

ISSUES AND CHALLENGES OF WAQF INSTRUMENT: A CASE STUDY IN MAIS

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ABSTRACT

Waqf is an important component of the Islamic economic instruments which is firmly believed, can solve the socio-economic problem mainly in the good attempt to eradicate poverty due to scarcity of income and employment. Although Waqf had been implemented in Malaysia for many years, it has yet give impact in contributing welfare of the people in this present day. Majlis Agama Islam Selangor (MAIS) is one of the religious institutions in this country that play a significant role in developing and managing Muslims Waqf in the state of Selangor. Lack of awareness, not getting enough funds beside others several challenges in Waqf will be discussed in this paper. Thus, this study attempts to discuss issues and challenges facing by MAIS during the implementation. Therefore this paper will propose action plan that should be taken by MAIS to improve effectiveness and efficiency of Waqf. In addition, the paper will identify the significance impact of Waqf implementation in MAIS towards generating economic growth to the state of Selangor.

Key words: *Waqf, Socio-economic, developing, managing, administration of Waqf.*

Introduction

Waqf means hold, to prevent or restrain in Arabic word or in legal terms it means to protect a thing from becoming the property of a third person (Sabran, 2002). It is defined as permanent submission by a Muslim of a valuable property to the ownership of Allah *swt*. According to Sabran (2002), it is the *mutawalli* (manager) obligation to govern the *Waqf* properties to the best interest of the beneficiaries once *Waqf* founder had determined the type of management of his / her *Waqf*. First priority is to preserve the property and secondly to maximize the revenues of the beneficiaries. The revenues are used for the welfare of the society including social, spiritual and economical objectives, which is distributed among the poor and the needy, mosques, schools, graveyards, orphans, widow, old folk's etc. The list of the beneficiaries is unlimited, as long as the donor determines the need of a group or individual for any Shari'ah compliant purpose the donation would be considered valid.

Waqf as an Islamic public finance instrument can be seen as a great potential mechanisms that play a significant role in generating a prominent source of financing for the state and for the needs of the Muslim *ummah* who are complex and growing. For an example, WARESS as a *Waqf* Trust beneficiary in Singapore had successfully transformed a number of low yielding assets into high income generating performers that giving higher returns for the Trust beneficiaries¹. It has consistently donated much of its profits towards education and helping the needy. Thus, *Waqf* prove as a powerful mechanism in developing the nation in form of charitable instruments and it was supported by Hasan & Abdullah (2008) who has cited that *Waqf* is unique and beneficial from economic point of view supported this.

In Malaysia, *Waqf* had been governed by the Islamic Religious Council of each state (Hasan & Abdullah, 2008). There are 14 State Islamic Religious Councils in this country with each aimed of

¹ Warees Investment Pte Ltd available at www.warees.com

making the administration of *Waqf* is systematic and effective for the *masalah ummah*. Each institution is empowered to administer *Waqf* properties with the best standard of practice and contemporary management system to project the excellence of Islam.

Unfortunately, the great potential has yet to be realized by Muslim. *Waqf* today perceived and understood to be very narrow, unmodern, non-economic, anti-social and resolves only around religious issues. Thus, it is a great challenge for *Waqf* institution in this country to participate a role in uplifting the pride, dignity and supremacy of Islam in Malaysia. As such, this paper attempts to concentrate on *Waqf* institution in Selangor state and to discuss the approaches taken by Majlis Agama Islam Selangor (MAIS) in developing *Waqf* properties besides issues and challenges facing by the institution during the implementation. Highlights on issues and challenges facing by the institution will be further discussed that holding the institution to leverage on its potential.

Background of Mais

Majlis Agama Islam Selangor (MAIS) is a statutory body established in 1949² where it main responsible in assisting and consulting *Sultan* in any Islamic religious matter. MAIS is a permanent entity, which has the legal power after the Sultan in terms of Islamic matter except for *Hukum Syarak* and justice administration matter³. The institution is responsible in encouraging, assisting and strive for economic excellence and tranquillity of the society. *Waqf* management in Selangor to be handled by MAIS has been authorized under *Enakmen Pentadbiran Hukum Syarak 1952*.

In order to ensure the continuation and flourishing of *Waqf* management, the institution had introduced Selangor Development of *Waqf* Property Action Plan to support their core role especially in terms of (i) to strengthen the current status of *Waqf* properties in Selangor; (ii) to identify the potential of *Waqf* in long term period; (iii) to identify the strategies and appropriate budget planning; and (iv) to target at least ten successful *Waqf* icon in Selangor⁴.

