

## EXPLORATORY STUDY ON WAQF IMPLEMENTATION IN MALAYSIAN PUBLIC AND PRIVATE UNIVERSITIES: WITH SPECIAL REFERENCE TO TURKISH UNIVERSITIES

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### ABSTRACT

Recently, public and private universities in Malaysia have acknowledged that waqf amongst the best instrument for financing their institutions. Some of them already implemented waqf in their institutions. However, the implementation of waqf in these institutions are seen differently practiced and implemented as a result of their distinct landscape. Even though they have different laws governing their institutions nonetheless, the permission to implement waqf in their institutions must be via State Islamic Religious Council (SIRC) or the Majlis Agama Islam Negeri as SIRC is the sole trustee of all types of waqf either general waqf or special waqf. Thus, this exploratory study concentrates on how waqf concept is implemented in these institutions. In addition, this study emphasizes that the experience of Turkish Foundation Universities/ Vakif Universities could be learnt and applied in our universities. In achieving the objectives of the study, a qualitative approach and exploratory study have been adopted. In collecting data, two main methods are used, namely library research and interviews. Then, content analysis approach has been used to analyze the data collected.

Key words: Waqf, Universities, Education, Foundation and State Islamic Religious Council (SIRC).

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### Introduction

Waqf has been viewed as an alternative source to finance education including universities besides maintaining religious institutions. Indeed, there are numerous examples that waqf has contributed to this area in the past and in current application. Historically, there are various prominent universities in Islamic nations such as Cairo, Baghdad al-Quds and Nisapor which have used waqf as an instrument for funding their institutions. Another example also can be seen from the famous University of al-Qurewiyin in Fez, al-Azhar University in Cairo, and the Shrine College of Abu Hanifah in Baghdad (Asharaf & Mustafa Omar, n.d.). In the same way, currently a significant number of outstanding universities in the world were founded and maintained using waqf properties such as the Vakif Universities/ Universities of Turkey such as Abant İzzet Baysal University, the King Abdul Aziz University of UAE, the University of Cordova in Spain and Universitas Islam Indonesia in Jogjakarta, Indonesia (Shahriza, Ismail, Jihan, & Yusof, 2015; Siti Mashitoh & Asmak, 2014). Apart from that, Oxford University and Cambridge University in United Kingdom as well as Harvard and Stanford in United States are among universities which are founded based on endowments with a well-established fund. The concept of endowment fund has become the drive of Western progress particularly in the field of education and medicine (Wan Kamal, Mohd Syakir, & Noor Inayah, 2014). Harvard University, for example, is reported to be one of the richest universities with endowment assets worth more than US\$30 billion. Siti Mashitoh & Asmak (2014) assert that the endowment concept practiced in western countries are contended as having similar contributions to waqf. They further express that the idea of endowment is very close to waqf although both have some specific features.

As for Malaysia, there are several universities either public or private have already implemented waqf in their institutions. They are National University of Malaysia (UKM), Putra University of Malaysia (UPM), Islamic Science University of Malaysia (USIM), IUM (Islamic University of Malaysia) and University College Bestari (UCB). The implementation of waqf in these institutions specifically public universities are seen accomplishing one of the 10 shifts in Malaysia Education Blueprint 2015-2025 (Higher Education) in a way to reduce the reliance on the government resources. Therefore, the discussion in this study

focuses on three public universities in term of how waqf is implemented in their institutions namely National University of Malaysia (UKM), Putra University of Malaysia (UPM), and Islamic Science University of Malaysia (USIM). Apart from that, two private universities viz. Islamic University of Malaysia (IUM) and University College Bestari (UCB) will be comprehensively discussed. Besides, this study suggests that the experience of Turkish Foundation Universities/ Vakif Universities could be learnt and adopted in our universities in order to improve the practice of waqf in these universities. As far as this study is concerned, there is no standard model yet for waqf implementation in public and private universities in Malaysia. Additionally, no specific framework to govern the implementation of waqf in Malaysian public and private universities. Thus, Turkish's' experience in implementing waqf in their universities would be the best model for Malaysia to refer.

