

Waqf Irsod Perspectives on Islamic Law and Its Practice in Malaysia: Contributions to Sustaining Economic Development

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Abstract

This study discusses the waqf of Irsod which has been codified by the State Islamic Religious Council as the Sole Trustee of the Waqf Property as a waqf in Malaysia. Waqf Irsod plays a major role through government or institutional assets that contribute towards sustainable development in Malaysia. The objective of this study is to look at the endowment of Irsod from the perspective of Islamic law and its role in economic development in Malaysia. This study uses library research methods and secondary data research related to Irsod waqf fatwa and its implementation model in Malaysia. Through the findings of this study, several suggestions towards strengthening waqf Irsod have been presented based on the principles and methods used in Islamic law so that all waqf property development can be implemented more dynamically and comprehensively in line with current needs in today's global world.

Keywords: Waqf Irsod, Islamic law, Sustaining Economic Development

1. Introduction

Waqf Irsod is one of the methods to increase the number of assets of Muslims through the waqf system. It is not something new and became one of the factors to the economic development of Muslims in the heyday of Islam. The Islamic rulers have allocated part of the country's assets to be endowed to increase the wealth of Muslims. Apart from that, encourage institutional bodies to also endow their property for welfare purposes and help through the ijtimaie sector. This type of waqf has been handed over in the form of land, buildings or houses endowed by the government, corporations, institutions or other bodies in accordance with Islamic law to be utilized for the purpose of preparing the site of a mosque, surau, cemetery or religious educational institution. This means that waqf is not only done by individuals but even the government itself has taken the initiative by handing over government property for religious interests known as Waqf Irsod. In Malaysia waqf of the Irsod type has long been introduced which takes place among the

families of the King or state government.

Waqf Irsod from the Perspective of Islamic Law and Law in Malaysia

Waqf Irsod comes from two Arabic words, namely "waqf" and "Irsod" which refer to the endowment of property from the government or from certain bodies or organizations. Originally, the purpose of the Irsod endowment was only focused on the government who acted to endow the properties belonging to the Baitulmal, including movable and immovable property. In general, waqf Irsod occurs when Baitulmal funds are distributed to the construction of mosques, educational institutions, hospitals and so on for the public benefit (Badran, Badran Abu al-'Aynayn (1986). Islamic jurists argue that waqf Irsod is not waqf in its real sense. This is because the government endowed the property not of its own, but the community's property kept in the Baitulmal. The case of Irsod endowment, a government only has the power to determine the use of property stored in the Baitulmal so that it can be spent on its beneficiaries on waqf projects that

require funds for development. Based on this provision, this Irsod waqf is also known as al-Takhsisat or Awqaf al-Takhsisat (Siti Mashitoh Mahamood, 2007).

In addition, based on the shortcomings of the government in terms of ownership of mawquf, then according to some jurists of the Shafi'i and Hanafi sects, this waqf Irsod does not take all the laws of waqf but only some of them. It is a reference to the need to comply with the rulings and use of mawquf made by the government, unless there are other larger and prioritized masalah. In this situation, then the ruling can be changed in order to prevent further harm (darar). For example, if the revenue of Irsod property from Baitulmal property has been set to be applied to a group in need, then this group gets funds or other resources from Baitulmal properties or other waqf, then the Irsodized mawquf can be given to other more necessary uses. In relation to this, Al-Zarqa 'in his book *Ahkam Al-Awqaf* also named this waqf of Irsod as *Al-Awqaf Ghayr Al-Sahihah* (Siti Mashitoh Mahamood, 2007).

The 77th Fatwa Committee of the National Council for Islamic Religious Affairs of Malaysia which convened on 10-12 April 2007 discussed the laws related to the use of the Waqf Property Development Program Fund given by the government in the Ninth Malaysia Plan. The results of the discussion has decided that buildings that have been completed on waqf land do not automatically become waqf unless the Department of Waqaf, Zakat and Hajj wants to endow them. The building must be registered as a new waqf property and must meet the principles of waqf and state enactments Assets that have been developed on waqf land can be leased to individuals for a long period of time. To develop waqf land intended for waqf, the government has the right to determine the conditions of the waqfed property. However, the appointment of nazir is not allowed as it contradicts the existing Enactment. Department of Waqaf, Zakat and Hajj can be the trustee Waqf Property Development Program fund through a national waqf entity that will be established through an economic joint venture with MAIN provided that both parties agree between State Islamic Religious Council (SIRC) and Department of Waqaf, Zakat and Hajj (www.e-fatwa.gov.my/fatwa-state/development-land-waqf)

