



## AN ANALYSIS TOWARDS THE SUSTAINABILITY AND MANAGEMENT OF WAQF'S PROPERTIES IN MALAYSIA WITH REFERENCES TO JOHOR



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### ABSTRACT

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In Malaysia, waqf properties are held and put under the Department of Waqf, Zakat and Hajj (JAWHAR) at the federal level and under the State's Islamic Religious Council (SIRC) of respective states for the state level. However, all these properties need a lot of funds to manage them, and issues arose on sustainability and management of these waqf properties. The research found no guidelines identified explicitly in any investigation or findings on the appropriate guideline to solve this issue. Therefore, this research seeks to determine the actual problems and the legal and procedural constraints relating to the management and sustainability of waqf properties, especially in Johor, that has never been available before. Hence, using qualitative research method, which include content analysis and interviews during field studies; this research aims to produce a comprehensive solution and possible sources of funding for the effective management and sustainability of waqf properties in Johor. It is determined that the issue of the insufficient fund, lack of proper planning by waqf Mutawalli, unregistered waqf land under SIRC, and outdated data are among the problems that become impediments to waqf development. Therefore, Mutawalli carried a big responsibility to ensure that the waqf properties shall be developed according to the classes agreed and affirmed by the donor (waqif), leading to positive consequences to Malaysia's economic growth, especially in Johor.

**Contribution/ Originality:** This study originates a new comprehensive solution and possible sources of funding for the effective management and sustainability of waqf properties which would lead to positive consequences to the economic growth in Malaysia, especially in Johor.

### 1. INTRODUCTION

Waqf translates to "al-habs." It is an infinitive noun in Arabic that essentially means to halt, prevent, or restrain. When it comes to property such as land, animals, and other things, the term refers to the freezing of property rights in exchange for certain benefits (Ibn Manzur, 1414H). Waqf is a legal term that refers to protecting anything from becoming the property of a third party (Abdul & Mohammad, 2014). Waqf has long been seen as a

vital factor in the socio-economic growth of Muslims. However, problem occurred when a number of waqf lands were abandoned, resulting in Muslim's property being lost. Waqf property development is akin to unlocking a treasure trove left behind by our forefathers in the form of priceless assets with immense growth and income-generating potential (Syed, 2017a). In this sense, a more significant effort should be made to improve waqf income to achieve the waqif's goal. Despite the fact that the number of waqf assets is growing exponentially in practically all Islamic nations, requests for more effective management to increase the value of waqf properties are becoming increasingly urgent (Muyassar & Sagdullaevich, 2020). Therefore, this paper will identify the actual problems as well as the legal and procedural constraints related to the management and sustainability of waqf properties, especially in Johor that have never been covered before. Then, the paper will produce a comprehensive solution and possible sources of funding for the effective management and sustainability of waqf properties in Johor. This would result in an appropriate mechanism for the effective management and sustainability of waqf properties. Which in turn, would lead to positive consequences to the economic growth of the country.

## 2. THE ADMINISTRATION AND JURISDICTION OF WAQF IN MALAYSIA

Waqf is a term used in Malaysian law to describe the dedication of any property whose usufruct or benefit may be used for any charitable purpose according to Islamic law. However, it does not include a trust as defined by the Trustee Act 1949 (Sharifah & Nor, 2017). The Federal Constitution stipulates that Islamic law governs the topic of waqf, which is listed in the Ninth Schedule as a state matter. Department of Waqf, Zakat, and Hajj (JAWHAR) was established at the federal level in 2004 to oversee the management of waqf resources across the country. Waqf Land Manual Management was released by JAWHAR in 2006 as an authoritative manual to govern several elements of waqf land management.

By virtue of Article 74(2) of the Federal Constitution, the State Legislature has the power to legislate provisions regarding waqf. Islamic administrative enactments have been codified in each state to provide for waqf administration in Malaysia (Ainul-Jaria, 2008). Since 1950, waqf provisions have been enshrined in the Respective States' Administration of Islamic Law Enactments. Selangor precedes the first state law that contains a provision relating to waqf in 1952, namely Administration of Muslim Law Enactment 1952, Selangor.