### Definition of Waqf

The Department of Awqaf, Zakat, and Hajj, Malaysia (JAWHAR) epitomizes waqf as any form of asset belong to individual which has been endowed as waqf and it is restricted for any form of dealing such as sale, inheritance, hibah and wasiyyah. However, its physical source remains intact and unchanged. According to Sharifah Zubaidah (2015), the definition of waqf in Malaysian enactments are not uniform. Pursuant to administration of Islam enactment, waqf is defined as:

“Any property from which its benefit or interest may be enjoyed for any charitable purpose whether as wakaf ‘am or wakaf khas in accordance with Hukum Syarak, but does not include a trust which is defined under the Trustee Act 1949 [Act 208]”.

It is understood from this definition is that waqf refers to subject matter of waqf itself, that is waqf property or mawquf. While, in Selangor Wakaf Enactment (No 7 of 1999) and the Melaka Wakaf Enactment 2005, waqf is defined as follow:

“The dedication of any property from which its usufruct or benefit may be used for any charitable purpose whether as wakaf am or wakaf khas according to Hukum Syarak, but does not include a trust which is defined under Trustee Act 1949 [Act 208]”.

It is identified that waqf in the specific enactments in Selangor and Melaka refer to the act of the donor in dedicating his property as waqf and not the waqf property itself. Nevertheless, in Negeri Sembilan Wakaf Enactment 2005, waqf means:

(a) an endowment of title to any property from which may be enjoyed any benefit, interest or profit; (b) an endowment of any benefit, interest or profit which may be enjoyed from any property; or (c) the provision of expertise and services from which may be enjoyed any benefit, interest or profit, whether as wakaf am or wakaf khas, in accordance with Shari‘ah principles, but does not include a trust which is defined under the Trustee Act 1949 [Act 208].

### Legality of Waqf

Al Quran has clearly encouraged believers to spend in the way of Allah as there will be a great reward. Allah said:

“Believe in Allah and His Messenger and spend out of that in which He has made you successors. For those who have believed among you and spent, there will be a great reward”

(Al- Hadid: 7)

Allah S.W.T also said in other verse:

“The example of those who spend their wealth in the way of Allah is like a seed [of grain] which grows seven spikes; in each spike is a hundred grains. And Allah multiplies [His reward] for whom He wills. And Allah is all-Encompassing and Knowing”

(Al -Baqarah: 261)

As mentioned in the two Quranic verses above, the waqif (the endowers) will continue to receive Allah’s rewards even after his/her death as long as the waqf property is used in a good manner. One way to be a donor is through waqf. Not only that, waqf is the best instrument to do charity because the property endowed will be managed by the authorized person/institution known as mutawalli to ensure the permanence of the awqaf assets. There is also a hadith mentioning about waqf as started by Prophet Muhammad Peace and Blessings be Upon Him (PBUH) when Umar who asked the Prophet (PBUH), what to do with a palm orchard he owned in the city of Khaibar and the Prophet (PBUH), said:

"Give it in charity (i.e. as an endowment) with its land and trees on the condition that the land and trees will neither be sold nor given as a present, nor bequeathed, but the fruits are to be spent in charity." (Narrated by Bukhory)

In Malaysia, waqf falls under the jurisdiction of the various Religious Councils (Majlis Agama) in the States as mentioned under Article 74 (2) of Federal Constitution. All States have their own respective Administration of Islamic Law Enactments which govern and regulate these Religious Councils. The existence of waqf law in each states encouraging to put waqf in a better position legally. Under these enactments, it is the State Islamic Religious Council (SIRC) to be the sole trustee as main regulator for waqf at state level. To further supplement provisions relating to waqf in the existing administration of Islamic law/ Islam enactments, three states have passed specific waqf enactments, namely, Selangor, Negeri Sembilan and Melaka. Pursuant to the power to make further regulations in relation to waqf in the state administration of Islamic law/ Islam enactments, the State Authorities in Perak and Johor have passed regulations and rules relating to waqf vide the Control of Waqf Orders 1959 (Perak) and the Johore Waqf Rules 1983 (Sharifah Zubaidah, 2015).

### University

Section 2 of Universities and University Colleges Act 1971 states that University or University College as higher educational institution having the status of a University or University College respectively. Meanwhile, pursuant to Section 2 of Private Higher Educational Institutions Act 1996, University or University College means a private higher educational institution conferred with the status of a University or University College under section 21, and include such private higher educational

institution which is affiliated to a University or University College whether within or outside Malaysia., conferred with the status of a University or a University College.