At the state government level that recognizes the endowment of Irsod. In Perak, the Perak State Shariah Committee has discussed issues regarding the status of government-granted land given to the Perak Islamic Religious Council (MAIP) for the purpose of religious activities. Among them are land for the construction of mosques, suraus, cemeteries, rakyat religious school sites and other purposes for the benefit of the Muslim community in the state. These lands are also directly involved in land acquisition by the government to be developed for development projects. This matter has been raised as a problem to MAIP so that its use does not violate the laws of waqf in Islam if the status of the land is

waqf land. The Perak State Shariah Committee met on 3 Zulqaedah 1422 equivalent to 17 January 2002 for the 154th time and agreed that the status of government-granted lands for the purpose of Muslim houses of worship, mosques, suraus and cemeteries are included in the waqf category. While government-granted lands for development purposes are considered as Baitulmal land (<http://infad.kuim.edu.my/modules.php>).

From the legal aspect in Malaysia, the award of property through Irsod is accepted as a valid and enforceable waqf that has been codified in the Administration of the Religion of Islam Enactment 1978 (No.14 of 1978) Johor was among the earliest states to provide for waqf Irsod under Section 41, that "waqfs from Baitul-Mal lands or Government lands or the like according to Hukum Syarak. Further to this provision, the Waqf Rule 1983 (J.P.U.51) has been introduced by inserting the same rule consisting of 2 sub-rules 10 (1) (2) which provide for this Irsod waqf under the section "Power to endow general property". Rule 10 (1) states that "the King may irsodised any property of Baitul Mal". Meanwhile, Rule 10 (2) provides that "The Government or any statutory body or any company that is legally permitted to irsodised its property".

As for the application of "waqf irsod", it is codified in the State of Selangor and Melaka under Section 9 (2) (a) of the Waqf Orang Islam (Selangor) Enactment 1999 (No. 7 of 1999) and also the Waqf (State of Melaka) Enactment 2005 (No. 5 of 2005) in the same section. This Selangor Enactment has interpreted it as "a land endowed by any corporation, institution, organization or other body in accordance with Hukum Syarak". Meanwhile, the Melaka Enactment lays down its interpretation as "waqf from Baitulmal land, Government land or land of any corporation, institution, organization or other body according to Hukum Syarak". Meanwhile, the interpretation and provision for waqf Irsod is not provided in the Waqf (Negeri Sembilan) Enactment 2005 (No. 5 of 2005) because it is fully referred to Hukum Syarak according to Section 3 (1) which is a reference to the state Fatwa Committee.

The Selangor state government through the Selangor State Government Meeting convened on 11 October 1973 has set the policy that Islamic religious and community sites such as mosques, place of worship are disposed of by reservation under Section 62 of the National Land Code and placed under the control of the Director of the Selangor Islamic Religious Department (JAIS). In line with that, on 2 January 2008, the Selangor State Government Meeting with the consent of His Majesty the Sultan of Selangor, the proposed implementation of waqf Irsod through disposal of land by ownership under Section 76 KTN by the State Authority to MAIS was approved. MAIS has identified the use of the site for the Irsod endowment to include religious sites such as suraus, Islamic cemeteries and the like. Meanwhile, community sites include religious schools, madrasahs, maahad tahfiz,

training centers, Muslim welfare homes and the like. The Waqf Land Management Manual of the Waqf Zakat and Hajj Department also explains the process of applying for government land by the State Islamic Religious Council (MAIN) for waqf (Irsod). This manual explains in detail the process that can be used by MAIN for the purpose of facilitating the process of land ownership by Irsod. MAIN can make this manual and it needs to be coordinated with the provisions of the respective state land laws and enactments to add Irsod waqf lands through government lands.

