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**WAQF INSTRUMENTS FOR
CONSTRUCTION CONTRACT:
AN ANALYSIS OF STRUCTURE**



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ABSTRACT

The waqf instruments for construction and development of property are still underutilized in this country. Taking into consideration the increasing cost of construction and limited sources of funds, the potential of waqf instruments to attract more public funds should not be ignored. Waqf instruments could be developed for financing the development of several institutions such as universities, research centres and et cetera. The paper aims to study and analyze the structure of waqf instruments that could be further developed for construction of potential assets. This includes the risks, parties involved, advantages as well as disadvantages. It is a conceptual paper and the authors apply the inductive and deductive methods as well as analysis of the relevant literatures to reach at the findings. The findings suggest several methods and structures of waqf instruments for future development. It could be significant for those institutions that have planned to apply this concept in the nearest future.

Keywords: Waqf, endowments, waqf property, construction, Islamic financial instruments

Presentation Outlines

- Introduction
 - Problem Statement
 - Objectives
- Literature Review
- Research Methodology
- Findings: The General Framework of Waqf Concept for Construction Project.
 - Instrument for Fund Accumulation
 - Management of Waqf Construction Project
 - Project Construction
 - Income and Distribution
- The Advantages and Disadvantages
- Conclusions

Introduction

- The waqf instruments for construction and development of property (e.g. buildings) are still underutilized in Malaysia.
- Taking into consideration the increasing cost of construction and limited sources of funds, the potential of waqf instruments to attract more public funds should not be ignored.
- Waqf instruments could be developed for financing the development of several institutions that could such as universities, hostels for poor students, research centres, orphanage house and *et cetera*.

Introduction ...

- For the purpose of the discussion, the construction contract is defined as:
 - “*formal agreement for construction, alteration, or repair of buildings or structures (bridges, dams, facilities, roads, tanks, etc.).*”
- The discussion of the paper is on the possible framework that could be adopted in the construction contract for *waqf* buildings. It could provide a preliminary or general framework that could be discussed in details later.

Problem Statement:

Some institutions may have limited fund to develop their buildings that are necessary to the operation of their tasks/roles. At the same time, the institutions may have significant contribution and roles in the development of the Muslim community. Hence, considering the concept of *waqf* as a mechanism to raise fund from the public, corporate institutions, rich individuals and etc. for the construction of buildings is essential.