A study conducted by Chang Da, Morshidi, & Dzulkifli (2015) report that the term “university” historically was originated from the Latin word i.e. *universitas*. It was used to refer to the University of Bologna that was established in Italy in 1088. For that reason, some has claimed that University of Bologna is the first university in the world. Subsequently, in the middle of the twelfth century countries like Paris, Oxford and Cambridge started to follow University of Bologna in their institutions. Several researchers have claimed that the existence of university today is a European legacy, whereby it was demonstrated by Walter (2004) that “the only European institution which has preserved its fundamental patterns and its basic social role and functions over the course of history” as quoted by (Chang Da, Morshidi, & Dzulkifli, 2015).

### Research methodology

This study has adopted qualitative and exploratory approach. A qualitative approach has been adopted because it does not involve statistical of data. Additionally, a qualitative research is defined as an inquiry process of understanding a social or human problem based on building a complex, holistic picture, formed with words, reporting detailed views of informants, and conducted in a natural setting (Creswell, 2009). An exploratory approach on the other hand is importance in this study in order to know how waqf is implemented as an alternative instrument in funding the universities in Malaysia. In collecting data, two main methods have been used, namely library research and interviews. The first method was applied to obtain data from primary and secondary sources. This includes classical and contemporary Shari’ah books on waqf, particularly pertaining to education (waqf education), sources from Shari’ah and conventional books on development and other relevant sources from journals, conference papers and websites. In addition, several Malaysian and Turkish legislations have been scrutinized for the purpose of this study. As regard to the second method, interviews have been conducted which involve expert interviews. Besides, open-ended questions have been sent earlier via email so that they could prepare for the answers before the interview sessions start. Open-ended questions allow interviewees to elaborate their points of interest suitably. The interview lasted approximately 2 hours per session. All the interviews data have been recorded and transcribed. Finally, all the data were analyzed using the content analysis method.

### How Waqf is Implemented in Malaysian Public Universities?

Based on literature studied, National University of Malaysia (UKM) is considered as the first public university which has established it owns waqf fund (Fadhilah, Zurina, & Mohamad, 2015; Siti Mashitoh & Asmak, 2014, 2015). Waqf fund in UKM has been established under the Chancellery Foundation in 2010 which provides two schemes for waqf donations. First is *UKM Cash Waqf Scheme* and second is *UKM Waqf Takaful Scheme*. In achieving the first scheme, UKM has provided various modern ICT facilities through its website, banking and electronic banking, as well as through direct debit to ease and enable the waqf donors namely public, staff and alumni to contribute to the waqf fund conveniently. All the contributing parties will be given tax exemption for their contributions. As regard to the second scheme, UKM has collaborated with Licensed Takaful Institutions by providing an endowment contribution scheme through the practice of waqf. This waqf programme is part of the UKM’s fund raising activities through the UKM’s Chancellor’s Foundation Trust Fund. Besides, this scheme also allows a contributor to regularly add to the fund (instalment) over a chosen period at least 5 years. In this context, the UKM is considered waqf receiver institution, whereas the Licensed Takaful Institutions is the scheme manager. Then, Takaful Institution will pay dividend to UKM directly as waqf recipient once attaining the period of maturity. If any accident happens to the contributor, the option of receiving a portion of Takaful benefit will be given to him/her. The aim of the programme is not only enable alumni of the university to contribute but also encourage generous person in the community to contribute to Trust Fund in the form of donations, endowments, bequests, awards and other benevolent forms for specified identified needs. The fund raising is directed towards student’s welfare, and development, research and academic development and the UKM’s Industry and Community Partnerships. Furthermore, UKM has initiated road shows regarding waqf donations and their importance for faculty members of the university to create awareness concerning the purpose of contributions (Siti Mashitoh & Asmak, 2015). From the programmes initiated, the researcher believes that UKM has really worked hard to ensure waqf is implemented as a mean to reduce the financial reliance of UKM from the government. However, based on the personal interview with Prof. Wan Kamal Mujani (26 February 2016), he expressed that waqf funds collected are freeze without being used to benefit the beneficiaries. He claimed that the unclear status of UKM either as an agent or a *mutawwali* contributes to this reason.

