

FINANCING THE DEVELOPMENT OF *WAQF* PROPERTY: THE EXPERIENCE OF MALAYSIA AND SINGAPORE

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ABSTRACT

The paper studies financing mechanisms used by *waqf* institutions in Malaysia and Singapore in developing various types of *waqf* properties. In Malaysia, the duty of managing and developing *waqf* assets is under the jurisdiction of state government through State Islamic Religious Councils (SIRCs). The problem of getting enough funds and inefficient staffs has hindered the development of a large number of *waqf* assets especially land *waqf*. In addition to traditional mode of financing such as long lease (*hukr*), modern schemes and self-financing have been used by the authority to develop *waqf* properties. Interestingly, the development of *waqf* assets in Singapore is encouraging especially after the establishment of Warees Pte Ltd.; a subsidiary of Singapore Islamic Religious Council (MUIS). The source of financing is mainly generated through cash *waqf* contributed monthly by Muslims in Singapore. Besides that, a modern mode of financing such as *sukuk musyarakah* has been introduced in developing commercial buildings on *waqf* land. This paper compares the financing methods adopted to develop *waqf* properties in Malaysia and Singapore. Recommendations are made as to the best form of financing that can be adopted in developing *waqf* properties in Malaysia.

Keywords : *Waqf* property, financing, development, cash *waqf*, *sukuk musyarakah*.

Introduction

In Malaysia, the development of *waqf* activities and institutions have increased tremendously. In recent years, ideas have evolved particularly on the contemporary *waqf* activities in Malaysia. For example, JCorp has come up with their innovation on corporate *waqf* (JCorp Annual Report, 2007). Former Prime Minister of Malaysia Dato' Seri Abdullah Ahmad Badawi has also suggested the establishment of World Waqaf Fund (Tabung Waqaf Sedunia) (Siti Mashitoh, 2007) and also establishment of Waqf Bond offered under *Waqf* Enactment (Negeri Sembilan) 2005 (Siti Mashitoh, 2007.) All these are among new innovations towards modern and contemporary platform for *waqf* development in Malaysia.

General Landscapes of Waqf in Malaysia and Singapore

Waqf Development in Malaysia

Historically, it is presumed that *waqf* institutions existed in Malaya later known as Malaysia, since the advent of Islam in the country around 1500CE (Siti Mashitoh, 2006). The origin and development of *waqf* in the country can be divided into three different periods; pre-colonial, colonization and post-independence. At the latter stage, great efforts have been taken by *waqf* authorities towards developing as well as establishing new types of *waqf* assets. Continuous supports from the government and private agencies also play a key role in enhancing and stimulating this philanthropic institution to achieve its main objective of improving the socio-economic welfare of the people in the country.

Not much information on the development of *waqf* practice during pre-colonial period of Malaya can be obtained. However, Pahang Laws enacted in 1596CE are thought to be the first codified laws pertaining to *waqf* in the country (Siti Mashitoh, 2006). Besides acknowledging Shafi'i rulings in matters relating to shariah, the law also recognizes two types of *waqf* assets; movable and immovable, as well as classifying

waqf properties into two main categories; public and special *waqf*. In term of *waqf* assets, three mosques, namely; The Kg. Hulu Mosque, Kg. Laut Mosque and Sultan Abu Bakar are considered to be among the earliest *waqf* creations in Malaysia (Siti Mashitoh, 2006).

Waqf institutions continued to survive although Malaysia was colonized for more than four hundred years. This practice became widespread, in particular during British occupation in which the implementation of secular policies by the British forced the Muslims to safeguard their religious rites. Muslims were encouraged to donate their lands for the purpose of building mosques and religious schools. Late 19th century saw the development of the traditional *pondok* education¹ in Peninsula Malaya (Ahmad Zaki et.al, 2006). Muslims generously dedicated their assets for the establishment of accommodation for teachers and *pondok* accommodation for students. The trusteeship of *waqf* assets during this period was placed under various parties, for example *penghulu*, the *qadis*, and religious school teachers. As no written documentation was in place, it is difficult to trace the actual number of *waqf* properties including the ownership of *waqf* assets transferred to the trustee's heirs.