**Table-1. Provision of Waqf in State's Administration of Islamic Law.**

States	Enactment	Section
Perlis	Administration of the Religion of Islam Enactment 2006	ss. 89-95
Kedah	Administration of Islamic Law (Kedah Darul Aman) Enactment 2008	ss. 51-58
Penang	Administration of the Religion of Islam (State of Penang) Enactment 2004	ss. 89-95
Perak	Administration of the Religion of Islam (Perak) Enactment 2004	ss. 78-84
Federal Territories	Administration of Islamic Law (Federal Territories) Act 1993 (Act 505)	ss. 61-68
Selangor	Administration of the Religion of Islam (State of Selangor) Enactment 2003	ss. 89-95
Kelantan	Council of the Religion of Islam and Malay Custom Kelantan Enactment 1994	ss. 61-66
Terengganu	Administration of Islamic Religious Affairs (Terengganu) Enactment 1422H	ss. 63-69
Pahang	Administration of Islamic Law Enactment 1991	ss. 70-78
Malacca	Administration of the Religion of Islam (State of Malacca) Enactment 2002	ss. 77-83
Negeri Sembilan	Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003	ss. 89-95
Johor	Administration of the Religion of Islam (State of Johor) Enactment 2003	ss. 89-95
Sabah	Majlis Ugama Islam Negeri Sabah Enactment 2004	ss. 51-57
Sarawak	Majlis Islam Sarawak Ordinance 2001 (Chap. 41)	ss. 43, ss 51-54

Source: Sharifah and Nor (2017).

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The list of enactment of administration of Islamic law of each state containing the administration of waqf is provided in Table 1.

Apart from that, there are five states which have specific enactment relating to waqf namely Perak, Terengganu, Selangor, Negeri Sembilan, as well as Malacca, illustrated in Table 2:

Table-2. List of States with Specific Enactment of Waqf.

States	Enactment
Johor	Johor Waqf Rules 1983
Selangor	Waqf (State of Selangor) Enactment 1999
Negeri Sembilan	Negeri Sembilan Waqf Enactment 2005
Malacca	Malacca Waqf Enactment 2005
Perak	Waqf Enactment (Perak) 2015
Terengganu	Enakmen Waqf (Terengganu) 2016

Source: Sharifah and Nor (2017).

In Johor, the waqf land's matter is under the provision of Administration of the Religion of Islam (State of Johor) Enactment 2003 (Enactment No. 16 of 2003). By virtue of Section 89, the law provided that Majlis be the sole trustee of waqf, nazr and trusts.

*Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting it, the Majlis shall be the sole trustee of:*

*(a) all waqf, whether waqf am or waqf khas.*

*(b) all nazr am.*

*(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 waqf, nazr am or trust and situated in the State of Johor.*

Next, by virtue of Section 90, the law provided on the vesting of waqf, nazr and trust property in Majlis. All property subject to Section 89 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 waqf, nazr am or trust affecting the property. Therefore, every submission will be made before the Nazir Waqf District or witnessed by two adult members qualify under Hukum Syarak.

There are numerous suggestions and proposals for developing these waqf lands in order to increase the country's profit. Waqf funds should be used to assist the government in meeting public needs. Waqf development is not solely focused on religious activities, it also contributes significantly to social services. As a result, education, health, mosque and madrasah, social care and welfare, trade and commerce, environment, infrastructure and art, culture, and history are all included in waqf development (Anwar, Ahamed, & Muhammad, 2014).

There are departments of MAIJ in every district to monitor and manage the waqf properties to ensure that they are well preserved. Waqf properties were categorised into five different classes: surau, mosque, religious school, Islamic cemeteries, and public charity.

### 3. LITERATURE REVIEW

Most waqf organisations have recently become aware of the necessity of waqf property development. As a result, more work is put in to help the property develops (Chowdhury, Chowdhury, Muhammad, & Yaso, 1970).

Even though the work is complete, some of the waqf properties are still underutilised (Hidayatul, Shahul, Ihsan, & Ibrahim, 2011; Sanep & Nur, 2011).

