

Temporary Waqf (Waqf Mu' aqqat): Historical Evolution and Juristic Doctrine from Classical 'Umrā to Madhhab Plurality and Modern Legal Codification

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ABSTRACT

Waqf is conventionally understood as a perpetual (*ta' bīd*) dedication of property whose ownership passes to God (*mamlūk lillāh*). Contemporary Islamic social finance, however, has revived debate on temporary waqf (*waqf mu' aqqat*), namely the dedication of an asset's usufruct for a fixed period. This article aims to trace the historical evolution of temporary waqf doctrine from the second century AH, to analyse comparatively the positions of the four Sunni schools and their underlying *uṣūl al-fiqh* reasoning, and to assess its codification in the statutory law of Kuwait, Malaysia and Indonesia, with India as a contrasting case. Adopting a qualitative doctrinal legal research design that combines historical-legal, comparative jurisprudence (*fiqh muqāran*) and *maqāṣid al-sharī'ah* approaches, the study analyses classical juristic texts, statutes and peer-reviewed literature through content and thematic analysis. The findings show that temporary waqf is not a modern invention. It is rooted in second-century AH practices of *habs* and *'umrā* in favour of persons, is permitted in principle by the Mālikī school, and finds support in a report attributed to Abū Yūsuf (Ḥanafī) and in minority opinions within the Shāfi'ī and Ḥanbalī schools. Arguments for its permissibility rest on analogy with usufruct-transferring contracts, custom (*'urf*) and public interest (*maṣlaḥah*), whereas the majority rely on analogy with manumission (*'itq*). At the statutory level, Kuwait and Indonesia recognise temporary waqf explicitly, while Malaysia exhibits a non-uniform, state-by-state approach. The article concludes by recommending the harmonisation of temporary waqf provisions in Malaysian state enactments on the basis of *siyāsah shar' iyyah*, accompanied by governance safeguards such as duration limits, registration and exceptions for mosques and cemeteries.

Keywords: temporary waqf, perpetuity, comparative jurisprudence, Mālikī school, waqf legislation

INTRODUCTION

Waqf is among the most enduring instruments of Islamic social finance, grounded in the principles of worship and continuing charity (*ṣadaqah jāriyah*). Theologically, the practice draws on Qur'ān 2:261, which likens spending in the way of God to a grain that sprouts seven ears, and on the Prophetic tradition that a person's deeds cease at death except for three, one of which is continuing charity [32, no. 1631]:

إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ: إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ

The dominant juristic tradition defines waqf as the retention of the corpus (*habs al-aṣl*) and the dedication of its usufruct (*tasbīl al-manfa'ah*) in perpetuity (*ta' bīd*), with ownership commonly regarded as passing to God (*mamlūk lillāh*). This understanding has shaped waqf administration in most Muslim countries, including Malaysia, where the majority of states follow the Shāfi'ī school. Structural socio-economic change, however the growth of financial assets, rapidly depreciating movable assets and the need to fund time-bound social projects has revived debate on temporary waqf (*waqf mu' aqqat*): the dedication of an asset's usufruct to charity for a fixed period, after which the corpus returns to the founder (*wāqif*) or his heirs, or is applied according to the founder's stipulation [3, 23].

Although several jurisdictions have codified temporary waqf, academic discussion of it remains divided into three strands that seldom meet: legal-historical studies of the formation of early waqf doctrine [35, 39], comparative juristic studies of the perpetuity requirement [6, 8], and applied studies of social-finance instruments such as Cash Waqf Linked Sukuk [19, 24]. As a result, the relationship between the historical roots of temporary waqf, the *uṣūl* reasoning that supports or rejects it, and the form of its codification in modern law has not been analysed in an integrated manner. In Malaysia in particular, the lack of uniformity among state enactments raises the question of which doctrinal basis should underpin legal harmonisation [26, 40].

Accordingly, this article is guided by three research questions: (i) how did the doctrine of temporary waqf develop from the practices of *ḥabs* and *ʿumrā* in the second century AH to the positions of the classical schools? (ii) what *uṣūl al-fiqh* arguments underlie the divergence between the *taʿbīd* and *taʿqūt* positions? and (iii) how has this doctrinal divergence been translated into modern statutory law in Kuwait, Malaysia and Indonesia, and what lessons does the Indian case offer? The article contributes a synthesis of three layers of analysis historical, doctrinal and statutory that provides a doctrinal foundation for harmonising temporary waqf law in Malaysia.

The article proceeds as follows. The next section reviews the relevant literature and identifies the research gap, followed by the methodology. It then examines the historical origins of temporary waqf, the classical juristic debate, and the *uṣūl al-fiqh* arguments. The subsequent sections assess modern statutory codification and offer a critical discussion before concluding with recommendations.

LITERATURE REVIEW

Legal-historical studies of early waqf

Scholarship on Islamic legal history has long questioned the assumption that waqf was perpetual from its inception. Schacht [39] found that until the time of Imām Mālik (d. 179 AH/795 CE), the prevailing form of *ḥabs* in Medina was a temporary life interest whose corpus reverted to the grantor or his heirs. Oberauer [35] refined this finding by showing that classical waqf doctrine emerged during the second century AH from the fusion of two distinct institutions: the perpetual *ḥabs fī sabīl Allāh* and the *ḥabs* in favour of persons, which derived from the practice of *ʿumrā*. Later, the Ottoman cash waqf controversy of the sixteenth century illustrated how waqf doctrine continued to adapt to economic realities through arguments from custom (*ʿurf*) [11, 27].

