

# Journal of Economics and Business Aseanomics

Journal homepage <http://academicjournal.yarsi.ac.id/jeba>

## Governance Structures: Dependability And Efficiency Of The Waqf Institutional System In Malaysia

Julia Mustafa<sup>1</sup>, Mohd Yaziz Bin Mohd Isa<sup>2</sup>, Zulkifflee Mohammed<sup>3</sup>

<sup>1</sup> PhD student, Graduate School of Business, Universiti Tun Abdul Razak, Malaysia City

<sup>2</sup> Graduate School of Business, Universiti Tun Abdul Razak, Malaysia

<sup>3</sup> School of Accounting & Taxation, Universiti Tun Abdul Razak, Malaysia

### Article

### Information

*History of article:*

Received:12-12-2022

Accepted:3012-2022

*Keywords: Waqf,*

*Malaysia,Governance*

### Abstract

Waqf lands have the potential to bring in billions of dollars in income for Muslim communities provided that they are successfully developed and managed. In the past, there was no established legal framework for the management of waqf in Malaysia. As a result, waqf land and assets were managed in an inefficient and disorganized manner. The State Islamic Religious Council (SIRC) in Malaysia oversees the waqf administration and is responsible for the legislation in Malaysia that is related to waqf. The SIRC in its role as the sole trustee is in charge of overseeing all aspects of waqf matters. It was made more difficult in Malaysia because there are 13 states and federal territories and each of them has its waqf regulation and as a result, there are different challenges. In addition, the law and enactment of waqf in each state are uniquely distinct from the legislation and enactment in the other states correspondingly. The disparities in size, the varying numbers of waqf properties, and other aspects are the core of these problems. If these Waqf properties were efficiently handled, it would be the ideal solution to the challenge of increasing the social and economic position of the Muslim community. Unfortunately, the waqf institutions in Malaysia do not seem to be capable of playing a proactive role in promoting the economic growth and overall development of Muslims in Malaysia. The purpose of this study is to better understand the challenges in governance, especially in the administration, management, and development of waqf in Malaysia.

### Abstrak

Tanah wakaf berpotensi mendatangkan pendapatan miliaran dolar bagi masyarakat muslim asalkan berhasil dikembangkan dan dikelola. Di masa lalu, tidak ada kerangka hukum yang ditetapkan untuk pengelolaan wakaf di Malaysia. Akibatnya, tanah dan aset wakaf dikelola dengan cara yang tidak efisien dan tidak teratur. Dewan Agama Islam Negara (SIRC) di Malaysia mengawasi administrasi wakaf dan bertanggung jawab atas undang-undang di Malaysia yang terkait dengan wakaf. SIRC dalam perannya sebagai wali amanat tunggal bertugas mengawasi semua aspek urusan wakaf. Itu menjadi lebih sulit di Malaysia karena ada 13 negara

*Kata kunci:*

*Wakaf, Malaysia,*

*Pemerintah*

JEL Classification:

G21, G28, G29

✉ Corresponding author: Yaziz

E-mail: moh\_yaziz@unirazak.edu.my

---

bagian dan wilayah federal dan masing-masing memiliki peraturan wakafnya sendiri dan akibatnya, ada tantangan yang berbeda. Selain itu, undang-undang dan pemberlakuan wakaf di setiap negara bagian secara unik berbeda dengan undang-undang dan pemberlakuan di negara bagian lain. Disparitas ukuran, variasi jumlah harta wakaf, dan aspek lainnya menjadi inti permasalahan tersebut. Jika harta wakaf ini ditangani secara efisien, itu akan menjadi solusi ideal untuk tantangan peningkatan posisi sosial dan ekonomi komunitas Muslim. Sayangnya, lembaga wakaf di Malaysia tampaknya tidak mampu berperan proaktif dalam mendorong pertumbuhan ekonomi dan pembangunan umat Islam secara keseluruhan di Malaysia. Tujuan dari penelitian ini adalah untuk lebih memahami tantangan dalam tata kelola, khususnya dalam administrasi, pengelolaan dan pengembangan wakaf di Malaysia.

---

### 1. Introduction

In Malaysia 8,861.15 hectares of land are held in waqf according to the JAWHAR data from 2013 and a total of 4317.88 hectares of the property has been designated as general waqf (wakaf am) and 4,543.27 hectares of the land has been designated as specific waqf (wakaf khusus) (which has been expressly allocated for a particular purpose and a certain beneficiary). These waqf lands have the potential to bring in billions of dollars in revenue for the Muslim communities if they are developed and maintained effectively. Unfortunately, the waqf institutions in Malaysia do not seem to be capable of playing a proactive part through these lands in promoting the economic development and overall expansion of Muslims in Malaysia. It would be a wonderful answer to the problem of elevating the Muslim community's social and economic standing if these Waqf lands were effectively administered.

The purpose of this study is to better understand the challenges in governance, especially in the administration, management, and development of waqf and waqf lands in particular. This research will consist of reviews of prior research to establish which aspects of waqf lands' administration, management, and development have the greatest potential for enhancement.