Waqf properties in Malaysia are governed by the State Islamic Religious Council (SIRC), which is under the jurisdiction of each state. Based on statistics from Yayasan Waqf Malaysia and JAWHAR, the Prime Minister's Department found that out of 30,000 hectares of waqf land in Malaysia, only 13% was developed. In comparison, the remaining 87% or 26,100 hectares are still not fully cultivated (Mohamad-Mohaimin, 2019). If the waqf assets are managed successfully and efficiently, the Malaysian economy will almost surely benefit. Unfortunately, the SIRC-vested management of waqf assets has been incapable of effectively managing the investment. This is due to a number of factors, including inefficient management, a lack of competence and financial assistance, and a lack of understanding of the legislation and enactment.

Waqf properties are under the responsibility of mutawalli after they have been donated by waqif. The institutional Mutawalli is in charge of managing and administering the property and developing the waqf property so that it can benefit the society. As a result, the waqf property must be given to the appropriate Mutawalli so that it can be administered and appropriately developed (Magda, 2013). As Malaysia has 14 states, it currently has 14 government Mutawallis. Mutawalli's administration is also known as the Religious Islamic State Council, and Malaysia has 14 separate waqf administrators (Ahmad, Latiff, Norzaidi, & Che, 2008).

Due to management inefficiencies, the majority of waqf properties in Malaysia are not entirely utilised. Insufficient funds for maintaining and managing waqf properties, including operational costs, lack of best performance by waqf manager, unregistered waqf land under State Islamic Religious Council (SIRC), outdated data, and confiscation of ownership rights by heirs from SIC are factors contributing to inefficient management. These issues should be handled cautiously as poor property management can jeopardise waqf's long-term viability (Farah & Raji, 2018). Apart from that, waqf managers have been found to be unqualified in several circumstances (Noranizah, Nazifah, & Latifa, 2016).

Waqf management in Malaysia had several issues, including inefficiencies in the way waqf assets were administered, with the bulk of waqf assets not being adequately utilized. This resulted in the inability to achieve the desired goals. The current state of waqf institutions is undeniably deplorable. It is safe to say that there has been a catastrophic collapse of waqf in many locations. Waqf institutions are not given the attention they deserve, and as a result, large number of waqf properties are mismanaged (Hassan & Shahid, 2010). On the other hand, the challenge is for the existing Muslims to be granted more property as a type of waqf for future generations of Muslims.

Waqf management issues manifested themselves in two ways: in the method, the waqf administration's day-to-day operations, and the absence of economic growth. It demonstrates institutional behaviour that results in revenue loss, work disturbance, misconception, increased costs, fading revenue, or no income at all (Shatzmiller, 2008). The returns for both the institution and society were insufficient, if not altogether absent, in several circumstances. In the end, the compounded organisational challenges led to the liquidation of the waqf assets and the institution's failure to impart its institutional order and maintain religious observance. The explanations can be traced back to several factors, the most important of which are insecure property rights and a lack of institutional frameworks (Shatzmiller, 2008).

In addition, SIRC's inability to efficiently administer the waqf assets is due to inefficient administration of the organisation, a lack of experience and financial assistance, as well as incomprehensible law and enactment. Various state laws or enactments govern the management of waqf property. There is no formal statute that regulates the management and administration of waqf properties in Malaysia, except in the states of Selangor and Malacca (Saripah., Din, & Mustapha, 2018).

Problematic registration techniques, lengthy and expensive procedures, interference with civil court jurisdiction, and idle waqf land are all difficulties that waqf properties in Malaysia face (Noor, Ibrahim, Mohammad, & Muhammad, 2020). Waqf properties are kept unused due to delays in the management process, which results in

the property being given up informally without any documentation or registration (Noranizah et al., 2016). Besides that, failure to register waqf land might lead to ownership disputes, with relatives refusing to accept the waqf status. Instead, they demand to distribute the property according to estate distribution. The SIRC may be unable to create a registered lease over the land if the waqf properties are not legally registered (Nor, Sharifah, & Zuraidah, 2012).

