

Development of *Waqf* Land : Issues, Prospect and Strategies

Megat Mohd. Ghazali Megat Abd. Rahman, Ph.D
Asiah Othman, Ph.D

*Department of Land Administration and Development
Faculty of Engineering and Geoinformation Science
Universiti Teknologi Malaysia
81310 UTM Skudai
megat@fksg.utm.my
asiah@fksg.utm.my*

Hussin Salamon, Ph.D
Nasrul Hisyam Nor Muhamad
Adibah Muhtar
Akmaliza Abdullah

*Centre of Islamic Studies and Social Development
Universiti Teknologi Malaysia
81310 UTM Skudai
drhussin@utm.my*

Abstract

The issues of abandoned and undeveloped *waqf* land are not new and the problem is faced particularly by the trustee. The factors that inhibit the development of *waqf* land are also publicly known. Although some *waqf* land has been developed in Malaysia, it is limited to the provision of mosque, religious school, and cemetery. This has hindered *waqf* properties from generating income that can benefit the Muslim society in this country. Therefore, there needs to be a new approach and strategy in creating an administrative system that is well-managed, efficient, and responsive, especially in the use of latest information technology, and a new dimension of development that can make *waqf* land the country's main economic strength, which will change the perception of the society about the traditional *waqf* practices. This paper gives a number of recommendations to the authorities for developing *waqf* land in the hope that they provide a path towards the full exploitation of *waqf* land for the economic development of the ummah and the society at large.

Key words: problems of *waqf* land, strategies in developing *waqf* land, National Foundation of *Waqf* Properties,

1. Introduction

Fundamentally, there are several problems accountable to the slow development of *waqf* land in Malaysia. The problems have produced negative impacts on the social and economic well-being of the society and, therefore, need to be given serious attention for more effective and comprehensive solutions.

In providing the solutions, there needs to be an overview of the main problems that often inhibit

the smooth efforts in developing *waqf* land to the optimum level. In this paper we would like to confine the discussion to the general *waqf* whereby it allows for a higher and better use.

2. Problems in developing *Waqf* Land

Generally, there are a number of problems related to *waqf* land that inhibit its development. Studies by Nik Mohd Zain (1999) and Azizian (1999) indicate that factors related to legal, location, physical conditions, ownership, registration, illegal occupation, database, and financing are mainly responsible for the said problem. In this paper, however, we do not focus on the financial aspect.

2.1 Legal Aspects

There are a multitude of legal issues that tend to hold back the development implementation of *waqf* land. Certainly, the development of *waqf* land will not take place smoothly without the necessary refinements on the legal aspects concerning *waqf* matters. Among the main issues that have come to surface in this context are:

- i. Non-uniformity of *waqf* laws among states has created differences in the understanding, interpretation, procedure in issuing decrees and hukum. This is due to the position of *waqf* land, like any other religious assets, being under the state's jurisdiction (Federal Constitution, Ninth Schedule, List 2(1)). Differences in interpretation and conservative understanding pertaining to certain aspects of *waqf* will certainly inhibit the development activities of *waqf* land.
- ii. Until today, there is no special enactment relating to *waqf* management and administration in many states, except for Selangor. Selangor *Waqf* Enactment 7/1999 provides comprehensive and systematic legal powers to Majlis Agama Islam Selangor to manage *waqf* properties. Void of such an enactment, there will be no available document that contains procedural details pertaining to the management and administration of *waqf*.

2.2 Location

The bulk of *waqf* land in the urban areas are sited on less strategic location and lack development potential while more interior *waqf* land is not being

optimally developed due to the absence of need for the use specified by the *waqif*. There are also parcels of *waqf* land in active development areas that could not be developed due to constraints in the *sighah*. For example, *waqf* land located in a Local Authority area have to comply with the Local Plan (if any) to ensure that their development is in accordance with the planning requirements. Should the site fulfils the wish of the *waqif* and also satisfies the Local Plan then it is only proper to develop it. Therefore, the location factor should be given a very serious consideration to ensure that *waqf* land can be practically developed.