Waqf developments and activities in the post-independence era of Malaysia have been encouraging. All matters relating to *waqf* assets are vested under the State Islam Religious Councils (SRIC), in accordance to Ninth Schedule (State List) of Federal Constitution of Malaysia (Ahmad, 1997). As the sole trustee of *waqf* properties, SRICs are empowered by law to appoint any individual or committee acting as its representative and also use *waqf* assets to generate income through yields and rentals. In contrast to past experience, *waqf* authorities not only develop *waqf* for establishing religious places but also build shops and commercial properties on *waqf* lands. To overcome the problem of getting enough funds for *waqf* development projects, various financing mechanisms have been used by *waqf* managers including *hukr*, *ijaratain*, *istibdal* and *sukuk musyarakah* (Mohamad Tahir, 2006). *Waqf* authorities also

¹ Refers to the traditional system of Islamic teaching.

introduced the cash *waqf* concept for fund raising purposes and the proceeds channeled to finance *waqf* activities. Various types of cash *waqf* concept such as *waqf* shares models, *takaful waqf* model and corporate cash *waqf* models have been developed by *waqf* authorities in Malaysia (Magda, 2008).

In recent years, various steps have been taken by the government and private companies towards accelerating and stimulating *waqf* developments in the country. The establishment of the Department of *Waqf*, Hajj and *Umrah* in 2004 under the Ministry of Prime Minister Department shows the commitment of Federal Government to consolidate *waqf* activities at national level (www.jawhar.gov.my). Among the main duties of the Department are to coordinate, facilitate and enhance SRIC in administrating and developing *waqf* properties in their respective areas. In 2008, the *Waqf* Foundation of Malaysia (YWM) was set up to strengthen *waqf* developments in the country. Currently, the foundation actively promotes its *waqf* fund projects and cash *waqf* scheme (www.ywm.org.my). Corporate *waqf* share launched in 2006 by Johor Corporation demonstrates the company's assurance to be one of the leaders in promoting corporate social responsibility via philanthropic *waqf* practice. Kumpulan Waqf An-Nur, a subsidiary of JCorp has successfully established a number of clinics known as An-Nur Waqf Clinic in various places and a hospital in Pasir Gudang (www.jcorp.com.my). The initiative taken by JCorp can be used as a model for other private companies to actively involve in promoting, establishing and developing *waqf* properties in Malaysia.

Waqf Development in Singapore

The historic origin and development of *waqf* in Singapore can be traced back to the period of British colonization when the country was known as Strait Settlements. Similar to the experience of Malaysia, most of *waqf* assets developed in Singapore are in the form of mosques and religious schools. The Mosque of Omar Kampung Melaka built in 1826 is thought to be the earliest *waqf* creation in the country (Shamsiah, 2006). *Waqf* funds are also used to establish two famous religious schools in the

country; Madrasah al-Iqbal built in 1907 (Abdul Halim and Kamaruzzaman, 2006) and Madrasah al-Junied established in 1927 (www.aljunied.edu.sg).

Waqf administration in Singapore is vested under Majlis Ugama Islam Singapore (MUIS). The promulgation of The Administration of Muslim Law Act (AMLA) in 1968 empowered MUIS to administer all matters relating to *waqf*. Section 58 of AMLA in particular clearly mentioned that all *waqf* created are vested in MUIS (www.muis.gov.sg). Being a sole trustee of *waqf* properties, MUIS has taken a bold step in establishing its own subsidiary; Warees Plc, to handle, develop and monitor *waqf* projects (Shamsiah, 2007). Since its establishment in 2003, Warees has successfully transformed a number of unproductive *waqf* lands into huge commercial residential areas (www.warees.com). As far as financial resources are concerned, cash *waqf* scheme and modern financial mode of *sukuk musharaka* bond have been introduced to fund *waqf* development activities. By becoming the investor of modern *sukuk musyarakah* instrument, Muslims in Singapore as well as abroad can directly be involved in developing various *waqf* assets. This shows that although the objective of the *waqf* bodies in Malaysia and Singapore are the same, but they have taken a different approach towards the development of *waqf* properties in their respective countries. MUIS in particular has managed to turn unproductive *waqf* assets to productive assets that benefits the Muslims in Singapore. The benefits derived from managing such assets have benefited many Muslim households in improving their income and able to compete with non-Muslims in a challenging economy like Singapore. These good practices should be followed by Malaysian *waqf* authorities.

