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LEGAL ANALYSIS ON THE LAW OF *WAQF* LAND AND ITS IMPLEMENTATION IN MALAYSIA

ROSHIDAH BINTI OSMAN

Universiti Utara Malaysia

DOCTOR OF PHILOSOPHY

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Universiti Utara Malaysia

A thesis submitted to the Ghazalie Shafie Graduate School of Government in fulfilment of the requirements for the Doctor of Philosophy
Universiti Utara Malaysia

Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
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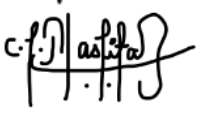
Pemeriksa Luar *(External Examiner)*	:	**ASSOC. PROF. DR. SITI MASHITOH MAHAMOOD (UM)**	Tandatangan *(Signature)*	
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ABSTRACT

This thesis provides a comprehensive legal analysis of the substantive and procedural laws governing *waqf* land in Malaysia and evaluating their implementation in *waqf* land development. *Waqf*, an Islamic endowment, plays a vital role in the socio-economic development of Muslim communities by providing perpetual benefits for religious, charitable, and public welfare. Despite that, the legal framework and administrative practices surrounding *waqf* land development in Malaysia are facing challenges, including legal ambiguities, management inefficiencies, and inconsistent implementation. The research has four main objectives: first, to examine the existing substantive laws governing *waqf* land, their historical development and the current framework; second, to analyse procedural rules relating to the administration and management of *waqf* land development; third, to evaluate the practical implementation of these laws, highlighting inconsistencies and challenges; and fourth, to propose a comprehensive recommendations to improve these laws, ensuring more effective management and development of *waqf* land. This study adopts a qualitative approach, integrating in-depth semi-structured interviews with key stakeholders and thorough document analysis of current development projects, utilizing their novelty in practice as a unique data collection method with phenomenological, ethnological, observatory and analysis approaches. This qualitative study examines the legal, cultural, and administrative aspects of *waqf* land development in Malaysia, gathering insights from key stakeholders, including SIRC officials, developers, and community members. Using a grounded theory model, the research identifies themes that shape a current practice model, which maps existing *waqf* management strategies, effective practices, and areas for improvement. Findings reveal significant gaps and inconsistencies in the current legal framework and implementation practices. Key issues include inadequate legal provisions, lack of clarity in procedural guidelines, issues and challenges in enforcement and compliance. Based on these findings, the thesis proposes reforms to improve the legal and administrative framework governing the development of *waqf* land in Malaysia, including revising and harmonizing substantive and procedural laws, enhancing the capacity of *waqf* management institutions, and implementing effective monitoring and evaluation mechanisms. This thesis contributes to the existing body of knowledge on *waqf* law and provides valuable insights for policymakers, legal practitioners, and stakeholders involved in the management and development of *waqf* land in Malaysia.

Keyword: *Waqf* Framework, *Waqf* Development, *Waqf* Governance, Substantive Law and Procedural Law**,** *Waqf* Land Development

ABSTRAK

Tesis ini mengutarakan analisis perundangan secara komprehensif meliputi undang-undang substantif dan prosedural yang mengawal tanah wakaf di Malaysia serta menilai pelaksanaan dalam pembangunan tanah wakaf. Wakaf, iaitu satu bentuk endowmen Islam, memainkan peranan penting dalam pembangunan sosio-ekonomi masyarakat Islam dengan menyediakan manfaat berterusan untuk tujuan keagamaan, kebajikan dan kesejahteraan awam. Namun, kerangka perundangan dan amalan pentadbiran berkaitan pembangunan tanah wakaf di Malaysia berdepan dengan cabaran, termasuk peruntukan undang-undang yang kabur, ketidakcekapan pengurusan dan ketidakselarasan pelaksanaan. Kajian ini mempunyai empat objektif utama: pertama, meneliti undang-undang substantif sedia ada yang mengawal tanah wakaf, menjejaki perkembangan sejarahnya dan kerangka semasa; kedua, menganalisis peraturan prosedural berkaitan pentadbiran dan pengurusan pembangunan tanah wakaf; ketiga, menilai pelaksanaan praktikal undang-undang dengan menonjolkan ketidakselarasan dan cabaran; dan keempat, mencadangkan kaedah yang komprehensif bagi menambah baik undang-undang tersebut agar pengurusan dan pembangunan tanah wakaf menjadi lebih berkesan. Kajian ini menggunakan pendekatan kualitatif dengan menggabungkan temu bual separa berstruktur secara mendalam bersama pihak berkepentingan serta analisis dokumen projek pembangunan semasa, menggunakan kaedah pengumpulan data yang unik melalui pendekatan fenomenologi, etnologi, pemerhatian dan analisis. Kajian kualitatif ini meneliti aspek perundangan, budaya dan pentadbiran pembangunan tanah wakaf di Malaysia dengan mengumpul pandangan daripada pihak berkepentingan, termasuk pegawai Majlis Agama Islam Negeri (MAIN), pemaju dan anggota masyarakat. Dengan menggunakan model teori berasaskan data, kajian ini mengenal pasti tema-tema yang membentuk model amalan semasa yang memetakan strategi pengurusan wakaf sedia ada, amalan berkesan, serta bidang yang memerlukan penambahbaikan. Hasil kajian menunjukkan terdapat jurang dan ketidakselarasan ketara dalam kerangka perundangan semasa dan amalan pelaksanaannya. Isu utama termasuk peruntukan undang-undang yang tidak mencukupi, kekaburan dalam garis panduan prosedur, serta cabaran dari segi penguatkuasaan dan pematuhan. Berdasarkan penemuan ini, tesis ini mencadangkan penambahbaikan terhadap kerangka perundangan dan pentadbiran yang mengawal pembangunan tanah wakaf di Malaysia, termasuk menyemak semula dan menyeragamkan undang-undang substantif dan prosedural, meningkatkan kapasiti institusi pengurusan wakaf, serta melaksanakan mekanisme pemantauan dan penilaian yang berkesan. Tesis ini menyumbang kepada kerangka ilmu berkaitan undang-undang wakaf dengan menyediakan pandangan yang bernilai kepada pembuat dasar, pengamal undang-undang, serta pihak berkepentingan yang terlibat dalam pengurusan dan pembangunan tanah wakaf di Malaysia.

Kata Kunci: Kerangka Wakaf, Pembangunan Wakaf, Tadbir Urus Wakaf, Undang-Undang Substantif Dan Prosedur Wakaf, Pembangunan Tanah Wakaf.

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Johore Wakaf Rules 1983

Majlis Agama Islam dan *Adat* Istid*adat* Melayu Perlis (MAIPs).

Malacca Wakaf Enactment 2005

Mohammedan and Hindu Endowments Ordinance 1905

National Land Code 1965

Pahang *Waqf* Fund Rules 2015

Pulau Pinang Islamic Religious Administration Enactment 2004

Sarawak Islamic Council Ordinance (Incorporation) (Amendment) 1984

Selangor Wakaf Enactment 2015

Terengganu Wakaf Enactment 2016

Wakaf Enactment Perak 2015

Waqf Enactment (State of Sabah) (Amendment) 2023

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Fatimah v. D. Logan [1808–84] 1 Ky 255.

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Majlis Agama Islam Wilayah Persekutuan v. Victoria Jayaseele Martin [2016] 1 LNS 131.

Majlis Ugama Islam Pulau Pinang v. Shaik Zolkafly Shaik Natar [2003] 3 MLJ 705.

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Ramah v. Laton [1927] 6 FMSLR 128.

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Syed Idross Bin Syed Hassan & Ors v. Majlis Agama Islam Negeri Pulau Pinang [Case No. 07400-007-0165-2017].

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Mahdi bin Ab. Hamid v. Mohamad Iqwan bin Yahaya [Case No. 14000–044–0042-2015].

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LIST OF ABBREVIATIONS

BMMB - Bank Muamalat Malaysia Berhad

BMW - Bahagian Pengurusan dan Pembangunan Mal dan Wakaf

JAWHAR – Department of *Awqaf*, *Zakat* and *Hajj*

MAHEB - Muslim and Hindu Endowments Board 1905

MAIDAM - Majlis Agama Islam dan *Adat* Melayu Terengganu

MAIK - Majlis Agama Islam dan *Adat* Isti*adat* Melayu Kelantan

MAIM - Majlis Agama Islam Melaka

MAINJ - Majlis Agama Islam Negeri Johor

MAINPP - Majlis Agama Islam Negeri Pulau Pinang

MAIPK- Majlis Agama Islam dan *Adat* Melayu Perak

MAIS - Majlis Agama Islam Selangor

MAIWP - Majlis Agama Islam Wilayah Persekutuan

MUIP - Majlis Ugama Islam dan *Adat* Resam Melayu Pahang

MUIS-Sabah Islamic Religious Council

PWM - Pusat Wakaf MAIWP

PWNS - Perbadanan Wakaf Negeri Sembilan

PWS : Perbadanan Wakaf selangor

SEDCO - Sabah Economic Development Corporation

SIRC - State Islamic Religious Council

TBS - Tabung Baitulmal Sarawak

WPAR - Wakaf Perak Ar-Ridzuan

WPPSB - Wakaf Pulau Pinang Sdn. Bhd

YWM - Yayasan Wakaf Malaysia

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CHAPTER ONE

INTRODUCTION

1.1 Introduction

Recently, there has been escalated public interest in the development of *waqf* land in Malaysia. The development of *waqf* land in Malaysia appears to be categorized into two types: projects aimed at generating financial returns and those focused on enhancing social welfare. This can be classified as classic development and contemporary development, stemming from general *waqf* and specific *waqf* in accordance with Malaysian laws [1]. The development projects were usually carried out for social well-being to serve the society. This type of development is usually adhered to because the nature of *waqf* is by way of specific *waqf*. The modern and contemporary development usually was performed by nature of general *waqf* [2].

In a specific *waqf*, normally the purpose of *waqf* has been specified by the *waqif* [3]such as for building mosques, religious schools and/or Islamic Centre. Whilst in general *waqf* the usual term used in statutory of *waqf* is for the general use of Muslim community and for this type of *waqf*, State Islamic Religious Councils (SIRC) in all states in Malaysia being the sole trustee of all *waqf* land, more than often have used their wisdom in marketing and demand strategy in developing such *waqf* land into business and commercial areas.

[1] Perlis (Sec. 89), Kedah (Sec. 52), Penang (Sec. 89), Johore (Sec. 89) Administration of Islamic Religion Enactment and Terengganu (Sec 14) *Enakmen Wakaf (Terengganu)* 2016, and Sabah Waqf Enactment 2018 (Sec. 9B).

[2] Salbiah Mokhtar, Mansor Ibrahim, "Contemporary Methods of Waqf Land Development in Malaysia",https://www.academia.edu/31294541/The_Contemporary_Methods_of_Waqf_Land_Development (accessd 20 January 2020)

[3] *Waqif*: means a founder who creates a *Waqf*, "Section 2 of *Waqf Enactment Negeri Sembilan 2005*, Sec.2, *Enakmen Wakaf (Terengganu) 2016.*

In terms of the use and the beneficiaries in *Shariah* perspectives, *waqf* can be divided into *waqf khairy,* that is a *waqf* for the general good, intended to fulfil a noble social function, especially in respect of those functions that have not been performed by the state adequately such as hospitals, schools, asylums, public water supply, cemeteries and mosques[4]. Normally the use of the *waqf khairy* is for the benefit of general Muslim society[5]. This type of *waqf* is typically used to benefit the public by funding mosques, schools, or hospitals. The perpetual nature of this *waqf* ensures that communities continue to benefit from it for generations[6]. Similarly, *Waqf 'Ala al-Masjid*, a subcategory of charitable *waqf*, specifically provides for the construction and maintenance of mosques, emphasizing the central role of religious institutions in *waqf* practices[7] .

Waqf dhurri is also known as *waqf* family whereby the *waqif* will normally leave the property under the care and custody of his family members as the main beneficiaries. However, the beneficiaries cannot gain ownership of the *waqf* asset but are only entitled to benefit from it. Mateen, stated that the ultimate benefit, however, has to be reserved for the permanent religious, pious or charitable purposes and such purposes have to be clearly specified or implied in the *waqf* deed[8].

[4] Islamic Markets retrieved from (https://islamicmarkets.com/dictionary/a/al-*Waqf*-al-khairi accessed on 3.1.2020.
[5] Nor Asiah, Mohamad, "*A Study on The Socio-Economic Roles of Waqf Ahli (Family Waqf) In Promoting Family Security and A Sustainable Family Economy,* 26(1) 2018 IIUMLJ 141-160.Accessed 20.2.2020.
[6] Kahf, M. "Financing the Development of Awqaf Property." Islamic Development Bank, 1998. Accessed 20.2.2020.
[7] Abul Hasan, Sadeq. "*Waqf*, Perpetual Charity and Poverty Alleviation." *International Journal of Social Economics* 29, no. 1/2 (2002): 135–151. Accessed 20.2.2020.
[8] M.Z. Mateen, 4 Pillars of Waqf | Walking Through Waqf - Part 2 | Global Sadaqah Blog. GlobalSadaqah.Com Blog. Retrieved January 19, 2022, from https://www.globalsadaqah.com/blog/waqf-4pillars-conditions/.accessed date 1.3.2022.

This form of *waqf* allows for the donor's family to receive financial support, with any surplus directed toward charitable purposes. Though less common in modern times, *waqf Ahli* was prominent during the Ottoman period as a means of securing family welfare while contributing to public goods[9].

The *Waqf Mushtarak*, or combined *waqf*, is a hybrid form that allocates its benefits between the family and the public. This dual-purpose *waqf* enables families to sustain themselves while ensuring that part of the *waqf* serves public welfare[10]. This flexibility has made it a favorable option in contemporary *waqf* practices, particularly in Southeast Asia. In some cases, *waqf* is established for more strategic or political purposes, referred to as *Waqf Siyasi*. Historically, *waqf* has been used to fund public infrastructure, education, or even military defences, reflecting its role in political and social development[11]. This type of *waqf* demonstrates the broader scope of endowments beyond merely religious or familial objectives.

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Another form is *Waqf Istiḥbāq*, or *waqf* for public utilities. This type of *waqf* is dedicated to public services such as water fountains, roads, or parks[12]. By enhancing public infrastructure, *Waqf Istiḥbāq* plays a direct role in improving the quality of life within communities, reflecting the altruistic values that underlie *waqf* in Islam.

[9] Murat, Cizakca. "*A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present"*. Istanbul: Boğaziçi University Press, 2000. Accessed 3.4.2020
[10] Mohammad Tahir, Sabit. "Sustaining the Means of Sustainability: The Need for Accepting Wakaf (*Waqf*) Assets in Malaysian Property Market." *Malaysian Journal of Real Estate* 3, no. 1 (2008): 47–60.
[11] Hoexter, M. "*Waqf* Studies in the Twentieth Century: The State of the Art." *Journal of the Economic and Social History of the Orient* 41, no. 4 (1998): 474–495.
[12] Ibid, 2.

Finally, *Waqf Waqfi* refers to *waqf* dedicated to religious institutions, such as *Madrasah (Islamic* Schools*)* or Islamic centres. These institutions benefit from *waqf* by ensuring their financial sustainability, which is crucial in maintaining educational and religious services over time.

In the recent case of *Syed Idross Bin Syed Hassan & Ors v. Majlis Agama Islam Negeri Pulau Pinang*[13] the *Shariah* High Court of Penang State has categorized *waqf* into *Waqf Ahli, Waqf Khairy* (divided into specific and general *waqf*), *Waqf Irsod* (*waqf* from government or Sultanate for the purpose of mosques, schools, orphanage and graveyard), and *Waqf Musytarak* (Share *waqf* or *waqf* from substitution of assets).

In this case like many other *waqf* cases the creation of *waqf* were made through *waqf* Deed or a Statutory of *waqf*. In Penang and Malacca being the Straits Settlement States, most of the Statutory of *waqf* were made through Deed Poll or Deed of Conveyance, a creation from the British System. However, in Malaysia all *waqf* Deed does not specify the types of *waqf* in specific. Just a mere mentioned for specific use or general use and hence it is easier to refer to as specific *waqf* and general *waqf*.

Unfortunately, there is no standard law or procedure on *waqf* in relation to its implementation on the development of *waqf* land in Malaysia and each state have its own interpretation and understanding on matters pertaining to *waqf*[14]. In Malaysia there are states with regulated *waqf* law like Perak through Enactment 9 of 2015 *Waqf*

[13] In MAL Case No.07400-007-0165-2017. *Mahkamah Tinggi Shariah, Negeri Pulau Pinang*.Dated 26.4.2024 Unreported.
[14] Ibid, 2.

Enactment (Perak) 2015, Selangor through Enactment No. 15 of 2015 *Waqf* (State of Selangor) Enactment 2015, Negeri Sembilan Enactment 2 *Waqf* (Negeri Sembilan) Enactment 2005, Malacca through Enactment No. 5 of 2005 *Waqf* (State of Malacca) Enactment 2005, Johor through Johore Waqf Rules 1983 as Johore Enactment No. 14 of 1978 Administration of Islamic Law Enactment 1978 was repealed by Enactment 16/2003, Terengganu through Enactment 1/2016 Enactment *Waqf* (Terengganu) 2016, Pahang *Waqf* Fund Rules 2015 (Pahang *Waqf* Enactment 2022) and Sabah *Waqf* Enactment 2018.

While other states like Perlis, Kedah, Penang, Kelantan, Pahang, Sabah, Sarawak and Federal Territories are unregulated *waqf* law states and the law on *waqf* in these unregulated states were implemented through Administration of Islamic Religion Enactment in each state. This particular discussion shall be elaborated further in Chapter Three of this thesis.

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Federal Government through Department of *Awqaf, Zakat* and *Hajj (JAWHAR)*, a Department under Prime Minister Office and *Yayasan Waqf Malaysia* (YWM), that has established by the former Prime Minister Tun Haji Abdullah Bin Haji Ahmad Badawi, to assist all SIRCs in developing their *waqf* land[15] but JAWHAR guideline is not mandatory to be complied with but rather just a directive to guide SIRCs.

Currently, the development of *waqf* land in Malaysia has gained significant momentum with renewed federal government focus. There has been an emphasis on balancing the

[15]Azniza Hartini Azrai Azaimi ,Ambrose Mohamed Aslam Gulam Hassan, Hanira Hanafi ,"*The Possible Role of Waqf in Ensuring a Sustainable Malaysian Federal Government Debt*",December 2015 Procedia Economics and Finance 31:333-345 DOI: 10.1016/S2212-5671(15)01205-8 License CC BY-NC-ND 4.0 accessed on 20.12.2020.

management of *waqf* assets across both categories: classical and contemporary *waqf* to serve society better. The federal government has shown increased openness toward *Shariah*-compliant *waqf* land development. Notably, the Minister in the Prime Minister's Department for Religious Affairs, Mohd Na'im Mokhtar, emphasized collaboration between federal and state authorities to streamline *waqf* development projects. The *Majlis Agama Islam Wilayah Persekutuan (MAIWP)*, for instance, is managing several *waqf* land lots and has formulated plans to develop 21 of them, including in urban areas like Setapak. These developments aim to ensure that *waqf* land benefits society while also contributing to economic growth[16] .

Experts are also calling for more modern frameworks to appeal to younger generations and for policies that allow more flexibility in the management of *waqf* assets, including the potential for cash *waqf*-linked sukuk, similar to Indonesia's model. This approach is seen as a way to increase financial sustainability and unlock the potential of *waqf* assets[17].

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Therefore, this research aims to provide thorough evidence and understanding on substantive and procedural law on *waqf* in Malaysia and the implementation of such law on the development of *waqf* land. The procedural law in most unregulated states will be secured by the researcher through interview with SIRCs officer or their related body and collection of *Fatwas* that were gazetted in the *Muftis' office* website as those procedural laws were produce in form of *fatwas*[18] either gazetted or not gazetted.

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[16] Na'im, Mokhtar, M. KLSE Screener. The Edge. July 22, 2024. https://www.klsescreener.com/v2/news/view/1362335/govt-open-to-*Shariah*-compliant-waqf-land-development-efforts-mohd-na-im.

[17] Kareem, M. "Interview: Dr Mohd Daud Bakar Discusses Waqf Reform." IFN Sustainable. July 26, 2023. https://islamicsustainable.com/interview-dr-mohd-daud-bakar-discusses-Waqf-reform/.

[18] Meaning : an official statement, edict or order from an Islamic religious leader.

1.2 Research Background

Waqf is one of the items listed under the State List in our Federal Constitution and that makes all matters relating to *waqf* to be under the purview of State Legislation including the laws relating to development of *waqf* land.

Currently the law in all State Enactments in Malaysia has entrusted SIRCs to be a sole trustee to all *waqf* land and SIRCs shall have the overall and absolute power and jurisdiction to determine the laws and procedures on matters pertaining to *waqf* in their states.

In Malaysia, land matters are a state prerogative, rooted in the country's federal list structure where powers are divided between the federal and state governments. Article 74 of the Federal Constitution clearly outlines that land, including the control and management of natural resources, falls within the purview of the state governments. This unique arrangement stems from the historical development of land administration during the British colonial period and continues to have significant implications for land use, ownership, and development today.

Under the National Land Code 1965 (NLC), which serves as a unifying framework for land administration, each state in Malaysia retains authority over its land. States are empowered to make laws concerning land, including property rights, ownership transfers, land dealings, and land tenure systems. However, while the NLC sets the general principles for land administration, it is state law that governs the detailed

https://dictionary.cambridge.org/dictionary/english/*fatwa*

aspects of land matters such as land use regulations, approval of land development projects, and land titles. States have their own land offices and administrators responsible for overseeing these processes.

In practice, the decentralization of land management has led to variations in the administration of land between different states. Some states, like Penang and Selangor, have more robust development controls due to their urbanization, while others may adopt more relaxed policies to encourage rural development[19]. This decentralized system, while designed to address the unique needs of individual states, has also given rise to challenges, particularly in the areas of coordination between federal and state agencies, as well as differences in enforcement practices.

A key area of concern lies in the administration of *waqf* land which has also been subjected to state law. As each state manages its own *waqf* land through the respective State Islamic Religious Council (SIRC), there is often a lack of uniformity in terms of regulations and governance frameworks. This has contributed to inefficiencies in the development and utilization of *waqf* properties, a crucial issue that has drawn attention from policymakers and academics alike.

In summary, the governance of land matters in Malaysia is deeply embedded in the structure of state laws, resulting in a system that allows for localized management but also poses challenges in terms of consistency and coordination. Understanding the

[19] Muhammad, Ubaidillah, , Mohd Adib Ismail, and Mohd Ali Mohd Noor. 2020. "The Waqf Integrated Financial Instrument of Pension Model in Malaysian Social Security: A Conceptual Proposition." The Journal of Muamalat and Islamic Finance Research 17, no. 1 (June): 33–55. https://doi.org/10.33102/jmifr.v17i1.259.Accessed 15.12.2020.

nuances of state control over land is crucial, particularly when addressing legal and administrative issues such as land development, property rights, and the management of *waqf* land.

In terms of law relating to development on *waqf* land in Malaysia, almost all SIRCs still been fettered by the legal issues in terms of registration, management and administration of *waqf* land and the laws to be applied therein pertaining to legal documentation on rental and loan documentations.

Notwithstanding such issues the development of *waqf* land in Malaysia are very much in a rapid progress due to socio and economic factors despite there is still no clear and standard law in development of *waqf* land to be abided by the stakeholders like financiers and developers, especially to a small state like Penang with limited area of land usage.

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SIRCs are still in try and error stage to develop the *waqf* land in their states [20]. Some states with larger financial funds tend to revert to a modern kind of development while other states are still struggling to compete with the current economic wave. The framework for *Waqf* land development has yet to be covered by even the recent *Waqf* Enactments such as Terengganu *Waqf* Enactment 2016.

On historical part, it is pointed out that the law on *waqf* in Malaysia is mostly influenced by British colonization and Western practices, British main purpose in colonization is to acquire lands to form plantations through their private owning land

[20] Mohamad Tahir, Sabit. "The Concept and Objective of *Waqf*." *Shariah Law Report* (2004). https://www.academia.edu/576257/The_concept_and_objective_of_*waqf*.Accessed 3.4.2020.

scheme called “permanent settlement”. Torrens system was brought into practise in a year 1870 whereby an individual title ownership was introduced to accommodate British in acquiring the individual held land that they desired[21].

However, British grand plan has been interrupted by Muslim Inheritance Law at that time, whereby the as a result of Muslim Inheritance rules, land often been divided among beneficiaries according to their *faraid* rule, that is a law on succession according to Islamic teaching, and those who hold a small-holdings tend to endowed their portion to charity in form of *waqf* and this has makes it harder for British to acquire the land.

As the result, British then implemented a law in 1911 known as *Waqf* Prohibition Enactment, and in that enactment all *waqf* made to family members was declared null and void. Most articles in that Enactment aims directly towards inalienability of *waqf* land[22] and hence, by virtue of this Enactment, Muslims in Malaysia has loss their liberty to proclaim their property as *waqf*s and this has continued until the Enactment was repealed in 1978.

After a long legal battle to implement *waqf* law in Malaysia to be in accordance to pure Muslim law and text, Malaysian prominent Muslim scholar and jurist, Professor Ahmad Ibrahim, has succeeded in repealing *Waqf* Prohibition Enactment in 1978. However, most of *waqf* cases in Malaysia at that time was bound by the Privy Council

[21] Murat, Cizakca. "The British Legislation in Malaya and Its Impact Upon the Malaysian *Waqf* System." In *Kertas Kerja Persidangan, the Second Harvard Conference: “Law of Waqf, Modern State Control and Nationalization,”* Harvard Law School, 16–18, 2008.3.4.2020. Accessed 3.4.2020.
[22] Ahmad, Ibrahim, T.S. "Wakaf in Johor: The Return of Islamic Law." *Malaysian Law Journal,* 1983. Accessed 3.2.2020.

case in India that was decided based on Indian *Waqf* Law and not on pure Muslim Law. As in the cases of *Comissioner for Religious Affairs v. Tengku Mariam and Haji Embong B. Ibrahim v. Tengku Nik Maimunah* [23].In India, *waqf* cases was tried in a normal civil court whereas in Malaysia, Muslim Law is the law of the land and matters relating to *Shariah* is administered in *Shariah* Courts based on rulings given by Mufti. Islamic Law in India is not interpreted the same way as in Malaysia as *waqf* law in India at that time was mostly influence by contemporary jurists with western education background known as Anglo-Muhammadan scholars[24] . By the time *waqf* Prohibition Enactment was repealed in 1978, the law on *waqf* in Malaysia has crumbles[25]. Many Malaysians has look at *waqf* as an ancient practise of building and maintaining mosque and graveyard. The Islamic teaching on *waqf* was long forgotten. Through Professor Ahmad Ibrahim's work and struggle, Islamic *Waqf* Validating Enactment was passed in 1972 whereby the Malaysia Courts were given the authority to decide *waqf* cases according to pure Islamic Law.

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However, the British ideas and propagandas on centralization is not at loss and such ideas was transformed by state *Waqf* Enactments; Perak in 1951 and 1965, Selangor in 1952, Terengganu in 1955, Malacca in 1959 and Johor in 1978, whereby these states start to have their own *waqf* Enactment that empowers SIRCs to be the sole trustee of *waqf*s and all documents pertaining to *waqf* should be kept by SIRCs. The idea of sole

[23] (1970) 1 MLJ 222, and (1980) 1 MLJ 286, in both cases Federal Court of Malaysia has decided to follow the Privy Council case of Abdulfata v. Russomoy (1894), whereby *Waqf* only valid if it is made for charity purposes and not for enrichment for family members; family *Waqf* is invalid *Waqf*. Malaysia jurist argues that such principles was made by Privy Council based on Indian *Waqf* law it should not be applicable to other country. It should not have a binding authority in this country.

[24]Ahmad, Ibrahim, T.S. "Privy Council Decisions on Wakaf: Are They Binding in Malaysia?" *Malaysian Law Journal,* 1971.Accessed 3.2.2020.

[25] Ibid, 10.

trustee or sole *mutawalli*[26] is the result of British influence on land centralization [27].

Hence, today the law on *waqf* rested in the sole discretion of SIRCs. Any law and procedure regarding development of *waqf* shall be passed only by SIRCs. Therefore, a development policy in regulated states, for instance, will not be the same as any other unregulated states. This un-uniformized in law and procedure must be understood well by the investors before any development on *waqf* land can takes place.

This research will thoroughly focus on the current substantive and procedural law practised in Malaysia and will also briefly provide an analysis on the theoretical framework on development of *waqf* land from *Shariah* perspectives by looking at the views from classical and contemporary scholars and jurists in the area of *waqf* law particularly on the issue of characteristics of *waqf* from Islamic perspective. In doing so, the historical factor on the applicability of *waqf* law in Malaysia shall also be analysed and examined.

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Through this research a conceptual framework shall be drawn by the researcher on the implementation of such law and procedure on the development of *waqf* land in Malaysia and finally to provide recommendations for a sustainable direction for the development of *waqf* land in order to boost economic growth for Muslims in Malaysia in accordance to Islamic doctrines that must be followed by all Muslims society and authorities rigorously.

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[26] *Waqf* State Enactments and Administration of Islamic Religious Enactment have not defined the meaning of *mutawalli* instead the word sole trustee was used. But in other Arab countries legislation such as Iraq State in Regulation No. (46) of 1970 Article 4, defined *mutawalli* as a person who is responsible for managing the *Waqf* according to the endowment conditions with the *Shariah* provisions, laws and regulations. This includes in the will of *Waqf.*

[27] Ibid, 10.

1.3 Problem Statement

The development of *waqf* land in Malaysia faces significant legal and procedural challenges, primarily due to a lack of a comprehensive legal framework governing *waqf* land development[28].

While various state enactments provide some guidance, they often fall short in establishing clear, uniform laws on how to effectively develop and manage *waqf* land. This creates inconsistencies and legal uncertainties across different states, making it difficult for stakeholders to fully utilize the potential of *waqf* properties[29].

Studies have highlighted that the absence of clear development frameworks within *waqf* laws hinders the optimal use of these lands for socio-economic purposes, particularly in the context of modern development needs[30].

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Currently the law in all Islamic Religion State Enactments in Malaysia has entrusted SIRCs with the overall and absolute power to determine the law and procedures regarding *waqf*[31]. This means that SIRCs have absolute power to determine the law and procedures on the development of *waqf* land in their states[32] .

[28] Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspectives* (Kuala Lumpur: University of Malaya Press, 2006), 112.access on 2.2.2020.
[29] Ibid, 9.
[30] Abdul-Karim, Shamsiah. "Contemporary Shari'ah Structuring for the Development and Management of Waqf Assets in Singapore" (Doctoral dissertation, Durham University), (2010). Accessed 2.10.2019.
[31] Sharifah Zubaidah, Syed Abdul Kader, and Mohamed, N. A. "Legal Framework for Management of *Waqf* Land in Malaysia." *Buletin,* MCCM Research and Development Foundation (YKPD) (2014) http://irep.iium.edu.my/41345/.accessed 2.2.2020.
[32] Mar Iman, A.H and Mohammad, T. S. *Concept, Management, Development, and Financing.* Johore Bahru, Johore: Penerbit UTM Press, 2014.Accessed 2.2.2020.

Additionally, there is an ongoing conflict of jurisdiction between Civil courts and *Shariah* courts over *waqf* matters which create inequality in substantive law. Although the creation of *waqf* deeds were mostly created by civil law in pre-independence era, any dispute or issue related to *waqf* land is under the jurisdiction of *Shariah* courts, creating legal conflicts and procedural delay [33]. The jurisdictional ambiguity undermines the effective enforcement of *waqf* laws and complicates the development process, as different legal principles are applied by each court system despite the power to govern the management, administration and all affairs pertaining to *waqf* were given to State Legislature pursuant to 9th Schedule of the 2nd State List in Federal Constitution.

Disputes regarding *waqf* land are still unsettled and it is stated that by virtue of Section 23 Court Judicature Act, civil courts shall have the jurisdiction to hear all civil proceedings, including *waqf*[34]. However, in the case of *Majlis Ugama Islam Pulau Pinang v Shaik Zolkafly Shaik Natar*[35], Federal Court has made a ruling that when it is involving conflict of jurisdiction then the subject matter approach shall be taken paramount consideration instead of remedy approach that constantly used by Civil Court and this includes *waqf* cases. Federal Court states that *" Court is on the opinion that is not for the courts to legislate and confer jurisdiction to the civil courts but for the state legislature to provide the remedy. The role of the courts is to interpret the laws and whenever necessary to give effect to the purpose or object of the laws enacted by the legislatures, (see United Malacca Bhd v. Pentadbir Tanah Daerah Alor Gajah*

[33] Mohammad, Tahir, S. H. "A Proposal for a New Comprehensive *Waqf* Law in Malaysia," 2013.
[34]Sharifah Zubaidah, Syed Abdul Kader, and Dahlan, N. H. "Current Legal Issues Concerning Awqaf in Malaysia." In *Institute of Objective Studies eBooks.* (2014) http://irep.iium.edu.my/20112/.Accessed 4.5.2020.
[35] [2003] 3 MLJ 705.

and Other Applications *[2002] 4 CLJ 177; Chor Phaik Har v. Farlim Properties Sdn Bhd[1994] 4 CLJ 285). We need therefore to give effect to the purpose or object of the amendment to Art. 121 (1A) of the Federal Constitution. As correctly stated by Abdul Kadir Sulaiman, J for which we agree, we requote what his Lordship said at p. 429: 'The fact that the plaintiff may not have his remedy in the Shariah court would not make the jurisdiction exercisable by the civil court."*

Despite of the decision given in *Shaik Zolkifli's* case, disputes regarding *waqf* land are still unsettled and that by virtue of section 23 Court Judicature Act, civil courts shall have the jurisdiction to hear all civil proceedings, including *waqf*[36]. However, in the most recent case of *Syed Idross Bin Syed Hassan & Ors v. Majlis Agama Islam Negeri Pulau Pinang*[37], the *Shariah* High Court of Penang has decided that that by virtue of Section 61(3(vii) and Section 89 of Administration of Islamic Religious Enactment Penang 2004, *Shariah* High Court have a jurisdiction to hear *waqf* cases and this is in line with the decision in *Shaik Zolkifli's* case. However, another issue arose in this case whereby the statutory interpretation of the Deed Poll pertaining to *waqf* was made through testimony of witnesses and not by the Court interpretation and without taking it to Federal Court[38] where the power to interpret laws was vested and this has become an intriguing issue to the legal fraternity.

Waqf land development currently govern by National Land Code 1965 due to lack of substantive law governing the development of *waqf* land in State Administration Enactment of *Waqf* Enactment. The National Land Code 1965 (NLC) recognizes the

[36] Ibid, 13.
[37] Ibid, 4.
[38] Article 128(1) Federal Constitution.

unique status of *waqf* land, particularly in Section 4(2)(e), which states that the NLC does not affect laws related to *waqf*. This means that *waqf* lands are governed primarily by state laws rather than the NLC itself[39]. *Waqf* properties must be registered with the State Islamic Religious Council (SIRC), which acts as the sole trustee. However, the NLC lacks specific provisions for *waqf* management, leading to ambiguities[40] regarding their protection and use, especially in cases of land acquisition by the government for public purposes and in the absence of specific endorsement for *waqf* land under the National Land Code 1965 (NLC) leads to several implications such as Vague Status, where *waqf* lands lack clear legal recognition, making them susceptible to conversion for other uses by unauthorized parties, undermining their intended perpetual nature[41]. There is also an issue of Compulsory Acquisition, where *waqf* properties are subject to acquisition under the Land Acquisition Act 1960, which can diminish their rights and interests as per *Syari'ah* law, exposing them to risks of being repurposed for public projects[42].

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There is also an issue of Registration Challenges, where the lack of specific procedures in the NLC results in many *waqf* lands being unregistered or improperly managed, complicating their administration and potentially leading to disputes over ownership and usage[43] and in Leasehold Issues, many *waqf* lands are granted leasehold status instead of freehold, risking reversion to state ownership upon lease expiration, contrary to the perpetual intent of *waqf*[44].

[39] Mohd Affandi, Rani M. "*Pengambilan Tanah Wakaf oleh Pihak Berkuasa Negeri: Analisis Menurut Hukum Syarak dan Aplikasinya di Malaysia*." (2008). Accessed 2.2.2020
[40] Ibid, 9.
[41] Ibid,16.
[42] Ibid, 9.
[43]Roshidah, Osman, N.A.B. Ramli, and M.Z. Mohd Nor. "Waqf Land Administration and Registration: Legal Analysis." The Journal of Social Sciences Research, no. 6 (2018): 1194-201.Accessed 2.10.2019
[44] Noor Aimi, Mohd Puad. "Issues and Challenges of *Waqf* Instrument: A Case Study in MAIS." *Synergizing Knowledge on Management and Muamalah* (2014). Accessed 2.2.2020.

In Wilayah Persekutuan in 2011, state SIRC has agreed to build Menara Bank Islam Malaysia Berhad on a *waqf* land known as *Waqf* Ahmad Dawjee Dadabhoy[45] by using a hundred percent (100%) financing from *Lembaga Tabung Haji Berhad*[46]. This is in fact a general *waqf* on such land.

It is a common finding that there is no direct provision in Quran regarding *waqf*[47] and as such in the category of *waqf khairy* in general *waqf* for public at large, the law has not been stated clearly in State Islamic Religious Enactment in Malaysia in the unregulated states like Perlis, Kedah, Penang and Federal Territories even though the development of *waqf* projects is growing rapidly in Penang and Federal Territories. Most SIRCs are lacking in terms of cash fund and investment from investors is the only alternative. Hence it is pertinent that clear laws and procedures be implemented by regulated and unregulated *waqf* states to attract investors in developing *waqf* land. SIRCs cannot rely entirely on the Federal Government to support the development of *waqf* land. As for the regulated states, they have their own law and procedures on the development of *waqf* land and that diverse practices lead to inconsistency in law and creates several ways of governance in laws and procedures[48] .

[45] Ahmad Dawjee Dadabhoy was born in the year 1907 in Gujaret, India. After travelling the world, in 1940 he chose to come to *Tanah Melayu* and stayed in Kuala Lumpur. He's fluent in multiple languages and love reading and knowledge and have a lot of friends and contacts around the world. At the time, he's already a rich businessman and a successful tycoon. Early on, he has been giving away his money to charities and through the *Waqf* institution. Initially, the institution is more of a family *Waqf* but then changed and named Al*Waqf*ul Islami ul Alamee. http://www.swadd.com.my/sejarah-surau-*Waqf*-ahmad-dawjee-dadabhoy (Accessed 23 October 2019).

[46] Irsyad Al-*Fatwa* Series. "Waqaf Ahmad Dawjee Dadabhoy", (2 December 2018). https://muftiwp.gov.my/en/artikel/irsyad-*fatwa*/irsyad-*fatwa*-umum. (Accessed 23 October 2019). P 274.

[47] Sulaimen, Haitam. The Islamic Trust *Waqf*: A Stagnantor Reviving Legal Institution. 4(30). https://www.zora.uzh.ch/123754/1/Suleiman_Haitam_*Waqf*_Published.pdf

[48]Md. Shahedur Rahaman Chowdury, Iftekar Amin Chowdury, Mohd Zulkifli Muhammad, and Mohd. Rushdan Yasoa'. "Problems of Waqf Administration and Proposals for Improvement: A Study in Malaysia." *Journal of Internet Banking and Commerce*. http://www.icommercecentral.com/open-access/problems-of-waqf-administration-and-proposalsfor-improvement-a-study-in malaysia.php?aid=38086. (Accessed October 23, 2019).

Furthermore, in order for *waqf* land development to be carried out, it is a procedure that a written consent from SIRC must be obtained[49] and this has often caused dissatisfaction among beneficiaries in the case of family *waqf* and hindered the development in *waqf* land[50] .This requirement happens to be a major obstruction to hinder the procedural development of *waqf* land in Malaysia in the category of *waqf dhurri* [51].Currently there is no standard and uniformed laws or policies in developing *waqf* land in Malaysia be it in *waqf dhurri* or *waqf khairy* [52], some SIRCs still revert to a classical concept of building Mosques and Islamic Centre on *waqf* land and some SIRCs has developed a more modern concept like commercial building for Banking and Financial Institution and a housing and commercial scheme for the usage of *Muslim* society.

The Administration of *waqf* in the hand of SIRCs has created disadvantage and inconvenience [53] and inconsistency in law and policy resulted in the unequal progress in the development of *waqf* land between states in Malaysia. In both regulated and non-regulated states in Malaysia, the sole power as trustee for every *waqf* rests on SIRCs. This issue has become an intense and debatable issue between beneficiaries and SIRC in *waqf dhurri*. The issue of sole-trustee or *mutawalli* has currently caused

[49] Siti Mashitoh, Mahamood, "*Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif Shariah dan Undang-Undang.*" *Kanun: Jurnal Undang-undang Malaysia* 29, no. 2 (2017): 177-192.
[50] Ibid, 13.
[51] Sharifah Zubaidah, Syed Abdul Kader. "Kerangka Undang-undang Pengurusan Wakaf di Malaysia: Ke Arah Keseragaman Undang-undang." *Kanun: Jurnal Undang-undang Malaysia* 28, no. 1 (2016): 102–127. http://jurnal.dbp.my/index.php/Kanun/article/download/4397/1188.
[52]Salbiah ,Mokhtar."The Evaluation Framework for *Waqf* Land Administration and Management in Malaysia."(2015)*Uitmperak.*https://www.academia.edu/31293107/The_Evaluation_Framework_For_*Waqf*_Land_Administration
and_Management_In_Malaysia?auto=download&email_work_card=download-paper.
[53] Nor Asiah, Mohamad, Syed Abdul Kader, S.Z., "Present and Future Research for Productive *Waqf* Management and Administration in Malaysia." *Journal of Islamic Law Review* 13, no. 2 (2017). Accessed 2.2.2020.

a major set-back in the development of *waqf* land[54].

Another procedural issue is the role of the *mutawalli*, traditionally entrusted to manage *waqf* properties, has been largely taken over by the State Islamic Religious Councils (SIRCs). While SIRCs are meant to safeguard and manage *waqf* land, their bureaucratic processes and lack of agility in adapting to modern economic needs have resulted in major setbacks for *waqf* land development[55]. The centralization of the *mutawalli* function in the hands of SIRCs has often led to inefficient land management, delayed decision-making, and missed opportunities for development. The slow approval processes and conservative approach to managing *waqf* assets prevent many projects from moving forward, ultimately stalling *waqf* land utilization.

In Penang, a phenomenal case of *Waqf Shaik Eusoff Shaik Latiff*[56] (*Syed Idross Bin Syed Hassan & Ors v. Majlis Agama Islam Negeri Pulau Pinang* has been initiated by the beneficiaries to contest the validity of *waqf dhurri and waqf muaqqat.*[57] The case is currently in appeal stage after the beneficiaries lost their claim in *Shariah* High Court as the Court decided that even though there is time stipulated in the *waqf statutory that lead to a temporary waqf* (*waqf muaqqat*) but nonetheless the *waqf* by virtue of the intention of *waqif* has made the *waqf* to be a valid *waqf*. Amongst the questions of law posted by parties are the validity of sole trustee or *mutawalli* in the hand of SRIC and

[54] Ibid, 19.
[55] Sait, S. and Lim, H. Land, Law, and Islam: Property and Human Rights in the Muslim World. UN-HABITAT, Zed Books, London (2006) https://doi.org/10.5040/9781350221017.
[56] P*erbicaraan tuntutan Tanah Waqf Hartawan 9 Januari (n.d.). https://www.bharian.com.my/berita/kes/2018/12/511693/perbicaraan-tuntutan-tanah-Waqf-hartawan-9-januari* (Ibid, 4.).
[57] Encyclopaedia of Islam (Brill): *Waqf Muaqqat* refers to a temporary *waqf* or conditional *waqf* where the *waqf* property or asset is endowed for a specified period of time. After the specified period or once the conditions are fulfilled, the property may revert back to the original owner or be used in a different manner.

the concept of perpetuity in *waqf*. In this case the creation of *waqf* was made through Will construed in accordance with Will Enactment 1938 (F.M.S 5 of 1938) or (Will Ordinance of Straits Settlement (S.S Cap. 53) respectively.

The issue of sole trustee or *mutawalli* was arose again in March 2019, in a controversial case of *Waqf Abdel Cauder* through Trust Deed of *Kavana Ebrahim @ Burong* dated 17-08-1892[58] and because of that dispute millions Ringgit worth of land value still failed to be developed. Therefore, to overcome this problem there has been a proposal for government and non-government body to be appointed as *mutawalli* to reform *waqf* substantive law and procedure in Malaysia [59]but since the enactment and the law only acknowledge SIRC as sole trustee, the dispute remains until the State Legislature reformed or revamped *waqf* law in their respective states or until SIRCs implemented a wider and less rigid approach on the issue of *mutawalli*. However, currently there has been a development in law regarding this issue whereby in some states in Malaysia SIRC has allowed other entity to manage *waqf* and most of the states give mutawalli status to their subsidiaries company like Penang to Wakaf Pulau Pinang Sdn Bhd, Selangor to Perbadanan Wakaf Selangor, and Negeri Sembilan to Perbadanan Wakaf Negeri Sembilan.

Apart from the problem in *mutawalli*, perpetuity seems to be another legal issue in *waqf*. Most of Muslim Jurist has recognised three main characteristics of *waqf* as perpetuity, irrevocability and inalienability and Malaysia has practice the said three

[58] A case of Muhamad Amin Bin Abdul Rahman v. Majlis Agama Islam Negeri Pulau Pinang & 2 others *(2019) 1 LNS 1208*. This case was strike out by Penang High Court as the Plaintif has no locus standi to initiate the suit and the Court also ruled that *Waqf* is in the jurisdiction of *Shariah* Court.
[59] Muhammad Yusoff Saleem "Mutawalli Institutions for the Management of Waqf Properties", *Malayan Law Journal Articles, 4 MLJ cxiv, (2010).* P 13. Accessed 2.2.2020.

main characteristics in *waqf* even though there were no clear and express provisions in the State Enactment regarding such characteristic and moreover *Al-Quran* and Hadith of the Prophet, have not mentioned on this matter as well but the practice remains.

The concept of perpetuity in *waqf* is another procedural issue in a cornerstone of *waqf* law, further complicates development. The traditional requirement that *waqf* land must be preserved in perpetuity limits the ability of stakeholders to modernize *waqf* land for contemporary use. While Islamic legal mechanisms like *istibdal* (the substitution of *waqf* property) offer a way to overcome the perpetuity rule, it is underutilized by State Islamic Religious Councils (SIRCs).

The issue of perpetuity becomes a major issue to be resolved when it comes to development of commercial building and houses as the value of such premises depends on the status of perpetuity as freehold asset or leasehold asset. The value between freehold assets and leasehold assets will determine the profit margin and the worthiness to develop the *waqf* land.

Another debatable problem in development of *waqf* land[60] is the procedure on the concept *Istibdal (*to the process of substituting or exchanging a *waqf* property with another asset of equivalent or greater value) [61], *which* means to substitute a *mawquf*[62]

[60] Jamil, Sulong, "Permissibility of Istibdal in Islamic Law and the Practice in Malaysia." *Journal of US-China Public Administration,* ISSN 1548-6591 July 2013, Vol. 10, No. 7, 680-689. Accessed 2.2.2020.
[61] "Istibdal," in *Encyclopaedia of Islam*, 2nd ed., edited by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs. Leiden: Brill, 1960–2007.
[62] Section 2 of Negeri Sembilan *Waqf* Enactment 2005, *"mawquf"* means a property endowed as *Waqf*, whether as *Waqf* am or *Waqf khas*;

with another property or money, or in kind, which is of the same value as or higher value than that *mawquf*, either by substituting, purchasing, selling or any other means in accordance with *Shariah* principles[63].

The reluctance to apply *istibdal*, even in cases where it could significantly enhance the value and utility of *waqf* land, prevents the modern development of *waqf* properties[64].There is no specific mention of *istibdal* in the Quran and practise of Prophet (peace be upon him) but the concept of *istibdal* is very much reliant on the opinions of Muslims scholar. The manual by JAWHAR has laid down the opinions by Muslims jurists in *Hanafi, Maliki, Shafie* and *Hambali's* school and our own Majlis Fatwa Committee in 1982 Conference has make a ruling on the concept of *istibdal* as in accordance to Hanafi's School[65].

In Malaysia, for a *waqf* regulated states like Malacca, Negeri Sembilan, Selangor, Pahang, Terengganu and Sabah *Waqf* Enactment, the concept of *istibdal is clearly stated,* however in unregulated *waqf* states the concept of *istibdal* was not defined in State Islamic Religious Enactment.

The concept of *istibdal* has not been fully implemented by SIRCs even though this principle is a practical and most suited alternative approach for the development of *waqf* land in Malaysia[66] and permissible in *Shariah*. *Waqf* is part of Islamic teaching

[63] Section 2 of Negeri Sembilan *Waqf* Enactment 2005.
[64] Ibid, 2.
[65] Manual Pengurusan Istibdal Wakaf, Jabatan Wakaf, Zakat dan Haji (JAWHAR), https://e-penerbitan.jawhar.gov.my.The 4th National Council for Islamic Religious Affairs Fatwa Committee meeting held on 13 April 1982 decided that: "Replacement waqf (waqf ibdal) means exchanging the mawquf with other property through sale or purchase or the like with the aim of maintaining the mawquf, which is permissible according to the taqlid of Imam Abu Hanifah".
[66] S.Hisham, Hazel Adria Jasiran and Kamaruzaman Jusoff. "Substitution of Waqf Properties (Istabdal) in Malaysia:Statutory Provisions and Implementation", *Middle-East Journal of Scientific Research 13*

and the concept of *waqf* is highly recommended by Al-Quran through the principle of *sadaqah* (the word *sadaqah* is derived from the Arabic word *Sadq* (truth) and the literal meaning of *sadaqah* is to spend from his/her possessions and abilities in the way of Allah S.W.T. and *sadaqah* is the necessary part of a *Muslim*'s faith through which he/she seeks the Pleasure of Allah by helping out the poor and others that are in a state of need).

As *waqf* is a part of Islamic teaching through Hadith by the practice of our Prophet Muhammad (peace be upon him) and his companions, the *Shariah* perspectives must be adhered to and be considered in implementing laws and procedures for development of *waqf* land. Therefore, Islamic jurists have argued and contended that in Islam, matters pertaining to *waqf* is subject to *ijtihad* and *fatwa* and some jurists in *Malikites* school like *Al-Khatib Al-Shirbini*, Abu Yusof from *Hanafites*, *An-Nawawi* from *Shafiites and Al-Mawardi* from the *Hanbalites* argued that since there are no specific verses in the Quran or in Prophet's practices to disallow temporary *waqf* thus, it is based only on *ijtihad* of the jurists in every *mazhab (*school of thought in Islamic jurisprudence*)* [67]. Some of the jurists allow the moveable asset like house, horses, crops to be subject matter of *waqf* therefore, there is a scholar opinion that perpetuity is not a condition for a valid *waqf* [68].

Another procedural issue effecting *waqf* development is an issue regarding *fatwas*[69] ,

(Research in Contemporary Islamic Finance and Wealth Management): 23-27, 2013; ISN 1990-9233. DOI: 10.5829/idosi.mejsr.2013.13.1877.Accessed 2.2.2020.

[67]"Madhhab," in *Encyclopaedia of Islam*, 2nd ed., edited by P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, and W.P. Heinrichs. Leiden: Brill, 1960–2007. Accessed 2.2.2020.

[68] Faliq A, Jafri, and Noor, A. M. "Temporary *Waqf* Model for Islamic Private Retirement Scheme in Malaysia: A Proposal." *Journal of Islamic Finance* 8, no. 1 (2019): 023–035. http://irep.iium.edu.my/72515/.

[69] *Fatwa* means "a clarification of the ruling of Allah regarding a specific incident or case without being obligatory like a court judgement". Mohamad Hashim Kamali, Principles of Islamic Jurisprudence, 3rd

and mostly because *fatwa* does not possess legally binding authority over Muslims within the state jurisdiction and are not accorded evidentiary weight in *Shariah* Court proceedings unless it is gazetted[70] [71]. *Fatwas* related to *waqf* development are often not gazetted, leaving them without legal force, and further complicating the regulatory environment. For example, a *fatwa* issued in a particular state may offer religious guidance on *waqf* development, but if not gazetted, it lacks enforceability, leading to confusion among stakeholders. This legal ambiguity further restricts the development process, as stakeholders are often unclear on the legitimacy of certain development projects under Islamic law.

This combination of legal gaps, jurisdictional conflicts, procedural issue of *mutawalli*, the underutilization of *istibdal* and non-gazetted *fatwas* hinders the development of *waqf* land in Malaysia. As a result, many *waqf* properties remain underdeveloped or are used inefficiently, despite their potential to contribute to socio-economic growth[72].

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Addressing these legal and procedural challenges is crucial to unlock the full potential of *waqf* land and promote sustainable development. Therefore, an analysis on the implementation of such laws and procedures on development of *waqf* land in all states in Malaysia is important towards creating a stable, sustainable and consistent income stream in development of *waqf* land. This research is timely and most needed,as conceptual framework on law and procedures in development of *waqf* land has become a stirring interest to many.

ed. (Cambridge: Islamic Text Society, 2003) 297-302.
[70] *Majlis Agama Islam Wilayah Persekutuan v. Victoria Jayaseele Martin* (2016) 2MLJ 309 (Federal Court).
[71] Section 34, Administration of Islamic Law (Federal Territories) Act 1993.
[72]Ibid, 18.

1.4 Research Questions

Based on the problem statements, the following research questions are devised to be answered in this research:

1. To what extent have the substantive laws governing *waqf* land in Malaysia evolved from their historical foundations to the present legal framework?
2. How do the current procedural laws facilitate the development of *waqf* land in Malaysia?
3. What are the challenges in the implementation of both substantive and procedural laws on *waqf* land development in Malaysia?
4. What recommendations can be made to improve the substantive and procedural laws and their implementation to enhance the development of *waqf* land in Malaysia?

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1.5 Research Objectives

The specific objectives are formulated in order to accomplish the general objective. The following are the specific objectives of this research:

1. To examine the historical development and current framework of the substantive laws governing *waqf* land in Malaysia.
2. To analyse the effectiveness of current procedural laws in facilitating the development of waqf land in Malaysia.
3. To evaluate the challenges in the implementation of substantive and procedural laws governing *waqf* land development in Malaysia.
4. To propose comprehensive recommendations for the reform and improvement of substantive and procedural laws, and their implementation, to enhance the development and management of *waqf* land in Malaysia.

1.6 Significance of Research

The research on the legal analysis of *waqf* land and its implementation in Malaysia, with a focus on both substantive and procedural laws, offers substantial contributions to various stakeholders, including institutions and policymakers, as it provides actionable recommendations to overcome legal, administrative, and financial hurdles. For academicians, it enriches the academic discourse on *waqf*, while for the Muslim community, it serves as a pathway to realizing the potential of *waqf* land for socio-economic development. By addressing the procedural and substantive challenges surrounding *waqf* land, this research aims to make significant contributions towards policy reform and institutional strengthening, fostering a more robust *waqf* management framework in Malaysia.

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This significance can be understood in the following dimensions: Significance to Institutions (State Islamic Religious Councils - SIRCs): The research provides critical insights into the current legal framework governing *waqf* land, helping institutions like SIRCs to address legal ambiguities and streamline processes for *waqf* land management. By identifying gaps in the substantive and procedural laws, this study offers recommendations for institutional strengthening, which could enable more efficient management of *waqf* assets.

Institutions responsible for managing *waqf* land, such as *Majlis Agama Islam Negeri* (State Islamic Religious Councils), can benefit from the research findings to enhance their governance practices, ensure legal clarity, and adopt modern *waqf* development strategies like *istibdal* (exchange of *waqf* property) to unlock underutilized *waqf* lands. This would ultimately empower these institutions to meet the needs of the community

more effectively and maximize the potential of *waqf* properties for public good.

The critical dimension of this research lies in the role of *fatwa* institutions. *Fatwas*, although non-binding unless gazetted, hold substantial legal and moral influence in the development of *waqf*. This is especially relevant in areas where classical jurisprudence must be reconciled with modern economic and legal realities, such as in matters of *istibdal* (replacement of waqf land), long-term leasing, or partnerships with private developers. By exploring how *fatwas* are formulated, adopted, and implemented across different states, this study contributes to the understanding of legal pluralism and the operational challenges arising from non-uniform *fatwa* adoption. The study further emphasizes the need for structured institutional engagement between *fatwa* bodies, SIRCs, and legal practitioners[73].

Significance to Stakeholders (*Mutawalli*, Developers, and Policymakers): Stakeholders involved in *waqf* land development, including the *mutawalli* (trustees), government agencies, developers, and policymakers, will find the research valuable as it highlights the challenges that hinder *waqf* land development, such as legal uncertainty, conflict between civil and *Shariah* jurisdictions, and the underutilization of *waqf* mechanisms like *istibdal*.

The study will guide stakeholders on how to navigate these legal complexities and optimize the potential of *waqf* land for socio-economic projects, such as affordable housing or public infrastructure development. The research's focus on financial

[73] Mohamad Hashim Kamali, "*Fatwa* in Malaysia: Legal Basis and Institutional Framework," *Malayan Law Journal* [2000] 3 MLJ xli.

models and legal frameworks will also inform policymakers about creating supportive legislation and administrative policies to encourage more public-private partnerships in *waqf* land development, thereby increasing the role of private sector investments.

One of the key impediments to *waqf* revitalization in Malaysia is the lack of *Shariah*-compliant financial mechanisms compatible with the perpetual nature of *waqf*. This research examines and recommended models such as *Musyarakah Mutanaqisah*, *Ijarah*, *cash waqf*, and *crowdfunding*, which can be integrated into the legal structure of *waqf* administration[74]. These models provide practical tools to mobilize resources, attract investments, and ensure the financial viability of *waqf* projects while maintaining their charitable essence. The study however, focus on legal framework on *waqf* land development and the gap in this research is on the contribution to designing financially innovative yet ethically grounded frameworks that can be adopted by SIRCs, developers, and Islamic financial institutions[75]. In doing so, it promotes the use of waqf as a tool for inclusive socio-economic development, in line with Islamic values of *adl* (justice) and *maslahah* (public benefit).

While significance to academicians and researchers adds to the existing body of literature on *waqf* law and its practical implementation. It provides a comprehensive legal analysis that spans across various states in Malaysia, evaluating different legislative approaches and their outcomes. By doing so, the study identifies best practices and gaps in legal frameworks, offering comparative insights that are valuable

[74] Mohd Ma'Sum Billah, "Financing the Development of Waqf Property: Concept, Structure and Implementation," *Islamic Finance Today* 6, no. 3 (2017): 12–19.
[75] Habib Ahmed, "Cash Waqf: A New Financial Product," in *Proceedings of the Fifth Harvard Forum on Islamic Finance* (Harvard University, 2003), 59–72.

for scholars studying Islamic law, property management, and Islamic finance.

This research also contributes to interdisciplinary fields, intersecting law, economics, and religious studies. Future scholars and academicians may build on this study to explore solutions for overcoming the legal and administrative hurdles in *waqf* land management. Furthermore, the cross-sectorial on implementation on current development case study approach, comparing states like Penang, Kedah, Selangor, and Negeri Sembilan, offers a rich empirical foundation for understanding how *waqf* laws can be practically applied to benefit society.

Finally, for the broader Muslim community, this research highlights the potential of *waqf* as a tool for community development and poverty alleviation. By addressing the challenges that prevent the full utilization of *waqf* land, this study offers strategies for *waqf* land to be revitalized and used for public purposes such as building schools, hospitals, mosques, and other essential infrastructure.

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The research also emphasizes the need to educate stakeholders on the opportunities that *waqf* development presents, including the use of cash *waqf* and innovative financing methods, which can broaden the scope of *waqf* projects. These insights will raise awareness within the Muslim community about the economic and social benefits that can be achieved through proper *waqf* management, encouraging more individuals and organizations to contribute to *waqf* projects.

Additionally, the research underscores the Islamic ethical dimension of *waqf*, reinforcing the role of *waqf* as a sustainable charitable institution that aligns with

maqasid al-shariah (the objectives of Islamic law), aiming to protect property, promote social welfare, and uplift the community. This study reinforces the role of *waqf* as a charitable institution aligned with the higher objectives of Islamic law (*Maqasid al-Shariah*), particularly through the lens of *Ibn 'Āshūr's* conceptualization. In his work *Maqasid al-Shari'ah al-Islamiyyah*, Ibn 'Āshūr outlines that the essential aims of *Shariah* include the protection and promotion of religion (*din*), life (*nafs*), intellect (*'aql*), lineage (*nasl*), and property (*mal*). *Waqf,* as a perpetual charitable endowment, serves all five objectives, whether by preserving wealth for public benefit, providing education and health services, or ensuring religious and social welfare. This study demonstrates that legal and procedural improvements in waqf governance are not only administratively necessary but are also ethically mandated to fulfill the foundational spirit of Islamic law. It affirms the *maqasid* vision of social justice**,** economic equity, and human dignity through the institution of *waqf*[76].

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1.7 Research Methodology

This section focused on research design, research scope, the types of data, data collection methods and data analysis. Methodology used in this study is qualitative method and in conducting qualitative research, the researcher will describe and examine varieties of qualitative data such as principles of law in both Federal Laws and State Enactments, regulations and policies including *Shariah* Principles and decided cases in Civil and *Shariah* Courts on *waqf* issues and factors. The main sources of research data are from primary source as well as secondary source to justify the analysis.

[76] Muhammad al-Tahir Ibn 'Āshūr, *Maqasid al-Shari'ah al-Islamiyyah*, trans. Mohamed El-Tahir El-Mesawi (Herndon, VA: International Institute of Islamic Thought, 2006), 193–200.

