

Administration and Management of Waqf Land in Malaysia: Issues and Solutions

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Abstract

The prolonged conflicts in the administration and management of waqf land have inhibited its development and expansion in Malaysia. This paper aims to identify the issues arising in the administration, management and development of the waqf land in Malaysia and offer several solutions to enhance waqf land development and ultimately strengthen the role of the SIRC (State Islamic Religious Council) as the sole trustee of waqf properties. The review of the past literature and in-depth interviews with three officers from Majlis Agama Islam Negeri (MAIN) or Sate Islamic Religious Council (SIRC) and the Department of Awqaf, Zakat and Hajj (JAWHAR) revealed several prominent issues in developing the waqf land which include ownership and registration of waqf land, financial problems, shortage of competent waqf managers and illegal occupation and encroachment of waqf land. This paper concludes that SIRC in all states must be professionally restructured in order to improve the administration, management and development of waqf land in Malaysia.

Keywords: waqf land; conflicts; administration; management; development; solutions;

1. Introduction

According to JAWHAR (2013), there are over 8,861.15 hectares of waqf land in Malaysia. A total of 4,543.27 hectares of the land have been categorized as wakaf khusus or special waqf (any form of dedication or endowment precisely declared for specific purposes or special beneficiaries) while 4317.88 hectares have been categorized as wakaf am or general waqf (any form of charitable dedication or endowment made to support all public welfare purposes without stating any special beneficiaries; be it any individuals, organizations or institutions).

If these pieces of land are efficiently managed and developed, they could yield billions of income to the Muslim communities. Unfortunately, waqf institutions in Malaysia seem to fail to play a dynamic role in uplifting the development and economy of the Muslims. Hence, this study was conducted to identify the issues arising in the administration, management and development of the waqf land in Malaysia. This study also offers possible solutions to the problems in order to ensure that rigorous and vigorous efforts to develop the waqf land could be undertaken and the noble aims of waqf could be achieved through rapid income generation and fair distribution of wealth among the Muslim communities. In order to achieve these objectives, previous studies on waqf land development in Malaysia were carefully reviewed. Besides, three in-depth interview sessions with the officers of Majlis Agama Islam Negeri (MAIN) or Sate Islamic Religious Council (SIRC) and the Department of Awqaf, Zakat and Hajj (JAWHAR) were also conducted to find out the real problems faced by SIRC in administering and developing the waqf land in Malaysia.

2. Literature Review

In general, there has been a wealth of waqf land research conducted by the scholars and academicians. Some of the studies have highlighted several issues concerning the administration, management and development of waqf land from multiple perspectives. Kamaruddin (1992) has pointed out several alarming issues related to every aspect of the administration, management and legislation as well as exploring significant issues and barriers in the development of waqf land, especially in Penang. He has interestingly concluded that most of the State Islamic Religious Councils (SIRC) in all states have basically faced similar problem that is inefficient waqf administration which eventually leads to the failure for generating optimum income from the waqf land.

In order to solve the above mentioned problem, various suggestions have been made. Razali (2005) suggested that the society should change any misleading or negative perceptions they have towards the waqf institutions. Besides, he also believed that comprehensive efforts should be made to ensure that the waqf institutions could effectively play their role to distribute the wealth equitably among the Muslims and thus, curbing poverty among the Muslim societies. Nik (1999) recommended that SIRC should swiftly adopt effective measures to enhance the management of waqf by establishing a department or division for managing the *wakaf khusus* (special waqf), appointing Waqf Administration and Management Advisory Committee and hiring more staff who are capable of managing the waqf.

Siti (2000) has outlined several processes and procedures for the administration and management of both general waqf and special waqf. Siti (2006) has also explained the legal aspects of waqf in Malaysia and highlighted the role of SIRC as a sole trustee of waqf property. She has even urged the council to take proactive steps to deal with unproductive and undeveloped waqf land. This move should be made in order to protect the interests of the Muslim endowers, gain their confidence and trust towards SIRC and thus, restoring its credibility.

2.1 The administration of waqf land in Malaysia

Johor has become the first state to document written legal provision concerning waqf known as Enakmen Larangan Wakaf 1911 (Waqf Prohibition Enactment 1911). It was then followed by Perak which introduced Enakmen Kawalan Wakaf 1951 (Control of Waqf Enactment 1951). Perak Waqf Enactment was then updated and renamed as (Peraturan Kawalan Wakaf 1959 (Perak Control of Waqf Rules 1969) (Hisham, 2013).