History of the Development of Waqf Irsod

During the time of Rasulullah saw in Madinah, sadaqah or voluntary contributions became the main source of the national treasury. Apart from sadaqah, zakat, fay', khums (1/5 of the spoils of war) and jizyah (head tax) are the second source of the country. Loans and hostage property of prisoners of war were also included in state revenue. Rasulullah saw also imposed 'usury on imported goods from non-Muslim traders in return because they first imposed taxes on Muslim traders (Zakariah Abdul Rashid, 2003)

During the reign of Abu Bakr, the source of baitulmal income could not be developed because he had to face the battle of al-Riddah. However, in Umar, the source of Baitulmal increased in line with the development of the Islamic state and the establishment of this institution. Umar al-Khattab imposed taxes on Muslims including zakat and 'usur (1/10) on land and others. Apart from that, jizyah and kharaj, business tax, ghanimah, rikaz and surplus inheritance in the absence of heirs are the source of baitulmal income. Later, the caliphs Uthman ibn Affan and Ali ibn Abi Talib continued the legacy left by Umar by making some improvements to make it more systematic.

During the reign of the Umayyad kingdom, the treasury accumulated 221 million dirhams. While during the reign of the Abbasids, caliphs al-Mansur and Harun al-Rashid who are considered the best rulers at that time managed to collect treasury amounting to 900 million dirhams as reported by al-Tabari (Hailani Muji Tahir, 2007). If assessed at the current value of this property amounts to around 1.3 trillion Dirhams. (Nordin Ghadimon, 2009). Princess Siti Zubaidah, the wife of Caliph Harun al-Rashid, who was aware of the difficulties and hardships experienced by the pilgrims, for example, built a road from Baghdad to Makkah which was obtained through his waqf properties. Even after he saw for himself the suffering and difficulty of his people to get water supply while visiting Makkah and Madinah, he built a water canal known as the canal or Ain Zubaidah. An underground water canal that spans the desert hundreds of miles from Baghdad to the holy city of Makkah was built in 808 A.D. using technology unthinkable by humans at the time. Interestingly, all financing and maintenance costs for the construction of this canal make full use of the

waqf resources and his own money.

Ibn Battutah, one of the great Muslim navigators while visiting Damascus in 726 A.D., has mentioned the diversity in waqf expenditure as astonishing and difficult to put into words. According to his records, there were various types of waqf in Damascus at that time such as waqf for people who could not afford to perform Hajj in Makkah, waqf of marriage contributions for women whose families could not afford it, waqf for freeing offenders, waqf of food, waqf of clothing, improving public facilities such as roads highways and on sidewalks for the convenience of the public. Furthermore, the institution of waqf practiced by the community at that time did not differentiate between master and servant. this is clear as narrated by Ibn Battuta in his notebook:

"One day while I was walking in the city of Damascus, I saw a slave accidentally dropping a porcelain bowl from China. The servant was then surrounded by people and one of them asked the servant to collect the pieces of the bowl to be brought to the waqf manager. Had brought the fragments and received the same payment for the price of the bowl. This is a very great institution and has saved the slave from being punished or scolded by his master. " (Syed Nurul Aqla Syed Abdullah & Adi Setia Mohd Dom, 2001)

Ibn Battutah's experience is further reinforced by the statement of Bahaeddin Yediyildiz (1996b: 21) as a result of his study of waqf in Turkey:

"Waqf institutions provide many social services that are similar to public services according to the view of modern society today. In fact, the construction of infrastructure such as roads, bridges and drainage systems; community services such as building hospitals and looking after the welfare of the poor and those in need; educational and cultural services such as opening schools, libraries and universities, providing grants to students and funding salaries to educators, religious services such as building mosques and paying the salaries of those who manage them all of which are implemented through waqf institutions. "

During the reign of Al-Ayubiyin in Egypt, the practice of waqf increased rapidly. Waqf is not only done by individuals but the government itself has taken the initiative by handing over government property for religious interests and is known as Waqf Irsod. Among the famous waqf irsod are as follows:

1. Waqf Nablis used to redeem Muslim prisoners captured by the crusaders in 564 H (1168 A.D.).
2. Waqf Rumah Said al-Suada 'was built for the use of widows and orphans.
3. Waqf of Ladang al-Khibaniah, Perigi Khaisariah and al-Shufiah in al-Bahnasawiah district.
4. Endowment of schools such as al-Nasiriah al-Syafieh School, al-Qamhiyyah, al-Malikiah in Fayuum.
5. Endowment of the hospital of Istana al-Fatimii. (Baniyah Mohd. Shariff: 1993)

