

REVIEWING THE LAW FOR MUSLIM AFFAIRS IN ENHANCING THE WAQF INSTITUTION IN THAILAND: A WAY FORWARD

SULAIMAN DORLOH

*Sultan Sharif Ali Islamic University
Brunei Darussalam*

ABSTRACT

Waqf institution is one of the most important institution in Islamic economy. Reducing the burden of the government and fulfilling social needs especially for Muslim society are always referred to as *waqf's* roles. In a majority of Muslim countries, where Shari'ah law is applicable, *waqf* property is managed by professional bodies. The government introduces *Awqaf* Departments to supervise and distribute *waqf* property accordingly. In some non-Muslim countries where Muslims are the minority, *waqf* property is managed by voluntary agencies under a small unit supervised by the Mosque Committee Members(MCM). The discussion on the roles of *waqf* institution in southern Thailand in order to explore and investigate as to what extent does *waqf* institution and Thai law accomodate *waqf* institution in minimising and eradicating the poverty in the predominated Muslim provinces such as Narathiwat province in order to identify various laws that recognize *waqf* property for Muslims and legal obstacles that impede the improvement of *waqf* institution in the country. Suggestions that contribute to the development of *waqf* institution in the country will be highlighted. Insights were obtained through interviews and discussions with the *imam*, *khatib* and Narathiwat Muslim Religious Committee Council (NMRCC). The paper concludes that although codifications of various Thai

laws have contributed towards enhancing the *waqf* institution in Thailand, some of the legal provisions need to be revised in order to achieve its goals effectively.

Keywords: *Waqf*, minority Muslim, development, socio-economic

INTRODUCTION

The term *waqf* literally means "to hold" or "to confine". This term is used in Islam in the sense of endowing and preserving something for the benefits of the needy among Muslims. It relates primarily to land and buildings and secondly to books, cattle, shares, stocks and cash. Traditionally, the Muslims in the four provinces in Thailand are deeply religious in sentiment, having great attachment to the Islamic institutions and culture. Though there are no official figures of the number of Muslims in Thailand, estimates indicate it to about 6 million, forming 4 percent of the 65 million (in 2001) of the population (Thanet Aphonsuvan, n.d). The Muslim communities are concentrated in the four southern provinces-Patani, Narathiwat, Yala and Satul. They are living in the area near the Northern part of the Malay Peninsular. Moreover, the Muslims in those four provinces in the South are not immigrant community, but indigenous to the area. They are categorized as Malay-Muslim communities. Being a non-Muslim country, Thailand do not have any law governing

specifically to the needs of *waqf* and *zakat* institution. Currently, *waqf* in those four provinces is run under the supervision of Provincial Islamic Committee and mosque committee (Praertchob, 1991). The main objective of this paper is to examine the availability of Thai laws concerning *waqf* properties and the practices of *waqf* committee in the Malay-Muslim majority areas by focusing on the practices of Al-Muhammadi Mosque *Waqf* Committee (AMWC). To achieve that aim, the writer organizes this paper as follows: the next section will discuss the method of collecting *waqf* property, followed by examining the available Thai laws concerning Muslim affairs in Thailand viz., the Royal Act concerning Muslim Mosque 1947, the Royal Act concerning Islamic Patronage Act 1945, Thai Civil and Commercial Law Code 1934 and Thai National Land Code 1951. Finally, this paper will outline some suggestions and recommendations.

Method of Collecting *Waqf* Property

The common practice in collecting *waqf* property in those areas is that the contributor will donate or dispose his land to the mosque. The recipient will be the *imam*. In most cases, the trustee for *waqf* property is the mosque committee itself. The *waqf* properties in the Malay-Muslim areas comprise of open land, apartments and rubber or coconut plantations. All these properties were donated to mosques and incomes from these properties go to the maintenance of mosques and religious schools. The balance will be deposited in the name of *waqf* committee's account. The objective of collecting *waqf* property is to bring *waqf* property towards sustainable development and poverty alleviation.

