REVIVAL OF WAQF PROPERTIES IN MALAYSIA

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ABSTRACT
Waqf has become a big concept within the Muslim society. Issues pertaining to waqf are famously discussed and debated among fiqh scholars and academician. Most Muslims are familiar with the concept but do not really understand the definition and meaning of waqf along with its process, law, administration and management of it. Waqf is standardly known as benevolence instruments where the profit is used to improve the welfare of the unfortunate society. Beyond the mentioned belief, many Muslims do not take effort in advancing their knowledge on waqf. Undoubtedly, this ignorant attitude among the Muslim- specifically in Malaysia- concerning waqf has largely added to the many visible issues and problems in waqf matters, majorly the administration and management of it. Added to this scenario is the slow progression in developing the many idle and nonproductive waqf properties in all Malaysian states. Hence, there is the need to revive the development of waqf properties in Malaysia. This paper covers brief introduction to waqf, waqf scenario in Malaysia and issues pertaining to its waqf management. Some innovative mechanisms in revitalizing waqf system in Malaysia are also presented with a brief outlook into Jabatan Wakaf, Zakat dan Haji (JAWHAR) dan Yayasan Wakaf Malaysia (YWM).

Keywords: waqf institution, management, issues

1. INTRODUCTION
The concept of waqf is in existence long before the emergence of Islam. It was not clearly identified as waqf then but the concept was evidenced through the construction of mosques and surau where donation from the society funded the maintenance cost of the mosques and suraus. Many Muslims believe that waqf is solely for religious matters. Little do majority of the them know that waqf can benefit all level of society. As to rid away this misconstrued understanding of waqf, it is imperative to understand what waqf means in this new era of modern world.

Waqf is standardly known as benevolence instruments where the profit is used to improve the welfare of the unfortunate society. Beyond the mentioned belief, many Muslims do not take effort in advancing their knowledge on waqf. Undoubtedly, this ignorant attitude among the Muslim- specifically in Malaysia- concerning waqf has largely added to the many visible issues and problems in waqf matters, majorly the administration and management of it. On top of this situation, progression on waqf properties is slow in coming although efforts have been taken to step up the development. This paper is intended to give some comprehension of waqf, specifically, covering those areas such as waqf and management of waqf properties.

It will cover brief introduction to waqf, waqf scenario in Malaysia and issues pertaining to its waqf management. Some innovative mechanism’s models in revitalizing waqf system in Malaysia are also

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presented with a brief outlook into Jabatan Wakaf, Zakat dan Haji (JAWHAR) dan Yayasan Wakaf Malaysia (YWM).

2. WAQF IN ISLAM

There are a few hadiths that support the concept of waqf. One was mentioned by the Prophet (p.b.u.h): whence a child of Adam dies, his/her deed comes to an end except for three things; running and continuous sadaqah, knowledge that benefits (others) and a righteous child who pray for him or her. Second, when Umar bin Al-Khattab went to the Prophet (p.b.u.h) and said “Messenger of Allah! I got a land in Khaibar. I never got a property more precious to me than this. What do you advise me?” The Prophet (p.b.u.h) said, “If you want you can make habs on (bequeath) it, and give it as sadaqah (charity); provided that it should not be sold, bought, given as a gift or inherited”. Then, Umar gave it as charity for the poor, relatives, slaves, wayfarers and guests. There is no harm for the person responsible for it to feed himself or a friend from it for free, without profiting. Third is when All the Prophet’s (p.b.u.h) companions proclaimed their land as waqf. This evidenced through narrations and report by Thabit Bin Anas Jabir Bin Abdullah and Ibn Hazm (Ibrahim & Ibrahim, 2013; Zahrah, 2007).

Even Karim (n.d), as cited in Ibrahim and Ibrahim (2013) stated that Allah (SWT) says in the Holy Quran: ‘those who spend their wealth (in Allah’s cause) by night and day, in secret and in public, they shall have their reward with their lord. On them, shall be no fear, nor shall they grieve’ (Sura: Al-imran, verse: 274); ‘By no means shall you attain Al Birr (piety, righteousness-here it means Allah’s reward, i.e. paradise), unless you spend (in Allah’s cause) of that which you love; and whatever of good you spend, Allah knows it well.’ (Sura: Al-Imran, Verse: 92); and ‘Verify those who give sadaqat (i.e. zakat and alms), men and women, and lend a goodly loan, it shall be increased manifold (to their credit), and theirs shall be an honourable good reward (i.e. paradise).’(Sura: Al Hadid, Verse:18).