Comparative juristic studies of the perpetuity requirement

Modern classics such as Abū Zahrah [6] and Kahf [23] set out the differences among the schools on perpetuity and confirm that the Mālikī school alone permits temporary waqf in principle. Alnaief et al. [8] discuss new issues in temporary waqf, including waqf of usufruct and of financial rights, while Ab Rahman and Amanullah [4] and ʿAbd al-Rahman [2] examine its practice in selected Malaysian states. Mahamood [26] identifies five principal variations in the legal treatment of *waqf muʿaqqat* across Malaysian jurisdictions, confirming the absence of uniformity.

Applied studies and social-finance instruments

On the applied side, Johari et al. [22] assess the role of temporary waqf in enhancing social welfare, while Ismal [19], Laila et al. [24] and Ryandono et al. [36] analyse the design of, and barriers to, Cash Waqf Linked Sukuk (CWLS) in Indonesia. In Malaysia, Engku Ali et al. [13] and Mohamad and Adnan [31] examine the potential of temporary waqf for development financing in Terengganu. Ambrose and Asuhaimi [9] highlight the risk-management dilemma that the perpetuity restriction creates for cash waqf. On governance, Alkhan and Hassan [7] examine the AAOIFI Shariʿah standard on waqf, and Sayed and Sopan Yadav [38] analyse the implications of India's Waqf (Amendment) Act 2025 for perpetuity and religious autonomy.

Research gap

The existing literature tends to focus on a single dimension history, doctrine or application. Few studies link the historical findings of Schacht and Oberauer to the *uṣūl* reasoning of the schools and, in turn, to the forms of statutory codification across jurisdictions. Moreover, most applied studies do not engage critically with the risks

of temporary waqf or with the counter-arguments of the majority. This article addresses these gaps through an integrated three-layer analysis and a critical discussion of the limits and safeguards required.

METHODOLOGY

This study adopts a doctrinal legal research design based on qualitative library research. A doctrinal approach is appropriate because the objective is to analyse, interpret and systematically evaluate Islamic legal principles, classical juristic doctrine and statutory texts relating to *waqf mu'qqat*, without the need for empirical fieldwork [14, 38]. The overall design is summarised in Figure 1.

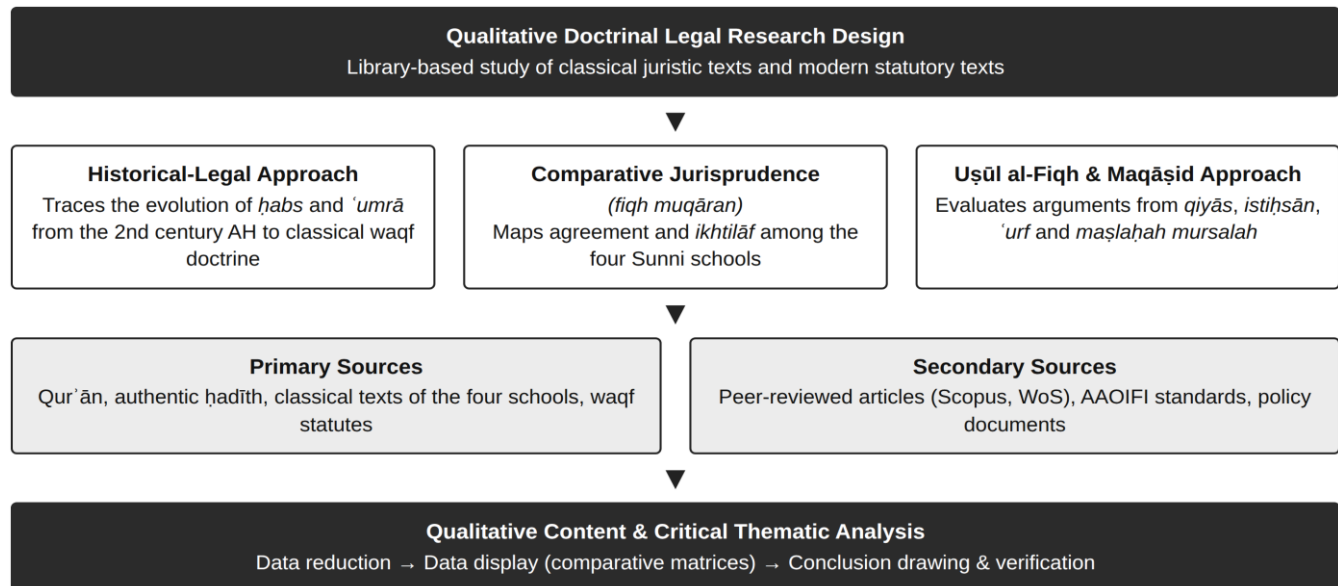


Figure 1. Research design

Source: Author's own construction.

Research approaches

Three approaches are combined to ensure a comprehensive analysis:

- Historical-legal approach.** Used to trace the evolution of waqf doctrine from the second century AH following Schacht [39] and Oberauer [35], particularly the fusion of *ḥabs fī sabīl Allāh* with *ḥabs* in favour of persons derived from *ʿumrā*.
- Comparative jurisprudence (*fiqh muqāran*).** Used to map the areas of agreement and disagreement (*ikhtilāf*) among the four Sunni schools Ḥanafī, Mālikī, Shāfiʿī and Ḥanbalī on perpetuity and temporariness in the waqf contract.
- Uṣūl al-fiqh and maqāṣid al-sharīʿah.** Used to evaluate the strength of each side's arguments, including *qiyās*, *istiḥsān*, *ʿurf* and *maṣlaḥah mursalah*, and their implications for the preservation of wealth (*hifẓ al-māl*).