Laws Concerning Muslim Affairs in Thailand

In Thailand, all religious matters including *waqf*, collecting *zakat* and *fitrah* are administered jointly by Chularajmontri (Shaykh al-Islam), Provincial Committee for Islamic Affairs (PCIA) and Mosque Committee Member (MCM). As for the position of *waqf* land in Thailand is out the ambit of the Thai civil law. Fortunately, there has been a decided case by the Narathiwat Provincial Court (NPC) as to the recognition of *waqf* property under Islamic law. Those laws are as follows:

- ***The Royal Act Concerning Muslim Mosque, 1947***

As stated in the Muslim Mosque, 1947, the Mosque Committee Members (MCM) has been given the duty and power to manage and administer the affairs of the mosque and its property according to Islamic law and the law of the country. Besides that, their responsibility is to ensure the proper observance of Islam according to the Malay culture. By virtue of this Act the Mosque Committee Members (MCM) were formed. Before the committees are appointed, the mosque must be first registered with the Muslim Religious Committee Council (MRCC) in the respective province. Indeed, many mosques in Thailand are un-registered and are not eligible for the government's subsidiary and legal recognition. The details of the mosque as to its location, Mosque Committee Members (MCM), the letter of the appointment of *imam*, *khatib* and *bilal* must be verified by MRCC. The verified document will be submitted to the provincial governor. The appointment and dismissal of the *imam*, *khatib* and

bilal is usually made by the MRCC, subjected to the consent of the community in that area. However, the Interior Ministry is entrusted to monitor the appointment of the Mosque Committee Members who are obedient to the state that he is appointed. (Moshe Yegar, 2002). The job scope of the Mosque Committee Members (MCM) was stated clearly in the Royal Act concerning Muslim Mosque, 1947. Below is the numbers of registered mosques in Patani, Narathiwat, Yala and Satul.

Table 1:

Total Number of Registered Mosques in the Four Southern Border Provinces

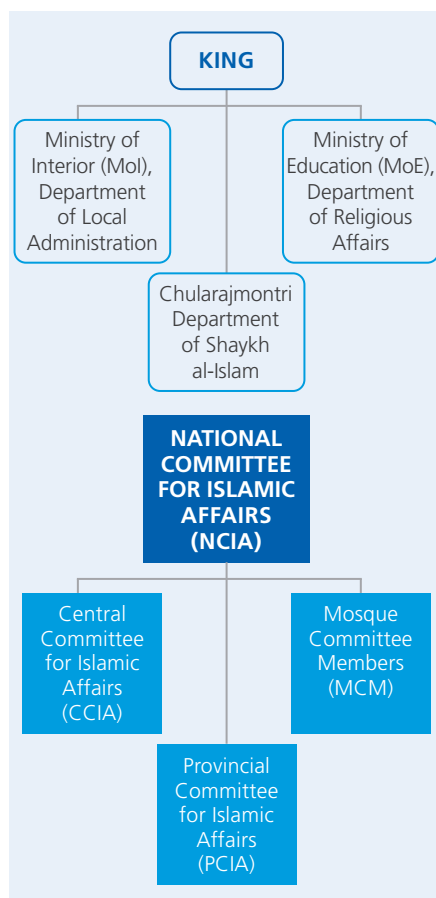
No	Province	Number of Registered Mosque
1	Patani	544
2	Narathiwat	477
3	Yala	308
4	Satul	147
Total		1476

Composition of the Committee

According to the Patronage of Islam Act of 1945, it provides the composition of the committee which consists of Chularajmontri and Provincial Islamic Religious Committee (PIRC) as permanent committee members whereas the Mosque Committee Members (MCM) are elected from the communities. **Figure 1** is the organizational structure of the Muslim affairs in the Kingdom of Thailand.

