

THE ADMINISTRATION AND MANAGEMENT IN ECONOMICS DEVELOPMENT OF WAQF LAND.

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ABSTRACT

Waqf is an Islamic concept of trust when an owner donates a land or property for a specific or general welfare of Muslim community. Basically waqf land is capable to contribute in economy and social benefits for the Muslims society. Currently Malaysia posses about 9,907 hectares of waqf land but the majority use of these assets are limited for mosque, cemetery, *surau* and orphanage. This has hindered waqf property from generating income that can benefit the Muslim society in this country. Although economic activities are not the main purpose of waqf but undoubtedly the profits gain will generate more charitable activities for the ummah. Waqf land is still subjected to several problems, among others are the abandonment and unutilised of land due to physical factors, legal aspects, inefficient databases and the most important issue is the management and administration of the State Islamic Religious Councils (SIRCs) as the sole trustee of waqf assets. Land as scarce resources should not be abandoned or unutilised. This will be a waste to economic of the area. As urban planners land is treated as prominent assets which need to be well managed and develop. Hence, land matter related to waqf needs to be understand, so constructive suggestion could be offered to improve the land management. Supposedly, to improve the economic development of waqf should commence from the administration strategy. Scenario in Malaysia shows that there is no uniformity of jurisdiction between SIRCs and certain SIRCs is adapting more contemporary ijthadi (rule base on fatwa) in waqf administration and management. Thus this paper will explore and examine related aspects to understand the role of the trustees. Finally, this paper is hope to disclose methods adapted by SIRCs in their administrations and to what extent that the SIRCs struggle to establish the waqf up to its best use economically and socially without compromising its philanthropic duty.

Keywords; Waqf, Administration, State Islamic Religious Councils (SIRCs)

1.0 INTRODUCTIONS.

Basically waqf land plays a significant role in provision of economy and social benefits towards the Muslims society. Waqf land development could generate working opportunity, housing as well as commercial property that could be utilised for Muslim and Islamic charity purposes. In contrast to this, currently waqf land plays a little role in contributing in Malaysia socio economic development. Other Islamic countries such as Egypt and Kuwait are successfully relying on waqf and also spreading the wealth to the non Muslim. Numerous research and studies have been executed concerning the issues and problems of waqf land in Malaysia. Several studies focus on the lack of managerial efficiency while others contemplated on the legal issues surrounding the land. At the same time there is several contributions made on the efficacy of the database management. From the previous research it was suggested that improved management in increasing economic yield of waqf land can leads to more income for the Religious Council. With that fund the council could move forward as institutes that governs the well

being of the Muslim economic activities. Urban areas which consist of land with high values certainly could not afford to permit some land to be abandoned or unutilised. This will be a waste to the economic of the area. As urban planners land in urban areas is treated as prominent assets or estates that need to be managed and well develop. Therefore unused urban land due to its status as waqf land need to be studied, understood and proposed with the best solution so that the land will be develop to its highest and best use according to the waqf law. According to Megat Mohd Ghazali (2007), waqf significantly possesses huge potential. However, it is still subjected to several problems that hinder the development. Among others are physical factors, size of the land, legal aspects, illegal trespassing by the non Muslims and the most important issue is lack of management and administration skills of the officers in the Religious Council.

2.0 DEFINITION

Kuwait Waqf Public Foundation defines waqf as the following;

Linguistically speaking, waqf means *retention* and *withholding*, but as far as jurisprudents (Faqihs) are concerned, the term means withholding an assets and getting it out of anybody's property so that it cannot be sold, granted or bequeathed. Another definition of waqf is withholding the assets on the waqif's property, while releasing the usufruct. An asset here indicates the corpus which may be a house, an orchard, cash money or otherwise.

