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ISSUES AND CHALLENGES OF WAQF PRACTICE IN MALAYSIA: A REVIEW

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A PEER-REVIEWED ARTICLE

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ABSTRACT

The literature of waqf is no longer foreign in the body of knowledge. Many researchers have written about waqf in various settings and disciplines. One of the waqf subjects studied was on the issues and challenges faced in practising waqf. The objectives of this study are to review and formulate issues and challenges of waqf practices in Malaysia that have been recorded by previous researchers. Using the content analysis method, past studies have been grouped and formulated. As a result, the study found that there are seven (7) issues and challenges of waqf practices that are experienced in most places, i.e. legal issues, awareness and knowledge, lack of funds, idle assets, management inefficiencies, incomplete record data, and illegal invasion.

ABSTRAK

Sastera wakaf tidak lagi asing dalam badan ilmu. Banyak penyelidik telah menulis mengenai wakaf dalam pelbagai tetapan dan disiplin ilmu. Salah satu subjek wakaf yang dikaji adalah mengenai masalah dan cabaran yang dihadapi dalam mempraktikkan wakaf. Objektif kajian ini adalah untuk mengkaji dan merumuskan isu dan cabaran amalan wakaf di Malaysia yang telah direkodkan oleh pengkaji terdahulu. Dengan menggunakan kaedah analisis kandungan, kajian lepas telah dikelompokkan dan dirumuskan. Hasilnya, kajian mendapati bahawa terdapat tujuh (7) masalah dan cabaran amalan wakaf yang dialami di kebanyakan tempat, seperti masalah hukum, kesedaran dan pengetahuan, kekurangan dana, aset terbiar, ketidakcekapan pengurusan, data rekod yang tidak lengkap, dan pencerobohan haram.

Keywords: Issues, challenges, Waqf, Malaysia, Islam

1. Introduction

Waqf is one of the several philanthropy concepts in Islam. The word of waqf is derived from the Arabic language, which means "stop". The person who gives waqf called "*waqif*", the asset given called "*mauquf*", the beneficiary of the waqf called "*mauquf alaih*". This type of philanthropy named after "stop" because of their principle, when someone gives waqf, the asset belongs to the mighty god of Allah¹ SWT,

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¹ Subhanahu wa ta'ala, Arabic for "The most glorified, the highest", Muslim honorific

cannot be sold and cannot be uninherited. When some asset does not belong to any individual, there must be someone or some organisation to manage and act as trustee to the waqf asset which is called "*mutawalli*". The practices of waqf have been carrying out since the time of prophet Muhammad pbuh², with the erection of Nabawi Mosque at Madinah or some scholar said the Khaibar land given by Umar al-Khattab, keep growing, experiencing phases up to and down, until the present day.

Studies related to waqf are no longer foreign among the members of the scholars and practitioners in the field. Initially, the waqf study from 1970 to 1990 was mainly focused on education, history, *fiqh*, and local practice. The study of Othman (1971) in the state of Kedah is an example of the earliest waqf study conducted in Malaysia. Now, there has been many studies about waqf has published, either in the form of journals, books, and conference proceeding. Even in some countries such as Malaysia have, they are on several academic conferences focus on waqf.

The central issue and critical motivation behind this article are the absent of comprehensive paper which review the report of obstacles of waqf in Malaysia. This kind of research paper is significant for an academicians to see the gap and loophole in the body of knowledge of waqf in Malaysia. This type of article also useful to waqf organisation where they can learn existing problems and avoid it. Throughout the past studies, waqf has been studied in various perspectives. One of the common viewpoints is the issues and challenges of waqf practice. Some article soles purposely examined the issues and challenges of waqf practice by interview an expert from academic and practitioner. Some research has a point out the issues and challenges of waqf practice which the authors discovered while they conduct their research. Thus, this article tries to review the issues and challenges of waqf practice that has been pointed out by previous research.