JCorp's (Kumpulan Waqf An-Nur Berhad) Experience in Developing Waqf Properties in Malaysia

JCorp plays a very important role in developing *waqf* properties in Malaysia particularly in corporate sector. Thus, its contribution in managing *waqf* property is proven and recognized by many parties.

As a private institution, JCorp is one of the prominent institutions which contribute directly towards this development. *Waqf* activities anticipated by JCorp is diversified to various activities via Kumpulan Waqf An Nur Berhad like *waqf* activity in medical-based institution known as Waqaf An-Nur Clinic which was the first *waqf* hospital launched by JCorp in 2006. Until 2007, the expansion of Waqaf An-Nur Hospital and Clinics reached not only the state of Johor, but also to Kuching, Sarawak in collaboration with Baitulmal Sarawak (JCorp Annual Report, 2007). With the implementation of cash *waqf* in Waqaf An-Nur, it has contributed tremendously towards the society in its own range.

A unique agenda implemented by JCorp for the *ummah* is through its Corporate Shares of Waqaf Corporation. This concept is a key institutional strategy towards making a success of its corporate mission of "Business Jihad". As a proof, via its corporate *waqf* agenda as reported in 2007 JCorp pledged to dedicate 25% of the annual dividend payout from the shares transferred into *waqf* (JCorp Annual Report, 2007). Thus, the dividend is useful to organize various activities for Muslims and non-Muslims, charitable and religious activities that benefits and fulfill the needs of the society as a whole. This is evident when in 2006, JCorp launched the idea of "Corporate *Waqaf*" which involved the transfer of 12.35 million unit shares owned by JCorp Kulim (M) Bhd, 18.60 million unit shares in KPJ Healthcare Bhd. and 4.32 million unit shares in Johor Land Bhd. to Kumpulan Waqaf An-Nur Bhd. as trustee (JCorp Annual Report, 2007).

As for *da'wah* activities, JCorp with Jabatan Kemajuan Islam Malaysia (JAKIM) produces an academic-based program to instill business mind-setting amongst Malaysian community with Islamic outlook. The program invites callers and viewers to donate via SMS (Short Messaging System) which is then distributed to the poor and needy in most of JCorp's program.

Thus, *waqf* activities in business, its Waqaf An-Nur Clinics and Hospital and other Islamic driven corporate social responsibilities activities have justified JCorp as a

Muslim corporation that is devoted towards Muslims *ummah* as a whole and directly alleviate poverty amongst Muslims. Undeniably, the focal activity of JCorp via corporate share and medical-based contribution has benefited the *ummah* as a whole.

Financial Performance of Kumpulan Waqaf An-Nur

Kumpulan Waqaf An-Nur Berhad (KWANB) started its operations on 25 October 2000 as Pengurusan Klinik Waqaf An-Nur Berhad. It was established to manage the waqaf clinics and dialysis centers under JCorp and managed by KPJ Healthcare Berhad. The establishment of KWANB has aptly reflected the effort by Johor Corporation to implement corporate endowment in the service of business jihad. The first corporate *waqf* involved the endowment of RM200 million Net Asset Value of JCorp shareholdings in Kulim (M) Berhad, KPJ Healthcare Berhad and Johor Land Berhad on August 3, 2006. In 2007, JCorp continued the endowment fund with 75 percent of JCorp's share in Capaian Aspirasi Sdn. Bhd. (CASB) into KWANB. CASB is a company that operates a shariah compliant insurance agency and also acts as a *zakat* collector.

