

Muslim's trust property issues in Malaysia: A preliminary study

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ABSTRACT

Wealth or property is an essential part of Muslim life whether it is related to religious affairs or life preservation. Therefore, the trust property management aspect should be emphasized in preserving the benefits of society, especially Muslims. For this reason, this study will review the management of Muslim property trusts in Malaysia and issues related to it. This study was conducted based on a qualitative approach in identifying issues that arose in the management of property trusts. The findings show that there are some issues especially in the management of zakat, *waqf*, bequeathal and inheritance have become polemic and debate in Malaysia. These issues need to be assessed and resolved from the perspective of Islamic law.

1. Introduction

Property is an essential aspect of Muslim life, and Islam encourages its believers to seek and manage property wisely. However, property management should be in line with the guidelines that have been inclined in Islamic law. There are some suggestions in the Qur'an and Sunnah that illustrate Muslims is encouraged to seek, acquire and manage the property. Among them as in Quran that Allah said;

أَلَمْ تَرَ أَنَّ اللَّهَ سَخَّرَ لَكُمْ مَّا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَأَسْبَغَ عَلَيْكُمْ نِعْمَهُ ظَاهِرَةً وَبَاطِنَةً وَمِنَ النَّاسِ مَن يُجَادِلُ فِي
اللَّهِ بِغَيْرِ عِلْمٍ وَلَا هُدًى وَلَا كِتَابٍ مُّنِيرٍ (20)

Translation; Do you not see that Allah has made subject to you whatever is in the heavens and whatever is in the earth and amply bestowed upon you His favours, [both] apparent and unapparent? However, of the people is he who disputes about Allah without knowledge or guidance or an enlightening Book [from Him].
(Luqman, 31; 20)

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Some of the commentators have interpreted the favour that perfected by Allah can be divided into two, which is apparent and unapparent, apparent favours refer to the favours that can be seen by the naked eye such as wealth, human beauties and guidance to do obedience. While personal favours are what is gained by a person like the knowledge of God, a strong belief and anything that can save a human from the spiritual doom (al-Qurtubi, 2006).

Thus that verse clearly explains that Allah has perfected or provided wealthy favour for humanity to be utilized and bestowed. The Prophet also touches the importance of property management like His word;

إِنَّ رِجَالًا يَتَخَوَّضُونَ فِي مَالِ اللَّهِ بِغَيْرِ حَقِّ فَلَهُمُ النَّارُ يَوْمَ الْقِيَامَةِ

Translation: People who are busy with unjustly acquiring Allah's wealth (that is, whatever comes from Him) will deserve the Fire on the Day of Standing.

(Narrated by al-Bukhari)

Al-Asqalani explains that the meaning of managing the wealth of Allah is to manage and carry out of the property of Muslims. Thus, the context of this hadith is the prohibition on managing the Muslims property without rights (al-Asqalani, 1986). Hence it is understood that Islam encourages the excellent management of the property and is far from the forbidden thing, also give a substantial threat to those who do not adequately manage the property.

The property management is the norm to the society, and it is considered as custom and culture. Every single man in society or state has its property management system. In Malaysia, the management of Islamic property is carried by a diverse body like individual, groups or institutions. Many trustee institutions managed some of the Muslim properties, and it has different roles. For example zakat property is managed by zakat centres such as Zakat Collection Centre of Federal Territories and Baytulmal MAIWP (Federal Territories Islamic Religious Council) (Muhammad Ikhlas & Luqman, 2018), Baytulmal MAIWP manages waqf, and some states have companies that manage their waqf such as Selangor (Perbadanan Wakaf Selangor), while inheritance wealth is managed by Amanah Raya Berhad (ARB). The Muslims property managed by the institution is considered as trust property.

This study will be conducted on the management of trust property in Malaysia. It is more focused on reviewing the literature on trust property management. To make a discussion clear, the study will present the concept and scope of trust property as a fundamental theoretical basis of the study. Furthermore, the debate on the need for property trust management is also elucidated. Then the previous studies on trust property management will be discussed and analyzed.