Waqf property is a valuable resource for estate owners and organisations, and it needs to be maintained by a good property management system. Property management can be described as the act of operating a property with the goal of preserving the property's capital value and revenue in accordance with the owner's goals (Farah & Raji, 2018). SIRC administration includes upkeep, maintenance, and interactions with it in order to maintain it productively; development, regeneration, or redevelopment; and development and regeneration finance. Waqf properties will only be considered sustainable if the income generated can be used to carry out the waqf ideology through income distribution to beneficiaries, building investment, as well as giving back to the Malaysian economy, which can only be realised through a good and efficient waqf administration (Karim, 2007; Kholid, Sukmana, & Hassan, 2009; Noor, Ali, Abdullah, & Tahir, 2014).

From the interview conducted, the officer at Johor Islamic Religious Council stated that among challenges in managing the waqf property is that, there are no specific laws on waqf, as it was governed by the Administration of the Religion of Islam (State of Johor) Enactment 2003 (Enactment No. 16 of 2003). This is because a specific enactment on waqf was abolished in 1973. There are also conflicts of jurisdictions since the development of the waqf land into buildings was under the city council's jurisdiction. The waqf land cannot be developed into commercial area as the land has explicitly been categorised to be developed specifically for *surau*, *religious school* and Muslim cemeteries. Apart from that, there are also issues related to the collection of the rental arrears in some of the waqf properties.

From the previous literature review, it could be implied that lack of proper planning and management, insufficient fund, waqf Mutawalli's poor performance, unregistered waqf land under SIRC, and outdated data are among the issues that had become impediments to waqf development. Therefore, there is a need for the management and sustainability of waqf properties in Malaysia to move forward. Hence, the proposed recommendation would result in an appropriate mechanism for the effective management and sustainability of waqf properties. This in return, would lead to positive consequences to the economic growth of Malaysia, especially in Johor state.

#### 4. THE WAY FORWARD FOR THE MANAGEMENT AND SUSTAINABILITY OF WAQF PROPERTIES IN MALAYSIA

According to Ismail (2013), for waqf to be appropriately and efficiently managed, the SIRC for each state must be creative and innovative in generating income from waqf assets. Waqf can significantly reduce Muslims economy's debt by replacing external borrowing. The provision of economic infrastructure, for example, can be carried out with waqf monies. Inevitably, the public is concerned about the waqf property's location and efficient use. Therefore, Vinten (1997) believes that charitable organisations must reveal, explain, and justify what they do and how they carry out their responsibilities.

Next, the implementation of waqf law, particularly the registration and recording system under the National Land Code 1965, must be more aggressive at all levels to avoid future rights disputes, particularly by heirs. Aside from that, in order to acquire a waqf status; precise information, norms, and regulations of waqf procedure must be acknowledged by the waqif and their heirs. In addition, current and accessible data on waqf assets must constantly be produced and made available as needed (Farah & Raji, 2018).

According to Rabitah, Zuraidah, and Norhidayah (2012), unsystematic management is caused by ineffective management. As a result, to improve management practices, the management procedure and internal control of

waqf administration must be improved. [Rabitah et al. \(2012\)](#) also proposed that the institution educate the Muslim community to raise awareness of the value of waqf. In practice, the institutional Mutawalli must demonstrate their accountability to the community by explaining how the waqf property was used. [Abdullah and Asharaf \(2008\)](#) found a wide range of management approaches among institutional practises in Malaysia. Despite the various techniques, the goal is to develop the waqf properties fully. In short, effective and efficient management will result in the appropriate development and usage plans. The institutional Mutawalli was built on the foundations of structure and management methods. The waqf property development level will be described by its efficient structure and good management techniques ([Chowdhury et al., 1970](#)). [Hasyeilla, Rohayati, Nur, and Norhana \(2014\)](#) also endorse this assertion, stating that reliable management methods and structure will enable the effective and efficient distribution of resources. As a result, it is a start towards maintaining high quality in developing and extending the waqf property. Thus, the waqf property will be used to its utmost potential, with no waste of resources.