Literature Review

The Economic Definition of *Waqf*

Waqf is a charitable foundation. It improves by the effect of moral and religious motivation⁵. The words charities have permanence and continuity, so that people can benefit from them for years, generations or even centuries. It should also be noted that the Islamic definition of *Waqf* makes its assets cumulative, in the application to the principle of perpetuity in *Waqf*. It means that a *Waqf* properties may not be sold or disposed of in any form, i.e. a *Waqf* properties remains in the *Waqf* domain perpetually and any new *Waqf* will be added to that domain, implying that the *Waqf* properties are only liable to increase. They are not permitted to decline since it is illegal to consume the properties of *Waqf* or to leave them idle by any action of neglect or transgression.

Legitimacy of *Waqf*

Under Muslim rules, the concept of *Waqf* was more widely comprehended as aligned with the spirit of charity endorsed by the Quran and Hadiths. *Waqf* implies the endowment of property, moveable or immovable, tangible or intangible to God by a Muslim, under the premise that the transfer will benefit the needy. As it implies a surrender of properties to God, a *Waqf* deed is irrevocable and perpetual. The *Waqf* property belongs to Allah, and no human being can appropriate if for his own purpose.

² Pengurusan Wakaf di Malaysia. Pg. 51

³ Section 4(1), 5 (1) and (6), Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003

⁴ MAIS Annual Report 2007

⁵ Further discuss in Section 3.2 Legitimacy of *Waqf*

Waqf are also important pillars in bringing socio-economic justice and both are needed to empower the Muslim *ummah*. The validity of *Waqf* is founded on the rule laid down by the Prophet (pbuh) himself: Umar bin al-Khattab bought a piece of land in Khaybar area. He went to the Prophet and asked for guidance in order to make the most pious use of it. The Prophet replied, “*Tie up the original property and devote the usufruct to human beings which is not to be sold or the subject of gift or an inheritance. Being the produce to your children, and the poor in the way of God*”.

On top of that, the evidence of *Waqf* based on the following hadith probably best explains the motivational principle behind establishing a *Waqf*. Abū Huraira reported that the Holy Prophet (pbuh) said, “*when a man dies, all his acts come to an end, but three; recurring charity, sadaqah jāriyah, or knowledge (by which people benefit), or a pious offspring who prays for him*”.

In addition, Imam Bukhari narrated an event in which Abu Talha gives his choice of land to Prophet (pbuh), a piece of land known as Bairuha orchard in Medina. The Prophet gave to him, advising that he should make it an endowment for his relatives. Abu Talha thereupon gave the orchard as a charity to Ubaay and Hassan. The Prophetic direction in respect of *Waqf* is contained in the following hadith: “*Retain the original (property) itself and endow its fruit in the path of Allah*”.

Legal Framework of *Waqf*

Waqf properties in the legal framework are not specifically defined, which land-rights in the context of the Malaysian Land Administration System does not apply to *Waqf* lands generally. The system is modeled based on the colonial model, and is complex comprising written and unwritten laws including common law and Islamic law. The major legislations are the Malaysian National Land Code, 1965, (NLC), based on Australian Torrens System, the Strata Titles Act, 1985 and the Land Acquisition Act, 1966. However, all these legislations are to great extent reflective of Western land tenure system, to which all land tenure rights and interests, in Malaysia, are subjected with exception of *Waqf* lands. Section 4 of the NLC provides that the Code shall not apply to *Waqf* and baitul mal land.

Waqf legislations

According to Hasan & Abdullah (2008), *Waqf* is one of the subject matters which are under states jurisdiction. In Selangor, determinants of *Waqf* was founded in Administration of the Religion of Islam (State of Selangor) Enactment 2003⁶, while in Pulau Pinang, it is provided in the Administration of Islamic Religious Affairs (State of Pulau Pinang) Enactment 1993 and in Federal Territory, the Administration of Islamic Law (Federal Territories) Act 1993.

According to Yaacob H. (2013) the earlier documents about *waqf* practices could only be seen in “*Waqf Prohibition Enactment 1911*” where the State of Johor introduced written laws regarding this issue. This was followed by the State of Perak introduced the “*Control of Waqf Enactment, 1951*”. Other states started much later with their own *waqf* enactments. In the nutshell, all states in Malaysia have their own legislations whereby *Waqf* properties are inadequately regulated give a great deal for each *Waqf* institution who wish to collaborate and integrate to optimize their institution achievement.