In short, the history of waqf in Malaysia can be traced back since hundred years ago and Selangor was the first state to authorize the SIRC as the manager of waqf properties in 1952 (Selangor Administration of Muslim Law Enactment, 1952). The move was then followed by Kelantan in 1953 (Kelantan Council of Religion and Malay Custom and Kathis Courts Enactment, 1953), Terengganu in 1955 (Terengganu Administration of Islamic Law Enactment, 1955), Pahang in 1956 (Pahang Administration of the Law of the Religion of Islam Enactment, 1956), Melaka in 1959 (Malacca Administration of Muslim Law Enactment, 1959), Pulau Pinang in 1959 (Penang Administration of Muslim Law Enactment, 1959), Negeri Sembilan in 1960 (Negeri Sembilan Administration of Muslim Law Enactment, 1960), Kedah in 1962 (Kedah Administration of Muslim Law Enactment, 1962), Perlis in 1963 (Perlis Administration of Muslim Law Enactment, 1963), Perak in 1965 (Perak Administration of Muslim Law Enactment, 1965), Federal Territory in 1974 (Federal Territory Administration of Muslim Law Enactment, 1974), Sabah in 1977 (Sabah Administration of Muslim Law Enactment, 1977), Johor in 1978 (Johor Administration of Islamic Law Enactment, 1978), and Sarawak in 2001 (Majlis Islam Sarawak Ordinance, 2001).

The absence of legal provisions for the administration of waqf in the past had resulted in inefficient and unsystematic administration of waqf land or properties. Those people who intended to endow their land as general or special waqf would just orally declare their intention to surrender their land as charitable endowments (waqf) with the presence of two Muslim witnesses. The act was then followed by the appointment of an individual waqf manager or group managers to administer and manage the land. The administration of waqf land during those days was almost effortless as the society abode any jurisprudence concerning waqf. The revenue gained from special waqf would be carefully utilized according to the endowers' specific intention and the profits gained from general waqf would be used to support a diversity of charitable work which could benefit the Muslim communities. There were hardly any cases of breach of trust or reclaiming/repossession of endowed land by the beneficiaries ever reported.

Besides, the absence of legal provisions for the administration of waqf land had also resulted in the appointment of waqf managers from selected groups of people who were trusted and well-respected by the local community such as pious leaders, religious teachers, imams, heads of villagers and mosque committee members even though some of them were not capable of administering, managing and developing the waqf land.

In some cases, the title deeds of the waqf land were transferred into their names. In other cases, some of the endowed land was not registered as waqf but remained registered under the endowers' names. This was due to the managers' failure to systematically record the properties which had been endowed. This unsystematic and disorganized way of administering and managing the waqf land continued until the SIRC was established and the Enakmen Pentadbiran Hukum Syarak Negeri-negeri di Malaysia (the Administration of Islamic Law Enactment) was introduced. The SIRC has then been entrusted with the power to act as the sole trustee for all waqf properties or nazar 'am in Malaysia.

All in all, disorganized administration and management of waqf in the past such as the absence of written records of waqf land and failure to register waqf land have left the SIRC with two major problems to solve. First, the SIRC has difficulties in identifying the actual number, size and locations of the waqf land. Second, the SIRC also has problems in claiming the rights as the sole trustees of those unregistered waqf. The problems will become more complicated if the

endowers themselves or the appointed managers of the waqf land have passed away and the heirs claim that the properties are not rightfully declared as waqf by their late parents or family members. Some of the land and properties have only been traced by the council after they have been manipulated for non-charitable purposes.

2.2 The jurisdiction of State Islamic Religious Council (SIRC) as the sole trustee of waqf land

In Malaysia, any matters related to waqf are solely controlled and administered by SIRC in accordance to The Federal Constitution's *Ninth Schedule, List II (State List)*. The jurisdiction of SIRC as the sole trustee of waqf land has clearly been embedded in each respective state enactment. All waqf land, whether movable or immovable could only be administered and managed by the council.

