

MANAGEMENT OF WAQF DISPUTES IN MALAYSIA:  
ISSUES AND RECOMMENDATIONS

BY

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## ABSTRACT

Numerous issues surrounding the administration of Waqf and its legal framework have contributed to the occurrence of disputes and conflicts between the State Islamic Religious Councils (SIRCs) and interested parties. Even though there are only a relatively small number of Waqf disputes in Malaysia, failure to effectively manage the Waqf disputes will impair the confidence of the public on the Waqf administrators and therefore affect the growth and development of Waqf in the country. Solutions must therefore be formulated to ensure that these disputes are managed and resolved pragmatically and, if possible, amicably. It is therefore the main objective of this research to propose recommendations which could improve the Waqf dispute resolution framework in Malaysia. To achieve this objective, the nature and types of Waqf disputes often faced in Malaysia and the challenges faced by the parties during the resolution process were determined through an analysis of past Waqf cases and through interviews with relevant Waqf officers in Selangor, Penang and Terengganu. An examination of Malaysia's Waqf legal framework observed that the SIRCs have been equipped with the necessary general powers to ensure that all Waqf disputes are properly addressed. With their given powers, it was found that the SIRCs held preference to amicable settlement before referring any matter to court. However, it has been further discovered that several issues are present throughout the dispute management process which had affected the parties' chances for amicable settlement. The issue of conflict of jurisdiction between the civil and Syariah courts in hearing Waqf disputes was also observed and analysed in this research. Inspired by the best practices of Singapore and India and the benefits which Alternative Dispute Resolution (ADR) could bring, recommendations were proposed at the end of this research with the aim to improve the current dispute resolution process. The proposed recommendations cover the dispute prevention process as well as the resolution and settlement processes by the SIRCs and the courts. Among the key recommendations proposed were on the empowering of the Syariah Courts in hearing Waqf disputes through legal reforms as well as effective administrative strategies which would effectively prevent or mitigate Waqf disputes. It is believed that the recommendations proposed in this research could benefit the Waqf administration and Waqf dispute resolution framework in this country.