2.3 Physical characteristics

Besides the location factor, physical factors often become an obstacle to the development of *waqf* land. However, this factor is easier to overcome if there are sufficient financial resources available. This is so because the physical problems resulting from the characteristics of the land such as undulating or rough terrain, etc. can be overcome by the use of technology. In other words, the scale of physical problems is very much influenced by the technological capability of the parties involved. Besides the physical problems, there are also problems of small-sized and scattered located parcels.

2.4 Illegal occupation

There are cases of trespassing or illegal occupation of *waqf* land in Selangor, Johor, Melaka, Terengganu and Perak whereby the parcels are used as squatters' settlements and business premises. In some states, this becomes a grave problem primarily due to lack of monitoring and enforcement.

2.5 Title registration

This is also an important factor that contributes to the failure in the development of *waqf* land. Without title registration, the trustee does not have the legitimate rights to develop the land for any purpose. One reason is that, each development undertaking requires permission from the land 'owner' without which the development application will not be approved by the authorities.

Therefore, the trustee such as Majlis Agama Islam should register all properties that have been donated either as a special *waqf* or a general *waqf*. Some of

the unregistered *waqf* lands are not even included in the list at the Majlis. This is an issue that definitely needs collective action for solution on the part of those concerned.

2.6 Database

Most Islamic religious councils do not have a complete database of *waqf* land and it creates a serious problem in the development process of the land involved. Naturally, basic information about the property such as location, actual site, land area, physical conditions, and the surrounding development is required before any development proposal is submitted to the authorities. The absence of such information will pose difficulties to the council in the development process.

3. DEVELOPMENT OF WAQF LAND

The State of Johor Darul Ta'azim is one of the fastest growing states with a 9% economic growth rate in 2005. Johor Bahru which is the state capital and centre for state administration has also enjoyed such a rapid growth and has become a potential region for project and infrastructural development. This has attracted many local and foreign investors in land development.

This situation has largely encouraged an increase in the land value in the state, in general, and in Johor Bahru, in particular. The increasing demand for urban land could cause the land value in this region to rise. The limited supply of land suitable for development has encouraged optimum utilization of land to ensure profitable returns. Therefore, it is rather an awkward situation to let land stock in the urban area to remain idle.

For this reason, it is only appropriate for Majlis Agama Islam Johor to put effort in developing potential *waqf* land. Productive *waqf* development needs a strategic investment to ensure continuous returns. Temporary type of development such as renting out of vacant land for certain use is not a profitable venture. On the other hand, *waqf* land, particularly general *waqf*, should be developed into its highest-and-best use. Among the development activities that have taken place on *waqf* land in Johor are construction of petrol station, shop-house, office, and plantation.

In general, there are 2,477 parcels of *waqf* land in Johor until May 2004. The district of Johor Bahru records the highest number of *waqf* properties (556), followed by the districts of Muar (509) and Batu Pahat (499) while Mersing has the least number of registered *waqf* properties. Table 1 clearly shows that *waqf* for surau outnumbers other types of *waqf* dedication.

Table 1 : *Waqf* land in Johor until March 2004

DISTRICT	MOSQUE	SURAU	RELIGIOUS SCHOOL	CEMETARY	GENERAL	TOTAL
JOHOR BAHRU	109	240	129	40	38	556
MUAR	75	244	76	77	37	509
BATU PAHAT	85	185	91	88	50	499
KLUANG	34	61	43	31	14	183
SEGAMAT	56	51	38	63	14	222
KOTA TINGGI	36	33	40	39	12	160
PONTIAN	52	95	58	51	12	268
MERSING	15	10	23	16	16	80
JUMLAH	462	919	498	405	193	2,477

Source : Enny Suhailis Suleiman (2006)

Table 1 also shows that the number of parcels of special *waqf* (mosque, surau, religious school and cemetery) is much higher than that of general *waqf*. This historically signifies the people's understanding, perception, and attitude that these four types of *waqf* give most rewarding in the hereafter. This is, in fact, a faint understanding of the *waqf* concept and the society has to be cleared of such a misunderstanding. Rewards comes from *Allah s.w.t.* and as long as the property is utilized and devoted according to the Shari'ah for the welfare of the people, it does not matter whether the *waqf* land is for a special or a general purpose.