Administration of Waqf

The centralized administration of the *Waqf* properties under the state authority is important to ensure a proper record being kept and the state able to place a complete database of its *Waqf*

⁶ Law/*Waqf* Enactment in Selangor are Enakmen Pentadbiran Hukum Syarak Selangor 1952 (No. 3), Enakmen Wakaf Selangor 1999 (No. 7), *Enakmen Pentadbiran Agama Islam Selangor No. 1, Tahun 2003. Pengenalalan Pengurusan Wakaf di Malaysia. (Pg. 44).*

properties. For MAIS, it had been stated as a sole trustee in Section 32 Wakaf (State of Selangor) Enactment 1999 (No. 7 of 1999). The section stated that “*Notwithstanding any provision to the contrary contained in any instruments or declaration creating, governing or affecting any wakaf, the Majlis shall be the sole trustee of all wakaf, whether wakaf am or khas, situated in the state of Selangor.*” Thus, no other individuals or bodies are allowed to hold the trusteeship power. The exercise of such a power from the mentioned two parties would be treated as illegal and not conforming to the laws. But, private individuals or bodies may seek permission with MAIS to manage *Waqf* properties.

Overall, the state religious council is holding an important role in managing the *Waqf* affairs and it must be spent for the common interest of the public. The prophet (pbuh) says; “*I neither give it to you nor deny it from you on my own. I am only a trustee on spending where I am ordered to spend*” (Al-Hadith, Bukhari).

Component of *Waqf*

Khalid (1988) had stated that *Waqf* in general can be identified into three types which are Al-I’qar (irremovable assets), Al-Manqul (removable assets) and *Waqf* Al-Irsod. The irremovable assets refer to any assets that cannot be moved, relocated or changed. In MAIS, the institution has dealt with irremovable wealth such as land for agriculture, school building, mosques and orphanage. Throughout MAIS establishment, the institution can be proud as many irremovable assets have been successfully developed in Selangor such as Masjid Tengku Kelana Jaya Petra (RM 8 million), Masjid An-Nur (RM 0.35 million), *Waqf* premises (RM 1.05 million), MAIS Centre of Information and Community Cyber (RM 0.35 million) and recently International Islamic University College’s Library (RM 13.3 million).

The second categories are Al-Manqul or a removable asset which refers to asset or possessions that can be removed, as for example cash, book, table, chairs, agricultural equipments, poultry, etc. MAIS personally received these kinds of *Waqf* to be managed which are *Saham Waqf*, *Waqf* for vehicle, such as funeral van, road tax, etc. Lastly, Al-Irsod refers to the type of *Waqf* where the government of a country put a piece of property to be used for the benefits of the citizens of the country. These assets must be used for the community best interest for the benefits of Islam.

The Significance Impact of Unit *Waqf* in Eradicating Poverty

Waqf connects with distribution of wealth in national economy because of its establishment period, *Waqf* provides the transfer of wealth for society. Based on study made by Othman (2001) *Waqf* plays a significant role in fighting poverty among the poor by providing access to food, education and medical care.

Evidence from *Waqf* developing project in Selangor such as MAIS Centre of Information and Community Cyber, a one stop centre library that provides a range of study places, variety of books, computers and internet resource to be access for the public. This show that *Waqf* education offered free education access to all public regardless of class and belief. In addition, development project of Religious School at Pulau Indah, Selangor shows that *Waqf* education provides equal opportunity for lower income people and encourages social justice by advancing people according to their ability. This proves that Unit *Waqf*, MAIS had constantly endeavoured to improve the educational standards of the poor of Selangor.

In terms of poverty alleviation⁷, *Waqf* premises in Puchong for an example had successfully created an employment opportunity especially for the self-employed people who have insufficient

⁷ Poverty produce agitation against peace of mind and for this, Islam does not grudge the importance of material well being in human life. Narrated by Abu Said Khudri, the Prophet (pbuh) used to provoke; “*O Allah! I see thee refuge from apostasy and poverty, thereupon a person inquired: Are the two similar? The Prophet (pbuh) replied: Yes*” (Al-Hadith- Abu Daud).

incomes to stand up the business on their own. MAIS offers lower rental properties for the premises and this indirectly rising life average of poor in improving their standard of living. In addition to that, the recent developments of International Islamic University College's library also create an employment generation for the state of Selangor by offering construction sector to employs more workers.