#### Administration of the Waqf in its Early Days

Early in the sixteenth century, European powers began establishing colonies in Malay countries, beginning with the Portuguese conquest of Malacca in 1511. They were finally succeeded by the Dutch, who in turn was succeeded by the British. The proclamation of independence in 1957 effectively ended the colonial rule held by these nations. Because each of Malaysia's 13 states and federal territories has its waqf regulations, and because Malaysia now comprises 13 states and federal territories, considering the Malaysian waqf system as a cohesive whole is exceedingly difficult (2018, Murat Çizakça). At the end of their rule in Malaya, the British initiated a centralization drive that continued after independence. This was the ultimate move that the British caused to the waqf development in the country, which were unable to recover from it. In the 1950s, several laws were passed that significantly centralized the waqf system in Malaysia (2018, Murat Çizakça). Land and other assets belonging to waqf were handled in an inefficient and disorganized manner in the past since there was no established legal framework for the waqf administration. People who had the intention of surrendering their land to a general or specific waqf would simply verbally declare their wish to surrender their land to waqf and they would do so in the presence of two Muslim witnesses. Following the adoption of the legislation, a single waqf manager or a group of waqf managers was selected to be in charge of the administration and management

of the land. In those days, the administration of waqf land was nearly straightforward since the society ignored any law related waqf. This was the case because waqf property was owned by the Islamic community. The income generated from specific waqf would be used in a manner that is delicately utilized in line with the one-of-a-kind goal of the benefactors, whereas the earnings generated from general waqf would be used to finance a variety of charitable endeavors that could be of help to Muslim communities. Very few instances of beneficiaries recovering or repossessing land that had been given to them as a gift or breaching the trust that was placed in them were ever documented. The absence of legal provisions for the administration of waqf land also resulted in the appointment of waqf managers from selected groups of people who were trusted and well-respected by the local community. In addition, the absence of legal provisions for the administration of waqf land also led to the appointment of waqf managers. Even though some of these individuals were incapable of administering, managing, or developing the waqf land, these people included virtuous leaders, religious teachers, imams, heads of villages, and members of mosque committees. These people also included pious leaders and religious teachers. In other instances, the title records of the waqf property were amended to reflect their names after it was transferred into their ownership. This occurred after the property was possessed by them. In other instances, a portion of the land that was bequeathed did not become recorded as a waqf but instead remained registered in the names of the donors. This was caused because the management did not keep accurate records of the properties that had been donated to the organization. This unsystematic and disorganized method of administering and managing the waqf land continued until the SIRC was established, and the Enakmen Pentadbiran Hukum Syarak Negeri-Negeri di Malaysia (the Administration of Islamic Law Enactment) was introduced. After those two events, the Administration of Islamic Law Enactment came into effect. (Ismail, Halim & Hanifah, 2015).

### **The Management of Waqf Assets In Malaysia**

Waqf is one of the matters related to the Islamic religion listed under Item 1, List II (State List), Ninth Schedule, Federal Constitution. The administration and management of waqf property in Malaysia are handled and managed by the State Islamic Religious Council (SIRC). It manages and develops waqf property as a fully accountable entity acting in its capacity as a waqf. The Federal Constitution stipulates that a state's legislature has the authority to enact legislation on any subject that is included on the State List in Article 74 (1) and (2). The legislation (provision) on waqf has been codified in the Islamic Religious Administration Law of the states in Malaysia, beginning with this point. (Ghani, Mohamad, Mohamed & Ismail, 2011)

### **Federal Constitution**

#### **List II—State List**

1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam;

the determination of matters of Islamic law and doctrine and Malay custom. (Federal Constitution)

(Ismail, Halim & Hanifah, 2015) Johor is the first state in Malaysia to publish a written legal provision on waqf. This law, known as the Enakmen Larangan Wakaf 1911, was drafted in 1911 (Waqf Prohibition Enactment 1911). Then, in the year 1951, the Enakmen Kawalan Wakaf was shown to the public for the first time in the state of Perak (Control of Waqf Enactment 1951). Later, the Perak Waqf Enactment was revised and rechristened as the Peraturan Kawalan Wakaf 1959 (Perak Control of Waqf Rules 1969). (Ismail, Halim & Hanifah, 2015). In a nutshell, the history of waqf in Malaysia can be traced back to a time one hundred years ago, and Selangor was the first state to designate the SIRC as the manager of waqf assets in 1952. In addition, the history of waqf in Malaysia can be traced back to a time one hundred years ago (Selangor Administration of Muslim Law Enactment, 1952). The move was then followed by Kelantan in 1953 (Kelantan Council of Religion and Malay Custom and Kathis Courts Enactment, 1953), Terengganu in 1955 (Terengganu Administration of Islamic Law Enactment, 1955), Pahang in 1956 (Pahang Administration of the Law of the Religion of Islam Enactment, 1956), Melaka in 1959 (Malacca Administration of Muslim Law Enactment, 1959), Pulau Pinang in 1959 (Penang Administration of Muslim Law Enactment, 1959), Negeri Sembilan in 1960 (Negeri Sembilan Administration of Muslim Law Enactment, 1960), Kedah in 1962 (Kedah Administration of Muslim Law Enactment, 1962), Perlis in 1963 (Perlis Administration of Muslim Law Enactment, 1963), Perak in 1965 (Perak Administration of Muslim Law Enactment, 1965), Federal Territory in 1974 (Federal Territory Administration of Muslim Law Enactment, 1974), Sabah in 1977 (Sabah Administration of Muslim Law Enactment, 1977), Johor in 1978 (Johor Administration of Islamic Law Enactment, 1978), and Sarawak in 2001 (Majlis Islam Sarawak Ordinance, 2001) (2015, Ismail, Salim & Hanafiah).