2. Issues and challenges of waqf practice

Legal conflict

In general, the legal conflict of waqf practice occurs in the scope of land rights and the waqf act of every state in Malaysia. In the context of Malaysia, the modelled administration system is based on the colonial model. In essence, the Malaysian Land Law consists of written and unwritten laws, including customary law and Syariah law. Principal legislation is the National Land Code (NLC), 1995 based on Australia Torrens System, Strata Copyright Act, 1985 and Land Acquisition Act, 1966, Sarawak Land Code (CAP 81) and Sabah Land Ordinance (CAP 88) 8. Data indicates that the causes and jurisdiction of the waqf institution, Zakat and Baitulmal in managing the funds or assets entrusted are subject to the enactment and Bill under the laws of each body. The problem was increasingly unfolding when there was a conflict between the Syariah Court and the civil court (Abdul Malik, 2012; Suziana Mohamed Nor & Romzie Rosman, 2017).

Abdul Majid & Said (2014) found that there is no specific provision related to waqf in the state enactment, the procedure for acquiring waqf land is more complicated than ordinary land, and there is a conflict between the Syariah court and the civil court. The causes and jurisdiction of waqf, zakat and baitulmal institutions in managing the funds or property entrusted are subject to enactments and bills under the respective body laws (Abdullah Abdul Ghani *et al.*, 2017). Mahamood *et al.* (2018) also found that there is a need to obtain permission and approval from the State Islamic Religious Council (SIRC) as the sole trustee of waqf property for all UAs in the states, including the Federal Territories to implement waqf.

² Peace be upon him

The problem of consent to the development of land or change the conditions of land from the landowners is too difficult due to the lack of specific provisions relating to waqf in the state enactment. The problem becomes more complicated if the mutawalli intends to sell the land or serve it for development purposes. To date, there are many cases related to waqf, which are still being delayed in civil courts throughout Malaysia (Abdul Malik, 2012). Most legal problems exist because waqf is a religious concept that requires recognition and enforcement of the law. The religious concept of waqf based on old theories without serious reading, thus producing a legal framework which is also based on the interpretation of very long religious texts (Mohd Puad, Jamlus Rafdi, & Shahar, 2014). The asset revaluation issue also arose from different interpretations and views for each of the Waqf, zakat and state baitulmal institutions (Abdullah Abdul Ghani *et al.*, 2017).

This legal issue not only occurs in Malaysia, but occurs in some other Muslim countries of the world (The World Bank Group, INCEIF, & ISRA, 2019). In India, most of the state Government failed to establish a department regulating the waqf or did not enforce the existing departments and caused these departments not to work (Rasool, 2017). In China, the first issue was about excessive barriers due to the dual management mechanism from the government (Binghaia & Kassim, 2017).

Low level of knowledge and awareness

Although the practice of waqf in Malaysia has been recorded since the arrival of Islam in Malaysia (Abd Jalil, 2018), the issue and challenges of a low level of knowledge and awareness among Muslims are still taking place. According to Ismail, Rosele, & Ramli (2015), the level of awareness and knowledge (*Marhalah al-Thaqafah*) of the community on waqf and its importance is still lacking. In the case of implementing waqf education for higher education institutions in Malaysia, Mohamed Nor & Romzie Rosman (2017) noted that the community is less than waqf because of lack of understanding about waqf as well as waqf governance which could not be adequately implemented. He stated this was attributed to the knowledge of the community on the role of waqf where they were more looking at the movable property to be used as waqf assets. Therefore, interested parties should provide a profound understanding of the community on the genuine concept of waqf.

The World Bank Group *et al.* (2019) has confirmed that there is a limited scope of research in the field of waqf, staff training, and public awareness of the excellent waqf potential for the benefit of the community. The findings of this low waqf awareness have been supported by research (Mohd Puad *et al.*, 2014). As said by Suhaimi & Rahman (2017), there is also confusion among Muslims concerning the difference between waqf and regular donations. Let alone the public; there are studies that show university staff still not understand the importance of waqf education (Suziana Mohamed Nor & Romzie Rosman, 2017).

Lack of funds

To develop assets and waqf assets, financial aspects play an essential opening. The lack of funds has led to many planned development projects. JAWHAR received many applications for a high-intensity waqf project to be developed from the MAIN. Under RMK-9, a total of 39 project applications submitted only 23 approved projects to be developed. While under RMK-10, a total of 42 projects applied include 10 RMK-9 extension projects to all ten projects of RMK-9 continued construction. No new RMK-10 project was approved (Mohd, 2015).

