



conference proceeding



SIMPOSIUM NUSANTARA⁹

THE 9TH REGIONAL SYMPOSIUM OF THE MALAY ARCHIPELAGO
Revisit Islamic Civilization and Built Environment In The Malay World

11 & 12 December 2012
Al-Khawarizmi Lecture Hall
UiTM(Perak)

Organized by:
Centre for Knowledge & Understanding of Tropical Architecture & Interior (KUTAI)
Centre for Islamic Thought & Understanding (CITU)
Centre for Architecture, Planning & Surveying (FSPU)
Faculty of Architecture, Planning & Surveying (Perak)
Universiti Teknologi MARA (Perak)
<http://perak.uitm.edu.my/simpورا9>



FSPU

PAPER CODE: EP343

WAQF ADMINISTRATION UNDER MAJLIS AGAMA ISLAM DAN ADAT MELAYU PERAK; A PARADIGM SHIFT: CASE STUDY ON WAKAF MASJID MELAYU TAIPING, PERAK, MALAYSIA

Mudirah Shahrudin^a, Noraini Johari^b, Mohd Salim Jasiman^c

^{a,b,c} Faculty of Architecture, Planning and Surveying, Universiti Teknologi MARA (Perak), Malaysia

Abstract

The main purpose of this paper is to discuss the performance and problems of the Waqf administration of Wakaf Masjid Melayu Taiping in Perak, Malaysia under the Majlis Agama Islam and Adat Melayu Perak. This paper first describes the problems of Waqf Masjid Melayu Taiping and then suggests proposals for improvement. Waqf administration requires a paradigm shift and new innovative avenues. It also needs to develop a hybrid viable model for generating more benefits for all involving parties of the society with sustainability characteristics. It is recognized that there is no ample study in the area of Waqf. Further, literature is very scanty relating to the Waqf administration. The existing studies identify various facets of the Waqf and its administration issue to explore different aspects of theoretical dimensions and practices.

Keywords: Waqf; Administration; Problems; Paradigm Shift; Majlis Agama Islam Dan Adat Melayu Perak

1. INTRODUCTION

The word Waqf is derived from the Arabic root verb waqafa, which means 'causing a thing to stop and standstill'. It also takes the meanings of 'detention', 'holding' or keeping. Waqf (pl. Awaqaf) is called Boniyad in Iran and Habs (pl. Ahbs) in North and West Africa. So, broadly, Waqf means holding and preservation of a certain philanthropy or sadaqah (charity) with the intention of prohibiting any use or disposition of the property outside the specific purposes to which the property is dedicated in such a way that it cannot be sold. However, by taking its different meanings into consideration Waqf can be applied to non perishable property whose benefit is extracted without consuming the property itself. Then notable examples of Waqf include land, buildings, books, cattle, cash money and so on. Once land was important for Waqf due to productivity but now Cash Waqf is more important because it's more productive compared to land as it is testified by the existing research studies and found profitable in the practices of modern Islamic financial system.

JIBC April 2012, Vol. 17, No.1 - 3 -

Waqf of Masjid Melayu Taiping consist of about 83 units of shoplots whereby about one third, about 23 of them are vacant or built with temporary structure. All the shoplots are situated at the heart of Taiping commercial centre. The rest of the shoplots are built with double and three storeys shophouse and four storeys shop office. The land was first alienated under one title on 23rd April 1880. Later, it was subdivided into individual shoplots and lease out return collected as ground rent.

Waqf is not specifically mentioned in the Holy Quran, the concept of wealth distribution is strongly emphasized therein¹ Distribution of wealth is a key issue in the modern economy to make it more dynamic, prejudice free and entrepreneurial. However, a hadith narrated by Abu Huraira [May Allah be pleased with him (R)] is considered as the origin of this institution in the world of Islam: "Abu Huraira (R) reported Prophet Mohammad [Peace be upon him (pbuh)] as saying: when a man dies, all his acts come to an end, but three; recurring charity (sadaqa jariyah)² or knowledge (by which people benefit), or a pious offspring, who prays for him"³. It is also

¹ The Qur'an (2:215, 264,270,280); (3:7); (58: 12, 13)

² Here by Islamic scholars Waqf is also termed "Sadaqa Jariyah" or recurring charity.