Figure 1:

The Flow Chart of the Organizational Structure of the Muslim Affairs in the Kingdom of Thailand



Source: Moshe Yegar (2002)

Powers and Duties of the Waqf Committee

The waqf committee is vested with the powers and charged with the duties to administer, control and manage *waqf* properties. It is provided in the Royal Act concerning Muslim Mosque 1947. Their responsibilities and duties are as follows:

1. Investing and determining the nature and extent of *waqf* properties
2. Giving instructions for a proper

- administration of *waqf* properties
3. Monitoring the affairs of the mosque and
 4. Introducing creative and innovative modes of *waqf* development.

Those duties as provided in the Royal Act suggested that the *waqf* committee could function as *waqf* property protectors. Section 7 of the Royal Act concerning Muslim Mosque, 1947 generally speaks about the mosque property by giving the authority to the mosque committee to manage and control over all mosque properties. Thus according to this law, the *waqf* committee is the one that has total supervisory power over all the *waqf* properties. The *waqf* committee has the rights to freely distribute the endowed money to any direction without being confined to the areas that the original endowers have decided to allocate their money to. This act is too general and vague, and the possibility of abusing the power may occur. An independent body is needed and more importantly, the majority of the committee is lacking of the professional expertise in *awqaf* development. There was no proper *waqf* and *zakat* institution which was initiated by the government in the four southern border provinces of Thailand even though there is a specific law that speaks about it.

- ***The Royal Act Concerning Islamic Patronage Act, 1945***

The Islamic Patronage Act of 1945 is similar to the Royal Act concerning Muslim Mosque 1947. The objective of the Act of 1945 is to regulate and monitor Muslim affairs in Thailand.

There are two sections which speak about mosque property viz., section 7 and section 8.

Section 7 of the Islamic Patronage Act, 1945 provides inter alia to the effect that:

"The Provincial Islamic Religious Committee (PIRC) has the power to monitor and take care the properties owned by mosques"

Section 8 of the Islamic Patronage Act, 1945 also provides:

"The procedural regulating concerning appointments and removal and management of the mosque property shall be determined by the National Committee for Islamic affairs with the consent of the Ministry of Interior."

By virtue of section 7 and 8 of the Islamic Patronage Act of 1945, several people shall be appointed as committee to look after the mosque property. The definition of mosque property, as stated in the Act of 1945 includes *waqf* properties as understood by Muslims. There is also no detailed provision on the qualifications of trustee or *mutawalli*. It is observed that this provision does not describe the appointment of trustee, its procedures of handling the dispute as to the *waqf* property. The Royal Act 1945 and the Muslim Mosque Act, 1947 seem to overlook the importance of *waqf* property, for example the issue of the registration of *waqf* property and the appointment and responsibilities of *mutawalis*. As a result, the MRCC has to adopt a conventional approach for anything that is not specified by the e Acts.

In Narathiwat, for example, the normal practice is that when a complaint was lodged as to *waqf* property, the MRCC will call the *imam*, *khatib* and *bilal* to give their statements. If MRCC is unable to solve the case, the *imam* with the consultation of the Mosque Committee Members (MCM) will bring the case to the provincial court for a decision. The provincial court, in most cases will refer to the Thai Civil and Commercial Law Code (TCCC), 1934. This code is considered as the final Thai Civil and Commercial law applicable to the Thai-Buddhist people (Rongruj Reung Watwong, n.d). The TCCC, 1934 sets forth general principles and specific rules for the gamut of civil law issues affecting businesses and individuals. Some of the topics of special interest to businesses include sales, obligations, contracts - general and specific, wrongful acts (torts, such as liability for negligence or intentional harm), property, mortgage and other forms of loan security, company and partnership law and agency. For individuals, the TCCC, 1934 covers marriage, divorce, wills and estate administration, and parental rights and duties.