Data sources

Primary sources comprise (i) the Qurʾān and authentic ḥadīth, particularly the ḥadīth on the waqf of Khaybar [10, 32]; (ii) authoritative texts of the four schools, including al-Dardīr's *al-Sharḥ al-Kabīr* with *Hāshiyat al-Dusūqī* [12] for the Mālikīs; *al-Mabsūṭ* [37], *Faṭḥ al-Qadīr* [16] and *Radd al-Muḥtār* [15] for the Ḥanafīs; *al-Ḥawī al-Kabīr* [29] and *Rawḍat al-Tālibīn* [33] for the Shāfiʿīs; and *al-Mughnī* [17] and *al-Inṣāf* [28] for the Ḥanbalīs; and (iii) statutory texts, including Kuwaiti waqf legislation, Malaysian state waqf enactments and rules, state fatwa decisions, Indonesian Law No. 41 of 2004 on Waqf, and India's Waqf (Amendment) Act 2025. Secondary sources comprise peer-reviewed articles retrieved from Scopus, Web of Science, ScienceDirect, JSTOR and SSRN, together with AAOIFI standards.

Data analysis

The data were analysed using qualitative content analysis and critical thematic analysis in the three phases proposed by Miles et al. [30], as shown in Figure 2. The first phase, *data reduction*, involved selecting and coding texts by theme: the perpetuity condition, ownership of the corpus (*'ayn*), asset type and the effect of expiry. The second phase, *data display*, organised the findings into comparative matrices of the schools and of jurisdictions (Tables 1–2). The third phase, *conclusion drawing and verification*, was carried out through source triangulation (classical texts, statutes and secondary literature) and guided by the hermeneutic principles of *murā'āt al-khilāf* (accommodating juristic disagreement) and *takhayyur* (selecting the opinion that best serves *maṣlahah*).

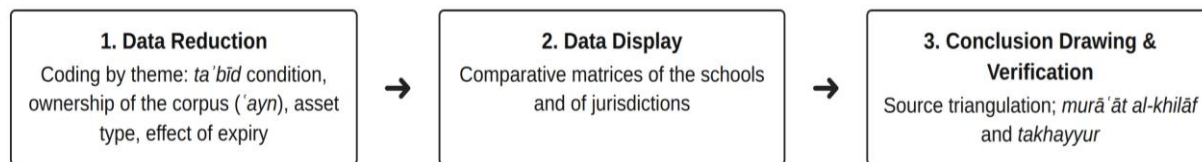


Figure 2. Data analysis process

Source: Adapted from Miles et al. [30].

Historical Origins: From Ḥabs and 'umrā To Classical Waqf

Legal-historical research shows that the waqf doctrine known today did not emerge fully formed but through a long process of evolution (Figure 3). According to Oberauer [35], early waqf doctrine was a synthesis of *ḥabs fī sabīl Allāh* the perpetual dedication of property for religious purposes and *jihād* and *ḥabs* in favour of persons, which derived from *'umrā*, the grant of a life interest (life estate). This is consistent with Schacht [39], who found that until the time of Imām Mālik (d. 179 AH/795 CE) the most common form of *ḥabs* in Medinan practice was a temporary life interest, with the corpus reverting to the grantor (*muḥbis*) or his heirs on the death of the beneficiary.

Over the course of the second century AH, the validity of private *ḥabs* that did not end in a perpetual charitable purpose came to be questioned and was gradually modified in juristic discourse. By the end of that century, *ḥabs* in favour of persons had been absorbed into the framework of *ḥabs fī sabīl Allāh*: it was recognised as valid only if the founder stipulated that, on the extinction of the beneficiaries, the property would pass to a perpetual charitable purpose [35]. This development explains why the majority of jurists later made *ta'bid* a condition of validity, while the Mālikī school rooted directly in Medinan practice retained room for temporary *ḥabs*.

Doctrinal evolution did not stop with the formation of the schools. The sixteenth-century Ottoman controversy over cash waqf, involving Shaykh al-Islām Ebussuud Efendi and his opponents, shows how Ḥanafī jurists accepted waqf of movables and cash on the basis of custom (*'urf*), even though this was difficult to reconcile with physical perpetuity [11, 27]. In the twentieth and twenty-first centuries, this development entered a phase of statutory codification, discussed later in this article.

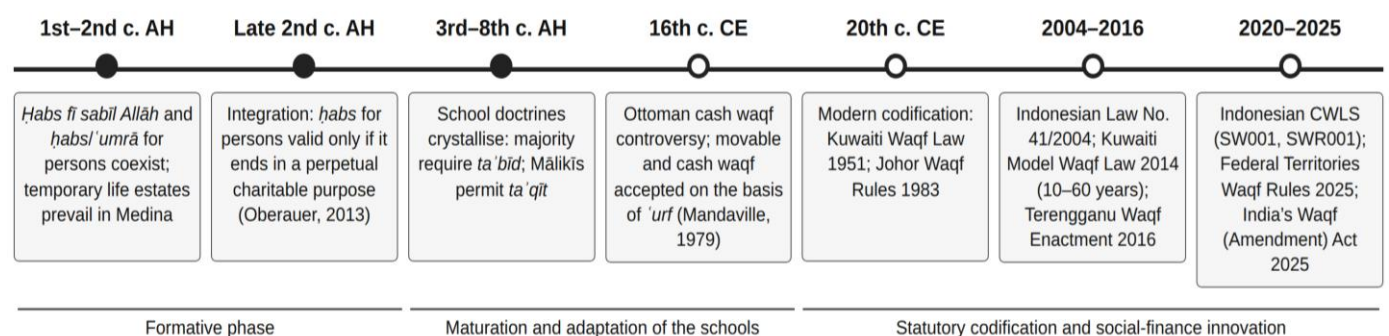


Figure 3. Chronology of the doctrinal evolution and codification of temporary waqf

Source: Author's construction based on Schacht [39], Mandaville [27], Oberauer [35], Ab Rahman and Amanullah [3] and the relevant statutes.