1.7.1 Research Design and Methodological Approaches

In conducting this research on the law of development of *waqf* land in Malaysia, it is imperative to adopt a doctrinal and multi-methodological social science approach that allows for a comprehensive understanding of the lived experiences of stakeholders and the structural and legal complexities surrounding *waqf* properties. The research design combines phenomenological, ethnography, observatory, descriptive and analysis of cross-sectorial implementation in current development projects on *waqf* land as a grounded theory model in this research as a part of methodology to analyse the issues comprehensively.

These approaches enable the collection of both qualitative and empirical data that are necessary to address the research objectives and answer critical questions on the law of development of *waqf* land. This section elaborates on the use of these three distinct but complementary methodologies.

Doctrinal research is often termed as library-based research concerned with the formulation of legal doctrines through analysing legal data[77]. Doctrinal is qualitative in nature because it does not involve any statistical in data analysis[78]. Such research design usually brings about questions; what is the law in a particular situation or case. In order to answer some important questions, qualitative analysis is used to study the research questions in an appropriate way.

[77] Anwarul Yaqin, Legal Research and Writing, Malayan Law Journal, 2007. Accessed 2.2.2020.
[78] Nuraisyah Chua Abdullah. *Legal Research Methodology.* Selangor, Malaysia: Sweet & Maxwell Asia, 2018.Accessed 2.2.2020.

The phenomenological approach is employed to understand the subjective experiences and perceptions of stakeholders involved in the administration and development of *waqf* properties. Phenomenology, as developed by philosophers such as Edmund Husserl and expanded upon by scholars in the social sciences, seeks to explore how individuals perceive and make sense of their lived experiences[79]. In this context, stakeholders including representatives from the State Islamic Religious Councils (SIRC), private developers, and *waqf* beneficiaries have unique perspectives on the challenges and opportunities of *waqf* land development.

Phenomenological research allows the researcher to capture these insights by conducting in-depth interviews[80], which provide rich, qualitative data about personal experiences and interpretations of legal, financial, and administrative challenges in *waqf* development.

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The significance of this approach lies in its ability to highlight the human aspects of *waqf* land development, including emotions, motivations, and challenges that are often overlooked in strictly legal or financial analyses[81]. For example, understanding the frustrations or expectations of SIRC officials regarding governmental support or policy restrictions can provide a clearer picture of why certain *waqf* land development projects fail or succeed.

[79]Creswell, John W. 2013. *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*. Thousand Oaks, CA: Sage Publications. Accessed 2.2.2020.
[80] Moustakas, C. (1994). *Phenomenological research methods*. SAGE Publications. Accessed 2.2.2020.
[81] Smith, Jonathan A., Paul Flowers, and Mike Larkin. 2009. *Interpretative Phenomenological Analysis: Theory, Method, and Research*. Thousand Oaks, CA: Sage Publications. Accessed 2.2.2020.

Ethnography approach could provide a deeper, contextualized understanding of the institutional and cultural environment[82] within which *waqf* land development occurs. By examining the cultural practices, norms, and social dynamics within SIRCs and waqf-related agencies, you can gather insights into the organizational culture and operational practices that influence *waqf* land development. interactions among stakeholders, such as officials, developers, and community members, to understand how these relationships impact development outcomes and localized practices or adaptations of *waqf* laws that shape waqf land use differently across states.

A book from Emerson[83], focus on the practice of writing and analysing fieldnotes, a central aspect of ethnographic research. This book is valuable for learning how to document observations systematically and interpret cultural details, which can be essential when studying the operational and cultural practices within *waqf* institutions.

A classic in ethnographic methods, particularly participant observation. He provides a detailed methodology for conducting observations, interviewing participants, and analysing ethnographic data. This approach can be beneficial for studying the daily activities and interactions within waqf-related organizations[84].

However, for the purpose of achieving the second objective of the research, the laws, regulations and procedures by each SIRC shall be analysed. This will be supported by the analysis on the reported cases regarding *waqf* in Malaysia. It is important for this

[82] Hammersley, M., & Atkinson, P. (2007). "Ethnography: Principles in Practice" (3rd ed.). Routledge. Accessed 2.2.2020.
[83] Emerson, R. M., Fretz, R. I., & Shaw, L. L. (2011). "Writing Ethnographic Fieldnotes" (2nd ed.). University of Chicago Press. Accessed 2.2.2020.
[84] Spradley, J. P. (1980). "Participant Observation". Holt, Rinehart and Winston. Accessed 2.2.2020.

research to study the principles which relate to each case.

While phenomenology focuses on lived experiences, ethnographic observes the cultural and ethnic approach on *waqf*, the observatory approach offers a way to empirically capture behaviour and processes through non-intrusive observation and analysing approach detailed the analysis on the substantive and procedural law on *waqf*. These methods are often used in social science research to understand interactions and practices within a natural setting[85]. In the context of *waqf* land development, the observatory method allows the researcher to observe meetings, discussions, and decision-making processes within SIRC or during development project planning. This method is particularly useful for understanding the practical implementation of *waqf* laws and policies.

By observing how stakeholders interact and manage *waqf* development projects, we can gather data that is not easily articulated in interviews. For example, how do developers negotiate with religious councils? How do community leaders and SIRC representatives handle legal or bureaucratic challenges in approving *waqf* land use? These observations provide a practical lens through which the intricacies of *waqf* development projects can be understood and documented. This approach has been supported in studies of institutional management, where observable practices often reveal insights not captured in interviews[86] .

To provide a detailed and contextual analysis of *waqf* land development in Malaysia,

[85] Angrosino, Michael. 2007. *Doing Ethnographic and Observational Research*. Thousand Oaks, CA: Sage Publications. Accessed 2.2.2020.
[86]Patton, Michael Q. 2015. *Qualitative Research and Evaluation Methods*. Thousand Oaks, CA: Sage Publications.Accessed 4.1.2020.

a cross-sectorial case study approach is also employed as an observatory method in Chapter 4 of this thesis. Observation was employed as a complementary method to doctrinal and interview-based data collection, allowing the researcher to witness firsthand the practical application of *waqf* laws and administrative procedures at selected sites. Non-participant observation was conducted at SIRC offices, *waqf* project sites, and public events. This method provided valuable insights into the actual implementation of substantive and procedural laws governing *waqf* land. It also revealed institutional behaviour, stakeholder dynamics, and discrepancies between legal frameworks and their execution on the ground. Observational data were systematically recorded through field notes and used to triangulate findings from legal texts and interviews. Cross-sectorial case studies are particularly useful for in-depth analysis of complex issues within a real-life context and case study also appear in previous related research design[87] .

This research will focus on key *waqf* development projects, such as the *Project Kg Dodol and Projek KITAB* in Penang, as well as various projects in other states such as Kedah with a case cross-sectorial case study of *Perkampungan Ummah* in *Palu*, Indonesia whereby the cash *Waqf* was initiated by *Jabatan Kemajuan Islam Malaysia (JAKIM)*. These projects are new project without any literature or publication yet but it offers a practical framework for understanding the successes and challenges of *waqf* land development under various legal, financial, and administrative conditions.

Cross-sectorial case studies on the implementation of *waqf* development allow for a

[87] Yin, Robert K. 2017. *Case Study Research and Applications: Design and Methods*. Thousand Oaks, CA: Sage Publications. Accessed 4.1.2020.

multi-faceted exploration of specific projects, including an analysis of the policies, stakeholders, and strategies involved. For example, the Kg Dodol and KITAB project, developed through a partnership between *Majlis Agama Islam Pulau Pinang* (MAINPP) and private developers, demonstrates how *waqf* land can be leveraged for community benefits, particularly affordable housing[88].

Analysing these cross-sectorial cases will provide insights into how public-private partnerships operate within the *waqf* framework, and what legal and financial mechanisms are used to make such projects viable. Furthermore, this cross-sectorial case study will help identify gaps in the current legal framework that may hinder the replication of successful *waqf* projects across Malaysia and therefore considered appropriate for the present research. This combined methodology allows for a comprehensive understanding of *waqf* land development from both a theoretical and practical perspective. By capturing the experiences of stakeholders through phenomenology, observing real-world practices, and analysing specific projects through case studies, this research will provide valuable insights into the legal, financial, and administrative challenges that *waqf* land development faces in Malaysia. The findings from this research can contribute to more effective strategies for managing *waqf* properties, promoting sustainable development, and enhancing public-private partnerships in the *waqf* sector.

Research design described the method of data collection, description of what data to collect and from whom such data should be collected and how to analyse such data[89].

[88]Abdullah, N. H., and H. Abdul-Rahman. 2018. "Innovative *Waqf* Projects in Malaysia: A Case Study Approach." *Journal of Islamic Finance and Business*. Accessed 4.1.2020.
[89] Johnson, G. *Research Methods for Public Administrator.* ME Sharpe, 2014.Accessed 4.1.2020.

There are many ways to collect data to suit the varying research question. In this research, the researcher will reveal a complete understanding on the conceptual basis of the doctrine of *waqf* involving immoveable property, its principles and legal rules relating to the development of *waqf* in Malaysia by using a doctrinal type of research.

The researcher intends to determine the adequacy of the current existing law regarding development of *waqf* land in Malaysia with an emphasis on a systematic presentation and explanation on the understanding of the current law and procedure used by SIRCs in the development of *waqf* land in Malaysia and the principles of *waqf* doctrine according to Islamic Law.

Through this type of research, the researcher intends to identify if there is a need for a new law and regulation or if we require a more flexible law to boost the development on *waqf* land in Malaysia such as a comprehensive *Waqf* Enactments to unregulated *Waqf* States that governs both the management and development of *Waqf* land and the need to have a National *Waqf* Land Development Act or *Waqf* Development Rules as well as to insert *Waqf* Land Development in Housing Development (Contril and Licensing) Act 1966 . A study on each state, a regulated and non-regulated *waqf* law and procedure on development of *waqf* land shall be compared to help researcher to obtain objective number three to analyse the impact of such law and procedure on *waqf* land and to further provide recommendation for a sustainable direction on law regarding development of *waqf* land in Malaysia.

The researcher also intends to explore the historical aspect in law of *waqf* in Malaysia

to get a better understanding on examination of the current law that exists today. This explained that historical design is needed to examine and evaluate all presentations and proofs subjectively on the phenomenon that occurred and to draw a solid inference thereon[90].

The field study research is a non-doctrinal or social science approaches in qualitative design will be conducted and through field study researcher plans to conduct a semi-structured interview with a respective with the key-player in *waqf* development such as the SIRCs or their respective body incorporated, the developer and the investor and bank officer , to get a deeper understanding of law regarding *waqf*, the administration and management aspect of *waqf* towards development of *waqf* lands in Malaysia

A doctrinal review of gazetted *fatwas* available on the Department of Islamic Development Malaysia (JAKIM) website, along with semi-structured interviews on the legal framework for *waqf* land development, will contribute to a deeper understanding of the current state of *waqf* land development in Malaysia and provide further clarity on the substantive and procedural laws applied by State Legislatures in their implementation of *waqf* law. This will help researchers to achieve Research Objectives number one, two and three as well as to answer Research Question number one, two and three and further to derive to a reliable recommendations and contribution to study to suit Research Objective number four and Research Question number four as well.

[90] Chua, Y. "Kaedah dan Statistik Penyelidikan: Kaedah Penyelidikan." In *McGraw-Hill Education eBooks*. http://eprints.um.edu.my/10246/ (2011). Accessed 2.3.2020.

To achieve the third research objective, evaluating how substantive and procedural laws are applied in *waqf* land development, this study uses a qualitative legal research approach combining both doctrinal and non-doctrinal methods. The doctrinal analysis examines statutes, *fatwas*, rules, and state enactments to understand the legal framework governing *waqf* land. To assess how these laws are applied in practice, the study uses phenomenological and observatory methods, focusing on the experiences and perspectives of key stakeholders such as State Islamic Religious Councils (SIRCs), developers, and cooperative societies in Penang, Kedah, Selangor, and Johor.

Data were gathered through semi-structured interviews and case studies of selected *waqf* development projects. These case studies explore analysis comprising analysis on legal documents, such as joint venture agreements, lease arrangements, and *fatwa* applications, as well as procedural aspects like approval processes, financing issues, and institutional decision-making. By combining legal analysis, stakeholder input, and field observations, the study offers a comprehensive evaluation of how *waqf* laws are implemented in practice, thereby fulfilling the third research objective.

1.7.2 Research Scope

The research examines the analysis on *waqf* law and procedure in Malaysia and its implementation on the development of *waqf* land in both regulated and non-regulated states. The scope of the research will be highlighted on the legal aspect on development of *waqf* land in Malaysia through substantive and procedural law, its law and regulation in all state Enactment also known as "*Enakmen Pentadbiran Agama Islam Negeri*" and the principles of development of *waqf* land from State *fatwas*.

By doing so, the research will go down to the historical fact of the first recognition of Muslim Law in Malaysia from pre-independent day to the current existing law. The first practice of *waqf* in Malaysia will also be highlighted in this research. Research scope shall be taken from historical background of *waqf* law in Malaysia and how *waqf* law has been introduced and implemented and thereafter evolved.

The effect of unstandardised in substantive and procedural law through Administration of Islamic Religious Enactment and State *Waqf* Enactment in the issue of sole trustee or *mutawalli*, the issue of perpetuity and *istibdal* in the Enactment shall also be scrutinise rigorously through *waqf* cases that have been determined and decided by Malaysian Courts.This research aims to provide an in-depth analysis of the law on development of *waqf* land in Malaysia, focusing on legal, institutional, and practical frameworks. By narrowing the research scope to specific geographical regions, key stakeholders, and institutional structures, the research will present a detailed exploration of *waqf* land development, with a particular emphasis on the roles of state religious bodies, stakeholders, and legal regulations.

The geographical scope of this research focuses primarily on Penang and Kedah through detailed cross-sectorial case studies as discussed in Chapter Four, and interviews with Penang, Selangor and Johore *waqf* authorities and *waqf* Stakeholders in Penang and Kedah State and an exception to one case in Palu, Indonesia focusing on the funding and implementations of that funds by JAKIM for philanthropic reasons, while also drawing upon *fatwas* and *waqf*-related rulings from other states across Malaysia to provide a broader context.

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Penang State: Penang is known for its dynamic approach to *waqf* land development especially in commercial developments. The state's proactive management of *waqf* assets and several notable development projects offer rich material for a cross-sectorial case study unit. For example, the state has developed various housing and commercial projects on *waqf* land, demonstrating how legal and institutional mechanisms can drive sustainable development. The study will explore the successes and challenges of Penang's *waqf* land development strategies, with particular attention to their alignment with Islamic legal principles and modern development needs.

Kedah: Kedah, a state with a rich history of *waqf*, will be the second cross-sectorial case study. The research will examine how *waqf* land in Kedah has been managed, including both successful and stalled projects. Kedah's *waqf* institutions and local stakeholders play a unique role in preserving and developing *waqf* properties, and the study will explore the administrative and legal challenges they face, particularly regarding the usage of *waqf* land for educational purpose

Selangor through *Perbadanan Wakaf Selangor* was selected as Selangor is among the earliest state with *waqf* Enactment. And Johore was selected as it is among the most structured *waqf* management state. Other States through *Fatwas*: The research will also draw on published *fatwas* from various states Mufti's website to provide insights into how *waqf* land is managed and developed within different Islamic legal interpretations. Each state has its own religious authority that issues *fatwas*, and these rulings often influence the management and development of *waqf* land. This approach allows for a comparative analysis between the more development-focused approaches

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seen in Penang and Kedah and the religious guidance provided in other states. By focusing on Penang and Kedah for cross-sectorial case studies on the implementation of *waqf* laws and procedures and using *fatwas* from other states for comparative legal insights, the geographical scope will offer a nuanced view of *waqf* development across Malaysia.

The research will closely examine the role of key stakeholders in the development and management of *waqf* land. This includes: State Islamic Religious Councils (SIRCs) or their incorporated body: SIRCs in Penang and Kedah are the main bodies responsible for overseeing *waqf* properties. The research will focus on the experiences of SIRC and the Stakeholders in managing *waqf* land, addressing the legal, administrative, and financial challenges they face. The study will also investigate how these SIRCs collaborate with other stakeholders to drive *waqf* land development be it a classical development or a modern development.

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Private Developers and Financiers: In both Penang and Kedah, private sector involvement in *waqf* land development has been critical in bringing projects to fruition. The research will examine how developers navigate the complex legal framework surrounding *waqf* properties while adhering to Islamic legal principles. Financial institutions that support *waqf* development, such as through Islamic banking products, will also be considered.

Community and Beneficiaries: Local communities in Penang and Kedah play an essential role in both supporting and benefiting from *waqf* land development. This research will analyse how community engagement is managed and whether it aligns

with the religious and social objectives of *waqf*. Additionally, interviews with beneficiaries will provide insights into the socio-economic impact of *waqf* projects. By focusing on these key groups, the research will present a comprehensive view of the challenges and opportunities faced by those involved in *waqf* land development and by focusing on the specific roles of key stakeholders and institutions, this research will provide a comprehensive understanding of how *waqf* land can be developed in ways that are both religiously compliant and economically viable. The insights drawn from Penang, Kedah, and other states will contribute to a broader understanding of *waqf* land management and offer recommendations for improving the development processes at both the state and national levels.

Although this study focuses on four selected states that is Penang, Kedah, Selangor, and Johor, the findings hold potential for generalization at the national level, as the selected states collectively represent a broad spectrum of legal frameworks, institutional capacities, and practical approaches to waqf land development. Each state reflects a distinct classification of *waqf* governance in Malaysia where Penang represents a state with no *waqf*-specific enactment but demonstrates advanced and innovative development initiatives and Kedah similarly lacks codified *waqf* laws and continues to prioritize classical religious-based *waqf* development, such as *madrasahs* and mosques. However, Selangor, with a dedicated *waqf* enactment, presents a model of formal legal structure but has progressed slowly in executing large-scale commercial *waqf* projects, and Johor, which applies *waqf* rules rather than full legislation, illustrates a flexible and diversified strategy in managing and developing *waqf* land.

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By analysing these states, the study captures the complete range of legal rules and the ability of institutions to apply and enforce them effectively. currently operating within the national *waqf* ecosystem. These case studies enable comparative legal analysis, revealing how different institutional setups and legislative frameworks influence the outcomes of waqf land development. As such, the findings are not limited to the selected states but provide broader insights into the challenges and potential reforms applicable to other states in Malaysia. The typological diversity of these case studies thus serves as a valid basis for drawing national-level conclusions and policy recommendations aimed at enhancing *waqf* governance across all states.

1.7.3 Types of Data

The researcher will rely mainly on two sources of data that are primary and secondary sources. Primary source is to provide first-hand information to the scope of this research and it will include examination on State Legislature, provisions in State Government Enactment, Federal Constitution, Custom Law, and *Muslim* Law or *Shariah* Principles in *Al-Quran* and *Hadiths* and data will also be derived from a decided cases report from civil courts as well as *Shariah* Courts that publish judicial pronouncements of cases regarding development of *waqf* in Malaysia.

Primary sources provide direct information relating to the scope of the research. Data induced from primary sources is free from any alteration or influence and it shall provide the original form of information. Among the law that shall be analysed are:

a) Federal Constitution

b) State Islamic Administration Enactments

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c) States *Waqf* Enactment

d) Civil Law Act 1959

e) National Land Code 1965

f) Street Drainage and Building Act 1974

g) Local Government Act 1979

h) Other laws related to *Muslim* Law on *waqf*

All these sources will assist the researcher to observe and identify research problems and to help researchers in achieving the research objectives in the study. The researcher will also conduct a field study by having face to face or tele-conference interviews with the SIRCs or their respective incorporated body that is in charge of development of *waqf* in the preparation of this research.

The researcher will also rely on a secondary source such as articles, journals, text books, newspaper, published and unpublished papers of the state government and internet materials to analyse, evaluate and comments on the primary sources used in the progress of this research [91]. Aside from laws and regulations, the data also are gathered through internet input such as newspaper, academic blogs, official websites and other social media.

1.7.4 Data Collection methods

The data in this research are collected through a qualitative method which generally will rely on the library method for the purpose of collecting data and getting

[91] Ibid, 13.

information on this study.

Data from legal journals, statutes, thesis, dissertation and case law that can be collected from the libraries such as Sultanah Bahiyah Library in Universiti Utara Malaysia, Penang Bar Committee Library as well as Court of Appeal Library in Istana Kehakiman Putrajaya. This method of collecting data will also include research through online libraries and online databases as well as perusing data and information in SIRCs' archives.

The researcher will also carry on and handle a face to face or tele-conference semi structured interviews with state authority consisting of SIRC officers from Selangor and Johore, and other respective incorporated body in charge of *waqf* from Penang State. One (1) Developer, one (1) *Waqf* Scholar, one (1) *mutawalli* and (1) one *Nazr Khas*, and one (1) representative from non-governmental organisation as representative to *Jabatan Kemajuan Islam Malaysia (JAKIM).* The researcher will conduct an interview with one (1) senior Management bank officer from Bank Islam Malaysia Berhad, specialising in Islamic Banking facility in order to collaborate data and information collected from the libraries.

List of Respondents are as illustrated in the following table:

Respondent	Designation in Institution
R1	Group Chief Financial Inclusion Officer Bank Islam Malaysia Berhad
R2	*Mudir* (Headmaster) and Recipient of Mutawalli for Madrasah Ashraful Al-Madaris

R3	Advocate & Solicitor and *Waqf* Committee of Madrasah Khairiah Al-Islamiyah, recipient of *Nazir Khas* (administrator)
R4	Vice President of Malaysian Consultative Council for Islamic Organization (MAPIM), recipient as *mutawwali* from JAKIM
R5	Chairman, Planning and Development *Wakaf* Land, Wakaf Pulau Pinang Sdn Bhd, (wholly owned by Penang SIRC)
R6	Assistant Director of Waqf Division of Johor State Islamic Religious Council
R7	Lecturer at the Islamic Studies Center, Sultan Ibrahim Islamic University College, Johor. (*Waqf* Scholar)
R8	Consultant and Chairman of Porpoise Resources Sdn. Bhd., Developer for Kg Dodol Project under Penang SIRC
R9	Executive Unit for Waqf Planning and Research, Waqf Corporation of Selangor (PWS), wholly owned by Selangor SIRC.

Table 1.2. Source: researcher's own

The researcher chooses two states in Malaysia that is Penang and Kedah as a targeted states as Penang is seen to be the most successful state in developing the *waqf* land. As other states like Perlis, Kelantan, Terengganu, Malacca, Perak, Negeri Sembilan, Sabah and Sarawak are seen to be left behind in development of *waqf* land. This can be seen in the lack of *fatwas* regarding development of *waqf* land in their respective *Mufti*'s website.

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Penang State on the other hand, even without any written law on *waqf* but has seemed to develop more *waqf* land than any other state in Malaysia. Johore with Johor Waqf Rules is seem as very organised *waqf* structured in management and administration.

The researcher chooses these interviewees in order to support the research as the participants are the people who make policies in the state and those who have the authority to make the policy for the development of *waqf* in their own respective state. The researcher chooses this number of participants to support the current study with the views that can help the researcher in achieving the objectives of this study. In conducting the interviews, the researcher intends to use semi structured interview as it is easier and better way to deduct the information [92]. Semi-Structured interview gives participants more freedom in answering the questions posted by the researcher as the question is based on topic without any restricted questions.

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The researcher will support the data collected through interviews with the four (4) novel cases studies that is valuable to this research as the law and procedure and approach used in such cases are the current practise by SIRC, and data on *fatwa* were collected through official communications with the *Mufti's* Office and by accessing publicly available fatwas from the Department of Islamic Development Malaysia (JAKIM) website.

The scope of this study is focused on the legal and procedural framework governing

[92] Moira Cachia, and Millward, Lynne. "The Telephone Medium and Semi-Structured Interviews: A Complementary Fit." *Qualitative Research in Organizations and Management* 6, no. 3 (2011): 265–277. https://doi.org/10.1108/17465641111188420. Accessed 2.3.2020.

the administration and development of *waqf* land in Malaysia, with particular emphasis on the practical implementation of substantive and procedural laws by entities legally recognized as trustees of *waqf* property. In this regard, the study deliberately excludes respondents from *JAWHAR (*Department of *Awqaf, Zakat* and *Hajj)* and *Yayasan Wakaf Malaysia (YWM)* due to their non-trustee status under the prevailing legal framework.

According to the existing legal structure in Malaysia, the State Islamic Religious Councils (SIRCs) are recognized as the sole legal trustees (*mutawalli*) of *waqf* property within their respective states, pursuant to state enactments and the Federal Constitution. Article 74 and the Ninth Schedule, List II (State List) of the Federal Constitution of Malaysia confer jurisdiction over matters related to Islamic law, including *waqf*, to the state legislative assemblies. Consequently, the legal authority to administer, manage, and develop *waqf* land rests exclusively with the SIRCs, who possess both statutory and operational control over waqf assets.

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In contrast, JAWHAR and YWM function as federal level, coordinating and facilitating bodies, rather than as legal administrators or trustees of *waqf* land. While these institutions play supportive roles, such as promoting waqf awareness, proposing policy guidelines, or funding selected *waqf* initiatives, they do not directly exercise control over the legal processes of *waqf* land registration, administration, or development. More importantly, they do not enact or implement substantive or procedural law applicable to *waqf* land matters, nor do they possess the legal locus standi to act as *mutawalli* or to enter into contractual or administrative dealings related to *waqf* land. The Yayasan *Waqaf* Malaysia (YWM) has indeed acquired hotel

properties in Terengganu in 2024, Taiping in 2024 and Melaka in 2024 using *waqf* funds.

However, due to the nature of the funding, YWM is legally and procedurally required to collaborate with the respective State Islamic Religious Councils (SIRCs) for the implementation and management of these projects. Consequently, YWM cannot act independently in the development or administration of these waqf funded ventures without the involvement of the SIRCs[93].

Therefore, the exclusion of JAWHAR and YWM as respondents is methodologically justified and consistent with the doctrinal and empirical objectives of this study. The research is primarily concerned with actors who possess legal and operational authority over waqf land, particularly in the formulation, application, and enforcement of substantive and procedural laws. Including institutions without such statutory roles would risk diluting the legal analysis and shifting the focus away from the actual implementers of waqf governance. This approach ensures that the findings and recommendations of the study are both jurisdictionally accurate and institutionally relevant, contributing meaningfully to the discourse on *waqf* law reform and the strengthening of trustee based governance mechanisms at the state level.

1.7.5 Analysis of data

The purpose of data analysis is to transform the data collected into credible evidence about the development of the intervention and its performance [94].

[93] *Bengkel Munaqasyah AIBIM (Siri 3), Bengkel Pembiayaan Akhir Hartanah Wakaf, Madjis Negeri Pulau Pinang (12.12.2024).*
[94] Vibhute, K., and F. Aynalem. *Legal Research Methods: Teaching Material*. Justice and Legal System

The researcher will apply different approaches in analysing data collected from library research and interviews and this will include a doctrinal approach specifically in dealing with law and regulation by identifying and understanding the current substantive and procedural law used by SIRC in Malaysia in developing their *waqf* land.

The researcher will use few approaches that are considered useful to suit this research. The analysis of data shall be on thematic data analysis and among the approaches are, descriptive approach, explanatory approach, analytical approach, critical analysis approach, observatory approach and historical approach in the process of saturation of information collected from library research and interview. Research Objectives number one, two and three will be achieved through documentary analysis of collecting data from online database and library research and from interview data.

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Descriptive and critical analysis approach deals with the question of 'what' and is commonly used to understand what happened as regards to a particular situation or phenomena, this approach will help to achieve first, second and third objectives and at the same time will answer the research question number one, two and three.

The aim of a descriptive and critical analysis approach is to help this study to organize factors and issues relating to the research topic. This approach is suitable to describe, interpret and discover the state of affairs in respect of the concept of *waqf*, the concept

Research Institute, Addis Ababa, Ethiopia, 2009.Accessed 2.3.2020.

of development of *waqf* in *Shariah* as part of the initiative process taken by the State to utilise the usage of *waqf* land and to develop it to boost the socio and economy of *Muslim*s Community.

This method shall be utilised to develop a plausible explanation for all research questions and to provide a sound basis for analytical and critical answer to the all objectives of the research. The researcher will apply this method together with a comparative approach to gain a deeper understanding of the legal complexity in the doctrine of *waqf* in *Shariah* and the development of *waqf* land in *Shariah* through examining *Muslim* Law, State Law and its position in the National Land Code.

The researcher will systematically provide a clear and precise explanation and description on the rule and procedure in development aspects of *waqf* and this will help researcher to increase a legal knowledge and deeper understanding in respect of *waqf* land law and its related problems. This method is most suited to answer research question number one, two and three and will help to achieve objectives number one, two and three as perceived by the researcher.

Comparative approach will be used to explain the different approaches by regulated and non-regulated states in Malaysia regarding the law, regulations and procedures in *waqf* law and its impact on developing *waqf* land in their state. This approach will answer the question of "what and how" this phenomenon happened in Malaysia and will provide reasoning to support these research objectives.

Analysis of data by using an exploratory approach will also provide answers to the

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question of "how" and therefore, will be a guide to answer research question number three, how the law and procedure in regulated and non-regulated state gives impact and direction to development of *waqf* land law in Malaysia.

Analytical approach will be used to explain and understand, to draw inference to find findings on the first research question and the first objective, and allows the researcher to examine the issues involving development of *waqf* law in Malaysia, to highlight the current law and the flaws or inadequacy in it as well as to be able to express the researcher's opinion and draw a conclusive finding to overcome the shortcomings in the present SIRC policy.

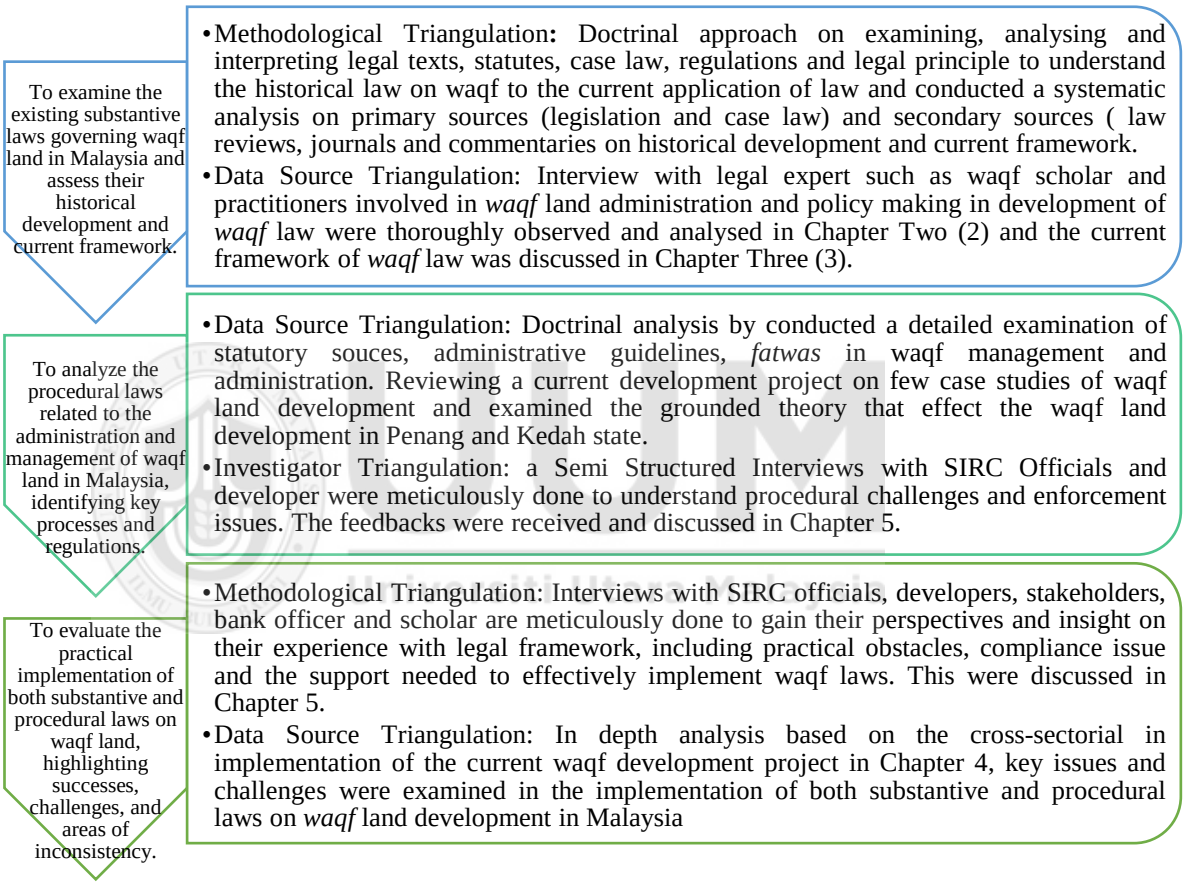
Historical and observatory approach will also be used in order to examine the first practise of *waqf* in Malaysia and the applicability of *Muslim* Law in this country. The law on *waqf* in Malaysia is the product of British colonization and therefore, an analysis on historical background will help this research to form a comprehensive study on the laws, procedures and policies in development of *waqf* land in Malaysia.

1.7.6 Triangulation of Data

Triangulation is a robust methodological approach employed in research to enhance the credibility and validity of findings by integrating multiple sources of data, methods, and perspectives[95]. In the context of this study, titled "Legal Analysis on the Law of *Waqf* Land and Its Implementation in Malaysia," triangulation serves as a vital tool for

[95] Moran-Ellis, J., Alexander, V. D., Cronin, A., Dickinson, M., Fielding, J., Sleney, J., et al. (2006). Triangulation and integration: Processes, claims and implications. *Qualitative Research, 6*(1), 45–59. Accessed 2.8.2024.

examining the complexities of both substantive and procedural laws governing *waqf*. By drawing from diverse data sources including legal documents, expert interviews, and case studies, this research aims to provide a comprehensive understanding of the legal framework surrounding *waqf* land and its evolution over time. The triangulation of data is best illustrated in the figure below:



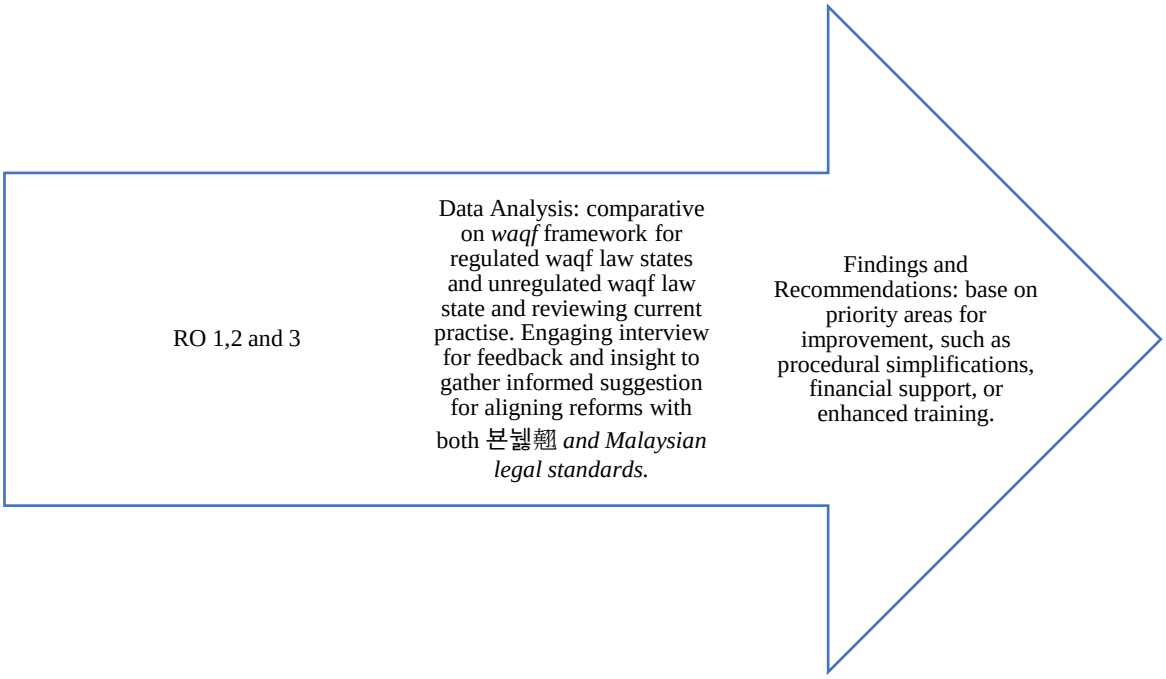


Figure 1.1. Triangulation of Data
Source: researcher's own

The application of triangulation in this study on *waqf* land in Malaysia has yielded significant insights into both the substantive and procedural laws governing its development. By integrating multiple data sources such as legal documents, interviews with experts, and cross-sectorial of current case studies on development projects, this research has provided a holistic view of the evolving legal landscape surrounding *waqf*. Qualitative method has not only reinforced the validity of the findings but also revealed nuanced perspectives on the implementation of *waqf* laws.

One of the key outcomes of this triangulated approach is the identification of persistent challenges faced in the development of *waqf* land. Interviews with practitioners highlighted inconsistencies in the application of laws and lack of law, while data from cross-sectorial implementation of case studies illustrated the bureaucratic hurdles that often impede progress. These findings underscore the importance of considering

multiple viewpoints, as they illuminate gaps in the current legal framework that may not be apparent when relying on a single source of data.

Moreover, the collaborative aspect of investigator triangulation engaging researchers with diverse expertise has enriched the analysis. Contributions from legal scholars, urban planners, and community leaders provided a multidimensional understanding of how substantive and procedural laws interact and affect the community. This collaborative dialogue has facilitated a more informed discussion of potential recommendations for improving the legal framework and its implementation.

In summary, the use of triangulation has proven essential in addressing the research questions posed in this study. It has not only enhanced the robustness of the findings but also illuminated the complexities of *waqf* land development in Malaysia, paving the way for more informed policy recommendations aimed at optimizing the implementation of *waqf* laws.

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This study has explored the legal landscape governing *waqf* land in Malaysia through a comprehensive triangulation approach, yielding valuable insights into both the substantive and procedural laws that shape its development. By integrating diverse data sources and employing various research methods, this research has not only enhanced the credibility of the findings but also provided a richer understanding of the complexities involved in the implementation of *waqf* laws.

The findings indicate that while the legal framework surrounding *waqf* land has evolved, significant challenges remain in its practical application. Issues such as

bureaucratic inefficiencies, inconsistent enforcement, and lack of public awareness hinder the effective development of *waqf* properties. The involvement of multiple perspectives from legal experts to community stakeholders has illuminated these challenges and highlighted the need for a more cohesive and informed approach to *waqf* land management.

As a result, this study offers several recommendations aimed at improving both the substantive and procedural aspects of *waqf* law in Malaysia. These include enhancing legal clarity, fostering collaboration among stakeholders, and promoting public education about *waqf*. By addressing these issues, policymakers can facilitate the more effective implementation of *waqf* laws, ultimately contributing to the sustainable development of *waqf* land and its benefits to the community.

In conclusion, the triangulation approach has proven essential in understanding the multifaceted nature of *waqf* land laws and their implications. This research not only contributes to the existing body of knowledge but also serves as a foundation for future studies aimed at optimizing the legal framework for *waqf* in Malaysia.

1.8 Limitation of Study

The researcher anticipates to find some constraints and limitations in terms of resources and documents as well as time constraints to get appointments especially during the pandemic occurrence. There will be a limitation in published literature whereby the researcher may be having a difficulty in getting a written policy used by each SIRC pertaining to development of *waqf* property as the officers in State Islamic

Religious Council might be reluctant to reveal any state document for fear of revealing some private and confidential clauses in the said document. State policies are not usually in a published form. These documents may contain the formula used by the State Islamic Religious Council to develop the *waqf* land and this document also provide an insight review of how a *waqf* land can actually be developed and commercialized.

There is also a lack of literature in law and procedure regarding development of *waqf* land in Malaysia as most available literature is on administration and management of *waqf.* SIRC often developed *waqf* land by using ruling from *Mufti* 's office. Currently, even the statutory of *waqf* has been declared as confidential documents in the Land Office and cannot be viewed or accessed without authorisation from SIRC.

The researcher also faced difficulty in obtaining the *Nazir Khas* agreement and the related document as the agreement was made private and confidential by Penang SIRC.

The researcher will solve this problem by interviewing a legal officer from the State Islamic Religious Council or their body incorporated or a State Legal Advisor with the undertaking of preserving any confidentiality clause that the state might impose. An interview with the stakeholder will be solved this problem but the document concerned is a private document and is against the interview protocol. The researcher will conduct an interview with a Bank's officer to get an insight view on the concept of financing the development of *waqf* land in respect of the said agreement used by the State Islamic Religious Council in procuring the financing part of the development of *waqf* land.

There will also be limitations on time to conduct interviews as officers in SIRC and State Legal Advisers are extremely busy and the appointment for interviews might take longer than the estimated timeline. The travelling cost will also be another constraint factor as the interviews to all State Advisors and Muftis shall consist of 14 states in Malaysia. The researcher might overcome this limitation by extracting data from various state *Mufti*'s official website focusing on the state that has a prominent development of *waqf* land *fatwas*.

Another limitation anticipated by the researcher will be the changes in the State Government policies regarding *waqf* and the amendment in National Land Code as regard to registration of *waqf* land and the enactment of a new *Waqf* Enactment by Wilayah Persekutuan State Islamic Religious Council[96], and the most anticipated law on registration of *waqf* land in Malaysia that soon will be tabled in Parliament but this limitation can be overcome by getting an interface or tele-conference interview with state Mufti and State Legal Advisor if needed , the two persons in charge with the policy changes in the state Enactment involving Islamic Law. An interview with them will help the researcher to evaluate whether there will be any amendment or changes in law in the near future and be prepared with a contingency plan for this study.

However, both State Legal Advisor and Mufti's office refuse to participate in the interview as State Legal Advisor prefer for legal framework to be handled by SIRC legal officer and the *Mufti*'s office on the other hand prefer to up-date their activities and *Fatwa*s in their website.

[96] Ibid, 19.

1.9 Literature Review

Recently most State Islamic Religious Councils (SIRCs) in Malaysia have realised that developing *waqf* land can resolve many social and economic issues pertaining to house owning and business compatibility amongst *Muslim* Community. Islamic Finance News[97] has described *waqf* as "The Sleeping Giant" in Islamic Finance System and if managed and administered systemically may improve social status and boost the economy for *Muslim* Community in many years to come. Singapore through "Majlis Ugama Islam Singapura" together with its subsidiary company known as *Waqf Real Estate of Singapore* (WAREES investment) which runs *Waqf* properties to generate maximum revenue[98] have proved this through many of their projects not limited to real estate but diversify into a fixed income such as *Sukuk,* cash and other alternative investments.

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There are many previous researches by scholars concerning registration, administration and management of *waqf* in Malaysia, the unsystematic and inefficient administration of *waqf* land by SIRC as well as lack of uniformed procedure in procuring *waqf* land. The literature review in this aspect has been developed since 2008 to 2024 to cover the various issues faced by SIRC in the development of *waqf* land, especially the success and the failure of the development of *waqf* land in Malaysia.

[97] Islamic Finance News. "The *Waqf* Industry: The Sleeping Giant of Islamic Finance." 2012. http://islamicfinancenews.com/sites/default/files/newsletters/v9i38.pdf.
[98] Muhamad Don, M. A. "Aplikasi Model Teori Al-Wilayah: Cadangan Penyelesaian Konflik Perundangan Wakaf di Malaysia." *Journal of Fatwa Management and Research* 16, no. 2 (2019): 15–30. https://doi.org/10.33102/j*fatwa*.vol16no2.2.Accessed 2.2.2020.

However, there is still lack of study on procedural aspect especially on the implementation of certain procedure on the development of *waqf* land in Malaysia and for this, the researcher intends to explore, analyse and examine the previous literatures, its contribution toward the development of *waqf* and the study gap between this research and the previous literature review.

In this research the literature review will be organised from broader topic to a narrow and specific topic and to be presented from historical background on the coming of *Muslim* Law to Malaysia, the first practise of *waqf* in Malaysia to the current law on the development of *waqf* land. The literature review can be divided into two categories, namely;

1. Definition and concepts of *waqf* in *Shariah* perspective for underpinning theories of *maqasid shariah* theories and institutional theories shall be referred to 1.9.1 to 1.9.3;
2. Theoretical underpinnings of *waqf* law of legal theories, public interest theories and stakeholder theories, shall be referred to 1.9.4 to 1.9.8.

1.9.1 Analysis on Jurisdiction of *Waqf* law in Malaysia and Case Study

The jurisdiction to hear the *waqf* dispute lies with the State Legislatures, however few important landmark cases have been decided by Malaysian Civil Court pertaining to this issue.

In the state of Penang all *waqf* land be it special *waqf* or general *waqf* are govern under Administration of The Religious of Islam (State of Penang) Enactment 2004 and

section 89 of empowered the State SIRC to be a sole trustee of all *waqf* and to the extent of any property affected by *waqf*, *general nazr* ("*nazr am*)" or trust.

According to Ismail Omar, difficulties regarding *waqf* property can be seen in three main issues namely; legal and administrative, economic and financial and socio-political elements.[99]

On the other hand, there are many articles and previous studies alleged that National Land Code 1965 (NLC) has clearly exclude *waqf* land by virtue of section 4(2) (e) where it provides that

"…***4. Savings.*** *(1) Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act: Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act. (2) Except in so far as it is expressly provided to the contrary, nothing in this Act shall affect the provisions of-*

(a) any law for the time being in force relating to customary tenure;
(b) any law for the time being in force relating to Malay reservations or Malay holdings;
(c) any law for the time being in force relating to mining;
(d) any law for the time being in force relating to sultanate lands;
(e) any law for the time being in force relating to Waqf or bait-ul-mal; "….

The lacuna in NLC as regard to *waqf* land has contribute another hurdle to develop *waqf* land in Malaysia[100]. The law in State Enactment and NLC has created a study gap in the area of registration and administration of *waqf* land and remain as a major obstacle in developing *waqf* land.

[99] Prof Dr Ismail Omar, "*Perak Festival of Ideas: "Transformasi Pentadbiran Tanah dan Mineral kea rah Peningkatan Kualiti Penyampaian*", 2017 Ipoh Convention Center 7 September 2017.
[100]Ibid, 9.

Among the obstacle in law in current jurisdiction of *waqf* Enactment can be seen through the following *Waqf* State Enactment, namely:

a. Administration of Islamic Law (Federal Territories) Act 1993 Act 505

Section 62. Vesting.

(1) All properties subject to the provisions of section 61 and situated in the Federal Territories shall without any conveyance, assignment or transfer whatsoever, and, in the case of immovable property, upon registration under the relevant written laws relating to land, vest in the Majlis, for the purposes of the trust, Waqf or nazr 'am affecting the same.

(2) The Majlis shall take all necessary steps to vest in itself for the like purposes any such property situated elsewhere than in the Federal Territories.

b. Enactment No. 5 of 2005

Waqf (State of Malacca) Enactment 2005

Section 50. Vesting of *mawquf*.

(1) The Majlis shall take all necessary steps as soon as practicable to vest in itself Waqf which are created under this Act.

(2) Any usufruct or benefit from a mawquf shall be vested to the Majlis from the date of the commencement of the Waqf, and the Majlis may claim any usufruct or benefit of a mawquf from any person before the registration of the Waqf.

(3) All mawquf situated in the State of Malacca, before the commencement of this Enactment, shall, without any conveyance, assignment or transfer whatsoever and in respect of all immovable property upon registration under the provisions of the National Land Code [Act 56 of 1965], is hereby vested to the Majlis to the extent of any property affected thereby.

(4) Subject to the provision of section 32, the Majlis shall take all necessary steps to vest in itself for the like purposes any such property situated elsewhere than the State of Malacca.

c) Enactment No. 7 Of 1999

Waqf (State of Selangor) Enactment 1999

Section 48 Vesting of *Mawquf*.[101]

[101] *"mawquf"* means a property endowed as *Waqf*, whether as *Waqf* am or *Waqf khas*; Section 2 of the

(1) The Majlis shall take all necessary steps as soon as practicable to vest in itself Waqf which are created under this Act.
(2) Any usufruct or benefit from a mawquf shall be vested in the Majlis from the date of the commencement of the Waqf, and the Majlis may claim any usufruct or benefit of a mawquf from any person before the registration of the Waqf.
(3) All mawquf situated in the State of Selangor, before the commencement of this Enactment shall, without any conveyance, assignment or transfer whatsoever and in respect of all immovable property upon registration under the provisions of National Land Code [Act 56/65], is hereby vested in the Majlis to the extent of any property affected thereby.
(4) The Majlis shall take all necessary steps to vest in itself for the like purposes any such property situated elsewhere than the State of Selangor.

a) Enactment 2 *Waqf* (Negeri Sembilan) Enactment 2005

Incorporating latest amendment - N.S. P.U.27/2008

Section 5. Majlis as sole trustee.

(1) Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting any Waqf—

(a) the Majlis shall be the sole trustee of any mawquf, situated in the State of Negeri Sembilan;

(b) the Majlis, as sole trustee of any mawquf situated in the State of Negeri Sembilan, may be made a mawquf-alaih[102] *for any such mawquf; and*

(c) the Majlis may be made a mawquf-alaih for any mawquf situated elsewhere than in the State of Negeri Sembilan.

(2) In the case of a mawquf situated elsewhere than in the State of Negeri Sembilan for which the Majlis is a mawquf-alaih, the Majlis may make any arrangement with the trustee of such mawquf for the purposes of this Enactment.

Section 6. Registration of *mawquf*.

Any person who desires to endow his property as a Waqf shall register such property with the Majlis in such manner as may be prescribed by the Majlis.
Section 7. Court may order mawquf to be registered.

Enactment as in Selangor Waqf Enactment 2015.

[102] "*mawquf-alaih*" means a person or an association or institution entitled to receive any benefit, interest or profit from a *mawquf*; section 2 of the Enactment.

Subject to section 50, where the Majlis has any reasonable ground to believe that a property has been endowed as a Waqf but such mawquf is not registered under this Enactment, the Majlis shall apply to the Court for an order to register such mawquf.

Section 9. Vesting in Majlis.

(1) The Majlis shall take all necessary steps as soon as may be practicable to vest in the Majlis any mawquf registered under sections 6 and 7.
(2) Any mawquf vested in the Majlis shall be vested in the Majlis without any conveyance, surrender, assignment, or transfer whatsoever and shall be so vested for the like title, estate or interest on the like tenure as the property was vested before the registration of such mawquf under sections 6 and 7.
(3) Any mawquf which has been vested in the Majlis shall not be conveyed, surrendered, assigned, charged, mortgaged, loaned or transferred except for the purposes of subsection 12(1) or in accordance with a fatwa made by the Fatwa Committee.
(4) The vesting of any immovable property shall be in accordance with the National Land Code.

a) Enactment 2 Administration of The Religion of Islam (State of Penang) Enactment 2004 *Incorporating latest amendment - Pg.P.U. 11/2008*

Section 89. Majlis to be sole trustee of Waqf, nazr and trusts.
Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting it, the Majlis shall be the sole trustee of—
(a) all Waqf, whether Waqf am or Waqf khas;
(b) all nazr am; and
(c) all trusts of every description creating any charitable trust for the support and promotion of the religion of Islam or for the benefit of Muslims in accordance with Hukum Syarak,

to the extent of any property affected by the Waqf, nazr am or trust and situated in the State of Penang.

Section 90. Vesting of Waqf, nazr and trust property in Majlis.

All property subject to section 89 shall without any conveyance, assignment or transfer, and, in the case of immovable property, upon registration under the written law relating to land, vest in the Majlis, for the purpose of the Waqf, nazr am or trust affecting the property.

Another area of inadequacy governing *waqf* land in the State of Penang lies in section 90 of Administration of The Religious of Islam (State of Penang) Enactment 2004 when the law stated that "All property subject to section 89 shall without any conveyance, assignment or transfer, and, in the case of immoveable property, upon registration under the written law relating to land, vest in the Majlis, for the purpose of *waqf* or *nazr* am or trust affecting the property". This section requires that even if without any conveyance, assignment or transfer, any *waqf* land shall be vested under the name of SIRC upon registration under the written law relating to land.

The inadequacy and insufficiency of *Waqf* Enactment in Malaysia remained, as in all *Waqf* Enactment and State Enactment as the word "the written law regarding land" has been highlighted in consensus in the Enactment and this wording was enacted as if the state SIRCs was unaware and oblivious to the fact that section 4(2) (e) of NLC has declared *waqf* to be out of NLC jurisdiction. These sections of law however, failed to highlight the fact that written law relating to land in this country is NLC and since NLC has ousted *waqf* land from its jurisdiction then there would be no other written law governing to land in this country. Being ousted means that any laws under NLC shall not binds *waqf* land and as such the power to register *waqf* land is now rest under the jurisdiction of *Shariah* Court of the State. Scholars[103] commented that s.4(2) of NLC provides that when it comes to *waqf* land the law governing it shall be regulated by the state authority and not NLC, another scholar [104] agree that NLC by virtue of s.4(2) (e) did not apply to *waqf* land and that *waqf* should be governed specifically by *Shariah* law [105]and other scholar has contended that NLC did not apply to *waqf* land

[103] Ibid, 29.
[104] Mohamad Nasir, Disa. "*Peletakhakan Tanah Wakaf Dalam Perspektif Perundangan." (2012) www.jawhar.gov.my/prev/images/muat_turun/perspektif_perundangan.pdf.*
[105] Sharifah Shafika, Alsagoff. "*Wakaf dari Perspektif Agama & Realiti*" (2017). *Shariah* Convention

in Malaysia[106].

Major lacuna in NLC as alleged by scholars comes in its own section 4(2) (e) as mentioned by many scholars earlier like (Syed Abdul Kader and Mohamed, 2014), (Disa, 2012), (Sharifah Shafika Alsagoff, 2017) and (Mohidin, 2013), alleged that section 4 (2) (e) clearly excluded *waqf* land from its regulation and therefore, it can be submitted that the intention of Parliament is to let the procedure in management, administration and registration of *waqf* land in the hand of state SIRC. Being the sole trustee in *waqf* land, SIRC should develop their own *waqf* law with disregard to rules and regulations in NLC 1965 and a great emphasize to SIRC to give a wide power to *Shariah* Court to determine the procedure to register *waqf* in all states in Malaysia. The alleged lacuna in procedure to register *waqf* land in NLC 1965 should be seen as a blessing to give *Shariah* Court exclusive power to determine the registration of *waqf* in Malaysia and this in fact can resolved all issue as to legal and procedural aspect of registration of *waqf* in Malaysia.

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Apart from using a traditional transfer form that is Form 14A provided in s. 215 and 216 of NLC to transfer the *Waqf* land to SIRC, the law provides for the transfer of *waqf* land to be also by way of s. 195, 197 and 200 of NLC by surrender the *waqf* land to state authority by using Form 12A for the whole land and Form 12B for a partial land. However, these ways can only be done if the *waqif* is still alive and able to conduct the *waqf* transaction him/herself [107]. Currently *Jabatan Ketua Pengarah Tanah Galian*

Penang.

[106] Mohiddin, Md Omar. *"Isu Pentadbiran Tanah Wakaf dalam Konteks KTN1965 dan Pejabat Tanah dan Galian Negeri Sembilan". Jurnal Pentadbiran Tanah, 3(1), 2013, ms. 25 – 37 25.*

[107] Rusnadewi, Rashid, A. Hussin, R., and Yaakub, N. I. "Pencerobohan Tanah Wakaf dari Aspek Perundangan Negara." In *International Conferences on Waqf 2015*, 48-51.

(JKPTG) has introduced a new guideline for a *waqf* land to be transferred by way of Statutory Vesting by using form 416C of NLC. It has been a long practice by states Penang SIRC to use section 415 and form 30A to register *waqf* land in Malaysia and Penang SIRC is also influenced by this practice. And such practise was in fact provided by JAWHAR in their guidelines and in the case of *Ahmad Yahya v Majlis Agama Islam Negeri Pulau Pinang*,[108] the civil high court has recognised the vesting order made under s. 415 of NLC by using form 30A as a valid procedure for Penang SIRC and most of the unregulated states to procure the *waqf* land.

However, after some time the practice has been changed to the current practice by virtue of a guideline provided by *Jabatan Ketua Pengarah Tanah Dan Galian (JKPTG)* by using section 416C of NLC. This current practice of using 416C even though provide a better alternative in registering *waqf* land but it can also open a floodgate of litigation to litigate the previous and current practices of *waqf* registration in Malaysia and in Penang in particular. The lacuna in NLC by JKPTG's circular gives rise to a more misunderstanding to legal practitioners Malaysian-wide as the circular gives a guideline to register *waqf* land by using 416C of NLC 1965 which clearly contravened with the word in the section itself. Sec 416C is not a solution to the lacuna in the procedure in the registration of *waqf* land.

S.416C deals only with gifts, bequest, or donation when it explicitly stated, 416C. Provisions as rights in whole or part of alienated land vested in the transferee.

(1) Where the whole or a part of any alienated land held by the transferor is occupied, used, controlled or managed by the transferee under any right or entitlement derived by

[108] (2016) 1 CLJ 1018.

way of a donation, gift, bequest, permission, consent, or otherwise howsoever, from the transferor or any predecessor in title of the transferor for any of the statutory purposes of the transferee immediately before the statutory vesting takes effect, the transferee's right to such occupation, use, control or management shall, upon application in writing by him to the Registrar, be endorsed on the register document of title to the land, where the Registrar is satisfied that the statutory vesting of such right or entitlement in the transferee has taken effect.

(2) The right endorsed on the register document of title under subsection (1) shall have effect from the date on which the statutory vesting took effect and shall subsist throughout the duration of that title and be binding on every subsequent proprietor of the land.

Nothing in this section that can be referred to *waqf* and in fact by the silence shows that this section is not an exception to sec 4(2) (e) to exclude *waqf* from NLC scope of law. JKPTG's circular even though is not a law but it stands as an internal guideline to all Land Administrators in Malaysia. JKPTG circular should not override the clear provisions of law and the guideline ought to be replaced to suit the written law relating to land.

The law in NLC should be read as intended by the lawmaker and Parliament, our regulator has explicitly excluded *waqf* from its regulation in s.416C but the procedure for statutory vesting of *waqf* land can be cured by virtue of s. 420 of NLC that provides the power of Court to give Order for vesting of land and by virtue of interpretation in section 421A *Shariah* Court Order is recognised and by virtue of s.421A any order made by *Shariah* Court under s. 417 and 420 must be registered by the Land Registrar.

This power must be grasp by state SIRC to enact a special Enactment or improvised current enactment to give power to *Shariah* Court to regulate the procedure to register *waqf* land in Malaysia [109].

In NLC 1965, section 420 provides for vesting orders*:*

(1) Notwithstanding anything in any other written law, no order of the Court vesting any alienated land, or any share or interest therein, in any person or body shall affect the land, share or interest in question until it has been registered pursuant to this section.

(2) The Court shall, accordingly, cause a copy of any such order to be served on the Registrar or, as the case may be, Land Administrator forthwith after the making thereof; and the Registrar or Land Administrator, upon receiving any such copy, shall give effect to the order by making a memorial of the vesting on the register document of title to the land to which, or a share or interest in which, the order relates.

(3) The Registrar or Land Administrator shall sign and seal every memorial made by him pursuant to this section, and, if able to secure the production of the instrument in question, shall make a copy of the memorial on the issue document of title to the said land or, where the order relates to a lease or a charge, on the duplicate thereof.

(4) Where the Registrar or Land Administrator takes action under this section in respect of any land or any share or interest therein, he shall cause notice of his action to be served upon any person or body having a claim protected by caveat affecting the land, share or interest.

Court in this section also means *Shariah* Court as provided in the interpretation section in NLC 1965, whereby it is stated in section 421A. Interpretation. *For the purposes of section 417 and 420, "Court" includes a Shariah Court.*

[109] Ibid, 9.

A case study in Penang state shows that under section 96 of Penang Administration of Islamic Religious Enactment, SIRC is to be sole trustee of mosque and related land, and state that:

"(*1) Notwithstanding any provision to the contrary in any written instrument, the Majlis shall be the sole trustee of all mosques in the State of Penang.*

(2) Every mosque, together with the land on which it stands and any land which is appurtenant to and used for the purposes of the mosque, other than State land or land reserved for a public purpose, shall, upon registration under the written law relating to land, and without any conveyance, assignment or transfer, vest in the Majlis for the purposes of this Enactment."

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By virtue of this section Penang SIRC can make a declaration that any land that has a mosque or any *Muslim*s graveyard erected on it can be declared as *waqf* and SIRC shall be a sole trustee to these lands. Legal battle on this issue has started in Malaysia through the case of *G. Rethinasamy v. Majlis Agama Islam Negeri Pulau Pinang*[110] whereby the Court held that NLC does not apply on *waqf* land as section 4(2) (e) clearly ousted *waqf* from any law in NLC. However, in this case as one party is not a *Muslim* then the civil court is of the opinion that the court can hear and decide the matter. The court in this case has decided that a part of the land that consists of a mosque and graveyard is *waqf* land (*waqf* by user) and the property is to be subdivided by the Plaintiff and vest the *waqf* part to Penang SIRC. Even so this case was decided for more than 22 years but the implementation of the said order by the High Court have

[110]The Plaintiff in this case claim the land under indefeasibility of title under NLC but the Defendant defence is that the land is a *Waqf* land by virtue of a previous practises that a part of that land has been used by *Muslim*s community in the area as mosque and graveyard and evidence by testimony shows that such practise existed 100 years ago".

yet to be perfected by Penang SIRC as the documents pertaining to the said land is in the possession of the Plaintiffs and currently the Plaintiffs has transferred the land to his sons and add on to the problems to SIRC to obtain the documentation and proceed with the vesting order to their name.