Overall, Unit *Waqf*, MAIS shows as a good attempt to eradicate poverty from the turmoil of life due to scarcity of income and employment. Poverty is a result of human deprivation from the necessities in life and *Waqf* present a good avenue that help deal with poverty and income inequality. *Waqf* in Selangor has demonstrated its capacity to provide access to the basic need in life through its focus on human development and it is evident that *Waqf* can be one true way in getting rid of poverty is through *Waqf*.

Issues and Challenges In The *Waqf* Practices

Based on the interview with the MAIS officer, there are six (6) key issues and challenges highlighted which constraint the institution to expand the potential of *Waqf*. Among the issues are model of the legal framework of Malaysia Land Administration system did not suit with *Waqf* lands, the differences and non-standardized procedures of the *Waqf* application, unproductive and no potential of *Waqf* properties, and management issues which related to insufficient of MAIS personnel in handling *Waqf* assets.

Legal Constraint of Malaysia Land Administration Systems of *Waqf*

Generally, a legal framework defines land-rights, which in the context of the Malaysian Land Administration System modelled based on the colonial model. Thus, it does not simply be used to apply for *Waqf* lands. As mentioned earlier, basically, the Malaysian Land Law consists of written and unwritten laws including the common law and Shari'ah law. The major legislations are the Malaysian National Land Code (NLC), 1995 based on Australia Torrens System, the Strata Titles Act, 1985 and the Land Acquisition Act, 1966, The Sarawak Land Code (Cap 81) and the Sabah Land Ordinance (Cap 88)⁸. However, all these legislation are a reflection of Western land tenure system which cannot be applied directly to *Waqf* land.

The State of Selangor had been commended for being the first state in Malaysia that has been instituted a *Waqf* enactment to better manage and administer all the *Waqf* property in the state. The Selangor Enactment No. 7 of 1999 (*Waqf* (State of Selangor) Enactment (1999) deserves to be called a relatively advanced law of *Waqf* in Malaysia. Section 2 of this law defines property as to "include any movable or immovable property and any interest in any right, interest, title, claim, chose in action, whether present or future or which is otherwise of value in accordance with Shari'ah law"⁹. The same section defines *Waqf* as "the dedication of any property form which its usufruct or benefit may be used for any charitable purpose whether as *Waqf* am or *Waqf* khas according to Shariah law, but does not include a trust which defined under Trustee Act 1949".

The majority of legal problems exist because *Waqf* is a religious concept that needs legal recognition and enforcement. The religious concept of *Waqf* is based on the old theories without serious revision thereof, thus resulting in a legal framework that is also based on the very old interpretation of the religious texts. Some Muslim jurists of the past recognize three fundamental

⁸ Mohammad Tahir Sabit Hj Mohammad. *Sustaining The Means of Sustainability: The Need for accepting Waqf Assets in Malaysia Property Market*

⁹Enakmen Wakaf (Negeri Selangor) 1997/1999

characteristics of *Waqf*, (*i.e.*) irrevocability, perpetuity, and inalienability¹⁰. They had highlighted the followings as the most common issues pertaining to the *Waqf* land;

- I. The National Land Code 1965 (NLC) does not provide specific provision pertaining to *Waqf* land, compare to special provisions in respect of trusts. The person administrating *Waqf* has not been included in section 43 of the NLC¹¹ as one of the receiving parties which the State Authority may dispose land to. This is the main reason that proprietors' grants of all *Waqf* lands have not been endorsed with the title that acknowledges the *Waqf*. The status of *Waqf* lands is vague and it will cause to the possibility of such land being converted to other purposes by irresponsible parties.
- II. Nowadays, the alienation of land by the State Authority is in the form of leasehold instead of freehold (perpetuity). The freehold grant can only be made for the purpose of public welfare or to satisfy the requirements made by the Federal Government or to satisfy any special circumstances which the State Authority think necessary. Therefore, by the virtue of this provision, *Waqf* lands which were given a leasehold title will revert to the State Authority after the expiration of lease period. The *Waqf* status will automatically void, contrary to the perpetual nature of *Waqf* under the Shari'ah law.
- III. Section 136(1) (f) (i) of NLC, prevent the subdivision of any portion of the agricultural land of less than 2/5 of a hectare.¹² Therefore, no separate title can be released for the purpose of exclusive development and proprietorship of the *Waqf* land.
- IV. Pursuant to provision of Land Acquisition Act 1960, *Waqf* properties are still subject to acquisition by the State Authority for the purpose of public utility and economic development of Malaysia. Such compulsory acquisition will diminish the right and interest of the stakeholder under the Shari'ah law relating to *Waqf*.