Evidently from the above, sharing wealth in the form of giving out donations is most encouraged in Islam. And, the one instrument to achieve this is through waqf.

3. WAQF CONCEPT

In laymen perspectives, waqf is a form of donation mostly in term of land and properties. Once a person proclaims his/her property as waqf, it is expected that someone who is entrusted with the waqf will distribute the benefits to the intended beneficiaries as specified by the donor according to the shariah principle. To understand the concept of waqf, first its structure-types, characteristics and participants - needs to be laid down.

3.1 Type of waqf

Standardly there are two types of waqf; specific waqf and general waqf. Specific waqf also known as waqf khas is where the donor declare beforehand what is the purpose of the waqf, for example, build of a mosque or school or for any other purpose he specifies. The purpose will then be specified in a waqf deed and the manager (mutawalli) who is entrusted to administer the waqf as specified by the deed. General waqf or waqf am, on the other hand, is an open ended waqf where the manager of the waqf may use the waqf properties for whatever purpose as long as it benefits the public and the purpose is not against the shariah principles.
3.2 Characteristics of Waqf

Waqf is a mean to protect and preserve a property from belonging to unintended persons. Many jurists believe it is a concept of holding, confining, detaining or restraining the proclaimed property from misuse. For many years, many Muslims believe that only fixed assets can be donated as waqf as interpreted by the Islamic law where the property proclaimed as waqf must be immovable as characterized by the need for waqf to be perpetual. This inherited definition of waqf is due to the nature of the benefit of immovable property where it is utilized without having to use up the property itself (Osman, 2012; Kahf, 2007b). Nowadays, this backward interpretation is no longer valid since the new ruling on waqf includes all movable properties such as cash, shares, books and other things as deemed beneficial (Osman, 2012; Cajee, 2007; Hasan, 2007; Nik Hassan, 1999; Sait and Lim, 2006). In spite of this, the acceptance of other forms of properties as waqf, immovable properties (land and building) still make up the majority of waqf property as evidenced by the value they acquired (Osman, 2012; Sait and Lim, 2006).

But the most acceptable and preferred definition of waqf is by Abu Yusof from Hanafi school where the meaning of waqf is rephrased by jurists such as Imam Muhammad and other Jurists in Shafie, Hanbali and Imami schools. The rephrased waqf definition leans towards the irrevocability, perpetuity and alienability of the donated property- which goes without saying- the proclaimed properties are prohibited from being transferred to other people.

3.3 Waqf Participants

The common parties involved for waqf to be valid are: founder (Waqif), beneficiary (Maukuf Alaihi) and donated property (Maukuf).

First, the founder must be mature and has a sound mind. He must donate on his will and he owns the property he wants to donate. Second, the founder must specify in the waqf deed who shall benefits from his proclaimed waqf. The beneficiary can be specified as individual or general philanthropy to the society. Third, the donated property must be something that can be donated where its ownership rightfully belongs to the founder. Lastly, a lafaz is undertaken to validate the waqf agreement.

4. WAQF IN MALAYSIA

Malaysia has 14 states and ruled by a King. Each state subsequently is under the power of the Sultan who is given full authority by the Federal Government to manage all religious matters which include zakat, baitulmal, waqf and others. The Sultan, then, passed on the power to the State Islamic Religious Council (SIRC) of each state in Malaysia to oversee all religious matters.

4.1 State Religious Council Responsibility

Mohammad and Iman (2006) agreed with fiqh opinions that the management of waqf should not have government interference since waqf properties will be subjected to liabilities and thus can have negative effect on the waqf properties in the future. This argument is further apparent with the appointment of SIRC as the trustee, problems in relation to waqf properties still prevail due to imbalance treatment of waqf property by the individual SIRC especially there is a big argument over the usage of istibdal in the administration waqf properties. In spite of this, however, the management of waqf properties in Malaysia has improved tremendously. This is largely due to the clauses included in the regulation pertinent to the waqf properties.