The Classical Juristic Debate: Ta' bīd Versus Ta' qīt

The juristic debate on perpetuity (*ta' bīd*) and temporariness (*ta' qīt*) stems from differing views of the nature of the waqf contract itself: is it a relinquishment of ownership (*isqāṭ al-milk*) that removes the property from human ownership, or merely a transfer of usufruct (*tamlīk al-manfa'ah*) with ownership remaining with the founder? The answer determines whether a waqf can be subject to a time limit.

The majority view: perpetuity as a condition

The majority of jurists the Shāfi'ī and Ḥanbalī schools, together with the authoritative Ḥanafī position based on the view of Abū Ḥanīfah's two disciples (*al-ṣāhibān*) hold that *ta' bīd* is a condition of validity. Once the waqf is complete, the property leaves the founder's ownership and cannot revert to him; Ibn Qudāmah [17, Vol. 6, p. 22] argues that the founder "has removed his ownership for the sake of God Almighty, so it may not return to him". According to the stronger Shāfi'ī view and that of *al-ṣāhibān*, ownership passes to God, whereas according to the well-known Ḥanbalī view it passes to a determinate beneficiary (*mawqūf 'alayh*) [6]. Consequently, waqf property may not be sold, gifted or inherited.

The principal textual basis of the majority is the ḥadīth of 'Abd Allāh ibn 'Umar concerning 'Umar ibn al-Khaṭṭāb's land at Khaybar, which he dedicated on the Prophet's instruction [10, no. 2764; 32, no. 1632]:

تَصَدَّقْ بِأَصْلِهِ، لَا يَبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ، وَلَكِنْ يُنْفَقُ ثَمَرُهُ

"Give its corpus in charity; it shall not be sold, gifted or inherited, but its fruits shall be spent." [10, no. 2764]

Al-Nawawī [33, Vol. 5, p. 325] states that if a person says, "I dedicate this for one year," the correct view, affirmed by the majority of the school's jurists, is that the waqf is void. Al-Māwardī [29, Vol. 7, p. 521] advances two main arguments: first, that the ruling of waqf is perpetuity, on the basis of the Prophetic instruction "retain the corpus and dedicate the fruit"; and second, analogy (*qiyās*) with manumission (*itq*) if waqf could be limited in time, so could manumission, which is not accepted. For the majority, a time-bound waqf also contradicts the nature of *ṣadaqah jāriyah*, whose reward is meant to be continuous.

The Mālikī school: permissibility of temporary waqf

In contrast to the majority, the Mālikī school alone recognises temporary waqf in principle. Khalīl ibn Ishāq states in his *Mukhtaṣar* that perpetuity is not a condition, which al-Dardīr explains as follows [12, Vol. 4, p. 87]:

وَلَا يُشْتَرَطُ التَّائِيدُ، فَيَصِحُّ مَدَّةً ثُمَّ يَرْجِعُ مِلْكًا

"Perpetuity is not a condition; the waqf is therefore valid for a period, after which [the property] reverts to [the founder's] ownership."

On this basis, Mālikī waqf does not require a permanent relinquishment of the corpus (*'ayn*): the founder remains the owner, while what is dedicated to charity is the usufruct or income [8, 23]. When the stipulated period ends whether a number of years or the lifetime of the beneficiary the property reverts to the founder or his heirs as unencumbered property.

The Mālikī position rests on three grounds:

- (a) **Absence of a text requiring perpetuity.** No authentic and explicit (*ṣarīḥ*) text of the Qur'ān or Sunnah makes perpetuity a condition of charity or waqf. The instruction in the Khaybar ḥadīth is understood to describe the most perfect form of waqf rather than a condition of its validity.

- (b) **Facilitation (*taysīr*) and encouragement of charity.** Waqf is an act of devotion (*qurbah*); conditions that deter participation should therefore be minimised so that owners can contribute according to their means [23].
- (c) **Compatibility with movable assets.** Permitting temporary waqf allows movables such as animals, weapons and equipment which physically wear out to be dedicated without contradicting the notion of perpetuity.

The Ḥanafī school: the position of Abū Yūsuf

The Ḥanafī tradition offers its own nuances. Abū Ḥanīfah (d. 150 AH) held that waqf is permissible but not binding (*jā'iz ghayr lāzim*), like a loan for use (*ʿāriyah*), so that the founder may revoke it except in certain cases such as a mosque or a judicial decree [37, Vol. 12, p. 28; 15, Vol. 4, p. 338]. His two disciples, Abū Yūsuf (d. 182 AH/798 CE) and Muḥammad al-Shaybānī (d. 189 AH), held that waqf is binding, and Ibn ʿĀbidīn [15, Vol. 4, p. 338] confirms that this is the position on which fatwā is given (*wa ʿalayhi al-fatwā*).