In a recent case of *Majlis Agama Islam Negeri Pulau Pinang v. Abdul Latiff Hassan & anor*[111] The 1st Defendant has obtained a Letter of Administration and an order to sell the land to the2nd Defendant, the developer. Plaintiff then came to know that the said land was subject to *waqf* and applied to court to invalidate the order to sell by the administrator. The administrator and developer defend the claim by using section 340 of NLC on indefeasibility of title to the registered owner. This has been challenged by Penang SIRC by virtue of section 89 and 90 of Enactment of Islamic Religious Administration that the said land was a *waqf* land. The court declared that by virtue of section 89 & 90 of the Enactment the land is a *waqf* land and this fact can challenge the indefeasibility of title held by the 2nd Defendant and the land shall be vested to Penang SIRC.

The court in this case also acknowledged the fact that the declaration by Majlis *Fatwa* Negeri Pulau Pinang that the land is *waqf* land by virtue of a Deed Polls incorporated by the deceased owner for the land to be a *waqf* land. The steps taken by Penang SIRC in getting the *fatwa* is acknowledged by the civil court. Even though the Enactment has clearly stated the position of *waqf* land to be registered under SIRC as a sole trustee, Penang SIRC in this matter has gone beyond the requirement of their own law to secure

[111](2017) 1 LNS 2030 Plaintiff in this case successfully reclaimed *Waqf* land that has been transferred to the developer by the beneficiaries and the Court acknowledge that *Shariah* Court shall have the power to decide on *Waqf* land.

the *waqf* land. Getting a *fatwa* from Majlis *fatwa* is an appraisable step by SIRC but will it be a precedent to future cases has yet to be seen. This action by SIRC in getting a *fatwa* on *waqf* land when there is a clear law regarding the status of *waqf* land and in the existence of Deed Poll that is an instrument recognized under the law as an instrument of land dealings available to Straits Settlement states in Malaya that is Malacca and Penang under NLC, is seen as unnecessary and will create more problems in the future as if the current Enactment is not enough to secure *waqf* land.

The act of obtaining a *fatwa* on *waqf* land has yet to be followed by any SIRC in Malaysia and hopefully it will not be a precedent in *waqf* case as this can create more problems in securing *waqf* land and added to more legal issue in registration the *waqf* land in Penang as the available law on registration of *waqf* land is still in grey zone.

The law in vesting *waqf* land to SIRC has been acknowledge by Court of Appeal Malaysia in the case of *Seberang Baru Sdn Bhd. V. Majlis Agama Islam Pulau Pinang dan Seberang Perai*[112] The Appeal Court decided that section 90 (1) & (2) of state Enactment provided a solutions when the *Waqf* land or all *Waqf* land as yet not been identified then section 90 (1) & (2) provide a blanket vesting of all *waqf* in the state, without SIRC having to take the steps to vest in itself the *waqf*. Vesting, with endorsement on the title, was not required by the enactment.

Section 90 of the Enactment states that Section 90. Vesting of *waqf*, *nazr* and trust property in Majlis**.** All property subject to section 89 shall without any conveyance,

[112] (2011) 1 LNS 1768 By virtue of section 4(1) and (2) of NLC, Defendants cannot rely on section 340 (3)(b) to protect their indefeasibility of title from being defeated.

assignment or transfer, and, in the case of immovable property, upon registration under the written law relating to land, vest in the Majlis, for the purpose of the *waqf, nazr am* or trust affecting the property. The law under this section of the Enactment gives a convenience of a blanket vesting of all *waqf* in the State in SIRC without the need for the SIRC to lodge its interest in the said *waqf* land.

However, in all the cases cited above the vesting order to vest the land to SIRC's name was made and pronounce by Civil Courts and none for far has been declared by the *Shariah* Court even though the power to vest and declared are available to *Shariah* Court by virtue of the fact that *waqf* land is not governed by NLC and civil courts have no jurisdiction to hear any matter relating to *Shariah* law.

Further analysis can be made from the above cited cases that the Court has interpreted that law in NLC did not apply to *waqf* land pursuant to s. 4(2). This interpretation from court is in line with the opinion of many scholars that the law regarding *waqf* should be governed by its own law and that the law in NLC should not be applicable to *waqf* land.

Although *waqf* falls within the jurisdiction of the *Shariah* court pursuant to the respective states' Administration of Islamic Law Enactments and List II of the 9th Schedule to the Federal Constitution, yet based on the above decided cases, as the prayers and relief sought by the parties are not within the jurisdiction of the *Shariah* Court. Further, if there is any non-*Muslim* party to the proceedings involving the question of *waqf*, equally the *Shariah* court too has no jurisdiction and power to deal

with the same.[113] These lacunas in the law have thus prevented the *Shariah* Court from hearing *waqf* cases. Further, due to the fact that the *Shariah* Court lacks the necessary power and jurisdiction, such *waqf* cases will indispensably fall back on the civil courts (High Court)[114]. This is because pursuant to section 23 of the CJA, the civil courts shall have the jurisdiction to hear all civil proceedings, including *waqf*.

Another case study will be on the doctrine of *istibdal* on *waqf* and it is seen as a perfect and reasonable alternative and this concept needs to be introduced to all *waqf* law in Malaysia[115]. However, currently Negeri Sembilan and Selangor have introduced and acknowledged this concept in their *Waqf* Enactment. Scholars argues that lack[116]of comprehensive law to regulate the registration and identification of *waqf* lands and the absence of any law to provide for the *istibdal* or replacement of the land acquired with a similar land in nature and value has defeated the purpose of creation of *waqf*[117]. The author has illustrated this lack of adequate law and the issue of *waqf* in the case of *Majlis Agama Islam Selangor v. Bong Boon Chuen & Ors*[118] the court in this case held that *Muslim* cemetery has not been formalised as *waqf* land and the state authority has yet to gazette it as *waqf* land and hence such land cannot be substituted with another land when acquired by the state. This case was decided even though Selangor *Waqf* Enactment 1999 , did recognise the concept of *Istibdal*.

[113] *Waqf* (Endowment) practice in Malaysia society. International Journal of Islamic Thought, 5(1), 56–61. https://doi.org/10.24035/ijit.05.2014.007
[114] Ibid, 13.
[115] Nur Khalidah Dahlan, Noor Inayah Yaa'kub, Mohamad Abdul Hamid & Mohd Rizal Palil," *Waqf (Endowment) Practise in Malaysian Society*", Vo. 5 (June) 2014, International Journal of Islamic Thought. e-ISSN 2289-6023.Accessed 2.1.2020.
[116] Ibid, 9.
[117] Ibid, 14.
[118](2006) 6 MLJ 488.

There are other scholars [119]who argues that the concept of *Istibdal* is available in Selangor *Waqf* Enactment by virtue of section 20 provides that the Majlis may substitute any *waqf* property, when it is no longer beneficial as intended by the dedicator. Scholar also argues that the concept of *Istibdal* through Islamic *Mazhab* or Islamic School of Thought and they conclude that there are different of opinion by *mazhab* on the concept of *Istibdal* but it is necessary for the importance of the public [120]. Amongst the Islamic Sect, the opinion by *Hambali* School is the most suitable in the current situation to solve the problems in *waqf* land where in *Hambali* School the concept of *Istibdal* is seen to be able to create a more dynamic *waqf* institution to achieve the true concept of *waqf* in Islamic teachings. *Hambali* School allows the mosque that is not in use and not prospered to be sold and the proceeds from the sale can be used to buy another property to replace the one that is sold and the benefits from it can be contributed back to the society just as the original intention of *waqf*.

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1.9.2 Overview of *Waqf* from *Shariah* perspectives

Waqf is one of the most contributed areas of Islamic literatures to the world wellbeing[121]. *Waqf* is not an obligation in Islamic teaching but it is strongly encouraged to endow our belonging to help the poor and the needy[122] and it is defined as a privately-owned property, corpus, endowed for a charitable purpose in perpetuity. From *fiqh* (Islamic jurisprudence) perspective, *waqf* is considered a recommended act unlike *alms (zakat)* which is compulsory for *Muslim*s. Historically, it is learnt that from

[119]Zulkifli Hasan, "*The Effectiveness of The Administration of Waqf Land In Malaysia*", 2007. 3 Shariah Law Review 68. Accessed 2.1.2020.
[120]Zuraidah Mohamad Isa & Norhidayah Ali, "*A Comparative Study on Waqf Management in Malaysia*", 2011. International Conference on Sociality and Economics Development IPEDR vol. 10 IACSIT Press, Singapore. Accessed 2.1.2020.
[121]Ibid, 3.
[122] See: *Quran Surah Al-Hajj, 22:77 and Al-Baqarah, 2:267*.

relatively a small act of donating a palm date orchard[123], *waqf* came to its glory during the Ottoman Empire.[124]

A discussion on the concept of *waqf*, objectives and classification of *waqf* toward a better understanding and interpretation of *waqf* documents has been discussed thoroughly with few evidences from Primary Sources of Islam by illustrated events that occurred during the early Islamic History. A learned scholar[125] has provided a lengthy definition of *waqf* and the requirements provided in Islamic Law to constitute what is *waqf*. The author described his study on the definition of *waqf* by using an argument from four schools namely the Hanafi, Maliki, Shafii and Hambali. This previous review on the subject of *waqf* helps the researcher in this study to understand the concept and objectives of *waqf* in Islamic Law and to apply such concept to overcome legal challenges in developing *waqf* property in Malaysia. The researcher found that this literature helped the researcher in understanding the concept of *waqf* through Islamic Scholars point of view and in determining the true concept of *waqf* in Islamic teachings.

The concept of *waqf* derived from the Hadith Sahih Bukhari:

> *Narrated by Ibn Umar whereby in the Hadith it is understood that, Umar (r) has received a piece of property in Khaibar, he came to Prophet (Peace Be Upon Him) and said: "I have got a piece of land better than which I have never got. So what do you advise me regarding it"? Then Prophet (Peace Be Upon Him) said, "If you wish you can keep it as an endowment for charitable purposes".*[126]

[123] See: *Sahih Al Bukhari*, book No.2532.
[124] Irsyad Al-Fatwa Series. "Waqaf Ahmad Dawjee Dadabhoy", (2 December 2018). https://muftiwp.gov.my/en/artikel/irsyad-fatwa/irsyad-fatwa-umum.
[125] Ibid, 9.
[126] Muhammad ibn Isma'il al-Bukhari, *Sahih al-Bukhari*, Book 53, Hadith 326; trans. Muhammad

Therefore, Umar gave the land in charity on a condition that the land neither can be sold nor be given as a present nor bequeath and its yield shall be used for the poor, kinsmen, the emancipation of slaves, jihad, for guests and travellers. This *hadith* is a proof to show that *waqf* cannot be transferred, inherited or irrevocable and exist in perpetuity [127]. Though lately scholars and jurists have a different opinion regarding the concept of perpetuity in *waqf*. Scholars [128] also, argued that temporary *waqf* is permissible in Islam. According to them, *waqf* is the widest topic in *fiqh* and it relies heavily on *ijtihad* of the jurist. Therefore, we must reflect back to *Maqasid Shariah* of *waqf* that is to help the needy and accommodate *Muslim* society. It seems that temporary *waqf* is most suitable in our present time.

Al-Quran did not mention the judicial concept of *waqf* specifically. However, in general Quran encourage *Muslim* and believers to give away part of what Allah (SWT) has given to us as a form of highest level of *Taqwa* or *Iman* and this shows that *Shariah* Principles is dynamic and Ijtihad or opinion from fuqaha can be acceptable in response to contemporary issues regarding management of *waqf* [129].

Researcher from middle east [130] have discussed a quick overview of *waqf* from Islamic scholars' point of view from the beginning of *waqf* until the 20th Century, the legal conditions, the management of *waqf* and the sociopolitical role of *waqf* in *Muslim*

Muhsin Khan (Riyadh: Darussalam, 1997).

[127] Noor Azimah Ghazali et al., "Issues on Waqf Land Registration Process in Malaysia and Improvement Proposals," *International Journal of Islamic and Civilizational Studies*, www.http://jurnalumran.utm.my/index.php/umran) (Accessed October 1, 2019).

[128] Faliq Asraf Jafri and Azman Mohd Noor, "Temporary Waqf Model for Islamic Private Retirement Scheme in Malaysia- A Proposal", *Journal of Islamic Finance*, Vol 8 No. 1 2019. P 50.

[129] Sharifah Zubaidah Syed Abdul Kader, "*Kerangka Undang-Undang Pengurusan Wakaf Di Malaysia: Ke Arah Keseragaman Undang-Undang*," *KANUN, Jurnal Undang-Undang Malaysia Jld 28 Bil 1*, January 2016, https://doi.org/ISSN 0128-2670. (Accessed 1 October 2019).

[130]Monzar, Khaf (n.d.): "*Waqf* a Quick Review", http://monzer.kahf.com/papers/english/*Waqf*AQuickOverview.pdf.

community.

Scholar further discussed[131] about wealth management, its accumulation and its re-distribution and the author has also made a comparison between Chinese *Waqf* (Tang) and Islamic system of *waqf*. The author has explained Islamic wealth management from historical and institutional view and in the accumulation side, a turmoil to protect the system from the conventional financial intrusion in today's economic institutions.

This literature supports the researcher's understanding toward the concept of *waqf* from Islamic Scholars' point of view, the concept of re-distribution and the challenges in protecting the system.

Learned scholars [132] make a finding that in Malaysia there are a total of 1331 *waqf* literatures were found for the period of 1957-2017. From this number, 810 literatures were from Malaysia. The result was discussed in 12 topics namely; i) type of literatures produced; ii) language of literatures; iii)subject areas of literatures; iv) number of literatures by period; v) number of authors that contribute; vi) list of research subject place; vii) types of research methodology; viii) list of active journals; ix) list of active *waqf* conferences; x) numbers of thesis/dissertations according to higher learning institutions; xi) comparison between sub-continents and xii) comparison between Malaysia and overall *waqf* literature [133].

[131] Murat Cizakza, "Islamic Wealth Management in History and at Present JKAU," *Journal of Islamic Econ Vol 28,* (January 2015). http://iei.kau.edu.sa/Files/121/Files/153874_28-1-01- Murat-6.pdf. (Accessed 2 October 2019).
[132] Salehuddin Md Dahlan and Nor Asiah Mohamad, "Waqf Literatures From Malaysia :60 Years after Independence," *Conference Paper*, March 2018, https://www.researchgate.net/publication/324006221 (Accessed 23 October 2019).
[133] Ibid, 14.

However, according to other authors[134], locally only 32 literatures were found that was furnished directly to the development of *waqf* in Malaysia. There are 18 subject areas being researched under *waqf* from Malaysia. These subject areas are categorized based on the major issue discussed by the researchers and confirmed that management and development is the major subject area on Malaysia's researches with 360 literatures (44.4%)[135]. Meanwhile cash *waqf* took the second place namely 87 literatures (10.7%). Third place, socio-economy role with 86 (10.6%). The lowest research area is banking, healthcare, socio-legal and investment with only one literature.

1.9.3 Historical Background on *Waqf* and *Muslim* law in Malaysia

There is no direct explanation in Al Quran regarding *waqf* but jurist from four schools of thought *Shafie, Hambali, Maliki* and *Hanafi* have agreed that there are few verses that generalised the welcoming of doing good thing for charity[136]and through the practices by the Prophet (Peace Be Upon Him) and His companions.

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In Malaysia, the law regarding *waqf* and the institution of *waqf* itself, is believe to be in subsistence for more than eight hundred years ago [137] through Arab traders that bring Islam to this country. According to Professor Ahmad Ibrahim, the earliest record regarding the practise of *waqf* in Malaysia was found in Inscription Stone (*Batu Bersurat)* in Terengganu. The Inscription provides historical evidence that *Islam* has

[134] Ibid, 13.
[135]Abdul Azim Islahi, "Waqf: A Bibliography," *Islamic Economic Research Centre King Abdul Aziz University,* 2003. Accessed 2.1.2020.
[136] Hassan, A.A. "Waqf in Islamic jurisprudence", *Proceeding of the Seminar on Management and Development of Awqaf Properties*. Jeddah. 4th – 16th August. Accessed 1.2.2020.
[137] Syed Othman," *Konsep wakaf dan Perlaksanaannya di Malaysia*", Seminar paper on Management and Administration of waqf property. Ipoh, Perak. Organised in 1986 by Majlis Agama Islam Perak and Prime Minister Department. Accessed 1.2.2020.

made a significant presence into Malay Peninsular by the year 1303 CE (Gregorian calender) (702 AH) (*Islamic* Calender).

There is no record on the first establishment of *waqf* institution in Malaysia except for the establishment of *waqf* of Masjid Kapitan Keling in Penang in 1801[138] . The practise of *waqf* and the law on *waqf* at that time have not been properly documented and normally *Imam, Qadis*, head of village and mosque committee were appointment to be in charge of administration and management of *waqf*[139].

1.9.4 Law on *Waqf* in Malaysia

Waqf as Islamic public finance instrument can play an important role in generating a prominent source of finance for the state and for the need of *Muslim* Community[140] for instance the model adopted by WARESS as a *waqf* trust beneficiary in Singapore that has successfully transformed various number of low yielding asset to a higher income for the benefit of the Trust beneficiaries[141] without diverting from the *Shariah* principles.

Malaysia Federal Government has through the Ninth Malaysia Plan willing to fund *Waqf* development and this has given an impact and awareness to transform *waqf* institutions in Malaysia. Unfortunately, through Tenth Malaysia Plan the fund and

[138] Khoo Salma Nasution, "Colonial Intervention and Transformation of Muslim Waqf Settlements in Urban Penang: The Role of the Endowments Board". *Journal of Muslims Minority Affairs*, Volume 22, issue 2, 2002. (Accessed 31 October 2019).
[139] Norfadilah Kamaruddin, "*Isu Pembangunan Tanah Wakaf.*" Dewan Bahasa dan Pustaka, Kuala Lumpur. http://scholar.google.com.my/citations?user=owga-rYAAAAJ&hl=en. (Accessed 23 October 2019).
[140]Noor Aimi Mohd Fuad, Nurauliani Jamlus, and Wan Shahdilla Shahar, "Issues and Challenges of Waqf Instrumenr: A Case Study in MAIS," *Synergizing Knowledge on Management and Muamalah,* (May 2014). P20.
[141] See: www.waress.com. (Accessed 1 October 2019).

allocation has been more difficult to be granted and as a result State Government has to revert to other means to finance the development of *waqf* project and the author have suggested for the Federal Fund to be sustained to a new platform in order to sustained the current development of *waqf* in Malaysia[142].

Previously, before going through a current rapid development, scholar commented that *waqf* has played an important role in strengthening the spirit of *Ukhuwah* or brotherhood amongst *Muslim* believers and societies by facilitating education and preaching the true spirit of Islamic teaching[143].

Waqf is one of the Islamic institutions that has existed since the time of Prophet Muhammad SAW. It serves as a development for economic growth and upgrading the social status of the *Muslim*s. Endowment is not only a spiritual matter to Allah SWT but is also considered as an economic institution which benefits the *Muslim*s.

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The management and administration of the *waqf* property is an important issue to be resolved in Malaysia and the implementation of a *waqf* management must be aligned with the *waqf* legislation so that there is a continuity of the reward to the *waqf* donor through good governance and systematic procedures[144],once managed properly and

[142]Ahmad Shazrin Mohamed Azmi, Noor Rosli Hanif, and Siti Mashitoh Mahamood, "*Tinjaun Persepsi Majlis Agama Islam Negeri Terhadap Peruntukkan Kerajaan Persekutuan Bagi Pembangunan Tanah Wakaf*," *JMIFR Vol.15 No.1 (June) 2018*, June 2018. https://doi.org/ https://doi.org/10.33102/jmifr.v15i1.104. (Accessed 20 October 2020).

[143] Siti Alawiyah Siraj, *"An Empirical Investigation into the Accounting, Accountability and Effectiveness of WAQF Management in the State Islamic Religious Councils (SIRCs) in Malaysia ,"* (PhD Thesis, Cardiff University, Cardiff, 2016, http://orca.cf.ac.uk/id/eprint/46875. (Accessed 1 October 2019).

[144] Mohd Afendi Mat Rani and Asmah Abdul Aziz, "Waqf Management And Administration In Malaysia: Its Implementation From The Perspective of Islamic Law," *Malaysian Accounting Review, Special Issue Vol. 9 No. 2, 115-121, 2010*, 2010, https://doi.org/ISSN 1675-4077. (Accessed 1 October 2019).

systematically, *waqf* can be a value-based intermediation as preached by Islamic Religion in line with Prophet SAW teachings.

1.9.5 Legal issues on Development of *Waqf* land in Malaysia

The law and regulation as well as policies in development of *waqf* in Malaysia varies from one state to another and some policies are lack of transparency and irregular[145] and hence the investors must equip themselves with the knowledge of State Law and State Regulations that the development is intended to propose. The finance of the development project varied as well, some state has used *waqf* fund and others have reverted to cash collected through *saham* or share *waqf* and there are states that finance their *waqf* development project by using Financing from Lembaga Tabung Haji (LTH) and Banking Institutions.

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On the other hand, other scholars have provided a comprehensive article so far in the study of legal and procedural aspects and challenges in development of *waqf* in Malaysia. The authors have given a clear differentiation between waqf in Islamic Law as compared to Trust and the relative law governing the two concepts. The difference between *waq*f and Trust under National Land Code and Trustee Act 1949 and the legal issues and questions that arise between the two[146].

This article is relevant to the researcher study as it provides legal framework for management of *waqf* at state level in Malaysia. The author has illustrated the comments on the effectiveness of the provisions in State Enactment on the

[145] Ibid, 13.
[146] Ibid, 14.

management of *waqf* land as well as provisions regulate the registration of *waqf* land in the Land Office.

But the current study differs with their study in terms of the objective that researcher seek, by analysing the legal principles and concepts that affect the development of the endowment land. The article entitled "What is *Waqf* in Islam" [147]explained through her article a set of Shariah concepts related to endowment, as she explained the endowment is one of the factors that achieve social solidarity among members of society, and it works to enhance cooperation between individuals. This confirms the importance of *waqf* in general. Therefore, the present study seeks to highlight the implications of developing the *waqf* land in Malaysia.

Another article entitled "The Legislative Objectives of the Islamic Endowment System[148]." The objectives of the research are summarized in defining the endowment and its importance as stated in the Qur'an and Sunnah, as well as highlighting the legislative objectives of the endowment and how to direct it to develop the endowment, and then explaining how to direct endowment banks to achieve the legislative objectives of the endowment. Abduh's article differs from the current study by seeking to highlight how these concepts influence the development of the endowment land in Malaysia.

[147] Wissam, Talal. "What is *Waqf* in Islam?" Retrieved from https://mawdoo3.com cite_note-wIqE3zDvLr-15 (accessed 2.2.2020).
[148] Muhammad Abduh, "The Legislative Objectives of the Islamic Endowment System" *Qudus International Journal of Islamic Studies, Vol 3, No 1, (2015).* https://journal.iainkudus.ac.id/index.php/QIJIS/article/view/1604/0. (Accessed 19 September 2020).

1.9.6 Procedures in development of *Waqf* land in Malaysia

The author also commented on the manual provide by JAWHAR as guideline to manage *waqf* land and foresee the handicapped in the said manual as well as the state law as it only provides for the procedure of registration of *waqf* land during the lifetime of the dedicator and the state law and the manual failed to provide solution in a situation where the dedicator has passed away.

This is a gap in this article where the author also suggests for the specific and uniformed law to be established to govern the administration of *waqf* in Malaysia either by the State Government or Federal Government but as a matter of *waqf* falls within the jurisdiction of State Government, it is recommended that the State be responsible to regulate a law on this issue.

A successful joint venture model in developing *waqf* land has been introduce in Pulau Pinang after a series of ups and downs in developing *waqf* land in Pulau Pinang and has examined and discussed the development area of *waqf* property in *Waqf* Seetee Aishah in Penang and the author's purpose of study is to review the *waqf* property development that has been implemented by Penang Islamic Religious Council[149]. The author wholly agrees and welcomes the development policy that was taken by the state. This article explained that through the process of joint venture between Penang Islamic Religious Council and UDA Holdings Bhd. in developing the *waqf* land has helped the increase value of the existing *waqf* properties.

[149] Hydzulkilfi Hashim, Ab Rahman, and Asmak, "*Pengurusan Pembangunan Harta Wakaf: Pengalaman Majlis Agama Islam Negeri Pulau Pinang (MAINPP) Terhadap Wakaf Setee Aishah*," *International Journal of Management Studies*: , accessed May 1, 2018, http://repo.uum.edu.my/10375/. (Accessed 19 October 2019).

This article shows that the development of *waqf* property can actually be done through various options by the State Authority on *waqf* land and this can provide a solution to other States to develop their *waqf* land successfully like what Penang State has done. The current study seeks to identify the current procedures in developing the endowment land in Malaysia, and this is what gives importance to the current research.

Another joint article entitled: "*Waqf* Models in Iskandar Malaysia: An Analysis.[150]" This article addresses the endowment models that are being applied by related institutions such as MAIJ and JCorps in Iskandar Malaysia and suggests other potential models that can be applied further in the Johore region.

Hence, the results of this study can shed light on the important roles of the *waqf* concept in developing information management and the variety of endowment models that can be applied to develop and participate in the endowment in the region. The present study serves to clarify the current laws and procedures in Malaysia to develop endowment land and a comprehensive discussion with past literatures on procedures in development of *waqf* land is further discussed in chapter three and chapter 5 of this thesis.

1.9.7 The implementation of laws and policies by SIRCs for development of *Waqf* land in Malaysia

A different scholar emphasized that the cash *waqf* is the best way for a joint w*aqf* in order to boost the development of w*aqf* land as it can attract more funds for w*aqf*

[150]Hanefah, H. M. M., Jali, A., Ramli, A. M., Sabri, H., Nawal, N., and Shahwan, S. "*Waqf* Models in Iskandar Malaysia: An Analysis," 2015. (Accessed 19 September 2020).

development projects[151]. The importance of the cash *waqf* can be observed further when Ismail [152] discussed various cash *waqf* schemes in *Muslim* and *Muslim* minority countries. The author also came up with various Cash *Waqf* Financial Institutions (CFWI) models based on direct and indirect cash *waqf, Murabahah, Mudarabah* and *Musharakah* financing.

Islamic financial institutions play a vital role in the Cash *Waqf* Linked Sukuk (CWLS) model, which combines charitable cash *waqf* contributions with sukuk investments to fund social projects. They facilitate fund collection, manage and invest pooled *waqf* funds in *Shariah*-compliant sukuk, ensure regulatory compliance, and develop CWLS products to attract investors. They also measure the social impact of CWLS-funded projects, ensuring alignment with community development goals. CWLS enhances fund mobilization, supports social welfare, fosters economic empowerment, and brings innovation to Islamic finance by modernizing waqf practices[153].

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Prior to that, another model was discussed as a method to fund development of *waqf* and commented that in enhancing the role of management of cash *waqf* by conceptualizing an Enterprise *Waqf* Fund (EWF) model by employing the venture capital characteristics[154]. Another scholar has suggested a Cooperative-*Waqf* model to

[151]Muhammad Ridhuan Ab Aziz, "Cash Waqf Models for Financing in Education.," *The 5th islamic economic system conference (iecons 2013)*. https://Www.Researchgate.Net/Publication/257811881_Cash_Waqf_Models_For_Financing_In_Education. (Accessed 30 October 2019).

[152] Ismail Abdel Mohsin, "Financing through Cash-Waqf: A Revitalization to Finance Different Needs." *International Journal of Islamic and Middle Eastern Finance and Management, Vol. 6 No. 4, Pp. 304-321,* 2013, https://doi.org/10.1108/IMEFM-08-2013-0094. (Accessed 30 October 2019).

[153]Fauziah Najim Nur, Engku Rabiah Adawiah Engku Alib, Alliqa Alvierra binti Md Bashirc, and Asmaou Mohamed Bacha "An Analysis of Cash Waqf Linked Sukuk for Socially Impactful Sustainable Projects in Indonesia." *Journal of Islamic Finance* 10, no. 1 (2021): 001–010. IIUM Institute of Islamic Banking and Finance. ISSN 2289-2117 (O) / 2289-2109 (P). Accessed 1.7.2024.

[154] Tunku Alina Alias, "Venture Capital Strategies in Waqf Fund Investment and Spending," *SRA International Journal of Islamic Finance, 4(1), 99-126.*, 2012). P23.

develop idle *waqf* land in Malaysia [155] while other scholar suggested an application of Al-Wilayah Theory Model as a proposal to settle *waqf* legislative conflict in Malaysia to ensure that *waqf* is validly and systematically developed[156].

Another area in development of *waqf* land comes in form of financing or sources to finance the *waqf* project has thoroughly discussed the issue of financing on the lease concept to validate the end-financing aspect secured by the borrower in purchasing a house developed on *waqf* land as compared to a well recognise procedure of creating a charge as a security for a housing loan[157]. The authors also discussed on the implication of lease over a charge from legal perspective and from *Shariah* perspective.

Previous literature suggested that the concept of *Istibdal* is highly recommended on the practise of *waqf* through Islamic schools of thought has been discussed to ensure that this concept is recognised by all schools of thought as an exception to the general of *waqf* that it shall not be transferred, sold, inherited or even be made as a gift[158].The authors support their view by using Hanbali's analogy on the practise by Sayyidina Umar (blessing of Allah upon him) and Saad in *Kufah* whereby *Sayyidina* Umar has instructed Saad to move the mosque to another location and replace a *baitulmal* building. This action is considered as *ijmak* or consensus of opinions by other

[155] Anwar Allah Pitchay et al., "Cooperative-Waqf Model: A Proposal to Develop Idle Waqf Lands in Malaysia," *ISRA International Journal of Islamic Finance* 10 (2018): pp. 225-236, www.emeraldinsight.com/0128-1976.htm. (Accessed 1 October 2019).

[156] Mohd Ali Muhamad Don, "Aplikasi Model Teori Al-Wilayah: Cadangan Penyelesaian Konflik Perundangan Wakaf Di Malaysia," *Journal of Fatwa Management and Reserach*, (October 2019). https://doi.org/10.33102/jfatwa.vol16no2.2. (Accessed 30 October 2019).

[157] Sharifah Zubaidah Syed Abdul Kader and Nor Asiah Mohamad, "Creating Security to Finance Waqf Property Development in Malaysia: Issues and Solutions," *Emerging Issues in Islamic Finance Law and Practice in Malaysia*, August 29, 2019, ISBN: 978-1-78973-546-8, eISBN: 978-1-78973-545-1).

[158] Megat Mohd Ghazali et al, "*Pembangunan Tanah Wakaf- Isu, Prospek Dan Strategi*,",,http://eprints.utm.my/id/eprint/2201/1/megat_paper.pdf.portal.psz.utm.my/support/wp (2015). (Accessed 12 June 2019).

Prophet's Companions. Many State *Waqf* Enactments has recognised the concept of *Istibdal* in their rules and law regarding *waqf* and many states have practised in their development plan.

Another concept that has been explored by SIRC recently is the concept of *Tawriq, which* is the concept of liquidity and selling *waqf* assets. In this concept, SIRC hopes to address unproductive, idle, no commercial value and lack of funds for *waqf* assets, aimed at financing maintenance or development costs [159].

The current study seeks to determine how laws, procedures and policies are implemented in the field of endowment lands development in Malaysia through SIRC Company. A joint article [160]first gave an overview of the management of endowment funds in Egypt, Kuwait and Malaysia, followed by an important comparison to identify criteria and experiences that can be combined to activate the management of endowment funds in Malaysia. The investigation relies on secondary and archival information (including books, archival manuscripts, articles published in peer-reviewed journals and journals, government reports and other documents of interest. Importantly, this article agrees with our current study, but differs in terms of enforcement mechanisms by SIRCs in Malaysia.

[159] Fuadah Johari Wan Abdul Fattah Bin Wan Ismail Muhammad Aunurrochim Mas'ad Hanim Misbah Ahmad Syukran Baharuddin Nurul Asikin Abdul Razak, "Exploration of the Concept of al-Tawriq in Waqf Asset Liquidity", *Jfatwa Management and Research.* 2018. http://jfatwa.usim.edu.my/index.php/jfatwa/article/view/179/121. (Accessed 20 October 2019).

[160] Ibrahim Ahmed Khalil.Yunus Ali, and. Mohammad Shaiban. "Waqf Fund Management in Kuwait and Egypt: Can Malaysia Learns from Their Experiences" *Proceeding of the International Conference on Masjid, Zakat and Waqf* (IMAF 2014) (e-ISBN 978-967-13087-1-4). 1-2 December 2014, Kuala Lumpur, Malaysia. (Accessed 20 October 2019).

Another article entitled: "*Waqf* Administration in India: Issues and Challenges of State *Waqf* Boards[161]." The article concluded, endowments aim to create a well-being and a just society, a society that leaves no one dying of starvation and ignorance. This paper will examine the problems of managing endowments in India with a focus on the work of government endowment councils.

This article differs from the current study, in terms of the country of study, as we are trying to study the endowment in Malaysia, but the conceptual study is highly recommendable to further be indulged in this research. Through this article, we conclude many difficulties in implementing the endowment in some countries especially in minority *Muslim* country.

Another article entitled "*Waqf* Instruments for Construction Contract: An Analysis of Structure[162]. "The results indicate several methods and structures for endowment instruments for future development. It may be important for those organizations that have planned to implement this concept in the near future. This study examines the underutilization of *waqf* instruments in the construction and development of properties. Given the rising costs of construction and limited funding sources, the authors argue that *waqf* instruments have significant potential to attract public funds for developing institutions such as universities and research centres. The paper analyses various structures of *waqf* instruments that could be employed in construction projects,

[161] Tabasum Rasool's article entitled:" Waqf Administration in India: Issues and Challenges of State Waqf Boards." *journal of Islamic thought and civilization, vol 7, issue 1,* (September 2017). P55. Accessed 1.12.2019.
[162] Abdullaah Jalil, Asharaf Mohd Ramli "Waqf Instruments for Construction Contract: An Analysis of Structure" *The Journal of Muamalat and Islamic Finance Research (JMIFR), Vol. 5, No. 1, p. 14, 2008. Posted:* (31 Mar 2011). p14 . Accessed 1.12.2019.

discussing the associated risks, involved parties, and the advantages and disadvantages of each structure. It also examines the underutilization of waqf (Islamic endowment) instruments in the construction and development of properties. Given the rising costs of construction and limited funding sources, the authors argue that *waqf* instruments have significant potential to attract public funds for developing institutions such as universities and research centres. The paper analyses various structures of *waqf* instruments that could be employed in construction projects, discussing the associated risks, involved parties, and the advantages and disadvantages of each structure. This is what this current research will work on to highlight the role of SIRC in developing the endowment *waqf* land in Malaysia.

1.9.8 The Improve Laws and Procedures in Development of *Waqf* Land in Malaysia

An entitled: "Critical Review on *Waqf* Experiences: Lessons from *Muslim* and Non-*Muslim* Countries[163]". The article provided a critical assessment of current practices in the endowment institution, based on the experiences of the Middle East, Asia, and some non-*Muslim* countries. This research is based on endowment practices in selected Islamic and non-Islamic countries.

The critical review shows that Singapore has had a very impressive endowment experience in terms of transparency, quality of services, and gaining public confidence in endowment management and endowment investment. On the other hand, Kuwait's

[163] Kamarubahrin, Aimu Fadzirul, and Abdullah Mohammed Ahmed Ayedh. "Critical Review on Waqf Experiences: Lessons from Muslim and Non-Muslim." *Iqtishadia: Jurnal Kajian Ekonomi dan Bisnis Islam STAIN Kudus 11, no. 2* (2018): 332-353.Accessed 1.10.2019.

experience is outstanding due to the lack of interruptions by the government and the establishment of sound governance, internal control and accountability tools. In addition, endowment practices in *Muslim* minority communities are dynamic and responsive to the needs of the community compared to *Muslim*-majority countries. This serves our current study by not making use of past experiences, but our current study differs with the article only in geographical terms as this research is focusing on Malaysia law and procedure.

Another improvement law that Penang SIRC has demonstrated, is the effectiveness of *Ijarah,* a leasing concept, as a reliable financing method for obtaining *waqf* assets[164]. *Ijarah*, a financial arrangement where an asset is rented or leased, or a service is hired for a specific duration in return for a predetermined payment, can be a suitable choice for mosques aiming to generate funds through crowdfunding to acquire *waqf* property [165] .According to another author [166], it is not known exactly how the accumulated cash *Waqf* was invested in these nations. However, these schemes have effectively delivered products and services to the recipients. Gadot (2006), referenced in Abdel Mohsin, 2013) asserted that WSS became popular in the 1990s and was extensively embraced as a method to generate funds for future investment. The investment's revenue has reportedly funded a wide range of programs. The following items are included:

[164] Anwar, A, Pitchay, Thaker, M. A. M. T., Mydin, A. A., Azhar, Z., and Latiff, A. R. A. "Cooperative-*Waqf* Model: A Proposal to Develop Idle *Waqf* Lands in Malaysia." *ISRA International Journal of Islamic Finance* 10, no. 2 (2018): 225–236. https://doi.org/10.1108/ijif-07-2017-0012.Accessed 12.1.2020.

[165] Muneeza, A., Arshad, N. A., & Arifin, A. T. (The application of blockchain technology in crowdfunding: Towards financial inclusion via technology. (2018), International Journal of Management and Applied Research, 5(2), 82–98.

[166]Ismail Abdel Mohsin, "Financing through Cash-Waqf: A Revitalization to Finance Different Needs." *International Journal of Islamic and Middle Eastern Finance and Management, Vol. 6 No. 4, Pp. 304-321,* 2013, https://doi.org/10.1108/IMEFM-08-2013-0094. (Accessed 3.10. 2019).

a) Expanding and improving the utilization of current *Waqf* properties;

b) Building mosques and religious schools;

c) Providing funding for healthcare facilities;

d) Offering tangible resources for Muslim communities;

e) preserving religious facilities and resources; acquiring automobiles for the aim of facilitating Islamic activities and events, such as for the dissemination of religious teachings (*daʿwah*).

f) Constructing places of worship (SIRC Annual Report, 2009).

While investigated the determinants of the behavioural intention of Muslim employees in Klang Valley, Malaysia, to make contributions to cash *waqf* through salary deduction[167]. The researchers utilized the theory of reasoned action (TRA) to assess whether the attitude of Muslim employees and the subjective norms surrounding them have a substantial impact on their behavioural intention to contribute monetary *waqf* through pay deduction. A total of 380 Muslim employees were included in this study. The results indicate that the attitude of the Muslim employees and the subjective norms surrounding them have a substantial impact on their behavioural intention to finally pay monetary w*aqf*.

A novel cash *waqf* concept was introduced that is seamlessly incorporated into mobile application platforms[168]. The application, known as the Awqaf Alternative Plan (AAP) model, is designed to particularly produce cash *waqf* from the staff, students, and

[167] Anwar, Pitchay A., Mydin Meera, A.K. and Saleem, M.Y., "Factors influencing the behavioral intentions of Muslim employees to contribute to cash-waqf through salary deductions", Journal of King Abdulaziz University: Islamic Economics, (2015) Vol. 28 No. 1, pp. 57-90. (Accessed 30.10.2019).
[168] Ibid, 90.

alumni of a tertiary education institution. In addition, the AAP model also tackles the issue of university management, namely in the estimation of expenditures for organizing university events. This concept is distinctive and its utilization can be expanded to other institutions that possess a substantial quantity of personnel, students, and other classifications of folks.

The article "*Waqf:* Lessons Learnt from Its Land Development" explores the challenges MAINPP faces in managing waqf land development, particularly with the Mohamed Haji Hashim *Waqf* in Penang. Key challenges include financial constraints and regulatory limitations that restrict ownership transfer, confining MAINPP to lease arrangements under Malaysia's National Land Code and state fatwas. Additionally, it emphasizes the importance of measuring investment returns using modern financial metrics like Net Present Value to evaluate the profitability of waqf projects. These approaches could increase MAINPP's operational efficiency and financial accountability, aligning waqf development with both economic goals and religious values. However, the article could benefit from a deeper analysis of inter-agency coordination to resolve conflicts between state fatwas and national development policies[169].

Another aspect in improvement of law can be learnt in the article, titled "Optimising *Waqf* Law for Effective Administration: A Comparative Analysis of the Trustee Act 1949 and State *Waqf* Enactments[170]," examines improvements for *Waqf* governance in

[169]Marina, Abu Bakar and Ismail, Sukriah & Ismail, Che & Ramli, Noor. (2022). "Mohamed Haji Hashim Waqf: Lessons Learnt from Its Land Development". International Journal of Advanced Research. 10. 776-789. 10.21474/IJAR01/15234. Accessed 1.1.2024.

[170] Zati, Ilham & Najid, Khadijah & Nasrul, Muhammad & Muhamad Ibrahim, Najhan. (2023). Optimising Waqf Law for Effective Administration: A Comparative Analysis Of Trustee Act 1949 And State Waqf Enactments.

Malaysia by comparing duties and provisions under the Trustee Act 1949 with state-specific *waqf* enactments. Key insights include; a study compares trustees' duties under the Trustee Act 1949 with those of *Mutawalli* and *Nazhir* in *waqf* enactments, especially focusing on Selangor and Terengganu.

It identifies gaps in *waqf* administration, such as the need for clearer procedures in appointing and removing *Mutawallis* (*waqf* managers), and recommends adapting specific provisions from the Trustee Act 1949 for improved governance. The paper advocates for expanding *Mutawalli* duties to include regular reporting to beneficiaries to enhance transparency and accountability, similar to trustees' obligations under the Trustee Act. While *waqf* laws allow investments for sustainability, they need stricter controls, suggesting incorporating more detailed investment guidance from the Trustee Act to prevent risky ventures while maintaining *Shariah* compliance. Unlike the Trustee Act, which lacks specific penalties, state *waqf* enactments outline punishments for unauthorized *waqf* management. The article supports incorporating select provisions from the Trustee Act to enhance *waqf* administration, ensuring integrity, fairness, and sustainable benefits for the community while maintaining *waqf*'s distinct characteristics.

1.10 Gap in Literature

Previous studies on development of *waqf* mostly have proposed models for economic perspective in terms of financing the development of *waqf* project or development of *waqf* land. Previous studies also have highlighted the challenges faced by SIRC in

IIUM Law Journal.31.10.31436/iiumlj.v31i1.800. Accessed 1.1.2024.

developing *waqf* land in Malaysia. This study will focus on understanding the law and procedure in the *waqf* law and its implementation on the development of *waqf* land in Malaysia.

The study shall seek a thorough and deeper understanding on what is the current status of law on development of *waqf* land and the policies adopted by SIRCs in enhancing the development of *waqf* to help *Muslim* Community as we are still lacking in terms of clear and proper law procedure to develop *waqf* land. Ambiguity on the law and procedure such as National Land Code and State Administration of Islamic Religion Enactments enforced by SIRCs also have caused a major problem in developing *waqf* land in Malaysia and as to the undergoing development the concept used whether in line with *Shariah* principles are the factors that this research will fulfilled.

The combination of civil law and the usage of various Federal Law over *waqf* and land matter which is a prerogative of the State is an intriguing and yet disturbing facts that shall be addressed in this research that cannot be found in the previous literatures.

Many sides of *waqf* law that have intertwined between civil law and *Shariah* law. The oldest creation of *waqf* statutory was created through civil law and these practised had develop over time by the evolvement of *waqf* law governing the development of *waqf* land and the same can be said to the procedural aspect as well.

There is also a gap in literature as to legal factors and issues on law and procedure in regulated and non-regulated states that gives impact and affecting development of *waqf* in Malaysia such as the policy in financing facility in funding the *waqf*

development, a cash *waqf* in form of share *waqf* or public funding and the legal implication on using these forms as method to fund development of *waqf* land.

Therefore, this research tends to cover the gap from a legal perspective as there are no studies ever made on the regulated *waqf* law and non-regulated *waqf* law states and the impact of such law on development of *waqf* land in Malaysia and the legal documentation that must be created in accordance to *Shariah* perspective so that *waqf* law and procedure can stand on its own passage.

Specifically, this work adds to the literature methodologically as none of the literature adopted a socio-legal approach particularly the qualitative method using interviews and case study analysis as a data collection method.

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1.11 Organization of the Thesis

This study shall consist of 6 chapters and shall be comprised in the following arrangement:

Chapter One is mainly regarding the introduction of the study that highlights the research background of the study. It enhanced current legal issues on the development of *waqf* land in Malaysia, presented in the form of a problem statement. This is followed by objectives to be achieved throughout the study and the scope of the research. In addition, this chapter will also spell out the research design and methods used to achieve the objectives of the research.

The overview study in this chapter shall be supported with previous literature on

studies that has been developed since 2008 to 2023 to cover the challenges faced by SIRC in the development of *waqf* land, especially the success and the failure of the development of *waqf* land in Malaysia.

Literature gap will also be discussed in this chapter whereby there is still lack of study on legal policies and development procedure in the development of *waqf* land in Malaysia and for this, the researcher intends to study, identify, analyse and examine the previous literature review, its contribution toward the development of *waqf* and the study gap between this research and the previous study in this area of research.

Chapter Two will consist of a thorough discussion on historical factor regarding the application of English Law in *Tanah Melayu* to post Independence era, The First Charter and the Second Charter to all states in Malaysia, and the discussion will be continued by the analysing the *Muslim* Law as law of the land pursuant to the case of *Ramah v. Laton*[171] , and other related cases such as *Awee Binti Ujang v. Ibrahim Bin Jamal*[172] *and Tijah Binti Mat Ali*[173] from pre-Independence era until the adaptation of English Law in Malaysian soil in contract and commercial matters by virtue of Civil Law Act 1956 and *Mohamadan* and Hindu Endowments Ordinance 1905. For better understanding on law regarding *waqf* in Malaysia today, the factors and issues relating to history on adaptation and the practise of *Muslim* Law in Malaysia need to be addressed in this chapter.

This chapter will also cover the concept and theory on *waqf* and the way it was

[171] (1927) 1 LNS 13 / (1982) 1B MLJ 1
[172] (1916) 1 FMSLR 274
[173] (1886) 4 Ky 124

introduced and practised in Malaysia by the discovery of *Batu Bersurat Terengganu*. This chapter will also analyse the previous practice of *Pajak Janji* for rice fields in Kedah to the modern development of *waqf* land in every state in Malaysia.

This chapter covers the characteristics and types of *waqf* practised in Malaysia and the implication of *waqf* to *Muslim*s from economic and social factors. This chapter will answer research question number One and research objective number One.

Chapter Three will discuss and study the current law and procedures regarding *waqf* in Malaysia as well as the enactment of *waqf* from all states that have regulated the *Waqf* Enactment as compared to states that do not have a specific *Waqf* Enactment. For a better understanding of the law and procedures adopted by SIRCs on development of *waqf* land in Malaysia, statutes, books or journal articles and case study related to the legal system and procedure used will also be analysed.

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To support this discussion, data information and *fatwas* from various states in Malaysia will also be discussed and an interview from various respondents shall be analysed thoroughly to answer research question number two and research objective number two.

Chapter Four will consist of a cross-sectorial implementation on current project development for *waqf* land in Penang State into commercial development to housing development and a development of *waqf* land into an organized plantation to generate income contributed to *waqf* specific. Also, a discussion on implementation of *waqf* law in Kedah State for development of *Islamic* School.

This chapter will analyse the current implementation of the substantive law and the procedural law used to enable the development of *waqf* land. The strength and the weakness of the documentation used shall be analyse as well. The case study will answer the research question number Three and research objective number Three.

Chapter Five will deal with the discussion on the extractions of all data collected from various respondents to answer research question and research objective number One, Two, and Three on the implementation of *waqf* law and the impact on *waqf* land in states in Malaysia to determined sustainable direction for development of *waqf* land in Malaysia to ensure that the development of *waqf* land in Malaysia does not stray from the *Shariah* teaching and at the same time be beneficial to Muslims socio economy. It will be on the critical arguments from the discussions in the previous chapters.

Various generalizations and inferences were drawn from the data and information discussed in the previous chapter gathered from documents and interviews. This chapter will cover a detailed presentation of the findings on the study, as well as to suggest a possible recommendation on development of *waqf* land in Malaysia with a hope that the practise of *waqf* can be enhanced systematically in the future.

Chapter Six will consist of recommendation and contribution of this research to the study of the *waqf* law field and to answer research question and research objective number Four.

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CHAPTER TWO

THE EVOLUTION OF *WAQF* LAW: HISTORICAL DEVELOPMENT IN THE CONTEXT OF MALAY CUSTOMS, MUSLIM LAW AND THE TORREN SYSTEMS

This chapter aim to address the first research question and research objective by analysing the evolution of *waqf* development in Malaysia, tracing its progress to the current framework.

2.1 The History and the Practice of Islamic Law and Customs

Before British colonialism, the laws used in the Malaysian land administration were based on Islamic law and Malay customs[174]. The Malay customary law or Malay *adat* varies from one region to another and between one racial or ethnic group. The corpus of regulations known as Malay customary law is exclusive to a specific racial or religious group, in this case, the Malays and Muslims[175].

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Customs must meet certain requirements in order to be recognized as legitimate sources of law. These include having a significant amount of antiquity, being consistently followed, being precise and certain, and being compatible with other local customs. Custom and the law of *adat* endured in Peninsular Malaysia as they were given legal status over time as characterized by *Adat Perpatih* and *Adat Temenggung*[176]. The customary practice known as *Adat Perpatih* was brought from Sumatra around

[174] Ainul Jaria, Maidin, Syed Abdul Kader, S. Z., Ali, B. B. M., Noor, F. M., Mohamad, N. A., Sufian, A., and Rosli, R. A. "*Principles of Malaysian Land Law".* http://ci.nii.ac.jp/ncid/BB00925240.(2009).
[175] Victor, M. Fic, Min, W.M.A, "*An Introduction to The Malaysian Legal System*," Pacific Affairs 53, No. 1 (January 1, 1980): 164, https://doi.org/10.2307/2756993.
[176] Ahmad, Ibrahim. "*Towards a History of Law in Malaysia and Singapore".* Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992.

15th century and it is practiced by the Malays of Negeri Sembilan. It follows the rules of succession, which stipulate that only women are allowed to own property and that women are the line of ancestry for tribes[177]. There are three *adat* digests in existence, the first is from Sungai Ujong in Perak, another, the Minangkabau legal digest from Perak, and the third from Kuala Pilah in Negeri Sembilan[178].

The other Malay states in the peninsula followed another customary practice namely *Adat Temenggung* which is a patrilineal system that originated as a matrilineal *adat* system from Palembang. The *Adat Temenggung* is autocratic and was influenced by Hinduism and Islamic law and based on a patrilineal system, which was influenced by the *Shariah* law and became patriarcha[179]. However later the Islamic influence became more prominent in the 14th century.

The use of *Adat Temenggung* can be seen during the Malacca Sultanate, by the existence of laws in Melaka, namely Malacca Legal Digest, or known as 'Hukum Kanun Melaka'. It is the law Malay customs that are compatible with Islamic law. Malacca Legal Digest was been enacted during the reign of Sultan Muhammad Shah (1424-1444 AD) and began to be implemented during the time of Sultan Muzaffar (14445-1458 AD) and arranged in an orderly manner during the period Sultan Mahmud Shah (1489 AD-1511 AD)[180]. The Malacca Legal Digest contains 44 clauses which cover all aspects of civil and criminal law, as well as public and private laws.

[177] Judith, Sihombing, E. *National Land Code: A Commentary.* Volume 1. LexisNexis, 2019.
[178] Abdul Aziz, Khamis. "*Adat* Kuala Pilah." *J.M.B.R.A.S.* 14, no. 2 (1936): 190.
[179] Ahmad, Ibrahim. and Sihombing, J. E. *The Centenary of the Torrens System in Malaysia.* Singapore: Malayan Law Journal, 1989.
[180]Che Zuina, Ismail, Salim, N J., & Hanafiah, N J A. (2015, July 1). Administration and Management of *Waqf* Land in Malaysia: Issues and Solutions. Mediterranean Center of Social and Educational Research. https://doi.org/10.5901/mjss.2015.v6n4s2p613

Besides, there is also another Malay Legal Digest in the other states to shows that the laws used in the Malaysian land administration were based on Islamic law and Malay customs such as the discovery of *Batu Bersurat Terengganu* in the early fourteenth century, 99 Perak Laws, Pahang Digest 1650, Johor Digest 1789, Kedah Digest 1650 and others [181]. However, after the Portuguese, Dutch, and British colonization, the land laws used contained a combination of different legal systems [182].

Thus, the only law applicable before the British was Islamic land law modified by local customary land law. This is also emphasized in the case of *Ramah v Laton*[183]. The principle that has been highlighted in this case is that Muslim law is not a foreign law, but rather local law and the law of the land, and the court must take judicial notice of it. The law must be presented or considered by the court.

In the case *Tijah binti Mad Ali*,[184] where the parties during the subsistence of the marriage jointly rented lands and planted paddy as well as made *nipa* palm sugar. The proceeds from the sale of paddy and palm sugar were kept partly utilized for household expenses and the balancer was kept by the husband. Upon divorce, the wife sued RM50 being half share of the balance of their joint earnings. The judge ruled that the joint earnings of the spouses during the coverture were the property of the husband, unless Mohamadan Marriage Ordinance provided otherwise, which was not so in this case. This case also shows recognition of court against property division rules a marriage that comes from the Malay tradition and became a community practice at that time.

[181] R. O., Winstedt. ed. "The Malay Annals or Sejarah Melayu." *JMBRAS* 16 (1938).
[182] Fuadah, Johari, Ibrahim, Patmawati, Radzi, Wirdati, and Firdaus, Mohd. "The Malaysian Land Taxation System: A Chronological Review of The Torrens System From The Islamic Perspectives." *Wulfenia Journal* 21 (2014): 118-133.
[183] [1927] 6 FMSLR 128
[184] 4 Ky (1886):124

2.2 Characteristics of Islamic Law and Malay Customs on Land Matters

Among some of the main characteristics of land tenure according to Malay custom which reflects Islamic law is the method of acquiring ownership of the land by clearing forest land, arid land, or uncultivated land. This method coincides with the ownership of land by *iḥyā' al-mawāt* in Islam which means to revive the dead land, as was practiced in the time of the Prophet SAW[185].

Iḥyā' al-mawāt means working on abandoned land by cultivating or building a building on it to benefit from it. It also can mean land where there are no traces of buildings, crops, occupation, playgrounds, or graves and there is also no place to keep livestock and is not owned or controlled by someone[186]. Thus, whoever explores and cultivates abandoned land is entitled to the ownership of the land[187].

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According to Malay custom, all land in the state is vested in the government, which is the sultan who rules the state and only the sultan has the discretion to grant land to whoever he deems worthy.[188] In the case of *Sahrip v Mitchell & Anor* (1870) Leic. 466**,** Justice Maxwell stated that:

"It is well known that by the old Malay law or custom of Malacca, while the sovereign was the owner of the soil, every man had nevertheless the right to clear and occupy all forest and wasted land, subject to the payment, to the sovereign, of one-tenths of the

[185] Mohd Ridzuan, Awang. *Undang-Undang Tanah Islam: Pendekatan Perbandingan*. Kuala Lumpur: Dewan Bahasa dan Pustaka, 1994.
[186] Abu Yusuf, Ya'qūb. "*Taxation in Islam"*. Vol. III. Translated by B. Shemesh. Leiden: E. J. Brill, 1969.
[187] Salleh, K., Harun, N., Bidin, A., and Hamid, N. A. "Land Administration: Issues and Way Forward." *Pertanika Journal of Social Sciences and Humanities* 25, no. S (2017): 225–230.
[188]Ibid, 91.

produce of the land so taken."[189]

If the land was left unused or neglected for a significant period without a valid reason, the sultan would reclaim the land, and the cultivator would forfeit all rights to it. This principle coincides with Islamic rules that have been enforced since the time of Caliph Saidina Umar. Saidina Umar once took back most of the land of Bilal bin Harith that had been given to him by The Prophet, because Bilal had failed to cultivate the land.[190]

The feature of traditional Malay land ownership is that the property rights given are not absolute, meaning that the property rights are recognized only to the extent of having the benefit of cultivating or working the land and obtaining something from it. Here, the concept of land tenure based on beneficial ownership is emphasized and not the ownership of things or property itself. This principle coincides with the principle of land ownership in Islam, which is that everything on this earth belongs to God, while human rights are limited to what he can cultivate the land for the benefit of the entire *ummah.*[191]

As a result of the ownership of benefits and not the property itself, then in Malay customs, if the land that has been brought to life is then left by the owner without being cultivated for three years until the land returns to a dead land, the owner's rights are

[189] (1870) Leic. 466.
[190] Afzal-ur-Rahman. *Economic Doctrines of Islam*. Vol. II. Lahore, Pakistan: Islamic Publication, 1980.
[191] Rabiah, Serji, M. *"Pemakaian Islam dan Adat Melayu dalam Sistem Torrens di Malaysia."* al-Irsyad Journal of Islamic and Contemporary Issues 1, no. 1 (2016): 13–26. https://doi.org/10.53840/alirsyad.v1i1.32.

forfeited[192]. In the case of *Abdul Latif v Mohamed Meera Lebe*[193]*,* Judge Claridge stated that there are two kinds of land, first 'living land' and second, 'dead land'. With regards to the dead land, nobody has property rights to it, when there is no sign of it being under cultivation by someone, then nobody can lay a claim to that land. If someone cultivates it into a rice field, be it *huma* or *ladang* or *sawah* or *bendang,* then no one can proceed against him. That is what is understood as 'living land'.

Melaka law also makes provisions regarding working on forest land which according to the law of people who cultivated an abandoned forest, will only belong to that person, with two conditions: first, that the person who explores is Muslim, second, the land should not belong to anyone else. When it is cultivated, then the items in it become the income of the person who cultivates it[194]. As such, it was a common practice and part of the recognized Malay customs by law at the time, that land ownership could be obtained by exploring forest land or abandoned land that is not cultivated or owned by anyone. Besides, this was also affirmed in *Adat Temenggung* whereby it certified that a Muslim can explore and cultivate land that does not belong to anyone as mentioned also in the provisions 99 of Perak Law 1765[195].

2.3 Application of English Law in Malay States

Before independence in 1957, Malaya comprised of:

a) The Straits Settlements, including Singapore, Penang and Malacca. These areas were British Territory and were administered as Crown Colonies.

[192] Salleh, Buang. "*Ke Arah Pengislaman Kanun Tanah Negara", Makalah Undang-undang Menghormati Ahmad Ibrahim.* Kuala Lumpur: Penerbit DBP, 1988.
[193] (1824) 4 Kyshe 249.
[194] Ibid, 98.
[195] Ibid, 94.

b) The Federated Malay States (F.M.S.) of Perak, Selangor, Negeri Sembilan and Pahang.

c) The Unfederated Malay States (U.M.S) of Johore, Kedah, Perlis, Kelantan, and Terengganu.

2.3.1 Straits Settlement

Early before, Penang was a province of the state of Kedah ruled by a Muslim Sultan.[196] The application of English law in the Straits Settlements began in Penang when the British East India Company leased Penang from the Sultan of Kedah. Francis Light was advised to negotiate with Sultan Kedah to obtain the said island and finally in 1791 Penang was handed over as a lease to the British as unoccupied territory[197]. The British used the reason that Penang was uninhabited and did not belong to anyone as a justification to apply the laws they brought to the island.

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In the case of *Ong Cheng Neo v. Yeap Cheah Neoh,*[198] The Judicial Committee of the Privy Council held that English law was the governing law in Penang. Sir Montague Smith said: "*the island was wholly uninhabited when the English arrived. It was really immaterial to consider whether the island should be regarded as a ceded or newly settled territory for there is no trace of any laws having been established there before it was acquired by the East India Company"*

[196]Salleh, Buang. *Malaysian Legal History: Cases and Materials*. Kuala Lumpur: Dewan Bahasa dan Pustaka, Ministry of Education, Malaysia, 1993.
[197] Ibid, 90.
[198] (1872) 1 Ky. 255

Hackett J in Fatimah v D Logan,[199] emphasized that "*here we have the fact that an island virtually uninhabited, is occupied and settled by British subjects in the name of the King of England. The case therefore would seem to fall within the general rule laid down in our law books and which Lord Kingsdon thus expresses in a recent case: 'When Englishmen establish themselves in an uninhabited or barbarous country, they carry with them not only the laws, but the sovereignty of their own State; and those who live amongst them and become members of their community, become also partakers of and subject to the same laws*'.

Therefore, English law should be considered as the law in force to the extent that it can be used after being adapted to local circumstances. The rights of the Sultan of Kedah and Kedah law over Penang were denied by the British because they had adopted English law despite the fact that the British themselves leased Penang from the Sultan of Kedah. English land law was introduced into Penang by the First Royal Charter of Justice 1807 and was subjected to English law.[200] The introduction of the Charter established a 'Court of Judicature of Prince of Wales' Island' which had the jurisdiction in all civil, criminal and ecclesiastical matters.[201]

The renowned Malaysian legal scholar, Professor Ahmad Ibrahim in his writing strongly denied the claim made by the British that Penang Island was terra nullius territory. This is because, in 1975, records found in the register of surveys show that Penang Island was inhabited by the Malay population as early as 1705. Even though there is no concrete evidence regarding the law used by the communities at that time,

[199] [1808–84] 1 Ky 255 at 259.
[200] Ashgar, Mohamed, A. A. "Malaysian Legal System: An Introduction." In *Malaysian Legal System,* CLJ Publication, Ampang, Selangor, 2020, 1-36. ISBN 9789674571498.
[201] The Court of Judicature mirrored the jurisdiction of the superior courts in England at the time.

it is believed that the Kedah law which implemented *Adat Temenggung* or local customary laws applied since Penang Island belonged to the state of Kedah.[202]

Meanwhile in Malacca, the British took over Malacca from the Dutch under the Anglo-Dutch agreement in 1824, and at that time, Malacca already had its own local law (lex loci) which was a mixture of Malay custom and Islamic law. However, the application of Malay and Islamic customary land laws in Malacca ended in 1861 when the British administrator who ruled the state passed a new law which provided that all land in the state of Malacca that had not been disposed of was declared to belong to the government as the English law used in England at that time.[203]

In 1826, Penang, Singapore and Melaka were incorporated into the Straits Settlements and became a group of British territories that were initially governed by the East India Company.[204] Later in the same year, it marked the official and statutory introduction of English law with the introduction of the Charter of Justice 1826 in the Strait Settlements with law based on the deeds system, subject to local circumstances and customs. However, to standardize land laws in the Malay Peninsula, the new law enacted allows these two states to also adopt a land law system based on the Torrens system.