As far as Malaysia is concerned, the site for religious use is allocated for by the developer as a condition in the planning standards required by the Local Planning Authority before obtaining a planning permission for residential development. The site allocated if comply the requirements and needs of the people the mosque has to be constructed. These factors help expedite the development of mosque in a newly developed area. Once the construction completed, the administration of the mosque is then under the supervision of Majlis Agama Islam.

Waqf land located in the urban area has a similar potential with other types of land parcels. However, it depends on the wisdom and capability of Majlis Agama Islam to develop the land to the optimum level. Thus, a number of aspects need to be given attention and they form part of the implementation strategies that should be devised by the authorities.

4. WAQF LAND DEVELOPMENT STRATEGIES

Taking into account the various problems faced by *waqf* institutions, we propose a number of strategies to enable consolidation of strategies in the administration, development, and management of *waqf* properties. Among the strategies are the establishment of National Foundation of *Waqf* Properties (YHWK), co-ordination in the legal aspects pertaining to *waqf*, corporatization of the nazir's institution, improvement in the methods and process of *waqf*, development of *waqf* information system, direct involvement in *waqf* planning and development, and innovative method of *waqf* development (including *istibdal*), and public awareness.

4.1 National Foundation of Waif Properties

Realising the constraints that have been briefly mentioned above, it is timely to establish a parent organization that is responsible for the administration, management, and development of *waqf* properties in Malaysia, let alone the Jabatan *Wakaf Zakaf* dan Haji (JAWZH) that has been formed five or six years ago, under the purview of the Prime Minister Department. Based on the experiences of other countries such as Singapore, Africa, and others, the establishment of National Foundation of *Waqf* Properties (YHWK) is considered necessary. This is an independent foundation with the executive powers to mobilise resources for the development of *waqf* properties all over the country. In this context, participation from corporate people, well-to-do individuals, and others in the socio-economic development of *waqf* properties will help the government materialise its vision to make *waqf* a vehicle for the society's socio-economic well-being. However, the foundation needs to carry out its responsibility as a trustee with the knowledge and skills in all matters of *waqf*. This is important to ensure that *waqf* properties are able to generate income that finally can benefit the ummah.

4.2 Coordination of laws in matters relating to waqf

As a matter of fact, the efforts to coordinate the Islamic law (not only related to *waqf*) have long been initiated but till now they have met with a deadlock. The idea to enact a uniform law on matters pertaining to the development of *waqf* land that is applicable to all states in Malaysia should not simply be abandoned as in the case of the draft for *Zakat* Act that has been put into a framework in 1980s. Open-mindedness of all parties related to religious affairs is needed to realise this effort.

The law relating to *waqf* is provided in the state's enactment of Islamic religious administration. So far, Selangor is the only state that has a law specially for *waqf*. The Enakmen *Waqf* (Negeri Selangor) 7/1999 provides a more systematic and comprehensive legal power to Majlis Agama Islam Selangor in the management of *waqf* properties. This enactment has 50 sections and 9 sub-sections. Among important provisions in the Selangor *Waqf* Enactment are:

- i. Provisions pertaining to the creation of *waqf* – Section 3 – 10

Figure 1 depicts the proposed model of the National Foundation of Waqf Properties