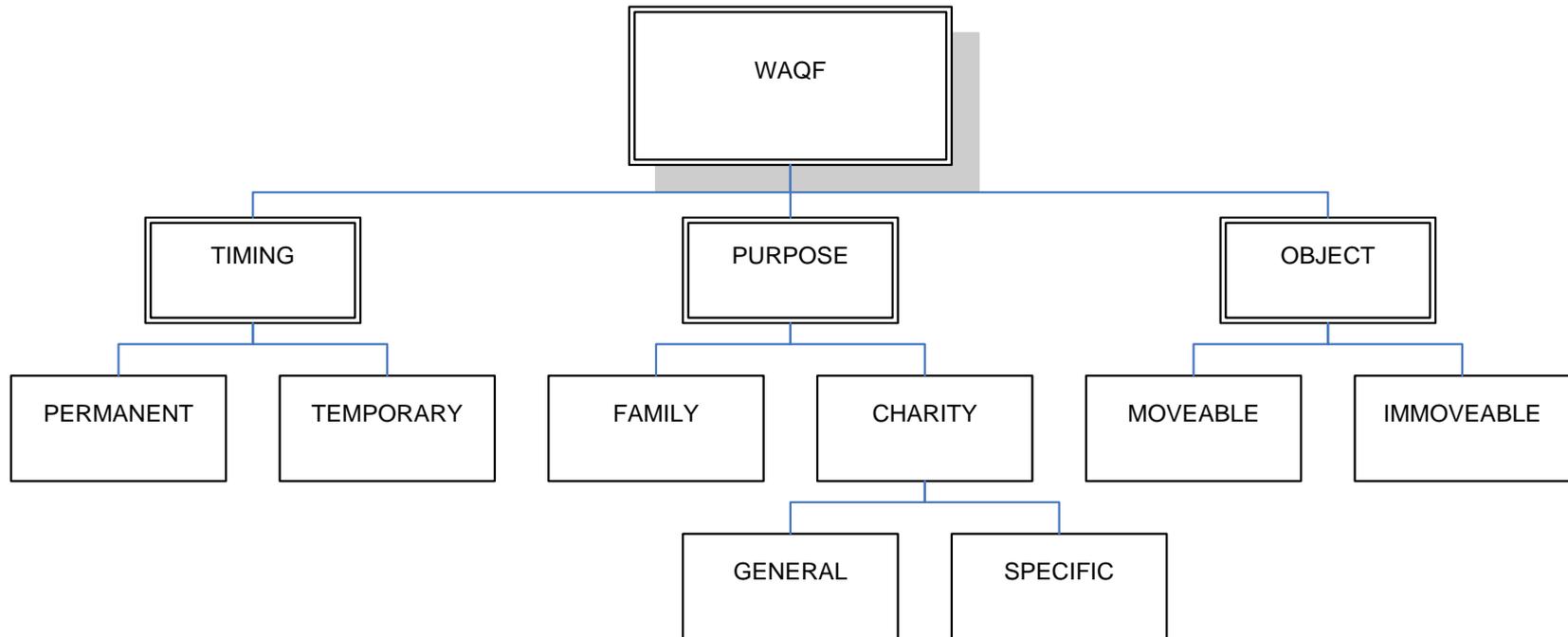
Objectives:

This paper aims:

- to study and analyze the structure of waqf instruments that could be developed for construction project
- to suggest the framework of waqf instruments that suitable for construction project
- to analyze and illustrate the advantages and disadvantages of this scheme based on a possible implementation at public universities

Literature Review

- Waqf in Islamic Jurisprudence:



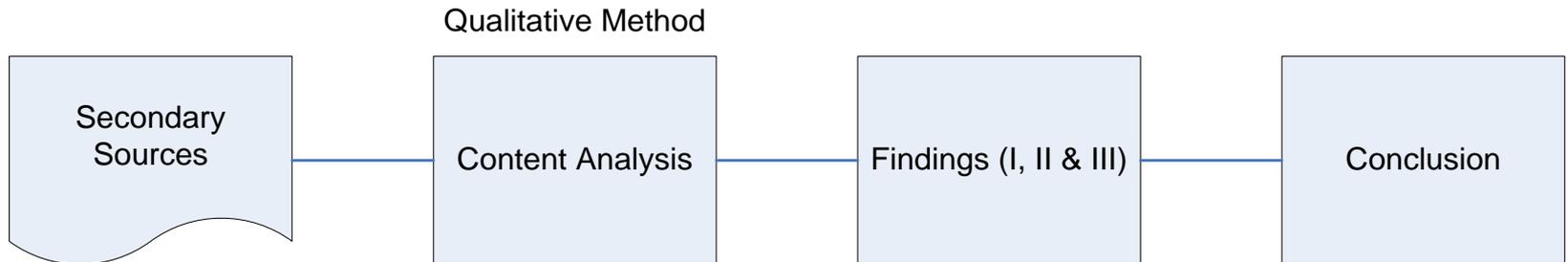
Literature Review

Sources for the financing and development of *waqf* property could be obtained from (al-Misri, 2005):

