

**REFORMING WAQF LAW IN THE FEDERAL TERRITORIES:
A STUDY ON LEGAL ISSUES AND CHALLENGES**

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Abstract	<p><i>Waqf plays a significant role in national development as it supports infrastructure development, healthcare, education, and economic empowerment through the utilization of waqf funds. Currently, waqf matters are regulated by the Islamic Religious Administration (Federal Territories) Act 1993, which has led to various legal issues and problems, including inconsistencies and conflicts of jurisdiction. Therefore, this study discusses the issue and direction of waqf law in the Federal Territories. Through the utilization of qualitative research methods, including semi structured interviews with key stakeholders and waqf law expert, a deeper understanding of the prevailing problems and conflicts surrounding waqf law in the Federal Territories was attained. The findings of this study highlight the urgent need for a re-evaluation of the existing legal framework governing waqf. The government's proposal to introduce a dedicated act exclusively for waqf is identified as a potential solution to effectively address the legal challenges encountered. A comprehensive waqf law reform approach is deemed necessary to overcome the various issues related to waqf administration. These insights shed light on the inconsistencies and jurisdictional conflicts that have arisen as a result of the current regulatory framework. The study argues that the implementation of a specialized waqf act would serve to harmonize and streamline the legal aspects of waqf administration. This proposed legislation would provide a clear and unified regulatory framework, resolving conflicts and enhancing the efficiency of waqf governance. The findings demonstrate that the government's proposal to introduce an act exclusively for waqf will effectively address the legal issues encountered. A comprehensive waqf law reform approach is considered necessary to overcome issues related to waqf.</i></p> <p><i>Keywords: Waqf, Federal, Territory, Legal, Issues.</i></p>
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INTRODUCTION

Waqf is a significant Islamic financial instrument, whereby a person donates a property to a charitable cause in the name of Allah SWT. The donated property, known as the waqf property, is considered inalienable, in that it can never be sold, taken back or owned by any

individual. Waqf is an important pillar of the Islamic social finance system and has been widely used in the Muslim world for centuries to support various social and economic activities, including education, healthcare, and poverty alleviation. In Malaysia, waqf matters are regulated by the Islamic Religious Administration (Federal Territories) Act 1993 (Act 505). However, the legislative provisions related to waqf in Malaysia are scattered across 14 different acts and enactments, which can result in inconsistencies and conflicts of jurisdiction. This fragmented regulatory framework has resulted in various legal issues that need to be addressed in order to achieve the objectives of waqf implementation more effectively.

In this regard, many scholars have called for comprehensive waqf law reforms in Malaysia to ensure that the governance of waqf is efficient and effective. One proposed solution is to establish a separate law on waqf to provide a unified and comprehensive regulatory framework for waqf matters. This would help to streamline the legal framework for waqf, address the existing legal issues, and promote greater transparency and accountability in waqf management. Furthermore, proper administration and management of waqf properties are crucial to ensure that the objectives of waqf implementation are achieved. This requires effective collaboration between all stakeholders, including the government, waqf beneficiaries, and other relevant parties. By leveraging the waqf properties for economic development, local communities can benefit from the social and economic activities supported by the waqf, contributing to the betterment of society as a whole.

METHODOLOGY

To obtain clarification, data, and further information on the administration practices and management of waqf activities in the Federal Territory, as well as feedback on legal issues of waqf in Malaysia, a qualitative research approach was used through an interview session. The respondents were three officers from the Legal Unit and the Wakaf Unit of the Islamic Religious Council of the Federal Region (MAIWP). Qualitative research is the most appropriate method for analyzing descriptive studies, which involve verbal words or writings on observable human behavior (Taylor and Bogdan, 1984). This approach is ideal for holistically understanding the human experience in a given context (Merriam, 1998; Patton, 2002). The interviews followed the focus group interview techniques (Kamarul Azmi 2012) and a semi-structured approach (Merriam, 1998), where specific respondents were selected for the interview and key questions were prepared. Follow-up questions were based on the answers and responses given by the respondents. Thus, this method allowed for a comprehensive understanding of the practices and challenges related to waqf management and administration in the Federal Territory.