[202]Ahmad, Ibrahim. and Joned, A. *The Malaysian Legal System.* Kuala Lumpur: Dewan Bahasa dan Pustaka, 1987.
[203] Salleh,Buang. *Malaysian Torrens System*. Kuala Lumpur: Dewan Bahasa dan Pustaka, 2007.
[204] Abdul Hamid, Mohamad, T. and Trakic, A. "The Reception of English Law in Malaysia and Development of the Malaysian Common Law." *Common Law World Review* 44, no. 2 (2015): 123-144.

2.3.2 Federated Malay States

In addition to the native customary land tenure, common law and equity principles were brought as new sources of land law into the Federated Malay States ('FMS') following the British occupation [205]. In contrast with the Strait Settlements which the status of the law of the land was arguable, before the British Colonization, the Federated Malay State was an inhabited territory ruled by Malay rulers who enforced the Malay *adat* influenced by the principles of Islamic law and the customary law.[206]

The application of English law started with the informal application through the 'residential system'. In Perak, the Ruler signed a treaty called Pangkor Treaty 1874 requesting British assistance in governing the state. As a result, the Ruler agreed to accept the advice from the British resident on all matters except Malay religion and custom. Meanwhile, Selangor and Sungai Ujong (an area which today belongs to the state of Negeri Sembilan) received British residents during the same year as Perak and Pahang in 1887.[207] Residents were placed under each state as advisors who advised the Sultans of the respective states on government matters. With the power that they possessed, they introduced and applied English law in their respective states.

Later, the official introduction of English law was carried out voluntarily in the FMS by passing the Civil Law Enactment in 1937. The four states of Perak, Selangor, Negeri Sembilan and Pahang, which later became the Federated Malay States were the first to enact laws introducing Torrens title for use in a Malaysia.[208]

[205] Ibid, 104.
[206] Ibid, 106.
[207] Ibid, 106.
[208] Teo, K. S., and Khaw, L. T. "*Land Law in Malaysia: Cases and Commentary*". 2nd ed. Butterworths

Furthermore, rather than being based on Islamic land law, the laws controlling the lands in these FMS were typified by the Torrens system. This is because the influence of Islamic law was heavily limited by the British. Originally, the agreement between the British and the Sultans was that the British would be the advisors for the Sultans and the Sultans must follow such advice unless related to Malay culture or Islam. Muslims believe that Islam is a comprehensive way of life that covers trade and commerce, criminal law, conveyance, and also personal matters like marriage and divorce. However, for the British, religion is more limited to personal matters like marriage and divorce only. Thus, after the occupation by the British, the Torren System was adopted in land matters.

This can be seen in the case of *Awee binti Ujang v. Ibrahim bin Jamal* whereby through the Pangkor Treaty, the Islamic administration was legally separated from the State government and was put under the sultan's power.[209] This shows that the power of the sultan was only limited to religious matters only.

In the case of *Shaik Abdul Latif & Ors v Shaik Elias Bux,*[210] it can be concluded that the law used for Muslims in Selangor, Perak and Pahang is Islamic law, while in Negeri Sembilan there is a custom used in some specific areas. But this system was finally abolished and replaced by the Torrens system after the arrival of the British administrator in the Federated Malay States. The first Torrens law implemented in Selangor was the Title Registration Regulation 1891, which was later used as a model

Asia, 1995.
[209] (1916) FMS 274.
[210] [1915] 1 FMSLR 204

for the enactment of similar laws in other states in the Federated Malay States.[211]

2.3.3 Unfederated Malay States

British influence in the Unfederated Malay namely the states of Kelantan, Terengganu, Kedah, Perlis and Johor came later compared to FMS. The position of Islamic law before the coming of the British in these states was the same as in Federated Malay States. In the case of *Patimah binte Hanis v Haji Ismail bin Tamim*,[212] Mr. Justice Mills was of the opinion that Islamic law was part of the law in Johor. This shows that Islamic law was the law of the land before the British colonization.

The states of Kelantan, Terengganu, Kedah and Perlis at that time were under the influence of Siam. However, the British finally managed to expand their influence in these states after the Bangkok Agreement in 1909 between the British government and the Siamese government.[213] This also marked the unofficial of British colonization through the residential system.

Among the effects of this agreement is that the British placed an advisor or British Resident in each state concerned. Johor was the last state to fall into the hands of the British. As a result of the British occupation of these states, the British introduced a land law based on the Torrens system that had to be adopted throughout the Unfederated Malay States.[214] Thus, the State of Johore had its Land Enactment of 1910,

[211]Rabiah, Serji, M. "*Sistem Torrens dalam Undang-Undang Tanah di Malaysia: Sistem yang Tidak Eksklusif*." In Proceeding of 2nd International Conference on Law, Economics and Education (ICONLEE*)*. E ISBN: 978-967-2122-17-3 (2017).
[212] (1939), 1 MLJ 134.
[213] Ibid, 106.
[214] Ibid, 103.

the Kedah had its Land Enactment of 1906 (amended in 1912) and the Concession Enactment of 1909, State of Kelantan and Terengganu had their own Land Enactment of 1938.[215]

2.4 Application of English Law in the Current Malaysian Legal System

When Malaysia was formed in 1963, there were three separate statutes that enabled the application of English Law which are the Civil Law Ordinance 1956 in Peninsular Malaysia, the Application of Laws Ordinance 1951 in Sabah as well and the Application of Laws Ordinance 1949 in Sarawak.

However, starting on 1 April 1972 after the formation of Malaysia, the Civil Law Ordinace 1956 was extended to Sabah and Sarawak by the Civil Law Ordinance (Extension) Order 1971. Then the Civil Law Act 1956 (Act 67) (Revised 1972) (CLA 1965) was incorporated into a single statute called the Civil Law Act 1956 (Act 67), which gives the authority for the application of English law in Malaysia.[216]

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The extent of the application of English law is prescribed under Section 3, Section 5 and Section 6. Section 3 of the Civil Law Act 1965 stated the application of UK common law, rules of equity and certain statutes as follows:

3. (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall—

> *(a) in Peninsular Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 April 1956;*
> *(b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 1 December 1951;*

[215] Ibid, 104.
[216] Ibid, 106.

> *(c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 12 December 1949, subject however to subparagraph (3)(ii):*

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

The effect of this provision is that the courts in Malaysia shall apply the common law as well as rules of equity existing in England in the absence of written law on 7th April 1956 in Peninsula Malaysia, 1st December 1951 in Sabah and 12th December 1949 in Sarawak along with the statute of the general application for Sabah and Sarawak only.

This provision has brought so many views from prominent scholars and practitioners whereby they believe that this provision should have been repealed and abolished as Malaysia should develop its own common law instead of adapting the English common law. One of the scholars is the late Professor Ahmad Ibrahim whereby he believes that the Malaysian courts should look for local remedies within Malaysian legislation and court rulings rather than referring to English common law, which would necessarily prioritize the local circumstances and people.[217] This was also agreed by the Farid Sufian Shuaib in his writing where he wrote "*After 50 years of independence and numerous achievements proclaimed, Malaysia should feel strong enough to develop its own law by looking within herself first. Physical judicial autonomy obtained by severance of appeal to the Judicial Committee of the Privy Council should be followed*

[217] Ibid, 106.

by substantive autonomy by severing the umbilical cord to English law.".[218]

However, a different opinion was adopted by the Malaysia Bar which pointed out that Malaysia should be proud of implementing the common law system as it is one of the most respected legal systems in the world.[219]

Next, by virtue of Section 5 of the Civil Law Act 1965, it allocated the reception of English law specifically in commercial matters which stated:

> *5. (1) In all questions or issues which arise or which have to be decided in the States of Peninsular Malaysia other than Malacca and Penang with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case at the date of the coming into force of this Act, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.*
>
> *(2) In all questions or issues which arise or which have to be decided in the States of Malacca, Penang, Sabah and Sarawak with respect to the law concerning any of the matters referred to in subsection (1), the law to be administered shall be the same as would be administered in England in the like case at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law*

Under section 5(1), it allows for the application of English commercial law as mentioned in the provision only in the absence of any written law passed by the Malaysian Parliament except for Penang and Malacca, as administered in England on 7 April 1956. However, as section 5(2) makes clear, in the absence of any local written

[218] F.S, Shuaib. "*Towards Malaysian Common Law: Convergence between Indigenous Norms and Common Law Methods*." Jurnal Undang-undang dan Masyarakat 13 (2009): 158.
[219] Ambiga, Sreenevasan. "*Common Law*." The Malaysian Bar, August 23, 2007. http://www.malaysianbar.org.my/press_statements/press_release_common_law.html (accessed May 20, 2023).

laws, the English commercial law that applies in the states of Penang, Malacca, Sabah, and Sarawak will be the same as that which is applied in England.

In the case of *Sri Minal Construction Sdn Bhd v Hong Kong Bank Malaysia Sdn Bhd*,[220] Heliliah J held that in the absence of case law in Malaysia, it is proposed to analyse the case law in the United Kingdom by virtue of the Civil Law Act 1956 in relation to the development of the law on professional negligence which is concurrent with contractual liability.

It is said that since the Malaysian Parliament has enacted most of the law regarding commercial matters such as Partnership Act 1961 (Act 135) ; Companies Act 1965 (Act 125); Financial Services Act 2013 (Act 758); Islamic Financial Services Act 2013 (Act 759); Contracts Act 1950 (Act 136); Hire Purchase Act 1967 (Act 212) ; and Bankruptcy Act 1967 (Act 360), the reliance on this section has been significantly reduced.[221]

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Section 6 of the Civil Law Act 1965 discuss regarding the Immovable property which stated as follow:

> *6. Nothing in this Part shall be taken to introduce into Malaysia or any of the States comprised therein any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein.*

This provision has a significant impact on the current discussion whereby this section has been enacted to exclude the application of English law to land matters. Thus, any English land laws relating to the tenure or conveyance or assurance of or succession

[220] [2007] 6 AMR 426.
[221] Ibid, 106.

to any immovable property or any estate, right or interest therein cannot be applied in the Federation. The land administration system that is used in Malaysia today is the Torrens system which is the system of registration of the land to secure the owner of the land.

Reference can be made to the case of *UMBC & Anor v Pemungut Hasil Tanah Kota* emphasized that "*The National Land Code is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidents of it, as well as other important matters affecting land there, and there is no room for the importation of any rules of English law in that field except in so far as the Code itself may expressly provide for this*." In this case, Section 6 of the Civil Law Act clearly did not preclude the application of the English equitable rules as to relief against forfeiture since these rules were not a part of the law of England relating to tenure of immovable property.

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2.5 The History of the Torren Systems in Malay States

Prior to the implementation of the Torren System in Malaysia, the rights over land were supposedly owned by the Sultans. Still, the people were given the right to occupy and utilize it. After the arrival of the British in the Malay States, elements of the Torrens System were gradually introduced into the local land laws. The Torrens system is the land administration system adopted in Malaysia today. This system was first introduced in the Malay Peninsula by the British in 1864 and continued to grow and be practiced by all states in the Malay Peninsula through the enforcement of the National Land Code which came into force in January 1966.

The Torrens System was introduced by an Australian Sir Robert Torrens and was introduced in South Australia in 1858.[222] It was introduced by the British to increase the efficiency and effectiveness of land administration. Under the Torrens system, an indefeasible title to the estate is created under the title by registration principle.[223] This means that the land title should be transferred through the registration of the instrument not by a written document signed by the landowner. Such registration will record the details of the owner and the land itself such as size, location, survey plan, and boundaries in the title[224]. Table below shows the Introduction of the Torren Systems in the Malay State Pre-Independence[225].

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[222] Saudah, Sulaiman. "*Pemakaian Undang-Undang Inggeris Dalam Urus Niaga Tanah di Malaysia."* KANUN: Kanun Jurnal Undang-Undang Malaysia, Kuala Lumpur: Dewan Bahasa dan Pustaka, no. 9(3) (September 1997): 17.
[223] Ibid 198.
[224] Judith, Sihombing. "*The Bare Trust Syndrome in the Peninsular Malaysian Torrens System—A Harbinger of Total Commitment to Equity? Or the Means of a Return to Torrens Concepts*?" Journal of Malaysian and Comparative Law 4 (1977): 269.
[225] Ridzuan, Awang, M. "*Undang-Undang Tanah Islam: Pendekatan Perbandingan"*. Kuala Lumpur: Dewan Bahasa dan Pustaka, 1994.

The Malay States Pre-Independence (1824-1948)	
The laws and the corresponding states	Introduction of the Torrens System
Federated Malay States (FMS) (Perak, Selangor, Pahang, Negeri Sembilan)	1) Incorporated the Torrens System into the General Land Regulation a) Perak (1877) revised (1879) b) Selangor (1891) revised (1898) c) Pahang (1889) ammended (1890) and (1897) d) Negeri Sembilan (1897) and (1898) 2) Formulated similar laws *The Land Code 1926 effective 1 January 1928 which later came to be known as The Land Code 1928.
Unfederated Malay States (UMS) (Johor, Kedah, Kelantan, Perlis, Terengganu)	* The Land Code 1926 1) Introduced together with British Law and the Torrens System. a) Johor (1937) b) Kedah; Kedah Land Enactmen (1913) revised (1934) c) Kelantan: Kelantan Land Enactmen (1938) d) Perlis; Land Enactmen (1935) e) Terengganu; Land Enactmen (1936)
Straits Settlement (Melaka, Pulau Pinang, Singapore)	1) Enforcement of Brtish law on property and transfer of ownership with the Anglo-Dutch Treaty (1824) Melaka and Pulau Pinang (1824) 2) Straits Settlement Land Act (1838) 3) 1886 Statute was thoroughly revised in accordance with the Torrens System

Table 2.1: Introduction of the Torren Systems in the Malay State Pre-Independence[226]

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It is further elaborate that the Torren System began to be incorporated in the FMS into the General Land Regulations during the second phase[227]. The registration of the title system was first introduced in Perak by way of the General Land Regulations 1879; in Selangor by way of the General Land Regulations 1882, in Negeri Sembilan by way of the General Land Regulations 1887 and in Pahang by way of the General Land Regulations 1889. It was followed later by The Registration of Titles Regulation of Selangor (1891), Perak and Pahang (1897) and Negeri Sembilan (1898). Two separate

[226] Ibid, 106.
[227] Ridzuan, Awang, M. " *Konsep Undang-Undang Tanah Islam: Pendekatan Perbandingan"*. Shah Alam: Journal of Malaysian and Comparative Law, Vol. 4, No. 2, 1987.

state legislation namely the FMS Land Enactment and the FMS Registration of Titles Enactment was enacted in 1911. Thus, within six years of the formation of FMS, uniformity of law and land administration was finally achieved[228].

2.6 Torren System in National Land Code 1965

Currently, the main statute on registration of title in Malaysia is the National Land Code 1965 which is derived from the Torren System. The Torren System was first introduced in the Malay Peninsula by the British in 1864 subsequently developed and practiced by all states in the Malay Peninsula through the enforcement of the National Land Code which came into force in January 1966[229].

During the British colonial period and before independence, the Federation of Malaya had seven different land laws which were a uniform land code used for the four Federated Malay States known as the Land Code 1928, five different land laws that are used in the Unfederated Malay States and the English Deed system that is still used in Penang and Malacca[230].

The formulation of the National Land Code 1965 based on the Torrens system has made the Land Code 1928 as a model used by the legal draftsmen to work on a new National Land Code in order to achieve uniformity for all the nine Malay states and

[228] P.H, Zaki, Hamzah, M. Z., Ismail, M. H., Awang, K. W., Haz, and Hamid, Y. A. "*Malay Customary Tenure and Conflict on Implementation of Colonial Land Law in Peninsular Malaysia*." International Journal of Law and Legal Studies 8, no. 3 (2020): 1–13. https://doi.org/10.5897/jlcr.9000026.
[229] Fuadah, Johari, Ibrahim, Patmawati, Radzi, Wirdati, and Firdaus, Mohd. "*The Malaysian Land Taxation System: A Chronological Review of The Torrens System From The Islamic Perspectives*." Wulfenia Journal 21 (2014): 118-133.
[230] Ibid, 103.

the two Strait Settlements. In the meantime, a special act has also been drafted and approved to abolish the English Deed system in Penang and Malacca and convert it to the Torrens system[231],

According to Suriyadi J in the case of *Sime Bank Bhd v Mohd Hassan bin Sulaiman*, the National Land Code 1965 was made effective from 1 January 1966 whereby henceforth a uniform system of land tenure and dealing existed throughout Peninsular Malaysia. Penang and Malacca were also absorbed into the system by the promulgation of the National Land Code (Penang and Malacca Titles) 1963, effective also on 1 January 1966[232].

In respect of the land under the NLC, ownership of land in the country is vested in two rights, which are either the government's right or the individual's right. If a land is claimed to be the property of an individual, then the individual must have a valid title registration document to prove his ownership. This is because the Torrens system only recognizes a person's property rights through registration of the title.[233]

2.7 The Principles and the Features of the Torren System

In general, there are two main principles of the Torrens system, namely the mirror principle and the curtain principle. These two fundamental ideas maintain that all

[231] Ibid, 112.
[232] [2000] 2 MLJ 158 at p 161.
[233] Azri, Amir, M. Daud, M. Z., and Samudin, S. A. "*Pemakaian Seksyen 340 Kanun Tanah Negara Menurut Perundangan Islam Di Malaysia: The Application of Section 340 of the National Land Code in Accordance with Islamic Law in Malaysia*." Journal of Muwafaqat 6, no. 1 (2023): 14–42. https://doi.org/10.53840/muwafaqat.v6i1.118.

relevant facts and information about the registered owner's title in the land is reflected in the registration. All the relevant information such as name of the proprietor, the land which has been alienated, its area and location, its survey plan and its boundary limit are all will be kept in the land's office record.[234]

Under the Mirror principle, registration reflects all material facts regarding a person's property rights on the land. The property rights are indisputable and safe, clear and simple.[235] In other words, this principle reflects in the record what is on the land with the title register. The title register is like a mirror showing all the important information about the land that may be sought by a potential buyer or charge.[236] The person named as the registered proprietor has a title that is said to be indefensible, that is a title that is absolute, conclusive and unimpeachable.

The second principle of the Torrens system is the curtain principle, which implies a register with the properties of a veil, which is in every transaction between the registered owner and the potential buyer, the prospective buyer is only obliged to pay attention to the register and nothing else. It is sufficient for the buyer to rely on information that is in the register and does not need to, in fact, cannot look further than what appear on the title.[237]

In the case of *Gibbs V Messer*, the Privy Council has explained that the main purpose

[234] Das, S. K. *The Torrens System in Malaya.* Singapore: Malayan Law Journal, 1963.
[235] Keenan, S. "Smoke, Curtains and Mirrors: The Production of Race Through Time and Title Registration." *Law and Critique* 28 (2017): 87-108.
[236] Teo, K. S. "*The Centenary of the Torrens System in Malaysia*." Journal of Malaysian and Comparative Law 16 (2019): 199–208. ISSN 0126-6322.
[237] Salleh, Buang. "*Land Tenure in Peninsular Malaysia: Prospects for Reform"*. Kuala Lumpur: Dewan Bahasa dan Pustaka, 2013.

of the Torrens system is to save those dealing with landowners the trouble and expense of having to inquire into the background of the title in question to satisfy them as to its validity.[238] Therefore, a valid registration will give indisputable rights and interests to the individual whose name is recorded in the register. This principle is concerned with the information recorded in the register records and there is no need to look behind the scenes such as the history of the land and so on.

Among the features of Torren Systems is the registration of all dealing of land in the land office. All land transactions must use specific forms and be registered. Failure to do so will result in the transaction being considered invalid and void. Section 206(1)(b) of the National Land Code 1965 highlights the importance of registration of land which all dealings with land must be registered with the State Authority and through stereotypical forms.

Besides, under the National Land Code, it confers the indefeasibility of title. This means that the registered land owner is given a title that cannot be denied or questioned, except in certain circumstances only. Indefeasibility of Title is guaranteed under the NLC pursuant to Section 89 and Section 340 of the National Land Code 1965. A level of conclusiveness known as indefeasibility is applied to an estate or interest in alienated land upon registration following a suitable dealing in a statutory form.[239] The Registrar will determine whether the instrument of dealing is fit for registration after it has been executed and attested in accordance with the requirements under the National Land Code.[240]

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[238] [1891] A.C. 248

[239] Judith, Sihombing, E. "*The National Land Code: A Commentary".* 2nd ed. MLJ, 1997, p. XXVI 10-60.

[240] Section 297 of the National Land Code 1965.

Thus, the registration of documents of title is a conclusive evidence of land ownership. Once a person's title or interest is registered in accordance with the prescribed registration procedures, it will be recorded in the Register document of title, and the person in whose favour the dealing is registered will become the indefeasible proprietor or interest holder to the exclusion of all others.

In the case of *Teh Bee v K Maruthamuthu,*[241] the Federal Court ruled that under the Torrens system, registration is everything. Allowing an investigation to be carried out on the rights of a registered owner is a wrong practice because it will defeat the purpose and object of registration. Therefore, Section 340 of the National Land Code 1965, provides for registration that will give ownership rights and interests that cannot be denied to the registered owner except in certain circumstances.

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Even so, the National Land Code of 1965, through section 340(2), has listed exceptions to the principle of indefeasibility of ownership if it can be proven that the registration of ownership was obtained through fraud, misrepresentation, forgery, invalid instruments, and if the right possession obtained by unlawful means. This means that if the land title is obtained by one of the elements under section 340(2), then the title will be questioned or denied.[242] Fraud can be happened due to the failure of land office to follow the standard operating procedures at the land registry such as procedures to replace lost certificates of title or issuance of new title, negligence in the identification and verification procedures as well as use of certification clause.[243]

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[241] [1977] 2 MLJ 7.
[242] Ibid, 108.
[243] Ainul Jaria, Maidin,and Hunud Abia Kadouf. "Weaknesses in the Registration of Land Dealing System in Malaysia: Suggestions for Improvements for Enhancing the Systems." *The Law Review*,

The next feature of the Torren System is all land belongs to the State Authority which has the ability to dispose of or alienate land to anybody it deems suitable, either indefinitely or for a certain period of time not exceeding 99 years.[244] Land alienated for a fixed term of years i.e. State lease, would revert to the State following the expiration of the tenure. Besides, land also could be forfeited by the State for non-cultivation, for inability to pay of rent, or for breach of some other terms, whether express or implied, or in cases where the registered owner dies without leaving any successors, or where the registered owner has abandoned or returned the land to the State.[245] Thus the State has all the rights to determine the rightful owner of any land to be alienated.

Under the National Land Code, illegal occupation of land is not allowed. It means that occupation of land owned by the government or individuals without permission is prohibited and even becomes an offense under section 48 of the National Land Code 1965. Any person found illegally occupying state land can be charged under Section 425 of the Code and can be fined not exceeding RM10,000.00 or imprisonment up to a year. This shows that the National Land Code of 1965 places great importance on registration in the determination of ownership of a land. An individual is also not entitled to a piece of land even if he has occupied the land on a Temporary Occupancy License (TOL) for a long period of time.[246]

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2009, 500–536. ISSN 1985-0891.

[244] Section 42(1) of NLC 1965.

[245] Section 46 of NLC 1965.

[246] Mohamad, N. A., and Begum, B. "Challenges of the Malaysian Torrens System in the 21st Century." In *Seminar on Southern Johor Development: Prospects and Challenges in the 21st Century,* 28th June 2007, The M-Suites Johor Bahru. (Unpublished).

2.8 History of w*aqf* in Malaysia

According to a scholar, the institution of *waqf* in Malaysia is believed to have been in existence for more than eight hundred years and it is believed to have started when the Arab Muslim traders brought Islam to the land in the tenth century[247]. The *waqf* development reemerged alongside the rapid growth of Islamic economics in Malaysia. Despite Malaya at that time being highly influenced by British colonization, Islam still became the dominant religion in Malaya and continues to be so until today. *Waqf* is now a common practice among Malaysian Muslims due to its Islamic roots.

The main factor in the development of *waqf* is due to religious education. This can be found in the early nineteenth century when there was a *waqf* deed by the ruler, Sultan Umar. During that time, the practice of *waqf* was focused on religious and educational purposes to promote knowledge among the public[248].

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Waqf during the early period was made based on verbal transactions only whereby a person who wanted to *waqf* their property would go to the village head or Penghulu as a trustee of the *waqf*. As the result of no proper written documents, the problem might arise later when Penghulu passes away and in certain cases, the deceased's successors fail to disclose *waqf* property and instead use it as personal property[249].

[247] Syed Othman Al-Habsh. "*Konsep Waqaf dan Perlaksanaannya di Malaysia*." Seminar paper on Management and Administration of *Waqf* Property, organized by Majlis Agama Islam Perak and the Prime Minister's Department, Ipoh, Perak, 1986.
[248] Mahmood, T. *Waqf dan Pelaksanaannya di Malaysia (Waqf and Its Implementation in Malaysia).* Siri Penyelidikan Yayasan Islam Terengganu, 2000.
[249] Baharuddin, Sayin. "*Pentadbiran dan Pengurusan Harta Wakaf di Semenanjung Malaysia*." Jurnal Fikrah 1 (January 1998): 94–98. Pusat Pendidikan Persediaan, Institut Teknologi MARA.

According to Crecelius,[250] during this era, *waqf* property was primarily confined to land donation for mosques, cemeteries, and public institutions like *Madrasahs* only. This is due to the belief of the Muslim societies that the establishment of mosques will help to uphold and promote religious beliefs among the community and at the same time can maintain Islam as the main religion for their society[251].

2.8.1 Terengganu Inscription Stone (*Batu Bersurat Terengganu*)

The earliest record in Malaysia is a Terengganu Inscription Stone (*Batu Bersurat Terengganu*) which was found in Terengganu dating from the early thirteenth century.[252] This becomes proof and records of the presence of the Islamic *syari'ah* in the previous Malay Federated State (*Tanah Melayu*).

The *Batu Bersurat Terengganu* holds a crucial place in the history of the Malay Peninsula, particularly as the earliest known artefact that signifies the arrival and adoption of Islamic law in the region. This stone, which dates back to the early 14th century, serves as an essential source for understanding the spread of Islam in the Malay world and the integration of Islamic legal principles into local governance[253].

[250] Daniel, Crecelius. "The Organization of *Waqf* Documents in Cairo." *International Journal of Middle East Studies* 2, no. 3 (1971): 266–277.
[251] Gabriel, Baer. "The *Waqf* as a Prop for the Social System (Sixteenth—Twentieth Centuries)." *Islamic Law and Society* 4, no. 3 (1997): 264–297.
[252] Razali, Othman. "*Institusi Wakaf: Sejarah dan Amalan Masa Kini".* Kuala Lumpur: Dewan Bahasa dan Pustaka, 2013.
[253] Abdul Rahim, R. A., Ismail, P., Abd Majid, M. K., & Md. Dahlal, N. H. (2010). "*Batu Bersurat Terengganu: Satu Tafsiran Terhadap Pelaksanaan Shariah Islam*". *Jurnal Fiqh*, *7*, 107–148. https://doi.org/10.22452/fiqh.vol7no1.6.

The *Batu Bersurat Terengganu* was discovered in 1887 in Kampung Buloh, Kuala Berang, in the state of Terengganu, Malaysia. The stone contains inscriptions in *Jawi* script, an adaptation of the Arabic script for writing the Malay language. The inscription provides historical evidence that Islam had already made significant inroads into the Malay Peninsula by the year 702 AH (1303 CE), as noted in the inscription's date.[254] The text of the inscription emphasizes religious teachings and laws that align with the principles of *Shariah*, illustrating how Islamic governance was being implemented in the Malay region at this time. The presence of such an inscription in Terengganu highlights the region's early adoption of Islam, facilitated by trade, travel, and scholarly exchanges, particularly between the *Malay* Archipelago and the Islamic world.

The *Batu Bersurat Terengganu* contains a set of legal and religious principles that reflect the foundational aspects of Islamic law. The inscription outlines several laws concerning personal conduct, criminal behavior, and obligations for the Muslim community. Among the inscriptions, there are references to the prohibition of certain crimes, such as theft and sexual misconduct, and instructions for punishment based on Islamic principles.

For example, the stone mentions the prohibition of adultery *(zina)* and the corresponding punishment, aligning with the *hudud* laws (criminal law) in Islamic jurisprudence. It also addresses the importance of observing Islamic practices, such as regular prayers, fasting, and the obligation to pay *Zakat* (alms), which are fundamental pillars of Islam.

[254] Ibid.

These legal provisions reflect the growing influence of Islamic jurisprudence in the governance of Malay states, particularly in Terengganu. The inscription indicates that Islam was not only a spiritual belief system but was also embedded in the legal framework of the Malay society.

The *Batu Bersurat Terengganu* is significant because it provides concrete evidence of the early establishment of Islamic law in the Malay Peninsula, predating the arrival of European colonial powers and their legal systems. It marks the beginning of an indigenous Islamic legal tradition in the Malay world, which later influenced the development of the legal systems in other Malay states.

The inscription demonstrates that the Malay rulers and their administrations were adopting and enforcing Islamic principles as early as the 14th century, making it one of the earliest records of Islamic law in Southeast Asia. The presence of Islamic legal principles in the Malay Peninsula likely contributed to the wider acceptance of Islam among the Malay population and the formation of Islamic states in the region.

In a broader sense, the *Batu Bersurat Terengganu* also reflects the integration of Islamic law into the local customs (*adat*) of the Malay people. This blending of Islamic law with traditional Malay practices eventually led to the development of a distinctive legal system, where *adat* and *Shariah* coexisted, influencing the governance and social order of the Malay states for centuries.

Thus, the *Batu Bersurat Terengganu* represents a pivotal moment in the history of the Malay Peninsula as it offers the earliest documented evidence of Islamic law being

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implemented in the region. This inscription not only highlights the influence of Islam in shaping the legal and social systems of early Malay states but also serves as a testament to the profound impact of Islamic civilization on Southeast Asia. As such, the *Batu Bersurat Terengganu* stands as a symbol of the deep historical roots of Islamic law in the Malay Federation, marking the beginning of a legal tradition that continues to influence Malaysia's legal system today.[255]

2.8.2 *Pajak Janji*

There is also the practice of *Pajak Janji* which is a traditional Malay land tenure system practiced primarily in the state of Kedah. It involves a temporary transfer of land rights, where the landowner (usually a farmer) leases out their rice fields to another person in exchange for a lump sum payment, with the promise to return the land once the lease period ends or the payment is repaid.

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The practice of *Pajak Janji* for rice fields in Kedah represents a traditional system of land management that has parallels with the modern development of *waqf* land across Malaysia. Both practices underscore the importance of land as a communal asset and reflect efforts to manage and utilize land for the welfare of the community in line with cultural and religious values.

Pajak Janji refers to a lease agreement where a landowner (often the state or local authority) allows another party to cultivate or utilize the land for a specified period in

[255] Ahmad, Ibrahim. *Suitability of the Islamic Punishments in Malaysia.* (1993) IIUM Law Journal, 1, 14.

exchange for payment or a share of the produce.[256] This practice dates back to the agrarian societies of Southeast Asia, particularly in rice-producing regions like Kedah, where rice was a staple crop and a critical component of local economies.

In Kedah, *Pajak Janji* emerged as a way to manage and allocate rice fields, especially during periods when the demand for rice increased. Landowners would lease out rice fields to farmers, allowing them to cultivate and harvest rice while ensuring that landowners received a steady income or produce share[257].

The practice of *Pajak Janji* significantly has the integration with *waqf* practices. In the context of *waqf*, land can be designated for religious or charitable purposes, including agricultural use. *Pajak Janji* could be utilized to generate income from *waqf* lands, supporting various community needs. Besides. land endowed as *waqf* could be leased under *Pajak Janji*, allowing the *waqf* authorities to manage these properties effectively while ensuring that the income generated is reinvested in community development projects[258].

In contemporary times, the relationship between *Pajak Janji* and *waqf* has evolved. With modernization and changing agricultural practices, there are calls for more structured and formalized approaches to managing *waqf* lands. The government and *waqf* authorities are now exploring ways to integrate traditional practices like *Pajak Janji* with innovative agricultural methods and financing models to enhance the

[256] Abdul Rahman, Azizan, Hydzulkifli, Hashim Omar and Mohd Sollehudin Shuib. "*Kaedah Pengurusan Harta Wakaf oleh Majlis Agama Islam Negeri Kedah (MAIK). Perlaksanaan Pajakan untuk 99 tahun*. IJMS 23, no. 1, 2016: 73-89.
[257] Ibid, 125.
[258] Ibid, 125.

effectiveness of *waqf* in supporting community development.

Thus, the practice of *Pajak Janji* in Kedah illustrates a historical approach to land management that has significant implications for *waqf* development in Malaysia. By enabling productive use of agricultural land, this system has historically supported community welfare, reflecting the broader goals of *waqf* in providing for societal needs. As Malaysia continues to develop, the integration of traditional practices like *Pajak Janji* with modern management strategies can enhance the effectiveness of *waqf* in addressing contemporary challenges[259].

2.8.3 Mohammedan and Hindu Endowments Ordinance 1905

After the British arrived in the 17th century, before Merdeka Day, official trustees were appointed to manage and oversee *waqf* in the Malay States. In the Straits Settlement, the Mohammedan and Hindu Endowments Ordinance 1905 was passed to administer the *waqf* property. The Mohammedan and Hindu Endowments Ordinance of 1905 in Malaya was similar in intent and structure to the ordinance enacted in India. This legislation was introduced by the British colonial administration to regulate the management of religious and charitable endowments belonging to the Muslim and Hindu communities in Malaya. Both Muslim and Hindu communities in Malaya had established numerous endowments (*waqf* for Muslims and *dharmasthala* for Hindus) to support mosques, temples, schools, and other community services[260].

[259] Ibid, 126.
[260] Sinha, V., The Mohammedan and Hindu Endowments Ordinance, 1905: Recourse to Legislation, (2011) 10.1007/978-94-007-0887-7_4.

The courts and British authorities implemented British rules on *waqf* using a very abstract understanding of Islamic law. The courts as well as the Mohammedan and Hindu Endowments Boards were established to govern *waqf*s and temples. The Board was given the authority to administer religious trusts and to manage the Hindu temples and mosques that were vested under the Board in the Straits Settlements.

The Mohammedan and Hindu Endowments Ordinance of 1905 played an important role in shaping the management of religious endowments in Malaysia. By introducing legal oversight and structured administration, the ordinance helped ensure that *waqf* and Hindu religious trusts were managed transparently and effectively, laying the foundation for the modern regulation of religious endowments in Malaysia. It marked the beginning of government involvement in *waqf* administration, which continues today under more formalized institutions.[261]

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2.9 The Administration of the Torren System in w*aqf* Land

Waqf is widely related to land and buildings. Under Islamic Law, any individual or person that declares the land or any property to become *waqf* is considered binding and valid as soon as the donor implies or expresses the intention clearly. Before, there was no proper documentation in regard to the *waqf* in *Tanah Melayu*. The community leaders such as Qadis, Imams and the head of the village or a certain community's committee i.e. the Masjid Committee will be appointed to administer the Islamic affairs including *waqf*.[262] They acted as the trustee or the *mutawalli* to manage the *waqf*

[261] Ibid, 127.
[262] Kamaruddin, N. *Isu Pembangunan Tanah Wakaf.* Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992.

property until the enforcement of the Islamic enactment by the states. As a result, many problems arose because of the lack of documentation and lack of accountability of the people responsible.[263]

After Merdeka Day, the Torrens system is the official land registration system under the National Land Code (NLC) 1965. *Waqf* lands, like other land, are registered in the Torrens system to ensure legal recognition and protection. All *waqf* property falls under the jurisdiction and power of the respective states' religious councils to manage pursuant to the respective Administration of Islamic Law enactments. These enactments include: the Malacca Administration of Muslim Law Enactment 1959, Kedah Administration of Muslim Law Enactment 1962, Perlis Administration of Muslim Law Enactment 1963, Perak Control of Wakaf Rules 1959 and Perak Administration of Muslim Law Enactment 1965 and Johor Wakaf Rules 1983.[264]

All the lands including *waqf* land must be registered for the Land Title to provide the indefeasible and recognized information of ownership of the land which as required under Section 340 NLC.[265] This is in line with the curtain and mirror principle in the Torren system where registration is everything and one does not need to go behind the Land Title as the registration contains all the information about the title. This means that ownership need not be proved by long complicated documents that the owner keeps because all of the necessary information regarding ownership is on the Land Title.

[263] Ibid, 123.
[264] Ibid, 13.
[265] Noor Azimah,Ghazali, and Sipan, I. "Integrating *Shariah* Law and Civil Law of *Waqf* Land Registration in Malaysia." *International Research Conference on Shariah Compliant Industries*, 2021.

Therefore, *waqf* land, in Malaysia, is required to be registered before it can be fully utilized or developed including *waqf* land by several procedures. There are two steps for the recognition of *waqf* land. The registration of declaration at SIRC and another registration at Land Office. Declaration at the State Islamic Religious Council (SIRC) is not considered binding and valid until it is registered at the Land Office.

There are three methods of *waqf* land registration under the National Land Code 1965 which under Section 215 of the NLC (Transfer of Title, form 14A), Section 195 of the NLC (State Surrender and Re-alienation, form 12A and form 12B), or Section 416 of the NLC (Statutory Vesting, form 30A, and form 30B). The better way in which to secure the position of *waqf* lands in the land offices is by way of statutory vesting under section 416C of the NLC.[266] This section allows persons or bodies who have been statutorily vested with powers to hold land to apply for endorsement of such status on the register document of title.

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2.10 Position of Waqf Land Under Malaysian Legal System

In Malaysia, under Article 4 (1) of the Federal Constitution, this Constitution is the supreme law of the Federation and any law passed after Independence Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void. The Constitution provides two main areas of Federal and States under the Federal level List 1 and List 2 for the Federal and State legislature. The Federal Constitution of Malaysia provides the interpretation of Islamic law including *waqf* and land matters within the Jurisdiction of State under the Ninth Schedule, List II of Federal Constitution.

[266] Ibid, 125.

Given that *waqf* is a state matter, it is within the exclusive powers of the state government to legislate laws on the administration of *waqf*. Section 25 of the Civil Law Act 1956 specifically recognizes the disposal of property according to Islamic law and thus, the administration of *waqf* properties have been put under the powers of the State Islamic Religious Councils as the sole trustee of *waqf* properties under the respective states' Administration of Islamic law Enactments[267]. As Malaysia is a federation that consists of 14 states and three federal territories, there are currently 14 different SIRCs all over the state as the sole trustee of all *waqf* properties in their respective states.[268]

The SIRCs are the sole trustees in charge of governing, managing, and developing these properties. Therefore, the State Islamic Religious Councils have the power to take all necessary steps like convert, lease, or engage another party to work the land on a profit-sharing basis to develop and obtain returns from the properties as long as the acts comply with the *Shariah*.[269] Besides, Section 4 (1) of the Administration of the Religion of Islam Negeri Johor, 2003, stated: "*There shall be a body called State Islamic Religious Council to assist and advise the Sultan in matters relating with Islam*" .

Not all states in Malaysia have enacted specific rules or enactments relating to *waqf*. There are two categories of *waqf* legal frameworks in the country: regulated *waqf* law,

[267] Monzar, Kahf. "Towards the Revival of Awqaf: A Few Fiqhi Issues to Reconsider." Paper presented at the Harvard Forum on Islamic Finance and Economics, Harvard University, U.S.A., 1999.
[268] Ibid, 13.
[269] Abd Majid, M. Z. "*Kefahaman Konsep dan Amalan Wakaf di Malaysia Hari ini." In Konsep dan Pelaksanaan Wakaf di Malaysia,* edited by Nik Mustapha Nik Hassan. Kuala Lumpur: Institut Kefahaman Islam Malaysia, 1999.

where states have formal legislation governing *waqf* administration, and unregulated *waqf* law, where *waqf* matters are managed based on general Islamic law principles and administrative guidelines without specific enactments. The following table illustrates the present regulated *waqf* laws in Malaysia.[270]

State	Enactment
Perak	*Waqf* Enactment (Perak) 2015
Selangor	Selangor *Waqf* Enactment 2015
Terengganu	Terengganu *Waqf* Enactment 2016
Pahang	*Waqf* Pahang Enactment 2022
Melaka	*Waqf* (State of Malacca) Enactment 2005
Negeri Sembilan	Negeri Sembilan *Waqf* Enactment 2005
Sabah	*Waqf* Enactment (State of Sabah) 2018

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The special position of *waqf* lands is also acknowledged under the National Land Code 1965 by section 4(2) which states to the effect that nothing in the NLC shall affect the provisions of (e) any law for the time being relating to *wakaf* or *baitul mal*. However, under Malaysian land law, *waqf* properties still need to be registered at the Land Office after a *waqf* declaration at the State Islamic Religious Council (SIRC). The rationale is to ensure land indefeasible ownership under the National Land Code 1965.[271]

2.11 The Importance of Registration of *Waqf* Land

Waqf under Islamic law becomes binding as soon as the donor implies or expresses his

[270] Ibid, 13.
[271] Noor Azimah, Ghazali, Sipan, I. A. Raji, F., and Mohammad, M. T. S. H. "Issues on *Waqf* Land Registration Process in Malaysia and Improvement Proposals." *UMRAN - International Journal of Islamic and Civilizational Studies* 6, no. 3 (2019): 57–71. https://doi.org/10.11113/umran2019.6n3.354.

intention to donate his property as *waqf* property. However, in the context of Malaysian Legal System, *waqf* properties need to be declared at the State Islamic Religious Council (SIRC) and registered in the land office to confer the indefeasibility of *waqf* land.[272]

Since *waqf* is a donation made by Muslims for the benefit of Muslim communities such as mosque, school, hospital, cemetery and others, it needs to be conserved and protected permanently. *Waqf* property needs to be dealt with involves registration, law and regulation compliance, and asset management including investment and development finance, maintenance and repair, protection, and generation of income all the time for the benefit of ummah.[273] However, without a title, it will be difficult for the *waqf* administrator to do all the development toward the land.[274] Therefore, a proper registration system for *waqf* is important.

Besides, the registration of *waqf* property also can avoid the challenge of the status of *waqf* from any third party that may lead to loss of *waqf* property. This includes the objection from the heirs of the *waqif*.[275] The declaration of *waqif* in SIR to donate property as *waqf* is not considered as legal and binding until all the registration processes according to NLC are taken. Currently, there are a few cases involving the objection of heirs to cancel the registration of *waqf* land. Hence, a *waqf* title is needed to avoid any challenge from a third party.

[272] Syed Khalid, Rashid. "*Siti Mashitoh Mahamood, (2006), Waqf in Malaysia: Legal And Administrative Perspective*". IIUM Law Journal 16, no. 2 (July 15, 2012). https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/view/56.
[273] Mohammad Tahir, S. H. "A Proposal for a New Comprehensive *Waqf* Law in Malaysia," 2013.
[274] Nik, Hassan, N. "The Economics of Awqaf Institution." Paper presented at the International Seminar on *Waqf*, Johor Bahru, August 11–12, 2008.
[275] Ibid, 132.

2.12 Significance of Historical Context in the Evolution of *Waqf* Law

The historical context of *waqf* law plays a critical role in shaping the legal and conceptual framework of its current application in Malaysia. Chapter 2 explores the evolution of *waqf* from its early Islamic origins to its institutionalization under various legal systems, including colonial and post-colonial regimes. Understanding this progression is essential for identifying the foundational principles upon which *waqf* was built, namely, perpetuity, irrevocability, and dedication for public benefit.

A historical examination enables the thesis to critically assess how *waqf* law in Malaysia has evolved from its early recognition under Islamic law as part of the legal system, through the period of British colonization which introduced statutory and administrative changes, to its present-day application under state enactments[276]. These historical shifts directly inform contemporary legal structures, including state enactments and the dual application of civil and Shariah law in *waqf* administration.

Moreover, by analysing historical models of *waqf* governance, the thesis can draw attention to the enduring relevance of traditional legal concepts, while also identifying areas where historical misalignments have led to implementation gaps in the current framework. This perspective is instrumental in proposing legal reforms that are not only contextually appropriate but also aligned with the original philosophy and objectives of *waqf* within Islamic legal theory. Thus, the historical dimension of *waqf* is not merely a background narrative but forms a substantive analytical foundation for evaluating the current challenges and future direction of our *waqf* land development.

[276] Ibid, 13.

2.13 Chapter Summary

The evolution of *waqf* in the context of Malay customs, Muslim law, and the Torrens system reveals a nuanced process of legal adaptation and coexistence within regulated states. Traditionally, *waqf* has been governed by Islamic law, emphasizing the permanent dedication of property for religious, charitable, or public purposes. In Malay societies, this institution was further influenced by local customs (*Adat*), which shaped land ownership patterns, inheritance, and communal responsibilities.

However, the introduction of the Torrens system during the colonial period brought a formalized, centralized approach to land registration and ownership, prioritizing individual titles backed by state guarantees. This system, designed for legal certainty and economic growth, often conflicted with the underlying principles of *waqf*, which emphasizes communal and religious objectives over purely economic ones.

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Over time, these evolution of *waqf* has been accepted and implemented in the regulated *waqf* law states in Selangor, Melaka, Perak, Negeri Sembilan, Pahang, Sabah and Terengganu. In some jurisdictions, *waqf* land has been incorporated into the Torrens system, but with certain accommodations to preserve its religious and social functions. For example, state religious authorities have been granted administrative powers to oversee *waqf* land registration, ensuring compliance with both Islamic law and state land laws. Additionally, legal innovations such as long-term leasing of *waqf* land have allowed for development while maintaining the underlying *waqf* purpose.

The acceptance of *waqf* within regulated *waqf* law states varies, with some regions embracing a more integrated approach while others struggle with tensions between religious, customary, and statutory laws. The process of acceptance hinges on balancing the historical and religious significance of *waqf* with the modern state's need for efficient land management and economic development.

In conclusion, the evolution of *waqf* within the frameworks of Malay customs, Muslim law, and the Torrens system underscores the ongoing challenge of harmonizing diverse legal traditions. As regulated *waqf* law states continue to adapt to changing social, economic, and legal realities, the future of *waqf* will depend on the ability to maintain its religious and charitable purposes while integrating it into the broader land administration framework. This balance is critical for ensuring that *waqf* remains a viable institution that serves the public good in both traditional and modern contexts. The evolution of *waqf* prior to its implementation in regulated *waqf* states will be clearly outlined, thereby fulfilling the first research question and research objective.

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CHAPTER THREE

SUBSTANTIVE AND PROCEDURAL LAW ON *WAQF*

This chapter is dedicated to fulfilling the second and third research questions and research objectives which is to analyse the current substantive law and procedural law pertaining to *waqf* development in Malaysia.

3.1 *Waqf* According to Law in Malaysia

3.1.1 Introduction: The Federal Constitution

In Malaysia, as mentioned in the previous chapter, administrative matters concerning Islam or Islamic law will fall within the purview of the State Government and exemption to the rule is only applicable for Federal Territories. The authority to legislate and manage is outlined in Schedule 9, List 2 of the State List. Accordingly, each state government has the power to establish its own Islamic council and religious department. As a result, the administration of Islamic religious affairs varies across states in Malaysia, with differences in legislation, management, and its implementation[277].

The State list of the Constitution includes references to Islam, the definition of *waqf*, regulations concerning charitable trusts and religious charities, the appointment of trustees, and the establishment of corporations related to religious grants and charities. Following the powers granted by the Federal Constitution under the State List, all

[277] Ibid, 79.

matters relating to the *waqf* property are then designated in the respective state enactment, in which will be discussed in depth later.

The law in our country requires that The State Religious Council (SIRCs), or Majlis Agama Islam Negeri, to oversee and manage all *waqf* properties, whether they are movable or immovable. Among the initiatives of the Federal Government to assist the SIRCs in developing the *waqf* land is by establishing Department of *Awqaf, Zakat* and *Hajj* (JAWHAR) and *Yayasan Waqf Malaysia (YWM)*. The purpose of establishing JAWHAR is to supervise and organize the administration of *Waqf, Waqf,* and Haji affairs in Malaysia, aiming to enhance the service's efficiency and effectiveness. More importantly, JAWHAR does not aim to usurp the responsibilities or functions of SIRCs or other relevant departments in developing the *waqf* land but only to assist them[278].Meanwhile, YWM run with purpose of collecting *waqf* funds, developing *waqf* assets, implementing social and welfare programs, running investment programs, and promoting *waqf t*hrough various activities and publications.

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3.1.2 Guidelines by JAWHAR

The Department of *Awqaf, Zakat* and *Hajj* (JAWHAR) in Malaysia provides comprehensive guidelines on *waqf* management through its official website. These guidelines aim to standardize and improve the administration of *waqf* across the country, particularly for State Islamic Religious Councils (SIRCs), educational

[278] Mohd Afandi, Rani, M. "Pengambilan Tanah Wakaf Oleh Pihak Berkuasa Negeri: Analisis Menurut Hukum Syarak Dan Aplikasinya Di Malaysia." PhD diss., Jabatan *Shariah* dan Undang-Undang, Akademi Pengajian Islam, Universiti Malaya, 2008.

institutions, and the public. Among the key resources are manuals on benefit distribution, cash *waqf*, land registration, and *waqf* in educational settings. JAWHAR also outlines procedures for *waqf* asset substitution *(istibdal)*, accounting standards, and legal frameworks. Special guidelines exist for collecting waqf funds for specific purposes, such as the distribution of the *Quran*. These resources are designed to ensure that *waqf* management is systematic, transparent, and compliant with both *Islamic* principles and local regulations. All documents are accessible through JAWHAR's e-Publication portal at e-penerbitan.jawhar.gov.my, supporting efforts to enhance the sustainability and impact of *waqf* in Malaysia.

While JAWHAR provides detailed guidelines and manuals on *waqf* management, these documents are not legally binding. They serve primarily as reference frameworks or best practice models meant to assist State Islamic Religious Councils (SIRCs), institutions, and stakeholders in improving *waqf* governance. However, the actual authority over *waqf* matters rests with each individual SIRC, which operates under its respective state laws and enactments. As a result, the implementation of JAWHAR's recommendations can vary from one state to another, depending on local policies and religious council decisions. In essence, JAWHAR offers national-level direction and support, but it does not have the legislative power to enforce compliance across the states.

3.2 The Regulated *Waqf* Law States

In Malaysia, not all states produce their own specific legislation on *Waqf*. Only states like Selangor, Melaka, Perak, Negeri Sembilan, Terengganu, Pahang and Sabah have

a specific w*aqf* law thus, having a more systematic ways to administer all the w*aqf* properties.

3.2.1 *Waqf* Law in the State of Selangor

In order to ensure a smooth administration and management of *waqf*, the state of Selangor has taken initial steps by drafting an enactment in 1999. With the establishment of the Selangor *Waqf* Enactment 1999, the administration of *waqf* in Selangor became more organized and structured. However, over time, the practice of *waqf* in Selangor has become more complex. Therefore, Selangor has come into a decision to replace the Selangor *Waqf* Enactment 1999 with the Selangor *Waqf* Enactment 2015[279].

The 1999 *Waqf* Enactment, despite being passed in that year, was implemented only from 1st July 2004. It replaced the sections concerning *waqf* in the Laws for the Administration of the Religion of Islam 1952 and included comprehensive provisions for both substantive and administrative aspects of *waqf*[280] .Among the key aspects of the 1999 *Waqf* Enactment includes:

i. Guidelines for establishing waqf and limitations on its creation;

ii. Authority and obligations vested in MAIS as the exclusive trustee of waqf in Selangor;

iii. Regulations regarding istibdal (substitution of waqf assets);

[279]Zati, Manaf, A., Syed Abdul Kader, S. Z., and Mohamad, N. A. "Examining the Evolution of *Waqf* Regulations in Selangor: An Analysis of the Governance Framework and Transformative Approach." *IIUM Law Journal* 27, no. 2 (2019): 337–365. https://doi.org/10.31436/iiumlj.v27i2.418.

[280] Syed Khalid, Rashid."Siti Mashitoh Mahamood, (2006), *Waqf* in Malaysia: Legal and Administrative Perspective." *IIUM Law Journal* 16, no. 2 (July 15, 2012). https://doi.org/10.31436/iiumlj.v16i2.56.

iv. Management of mawquf (endowed property) and its revenues;

v. Appointment, authority, and responsibilities of the waqf Management Committee in overseeing waqf affairs in Selangor.

Under Section 21 of the 1999 *Waqf* Enactment, the responsibility for managing w*aqf* in Selangor lies with the *Waqf* Management Committee. This committee formulates policies that are then implemented by the *Waqf* Unit under Majlis Agama Islam Selangor (MAIS). The Wakaf Unit includes the Registrar of *Waqf*, the Assistant Registrar, and staff members[281]. However, this unit is currently inadequate to meet the growing demands of *waqf* in the state. Issues such as limited human resources, a heavy workload, and incomplete *waqf* data were identified as challenges affecting *waqf* management at that time[282].

To enhance and maximize the utilization of *waqf* properties in Selangor, a similar approach was adopted with the establishment of *Perbadanan Wakaf Selangor* (PWS) under the *Wakaf* Corporation of Selangor Order 2011. As a subordinate organization to MAIS, one of the key roles of PWS is to promote, facilitate, and develop *waqf* properties and projects owned by MAIS. In fulfilling this mandate, as of June 2024, PWS operates through seven departments which includes administrative department, finance, corporate, IT, properties, project and investment department.

[281] Ibid, 16.

[282] Nurul Azma, Bakar, A., Hussain, M. N. M., and Hamed, A. B. "Scrutinizing the Effects of Restructuring in Perbadanan Wakaf Selangor." *International Journal of Accounting, Finance and Business* 2, no. 4 (2017): 13–21.

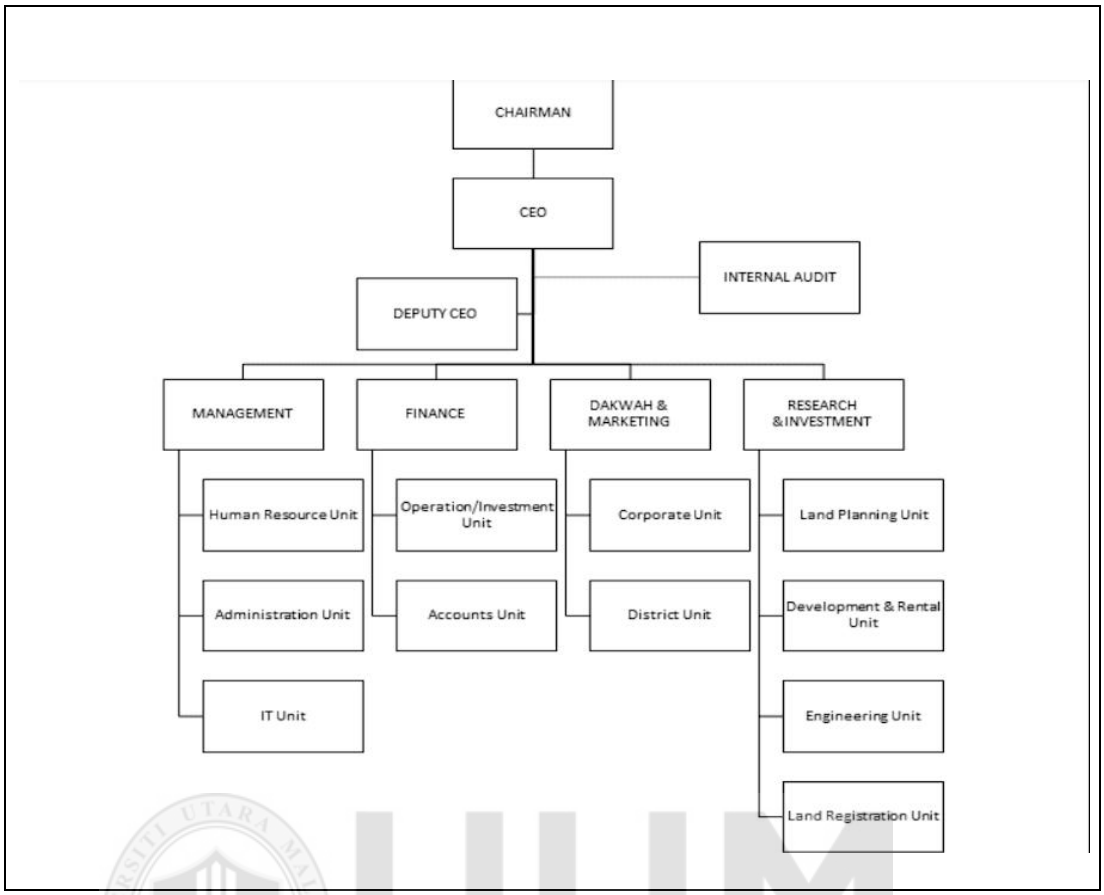

Figure 3.1: Organisational Structure of PWS

Source : PWS's website

The establishment of PWS has contributed to more projects in the development of the *waqf* land, but there were still some limitations on the potential growth of *waqf* land in Selangor. Thus, to overcome those loopholes and limitations, the *Waqf* Enactment (State of Selangor) 2015 was established and came into effect on 19th October 2015[283].

The 2015 Enactment consists of 49 sections organized into 10 parts, designed to rectify deficiencies found in the 1999 *Waqf* Enactment. One of the rationales behind its enactment, as deliberated in the Selangor State Assembly, was to enhance the

[283] Ibid, 9.

administration of *waqf* as reports were found that there has been several *waqf* properties in Selangor were observed to be underutilized or not fully optimized in terms of their usage potential.

The major changes between the 1999 and 2015 Enactment are the introduction of new provisions for practice on management of *waqf*, eliminating certain provisions and the rewording of previous provisions from the 1999 *Waqf* Enactment to improve clarity and comprehension. In summary, the fundamental principles of *waqf* remain unchanged and are preserved in the 2015 *Waqf* Enactment. Only new provisions on the administrative aspect were included into the new Enactment.

One significant alteration introduced by the 2015 *Waqf* Enactment is the broadening of the definition of '*waqf*'. Another term that was included in the 1999 Enactment but has been elaborated and broadened in the 2015 *Waqf* Enactment is the concept of *Marad Al-Maut* and the practice of creating *waqf* through wills. The revised definition of *Marad Al-Maut* was influenced by the decision in the case *of Mahdi bin Ab. Hamid v. Mohamad Iqwan bin Yahaya* whereby the 1990 Enactment is deemed to be insufficient and does not adequately cover the concept of *al- Waqf bi-al Wasiyyah*[284]. Hence, Part V11 of the 2015 *Waqf* Enactment has elaborated on the concept of *Marad al-Maut*, relating it to the practice of creating *waqf* through wills.

[284] Siti Mashitoh, Mahamood. "Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif *Shariah* dan Undang-Undang." *Kanun: Jurnal Undang-undang Malaysia* 29, no. 2 (2017): 177-192.

Besides, there have been jurisdictional conflicts regarding the authority to manage *waqf* between the *Waqf* Management Committee and PWS. Hence, the new provision in the 2015 *Waqf* Enactment has come into force to acknowledge the duties and responsibilities of PWS. Firstly, PWS has been recognised as *Waqf* Managers in Selangor, upon authority given under the 2015 *Waqf* Enactment to give power to MAIS to appoint third parties to manage the *waqf* property on his behalf.

Although PWS was established as the w*aqf* manager for Selangor, the 2015 *Waqf* Enactment reaffirms MAIS as the sole *waqf* trustee in Selangor as per Section 4 (c) and Section 8 of the *Waqf* Enactment 2015. This reaffirmation is crucial as it consolidates MAIS's role as the primary authority for overseeing *waqf* administration in Selangor. MAIS also possesses the authority to formulate *waqf*-related policies that bind *waqf* managers like PWS. Therefore, it is appropriate that MAIS retains the authority to administer *waqf* too. The full scope of MAIS's powers and responsibilities in *waqf* administration is detailed in Part II of the 2015 *Waqf* Enactment.

According to Section 2 of the 2015 *Waqf* Enactment, PWS is defined as the *Wakaf* Corporation of Selangor, established under the Establishment of *Wakaf* Corporation of Selangor Order 2011. By reading together the Order with the 2015 *Waqf* Enactment, PWS is tasked with various responsibilities, including executing, facilitating, undertaking, and developing *waqf* properties owned by MAIS. They are also responsible for registering and maintaining information on *waqf* properties in the state. In addition to the powers granted under the Order, the 2015 *Waqf* Enactment empowers

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PWS to issue *waqf* shares and accept shares, bonds, sukuk, or other instruments as valuable guarantees[285].

Nonetheless, the authority of PWS is not unrestricted. Referring to Section 8 of the 2015 *Waqf* Enactment, while carrying out its responsibilities and exercising its powers, PWS remains under the supervision and guidance of MAIS. Additionally, PWS is obligated to report its activities and performance to MAIS. This arrangement preserves MAIS as the sole trustee while enabling it to delegate the operational management, thus conserving its manpower resources.