The relevant sections of the TCCC, 1934 are sections 522, 523, 524, 525, 526, 527 and section 537 which specifically refers to the gifts. However, those sections did not successfully apply to the concept of Muslim *waqfs*. The rationale behind highlighting this law is because the court will normally refer to it despite the fact that the case is involving the issue of *waqf* property. The concept of transfer of property without any consideration is recognized

under the TCCC. Section 521 of TCCC provides, a gift is a contract whereby a person called the donor, transfers gratuitously a property of his own to another person, called the donee, and the donee accepts such property.

- **Thai National Land Code 1951**

Section 84 of the Thai National Land Code, 1951 provides *inter alia* that *wats* (Thai Buddhist temples), Roman Catholic Churches, Christian Foundations or Muslims may acquire land with the permission of the Minister. The acquisition of such land shall not exceed fifty acres. However, under certain circumstances, the minister may allow the acquisition of such land exceeding fifty acres. This section shall not affect the acquisition of land prior to the effective date of this code or acquisition of land for Muslims under the provisions of Muslim law in a Changwat (province) having an Islamic magistrate (Dato Yutitham).

The amount of land which may be distributed under the preceding section is as follows:

- (1) For residential purposes, the government may allocate 1 *rai* (acre) of land for each family.
- (2) For religious purposes, the government may allocate 1 *rai* of land,
- (3) For public charity, the government may allocate 5 *rai* of land and,
- (4) For burial purposes, the government may allocate ½ *rai* of land per family.

A closer study of the code reveals that the government has the authority to dispose the land for religious purposes up to 50 acres. However, pursuant to article 84 of the Thai National Land Code

(TNLC) the mosques which are situated in the four provinces for example, Patani, Narathiwat, Yala and Satul the local authority after consultation with the Ministry of Home Affairs may approve or allocate 50 acres of open land for mosque utility.

Waqf Property of Al-Muhammadi Mosque, Banthon Village, Narathiwat Province: An Example

In almost every village in the Malay-Muslim majority areas, there is a central mosque for Friday prayer. However, in the village of Banthon, Narathiwat Province, there are three mosques. Al-Muhammadi Mosque (Ban Thon Mosque) is among the biggest and oldest mosque in this area. It was registered in the year of 2496 B.E (Reg no 93/2496).

The *awqaf* properties of this mosque are under the purview of Al-Muhammadi Waqf Committee (AWC). The Khatib, an ex-officio of the committee is the secretary for the AWC. The total number of *waqf* properties that are managed by Al-Muhammadi mosque consists of 3 arcs of coconut land, 4 arcs of farming land and 3 arcs of open land for burial purposes. The estimated total monetary value of immovable properties of Al-Muhammadi Mosque was 180,000 Thai Baht. (Interview, 30th April 2009). **Table 2** is the registered Al-Muhammadi *waqf* properties.

As for expenditure on monthly electricity charges, it is deducted from weekly and monthly donations. In 1990 Ban Thon Local Administration had sanctioned a sum of 50,000 Thai Baht to Al-Muhammadi Mosque as a subsidy for reconstruction of Al-Muhammadi Mosque meeting room.

Table 2:

Al-Muhammadi Waqf Property

No	Items	Location	Remark
1	Coconut land for 3 arcs	Ban Thon Beach	Center for Pre-school was built
2	Farming land for 4 arcs	Adjacent to Kubang Tiga Kub carnal on main road to Pek Bon	Currently is Ma'had al-Nahdhah al-Hadithah
3	Grave yard for 3 arcs	Main Road to Ban Thon Beach	-
4	Tents, Tables, chairs	Al-Muhammadi's Store house	Rentable

Sources: File report on Al-Muhammadi Waqf Property

Encroachment on Waqf Land

A serious problem faced by the *waqf* properties relates to the encroachment by unauthorized person on the open land that belonged to Al-Muhammadi Mosque. Wooden houses were constructed on *waqf* land for dwelling purposes despite the fact that the encroachers have been warned by the MCM. So far there has been no action taken by the MCM to remove the intruders (Interview, 30th April 2009).