In carrying out their duties and administering the waqf property, the Mutawalli must adhere to Islamic values fully and be trustworthy. To avoid incidents of dishonesty on some Mutawallis, the integrity and qualification of the Mutawallis should be evaluated. The waqf administration should have a defined guideline for waqf Mutawallis regarding where, how, and at what rate they should invest waqf earnings under their supervision, so that illegal occupation and misappropriation of waqf property are avoided. There should be an authority in charge of proper and regular oversight of the waqf property and how it is managed by the Mutawallis ([Muyassar & Sagdullaevich, 2020](#)).

Lack of funds and increased maintenance costs are among the causes which contributed to many waqf assets not being adequately utilised ([Abdullah & Muhamad, 2008](#)). The effective use of a waqf property would be severely hampered in this case. This, together with the potential of a waqf, could not be realised due to a lack of cash, as the Mutawalli institution lacks money and is not self-sufficient ([Aznan & Syahnaz, 2015](#)). However, some institutional Mutawallis take proactive measures using a range of tactics and approaches, including cash waqf ([Farhana, Rahman, & Marican, 2014; Murat, 1992](#)), shares waqf ([Abdullah & Muhamad, 2008](#)) and sukuk financing ([Hydzulkifli & Asmak, 2015](#)). Any waqf property can be utilised and modified using these fund-raising tactics, making it sustainable and providing long-term advantages.

In order to solve the issue of insufficient funds, waqf properties will be limited in their potential to attain financial sustainability if they rely heavily on other sources of funds rather than self-income. If the waqf properties can be marketed into a viable venture with a positive cash flow, the waqf institution will be self-sustained in terms of financial until it no longer requires external funding ([Farah & Raji, 2018](#)). It must be emphasised that the waqf management's obligation is to maintain the assets so that they continue to provide benefits and maximise those benefits. Aside from that, asset development may be a viable option, but this will necessitate more financial resources. Waqf certificates, cash deposits and cash waqf instruments offered by the Islamic banks and insurance businesses are excellent ways to add to the waqf fund.

For the record, in 2020, the waqf properties in Johor recorded by Johor Islamic Religious Council amounted to MYR17,250,543.49. The Johor Islamic Religious Council will ensure that the waqf land or properties shall be developed according to the classes agreed and affirmed by the donor (waqif). The vacant yet-to-be-developed waqf land will be rented out to a qualified applicant to ensure that others can still enjoy the benefits from the waqf land. In fact, the benefits obtained from the rented waqf land will be taken care of by the Johor Islamic Religious Council, and it will be distributed among the beneficiaries (*marwaf alaih*).

Based on the interview conducted, there are also suggestions from the Johor Islamic Religious Council to manage and sustain the waqf properties in Johor. Among the recommendations are to bring back the waqf enactment that had been previously abolished. For this purpose, a new law on waqf has been drafted by the Johor Islamic Religious Council. They also proposed to establish new strategic planning on all potential waqf land, appoint qualified consultants to research potential waqf lands to be developed, select a debt collector in handling the

rental arrears issues, add a new subject in the Johor religious school syllabus, reinforce the research and development with the collaboration from Kolej Pengajian Islam Johor (MARSAH) and local universities, and grant a research fund related to the development of waqf properties.

## 5. THE MANAGEMENT OF WAQF PROPERTIES IN INDONESIA AND SINGAPORE

Regarding Indonesian experience with waqf issues, Ihsan and Ibrahim (2011) conducted a case study on two Indonesian waqf organisations, examining their accounting and management methods. The data gathered through a mix of interviews, direct observation, and document reviews demonstrated that the procedures of the two waqf institutions differed significantly. Due to the presence of committed professional Muslims, the first waqf institution has more effective management, transparent, and more accountable compared to the second institution, although the latter has a better accounting system and more “academically” qualified individuals. These findings are certainly intriguing and it demonstrated that simply having qualified personnel is insufficient. It is crucial for them to understand Islam and succeed in internalising the Islamic concept in performing their duties as mutawallis, as they are accountable not only to the waqif but most importantly to Allah SWT.