### **Department of Awqaf, Zakat And Hajj (Jabatan Wakaf, Zakat Dan Haji – "Jawhar")**

The formation of the Department of Awqaf, Zakat, and Hajj (JAWHAR) on March 27, 2004, marked the beginning of the commitment made by the Federal Government of Malaysia to assist in the expansion of the property owned by Muslims. These efforts were first considered as a starting point. It was founded after the announcement made by the previous Prime Minister of Malaysia, Y.A. Bhg Tun Abdullah bin Ahmad Badawi, during a cabinet meeting of the Malaysian government.

The commitment of the former Prime Minister was further articulated in a speech that he delivered on the occasion of the launch of the 9th Malaysia Plan on March 31, 2006, in the Dewan Rakyat: "In addition, we will develop Bumiputera capital resources, such as land and waqf property under the responsibility of the state Islamic religious authorities. The state Islamic religious authorities must take on the responsibility of fardhu kifayah, play an active role in developing the economy of Muslims, and assist in human development efforts". On October 8, 2004, Y.B. Dato' Seri Dr. Abdullah bin Md Zin, a former Minister in the Prime Minister's Department (the minister responsible for Islamic matters) officiated the official establishment of JAWHAR. During his opening remarks, he has addressed that the Minister reaffirmed the following objectives of the government: "The establishment of the Waqf, Zakat & Hajj Department aims to ensure that the administration of waqf property, zakat, and hajj affairs throughout the country is more organized, systematic, and effective. It also means to increase the effectiveness and efficiency of the service delivery system to a more excellent, glorious, and distinguished level".

There are four objectives of JAWHAR as follows:

- a. Empowering and advancing the socio-economic development of the community in the fields of Waqf, Zakat, Mal, and Hajj/ Umrah through close cooperation with Religious Authorities States, and related agencies;
- b. Improving the best governance of Waqf institutions, Zakat, Mal, and Hajj/Umrah with the cooperation of states and related agencies;

- c. Increase the awareness and understanding of the Muslim community about the concept of Waqf, Zakat, Mal, and Hajj/Umrah management general resources and develop the potential of general resources as a container involving the socio-economics of the community; and
- d. Enriching and cultivating the heritage (legacy) in the practice of waqf among the Malaysian community, management coordination, monitoring, and enforcement of umrah as well as improving the quality of the hajj management system to maintain the best governance.

There are four distinct roles that JAWHAR plays, which are as follows:

- a. Plan, monitored, and coordinated modernization and development of Waqf, Zakat, Mal, and Hajj/Umrah institutions can work more effectively;
- b. Establishing smart cooperation with Government agencies, GLC, and private parties in the development of Waqf institutions, Zakat, Mal, and Hajj/Umrah;
- c. Conducting studies and research, publishing and coordination on development issues and programs the treasures of the Muslim community so that they can be fully utilized by the community; and
- d. Plan and coordinate system requirements and uniformity laws for the development of Waqf, Zakat, Mal, and institutions Hajj/Umrah

### **Yayasan Wakaf Malaysia ("YWM")**

It was on July 23, 2008, that JAWHAR created the Yayasan Waqaf Malaysia ("YWM") under the Trustee [Incorporation] Act of 1952. This basis is a national waqf entity. The Chairman of the Board of Trustees of YWM is the YB Minister in the Department of the Prime Minister's Religious Portfolio, while the Vice Chairman is the Director General of the Zakat and Hajj Waqf Department (JAWHAR). The other members of the Board of Trustees consist of representatives of State Islamic Religious Councils, one (1) representative from the Ministry of Finance, one (1) representative from the Ministry of Economic Affairs, and a representative from the corporate sector. The law related to waqf used refers to the enactments regarding waqf in the State Islamic Religious Council (SIRC) and Malaysian laws in force.

The objectives of YWM are as follows:

- a. Develop and advance waqf property throughout the country through collaboration with SIRC as the sole waqf trustee;
- b. Develop and advance waqf property and property of Muslims for charity and charity through economic, educational, social, and welfare development of Muslims;
- c. Generating capital through contemporary, up-to-date, and innovative methods to maximize the benefits of waqf;
- d. Dealing with the problem of socio-economic inequality among Muslims progressively and productively, especially to reduce the poverty gap; and
- e. Complete the endowment trust.

