



# Waqf Al-Gharimin Approach for Non-Performing Loans of Cooperative Banks with a Special Focus on Marawi Case

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**Abstract.** The Battle of Marawi which continued from 23 May 2017 to 23 October 2017, took place in Marawi city, the capital of Lanao del Sur province in the Philippines. As an aftermath of the terror attack, the town was left in ruins with 95% of the structures within the four square kilometers of the main battle area heavily damaged or completely collapsed. 3,152 buildings were utterly destroyed, and 2,145 buildings were partially or heavily damaged due to the five-month heavy bombardment during the battle. Government estimates have placed the number of displaced residents at 200,000. These people are in urgent need of housing. However, it is almost impossible for them to get loans from commercial banks due to the credit risk. In this study, we are proposing a sustainable model which will assist the residents in rebuilding or renovating their houses with a unique model of financing, which adapts to a waqf and zakat system. This paper proposes a sustainable model which refers to the practices implemented in the history of the Muslim world, namely waqf model that existed during Ottoman times in the 18th century and onwards known as Waqf to Release the Indebted Prisoners to suggest an innovative solution based on waqf to cover a Non-Performing Loans. The study also investigates earlier text on debt from Al-Majalla Book IV: Transfer of Debt as well as existing fatawa on the implacability of the model without contradicting the rules of *Shariah*.

**Keywords:** NPL, Waqf, Al-Majalla, Zakat, Islamic Finance, Sustainability

**JEL Classification:** D64

## Introduction

The Battle of Marawi also known as the Marawi siege and the Marawi crisis was a five-month-long armed conflict in Marawi, Lanao del Sur, that started on 23 May 2017, between Philippine government security forces and militants affiliated

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with the Islamic State of Iraq and the Levant (ISIL), including the Maute and Abu Sayyaf Salafi jihadist groups. As an aftermath of the terror attack, the town was left in ruins with 95% of the structures within the four square kilometers of the main battle area heavily damaged or completely collapsed. Three thousand one hundred fifty-two buildings were completely destroyed, and 2,145 buildings were partially or heavily damaged due to the five-month heavy bombardment. Government of the Philippines estimates the number of displaced residents at 200,000. About 70 percent of displaced residents are living in the nearby temporary government shelters as of May 2018. Most of the refugees now live in overflowing and severely congested areas like school buildings that act as temporary evacuation centers while Marawi will remain run-down for the coming years.

The authors traveled to the Marawi City in April 2018 to take records of the life standard of people after the battle. The trip was the motivation for this study. Since the need to re-establish the Marawi city is crucial and should not be relied on foreign aid only but structured on the sustainable and self-sufficient model to meet the urgent needs of Marawi population. The specific requirement for the city is housing, and its provision using Islamic finance, i.e., to provide housing loans to the citizens to rebuild or renovate their houses via provision of necessary funds. The main concern which can be raised is the ability of these people to repay the loans hence accumulation of non-performing loans (NPL), which is potentially the main risk of microfinance. In this context, the authors propose a self-efficient model which mirrors the historical practices of the Muslim world.

The paper is designed as follows. The current section is an introduction, part two, describes the historical practice, namely *waqf* (pl. *awqaf* philanthropic foundation) approach applied during the Ottoman Empire. Part three overviews the jurisprudential text, which in our case is the legal justification for the applicability of the proposed model. Part four is the summary of the existing *fatawa* (pl. of *fatwa* legal opinions on the point of Islamic law given by a qualified jurist) and divine text to support the proposed model and ensure its compliance with *Shariah* (Islamic law). Section five describes and illustrates the model, and part six concludes.

## *Waqf*

Pious foundations are known in the Islamic world as *awqaf*. The word *waqf* and its plural form *awqaf* are derived from the Arabic root verb *waqafa*, which means causing a thing to stop and standstill. The second meaning is merely devout (charitable) foundations. This institution, whereby a privately owned property, body,

is endowed for a charitable purpose in permanency and the revenue generated is spent for that purpose, stands out as one of the significant achievements of the Islamic civilization (Cizakca, 1998).