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3 www.jawhar.gov.my
Among the responsibilities of the SIRC as set forth in the clause are:

1. All waqf properties are solely trusted under the council of Islamic religion
2. The council must keep all the documents related to waqf properties
3. Ownership of waqf properties must be transferred to the council
4. The council must use all monies from specific waqf properties for the intended purpose of the founder
5. The council must keep all the monies from general waqf properties in the general fund of the council or the baitul mal

### 4.2 Department of Waqf, Zakat and Haj (JAWHAR)

According to Mohd Salleh and Muhammad (2008), the Malaysian Federal Government does not have any land to its name because all pieces of land in Malaysia are rightfully owned by the states. Hence, it becomes very taxing for the Malaysian Government to administer and develop waqf properties especially land. Due to this reason, there are many idle and nonproductive waqf lands in Malaysia. The need to develop the idle and unproductive waqf land had prompted the Former Malaysian Prime Minister; Tun Abdullah Haji Badawi announced the establishment of Department of Waqf, Zakat and Haj (JAWHAR) in 2004. JAWHAR is expected to make progression on waqf properties in an organized, systematic and effective way. However, JAWHAR has no jurisdiction in practicing its power and rights on the management of waqf properties because the sole trustee on waqf is still vested under each SIRC.

JAWHAR main function is to establish liaison with the individual SIRC and coordinate all information from the SIRCs to develop waqf properties in each state via the fund from the Federal Government. Holistically, under the 9th Malaysian Plan with an allocation of RM250 million, JAWHAR and SIRCs boosted the development of waqf land by applying the waqf land development model as depicted below.

**Figure 1: Waqf Land Development model**

![Waqf Land Development model](source)

At the planning stage, SIRCs need to identify the waqf land to be proposed for development to JAWHAR. The proposed waqf land must be strategic in location and must be unrestricted. SIRCs will still hold the title to the waqf land to maintain the perpetuity aspect of the waqf. During the implementation process, the Federal Government needs to lease waqf land through the Federal Land Commission (FLC) since Federal Fund can only be used on Federal Government lands. As all lands belong to SIRC, this leasing agreement is imperative before proceeding to the implementation process. While the JAWHAR provides the fund, the Work Department is to monitor and manage the proposed projects. Once the project is completed, it will be transferred back to JAWHAR. Next, JAWHAR will pass on the completed social project such as orphanage shelter to SIRCs to manage on their own. For economic project, the SIRCs and Yayasan Wakaf Malaysia (YWM) will jointly be given the authority to manage it where the profits will be deposited into SIRCs and YWM waqf fund for future waqf land development. Lastly, JAWHAR needs to evaluate whether the projects undertaken meets its objective. If it does not, JAWHAR needs to make report on it and find solution to rectify the failure (Mohd Salleh and Muhammad, 2008).

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4 Alhabshi (1991)
5 Interview with JAWHAR
4.3 Yayasan Wakaf Malaysia (YWM)

On 25th March, 2006, a committee led by the National Baitulmal Coordination Committee or Jawatankuasa Penyelarasan Baitulmal Kebangsaan (JPBK) had agreed to establish a national entity to manage waqf related matters. Although JAWHAR is already in operation to conduct the monitoring and coordination on waqf properties, this national entity- which later launched in 2008 and named as Foundation Waqf Malaysia or Yayasan Wakaf Malaysia (YWM)-is to work along JAWHAR and SIRCs. YWM main idea is to unite and collect all waqf resources as a highly potential economic source in maximizing the benefits to the society. The core purpose of YWM is 1) to collect waqf fund by conducting fundraising programs, 2) to develop and progress waqf properties, 3) to invest YWM fund as allowed by shariah, 4) to organize beneficial activities such giving assistance to the impoverished and to best carry the intention of the founder and 5) to promote conferences/seminars and to publish brochures as a tool to expand YWM's objective (Ahmad, 2008). YWM is also actively promoting its cash waqf programs by distributing flyers and brochures to the public.