3.0 LEGALITY OF WAQF

The majority of Muslim scholars are of the opinion that the waqf is both lawful and recommended, based on general and specific evidence. As for general evidence, they consider it as an act of charity which is greatly encouraged by both the Qur'an and the Sunnah. The prevalent Qur'anic verse is, ***“By no means shall ye attain righteousness unless you give freely of that which you love’ (Ali Imran: 92).*** Although Waqf is not expressly highlighted in the Qur'an, it is mentioned in the teachings and deeds of the Prophet Muhammad (pbuh). In one such saying the blessed Prophet (pbuh) said: ***‘when a person dies all their actions come to an end except for three: ongoing charity, knowledge from which people continue to benefit and righteous children who pray for them’.*** (Sahih Muslim). The ongoing charity to which the Prophet

(pbuh) referred is Waqf. Since the time of the Prophet (pbuh), Waqf generally took the form of a donated property or an institution to help others.

The Faqihs and the jurist also supported their views by evidence special to waqf. Narrated by Ibn Omar as saying; "Omar acquired an exceptional piece of land in Khaiber where he came to see the Prophet s.a.w and consulted him in connection therewith". The Prophet s.a.w said *"If you will, you can withhold the property so that it cannot be sold, granted or bequeathed. The proceeds can be distributed to the poor, the kinsmen, the captives, in the way of God, the guests and the wayfarers."* Therefore, Omar accordingly dedicated the property and the income to the poor and relatives and on freeing the slaves and on the services rendered to travelers and on hospitality. The administrator (or manager) shall have the power to take some of the income and the rest of it for feeding others, not accumulating riches thereby. (*Sahih Al Bukhary*)

There are two categories of waqf activities:-

1. **Religious waqf** is revenues confined by the mosque and real estate to be spent on mosque's maintenance and running expenses. Religious waqf in any society adds to social welfare of any community because it helps to satisfy the religious needs of people and reduce the direct cost of providing religious services for any future generation.
2. **Philanthropic Waqf** is the other kind of waqf. It aims at supporting the poor segment of the society and all activities that are of interest to people at large such as public utilities, the poor and needy, libraries, scientific research, education, health services, care of animals and environment, lending to small businessmen, parks, road, bridges, dams etc.

The three main characteristics of waqf land are;-

- i. Perpetuity – waqf donates legally remain binding forever. This waqf cannot be limited by time or temporary in nature.
- ii. Inalienability – once the declaration is made and valid, the subject matter of waqf passes out the ownership of the waqif (founder) and it cannot be alienated or transferred either by the waqif or the muttawali (trustee) nor to their heirs can take it by way of inheritance.

- iii. Irrevocability- lack of power of the donors to revoke his donation. The waqf is effective and binding as soon as the declaration made by donor.

These three characteristics are upheld by the majority of legal scholars in all generations including today.

4.0 WAQF IN MALAYSIA.

According to Muslim Law Enactment No 4 of 1955, most of the states in Malaysia deal with two types of waqf, namely waqf 'am' (general waqf) and waqf 'khas' (special or private waqf). Section 2 of the Enactment defines these two waqf as follows: "waqf am" means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognised by Islamic law, and includes the property so dedicated. While "waqf khas" means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognised by Islamic law, and includes the property so dedicated, the income of which is to be paid to a person or persons for purposes prescribed in the waqf. Waqf 'khas' must abide the purpose of the donors while 'waqf 'am' can be used for any purposes without violating the syara'.

Table 1: Inventory of Waqf Land Areas by each State.