It has also been made clear that SIRC in every state of Malaysia is the sole trustee for all waqf land and properties whether they are in the form of waqf am or waqf khas, and all nazar am and all trusts. This provision has been explicitly mentioned in the Administration of Islamic Religious Affairs (Terengganu) Enactment 2001: Notwithstanding any provision to the contrary contained any instrument or declaration creating, governing or affecting it, the Majlis shall be the sole trustee of:

- a) all wakaf, whether wakaf am or wakaf khas;
- b) all nazar am; and
- c) all trusts of every description creating any charitable trust for the support and promotion of the religion of Islam or for the benefit of Muslims in accordance with Hukum Syarak, to the extent of any property affected by the wakaf, nazar am or trust and situated in the State of Terengganu (Section 63).

While Section 64 of the Act states that: "All property subject to Section 63 shall without any conveyance, assignment or transfer, and, in the case of immovable property, upon registration under the written law relating to land, vest in the Majlis, for the purpose of the wakaf, nazar am or trust affecting the property".

The appointment of SIRC as the sole trustee of waqf property is to ensure that waqf is properly administered and efficiently managed so that it can generate substantial profits and revenue that could be used by the beneficiaries to fund any charitable work (Siti, 2005). It has also been appointed to avoid various problems which may arise due to the appointment of independent trustees who are sometimes not trustworthy and to also avoid any intrusion from the heirs which could lead to the loss of waqf land and transferring of ownership which are obviously deviating from the intention of the endowers and against the Islamic principles.

From the legal perspective, in the decision-making process, SIRC reserves the right to make agreements, purchase, hold and possess, convert, transfer and develop all the waqf land (whether movable or immovable), in accordance with the Islamic principles. In fact, SIRC has exclusive jurisdiction over the management and development of any waqf land.

Since SIRC has been vested with the power to develop the properties, it should be able to generate more income and improve the economy of the Muslim community. With such power, SIRC can establish smart partnership or joint venture with other Muslim individuals, government agencies, corporate institutions or private bodies to ensure that the properties will generate competitive income and profits continuously (Mohd & Asmah, 2010).

3. Issues and Challenges in Developing Waqf Land

Though there are clear guidelines for proper waqf administration and management which can be adopted and followed, the nazir or mutawalli, does not seem to follow the implementation guidelines. Several prominent issues and challenges in the development of waqf land are highlighted as follow:

3.1 Ownership and registration of waqf land problems

Although the State Administration of Islamic Law Enactment clearly entrusted SIRC as the sole trustee of the waqf land in the respective states, there are a lot of waqf land which is still registered under individuals, mosque committee or qariah or even the endowers' themselves. Therefore, it is very difficult for SIRC to trace the waqf land and identify the waqf categories since they consist of various title holders and are exclusively administered by the appointed managers. Without legal ownership documents, any applications to develop the land will not be approved by the authorities.

Referring the matter to court will involve a lot of money and take a long period of time. What is worse, due to incomplete record and ambiguity of information, the next of kin will perhaps win the case against SIRC. This will cause SIRC to bear the loss and it will have to repay all the revenue collected since the past few years. Not only the waqf land

which is not registered and administered by SIRC is exposed to land acquisition and reclaiming of rights by the heirs, it is also exposed to land invasion.

Another issue which needs to be looked into is that most of the registered waqf land is meant for waqf khas, (which the land has been precisely declared for specific purposes or for special beneficiaries) and only limited number of waqf land is registered as waqf am and this has led the land to be undeveloped and financially unproductive.

3.2 *Financial problems*

Lack of capital and limited financial resources have also hindered the development of the waqf land. This is because the revenue gained from the waqf land will be fully used to cover a broad range of expenses including the maintenance, repair, management and administration of waqf properties which sometimes exceed the waqf revenue. Besides, some of the revenue will also need to be used to pay for various taxes. Other factors which contribute to financial problems are SIRC's failure to lease out the land at a competitive rate and failure to systematically collect rent arrears from the tenants.

3.3 *Physical barriers: Size, type and geographical location of waqf land*

Most of the waqf land areas are found to be located in less strategic locations (rural areas), scattered and lack of potential to be developed. Though some of them are strategically located in the urban areas, efforts to develop the areas cannot be undertaken due to certain constraints and restrictions such as sighah (declaration). SIRC has also faced problems developing the land which has been declared as a form of wakaf khas since any plans which are to be undertaken must take into account the endowers' intentions and their beneficiaries. Next, some of the waqf land could not be developed due to its small size, thus limiting the construction and development of mega projects which could generate competitive revenue to SIRC. Some of the land has also been occupied and it will cost SIRC a lot of money for resettlement and compensation if the occupied waqf land is to be developed. It is also impossible for SIRC to develop the waqf land which has been endowed and managed by other trustees than SIRC.