The functions of YWM are as follows:

- a. **COLLECTING WAQF FUNDS**  
Implement programs to fill the Yayasan Trust Fund to be used as the economic capital of Muslims
- b. **DEVELOP AND ADVANCE WAQF PROPERTIES**  
Collaborate with parties involved such as SIRC, Public Universities, and Private Universities to advance and develop waqf property as well as research and research new waqf products
- c. **IMPLEMENT WELFARE AND SOCIAL PROGRAMS**

Designing activities that are beneficial to Muslims for the good of life in this world and the hereafter such as scholarships, assistance to the poor, and implementing waqf trusts as best as possible.

d. RUN INVESTMENT PROGRAM

Make investments in Malaysian Cash Foundation and Waqf funds in any investment permitted by Shariah until the distribution is implemented.

e. ORGANIZE PROMOTION AND PUBLICATION PROGRAMS

- i. Promote and organize various conferences, seminars, and so on; and
- ii. Publish various brochures to expand and advance the objectives of the establishment of the Foundation

### Waqf Legislation in Malaysia

Despite having JAWHAR and YWM as two entities established at the federal level, legislation on waqf in Malaysia is still within the purview of the State Islamic Religious Council (SIRC), which is also responsible for its administration under the State Administrative Law Enactment Islam ("Enakmen Pentadbiran Agama Islam Negeri"). In Malaysia, the State Islamic Religious Council ("SRIC") oversees waqf administration. SIRC, in its capacity as the only trustee, is responsible for managing all aspects of waqf affairs under the regulations specified in waqf law. In addition, the law and enactment of waqf in each state are uniquely distinct from the legislation and enactment in the other states correspondingly (2021, Ismail, Bakar, Ismail & Ramli).

The following is a list of the waqf laws that are now in effect in all of Malaysia's states:

NO	STATE	WAQF LAW	WAQF ENTITY
1	Terengganu	i. Enakmen Wakaf (Negeri Terengganu) 2016. ii. Enakmen Pentadbiran Hal Ehwal Agama Islam (Terengganu) No. 2 Tahun 2001 (seksyen 63 – 69).	-
2	Perak	i. Enakmen Wakaf (Negeri Perak) 2015. ii. Enakmen Pentadbiran Agama Islam (Perak) No. 4 Tahun 2006 (seksyen 78 – 84).	-
3	Melaka	i. Enakmen Wakaf (Negeri Melaka) No. 5 Tahun 2005. ii. Enakmen Pentadbiran Agama Islam (Melaka) No. 7 Tahun 2002 (seksyen 77 – 83).	-
4	Selangor	i. Enakmen Wakaf (Negeri Selangor) 2015. ii. Enakmen Pentadbiran Agama Islam (Selangor) No. 1 Tahun 2003 (seksyen 89 – 95).	Perbadanan Wakaf Selangor
5	Negeri Sembilan	i. Enakmen Wakaf (Negeri Sembilan) No. 5 Tahun 2005 ii. Enakmen Pentadbiran Agama Islam (Negeri Sembilan) No. 10 Tahun 2003 (seksyen 89 – 95).	-
6	Johor	i. Kaedah-Kaedah Wakaf Johor 1983 ii. Enakmen Pentadbiran Agama Islam (Johor) No. 16 Tahun 2003 (seksyen 89 – 95).	-



7	<b>Pulau Pinang</b>	Enakmen Pentadbiran Agama Islam (Pulau Pinang) No. 4 Tahun 2004 (seksyen 89 – 95).	Waqaf PulauPinang Sdn.Bhd.
8	<b>Perlis</b>	Enakmen Pentadbiran Agama Islam (Perlis) No. 4 Tahun 2004 (seksyen 89 – 95).	-
9	<b>Pahang</b>	Enakmen Pentadbiran Undang-undang Islam (Pahang) No.3 Tahun 1991 (seksyen 67 – 81).	-
10	<b>Kedah</b>	Enakmen Pentadbiran Undang-undang Islam (Kedah) No.5 Tahun 2008 (seksyen 52 – 58).	-
11	<b>Kelantan</b>	Enakmen Majlis Agama Islam dan Adat Istiadat Melayu (Kelantan) No. 4 Tahun 1994 (seksyen 61 – 66).	-
12	<b>Sarawak</b>	Ordinan Majlis Islam Sarawak Ordinan 41 Tahun 2001 (Bahagian V- Penubuhan Lembaga Baitulmal dan Wakaf, Baitulmal, Wakaf dan Nazr (seksyen 43 – 55)).	Tabung BaitulmalSarawak
13	<b>Wilayah Persekutuan</b>	Akta Pentadbiran Undang-undang Islam (Wilayah-wilayah Persekutuan) Akta 505 Tahun1993 (Bahagian VI- Kewangan (AmanahKhairat) (seksyen 60 – 71).	Pusat WaqafMAIWP Sdn.Bhd.
14	<b>Sabah</b>	i. Enakmen Wakaf Negeri Sabah 2018 Enakmen Pentadbiran Undang-undang Islam (Sabah) No. 13, 1992	-