On perpetuity, Muḥammad required that *taʿbīd* be expressly stated, whereas for Abū Yūsuf it need not be mentioned because the term *waqf* itself connotes permanence [16, Vol. 6, p. 214]. Ibn al-Humām nevertheless reports, from al-Nāṭifī's *al-Ajnās* through Muḥammad ibn Muqātil, a narration from Abū Yūsuf that a waqf in favour of a specific individual is valid and that, on the beneficiary's death, it reverts to the founder's heirs. On the basis of this report, Ibn al-Humām infers (*takhrīj*) that Abū Yūsuf might also permit a waqf for twenty years, since there is no substantive difference between the two cases [16, Vol. 6, p. 214]. Contemporary scholars such as Kahf [23] and Alnaief et al. [8] rely on this report as a Ḥanafī basis for temporary waqf. It must be stressed, however, that the dominant position of the school still treats *taʿbīd* as a condition; Abū Yūsuf's report and Ibn al-Humām's inference are better regarded as a basis for *ijtihād* within the school than as its authoritative position.

Minority views in the Shāfiʿī and Ḥanbalī schools

Although the Shāfiʿī and Ḥanbalī schools formally uphold *taʿbīd*, their authoritative texts record minority views that do not invalidate temporary waqf. In the Shāfiʿī school, al-Nawawī [33, Vol. 5, p. 325] mentions, besides the majority view that such a waqf is void, one view that it is valid and ends when the period expires, and another attributed to al-Imām, that is, Imām al-Ḥaramayn that a waqf not requiring acceptance (*qabūl*), such as a waqf for a mosque, is not vitiated by a time condition; the condition is disregarded and the waqf remains perpetual. Al-Māwardī [29, Vol. 7, p. 521] records the view of Abū al-ʿAbbās ibn Surayj, who permitted temporary waqf on the ground that, just as a person may dedicate all or part of his property, he may dedicate it for all or part of time; al-Māwardī himself rejects this view.

In the Ḥanbalī school, al-Mardāwī [28, Vol. 7, p. 35] states that if a person says, "I dedicate it for a year," the waqf is invalid according to the school (*hādihā al-madhhab*). He then records two other views: (i) a possibility (*iḥtimāl*) that the waqf is valid and that after the period its income is applied in the manner of a waqf whose end is interrupted (*maṣrif al-munqaṭiʿ*); and (ii) a view that the waqf is valid while the time limitation is disregarded (*yalghū tawqītuhu*).

These findings require careful reading. The minority views in the Shāfiʿī and Ḥanbalī schools show that perpetuity is a matter of *ijtihād* (*maḥall al-ijtihād*) rather than of consensus. Most of these views, however, do not return the property to the founder as the Mālikī school does; they either disregard the time condition (so that the waqf becomes perpetual) or channel the income to others after the period ends. Only Ibn Surayj's view and the view that the waqf "is valid and ends on expiry" come close to the modern concept of *waqf muʿaqqat*.

Table 1 summarises the doctrinal positions of the four schools.

Table 1. Comparative matrix of the four schools on temporary waqf

School	Principal position	Ownership of the corpus (‘ <i>ayn</i>)	Effect of a time limit / expiry
Mālikī	<i>Ta’qīt</i> permitted; <i>ta’bīd</i> not a condition [12, 4/87]	Remains with the founder; only the usufruct is dedicated	Valid; property reverts to the founder/heirs on expiry
Ḥanafī	Authoritative: <i>ta’bīd</i> is a condition. Abū Yūsuf’s report: valid for a specific individual, then reverts to the founder’s heirs [16, 6/214]	According to <i>al-ṣāhibān</i> : leaves the founder’s ownership (God’s ownership)	Authoritative: invalid. Ibn al-Humām’s <i>takhrīj</i> : a 20-year waqf may be permissible under Abū Yūsuf’s report
Shāfi‘ī	<i>Ta’bīd</i> a condition [33, 5/325; 29, 7/521]	Passes to God (stronger view)	Void (majority). Minority: valid and ends on expiry; or time condition disregarded. Ibn Surayj permits
Ḥanbalī	<i>Ta’bīd</i> a condition [28, 7/35]	Passes to a determinate beneficiary (well-known view)	Invalid (school). <i>Iḥtimāl</i> : valid, then applied as <i>munqaṭi</i> ‘waqf; <i>qīla</i> : valid with the time limit disregarded

Source: Author’s compilation from the classical sources cited (volume/page).

UṢŪL AL-FIQH ARGUMENTS IN THE PERPETUITY DEBATE

Recognition of temporary waqf does not rest merely on juristic leniency; it is built on instruments of *uṣūl al-fiqh* such as *qiyās*, *istiḥsān*, ‘*urf* and *maṣlaḥah mursalah*. At the same time, the majority position also has a firm *uṣūl* basis. This section evaluates both frameworks.

Analogy (*qiyās*): waqf as a usufruct-transferring contract

According to Alnaief et al. [8] and Johari et al. [22], waqf belongs to the category of gratuitous contracts (‘*uqūd al-tabarru‘āt*) rather than exchange contracts (‘*uqūd al-mu‘āwadhāt*). Proponents of temporary waqf argue that the default rule in transactions is permissibility (*al-aṣl fī al-mu‘āmalāt al-ibāḥah*), so that no condition may be imposed without clear evidence. They advance three analogies (Figure 4):

- Analogy with ‘*āriyah*.** In ‘*āriyah*, the owner transfers the use of an item for a period without transferring ownership of the ‘*ayn*. Since waqf in the Mālikī view is likewise a transfer of usufruct for charity, it may be time-bound as ‘*āriyah* is [8].
- Analogy with gifts of usufruct and ‘*umrā*.** A gift of usufruct for a period or for the recipient’s lifetime (‘*umrā*) is the historical basis of *ḥabs* for persons [35]. This argument is contested, however: for the majority, ‘*umrā* becomes the permanent property of the recipient and his heirs on the basis of the relevant ḥadīth, whereas the Mālikīs regard it as a gift of usufruct that reverts to the donor. The strength of this analogy therefore depends on one’s position on ‘*umrā* itself.
- A *fortiori* analogy (*qiyās awlā*) with *ijārah*.** Although *ijārah* is an exchange contract, it shows that the Shari‘ah recognises the separation of ownership of the ‘*ayn* from the usufruct, with the usufruct fixed in time. If a time-bound separation is valid in a commercial contract, it is all the more (*awlā*) permissible in a charitable one [3, 23].