The shortage of funds is not a new issue for the estate of waqf assets. Abd Mutalib & Selamah Maamor (2018) found that the most significant problems and challenges faced by SIRC in an effort to develop waqf assets are a shortage of funds. Some of the factors that led to a lack of funds were low rental rates at the facility of waqf (Mohd Ali, Johari, Fauzi, Ahmad, & Chuweni, 2016). In addition, The World Bank Group *et al.* (2019) claims that most of the waqf stakeholders do not have so many investment strategies

that can be applied. This caused, until the trustees faced with the constraints in terms of the fund to manage waqf at the institutional level (Mahmood, Shahimi, Musafar Hameed, & Mustaffha, 2017). The absence of incentives and tax relief to the waqif resulted in a which they refused to be give more (Mahamood *et al.*, 2018). There are also those who do not want to be waqf because they do not believe in waqf trustees (Ahmad, 2019; Pitchay & Abd Jalil, 2016; Binghaia & Kassim, 2017). Funds on the waqf institution are not sufficient to cover the required costs (Mahmood, Mustaffha, Musafar Hameed, & Johari, 2017). This fund shortage problem not only occurs in Malaysia, but happens in other Muslim countries such as India, Yemen, Indonesia and others (Saad, Mohammed, & Al-Jubari, 2019)

Idle assets and land

According to statistics from the state Islamic Religious Council's records, Malaysia has over 33 thousand acres of waqf land. However, until in 2015, the notes showed only seven per cent of which were developed (Abd Jalil, 2018). This means that 93% of the land of waqf in Malaysia is not productive. Issue of the problem this waqf land development was also touched by (Abdul Majid & Said, 2014). In the state of Selangor likewise in other states, many waqf lands were challenging to develop because of its non-strategic location as far away in the interior (Abd Mutalib & Selamah Maamor, 2018; Mohd Puad *et al.*, 2014). According to (The World Bank Group *et al.*, 2019), many of the complaints on waqf assets and buildings were not adequately maintained. In Yemen, Saad *et al.* (2019) recorded that most of the waqf land was not developed.

Abdul Majid & Said (2014) pointed out that many waqf lands were abandoned due to the small waqf land which prevented the development project. Apart from that, the waqf of the scattered land is also challenging to develop (Abdul Majid & Said, 2014). There are also cases where properties have been waqf not explored for development purposes (Abul & Mohammad Abdus, 2010). Other issues and challenges faced by waqf institutions in using waqf property are the orientation of the building not suitable or incorrectly built. This happens when the building is made does not overlook the road instead of facing the field by the way behind the building (Abd Mutalib & Selamah Maamor, 2018). There is also waqf land which is so strategic and located in the city centre but still undeveloped due to its oversized size (Mohd, 2015). However, says Rasool (2017), without healthy finances, waqf assets will not be able to be developed at all.

Management Inefficiencies

waqf institutions such as zakat institutions and Baitulmal were not entirely responsible for bringing the Muslims towards proper development (Al-Habsyi, 1986). The unstable performance of the management is divided into three stages. The first stage is a new project manager, taking it from support staff. Because instability is their inability to control and close each project segment, as support staff usually work in specific tasks, such as buyers, secretaries, and accountants, while project manager takes care of all aspects (Binghaia & Kassim, 2017). Ahmad (2019), in its opinion, the management of waqf was attributed to the lack of adequate organisational, organisation and coordination by leaders in the states. The World Bank Group *et al.* (2019) adding to the state that the waqf management has low credibility.

In other studies, Binghaia & Kassim (2017) found that waqf resources were not adequately managed and project planning was not carefully developed. They also found that the coordinating between one trustee of waqf and the trustees of the waqf are not strong. According to Abas & Raji (2018), there were five factors that resulted in the waqf in Malaysia cannot be managed efficiently, namely; financial constraints, lack of calibre waqf managers, many waqf lands that have yet to be registered with play, obsolete data, and waqif heirs. Mohd Puad *et al.* (2014) state that the lack of professional and technical expertise in developing waqf assets is part of the constraints faced by the SIRC. The management problems and administration of the waqf also occurred as the number of staff assigned to manage waqf was not equal to the total guarded assets (Abdul Majid & Said, 2014). Part of the staff stationed in the waqf management

body was found to be less skilled in handling various cases involving the waqf property management (Abas & Raji, 2018; Rabitah Harun, Zuraidah Mohamed Isa, & Norhidayah Ali, 2012).