Between the 14th and early 20th centuries, the Ottoman Empire widely succeeded in eliminating poverty through the *waqf* system and *awqaf* experienced its most magnificent era. The founder of the first *waqf* was Orhan Gazi<sup>1</sup> who established first Ottoman *Madrasa* (educational institution), in the Turkish city, Iznik and endowed property to maintain the administration of the Madrasa. Overall, the Ottomans saw the *waqf* system as a tool to help society grow together rather than leaving individuals isolated and alone, unlike today, where individuals are left at the mercy of capitalism. Although some developed countries provide “Band-Aid solutions” in the name of being welfare states, the crisis of the free-market – or the neoliberal system – does not allow for less privileged individuals to catch up. This widens the gap between the rich and the poor, and between the developed and the developing countries.

Numbers of vital facilities such as health, education, and community were provided in history at no cost by the government via the *waqf* system. There are also unique and exciting *awqaf* in the history of Ottoman such as i) *Waqf* to maintain walls and streets clean. The objective of this *waqf* was to appoint individuals who will ensure the cleanliness of the walls of mosques, madrasas, minarets, imarets, etc. as well as maintaining streets clean; ii) *Waqf* to visit sick citizens. The objective of this *waqf* was to appoint individuals who regularly visited houses to check the needs of citizens who were sick. iii) *Waqf* to plant fruit trees; and iv) *Waqf* to release indebted prisoners.

In our paper, we focus on the *waqf* founded in 1708 in Istanbul to release indebted prisoners. We relate this example to our proposed model to repay potential non-performing loans.

1 Orhan Gazi was the second bey of the nascent Ottoman Sultanate from 1323/4 to 1362. He was born in Söğüt, as the son of Osman Gazi and Malhun Hatun. His grandfather was Ertuğrul. In the early stages of his reign, Orhan focused his energies on conquering most of northwestern Anatolia. Source: Wikipedia

## *Waqf and Zakat Funds*

*Zakat* in the Arabic language means “development and increase”, and it also refers to “purify” and “praise” (Fayoumi, 1987). *Shariah* defines *zakat* as “payment made annually on certain kinds of property (*al maal*) when reached specific amount (*nisa-ab*) and a lunar year has passed while it was possessed” (Aabi, 1997). Ibn Qudamah shortly defined *zakat* as a right mandatory on the money (Ibn Qudamah, A. A. (n.d.).

The matter of investing *zakat* funds and *waqf* is an essential debate. The question arises: is it permissible to direct some *zakat* funds to establish investment projects and *waqf* it to secure stable and permanent financial resources for the needy segment of the society? This question has been raised several times in the jurisprudential councils and specialized scientific seminars and many committees of *fatwa* in the Islamic countries. The authors considered this subject as an implementation of contemporary *zakat* issues to propose it for the Marawi case.

## *Fatwa on Investing Zakat Fund and to Waqf It*

This section reviews the existing fatawa on the permissibility of the investment of *Zakat*.

**Question:** If *zakat* money reaches the hands of the imam or his deputy (*bait-ul-maal*), is it permissible for him to invest in *zakat* projects and *waqf* them or not?

**Answer:** The modern scholars differed on the investment of *zakat* money into two different opinions. The first view, represented by Al-Othmani, Alwan, Al-Sayed and Zuhaili, sees it impermissible to invest *zakat* money (Islamic *Fiqh* Academy, 1986). The second view, represented by Abu Ghada, Al-Abadi, Al-Khayat, Al-Qaradawi, Nabhan and Zarqa, believes that it is permissible to invest *Zakat* funds for investment projects (Islamic *Fiqh* Academy, 1986; 1988).