2. The Concept of Trust Property Management and Its Scope

This study focuses on the management of Muslim property trusts discussions in Malaysia. However, the concept and scope of trust properties need to be detailed so that the general principles of wealth can be bounded and expand the perspective of trust properties. Property from a conventional perspective refers to what each or society possesses like goods, land, animals, and others (Mu'jam Alfaz, 1989). Whereas according to the fiqh the property is everything that can be owned and exploited (Zaydan, 2009).

The property in that context includes assets other than trust properties, whereas trust property is a property that has been entrusted to another party to be managed. However, in Malaysia typically the use of trust funds refers to the inheritance property. This is due to a trusted company known as Amanah Raya Berhad only deals with matters of inheritance, bequeathals and donations (arb.com.my, 2016).

However, in reality, the concept and the sphere of trust properties are broader, it can be understood as property entrusted to individuals or institutions to be kept, stored, administered, managed, invested or distributed following the fundamental principles of those properties. Under the basic principles means it is suite to the type of property, for example, zakat property should be allocated to asnaf; hence the institution that holds the trust of the property should manage and distribute the property of zakat to asnaf.

Consequently, property such as zakat, waqf, investment property, deposit property, grants, inheritance (managed by a third party), wills and the like can be categorized as trust property.

3. The Need of Research on Trust Property

The management of trust property is a crucial phenomenon nowadays, so it opens the space of study and research from various perspectives. Furthermore, there are some polemics and issues arose in handling and managing trust properties. This is due to the involvement of a third party (institutions) in managing the property and how they ensure the trust property management in line with Islamic law guidelines. Among the general guideline for property management are (Shukeri, 2011);

- 1- The method of ownership; the property owned through the Shariah ethical mean either the source of the property, through the legal contract of ownership and obtain it from the means of submission and legacy (inheritance, will and so forth).
- 2- The method of producing property; the property must be produced in a lawful (halal) and permissible way that coincides with shariah.
- 3- The method of spending and using property; spend wealth on the right path, not wasteful, not oppressing others and so forth.

The management of trust property is seen as very important because it is a fundamental part of human life. Sharia even recognizes the property as an aspect that should be emphasized by Muslims. Realizing this significance, Muslim scholars have placed the property as a form of *maslahah daruriyyah* in line with the objectives of Islamic law (*maqasid al-shariah*). 'Ali bin Mukhtar stated that property management could be linked to how one manages the weapons ('Ali Mukhtar, n.d.);

Property resembles a weapon. The weapon in the hands of criminals will cause him to kill others. However, if the weapon in the hands of a soldier it can be used to defending and controlling national security. Bad and good weapons are not seen on its substance. Similar to a property, Allah SWT has explained that property can make his master received a good or bad reward in the world and the hereafter.

Malaysia's reality witness, some issues on trust property management, has become an essential topic of discussion. This issue and polemic require a more in-depth and contextual study. For example, the amount of unclaimed inheritance is over 40 Billion MYR (NST, 2007); it is such a significant amount. According to Tun Ahmad Sarji Abdul Hamid, the statistics obtained through the Malaysian Syariah Judiciary Department (JKSM), at present, shows that unclaimed property of Muslims reached RM66.6 billion (Utusan Malaysia, 2013). This situation will affect if the case of this inheritance is left to decades will result in increasing the number of heirs.

Similarly, in the issue of Tabung Haji savings, for example, the investment of TH on costumers saving is unclear, the payment of zakah of TH which is said not compatible with the principle of shariah and the land that TH purchased is considered inappropriate and not profitable investment (astroawani.com, 2016). Also, the issue of waqf management arose, among them, is the wakaf land. It was invaded to develop a residence, and business premises, the waqf land which was devoted to specific groups or certain purposes are developed for other purposes (Mohamad Zaim, Muhammad Ikhlas & Mohd Anuar, 2015; Ridzwan, Wardah, Rapih & Farzana, 2019). The transfer of waqf property (*istibdal*) to strategic places. The issue of zakat management is also noted as a significant polemics, for example is the issue on the investment of zakat funds (that not be able to distribute in audited year), the transparency of zakat distribution, the determination of asnaf zakat, the status of transferred zakat funds out of the area and so on.