A fund under the name of Dana Waqaf Niaga has also been established as a pilot scheme for the purpose of aiding small businesses facing problems in securing financing for start-ups or for business. The fund provides interest free financial assistance in the form of micro credit. An initial fund of RM100,000 has been set aside from the provision of 25 percent of *fisabilillah* and this is expected to reach RM1 million within 3 years. A total of 21 businessmen have benefited from the fund. Besides that, Briged Amal Waqaf was set up as a voluntary team to assist victims of disasters such as earthquake and flood. The team consists of five groups based on their capabilities and expertise in providing assistance and are tapped from such companies within JCorp Group. In 2007, four more Waqaf An-Nur clinics have been set-up to make a total of nine Waqaf An-Nur clinics including a Waqaf An-Nur Hospital.

In 2007, the revenue received by KWANB from shares that have been endowed amounted to RM3.23 million, which is a reduction of 19.6 percent from RM4.02 million in 2006. This decrease was due to the decreasing dividend returns of company shares that had been endowed. The pre-tax profit of KWANB was RM2.28 million, a decrease of 75.8 percent compared to RM4.03 million in 2006. The decrease was due to the effect of the decrease in dividends received and the increase in the expenditure. However, the total share value that had been endowed to KWANB is RM141.9 million, an increase of 57 percent compared to RM90.4 million in the previous year. The total assets of KWANB have increased to RM145.3 million in 2007 from RM94.3 million in 2006. A total of RM177,360 was expended on *fisabilillah* and welfare and a total of RM58,727 was channeled to the Johor Islamic Religious Affairs Council.

Financial Performance of MUIS Waqf Funds

In Singapore, MUIS acts as the overall administrator of all *waqf* funds through *Waqf* Funds group. The group consists of the Board and Fusion Investments Pte Ltd. The principal activity of the MUIS *Waqf* Funds is the management of the assets and the related distributions in accordance with the respective trust deed of each *waqf*. An individual *waqf* fund is managed either by the *Waqf* Funds or Trustees appointed under the instrument creating and governing a *Waqf* Fund. As at December 31, 2007, the number of appointed trustees is 24 compared to 23 in 2006.

In 2007, the pre-tax income received by the *Waqf* Funds increased from \$6.3 million in 2006 to \$98.9 million due to an increase in the fair value of investment properties. The total capital owned is \$65.4 million and the asset revaluation reserve is \$8.4 million. The accumulated funds received are \$341 million that increased from \$130.7 million in 2006.

Management of Waqf Fund: A Comparison

In Malaysia, JCorp represents the corporate entity in contributing towards waqaf development, whereas Warees represents Singapore. Both JCorp and Warees are involved in various partnership contracts which is based on *musyarakah* concept like the development of food outlets by Warees and development of An-Nur Clinic by JCorp.

Both JCorp and Warees implement the concept of *cash waqf* in running their activities especially in the development of projects. The source of fund comes mainly from corporate shares for JCorp and Warees receives partnership fund from Majlis Ugama Islam Singapura (MUIS). However, the major fund for JCorp is the corporate shares but Warees receives compulsory monthly salary deduction from Muslims in Singapore. In terms of activity, the focus area of JCorp is mainly in medical-based institution and contribution, but Warees is more concerned towards development of Commercial Avenue for Muslims. These two different approaches might be related to the need of the people of these two countries. Demands from Malaysian are more towards medical facilities rather than business avenues that are more crucial in Singapore. Economically, Muslim minority in Singapore are behind as compared to the other communities. Nevertheless, Malaysian *waqf* authorities should emulate MUIS in developing waqf properties for commercial purpose. This is because Muslims in Malaysia are still lacking behind in business activities compared to the non-Muslims.

In order to contribute towards human development agenda, JCorp at the same time train interested individuals via its intrapreneur concept by means of *Waqf* Fund. The aim is to produce Muslim entrepreneurs who are able to bring inner development towards them and then contribute materially towards the society. Warees, however, has not yet ventured into this similar program. Their activity is more towards investment in commercial property that involves business entity but not for human development in particular.