LEGAL ISSUES OF WAQF IN THE FEDERAL TERRITORY

The study discovered that in the Federal Territory, the implementation of waqf is limited due to the absence of a specific waqf law. Therefore, the efforts of the Department of Islamic Development Malaysia (JAKIM) to draft a Waqf Act specifically for the Federal Territory should be supported by all parties, as it ensures that waqf implementation is up-to-date and meets current needs (Mohd Izzat Amsyar Mohd Arif, 2019). Only five states in Malaysia have enacted specific waqf enactments through their respective State Legislative Assembly, namely, Melaka, Negeri Sembilan, Selangor, Perak, and Terengganu. Meanwhile, the remaining states have waqf governance provisions placed in their state Islamic religious administration enactment, except for Johor, which has the Wakaf (Johor) Rules 1983.

The existing provisions on waqf in the Administration of Islamic Law (Federal Territories) Act 1993 are too general and do not provide a suitable and effective procedural arrangement for the rapidly growing waqf activities in the Federal Territory. Therefore, the drafting of special laws can be a comprehensive legal mechanism for regulating and administering all waqf-related activities (Farra Munna Harun et al, 2016). Although there are those who are of the opinion that laws of a general nature are easier to administer than those

that are specific in the context of governance and jurisprudence, if a law enacted is too general or the existing provisions are very limited and not inclusive of the substantive aspects and procedural arrangements as required, then it will be exposed to various interpretations. Hence, this situation will certainly lead to disability and governance flaws. Worse, all actions of the State Islamic Religious Council (MAIN) as the administrator of waqf property can be challenged through court action by certain parties. Therefore, to avoid future conflicts, the efforts taken by JAKIM at the federal level should be exemplified by other states that have not yet enacted their respective waqf specific enactments.

Since there is no legal provision that sets the definition of waqf, then in practice, MAIWP adopts the definition and guidelines prepared by the Department of Zakat, Wakaf and Hajj (JAWHAR). To date, even without the provisions of the law, MAIWP practices the practice of recognition and granting credentials to mutawalli to qualified ones. For example, for education waqf, universities that have been granted *mutawalli* status by MAIWP are; University of Malaya (UM), National Defence University Malaysia (UPNM), Universiti Teknologi Malaysia Kuala Lumpur (UTM KL), Mara Poly-Tech College (KPTM) and Baitulmal Professional Institute (IPB). Cash waqf funds (movable property) collected, will be held and self-managed by *mutawalli* without having to be sent back to MAIWP provided:

- i. Mutawalli need to submit activity and financial reports on a periodic (4 times a year).
- ii. There are MAIWP representatives on the board of directors *Mutawalli* (university)

This process smoothes the administration of waqf property because, if the funds are handed back to MAIWP (as is the practice in some states), it will lead to an accounting conflict and delay the process of providing assistance to the target group due to bureaucratic redundancies. However, for immovable property such as property assets, it will still be registered as a waqf property, with MAIWP as a trustee. At MAIWP, the Waqf Unit is responsible for managing immovable property waqf while the Waqf Centre is responsible for managing the waqf of movable property including the collection and promotion of cash waqf or trust certificates. The Wakaf Unit operates at the PERKIM Building, No. 150 Jalan Ipoh, 51200 Kuala Lumpur and the Wakaf Centre operates at Level 34 of Menara Imarah Wakaf, No 22 Jalan Perak, 50450 Kuala Lumpur. In the gornvern aspect, every decision on waqf has to go through (in order);

- i. Islamic Law Clearing Committee (Mufti Department);
- ii. Waqf, Will, Estate and General Resources Committee (KWSA); And
- iii. Development and Investment Committee.

Therefore, MAIWP as the sole trustee, will execute the waqf according to the wishes and intentions of the person who is wakaf. The waqf *istibdal* instrument practiced by MAIWP is the replacement of a property with a ringgit valuation rather than a replacement of a property with a property. For example, a waqf giver gives land to build a school. Due to the small size of the land, it is impossible for the school to build, the valuation of the land is assessed and diistibdal with the valuation of ringgit. The amount of such money is channeled for the development of the school (being part of the fund).