No	States	Areas of Waqf Land (Hectares)		Total Areas (Hectares)	Values of Waqf Land (RM) -Estimation
		Am	Khas		
1.	Johor	1,954.58	1,783.50	3,738.08	7,000,000.00
2.	Kedah	-	448.84	448.84	
3.	Kelantan	Data not available	Data not available	129.55	9,821,000.00
4.	Malacca	201.54	1,230.39	1,432.79	6,021,657.00
5.	Negeri Sembilan	Data not available	Data not available	8.73	Data not available
6.	Pahang	Data not available	Data not available	723.82	Data not available
7.	Perak	Data not available	Data not available	2,683.40	Data not available
8.	Perlis	2.74	14.49	17.24	1,337,998.00
9.	Pulau Pinang	-	546.56	546.56	850,000,000.00
10.	Sabah	-	20.29	20.29	Data not available
11.	Sarawak	6.86	4.04	10.90	1,416,781.90
12.	Selangor	18.79	0.44	19.23	200,000,000.00
13.	Terengganu	Data not available	Data not available	125.71	7,412,066.50
14.	Wilayah Persekutuan	1.82	0.05	1.87	27,910,600.00
	TOTAL	2,186.33	4,048.60	9,907.01	1,110,920,103.40

Source: Jabatan Wakaf, Zakat dan Haji (2007)

Table 1 above shows the distribution of waqf land areas for each state. Johor has the largest waqf land areas but Pulau Pinang has the highest estimated land values. The estimation of total amount of more than RM1 billion suggests that if this land is well managed and developed, it can ensure greater return not only to the trustee but to the community and nation at large.

5.0 WAQF ADMINISTRATIONS

After Malaysia secured its independent in 1957 the practice of awqaf continues to exist in by the Malay community. Most of the waqf is stipulated for the construction of mosques and other religious purposes such as orphanage and the cemetery. Every state has its own legislation in Islamic administration and institutions associates with it. According to the provision Table 9 (2) of the Federal Constitutions the administration and the management of waqf assets is trusted to state religious authority known as State Islamic Religious Councils (SIRCs). It is also in precisely match the provision of section 3(2) of the constitutions that placed the Duli Yang Maha Mulia Sultan and Yang Di Pertuan Agong as the Islamic rulers of their respected states. The establishment of SIRCS is to advice and consult the ruler regarding the Islamic matters. Therefore the provisions of law by each state implicate that each state will formulate their own policy and activities to govern and admin the Islamic matters in their state including the management of waqf assets. This resulted to the different interpretations of management and administration among the SIRCs.

The Department of Waqf, Zakah and Hajj Malaysia stated that in accordance with the provision laid down in the state Enactment, waqf assets in Malaysia are allocated under the State Islamic Religious Councils (SIRC) as the sole trustee of each state. The term 'sole trustee' implies that the Religious Councils of each state have been legally appointed by their respective legislations to supervise all the waqf assets and be responsible for their management and development. No other parties or bodies are entitled to hold trusteeship power. This provision is important to avoid redundancy and negligence and improper conduct in administration and management.

It was during this period when administration of waqf was wholly placed under the supervision of the members of the respective SIRCs who had been appointed as the trustees for waqf management. Malaysia also practices the three main characteristics of

waqf that are Perpetuity, Inalienability and Irrevocability. Various statutory provide that waqf declaration is irrevocable especially when the title is registered to SIRC. A waqf cannot be sold or transferred by the waqif or be inherited by any person. The administrator of waqf in Malaysia is adopting the Mazhab Syafie in managing the assets. Incidentally up to 2005 the legislation of waqf is still not standardized within the states. Each state has their own sections of waqf legislation under the State Islamic Law. However states like Johor, Perak and Selangor and Terengganu have supporting legislation as a backup for waqf administration.

6.0 ADMINISTRATIVE AND MANAGEMENT ISSUE

1. Legal

Megat Mohd Ghazali and friends (2007) identify that there are several legal issues that obstructing the development of waqf land. The main one is the diversity of waqf jurisdiction among the states which creates different understanding and interpretations. This leads to different kind of fatwas among the states. Different interpretation and conservative understanding will jeopardise the waqf development. Malaysia's Prime Minister requested the Muslim jurists to study and come up with a fatwa which allows the 'waqf khas' to be developed into more economical and commercialised development instead of the intended development by the donors. He hoped that commercialized development will give greater benefits to the Muslims but at the same time the donors' wish will not be neglected. (Berita Harian 9 June 2007)