## ملخص البحث

ساهمت العديد من القضايا المتعلقة بإدارة الوقف وإطاره القانوني في حدوث المنازعات والصراعات بين المجالس الدينية الإسلامية للولايات والأطراف المعنية. على الرغم من أن عدد منازعات الوقف في ماليزيا صغير نسبياً، غير أنّ الفشل في إدارة هذه المنازعات سيضعف ثقة الجمهور بالمسؤولين عن الوقف، مما يؤثر على نمو وتطور الوقف في البلاد. وبالتالي ينبغي إيجاد حلول لضمان إدارة هذه المنازعات وحلها بشكل عملي، وإن أمكن، بطريقة ودية. وعليه فإن الهدف الرئيسي من هذا البحث هو اقتراح توصيات من شأنها تحسين إطار تسوية المنازعات الوقفية في ماليزيا. ولتحقيق هذا الهدف، تم تحديد طبيعة وأنواع منازعات الوقف التي غالباً ما واجهتها ماليزيا والتحديات التي واجهتها الأطراف المعنية أثناء عملية الحل، وذلك من خلال تحليل قضايا الوقف السابقة وإجراء المقابلات مع موظفي الوقف المعنيين في ولايات سيلانجور وبينانج وترينجانو. يتضح من دراسة الإطار القانوني للأوقاف الماليزية أنه تم منح المجالس الدينية الإسلامية للولايات الصلاحيات العامة اللازمة لضمان تسوية جميع منازعات الوقف على الوجه الأمثل. وعلى الرغم من منحهم لهذه الصلاحيات، فإن المجالس الدينية الإسلامية للولايات تفضّل التسوية الودية قبل إحالة أي مسألة إلى المحكمة. ومع ذلك، فقد لوحظ وجود العديد من القضايا في جميع مراحل إدارة المنازعات التي أثرت على فرص الطرفين في التسوية الودية. وقد تم دراسة وتحليل مسألة تنازع الاختصاص بين المحاكم المدنية والمحاكم الشرعية في النظر في منازعات الوقف في هذا البحث. وذلك باستلهم أفضل الممارسات في سنغافورة والهند، وبالنظر إلى الفوائد التي تحققها الحلول البديلة للمنازعات، والتوصيات المقترحة في نهاية هذا البحث بهدف تحسين عملية تسوية المنازعات الحالية. تتناول التوصيات المقترحة عملية منع المنازعات وكذلك عمليات تسوية المنازعات وحلها من قبل المجالس الدينية الإسلامية للولايات والمحاكم. وإن من التوصيات الرئيسة المقترحة منح المحاكم الشرعية صلاحية النظر في منازعات الوقف من خلال إجراء إصلاحات قانونية، وكذلك وضع استراتيجيات إدارية فعالة من شأنها أن تمنع أو تخفف منازعات الوقف. من المعتقد أن التوصيات المقترحة في هذا البحث يمكن أن تفيدها الجهات المسؤولة عن إدارة الوقف وإطار تسوية المنازعات الوقفية في هذه البلاد.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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- Administration of Muslim Law Act 1966 (Act 27) (Singapore)
- Administration of Muslim Law (State of Selangor) Enactment, 1952 (Selangor Enactment No.3 of 1952)
- Administration of the Religion of Islam (State of Perak) Enactment 2004 (Perak Enactment No.4 of 2004)
- Administration of the Religion of Islam (State of Penang) Enactment 2004 (Enactment 2)
- Administration of the Religion of Islam (State of Selangor) Enactment 2003 (Selangor Enactment No. 1 of 2003)
- Administration of Islamic Religious Affairs (Terengganu) 2001 (Terengganu Enactment No. 2 of 2001)
- Civil Law Act 1956 (Act 67)
- Court of Judicature Act 1964 (Act 91)
- Establishment of Wakaf Corporation of Selangor Order 2011
- Federal Constitution
- Karnataka State Wakf Rules 2017
- Land Acquisition Act 1960 (Act 486)
- Mediation Act 2012 (Act 749)
- Mohammedan and Hindu Endowments Ordinance 1905 (Ordinance No. 92 of 1905)
- National Land Code 1965 (Act 56)
- Penal Code (Act 574)
- Rules of the High Court 1980 (PU(A) 50/1980)
- Specific Relief Act 1950 (Act 137)
- Syariah Court Civil Procedure (State of Selangor) Enactment 2003 (Selangor Enactment No. 4 of 2003)

Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355)

Syariah Court Civil Procedure (Sulh) (Federal Territories) Rules 2004 (P.U.(A) 18/2004)

Trustee Act 1949 (Act 208)

Wakaf Enactment (State of Negeri Sembilan) 2005 (Negeri Sembilan Enactment No. 5 of 2005)

Wakaf Enactment (State of Perak) 2015 (Perak Enactment No. 9 of 2015)

Wakaf Enactment (State of Selangor) 1999 (Selangor Enactment No. 7 of 1999)

Wakaf Enactment (State of Selangor) 2015 (Selangor Enactment No. 15 of 2015)

Wakaf Enactment (State of Terengganu) 2016 (Terengganu Enactment No. 1 of 2016)

Wakf Act 1954 (India)

Wakf Act 1995 (India)

Waqf Act 1995 (*Waqf Amendment Act, 2013*) (India)