The requirement for the effective administration of waqf assets guarantees that the waqif purpose is met, but this is only feasible if the governance of waqf institutions is adequately funded and functioning well. The management of a waqf institution in Singapore is an excellent example of how a waqf institution can be administered appropriately and generate more cash for the benefit of Muslims. The Strategic Unit of Zakat and Waqf (SUZW), a division of Majlis Ugama Islam Singapura (MUIS), a statutory board under the Ministry of Community Development, Youth and Sports (MCYS), is in charge of waqf in Singapore. Before decisions are taken at the management and MUIS council levels, all issues connected to the development of waqf assets shall be presented to the waqf investments committee. The SUZW's responsibilities would be to monitor the waqf's administration, whether trustees or mutawallis are in charge. It is worth noting that the appointment or retirement of trustees and mutawallis must be approved by the MUIS. This ensures that their records of managing the waqf are kept and maintained in a central location, which is an example of good governance practised by MUIS. SUZW's development of commercial complexes and residential units, which are then leased out to interested parties, is an example of a financial decision to produce income. Although it is unfair to compare the management of waqf in Malaysia to that in Singapore – because Singaporean Muslims, who make up 14% of the total population, are the minority in a secular state compared to Malaysian Muslims, who make up 61.3% of the population; the SIRC in Malaysia can benefit from their experience in handling waqf. According to a literature survey, there are only a few researches looking into the efficiency of operating waqf institutions (Johari, Mustaffha, & Hameed, 2016; Saad, Kassim, & Hamid, 2013).

The efficient controlling duties of MUIS as waqf authority emerged as a prominent theme among the elements influencing the development of the waqf sector in Singapore. Monitoring and oversight, policy formation, and decision-making are among the governing roles, which coincide with the ideal functions of the governing body (Pointer & Orlikoff, 2002).

MUIS holds all deeds and a list of waqf properties for all registered waqf accounts as the waqf authority. Private mutawallis and warith are expected to submit an annual report to MUIS on a yearly basis. MUIS also develops and publishes an annual report, as well as an audited financial statement, in parallel. MUIS will undertake a criminal- and financial-background check on any private mutawallis who nominate their successor. It is advantageous to have a proper check and balance mechanism to avoid mismanagement, misallocation of waqf holdings, or any illegal sale of waqf assets (Lisa & Syed, 2020).

It is reported that MUIS has published essential regulations and policies in terms of policy creation toward waqf matters. The most recent rule is connected to the obligation for each waqf account to set aside a portion of their waqf income as a sinking fund, which will be used for major repairs and expansion of the waqf in the future. In

certain circumstances, waqf procedures that were established a century ago are no longer relevant. Private mutawallis can seek counsel and proper procedure from MUIS in this circumstance (Lisa & Syed, 2020). Efforts to revitalise the waqf sector can begin once appropriate governing responsibilities are in place. One of them is that MUIS manages and invests the collected cash waqf capital. The investment revenue is subsequently dispersed to the recipients (MUIS, 2019).

Despite many improvements, the waqf industry in Singapore also has experienced significant hurdles throughout its existence. External concerns, such as government-mandated purchase, rising living costs, and many legislative constraints, are identified as current difficulties to the country's waqf industry. On the other hand, MUIS, as a waqf authority, has effectively undertaken governing functions that allow for the creation of new waqf kinds and the rehabilitation of existing waqf assets to some extent. Even though the number of waqf accounts and properties are declining, these endowed properties have benefited the Muslim population in Singapore as well as thousands of other recipients around the world. Furthermore, it allows for the rehabilitation of existing properties with the goal of providing infrastructure for religious and social activities, as well as supporting Muslims in becoming a highly inspired and self-sustaining society (Lisa & Syed, 2020).

## 6. CONCLUSION AND RECOMMENDATIONS

Waqf is one of the sources in Islam that can cater for the needs of poor people or help the people in the economy to meet up their basic biological needs. Development of waqf properties is like the key to a treasure trove left behind by our ancestors in the form of valuable properties possessing enormous potential for future generation's growth and income. However, lack of proper planning and management, insufficient fund, waqf Mutawalli's poor performance, unregistered waqf land under SIRC, and outdated data are among the issues that had become impediments to waqf development. Therefore, the management of waqf property should be reformed, the policies in waqf institution should be revived, and the SIRC should be more proactive so that the purpose of waqf can meet its goals and serve its purpose effectively.

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