Waqf is still subject to the scrutiny and jurisdiction of the civil courts. The civil courts are usually presided by judges who may not be conversant with Shari'ah law. As a result, they may tend to decide disputes on *Waqf* and may give decisions which are contrary to the principles of Shari'ah law on *Waqf*.¹³

Lack of marketability and unproductive of *Waqf* assets

The *Waqf* properties in Selangor have traditionally been situated in the rural areas with some pockets of *Waqf* lands located in the towns.¹⁴ However, there are some of *Waqf* lands which were located at a strategic area and at town have not been developed. It was assumed that there might be a condition, constraints or other causes such as specific *Waqf*. When a specific condition has been imposed on the *Waqf* land, it cannot be easily developed and managed by the *mutawwali*.

¹⁰ Assoc. Prof Dr Sharifah Zubaidah Syed Abdul Kader & Dr Naurruhal Hilal Md Dahlan. *Current Legal Issues Concerning Awqaf In Malaysia*

¹¹ Section 43, NLC; Private land and interest therein can be owned by natural and artificial persons, through alienation by the State (Mohammad Tahir Sabit Hj Mohammad. *Sustaining The Means of Sustainability: The Need for accepting Waqf Assets in Malaysia Property Market*)

¹² Section 43, NLC; Private land and interest therein can be owned by natural and artificial persons, through alienation by the State (Mohammad Tahir Sabit Hj Mohammad. *Sustaining The Means of Sustainability: The Need for accepting Waqf Assets in Malaysia Property Market*)

¹³ The Shariah court has no legal power to be imposed on Muslim and non-Muslims relating with Land Administration. For instance, the issue of misused of *Waqf* lands by non-Muslims had been referred to Civil Court and the decision was made based on precedents cases by privy council and Court in India. *Basori Umar, (2008), Isu-isu semasa berhubung pembangunan tanah wakaf.*

¹⁴ The *Waqf* properties has shifted quite rapidly to urban areas as land originally earmarked for rural development has been transformed into urban centres, mostly as a result of the extension of town boundaries. (Abdul Fatah bin Haji Khalid (1988), *Islamic Land and Land in the State of Selangor*). Pg. 251

Furthermore, the religious state council did not have full ownership for the administration of *Waqf* lands, which cause many *Waqf* lands useless and unproductive for requiring return from economic activities and give benefits to Muslims. A registration of legal ownership is a very important aspect that has to be emphasized. Without the legal ownership, any efforts for development cannot be implemented. It was assumed that the trust holder was not given a clear rights and indications to manage the *Waqf* land.

In addition, it was reported that the current database of MAIS on *Waqf* assets are not sufficient, which detail and important information are not available.¹⁵ The database is very important in terms of monitoring and controlling the *Waqf* assets. The proper monitoring of the assets for further development can only be done if details information of the assets is available. The problem occurred when those who managed and hold full information about the assets has resigned, without delegating the information to his or her successor.

Strong financial condition is also a very important element in developing the *Waqf* assets, particularly those involve with property sector. Lack of financial fund will cause many development projects which have been planned cannot be executed. MAIS agreed that the financial fund is not sufficient enough to manage the *Waqf* because the *Waqf* properties are not fully utilized to generate income for the further development. In addition, less number of property developers who interested to involve with the development of *Waqf* lands due the number of acres for *Waqf* land given by the individual founder usually lesser than three (3) acres which does not really attract developers who looking forward for a bigger project. As the developers have lack of Islamic spirit in terms of helping Muslim *ummah*, they are mostly interested with high potential property which can maximize their profits.

Misused of *Waqf* assets

Unfortunately, some of *Waqf* today is not as it used to be. Prior to establishment of MAIS i.e 1949, most *Waqf* properties in Selangor had been managed by private/individual trustee e.g. religious person (imam) etc without having any proper administration and documentation or even have been missing which in some cases had been handed over through verbal declaration.¹⁶ Thus, it is a great challenge for MAIS to identify *Waqf* properties that has yet to be registered especially when the both *waqif* and *muttawalis* deceased. The documentation may be delayed for years as MAIS face difficulties in ensuring all the family members able to present and make themselves available during the hearing day at the court.