According to the table, the states of Terengganu, Perak, Melaka, Selangor, and Negeri Sembilan, as well as Johor and Sabah, have all established Enakmen specifically on Waqf. The remaining states do not have a separate statute to cover the area of waqf nonetheless there are specific provisions that are stated in the individual State Administrative Law Enactment Islam. Among the specific provisions, the following are the ones that stand out as particular as follows (Alhabshi, 1987: 123)

- a. The SIRC is the sole trustee of all waqf properties;
- b. The SIRC is responsible for keeping all documents that pertain to waqf properties;
- c. The SIRC must take the necessary steps to transfer ownership of all waqf properties to itself; and
- d. All money received from specific waqf properties must be used following the purpose for which such properties were intended.

When looking at the current legislation, the allocations related to waqf need to be expanded, updated, and clarified to cater to the requirements of the current situation and the development of waqf. This is because the provisions in the state enactments are not comprehensive. It emphasizes administrative aspects and simple procedures about waqf. The substantive aspects are not emphasized (except under the Waqf Enactment (State of Selangor) 1999) (2011, Ghani, Mohamad, Mohamed, Basri & Ghani).

There has been some progress made toward the goal of transferring ownership of all waqf assets to the state religious councils; nevertheless, this is not a simple procedure, and there have been some obstacles along the way. The SIRC report directly to the Sultan of each state that they are located in. Waqfs are placed under the authority of the Yang Di Pertuan Agong, the King, in those kingdoms that do not have sultans. The actual text of the law includes the following provision:

"Notwithstanding any provision to the contrary, the SIRC... shall be the sole trustee of all awqaf, whether Specific waqf (family waqfs) or waqf am... (charitable waqfs)."

According to this section of the legislation, the SIRC is the only trustee of all awqaf. The phrase "notwithstanding any restriction" means that the SIRC will act as the only trustee even if the waqf deed expressly

states otherwise. Consequently, the trusteeship institution known as mutawalli, which was founded by the organization's founder, has been unexpectedly abolished. The Control of Waqf Enactment, enacted in 1951, clarifies this issue by stating that the State Executive Council could lay off any trustee, appoint a new trustee or trustee, or designate the SIRC to manage the trust of such waqf. This argument is made clearer in the state of Perak by the Control of Wakf Enactment, which was passed in 1951 and states that the State Executive Council has the authority to dismiss any trustee, appoint a new trustee or trustees, or designate the SIRC to administer the trust of such waqf (Ibrahim, 1965: 287). (2018, Murat Çizakça) The British Legislation In Malaya And Its Impact Upon The Malaysian Waqf System.

### **State Islamic Religious Council (Sirc) As the Sole Trustee of Waqf Land**

The purpose of appointing the SIRC as the sole trustee of this waqf property is to ensure that the waqf is managed well and efficiently so that it can generate a good income and can be used by its beneficiaries or for charitable purposes, regardless of whether these purposes were determined by the waqf. The SIRC was appointed as the sole trustee of this waqf property to ensure that the waqf is managed well and efficiently so that it can generate a good income and can be used for the prevention of a variety of issues that are brought about by the nomination of private trustees made by waqfs in the past is an aspect of the selection of SIRC that is of the utmost importance. The untrustworthy attitude of private trustees as well as the interference of heirs has caused the loss of property and waqf status, which further deviates from its original purpose and is contrary to its legal principles (Ghani, Mohamad, Mohamed & Ismail, 2011).

In Malaysia as a whole, the Enactment for each state has designated the SIRC as the exclusive trustee of waqf property. This is the case regardless of whether the waqf in question is public or private is a lack of consistency in establishing the function of the SIRC. In the states of Selangor and Kelantan, for instance, the Majlis functions as the only Inspector (Nazir) for waqf property. The SIRC of Perak serves as the only trustee for the state. The SIRC is the only controller of waqf while it is present in Terengganu. When you take a glance at it, you'll see that the function of the SIRC as a nazir, trustee, and controller does not appear to be all that dominant. Therefore, there is still an opportunity for the waqif to designate its waqf manager. For instance, the waqf of a mosque is handled by the mosque's Waqf Committee; nonetheless, the SIRC is responsible for keeping an eye on all developments and finances. As a result, if SIRC were to be selected as the only trustee, its role would be preeminent (Ghani, Mohamad, Mohamed & Ismail, 2011).

The behaviour of private trustees who are not to be trusted and the meddling of heirs has resulted in the loss of property and the status of waqf, which therefore deviates from waqf's original goal and is opposed to waqf's legal principles. As a result of this circumstance, the SIRC will undoubtedly be able to manage and administer waqf property in every state in a more efficient manner, free from the obstructions and constraints imposed by certain persons or organizations (Ghani, Mohamad, Mohamed & Ismail, 2011).