Such issues and polemics often arise due to lack of attention on Islamic law principles by institutions that are managing trust properties. This may be due to a lack of efficiency in the management of trust funds, or it is reflected from a diverse interest and profits targeted by the institutions. Therefore, the study of trust property according to the reality of Malaysia needs to be done, and it is to solve the legal issues

that arose and to come out alternative solutions so that the wealth of Muslims can be well managed and give a benefit to a Muslims.

4. Review of Past Research on Trust Property Management

There are several aspects to be emphasized in the spotlight on trust property management issues in Malaysia. Among the areas of concern are the institutions that manage the trust property and Islamic law principles in the management of trust property. On the first aspect it is summarized below;

Literature Source	Review
Mamat Said (2001)	<p>Reviewed on the zakat business of Lembaga Urusan dan Tabung Haji (TH). Issues that still unanswerable as follows:</p> <ol style="list-style-type: none"> 1. The basis of zakah payment of TH, either based on depositor's deposits or a business basis conducted by TH. 2. The status of money deposited by depositors in TH whether as a saving, share or <i>mudaraba</i>. 3. If intended as savings, can TH conduct business using that deposit? Should TH request prior consent from the depositor if need to use the deposits? 4. The utilization of deposited money by TH whether as a share or <i>mudaraba</i>. 5. If zakat issued on a business basis, it still needs to be issued according to the number or amount of deposits of the states. 6. In which sector does TH invest its funds and how far the sharia panel controls its business legality conforms to Islamic remedies.
Syahidawati Shahwan (2000)	<p>Disclose TH's form or place of investment in the plantation sector, among the investments, is; palm oil plantations and palm oil mills, cows breeding by TH Plantations Sdn. Bhd, Sungai Ibok oil palm plantation, Ladang Bukit Belian managed by TH Peladang Sdn. Bhd., TH Estates (Holding) Sdn. Bhd., Panji Alam Palm Oil Mill Sdn. Bhd. Moreover, others. This study does not involve other investment sectors and not include the assessment of the investments base on Islamic law perspectives.</p>
Al-Azifah Shafie (2010)	<p>Mohd Analyzed on the Basic Draft of Bequeathal Documents and the Comprehensive Draft of Bequeathal Documents of Amanah Raya Berhad and found out that both documents are in line with Islamic principles. However, there are some clauses in these drafts need to be refined to avoid confusion.</p>
Projek Penyelidikan UiTM (2007)	<p>Reviewed the Baitulmal role in applying the business assistance scheme. It is a form of a proposal to empower the funds owned by Baitulmal through business assistance. Also, it reviewed the public's confidence in Baitulmal institution management.</p>
Nor Azureen Ramli, et al. (2003)	<p>Reviewed the issue of collection and distribution of zakat fitrah at Baitulmal of Selangor Islamic Religious Council (MAIS). There are some issues highlighted in this study such as the distribution of zakat fitrah not reach the 2/8 ratio, a limited function in zakat management and others. However, this study presents solutions for efficient and professional management improvement in Baitulmal MAIS.</p>

Baharuddin Sayin, Asmak Ali & S. Salahudin Suyurno (2006)	Analyzed on the implementation of corporate waqf development of Johor Corporation Berhad (JCorp).
Abd. Shakor Borham (2011)	
Hydzulkifli & Asmak (2012)	Reviewed management of waqf development through Penang Islamic Religious Council (MAINPP) experiences. The study found out that the development of wakaf was done by building houses and shops for sale (the sale of benefits).
Mohd Anuar & Mohammad Naqib (2017)	Reviewed on the practices of cross-border zakah collection by zakah institutions. The study found that practices do not comply with Shariah and a violation of the law in Malaysia.
Rusnadewi, Rohayati & Noor Inayah (2015)	This study was conducted to study the issue of the invasion of waqf land in Malaysia. The study analyzed the lack of control mechanism and enforcement by the authorities.
Mariyatul Qibtiyyah & Noralfishah (2015)	This study reviewed the issue of missing person's (<i>al-mafqud</i>) property that unable to claim which more than 6.6 billion in the cash form and more than 50 billion in the others asset form.