As numbers of *waqf* properties continues to increase over time, there has been a deficiency in the manpower to handle all the w*aqf* properties. By virtue of the 2015 *Waqf* Enactment, MAIS and PWS are allowed to appoint third parties to manage the w*aqf* properties upon certain conditions. As in Section 4(2) and (3), the managers appointed bear all the responsibility as set out by MAIS, and MAIS owns the right to take back all the appointments of managers if it is believed that it was needed[286].

To curb the problems involving the status of w*aqf* concerning the *Waqif*'s descendant, trespass and unlawful occupation, the 2015 *Waqf* Enactment had included provision specifically on the vesting of *waqf* properties and the registration process by PWS. Looking back at the 1999 *Waqf* Enactment, the statute would invalidate any *waqf* that is in conflict with any statutory law. Thus, if any *waqf* is not registered or vested as required under the National Land Code 1965, it could render the *waqf* invalid. To ensure that the issue will no longer be prolonged, Section 13 of the 2015 *Waqf*

[285] Ibid, 123.
[286] Ibid, 123.

Enactment states that a *waqf* becomes effective once all the necessary pillars and conditions for its establishment are fulfilled. Once effective, it cannot be sold, gifted (*hibah*), or inherited by any individual.

The 2015 Enactment also further mandates the establishment and maintenance of a *waqf* registry. Additionally, it requires the appointment of a Chief Registrar of *Waqf* and Registrars of *Waqf*, who are responsible for overseeing all matters related to the registration of *waqf* properties. This includes maintaining a registry for all endowed properties (*mawquf*), safeguarding all relevant documents and titles, and providing regular reports to MAIS regarding the status of the *Waqf* registry. MAIS, in turn, is responsible for publishing a comprehensive list of all properties, investments, and assets in the State Gazette.

In line with the current development, the 2015 Enactment has also recognised *mawquf* in other form than movable and immovable properties. The 2015 Enactment has added a specific mention of cash in the legislation. Under the 2015 *Waqf* Enactment, cash w*aqf* is defined as monetary contributions, the value of gold, or similar assets given by individuals for the purpose of w*aqf*. Expanding the scope of *mawquf*, the 2015 *Waqf* Enactment also permits w*aqf* to be established through shares, bonds, sukuk, and other instruments as valuable guarantees.

Other than the administration and the development planning of the w*aqf* properties, MAIS also feels the need to have legislation on offences committed pertaining to *waqf*. It cannot be denied that there would be the possibility that certain individuals would collect funds or assets for personal gain rather than for w*aqf* purposes. Thus, Section

45 of the 2015 *Waqf* Enactment provided that any actions concerning the administration and management of w*aqf* in Selangor without approval from MAIS or PWS as an offense. If convicted, the individual may face a fine of up to one thousand Ringgit, imprisonment for a maximum term of six months, or both.

Furthermore, Under Section 44 of the 2015 Enactment, MAIS and PWS has been given the authority to take action against trespassers in the *waqf* land under any written law. As an example, action may be taken under Section 6 and 7 of the Specific Relief Act 1950 and Section 425 of the National Land Code.

3.2.2 *Waqf* Law in the State of Malacca

In Malacca, Majlis Agama Islam Melaka (MAIM) administers *waqaf (waqf)* properties for the Muslim community in Malacca in accordance with the provisions outlined in the Administration of the Religion of Islam (State of Malacca) Enactment 2002 and the *Wakaf* (State of Malacca) Enactment 2005. This demonstrates that MAIM manages *waqf* assets in compliance with legal frameworks, ensuring adherence to established laws. These two enactments are complementary rather than conflicting, aimed at enhancing the management of *waqf* properties in Malacca[287].

[287] Halim, M. B. B. M. A., Borhan, H., Hitam, M., and Kamaruddin, S. M. "Modelling the Database Development for *Waqf* Land in District of Melaka Tengah Malaysia." *Business Management and Strategy* 15, no. 1 (2024): 156–169.

Provision on w*aqf* under the Administration of the Religion of Islam (State of Malacca) Enactment 2002 can be found under Section 77-83. The authority of MAIM to regulate further rules on *waqf* may be found under Section 77 of the Enactment.

"Majlis to be the sole trustee of wakaf, nazr, trusts.
Notwithstanding any provision to the contrary contained in any instrument or declaration creating in any device or manifestation creating, governing, or affecting it, the Majlis shall be the sole trustee of:
(a) all wakaf, whether wakaf am or wakaf khas;
(b) all nazr am; and
(c) all trusts description is creating a charitable trust for the support and promotion of the religion of Islam or the benefit of Muslims by Hukum Syarak, to the extent of any property affected by the wakaf, nazr, trust, and situated in the State of Malacca."

In addition to that, MAIM also relies on the *Waqf* (State of Malacca) Enactment 2005 which provides specifically on w*aqf*. The legislation covers provisions concerning the establishment of w*aqf*, management of *Mawquf Alaih*, invalid w*aqf*, management of *Mawquf, Istibdal*, development of *Mawquf*, the *Waqf* Management Committee, and the powers of *Majlis* (SIRC). If certain issues are not explicitly addressed in the enactment but are pertinent to the management of w*aqf* assets, supplementary rules should be implemented and referred to the Fatwa Committee. Upon approval and confirmation of *Shariah* compliance, these rules can be applied to w*aqf* assets[288].

Malacca State Islamic Religious Council (MAIM) is the sole organization authorized by the government to manage the *waqf* assets of Muslims in the state of Malacca. The *Waqf* Division in MAIM is placed under *Baitulmal*, which is responsible for overseeing w*aqf*, property, development, and investment affairs. Initially comprising

[288] Rusni, Hassan, Murat, N. A. M., Salman, S. A., and Yusoff, A. "Towards Developing a Shariah Governance Framework for *Waqf* Institutions: A Case of Majlis Agama Islam Melaka." *Journal of Finance & Banking Review* , no. 2 (2022): 1. https://doi.org/10.35609/gcbssproceeding.2022.2.

a single unit, improvements were implemented and as of 2024, there has been a total of 3 units under *Waqf* Division which includes The Land Registration Unit, Administration Unit and the Land Enforcement Unit.

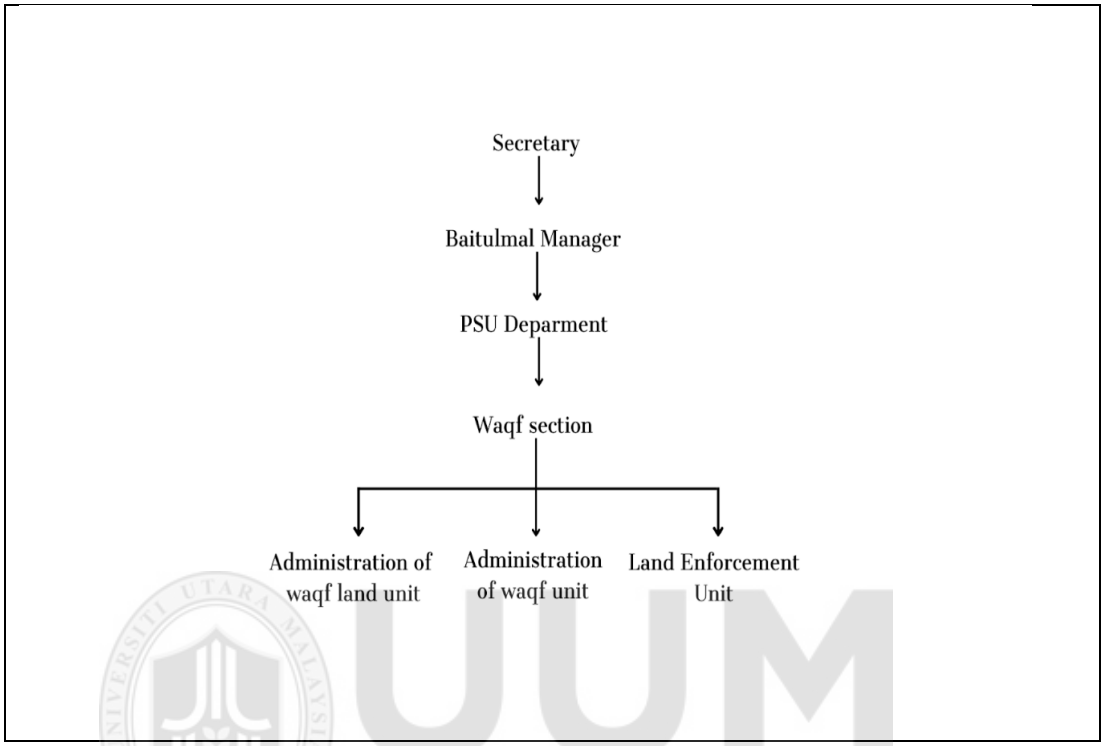

Figure 3.2: Organisational Chart of Waqf Division under MAIM

Source: researcher's own

Section 24 of the Enactment outlines the responsibilities of the *Waqf* Management Committee as to implement any directives, policies, and decisions issued by the Council (MAIM) concerning *mawquf*, to oversee, organize, manage, and administer the *mawquf*, to enhance, improve, and upgrade the *mawquf*, managing the *waqf* fund and to perform any other duties or powers stipulated under this Enactment or directed by the Council as needed.

Apart from that, the Enactment also authorise the *Waqf* Management Committee, with the consent of Council and subject to such condition, *istibdal* (replaced) any *mawquf* or develop or invest the *mawquf* and as per Section 35 of the Enactment.

3.2.3 *Waqf* Law in Negeri Sembilan

For the state of Negeri Sembilan, Section 5 of the Wakaf Enactment (Negeri Sembilan) 5/2005 stated that the Negeri Sembilan Islamic Religious Council (MAINS) is the sole trustee of all *waqf* (*mawquf*) assets located within Negeri Sembilan. In 2005, *Perbadanan Wakaf Negeri Sembilan* (PWNS) was established to further administer *waqf* properties in the state.

Under PWNS, a few units were established as a way to administer all *waqf* properties in the State of Negeri Sembilan. Those units include the Administration and Finance units, Property, Clinic and Hemodialysis Center, Marketing and Outreach, and the Asset Management Unit[289].

As for the governing law, Negeri Sembilan has its own specific legislation on *waqf* which is the Negeri Sembilan *Waqf* Enactment 2005. The legislation specifies the Council's duties as the sole trustee and outlines its responsibilities. It also covers the appointment of a *Waqf* Registrar, Deputy Registrar, and related officers, sets up an Advisory Panel for *Waqf* Management, establishes a *Waqf* Fund, governs *waqf*

[289] M. H., Daud, M. and Mubarak, M. Z. "*Amalan Pengurusan Wakaf di Perbadanan Wakaf Negeri Sembilan (PWNS)*." Sains Insani 6, no. 2 (2021): 1–8.

management, delineates offenses and penalties, and outlines enforcement and the investigation procedures.

Among the main provisions of the Enactment is on the registration of the *waqf* land. Under Section 6 of the Enactment, any person seeking to establish a *waqf* on their property must submit an application to the Council for the registration of the *waqf* property. The Council also has the authority to file a petition to the court to declare any property as *waqf* property, and the court may order the property to be registered as *mawquf.* Once *waqf* properties are registered, the Council has the authority to issue a *mawquf* certificate to verify in the civil or *Shariah* court that the property is indeed *waqf* property.

Due to the systematic process of the administration of w*aqf* as seen in the Enactment, it is proposed that the regulations governing *waqf* management outlined in the Negeri Sembilan *Wakaf* Enactment serve as a strong model for revising *waqf* laws in other states across Malaysia[290] .

3.2.4 *Waqf* Law in the State of Perak

In the state of Perak, according to the Administration of the Religion of Islam (Perak) Enactment 2004 and further defined by the *Waqf* Enactment (Perak) 2015, *Majlis Agama Islam dan Adat Melayu Perak* (MAIPk) is the sole trustee and institution responsible for managing *waqf* assets.

[290] Ibid, 9.

The *Waqf* Enactment (Perak) 2015 is a significant law governing the administration of *waqf* assets in Perak. It came into force on February 15, 2016, and comprises 10 parts and 50 sections covering various important aspects related to *waqf*, including establishment, *istibdal*, development, management, and financial matters.

Unlike the other state discussed above that has established a specific unit in administering the w*aqf* properties, MAIPk has placed most of the *waqf* affairs within a larger division, namely the *Bahagian Pengurusan dan Pembangunan Mal dan Wakaf* (BMW). BMW is divided into two other units, namely the Property Development Unit and also the *Waqf* Management Unit. The marketing function of *waqf* products such as cash *waqf* is separated from the development function and placed under the Marketing Division[291].

Under the Property Development Unit, their scope of duties includes managing and developing land assets such as *waqf* land and *waqf* buildings. Some examples of the *waqf* buildings include the Islamic institutions, mosques, suraus, graveyards, *tahfiz* schools, and orphanages whereby the unit will be handling matters related to land, home or mosque to be transferred as *waqf*.

As to the *Waqf* Management Unit, this particular unit will be focusing on the *waqf* fund received under *Wakaf* Perak Ar-Ridzuan (WPAR). Thus, this unit will focus

[291] A. N., Nazeri, N. A., and Ab Rahman, A. A. "*Peranan Wakaf dalam Pembangunan Ekonomi di Negeri Perak: The Role of Waqf in the Economic Development of Perak*." Jurnal Fiqh 18, no. 1 (2021): 169–216.

solely on all projects based on WPAR meaning that all projects based on WPAR will be managed under the *Waqf* Management Unit [292].

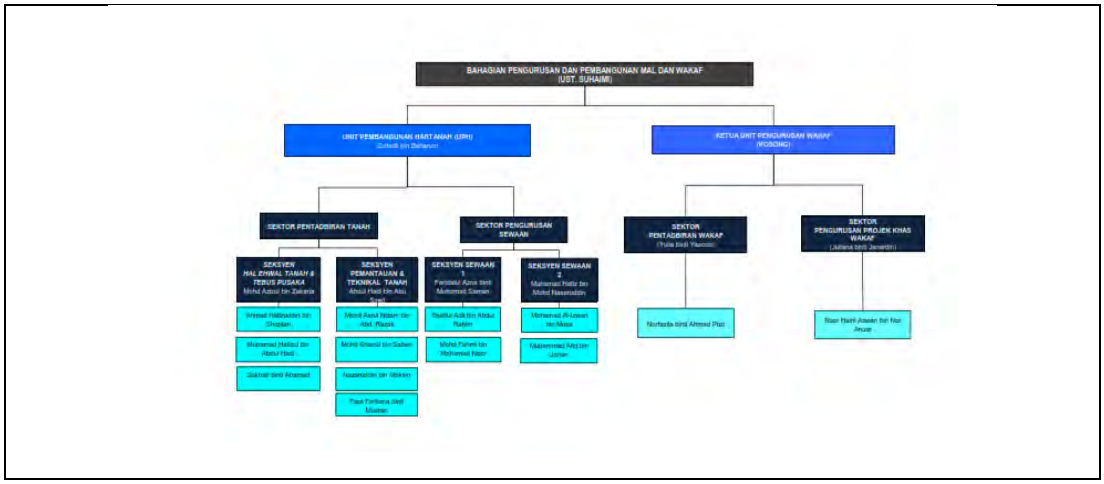

Figure 3.3: Organisational Chart of Waqf Division in Perak
Source :Waqf Perak official website at https://wakafperak.gov.my/portal/index.php/ms/info-wpar/struktur-organisasi

Section 38 of Part IX of the Perak *Waqf* Enactment provides that the *waqf* funds obtained may be invested according to *Shariah* principles. This includes investing *waqf* funds in *Shariah*-compliant banks, *Shariah*-compliant investment institutions, and in securities issued by state and Federal governments that adhere to *Shariah* principles. This approach ensures that the returns from *waqf* fund investments are utilized ethically and in accordance with Islamic *Shariah* guidelines.

Hence, WPAR has formed a systematic way of handling all the *Waqf* Fund. This fund (WPAR) generally consists of three basic components that form the fund. Firstly, cash *waqf* enables the community to donate or to give *waqf* without earmarking funds for any specific project. Contributions to this cash *waqf* will be utilized by MAIPk for the

[292] Ibid, 132.

general welfare of the Muslim community or to support projects under WPAR in situations where specific projects lack sufficient funds. The second component involves project-based funds, where donations are specifically allocated to projects identified by MAIPk for the development of *waqf* assets. Meanwhile, the third component involves investment aspects in collaboration with Maybank Islamic. Maybank will contribute additional funds to every ringgit of their donation[293] .

3.2.5 *Waqf* Law in the State of Terengganu

Just like any other state, Terengganu places its power to administer and manage w*aqf* land to the State Religious Council. As in Terengganu, Majlis Agama Islam dan *Adat* Melayu Terengganu (MAIDAM) is responsible to legislate and enforce the law on the management of *waqf* in Terengganu. This authority was specifically provided in Section 63 of the Administration of Muslim Law Enactment (Terengganu) 2001 and the Terengganu *Waqf* Enactment (2016) which governs *waqf* matters in Terengganu. Section 4 of the Enactment provides on power of Majlis (MAIDAM) which includes:

a. The Majlis shall be the sole trustee for all waqf situated within the state of Terengganu;

b. The Majlis, as the sole trustee for any waqf property (mawquf) situated within the state of Terengganu, may be designated as mawquf 'alaih for any such mawquf;

[293] Muhammad, F., Razak, A. A., Awang, S. A., Hussin, M. Y. M., and Aliyasak, M. Z. I. "*The Awareness Level among the Perak Muslim Community towards the Perak Ar-Ridzuan Waqf*." Sains Humanika 11, no. 3 (2019). https://doi.org/10.11113/sh.v11n3.1524.

c. The Majlis may establish a corporation or company under the Companies Act 1965 [Act 125] to carry out any activities of the Majlis in fulfilling its obligations and powers under this Enactment;

d. The Majlis may be designated as mawquf 'alaih for any mawquf located outside of Terengganu, and for this purpose, the Majlis may enter into any arrangements with the trustee of such mawquf;

e. The Majlis may appoint or grant permission to any party to manage, administer, and hold any mawquf on its behalf;

f. The Majlis may establish any waqf scheme or approve any institution to establish any waqf-related scheme; and

g. The Majlis shall be responsible for taking any action against any encroachment upon waqf assets.

Under MAIDAM, the administration of *waqf* was put under the *Waqf* Section. This section is headed by a Senior Assistant Secretary, (*Penolong Kanan Setiausaha* (PKSU)) who is responsible for all matters concerning *waqf* land.

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Figure 3.4 : Organisation Chart of MAIDAM

Source : MAIDAM official website at https://www.maidam.gov.my/index.php/en/profil/organisasi/carta-organisasi

With regards to its rule and regulation, the Terengganu *Waqf* Enactment (2016) has provided in detail the substantive and procedural law on *waqf*. The Enactment contains 62 Section divided into 13 parts and two schedules. Among the matter provided in the Enactments is on the authority and responsibility of Majlis, the w*aqf* committee, the establishment of w*aqf*, *mawquf* (*waqf* property), *mawquf alaih*, *waqf* by will, cash *waqf*, determination of the Islamic law (*hukum syarak*) and on offences and penalties involving *waqf* properties.

To develop all the *waqf* lands, MAIDAM has categorised the project on development of *waqf* into four sectors, religious, commercial, education and social welfare sectors. . The development of these *waqf* projects also were derived from the collection of cash w*aqf*. MAIDAM's approach to cash *waqf* involves directing accumulated funds towards creating permanent assets that generate revenue or benefits. These assets include mosques, business premises, buildings, industrial facilities, and others. The income generated from these assets is then distributed to eligible beneficiaries in sectors such as health, education, religion, and social welfare[294].

3.2.6 *Waqf* Law in the State of Pahang

Before, the governing law on *waqf* in Pahang is the Islamic Religious Administration Enactment 1991 along with the Pahang *Waqf* Fund Rules 2015 and the *Majlis Ugama Islam dan Adat Resam Melayu Pahang* (MUIP) as the SIRC of Pahang are responsible as the sole trustee on all *waqf* properties in Pahang.

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The governing law on *waqf* in Pahang has begun as early as December 1998, whereby MUIP has established the Pahang *Waqf* Share unit to administer all *waqf* properties based on the authority and regulations given under Section 70-80 of the Islamic Religious Administration Enactment 1991. For a better administration, the Pahang *Waqf* Share Fund Rules 1998 was legislated. However, consequently on June 2015, improvement was made by MUIP in the Rules through legislation of the new *Waqf* Fund Rules 2015. The *Waqf* Share unit was also being renamed as the Pahang *Waqf*

[294] Ummi Shahirah, M. Y. "*The Factors that Influence the Awareness of Cash Waqf among Muslim Community in Kuala Terengganu*." Master's thesis, Universiti Utara Malaysia, 2020.

Fund. In hope of a smooth operation of administration of the *Waqf* Fund, the *Waqf* Committee under MUIP was established.

Pursuant to the establishment of the MUIP *Waqf* Committee, in the year 2020, during the 180th Full Meeting of MUIP, convened on August 5, 2020, it was decided that the operations of the Pahang *Waqf* Fund be removed or separated from the administration of the Pahang Islamic Religious Council and managed by the Pahang *Waqf* Collection Center until the establishment of a new entity for the Pahang *Waqf*. Now, the Pahang *Waqf* Fund is known as *Waqf* Pahang.

As Pahang *Waqf* now has its own entity responsible for administration, there is a need for its own specific legislation too. Thus, on 13th October 2022, the new *Waqf* Pahang Enactment 2022 was enacted and began to be enforced to govern all matters on *waqf* in the State of Pahang on 17th August 2023.

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The organizational structure of the *Waqf* Committee starts with the Deputy Chairperson at the top, followed by the *Waqf* Committee. Below him is the Chief *Waqf* Manager, who oversees both the *Shariah* Panel and Internal Audit. Reporting to the Chief *Waqf* Manager is the Deputy Chief *Waqf* Manager and Under the Deputy Chief *Waqf* Manager, there are several departments such as the Management Services, which includes the Administration and Services Division and the Finance and Accounts Division, with a sub-section for Distribution; Corporate, comprising the Preaching Division and the Marketing Division; Information Technology; Development, which consists of Property, External Cooperation, and Research; and finally, Operations, which includes the Collection and Salary Deduction sections.

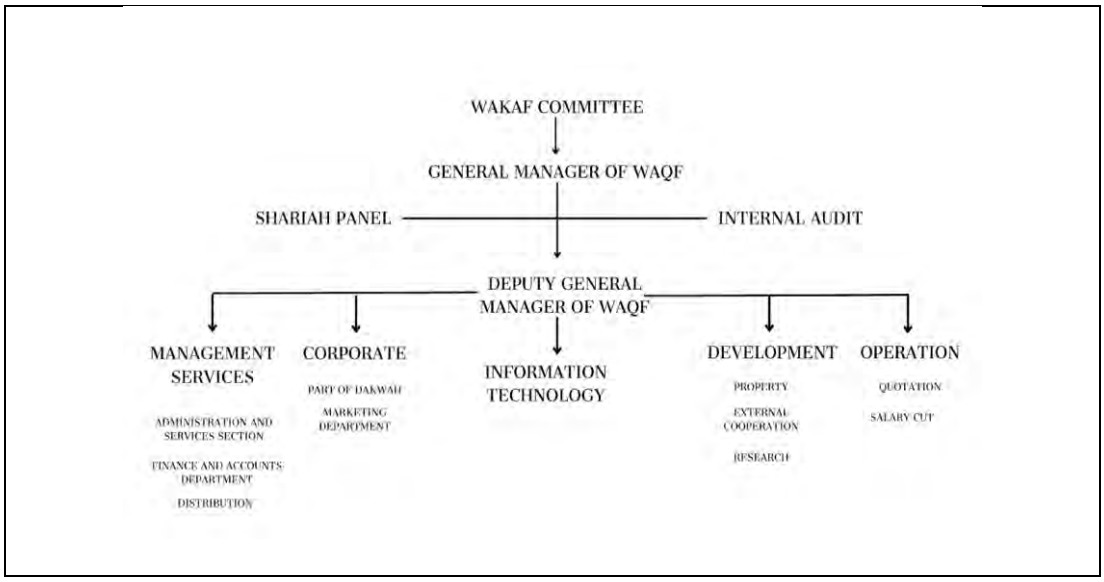

Figure 3.5 : Organisational Chart of Pahang Waqf Committee

Source : researcher's own

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Apart from having its own *Waqf* Committee with a very detailed scope of duty in each division, another initiative of MUIP on managing the *waqf* properties is by appointing an administrator for the *waqf* properties. This is pursuant to the power provided under Section 4(d), 4(e) dan 9(d) of the Pahang *Waqf* Enactment 2022. In fact, w*aqf* Pahang has even provided very detailed guidelines for the Appointment of Special *Mutawalli* which may be found on their official website, *Waqf* Pahang.

3.2.7 Waqf Law in Sabah

The governing law on *waqf* in Sabah is based on the Sabah State Islamic Religious Council Enactment 2004 and the *Waqf* Enactment (State of Sabah) 2018[295]. However,

[295] H.,Dzulkifli. "*Pindaan Enakmen Wakaf Negeri Sabah Lulus*." Harian Ekspress, Accessed June 10, 2024. https://www.dailyexpress.com.my/news/213534/pindaan-enakmen-wakaf-negeri-sabah-lulus/.

a new amendment towards the *Waqf* Enactment was passed and began to be in force on 14th of February 2023 and named as *Waqf* Enactment (State of Sabah) (Amendment) 2023. Among the amendment made to the 2018 Enactment is:

a. to amend subsection 8(1) of this Enactment to specify the qualifications of the Chief Registrar of Waqf
b. to replace section 9 of this Enactment to specify the basic principles of waqf according to Islamic law
c. to introduce new sections 9A, 9B, 9C, and 9D to specify the qualifications of the waqif, types of waqf, use of property as 'mawquf', and creation of waqf.
d. to amend section 12 of this Enactment to expand the powers of the Chief Registrar of Waqf to issue waqf registration certificates.
e. to include/introduce new section 19A to empower the Chief Registrar of Waqf to issue guidelines or directives
f. to amend paragraph 20(1)(a) of the Enactment to include joint owner's consent (property owner) as one of the conditions of 'mawquf'.

The administration of *waqf* in the state of Sabah is managed by the Sabah Islamic Religious Council (MUIS) under the Sabah State Islamic Religious Council Enactment No. 5 of 2004, where the Council acts as the sole trustee of *waqf*. The *waqf* management system in Sabah, particularly in Kota Kinabalu, was enhanced with the establishment of a dedicated department for *waqf* in the year 2010. This *waqf* department is led by the Chief Assistant Secretary of *Waqf* and *Baitulmal*, responsible for overseeing *waqf* management in Sabah.

Since its establishment in 2010, several plans have been made to develop existing *waqf* properties in Sabah. Development plans for these *waqf* properties have been devised through collaboration between two different bodies, namely the Department of *Awqaf, Zakat* and *Hajj* (JAWHAR) and the Sabah Economic Development Corporation (SEDCO) [296].

[296] Siti, Putung, Ag. Damit, Saini, Mohad Abd Hakim, Mohd Mokhtar, Ros, and Ag. Basir, Dg. Hafizah. "Amalan Wakaf Di Sabah: Satu Tinjauan Awal." In *Proceedings of the International Conference Islam Borneo VI*, 18-19 (2013).

3.3 The Unregulated *Waqf* Law States

Differs from the state with regulated *waqf* law state as discussed above, the State of Kelantan, Pulau Pinang, Kedah, Perlis, Sarawak, the Federal Territories and Johor do not have a specific enactment on *waqf* in their respective states and *waqf* in these states were governed by Administration of Islamic Religion Enactments.

3.3.1 *Waqf* Law in the state of Kelantan

In the state of Kelantan, their SRIC or known as *Majlis Agama Islam dan Adat Istiadat Melayu Kelantan* (MAIK) act as a sole trustee on *waqf* properties under the authority provided by Section 61 of the Islamic Religious Council and Malay Custom Enactment (Kelantan) 1994. The governing law on *waqf* can be found in Section 61 and 67 of the 1994 Enactment which provides for the power of MAIK as sole trustee on *waqf* properties, vesting of *waqf* land, restriction on *amanah khairat*, income and revenue from *wakaf khas*, capital assets on *wakaf* am and on the *suratcara* or declaration of *waqf* property (to be referred to *Jamaah Ulama* on uncertainty).

As of now, the management of *waqf* is under the Development Division (*Waqf* Unit) of MAIK with seven staff members in the unit. Previously, this unit was merged with the *Baitumal* Unit under the Inheritance Assets Division. However, now it has been separated and placed under the Development Division (*Waqf* Unit). As *waqf* has been a longstanding practice in Kelantan, there are still *waqf* assets that have not been

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handed over to MAIK and do not comply with the law. MAIK cannot intervene in terms of these *waqf* assets from the donors' property perspective[297].

The forms of *waqf* administered by the *Waqf* Unit (MAIK) include cash *waqf*, land *waqf*, and property *waqf*. Cash *waqf* may be transferred through the account number provided by the *Waqf* Unit in their website *e-Waqaf* Tunai MAIK, by walk in to the *Waqf* Unit office and as for *waqf* land, the individual can also walk in to the *Waqf* Unit office and bring along the land title of *waqif*. However, the officer in charge must first look at the suitability of the land.

Just like any other state, the practice in Kelantan is that cash *waqf* will be converted into permanent asset forms. However, the decision to convert cash *waqf* into permanent assets is based on the view of the Kelantan Mufti through the meeting of the Council of Scholars (*Jemaah Ulama*). However, unlike Johor and Selangor, Kelantan did not have any *waqf* share scheme to be offered in their state.

3.3.2 *Waqf* Law in the State of Perlis

The management and oversight of *waqf* affairs in Perlis are overseen by the *Majlis Agama Islam dan Adat Istidadat Melayu Perlis* (MAIPs). This aligns with the regulations set forth in Perlis state law, specifically Clause 4 of the Islamic Religious Administration Enactment No. 3/1964, which designates MAIPs as the primary institution responsible for advancing the socioeconomic development of Muslims, including the management of *waqf* properties.

[297] Kamdari, M. N. A., Karim, A. M. R., et al. "Tadbir Urus Wakaf: Satu Kajian di Negeri Kelantan." *Journal of Islamic Philanthropy & Social Finance* 1, no. 2 (2017).

MAIP, serving as the sole trustee of *waqf* in Perlis, is entrusted with the management and oversight of all affairs concerning the *waqf* properties of Muslims in the state. This responsibility aligns with the provisions outlined in Section 89 of the Islamic Administration Enactment 2006. Besides, the Islamic Administration Enactment 2006 is actually the only law governing *waqf* matters in Perlis. The provision on *Waqf* can only be found under Section 90 until Section 95 which similarly discuss the same matter on *waqf* as the state of Kelantan.

The administration structure in MAIP consists of a Chief Executive Officer that oversees three divisions: *Waqf* Management Division, Management & Secretarial Services Division, and *Waqf*, Property & Asset Development Division. Within the organisation, MAIP has established a *Waqf* Unit under the *Waqf*, Property & Asset Development Division.

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Eventually, Cash *Waqf* Am will be managed by MAIPs management for any *waqf* projects that will be beneficial, such as health, education, social segments, and so on. Benefit distribution depends on the needs and considerations of MAIPs as the sole trustee of *waqf* properties and trusts. While Cash *Waqf* Khas will be used and administered by MAIP to distribute Al-Quran to the community, to build and/or for the maintenance of mosque, the Muslim cemetery, the autism and community centre and also to fund programmes on education for certain universities such as UniMAP, UiTM and KUIPs.

3.3.3 *Waqf* Law in the State of Kedah

In the state of Kedah, the administration and management of *waqf* properties fall under the *Waqf* Division of the Kedah State Islamic Religious Council. The administration of the *waqf* consists of the *Yang Dipertua*, a Secretary of the Council, a Head of the *Waqf* Division, an Assistant Head of the *Waqf* Division, and is assisted by three assistants, namely an Islamic Affairs Assistant and two Administrative Assistants. Additionally, within the *Waqf* Division, there are several units, namely the Registration and Records Unit, the Cash *Waqf* Unit, and the Administration Unit, as outlined in the organizational chart for the administration of *waqf* properties in the state of Kedah.

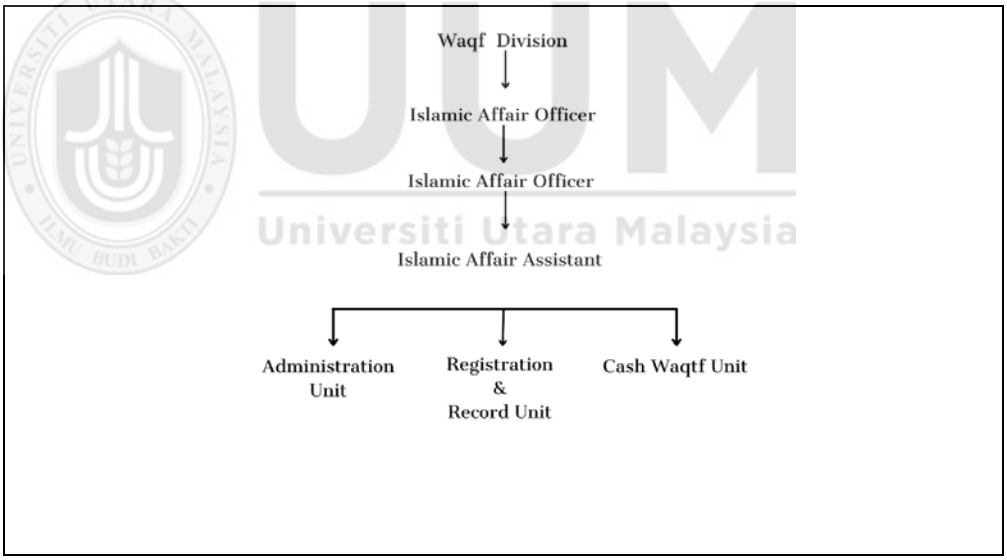

Figure 3.6: Organisation Structure of Waqf Division in Kedah

Source : Researcher's Own

The *Waqf* Division plays its role in managing the *waqf* properties by:

a. Managing the application process,

b. Coordinating *waqf* property records,

c. Managing *waqf* property rentals,

d. Receiving and coordinating *waqf* revenues,

e. Managing applications for the use of *waqf* revenues,

f. Conducting investigations into properties that will be given as *waqf*,

g. Organizing the development planning of *waqf* properties,

h. Managing the acquisition process at the council level and controlling encroachment activities on *waqf* properties,

i. Preparing annual and progress reports on *waqf*.

Additionally, this *Waqf* Division also runs campaigns to encourage the public to engage in the practice of *waqf*. These campaigns also aim to raise awareness among the community about the importance, influence, and impact of *waqf* practices on the country and the Muslim community[298].

In the state of Kedah, the laws related to *waqf* are provided under the Islamic Religious Administration Law (No. 9) of 1962. This law stipulates that *waqf* properties in the state of Kedah are vested in and belong to the Kedah State Islamic Religious Council (MAIK) as the sole trustee of *waqf* properties, whether they are general *waqf* or specific *waqf*. Therefore, MAIK acting as the nazir or al-*mutawalli* are responsible for administering and managing all *waqf* properties efficiently and effectively, as well as developing and advancing *waqf* properties in Kedah Darul Aman. The Islamic Religious Administration Law was established in 1962, concurrently with the establishment of the Kedah State Islamic Religious Council as a State Government Statutory Body.

[298] Noor, A. M., Ghazali, A. Z., and Mat Rani, M. A. "*Pengurusan Dan Pembangunan Harta Wakaf Di Negeri Kedah Darul Aman."* Jurnal Pengurusan JAWHAR 10, no. 1 (2016): 41-58.

However, in 2008, the Kedah State Government has passed the Islamic Legal Administration Enactment (Kedah Darul Aman) 2008 to replace the Kedah State Islamic Religious Administration Enactment No. 9 of 1962 with the aim of improving and standardizing Islamic laws among the states in Malaysia. Although the Enactment regarding Islam in Kedah has changed, any *waqf* that was valid under the previous Enactment remains valid under this new Enactment. Furthermore, any specific *waqf* made after this section comes into effect is null and void unless it is explicitly approved and validated by His Royal Highness the Sultan on the advice of the Council. Additionally, any *waqf* that exceeds one-third of the endower's property at the time of *Marad al-Maut* (deathbed illness) is invalid, whether it is made by will or otherwise[299].

Under this law, there is also a provision in subsection (3) which states that the income received by the Council from a specific *waqf* must be used in accordance with the valid provisions for that specific *waqf*, while the income obtained from each *waqf*, other than specific *waqf*, shall become part of the *Baitulmal*. The Council may also impose any fees at a rate determined by the Council for the management of specific *waqf*, and these fees shall be deducted from the income of that specific *waqf* and credited to the Council as revenue. This law is implemented by the Kedah State Authority in accordance with its powers, where matters related to religion, including *waqf*, are listed under List II, State List, Ninth Schedule of the Federal Constitution, which provides that the states in Malaysia have the authority to legislate on matters mentioned in the list.

[299] Ibid, 147.

3.3.4 *Waqf* Law in the State of Pulau Pinang

In the state of Penang, since 1905, *waqf* land administration has followed the British colonial system and was overseen by the Muslim and Hindu Endowments Board 1905 (MAHEB). Further in 1959, the Islamic Religious Administration Law Enactment 1959 has established the *Majlis Agama Islam Negeri Pulau Pinang* (MAINPP). By the authority provided under Section 89 (2) of this enactment, MAINPP gradually assumed control over all *waqf* lands previously managed by MAHEB. This transition of *waqf* land administration to MAINPP was completed on January 1, 1967. Currently, all regulations concerning *waqf* are outlined in the Administration of the Religion of Islam (State of Penang) Enactment 2004.

As stipulated in the Administration of Islamic Religious Affairs Enactment 1993 under Section 92, MAINPP as the sole trustee are responsible for the development of the land for the benefit of Muslims. Section 93 of the same enactment empowers the Council to initiate and assert rights over and register all *waqf* lands mentioned in Section 92 under any relevant land laws. The authority for *waqf* administration in Penang is further defined in the Administration of the Religion of Islam (State of Penang) Enactment 2004. Sections 89 to 95 of this enactment grant MAINPP powers as the sole trustee for the placement, management, and control of *waqf* properties. Through Section 89, MAINPP assumed the role of trustee, departing from previous practices discussed above[300] .

[300] A., Abdullah, Ibrahim, M. N. A., Shaimi, S., Baharuddin, A. S., and Harun, M. A. W. "*Cabaran Pengurusan Harta Tanah Wakaf: Kajian Kes Terhadap Pengalaman Majlis Agama Islam Negeri Pulau Pinang (MAINPP)*." Ulum Islamiyyah 33, no. 1 (2021): 85-97.

Under MAINPP, the *Waqf* Division in Pulau Pinang was placed under the *Baitumal* with four main units placed under the Division which is the Premises Management and Maintenance Unit, *Waqf* Fund Management Unit, Land and Property Development Unit, the Administration of Land Unit and the Development Unit.

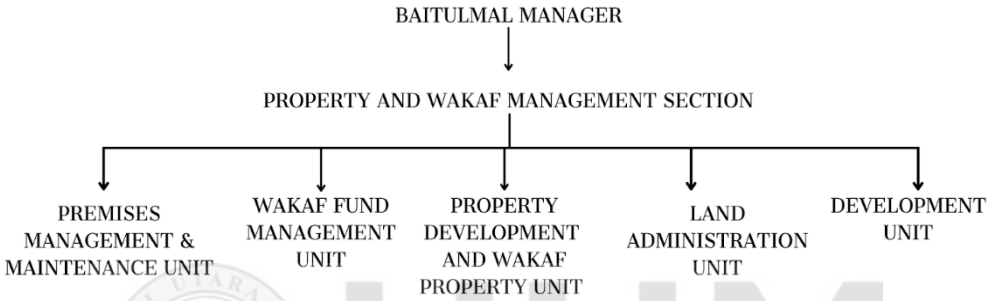

Figure 3.7: Organisational Structure of Waqf Division in Pulau Pinang

Source: Researcher's Own

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The growth of *waqf* property in MAINPP is based on a number of fundamental principles, including the prohibitions against sale, inheritance, and endowment. These guidelines are consistent with the definition of *waqf* given by Islamic law. The Sixteenth *Fatwa*, which addresses the law pertaining to the transfer of some *waqf* land to the government, was published by the Department of Islamic Development Malaysia (JAKIM) and is also referred to by MAINPP.

Furthermore, with regards to application, MAINPP adheres to the following several *waqf* land development principles which is:

i. MAINPP owns Permanent Land in a trustee capacity.

ii. Form 15A is used for leasing the land.

iii. The land cannot be sold, pledged, or mortgaged.

iv. MAINPP has the authority to lease the land for a period of 99 years to the lessee.

v. Upon the lease's expiration, the land reverts to MAINPP.

vi. The lessee can apply to MAINPP to extend the lease term after it expires.

One of the efforts made by MAINPP to develop *waqf* land in Pulau Pinang is by having MAINPP and Syarikat Wakaf Pulau Pinang Sdn. Bhd (WPPSB), a wholly-owned subsidiary of MAINPP, to form a joint venture with the developer to execute the property development idea and ensure the project's success. With this joint venture approach, MAINPP and WPPSB split the roles, expenses, and profits with the developer.

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3.3.5 *Waqf* Law in Sarawak

As to the state of Sarawak, the management of *waqf* in Sarawak has been combined by the state government under the *Tabung Baitulmal* Sarawak (TBS) which was incorporated under the Sarawak Islamic Council Ordinance (Incorporation) (Amendment) 1984.

TBS is in charge of collecting, managing, and distributing w*aqf* and *waqf* funds within the state. TBS is governed by the Islamic Religious Council of Sarawak (Majlis Islam Sarawak, MIS), pursuant to Sections 43 and 51 to 54 of the Sarawak Islamic Council

Ordinances 2001, which provide that Muslim property must be administered in line with Islamic law. Thus, MIS is in charge of overseeing the administration of Islamic affairs in Sarawak, which includes *waqf* and *zakat* collection and distribution.

TBS hopes to guarantee successful distribution, appropriate administration, and efficient collecting of funds for the benefit of Sarawak's Muslim community by merging the management of *waqf* and *Waqf*. Thus, TBS roles in *Waqf* management in Sarawak is that MAIS to act as a *Waqf* Trustee in accordance with the power and guidelines provided under Sarawak Islamic Council Ordinances 2001 and the Majlis Islam Sarawak (Administration of *Wakaf*) Rules, 2008 and TBS as a Registrar of *Waqf* under authority given by the same Rules.

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3.3.6 *Waqf* Law in Federal Territories

The Federal Territory Islamic Religious Council (MAIWP) was founded on February 1, 1974, concurrently when the Federal Territory of Kuala Lumpur was formed. It was established to handle Islamic matters in the Federal Territory of Kuala Lumpur, which was formerly governed by the government of Selangor. Then, the management of Muslim affairs in Labuan and Putrajaya was subsequently the responsibility of MAIWP, following their declaration as Federal Territories on April 16, 1984, and February 1, 2001, respectively. The goal of the MAIWP is to build a modern, vibrant Islamic society that always strives for Allah SWT's pleasure. In order to attain ummah unity, it also strengthens the Islamic world and increases faith among Muslims in the Federal Territory, particularly in Malaysia.

The goal of MAIWP is also to prevent and alleviate disadvantages within the Muslim community, and to work with them to expand the organization's assets through investments and other halal endeavours that will benefit the ummah. This include overseeing investments and adding assets bought from *waqf* businesses.Currently, PPZ-MAIWP fully manages the administration of MAIWP's waqf (endowment) funds. This includes the collection and distribution of waqf funds, as well as the implementation of waqf projects for the benefit of the community.

In legal perspective, *waqf* in Federal Territory is administered under the Islamic law (Federal Territories) Act 1993 (act 505), which states that, regardless of any provision in any instrument or declaration creating, controlling, or affecting the matter, Majlis shall be the sole trustee of all *waqf*, whether general or special, all general *nazr*, and all trusts of any description creating any charitable trust to support and promote Islam or for the benefit of Muslims, provided that the trust is established in accordance with *Shariah* law[301].

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In addition, PWM has carried out a number of other *waqf* projects, including *Darul Hidayah, Darul Kifayah, and Darul Ilmi. Darul Ilmi* was founded as a facility to offer senior folks who wish to expand their religious knowledge schooling in line with the cottage system. The center does not follow the model of a senior care facility, but rather an Islamic study that is situated in cottages and offers lodging. In the meanwhile, the Darul Hidayah complex serves as a one-stop shop for visitors. The complex's building demonstrates MAIWP's commitment to supporting immigrants in the nation.

[301] Aimi Fadzirul, Kamarubahrin, Abdullah Mohammed Ahmed Ayedh, and Khairil Faizal Khairi, "*Accountability Practices of Waqf Institution in Selected States in Malaysia: A Critical Analysis*," *International Journal of Economics, Management and Accounting* 27, no. 2 (2019): 331–352.

Darul Kifayah was established to protect the welfare of abandoned children, *asnaf (the poors)*, and low-income students by offering them temporary housing, moral and religious direction, and top-notch educational resources in an attempt to raise morally upright citizens[302].

Additionally, PWM collaborates with *Yayasan Wakaf Malaysia* (YWM), other Islamic banks such Bank Islam, Bank Muamalat, and CIMB Islamic, as well as strategic partners for PWM *waqf* collection.PWM intends to persist in executing socialization initiatives aimed at introducing *waqf* practices across the community, with a particular focus on enhancing the *asnaf* economy within the Federal Territory.

3.3.6 *Waqf* Law in the State of Johor

Initially, Johor actually introduced its *Waqf* Enactment 1973. However, this *waqf* law was repealed, and its contents were incorporated into the Administration of Islamic Religion Enactment 1978 (En. 14/1978), which was subsequently replaced by the Administration of Islamic Religion Enactment (State of Johor) 2003 (En. 16/2003), effective from 2003 onwards[303] Johor also implements its *waqf* regulations through the Johor *Waqf* Rules of 1983.

[302] Ibid, 153.
[303] Mahamood, S. M. "*Perundangan Wakaf dan Perkara-Perkara Berbangkit*." Kertas kerja dalam Konvensyen Wakaf Kebangsaan 2006 anjuran Jabatan Waqaf, *Waqf* dan Haji (JAWHAR), Legend Hotel, Kuala Lumpur, 2006.

However, as of 2024, a new *Waqf* Enactment has been submitted and is under review by the State Legal Advisor before being discussed at the State Assembly level. In this new enactment, all regulations from the Johor *Waqf* Rules 1983 will be incorporated.

Nonetheless, previously the rules and regulation on *waqf* can be found under section 89 until 95, under Part VI of the Islamic Religion Enactment (State of Johor) 2003 (En. 16/2003), which are put together as *Waqf, Nazr* and Trust (*Amanah*). The provision provides on Majlis as the sole trustee for *waqf*, the vesting of *waqf* property on Majlis, restriction for the establishment of *amanah khairat*, income or revenue from *waqf* properties, the *waqf* capital, the interpretation of the deed regarding *waqf* and the publicizing the list of *waqf* assets

The Administration of Islamic Religion Enactment (State of Johor) 2003 (En. 16/2003) provided that all *waqf* affairs will be administered by the Majlis Agama Islam Negeri Johor (MAINJ). According to Section 89 of Enactment 16/2003, MAINJ is the sole trustee for all *waqf* properties located in Johor, with its objective to support and develop Islam for the benefit of Muslims according to *Shariah law*. For this purpose, a unit called the *Waqf* Division has been established.

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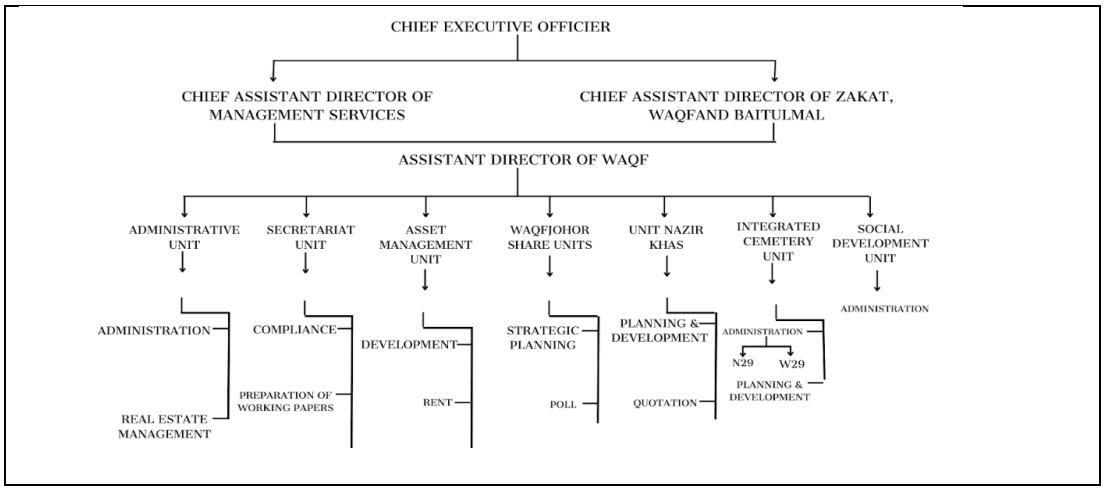

Figure 3.8: Organisational Chart of Waqf Division of Johor

Source: researcher's own

According to scholar, among the functions of the *Waqf* Division is to manage and administer the *Waqf* Fund Group as the Trustee of *Waqf* and to act as the trustee of assets endowed by Muslims for specific purposes[304]. In its official website, the *e-WakafJohor*, the scope of duty of the Wakaf Division includes:

a. Administering the waqf assets.

b. Registering the waqf assets.

c. Distributing waqf assets according to the purposes specified by the waqif.

3.4. The Position of *Fatwa* and Its Influence on Legal Framework

3.4.1 Introduction

In Malaysia, the legal structure governing Muslims' personal and religious life is shaped in large part by the role of *fatwas*, or Islamic legal rulings. A State *Fatwa*

[304] N. H. N. Muhamad, A. H. Abdullah, S. S. M. Noor, and M. R. Rosli, "Wakaf di Negeri Johor: Latar Belakang dan Potensi," *UMRAN - International Journal of Islamic and Civilizational Studies* 6, no. 2–2 (2019), https://doi.org/10.11113/umran2019.6n2-2.380.

Committee's pronouncement on a question of Islamic faith provides direction on everything from theological matters to more pragmatic matters like property rights, family law, and *waqf*. But given that their place in the legal hierarchy frequently interacts with statutory law, administrative rules, and constitutional principles, the legal standing of *fatwas*, particularly in Malaysia's secular courts, needs close scrutiny.

The State *Fatwa* Committees are principally responsible for issuing *fatwas* in Malaysia. These *fatwas* are meant to provide Muslims with guidance on matters of faith and function as legal views grounded in *Shariah*, the Islamic legal principles. However, *fatwas* need to be institutionalized by statutory procedures, such being gazetted by the state, in order to have legal authority beyond religious instruction. *Fatwas* that have been gazetted bind Muslims in that state legally. All this would apply to matters governing *waqf* as well.

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There are several Malaysian case laws that address the position of *fatwas* within the legal framework, especially concerning how *fatwas* are treated by the courts in matters of Islamic law. As in *Syed Abu Bakar bin Ahmad Alsagoff v. Mohd Zainal Abidin bin Abdul Mutalib* [305], the court in this instance looked at a *fatwa* about *waqf* and inheritance. The State Religious Councils' *fatwas*, according to the court, provide authoritative advice on Islamic topics; nonetheless, they must be compliant with statute law. This case demonstrates the ways in which *fatwas* and civil law interact, particularly where religious law and statute provisions collide.

[305] *Syed Abu Bakar bin Ahmad Alsagoff v. Mohd Zainal Abidin bin Abdul Mutalib*, [2016] 4 CLJ 835 (Court of Appeal, Malaysia).

That being said, the Federal Court addressed the power of *fatwas* with regard to decisions made by Islamic religious bodies in *Majlis Agama Islam Wilayah Persekutuan v. Victoria Jayaseele Martin* (2016)[306]. It was reiterated that once gazetted, *fatwas* are legally binding on Muslims, especially when it comes to questions of faith overseen by the state's Islamic religious authorities. Nonetheless, the court also stressed that when implementing *fatwas* in administrative decisions, compliance with procedural and constitutional norms is vital.

Another case to be referred is the case of *Tengku Zainul Akmal Tengku Besar Mahmud & Anor v. Majlis Agama Islam Dan Adat Melayu Terengganu*; SPPT Development Sdn Bhd (Intervener) (2012) whereby court has emphasized in this case that *fatwa* issued by Mufti of Terengganu are binding upon all parties and imposed clear emphasis that parties are prohibited from contravening the *fatwa*.

In the most current case of *SIS Forum (Malaysia) & Anor v. Jawatan Kuasa Fatwa Negeri Selangor*[307] Federal Court has decided that the *Fatwa* from *Jawatan Kuasa Fatwa Selangor* binds the Muslim Community as individuals and does not bind an organization like SIS Forum (Malaysia) as they have no entity as individual even to say a prayer (*shahadah*).

3.4.2 *Fatwa* on *Waqf* in Different States

As of 2023, the state of Selangor through PWS has compiled fifty (50) *fatwas* and opinions from the Selangor Mufti Department concerning the management of *waqf* in

[306] Ibid, 23.
[307] (2025) Civil Appeal No: 01(f)-23-09/2023(W).

Selangor. These *fatwas*, decided through meetings of the Selangor *Fatwa* Committee, cover a range of topics. There are twenty-four (24) *fatwas* on general *waqf* management, providing principles for effective administration in line with Islamic law. Eight *fatwas* address both general and specific *waqf*, outlining the purposes they serve.

Additionally, two *fatwas* highlight the benefits of *waqf*, emphasizing its role in community welfare. Guidance on land acquisition for *waqf* purposes is given in two *fatwas*, while eight *fatwas* discuss *istibdal*, the exchange of *waqf* land for better utility. Four (4) *fatwas* focus on financing operational costs associated with managing *waqf* properties, ensuring their sustainability, and two *fatwas* pertain to the planning of development projects funded by *waqf*. This comprehensive collection of *fatwas* reflects a structured effort to provide clarity and guidance for *waqf* administrators, ultimately enhancing the effectiveness and social impact of *waqf* management in Selangor.

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One of the *waqf* development projects that was influenced by *Fatwa* is the development of the Taman Impian Kasih housing project by the Selangor Islamic Religious Council (MAIS) at Jalan Kebun. The project has received approval from the Selangor *Fatwa* Committee. MAIS, through the Selangor *Waqf* Corporation (PWS), to engaged in discussions with the committee to address any potential issues regarding the development in the area.

Abu Bakar Yang, the CEO of PWS, stated that the discussions resulted in a positive outcome, marking this project as a pilot for future *waqf* land developments in Selangor. He emphasized that *waqf* land cannot be sold, inherited, or gifted; instead, homes built

on such land are leased, with approval from the *Fatwa* Committee. The committee has clarified that any development on *waqf* land, such as housing, must be done through leasing. Additionally, the transfer of land to local authorities for the development of infrastructure like roads and streetlights is permitted, provided that the value of the development exceeds the land price.

As in Perak, the *fatwa* on *waqf* land in Perak can indeed be found on the Perak Mufti Department website. One notable *fatwa* that has been gazetted concerns the use of special *waqf* for mosques. It states that unused special *waqf* land designated for a mosque can be replaced with another site, provided that the new site has equal or greater value. This is based on the principle of *istibdal* (exchange). This *fatwa* allows for flexibility in managing *waqf* properties while ensuring that their purpose is maintained.

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In Terengganu, the influence of *fatwa* is evident in the application of cash *waqf*. The National *Fatwa* Committee's 77th meeting, held from April 10 to 12, 2007, determined that donating in the form of cash *waqf* is permissible in Islam. Additionally, the 7th meeting of the Terengganu *Fatwa* Committee, convened on January 31, 2007, approved the implementation of a Cash *Waqf* Scheme. This reflects a progressive approach to *waqf* management, allowing for greater flexibility and encouraging community contributions in financial form, ultimately enhancing the social welfare impact of *waqf* in the state.

In Pahang, the most recent *fatwa* concerning *waqf* projects was issued in 2021 during the 1st Meeting of the Pahang State *Shariah* Advisory Committee, which took place

on February 25, 2021. This meeting marked a significant step in enhancing the management and administration of *waqf* initiatives within the state.

The *Fatwa* committee unanimously agreed to grant the appointment of *Bank Muamalat Malaysia Berhad* (BMMB) as the official collection agent for cash *waqf* contributions. This strategic partnership aims to streamline the collection process and make it more accessible to the community.

In addition, BMMB will work collaboratively with the Pahang Islamic Religious and Malay Custom Council (MUIP) to manage selected *waqf* projects. A Joint Management Committee (JMC) will be established, comprising representatives from both MUIP and BMMB. This committee is tasked with overseeing the implementation, monitoring, and evaluation of these *waqf* projects to ensure they are aligned with Islamic principles and effectively meet the needs of the community.

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The decision is expected to enhance transparency and efficiency in *waqf* management, making it easier for individuals to contribute. By leveraging BMMB's banking expertise and MUIP's understanding of local needs, this initiative aims to promote sustainable development through *waqf*, thereby benefiting the community at large.

Besides, On July 4, 2004, the Council of Scholars of the Kelantan Islamic Religious and Malay Custom Council issued a *fatwa* regarding the development of special *waqf* lands, such as that *of Al-Marhum* Tengku Kaya Pahlawan. They concluded that these lands could be developed without compromising their *waqf* status, as long as the wishes of the *waqf* giver are respected. The development should enhance the benefits of the *waqf*, and collaboration between developers and the nazir (trustee) is

permissible, ensuring fairness for both parties. Developers cannot gain permanent rights to the buildings; they may only recover their investment. The returns on investment can be structured so that once costs are recouped, the properties become fully *waqf*, with income managed according to the *waqf* giver's directives. Furthermore, the Kelantan Islamic Council, as the sole nazir, cannot transfer rights over the *waqf* lands. The council approved the development of an Islamic complex on the *waqf* land, confirming that it complies with Islamic law.

Negeri Sembilan on the other hand has a specific *Fatwa* on development of *waqf* land. The Meeting of the Negeri Sembilan *Fatwa* Committee, held from December 11 to 13, 2012 (27 to 29 Muharram 1434H), concluded that developing special *waqf* lands, particularly mosque *waqf*, through additional projects or improvements to ensure the preservation of the *waqf* property is permissible in Islam. However, these developments must align with the needs identified by the authorities and must not contradict Islamic law. However, the influence that it has on binding the procedural *waqf* law is less as it is important to note that this *fatwa* has not yet been gazetted.

In Johor, the issuance of *fatwas* regarding *waqf* plays a significant role in guiding its administration and development. The eighty three (83) *fatwas* reflect the state's commitment to providing clear legal and religious frameworks for various aspects of *waqf* land and the development which can be easily searched on the Johor Mufti Department's website.

One of the main *fatwas* on development of *waqf* project was made on 24th of March 2009 on the "Development of *Waqf* in the Ninth Malaysia Plan (RMK 9) on *Waqf*

Land Owned by the Johor Islamic Religious Council.". The Johor State *Fatwa* Committee has outlined key decisions regarding the development of *waqf* land. They welcome proposals from the federal government aimed at broader community benefits, with the condition that if the land is for essential purposes like mosques or burial grounds, it must be replaced with an equivalent asset according to Islamic law. The process of *Istibdal* allows for existing *waqf* assets to be replaced or sold, with proceeds directed into a fund to purchase new assets for specific purposes. If financing is insufficient, options include utilizing allocations from the *Waqf* Department, *waqf* funds from the Johor Islamic Religious Council, or making instalment payments, with the goal of ensuring effective management and development of *waqf* properties in the state. The *fatwa* however, has not been gazetted according to Jabatan Mufti Johor, 2024).

Similarly in Perlis, there was not much *fatwa* on development of *waqf* land but only on general concept on *waqf* implementation. Similar to Perak and Johor, Perlis has also issued *fatwa* on *istibdal* concept. According to Perlis Mufti Department, the exchange of the *waqf* land is permissible, but it must be replaced with an area that is equivalent or larger.

As of 2024, the *Fatwa* Committee in Penang has issued a total of One Hundred Seventy Nine (179) *fatwas* regarding *waqf*. Unlike broader rulings, these *fatwas* are highly specific, with each one addressing individual *waqf* lands. This focused approach ensures that each ruling is tailored to the unique circumstances and needs of the particular *waqf*, enhancing the effective management and development of these important assets within the community.

Nonetheless, there is one *fatwa* that will be quoted in this research paper. The Penang State *Fatwa* Committee, in its meeting from October 26 to 28, 2022, has approved the proposed strategies for sustainable development and distribution of cash *waqf* investments in Penang *Waqf* (WPP). The committee determined that these strategies are permissible, provided certain conditions are met: the *waqf* capital must not decrease, investments should generate consistent and stable income for beneficiaries, all investments must comply with *Shariah* law, management must guarantee reimbursement of the *waqf* assets in case of losses, and prior approval is required from both the Penang Islamic Religious Council and the *Fatwa* Committee for each investment. This *fatwa* however, has not been gazetted yet.

Besides, among sixty four (64) *fatwas* on *waqf* made by Federal Territories *Fatwa* Committee, one *fatwa* that discusses the *waqf* project is *fatwa* on *Waqf* Ahmad Dawjee Dadabhoy. This *fatwa* did not specifically discuss the regulation aspect but merely on the status of *waqf* land by Ahmad Dawjee Dadabhoy. At the end of his life, Ahmad Dawjee Dadabhoy bequeathed nearly all his wealth, including a valuable 1.2-hectare plot of land in Kuala Lumpur, to be established as *waqf*. Following his death in 1987, the Federal Territory Islamic Religious Council (MAIWP) was declared the trustee of his estate, as he had no heirs. The property, initially valued at RM34 million, was developed through a collaboration with *Lembaga Tabung Haji* and Bank Islam Malaysia Berhad, significantly increasing its value to over RM151 million. This development marked a pioneering effort in the commercial utilization of *waqf* properties in Malaysia. The returns generated will benefit the Muslim community and support charitable causes, showcasing the lasting impact of *Allahyarham*'s generosity.

