeholders to initiate and enhance existing efforts to issue waqf-based SRI Sukuk as soon as practically possible.

As we seek to develop the waqf system in these times of rapid change and discovery, we must finally consider how financial technology, or digital finance, might be harnessed to enhance the efficiency of waqf collection and distribution. Waqf may be calculated and monitored using smart apps, for example, that present funding options to donors based on their personal preferences.

Indeed, portals and apps have already been created to collect cash waqf, such as through crowdfunding schemes, and to finance small businesses through qard al-hasan. The advent of blockchain technology provides another means by which donors can monitor waqf donations and ensure that beneficiaries receive what has been allocated to them.

In this age of ever-increasing connectivity, technology can also be used to link donors in wealthy Muslim nations to those in need in poverty-stricken or conflict-torn areas, in a more structured and transparent manner.

The possibilities presented by the connection of billions of people worldwide, through mobile devices with unprecedented processing power, storage capacity and access to knowledge, really are unlimited. Technological advances are being made every day, and emerging breakthroughs in fields, such as artificial intelligence, robotics, the Internet of Things, nanotechnology and biotechnology will, no doubt, further enhance the potential of the waqf system in ways that we cannot imagine today.

However, our laws and regulations, along with our innovative products and methods, cannot alone guarantee the effective revival of the institutions of waqf. The success of all that I have mentioned also requires a “softer” element, upon which the long-term sustainability and viability of waqf ultimately depends.

That softer element is trust or amanah. Trust can only be established through the actions of responsible individuals and the financial community collectively. More must, therefore, be done through public awareness and educational programmes, to enlighten donors, trustees, beneficiaries and all other stakeholders of the waqf ecosystem, as to the measures and actions that will be necessary if we are to fulfil the true purpose of waqf and ensure its long-term sustainability.

The importance of Islamic social finance is increasingly being recognised on an international level, with waqf, zakat and sukuk all seen as financial tools that could help to improve our quality of life, and sustain the welfare and wellbeing of humankind in the world today.

Given the significant potential for waqf to contribute to humanity in this way, it is essential that its stakeholders worldwide now work to coordinate and collaborate across national boundaries, in the orderly development of the waqf ecosystem.

In this context, and given its global leadership in the Islamic finance industry, Malaysia has not just the opportunity, but also the responsibility to act as an example that other countries may emulate, and to pave the way for this internationally essential development.