The most important reason for appointing SIRC as the sole trustee of waqf property is to ensure that waqf is properly administered and maintained efficiently. This is done to ensure that waqf can generate large earnings and income, which the beneficiaries may use to finance any charitable activity (Siti, 2005). It has also been appointed to avoid various problems that may arise due to the appointment of independent trustees, who are sometimes not trustworthy. Additionally, it has been appointed to avoid any intrusion from the heirs, which could lead to the loss of waqf land and the transferring of ownership, both of which deviate from the intention of the endowers and are against Islamic principles. Furthermore, it has been appointed to avoid any interference from the heirs, which could lead to the loss of waqf land and the transfer. (2015, Ismail, Salim & Hanafiah).

Throughout the entire process of decision-making, SIRC retains the right, from a legal point of view, to make agreements, acquire, hold and occupy, convert, transfer, and develop any of the waqf land (whether mobile or immovable), following the Islamic principles. In addition, SIRC can convert, transfer, and develop any



of the waqf lands. SIRC is the sole organization that is authorized to supervise the administration of waqf land as well as its growth.

Since SIRC has been granted the right to develop the properties, it should be able to bring in a higher quantity of money and contribute to the improvement of the economy of the Muslim community. Because of this capacity, the SIRC can form strategic alliances or joint ventures with other Muslim persons, government agencies, corporate organizations, or private groups to guarantee that the assets will provide competitive income and profits on an ongoing basis. (Mohd & Asmah, 2010).

### **Challenges In Waqf Management Across 13 States**

Waqf administration was made more difficult in Malaysia as a result of the country's federal structure. Since there are 13 states, it has also resulted in 13 different challenges. These issues come from differences in size, the number of waqf properties, and other factors. These differences may be summed up in five problems that are shared by all states, and they are as follows (2018, Murat Çizakça):

- a. There is a lack of transparency on the aims and functions of the administrators;
- b. The organizational structure is ineffective;
- c. Waqf officials do not receive enough training;
- d. There are no definite plans or activities to develop waqf properties; and
- e. There is insufficient financial assistance available to put waqf initiatives into action.

Overall, the disorganized administration and management of waqf in the past, such as the absence of documented records of waqf land and the inability to register waqf land, have left the SIRC with two primary challenges that need to be solved. One of these challenges is the inability to register waqf land.

First, the SIRC has trouble determining the real number of waqf lands, as well as their sizes and locations. Second, the SIRC is having trouble asserting the rights to be the only trustees of those unregistered waqfs, which presents a dilemma for the organization. If the endowers themselves or the appointed administrators of the waqf property have passed away, and the heirs claim that the assets are not legitimately proclaimed as waqf by their departed parents or other family members, then the case will become more challenging. The council is only able to track down some of the land and buildings after those assets had already been used for reasons unrelated to charity giving (2015, Che Zuina Ismail, Salim & Hanafiah).

### **The Method for Registering a Waqf**

Based on the registration of waqf land by SIRC found that there are no standard rules or there is no coordination in the land registration done by the State Islamic Religious Council. Though there is no coordination in the waqf land registration aspect done by the council, the aspect registration of waqf land is still done by them and the practices that have been done are not violate the national land regulations which are following what has been provided in the National Land

Code 1965 (Act 56). SIRC is the sole trustee in all waqf properties which include general waqf, specific waqf as well as movable and immovable property. This matter is preserved in the Islamic Religious Administration Act/Enactment and the Waqf Enactment. SIRC's are founded in each state with the same objective, but the operations and management of each one are distinctive. (2011, Ghani, Mohamad, Mohamed, Basri & Ghani).

Currently, waqf can be registered using one of three different approaches, some of which are outlined in Table 1. The Department of General and Mines as well as the Department of Survey and Mapping both assist in carrying out this. (M. Afendi & Sayuti, 2012).

**Method of Waqf Land Registration in Land Office in Malaysia**

No	Method	Provision In National Land Code ("NLC")	Land Office's Forms
1.	Transfer Title	Section 215	Form 14A and form 14B
2.	State Surrender and Re-alienation	Section 195	Form 12A and 12B
3.	Statutory Vesting	Section 416	Form 30A and form 30B

SIRC will register and record the endowment and will register the land with the Department of Director General and Mines (DGM) or the Land Office (LO) of each state. However, the registration method for each DGM and LO is different whether using the method: (i) transfer of ownership using Form 14A; (ii) statutory vesting under section 416C; (iii) surrender of land (surrender) – Form 12A and Form 12B; or (iv) statutory vesting under section 415 NLC – Form 30A. The main factors that affect waqf registration methods are lack of skill in the administration of SIRC and the State Department of Islamic Religion regarding legislation and land administration, noncompliance to the regulations issued, administrative factors, and the legal factors of the land itself. In the registration records, the word "Waqf" is not recorded in the ownership document but instead in the registration records the waqf land is recorded under the name of SIRC, and the record of such waqf is kept in the SIRC office.