Following the good idea of waqf practices and its implementation in UKM, UPM also has initiated a waqf programme known as Dana Waqf Ilmu (DWI). This waqf fund has been established in 2011 when it was launched by the UPM’s Chancellor, the Sultan (Ruler) of Selangor, Sultan Sharifuddin Idris Shah on 16 August 2011. Through this programme, DWI has received donation from various stakeholders such as individual and corporate, non-governmental organizations and etc. Apart from that, Sultan himself has endowed 300,000 MYR as a significant support to DWI’s programme. The waqf fund collected from this programme will be used towards the development and prosperity of academic activities in University which is for student development, research, to finance the acquisition facilities and amenities needed for academic activities and for the advancement of knowledge (Siti Mashitoh & Asmak, 2014). Another essential point, a research conducted by Ahmad Shaifful (2015) confirms that even though DWI is still considered new, however, from the perception of the respondent he has interviewed, DWI programme has achieved its target. It is because through this programme it creates awareness towards UPM’s community to directly contribute for that programme. In addition, as the law stipulates that all waqf is under state jurisdiction, therefore the consent of State Islamic Religious Council (SIRC) or Majlis Agama Islam Negeri as a sole trustee must be granted prior to implement waqf in the university. The legal provision stated above can be seen in Section 32 of the Wakaf (State of Selangor) Enactment 1999 which states that:

“Notwithstanding any provision to the contrary contained in any instruments or declaration, creating, governing or affecting any wakaf, the Majlis shall be the sole trustee of all wakaf, whether wakaf am or khas, situated in the State of Selangor.”

For that reason, UPM had signed a Memorandum of Understanding (MOU) for six months with Majlis Agama Islam Selangor (MAIS) to collect and manage the waqf fund. In February 2012, a Memorandum of Agreement had been signed between UPM and MAIS for three years period which had lapsed on February 2015. In March 2015, a temporary permission was given by MAIS to UPM to collect waqf fund. A new agreement is being negotiated with the Perbadanan Wakaf Selangor, a body established by MAIS (Fadhilah, Zurina, & Mohamad, 2015).

In addition, USIM is another public university which has practiced and implemented waqf. The implementation of waqf in USIM is via a centre named as Centre for Awqaf Development Financing or Pusat Pembangunan Pembiayaan Wakaf (PPPW). The existence of this Centre has resulted USIM collaborating with Majlis Agama Islam Negeri Sembilan (MAINS) to create a special fund called the Al-Abrar USIM Waqf Fund. Several objectives have been laid down by PPPW namely: 1) Managing the collection and distribution of waqf fund; 2) Identifying and defining the activities and projects that can be funded with waqf funds; 3) Developing products that are appropriate to USIM's Waqf Fund and 4) Conducting research on waqf financing of higher education. Other than that, PPPW has worked closely with the Faculty of Medicine and Health Sciences to establish USIM Specialist Medical Clinic and also a Haemodialysis Clinic. The Specialist Medical Clinic is now opening to the public after obtaining operating license from the Ministry of Health. MAINS has allocated 2 million MYR, 1 million MYR as outright waqf grant and 1 million MYR as qardhul hassan for the establishment of the Specialist Medical Clinic. MAINS has also allocated 1.5 million MYR for the establishment of the Haemodialysis Clinic. Work on this clinic will commence after obtaining operating license from the Ministry of Health. This clinic will provide treatment for end-stage renal disease patients from among the asnaf group financed by MAINS. MAINS had appointed USIM as a mutawalli (manager of waqf) to develop and manage waqf assets. Not only that, USIM will also distribute the benefits to the targeted group as intended by the waqif (Fadhilah et al., 2015). In order to ensure all these objectives are accomplished, PPPW has applied to MAINS Waqf Council to manage their own PPPW. In July 2013, the Council has approved USIM's application to be mutawwali (Manager) of USIM's Al-Abrar Waqf Fund. The appointment of USIM as mutawwali is pursuant to Wakaf Enactment (Negeri Sembilan) 2005. Based on Section 5 of this Enactment, MAINS is deemed to be the sole trustee of waqf assets in the State of Negeri Sembilan. However, under section 33 of this Enactment, MAINS may appoint person or agent who is considered to be competent with the advice of the Shari'ah Advisory Board Panel. In USIM's case the agent is called mutawwali. Section 33 (a) of the Enactment stipulates that function of a mutawwali is to manage and develop any mawquf including i.e any asset endowed as specific waqf or general waqf. Section 33 (b) of the Enactment stipulates that the mutawwali also manages the usufruct, benefit or profits from any mawquf for the interest of its mawquf- alaih i.e the intended beneficiaries of the mawquf as intended by the waqif (the endower of the asset). Under the terms of the approval from MAINS, USIM is required to submit periodic management and financial reports on the USIM Al-Abrar Waqf Fund. The University will set up a separate account so that the waqf funds collected are differentiated from the university's account (Muhammad, Fuadah, & Asma, 2014).