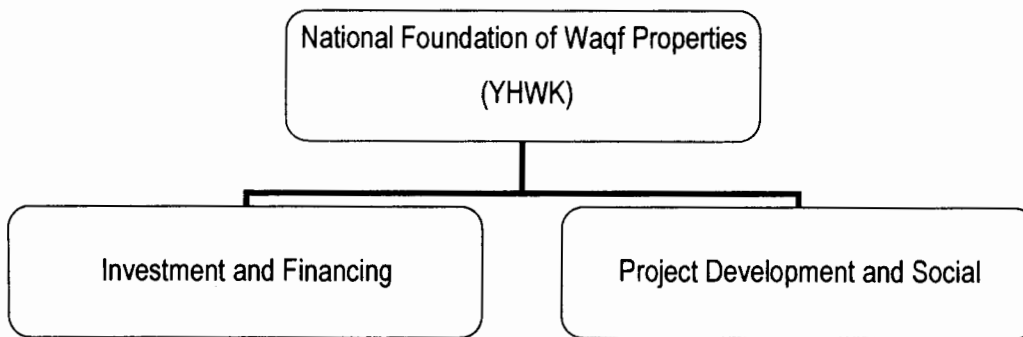


Figure 1 : The proposed structure of National Foundation of Waqf Properties

- ii. Provisions pertaining to creating Saham *Waqf* – Section 17(1) and (2)
- iii. Powers of Majlis Agama Islam Selangor to execute istibdal and development of *mawquf* – Section 19
- iv. Powers of establishing *Waqf* Management Committee – Section 21
- v. Powers of Majlis Agama Islam Selangor to act as the sole trustee of all *waqf* properties – Section 32
- vi. Powers of Majlis Agama Islam Selangor to appoint *Waqf* Registrar – Section 34
- vii. Provisions for the establishment of *Waqf* Provident Fund – Section 39
- viii. Provisions for taking actions against illegal occupation of any waqf land – Section 45

We suggest that all other states consider enacting and enforcing a similar law. Such efforts, apart from enabling the detailed itemisation of the existing waqf law, will provide a more serious commitment of the states towards creating a legal framework that will improve the development process of waqf land.

Another problem inhibiting the development of waqf land is illegal occupation. Provisions related to illegal occupation of waqf land need to be included either in the specific waqf act or State's Enactment of Crime Offences to expedite enforcement and prosecution procedures. Such provisions have already been in placed in states' laws, for instance, Selangor *Waqf* Enactment 1999, Islamic Religious Administration Enactment (Johor) 1978 (Section 50), Enactment

Crime Offences (Melaka) 1991 (Section 78), Shari'ah Crime Offences Enactment (Sabah) 1995 (Section 93), etc. However, other states do not have such enactments while others provide no specific reference to 'illegal occupation or trespassing of waqf land', but instead have provisions for 'illegal occupation or trespassing of land that belongs to Majlis'.

4.3 Corporatisation of Nazir's institution

A *nazir* or a mutawalli is an individual, committee, group of people, agency, or the Majlis that are appointed and entrusted with safeguarding and managing waqf, in line with the aspiration, terms and conditions of the *waqif*. A *waqif* can appoint any individual as a *nazir*, either himself, family members, or other individuals. The judge or qadhi can also appoint a nazir on behalf of the *waqif*. Among the conditions is that, a nazir should uphold fairness and has able physical capacity and mental strength.

The duties of a nazir are not confined to protecting *waqf* properties from damage, destruction, or illegal occupation but as an administrator, a *nazir* has to do his best in the interest of the beneficiaries and the land itself, either through tenancy or land development. In some circumstances pertaining to waqf, the majority of jurists including those in the Syafi'e and Hanbali schools, allow the *nazir* to apply for loan or take up financial liability to ensure that the benefits from a particular waqf land can be channelled to the beneficiaries. Therefore, the appointed *nazir* must have the necessary skill, expertise, and knowledge to

develop *waqf* land. A *nazir* can also be considered as a scholar, just like the trustee of the orphans, who is responsible for protecting *waqf* land and enhancing its value.

Verbal and private appointment of *nazir* to manage *waqf* properties having development potential is considered inefficient. The implication is that, individually and privately managed *waqf* properties could not be utilized to the maximum. These properties should be managed collectively by a professional organization or committee in order to increase the management efficiency and, thus, maximize the benefits. Therefore, an organization that is entrusted as a professional *nazir* should be formed to manage all *waqf* properties.