Another issue is that there are certain states in Malaysia which have been quite established in waqf development compare to others. Asmak Ali, Baharudin Sayin and Salahudin Suyurno (2006) discover that every Religious State Councils has their own waqf law. Among the states, Selangor has come up with the largest number of sections that have been upgraded to 20 sections from 9 sections. This statement is also supported by Megat Mohd Ghazali (2007) which stated that only Selangor has a special jurisdiction namely 'Enakmen Wakaf Negeri Selangor' 7/1999 that provides comprehensive and systematic management on waqf land. Without this enactment, there is no detail procedure in managing and administrating the waqf land. Others states have yet to explore the success of Selangor before following the step.

Another main issue highlighted by SIRC as reported by Siti Mashitoh (2006) is the imposition of Civil and Federal laws that have to be applicable on the administration

of waqf assets. This application creates conflict since the Shari'ah law and common law are of different bases.

2. Lack of Ijtihadi in formulation/revival of law (fiqh issues of waqf)

There is a need to study the issues of fatwas related to contemporary fiqh where the Muslim jurists and Muftis can find flexibility in imposing the fatwas onto the waqf land. According to a research done by Mohd Tahir Sabit (2005), the Muslim jurists seem to be inactive and lack of ijthadi endeavour in facilitating the jurisdiction related to the development of waqf land. Most ulama still rigidly follow the Syafie rules applicable to waqf and are reluctant to study the availability of other rules (namely Hanafi, Hanbali or Maliki) which are also established rules in waqf jurisdiction. Malaysia basically follows 'mazhab' Syafie in the ruling of waqf land. However, certain Religious State Councils find the ruling is too rigid thus limit the development of waqf land. Therefore, these Religious Councils have learned, studied and followed established 'mazhabs' such as Hanafi, Maliki and Hanbali for certain development according to certain suitable circumstances. This situation creates different understanding, interpretations of rules and fatwas that lead to diversified methods of managing waqf lands among the Religious State Councils. This diversification may reflect lack of cooperation between Religious Councils in Malaysia.

Several studies have discussed on more contemporary methods in curbing/solving waqf development issues. Among the significant measures that being suggested is istibdal and ibdal. Waqf istibdal means substituting a waqf land with another with intention to replace the former with something better either through sales, exchange or purchase according to Shari'ah. Basically waqf land are prohibited from any transaction such as hibah (gift) or inherited. However to ensure the benevolent of the properties the authority can opt for istibdal as a means to optimize the benefits of it. Although there are differences in opinions among the ulama and mazhabs, there is permissibility on this for the public interest. The Syafie School totally forbids istibdal irrespective of its categories, while Maliki allows istibdal only for extension of mosques and road widening. Since Malaysia is following the mazhab Syafie many SIRC's do not taken any active actions in developing the assets with istibdal methods. However there are SIRC's such Johor and Malacca is studying and trying to adapting istibdal in their waqf management especially following the mazhab Hanafi with the well known example of the case of Sayidina Umar r.a. In this case the great ruler shifts a mosque in Kufah

and builds a Baitul-Mal at the kiblah of the mosque. This action is considered allowable as it was not disputed by the companions.

Based on the opinion of Imam Ahmad Ibn Hanbal istibdal can create a more dynamic waqf institution as istibdal can solve many problems related to location, size or economy. However the issues here in Malaysia is the hesitation of the administrators to use istibdal whether they have lack of confidence in the idea or they just afraid to undertake certain innovative action due to lack of knowledge in the application. The fact is istibdal will assist the managers/trustees to undergo the activities as stipulated by the waqf which is the intention is for the benefits of the community. Certainly istibdal needs careful implementations by the fiqh and Shari'ah expert and other professionals.

3. Personnel/officers –

According to Siti Mashitoh (2006), almost all State Islamic Religious Councils (SIRC) faced similar administration problem which is lack of qualified officers. This seems to be the result of the inadequacy amount of revenue derived from these assets to cover the expenses of managing the assets. Most of the states have appointed only two officers to manage waqf affairs with the help of contract staffs.