Waqf Prohibition Enactment 1911

## **LIST OF ABBREVIATIONS**

SIRC	State Islamic Religious Councils
ADR	Alternative Dispute Resolution
NLC	National Land Code
JAWHAR	Jabatan Wakaf, Zakat dan Haji
JKSM	Syariah Judiciary Department of Malaysia
MAIS	Majlis Agama Islam Selangor
PWS	Perbadanan Wakaf Selangor
MAIDAM	Majlis Agama Islam dan Adat Melayu Terengganu
MAINPP	Majlis Agama Islam Pulau Pinang
MAIWP	Majlis Agama Islam Wilayah Persekutuan
MAIM	Majlis Agama Islam Melaka
UME	Urus Maju Ehsan (M) Sdn. Bhd.
MUIS	Majlis Ugama Islam Singapura
AMLA	The Administration of Muslim Law Act
NAWADCO	National Waqf Development Corporations
WAMSI	Waqf Management System of India
SOP	Standard Operating Procedure

# CHAPTER ONE

## INTRODUCTION

### 1.1 BACKGROUND OF RESEARCH

With the diversification of approaches in developing the Waqf institution, it is foreseeable that its growth in Malaysia will continue in leaps and bounds. New ideas and innovations are being developed to further expand this charitable institution from its classical interpretation to a modern institution which can be integrated with present socio-economic practices.

In the past, Waqf practices in the states of *Malaya* were commonly confined to surrendering plots of land for purposes of building mosques or suraus, religious institutions and burial sites.<sup>1</sup> These types of dedication however have since expanded to other types of endowment; assets both tangible and intangible in nature are now recognized and accepted as Waqf assets as long as they are permissible, beneficial and have value.<sup>2</sup> Cash, shares, stocks, bonds, professional services and intellectual properties are now widely accepted and legally recognised as Waqf assets (*Mawquf*).<sup>3</sup>

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<sup>1</sup> Sharifah Zubaidah Syed Abdul Kader and Nor Asiah Mohamad, "The Legal Position of Waqf Lands in Malaysia," in *Waqf Laws and Management*, edited by Syed Khalid Rashid (Kuala Lumpur: IIUM Press, 2017), 85.

<sup>2</sup> Al Imam Shams Al Muhammad Ibn Al Khatib Shirbaini, *The Book of Endowment (kitab al- waqf) from Mughni al- Muhtaj ila Ma'rifat Ma'ani Alfaz al-Minhaj*, translated with an introduction, appendices and notes by Nicholas Mahdi Lock, (Kuala Lumpur: IBFIM, 2015), 9.

<sup>3</sup> Under the Waqf Enactment (State of Selangor) 2015, Waqf property has been interpreted under section 2 as to include moveable property, immovable property or intellectual property. Benefits, interest and rights in connection to the property as well as expertise and services which has value and in accordance with Islamic Law is also recognized as a Waqf property under this enactment. See Raji Fauziah, Muhammad Tahir Sabit Muhammad, and Ismail Omar, "Intellectual Property an Asset For *Awqaf*," *International Journal of Real Estate Studies*, vol. 9, no. 1 (2015): 5.

The colonization by the British marked a significant change in the administration of Waqf in Malaysia. Through a series of laws, the state Islamic religious councils (SIRC)<sup>4</sup> were recognized as the sole trustees and administrator (*Mutawalli*) for Waqf in the state regardless of any prior arrangements made by the *Wakif* on the administration of the Waqf. Effectively, all Waqf properties were deemed to be vested under the name of each SIRC as trustee.<sup>5</sup> This practice continued even after the period of colonization which ended in the year 1957.<sup>6</sup>

The shift in Waqf administration however has not curbed the participation of interested parties who wish to establish their own endowment either for sustainability or philanthropic purposes. Since Waqf has been identified as a viable fund generator for social economic sustainability projects,<sup>7</sup> Malaysia has witnessed increased participation of various bodies such as corporations<sup>8</sup>, educational institutions<sup>9</sup> and charitable foundations in this sector. These bodies are now recognized as potential *Wakifs*, *Nazhir* (managers) and *Mawquf 'alayh* (beneficiaries), a position previously held by individuals.

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<sup>4</sup> Malaysia consists of fourteen states in total. The administration of Islam of each state are under the jurisdiction of their respective SIRCs. As such, there are fourteen SIRCs which administers Waqf in Malaysia.