### How Waqf Is Implemented in Malaysian Private Universities?

On the other hand, recently there are several established private universities based on the philosophy of “Devotion to God, Compassion to Humanity”. The concept of these particular universities are conceptualized through waqf, which the source of fund is collected from public. Commonly, the implementation of waqf in private universities are initiated by different entities or bodies such as Non-Profit Organization, State Islamic Religious Council (SIRC), Government Linked Company (GLC), Private Company, Sultan (Ruler) and etc. The implementation of waqf in University College Bestari (UCB) for instance was initiated by the Non-Profit Organization known as Pertubuhan Kebajikan Anak Yatim Malaysia (PEYATIM) on 1998. Likewise, waqf application in International Islamic University College Selangor or Kolej Universiti Islam Antarabangsa Selangor (KUIS) is under the initiative of State Islamic Religious Council of Selangor or Majlis Agama Islam Selangor (MAIS). Despite this, Islamic University of Malaysia (UIM) in earlier has been initiated by Sultan (Ruler). Chang et al. (2015) demonstrate that the vision of the university based on waqf does not only to become a university characterized by high quality education but also aim towards humanitarian values in empowering needy and underprivileged students. Apart from that, they state that the mission of this type of university also to provide an education which will result in their valuing discipline, being caring and giving individuals.

Historically, Islamic University of Malaysia (UIM) was established on 24 February 1955 and formerly known as Kolej Islam Malaya (Muslim College Malaya/KIM). It is the first university that was established with the consent of the Conference of Malay Rulers. UIM is currently operating in Cyberjaya with the blessings and approval of the Ministry of Higher Education. The history of UIM development is based on the waqf concept which began with the waqf by Sultan of Selangor who donated Istana Jameah (Jameah Palace) in Kampung Jawa in 1955 to be a KIM campus which symbolized educational progress in Malaya. In line with its establishment, UIM is obliged to inspire any form of waqf contribution in furthering the mission of IUM establishment until it becomes a university that continues to grow on Islamic endowments without solely depending on government contributions and that also has freedom in knowledge and intellectual development. All waqf matters of UIM will be monitored and advised by a panel known as the 'Shari'ah Panel' consisting of experts who are authoritative in Shari'ah law (<http://www.uim.edu.my/v2/index.php/faw>). Siti Mashitoh & Asmak (2014) express that UIM has received waqf income and contributions from numerous resources such as from leasing of waqf lands and waqf premises belonging to UIM, waqf donations from individual and corporate bodies including the alumni of Islamic College (ALKIS) and also contributions from State Islamic Religious Councils (SIRC) (as certified by the Conference of Rulers) and from Federal Government of Malaysia. Besides, Mohd Syakir, Wan Kamal, Noor Inayah & Roziah (2014) add that UIM has received financial supports around 5.18 million MYR from several donors. Among of them are Permodalan Berhad (PNB) 5 million MYR, Shahpadu Corp Sdh Bhd, Datuk Dr Haron Din as a former student of KIM, Alumni Kolej Islam (ALKIS) and others. UIM at present only offering postgraduate programmes and

the first study sessions for Master and PhD programs commenced on September 2015. Nor Liana (2014) states that waqf fund received will be used for student needs, research and administrative cost. UIM has moved forward by establishing an institute known as International Waqf and Islamic Finance Management Institute (i-WAFA) which has been declared on 12th of August 2014 by the university President in conjunction with the launch of Waqf Property Management Professional Course. The role of i-WAFA can be seen as following:

“as the world’s first and advanced research institute that combines Waqf Management and Islamic Finance and is characteristically cross-disciplinary”.