³ The Sahih Muslim.

evidenced in the Sunnah (practices of Khairul Karun ⁴) that many great personalities of Islam had Waqf their properties in different form. There are mainly two types of Waqf, namely (a) Waqf lil awlad (Waqf for family) and (b) Waqf lillah (Waqf for Allah). In addition to previous two types of Waqf some authors also identified another Waqf system which is named as ‘Waqf for Philanthropy’ ⁵. Sometimes, this philanthropic Waqf is categorized under the Waqf lillah. The amount or value of the Waqf is not an important issue rather it is worthy to involve whole ummah in the process of Waqf so that everyone irrespective of financial condition could be involved by contributing as little as a cent within the prescribed systems of institutionalizing the concepts under government and private initiatives and guidelines provided by Islamic doctrines. Hence, it is not the preserve of the wealthy. That is anyone, subject to certain Sharia conditions, can be a waqifa (donator). A Waqf may be made during one’s lifetime or up to one-third of one’s distributable estate through Mutawalli ⁶ (Waqf manager) or one’s willpower in the time of death. (Shahedur, 2012)

2. OBJECTIVES OF THE STUDY

The main objective is to assess the performance of the existing Waqf Administration of Wakaf Masjid Melayu Taiping, Perak, Malaysia. More specific objectives of the study are furnished below:

1. To study the features of existing Waqf administration of Wakaf Masjid Melayu Taiping under Majlis Agama Islam dan Adat Melayu Perak.
2. To analyze the problems and prospect of Waqf systems in Perak.
3. To provide proposals for further improvement of the overall performance.

3. RESEARCH METHODOLOGY

This research applies the case study approach in order to explore an in-depth management of waqf properties to identify the weaknesses in the practice which contributes to management need for waqf properties administered under Majlis Agama Islam dan Adat Melayu Perak. Wakaf Masjid Melayu Taiping was selected as a case study in order to minimize the size of research area in relation to waqf properties in Perak. In the perceptual analysis, data collection was performed through interviews and questionnaire study.

3.1 Data Collection

The interviews were conducted in order to identify the practice in managing waqf properties and thereafter, identify its weaknesses. It was very important in order to get deeper and clear understanding as regard to practice in management and maintenance aspect of waqf properties administered under Majlis Agama Islam dan Adat Melayu Perak.

3.2 Data Analysis

In accordance with variety of data in a form of structured and semi structured questions, this research then compare with the requirement in managing properties For the semi structured questions, whether in pro-forma or interview formats were analysed qualitatively by listing and quoting relevant text or transcriptions pertinent to the issue. It is performed manually by using Constant Comparison Method to facilitate the performance of content analysis.

4. FINDINGS AND DISCUSSION

The Waqf is not only the spiritual and religious aspect but also an important issue which has influences on the economic, political, community, educational and social development. As Waqf institution covers a wide range of

⁴ The khairul karun is described as the golden age for developing the Islamic tenets and providing dependable explanation of various basic principles and practices of Islam which is relevant to the lives of ummah and its different phases irrespective of age, variations in identity and geographical locations.

⁵ Monzer Khaf states in “Waqf: A Quick Overview” that Philanthropic Waqf began by the Prophet Muhammad (pbuh) too. A Jewish man called Mukhairi made his will that his seven orchards in Madinah be given after his death to Prophet Muhammad (pbuh). In the year four of the Hijrah calendar, he died and Prophet Muhammad (pbuh) took hold of the orchards and made them a charitable Waqf and the practice was followed by the companion of the Prophet Muhammad (pbuh).