5.0 WAQF ISSUES IN MALAYSIA

Previously, before the SIRC is given the authority to manage waqf properties, the manager (mutawalli) to manage the waqf property is chosen by the waqif or donor himself. The mutawalli can be the village leader, trusted individuals or the mosque committees. There is no existence of formal agreement between the waqif and the mutawalli. As a result, mismanagement and corruption surrounds the administration of waqf properties. Most often than not, waqf properties are not managed in accordance to the original intention of the waqf.

One may think that with the appointment of SIRCs as the waqf properties trustee, abovementioned problem can be tackled. But, it is sad to say that such problem still exist when SIRCs are unable to manage waqf properties efficiently. Below are some of the issues.

5.1 Work Force

The persons in charge to manage the waqf properties are not qualified, knowledgeable and professional in the Islamic principles and the laws governing them resulting in difficulty attaining the performance and objectives of the waqf system. To add salt to the wound, SIRCs are also facing shortages of personnel to run waqf properties. Additionally, there are also involvements of the non-muslims in managing the waqf properties. Having no in depth knowledge of the principles and beliefs in Islam, the waqf properties are managed by those who are not supposed to be managing them in the first place. It is not too hush to say that waqf properties should be managed solely by qualified Muslims as to ensure that the objectives of the waqf system is upheld (Chowdury, Ghazali & Ibrahim, 2011).

5.2 Land

The wealthy Malaysian prefers to perform waqf by giving away their lands. However, most often, this donated property is very isolated and have no proper infrastructure which deems valueless. In addition, some of the land has features that are not conducive to develop into productive progression. At other times, there also exists illegal occupation of waqf land by the society. All these along with the improper recordkeeping of ownership registration and minimal waqf data base system have hindered SIRCs intention in developing waqf aggressively (Mohd Salleh and Muhammad, 2008).
5.3 Monetary

The Federal Government through the 9th Malaysian Plan had allocated RM250 million for reforming the waqf system in Malaysia (Mohd Salleh and Muhammad, 2008). This amount is actually not sufficient to develop enormous amount of waqf land in Malaysia. As such, many SIRC have formed cooperation with private businesses to develop their waqf land. From the outset, this effort can be fruitful to SIRCs. But it is not apparently so since the private businesses will acquire more benefits compared to the SIRCs. Mohd Salleh and Muhammad (2008) further mentioned that private businesses get 70% while SIRCs only get 30% share from the developed waqf properties. This can be negative to the welfare of the ummah.

5.4 Waqf Enactment

The fact that each SIRC has its own law in managing waqf contributes to the slow progress in reviving waqf properties in Malaysia. The SIRCs have State Islamic Administration Enactment or ‘Enakmen Islam Pentadbiran Islam Negeri (EIPIN)’ but many do not have specific regulation on waqf, namely Waqf Enactment or Enakmen Wakaf. Only a few SIRCs have Waqf Enactment. These SIRCs include Melaka, Negeri Sembilan and Selangor. The Waqf Enactment defines aspects of waqf which include the type, SIRCs power, administration of waqf, to name a few. Without the presence of this specific Waqf Enactment, it will be very difficult for waqf institutions to uphold and develop waqf properties.

In short, all issues above coupled with the unavailability to form a standard system for waqf management restrict waqf institutions to progressively and actively develop waqf properties.

6.0 WAQF NEW MECHANISM

New measures have become intense issues in waqf development not only in Malaysia but also in most Muslim countries as to revive the waqf system. In all the above discussion, waqf is categorized into various types where the most common categories are those of landed properties. As indicated earlier, there are two types of waqf; general and specific. These two types are further classified into movable or immovable properties. The debate on the movability of the waqf properties still persists especially there are contradictions between the scholars on the Islamic principle supporting it. The movability in the waqf system is highly supported by the Ottoman Sultans who believed that the fund obtained from the movable waqf properties are used for the expansion of Islam in Europe (Chowdury et al, 2011; Cizakca, 2004, 2010). The Malaysian Fatwa Committee Council also confirmed that cash waqf, one form of movable waqf, is allowed to be endowed (Chowdury et al, 2011). The below chart specify the three diverse aspects of waqf system in the Islamic Jurisprudence.