The "Waqf" is not recorded in the ownership document because it is not included in the jurisdiction of the NLC and can be considered as "Ownership Restrictions" (Sallehuddin, 2013).

**Issues And Challenges in Developing Waqf Land**

Even though there are obvious criteria that may be chosen and implemented for proper waqf administration and management, it appears that the nazir or mutawalli is not adhering to the implementation standards. This is even though there are explicit criteria. The following is a list of some of the most major challenges and barriers that have surfaced all during the process of developing land that is held in waqf:

**a. Ownership and registration of waqf land problems**

Even though the State Administration of Islamic Law Enactment has made it abundantly clear that SIRC is to be the sole trustee of waqf land in each of the respective states, a considerable amount of waqf land is still registered under individuals, mosque committees, or qariahs, or even the endowers' themselves. This is although the State Administration of Islamic Law Enactment has made it clear that SIRC is to be the sole trustee of waqf land in each SIRC finds it very difficult to track the waqf land and identify the waqf categories since waqfs are comprised of a wide variety of title holders and are solely handled by designated managers. Because of this, tracking the waqf land and identifying the waqf categories is a very difficult task. The authorities will not provide permission for the development of the property for any applications that are presented without the necessary evidence regarding the legal title of the land. In addition to being susceptible to land acquisition and the reclaiming of rights by the heirs, the waqf property is also susceptible to a land invasion. Both threats are present.

The waqf land is not registered and is controlled by SIRC. The fact that the majority of registered waqf land is designated for specific waqf and only a small number of waqf land is registered as waqf has contributed to the land being underdeveloped and financially unproductive (2015, Ismail, Salim & Hanafiah).

**b. Financial constraints**

The development of the waqf land has been slowed down by several issues, the most significant of which is a lack of funds as well as inadequate financial resources. This is a result of the fact that the income that is obtained from the waqf land will be utilized completely to pay for a diverse range of expenses. Waqf assets are subject to regular upkeep and repair, as well as management and administrative costs, all of which have the potential to together result in costs that are higher than the money obtained from waqf holdings. In addition to that, a piece of the profits will furthermore need to be utilized to pay for the many taxes that are owed. The inability of SIRC to recover rent arrears from tenants in a methodical manner and the failure to lease out the property at a competitive rate are two other issues that contribute to the organization's ongoing financial difficulties. Both problems could have been avoided if SIRC had rented out the property at a competitive rate.

**c. Obstacles caused by the physical environment, including the dimensions, composition, and placement of waqf land**

It has been discovered that the majority of the waqf land areas are situated in less strategic places (rural areas), are dispersed, and cannot be developed. Even though some of them are in very advantageous positions inside metropolitan regions, it is not possible to make any progress toward developing such places because of specific restraints and prohibitions such as *sighah* (declaration). SIRC has also had trouble developing property that has been determined to be a kind of Specific Waqf. This is because any plans that are to be implemented must take into consideration the objectives of the endowers as well as the recipients of the endowment. Next, part of the waqf property was too small to be developed, which restricted the building and development of megaprojects that might have provided SIRC with income that was comparable to that of its competitors. If the occupied waqf property is developed, the SIRC will have to pay a significant amount of money for relocation and compensation. Additionally, some of the lands have already been inhabited by people. It is also hard for SIRC to develop the waqf property since the land is maintained by others other than SIRC, who were the original donors of the land.

**d. Shortage of competent manpower**

The inability to undertake the action of updating the records of the renters continuously has also led to the failure of collecting the monthly rent as well as the arrears from the tenants. The tasks of conducting research and planning, as well as funding and putting together development initiatives that are competitive and lucrative, are hampered by a shortage of efficient specialists, energetic professionals, and aggressive strategic planners. Worse still, the "post-mortem" of the planning and development projects, which might assist in evaluating the potential and efficacy of the development projects, is seldom carried out owing to a lack of dynamic specialists. This is very problematic. Because of the excessive amount of bureaucracy and the lack of transparency in the administration of the waqf land, contributions of ideas towards the development of waqf land have been prevented, which has slowed the growth of SIRC as the sole trustee of waqf in Malaysia.

**e. Incomplete databases**

The lack of comprehensive databases that include information on the status of waqf property, as well as its size, geographical location, kind, and other relevant information, has further slowed down the process of developing prospective waqf land. For example, there are a total of 2,477 lots of land that were bequeathed to the Majlis Agama Islam Negeri Johor (MAIJ), which is also known as the Johor State Religious Council. However, only 70 percent of the waqf property was registered and documented as having been owned by the institution. The other thirty percent were not documented, and the property's exact dimensions, location, and owner were unknown (Siti, 2012). It has been determined that the differences in the data at SIRC offices are the consequence of incomplete, out-of-date, and unsystematic data gathering. This discovery was made when it was observed that a situation somewhat like this one is going place in every one of the states. Even though the Department of Awqaf, Zakat, and Hajj (JAWHAR) has made steps to gather information on waqf land in all states, the success of the plan has been hindered by SIRC's lack of cooperation.