⁶ Mutawalli / Nazir or sometimes Wasy (Waqf manager) preserve the property to maximize its revenue or benefits of the beneficiaries.

issues from economic to the social aspect of the human development, it can be attributed as one of the prime tools to uplift the pride, dignity and supremacy of Islam. Therefore, such an important issue cannot be free to run itself on the whims without following any predetermined policies, rules and scientific management systems within the purview of the overall guidance of the Islamic tenets. So, application of the professional management concepts and principles along with contemporary best practices and through the appropriate⁷ and time based Waqf systems provide the basis for excellence of operations to achieve the overall efficiency and effectiveness.

i. History of administration

The problem starts with the State Islamic Religious Council (MAIN)⁸ which is the sole trustee of all. For this case is Majlis Agama Islam Perak.. Wakaf Masjid Melayu Taiping formerly was administered under a group of Trustee consist of six person headed by the ex officio, the District Officer of Larut (first chairman is the Residence of British) and another five nominated trustee (the kadi and head of sub district in Taiping); where all the appointments with the consent of Sultan of Perak. As we can see that the appropriateness in management systems of Waqf with its real Islamic standard was handicapped due to some historical reasons which are majorly attributed to the history of western colonialism. Thus, Wakaf Masjid Melayu Taiping is not an exception to other countries of the Muslim world in the same context.. According to the opinions of Waqf practitioners and researchers in the field, Waqf administration in Malaysia is facing multitude of accumulated problems. (Shahedur,2012). As the trustee inherits Waqf property, it should be managed with qualified, knowledgeable and professional managers who are well acquainted with Islamic as well as country laws to make right symbiosis for attaining the performance goals in the Waqf systems. Another issue is that the peoples involved in managing the Waqf assets - Mutawalli or Waqf manager - are found to be as unqualified in some cases. (Shahedur, 2012) For Wakaf Masjid Melayu Taiping, the five nominated trustee are not the people who are really qualified in administering; in addition the post was inherit to the next generation. Even in some incidents the Waqf lands are managed by non-Muslims who are not really competent to run that venture in head as well as heard and beliefs. (Shahedur, 2012). The first chairman of the Wakaf Masjid Melayu Taiping is the British officer. So, how can authority trust them without their fundamental beliefs and ideologies? That means Waqf assets should be granted to the right Mutawalli (Waqf manager) by considering their sound footings in ability, willingness and beliefs as well to utilize the asset with trust and reliance. (Shahedur, 2012). The administration of Wakaf Masjid Melayu Taiping after nearly a decade. was hand over to Majlis Agama Islam Perak in February 1972 till present. The administration was assigned under a small unit under Islamic Affairs Department which administered all the mosques in Perak.; not in a separate unit by itself. Later, it was assigned under the Property unit of Majlis.till present.

ii. Practice in collection of revenue

Another problem of waqf administration of Wakaf Masjid Melayu Taiping related with the management of Waqf asset is that these properties left idle due to some procrastination in the management process. The notable factors that lead to the procrastination consist of properties given out orally without any registration and documentation, and accounting practices are not in compliance with the Islamic accounting norms. In addition, complexity in the possession⁹ of land property makes sale and purchase restricted in the formal market, while in leasing and rental markets these are often rented below the market price (Jasni, 2006). For Wakaf Masjid Melayu Taiping, all the lots was formerly lease for 66 and 99 years for a ground rent ranging from RM1 to RM10 per month. The building was built by the lessee as part of the agreement. Majority of the lessee are Chinese and some of the lots the lease are not expired yet. Presently,all the lots built with double and three storey shophouse are still under lease agreement. The revision of rent only can be carried out when both parties agreed to do so. as a result the revenues collected not enough to pay for quit rent and assessment of those lots. As a result, the Majlis Agama Islam still has to pay the outstanding amount to Land Office and Taiping Municipilty from Baitulmal's fund which is administered under the same organization.The collection of revenue in the form of rent formerly collected partly by the Committee of Wakaf Masjid Melayu Taiping and partly by Majlis itself. This practices has led to the lack of

⁷ The appropriateness of the systems must be promulgated and evaluated through guidance of the Shariah or Islamic principles.