3.4 *Shortage of competent manpower*

Interviews with the SIRC officers revealed that SIRC is also facing a shortage of staff in administering the waqf land (Bakri, Fakhruddin & Ku Hayati, personal communications, March 5, 2011). Lack of efficient and professional workers have resulted in inept and very slow registration process of the waqf land and disorganized records of the matters related to the development of the waqf land. Kamaruddin (1992) claims that most of the officers who are in charge of administering the waqf land only have little knowledge and experience in property management and some do not even have any knowledge and experience at all.

Besides, due to shortage of staff, SIRC is also having problems to properly supervise the rent collection of the waqf land and properties which adversely affects the revenue. The failure to regularly update records of the tenants has also led to the failure of collecting monthly rents and the arrears from the tenants.

Lack of efficient experts, dynamic professionals and proactive strategic planners limit the activities concerning research and planning, financing and implementation of competitive and profitable development projects. What is worse, the 'post-mortem' of the planning and development projects which could help to evaluate the potential and effectiveness of the development projects is hardly conducted due to lack of dynamic professionals. Having lots of red tape and lack of transparency in administering the waqf land have prevented contribution of ideas towards the development of waqf land and have retarded the growth of SIRC as the sole trustee of waqf in Malaysia.

3.5 *Incomplete databases*

Lack of comprehensive databases concerning the status of waqf land, size, geographical location, type and other relevant information have also hampered the development of potential waqf land. For example, there are a total of 2,477 lots of land were endowed and entrusted to Majlis Agama Islam Negeri Johor (MAIJ) or Johor State Religious Council but only 70% of waqf land were registered and recorded. The other 30% were left unrecorded and the actual size, location and ownership remained unknown (Siti, 2012). Similar situation is also occurring in every state and the discrepancies of data at SIRC offices are found to be caused by incomplete, outdated and unsystematic data recording. Although the Department of Awqaf, Zakat and Hajj (JAWHAR) has taken the efforts to gather information of the waqf land in all states, lack of cooperation from SIRC has hindered the success of the initiative.

3.6 *Illegal occupation and encroachment of waqf land*

There have been many cases of waqf land being encroached, occupied or leased to the non-Muslims. Thus, SIRC has faced a lot of difficulties in getting them to vacate the land. This has become a barrier to successful development of the land and is also against the intention of the endowers. Some of the occupants have also been found to engage in the activities which are prohibited in Islam. Some legal methods and procedures which could result in SIRC to bear high legal costs have prevented SIRC from taking any actions though it is clearly stated in Section 425 (1) and 1 (A) of the National Land Code 1965 (NLC 1965) that "Any person who, without lawful authority:

- a) occupies, or erects any building on, any State land, reserved land or mining land, or
- b) clears, ploughs, digs, encloses or cultivates any such land or part thereof; or
- c) cuts or removes any timber or produce on or from such land,

shall be guilty of an offence, and liable on conviction to a fine not exceeding ten thousand ringgit, or imprisonment for a term not exceeding one year.

(1A) Any person who abets the commission of an offence under subsection (1) shall be guilty of an offence, and liable on conviction to a fine not exceeding ten thousand ringgit, or imprisonment for a term not exceeding one year, or to both.

4. Possible Solutions to Waqf Land Administration Problems

In order to ensure that the waqf land is systematically developed and will extensively increase the waqf revenue, some of the prominent aspects of waqf administration must be carefully looked into and improved. This can be done by adopting the following suggestions.

4.1 *Strengthen and reform waqf administration*

SIRCS in all states have been entrusted with the responsibilities to administer and manage waqf in Malaysia. Thus, as a sole trustee, SIRC should reform its administration in order to regain the confidence from the public and prove that SIRC is capable of dynamically, efficiently and systematically administer, manage and develop the waqf land in this country. Hence, the organization structure of SIRCS in all states must be professionally restructured so that the waqf land could be productively developed and achieve the noble aim of waqf, that is to improve the economy of the Muslims. SIRCS in all states should hire qualified administrative personnel such as architects, property valuers, engineers, accountants and other professionals to enhance the administration and management of waqf.

4.2 *Register all waqf land*

SIRC should identify the sizes, types and locations of all waqf land in their respective states. Besides getting the information from JAWHAR, SIRC should also adopt a more proactive approach to register all the waqf land in each respective state through 'vesting'. Systematic and efficient data base of registered land should also be created and managed by skilful IT personnel.