<sup>5</sup> Previously, the *Mutawallis* were appointed among the Imams (head of mosque), Bilal or Penghulus. See Mohamad Isa Abd Jalil, Sofri Yahya, and Anwar Pitchay, "The Contemporary Model of Waqf Structure," in *A Perspective on Islamic Wealth Management: Waqf, Hibah, Wasiyah, Estate Distribution*, ed. Mohammad Tahir Sabit Mohammad and Ismail Omar (Johor Bahru: Penerbit UTHM, 2017), 15.

<sup>6</sup> Murat Cizakca, *A History of Philanthropic Foundations: The Islamic World from the 7th Century to the Present*, (Istanbul: Boğaziçi University Press, 2002), 118.

<sup>7</sup> Sultan Nazrin Muizzuddin Shah, "Waqf: Gaining the trust for social economic sustainability", *New Straits Times*, <<https://www.nst.com.my/opinion/columnists/2018/02/338153/waqf-gaining-trust-social-economic-sustainability>> (accessed on 30 July,2018).

<sup>8</sup> Abd Shakor Borham and Siti Mashitoh Mahamood, "Wakaf Korporat Johor Corporation dan Sumbangannya dalam Memenuhi Tanggungjawab Sosial Islam di Malaysia: Satu Tinjauan" *Journal of Techno Social* vol. 5, no. 2 (2013): 66.

<sup>9</sup> Ministry of Higher Education Malaysia, *Enhancing University Income Generation, Endowment and Waqf: University Transformation Programme Purple Book* (Putrajaya: Ministry of Higher Education Malaysia, 2016), 3.

However, with the growth and diversification of stakeholders,<sup>10</sup> coupled with the creation of various Waqf schemes by the SIRC's, it is expected that interaction between these interested parties may bring about friction and disputes.<sup>11</sup> If not managed and resolved effectively, these disputes could potentially diminish the trust between the parties involved and inadvertently affect the development of Waqf in the country.

As the SIRC's are the *Mutawallis* and sole trustees for Waqf in the state, they would also be responsible in overseeing any Waqf disputes occurring in the state. To enable them to properly execute their duties, SIRC's are now granted more power through their state Waqf laws. New provisions are also introduced to ensure the smooth administration of Waqf in the state and to prevent potential disputes.<sup>12</sup> It is however hypothesized that the current Waqf framework of this country is still developing and is inadequate in addressing present and future Waqf disputes which may arise. Parties' access to justice is also limited due to the limitations imposed on the courts in determining Waqf cases and in issuing appropriate remedies. This is evident in reported Waqf cases which shows the apparent conflict of jurisdiction between the civil and

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<sup>10</sup> Stakeholders are explained as constituencies in an organization's environment that are affected by the organization's decisions and actions. See Fazian Hashim and Sabariah Eni, "An Overview of Waqf Management," in *A Perspective on Islamic Wealth Management: Waqf, Hibah, Wasiyah, Estate Distribution*, ed. Mohammad Tahir Sabit Mohammad and Ismail Omar (Johor Bahru: Penerbit UTHM, 2017), 31.

<sup>11</sup> Disputes have been described as disagreements which are specific and involve disagreements which are capable of resolution by negotiation, mediation or third party adjudication. Henry Brown and Arthur Marriott, *ADR Principles and Practice*, (London: Sweet & Maxwell, 2011), 7.

<sup>12</sup> Among the improvement in Waqf governance can be seen through the promulgation of Waqf laws which necessitates the registration of Waqf properties, creation of a Waqf registry and to appoint a Waqf registrar to manage the Waqf registry. Apart from promoting transparency and accountability on the SIRC's, it will also prevent the possibility of dispute pertaining to the status of a Waqf. See section 15 of Waqf Enactment (State of Selangor) 2015.