Additionally, i-WAFA focuses on researches in term of comparative contemporary issues, in particular, the waqf and Islamic finance industry. i-WAFA also will contribute to the strengthening of human capital development of expertise in waqf and Islamic finance on the international arena. Findings of studies conducted by i-WAFA together with local and international experts in the field will benefit the country and humanity. i-Wafa has received recognition at the national level through CIMB Islamic endowment of Research Chair worth RM 1 million in the field of Waqf and Islamic Financial Management. In fact and in addition to that, CIMB Islamic has also contributed RM 1 million for the establishment of a special library for CIMB Islamic as the world’s primary reference in the field of Islamic finance. (<http://www.uim.edu.my/v2/index.php/research-and-innovation/institutes-centres/i-wafa>).

Furthermore, University College Bestari (UCB) is another private university which is seen adopting waqf concept to finance its institution. UCB was originally established as the Kolej Teknologi Bestari during the late 1990’s. Then, in year 2012, it was upgraded to become a University College which primarily to offer several degree programs including economics, management, information technology, counselling, apart from diploma programs in various arenas including nursing. As a result of UCB belong to Non-Governmental Organizations which is PEYATIM, UCB does not receive any government funding. Therefore, the only way to collect fund is thru waqf besides generating revenues in the form of tuition fees and accommodation fees. UCB which is situated in Terengganu also known as “The Waqf University”. Based on personal interview with the President of PEYATIM Prof Datuk Dr Tengku Mahmud Mansor on (3 February 2016), he mentioned that the practice of waqf concept in UCB started when a piece of land belong to PEYATIM has been separated into small lot of one square foot each to be sold to potential donors (waqif) at a price of 30.00 MYR per lot. All waqifs will be conferred with certificates to show that they have a plot of land that has been given as waqf for the university. Those lots that are acquired would then be donated back to PEYATIM as the recipient. The funds collected after the sale of plots will be considered as waqf fund. Equally important, PEYATIM has collaborated with several bodies in Malaysia such as Pos Malaysia, Bank Simpanan Nasional Berhad (BSN) and etc. to help PEYATIM in promoting the sale of land. The President further explained that, till today there are 13 million MYR fund which YAWATIM has received from almost 2000 dedicators or waqifs all over the states in Malaysia. YAWATIM is an authorized body which was established on 2 November 2011 as company limited by guarantee with the registration No 96651H pursuant to Section 16(4) of Companies Act 1965. The purpose of establishing YAWATIM is to ensure that the fund collected complying the law in Malaysia. As far as the law in Malaysia is concerned, PEYATIM as a Non-Governmental Organization is prohibited to collect deposit from public, therefore, establishing YAWATIM is satisfying the requirement of law. In addition, waqf funds collected will be used to develop various infrastructure projects and also to be invested in order to have high economic returns in future (Baharuddin & Muhammad Hamizan, 2015).

In the same way, in order to legalize the act of waqf practiced, UCB has acquired consent from Majlis Adat Istiadat-Melayu and Agama Islam (MAIDAM) beforehand. This is because MAIDAM is the sole trustee of all kinds of waqf in the state of Terengganu. Subsequently, instead of being beneficiary, PEYATIM also is appointed as an administrator or mutawwali of UCB who is responsible to ensure waqf funds collected are managed efficiently and based on Shari’ah compliance. It is believed that the idea of implementing waqf concept in UCB should be a yardstick to the other states in Malaysia (Obaidullah, 2014).