#### **f. Unauthorized occupancy of waqf land as well as development on it**

There have been several cases in which non-Muslims have encroached on waqf land, occupied it, or leased it out to utilize it for their purposes. This can take numerous forms, including encroachment, inhabiting the property, or leasing the land. As a direct consequence of this, the SIRC has encountered a considerable deal of resistance while attempting to persuade individuals to vacate the premises. Because of this, the correct development of the property has grown more difficult to achieve, which is not only counter to the intention of the people who donated but also a barrier. It was revealed that some of the renters were engaging in activities that are banned in Islam, and that this was carried out by other tenants as well.

In today's world, numerous distinct types of waqf property development are being put into action by various organizations. Agriculture, livestock farming, and the construction of buildings are the three primary categories of waqf land development that may be differentiated from one another. (Hashim, H., & Ab. Rahman, A., 2015).

#### **Distribution of Waqf Asset**

Provisions in the state enactments are not comprehensive where it emphasizes more administrative aspects and simple procedures about the endowment. The substantive aspects are not emphasized (except under the Waqf Enactment (State of Selangor) 1999). This provision is made together with the matter of vows, except in Johor under the Administrative Enactment Johor Islamic Religion, 1978 where provisions related to waqf are made separately from allocate related to vows. (2011, Ghani, Mohamad, Mohamed, Basri & Abdul Ghani)

Jabatan Wakaf, Zakat dan Haji (JAWHAR) had publish the Management of Waqf Benefits in 2021 and this manual hope can be the guide to all the SIRC for their reference in managing the waqf.

Every benefit accruing from a waqf must be used in conduct that is following the waqf objective and does not go against the Shariah or any other laws currently in effect. In general, waqf benefits can be broken into several main provisions, Welfare & Interest of the Waqf beneficiaries; the administration and management of Waqf assets; development and maintenance of Waqf assets; and the Investment & Development of Waqf assets.

The manual also suggested the distribution of Cash Proceeds from Cash Waqf There are two (2) examples of models for the distribution of cash proceeds from cash waqf that can be used as follows:

- a. Model 1 Allocating cash proceeds from cash waqf to three (3) main parts namely;
  - i. Management and Administration.
  - ii. Virtue and Importance of Mawquf 'Alaih. Waqf Benefit Distribution Management Manual
  - iii. Expansion of Waqf Property.

This model can be used for the management of distribution or benefits for general waqf or specific waqf.

- b. Model 2

Cash proceeds from cash waqf will not be distributed but will be invested until it reaches a value and can be converted into a permanent asset. However, this model is only used for managing the distribution of general waqf benefits.

#### **Conclusion**

In Malaysia, SIRC oversees waqf administration and is responsible for the legislation in Malaysia that is related to waqf and they also the sole trustee and is in charge of overseeing all aspects of waqf matters on the other hand the federal government also created the JAWHAR to assist in the expansion of the property owned by Muslims. Based on observation, it is evident that there is no centralized entity that coordinates all waqf land in Malaysia to consolidate waqf records and information. SIRC and JAWHAR must combine their skills and knowledge to guarantee that the management of Waqf in Malaysia is elevated to a higher level.

**References**

- Administration and Management of Waqf Land in Malaysia: Issues and Solutions 2015 Che Zuina Ismail. Nor Jana Salim. Nor Jawanees Ahmad Hanafiah
- 2018, Murat Çizakça) The British Legislation In Malaya And Its Impact Upon The Malaysian Waqf System
- The Concept of Waqf Property Development: A Study at Penang State Islamic Religious Council (MAINPP) 2021 Che Zuina Ismail, Marina Abu Bakar, Sukriah Ismail & Noor Asyimah Ramli
- The Concept of Waqf Property Development: A Study at Penang State Islamic Religious Council (MAINPP) 2021 Che Zuina Ismail, Marina Abu Bakar, Sukriah Ismail & Noor Asyimah Ramli.
- Wakaf Perumahan Islam Sebagai Instrumen Kewangan Sosial Islam Di Malaysia, 2018, Mohd Faisol Ibrahim
- Amalan Pendaftaran Tanah Wakaf : Satu Kajian Kes Di Bawah Majlis Agama Islam Negeri Di Malaysia, (2011) Sayuti Ab Ghani, Mohd Hamran Mohamad, Hasan Al-Banna Mohamed, Basri Abdul Ghani
- Issues On Waqf Land Registration Process In Malaysia And Improvement Proposals, 2019, Ghazali, Sipan, Raji & Mohammad)
- Afendi M. & Sayuti (2012), Implikasi Perundangan Terhadap Pendaftaran Tanah Wakaf Malaysia. Satu Kajian Dari Aspek Akta Pengambilan Tanah. Retrieved from:  
<http://www.Scribd.Com/Doc/81330622/Implikasi-Pendaftaran-Tanah-Wakaf>
- Department of Awqaf Zakat and Hajj - <https://www.jawhar.gov.my/en/> Yayasan Wakaf Malaysia - <https://www.ywm.gov.my/>