Most of the State Islamic Religious Councils (SIRC) in Malaysia except for Johor, Malacca and Selangor, do not appoint specific officers to supervise waqf assets. It is also regretted that almost none of the administration personnel has any training or competency in investment analysis, project management, property evaluation or any experiences that are relevant to the job. They are usually administrators who are assisted by clerks, typist or accounts officers. This finding is also in accordance with Kamarudin Ngah (1992), who focused on problems underlying the waqf land especially in Pulau Pinang. He acknowledges that most of the officers and their subordinates in charge of waqf land have no or little experience and knowledge of the property management.

Syed Othman Alhabsyi (1991) highlighted the facts that there seems to be very little understanding of the potential of waqf as an Islamic development institution within the circle of those involved in managing the waqf properties. There is however a glimpse of hope stemming from the efforts of a few states like Pulau Pinang, Malacca, Selangor and Federal Territory of Kuala Lumpur, which are relatively more active in undertaking income-generating projects on waqf land.

4. Lack of involvement with the planning and development process.

One of the reasons for the failure in developing waqf land is because the unsuitable location or it's non-compliance with the local plan and the non-fulfillment to the local residents need. As example there is waqf land for mosque being gazetted in heavy manufacturing areas. So the benefits of the land is abandon and intention of the waqif/donors cannot be realised. The state structure plan and the local plan have to be understood since they are the essential documents in determining the land use development. The SIRC's do not involve directly in local plan creations since it is under the responsibilities of Town and Country Planning. However there is a session of public participation held to share the ideas of development with the public where public can comment, suggest or object the proposed development. The involvement of the parties concerned will assist in determining the suitability of the proposed site and how its affect waqf land. Nevertheless, SIRC's always failed to participate in such activities due to lack of awareness and knowledge of the process.

5. Public Awareness

The difficulty in developing waqf especially for income generating development can also link to the awareness and understanding of the public. Public do not aware of the purpose of waqf in economic development thus makes them do not encourage to donates for waqf purposes. The information of waqf is very limited and only circulated within religious body or institutions. Waqf info should be disseminating though the mass media to gain an impact.

6. Others issues.

Even though the SIRC's has the mandate as the sole trustee of waqf management the are still assets of waqf entrusted under the private trustees due to the difficulty of tracing them as well as the administrative problem faced by the SIRC's. This is due by the inability of the SIRC's to conduct a full survey of the existing mawquf as they are lack of officers. Furthermore the founders and the appointed trustees do not aware of the rules and regulations set by the SIRC's. Besides having no knowledge on the procedures they treated waqf as an 'ibadah affairs' and they believe that it should be controlled by individual trustees as appointed by them (Siti Mashitoh, (2002)).

There are other issues relating to waqf assets such as the physical aspect of size and locations, financial issues, reclamation of lands by the heiress of the donors and the trespassing by the none Muslim. All these problems lead into many of those lands cannot be develop up to its true potential. Even though the legal aspect in terms of enactment are almost the same in every states, the implementations and the fatwa is quite distinguish. Previous studies have touched on lack of innovation and new ijthadi in administrating and managing the waqf assets. Although some of the SIRC have been brave in shifting into more current and flexible approach other SIRC remain intact. So far the shift in administration methods is yet to be proven whether or not it is the solution needed in curbing some issues of waqf land.

7.0 ADMINISTRATION AND MANAGEMENT STRATEGIES

Undoubtly all the issues and problems must be overcome vigorously and quickly so that the potential of waqf assets can be unleashed. Personal opinion suggested that even many researches have been accomplished with various strategies and suggestion but without the revival of the administrative and the management team the strategies are difficult to implement. Therefore it is vital for the SIRC to take a proactive actions in the management system in order to react to the problems and strategies discussed.