The scholars who have argued that it is not permissible to invest *zakat* money by *bait-ul-maal*, refer to the following reasons (Islamic *Fiqh* Academy, 1986; Alwan; 1984). First, investing *zakat* funds in industrial, agricultural or commercial projects leads to delay in the delivery of *zakat* to those who are entitled to it, as their spending on these projects leads to waiting for profits, however, *zakat* must be paid immediately because Allah, Almighty, has added “for” (*laam*) to those who are deserving *zakat* in the following *ayah*:

﴿ إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ

قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَرَامِينَ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ فَرِيضَةً

مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ ﴿٦٠﴾

Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and debt; in the cause of Allah. And for the wayfarer: (thus is it) ordained by Allah, and Allah is full of knowledge and wisdom (At-Taubah 9:60).

Second, the investment of *zakat* funds will expose them to loss since trade includes risk of loss. For example, if the project which invests *zakat* runs into financial difficulties and fails to repay the principal at maturity. Or the risk of loss in purchasing power due to the decrease in value of *zakat* investment because of inflation. Third, investment of *zakat* funds exposes them to their expenditure in administrative work. Fourth, the *Imam* or his representative on *zakat* is considered as a hand of trust that does not act or invest *zakat* fund but deliver it to those who are entitled to *zakat*.

On the other hand, the proponents of investing *zakat* funds were quoted as follows: (i) if Islamic law permits investment of the orphans' money by their guardians, it is permissible to invest the *zakat* funds before paying them to the beneficiaries to achieve benefits for them (Al Bayhaqi, 1992); (ii) by using *qiyas* (analogy), "For the sake of Allah" category (*fi-sabil-Allah*) can be comprehensive and covers all aspects of good deeds, including building mosques, building fortresses, building factories, and other things that benefit Muslims (Al-Razi, 1981). Since it is permissible to pay *zakat* on all other aspects of good, it is permissible to spend *zakat* on establishing factories and projects whose profit will benefit the recipients of *zakat*; and (iii) the Prophet (peace and blessings of Allah be upon him) and the Caliphs<sup>2</sup> used to invest *zakat* funds in cattle, i.e. camels and sheep. These animals had special places for their upkeep, grazing and their offsprings. Also, they had pastoralists who cared for and supervised them. It was narrated that Anas (may Allah be pleased with him) said that:

2 A person considered a political-religious successor to the Islamic prophet Muhammad and a leader of the entire ummah (Muslim community).

Some people from 'Uraina tribe came to Medina, and its climate did not suit them, so Allah's Apostle (peace be upon him) allowed them to go to the herd of camels (given as Zakat) and they drank their milk and urine (as medicine) but they killed the shepherd and drove away all the camels. So, Allah's Apostle sent (men) in their pursuit to catch them, and they were brought, and he had their hands and feet cut, and their eyes were branded with heated pieces of iron, and they were left in the Harra (a stony place at Medina) biting the stones. (Sahih Bukhari, 2: 577).

#### *Discussion on the Views of Contemporary Scholars on Investing Zakat Funds*

Scholars who argue that investing zakat money is contrary to the instant payment of *zakat* since investing the zakat fund leads to a delay in the delivery of *zakat* to those who are entitled to it. This view is not accurate since instant payment is obligatory upon the owner (*zakat* payer) rather than the *Imam*. It is permissible for the *imam* to delay *zakat* to the second year if his *ijtihad* leads him to that because the *imam* is the *wakeel* of the beneficiaries of *zakat* and he is commanded to investigate their public interest (Al Hattab, 1993; Ibn Mufleh, 1983; Abi Obied, 1982).

Moreover, the counter argument to the opinion that the investment exposes Zakat fund to loss is that the possibility of a loss of investment does not prevent people from investing their money, because of their goal of generating income and using it in the future to create wealth. Ibn Abdul Salam (1994) considered trading and investment as one of the *maqasid Al-Shariah*. Furthermore, *Shariah* encourages the *imam* and his deputies to save the nation's funds and invest them to the benefit of the *ummah*. Abu Yusof (2000) argued that the *imam* might build a well from *bait-ul-maal* funds instead of people bearing the expenses of constructing wells.