Moreover, the historian Ashikpashazade (Lewis, 1963) narrates, as soon as Sultan Mehmed Khan Gazi succeeded in conquering the city of Constantinople, he appointed Suleyman Bey as ruler of the city. His Majesty sent him to all his colonies to repatriate the original inhabitants to inhabit the city of Constantinople which had been destroyed by war. He instructed Suleyman Bey:

"Anyone who wants to come, let them come, and let them be the owners of the residential houses, producers and farms that exist in Istanbul." (Lewis, 1963)

To further encourage the migration of people to this city, he redeveloped the city of Constantinople. Interestingly, in the reconstruction of this settlement, he did not limit its population to the Turks or the Muslim community only.

Turkish Municipal Construction Through Complex Architecture

The greatness of the role and contribution of waqf institutions as a source of funding in developing the ummah has reached its peak during the reign of the Ottoman Empire. Through the rule of the Ottoman government, famous buildings called complexes or kulliye were developed, supervised and fully funded through waqf institutions. The uniqueness of this kulliye which serves as an institution of spiritual, social and economic support is built in three different parts that are interconnected with each other. (Mustafa Cezar, 1983; Bahaeddin Yedyildiz, 1989 & Rafee Hakky, 1992)

The first part of the building consists of houses of worship, nursing homes, hospitals, educational facilities (schools, colleges and universities), libraries, guest houses, food distribution centers (imaret), public water services (public fountains) and land-cemetery. These collectively constructed building units called hayrat serve to provide various forms of services needed by the community. These services are provided to various sections of society regardless of race, religion or ethnicity and have been provided without charge.

The second part of the kulliye consists of business buildings such as shops, Turkish bath services (Turkish Hammam), bazaars, closed markets (bedesten) and merchant lodges (carranseraei). The building units in the second part which is also called akarat serve as a source of income generator to finance the cost and maintenance of life in the first part. While the third part consists of buildings that house the residents around the first part (hayrat). The mosque was built and placed in the middle of the kulliye to enable the community to perform their responsibilities to the great creator, Allah SWT. (Bahaeddin Yedyildiz, 2006a)

Interestingly, in discussing the construction of this kulliye, Murat Cizakca (2011) has linked its role in human development with the hadith of the Prophet SAW known as Thawab ba'd al wafah (reward after death). According to him, the waqf who performs prayers in the mosque built in the middle of this

kulliye is considered to have provided continuous charity from a servant to its creator, Allah SWT. Kulliye also provides free food to those who need it. Meanwhile, the knowledge disseminated through schools, colleges and universities built through this endowment is also considered as mudarabba (capital-labor sharing). Good deeds in the form of knowledge generated through this waqf will be shared between scholars, waqf and the community. Finally, the waqf management will promise the birth of pious children who always pray for the well-being of the waqf spirit.

Construction of kulliye through the concept of hayrat and akarat by placing units of waqf entities such as houses of worship, nursing homes, hospitals, educational institutions (schools, colleges and universities), libraries, guest houses, imaret, public water services (public fountains), cemeteries, bazaars, carranseraei and the surrounding settlement areas are clearly such unique structures that serve as a mechanism of socio-economic development of the community. In fact, the construction of this spiritual, intellectual and biological kulliye was considered a city for peace by the great Turkish philosopher Farabi. Du Franske Canaye (1988) who visited Istanbul in 1576 also mentioned that the Turkish city as a city existed through the relationship between nature, man and god through waqf.

Closed Market (Bazaar)

The closed market or bazaar is a building based on the architecture of the mosque. The closed bazaar was one of the most important economic and social institutions during the reign of the Ottoman Empire. One of the famous bazaars is the Buyuk Bedesten or Gran Bazaar which was built in 1455 in Istanbul by order of Sultan Mahmed. The bazaar which has 4000 shops has been connected by 58 different streets to be the heart of the trade center especially jewelery (gold), spices, carpets and ceramics sourced from waqf. The income from the rental of the shops in the bazaar is used for good purposes such as financing the cost of construction and maintenance of mosques, hospitals, nursing homes and orphanages.