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6 Interview with JAWHAR
It is to some researchers’ opinion that the movable waqf should be given serious attention. They believe that to develop the full potential of waqf properties to generate income, the orthodox treatment of them shall be replaced by new innovation of waqf. To materialize this new vision, movable waqf shall be allowed to be endowed freely without restricting waqf properties to immovability status only. As such, this section briefly laid down the notion of movability in waqf management. It is a point to mention that there exist interrelations between these mechanisms as discussed next.

6.1 Cash Waqf

Most Muslims believed that waqf endowment shall be in the form of properties since properties meet the conditions of perpetuity, irrevocability and inalienability. Little do the Muslims know that properties can be demolished and destructed due to natural mishap and thus the value of the properties can be diminished. Due to this reason, it is crucial to look into cash waqf as an alternative to waqf properties where the value of waqf can be enhanced through proper management. Cash waqf is more constructive as compared to land, books, buildings and it is reckoned to be lucrative in the modern Islamic financial system practices. As cash waqf does not involve land, many Muslims can participate in the waqf endowment regardless of their financial position as long as no shariah principles are violated (Chowdury et al, 2011).

The society can easily join the cash waqf as they are only required to donate their money by way of cash or make the payment through bank accounts via e-waqf facility. The fund collected from the society will be managed by the nazir who acted as an agent to the waqif based on the wakalah contract where the nazir route the fund for the identified projects and any balance will be reverted back to the fund for future undertakings. Practically, the wakalah contract is applied in the implementation of cash waqf because the waqif permission is not required to run the activities and projects under the waqf agreement (Jalil & Ramli, 2008). The nazir is solely responsible to manage the fund as long as the objectives of the waqf are sustained.

Another example is cash waqf through deposits as practiced by a mosque created under the existing waqf. When the mosque is in need of fund, it can simply apply a beneficiary account with the bank or get a new account of a newly created waqf. Another way is for the mosque to solicit donation for additional fund for maintenance of the mosque through displaying its account number to the public at its premise. Often, there will be a number of people willingly donate to the mosque for this purpose. If in any case, a smaller amount of money is donated or when the waqif does not have any beneficiaries in mind, the waqif may select from a list of existing or future development projects of the bank dealing the waqf certificate where the waqif will
eventually leave the bank to make decision on his behalf (Karim, R, n.d). Here, the bank will position itself as the mutawalli for the waqf. The model for the abovementioned is tabled below.

**Figure 3: Product model-public waqf**

Source: Khademolhoseini (n.d)

### 6.2 Waqf-Shares

Waqf share works closely with cash waqf concept. This means there is no physical donation of property but cash. The availability of waqf share, like cash waqf, gives opportunity for all Muslims to participate regardless of status. It will eliminate the notion that only the wealthy persons can make the waqf endowments.

An individual will buy shares—amount must be affordable to all—from specified religious institutions. A certificate is issued to the individual, in this case known as waqif or founder—where the name of the waqif will be written on the certificate as proof that he purchases the share with specific amount. The shares will be endowed to the specific religious institution who acts as a mutawalli to manage the collected fund. The funds or revenue collected then will be used for charitable purposes. The model of waqf shares is stipulated in the table below. Not only Malaysia used this model but also other countries such as Indonesia, Sudan, Kuwait and UK.
6.3 Corporate waqf

Ibrahim and Ibrahim (2013) pointed that development of waqf is not confined to immovable property such as land. Steps have been taken to introduce more contemporary waqf development. As mentioned earlier, cash waqf and waqf share are two of the new mechanisms in waqf development. These two mechanisms are more to individual’s participation. The most contemporary and most discussed mechanism in waqf development, however, is corporate waqf where cash waqf and waqf share are also utilized in its application. Corporate waqf is an innovative mechanism in generating income for the benefits of most society in the form of cash waqf, waqf share and other assets investment methods. It is an initiative in combining perpetuity characteristic of waqf to achieve the power of entrepreneurial dynamism. Example of corporate waqf is evidenced in some of the Muslims countries such as JCorp in Malaysia and Warees Plc in Singapore.