As for scholars saying that the investment of *zakat* fund leads to their expenditure in the administrative work, it contradicts the verse 9:60 "Alms are for the poor and the needy, and those employed to administer the (funds) ..." (*At-Taubah* 9:60). Allah has made a special entitlement for administrators of the *zakat* fund to receive the *zakat*.

In short, it is permissible for the *Imam* or his deputy, e.g. *bait-ul-maal*, to invest in *zakat* projects and *waqf* them. However, the following requirements shall be considered:

- i. There are no necessary disbursements for *zakat* funds, such as sustaining the essential needs of those entitled to food, clothing, housing, etc.
- ii. *Zakat* funds should be invested in the areas of legitimate investment.

- iii. All procedures should be undertaken to ensure that such funds remain based on the *zakat*.
- iv. The decision to invest Zakat funds should be preceded by accurate studies of the experts on the economic feasibility of such investment projects.
- v. The decision to invest Zakat funds should be adopted with a general mandate: such as the *imam*, the judge or any person in charge.
- vi. The supervision and management should be assigned to the competent, experienced and honest people.

## **Overview of Al-Majalla - Book IV. Transfer of Debt**

In this section, the authors refer to Al-Majalla Book IV transfer of debt to relate the proposed model to existing jurisprudence.

### *The Contract of Transfer of Debt*

In Al-Majalla the transfer of debt means transferring debt from the account of one person to that of another. The following are the conditions to be fulfilled to make debt transfer valid. (i) The transferor is the debtor who makes the transfer; (ii) the person in whose favor the debt is transferred is the creditor; (iii) the transferee is the person who agrees on the transfer of the debt to himself, the subject matter of the transfer is the property transferred; (iv) a restricted transfer of debt is a transfer of debt whereby the transferor limits the payment by the transferee to property of his owing by the transferee or in his possession; and (v) an absolute transfer of debt is a transfer of debt whereby the transferor does not limit the payment to property of his in possession of the transferee.

### *The fundamental basis of a transfer of debt*

A contract for the transfer of debt is concluded by the transferor by informing his creditor that he has transferred his debt to some other person, and by the agreement thereto of the creditor and such other person. i) A contract for the transfer of a debt may be concluded between the person in whose favor the transfer is made and the transferee alone. For example, A informs B that he has transferred to him a certain sum of money owing to him by C, and B agrees thereto; or A tells B to transfer to him a sum of money owing to him by C and B agrees thereto. In both cases, a valid contract for the transfer of the debt has been concluded, and the transferee may not thereafter go back on the transaction. ii) A contract for the transfer of debt

may validly be concluded between the transferor and the person in whose favor the transfer is made alone, provided the transferee, on being informed thereof, agrees thereto. For example, A transfers a debt which he owes B, to C, who is resident in some other country. B agrees thereto. If the transferee, on being informed thereof, agrees thereto, a valid contract for the transfer of the debt is concluded. iii) A contract for the transfer of a debt may be concluded between the transferor and the transferee only, subject to the agreement of the person in whose favor the transfer is made. For example, A transfers a debt owing to him by B to C. C agrees. The contract for the transfer of debt has been concluded, subject to the consent of the person in whose favor the transfer has been made, and if the latter agrees thereto, such transfer becomes executory.

#### *Conditions Relating to the Transfer of Debt*

To conclude a contract for the transfer of a debt, the transferor and the person in whose favor the transfer is made must be of sound mind, and the transferee must be of sound mind and should have reached the age of puberty. Consequently, any transfer or acceptance of the transfer of a debt by a minor of imperfect understanding is void, and any acceptance of the transfer of a debt by a minor whether of perfect or imperfect understanding, or whether permitted by his tutor to undertake business, or whether interdicted, is void. (i) for the contract of transfer of debt to be executory, the transferor and the person in whose favor the transfer is made must have reached the age of puberty. Consequently, the transfer or acceptance of the transfer of a debt by a minor of perfect understanding is dependent upon ratification by the tutor. If the tutor ratifies, the contract becomes executory. Moreover, if the minor accepts the transfer of debt, and the tutor gives his permission, the transferee must be wealthier than the transferor. It is not essential for the validity of a contract in the transfer of a debt that the transferee should be indebted to the transferor, neither is it required that the transferor should be entitled to receive something from him. (ii) A contract for the transfer of a debt in respect to which a valid contract of guarantee cannot be concluded is invalid. (iii) Any contract for the transfer of a debt in respect to which a valid contract of guarantee can be concluded is valid. The subject matter of the contract must, however, be clearly ascertained. Consequently, any contract for the transfer of a debt which is unknown is invalid. For example, A agrees to accept the transfer by B of some debt which may be proved in the future to be due to him. The contract is invalid. iv) A contract for the transfer of a debt incurred because of a guarantee or arising out of a contract for the transfer of a debt may be validly concluded, in the same way as a contract for the transfer of debts which have been incurred directly.



