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# WAQF IN MALAYSIA: THE POWER BEHIND IT

Dahlia binti Ibrahim  
dahlia400@uitm.edu.my

Faculty of Business and Management, Universiti Teknologi MARA Cawangan Kedah

The waqf institutions' situation in Malaysia long before independence is very different from today's scenario. Back then, many Muslims concentrated on preserving their religious customs from being contaminated by the British nonspiritual procedures. During this colonial era, the waqif personally and directly appointed many highly reputed individuals such as the village head, religious school teachers, mosques and suraus to manage the waqf. The original owner did not make any official ownership transfers with the mutawalli; there was only verbal agreement between the two parties (Mahamood, 2006). Therefore, there was no proof as to the right of the waqf for the intended purpose when the founders normally left it to the trusted individuals to fully manage the waqf as long as the trusted mutawalli deliver the intended purpose accordingly. To overcome this situation, the State Islamic Religious Council (SIRC) of each state in Malaysia is given the power and trust to administer the waqf, replacing the old ways in the appointment of trusted individuals by the founders. The SIRC was set up way back in 1916 where it was originally established merely for the supervision of mosques in Kelantan. As the sole trusteeship of the waqf, each SIRC in each state in Malaysia is given the authority to supervise, manage and develop all the waqf (Mahamood, 2006).

Legally, Section 25 of the Civil Law Act 1956 governs the SIRC in the administration of waqf (Kamaruddin, Masruki & Hanefah, 2018). Each SIRC is unique in its own way. The formation of the SIRC of each state was not done simultaneously and it was done stage by stage. Although the interpretation functions of the SIRC differ from each other, its main function is the same. It is important to know that the Sultan of each state has full authority on the SIRC in his state. For those states without the sultanate system, the Governor of each state holds the power on the SIRC. Although the SIRC holds the same function, there is no standard or centralized regulation governing the management of waqf by these SIRC. As such, they are free to practice their own individual enactment. Interestingly though, these SIRC share the same issues to manage and develop the waqf under their jurisdictions. Some of the well-known issues are the size of land and its location; distance of the waqf from the population and nearby infrastructure; insufficient manpower to manage all of the waqf; insufficient funds to develop the waqf; unlawful occupation of the waqf land; incompetency of managing the waqf and poor recordkeeping of the proclaimed waqf (Mohd Salleh & Muhammad, 2008).

In addition, the laws governing the management of the waqf in Malaysia vary from one state to another. Except for the state of Selangor, Malacca and Negeri Sembilan, the rest of the states have provisions for the waqf which are not centralized and do not have specific jurisdiction pertaining to the creation of waqf. Most of the enactments as provided in most of the states focus on the administrative and implementation of the waqf. According to Mahamood (2006), the enactments cover:

1. The appointment of the SIRC as the sole trustee of the waqf in Malaysia.
2. Giving the SIRC the right to the waqf including the general and specific waqf.
3. The creation of the waqf based on the one-third rule regardless of voluntary or not.
4. The income and capital treatment of the general and specific waqf.
5. The SIRC authorization to make decisions on the general waqf if there is no provision indicated in the legislation.

6. The permission for the SIRCs to seek the advice of the Mufti if there is any uncertainty in the creating of the waqf.
7. The rate exemption which only applicable to the Johore Enactment (14) 1978.
8. All the mawquf (assets/properties proclaimed as waqf) and any investments related to them.
9. The vesting power of the SIRCs as the sole trusteeship of the state mosques and their rights to create new mosques.

As to date, the management of waqf in Malaysia still remains the same as it is years back. There are no indications that there will be any changes in the structural management of the waqf. As such, the waqf management still has no centralized regulation to govern it. There were a few suggestions of having a centralized waqf system in Malaysia. Nevertheless, none of the suggestions were successful due to the empowerment in the decision making falls into the approval of the sultan or governor of each state. Hence, the Department of Waqaf, Zakat and Haj (JAWHAR) and Malaysia Waqf Foundation (YWM) were set up in 2004 and 2008, respectively, to foresee standardized administration of waqf in Malaysia. It is expected that with the inclusion of these two federal agencies, the SIRCs will become more systematic and efficient in managing the waqf.

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