Syariah courts<sup>13</sup> and the appearance of damaging media reports on disputes involving Waqf properties and the SIRC's as *Mutawallis*.<sup>14</sup>

It has been recorded by Umar Oseni that Waqf disputes in Malaysia revolved mainly around Waqf lands. However, it has also been shown that the evolution of Waqf practices and the increased participation by other stakeholders has given rise to new categories of disputes and conflicts.<sup>15</sup> As the Waqf institution is projected to grow in scale even further in the near future, it can safely be presumed that such expansion will also give rise to future disputes of different natures. Measures to improve the current dispute resolution framework are therefore needed to prepare the Waqf administrators in facing the future Waqf cases and to enable them to effectively manage current disputes.

Apart from the issue involving the jurisdiction of courts and the negative media coverage on Waqf cases, issues which affect the management of Waqf disputes in Malaysia also include; lack of comprehensive laws on Waqf,<sup>16</sup> exorbitant costs and delays in the event of litigation<sup>17</sup> and the lack of expertise by the SIRC's to handle the

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<sup>13</sup> Ibid.

<sup>14</sup> An example of media reports which are potentially damaging to the SIRC's can be seen in the case of Wakaf Sheik Eusoff Sheik Latiff. See *Free Malaysia Today*, "Penang Islamic Authority turned land into wakaf without heirs' consent, court hears", <<https://www.freemalaysiatoday.com/category/nation/2019/11/21/penang-islamic-authority-turned-land-into-wakaf-without-heirs-consent-court-hears/>>(accessed 12 December, 2019).

<sup>15</sup> Umar A Oseni, "Shari'ah Court-annexed ADR: The Need for Effective Dispute Management in Waqf, Hibah and Wasiyyah Cases in Malaysia" in *14th Annual Conference of the Shari'ah Legal Officers of Malaysia organized by Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia*, (Langkawi, November 2012), 9.

<sup>16</sup> Sharifah Zubaidah Syed Abdul Kader and Nor Asiah Mohamad, "Legal Framework for Management of Waqf Land in Malaysia," *Syariah Law Report Articles*, 4 (2014): 17.

<sup>17</sup> Syed Khalid Rashid, "Measures for the Better Management of Awqaf", *IUM Law Journal*, vol. 20. no. 1 (2012): 124.

disputes.<sup>18</sup> These issues have been cited by scholars as factors which have impeded the efforts of the Waqf administrators when dealing with Waqf disputes. Pragmatic solutions which address these issues must therefore be formulated to ensure Waqf disputes in Malaysia can be properly addressed and better still, be prevented. The negative impact of poor dispute management could result in deterioration in the reputation and good name of the SIRC's as Waqf administrators and lack of trust by the public on the potential of Waqf as an instrument for social welfare.

To revive the Waqf institution and return it to its glory, Adi Setia believes that the administration of Waqf needs to be creative, anticipative, proactive and systematic.<sup>19</sup> A similar approach should also be adopted in the context of managing Waqf disputes. In this light, it is therefore the main objective of this research to propose recommendations which could improve the Waqf dispute resolution framework in Malaysia. To achieve this objective, the nature and types of Waqf disputes often faced in Malaysia were determined while also analysing the issues and challenges faced by the parties during the process of managing these disputes. With this information, recommendations based on the current societal needs and future expectations were proposed with the hope that it could improve the current Waqf dispute resolution framework in the country.

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<sup>18</sup> Farah Nadia Abas and Fauziah Raji, "Factors Contributing to Inefficient Management and Maintenance of Waqf Properties: A Literature Review", *International Journal of Islamic and Civilizational Studies*, vol. 5. no. 3 (2018): 59.

<sup>19</sup> Adi Setia, "Waqf, Civil Society & the Civic Economy: Some Preliminary Reflections" in *The Book of Endowment (kitab al- waqf) from Mughni al- Muhtaj ila Ma'rifat Ma'ani Alfaz al-Minhaj*, translated with an introduction, appendices and notes by Nicholas Mahdi Lock (Kuala Lumpur: IBFIM, 2015), 168.