Among strategies that have been suggested are:-

- I. The database needs updating where the data needs upgrading in registering methods and efficient supervisions. This is very basic needs and according to JAWHAR Malacca, Johor, Selangor, Penang, Perak and Kuala Lumpur have their own database develop by Geographical information system (GIS). While other states still using the old filing system. However, with the concerns of JAWHAR gradually these SIRC will follow suits with the more updated system.
- II. Expert in rules and legislation and know what aspects to be improvise. There are sections and rules need to be added into the current enactment to make it more efficient and comprehensive especially clauses that gives more authority to the SIRC to take action towards any violation of the waqf land as well as ability to reclaim the land from the non Muslims.
- III. Every states have to establish state committee with initiative to plan, enhance and developed waqf assets with integrity, efficiency and innovative especially in income generating development.

- IV. There should be standardisation of management among the states and at the federal level. One organization with uniform law to administer the SIRC's. This organisation shall assist in fund, consultations of expertise and formulation of database. At the same time the organisation shall create a centralised databases. At present the Department of Waqf, Zakah and Hajj (JAWHAR) is in the endeavour to collect all the databases and establishing a strong networking with the SIRC's as well as with the other related institutions.
- V. Promote the awareness within the nations. This task is carried out by Department Waqf, Zakah & Hajj and some SIRC's. The department carried out several approaches in increasing the awareness of the public and increase participations of scholars in research, seminars and conference regarding issues or finding of waqf matters.
- VI. Encourage commercialise development within the SIRC's. Since there is highly economic potential of the waqf land it is hoped that the administration will give emphasis on income generating development. Although many disputes might arise due to nature of waqf such the status and stipulated deeds, it is not impossible to undertake. Examples from establish country, ijihad and fatwa formation can assist this to take place. The most fundamental is that the development will further enhance the benefits of waqf and for the betterment of the ummah.
- VII. The smoothness of administration depends on the human resources in terms of qualifications, skill, knowledge and attitude. The development should be executed professionally by combining specialist in various fields such as Shari'ah expert, property investor, town planner and financial contributors. So the staff need to have multidiscipline or basic knowledge in property development with the ability to come up with innovative ideas and knows who to consult when developing waqf land. The SIRC's also needs to be linked or have networking among the councils in order to share knowledge and to discuss matters in waqf development. More active SIRC's could become a model for others to emulate the success in managing their waqf as well as provide advice or consultations. This will increase uniformity among the SIRC's.
- VIII. Training and courses especially for the administrators by adopting methods of others successful countries should be frequently organised. Expose the staff towards quality management with related institutions. The staff should realise that they are managing the very precious assets not only now but also hereafter so they

have to carried out their task with high responsibility and put a lot of effort to make sure the waqf assets will serve the ummah in live and provide deeds to the waqif when the uses is spread for the benefits of all. May Allah swt bless us all!

8.0 CONCLUSION

Waqf development is aimed to provide its benefits to the community with charitable purposes. Waqf assets undeniably have abundant potential to increase the economy of Muslims and it also can sponsor social and culture activities. There are proven potentials of waqf to alleviate socio-economy problem as in many Arab countries such as Jordan, Kuwait and Egypt where the waqf institutions have contributed in the socio-economy development. Hence, the development of waqf institution will help to narrow down the gap between the rich and the poor in Malaysia. Besides, good management will spread the charitable property wholly in systematic, effective and comprehensive methods. The development of the land and enhancement of the institution also ensure that waqf land is not static but it must be productive and effective. The development will stimulate and encourage the Muslims to perform a jihad in Islam. Islam demands the followers to establish and upgrade the economic strength for spreading the Islamic civilization to the whole world. In case of Malaysia, firstly, the waqf institution needs to be significant by solving the problems faced by the SIRCs. The SIRCs' management and decisions must reflect the contemporary fiqh issues of waqf land. There is a need for standardization of legislation within the SIRCs to ensure the better cooperation and administration of waqf land.

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