There are cases where the family members had misused the *Waqf* properties for personal interest due to lack of awareness. *Waqf* properties may have been neglected as not much attention is paid for it. A routine check is only conducted by MAIS once a year due to huge number of *Waqf* properties managed by them with limited number of staff to monitor frequently. For every district in Selangor, only two or three officers have been placed to monitor the *Waqf* properties. Therefore, it is not surprisingly if some of *Waqf* properties had been mismanagement and illegal transfer.

Lack of knowledge and management skills of *Waqf*

Lack of professional and technical expertise in developing *Waqf* assets were part of the constraint facing by MAIS. In addition, even for secondment cases within the MAIS organization itself, without any immediate replacement of the position, it may greatly impact in terms of the *Waqf* timeliness process especially when the person who being secondment holding an important

¹⁵ Basori Umar claimed that over 30% of *Waqf* lands registered have no information about location, size and right ownership. *Isu-isu semasa berhubung pembangunan tanah wakaf (2008)*.

¹⁶ Based on the interview with MAIS representative.

role in decision making process. This could burden the acting staff who may take an extra workload and responsibility to oversee the entire *Waqf* unit besides his or her current task.¹⁷

Lack of awareness of *Waqf* among Muslims

In Malaysia, most people believe that *Waqf* obligation is only for Muslims society. However, *Waqf* can also be contributed by non-Muslims as well. This information is not being promoted to society due to lack of awareness of *Waqf* among them. Other than that, Muslim society still does not realize on the important of *Waqf* in contributing towards Islamic economics. People might think *zakat* is only the best instrument in helping needy people and reducing gap between poor and rich. From the survey made by MAIS in 2008, almost 70 per cent of Muslims in Malaysia do not aware on *Saham Waqf* done by the institution.¹⁸

***Waqf* remains in perpetuity and cannot be used collateral**

The majority of the Muslims jurists believe that the *Waqf* must be perpetual once it is created.¹⁹ This, on the one hand will ensure that no confiscation of *Waqf* properties will take place either by the government or by individuals. And on the other, it will ensure regular and continual support from the *Waqf* properties towards financing charitable areas such as mosques, hospitals, orphanages, schools, or for any needy area in the Muslim society.

On the other hand, *Waqf* cannot also be used for collateral. It means that whenever the management fund would like to seek any financing fund for them to do their project such as establishment of school, hospital etc; they cannot use the *Waqf* properties as their collateral to the bank. If they use *Waqf* properties as the collateral it is against with the majority of the Muslims jurist where they believe the *Waqf* must be perpetual once it is created.

Remains in perpetuity means that *Waqf* properties may not be sold or disposed of in any form, i.e., *Waqf* asset remains in the *Waqf* domain perpetually and any new *Waqf* will be added to that domain, implying that *Waqf* properties are only liable to increase. They are not permitted to decline since it is illegal to consume the assets of *Waqf* or to leave them idle by any action of neglect or transgression. If the property is in perpetuity, it could be difficult for the management to generate extra income from the asset. Once the properties become *Waqf*, the usage of *Waqf* is only limited to the benefit of its usufruct based on the intention of *Waqf* provider.

Proposed Action Plan

To revise the Malaysia Land Administration System of *Waqf*

The constraints have in the legal framework, could be reduced by considering the revision of the Civil and the Shari'ah court's practices, in particular the Malaysia Land Administration Systems of *Waqf*. It was recommended that to appoint judges who qualified and knowledgeable in both areas of laws, Civil and Shari'ah law in handling *Waqf* related matters. Based on the current practice, any Islamic related cases must be heard by judges who qualified in Islamic law while for non-Islamic cases must be handled by civil judges. In the cases whereby issues involved both laws, the judges from the two disciplines must sit together and jointly make the final judgement.

Government has to play a significant role in reducing the bureaucracy of land administration i.e the *Waqf* lands in Malaysia. Government has to simplify the conversion process of leasehold

¹⁷ The interviewer agreed that he currently hold few tasks due to insufficient number of staff

¹⁸ Based on the interview with MAIS representative.

¹⁹ Muhammad Kamal al-Din Imam, *al-Wasayah wa al-Awqaf fi al-Fiqh al-Islami*, Beirut: University of Beirut, 1989.

status to freehold status for *Waqf* land and to reduce the conversion premium. This to ensure that perpetual concept of *Waqf* can be sustained.