### *Effect of a Contract for the Transfer of Debt*

The effect of a contract for the transfer of debt is that the transferor, and his guarantor, if any, are liberated from all responsibility for the debt. The person in whose favor the contract is made then has the right of demanding payment thereof from the transferee. A pledgee who transfers his right to claim the debt from the pledgee or to some third person loses all right of retention over the pledge. If any person who makes an absolute transfer of debt has no claim against the transferee, the latter may have recourse against the former, after he has paid his debt. If such a person has a claim against the transferee, the amount of the claim is set off against the debt after payment has been made. In the case of a restricted contract for the transfer of a debt, the transferor loses his right to claim on account of the subject matter of the transfer. The transferee is under no obligation whatsoever to give the subject matter of the transfer to the transferor. If he does so, he is liable to make good any loss resulting therefrom. Upon making good, such loss, he has a right of recourse against the transferor. If the transferor dies before making a payment, his debts being greater than the value of his estate, the other creditors have no right to touch the subject matter of the transfer. If a restricted contract for the transfer of a debt is concluded whereby payment is to be made from the sum to be received in respect to the price of a thing sold due to the vendor from the purchaser, and the thing sold is destroyed before the delivery, the price, in consequence, is no longer due, or if the thing sold is returned by virtue of a contractual option, or by reason of an option of inspection or an option for defect, or if the sale is rescinded, such transfer is not void and the transferee has a right of recourse against the transferor after payment. That is to say; he may obtain what he has given from the transferor. But if any person appears who is entitled to the thing sold and takes possession of the same whereby it is proved that the transferee is free from the debt, the contract of transfer is void. If a restricted contract for the transfer of a debt is concluded whereby payment is to be made from a sum of money deposited on trust by the transferor with the transferee, and some person appears who is entitled to such money and takes possession of the same, the contract of transfer is void, and the debt reverts to the transferor. If a restricted contract for the transfer of a debt is concluded whereby payment is to be made from a sum of money belonging to the transferor in possession of the transferee, and such sum of money is not subject to compensation, the contract is void, and the debt reverts to the transferor. If it is subject to compensation, however, the contract continues in force. For example, A transfers to C a debt which is due to B, to be paid from money which he has

deposited with C on trust, and such money is lost without any fault being attributable before payment is made. The transfer is void, and the sum due to the creditor reverts to the transferor. If such money has been wrongfully appropriated, or if, being deposited on trust, it has been lost by the act of C and must be repaid by him, the contract is not void. If any person transfers a debt to some other person and provides that payment is to be made from the price realized on the sale of some specific property of his, and such person agrees to the transfer on that condition, the contract is valid, and the transferee is bound to sell the property and pay the debt from the price realized. In the case of a vague transfer of debt, that is to say, in the case of a transfer of debt where it is not stipulated whether the subject matter of the transfer is payable forthwith if the debt is likewise payable forthwith by the transferor. If the debt is payable at some definite future date, the transfer is of the same nature, and payment must be made when the debt falls due. There is no right of recourse against the transferor until the transferee has paid the debt; and when recourse is made, the subject matter of the transfer may be claimed. That is to say; the transferee takes from the transferor exactly the same type of money that was the subject of the transfer. He cannot, however, claim the identical money which has been paid. For example, (1) Silver money is transferred. Payment is made in gold. Silver money may be claimed from the transferor and not gold; (2) Payment is made with goods and effects. The money which was the subject of the transfer may be claimed. If the subject matter of the transfer is paid, or it is transferred to some other person, or the person in whose favor the transfer is made liberates the transferee from the debt, or the person in whose favor the transfer is made makes a gift of the subject matter of the transferor, disposes of it as alms and the transferee accepts, he is liberated from the debt. In the event of the death of the person in whose favor the transfer is made, and of the transferee becoming his heir, the transfer becomes devoid of effect.