In addition, there was also a problem of breach of agreement in the waqf property management (Megat Abd Rahman *et al.*, 2006). There is a mentality officer who manages waqf does not play a role to develop waqf (Suziana Mohamed Nor & Romzie Rosman, 2017). Typically workers must perform their duties due to lack of human resources (Mahmood, Shahimi, *et al.*, 2017). In Yemen, according to Saad *et al.* (2019), the waqf trustee has no experience in managing waqf. There is also a case, the manager who has already been competent to stop work (Binghaia & Kassim, 2017). The insufficiency of the staff has resulted in many more land waqf cases that have not been processed to the state Islamic religious Council (Abdul Malik, 2012).

Incomplete Data

One of the issues that blocked land development is a registration issue and incomplete information in the land of waqf (Hisham, 2006; Md Zain, 2005; Rahman, Bakar, & Ismail, 1999). When referred to land law in this country, the National Land Code 1965 (Act 56) explains no person or specific body entitled on an unregistered Land (Sek. 340, NLC) (Ghani, Mohamed, Mohamad, & Ghani, 2012). Disclosure issues for waqf, zakat and baitulmal activities are the most frequently discussed issues by the study participants (Abdullah Abdul Ghani *et al.*, 2017). The SIRC is not able to take action to register old waqf land which has not been transferred and has not been registered in the SIRC name for the following reasons; A. Waqif has died b. Grant, in the name of Penghulu³/Khadi⁴ C. Verbal oral without supporting documents D. Land on other stakeholders, E. Agriculture land less than 1 acre (Mohd, 2015). The audit review of the Committee found that the accounting standards of waqf have resulted in the statements prepared by the non-uniform and varied. There is a waqf institution that does not have a report management system, but in terms of evaluation, the report is carried out annually (Mahmood, Mustaffha, *et al.*, 2017).

The difference in the governance model can have a direct impact on accounting practices and financial reporting for these institutions (Abdullah Abdul Ghani *et al.*, 2017). In China, data from the government showed that most of the waqf institutions had low transparency levels (Binghaia & Kassim, 2017). In this case, the ministry in India has given the grant to all waqf board to set up centralised computing facilities; unfortunately, the process is prolonged (Rasool, 2017). The findings of Abas & Raji (2018) showed that outdated data was no right survey. Although the SIRC has been appointed as the sole trustee of the waqf property in their respective states, there are still many waqf properties that are yet registered under the individual or the mosque committee.

Illegal invasion

Waqf land is often exposed to illegal invasion (Abdul Majid & Said, 2014) as stated in the previous section, that many land waqfs were in remote locations and were challenging to develop due to far from the community's residents. These waqf lands are sometimes used for farming without the permission of the waqf trustee. Occurring in some places such as Pulau Pinang and Johor, tenants consisted of non-Muslims and more sad cases there was a case of waqf property which was spared to the hand of non-Muslims following the failure of the beneficiary registered it (Ibrahim, 2005).

In Penang, there were cases where the base population in the waqf lands refused to move (Ibrahim, 2005). The land was occupied by squatters/tenants who refused to move. This usually occurs in a strategic land (e.g. on the land of waqf Cauder of Penang Island) (Mohd, 2015). The issue reached its peak when the land of waqf was clearly endowed but demanded in court by the heir of waqif (Abas & Raji, 2018). The

³ Head of village

⁴ Marriage officer

waqf lands were also encroached and used by Parties not responsible for the establishment of the placement and business premises (Isamail *et al.*, 2015). There is a case where family members are abusing the property of waqf for personal interest (Mohd Puad *et al.*, 2014). In India, the Joint Committee of Parliament in its own report estimates that around 70 to 80 per cent of waqf land was occupied illegally (Rasool, 2017).

3. Conclusion

In conclusion, this article found that there are seven (7) common issues and challenges of waqf practices in Malaysia which are legal conflict, low level of knowledge and awareness, lack of funds, idle asset and waqf land, management inefficiencies, incomplete data, and illegal invasion. Undoubtedly, there are also other issues that are ever recorded, but it is an isolated issue. The limitation of this research is that findings only came from the literature without confirmation from the expert panel. This article is expected to contribute to the body of knowledge and helps the mutawalli to manage the waqf asset more efficient.

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