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In Malaysia, states like Penang, Selangor, Perak, Perlis, and Johor have specific legal frameworks governing the amendment of *fatwas* that have been gazetted. This provision may be found in the state's respective Islamic Administration Enactment. When a *fatwa* is gazetted, it becomes an official legal ruling, and any amendments to it must follow a structured process. This begins with the proposal for an amendment, which can arise from new evidence or societal changes, often initiated by the Islamic council, community leaders, or scholars. Following this, the council conducts a thorough review and deliberation, consulting relevant scholars to assess the amendment's necessity and implications. Once a decision is reached, the approved amendment is gazetted again, clearly detailing the changes and the rationale behind them to ensure public awareness. This process not only maintains transparency but also binds the community to the updated ruling, reinforcing trust in the religious authority while allowing for the evolution of Islamic jurisprudence in response to contemporary needs.

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3.4.3 Legal Perspective: *Fatwa* as Non-Binding Opinion

However, legally speaking, *fatwas* lack legal effect unless they are formally incorporated into the legal system. This distinction is crucial because it emphasizes the fact that *fatwas*, despite their influence, do not always result in laws that are binding. The court made it clear in *Mamat Daud v. Government of Malaysia (1988)*[308] that *fatwas* are advisory opinions rather than legally obligatory unless they are acknowledged by legislation or gazetted. This distinction highlights the fact that *fatwas* are subject to statute law and cannot supersede an individual's constitutional rights.

[308] 1 MLJ 119. Supreme Court.

Furthermore, *fatwas* usually only pertain to Muslims because they address moral and theological issues that are relevant to Islamic law. This means that their main objective is to regulate issues related to personal law, like marriage, inheritance, and *waqf*. *Fatwas* do not generally influence the lives of non-Muslims, as Malaysia maintains a dual legal system where Islamic law operates alongside civil law.

A case of *Sisters in Islam v. Selangor Islamic Religious Council* (2019) is another noteworthy case. The High Court in this case considered whether a *fatwa* against Sisters in Islam, a Muslim group that advocates for women's rights, was legitimate. A challenge was filed alleging that the *fatwa*, which described the organization as departing from Islamic beliefs, infringed upon constitutional rights. The Federal Constitution guarantees essential liberties, including freedom of expression, and the court decided that the *fatwa* could not restrict these rights. This case serves as an example of the continuous difficulty in striking a balance between Malaysia's commitment to preserving individual rights and religious directives. This case was on appeal to Federal Court and the decision was overturn as cited in 3.4.3 previously.

These cases reflect how *fatwas*, while influential in religious matters, must be incorporated into the legal system through proper statutory procedures before they have the force of law in Malaysia. They also highlight the balancing act between religious authority and the jurisdiction of the courts.

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3.4.4 *Fatwas* in Administrative and Legislative Framework

Fatwas need to be formally included into the legislative framework by state enactments in order to have legal force. In other word, the *fatwas* must be gazetted. For instance, governmental legislation pertaining to *waqf* frequently include *fatwas* to direct the creation and upkeep of *waqf* properties. *Fatwas* have an impact on the State Islamic Religious Councils' administrative actions when they are gazetted. This is especially important when discussing *waqf*, as *fatwas* can dictate the best uses and investments for properties. But *fatwas* have to always follow the legal criteria for procedure.

Although *fatwas* are very powerful in questions of religion, they have to work within the constraints of administrative procedures and statutes. A *fatwa* cannot be considered legally binding until it is accepted and carried out in accordance with the correct legal procedures.

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The place of *fatwas* in the Malaysian legal system illustrates the intricate interplay between the requirements of a secular legal framework and Islamic religious authority. Although they play a crucial role in advising the Muslim community on matters of faith, *fatwas* do not automatically become legally binding. Their formalization through gazetting and adherence to the constitution and statutory laws are prerequisites for their legal authority. The notion that *fatwas* must function within the bounds of civil law and constitutional rights even though they are authoritative in religious contexts has been regularly affirmed by Malaysian courts. As a result, the legal standing of

fatwas is still being examined by courts and lawmakers, guaranteeing their coexistence with Malaysia's legal pluralism.

3.5 Critical Analysis of Current Procedural Laws Governing *Waqf* Land in Malaysia

The procedural regulations overseeing *waqf* land in Malaysia are crucial for the proper administration, management, and development of these philanthropic assets. While these rules are grounded in Islamic principles and seek to preserve the sacredness of *waqf*, the current framework suffers from fragmentation, inefficiency, and inconsistency. These issues have hindered the effective use and expansion of *waqf* resources.

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3.5.1 Fragmented Legal and Administrative Framework

A notable characteristic of the procedural regulations governing *waqf* land in Malaysia is the distribution of power between the federal and state governments. According to the Federal Constitution, Islamic matters, including *waqf*, fall under the jurisdiction of individual states. As a result, each state has developed its own unique legislative, procedural, and administrative systems for managing *waqf* land, leading to inconsistencies.

Discussing the inconsistent procedure across States, the management of *waqf* land varies in sophistication from one state to another in Malaysia and that the decentralization of *waqf* administration has led to the absence of standardized

procedures, which creates inefficiencies in land management across different states. This lack of uniformity impedes the development and effective use of *waqf* land[309].

It is undeniable that the decentralized system results in duplications of procedures, necessitating that *waqf* land development pass through multiple layers of approval from both the State Islamic Religious Councils (SIRCs) and local authorities[310]. This bureaucratic redundancy causes delays and deters private sector engagement in *waqf* development projects.

3.5.2 Inadequate Registration and Record-Keeping

Within the current procedural framework, *waqf* land registration and administration present major obstacles. Due to outdated documentation or insufficient legal procedures to establish and validate *waqf* ownership, a sizable percentage of *waqf* land remains unregistered.

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There is a lack of centralised *waqf* registries[311] as no extensive national database has been set up to keep track of *waqf* properties, the lack of a centralized register has led to registration problems. This situation causes *waqf* land to remain underutilized or mismanaged due to inadequate record-keeping[312].

[309] Ibid, 125.
[310] Abd Mutalib, Hasyeilla, and Selamah Maamor. "Investigating Waqf Property Resources of Institutional Mutawalli In Malaysia". International Journal of Islamic Business 3, no. 1 (June 30, 2018): 19–32. Accessed November 5, 2024. https://e-journal.uum.edu.my/index.php/ijib/article/view/13329.
[311] Ibid, 125.
[312] Hasan, Zunaidah Ab, Azhana Othman, Khalilah Ibrahim, Mohd Ab Malek Md Shah, and Abd. Halim Mohd Noor. "Management of Waqf Assets in Malaysia." International Journal of Nusantara Islam 3, no. 1 (December 15, 2015): 59–68. https://doi.org/10.15575/ijni.v3i1.412.

The lack of clarity in the procedural regulations pertaining to *waqf* registration causes confusion and delays in determining who owns and how to classify *waqf* land[313]. This adds even more to the administration of *waqf*'s inefficiencies.

3.5.3 Procedural Barriers to *Waqf* Development

Procedures that prevent *waqf* land from being used to its full potential for the benefit of the community can hamper the development of *waqf* land. *Waqf* land is set aside for charitable or religious purposes, but the rules governing its use are unduly restrictive and often conflict with modern standards of land usage.

Developers who want to use *waqf* land for projects have to get through a lot of bureaucratic hoops, which might take years to clear. These hoops frequently include both the SIRCs and civil agencies. As a result, investment is discouraged and *waqf* assets cannot develop on time.

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Besides, there also exists a strict restriction on the use of *waqf* land. *Waqf* land is frequently subject to limitations imposed by the *waqif,* or the individual who gifted the land. *Waqf* land cannot be developed even in cases where it would benefit the community because of these restrictions, which restrict its ability to be used for reasons other than those for which it was originally intended.

[313] Hassan, A., & Shahid, M. A. (2010). Management and development of the awqaf assets. Seventh International Conference—The Tawhidi Epistemology: *Zakat* and *Waq*f Economy, Bangi, 309–328.

3.5.4 Weak Governance and Oversight by SIRCs

The SIRCs bear a great deal of duty under the procedural regulations governing the management of *waqf* land; nonetheless, these organizations frequently lack the ability and resources necessary to properly manage *waqf* holdings. This has caused underutilization, poor management, and occasionally corruption in the *waqf* administration.

There is also an issue of inadequate resources. SIRCs frequently lack the manpower, capital, and experience required to effectively manage *waqf* properties[314]. Insufficient funding leads to undeveloped *waqf* holdings that may otherwise bring in money for social benefit.

Weak governance can also be seen in the lack of transparency and accountability. The absence of accountability and transparency in the management of *waqf* properties exacerbates the governance problems in *waqf* administration. Improved procedural protections are necessary to guarantee that *waqf* assets are administered in accordance with their original purposes and are not subject to mismanagement or exploitation[315] [316].

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[314] Abas, Farah Nadia, and Fauziah Raji. "Factors Contributing to Inefficient Management and Maintenance of Waqf Properties: A Literature Review". UMRAN - International Journal of Islamic and Civilizational Studies 5, no. 3 (October 31, 2018): 53–67. https://jurnalumran.utm.my/index.php/umran/article/view/233

[315] Undang-undang Malaysia 29, no. 2 (2017): 177-192. Mahamood, S. M. "*Perundangan Wakaf dan Isu-Isu Berbangkit." Kertas kerja dalam Konvensyen Wakaf Kebangsaan 2006 anjuran Jabatan Waqaf, Waqf dan Haji (JAWHAR), Legend Hotel, Kuala Lumpur, 2006.*

[316] Ahmad Zamri Osman and Gloria Agyemang, "Privileging Downward Accountability in Waqf Management," Journal of Islamic Accounting and Business Research 11, no. 3 (January 2, 2020): 533–54, https://doi.org/10.1108/jiabr-05-2017-0064.

3.5.5 Inefficiencies in Dispute Resolution

Land disputes related to *waqf*s are common; these disputes can involve ownership, *waqf* laws, or conflicts between beneficiaries and trustees. However, there are instances where the procedural rules governing the settlement of *waqf* disputes are insufficient, leading to drawn-out court battles and further obstacles to the growth of *waqf* land.

Discussing conflicts of jurisdiction, draw attention to the challenges posed by Malaysia's dual legal system, which places civil courts' power over land disputes and *Shariah* courts' authority over *waqf* proceedings[317]. The lack of direction provided by the procedural legislation in resolving jurisdictional conflicts results in delays in the resolution of disputes relating to *waqf*.

Besides, it cannot be denied that the Malaysian legal system has a slow dispute resolution mechanism. The procedural inefficiencies in *Shariah* courts aggravate the slow pace of *waqf* dispute settlement. Because of these inefficiencies, it is challenging to settle disputes quickly, which results in *waqf* land being underutilized and idle.

3.5.6 Opportunities to Reform

Despite the significant challenges currently facing the management of *waqf* land in Malaysia, there are several promising opportunities for reforming the procedural laws to enhance their effectiveness. Addressing these challenges through comprehensive

[317] Ibid, 160.

legal reforms could greatly improve the administration, management, and utilization of *waqf* assets. Key areas for reform include:

Firstly, by harmonization of *waqf* procedures across states. One of the most critical reforms would be the development of a unified national framework for *waqf* governance. Such a framework would help eliminate the inconsistencies that arise from the current decentralized approach. By standardizing the processes for the registration, management, and development of *waqf* land, a national system could streamline operations, reduce bureaucratic obstacles, and create a more cohesive approach to *waqf* administration[318]. This harmonization would not only improve efficiency but also foster greater clarity and uniformity in the handling of *waqf* assets across different states.

Secondly by having a centralized *waqf* registry. Another significant reform would be the establishment of a centralized digital registry for *waqf* properties. Implementing a digital system would greatly enhance the transparency and accountability of *waqf* management. A centralized registry would provide a comprehensive and accessible record of *waqf* properties, facilitating better oversight and more efficient management. This reform would also address issues related to data fragmentation and improve the overall effectiveness of *waqf* land administration[319] . Greater transparency through a centralized registry could encourage more robust and informed decision-making, benefiting all stakeholders involved.

[318] Ibid, 125.
[319] Ibid, 160.

Besides, the current procedural requirements for *waqf* land development are often complex and burdensome. Simplifying these procedures and establishing clear, predictable timelines for decision-making would significantly improve the efficiency of the development process. By reducing bureaucratic delays and streamlining approval processes, Malaysia could foster a more favourable environment for investment in *waqf* land development. This would not only expedite development projects but also attract private sector involvement, which is crucial for maximizing the potential of *waqf* assets [320]. Clearer guidelines and faster approvals could lead to more dynamic and responsive development efforts.

Another potential reform would be by improving governance and accountability within *waqf* administration. It is essential for enhancing the effectiveness of *waqf* land management. This could be achieved by introducing stricter reporting requirements, implementing more rigorous oversight mechanisms, and ensuring greater transparency in administrative processes. Such reforms would help address current weaknesses in governance and foster a more accountable and transparent management framework. Strengthening governance structures would contribute to more effective oversight and better stewardship of *waqf* assets, ultimately benefiting the community as a whole.

3.5.7 Summary on Analysis of Procedural Law Governing *Waqf* Land in Malaysia

In summary, the procedural laws governing *waqf* land in Malaysia are in urgent need of reform. The existing framework is characterized by fragmentation, inefficiency, and excessive restrictions, which prevent the full potential of *waqf* land from being realized

[320] Ibid, 2.

for the benefit of the community. By addressing these procedural challenges through targeted legal reforms, Malaysia has the opportunity to unlock the substantial economic and social value inherent in *waqf* land. Reforming the regulatory framework to harmonize procedures, establish a centralized registry, streamline development approvals, and strengthen governance could transform *waqf* land into a more effective tool for community development and social welfare. These changes would pave the way for a more efficient and impactful utilization of *waqf* assets, ultimately contributing to the overall betterment of society.

3.6 Examination of Substantive Laws Governing *Waqf* Land in Malaysia

3.6.1 Current Substantive Laws Governing *Waqf* Land

In Malaysia, the administration and management of *waqf* land fall under state jurisdiction, as Islam is a state matter. Consequently, each state enacts its own *waqf* laws, leading to variations in how *waqf* properties are governed across the country as discussed previously. The main legal instruments regulating *waqf* include State *Waqf* Enactments and the Administration of Islamic Law Enactments.

3.6.2 Institutional Framework and Administration of *Waqf* Land

The administration of *waqf* land in Malaysia is primarily the responsibility of the SIRCs, which act as sole trustees for *waqf* properties. These councils are empowered to manage *waqf* assets in accordance with Islamic law and to ensure their proper use for charitable purposes. The SIRCs' role includes registering *waqf* properties,

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maintaining records, and ensuring that *waqf* assets are preserved and developed in line with the wishes of the donors (*mutawalli*s).

While the SIRCs are the designated *waqf* authorities, their effectiveness has been questioned. Studies indicate that the councils often lack the necessary resources and expertise to manage *waqf* properties effectively, particularly in areas such as financial management, legal compliance, and property development. Furthermore, the lack of standardized procedures across states exacerbates inefficiencies in the management of *waqf* land.

3.6.3 Challenges in the Current *Waqf* Legal Framework

Despite the existence of substantive *waqf* laws, the development of *waqf* land in Malaysia faces numerous challenges. One major issue is the legal ambiguity surrounding the development of *waqf* land. Many *waqf* properties remain underdeveloped due to uncertainties in the legal framework, particularly with respect to land tenure, zoning regulations, and the rights of developers.

A key challenge identified in interviews with stakeholders is the lack of government support for *waqf* development projects. While the government has introduced initiatives to promote *waqf*, such as the establishment of the *Waqf* Land Development Corporation, these efforts have been criticized for being insufficient. Stakeholders have expressed concerns that the absence of a centralized, supportive legal framework

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hinders the ability of *waqf* institutions to engage in large-scale development projects[321].

Another challenge is the dual nature of Malaysia's legal system, which complicates the process of *waqf* land development. For example, developers must comply with both *Shariah* law and civil law, creating potential conflicts or delays in the approval of *waqf* development projects. This situation is further complicated by the fact that *waqf* laws are state-specific, meaning that developers working across different states may face inconsistent regulations.

3.6.4 The Need for Legal Reforms and Recommendations

To overcome the challenges associated with *waqf* land development, legal reforms are essential. One potential solution is the standardization of *waqf* laws across all states, which would create a more cohesive and supportive legal environment for *waqf* development. Additionally, reforms should focus on streamlining the approval process for *waqf* land development projects, ensuring that both *Shariah* and civil law requirements are met without unnecessary delays.

Another important reform involves enhancing the capacity of the SIRCs. By providing *waqf* administrators with the necessary training and resources, the effectiveness of *waqf* management can be improved. This includes equipping administrators with financial and legal expertise to better manage *waqf* properties and pursue development opportunities.

[321] Mohamed, A. A. A. Malaysian Legal System: An Introduction, in Malaysian Legal System, (Ampang, Selangor: CLJ Publication, 2020), 1-36, ISBN 9789674571498.

Furthermore, the establishment of specialized *waqf* development units within government agencies could provide much-needed support for *waqf* projects. These units could assist in navigating the legal complexities of *waqf* land development, facilitating collaboration between *waqf* institutions and private developers.

The substantive laws governing *waqf* land in Malaysia are shaped by a combination of Islamic principles and modern legal requirements. While these laws provide a framework for the administration and management of *waqf* properties, they also present challenges that hinder the development of *waqf* land. Legal reforms aimed at standardizing *waqf* regulations across states, improving the capacity of *waqf* administrators, and streamlining the legal process for *waqf* development are crucial for ensuring the successful utilization of *waqf* properties for the benefit of society. Addressing these challenges will contribute to the sustainable development of *waqf* land in Malaysia and ensure that *waqf* properties continue to serve their intended charitable purposes.

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3.6.5 Scope of State Enactments Concerning *Waqf* in Malaysia

In Malaysia, *waqf* falls under the jurisdiction of the individual states, as Islamic law is governed by state authorities. Consequently, each state has developed its own set of enactments concerning *waqf*. These enactments primarily deal with the management and administration of *waqf* properties. However, their scope extends beyond mere administration, encompassing various dimensions such as governance, legal procedures, development, and the utilization of *waqf* properties. This thesis

synthesizes the scope of state *waqf* enactments in Malaysia to explore whether they focus solely on management and administration or extend further to cover other aspects of *waqf*.

3.6.6 State *Waqf* Enactments: A Focus on Management and Administration

State *waqf* enactments in Malaysia uniformly place strong emphasis on the management and administration of *waqf* properties. The primary objective of these enactments is to regulate the processes by which *waqf* properties are registered, maintained, and preserved according to Islamic law. State Islamic Religious Councils (SIRCs) are designated as the sole trustees of *waqf* properties, responsible for ensuring that *waqf* assets are managed in accordance with the founder's intentions (*mutawalli*) and the *Shariah* principles.

For instance, the *Waqf* Enactments of Johor, Selangor, and Penang all provide detailed provisions regarding the registration of *waqf* properties, the appointment of *waqf* managers, and the reporting requirements for the administration of these properties. These laws emphasize the importance of transparency and accountability in the handling of *waqf* funds, mandating regular audits and detailed reporting to ensure compliance with Islamic principles. The emphasis on administration is intended to protect *waqf* assets from misuse or mismanagement, ensuring their sustainability and continued benefit to the community.

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3.6.7 Beyond Administration: Governance and Legal Frameworks

Although management and administration form the core of state *waqf* enactments, their scope often extends into the broader realm of governance. These enactments provide the legal framework within which *waqf* properties are governed, addressing not only the managerial responsibilities of the SIRCs but also the legal procedures related to *waqf*. These procedures include the formalization of *waqf* declarations, dispute resolution mechanisms, and the enforcement of *waqf* conditions.

In Kedah and Perak, for example, *waqf* enactments include provisions for the establishment of *waqf* boards or committees that oversee the strategic management of *waqf* assets. These bodies are tasked with ensuring that *waqf* properties are utilized effectively and in accordance with both religious and legal standards. Additionally, *waqf* enactments often provide mechanisms for resolving disputes concerning *waqf* properties, either through the *Shariah* courts or alternative dispute resolution processes.

3.6.8 *Waqf* Development: Provisions for Property Enhancement

Several state enactments go beyond administrative concerns and address the development of *waqf* properties. In many cases, *waqf* assets remain underutilized due to legal, financial, or bureaucratic challenges. To counter this, state laws often include provisions aimed at facilitating the development and enhancement of *waqf* properties for greater economic and social benefit.

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For instance, the *Waqf* Enactments of Selangor and Negeri Sembilan explicitly encourage the development of *waqf* land for projects such as affordable housing, educational institutions, and health facilities. These enactments empower the SIRCs to enter into joint ventures and other forms of partnerships with private developers to enhance the value of *waqf* properties. The laws also provide guidelines for the leasing or temporary transfer of *waqf* land for development purposes, so long as the development aligns with the religious and charitable objectives of the *waqf*. As example, Section 24 of the *Selangor* Waqf Enactment 2015 allows for *waqf* from rental proceeds, while Section 41 permits istibdal (exchange) of *waqf* property, and Section 42 enables action on neglected or underutilized *waqf* assets. Meanwhile Section 12 *Waqf* Enactment (Negeri Sembilan) 2005 grants the power to perform istibdal (substitution or exchange) of *waqf* property when necessary and Section 13 outlines MAINS' responsibility for the management and development of *waqf* assets. Some of this provision became a general guidelines to develop *waqf* land.

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Under *Wakaf* (State Of Sabah) Enactment 2018, SIRC was given a power to utilise *Wakaf* Fund as provided in Section 39. *(1) The Wakaf Fund may be utilized for the purpose of (a) payment of all costs, charges and expenditure for administration of any wakaf including the cost for maintenance and repair of any mawquf; (b) purchase of any property as a wakaf under section 5; (c) execution of any wakaf and financing the development of any mawquf subject to any terms and conditions as the Majlis deems fit*;

While in Pahang, under Section 13 of Enactment *Wakaf* Pahang , just like in Sabah, SIRC was given the power to establish w*aqf* fund and managed by the Corporation

and by virtue of section 13 provides that *waqf* fund shall be spent for financing development of *waqf* subject to terms and conditions deem fit by the Corporation.

3.6.9 Legal Protection, Compliance and Social Charitable Provision

In addition to management and development, state enactments concerning *waqf* often include provisions for the legal protection of *waqf* properties. These laws are designed to ensure that *waqf* assets are safeguarded from unlawful appropriation or sale. *Waqf* properties are typically considered inalienable under Islamic law, meaning they cannot be sold or transferred outside the framework of *waqf*. State enactments reinforce this principle by providing penalties for individuals or institutions that attempt to misuse *waqf* assets.

For example, Section 44 of the *Waqf* Enactments of *Terengganu* and Section 45 of the *Waqf* Enactment of *Malacca* is a provision that protect *waqf* properties from unlawful seizure, encroachment, or damage These laws also grant SIRCs the authority to take legal action against individuals who violate *waqf* conditions or attempt to appropriate *waqf* land for personal use. By ensuring legal compliance, these enactments play a crucial role in preserving the integrity of *waqf* properties for future generations.

Lastly, some state *waqf* enactments recognize the social and charitable dimensions of *waqf*, extending beyond mere management to address the broader objectives of *waqf* within the community. The enactments often specify the purposes for which *waqf* assets can be used, such as religious education, healthcare, poverty alleviation, and community welfare. The provision can be found under Section 38 and 39 of the Waqf Enactment (Terengganu) 2016.

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3.6.10 *Waqf* Enactment in Selangor and Negeri Sembilan Pertaining to the Development of *Waqf* Land

The states of Selangor and Negeri Sembilan, in particular, have established comprehensive *waqf* enactments that facilitate the development of *waqf* land while maintaining compliance with Islamic principles. These enactments empower their respective Islamic Religious Councils to undertake initiatives aimed at enhancing *waqf* properties through collaboration with public and private entities, creating a sustainable model for *waqf* land development.

3.6.11 Key Provisions on *Waqf* Development in Selangor

1. Partnerships and Joint Ventures:

The Selangor *Waqf* Enactment under Section 8 give power to MAIS to enter into partnerships with private developers, government-linked companies, and other entities to develop *waqf* land. These partnerships are typically structured through joint ventures, where the private sector provides funding and expertise, while MAIS ensures that the development aligns with *Shariah* principles and the *waqf*'s objectives.

These partnerships can take the form of build-operate-transfer (BOT) models or leasing arrangements, where the developer is granted the right to develop and utilize the *waqf* land for a specified period before the property reverts to the *waqf*. This arrangement allows for the generation of income while preserving the long-term charitable purpose of the *waqf*.

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2. Temporary Leasing of *Waqf* Land:

The enactment under Section 24 permits MAIS to lease *waqf* land temporarily to developers for the purpose of development. This approach is commonly used for commercial projects, such as the construction of shopping malls, residential complexes, or mixed-use developments.

The lease agreement stipulates that after the completion of the lease period, the property reverts to MAIS, with the revenue generated during the lease being used to fund *waqf* purposes, such as education, healthcare, and poverty alleviation. This approach ensures that *waqf* land continues to generate income while retaining its religious and charitable essence.

3. Facilitation of Financing for *Waqf* Projects:

To support development, the Selangor *Waqf* Enactment enables MAIS to seek financial assistance from banks, government bodies, and international donors. As example, Section 23 of the enactment promotes innovative financial tools, such as Sukuk (Islamic bonds), to raise capital for *waqf* land development.

4. Development for Public Use:

The development of *waqf* land in Selangor is often directed towards projects that serve public welfare, including the construction of mosques, schools, and hospitals. MAIS has been involved in several initiatives where *waqf* land has been developed for affordable housing, providing accommodation to lower-income groups while adhering to the principles of *waqf*.

5. Regulatory Oversight and Accountability:

The Selangor *Waqf* Enactment, specifically under Section 39 includes provisions for regular audits and reporting mechanisms to ensure that development projects are aligned with *waqf* conditions and Islamic principles. MAIS is required to submit detailed reports on the progress and outcomes of *waqf* land development, ensuring transparency and accountability.

3.6.12 Negeri Sembilan *Waqf* Enactment: Focus on Sustainable Development

Similar to Selangor, the Negeri Sembilan *Waqf* Enactment also provides a legal foundation for the development of *waqf* land, with the Majlis Agama Islam Negeri Sembilan (MAINS) playing a central role in overseeing these efforts under Section 5 of the Enactment. The enactment reflects a strong commitment to developing *waqf* land in a way that balances economic growth with Islamic social objectives.

3.6.13 Key Provisions on *Waqf* Development in Negeri Sembilan:

1. Development for Economic Growth:

The Negeri Sembilan *Waqf* Enactment encourages the development of *waqf* land for economic activities, with a focus on generating sustainable income that can support *waqf*'s charitable objectives. MAINS is empowered to undertake projects that provide long-term economic benefits, such as commercial real estate developments and agricultural projects. The income from these projects is then channelled into social welfare programs, educational scholarships, and religious activities.

2. Indirect Incentives for Private Sector Participation:

To attract private sector involvement, the Negeri Sembilan *Waqf* Enactment includes provisions that provide indirect incentives for developers and investors who participate in *waqf* development projects. Part III of the Enactment provides for the responsibilities of MAINS to fully utilize the waqf fund and to develop waqf property. Hence, MAINS often collaborates with government agencies to ensure that *waqf* development projects are supported by appropriate infrastructure and regulatory frameworks.

3. *Waqf* Land Development through Leasing:

Like in Selangor, the enactment in Negeri Sembilan permits the leasing of *waqf* land to private entities for a specified period. While the exact wording leasing may not appear directly in the enactment, the legal flexibility given to MAINS under Section 12 and their role in managing and developing waqf assets (as per Section 13) supports leasing as a permissible and commonly practiced method of developing waqf land in Negeri Sembilan. During this time, developers can construct and operate facilities such as commercial buildings, hotels, or agricultural estates. At the end of the lease, the developed property reverts to MAINS, ensuring that the *waqf* asset remains in perpetuity for charitable use.

4. Collaborations with Public Institutions:

In furtherance with the point above, the enactment also indirectly promotes collaboration between MAINS and other public institutions, such as local authorities, government ministries, and educational institutions, to develop *waqf* land for public benefit. One example is the construction of schools or universities on *waqf* land, which is then operated by public entities, ensuring that the land serves an educational purpose while maintaining its *waqf* status.

5. Social Development Projects:

In Negeri Sembilan, there is a strong focus on using *waqf* land for social development projects. This includes the construction of low-cost housing, healthcare facilities, and community centers. These projects are aimed at improving the quality of life for disadvantaged communities, particularly in rural areas. MAINS works closely with community organizations and government agencies to identify the most pressing needs and allocate *waqf* resources accordingly.

6. Monitoring and Compliance:

The Negeri Sembilan *Waqf* Enactment includes stringent monitoring mechanisms which can be seen under part V of the enactment which provides for the function and duty of the *Waqf* Management Advisory Panel. This is to ensure that *waqf* land development projects adhere to the conditions set forth by the *waqf* donor (*mutawalli*). MAINS is responsible for ensuring that all development projects are in compliance with Islamic principles and that the *waqf* land is used in a manner consistent with its intended charitable purpose.

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3.6.14 Key provisions in the Selangor *Waqf* Enactment 2015 and the Negeri Sembilan *Waqf* Enactment pertaining to the *Waqf* Development.

Selangor *Waqf* Enactment 2015 governs the management and development of *waqf* properties by the *Majlis Agama Islam Selangor* (MAIS). While the enactment primarily emphasizes management, there are provisions under part II of the Enactment that address the development of *waqf* land:

PART II of Selangor *Waqf* Enactment 2015: Powers of the Majlis (MAIS)

This section empowers MAIS to manage and develop waqf land and assets for the benefit of the community. MAIS is authorized to enter into contracts, joint ventures, and other agreements that facilitate the development of waqf property.Development projects could include commercial developments or projects with social benefits, such as building schools or hospitals.

Investment and Development of Waqf Property

MAIS is permitted to invest waqf funds and properties into development projects that align with Islamic principles. This part of the Enactment specifically allows for leasing, renting, and other commercial activities, ensuring that waqf properties can generate income while maintaining their religious objectives.

Power to Purchase, Exchange, or Transfer Waqf Land

While traditional waqf law prohibits the sale of waqf land, Section 6 and 7 permits MAIS to engage in transactions like *Istibdal* (substitution) when the original waqf property is no longer beneficial. This opens the door for redeveloping land that may not be effectively utilized.

3.6.15 Specific Provisions from Negeri Sembilan *Waqf* Enactment.

The Negeri Sembilan *Waqf* Enactment (also referred to as the Administration of *Waqf* Enactment) empowers the Majlis Agama Islam Negeri Sembilan (MAINS) to undertake *waqf* land development for the benefit of the Muslim community. Some relevant provisions include:

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Section 11: Waqf Schemes

This section Empowers MAINS to create fundraising schemes for waqf development.

These funds can be used to construct infrastructure on waqf land such as housing, health clinics, or commercial buildings and to facilitates community or corporate participation in financing development projects through structured donation schemes.

Section 12: Power of *Istibdal*

This section enables MAINS to replace unproductive or unsuitable waqf land with more viable such as to acquire land in better locations for long-term development (e.g., replacing flood-prone land with commercial lots). The provision would enhances the economic utility of waqf assets.

Sections 15 & 16 :Rent Collection and Use for Administration

These sections collectively empower MAINS to lease or rent out waqf land—such as to private developers for joint-venture projects—and to legally claim rent or value from these arrangements. The income generated from such developments (e.g., commercial buildings, office spaces, car parks) ensures that waqf assets remain productive while ownership stays with MAINS. Critically, the revenue collected is not merely for profit but is permitted to be used to cover administrative and operational costs associated with managing the developed waqf assets. This includes maintenance, staff, utilities, and reinvestment into further development. By allowing MAINS to both generate and utilize income, these provisions establish a sustainable financial model for the long-term upkeep and growth of waqf projects, while remaining aligned with Islamic principles.

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Comparison of Development-Oriented Provisions in State Waqf Enactments shall be projected and illustrated as in the following:

State	Relevant Enactment	Key Development Provisions	Institutional Structure	Development Focus Areas
Selangor	Waqf Enactment 2015	S.24: Rental waqf; S.41: *Istibdal*; S.42: Action on neglected/underutilized assets	Perbadanan Wakaf Selangor (PWS)	Housing, education, healthcare
Negeri Sembilan	Waqf Enactment 2005	S.12: *Istibdal* authority; S.13: MAINS responsible for development	Majlis Agama Islam Negeri Sembilan (MAINS)	Social, educational, religious infrastructure
Sabah	Wakaf Enactment 2018	S.39(1): Waqf Fund for maintenance, acquisition, and development of waqf property	State Islamic Religious Council (SIRC) Sabah	Property maintenance, purchase, and development
Pahang	Waqf Enactment (Pahang)	S.13: Establishment and use of Waqf Fund for development, managed by the Corporation	State Islamic Religious Council (SIRC) Pahang	Waqf property development funding
Perak	Waqf Enactment 2015	S.38: Investment of waqf funds in *Shariah*-compliant instruments	BMW Unit under MAIPk (WPAR framework)	Cash waqf, project-based funds, corporate investment (e.g., Maybank Islamic)
Terengganu	Waqf Enactment 2016	S.4: MAIDAM powers to establish corporations, schemes, and take action against encroachment; categorized projects by sector	Majlis Agama Islam dan Adat Melayu Terengganu	Religious, commercial, education, social welfare
Malacca	Waqf Enactment (Malacca)	S.45: Legal protection of waqf assets; empowerment of MAIM to engage developers for urban waqf through leasing and strategic partnerships	Majlis Agama Islam Melaka (MAIM)	Urban leasing, real estate partnerships

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3.6.17 Analytical Reflection on Substantive Laws Governing *Waqf* Land in Malaysia

Through the detailed examination of Section 3.6, the researcher observed that the substantive legal framework governing *waqf* land in Malaysia is highly fragmented due to the federal structure, wherein Islamic affairs fall under state jurisdiction. This decentralization has resulted in significant variations in *waqf* laws across the states, creating inconsistencies in governance, procedural implementation, and legal interpretation.

The analysis of state enactments revealed that while certain states, such as Selangor and Negeri Sembilan, have introduced more advanced legal provisions, including mechanisms for *istibdal*, leasing, and development, other states continue to adopt more conservative frameworks, limited to administrative oversight. This disparity not only leads to governance challenges but also discourages private sector engagement, particularly for developers operating across multiple jurisdictions who require legal certainty and procedural consistency.

The researcher also noted that although the State Islamic Religious Councils (SIRCs) are entrusted as the sole trustees (*mutawalli*) of *waqf* properties, their institutional performance is often hindered by limited resources, inadequate technical capacity, and a lack of financial and legal expertise. Despite having legal authority, many SIRCs are unable to fully operationalize the substantive laws entrusted to them. This observation underscores the need for *waqf* law reform to go beyond legislative drafting and include robust institutional development.

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Further, the researcher critically examined the dual legal system in Malaysia, which mandates compliance with both *Shariah* and civil laws. This duality poses substantial challenges for *waqf* land development, particularly in relation to land tenure, registration, zoning, and planning approvals. Many state enactments have yet to reconcile these overlapping frameworks effectively, thereby creating legal ambiguities and delays in implementation.

Another significant finding by the researcher is the gap between legislative intent and practical application. While some state enactments contain progressive and comprehensive provisions, such as Section 41 of the Selangor Enactment (pertaining to *istibdal*) and Sections 38 and 39 of the Terengganu Enactment (which address the charitable functions of *waqf*), the operationalization of these provisions remains limited. This disjunction highlights the need for clearly defined implementation mechanisms, performance indicators, and institutional accountability.

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The analysis further indicated that most *waqf* enactments focus primarily on the administration and protection of *waqf* properties. However, the researcher found that these laws also extend into broader governance domains, including strategic development, dispute resolution, and social welfare objectives. Unfortunately, these dimensions are frequently underutilized due to bureaucratic inertia, inconsistent state priorities, and limited inter-agency collaboration.

As a result of this analytical reflection, the researcher concludes that the current legal framework, although substantively grounded in Islamic principles and administrative mechanisms, requires a more integrated and harmonized approach. Legal reform must

be accompanied by capacity-building initiatives, standardized state procedures, and alignment between *Shariah* and civil legal systems. These insights have directly informed the reform proposals presented later in this thesis, particularly those advocating for a national *waqf* legal framework, empowered and well-trained SIRCs, and streamlined approval mechanisms for *waqf* land development.

3.7 The Legal Framework and Procedural Steps on *Waqf* Land Development in Malaysia

3.7.1 Legal Framework Governing Land Development

National Land Code 1965:

The National Land Code 1965 is the primary legislation that regulates land affairs in Peninsular Malaysia (Idris et al, 2015). The legal system ensures clarity and security of land ownership by addressing land tenure, registration, and transactions in a comprehensive manner. The National Land Code governs the process of converting land use, necessitating landowners who wish to alter the classification of their land to receive authorization from the State Land and Mines Office. The Code also stipulates the protocols for transferring land ownership and registering titles, guaranteeing that all transactions are lawfully recorded and acknowledged.

The National Land Code 1965 (NLC) has various parts that explicitly address land development without any specification to development of *Waqf* land. These sections establish the legal structure for different areas of land utilization, urban growth, and the transformation of land classifications. Important sections and rules pertaining to land development include:

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1. **Land Use and Category**

a. Section 52: Classification of land as "town," "village," or "country" land.

"Categories of land use and application thereof to lands alienated under this Act.
(1) For the purposes of this Act there shall be three categories of land use, to be known respectively as "agriculture", "building" and "industry" and, subject to sub-section (5), where any land is alienated under this Act-
(a) there shall be endorsed on the document of title thereto such one of those categories as the State Authority may have-
(i) prescribed by a notification having effect in relation thereto under sub-section (2), or
(ii) in the absence of any such notification, determined in relation thereto pursuant to subsection (3); and
(b) the conditions to which the land becomes subject shall include accordingly-
(i) such express conditions as may be imposed by the State Authority by virtue of section 121 or, as the case may be, 122, and
(ii) such implied conditions as are applicable thereto by virtue of section 115, 116 or 117.
(2) The State Authority may, by notification in the Gazette, specify any area of the State, and prescribe a category of land use in relation thereto for the purposes of this section; and that category shall be the one to be endorsed under sub-section (1) on the alienation pursuant to any approval given after the notification is published of any State land in that area which has not at any previous time been alienated.
(3) Except in a case falling within sub-section (2), the category of land use to be endorsed pursuant to sub-section (1) on the document of title to any land shall be determined by the State Authority at the time when the land is approved for alienation.
(4) Copies of any notification under this section shall be published in accordance with section 433.
(5) This section does not apply to any land alienated under this Act in pursuance of an approval given by the State Authority before the commencement thereof; and the State Authority may, on approving the alienation of any land after that commencement, direct that no category of land use be endorsed on the document of title thereto, if satisfied that the use thereof could be more appropriately controlled by the imposition of express conditions under section 120".

b. Section 53: Categories of land use (agriculture, building, industrial) and conditions imposed.

"USE OF LANDS ALIENATED BEFORE COMMENCEMENT

53. Conditions affecting use of lands alienated before commencement until category of land use imposed.

(1) This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.

(2) All land to which this section applies which is at the commencement of this Act-

(a) country land, or

(b) town or village land held under Land Office title,

shall become subject at that commencement to an implied condition that it shall be used for agricultural purposes only:

Provided that this condition-

(i) shall not prevent-

(a) the use of any part of the land for any purpose for which it could (under section 115) be lawfully used if it were subject instead to the category "agriculture", or

(b) the continued use of any part thereof for any industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with-

(a) any building lawfully erected before that commencement, or

(b) any building erected after that commencement, the erection of which would (under section 115) be lawful if the land were subject instead to the category "agriculture",

(3) All other land to which this section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes:

Provided that this condition-

(i) shall not prevent the continued use of any part of the land for any agricultural or industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with-

(a) any building lawfully erected before that commencement, or

(b) any building erected after that commencement, the erection of which would (under section 116) be lawful if the land were subject instead to the category "building".

(4) No order under sub-section (4) or (5) of section 129 declaring land forfeit to the State Authority shall have effect with respect to any land for breach of any condition to which it is subject by virtue of this section except upon payment of such compensation as may be agreed or determined under section 434".

These two provisions of the law are used to identify the category of land in order to establish the kind of development plan that will be used to develop the land, whether the land is appropriate for development or not, and to determine the amount of premium that will be required to be paid in the event that the development is to proceed.

2. Conversion and Variation of Land Use

a. *Section 124: Application for the variation of category, conditions, and restrictions in interest. This section covers the procedures for converting land use from one category to another (e.g., agricultural to residential).*
b. *Section 124A: Conditional approval of conversion or variation and compliance requirements.*
c. *Section 124B: Imposition of premium upon approval of conversion or variation.*

3. Development Plans and Layout Approvals

a. *Section 135: Approval of layout plans and conditions attached thereto. This section outlines the procedures for submitting layout plans to the State Authority and obtaining approval for proposed developments.*
b. *Section 136: Alteration or modification of approved layout plans.*

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4. Subdivision and Partition

a. *Section 140: Application for subdivision of land. This section governs the subdivision of land into smaller lots.*
b. *Section 141: Conditions and restrictions for subdivision.*
c. *Section 142: Partition of land held under co-proprietorship.*

5. Surrender and Re-alienation

a. *Section 197: Surrender of title and re-alienation. This section covers the procedures for surrendering the title of a piece of land and re-alienating it under new conditions.*

6. Conditions and Restrictions in Interest

a. *Section 124C: Conversion of express conditions to express land use. This section allows for changes in the express conditions governing land use.*
b. *Section 128: Imposition of conditions or restrictions in interest by the State Authority for controlling the use of land.*

7. Land Disposal and Development

a) *Section 46: Reservation of land for public purposes. The State Authority may reserve land for public amenities and infrastructure, impacting land development projects.*
b) *Section 62: State land disposal for development. The State Authority may dispose of state land for development purposes.*

8. Administrative and Procedural Provisions

a) *Section 79: Powers of the State Authority to make rules for regulating the development and use of land.*
b) *Section 436A: Imposition of penalties for breach of conditions or restrictions imposed under the NLC.*

These sections collectively provide for the legal basis for regulating land use, managing changes in land category, and overseeing development activities. They ensure that land development aligns with public policy, environmental considerations, and sustainable planning principles.

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The Town and Country Planning Act 1976

The Town and Country Planning Act 1976 establishes the legal basis for town and country planning in Malaysia. It empowers local authorities to prepare and implement development plans, including structure plans and local plans, which guide land use and development within their jurisdictions. The Act mandates that any proposed development must align with these plans, ensuring that growth is consistent with broader planning objectives. Developers must obtain planning permission from the

local planning authority, which assesses whether the proposed development complies with zoning regulations and planning guidelines[322][323] .

The Street, Drainage, And Building Act 1974

The Street, Drainage, and Building Act 1974 further regulates land development by establishing requirements for the construction and maintenance of infrastructure, such as streets, drainage systems, and buildings. The Act provides the legal framework for local authorities to enforce building codes and ensure that development projects meet technical and safety standards.

While this legal framework provides a comprehensive approach to land development, studies have identified areas for improvement. There is a need to clearly define the planning principles and control mechanisms for new town development, as well as to enhance the integration between different laws and strengthen the overall land use planning system in Malaysia.

The Environmental Quality Act of 1974 (EQA)

The Environmental Quality Act 1974 (EQA) is essential in safeguarding Malaysia's natural environment during the process of development. Some projects, particularly

[322] M.A., Marzukhi, Omar, D., & Leh, O L H. (2012, December 1). Re-appraising the Framework of Planning and Land Law as an Instrument for Sustainable Land Development in Malaysia. Elsevier BV, 68, 767-774. https://doi.org/10.1016/j.sbspro.2012.12.265.
[323] D., Omar (2009). Planning Principles and Control Mechanisms of New Town Development in Malaysia. Canadian Center of Science and Education, 4(9). https://doi.org/10.5539/ass.v4n9p139

those that have substantial environmental effects, must go through an Environmental Impact Assessment (EIA). The Environmental Impact Assessment (EIA) process entails a thorough assessment of the possible environmental repercussions of a proposed project and the identification of solutions to alleviate them. Prior to the project's advancement, the EIA report must receive approval from the Department of Environment (DOE), guaranteeing the incorporation of environmental factors into development planning.

Additional Applicable Laws

Various areas of land development are further regulated by additional legislation, including the Federal Territory (Planning) Act 1982, Uniform Building By-Laws 1984 (UBBL), Strata Titles Act 1985, Housing Development (Control and Licensing) Act 1966, and Local Government Act 1976. These laws relate to different matters such as urban planning in federal territories, construction regulations, development of strata properties, control of housing development, and powers of local government.

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3.7.2 Procedural Steps for Land Development

Land Acquisition and Title Conversion

The first step in the land development process is acquiring the land and ensuring it is suitable for the intended development. This involves negotiating and executing a sale and purchase agreement and completing the necessary transfer of ownership. If the land's existing category does not permit the intended use, the developer must apply for a title conversion. This application, submitted to the State Land and Mines Office,

involves changing the land's category and conditions, such as from agricultural to residential use. Upon approval, the developer may need to pay a premium for the conversion.

Preliminary Planning and Compliance

Developers conduct preliminary planning, including feasibility studies that assess environmental, social, and economic impacts. They also prepare a development proposal that outlines the project's concept and complies with the local and structure plans. This proposal is submitted to the local planning authority as part of the application for planning permission.

Planning Permission Application

The local planning authority reviews the development proposal, ensuring it aligns with zoning laws and planning objectives. If the proposal complies, the authority issues a planning permission letter, authorizing the developer to proceed with detailed planning.

Building Plan Approval

Once planning permission is obtained, developers prepare detailed building plans, including architectural, structural, mechanical, and electrical specifications. These plans are submitted to the local authority for approval, ensuring they meet the required standards and regulations.

Infrastructure and Utility Approvals

Developers must also secure approvals from relevant agencies for infrastructure and utility connections, such as water, electricity, and sewage. This ensures that the development will have adequate infrastructure support.

Commencement of Construction

With all necessary approvals in hand, developers can apply for a building permit, which allows them to begin construction. The construction phase must adhere strictly to the approved plans and regulations.

Inspection and Compliance

Throughout construction, inspections by the local authority and other relevant agencies ensure compliance with building codes and safety standards. Any deviations must be rectified to meet regulatory requirements.

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Certificate of Completion and Compliance (CCC)

Upon completion, developers apply for a Certificate of Completion and Compliance (CCC), issued by a qualified professional such as an architect or engineer. The CCC certifies that the building is safe and fit for occupancy, replacing the former Certificate of Fitness for Occupation (CFO).

Final Approvals and Handover

Final inspections and approvals from local authorities and other agencies conclude the development process. For developments involving multiple units, such as housing or commercial complexes, units are handed over to purchasers once the CCC is issued.

Post-Development Obligations

In developments involving strata properties, developers must apply for strata titles, allowing for the individual ownership of units. Additionally, a management corporation or similar entity is established to manage and maintain common areas and facilities.

All in all, the land development process in Malaysia is a meticulous and controlled approach guided by a strong and comprehensive legal framework. This framework guarantees that development projects are carried out in a systematic, secure, and ecologically conscientious manner. Developers are required to negotiate through a range of significant legislation and regulatory obligations, including those related to land acquisition, title conversion, construction, and final approval. Complying with these laws and regulations not only promotes sustainable development but also safeguards the rights of property owners, the general public, and the environment. The legislative framework and procedural methods for land development will have a significant impact on Malaysia's future landscape as the country continues to grow and urbanize.

The law on development of land protected all development in Malaysia without any special treatment given to *Waqf* land in particular. The same procedures were also applied in the development of *Waqf* land except on surrendering the land to State Government that is still highly debated. But this procedure has been overcome by the issuance of *Fatwa* by State *Fatwa* Committee as a guidance to SIRC in fulfilling the

development programs. This analysis is thoroughly discussed and highlighted in the analysis of interviews topic below.

3.7.3 The Legal Considerations and Procedures for The Development of *Waqf* Land in Malaysia

Waqf land, can be developed in accordance with the National Land Code of 1965 as well as other pertinent laws and regulations in Malaysia during this process. Nevertheless, due to the fact that *waqf* land is normally used for charity and religious purposes, there are extra legal considerations and procedures that are peculiar to *waqf* land.

General rule is that *waqf* land is handled in accordance with Islamic law and is subject to a variety of specific norms and restrictions. The administration and management of *waqf* land in Malaysia are confronted with a number of challenges, some of which include concerns pertaining to ownership and registration, financial issues, a lack of professional *waqf* managers, and illegal occupation and invasion of *waqf* land[324]. In order to solve these difficulties, the State Islamic Religious Councils in Malaysia need to undergo a professional restructuring process in order to enhance the administration, management, and development of *waqf* land.

It was the Arab and Indian Muslim traders who had settled in the region that had a significant impact on the development of family and public *waqf*s in the Malay states

[324] Che, Ismail, Z., Salim, N J., & Hanafiah, N J A. (2015, July 1). "*Administration and Management of Waqf Land in Malaysia: Issues and Solutions"*. Mediterranean Center of Social and Educational Research. https://doi.org/10.5901/mjss.2015.v6n4s2p613

during the 19th and early 20th century [325]. The *waqf*s, on the other hand, became subject to court rulings and legislation that originated from other sources like as the British, French, and Ottomans. This resulted in foreign norms being forced upon the local practices[326].

These principles are the source of the current management of *waqf* assets in Malaysia, which arises from the fact that the *waqf* properties are currently under the supervision and management of the state government through the State Islamic Religious Councils[327] .

The legislative structure and laws that govern *waqf* in Malaysia have an effect on the development and commercialization of *waqf* property in the country[328]. For *waqf* properties to be managed in a way that is both sustainable and efficient, it is essential to have competent planning and management, adequate finance, the performance of *waqf Mutawalli* (trustees), registration of *waqf* land under the State Islamic Religious Councils, and the utilization of up-to-date data[329].

It has also been a source of worry that *waqf* properties in Malaysia are not being properly maintained or utilized. According to the findings of a study conducted by Bello, despite the fact that substantial expenditures have been made to build *waqf* properties, a considerable number of these properties are characterized by poor

[325] Ibid, 9.
[326] Ibid, 9.
[327] Ibid, 9.
[328] Mohd Zakhiri, Nor, M., Azhar, A., Mohamad, A M., Yusof, Y., & Khalid, A H M. (2022, June 10). The Impact Of Law On The Development And Commercialisation Of *Waqf* Property. , 7(28), 52-59. https://doi.org/10.35631/ijlgc.728004.
[329] Yusoff, R M., Wahab, N., Salleh, R M., Atan, S M., & Baharudin, M H. (2021, January 1). An Analysis towards the Sustainability and Management of *Waqf*'s Properties in Malaysia with References to Johor., 11(7), 345-354. https://doi.org/10.18488/journal.1.2021.117.345.354

administration and maintenance, which results in insufficient funds and hinders the achievement of the fundamental aim of *waqf* organizations[330]. This underscores the necessity of improving the management and maintenance of *waqf* holdings in order to guarantee the continuing distribution and preservation of any wealth that may be involved.

In conclusion, the development of *waqf* land in Malaysia necessitates taking into consideration the National Land Code 1965 and any other applicable legislation, in addition to the particular legal criteria and processes that govern *waqf* lands in accordance with Islamic law. In order to fully fulfilled the potential of this significant philanthropic organization, it is essential to ensure that *waqf* properties are effectively administered, managed, and maintained.

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3.7.4 Key Considerations for Development of Waqf Land

Waqf land, which is property donated or endowed for religious, educational, or charitable purposes under Islamic law, is intended to be used perpetually for the benefit of the community, and its ownership cannot be transferred or sold. The management and use of *waqf* land are typically governed by state Islamic religious councils, which act as trustees or *mutawalli*.

Each state in Malaysia has its own *waqf* enactments or regulations governing the administration and development of *waqf* properties, outlining the powers and

[330] Bello, H., Ayob, M. F., and Sarkawi, A. A. "Preliminary Study on the Maintenance Level of *Waqf* Properties: Federal Territory, Kuala Lumpur." *UMRAN* 7, no. 3 (2020): 87–97. https://doi.org/10.11113/umran2020.7n3.443.

responsibilities of the state Islamic religious councils in managing *waqf* assets. These enactments are complemented by Administration of Islamic Law Enactments, which provide additional regulations on the management and administration of *waqf* land within the context of Islamic law.

While the National Land Code governs general land matters, *waqf* land is also subject to specific Islamic laws and regulations. For example, the conversion of *waqf* land for different uses must be approved by the relevant Islamic religious authority, and any disposal or development of *waqf* land must align with the conditions of the *waqf* deed and the intention of the endower *(waqif)*[331] .

Before any development can proceed, approval must be obtained from the relevant state Islamic religious council, ensuring that the proposed development aligns with the *waqf*'s objectives and benefits the intended beneficiaries. The development must also comply with state-specific *waqf* regulations, which may include restrictions[332] .

3.7.5 Navigating the Complexities of *Waqf* Land Development in Malaysia: The Interplay of Civil and Islamic Law

The development of *waqf* land in Malaysia is a unique and complex process that involves the interplay of civil and Islamic law[333] . While standard procedures for land development as outlined in the National Land Code 1965 apply, additional approvals

[331] Ibid, 193.
[332] Haneef, M. A. H. M. A. "*Waqf* as a Socio-Economic Institution." *Journal of King Abdulaziz University-Islamic Economics* 31, no. 2 (2018): 71–78. https://doi.org/10.4197/islec.31-2.5.
[333] Ali, E. M. T. E., Nordin, N., Adam, F., and Halim, M. S. A. "*Waqf* Assets Management: Harnessing Tool for Muslims' Welfare." *International Journal of Academic Research in Business and Social Sciences* 8, no. 11 (2018). https://doi.org/10.6007/ijarbss/v8-i11/4907.

and considerations specific to *waqf* governance are required[334] (Ismail et al, 2015). The state Islamic religious councils play a crucial role in overseeing the development of *waqf* land, ensuring that all activities comply with the *waqf*'s intended purposes and Islamic legal principles.

One of the primary issues in *waqf* land development is the ownership and registration of *waqf* properties. Many *waqf* lands remain unregistered under the state Islamic religious councils, leading to challenges in their management and development[335] . Financial constraints have also been a significant hindrance, as the insufficient funds available for *waqf* development can impede the ability of the councils to fulfill their responsibilities effectively [336].

Another issue is the shortage of competent *waqf* managers, or *Mutawalli*s, who possess the necessary skills and knowledge to administer *waqf* properties in accordance with Islamic principles [337]. Proper planning and management are crucial, as the lack thereof can result in problems such as the collection of rental arrears and the illegal occupation or encroachment of *waqf* land[338] .

To address these challenges, researchers have proposed several solutions. The state Islamic religious councils must be professionally restructured to improve the administration, management, and development of *waqf* land [339](Ismail et al, 2015). Qualified individuals with expertise in investment and management practices, as well

[334] Ismail, C Z., Salim, N J., & Hanafiah, N J A. (2015, July 1). Administration and Management of Waqf Land in Malaysia: Issues and Solutions. Mediterranean Center of Social and Educational Research. https://doi.org/10.5901/mjss.2015.v6n4s2p613
[335] Ibid, 195.
[336] Ibid, 193.
[337] Ibid, 195.
[338] Ibid, 193.
[339] Ibid, 195.

as an understanding of Islamic requirements, should be appointed as *Mutawallis* to ensure the effective stewardship of *waqf* properties[340] .

Furthermore, the establishment of appropriate investment and management strategies tailored to the specific nature and purpose of the *waqf* is essential for ensuring the sustainability and growth of *waqf* assets[341].

By addressing the complex issues surrounding *waqf* land development and adopting a comprehensive approach that integrates civil and Islamic legal frameworks, Malaysia can unlock the full potential of *waqf* as a socio-economic institution and contribute to the country's economic development[342] . A thorough recommendation shall be discussed further in Chapter Six.

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3.8 Chapter Summary

Current substantive law primarily governs the administration and management of *waqf* properties, such as those overseen by entities like the State Islamic Religious Councils (SIRCs), which act as trustees. These laws outline the responsibilities and functions of these governing bodies in maintaining and overseeing the *waqf* assets. However, it is important to note that these substantive laws typically do not address the development aspects of *waqf* land.

[340] Ibid, 194.
[341] Ibid, 194.
[342] Ibid, 194.

The substantive legal framework focuses on ensuring that *waqf* properties are managed in accordance with their intended religious and charitable purposes. This includes overseeing the financial and administrative aspects of the *waqf*, but it often lacks detailed provisions on how to develop or enhance the *waqf* land itself.

In contrast, the development of *waqf* land is generally governed by procedural laws and regulations. These procedural laws provide the mechanisms and processes through which *waqf* land can be developed or improved. This might involve obtaining permits, following zoning regulations, and adhering to construction standards. These laws ensure that development activities are carried out in a manner consistent with broader legal and regulatory requirements.

The current procedural laws in Malaysia significantly influence the development of *waqf* land, both facilitating and hindering progress. While substantive laws ensure proper management and administration of *waqf* assets, the development of these lands is often governed by various procedural rules that can differ from state to state. This inconsistency creates challenges, as each state may have its own requirements and processes for *waqf* land development, leading to uneven progress across the country.

In states with more streamlined procedural frameworks, *waqf* lands may be developed efficiently, allowing for better economic returns and community benefits. Conversely, in states with more cumbersome or restrictive procedures, the development process can be slow or complicated, stifling potential growth and innovation. As a result, the varying procedural laws contribute to an inconsistent landscape for *waqf* land

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development, ultimately affecting the overall efficacy of *waqf* contributions to the community and the economy in Malaysia.

Thus, while the substantive law focuses on the proper management and administration of *waqf* assets, the development and improvement of *waqf* land are typically guided by a different set of procedural rules. This distinction highlights the need for a coordinated approach that integrates both substantive and procedural legal considerations to effectively manage and develop *waqf* properties.

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CHAPTER FOUR

CROSS-SECTORIAL ANALYSIS ON CURRENT IMPLEMENTATION OF LAW AND PROCEDURE IN *WAQF* DEVELOPMENT

This chapter present a cross-sectorial analysis of the implementation of laws and procedures in current w*aqf* projects, addressing Research Question and Research Objective number Three (3).

4.1 Introduction

This chapter provides a comprehensive analysis of the substantive and procedural laws applied in various *waqf* development projects, with a focus on the practices of two State Islamic Religious Councils (SIRCs), namely the Penang SIRC and Kedah SIRC. Additionally, an isolated case study from Palu, Indonesia, is included to examine the funding mechanisms employed by JAKIM in supporting *Waqf* projects abroad. The chapter explores new approaches to the development of both specific *waqf* (*waqf* khas) and general w*aqf* (*waqf* am), addressing the complexities and nuances inherent in these two categories.

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The implementation of substantive and procedural law discussed in this chapter as well as the challenges are based on the researcher's observation in managing these projects as advocate and solicitor, which has provided unique insights, particularly in the drafting of agreements between developers, *mutawallis* (trustees), and *Nazir Khas* (special trustees). To justify the facts and data in this chapter, a semi-structured

interviews was conducted with the parties and respondents involved in these development projects. Data in interviews will be analysed in the following chapter.

The cross-sectorial development projects presented herein are original and have not been previously published in academic journals. Notably, several of the projects discussed are ongoing and remain in various stages of development.

4.2 Project 1: Urban *Waqf* Property Redevelopment (Project Kampung Dodol, Penang State.

4.2.1 Background

Kg Dodol Penang is a part of the General *Waqf* of "*Waqf* Hashim Yahya" situated at the heart of Jelutong Town on the Island of Penang. The project was originally handled by Yayasan Islam Pulau Pinang 126 and later on in 2017 was corroborated with an independent Developer Messrs Porpoise Resources Sdn. Bhd. The Development consists of 3 phases which will be developed over 15 years of planning. This project aims to assist urban Muslims to own a house and hence, the project will be launched under "*Project Rumah Mampu Milik*".

The parties involved in this development are Porpoise Resources Sdn Bhd (PRSB) as the developer, Yayasan Islam Pulau Pinang (YIPP) as the project promoter, and Majlis Agama Islam Negeri Pulau Pinang (MAINPP) as the title holder of the Hashim Yahaya *Waqf* Land.

The project has a total of 17 acres of land which Phase 1 consists of 4.175 acres, Phase 2 is 7.56 acres, and Phase 3 is 5.34 acres. The project development land is strategically located along Perak Road, Jelutong within a 12 km radius of urban development which includes the Penang Bridge, Penang International Airport, Komtar State Government, Georgetown City, and others.