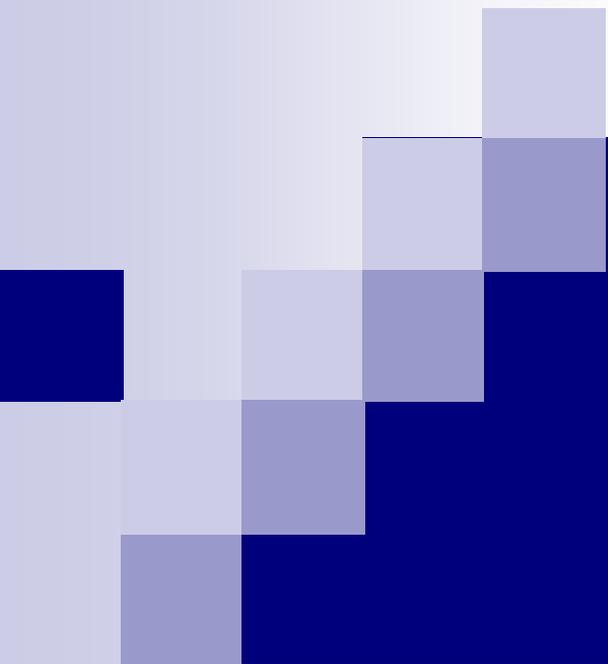
- The property of *al-waqif* (donour)
- The property of *al-mawquf calayh* (beneficiaries)
- The revenue of the *waqf* property
- The revenue of other *waqf* property
- Baitumal for *maslahah* (public interest)
- Reserves from the revenue of the *waqf* property
- The sale of a portion of *waqf* property to develop the remaining portion of *waqf* property
- The lease of the *waqf* property with advanced rentals
- Charities
- Loan or debts (without interest)

Research Methodology

- Sources of data & information: Secondary
- Method of Analysis: Content Analysis



- It could be observed that the focus of the contemporary writings is on the development of existing waqf property (land). However, the focus of this study is the construction of waqf building on public (government) land.