## **How Waqf (Foundation) Is Implemented in Turkish Universities?**

### **University Foundation**

In Turkey, there are also universities that benefit from waqf (foundation). One is University Foundation (Public or State universities) and the second is Foundation University (Private Non-Profit Foundation University). State universities are funded by the government budget, however, there are several type of foundations, associations and corporations which sphere these universities. The formation of foundations to support State Universities must be in line with Civil Code and Foundations Law as well as Article 130 of The 1982 Constitution. University foundations have been encouraging and helping universities to improve themselves since the commencement of the Republic (Hatice, 2011). As an example, Abant İzzet Baysal University was instituted on 3 July 1992 is a third model as a state university sustained by a foundation. Abant İzzet Baysal University has been funded by the foundation founded by İzzet Baysal, one of the greatest philanthropists in Turkey. The university has reached an excellent physical structure and superior technologic infrastructure with the facilities and equipment investment amounting to 262 million TL as of 2010 funded by İzzet Baysal Foundation and the state allocation (<http://ibu.edu.tr/en>).

Subsequently, funds collected to support state universities are generated from car parks, community services or other services in the university zone. These funds will be used to give scholarships to university students, support academic staff in their research, and supplying security system or any other materials to the university as required. It is apparent that there is mutual network between foundations and state universities in terms of their community services. As a result, numerous state universities nowadays able to handle their resource scarcities and have enhanced the quality and scope of the education offered. Apart from giving scholarships to university students, the foundations also inspire students to take part in community occasion such as

symposiums, and theatre or cinema groups. Besides, the students are encouraged to adapt living in society which they could learn social duties and so be effective members of society.

### **Foundation University (Private Non- Profit Foundation University)**

As regard to Foundation University, Turkish Constitution: Code No.130 stipulates that the primary prerequisite for the tycoons to form a university is not-for-profit reason. Considering this, no university based on profit in Turkish higher education sector. Another essential point, in 2007 the Council of Higher Education has reported the importance of non-profit universities which started to reduce the burden carried by public counterparts via providing high quality education to their students (Erkoc, 2011). Private Non-profit Foundation University or simply known as Foundation University (FU) is one of the four groups of higher education institutions of foundations in Turkey. Besides, this institution is also commonly known as Private University. The example of Foundation Universities can be seen established in several regions of Turkey. In December 1984, Bilkent University was the first Foundation Universities instituted in Ankara then, followed by Baskent University in 1994. In Istanbul on the other hand, the first private university known as Koc University was formed in 1992. In the following decade 21 more private institutions were established, 14 of them in Istanbul, four in Ankara, two in Izmir and one in the south in Tarsus (Dogramaci, n.d.). As confirmed by Siti Mashitoh & Asmak (2014) at this time, there are about 68 waqf universities in Turkey and the number continues to increase. Its largest city, Istanbul, has 38 universities, and this constitutes the largest number at present.

Besides the prerequisite mentioned earlier, Turkish Constitution 1982 also requires a private university to have adequate funds to meet a part of its costs, and the level of education and research must not be lower than public university geographically closest to it. Additionally, a private university, must enter into a formal covenant with one of the public universities before its operating. This is to provide for the possibility of its being closed by the Council of Higher Education if not up to standard. By that covenant, all properties of the private university would be handed over to the public university, and the public university would accept the students of the scattered private university (Dogramaci, n.d.). Koc University for instance was founded in 1993 as a non-profit private university in Istanbul, Turkey. In the twenty years since its establishment, Koc University has become one of the leading universities in Turkey, distinguished by notable contributions to the elevation of education, knowledge and service both domestically and beyond. Koc University is supported by the resources of the internationally renowned Vehbi Koc Foundation. The establishment of Koc University is in line with Article 130 of the 1982 Constitution as this article explains that only foundation can establish universities and any other higher education institutions. Private sectors who form foundations must inform the General Directorate of Foundation (DGF) if they wish to institute a university. When the DGF agrees, the foundations may apply to the Council of Higher Education (CoHE).

Another essential point, once the university is established by foundation, it is a separate legal body to the foundation. The university's legal status remains even the foundation is closed. With regard to that, all the assets whether movable or immovable such as utensils, things, cash and the economic privileges which allotted by foundation to university will be the university's assets. In the situation of foundation is terminated, the DGF will transfer the authorized power of the terminated foundation to other foundation whose purposes are alike (Additional Article 15 of Law No. 2547). Equally important, the 1982 Constitution also provides that universities established by foundations are subject to the provisions for state institutions of higher education, as regard to the academic activities, employment of teaching staff and security, except for financial and administrative matters (Article 130 X). In fact, referring to the Constitution, the Council of State has ruled that the contracts of the academic staff at foundation universities are administrative contracts and any disputes arising from these contracts should be heard in administrative courts (Division VIII of Council of State, Date: 04.02.2003, No. 2002/557- 2003/561).