Rest and Treatment Area (Carranseraei)

Carranseraei is a large rectangular building built as a safe haven for traders and travelers since medieval Turkey (Aysil Tukul Yayus, 1981). In the era of Seljuk rule, Carranseraei has been a catalyst to the economic growth of the country. In fact, these accommodation buildings are often associated with Seljuk government activities that are fully funded through waqf.

Food Preparation Center (Imaret)

Imaret or food preparation center is also a waqf entity that is very famous in providing food for free to the poor and those in need such as visitors and travelers (Singer, 2004). According to Singer again, until 1530 there were no less than 83 for imaret were built by the Ottoman government. In Erdine for

example, the built imaret has provided free food every day to 2600 people out of a total population of 22000 people. The number of imaret mentioned above does not take into account the existing numbers in Istanbul, Egypt and the Hijaz and thousands of other projects under construction after that year.

Public Bath (Hammam)

Orhan Yilmazkaya (2003) has mentioned that a hammam is part of a unit in a complex or kulliye building group consisting of a mosque, hospital, imaret, library, school and accommodation for religious groups as well as students. The construction of a hammam resembling the construction of the Roman Bath in England not only provided space for the community for recreation, but the mechanism of its implementation and management was made in accordance with the conditions laid down by Islam. These include the segregation of male and female baths. After the conquest of Istanbul, Sultan Mehmet built 19 hammams in Istanbul with the five hammams being built with a large size that can accommodate up to 5000 people. The income earned from the hammam (funded by the sultan, the sultan's family and the nobility) was used to fund the mosques and buildings in the kulliye group. There are thousands of hammams have been built for the welfare of the community throughout the Ottoman province.

Development of Waqf Irsod in Malaysia

In Malaysia, although the Irsod type of waqf has been introduced for a long time, it is not as popular as other types of waqf. Nevertheless, the practice of Irsod waqf has long existed especially among the families of the King or state government. This type of waqf has been handed over in the form of land, buildings or houses endowed by the government, corporations, institutions or other bodies in accordance with Islamic law to be utilized for the purpose of preparing the site of a mosque, surau, cemetery or religious educational institution.

Among the earliest Irsod endowment is a gift of endowment Irsod in 1374H / 1955M by al-Hishamuddin late Sultan Alam Shah Palace Jamiah has endowed the Islamic Religious Council and Malay Customs Selangor (MAIS) as a special endowment. The purpose is to make the Malayan Islamic College (KIM) including a land area of about 1.49 acres located at Jalan Kota Raja, Lot 4457 Mukim Daerah Klang. The waqf handover letter was dated 5 March 1953 /19 Jamadil Akhir 1372. He hoped that this college would be able to produce scholars who fear Allah and further enlighten the Malaysian society with the spirits of Islam and be able to eliminate all forms of disbelief and ignorance. This college is named the Malayan Islamic College in Klang (KIMK). KIMK began operations on 24 February 1955 with a total of 55 students from all over the Federation of Malaya and Singapore. The official opening was held on 8th April 1955 (Abdul Talib & Firdaus Ahmad, 2003).

In 2006, a corporate entity JCorp irsod endowed part of its shares worth RM200 million to the Johor Islamic Religious Council as a special endowment. It is self-managed by JCorp by creating a special entity known as Kumpulan Waqaf An-Nur Berhad (KWANB) and placed under the remit of JCorp's Corporate Values and Culture Unit. KWANB's travel is fully subject to the laws and regulations set out in KWANB's Memorandum and Articles of Association. The basic principle in the implementation of corporate waqaf pioneered by JCorp is to waqaf JCorp's ownership shares or interest shares in its subsidiaries listed on the open market. It is this methodology adopted by JCorp that allows it to be recorded as the first corporate institution in the world to implement it.

Subsequently, at the Federal Government level, Irsod endowment also implemented through the 9th Malaysia Plan, amounting to more than RM262 million has been allocated for the development of endowment properties in Malaysia. JAWHAR in collaboration with MAIN has successfully implemented 17 property development projects covering various key areas such as education, welfare, housing, economy, health, social and religion. Beginning in 2010, the Federal government has channeled an allocation of RM30 million to Yayasan Waqf Malaysia (YWM) to implement the development of small projects with a large impact in selected mosque areas throughout the country. YWM has implemented the construction of 2 types of projects to become waqf icons throughout the country, namely Bazar Waqf Rakyat and Waqf Mart. These two types of projects total 69 projects nationwide and have benefited thousands of ummah (Anan C. Mohd).