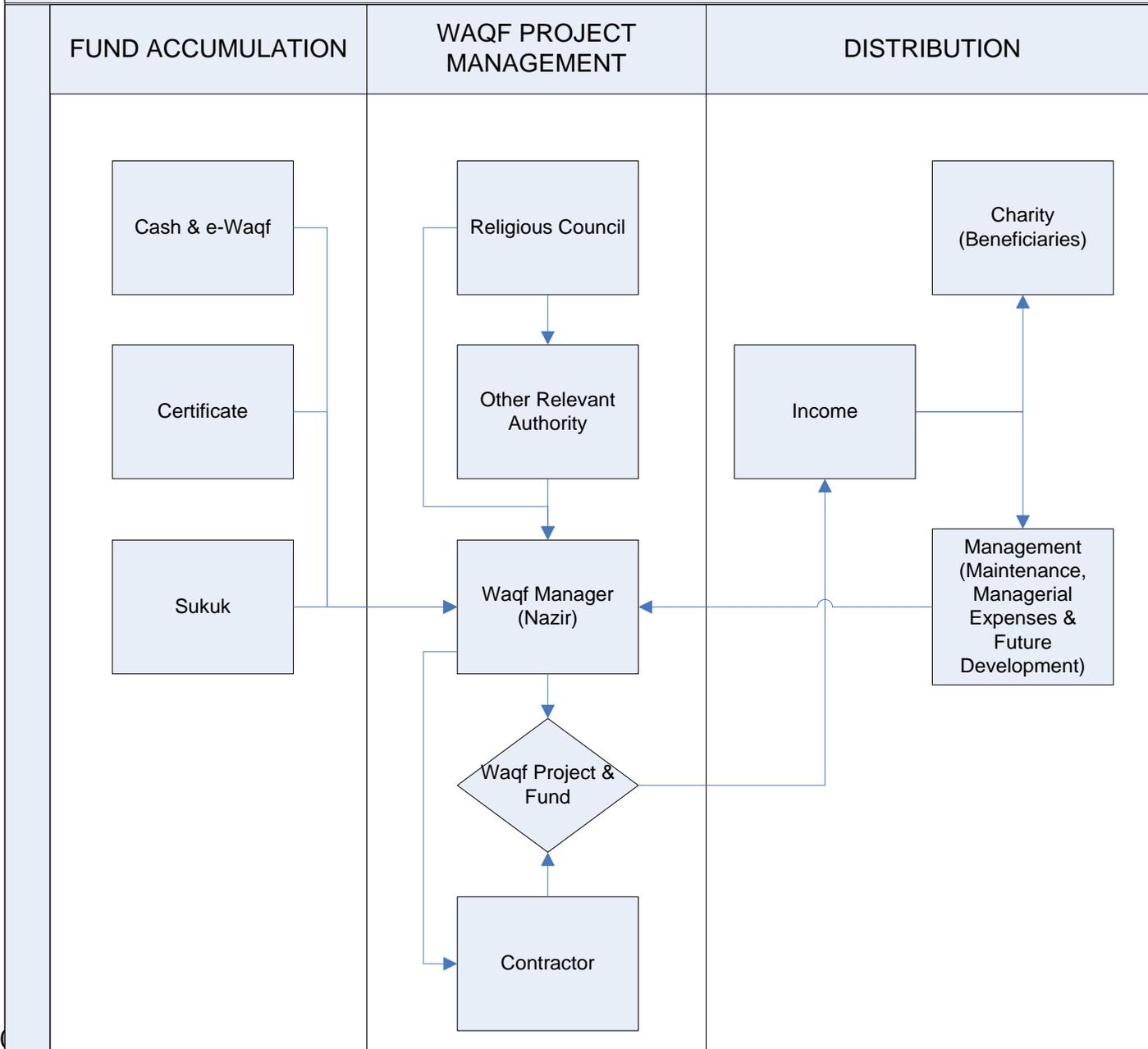


Findings: The General Framework of Waqf Concept for Construction Project: An Analysis

Three Main Stages

- Based on the analysis, it is observed that there are three main stages that take place in the general framework of waqf concept for construction project namely:
 - Fund Accumulation;
 - *Waqf* Project Management; and
 - Distribution of Income or Yields.