In the same way, foundation universities will be administered and ruled by the board of trustees comprising of at least seven persons. They hold the highest power and at the end of the day, they will answerable for the conduct of the institutions (Arslan, 2013). The board of trustees will make or dissolve the contracts of the other administrators and academic staff and other employees and votes as well as oversees the budget of the university. Besides, the board of trustees carries out other functions designated by law as well as can delegate some powers, which are appropriate, to the administrators of the university (Additional Article 5 II of Law No. 2547). Commonly, members of the board of trustees are nominated by the leading body of the foundation. No age limit for the members to be elected as long as they fulfil the required qualifications for public workplace. Nonetheless, at least two-thirds of them should have a bachelor's degree. Then, a chairman will be chosen by the board of trustees among of them (Additional Article 5 I of Law No. 2547). It is reported that private universities are not subject to be controlled by Council's either financial or administrative issues. Hence, they enjoy privileges in contrast to public universities (Dogramaci, n.d.). Another essential point is the university rector is selected by the board of trustees after consent given by the Council of Higher Education as stipulated under Article 13a of Law No. 2547. As a rector his function is to accomplish the decisions of the board of trustees. Nevertheless, in fact, this practice has been disparaged, as the board of trustees is alleged to impede the business of Rector. For that reason, it is suggested that the Rector should be chosen by the President of the Republic as well as state universities and should be the authorizing officer of the university. Additionally, foundation universities are funded by three different sources of funding namely contribution of founding foundations, student fees and government aids (Ozcan, 2011). According to Dogramaci (n.d.) in theory, the Government can contribute financially to the private universities, but so far this has not amounted to more than about 2% of their budgets. In addition, Lynch (2015) reports that most foundation universities have also benefitted from land donations by the state.

### **Conclusion**

From the above discussion, it has been shown that waqf is one of the best instruments to finance universities in Malaysia. The implementation of waqf in public and private universities are not much different. However, private universities are seen having

more privileges in term of collecting waqf fund if they have their own asset like land comparatively public universities. The successfulness of UCB in applying waqf as a tool to collect fund could be the best model for other university to follow. Universities which implemented waqf as their favours should be given power to manage their own institutions as mutawwali (Muhammad Yusuf, 2009). Public universities are seen do not have much freedom in implementing waqf as they are bound by the universities rules and regulations in contrast to private universities. The landscape of waqf in Turkish foundation universities and universities foundation are more organized as they are monitored by the same laws provided by their government. Hence, the difference culture between Malaysia and Turkey would not be an obstacle for Malaysia to learn from Turkish's experiences in implementing waqf in their universities. Besides, it is hoped that the successfulness of Turkey in implementing waqf in their universities could also be learnt and adopted by other Muslim countries in the world. Due to the significance of waqf in financing higher education institutions, we would like to suggest that further research could be extended to see the experience of other countries like Kuwait, Spain, India and Arab Saudi in implementing waqf in their higher education institutions. In addition, the practice of endowment as a financial instrument for higher education institutions in western countries such as United Kingdom and United State could also be explored in the future study which does not been covered by our research.

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- Federal Constitution (As at 15th September 2014)
- Melaka Wakaf Enactment 2005
- Private Higher Educational Institutions Act 1996
- Trustee Act 1949
- Universities and University Colleges Act 1971
- Wakaf (State of Selangor) Enactment 1999
- Wakaf Enactment (Negeri Sembilan) 2005

##### **Turkey**

- Foundations Law (Law No. 5737)
- Higher Education Law (Law No 2547)
- Turkish Civil Code (Law 4721)
- Turkish Constitution 1982

##### **Miscellaneous**

- Interview with Prof Dr. Wan Kamal Mujani, Dean, Faculty of Islamic Studies, (UKM, Selangor on 26 February 2016)
- Interview with Prof Dato' Dr. Haji Tengku Mahmud Mansor President of Pertubuhan Kebajikan Anak Yatim Malaysia (PEYATIM) (Selangor on 3 February 2016)