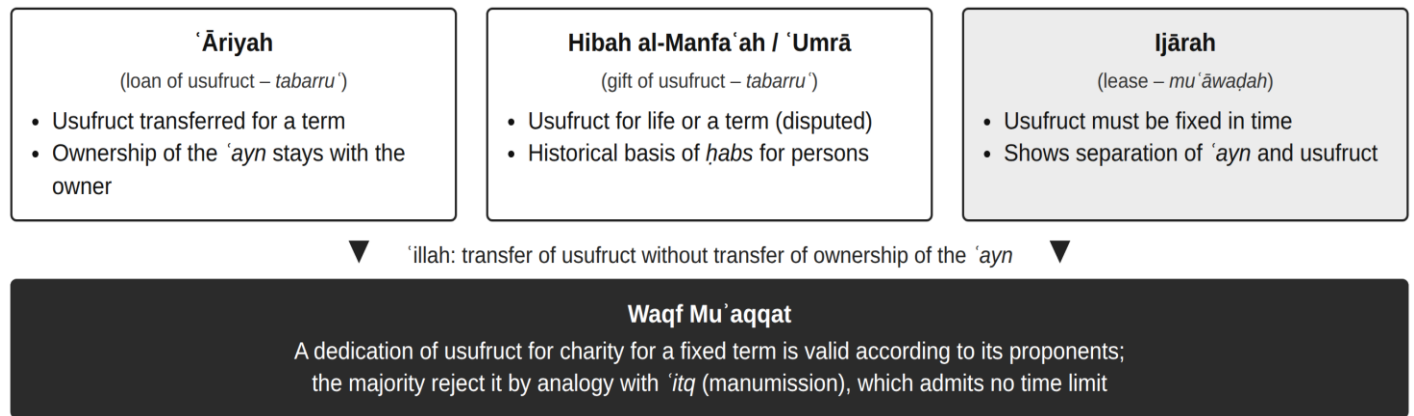


Figure 4. Analogical framework for temporary waqf and the majority's counter-argument
Source: Author's construction based on al-Māwardī [29], Kahf [23] and Alnaief et al. [8].

The majority, by contrast, draw an analogy between waqf and *'itq*, the effective cause (*'illah*) being that both are relinquishments of ownership for the sake of devotion that admit no time limit [29, Vol. 7, p. 521]. They also argue that the wording of the Khaybar ḥadīth “it shall not be sold, gifted or inherited” describes an essential feature of waqf that is incompatible with returning the property to the founder or his heirs. The disagreement thus stems from differing identifications of the *'illah* and of the nature of the waqf contract, not from disagreement over the texts.

Juristic preference (*istiḥsān*) and custom (*'urf*): movable and financial assets

Istiḥsān departing from the ruling of apparent analogy in favour of another ruling on the strength of weightier evidence such as custom, necessity or public interest plays an important role in the Ḥanafī tradition. A classic example is the permissibility of waqf of movables (*waqf al-manqūl*) such as weapons and horses on the basis of transmitted reports (*athar*), and later of books and cash on the basis of *'urf*, although analogy would restrict waqf to permanent immovable property [16, Vol. 6, p. 217; 6; 27]. Alnaief et al. [8] argue that a rigid analogy with *'itq* hampers the dedication of movable and modern financial assets.

- Depreciation of movable assets.** Vehicles, machinery, technological devices and medical equipment depreciate and have limited economic lives. Requiring absolute perpetuity for such assets is impractical; temporary waqf allows them to be dedicated for their economic lifespan [22].
- Recognition of modern commercial custom.** Instruments such as term deposits, sukuk, patents and software licences have maturity or expiry dates. On the basis of the maxim *al-‘ādah muḥakkamah* (custom is authoritative), some contemporary scholars hold that such assets may be dedicated temporarily [13, 23].

Public interest (*maṣlaḥah mursalah*) and facilitation (*taysīr*)

The permissibility of temporary waqf is further supported by *maṣlaḥah mursalah* and the maxim *al-mashaqqah tajlib al-taysīr* (hardship begets facility). Three dimensions of *maṣlaḥah* can be identified:

- Reducing founders' psychological and financial barriers.** Absolute perpetuity often deters owners who are concerned about their families' future financial needs. Temporary waqf assures them that the property will return to them or their heirs, thereby widening the donor base to include middle-income groups [2, 22].
- Financing socio-economic development.** Temporary waqf enables the rapid mobilisation of funds for social needs such as health, education and community-based tourism (CBT) without the burden of managing real estate in perpetuity [13, 31].

- (c) **Preservation of wealth (*hifẓ al-māl*).** Imposing perpetuity on property without maintenance funding can leave waqf assets idle and unproductive [5]. Under temporary waqf, assets whose term has expired return to owners who are able to maintain or redeploy them [8].

The majority can, however, invoke *maṣlahah* too: the stability and certainty of perpetual waqf assets constitute a greater benefit for future generations, and allowing property to revert may invite inheritance disputes and the erosion of waqf assets. These considerations are taken up in the discussion below.