⁸ Majlis Agama Islam Negeri.

⁹ Mohammad TahirSabithazi Mohammad," Sustaining the means of sustainability: The need for accepting Waqaf (Waqf) assets in Malaysian property market".

updating and synchronizing the collections from both part. As a result, the outstanding amount from some of the lots remain uncollected. The lease agreement did not state any form of penalty or action except for court jurisdiction for late payment, and grace period for payment option is never mentioned. Since the waqf ownership was taken over by Majlis Agama Islam in 1972, the ground rent of some of the lots had increased, but still no fixed revision interval been agreed. Waqf revenues are insufficient to bear the operational cost, Waqf properties has no self-generating income and unproductive, delay in the earning of the compensation in the acquisition of Waqf properties, procrastination in the istibadal¹⁰ and irregularity in receiving the benefit of the Waqf properties by the maukufalaih (beneficiaries) (Abdullah, 2010).

iii. Management and maintenance concept and practice

The properties under Wakaf Masjid Melayu Taiping was sublet to other parties without any restriction or consent from landlord; as there is no requirement for that been mentioned in the lease agreement. Some of the lot were sublease according to floors and further sublet into partitions unit within the floors. Such a difference between the leased value and market value of the properties may open the doors of numerous menaces including corruption. Hence, it is the constraining factor in the way of spontaneous development process. In some cases Waqf properties are beyond the control of Majlis that gives rise to subsequent problems such as defaulting on outgoings ,tax and other kinds of tax related to Waqf land properties. Thus, Waqf land is seized by land office and Waqf premises are being sealed by local authorities. (Shahedur, 2012). The maintenance of waqf properties much below the expectation level. The long term planning is very much neglected for example: four storeys shop office built by Majlis formerly faced the water meters problems; one lot sharing a main meter where no individual separate meters provided until outstanding amount of water bill are unsolved and left to Majlis to settle as the property owner; and the Distress Act 1951 a way recovering tenant's debt never been refereed. The repair works can hardly be attended promptly eventhough for small amount of money as no singking fund or maintenance allocation is allocated from the portion of the revenue collected Further enhancing the problem the staff at branch level (Taiping) on function to collect rent and they are the administration staff with zero technical knowledge. Therefore, there is a huge gap between the expectation and existence of presence of all the factors that make the Waqf systems effective. Due to above mentioned diverse problems Waqf management systems are facing various challenges to make it dynamic, transparent, productive and innovative in the utilization of the Waqf properties that deserve attention to reorient the total systems.(Shahedur, 2012) Present paper endeavored to minimize the gap and explore the solution to bring efficiency in the existing system and make it more effective.

iv. Knowledge management

The management of informations are very minimal that restrict them for further actions and decision for future planning. The informations are scattered among the Majlis Agama Islam dan Adat Melayu Perak headoffice in Ipoh; branch office in Taiping and Waqf Committee of Masjid Melayu Taiping. There is no comprehensive or complete information to refer; as the knowledge management transformation process and storage for further reference and action are very important in an organization including charity properties such as waqf. The staff involved in the waqf keep on changing together with the restructuring of Majlis Agama Islam dan Adat Melayu Perak's organizational structure. There is no proper professionals staff being recruited resulting the knowledge slowly diminished as the staff retired and being transferred to other branches or units. The accounting informations are scattered between the main and branch offices. The details and conditions of lease and tenancy agreement was not properly compiled, In addition, the plans for the buildings whether built by Majlis or lessee can hardly be retrieved. Therefore the history of the development and trails of leaseholder for lots under the waqf of Masjid Melayu Taiping are almost none. Recently, a three storey budget hotel had complete their construction on almost five lots of the waqf land, where the fund comes from the Federal Government through the Public Work Department. The hotel was planned without parking space within the building . To cater for the parking requirement, a few other lots under the same waqf was allocated for the parking lot for the hotel visitors. As this is called a piecemeal development which does not consider on the future trend and requirement.