## The Model

In this study, we propose a sustainable model which combines the concept of *waqf* and *zakat*. We name this *waqf* the *Waqf Al-Gharimin*. *Waqf Al-Gharimin* is a unique unit which will act as a guarantor (*kafeel*) to the Islamic Bank (the creditor). So that if the customer (transferor) is not able to repay his loan to the Islamic bank (Creditor), the *Waqf Al-Gharimin* (Transferee) will cover the existing NPL. The funds of *Waqf* are coming from the *Zakat* fund. Below is described the operational model (*modus operandi*) of the model.

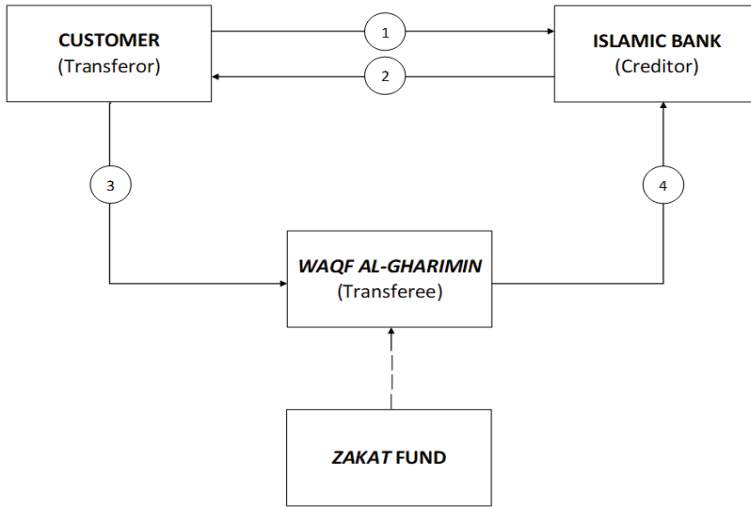


Figure 1. The Modus Operandi of the Model

In the first step the customer approaches the bank for the housing loan. Afterwards, the bank requests for the collateral. Third, the customer contacts the *Waqf-Al-Gharimin* to be a guarantor for the potential case of default. And lastly, the *Waqf* ensures the bank that in case of the default of the customer, the outstanding debt will be repaid by the *waqf* to the bank.

In this model, the customer is the transferor or the party who transfers the debt. *Waqf Al-Gharimin* is the transferee, the party who pays the outstanding loan of the customer to the bank, which is a creditor. This model enables the citizens of Marawi to acquire a loan from the bank to rebuild their houses.

## Conclusion

The Battle of Marawi which took place in Marawi city, Philippines left 95% of the structures within the four square kilometers of the main battle area in ruins. As a result, 95 percent of the buildings were destroyed, and 200,000 residents were displaced. About 70 percent of displaced residents were living in the nearby temporary government shelters as of May 2018. Most of the refugees now live in overflowing and severely congested areas like school buildings that act as temporary evacuation centers while Marawi will remain run-down for the coming years.

In the visit of the authors to the Marawi City in April 2018 they witnessed the urgent need to re-establish the city, hence and in this study, propose a solution

to the existing housing problem in Marawi, Philippines. This study suggests the adoption of a new *waqf* model namely *Waqf Al-Gharimin*. *Waqf Al-Gharimin* adapts features of *waqf* to release prisoners' model which existed during the Ottoman period, and in contemporary terms, it will act to repay NPL.

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