To prepare a standard manual

In order to ensure the *Waqf* property could be sustained for a future generation, it was recommended that a manual of *Waqf* implementation be prepared with the objectives of (i) to provide a standard guideline to all the *mutawwali*, by focusing in the aspect of registration and administration of the *Waqf* properties, (ii) to provide an accurate, quick and sufficient information to the public about how to manage the *Waqf* properties and (iii) to improve and increase the efficiency and effectiveness of management of the *Waqf* properties.

In addition, MAIS has to critically identify *Waqf* properties which have good potential and marketable to be developed which give benefits to all. Currently, it is quite difficult to get non-removable *Waqf* assets such as land, thus, alternative *Waqf* such as cash *Waqf* and *saham Waqf* have to be explored further. Fatwa given by *fuqaha* must be pro-active by taking into consideration the contemporary issues. As not all Muslims have non-removable assets to be given up as *Waqf*, thus, the creation of cash *Waqf* scheme will open a wider opportunity to Muslims to practice *Waqf*.

To increase the financial fund for *Waqf* development

As an alternative to increase the financial fund, MAIS can integrate with telecommunication companies in Malaysia i.e. Telekom to establish an easy and convenient way for society. It was suggested that MAIS to establish an electronic system such as cash *Waqf* via instant messaging system (SMS) in order to encourage people to perform *Waqf*. This is parallel with advancement of technologies where people prefer to use technology i.e online system for their daily transaction. A good collaboration between MAIS and some commercial banks is also practical in channelling the *Waqf* collection by offering Cash *Waqf* deposit through ATM machines. The machines can be located at strategic areas such as shopping complex, government and private buildings where it will be easy to access by everyone.

To fully utilize the benefits of *Waqf* for economic activities

In order to ensure the *Waqf* land can be utilized for the benefits of economic *ummah*, the concept of ‘*istبدال*’ must be used, by replacing the non-potential *Waqf* land with the potential one.²⁰ Therefore, MAIS must properly identify which lands have to be replaced for larger benefits. This issue would not be exist in the first place if *wakif* given up his / her good properties as *Waqf*. This is in line with Allah’s command in Al-Quran, which means “*O believers, you shall never attain piety unless you spend of what you love; and whatever you spend – verily, Allah has full knowledge thereof*”.²¹

There is a call for improvement regarding managing and monitoring *Waqf* activities in MAIS. Singapore *Waqf* will be the best benchmark for Malaysia as it had been recognized as the best *Waqf* authorities in the world. By adopting joint venture and partnering approach, there is potential for MAIS to develop *Waqf* properties. A strong cooperation between academicians, Islamic scholars, *Waqf* authorities, practitioners, developers and financial institutions hopefully able to synergise the integration to bring forward creative thoughts and methods for the development of *Waqf*.

²⁰ The mode of substitution simply means an exchange of a *Waqf* property for another that provides at least similar services/income without any change in the provisions laid by the founder. The classical example of this is a school building in a sparsely populated area that can be exchanged with a school building in a densely populated area.
Retrieved from <http://www.islamic-world.net>

²¹ Refer to Surah Al-Imran, verse 92.

Therefore, all the religious council are recommended to have collaboration with other government agencies in order to conduct economic activities on the *Waqf* land. As an example, through the 9th Malaysian Plan, the religious council have collaborated with Jabatan Wakaf, Zakat dan Haji, Prime Minister's Department to develop some potential *Waqf* lands. A project of development has been proposed, however, yet to be implemented. Thus, it is hoped that the efforts for improving the usage of *Waqf* land for *ummah* benefits has to be seriously taken. It was reported that there are *Waqf* lands which are developed for agriculture activities, therefore, it is suggested that the *mutawwali* (MAIS) has collaborated with FELDA or FELCRA to provide skilled labours to cultivate the lands. The sharing technologies are helpful for increasing economic value of the lands.²² The agricultural sector is parallel to the Malaysian government objective in promoting and supporting the development of agro-based industry. It is recommended that the *Waqf* lands development been focused on the processing and manufacturing industries for both food and non-food agriculture products.²³ The sectors which can be considered are cattle farming, palm oil estate, cultivation of fresh-water fish, and herbal farm.

In addition, in order to ensure the public interest (*maslahah ummah*) has been put in place, it is recommended that the Specific *Waqf* must only be allowed for temporary period, which is less than 60 years or for two generations. However, *Waqf* which has been specified for mosque must be made perpetually. Conditions provided by *wakif* are not necessarily to be adhered, if they are not suitable with Shari'ah and not for the benefits of *ummah*.