Codification Of Temporary Waqf In Modern Statutory Law

The recognition of *waqf mu'awqqat* in modern statutes marks a shift from classical juristic debate to pragmatic legal codification. Several Muslim countries have translated the flexibility of the Mālikī school and Abū Yūsuf's report into national law to stimulate the mobilisation of Islamic social finance. This section examines three jurisdictions that recognise temporary waqf Kuwait, Malaysia and Indonesia and India as a contrasting case that highlights the risks of state intervention in the principle of perpetuity.

Kuwait: comprehensive codification

Kuwait is among the first countries to give temporary waqf a statutory framework. Its waqf law, known as *Mashrū' Qānūn al-Waqf* and in force since 1951, was later complemented by *al-Qānūn al-Istirshādī li al-Waqf* (the Model Waqf Law) of 2014, prepared with the Islamic Development Bank as guidance for member countries [3, pp. 480–481]. In brief, this framework keeps mosques and cemeteries as perpetual waqf, requires family waqf to be temporary, limits the duration of a waqf to between ten and sixty years or a maximum of two generational layers, and returns the property to the founder or his heirs when the term ends [3, pp. 486–493]. Kuwait has also extended the concept to services through the *waqf al-waqt* initiative, a voluntary contribution of time and expertise for a fixed period [3, p. 498].

Malaysia: a non-uniform, state-based approach

Because waqf falls within the State List of the Federal Constitution, the position of temporary waqf in Malaysia is determined by the legislation of each state. The most recent mapping by Mahamood [26] reveals a wide spectrum: some jurisdictions among them Terengganu, Johor and the Federal Territories provide for it expressly; others, such as Selangor and Sarawak, admit it only through a general definition of waqf; while the legislation of Melaka and Sabah makes no provision for it at all. State fatwa decisions, for their part, tend to emphasise the permanence of a completed waqf, as in the Penang fatwa on the Sheikh Eusoff waqf land (2000) and the decision of the Terengganu Fatwa Committee (2004) prohibiting revocation of a waqf by its founder or his heirs [20, 21]. In practice, the experience of Terengganu shows that temporary waqf has been used to finance local community development [13, 31].

Indonesia: statutory recognition and Cash Waqf Linked Sukuk

Indonesia recognises temporary waqf explicitly in the definition of waqf in Article 1(1) of Law No. 41 of 2004 on Waqf, which describes waqf as the legal act of a founder in separating and/or transferring part of his property to be used “in perpetuity or for a specified period”. This framework is reinforced by the Indonesian Ulama Council's fatwa on cash waqf (11 May 2002) and Indonesian Waqf Board (BWI) Regulation No. 1 of 2009 on the management of movable waqf in the form of money.

From a doctrinal standpoint, the significance of the Indonesian approach lies less in any particular instrument than in the choice it embodies. By writing “for a specified period” into the statutory definition of waqf, the legislator adopted the Mālikī position through *takhayyur* in a country whose population largely follows the Shāfi'ī school, and made that choice binding on all *nāẓir* and courts. This statutory foundation has since allowed the state to design capital-market products that accept time-limited cash waqf alongside perpetual waqf, the best known being the Cash Waqf Linked Sukuk, whose structure and outcomes lie beyond the scope of this article and are examined elsewhere [19, 24]. For the present argument, the Indonesian case shows that a legislature can

resolve the perpetuity question at the level of definition, rather than leaving it to case-by-case administrative discretion.

India: the contrasting case of the Waqf (Amendment) Act 2025

Whereas Kuwait, Malaysia and Indonesia illustrate codification that widens founders' options, the Indian experience highlights the opposite risk: state intervention that erodes the principle of perpetuity. The Waqf (Amendment) Act 2025, among other things, prospectively abolishes the doctrine of *waqf by user*, expands the role of government officers such as the Collector in determining the status of waqf property, admits non-Muslim members to waqf boards, and applies the law of limitation to claims over waqf property. Sayed and Sopan Yadav [38] argue that some of these provisions conflict with the principles of *niyyah*, *ṣadaqah jāriyah* and *ta'bīd*, and with religious autonomy under Articles 25–26 of the Indian Constitution. On 15 September 2025, the Supreme Court of India (*In re: The Waqf (Amendment) Act, 2025*, 2025 INSC 1116) declined to stay the Act in its entirety but, by interim order, stayed several key provisions, including the requirement that a founder must have practised Islam for at least five years and the power of government officers to determine the status of disputed waqf property.

The main lesson of the Indian case is that waqf codification whether it expands or restricts must be rooted in Sharī'ah principles and in the participation of religious institutions. A temporary waqf voluntarily chosen by the founder differs fundamentally from the “forced temporariness” that results when perpetual waqf property is exposed to loss of status through limitation law or administrative decision.

Comparative analysis

Table 2. Synthesis of legal frameworks for temporary waqf

Aspect	Kuwait	Malaysia	Indonesia	India
Doctrinal basis	Mālikī; Abū Yūsuf's report	Shāfi'ī (generally); <i>takhayyur</i> towards Mālikī/Abū Yūsuf in some states	Eclectic approach (<i>takhayyur</i>)	Ḥanafī (generally)
Recognition of temporary waqf	Explicit (1951; 2014 model law)	Non-uniform: explicit (Terengganu, Johor, Federal Territories), implicit (Selangor, Sarawak), absent (Melaka, Sabah)	Explicit in Law No. 41/2004	None; the main issue is erosion of perpetual waqf
Limits / safeguards	10–60 years or ≤ 2 generational layers; mosques and cemeteries perpetual	Johor: family waqf ≤ 60 years or two generations; mosques perpetual	Set in the waqf pledge; sukuk tenor	Limitation law; role of the Collector (partly stayed)
Main instruments	Property waqf and <i>waqf al-waqt</i>	Term deposits; leases; <i>wakaf irsod</i>	Sukuk-linked cash waqf	—

Source: Author's compilation.