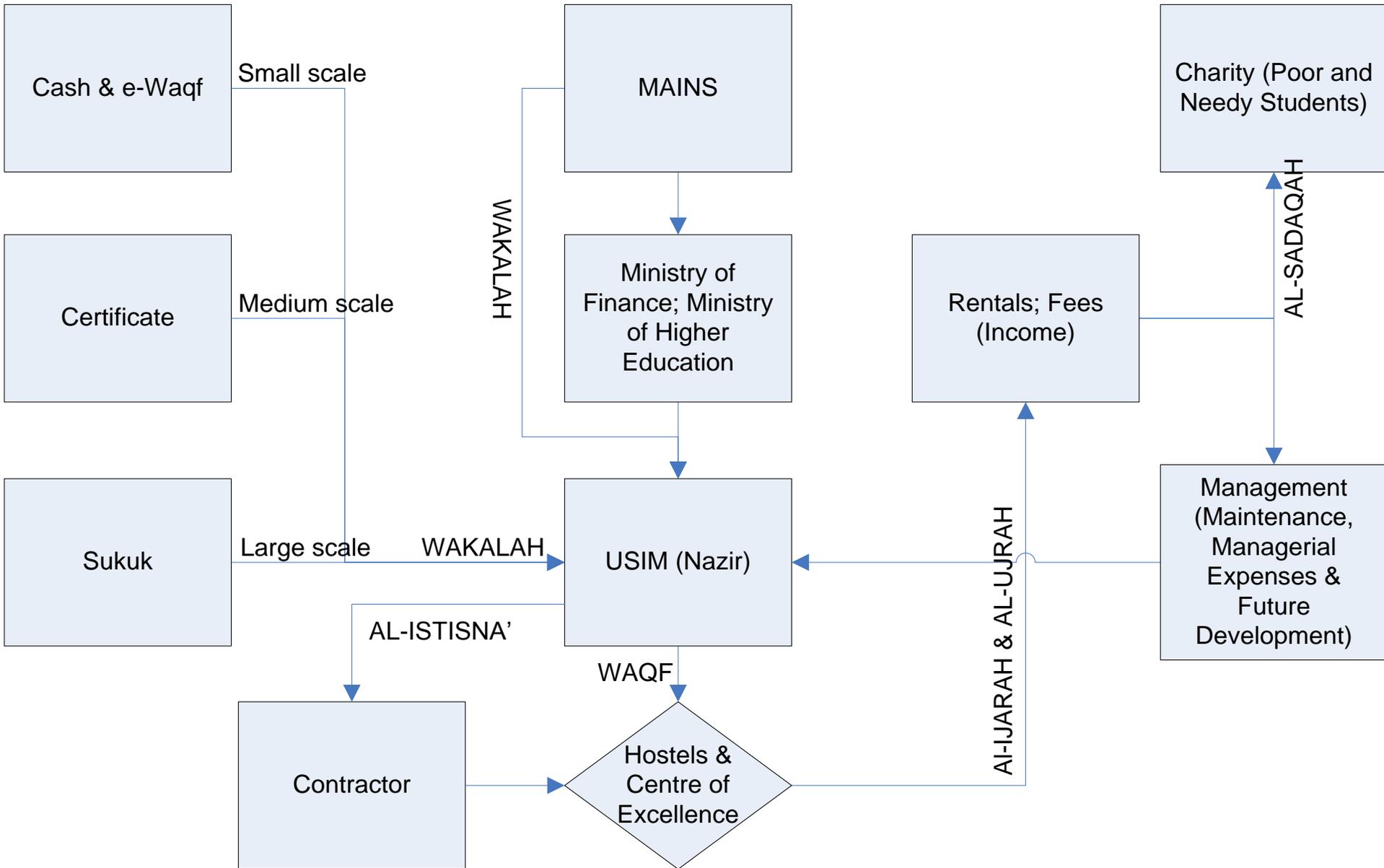
FRAMEWORK OF WAQF CONSTRUCTION PROJECT



Fund Accumulation

- There are three forms of instruments that could provide opportunities for the donors to dedicate their wealth for waqf purposes according to their preference as stated below:
 - Cash and e-Waqf
 - Per-square Feet Value Certificate
 - Sukuk (al-Wakalah + Waqf)

Management of Waqf Construction Project



The Contributions: Cash Waqf or Wakalah?

- The proposed Shariah contract should be based on the *wakalah* (agency) contract.
- The potential “*nazir*” acts as the contributors’ agent to manage the *waqf* fund and develop the prescribed building at the prescribed area. Hence, the potential project should be prescribed in details to avoid the factor of *al-jahalah* (lack of information) that may invalidate the *wakalah* contract.

The Contributions: Cash Waqf or Wakalah?

“Cash waqf” is not suitable for the waqf construction project as it may have several issues. The issues are:

- “Cash Waqf” is a type of *waqf al-manqul* (endowment of movable properties) which is considered as invalid according to *al-Hanafiyyah* (Al-Zuhayli, 2000). Additionally, a movable property is easily subject to total physical loss.
- “Cash Waqf” has no benefit unless it is consumed (exchanged) with another. Hence, the cash has no eternal attribute which should be available in the waqf property.
- The value of “Cash Waqf” is subject to volatility. One of the disadvantages of cash waqf is that the value of cash is very much subject to depreciation and inflation which may affect the purchasing power of the cash waqf (al-Misri, 2005)
- The application of *istibdal* is inevitable in the “Cash Waqf” and the practice of *istibdal* has several strict conditions.