In line with corporate waqf principles 1) to create an Islamic institution catering to the society’s need with element of corporate entity 2) to carry out the responsibility to the ‘ummah’ for eternity 3) to voluntarily share wealth, time and expertise 4) to generate wealth and protection of the income, and 5) to establish an incorporation instrument that is trustworthy and wholly; the objectives of corporate waqf are (Ministry of Finance, 2011):

1. Ability to expand and generate wealth for individuals, private and public sector in global arena
2. Professional management
3. Preservation of the ummah economic ownership through protection of the assets
4. Released of the ummah’s undeveloped assets
5. Strengthening of the ummah’s economic welfare
6. assist government in nation’s development and reduction of spending, deficit and debts

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Ministry of Finance (2011)
Corporate waqf is popularly discussed as the tools to give new meaning in generating income to improve the economy of the ummah. Most importantly, its application is not against the principles of waqf. It is expected that all issues pertaining to waqf management such as management negligence, flaws and ineffectiveness can be solved through corporate waqf.

In short, the three mechanisms, cash waqf, waqf share and corporate waqf- are new innovation in waqf development in the new era. Nevertheless, the applications of these mechanisms are not without controversies. It is important to mention that cash waqf utilization in the waqf system received a lot of debates among the fiqh scholars and modern scholars alike. Historically, cash waqf exist and accepted in many Muslim countries as way back as the 15th century to the 16th century. Not only it deviates from the three conditions of waqf-perpetuity, irrevocability, inalienability- but also, the nature of the management of cash waqf which involve some form of interest bearing become the disputes which persisted from the 16th century till the twentieth century (Cizakca, 1998). Despite this disagreement among the fiqh experts, Majid Khademohoseini (n.d) noted that cash waqf, waqf share and corporated cash waqf are acceptable in many Muslim Countries albeit ongoing debates on them.

7. CONCLUSION

Majority of Muslims aware that waqf is to help the poor and needy. This historic belief of waqf is one big factor to the many problems occurring as we reach the era of millennium. Conservatively, most waqf properties are used to develop mosques, surau and religious schools. Many Muslim countries refused to bulge from the tradition system of waqf, fearing any changes made to its system will violate the shariah principles. No doubt, changes made on the waqf development and management erected new meaning and understanding that needs to be understood and accepted by the Muslims as a whole. Malaysia is no exception to this situation. Problems pertaining to waqf that arise in Malaysia almost replicate those of other Muslim countries. Hence, Malaysia is also in active search of ways to improve its waqf development.

It is mentioned by Alhabshi (1991) that estimated 90% of all waqf proclaimed for religious purpose where only 10% can be used for other purposes. Judging from the number, nothing much can be done to improve the development of waqf for the philanthropic and economic improvement of the ummah. But according to Rashid (2011), even 10% of all waqf properties can be developed due to urbanization and a rise in property valuation and rentals. He further mentioned that the average rate of return of investments made in developing waqf can give returns between 20-25%. As such, it is worth the time and effort to seriously look into the new ways in developing the waqf. Notwithstanding, there exists many new mechanisms of waqf which are creative and innovative in generating better income for waqf, still there are slow incoming due to reluctance in changing the old system. Malaysia cannot afford to lose all the time and possibilities in gaining income from the many underdeveloped waqf available in all the states. It is beyond words what can be achieved from developing the underdeveloped waqf properties. In India, for example, 100 waqf properties developed increased nearly 1900% in revenues (Ibrahim & Ibrahim, 2013; Rashid, 2011).

In summary, maybe it is not fair to solely put full responsibility to the religious councils. The government and the Muslim society should also be involved in finding the best way to develop waqf properties in Malaysia. The changes made to waqf system not only involve the changes to its administration and implementation of the waqf properties, but also, all parties need to combine effort in finding the best policy that can be applied to the existing way of their waqf management. There are many papers written on the participation of Islamic financial institutions in providing fund to develop waqf properties. Here, it is evidenced that developing waqf properties are not small matters in hand. All parties should lend their hands to be realize what Rashid (2011) expressed as “only sky is the limit in the waqf development’.
REFERENCES