The second aspect is about Islamic legal issues in the management of trust properties. The summary of this aspect as follows:

Literature Source	Review
Rohayu Abdul Majid & Rosli Said (2014)	This study list down four main issues of waqf property management which is procedural and legal issues, management and administrative problems, land development problems and physical and social barriers.
Mohd Saharudin, Mohd Saifoul & Jamal (2003)	This study listed the problems of waqf, which is; problems in the interpretation of the waqf usage according to ulama', waqf properties that are still undeveloped in Malaysia and the problem of the institution that regulates the property of waqf.
Ahmad Ibrahim (1988)	The study has been conducted on the nominee property as well as the dispute issues arising in cases which have been decided in court.
Mohd. Ridzuan Awang (1988)	This study explained the law of administration and Muslims property management in Malaysia
Abdul Rashid Abdul Latiff (1986)	Study on the theory of bequethal and the distribution of inheritance in Islamic law
Said Ibrahim (2013)	
Wan Abdul Halim Wan Harun (2012)	Reveal issues on the distribution of Muslim inheritance from a legal perspective in Malaysia. The study also explains the institutions responsible for managing the inheritance of Muslims, namely Amanah Raya Berhad, Distribution of Inheritance Section (<i>Seksyen Pembahagian Pusaka</i>) or Land Office and High Court.
Habibah Abdul Wahid (2015)	A study on new issues in which zakat was channelled to flood victims who were not included in eight asnaf.

Abdul Hamid (2012)	A study is questioning a fatwa that obliges Islamic financial institutions in particular TH to pay zakat.
Lokmanulhakim (2015)	A study that sets forth the proper method of calculating zakat of shares that can be applied in Malaysia. It also attempts to improve the performance of zakat collection in Malaysia; for example, the calculation based on the lowest value should be changed to the current value-based calculations.
Suryani Masnan (2012)	Study on zakat on income as practised in Selangor Zakat Board (LZS). The study attempts to see the issue of salary deduction practice and its alignment with Islamic law.
Muhammad Ikhlas & Abdul Hakim (2016)	Study on the takaful model of waqf in Islam and its needs in the takaful industry nowadays.

The studies on Islamic property that has been done by previous researchers are seen as comprehensive and separated. This led to complex discussions about the property and also had a different side. Therefore, it is necessary to establish general rules and principles on the aspects of Islamic property law that able to provide outline and guidance to research Islamic law of property. The previous research also shows that much unresolved Islamic property issue that needs to be resolved according to Islamic law perspectives.

5. Summary and Conclusion

The issue of trust fund management is an important issue. With its sphere as the property of Muslims, it must be managed by following a sharia-compliant manner. Hence the question has arisen in the extent of the attitudes towards Syariah principles by the institution that manages the trust property. With a review of the trust property management of some institutions, it is sufficient to disclose or identify issues of trust property management.

Two aspects can be evaluated in the practice of trust property management, the first aspect is the managing institution and its management methods and the second aspect is the legal issue that arises. For the first aspect of the example is ARB management of inheritance and bequeathal, although this institution is set up to safeguard the trust property of Muslims, but ultimately it is the place where much-unclaimed property has accumulated, so it raises the question whether it really cares for the welfare of Muslims, especially heirs and families of the deceased. Therefore, in terms of management, it needs to be elucidated and refined to provide the best solution.

After highlighting some of the previous works of literature, several management issues have been identified. Among them is;

- 1- Position of investment by trust property managers such as deposit money
- 2- Position of frozen assets in Amanah Raya Berhad
- 3- Issues of abandoned and undeveloped waqf property management
- 4- Cash waqf instruments in the application of the current financial system
- 5- A new interpretation of asnaf in term of zakat distribution based on the reality of Malaysia
- 6- The position of the Islamic financial institution's zakat payment in Malaysia
- 7- Fiqh issues regarding the nominee of the property

Some of these issues are important in solving and explaining the practice of trust property management in Malaysia. With fiqh clarification, community trust towards trust property management institutions will be more positive. Similarly, the wealth of Muslims can be well managed by the principles of sharia and

can guarantee their welfare in Malaysia particularly. Therefore, these studies will be conducted in greater detail in order to achieve the objectives and targets that have been set.

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