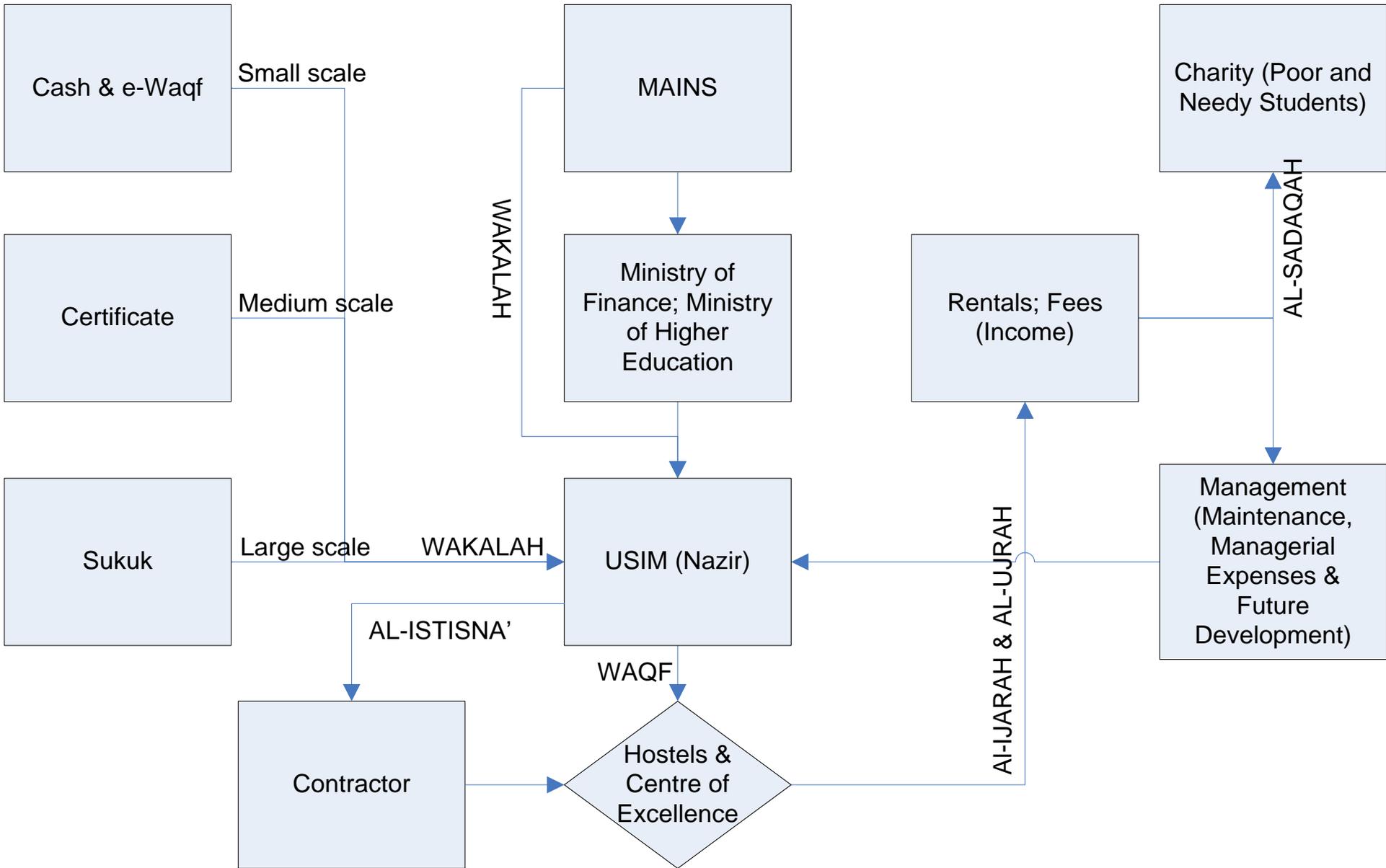
Project Construction

- The construction of the building (e.g. hostels or excellence centre) should be based on the contract of *al-istisna'* (manufacturing sale).
- In this particular framework, the *nazir* (acting as agent) deals with the contractor to build the building as prescribed in the *wakalah* and *waqf* contract.
- No third party financing is needed if the waqf fund is sufficient. In the case of non-sufficiency of the fund, a more complex structure is needed and the discussion is not within the scope of the study