The Need for Waqf Irsod in the Current Context in Malaysia

In line with the government's efforts to make Malaysia a developed country by 2020, various development plans are in full swing. To enable governments, individuals, corporations or corporate bodies wishing to undertake any development project, then land is the most important asset needed to be used as a site. Land is a resource in the overall strategic development (Arifin Said, 1985). Real estate is also one of the asset classes that are not necessarily for investment purposes only. In general, the purpose of property ownership is either to be inhabited, or rental returns and capital value growth (Hishamuddin Mohd Ali, Megat Mohd Ghazali Megat A. Rahman, Asiah Othman, 2006).

In the current context, Muslims are faced with two scenarios, namely the loss of land assets such as Malay Reserve Land ownership and land acquisition for public purposes and economic development of the State Authority (PBN). The issue of the importance of land of Muslims and the Malays have been raised in the Umno General Assembly 2014, Wanita UMNO ask the Prime Minister to make

amendments to the constitution to empower the Attorney General as 'custodian of the public interest' of the authorities to make a petition to any state in which no change is required for the Malay reserve land (<http://www.utusan.com.my> reserves). However, although there is such a law such, in practice many of the reserve land has been transferred into the hands of non-Malays (Mohd. Salleh Abas 1968). For example, from 2,432,790 hectares in 1948 decreased to 1,757,884 in 1970. This means that the Malays loss of 674.906 hectares of Malay reserve land, especially after the Land Acquisition Act 1960 came into force (Ahmad Nazri Abdullah, 1985).

Further in the plan to develop waqf land owned by MAIN for the purpose of development, agricultural and settlement projects require a strategic land area and location. To meet this criterion, MAIN faces problems because many of the endowed lands consist of small lots of land and its location is far from urban areas and scattered. Not least, these lands have no potential and are not viable and not productive to be developed in the near future. As a result, the land was left idle without being able to give any return to MAIN, especially to the Muslims as a whole. In order to develop these lands, MAIN needs to establish more economical land with the support and cooperation of the State Authority (PBN), especially in major urban areas that are able to provide more sustainable economic opportunities.

Based on the issues raised, the Irsod endowment needs to be expanded to help increase the number of lands owned by Muslims who are being squeezed in the current of modern development today. The implementation of the Irsod waqf through the 9th Malaysia Plan of more than RM262 million which was allocated by the government in 2008 must be continued and allocated annually and made the national development agenda for the development of waqf properties in Malaysia. The success of waqf Irsod through 9th Malaysia Plan should be used as a yardstick for the success of MAIN in managing waqf Irsod. Therefore, GLC companies are also advised to participate in corporate waqf by allocating a small amount of company profits to waqf capital. If this GLC company, which makes a profit of RM1 billion to RM10 billion a year, can contribute only 1% of the profit, then the amount accumulated in a year may reach billions of ringgit. In recent years, Malaysia's government-linked investment companies (GLICs) and government-linked companies (GLCs) have often received major international media coverage, an important testament to their increasingly influential position in national and global economic development. The economic activities of GLIC and 20 major GLC companies (G20) under the GLC Transformation Program (GLCT) are booming with net profit increasing to RM26.2b (Berita Harian online, 24 July 2015).

2. Conclusion

Waqf Irsod would open a huge margin in the context of the economic development of the Malays against the public deeds of charity donations. In the short term, through the injection of capital (capital injection) that make up the endowment fund Irsod by various financial entities is believed to be able to obtain equity in achieving the goals of the Malays and Muslims to achieve economic balance between the races in Malaysia, as desired by the government. As a result of this, the Malays are no longer dependent on the subsidy borne by the government with a large amount each year. Thus, the overall economic empowerment through the Irsod endowment instrument is seen to be able to mobilize large capital in groups. It provides space and opportunity for everyone to be involved either in terms of ownership or purchasing power based on their financial capabilities. In a situation of limited national asset ownership and low purchasing power of Muslims, the Irsod endowment is an innovative, creative and proactive mechanism that needs to be created systematically to encourage and facilitate the public to endow.

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