¹⁰ The process of exchanging one piece of land for another. *JIBC April 2012, Vol. 17, No.1 - 8 -*

PROPOSAL FOR IMPROVEMENT

It is recognized that there is no ample study in the area of Waqf. Again literature is very scanty relating to the Waqf management (Shahedur, 2012). The existing studies identify various facets of the Waqf and its management issue to explore different aspects of theoretical dimensions and practices in different countries. Karim (2010) did research on Waqf in Bangladesh to explore its problems and prospect by focusing the legal perspective. He identifies important problems in the way of efficient management of Waqf assets in Bangladesh and suggested for changing the administration and management of waqaf in order to make it suitable to the contemporary needs. He found that huge amount of national Waqf assets are being underutilized, the innovative avenues of which can be developed by framing and adopting some diversified measures. The mentionable recommendations are ensuring participation of the poor class to share the Waqf assets in productive projects, empowering the poor through Waqf based on the practices of various Islamic finances and establishing the productive entrepreneurial ventures by creative distribution of the Waqf assets to the poor class individually or collectively instead of traditional donation granting for unproductive purposes. Although he suggested the measures for the improvement of the Waqf administration of Bangladesh these can also be applied to in the context of Malaysia for the improvement of Waqf management scenario. In another study, Ahmed (2007) explains the social role of Islamic micro finance and identifies the potentials for Waqf-based micro finance philosophy and practices. To explore the unlimited benefits of the Islamic micro finance based on the Waqf assets it is recognized that Islamic micro finance can take care of those who cannot be taken care of by the market, who cannot play with economic forces or do not have access to economic means to enable them for exploiting the economic opportunities around them. Islamic financial systems emphasized on *adl* (social justice) and *ihsan* (benevolence) rather than the normal practices of isolated commercial financing practices. To integrate social development objectives, address the poverty issue and to increase the income and wealth of the poor class micro finance can play an immense role by applying the concept of group based social collateral philosophy. This practice may also facilitate the reduction of credit risk and high recovery of loaned money by involving the borrowers with productive micro enterprise development and providing them the techno economic advisory services for continuation and sustenance of the enterprises (Khan, 1997 and Siddiqi, 2004).

Other studies also points out that Islamic ideology included various institutions and structures among them such as *zakah*, Waqf and *qardhasan* that helps to redistribute income and wealth for the fulfillment of the basic needs for all in the society and ensures features of justice, equity, and social peace in that society. And these features are the indicator of a vibrant society (Zarqa, 1988 and Elgari, 2004). Therefore, it is evident that the waqaf assets can be used to finance productive microenterprises. Present paper suggest proper management systems of the Waqf assets can provide a viable model for survival through providing micro finance for enterprise development by involving the marginal and poor sections of the society. In addition, Ashraf (2008) presented a paper on "The Collection of Waqf through Insurance Companies: A Critical Analysis of the Malaysian Experience" where he endeavored to explore the performance of Insurance sector as a model for convincing young and middle class to contribute to Waqf. It has been found in the study that through proper management of the Waqf assets the studied insurance company ensured mutual benefits for all related parties by combining several Islamic principles into the practices as a profit making institution. The scheme in his study complements the conventional method of collecting Waqf with new practices of involving diversified groups through innovative plan. It was found in the study that in Malaysia, an insurance company by introducing "Takaful Waqf Plan" becomes successful in achieving developmental goals and overcoming the problems related to the operations of Waqf collection and management by ensuring the participation of all walks of life regardless of their age and economic background rather than wealthy and older people of the society. Therefore, the present paper has looked at the conventional way of collecting Waqf in Malaysian normally through the Waqf Unit or Department under the Council of Islamic Affairs can be changed through applying the innovative plan of insurance companies. (Shahedur, 2012). Thus, the motivation of the paper was to identify the problems and explore the innovative avenues for Waqf administration and to develop a better Waqf management for generating more benefits for all involving parties of the society with sustainability characteristics.