The construction in Phase 1 will involve 720 units of 850 sq ft apartments where the 590 units are sellable units while 110 units will be free units for the original settlers. For the construction in Phase 2, it will comprise 1170 units where 900 units are for sale, and 270 units are for special housing. Phase 3, involves the construction of 909 units which consist of 1200 sq ft, 1000 sqft, and 850 sq ft apartments. The layout plan for each of the phases is as follows:

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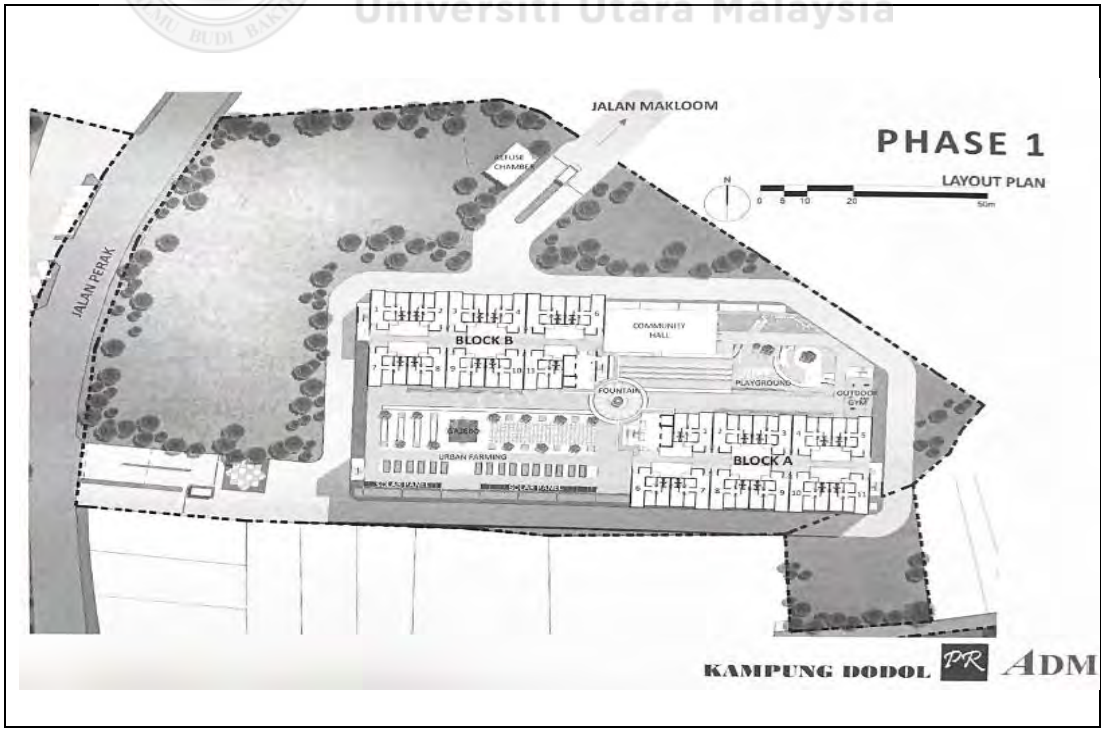

Figure 4.1: Layout plan for Phase 1

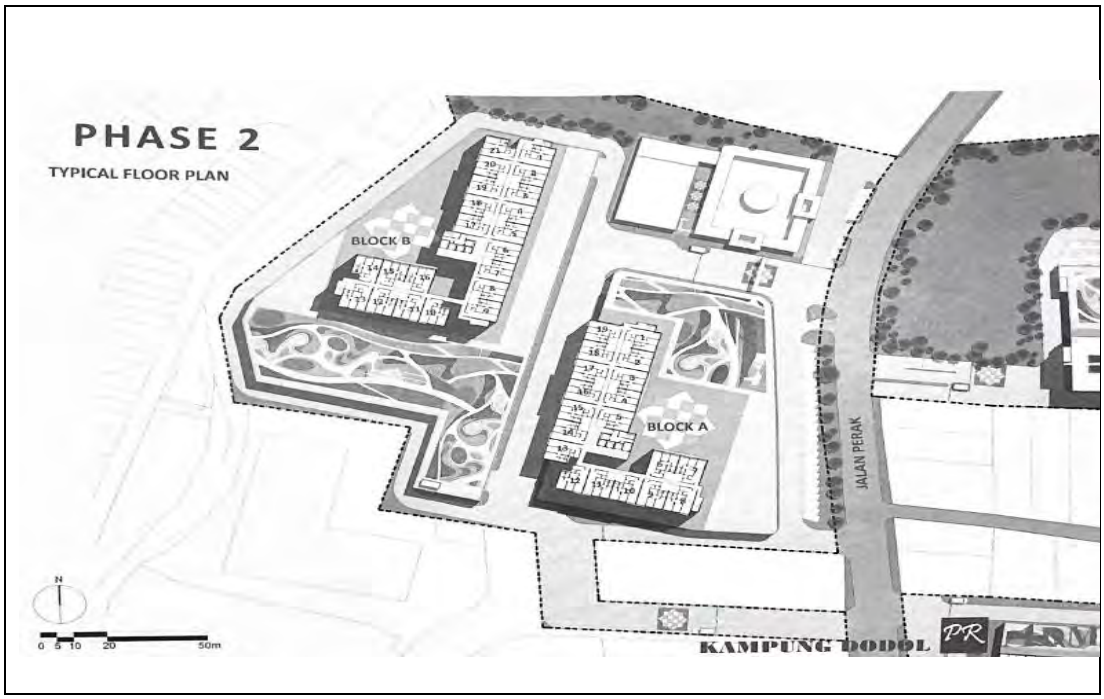

Figure 4.2: Layout Plan for Phase 2

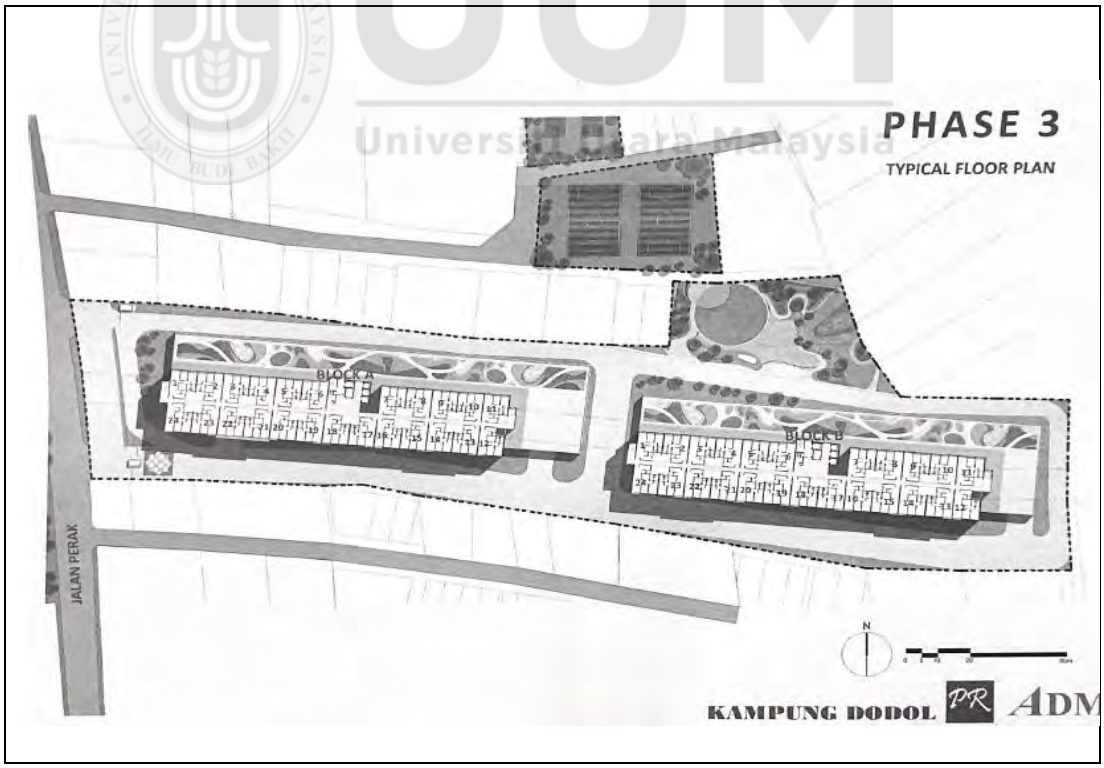

Figure 4.3: Layout Plan for Phase 3

All Sources : Development project report shared by developer

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This *waqf* development project will be a great initiative in giving benefit to the local Muslim community to own an affordable yet modern apartment with proper infrastructure and public amenities.

4.2.2 Challenges in the Development

In implementing the *waqf* development project, several constraints and challenges are faced such as legal conflicts, financial, and social issues. Firstly, various legal conflicts have hindered the implementation of the development of *waqf* property. One of them is there is a non-uniformity of *waqf* laws between the states that create differences in understanding, interpretation, and procedures for issuing *fatwas* and laws. This stems from the position of *waqf* property, such as religious matter which is under the jurisdiction of the state. The legislation and *waqf* enactments for each state differ according to each state. Thus, the pattern of *waqf* management for each state is also different. Because of this, the State *waqf* centers are faced with administrative problems that are not uniform for all states. Differences in interpretation and understanding are inherent conservatives regarding certain aspects of *waqf* definitely hinder the activities of *waqf* property development.

Besides, for the development of *waqf* property, a large allocation of funds is required to finance development projects. However, constraints in terms of lack of finance and funds have caused *waqf* land in particular to be unable to be developed properly. In addition, the problem of the economic crisis leads to an increasing cost of development. This at the same time requires more funds and finances to complete the development of *waqf* property. In addition, the profit policy that is set and must be paid to SIRC is very high which leads to financial problems in this *waqf* property development project.

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Next, the social issue which regards the occupancy problem and the struggle to get vacant possession of the premises. The eviction of the community in the *waqf* land needs to be done before the *waqf* land can be developed. This will put a burden on the residents on the *waqf* land where they have to move to other settlements. The issue is more crucial when the community refuses to give their cooperation to move and this can lead to the adjournment of the *waqf* development.

4.2.3 Solution Implemented

After considering the problems faced, several strategies and action was taken to overcome the challenges. Firstly, in regard to the legal conflicts, clear guidelines and protocols are made for the administration and development of *waqf* properties to ensure they align with both Islamic principles and national laws. Besides, comprehensive legal manuals and handbooks are also used for *waqf* administration, detailing procedures, rights, and obligations of all stakeholders.

Besides, financial aspects play a very important role in development efforts, especially those involving the real estate sector. Therefore, in solving the financial issues, an investment agreement has been made between the developer and the investor in which the investor will invest in the *waqf* development project and contribute funds for the purpose of project development. With this investment cooperation, this *waqf* development project can be done and financial problems can be overcome.

In the current *Waqf* development project for affordable houses, an agreement between Porpoise Resources Sdn Bhd as the Developer and the private investor was made in

which the Investor agreed to fund RM2,000,000.00 as the mobilization sum for the *waqf* development focusing on funding the design plan and planning permission application related. In return, the investor will be entitled to the 30% profit from the project development along with the investment sum paid by the developer.

Besides, following the social issues, PRSB by exercising its right and the power conferred upon by the Power of Attorney must take all the necessary measures to ensure there shall be no settler on the *waqf* land. After several discussions between PRSB and MAINPP, they adopt a diplomatic and humane approach to dealing with the issue of eviction of the settlers from their home. Lot 308 which was referred to as Phase 1 in Section 9W, Jalan Perak, Kampung Dodol, Daerah Timur Laut, Pulau Pinang was offered as a solution for the relocation of settlers. This lot was located for the construction of apartments to compensate the settlers and at the same time without having to use force to evict and relocate them from their homes during the construction of phases 2 and 3.

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4.2.4 Outcomes

The development of an affordable housing endowment as a result of the collaboration between Porpoise Resources Sdn Bhd (PRSB), Yayasan Islam Pulau Pinang (YIPP), and Majlis Agama Islam Pulau Pinang (MAINPP), can benefit the community in Penang, especially those who are from low-income families to finance and own a comfortable home with the conclusive facilities.

This affordable housing development can improve the quality of life by reducing poverty among people and preventing them from spending a large amount of their

income on housing. It also allows them to allocate resources to other essential needs such as education, healthcare, and food. This can reduce the financial burden on those who are struggling and indirectly their economic stability will increase with the availability of affordable housing that offers low payments.

Besides, affordable housing schemes also can develop the community through social integration. Affordable housing promotes social integration and diversity by allowing people from various socio-economic backgrounds to live in the same community. This also can increase economic growth by creating job opportunities through the construction and maintenance of affordable housing and stimulating local economies.

Next, consider that this housing development is in the urban area of Penang with easy access to resources, the residents do not need to travel long distances to get the facilities and job. They can find suitable jobs close to their house and their children also can live closer to good schools and educational resources. This also can lead to their success in school due to reduced absenteeism and a stable study environment.

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4.2.5 Law Implemented and Procedures

In establishing this *waqf*, there are various of laws implemented in order to make sure that the *waqf* can be accomplished successfully. It is implemented by a combination of Islamic law (*Shariah*) and civil law, primarily focusing on ensuring that the objectives of the *waqf* are met in compliance with religious principles while also adhering to state regulations. The development of *waqf* property requires careful planning, approval from religious and civil authorities, and compliance with relevant law.

This *waqf* is established by a collaboration agreement between Majlis Agama Islam Pulau Pinang (MAINPP) as the title holder of the Hashim Yahaya *Waqf* Land, Yayasan Islam (YIPP) as the project promoter and Porpoise Resources Sdn Bhd as the developer. This tripartite collaboration was sealed through an offer letter from MAINPP to PRSB dated June 30, 2016 which was duly accepted by PRSB. The official Collaboration Agreement between the PRSB and MAINPP was signed on 8 August 2017. This collaboration agreement is governed by the Contract Act 1950 which is a legally binding agreement between parties who agree to cooperate on a particular project or venture, often for mutual benefit.

Besides, Porpoise Resources Sdn Bhd as developer was also entrusted and appointed as the Power of Attorney (POA) on behalf of the developer to delegate certain powers to another, such as signing documents, making decisions, or managing specific aspects of the collaboration. This POA was govern by Powers of Attorney Act 1949 which Section 3 of the Act allows for the granting of a power of attorney to enable the attorney to act on behalf of the principal for specified purposes. Upon this appointment, the POA is responsible to enter contracts, manage finances, sign legal documents, and handle intellectual property matters in regards to the *waqf* development.

For the development of the *waqf* land, the main statute refer is the National Land Code 1965 which plays a significant role in regulating the use, management, and development of *waqf* land, ensuring that the *waqf* adheres to both *Shariah* and Malaysian land laws. Before any development can proceed, *waqf* land must be properly registered with the SIRC, which is the legal trustee of all *waqf* property in Malaysia. All actions involving *waqf* land must comply with the provisions of the

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National Land Code 1965 including the Registration of Titles. The SIRC must register the *waqf* land with the Land Office under the National Land Code to ensures that the land is properly recorded as *waqf* land, and the SIRC becomes the registered trustee.

For the procedure of this *waqf*, it started with the proposal from PRSB for the *Waqf* Development to the board of Director of YIPP and MAINPP in 2016 whereby it discussed the concept and the components of the development, the benefits to the Muslim in the state and the funding structure and exercise. Following the proposal and discussion, the *Fatwa* Committee has approved the proposal of the Development of Kampung Dodol as presented by PRSB and issued a Letter of Offer to PRSB on 30 June 2016. Upon the approval by *Fatwa* Committee, the execution of this *waqf* development was started.

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4.3 Project 2: Establishing Educational Institution on *Waqf* Land Transformation (Project *Madrasah* Ashraful Madaris Kedah)

4.3.1 Background

Madrasah Ashraful Madaris is an educational institution focusing in Islamic Teaching and was established in early 2008. The *Madrasah* was located in Kulim, Kedah having its registered address at Lot 141-145 Lorong Keladi Lambok Kampung Keladi 09000 Kulim Kedah. The *Madrasah* is registered and supported by the Islamic Religious Council of the State of Kedah (MAIK).

The *Madrasah* currently accommodates a total of 100 full-time students for Quran memorization studies (*tahfiz*). The *Madrasah* also plans to conduct studies in Islamic

Jurisprudence (Syukbah Alim) up to the level of Hadith specialization (Daura Hadith) in the future.

Madrasah Ashraful Madaris envisions becoming an educational institution rooted in the Quran and Hadith along with its mission to nurture excellent and devout individuals who are integrated and balanced, capable of leading society towards a comprehensive understanding and practice of Islam. The *Madrasah* also aims to develop outstanding student performance that embodies both academic excellence and spiritual strength, fostering leaders who can guide communities towards a more profound Islamic way of life.

4.3.2 The Applied Law and Procedure

The governing law and procedure during the year 2010 that binds the *waqf* land located in Lot 141-145 Lorong Keladi Lambok Kampung Keladi 09000 Kulim Kedah is the Trustee Act 1949. A Deed of Trust dated 31.03.2010 was created where Mohd Sofee, Abdul Wasi and Mohd Arof, the owner of the land, was appointed as the trustee of the land and *Madrasah* Ashraful Madaris as the said beneficiary. The Deed of Trust was created based on the Trustee Act 1949. As example, Section 7 of the Trustee Act which provides for the duties of the trustee and Section 14 on the power to delegate was applied in Clause 1 and Clause 5 of the Deed of Trust. Clause 1 and Clause 5 of the Trust Deed provides;

> " *1. The Trustee hereby irrevocably declares that the Trustee shall hold the said Property in trust for the Beneficiary and hereby agrees that the Trustee will at the request and cost of the Beneficiary sell transfer or otherwise deal*

with the same at such time or times or in such manner as the Beneficiary may direct and shall at all times execute and do all such documents acts and things as may be necessary to procure the appropriate registration to give effect to any such transfer or dealing or if so required to protect the interest of the Beneficiary,"

" 5. The Trustee at the request of the Beneficiary shall execute and do all such documents and acts as may be necessary for vesting the said Property into the new Trustee of nominee of the Beneficiary."

Besides, another governing law applied in the development of the *waqf* land is the National Land Code 1965. Section 339 provides for the registration of interests in land and includes provisions for registering trustees. It stipulates how trustees can be recognized in the land title system, ensuring that their role and responsibilities are officially recorded. In other words, when a property is held in trust, the trustee is often registered as the proprietor of the land. This section ensures that the trustee's role is officially documented in the land registry.

Following the land law, the name of the trustees, Mohd Sofee, Abdul Wasi and Mohd Arof, was specifically written in the land title of Lot 141 - Lot 145 as the trustee for *Madrasah* Ashraful Madaris.

Now that the right on the use of the land is vested on *Madrasah* AShraful Madaris, with the owners as the trustee, the building plan can now proceed. The applied law for the next procedure is to get the approval of the authority which is the Kulim Municipal

Council to build the *Madrasah*. As in Section 22(3) of the Act stipulates that no person shall carry out any development unless planning permission has been granted by the relevant authority. This ensures that all developments are approved in accordance with planning regulations and standards.

Upon filling up Borang C provided under Section 22 of the Town and Planning Act, the Planning Permission was granted to *Madrasah* Ashraful Madaris on 27th of December 2011. In the Planning Permission, the municipal council has given consent to the development of the land upon certain conditions to be followed. The planning permission would include comments and feedback from different departments such as the land office, the Kedah Environment Department and the Tenaga Nasional Berhad. The terms and conditions on how the development would be carried out must be abided.

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Creation of *Waqf* by *Waqif*

In 2019, the registered owner of the property, Lot 10020 GM 16959 has provided her intention to transfer or handover the ownership of her property to the MAIK for the purpose of Islamic education. The *waqif*, Othma bin Othman has created *waqf* khas over the said land for the use of *Madrasah* Ashraful Madaris and for MAIK to be nazir *mutawalli* for the property.

The *waqif* was required to sign a Declaration Letter on *Waqf Am* (*Surat Lafaz Wakaf Am*), which later upon request by the waqif was change to *Waqf Khas* (Specific *Waqf*), containing the *waqif* name, age, address, date of signing of the said form, and the details of the *waqf* land. By virtue of the Declaration Letter, the ownership of the land will be transferred to MAIK as '*nazir amanah'* for the *waqf* land.

Lot 10020 then will be used by *Madrasah* Ashraful Madaris to accommodate students aged below 8 years old. But as of today, the management of the *Madrasah* has confirmed that the architect is currently finalizing the plans with assistance and funding from private individuals. The architect will submit the plans to the engineer, who will then apply for planning permission from the Kulim Municipal Council. Based on previous experience with building the *Madrasah*, this approval process typically takes around 4 years before the plans can be submitted to the Islamic Council for final approval.

4.3.3 Development Process

To accommodate the increasing number of students and new applications, the second phase of development will be initiated. It consists of classroom buildings, dormitories, and teacher quarters blocks with a total construction cost of RM2.5 million.

The development work began in 2023 and is still ongoing. The ongoing work involves the construction of a 3-storey building for the use of students and teachers at the *Madrasah*. The mudir, along with the site supervisor and management staff of the *Madrasah*, would oversee and manage activities at the construction site in making sure that the development is well administered.

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Figure 4.3 : Current progress of the development of Madrasah Ashraful Madaris

Source : Shared by Mutawalli of Madrasah Ashraful Madaris

The ground floor will involve the construction of a kitchen, canteen along with a dining hall. The second floor will contain a prayer room (mussola) and 8 classrooms for Quranic studies for students. Meanwhile, the third floor will consist of rooms or dormitories for these students. The building is expected to accommodate up to 300 students as planned by the management.

As the development will cost around RM2.5 million, the work cannot be expedited as it still requires more funding.

4.3.4 Funding and Management

MAIK has implemented a Cash *Waqf* Fund Scheme in collaboration with the Kedah *Baitulmal* Trust Fund (TABK). One of the sources of funds for the development of *Madrasah* Ashraful Madaris is through the *Waqf* Fund handled by MAIK.

Apart from that, the *Madrasah* also received funding from the Kedah State *Zakat* Board (LZNK). LZNK will distribute some part of the *Zakat* fund collected to the *Madrasah*. In return, *Madrasah* Ashraful Madaris will be offered the opportunity to become one of the *Zakat* collection agents, responsible for receiving *Zakat* collections on behalf of LZNK. This is also a part of efforts by LZNK to promote the collection and distribution of funds in Kedah.

Besides, *Madrasah* Ashraful Madaris has developed a cash *waqf* model whereby they are open to receive fund through crowd funding donations from the public. Donations in form of cash *waqf* can be directly channelled to the bank account of the *Madrasah*, as displayed on their Facebook, Instagram, and TikTok social media pages. Since contributions from the public are for the development of the *waqf* land, the *Madrasah* management is actively updating their social media platforms on the progress of the construction work to let the public know or become aware of it. Another effort made by the management of *Madrasah* to collect funds is by initiating varieties of campaigns. One of it includes the '*Kempen RM150- 1 Keluarga*' that was launched in March 2024. Under this campaign, the fund collected will be used to purchase roofing materials for the development project. The *Madrasah* requires a total of 1500 lots of roofing materials for the progress of the project, with each lot priced at RM150. Hence, if one

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family would like to donate for 1 lots of roof, the head or representative of the family may make donation for a total of RM150.00.

In Malaysia, the collection of cash, particularly from the public, is subject to various legal regulations to prevent fraud, unlicensed financial schemes, and other forms of financial malpractice. One key piece of legislation that addresses this is the Kootu Funds (Prohibition) Act 1971, commonly known as the KUTU Act. The Act specifically targets the illegal collection of money through unregulated or informal savings schemes often referred to as "kutu" or rotating savings and credit associations (ROSCAs). Under this law, organizing or participating in such schemes without proper authorization is illegal, as it poses risks to contributors who may not be protected under formal financial regulations.

In addition to the KUTU Act, the Financial Services Act 2013 (FSA) and the Islamic Financial Services Act 2013 (IFSA) also regulate the collection of money, ensuring that financial institutions or organizations engaging in the collection of cash from the public are licensed and adhere to financial and operational guidelines established by Bank Negara Malaysia. These laws are designed to ensure transparency, protect consumers, and prevent unauthorized financial activities such as illegal deposit-taking schemes, which could otherwise result in significant financial losses for participants.

However, there is no specific legislation that directly regulates the issue of cash *waqf*. In practice, several states, such as Johore, have issued *fatwas* permitting the establishment and collection of cash *waqf*, thereby providing a legal and religious basis for its implementation. The *Fatwa* Committee of the National Council for the Religion

of Islam has confirmed the legality of Cash *Waqf* at its 77th meeting on 10th to 12th. April, 2007 (Syed Abdul Kader et al., 2017)

4.3.5 Long Term Impact

With phase 2 of the development project of *Madrasah* Ashraful Madaris, the institution is able to accommodate a bigger number of students. With the new building, the *Madrasah* is targeting to have 300 students (previously, the *Madrasah* could only accommodate up to 100 students only).

The students will then be placed into three different buildings. The old building will accommodate hafiz focusing on Quran memorization while the new building will be resided by *mualim*, students who focus on the learning of *kitab, hadith* and *tasawwuf*. Meanwhile, Lot 10020 will accommodate students aged below 8 years old. With this classification of students according to classes and age, the *Madrasah* can be managed in a more systematic way.

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4.4 Project 3 : Social and Philanthropic Development on *Waqf* Land (*Project Perkampungan Ummah* by *MAPIM*)

4.4.1 Background

Waqf Land may also be used for social development of a community. In 2019. Malaysian Consultative Council of Islamic Organization (MAPIM) along with the representative Mr Mukhlis, has signed an agreement to develop a *waqf* land in Indonesia. The project is known as '*Projek Perkampungan Ummah Malaysia'*. The

waqf land for the project was in the name of Mr Mukhlis who will be acting as trustee for 4 pieces of properties.

The construction of the '*Perkampungan Ummah Malaysi*a' is based in Palu City, Sulawesi, to aid the victims of the earthquake and tsunami that struck Central Sulawesi in the same year. Managed by the Malaysian Consultative Council of Islamic Organizations (MAPIM) together with the Department of Islamic Development Malaysia (JAKIM), this village project is the first of its kind and one of the largest humanitarian initiatives from Malaysia to the affected area.

Figure 4.4 : The Waqf Land for development of Perkampungan Ummah Malaysia

Source : Project report shared by MAPIM officer

The Department of Islamic Development Malaysia (JAKIM), together with 11 agencies under its purview, led by Dr. Muhammad Yamin Bin Ismail (Director of the Dakwah Division at JAKIM), has been involved in this mission. JAKIM aims to deliver humanitarian assistance worth RM1,000,000.00, contributed by JAKIM and

its agencies through MAPIM Malaysia. Contribution by JAKIM has become the main fund in this project. Besides, MAPIM through a contract signed in 2019 with Mr Mukhlis, has agreed to make available a total amount of RM611.566.00 for the development of the land.

4.4.2 Applied Law and Procedure

The fund given for this project was based on crowdfunding organised by MAPIM and cash *waqf* by *Jabatan Kemajuan Islam Malaysia* (JAKIM). MAPIM as an established organisation has provided through its Constitution on the right policy to receive funding. As stated in Article 9A.1 and 9A.2 of MAPIM Constitution;

> *" 9A.1 SUMBANGAN*
>
> *Pertubuhan ini dibenarkan untuk menerima sumbangan dalam apa-apa bentuk (kewangan/barangan/harta/aset/geran/bon) dan sumbangan yang diterima hendaklah diisytiharkan di dalam Penyata Tahunan Pertubuhan"*
>
> *"9A.2 KUTIPAN DERMA*
>
> *Pertubuhan boleh membuat kutipan derma dari orang ramai dan wajib menggunakan akaun-akaun rasmi Pertubuhan dan perlu diistiharkan dengan jelas dan tepat kepada bendahari untuk direkodkan dalam Penyata Tahunan Pertubuhan"*

To sum up, in compliance with the Charitable Donations (Security) Act 1987 and the Constitution, MAPIM is permitted to accept donations in various forms, including financial contributions, goods, property, assets, grants, and bonds. All donations received must be declared in the organization's Annual Statement. Additionally, the

organization can carry out fundraising activities from the public and must utilize its official accounts for these purposes. It is mandatory to report all fundraising activities clearly and accurately to the treasurer, who will then record them in the Annual Statement of the organization. To ensure that the development project adheres to the regulatory framework, a building contract has been established between the four trustees of the land and Majlis (MAPIM), referred to as the contractor. Under the agreement, MAPIM is entrusted with the responsibility of procuring and managing the financing for the construction, as well as overseeing the execution of the specified work detailed in the contract.

Based upon the Contract Act 1950, the Building Contract was created containing stipulated terms & conditions that would govern parties involved in the project. Generally, the important terms of the contract are the sum of the contract, contractor's obligation, commencement work, time being of the essence and statutory requirements. There was also a specific Clause in the building contract which mentioned the governing law in the contract to be the Malaysian Law. According to Clause 22 of the Building Contract;

> *"22. GOVERNING LAW*
>
> *22.1 The Constructions, validity and performance of this Agreement shall be governed in all respects by Malaysian Law.*
>
> (Nonetheless, to obtain a valid ownership of the *waqf* land to avoid future dispute, the local binding law would still need to be adhered to)
>
> *22.2 The Court of Malaya shall have jurisdiction to settle any dispute which may arise between the parties in respect of the construction validity or performance of this Agreement or as to the rights and liabilities of the*

parties hereunder and the parties hereby agree that in the event of any action in respect of this Agreement being begun the process by which it is begun may be served on them in accordance with the provision of Clause 26 therein and/or enforcement of any Order or Judgement shall be obliged by the Employer as if the Order or Judgement is pronounce in Indonesia."

In regards with the title of the land, the owner through *Surat Penyerahan* has transferred the ownership of the land to the four trustees. In Indonesia, *the "Surat Penyerahan*" (Handover Letter) is a formal document used to transfer ownership or responsibility from one party to another. This document is often used in various contexts, such as real estate transactions, government property transfers, or administrative handovers. In this project, *Surat Penyerahan* was created to transfer the ownership of the land from the original owner to the trustee. MAPIM would then fund the development of the land through a building contract signed between all parties involved.

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The project would then adhere to the local government procedure (ruling the Kota Makasar) in building all the houses and infrastructure agreed upon. Among the license needed by the Indonesian government includes the "*Surat Izin Usaha Perdagangan Besar", "Tanda Daftar Perusahaan"* dan *"Surat Izin Gangguan"* which all has been complied with.

4.4.3 Structure of the Village

The Malaysian Ummah Village will consist of different facilities for the community. There will be 55 temporary Housing units designed with essential features for

comfortable living. Each unit includes a ceiling, a spacious living room, a bedroom for rest, an indoor bathroom for convenience, and glass windows to allow natural light into the living space. These units are equipped to provide temporary accommodation that meets basic living needs, ensuring comfort and functionality for their occupants.

Besides, there would also be a mosque designed to accommodate a minimum of three hundred people at once, featuring essential amenities to facilitate religious activities and programmes that will be held within the community. The mosque will include a sound system for clear audio during prayers, a carpeted prayer area for comfort, a traditional wooden pulpit (minbar) for sermons, and a designated ablution area. These facilities ensure a conducive environment for prayer and community gatherings, supporting spiritual practices within the mosque's premises.

The village would also feature amenities essential for community living, including two regular water tanks and two clean water tanks containing filtered drinking water. Additionally, there will be two communal kitchens equipped to serve residents' needs. Enhancing the living environment further is a playground designed with recreational structures such as a seesaw, swing, slide, and spinner, providing a safe and enjoyable space for children and families to unwind and engage in physical activities. There would also be Islamic school and mobile clinic for the residents. These facilities contribute to fostering a vibrant and inclusive community atmosphere in the village.

4.4.4 Social Impact

The main purpose of the development of this *'Perkampungan Ummah Malaysia'* is to aid the victims of the earthquake and tsunami that struck Central Sulawesi as the the

victims are still recovering from the loss caused by the incident. Individuals that are in need are offered the chance to live in this Ummah Village for three years, during which they will receive entrepreneurship training to help them break free from poverty.

The establishment of the village encompasses with temporary housing units plays a crucial role in improving the physical and mental well-being of individuals affected as it may reduce stress and provide a safe place to call home. Beyond the immediate benefits of shelter, the individuals who enjoy the benefit would be empowered to pursue employment opportunities and education, thereby enhancing their skills and fostering financial independence. This not only strengthens individuals but also contributes to the overall economic vitality of communities.

Additionally, the village would also enhance public safety by reducing instances of homelessness and creating a more secure environment for all residents. These interconnected benefits underscore the importance of stable housing as a foundational element in promoting individual well-being and community resilience. Apart from that, they are still able to receive shelter, basic needs as well as the opportunity to learn Islam from the establishment of the school in the village.

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4.4.5 Recommendation: The Application in Malaysia

Although this *waqf* land development project is being implemented in Palu, Indonesia, the researcher believes that the various aspects involved such as regulatory compliance, funding mechanisms, development methodologies, and management practices can serve as valuable models for similar initiatives in Malaysia.

The regulatory compliance frameworks established in Indonesia could provide insights into how to navigate legal and administrative requirements effectively. Additionally, the funding strategies utilized in the project may offer innovative approaches to securing financial resources, which could be adapted to suit the Malaysian context as the base of the project is managed by JAKIM and MAPIM which both are based in Malaysia.

Moreover, the development methods employed, which may include community engagement and sustainable practices, could inspire new ways of managing *waqf* properties in Malaysia. Finally, the management practices demonstrated throughout the project can highlight effective organizational strategies and governance models that could enhance the efficiency and impact of *waqf* development initiatives in Malaysia. Overall, this project serves as a comprehensive case study that can inform and improve future efforts in the Malaysian context. This project does not seek to generalize the Indonesian legal system to the Malaysian context. Instead, it provides a comparative experience-based model, demonstrating how Malaysian and Muslim community have addressed complex issues of *waqf* development through collaborative, faith based, and humanitarian initiatives abroad. As such, the Palu project functions as a reflective case study that can enhance the analysis of Malaysia's own *waqf* development framework by offering insights into institutional adaptability, strategic implementation, and cross-border governance practices.

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4.5 Project 4: Commercial Development of *Waqf* Land (Smart City Batu Kawan by, Penang SIRC)

4.5.1 Background

Pulau Pinang State Religious Council (MAINPP) through Wakaf Pulau Pinang (WPP) has identified potentially developable lands and subsequently sought financial sources to finance the development projects of these *waqf* lands with various stakeholders. The returns from the investments conducted will then be able to provide returns to manage *waqf* programs, especially in education. One of commercial development of *waqf* land can be seen by the project of Smart City in Batu Kawan.

To start off, in the meeting of the Penang State Islamic Religious Council (MAINPP) on 23rd of June 2020, the International Islamic College of Technology (KITAB) Penang has been approved as a *Waqf*-based Higher Education Institution (IPT). Along with that, MAINPP then took note of the identified 17.3-acre land in Batu Kawan that are deemed suitable for the construction of KITAB Urban Campus. The land that was previously owned by the state of Pulau Pinang was then dedicated and given as *Waqf* Irsod to be developed as Smart City for KITAB.

In line with the approval of the use of *waqf* land made in 18 and 19 August 2020, MAINPP then consequently approved the conceptual design proposal for the KITAB Urban Campus in Bandar Cassia, Batu Kawan based on *waqf* principles at the MAINPP Meeting No. 4/2021 dated 30 September 2021.

Figure 4.5: Layout of the Smart City

Source : Project Report shared by WPP

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4.5.2 The Applied Law and Procedure

In developing the project, MAINPP first acquired the land from Penang Development Centre (PDC), in the form of *Waqf Irsod.* PDC Penang, officially known as Penang Development Corporation (PDC), is a statutory body established by the Penang State Government in Malaysia. Its primary role is to drive and oversee the development of the state's economy and infrastructure where it applies to the Bandar Casia project as well.

When acquiring land from the Penang Development Corporation (PDC), MAINPP must navigate several legal and regulatory steps. The acquisition process is governed

by the National Land Code 1965 and overseen by the Penang State Land Office, which handles land administration and approvals. MAINPP would negotiate terms with PDC, align the intended land use with local zoning and planning regulations, and secure necessary planning permissions and a Development Order. The transaction is formalized through a land sale agreement and title registration. Throughout this process, compliance with legal requirements and thorough due diligence are essential to ensure all aspects of the acquisition are handled correctly.

Other than that, In Malaysia, the *Fatwa* or Islamic legal rulings play a significant role in ensuring that projects comply with Islamic principles, especially for projects involving land development or financial transactions that may have religious implications. The *Fatwa* is issued by the Majlis Agama Islam Negeri Penang (MAINPP), or the Penang Islamic Religious Council, which oversees religious and Islamic financial matters in the state. To correlate with this project, as the project would be build on a *waqf* land for benefits of Muslim and the community, approval from the Penang State *Fatwa* Committee Meeting (MAINPP) No. 4/2020 was obtained on 18 August 2021. Approval from MAINPP in the form of a *Fatwa* is essential as the project intersects with Islamic principles and involves Islamic elements. This process ensures that the development complies with *Shariah* law, aligns with Islamic values, and addresses any religious concerns that might arise. The approval from MAINPP would provide guidance on necessary adjustments to meet religious and ethical standards on the development of *waqf* land. As of today, the project is still ongoing and would meet and comply with further regulatory framework.

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4.5.3 Development Plan

The Smart City will be divided into four zones. In the first zone, there will be a vibrant hub of Islamic institutions and facilities. This includes a mosque and Islamic center capable of accommodating up to 3000 people, complemented by an expansive courtyard for versatile activities. Additionally, there will be an Islamic primary school and an Islamic secondary school, providing comprehensive educational opportunities within the community.

Figure 4.6 : Proposed plan of Zone 1

Source : Project Report shared by WPP

Zone 2 will feature a dynamic blend of residential and lifelong learning facilities. It will include service apartments designed for convenience, a commercial center for business and educational activities, and a sports center for recreational pursuits. Additionally, there will be cafeteria and restaurant options available, providing a complete living and learning environment for residents and visitors alike.

Figure 4.7 : Proposed plan of Zone 2

Source: Project Report shared by WPP

Zone 3 will include a student residential complex featuring two 9-storey apartment blocks with separate facilities for male and female occupants. Each room will accommodate up to 8 individuals, allowing for a maximum capacity of 1500 students. The complex will have separate rear entrances that will be adjacent to the Islamic School, ensuring convenience and accessibility for residents studying at the institution.

Figure 4.8: Proposed plan of Zone 3

Source : Project Report shared by WPP

Zone 4 encompasses the Academic and Administrative area of KITAB Urban Campus. The main entrance to the campus will be from Persiaran Cassia Barat. This zone comprises administrative offices and academic blocks, central to the institution's operational and educational functions.

Figure 4.9 : Proposed plan of Zone 4

Source : Project Report shared by WPP

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4.5.4 Economic Impact

The economic impact of the development of this Smart City is significant and multifaceted. By integrating advanced technologies and turning it into urban infrastructure and services, the concept of Smart City that is implemented will enhance efficiency, sustainability, and quality of life for residents. This development will attract investment and spur economic growth by creating new business opportunities, boosting productivity, and improving resource management.

As example in the opening of a Smart City, specifically the new campus would present a wealth of job opportunities across various sectors. It initiates roles in education and research, including teaching positions, administrative roles, and research opportunities.

Support services such as maintenance, security, and IT support for ensuring smooth operations in the city.

Besides, during the construction phase, there are opportunities in labor, engineering, architecture, and project management. Hospitality and service sectors flourish with jobs in cafeterias, restaurants, and accommodation services. Retail and business sectors may also thrive, catering to the community's needs especially in Zone 2 where the residents will be located. Last but not least, the establishment of KITAB as a learning institution itself would produce high-quality individuals that will directly contribute to the economy, thereby creating added value in the overall development of the country.

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4.5.5 Social Contributions

Though the development of the Smart City would bring a great benefit to the community as whole, there are also other social contributions that can be seen too. One of it is the establishment of Penang Islamic Digital Library (PIDL) in the Smart City. The Penang Islamic Digital Library (PIDL) provides electronic books (Ebooks) to its members. Subscribers can access digital reading materials through the PIDL application on their electronic devices, enjoying the convenience of accessing content anytime and anywhere. PIDL also offers amenities like iPads, reading areas, discussion rooms, a children's section, and a comfortable cafeteria for visitors. Focusing on Islamic Studies, PIDL's collection includes topics such as Islamic Law, *Shariah*, Islamic Theology, Islamic Civilization, and Arabic Language. Additionally, it covers subjects like Management, Islamic Finance, Entrepreneurship, Financial Management,

Business Management, Halal Management, Information Technology, Programming, Family & Community Development, and a variety of other topics.

Other than that, the Smart City would also encompass the establishment of the Quran Lab. Quranic-Lab was officially opened by Dato' Dr. Rosian bin Ahmad, Chairman of KITAB Penang's Board of Directors and Deputy Chairman of the Penang State Islamic Religious Council (MAINPP), in 2021. Quranic-Lab is an advanced research center that operates in Arabic, Malay, and English, offering sophisticated tools for scholars to delve into the unique qualities and virtues of the Quran, promoting a deeper global understanding of this sacred text. Equipped with state-of-the-art technology, Quranic-Lab allows the public to access Quranic wisdom conveniently. This ensures the delivery of high-quality content and messages. Such an innovative facility benefits various segments of society, including professionals, researchers, students and provides easy access to learn Islam.

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4.6 Project 5: Agricultural *Waqf* Land Transformation (Project MKI)

4.6.1 Background

A Specific *Waqf* was created by way of A Deed of Conveyance on 16th June 1954 by one Haji Mansur Bin Hj Abid and Hj Ahmad Bin Hj Hussain, Haji Hamzah Bin Hi Mohamad Ali, Haji Hussain Bin Hj Arshad and Hj Mansur Bin Haji Abid all are Trustees to *Al-Madrasah al-Khairiah al-Islamiah* (MKI). MKI is a public religious secondary education institution located at Pokok Sena, Penang. It was founded in 1933 by Tuan Haji Hussin bin Haji Mohd Nasir. After he died, the position of *mudir* was

taken over by his son Tuan Hj. Ahmed. This school was established on its own *waqf* land of one acre in Pokok Sena, Kepala Batas, Penang.

The school's source of income is more from the aid and support from charitable donations and *waqf* from the public and former students. The central government and the Islamic Religious Council of Penang are also among the contributors to the *Madrasah* economy.

A specific *waqf* was made over a few plots of lands. The *waqf* specifically stated that the proceeds of "*padi*" plantations in the said lands shall be used for the purpose of payment of the teacher's salary, scholarship, repair, and keep and maintaining the *Madrasah* (MKI).

In August 2021, after a few years of negotiation between *Al Madrasah Al-Khariah Al-Islamiah* (MKI) and Penang SIRC, an agreement was made between parties to give power to MKI to manage the *Mauquf*.

4.6.2 Development Strategies

On 6/8/2021, an agreement was made between Penang SIRC and Al-*Madrasah Al-Khairiah Al-Islamiah* where MAINPP is the sole trustee for *waqf* property in Penang and MKI is the *Nazir Khas* on behalf of MAINPP. In this agreement, MAINPP recognizes MKI as a *Nazir Khas* on behalf of MAINPP to look at and administer the *Maukuf* properties. There are in total of 7 *maukuf* properties which are the properties

that have been *waqf* by the previous landlords for the use and benefit of MKI. The *waqf* created is a special *waqf* which is specifically for the use of MKI only.

Among the projects carried out for *waqf* purposes for the use of MKI is the replanting of 10.6927 acres of palm oil on *waqf* land in MKI. This project has been managed by Sinar Teratak Enterprise which is a Bumiputera company that offers work related to plantation work, agricultural work, rental of machinery and subcontractors. This company was established on February 26, 2009, and is managed by Jasni bin Abdullah as company manager.

Among the purposes of this oil palm replanting is to replace the old plants with new plants to ensure a better and regular increase in farm yields and to ensure smooth operations in the future. This cultivation is also important to ensure that all of the oil palm plantation areas can produce high yields and provide a good income to oil palm owners.

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This is because the life span for palm trees to produce results is only between 25 to 30 years and up to a height of 20 to 30 meters. After the economic lifespan, oil palm trees will usually experience a shortfall in production. Therefore, this replanting is important to ensure that palm trees can produce high yields and increase palm income.

Among the plans in the replanting of this palm oil include pushing the trees and chipping. All areas that want to be replanted will be marked with stakes to prevent falling outside the area. After felling, the chipping work will also be carried out. In addition, digging and planting work is also being carried out. All the number of trees

will be recorded to know the actual number of replanted trees. Finally, fertilization will be done to supply palm trees with additional sources of food for perfect vegetative growth.

4.6.3 Role of Technology

Technology plays a pivotal role in enhancing the efficiency, sustainability, and profitability of palm oil plantations. In planning for the replanting of palm oil on *waqf* land, there are various types of technology proposed by the contractor to ensure that palm trees can produce maximum production. The adoption of new and improved technologies nowadays has transformed the field of agriculture, especially in palm tree plantations in many ways in order to enable the farmers to improve the efficiency, productivity, and sustainability of crops.

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Previously, when there was no technology, farmers had to conduct all the agricultural tasks manually which took a long time to do. The manual labour and hand tools used in agriculture also have limitations in terms of energy and output. However, technological advances have made it much easier for farmers to harvest and chop their crops. In fact, there is also various research conducted by the contractor that has been carried out in the past to increase the productivity of the oil palm sector including the use of technology including research on oil palm tree seeds, chemical fertilizers, insecticides, cutting tools, transport machinery, and others.

The current replanting of palm oil on this *waqf* land has used various types of modern technology such as modern machinery ie: tractors, bulldozers and rollers, fertilizers,

seeds, irrigation systems, harvesting, and cutting of crops in its techniques and strategies for the development of the palm oil trees. These technologies very much provide the farmers with high productivity of crops and make agriculture more advanced.

The use of water supply sources is one of the most important sources for plants in increasing the level of soil fertility as well as increasing crop yields. Therefore, technology has also made a great impact on irrigation. In the past, the process of watering the farm was very difficult because farmers had to water the plant manually. But now tube wells have made it easier to water the entire field without any difficulty. Due to the irrigation system, farmers are able to save a lot of water. The use of fertilizers for one plant decreased because of good irrigation. Therefore, a lot of time and energy can be saved with proper irrigation and this may allow agricultural producers to cut costs and keep more of their profit.

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In addition to that, works such as pushing trees and chopping, making trenches, making holes and planting and fertilizing are also easier to do with the presence of modern technology used in each process. The advanced machinery used for harvesting palm oil can improve efficiency and reduce labour-intensive tasks and ensure better quality control.

Besides, biotechnology was also used such as high-yield varieties which is the genetic engineering and selective breeding to ensure that oil palm trees continue to produce sustainably and get sufficient and balanced nutrients to grow and reduce the need for chemical inputs.

4.6.4 Community Impact

With a *waqf* project being carried out, it played an essential part in developing various aspects of the society and the economic impact, especially for the local farmer and the other community. Firstly, it can open up job opportunities and increase the income for farmers while also helping to improve the subsistence level for themselves and their families. This is because palm oil cultivation can provide a stable income for farmers and lift many out of poverty and contribute to local economic growth. The plantation also creates jobs not only in farming but also in related to other sectors such as processing, transportation, and trade.

Besides, replanting this oil palm also can increase production and income. The income generated from this palm oil plantation can be used to meet the needs of MKI as well as add infrastructure to provide conductive spending. In addition, students and teachers can also learn in a comfortable atmosphere with sufficient facilities. Since this school's source of income is more from the aid and support from charitable donations and *waqf* from the public and former students, the income from this planting is very important so that it can be channelled to the *Madrasah* and can operate better.

4.6.5 The Law Implemented and Procedures

The *Nazir Khas* agreement between Majlis Agama Islam Negeri Pulau Pinang (MAINPP) as the Trustee for the *Mauquf* land and Al- *Madrasah Al Khairiah Al-Islamiah* (MKI) as "*Nazir Khas"* was made in 6th of August 2021 whereby the role of the *Nazir Khas* is essentially that of a fiduciary, responsible for the management and development of *waqf* property in line with Islamic principles. While the appointment

of a *Nazir Khas* is based on *waqf* law, this agreement also has a contractual component whereby the SIRC enter into a contractual agreement under the Contract Act 1950 with the *Nazir Khas* that outlines the duties, powers, responsibilities, and compensation related to the development and management of the *waqf* property.

MKI was appointed by MAINPP as a special nazir to manage and administer *Mauquf* properties for MKI's special purposes and benefits, including the development of plantations. The development of plantation is subject to various environmental regulations, including the Environmental Quality Act 1974 (EQA 1974). This Act, along with related legislation and guidelines, aims to ensure that plantation development does not harm the environment and complies with sustainable development principles. Under this Act, certain large-scale plantation developments are required to undergo an Environmental Impact Assessment (EIA). The EIA process is designed to assess the potential environmental effects of the plantation development and to propose measures to mitigate any adverse impacts. Section 34A of the Environmental Quality Act 1974 requires an EIA for prescribed activities, which include land development for agricultural purposes exceeding a certain area. Then, the EIA report must be submitted to the Department of Environment (DOE) for approval before any development can commence.

The procedures of this *waqf* land starts with the Letter of the Appointment of MKI as *Nazir Khas* on behalf of the MAINPP on 7th of May 2021 to manage *waqf* property for the use of MKI. The appointment later was accepted by MKI at the same time making MKI responsible for ensuring that all *waqf* properties are well looked after and

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managed as well as ensuring that development on them runs smoothly and in an orderly manner.

4.7. Legal and Regulatory Framework in *Waqf* Land Development

4.7.1 Overview

Waqf is listed under the State List of the Federal Constitution and it comes under the jurisdiction of the state governments. Given that *waqf* is a state matter, it is within the exclusive powers of the state government to legislate laws on the administration of *waqf*. The administration of *waqf* properties has been put under the powers of the State Islamic Religious Councils (SIRC) as the sole trustee of *waqf* properties under the respective states. Therefore, all *waqf* land, whether movable or immovable, can only be administered and managed by the council.

The appointment of the State Islamic Religious Council as the sole trustee of *waqf* property can ensure proper administration and efficient management, allowing *waqf* to generate substantial profits and revenue for funding charitable work for beneficiaries. Legally, SIRC has the authority to make decisions regarding agreements, purchases, holding, possession, conversion, transfer, and development of all *waqf* land in accordance with Islamic principles. SIRC has exclusive jurisdiction over the management and development of any *waqf* land, including the power to approve any development, which requires SIRC's approval before proceeding.

4.7.2 Legal Challenges

Waqf, an Islamic endowment of property to be held in trust and used for charitable or religious purposes, faces several legal challenges in its development. These challenges can vary depending on the legal and regulatory framework of each state. Here are some of the common legal issues associated with *waqf* land development:

Firstly, the issue of the charge and inalienability of *waqf* land. The concept of charging *waqf* property essentially using it as collateral for loans or other financial obligations raises significant legal and ethical considerations within Islamic jurisprudence. *Waqf* property is traditionally considered inalienable, meaning it cannot be sold, transferred, or used as collateral. This principle is based on the idea that once a property is dedicated as *waqf*, it permanently becomes a trust for charitable or religious purposes and cannot revert to private ownership or be used for personal gain.

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From the current legal perspective, the title of *waqf* land is highly secure. Although the transfer of private land to *waqf* land is facilitated through section 215, transferring such land by the Majlis Agama Islam to another person is not allowed under the National Land Code (NLC) and is prohibited by state laws. This restriction exists because the legal framework for managing *waqf* lands in Malaysia adheres to the traditional classical view of Muslim jurists, meaning that once a property is dedicated as *waqf*, it is irrevocably perpetual and cannot be assigned, conveyed, or transferred [343].

[343] Ibid, 3.

The perpetual nature of *waqf* titles adds an extra layer of security, effectively freezing the title. Under *Shariah* law, *waqf* land can be leased or rented for both short and long terms. However, under the current legal framework, other forms of dealing such as transfer, sold, charged, or transmitted are not applicable. *Waqf* land is not a tradable commodity in the sale and purchase market, and in the leasing and rental markets, it is often treated unfairly, frequently being rented out at below-market prices. As a result, the non-transferability of the title prevents *waqf* land from accessing land and credit markets.

Besides, there are also challenges in terms of financial problems in developing the *waqf* properties. This is due to the development cost that is increasing. The overall economic inflation contributes to higher costs of materials, labour, and operational expenses. The increasing wages and labour shortages in certain sectors also contribute to higher construction costs. The development cost is also increasing due to the profit charge by SIRC is too high. This can be seen in the current *waqf* development in *Waqf* Hashim Yahaya in *Kampung Dodol.* The Penang SIRC charged the usufruct for this *waqf* development for the total amount of RM 15,130,580.00 which is considered high and this led to the increase in the development cost.

Next, the price for the housing scheme for affordable housing is normally controlled by the State government. This can limit the profit margins because state-controlled house pricing can cap the rental or sale prices of *waqf* properties, limiting the profit margins that can be reinvested into further *waqf* development and charitable activities. Besides, it can reduce the income from *waqf* properties which can affect the financial

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sustainability of *waqf* projects, making it difficult to cover maintenance costs and fund other community initiatives.

4.7.3 Regulatory Compliance

In Malaysia, the administration of *waqf* properties is governed primarily by state-level enactments and regulations, as the management of Islamic religious matters, including *waqf*, falls under the jurisdiction of individual states. Regulatory compliance for *waqf* development involves adhering to a variety of legal and administrative requirements to ensure that the development of *waqf* properties is in line with both Islamic law and national regulations.

Firstly, the National Land Code 1965 (NLC) which is a significant piece of legislation governing land matters in Peninsular Malaysia, and it contains specific provisions related to *waqf* (Islamic endowment). The NLC recognizes *waqf* as land endowed for religious or charitable purposes in accordance with Islamic law. This recognition provides a legal framework for managing *waqf* properties within the broader land administration system in Malaysia.

Section 215 of the NLC facilitates the transfer of private land to *waqf* but does not provide for the transfer of such land by the Islamic Religious Council to another person. This provision allows individuals to dedicate their land as *waqf*, thereby changing the status of the land to be used for religious or charitable purposes as per Islamic law. The NLC also stipulates that *waqf* land cannot be transferred, sold, or used as collateral. This aligns with the Islamic principle that *waqf* properties are inalienable and must be preserved for the purposes they were endowed.

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Besides, there is also the state-specific Enactment. Each Malaysian state has its own specific enactment for the administration of Islamic law, which includes provisions related to *waqf*. These laws are typically administered by the State Islamic Religious Councils. For example, in Penang, it is governed by the Sections 89 and 90 of Administration of Religion of Islam (State of Penang) Enactment 2004.Thus, the State Islamic Religious Councils are generally designated as the sole trustees of all *waqf* properties in the state. They are responsible for the management, administration, and development of *waqf* assets.

Next, for the development of *waqf* to be developed, it must also adhere to the Housing and Developers Act in Malaysia which is officially known as the Housing Development (Control and Licensing) Act 1966 (Act 118) ("HDA"). It is a critical piece of legislation designed to regulate the housing development industry and protect the interests of homebuyers. This act also governs the licensing and regulation of housing developers, ensuring that they adhere to standards that include provisions for affordable housing.

However, in *waqf* development, HDA should not be taken as a key structured as HDA can govern the developer but does not govern *waqf* land. The nature of development for *waqf* project on *waqf* land is differ from other land development as in w*aqf* development there is no need for the sale and purchase as the project is not a sale and purchase project. The development concept is built and rent. The rent is the usufruct to enjoy the benefit over the *waqf* assets with a lease tenure of 99 years.

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4.8 Chapter Summary

This concluding chapter synthesizes the findings from the case study on *waqf* development in Malaysia, reflecting on its progress, challenges, and future prospects. It highlights the integral role of *waqf* in fostering social welfare, economic development, and community resilience in the country. The effective utilization of underutilized *waqf* land such as for affordable housing projects provides a sustainable solution to housing shortages, enhancing the quality of life for low-income families while adhering to Islamic principles of social welfare and community support.

The organization related to *waqf* development such as policymakers, legal professionals and developers needs to take responsibility for improving *waqf* development. This includes enhancing the legal frameworks by reviewing and updating existing laws to streamline *waqf* land development processes, ensuring they align with contemporary needs while adhering to *Shariah* principles. Besides, financial support also needs to be given by providing grants, subsidies, and tax incentives to encourage the development of *waqf* land for housing and other community projects.

Besides, the responsibility of legal professionals also is crucial in the *waqf* development by simplifying and clarifying the legal procedures for endowing, registering, and developing *waqf* land to reduce bureaucratic hurdles. They also can provide clear legal advisory services to individuals and organizations interested in *waqf* to ensure compliance with both *Shariah* and national laws.

In addition, in the implementation of *waqf* development, developers also play an important role in making it successful. Thus, the collaborative projects between the

developers with the SIRCs, government bodies, and other stakeholders are important to develop the *waqf* land by leveraging combined expertise and resources. They also needed to maintain high construction and development standards to ensure the durability and safety of *waqf* projects. By following these recommendations, policymakers, legal professionals, and developers can work together to optimize the development of *waqf* land. This collaborative approach will ensure that *waqf* properties are effectively utilized for the benefit of the community, adhering to Islamic principles while addressing contemporary social and economic needs.

Last but not least, based on the findings, several suggestions for further research in *waqf* management can be adopted in the future. This includes the comparative analysis of *waqf* management models to compare different models of *waqf* management across various Islamic countries to identify best practices and their applicability in the Malaysian context. Besides, the innovative financing mechanisms for *waqf* projects also can be made by exploring new and innovative financing models for *waqf* land development. Thus, future research on *waqf* land development can provide valuable insights and practical recommendations to enhance the effectiveness and impact of *waqf* initiatives.

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CHAPTER FIVE

FINDINGS AND DISCUSSION

This Chapter presents the findings and discussion, providing an in-depth analysis of the data collected in relation to the Research Questions and Research Objectives of this research. The data was analysed through thematic approach using Delve software.

5.1 INTRODUCTION

The term *waqf* (plural: *awqaf*) originates from the Arabic root verb *waqafa*, which signifies "to stop or cause something to become stationary"[344]. The term also conveys meanings such as detention, prevention, and restriction. In English, *waqf* is commonly rendered as "religious endowment," although this translation may not fully encapsulate the intrinsic sense of devotion and spiritual significance embedded within the Islamic conception of *waqf* [345]. Technically, *waqf* refers to the act of rendering a property inalienable while dedicating its yields or usufruct for charitable purposes to designated beneficiaries[346]. It is also defined as "a dedication of property either explicitly or implicitly, for any charitable or religious cause, or for the provision of benefits to humankind" [347].

[344] Ibid, 3.
[345] Mohamad Akram Laldin Mohsin, *Fundamentals of Islamic Banking and Finance* (Kuala Lumpur: CERT Publications, 2016), 72.
[346] Abdelrahman Bouheraoua and Noor Mohammad Osmani Ansary, "The Concept and Operations of Waqf from the Shariah Perspective," *Shariah Law Reports* 3, no. 2 (2010): 25–40.
[347] Siti Mashitoh Mahamood and Aznan Ab Rahman, *Waqf Laws and Management in Malaysia: Issues and Challenges* (Kuala Lumpur: University of Malaya Press, 2015), 17.

In Malaysia, the Department of Awqaf, Zakat, and Hajj (JAWHAR) conceptualizes *waqf* as a privately owned asset of any kind that has been subjected to a legal restriction prohibiting its transfer through sale, inheritance, *hibah* (gift), or *wasiyyah* (will), while preserving its physical form. Furthermore, *waqf* entails a philanthropic commitment of property or its benefits in perpetuity, either for general welfare or specific causes. As a voluntary act, it parallels other forms of Islamic charitable giving such as *sadaqah*, *zakat* and donations[348]. W*aqf* is a form of property restrained from disposition, where the original corpus is preserved and its benefits are directed toward public welfare[349].

The land development process in Malaysia is intricate and governed by an exhaustive legislative framework. This framework is aimed at ensuring proper growth, conservation of the environment, and conformity to the objectives of both national and local planning processes. This chapter provides a discussion and analysis of interviews and documentation from various stakeholders in the development of *waqf* land to understand the most important substantive laws and procedural guidelines involved in *waqf* land development. It also highlights the role that various legal instruments serve in regulating activities related to land use and development projects.

Interviews were meticulously carried out with a range of stakeholders who played significant roles in the various *waqf* development projects outlined in the previous chapter. The objective was to gather detailed and nuanced data on several critical aspects, including their viewpoints on the current legal frameworks governing these

[348] Mohd Zulfakar Mohamad, "Legal Framework of Waqf in Malaysia: A Critical Analysis," *Journal of Islamic Law and Economics* 1, no. 1 (2015): 13–29.
[349] Che Seman, Azlina, Siti Nurul Huda Zakaria, and Ahmad Azam Mohamed, "Pengurusan Wakaf di Malaysia: Cabaran dan Cadangan Penambahbaikan," *Journal of Fatwa Management and Research* 9, no. 2 (2017): 29–45.

projects, the specific challenges they faced throughout the development process, their recommendations for enhancing the effectiveness and efficiency of such frameworks, and their evaluations of the overall impact and success of the projects. The data from the informants were gathered through face-to-face interviews using a set of questions generated based on the research questions. Each interview was conducted physically with both the interviewer and interviewee present.

Before beginning the interviews, the researcher explained the interview protocols and procedures to the participants. They were assured that their responses would remain confidential and be used exclusively for research purposes. Each participant was asked between 7 to 11 questions designed to gather information pertinent to the research objectives. These questions were crafted based on the study's focus on examining the challenge and recommendation for reform on the substantive and procedural law governing *waqf* land in Malaysia. Each interview was expected to last between 30 to 40 minutes. After the interviews, the researcher transcribed the informants' responses for analysis.

The content of the transcript was then systematically categorised by using Delve, a software for qualitative coding in order to analyse the themes and patterns. Delve is an online CAQDAS tool created by Alex Limpaecher and LaiYee Ho, who are based in New York City. Developed with a "human centred" design approach, Delve facilitates collaborative qualitative data analysis through user-friendly tools. Available since 2018, it allows for code-based text analysis and is specifically tailored to support inductive qualitative analysis, emphasizing human interpretation. Back to this research, the themes and ideas will then be thoroughly discussed in this chapter by including

direct quotes from the respondents. These methods allow for a systematic examination of the data, helping to identify key themes and categorize information.