Apart from the *istibdal* problem, in the context of waqf land administration, according to Ahmad Shazrin et al (2018), based on the response received from MAIN, the current policy on the aspect of waqf land development allocation from the Federal Government is considered not to give much advantage to MAIN. As a result, the Federal Government is only inclined to set policies that can give the current government an advantage to win the hearts of the people (political mileage). Meanwhile, many other problems that do not receive attention from the government such as the issue of lackof funds

in administering waqf property make it a constraint that makes its development unworkable (Shahrina Romli, 2018).

In the governance of waqf activities, the Islamic Religious Administration (Federal Territories) Act 1993 (Act 505) was found to be non-comprehensive due to the absence of a specific definition of *mutawalli* and *nazir* waqf. In fact, the procedural aspects of enforcement and implementation of waqf are not directly touched upon in any provision. Section 61 stipulates that MAIWP is the sole trustee of all waqf, whether general waqf or special waqf. The interpretation of 'single trustee' as enshrined means, 'only' and 'not other than'; i.e. the exclusive authority of MAIWP to be registered as a trustee for registered waqf properties.

According to Sharifah Zubaidah (2016), the waqf law in Malaysia which makes the State Islamic Religious Council (MAIN) the 'single trustee' of waqf property in the state has caused discontent from several parties, including private trustees and sometimes beneficiaries under special waqf. Thus, this provision has caused legal problems especially when it comes to jurisdictional and legal conflicts between the Federal Territory Islamic Religious Council (MAIWP) and the State Islamic Religious Council (MAIN) in other states. Although the law has established this to ensure the smooth administration of waqf property so that it can be used as required by the waqf (Che Zurina Ismail et al, 2015), the law of waqf should be reviewed. This is because, the success of waqf administration depends on the effectiveness of waqf property management which also involves several activities such as property and fund raising, as well as the distribution and investment of funds that require expertise, experience and best governance of fund management which is an important element of the corporate sector (Asharaf Mohd Ramli, 2014). Therefore, these factors; such as the issue of professionalism, accountability and transparency in the management of the funds The assets should be taken into account and enshrined as written laws to ensure effective and comprehensive implementation.

It is also suggested that looking at the development of waqf during the effort to develop the eminence of the waqf should not be the exclusive authority of the State Islamic Religious Council. Although it has been provided by law in each state that the State Islamic Religious Council is the 'single trustee' of the waqf property, this provision should be refined and re-harmonized. Section 61 of Act 505 has made MAIWP the sole trustee of the property of a waqf person resident in the Federal Territory, even where the waqf property is located. Based on this provision, MAIWP is responsible as a trustee including for waqf property located outside the Federal Territory's delimitation territory; i.e. in other states. As a result of the provisions, overlapping jurisdictional conflicts regarding waqf land may occur with MAIN in other states. This constraint has made it difficult for concerted efforts by MAIWP as the implementation of waqf is limited to the limitations of the delimitation jurisdiction (Shahrina Romli, 2018). This legal barrier, in fact, is to safeguard the *maslahah* of Muslims so that the property of waqf can be managed transparently and perfectly (Noor Azura et. al, 2022).

Thus, to overcome the limitations of this jurisdictional problem, MAIWP takes the approach of working with MAIN in other states to resolve issues and conflicts through a mutual consent and understanding approach. For example, Ahmad Dawjee Dadabhoj's waqf property which resides in Masjid India (Federal Territory) but the waqf property is located in the state of Selangor. A mutual agreement was reached to designate the Selangor Islamic Religious Council (MAIS) as a registered trustee and MAIWP as the beneficiary of the waqf property. In addition, the registration of waqf properties is confidential as the registration process has to be in accordance with the practices of the Land Office which varies according to the place and state.

In addition, MAIWP's jurisdiction in carrying out the responsibility of managing waqf is limited to Muslims only. MAIWP has no power if it involves the property of a non-Muslim or a company. In practice, a waqf property owned by a company may make Amanah Raya Berhad a trustee of the property. This is because, until now, a company is an entity that is incorporated into a legal entity and is not defined as a Muslim. Even if a company is owned by a Muslim (partial or fully), MAIWP has no power to enforce the law on it. Just like the issue

to oblige the company to pay zakat. Therefore, this issue is still being discussed and debated to date. The Syariah Court has taken a subject matter *approach* to justify its jurisdiction to hear and decide cases involving non-Muslims. In example, the case involves the verification of waqf of the estate claimed by non-Muslim members of his family.