CONCLUSION

From the discussions above it is clear that through innovative Waqf administration various parties of a society can reap the benefits including poorest of the poor section that are not generally reachable by government or other agencies (Shahedur, 2012). These practices help in the fulfillment of religious requirement through performing various activities and mobilizing resources from rich to poor, creating employment opportunity to develop socio-economic conditions of the poor and whole society as ultimate results. It also will help to reform the present

institutional setup and their networking relationship throughout the country with a view to increasing their performance in the direction of the efficient and need based dynamic management of the Waqf affairs and systems. As a consequence total policy dimensions at micro and macro perspective can also be framed to meet the diversified objectives of innovations and development in the Waqf administration complying with the Shariah guidelines. (Shahedur, 2012).

- This is one of Landlords' remedies for non-payment of rent by tenant.
- A distress action, that is, to seize the tenant's goods and sell them to pay the arrears.
- The landlord's right to distress is governed by the **Distress Act 1951** which gives the landlord the statutory power to distrain for the arrears of rent.

As for Wakaf Masjid Melayu Taiping the Knowledge management roles must be discussed and implemented as soon as possible in order to make decision for future planning or development. The overall conclusion is, the management of waqf properties under Majlis Agama Islam Perak need to have a paradigm shift as to be at par with the present trend and hopefully able to cope with future trend as well.

REFERENCES

- Abdullah M.S. (2010). *Malaysia needs transformation of Waqf management, Travelodge PhD Wakaf @ Mohamad Salleh Abdullah , blog entry, Malaysia needs transformation of Waqf management*. Retrieved from: <http://sallehabdullah.blogspot.com/2010/01/artikal-malaysia-perlukantransformasi.html> (accessed 27 February 2011).
- Ahmed, H. (2007). *Waqf based Microfinance: Realizing the Social Role of Islamic Finance: Paper presented at the International Seminar on Integrating Awqaf in the Islamic Financial Sector, March 6-7*. Singapore.
- El-Gari, M.A. (2004). *The Qard Hassan Bank: Paper presented at the International Seminar on Nonbank Financial Institutions: Islamic Alternatives, March 1-3, 2004*. Kuala Lumpur, jointly organized by Islamic Research and Training Institute, Islamic Development Bank and Islamic Banking and Finance Institute Malaysia.
- Hasim, A.B.M. (2008). *The Collection of Waqf through Insurance Companies: A Critical Analysis of the Malaysian Experience: Paper presented at International Conference On Co-operative Insurance in the Framework of Waqf, March 4 – 6*. International Islamic University Malaysia, jointly organized by Islamic Research and Training Institute, Islamic Development Bank, Kuwait Awqaf Public Foundation, Department of Usul al-Fiqh, KIRKHS, IIUM.
- Jasni, M.Z. (2006). *Pembangunan Tanah Wakaf Majlis Agama Islam Melaka (Land Development Council of Religious Endowments in Melaka*. Department of Land Administration and Development, Faculty of Geoinformation Science and Engineering, Universiti Teknologi Malaysia, Johor.
- Karim, M.F. (2010). *Problems and Prospect of Awqaf in Bangladesh: A Legal Perspective*. Kuala Lumpur : AIKOL,IIUM.
- Khan M.F. (1997). *Social Dimensions of Islamic Banks in Theory and Practice*, manuscript, Islamic Research and Training Institute, Islamic Development Bank.
- Siddiqi M.N. (2004). *Riba, Bank Interest, and the Rationale of Its Prohibition*. Series No. 2.Jeddah: Islamic Research and Training Institute.
- Zarqa, M.A. (1988). *Islamic Distributive Schemes*. In Iqbal, M. (Ed.), *Distributive Justice and Need Fulfillment in an Islamic Economy* (pp.163-216). Leicester: The Islamic Foundation