The formation of this organization will not necessarily ignore the duties and roles of the *nazir* appointed by the *waqif*. This organization will act as a centre and consultant to monitor, coordinate, and plan the best strategies to develop *waqf* properties. Apart from that, individual *nazir* has to be identified and registered through this organization to facilitate the management of *waqf* properties. This organisation can use the legal mechanism to take over powers and duties of unqualified *nazirs* such as those who are old, having memory lapse, or committing breach of trust.

4.4 Strengthening the method and procedure in creating *waqf*

The *sighah* method now practised need to be refined to overcome problems associated with ownership and development of *waqf* land. The present practice is that, each *waqif* is required only to furnish the trustee with a *sighah* form but sometimes without complete evidence. For example, land title is not attached together with the form and the problem exacerbates if the *mawquf* is not registered at the Land Office. Such practice should be revised and rectified. The proper method and procedure should be made known to the public, especially with regard to creating general *waqf*. Proper understanding among the people about the correct method and procedure in creating *waqf* can attract more participation from the public.

Apart from being able to give a better understanding to the public, the procedure and guidelines have to stipulate that each time *waqf* is created, Majlis has to conduct title search at the Land Office to ascertain the particulars of the land such as the actual location,

size, express conditions, limitations of interest, or encumbrances of the property. Consideration of each factor that inhibits development should be made. This means, the land to be donated should not be entangled by problems with regard to title, ownership, location, or other physical conditions. This preliminary exercise will prevent the registration of lands with legal complications that will jeopardize their future development.

The *waqif* should also be advised to donate land that has development potential. It is quite often that a *waqif* donates land that cannot be utilized for something whereas a Muslim should give away something good and utilizable by others. Besides giving a proper understanding on the correct method and procedure of creating *waqf*, the trustee or its representatives should go to the ground to identify the location of the land to be donated and give appropriate advice to the donor. Only after both parties are satisfied with all relevant matters, then the *sighah* process is consummated.

4.5 Development GIS-based land information system for *waqf* land

A complete information system that displays the most up-to-date data of *waqf* properties is needed. Among other things, this system is capable of displaying the location of the parcel, its size, physical conditions, accessibility, and the surrounding conditions. This system is developed not only to be used to store the latest data on *waqf* land but also to enable the administrator to carry out the management and planning more efficiently and systematically. This system is also capable of objectively and methodologically assist the authorities to identify *waqf* land with good potential for development (Hamid, 2005).

Among the steps in developing this system are: carrying out user requirement analysis, designing the database, constructing the database, developing application and user-interface, testing the system, and staff training.

We suggest that the state Islamic religious councils forge a co-operation with any institution capable of assisting them in developing the system, through a memorandum of understanding or consultancy.

4.6 Direct involvement in the planning and development process

So far, there are a lot of problems and challenges in developing *waqf* properties that ultimately affect the management of *waqf* properties throughout the country. These shortcomings are the results of organizational weaknesses, lack of expertise, and financial problems.

As already addressed, one of the reasons for the failure in developing *waqf* land is its unsuitable location or its non-compliance with the local plan or non-fulfilment to the local residents' need. To avoid such problems, it is only appropriate for those who have the expertise and knowledge on the planning and procedures for developing *waqf* land to be involved directly in the development process.

The state structure plan and the local plan have to be understood since they are the essential documents in determining land use and development. Public participation in the process of preparing both documents has to be fully exploited to disseminate views and suggestions, especially with regard to maximizing the utilization of *waqf* properties. Similarly, neighbouring owners to land that is to be developed must express their views before a final decision on planning permission is given to the applicant.

With such exposure, the parties involved will be able to play their role in giving comments and recommendations in the process of considering planning permission applications. The involvement of the parties concerned can help determine the suitability of the proposed site in terms of location etc. In some circumstances, the existing *waqf* land can, for example, be proposed to be developed for mosque while the land allocated by the developer used for other public purposes. This will guarantee a more efficient and effective land use.