Opportunities for Waqf Development in Malaysia

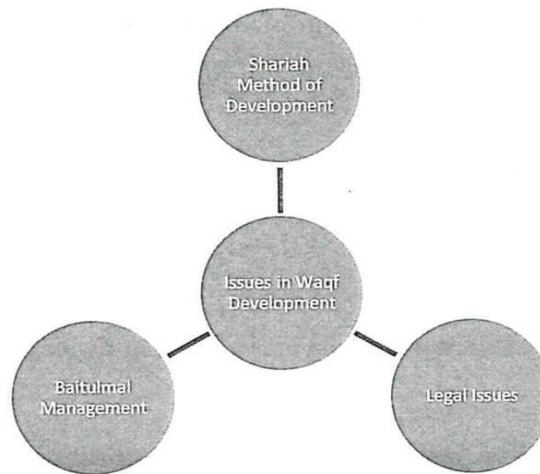
The future of *waqf* development in Malaysia is constantly bright and inspiring with the full support by the Malaysian government. Many institutions would be able to absorb *waqf* concept in its corporate social activities by Malaysia government-linked companies (GLC) such as Petronas, TNB, Khazanah Nasional and others. In addition, in third Islamic Economics Congress on 12th January 2009, the concept of corporate *waqf* has been selected to be a main strategy to run the idea of Business Jihad.

Besides putting hope on the GLCs, government agencies like JAWHAR under Prime Minister Department and Religious State Council of all states should play an important and pro-active role in managing *waqf* development. Proper management of *waqf* property can lead towards successful planning and implementation of *waqf* development for the benefit of Muslims. These innovations also might bring better economic development for Muslims and Malaysia as a whole. For example, Religious State Council of Penang has established a subsidiary with 100% equity known as Permodalan Wakaf Pulau Pinang Sdn. Bhd. (Berita Harian, 2007).

Issues in Waqf Development: An Analysis

There are several critical issues related to the development of *waqf* assets. Mohd. Saharudin et. al (2003) have examined the preliminary issues that restrict the proper implementation of *waqf* in economic planning in Malaysia and concluded that there are three main critical issues. The issues are: (i) the clarification on how to develop the *waqf* according to the Islamic scholar's opinion (shariah issues); (ii) legislation obstacles (legal issues); and (iii) the problem of *Baitul Mal*'s administration that is inefficient and unsystematic (human resources and management issues).

Figure 1: Issues in Waqf Development



Methods of Development

There are a number of methods that has been suggested by the scholars for the development of *waqf* property. Most of the literatures have suggested the involvement of private entity in the development of *waqf* assets. Mohamad Tahir (2006) has divided the development of *waqf* assets into three main methods. They are: (i) credit based finance; (ii) joint venture or equity and income sharing; and (iii) self-financing. The combination of these three methods of financing or two of them may be deemed necessary by the managing authorities based on the situation where the *waqf* assets are operating. The main issue is on the protection and security of the *waqf* assets. *Waqf* assets are owned by Allah SWT or by the beneficiaries (in according to different opinions of Islamic jurists) and hence, the transfer of the ownership of *waqf* assets either through *ibdal* or *istibdal* is highly unfavorable from the *fiqh* perspective. Even though, there are Islamic scholars and jurists who permit the practice of *ibdal* and *istibdal*, there are, however, several conditions that should be fulfilled. Some Islamic schools of law have a very strict opinion on the practice of *ibdal* and *istibdal*.

The problem in selection of the most suitable shariah method to develop the *waqf* properties could be overcome with the involvement of Fatwa and Mufti department. It is necessary that decisions related to the shariah rulings on *waqf* assets and management being referred to Fatwa Council of the state or federal territory. In another words, the involvement of Mufti Department in the development of *waqf* property is crucial. JCorp has appointed Dato' Noh Gadot – the former Mufti of Johor – as a member of the Board of Directors for its *waqf* program. The involvement of Mufti and Fatwa Council in the development of *waqf* property may improve the effectiveness of shariah decision-making process in *waqf* development.