Income and Distribution

The building e.g. hostels, could be leased to the university or students or any users at a reasonable rate. Exemption or rebate on the rentals could be given to any qualified and deserving parties (e.g. poor and needy students). The rentals acquired could be used for two main purposes. The two main purposes are:

- The maintenance of the (waqf) building. This involves the cost of managing (manager's salaries, security, *etc.*), upgrading, renovating, fixing, repairing, cleaning of the assets or *et cetera*.
- The charity purposes. This is based on the contributors' intention whether to make a general or specific endowment. It is better to make a general endowment so that the nazir could channel the fund to any types of charity purposes. The description of the beneficiaries could be done on the basis of their attributes e.g. poor and needy students.



The Advantages

The advantages of the waqf concept for construction project are:

- The access to the public fund at the lowest cost
- No third party financing is needed
- The *wakalah* concept provides flexibility to the managing party
- The willing donours and contributors could be local or global
- The building that could generate income is suitable for this project

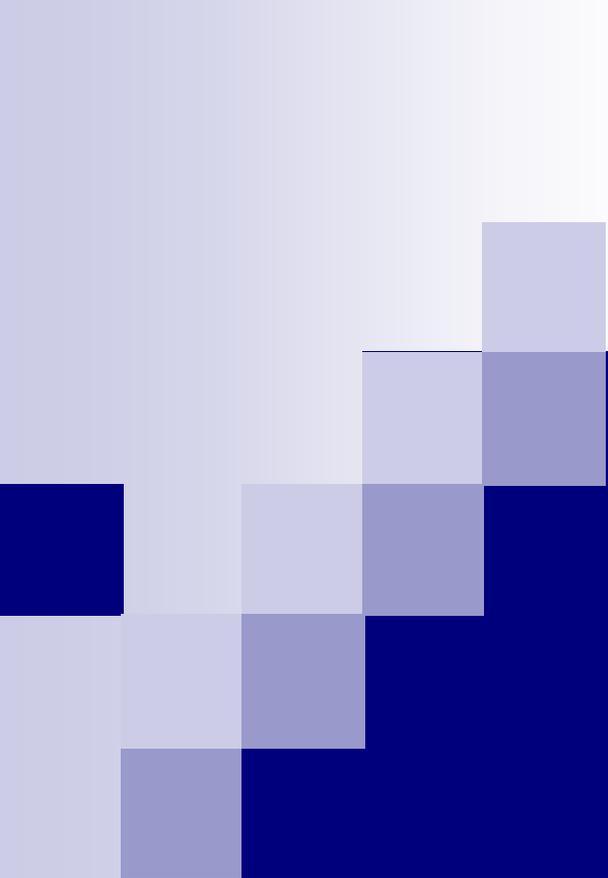
The Disadvantages

However, the waqf concept for construction project may have several disadvantages. They are:

- There are legal issues that should be discussed and addressed
- The risk of under-subscription of waqf instruments. Hence, the waqf fund is not enough to meet the cost of the construction
- Default of contractor may lead to loss of public fund and confidence

Conclusions

- The *waqf* concept offers the access to raise fund from the public for relevant institutions in the development of their institutions.
- The management of the *waqf* construction project is the most critical part of the whole process. Hence, the religious authorities in Malaysia should not involve in this project except with highly capable and reputable institutions in order to ensure and maintain the public confidence.
- The authors also suggest that more researches, particularly from the legal and marketing perspectives, should be conducted on the topic. The potential of this concept is vast and it should be developed in the nearest future.



Thank you.

Q & A Session.