The existing Act 505 only emphasizes the administrative and procedural aspects of waqf only (Farra Munna Harun et al, 2016). There is no provision on substantive aspects especially on offenses and punishments (for convictions) in relation to waqf activities (such as the collection of waqf funds without permission) in Act 505 or the Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559). Due to the absence of specific legal provisions that stipulate offences and punishments for offences involving waqf, MAIWP takes a consultative and non-aggressive approach for anyone found to be illegally collecting waqf funds (without credential as *mutawalli*). In the records to date, no arrests or prosecutions have been made by the Enforcement Unit and Prosecution Unit of the Federal Territory Islamic Religious Department (JAWI).

In addition, the judgment by the court in the case of *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman* (1992) 2 MLJ244 should be taken seriously. Although the subject of dispute in this case involves the field of waqf where both parties are in conflict are Muslim, the upper court ruled that the civil High Court is authorized to hear and decide the case. This is due to the fact that the Administration of Islamic Law (Penang) Enactment 1959 does not provide for any provision of any injunctive remedy which makes the Syariah Court no longer in jurisdiction even on matters of waqf. Therefore, the absence of a comprehensive law is also found to affect the jurisdiction of the Syariah Court.

CONCLUSION AND RECOMMENDATIONS

Utilizing the Islamic financial instrument of *ijtihad*, waqf has the potential to benefit the ummah in various sectors such as education, health services, economic activities, religion, agriculture, and more. The successful development of the Wakaf Ahmad Dawjee Dadabhy in the Federal Territory by MAIWP, Lembaga Tabung Haji (LTH), and Bank Islam Malaysia Berhad (BIMB) should be used as a model for the development of waqf land for commercial purposes in Malaysia. Private sector initiatives to invigorate the eminence of waqf in Malaysia should be recognized and encouraged, but proper channels and means should be followed to prevent irregularities.

The governance of waqf is a crucial aspect to ensure the proper management and utilization of waqf assets. One of the key measures to ensure good governance is the establishment of specific guidelines for the management of waqf. These guidelines should cover various aspects of waqf management, including the appointment of qualified trust managers, the conduct of financial audits and activity reports, and obtaining the opinion of Islamic law from a single authority. The appointment of qualified trust managers is important to ensure the proper management of waqf assets. Trust managers should possess the necessary expertise and knowledge to effectively manage waqf assets and distribute the benefits in accordance with Islamic law. In addition, the conduct of regular financial audits and activity reports is crucial to ensure transparency and accountability in waqf management. This helps to prevent the misuse or misappropriation of waqf funds by any interested parties.

It is also important to obtain the opinion of Islamic law from a single authority to ensure consistency in the interpretation of Islamic law related to waqf. This can prevent conflicts or disputes that may arise due to differing interpretations of Islamic law related to waqf. The opinion of Islamic law can also help to ensure that the management and utilization of waqf assets are carried out in accordance with Islamic principles.

In addition to specific guidelines for waqf governance, it is also essential to create a special legal guide for waqf to prevent the essence and important elements of waqf from being compromised during the legislative process. This legal guide can serve as a reference for states that intend to enact waqf laws in their respective states. It can ensure that the legislative process is carried out in a way that preserves the essence and important elements

of waqf. This can prevent the potential dilution or misinterpretation of Islamic principles related to waqf in the legislative process.

In conclusion, the establishment of specific guidelines for waqf governance, including the appointment of qualified trust managers, the conduct of regular financial audits and activity reports, obtaining the opinion of Islamic law from a single authority, and the creation of a special legal guide for waqf are important measures to ensure proper management and utilization of waqf assets in accordance with Islamic principles. Managing waqf effectively requires expert management and a focus on legal issues and challenges to ensure that the wishes of the waqf are achieved and utilized in accordance with Islamic law. Therefore, authorities should provide clear procedural arrangements and legal mechanisms for private efforts in developing waqf instruments and products while preventing any misuse of funds by irresponsible parties.

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