4.3 *Improve existing renting system*

Waqf land rental rate should be increased to commensurate with the current rental rate so that it will help to double the revenue and thus making it possible for the development of the waqf land to be undertaken. More staff should also be hired to ensure that the rent is collected on time and records of waqf land and tenants must be systematically kept and frequently updated.

4.4 *Offer tax relief to waqifs*

Interesting incentives such as granting tax relief to the waqifs who endowed their land should also be offered. Waqf land which has been used to build mosques and musollas should be exempted from any tax since those are the places for Muslims to perform their religious activities. The tax for waqf land which has been used for business purposes and housing estates should be reduced nominally if approved by the respective authorities to encourage more Muslims to endow their land.

4.5 *Review certain provisions of National Land Code (Kanun Tanah Negara) 1965*

It is seen timely for certain provisions of the National Land Code 1965 to be reviewed. Although Part 30 of the code provides matters related to Registration of Statutory Vesting, there is a strong need for a specific chapter of registering the waqf land be provided due to the following reasons:

- i. Enacting a new statute concerning the registration of waqf land under the National Land Code will be easier, faster and cheaper.
- ii. If the law concerning waqf land is enacted under Article 76 (1) of the Federal Constitution, it will be subjected to the approval of the State Authority (Pihak Berkuasa Negeri).
- iii. Part 30 of the National Land Code complicates the administration of waqf land as the State Islamic Religious Council is required to make a special application to register the waqf land and it will also take up a lot of time for the application to be processed and the land to be registered.
- iv. The current definition of waqf should be reviewed and a more appropriate definition should be clearly provided to ensure the term is easily and generally understood by all parties.
- v. Any waqf land registration should follow the legal procedures as provided in the National Land Code and once implemented, it will benefit the registrars and endowers since it is easier, faster and cheaper.
- vi. If a waqif intends to endow his land, he is only required to fill out a Specific National Land Code form and witnessed by the Syariah Court Judge or District Officer without incurring any cost. Once certified, the land title will be kept by SIRC.

4.6 *Strengthen the jurisdiction of Syariah courts*

The Syariah courts should be granted more exclusive power to handle and solve issues related to the Muslims' properties and the fatwas (legal pronouncements in Islam) issued by the Muftis must be followed. Muslim judges who are experts in Islamic jurisprudence should be allowed to hear any disputes related to waqf.

4.7 *Review Land Acquisition Act*

The Land Acquisition Act should also be reviewed and amended to prohibit the waqf land to be acquired by the government for any purpose. As for now, there is no legal provision which clearly prohibits the government or State Authority to acquire the waqf land and replace any acquisition with a piece of land with similar nature and value.

4.8 *Organize waqf awareness campaigns*

In order to increase the quantity of waqf land, vigorous efforts and initiatives should be taken. More awareness campaigns should be organized to inform the public the importance and benefits of endowing their land. Children in primary schools should be educated about waqf, so that they are aware of what it really is and have deeper understanding of the advantages of waqf to the Muslim communities.

4.9 *Strengthen the role of Department of Awqaf, Zakat and Hajj*

The Federal Government has established the JAWHAR to coordinate the activities conducted by all waqf institutions in Malaysia. JAWHAR also helps, facilitates and complements the efforts SIRC has taken in improving the efficiency and effectiveness of waqf administration, management and development. JAWHAR is also responsible for observing and assisting SIRC if it fails to complete any development projects due to shortage of financial resources and experts. Among other roles of JAWHAR include:

- a) to develop all waqf/baitulmal assets in the country by implementing development projects which benefit the Muslims.
- b) to generate more income from waqf properties and also increase waqf land revenue by adopting various contemporary and innovative approaches.
- c) to mobilize waqf/baitulmal assets and improve the economy of the Muslim community.
- d) to address issues concerning socio-economic inequality among the Muslims in a progressive and productive way in order to eliminate poverty among the Muslims (Sohaimi, 2008).

5. Concluding Remarks

In conclusion, this paper has presented several issues concerning the administration and management of waqf land in Malaysia, which eventually led to some of the waqf land areas left unattended and undeveloped. Several recommendations have also been highlighted to ensure that SIRC would be able to administer, manage and develop the waqf land efficiently and productively. However, more research should be conducted to find more effective ways and approaches which can be adopted to increase the revenue of the waqf land and generate more competitive capital to fund any waqf land development projects in the future.

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