Baitul Mal Management

The problem of *Baitul Mal* lies with the lack of human resources especially those with professional backgrounds. The root of the problem is very much related with the employment scheme and policy adopted by the state or federal territory. The effort to improve the *Baitul Mal* management should begin with the improvement of the employment scheme and policy. Unattractive employment scheme and policy will not be able to attract professionals to work with *Baitul Mal*. It is the responsibility of the State Council to review the employment scheme at *Baitul Mal* especially and State Islamic Council generally in order to revive its function in the development of *waqf* property. Placing too much responsibility on *Baitul Mal* as well as the State Islamic Council which lack employees and professionals exposes the institutions to critics by public without the right understanding on the root of the problem.

As for now, it is strongly recommended that *Baitul Mal* or the State Islamic Council appoint or cooperate with private and professional institutions that are able to manage and develop the *waqf* assets based on a win-win formula. A trustee body could be established to monitor the *waqf* development project undertaken by the managing institutions as in the case of MUIS in Singapore. The trustee body should also ensure that the purpose of *waqf* and the distribution of *waqf* proceeds to the beneficiaries are carried out accordingly.

Legal Framework

In Malaysia, the authority of Islamic affairs – including Waqf affairs – according to the Ninth Schedule, List 2, State List, Constitutional Law is under the purview of the State. As for *waqf* management, this leads to the different set of rules regarding the administration of *waqf* assets between the states in Malaysia. Additionally, differences in rules lead to differences in the management practices and problems raised in managing the *waqf* assets (Siti Mashitoh, 2003).

The legal issue is perhaps the most difficult issue faced by the *waqf* manager (*nazir*) in Malaysia. In most situations, laws related to *waqf* administration in the state enactments are not comprehensive. They only cover managerial aspects as well as the brief procedure for making *waqf* (Siti Mashitoh, 2003). Selangor was the first state in Malaysia that introduced new enactment in *waqf* administration that touches on substantive areas and more updated (Siti Mashitoh, 2007).

According to the most of the states enactments, the State Islamic Council acts as the trustee of *waqf* property, either the *waqf* is general/public or specific. The nature of trustee is to abide by the conditions laid out by the donor (Siti Mashitoh, 2007). Hence, this does not give the flexibility to the state Islamic council to manage the *waqf* property. In order to provide flexibility related to the legal framework of *waqf* property, it is important to educate the public especially the donors to make general *waqf* instead of specific *waqf*. General *waqf* provides the institutions to manage and develop the *waqf* assets as appropriate as possible. It will then be not tied to the special request as to how the asset should be developed, but rather how the development of such assets can benefit the Muslims in general.

There are other legal issues such as the nature of *waqf* property, the changing of *waqf* assets status from leasehold to freehold, the power of Mufti, shariah and civil courts related to *waqf* assets and etc. However, these issues require in-depth studies and political will before they could be fully resolved. The establishment of *Waqf*

Foundation of Malaysia is considered as one of the critical milestones in the development of *waqf* concept in Malaysia.

The Significance of Private Institutions' Initiatives

Based on the experiences of JCorp in Malaysia and Warees in Singapore in the development of *waqf* fund and properties in their respected areas, it is evident that the initiatives carried out by private entity with corporate and professional backgrounds could help the religious authorities in developing the *waqf* assets as well as diversifying the sources and application of *waqf* funds.

The involvement of private institutions could diversify the concept of *waqf* as could be seen by the practices of JCorp and Warees. Previously, *waqf* concept is only associated with fixed or immovable properties. Furthermore, the private institutions are seen to be more creative and capable in the development of *waqf* assets.

Conclusion

This paper compares the practices of *waqf* financing and development in Malaysia and Singapore. JCorp and Warees were chosen as case studies since these two bodies have been actively involved in the development of *waqf* in both countries. Both countries can learn from each other and improve the ways *waqf* properties can be better developed and managed according to the shariah laws. It is recommended that more concerted efforts must be taken by the *waqf* bodies in both countries to better manage and finance *waqf* properties according to shariah.

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