4.7 Development of *waqf* properties by way of *Istibdal*

Waqf istibdal means substituting a *waqf* land with another *waqf* land with a view to replace the former with something better, either through exchange, sale, or purchase according to *Shari'ah* by maintaining the original intention of dedication of the *waqif*. Basically, *waqf* land cannot be transacted, given as present (*hibah*), or inherited. However, to ensure continuity

of the manfaat from the *waqf* property, the *qadhi* (judge) or the authority in charge of *waqf* can opt for *istibdal* as a means to optimize the benefits from the *waqf*. Although there are differences in opinions among the *ulama'* on *istibdal*, there is permissibility on this for the public interest.

In discussing the *Shari'ah* law on *istibdal*, we need to differentiate between *waqf* for mosque and other types of *waqf*. For *waqf* other than the use for mosque, *istibdal* is permissible against a special *waqf* for the public interest. However, generally, *waqf* for mosques that is still useable and is in good conditions cannot be substituted, without an absolutely compelling need. According to the Hanafi's school, all mosques under absolute *waqf* cannot be replaced even if they cease to be usable for prayers, damaged, or derelict.. The Shafi'e's school out-rightly forbids *istibdal* irrespective of its category. The Maliki's school allows *istibdal* for mosque only for building extension or road widening. They out-rightly disallow *istibdal* of *waqf* for mosque even if the building is damaged.

However, the Hanbali's school sanctions the *istibdal* of mosque that can no longer be utilised or cease to be usable based on the case of Sayyidina 'Umar r.a. and Saad at Kufah. In the case of Sayyidina 'Umar r.a., he ordered Saad to shift a mosque and to build a *baitul-mal* at the kiblah of the mosque. This action by 'Umar is considered *ijma'* as it was not disputed by the companions.

The proceeds from selling a *waqf* property can be used to purchase another similar or different property as long as the benefits from the *waqf* can be enjoyed by the society.

Istibdal is a suitable method to solve present problems and issues of *waqf*. Based on the opinions of Imam Ahmad ibn Hanbal, *istibdal* can create a more dynamic *waqf* institution for the sake of public interest and is capable of achieving the original intention of *waqf*, that is, the creation of welfare and the continuance of rewards by Allah. The problems associated with location, economy, or productivity of *waqf* properties often become the stumbling blocks in the development of *waqf* properties.

Among the issues that arise on *istibdal* is the hesitation of the *nazir* or the manager of the properties that the original intention or purpose of *waqf* is being denied or changed through the process. The fact is that, *istibdal* gives an opportunity to the *nazir* to continue with the intention of the *waqif* even though the

property is physically changed, the original intention remains intact.

Certainly, the *istibdal* process has to be implemented with due care by the committee that comprises experts in *fiqh* and shari'ah, property consultants, and other professionals, who can deliver the best decision after carefully considering various factors and implications. Certainly, *istibdal* is a process that involves many considerations and steps. What is important here is that *istibdal* is able to ensure the preservation of the welfare of the society from the practice of *waqf*.

4.8 Public Awareness Program

The difficulty in developing *waqf* land can also be looked upon from one perspective, namely the lack of public understanding and awareness about *waqf* itself. One reason is because they are not exposed to sufficient information on matters pertaining to *waqf*. It is therefore proposed that the syllabus of Islamic studies at secondary schools includes a topic on *waqf*. Besides, more information on *waqf* should be disseminated to the public through the media. This is related to the suggestion that *waqf* properties should be developed professionally by combining specialists in various fields. Thus, the promotional activities and information dissemination on *waqf* can be implemented more effectively. Directly or indirectly, the public will start to gain information and knowledge on *waqf* and matters related to it such as *istibdal*, cash *waqf*, *waqf* laws, etc.

5. CONCLUSION

The problems in developing *waqf* land are not new. It is high time that these long-standing problems require quick and proactive actions by all parties, including the governments, legal institutions, institutions in charge of *waqf* management, the society, and others. The suggested strategies for developing *waqf* land should be given appropriate attention to revitalise *waqf* institution as an institution that can promote the socio-economic well-being of the ummah. This is in line with the government's intention that wants to see *waqf* institution run smoothly and act as a vehicle for the society's socio-economic well-being.

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