Overall, this comparison shows that modern waqf governance requires a balance between statutory oversight and the autonomy of religious institutions. Clear codification (Kuwait and Indonesia) widens founders' options while setting clear limits and exceptions, whereas non-uniform codification (Malaysia) creates legal uncertainty across states.

DISCUSSION: STRENGTHS, RISKS AND SAFEGUARDS

The findings confirm that temporary waqf has legitimate historical and doctrinal roots in the juristic tradition. The historical work of Schacht [39] and Oberauer [35] shows that temporariness is not a deviation from an “original” waqf but part of its early form. This analysis should not, however, be read as a claim that perpetuity is a weak condition; the majority position has a firm textual and analogical basis and is followed by most Muslims, including in Malaysia.

From the perspective of *siyāsah shar‘iyyah*, the maxim *ḥukm al-ḥākim yarfa‘ al-khilāf* (the ruler’s decision resolves juristic disagreement) provides a basis for state authorities to adopt the Mālikī view or Abū Yūsuf’s report through legislation, even where the official school is Shāfi‘ī, provided that it is driven by clear *maṣlahah*. Such *takhayyur* has been applied in various areas of Islamic family and financial law in Malaysia. Harmonising temporary waqf provisions is therefore not contrary to the school tradition but an application of a mechanism recognised within it.

Several risks must nonetheless be managed. *First*, the risk of disputes and asset erosion: returning property to heirs after a long period may give rise to inheritance disputes, especially where records are unclear. *Second*, liquidity risk for the *nāzir*: temporary cash waqf capital must be repaid at maturity, which limits the investments and projects that can be financed [9]. *Third*, conceptual confusion: if the boundary between temporary waqf and loans or social investment is blurred, the devotional value and identity of waqf may be eroded. *Fourth*, crowding out: encouraging temporary waqf should not reduce perpetual waqf of strategic assets such as mosques and cemeteries.

To address these risks, this study identifies minimum safeguards drawn from the experience of Kuwait, Johor, Terengganu and Indonesia: (i) maximum duration and generational limits; (ii) absolute exceptions for mosques, *surau* and cemeteries; (iii) mandatory registration recording the term, beneficiaries and effect of expiry; (iv) separate accounting for perpetual and temporary waqf funds, as outlined by AAOIFI [1]; and (v) a clear rule on whether the property reverts to the founder/heirs or converts into perpetual waqf at the end of the term.

This study has several limitations. It is doctrinal and does not empirically assess founders’ perceptions or the performance of temporary waqf instruments. The statutory analysis also relies on accessible texts and secondary studies and does not cover all Malaysian states or all OIC member countries.

CONCLUSION

This article has analysed the historical evolution, juristic doctrine, *uṣūl* arguments and statutory codification of *waqf mu‘aqqat*. Three main findings emerge. *First*, historically, temporary waqf is rooted in second-century AH practices of *ḥabs* and *‘umrā* for persons before the doctrine of perpetuity was consolidated by the majority [35, 39]. *Second*, doctrinally, the Mālikī school permits temporary waqf in principle, supported by Abū Yūsuf’s report and by minority views in the Shāfi‘ī and Ḥanbalī schools, whereas the majority require *ta’bīd* on the basis of the Khaybar ḥadīth and analogy with *‘itq*; the disagreement stems from differing views of the nature and *‘illah* of the waqf contract. *Third*, at the statutory level, Kuwait and Indonesia have codified temporary waqf explicitly with clear limits and safeguards, Malaysia still shows a non-uniform approach, and the Indian case demonstrates the danger of temporariness imposed by the state.

On the basis of these findings, the following policy recommendations are made:

- (a) **Harmonisation of state enactments.** State Islamic Religious Councils (MAIN) that have no express provision on temporary waqf (such as Melaka and Sabah), or that recognise it only implicitly, should consider specific provisions based on *siyāsah shar‘iyyah* and *takhayyur*, drawing on the practice of states that already provide for it expressly, without prejudice to the status of perpetual waqf [5, 40].
- (b) **Stronger governance and digitalisation.** *Nāzir* or *mutawallī* should adopt AAOIFI Shari‘ah Standard No. 33 on Waqf and digital registration systems that record maturity dates and reversion mechanisms, in order to build founders’ confidence [7].

- (c) **Tax incentives.** The Inland Revenue Board of Malaysia and relevant authorities should consider extending the deduction under subsection 44(11D) of the Income Tax Act 1967 to qualifying temporary waqf contributions, to encourage participation by corporations and Islamic financial institutions [13, 25].

Future research is recommended in three directions: (i) empirical studies of the socio-economic impact of temporary waqf, including social return on investment (SROI) in affordable housing and microfinance [18, 36]; (ii) the design of liquidity-risk management frameworks for *nāzir* when temporary waqf capital matures [9]; and (iii) cross-jurisdictional comparisons involving Türkiye, Morocco and Saudi Arabia [34].

Overall, *waqf mu'qqat* is not a substitute for perpetual waqf but a complement that enables the institution to respond to contemporary social-finance needs. With codification rooted in the juristic tradition and robust governance safeguards, temporary waqf can broaden public participation in waqf while preserving the sanctity and sustainability of the institution itself.

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Conflict Of Interest

The author declares no conflict of interest.

Data Availability Statement

No new data were generated in this study. All materials analysed are publicly available and are cited in the reference list.

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