After a consultation among the committee members, a complaint was lodged to the Naratiwat Muslim Religious Committee Council (NMRCC). The committee was unable to settle the dispute. In February 1999, a second suit was filed at the Narathiwat provincial court by *Waqf* Committee of Al-Muhammadi Mosque. It was filed against individual trustees. In this case the *Waqf* Committee of Al-Muhammadi Mosque demanded a piece of land which was registered under the name of individual trustees given to the Al-Muhammadi Mosque. According to

Waqf Muhammadi Committee, such property must be transferred and registered under the Al-Muhammadi mosque to avoid from converting a donated property into private property by the trustees.

The plaintiff argued that the said land was donated by the villagers to Ma'had al-Nahdhah al-Hadithat but not to the Al-Muhammadi Mosque. Several witnesses were called and after hearing statements of witnesses from both sides, the court allowed to transfer the disputed land to the Al-Muhammadi *waqf* property under the supervision of Al-Muhammadi Mosque Committee.

The learned judge of the Narathiwat Provincial Court (PNC) was of the view that the Al-Muhammadi Mosque can own the *waqf* property provided that Al-Muhammadi Mosque must be first registered under the Mosque Act, 1847. The learned judge referred to the cases decided by the appeal court. However, this decision could not be applied to other cases. This is because under the Thai judicial system, a trial court in Thailand is not bound by prior court rulings when it decides an issue under the TCCC, 1934 or any other Thai law for that matter. Every case brought before a Thai trial court is subject to the trial court judge's personal interpretation. From the decided case above, it is concluded that the status of *waqf* property in those Muslim majority areas is unsecured unless Thai government issue a specific law concerning *waqf* property for the Muslims in Thailand.

Suggestions and Way Forwards

Based on the foregoing discussion, the followings are suggestions on the improvements of those weaknesses:

1. Accepting Shari'ah as part of Thai law.
The possibility of making Shari'ah as

a source of Thai law is based on the decided cases by the Thai judges in the case of Al-Muhammadi *waqf* property.

2. As none of the Thai National Land Code (TNLC) provision and other laws is devoted to *waqf* land, the only way lands can be dedicated for *waqf* by Muslims is through the mechanisms of Islamic law of *waqf* which are being implemented at the Islamic Religious Councils in those four areas.
3. Since there is no *waqf* legislation in Thailand this will be problematic. Thus, there is a dire need for a new and complete law for *waqf* management. If the law could not be passed by the parliament, the call for establishment of an independent body or board which is responsible to regulate *waqf* institutions should be considered by the Thai government.

CONCLUSION

Despite the deteriorated conditions that face the *waqf* system in the Malay-Muslim majority areas in Thailand, there are currently lots of voices that are aware of the significance of *waqf* and calling for revival and reorganization of the *waqf* system. In fact, reviving the *waqf* could play a vital role in mobilizing our local resources and achieving development. It does not, however, mean that for an effective *waqf* administration, the Government alone is responsible. In fact the whole society in general and those who are connected with the *waqf* administration in particular have to be more responsible towards *waqf* administration. Therefore, it is necessary to unite and empower all possible efforts that aim at revitalizing the culture of *waqf* in those areas and to emphasize on its potential as a financial institution able to achieve sustainable development.

REFERENCES

Moshe Yegar. (2002). *Between integration and secession: The Muslim communities of Southern Philippines, Southern Thailand and Western Burma/Myanmar*, New York: Lexington Books.

Praertchob, Preeda. (1991). "Mobilization of resources through waqf in Thailand" in Ariff M.(Ed.) *The Islamic Voluntary Sector in Southeast Asia*. Pasir Panjang Singapore, Institute of Southeast Asian Studies.

Rongruj Reung Watwong. (n.d). *Krub Khrua (Family)*, Bangkok: Winyuchun,

Thanet Aphornnsuvan. (n.d). *History and politics of the Muslims in Thailand*, Bangkok: Thammasat University.