To promote the career opportunity

The need for MAIS to expand and promote the career opportunity available in *Waqf* field by offering attractive remunerations package would be able to attract more candidates to apply job at MAIS. The realization to acquire more experts is really a rough ride for MAIS to work in various development expertises. Thus, by recruiting professionals such as civil engineers, architect and quantity surveyor as part of their team may facilitate MAIS to manage the portfolio professionally. Thus, in the modern contemporary, the scope of knowledge for the *mutawwalis* involves a wide range of scope need to be covered especially not only in Shari'ah background but capable in managing the modern contemporary knowledge as well.

To increase an awareness about the important of *Waqf*

Waqf has to be promoted widely as the important instrument of Islamic economics.²⁴ In order to ensure the implementation of viable *Waqf* development programs achieve its potential and performs its actual role the need to ensure the information and mobilization through word-of-mouth with the objective to create a positive word of *Waqf*. It is the responsibility of Muslim scholars, advocates and intellectuals to make general public aware. The interpretation and understanding of *Waqf* need to be corrected as to enlarge the scope of contribution of *Waqf*.

Maximization of the communication can be done using a channel of communication i.e information technology, media electronic, radio and campaigns via speeches, lessons, personal contacts and visit through educational platforms believe to be a great tools in promoting *Waqf* to the public. For an example, besides MAIS current promotion activities i.e monthly religious talk, Safar

²² In Singapore and Kuwait, the development of *Waqf* properties has been implemented by establishing a corporate body who acts as the developer to develop the properties by commercial. Based on the approach taken, it has contributed as a value added to the existence of *Waqf* properties. *Isu-isu semasa berhubung pembangunan tanah wakaf, Institut Latihan & Dakwah Selangor, 2008.*

²³ The government plans to accelerate and transform the agriculture sector into a highly modernized, commercialized and sustainable sector.

²⁴ While Salah and Zakah are regarded as fundamental pillars and compulsory in Shari'ah, *Waqf* is considered voluntary but highly desirable. Dr. Akram Laldin.

as the month of *Waqf* and icon *Waqf*, MAIS can leverage based on *zakat* promoting strategy. With the existing of Islamic media channel such as Astro Oasis and Channel 9, MAIS can collaborate with them to promote the importance and benefits of *Waqf*, i.e to have one slot of *Waqf* in those channels.

Leverage on *Waqf*

It's time for MAIS to consider future project of *Waqf* to be leverage on mega project that benefit both muslim and not muslim i.e society in Selangor. *Waqf* should not be limited to education and religious facilities only. Thus, we proposed MAIS to oversee the future *Waqf* project to be develop in to healthcare and transportation role that giving better infrastructure to the public. As public raised concern recently on the high expenses need to be paid for medical treatment and higher toll usage, it is the right time for MAIS to see whether the investment on building hospitals and road able to reduce to improve *maslahah*. This could be a big step to be followed by other religious council who managing *Waqf* properties.

Conclusion

Waqf is indeed a charitable foundation. It improves life by using the effect of moral and religious motivation. Due to the fact that Allah s.w.t. encourages human beings to help each other in his Holy al-Qur'an and with the example of his prophet, *Waqf* is to prominently improve in the Muslim world and plays a significant role in social, political, and economic life in the Muslim society. Islam is the only religion which implemented the concept of *Waqf*. It was form as a prime vehicle in causing and to push the society in achieving calmness and tranquillity, providing good meal, good high education, serving free healthcare and so on.

Thus, MAIS has to play its role effectively in ensuring *Waqf* as an important instrument in enhancing the socioeconomic especially in attempt to eradicate poverty for the well being of the Muslim ummah. All obstacles and challenging in handling and managing the *Waqf* properties must be incorporated with some strategic action plan. MAIS has to ensure its greater role as the *mutawwalis*, by being creative in utilizing the *Waqf* assets for the benefit of mankind. The role of *mutawwalis* shall be understood based on Maqasid al-Shariah, which is to uphold justice in serving the public. *Waqf* must be managed as it is suppose to be managed, where the issue of ownership and legal entity of the *Waqf* assets need to be resolved. In addition, *mutawwalis* must be given very wide power in managing and developing *Waqf* assets. By this *Waqf* not only make endowment of the wealth to get closer to God but it also sympathizing the hardship of others as well as respecting their rights.

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