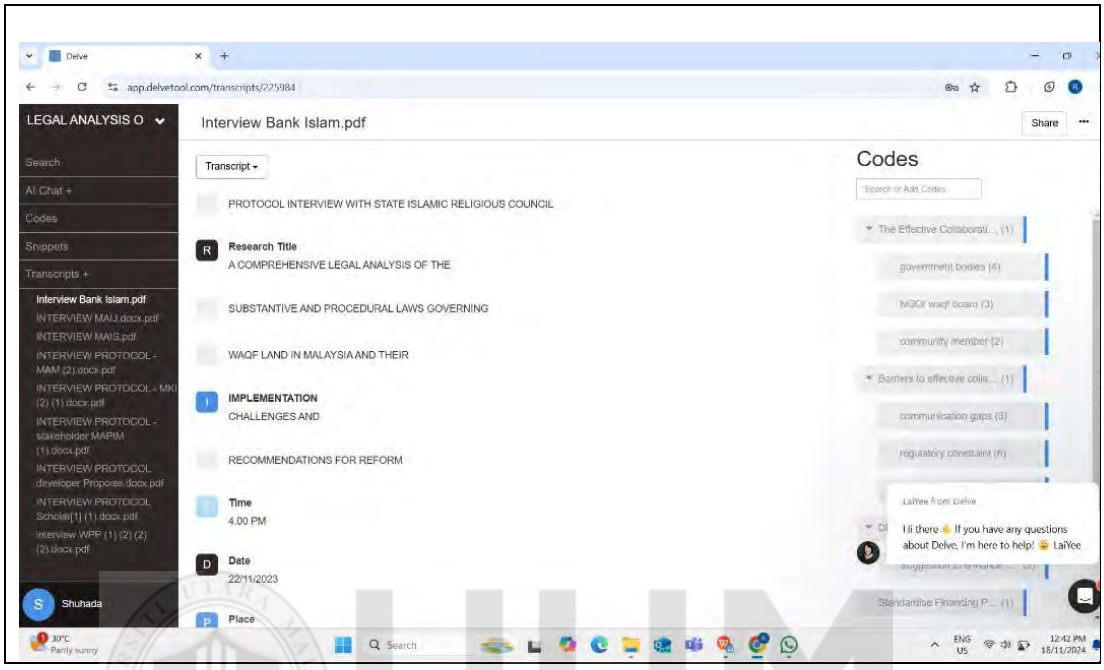

Figure 5.1: Screenshot on Delve Software
Source: Researches's own

Through this meticulous approach, researchers would explore relationships within the data and develop a comprehensive understanding of participants' experiences and perspectives.

Besides, part of Chapter Five also presents the key findings from this research, organized to address the research objectives and answer the research questions concerning the governance, development, and management of *waqf* land in Malaysia. Through extensive analysis, several findings emerged, each contributing to a deeper understanding of *waqf* land's potential, challenges, and requirements for sustainable development.

The findings primarily address the first research objective: to examine the legal and procedural frameworks governing *waqf* land development. They highlight the complexities of Malaysia's dual legal system, with the State Islamic Religious Councils (SIRCs) tasked with *waqf* administration while navigating both Islamic law and civil regulations such as the National Land Code. Additionally, the study reveals how the lack of clarity around key terms such as *mutawalli* further complicates *waqf* governance, resulting in inconsistencies across states and posing challenges for effective land management. Together, these findings provide insights into the legal and procedural landscape of *waqf* land, answering the first research question on existing regulatory frameworks and their impact on *waqf* land development.

In response to the second research objective, which seeks to explore strategies for enhancing *waqf* asset value and development, this chapter examines the inconsistent application of *istibdal* across regulated and unregulated states, as well as the underutilization of innovative financing models. These findings reveal the disparity in how states approach *waqf* development, demonstrating that while some states successfully apply principles like *istibdal* to enhance asset value, others face limitations due to resource and regulatory constraints. The chapter further explores the potential of alternative financing methods, such as Islamic crowdfunding and sukuk, as viable means for funding *waqf* projects. Together, these insights answer the second research question by identifying both challenges and opportunities in leveraging *waqf* assets for sustainable development.

The third research objective focuses on developing best practices for effective *waqf* land management and capacity building within SIRCs. This chapter addresses this

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objective by examining the limited adoption of modern technology, the need for educational and motivational approaches within SIRCs, and the constraints posed by insufficient federal government involvement in *waqf* development. Findings on the limited integration of technology and the need for targeted capacity-building initiatives underscore the importance of enhancing SIRCs' institutional capabilities. Additionally, the lack of coordinated federal support is identified as a barrier, highlighting the need for centralized resources, regulatory guidance, and policy direction to facilitate *waqf* land development on a national scale. These findings collectively answer the third research question by outlining best practices that can empower SIRCs to manage *waqf* assets more effectively and sustainably.

In summary, the findings presented in this part provide a comprehensive analysis of the multifaceted issues surrounding *waqf* land in Malaysia. Through a combination of legal, financial, and administrative insights, the findings not only address the research questions but also offer practical recommendations to improve *waqf* land management, optimize asset development, and ensure alignment with both *Shariah* principles and modern governance standards. This part thus lays the foundation for proposing an integrative model for *waqf* land governance that addresses current challenges and supports *waqf*'s role in Malaysia's socioeconomic landscape.

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Demographic of Respondents

Respondent (R)	Respondent's Designation	Gender
1	Group Chief Financial Inclusion Officer Bank Islam Malaysia Berhad	M
2	Mudir and Recipient of Mutawalli for Madrasah Ashraful Al-Madaris	M
3	Advocate & Solicitor, Waqf Committee of Madrasah Khairiah Al-Islamiyah	F
4	Vice President of Malaysian Consultative Council for Islamic Organization (MAPIM)	M
5	Chairman, Planning and Development Wakaf Land, Wakaf Pulau Pinang Sdn Bhd.	M
6	Assistant Director of Waqf Division of Johor State Islamic Religious Council	M
7	Lecturer at the Islamic Studies Center, Sultan Ibrahim Islamic University College, Johor.	M
8	Consultant and Chairman of Porpoise Resources Sdn. Bhd.	M
9	Executive Unit for Waqf Planning and Research, Waqf Corporation of Selangor (PWS)	F

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This thorough approach was intended to provide a well-rounded understanding of the complexities involved and to inform future improvements in *waqf* land management and development practices.

5.2 Analysis on Legal Framework

Respondents have conveyed a range of perspectives on the current legal framework governing *waqf* land, highlighting several key concerns. Their perspectives on the legal framework would include issues on perpetuity, *istibdal*, *mutawalli*, *fatwa*, stakeholder collaboration, policy and regulatory environment and also their respective comparative insights.

5.2.1 Perpetuity

This analysis explores the perspectives of various stakeholders regarding the concept of perpetuity in *waqf* development. The insights gathered from respondents highlight the significance of ensuring that *waqf* assets are maintained and utilized effectively over the long term, as well as the challenges associated with this objective. One of the respondents shared that they did emphasizes the importance of permanent *waqf* through *Waqf Muabbad* while recognizing the value of incorporating *Waqf Muaqqat* to allow for changes in the public interest.

> *"In Johor, MAIJ utilizes the concept of Wakaf Muabbad, which refers to permanent waqf. However, in the new enactment, we have included the principle of Wakaf Muaqqat. This concept allows for changes based on "maslahah" or public interest. The process of*

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making such changes requires a fatwa. The idea of perpetuity is tied to the concept of "ain," ensuring that the waqf remains lasting and beneficial to the community". - R6

Besides, the respondent also expressed that the perpetuity of *waqf*, which ensures its continued existence and support for various charitable causes, is not a significant challenge in the effective management of *waqf* development.

"Marketing homes or projects on waqf land has not been much of a problem because the Penang Islamic Religious Council has already successfully completed the Sittee Aisya project in collaboration with UDA Holdings Sdn Bhd. So, the Council's experience is highly respected, even though the sale status is only "leasehold" or for the benefit of leasehold." - R8

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The respondent also shared that the scholars had the different interpretation on the perpetuity of *waqf* land but they emphasized that despite differing views, the primary objective is to ensure the long-term benefit and sustainability of *waqf*.

"Some scholars view that the subject matter of the waqf should be perpetual regardless of whether the property is immovable (such as land or house), or movable, which is permitted by Islamic texts or by reasoning (al-qiyas) (such as a slave, garment, coat of mail, mats, candles, and carpet in mosques). Some other scholars, such as Abu Yusuf and Muhammad Hasan from the Hanafi school of thought, view

that the dedication of waqf must be perpetual (Al-Zuhayli, 2012). Yet, the perpetuity of dedication is intended, but the perpetuity of the object is subject to interpretation (Mohammad and Mar Iman, 2006). Despite these differences, the overarching goal remains the same, which is ensuring the long-term benefit and sustainability of the waqf."-R7

Next, the perpetuity of waqf lies in the intention of the *waqif* rather than the specific property itself. The property can change over time, but the waqf's purpose as determined by the *waqif*'s intention ensures that the benefits of the endowment continue indefinitely, in accordance with Islamic principles. As shared by the Respondent:

"The perpetuity of waqf is fundamentally tied to the intention of the waqif which the person who establishes the waqf, rather than to the property itself". -R7

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5.2.1.1 Critical Analysis: Perpetuity in Waqf Development

The principle of *perpetuity* lies at the heart of *waqf* in Islamic jurisprudence. Traditionally, *waqf* is defined as an irrevocable and perpetual endowment where the corpus (*'ayn*) of the property is preserved while its usufruct is directed toward charitable purposes. The interview findings in Section 5.2.2, however, reveal a more dynamic, context-sensitive understanding of perpetuity among contemporary *waqf* practitioners and institutions.

1. Reconciling Classical Perpetuity with Contemporary Flexibility

R6's insights from Johor provide a forward-looking perspective on perpetuity by distinguishing between *waqf muabbad* (permanent *waqf*) and *waqf muaqqat* (temporary *waqf*). The recognition of w*akaf muaqqat* under Johor's new enactment marks a significant legal evolution, enabling *waqf* to respond to *maslahah 'ammah* (public interest) without violating the sanctity of the *waqf* concept.

This development reflects a progressive shift from rigid legal orthodoxy toward contextual *ijtihad,* acknowledging that permanence in *waqf* does not necessarily mean the immutability of the property, but rather the continuity of its charitable purpose. However, the reliance on *fatwa* to legitimize such adjustments underscores the critical role of *Shariah* authority in navigating doctrinal tensions.

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2. Property and Purpose: A Shift in Legal Emphasis

R7's remark that "*the perpetuity of waqf is fundamentally tied to the intention of the waqif rather than the property itself*" reflects a subtle but important legal and philosophical shift in *waqf* management. It suggests that preserving the *waqif's* charitable intent may take precedence over maintaining the exact form or location of the endowed asset. This interpretation aligns with the juristic flexibility seen in the *Hanafi* and broader *Sunni* traditions, where scholars like Abu Yusuf accepted *istibdal* under certain conditions. It also aligns with contemporary legal needs, especially in urban development contexts where land usage may need to adapt.

3. Perpetuity and Legal Marketability: A Practical Trade-Off

R8's comment on the Penang Islamic Religious Council's successful housing project (Sittee Aisya) introduces an important practical dimension: the tension between perpetuity and commercial viability. Despite leasehold limitations, reflecting the *waqf* nature of the land, the project was successful due to effective marketing and institutional credibility.

This underscores the idea that perpetuity is not an absolute barrier to market transactions, provided that the legal structure like leasehold instead of sale and purchase and administrative strategy are properly aligned. The success in Penang thus challenges the perception that perpetuity impedes economic development and instead illustrates how clear legal interpretation, coupled with innovative practice, can reconcile Shariah and commercial requirements.

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4. Jurisprudential Difference and Doctrinal Ambiguity

The diversity of views among Islamic scholars, as mentioned by R7, reveals a lack of uniformity in the doctrinal interpretation of perpetuity. While some jurists require perpetuity in both the endowment and the asset, others allow for flexibility depending on the context and purpose. This divergence presents a governance and legal challenge for Malaysia's state based *waqf* system, where each SIRC may interpret and implement perpetuity differently. Without a unified national legal standard, this doctrinal ambiguity could result in inconsistent rulings, administrative confusion, or investor hesitation.

5. Institutional Implications and the Role of *Niyyah* Intent(*s*)

The repeated emphasis on *waqif's niyyah* as the foundation of perpetuity shifts the focus from strict legal rules to ethic, and religious integrity. This places a considerable burden on *waqf* authorities to accurately interpret historical documents and intentions, especially in older or undocumented *waqf*. However, the institutional mechanisms to evaluate and act on *niyyah* are often underdeveloped, increasing the risk of subjective or arbitrary interpretations unless guided by a robust procedural and fatwa framework.

The interview data reflect a transformative understanding of perpetuity in *waqf* land development, one that seeks to preserve the essence of *waqf* through flexibility rather than formalism. While traditional jurisprudence emphasizes permanence of the asset, current practice in states like Johor and Penang indicates a gradual shift toward prioritizing long-term benefit and public interest, with fatwa and administrative innovation acting as mediating tools.

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However, this shift also introduces legal and operational challenges, varying scholarly interpretations, risk of inconsistent application across states, and the need for stronger frameworks to evaluate *niyyah* and public benefit. As such, perpetuity must be critically redefined, not as rigidity, but as sustainability of purpose within a responsive legal framework.

5.2.2 *Istibdal*

Istibdal is an Islamic legal concept that refers to the process of replacing or exchanging

waqf (endowed) property with other properties or assets. This practice is typically utilized when the original *waqf* property is no longer deemed beneficial for its intended purpose. Shared by R6, the concept of *istibdal* was viewed as an important concept in the context of legal framework and implemented and practised in Johor.

> *"MAIJ implements the concept of istibdal. For example, if the Public Works Department (JKR) or Tenaga Nasional Berhad (TNB) requires a portion of waqf land, MAIJ will assess whether the use is for "maslahah" or public interest. If it is deemed to serve the public good, MAIJ will apply the istibdal concept by replacing the land or compensating with cash value." - R6*

Nonetheless, respondents agreed that a good management of *waqf* land are crucial in applying the concept of *istibdal*. Shared by respondents,

> *"Istibdal plays a vital role in development of waqf land. Therefore, in managing assets, the purpose of management is important to determine the reason for istibdal." - R7*

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5.2.2.1 Critical Analysis: Application of *Istibdal* in *Waqf* Land Management

The interview findings underscore the growing importance of the Islamic legal concept of *istibdal* (substitution of *waqf* property) as a mechanism to reconcile classical *waqf* principles with modern development needs. The respondents, particularly R6 and R7, presented *istibdal* as not merely a theoretical doctrine but a practically implemented legal tool and notably within the administration of Johor's State Islamic Religious

Council (MAIJ).

1. *Istibdal* as a Legal Mechanism for Public Utility and Development

R6's example of MAIJ allowing the substitution of *waqf* land for infrastructure development by entities such as JKR or TNB reflects a progressive and flexible legal interpretation of *istibdal*. By determining whether the requested use of the land serves *maslahah 'ammah* (public interest), MAIJ actively balances between maintaining the sanctity of *waqf* and addressing contemporary social and infrastructural needs.

This reflects a broader legal development where *istibdal* acts as a gateway for legally permissible transformation of *waqf* land use without breaching the foundational *waqf* principle of *perpetuity*. Rather than suspending or dissolving the *waqf*, substitution enables continued benefit, albeit in a different form whether through land replacement or monetary compensation.

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2. The Role of Asset Management and Institutional Governance

R7's statement, that effective application of *istibdal* depends heavily on the clarity of asset management objectives, raises a key governance issue. While *istibdal* allows for flexibility, it also requires a strong, principled justification rooted in both Shariah and administrative integrity. The purpose of the asset, the original *niyyah* of the *waqif*, and the ongoing value of the property must be weighed carefully to avoid abuse or arbitrary disposals of *waqf* land under the guise of public benefit.

This observation points to a critical governance challenge, the risk of *istibdal* being misused in the absence of:

a) a clear legal and procedural framework;

b) transparent valuation methods for replacement or compensation;

c) documented decision-making based on Shariah and public interest principles.

3. Gaps and Legal Ambiguities

Although the practice is described positively in Johor, the data is silent on whether there is a uniform legal process guiding *istibdal* decisions across states. The analysis suggests a potential lack of codification or standardized procedures at the national level, which could result in inconsistencies or weakened public trust. In states without clear *waqf* rules or fatwa on *istibdal*, such practices could invite legal disputes or criticisms of mismanagement. Moreover, the absence of respondent commentary on whether these *istibdal* decisions are subject to judicial or *fatwa* committee oversight raises further concern about the institutional checks and balances necessary to maintain the religious legitimacy of *waqf*.

4. Theoretical and Practical Considerations

Theoretically, *istibdal* is permissible in Islamic jurisprudence only under specific conditions, primarily when the original asset no longer serves its intended purpose or poses harm. Practically, however, the concept may be stretched or interpreted differently depending on state policy, administrative priorities, or development pressures. This tension between doctrine and implementation is a recurring challenge

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in *waqf* administration, and your data illustrates the need for:

a) clear fatwa or legislative guidance;

b) ethical standards for evaluation and substitution;

c) documentation of public benefit justification.

The concept of *istibdal*, as reflected in the interviews, demonstrates an evolving yet cautiously applied principle in modern *waqf* land management. Its practice in Johor shows potential for balancing religious integrity with developmental needs, but also exposes institutional risks if not anchored by transparent and standardized governance mechanisms. The analysis reveals that while *istibdal* can serve as a powerful legal enabler for *waqf* development, its legitimacy and sustainability depend on clear purpose, ethical management, procedural safeguards, and *Shariah* oversight, and due to its seriousness, JAWHAR guideline on *Istibdal* has been published in their website since 1982 to show the importance of this concept.

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5.2.3 Fatwa

Fatwa are sought on all matters related to daily matters and applies to the management and development of *waqf* land. Respondents believes that in term of legal framework, *fatwa* act as an important aspect in guiding the development of *waqf* land including in leasing, shared by respondents,

> *"For every lease agreement, we present it to the Waqf Committee for approval, and if needed, to the Fatwa Committee" - R6*
>
> *"... if an old and dilapidated mosque has been waqf'd by a previous*

benefactor, fatwa becomes crucial in determining whether to demolish the old mosque and replace it with a new one, following the conditions set forth in the original waqf…" -R6

""Fatwas are very important and are used especially in situations when the return of land to the state government occurs. Fatwas also allow for the transfer of land, particularly for the maintenance of buildings and land." - R9

Respondent believes that as *fatwa* has its own place in the legal framework governing *waqf*, hence it is crucial for it to be gazetted and mufti and *fatwa* committees to be knowledgeable.

"Fatwa on perpetuity more appropriate for it to be gazetted even for regulated or unregulated waqf states" - R7

"Muftis and fatwa committees need to be more exposed to current knowledge."-R7

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5.2.3.1 Analysis of the Role of *Fatwa* in *Waqf* Land Development

The interview excerpts in section 5.2.3 reveal that *fatwa* plays a pivotal but nuanced role within the governance framework of *waqf* land in Malaysia. While not inherently legislative in nature, *fatwa* serves as a *Shariah*-compliant interpretive guide, shaping decisions on both substantive and procedural issues, especially in complex or unprecedented *waqf* matters.

1. *Fatwa* as a Complementary Legal Source in Substantive *Waqf* Governance

Respondents highlight that *fatwa* contributes significantly to resolving substantive legal issues such as:

a) determining the permissibility of demolishing and rebuilding *waqf* structures (e.g., mosques);
b) interpreting the conditions of the original *waqf* deed (*waqif's* intent); and
c) guiding the transfer or utilization of *waqf* assets when civil law mechanisms are insufficient or silent.

This illustrates the *Shariah*-centric nature of *waqf*, where *fatwa* fills interpretive gaps that statutory law cannot address. The respondent's citation of *fatwa* being essential in determining whether a dilapidated mosque can be rebuilt reflects a reliance on religious authority to maintain fidelity to *niyyah* (intention) and *perpetuity* principles.

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2. *Fatwa* in Procedural Implementation: Lease Approvals and Land Transfer

From a procedural perspective, the interviews show that *fatwa* is institutionalized within the approval process for *waqf* development projects:

> "*For every lease agreement, we present it to the Waqf Committee for approval, and if needed, to the Fatwa Committee*." – R6

This reflects a dual-level compliance mechanism where administrative approval by the *waqf* committee is coupled with *Shariah* oversight via the *fatwa* body. Such a practice indicates an embedded role of *fatwa* in ensuring both legal and religious legitimacy before transactions, especially leases and transfer, are executed.

Moreover, the invocation of *fatwa* in matters involving the return of land to the state government further supports its function as a moral-legal safeguard, ensuring that transfers are not only procedurally valid but also *Shariah*-compliant. This interplay between state land policies and *waqf* law is a hallmark of Malaysia's dual legal system.

3. The Critical Need for Gazette and Competency

Respondents also express concern about the authority and effectiveness of *fatwa*, with emphasis on two interrelated issues:

a) the need for *fatwa* to be gazetted to be enforceable and legally binding within state administration;
b) the intellectual preparedness of muftis and *fatwa* committees, especially in contemporary legal, financial, and urban development matters.

"*Fatwa on perpetuity more appropriate for it to be gazetted…"* – R7

"*Muftis and fatwa committees need to be more exposed to current knowledge*." – R7

These insights suggest that while *fatwa* is respected and frequently referenced, its institutional impact is uneven due to its non-binding nature when not gazetted and the varying levels of capacity among *Shariah* scholars. This weakness has significant implications:

a) In states without respective *waqf* enactments, ungazetted *fatwa* may lack practical enforcement.
b) Poorly contextualized *fatwa* may inhibit progressive *waqf* development, especially in finance-linked projects, leasing, and public-private partnerships.

4. Implications for *Waqf* Legal Reform and Institutional Integration

The data points to a structural need for integration and reform:

a) *Fatwa* should be systematically incorporated into the procedural workflow of *waqf* institutions through formal gazettement.
b) Capacity-building programs for muftis and *fatwa* committees are essential to align their understanding with urban planning, property law, and Islamic finance.

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Moreover, this analysis reveals that *fatwa* occupies a hybrid legal space, it is neither purely theological nor entirely administrative but acts as a mediating force that ensures compliance with Islamic values while facilitating legal processes. In that sense, its authority is as strong as the institutional structure that supports it.

This interview data underscores that *fatwa* remains a critical interpretive and procedural tool in *waqf* governance in Malaysia. However, its impact is hindered by inconsistencies in gazettement and varying levels of institutional readiness. For *waqf* land development to be both legally sound and *Shariah*-compliant, *fatwa* must be empowered through structural reforms, including its integration into legal procedures and the enhancement of the scholarly competence behind its issuance.

5.2.4 Policy and Regulatory Environment

The respondent has various views on the policy and regulatory environment regarding *waqf* development. These views encompass a broad spectrum of considerations related to how policies and regulations impact the management, utilization, and enhancement of *waqf* properties. The respondent's observations may include the existing legal framework and policies, stakeholder engagement and technology in regards to the *waqf* development.

Respondent is in the view that the *waqf* institutions need for clear and comprehensive legal framework and policies that outline their rights and responsibilities in managing *waqf* land. They emphasize the need for a structured framework that clearly outlines the parameters within which *waqf* institutions operate, ensuring that all aspects of their management responsibilities are clearly articulated and understood. This comprehensive approach aims to facilitate effective governance and oversight, thereby enhancing the overall efficiency and transparency of *waqf* land management practices. The respondent said:

> *"The legal and regulatory environment governing waqf properties can be complex and inconsistent, leading to difficulties in understanding and navigating the procedures required for development." - R3*

> *"The government does not provide adequate legal, financial, or infrastructural support for the development of waqf properties. This*

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includes insufficient policy frameworks, lack of financial incentives, or minimal regulatory guidance. This lack of support can hinder the development process, making it difficult for MKI to obtain necessary approvals, financing, or technical assistance". - R3

The *waqf* property framework and regulations governing *waqf* can be vague or inconsistent, leading to confusion about the rights and responsibilities of *waqf* managers. Thus, this ambiguity can result in legal disputes and inefficient property management.

Besides, respondents also agreed that the support and engagement from various stakeholders may significantly enhance the effectiveness and impact of *waqf* land development initiatives.

"Tackling these challenges requires a multi-faceted approach, involving legal expertise, stakeholder engagement, social impact assessment, community involvement, and a comprehensive understanding of both religious principles and modern development practices." - R5

"MAINPP itself may lack professionals with the necessary expertise in waqf management, property development, and financial planning within waqf institutions. This lack of expertise can result in poorly planned projects, inefficient management, and missed opportunities to maximize the value and impact of waqf properties." - R3

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In addition, the respondent is also in the view that outdated technology hampers operational efficiency. The lack of digital tools for managing *waqf* properties can lead to inefficiencies in record-keeping, property management, and communication.

> *"Stakeholders, including MAINPP and MKI, may lack access to modern technology and innovative practices that could enhance the efficiency and sustainability of waqf property development. This can lead to outdated methods being used, reducing the potential benefits and effectiveness of development projects." -R3*

To add, a respondent which is a Group Chief Financial Inclusion for Bank Islam interested in how *waqf* funds are invested and managed. The respondent agreed the lack of the standardization of the financing process between banks lead to the inconsistencies in how *waqf* assets are managed, financed, and invested, which may hinder the overall effectiveness and growth of *waqf* institutions. Standardized processes would help streamline operations, improve transparency, and facilitate better coordination among financial institutions, ultimately supporting more robust and uniform *waqf* development. The respondent said:

> *"Secondly, in terms of standardization, we need to create SOPs and so on. If possible, standardize the financing process; there's no need for a 'secret recipe' at each bank. Just create a standard by the Shariah Committee and then have Legal Solicitors helping banks use this standard. There's no need for variations between states because, ultimately, these agreements will end up in court. This is not for*

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Islamic banks to compete with each other; this is something we do for the ummah." -R1

Thus, the specific regulatory issues that need addressing include the inadequate legal framework for development. There may be insufficient legal provisions regarding the development and utilization of *waqf* land, causing delays or obstacles in project implementation. Thus, there is a need to introduce or update legislation to provide clear legal frameworks for the development of *waqf* land, including streamlined processes for obtaining approvals and permits.

Besides, for the inadequate involvement of key stakeholders, including local communities and private sector partners, in the policy making process, the suggestion in the policy change is that to develop mechanisms for regular consultation and engagement with stakeholders. Establish advisory committees or forums that include representatives from various groups affected by *waqf* land policies. As mentioned by the respondent:

"Furthermore, engaging stakeholders, including legal experts, wakaf administrators, and education authorities, could provide deeper insights into the adequacy of the current legal framework and potential areas for reform." - R3

"In terms of upgrading professionalism at SIRC level, I would really suggest that SIRC should engage and appoint more professionals to be in in SIRC or Wakaf Pulau Pinang Sdn Bhd to assist in studying

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and analysing and planning a development of waqf land that have a high impact on the Muslims Community."- R5

Besides, there is also a need to invest in modern technology solutions to streamline administrative processes, improve data management, and enhance overall efficiency. Developing integrated systems that can handle various aspects of *waqf* management can address operational challenges and improve effectiveness.

5.2.5 Diverse Perspectives on Projects and Agreements

Based on the interviews conducted with the various stakeholder in different states, they had diverse perspectives on the law and regulatory environment affecting *waqf* land. These perspectives also highlight the different type developments and agreements used that has been carried out in different states. As shared by the respondents:

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"The waqf in Selangor consists of general waqf, special waqf, conditional waqf, joint waqf, equity waqf, gold waqf, testamentary waqf, takaful waqf, intellectual property waqf, knowledge waqf, commercial waqf, cash waqf, service waqf, and irsod waqf. The total waqf properties comprise 1,419 lots of land throughout the state of Selangor. Types of development include the construction of mosques, religious schools, Islamic cemeteries, gas stations at ILIM and Jalan Reko Bangi, as well as facilities like restrooms, prayer rooms, and fast-food restaurants." -R9

"The agreement use in the project is Joint venture agreement ..using lease form in form 15A.." -R9

"In Johor, waqf is divided into categories such as burial grounds, mosques, religious schools, suraus, residential properties, and businesses. For sites without specific uses, there's no need for development; however, to generate income for MAIJ, for example, land designated for mosques can be leased for agriculture or eateries, subject to certain conditions. Permanent structures have also been built, such as waqf bazaars on welfare waqf land and general waqf land. There are also agricultural waqf initiatives, where MAIJ leases palm oil plantations. Additionally, land is leased for telecommunications towers, azan towers, and light poles. These leases are open to the public, except for MAIJ personnel." R6

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"..Waqf Sittee Aishah and Amanee used a joint venture agreement between MAINPP and developer and a lease agreement of 99 years between developer and purchasers. Recently in Amanee project the developer introduced a new agreement that is the e-spa agreement generated in Kementarian Perumahan dan Kerajaan Tempatan's (KPKT) website through Forn H" -R5

"the contract documentation in our project still relied on conventional law such as joint-venture agreement and power of attorney" – R5

"legal dispute still subject to civil jurisdiction but lately court divert the cases to Shariah Court."- R5

The respondent also elaborated on the various *waqf* laws implemented in their respective states, discussing how these legal frameworks differ in their approach to the administration and management of *waqf* properties. They highlighted specific provisions and regulations that reflect the unique socio-economic and cultural contexts of each state, emphasizing the impact these laws have on the effectiveness and sustainability of *waqf* initiatives within their communities. As shared by the respondents:

"The old Johor Waqf Enactment has been repealed and replaced with the Administration of Islamic Religion Enactment 2003, amended in 2016. However, Johor still follows the Waqf Rules of 1983 concerning the administration and management of waqf. Currently, a new Waqf Enactment has been submitted and is under review by the State Legal Advisor before being discussed at the State Assembly level. In this new enactment, all regulations from the Waqf Regulations of 1983 will be incorporated." -R6

"We utilize the Selangor State Waqf Enactment and the Selangor State Islamic Administration Enactment, both of which are comprehensive." -R9

"WPP / MAINPP will be obliged to refer to the Islamic Religious Administration Enactment (Penang State) 2004 and the state fatwa

committee so that any action does not conflict with the rules and Shariah. The state waqf act of Penang is yet to be legislated/enacted." R5

5.3 Findings on Legal Framework and Regulatory Environment

5.3.1 The Dual Legal Framework Governing Waqf Land

In this part of the research, few findings were drawn based on the interpretation of law and enactments discussed in Chapter Three (3) and data from semi structured interview from various respondents quoted in 5.2. Below are the findings obtained from data collected:

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Concept of Perpetuity and Legal Documentation

One of the key findings of this research is that the governance of *waqf* land in Malaysia is characterized by a dual legal framework that incorporates both Islamic law and civil law. While *waqf* is fundamentally an Islamic institution, intended for the perpetual dedication of assets for charitable and religious purposes, its administration and development are intricately tied to the civil legal system, particularly the National Land Code 1965 and Contract Act 1950. The National Land Code provides the civil regulatory foundation for land transactions, including the registration, transfer, and development of land and Contract Act governs the contracts between SIRC and developers. However, *waqf* lands are subject to specific Islamic legal principles, such as perpetuity and non-transferability, which often come into conflict with the commercial and developmental frameworks imposed by civil law.

The concept of perpetuity, in the context of state *waqf* enactments in Malaysia has significant implications for the long-term sustainability and effectiveness of *waqf* properties. Here are some critical perspectives on how this principle impacts the *waqf* framework: Section 18 Terengganu *Waqf* Enactment 2016 recognised *waqf muaqqat* (temporary *waqf*) and Johore SRIC also recognised *waqf muaqqat* through section 17 Wakaf Rules of Johor 1983. Most states that rely on their respective Administration of Islamic Law Enactments are silent on the issue of perpetuity, and generally adhere to the Shafi'i school of thought regarding perpetual *waqf*. However, in the Federal Territories and Sarawak, the respective laws namely, the Administration of Islamic Law (Federal Territories) Act 1993 in section 2 and the Sarawak Islamic Council Ordinance 2001 also in section 2, explicitly define *waqf muabbad* and *waqf muaqqat*.

The perpetuity requirement can create legal ambiguities and complicate dispute resolution regarding *waqf* properties. Different interpretations of what constitutes a valid *waqf* can lead to inconsistencies across state enactments, making it difficult for stakeholders to navigate the legal landscape effectively.

Some scholars advocate for recognizing temporary *waqf*s as a viable alternative to address immediate community needs while still providing long-term benefits. This approach suggests that temporary *waqf*s can generate perpetual benefits if managed correctly, allowing for flexibility in addressing changing social dynamics without compromising the foundational principles of *waqf*.

The strict application of perpetuity may ultimately threaten the sustainability of *waqf* properties by discouraging potential donors who perceive the process as overly rigid

and unresponsive to modern needs. This could lead to a decline in new *waqf* contributions, undermining the overall goal of enhancing community welfare through charitable endowments.

While the concept of perpetuity is central to traditional *waqf* practices, its rigid application poses challenges that can hinder effective management and sustainability. A more flexible approach that incorporates temporary *waqf*s and adapts to contemporary needs may enhance the viability and impact of *waqf* in Malaysia's socio-economic landscape.

On legal documentation, however, it seems that the reliance on the Contracts Act 1950 for agreements between State Islamic Religious Councils (SIRCs) and developers, rather than utilizing *Shariah*-compliant contracts such as *murabahah, istisna', mudharabah,* or *ijarah*, highlights significant gaps in the current *waqf* framework in Malaysia. This situation raises several critical points for consideration; namely, the Contracts Act 1950 is primarily based on common law principles and may not fully align with Islamic legal requirements. By relying on this secular framework, SIRCs may overlook the inherent benefits of *Shariah*-compliant contracts that are designed to ensure ethical and equitable transactions. For instance, *murabahah* and *ijarah* provide mechanisms that can enhance transparency and fairness in financial dealings, which are crucial for maintaining the integrity of *waqf* properties.

The use of conventional contracts limits the ability of SIRCs to adapt to the unique needs of *waqf* properties. *Shariah*-compliant agreements allow for more tailored solutions that can address specific circumstances surrounding *waqf* land development. For example, *istisna'* (a contract for manufacturing goods) could facilitate the

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construction of facilities on *waqf* land, ensuring that developments align with both community needs and Islamic principles.

Relying solely on the Contracts Act may lead to inefficiencies in project execution and management. *Shariah*-compliant contracts often incorporate profit-sharing mechanisms, which can incentivize developers to maximize the utility and value of *waqf* properties. This could result in better outcomes for both SIRCs and the communities they serve.

The absence of a robust *Shariah*-based framework for *waqf* management can create legal ambiguities and uncertainties in contractual relationships. This can complicate dispute resolution processes when conflicts arise between SIRCs and developers. A clear set of *Shariah*-compliant guidelines would provide a more coherent legal foundation, reducing potential disputes, and enhancing trust among stakeholders.

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The lack of *Shariah*-compliant frameworks may also limit community engagement in *waqf* projects. By utilizing contracts that resonate with Islamic values, SIRCs could foster greater participation from the Muslim community, encouraging donations and investments in *waqf* initiatives that are perceived as ethically sound.

While the reliance on the Contracts Act 1950 provides a legal basis for agreements between SIRCs and developers, it does not adequately address the unique requirements of *waqf* management under Islamic law. Emphasizing *Shariah*-compliant agreements such as *murabahah, istisna', mudharabah, or ijarah* could enhance the effectiveness, transparency, and sustainability of *waqf* properties in Malaysia, ultimately benefiting

both SIRCs and the communities they serve.

5.3.2 Difficulties Providing a Unified Legal and Procedural Framework for Waqf Development.

Fundamental to Islamic charity endowments, *waqf* has great power for socioeconomic development especially in sectors such education, healthcare, and poverty reduction. With large areas of land given for the benefit of the society, *waqf* land is very important in the Islamic economy in Malaysia. But underlined by the particular political and legal framework of Malaysia, the scattered character of *waqf* law across many states has hampered the effective and efficient growth of these areas. One of the main difficulties is the lack of uniform regulations controlling *waqf* land and the reality that the Malay Rulers personally oversee *waqf* land under the direction of state legislation. This has hindered attempts at legal reforms, therefore hindering the full possibility of *waqf* land development to be achieved.

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State laws mostly control *waqf* management in Malaysia since issues involving Islamic law fall under state authority. Every state has a State Islamic Religious Council (SIRC) in charge of *waqf* land development and management. The Federal Constitution of Malaysia, which gives state governments the power to act on Islamic concerns including *waqf*, embodies this dispersed structure. Consequently, the legal systems controlling *waqf* land vary greatly throughout states, which results in variations in the management and growth of these assets.

Some states, hampered by antiquated laws and bureaucratic inefficiencies, lag behind while others have made notable progress in reforming their *waqf* legislation and including best practices in land management. This difference in legal systems results in unequal development results all throughout the nation: certain *waqf* lands are underused or even left inactive while others are actively supporting social and economic growth. Therefore, the lack of uniform rules becomes a major barrier to fully realize *waqf* land on a nationwide level.

The direct control of *waqf* land by the Malay Rulers complicates the matter to another level. The Malay Rulers have great power over issues of *waqf* as constitutional monarchs and defenders of Islam in their various domains. Their participation in w*aqf* management reflects the great cultural and religious value of *waqf* in the Malay-Muslim culture. This also means, then, that any reform effort for *waqf* rules has to consider the Malay Rulers' authority and agreement.

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Given the traditional and religious character of *waqf*, the Malay Rulers are generally wary of implementing reforms that can be seen as compromising Islamic principles or their function as defenders of the religion. This might cause opposition to attempts at legal reform, especially those meant to provide a uniform or regulated framework for *waqf* land development. Policymakers have to carefully negotiate the fine line separating honouring the authority of the Malay Rulers from advancing sensible legal reforms.

The scattered character of *waqf* rules and the power of the Malay Rulers have made efforts at legislative reform aiming at standardizing *waqf* land management throughout the nation more difficult. Any movement toward standardizing has to balance the

requirement of a unified national policy on *waqf* development with the constitutional reality of state authority over Islamic issues. Since it calls for the participation of several stakeholders including the federal government, state governments, the SIRCs, and the Malay Rulers this is no easy work.

Standardized *waqf* laws have had numerous difficulties being introduced. Legal pluralism; that is, the variation in Islamic law interpretation and *waqf* administration style among different states first arises and must be standardized. This variety makes it challenging to design a one-size-fits-all legal system applicable consistently among all states. There is the question of political will since some state governments would be unwilling to give a federal authority jurisdiction over *waqf* issues or implement laws they believe to compromise their autonomy. Furthermore, capacity is a concern since some states can lack the institutional tools or knowledge required to apply contemporary *waqf* rules successfully.

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Many *waqf* lands remain undeveloped or underused as a result of these difficulties, which have slowed down legislative change in the *waqf* sector. Implementation of best practices in *waqf* management or attraction of private investment and funding for *waqf* development projects depends on a consistent legal framework. This has reduced the capacity of *waqf* land to support social welfare goals and economic growth targets of Malaysia.

Notwithstanding these difficulties, the *waqf* sector is realizing it needs legal reform. Both academics and legislators have demanded the creation of a uniform legal system that will respect the authority of the Malay Rulers and simplify *waqf* administration

among states. The development of a federal model law on *waqf*, which states might adopt freely, allowing for more homogeneity in *waqf* governance without thus violating state sovereignty, offers one potential solution.

With the federal government giving states that want to upgrade their *waqf* laws technical aid and capacity-building support, another solution may be to improve collaboration between the federal and state governments. This could assist close the discrepancy between lagging states with less advanced *waqf* systems and those others with more advanced frameworks. Furthermore, more interaction with the Malay Rulers is necessary to guarantee that any legal changes would be perceived as improving rather than as weakening their function as defenders of Islamic institutions.

The growth of *waqf* assets and their possible contribution to the socioeconomic development of Malaysia is seriously hampered by the lack of uniform rules controlling *waqf* land in the nation. The distributed character of *waqf* government and the power of the Malay Rulers hamper attempts to implement legal changes meant to produce a more homogeneous and efficient framework for *waqf* property development. Still, it is feasible to overcome these obstacles and fully utilize *waqf* land in Malaysia by striking the proper mix of respect of state sovereignty, interaction with traditional authority, and technical help for legal modernization. To attain social and economic fairness in the nation, the future endeavour will need cooperation, consensus-building, and a shared dedication to the *waqf* values.

The coexistence of these two legal systems poses challenges in the effective governance of *waqf* land. For instance, developers and stakeholders must navigate both

sets of regulations to ensure that *waqf* properties can be developed in a way that aligns with both *Shariah* principles and civil law requirements. This duality underscores the complexity of *waqf* land development in Malaysia and highlights the need for greater integration between Islamic and civil legal frameworks to facilitate smoother processes for *waqf* land development while preserving its charitable nature.

The question of jurisdiction in *waqf* disputes remains subject to the discretion of the court before which the matter is brought. In practice, this creates significant legal uncertainty, as the resolution of such disputes often depends on the interpretive stance taken by the presiding judge. The legal framework governing *waqf* continues to be shaped largely by litigators, given the absence of a definitive precedent that comprehensively addresses the jurisdictional boundaries in waqf related cases. This lack of clarity persists despite strong arguments that all *waqf* disputes ought to fall within the exclusive jurisdiction of the *Shariah* Courts. Consequently, the unsettled nature of jurisdiction not only complicates the adjudication of *waqf* matters but also perpetuates tensions between civil and *Shariah* judicial domains.

5.3.3 Inconsistent Application of the *Istibdal* Principle

Another significant finding is the inconsistent application and regulation of the principle of *istibdal* across different states in Malaysia. *Istibdal* refers to the substitution or exchange of *waqf* property, typically allowed when the original *waqf* asset is no longer viable for its intended purpose, and the substitution can preserve or enhance the value of the *waqf*. In states with robust *waqf* governance frameworks, such as Selangor*, istibdal* has been effectively utilized as a mechanism to enhance the value of *waqf* assets. For example, in a notable case, the Selangor Islamic Religious Council

(Majlis Agama Islam Selangor, MAIS) surrendered a road access portion of *waqf* land to the state authority for the purpose of developing a petrol station. This surrender reclassified the land from its original use into a commercially viable asset, substantially increasing its market value. Furthermore, the land surrendered was compensated with the acquisition of another parcel of land, thereby expanding the *waqf*'s asset base.

This strategic use of *istibdal* demonstrates its potential to contribute to the economic sustainability of *waqf* properties. However, in unregulated states where *waqf* governance is less developed, the principle of *istibdal* is either underutilized or not employed at all. This disparity suggests that there is a need for clearer guidelines and regulations on the application of *istibdal* to ensure that *waqf* assets across Malaysia can be optimized and their value preserved or enhanced.

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The inconsistency in the application of the *istibdal* concept by State Islamic Religious Councils (SIRCs) in managing *waqf* land development is a critical issue that highlights both opportunities and challenges within Malaysia's *waqf* framework. While states like Selangor and Johor have embraced *istibdal* as a mechanism for enhancing *waqf* land utilization, other states with less regulated *waqf* laws have been slower to adopt this approach.

Istibdal refers to the process of exchanging *waqf* properties to facilitate better development opportunities. This concept allows SIRCs to replace underperforming or non-productive *waqf* lands with more viable assets, thereby addressing the issues of

underdevelopment and financial stagnation associated with strict adherence to the principle of perpetuity. By permitting such exchanges, *istibdal* can lead to enhanced economic benefits and social welfare outcomes.

The disparity in the adoption of *istibdal* across different states raises concerns about equitable development of *waqf* properties. States like Selangor and Johor, which actively utilize *istibdal*, demonstrate its potential to revitalize underutilized *waqf* lands and generate income for community projects. In contrast, states that have not integrated *istibdal* into their *waqf* management strategies risk maintaining stagnant assets that do not contribute effectively to local economies or community needs.
The inconsistent application of *istibdal* can lead to significant divergence in how *waqf* lands are developed across Malaysia. States that leverage *istibdal* can adapt more readily to changing socio-economic conditions, allowing for innovative projects that align with community needs and aspirations. Conversely, states that rely solely on traditional interpretations of perpetuity may struggle with outdated properties that fail to meet contemporary demands, ultimately limiting the impact of *waqf* as a tool for social development.

The slow adoption of *istibdal* in unregulated states may stem from legal ambiguities and a lack of administrative capacity within SIRCs. Without clear guidelines or frameworks for implementing *istibdal*, councils may hesitate to engage in property exchanges due to fears of violating traditional *waqf* principles or facing backlash from stakeholders who prefer a more conservative approach and to address these inconsistencies, it is crucial for policymakers to develop comprehensive guidelines that facilitate the implementation of *istibdal* across all states. This could include

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training programs for SIRC officials on the jurisprudence and practical applications of *istibdal*, as well as creating a standardized framework that aligns with Islamic principles while promoting flexibility in *waqf* management.

While the concept of *istibdal* offers a promising avenue for enhancing the development of *waqf* lands in Malaysia, its inconsistent application across states poses challenges that need to be addressed. By fostering a more uniform approach to *istibdal*, Malaysia can unlock the full potential of its *waqf* assets, ensuring they serve as effective instruments for community development and social welfare.

Despite the presence of regulatory frameworks in certain states, this research finds that there is no comprehensive or standardized *waqf* development model across Malaysia. Even in states where *waqf* governance is more structured, such as Selangor and Johore, the development of *waqf* land lacks a uniform approach that could guide sustainable and *Shariah* -compliant development efforts. Each state tends to adopt ad hoc measures for *waqf* land development, which results in inconsistent practices and outcomes.

5.3.4 Absence of a Comprehensive *Waqf* Development Model

The absence of a comprehensive *waqf* development model poses challenges for maximizing the potential of *waqf* assets. Without a clear, cohesive framework, the development of *waqf* properties often depends on the discretion of individual SIRCs and their interpretations of *Shariah* and civil law. This situation underscores the need for a unified *waqf* development model that integrates Islamic principles, civil law

requirements, and sustainable development practices to ensure the optimal use of *waqf* lands across all states in Malaysia.

5.3.5 Relinquishment of SIRC's Authority Over *Waqf* Land and Adherence to Federal Law

A significant finding of this research is the tendency of State Islamic Religious Councils (SIRCs) to relinquish, or significantly limit, their authority over *waqf* land matters in favour of complying with federal regulations such as the Housing Developers (Control and Licensing) Act 1966. This deference to federal laws, which primarily govern private and commercial land development, often overlooks the unique nature of *waqf* land, which is governed by Islamic principles of perpetuity and charitable dedication. The concept of *waqf* land development is inherently distinct from that of other forms of land, such as trust land, because *waqf* land cannot be sold or transferred. Instead, SIRCs are limited to leasing the usufruct (the right to use the land) of structures developed on *waqf* property, while maintaining the underlying asset in its perpetual charitable status.

This research underscores the need for SIRCs to develop a specialized *waqf* land development model that is tailored to the specific legal and religious requirements of *waqf*. Relying solely on federal laws like the Housing Developers Act, which are designed for commercial land development, fails to address the complexities and limitations imposed by Islamic law on *waqf* properties. Without a dedicated *waqf* development model, SIRCs risk undermining the sustainability and long-term charitable purpose of *waqf* assets. Therefore, it is imperative for SIRCs to establish a

comprehensive framework that not only adheres to *Shariah* principles but also accommodates the unique challenges of modern *waqf* land development. This would ensure that *waqf* land continues to serve its intended charitable and religious functions while allowing for productive and sustainable development.

5.4 Analysis on Management Practices

5.4.1 *Mutawalli*

In classical Islamic jurisprudence (*fiqh*), the term *mutawalli* refers to the individual appointed to supervise and administer *waqf* property on behalf of the *waqif* (donor). The *mutawalli* is entrusted with safeguarding the *waqf* asset and ensuring that its benefits (*manfa'ah*) are directed to the designated beneficiaries (*mawquf 'alayh*) in accordance with the conditions stipulated by the waqif and the principles of Shariah.

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The Hanafi School, according to Abu Yusuf and Muhammad al-Shaybani, students of Imam Abu Hanifah, the *mutawalli* is the manager of *waqf*, empowered to act in the interest of the *waqf* and its beneficiaries. The *mutawalli* has legal standing to represent the *waqf*, administer income, and, with judicial approval, take legal action to protect *waqf* interests. The Hanafi school emphasizes that the *mutawalli* may be the waqif himself, a person nominated by the *waqif*, or, in the absence of nomination, appointed by a *qadi* (judge). M*utawalli* is entrusted with the practical affairs of the *waqf* and must execute them according to the *waqif*'s stipulations[350].

The Maliki School regard the *mutawalli* (also called *nazir*) as a person of fiduciary

[350] Abu Bakr al-Kasani, *Bada'i al-Sana'i fi Tartib al-Shara'i*, ed. Ali Muhammad Mu'awwad and 'Adil Ahmad Abd al-Mawjud (Beirut: Dar al-Kutub al-'Ilmiyyah, 2000), 6:222.

trust (*amanah*). The role is limited to preserving the *waqf*, collecting revenues, and distributing benefits. The *mutawalli* must act honestly and is accountable to the beneficiaries and the court for any mismanagement. He cannot sell, lease, or change the nature of the *waqf* property without judicial permission[351].

The Shafi'i School define the *mutawalli* as the executor of the *waqf* and affirm that he must act within the terms set by the waqif. If the waqif does not appoint a *mutawalli*, then the judge (*qadi*) has the authority to do so. The Shafi'i school emphasizes judicial oversight, especially in cases involving *istibdal*, leasing, or disputes over *waqf*.[352]

The Hanbali School recognize the *mutawalli* as a representative of the *waqf*, responsible for both management and legal defence. Ibn Qudamah in *al-Mughni* outlines the responsibilities of the *mutawalli* in distributing income, conducting repairs, maintaining records, and ensuring compliance with Shariah. Like other schools, they also allow judicial appointment where no *mutawalli* is named[353].

Hence, the classical *mutawalli* means a trusted manager responsible for upholding the *waqf*'s religious purpose. Today, SIRCs carry that same responsibility but within a legal, administrative, and development-oriented framework. While the essence of trust and Shariah compliance remains, the role has evolved to meet modern needs, especially in developing *waqf* land for the benefit of the Muslim community.

[351] Malik ibn Anas, *al-Mudawwanah al-Kubra*, ed. Muhammad Abd al-Salam Babshil (Beirut: Dar al-Fikr, 1994), 3:118–121.
[352] Abu Ishaq al-Shirazi, *al-Muhadhdhab fi Fiqh al-Imam al-Shafi'i*, ed. Muhammad al-Zuhayli (Damascus: Dar al-Qalam, 1995), 2:502–503.
[353] Ibn Qudamah, *al-Mughni*, ed. Abd Allah al-Turki (Cairo: Dar Alam al-Kutub, 1997), 6:185–186.

The role of the *mutawalli* (trustee) is critical in the management and development of *waqf* assets. This analysis examines the perspectives and experiences of various stakeholders regarding the role of *mutawalli*(trustees) in *waqf* development. The insights gathered from respondents highlight the responsibilities, competencies and and opportunities associated with *mutawalli* governance in managing *waqf* assets. As highlighted by the respondents, it is the trustee's responsibility to ensure that all *waqf* development projects are aligned with *Shariah* principles. This obligation encompasses not only the ethical management of *waqf* assets but also the requirement to adhere to Islamic legal guidelines in planning, implementation, and ongoing operations.

> *"WPP / MAINPP as a trustee will be obliged to refer to the Islamic Religious Administration Enactment (Penang State) 2004 and the state fatwa committee so that any action does not conflict with the rules and Shariah*" *-R5*

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In addition to their responsibilities related to *Shariah* compliance, the trustee also has the vital obligation to effectively administer and develop *waqf* properties. This includes overseeing the maintenance and enhancement of the assets to ensure they are utilized to their fullest potential for the benefit of the community. The trustee must engage in strategic planning and decision-making to implement development initiatives that align with the original objectives of the *waqf*. As shared by the Respondent:

> *"The Madrasah has been given authority as the Mutawalli to*

independently manage the properties endowed to the Madrasah. This means the Madrasah can administer, control, and develop the waqf property on its own. This includes managing development funds and administrative funds for the waqf property without assistance from the Islamic Council." - R2

Next, the respondent expressed the key responsibilities of the *mutawalli*s also to seek funding to support and enhance the management of *waqf* development. They emphasized that this role is crucial for ensuring the sustainability and effectiveness of *waqf* initiatives, as securing adequate financial resources enables the *mutawalli* to implement various projects and programs that benefit the community.

"MAPIM was the coordinator for the Palu project, as the development funds were provided by MAPIM through donations from the public to the Palu fund. MAPIM actedby ensuring that all waqf land was properly documented with agreements, and MAPIM monitored the development on those lands." -R4

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5.4.2 Institutional Effectiveness.

The effectiveness of *waqf* institutions in managing *waqf* properties is crucial for ensuring that these properties achieve their intended social, economic, and religious objectives. By analysing the effectiveness, it shows how well these institutions manage their resources, execute their projects, and contribute to community well-being. The respondent agreed that *waqf* institutions are effective in managing *waqf* properties in terms of financial management. As shared by the respondent:

"In 2018, a new management committee for the waqf division of MKI was appointed. Consequently, this new Waqf Committee under the MKI Management Board discussed with MAINPP to work on the intention of self-managing the waqf properties donated to MKI. This was to facilitate MKI in planning its finances, as most of the waqf properties could not generate revenue for MKI due to disorganized management, issues with unauthorized occupants, and reluctance to pay site rents. These issues disrupted MKI's plans to utilize the waqf properties for generating income." - R3

Apart from that, respondent also shared their strategies in terms of effective communication and fundraising strategies to manage financial resources effectively.

"As with all of MAPIM's campaigns for disasters or crises, MAPIM will launch a fund for the campaign. We usually disseminate information through the official MAPIM website, MAPIM members' social media, and public campaigns to inform the public that Palu needs help to rebuild their village, which was hit by the tsunami." - R4

Besides, operational efficiency is also important in managing *waqf* development. As agreed by the respondent the *waqf* institution demonstrates a suitable operational efficiency to maximize the use and value of the *waqf* assets through streamlined processes and effective resource management.

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"The Madrasah has been given authority as the Mutawalli to independently manage the properties endowed to the Madrasah. This means the Madrasah can administer, control, and develop the waqf property on its own. This includes managing development funds and administrative funds for the waqf property without assistance from the Islamic Council." -R2

"For the waqf land received in 2020, the architect is currently finalizing the plans with assistance and funding from private individuals. The architect will submit the plans to the engineer, who will then apply for planning permission from the Kulim Municipal Council. Based on our previous experience with building the Madrasah, this approval process typically takes around 4 years before the plans can be submitted to the Islamic Council for final approval." --R2

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Additionally, the legal and regulatory frameworks play a crucial role in the effectiveness of various *waqf* institutions in managing *waqf* properties. The respondent highlighted that well-defined and supportive legal structures provide a foundation for institutions to operate efficiently and transparently.

"Even though Housing Developer's Act has a tight leash on waqf land but most of the law stated in that Act really protect the development project in terms of safety and transparency. This Act helps SIRC and our developers by providing a security in terms of monitoring the cash

flow in HDA account and the developers appointed by SIRC are bound by that Act." - R5

"The legal framework surrounding waqf land in Penang has a profound impact on its economic and social development. While there are opportunities for enhancing community benefits through effective management and development of waqf properties, challenges related to bureaucracy, awareness, and conflicts require ongoing attention and reform. A well-defined and supportive legal framework can empower waqf institutions to fulfill their potential as catalysts for community development in Penang. Regular reviews and updates to the legal provisions, alongside community engagement, can help maximize the benefits of waqf lands." -R5

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Clear regulations ensure that *waqf* properties are managed according to established guidelines, protecting both the assets and the interests of the beneficiaries. Effective legal frameworks facilitate compliance, streamline administrative processes, and reduce the risk of disputes or mismanagement. Conversely, ambiguous or restrictive regulations can create challenges, hindering institutions' ability to effectively utilize and develop their properties.

"The legal and regulatory environment governing waqf properties can be complex and inconsistent, leading to difficulties in understanding and navigating the procedures required for development." - R3

Hence, strong financial management, operational efficiency, and legal regulatory framework can significantly enhance the effectiveness of *waqf* institutions in managing their properties. These elements ensure that *waqf* assets are utilized to their fullest potential, are maintained and developed in a sustainable manner, and operate within a clear and supportive legal environment.

5.4.3 Challenges in Implementation of *Waqf* Principles

In the development of *waqf* land and the implementation of *waqf* principles in Malaysia, respondents have identified a range of complex challenges that impact the effectiveness and efficiency of these processes. These challenges would come in different forms such as challenges in administrative, financial, legal framework and in social aspects

According to respondents, the development of *waqf* land in Malaysia faces several significant challenges that impact the effectiveness and sustainability of these initiatives. In terms of administrative challenges one of the foremost issues is the constraint on human resources and expertise. There is a notable shortage of skilled professionals and experts who are well-versed in *waqf* management and its intricacies. This shortage can lead to inadequate oversight, inefficient administration, and a lack of specialized knowledge necessary for effectively managing and developing *waqf* assets. respondent commented that,

> *"MAINPP itself may lack professionals with the necessary expertise in waqf management, property development, and financial planning within waqf institutions. This lack of expertise can result in poorly planned*

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projects, inefficient management, and missed opportunities to maximize the value and impact of waqf properties."-R3

Apart from that, respondents agreed that another challenge to cope with is on the maintenance of the *waqf* project in the long term. Ensuring the ongoing success and sustainability of *waqf* projects requires continuous attention and management, which can be particularly demanding.

"After development, ongoing maintenance and management of the waqf properties can pose challenges, particularly in ensuring that the properties continue to serve their intended purposes over time."- R5

Another major challenge in terms of legal aspects is involving the complexity of procedures and regulations that must be adhered to. The regulatory framework governing *waqf* land development often requires lots of process and procedure, with multiple layers of rules and requirements that can be difficult to navigate. There are also policies and procedures that need to be followed that differ from the concept of *Waqf* Properties. Statement by the respondent himself mentioned,

"The administrative processes surrounding waqf land can be complicated. Lengthy legal procedures can deter potential developers and investors, stifling economic opportunities."-R5

"Another policy that is challenging to meet is the policy and procedure by Local Government Authority like Majlis Perbandaran Seberang Perai. Local Authority requires that for every development the land owner have to surrender about 20 feet of the land to accommodate the

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road, side road, utilities for Tenaga Nasional, and playground to State Authority. For a waqf land the act of giving and surrendering this land is not permissible under the Fatwa and State Fatwa Committee forbid this land acquisition by the State Authority"-R5

This complexity not only makes it challenging for stakeholders to comply with regulations but also contributes to delays in project implementation. The need to adhere to various procedural guidelines and legal frameworks often requiring additional time and resources that would delay the projects. Another respondent stated that,

"*Additionally, there are time constraints due to the lengthy approval process for development. The Madrasah must obtain approval from the Municipal Council and then from the Islamic Council."*-R2

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Additionally, another significant challenge that was brought into light during the interviews pertains to social dynamics involving the community, authorities, and beneficiaries. The development of *waqf* land often requires extensive effort and collaboration among various stakeholders, which can lead to conflicts and tensions. These social challenges include managing differing expectations and interests among community members, navigating bureaucratic hurdles with authorities, and addressing the needs and concerns of beneficiaries. As shared,

"Conflicts may arise between various stakeholders, including religious authorities, local communities, and developers, resulting in delays or disputes regarding land use and development goals. Even though the

*ownership of the land has been finalized, there are also differences of opinion regarding development (the existence of Team A and Team B of Beneficiaries who have opposing opinions)"...*R5

To add on, engaging the community and stakeholders in *waqf* management can indeed be challenging, especially in regions where there is limited awareness or understanding of *waqf* principles and objectives. In such areas, the fundamental concepts of *waqf*—such as its religious significance, legal framework, and intended benefits—may not be well known or understood by the general public. This lack of awareness can lead to resistance or scepticism about *waqf* initiatives, making it difficult to gain community support and collaboration. respondent in their words mentioned that,

"There is a lack of public awareness about the potential benefits of developing waqf properties or a perception that waqf properties should not be commercially developed. This can lead to limited community support and participation, as well as affect the willingness of investors or potential partners to engage in waqf property development projects."
- R3

In my view, here in Malaysia, society needs to be better educated about waqf because I see that the waqf process here is very minimal compared to Indonesia. Although we are financially and infrastructurally advanced, the public's knowledge about waqf is still lacking." -R4

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"Many potential beneficiaries and community members may not fully understand their rights regarding waqf land due to inadequate legal literacy." -R5

5.5 Findings on Management and Development of *Waqf* Land

5.5.1 *Mutawalli*

Additionally, a critical issue identified is the lack of clarity surrounding the term *mutawalli* (*waqf* administrator) in state *waqf* administration enactments. As a result, in legal documents such as land titles, State Islamic Religious Councils (SIRCs) are often registered as "trustees" rather than *mutawallis*. This terminology fails to fully capture the religious and administrative responsibilities of the *mutawalli* under Islamic law, leading to confusion and potential misinterpretation of the role SIRCs play in *waqf* governance. The use of the term "trustee" aligns more closely with civil law, but does not reflect the unique Islamic legal principles that should guide *waqf* administration.

The issue of *mutawalli* (trustee) in the management of *waqf* land development poses significant challenges, particularly due to the lack of a clear definition and framework within state *waqf* enactments and administration laws. This ambiguity creates insecurity for potential investors and developers, ultimately hindering the progress of *waqf* land development in Malaysia.

Ambiguity in Definition lead to the term *mutawalli* is not consistently defined across various state *waqf* enactments, leading to confusion regarding the roles, responsibilities, and powers of the *mutawalli*. Without a clear legal definition, stakeholders may find it difficult to ascertain who is authorized to manage waqf

properties and make decisions regarding their development. This lack of clarity can deter investors who seek assurance that their interests will be protected and that there will be competent management overseeing the projects.

Insecurity for investors and developers can create uncertainty surrounding the *mutawalli*'s role can create an environment of risk for investors and developers. If the authority of the *mutawalli* is ambiguous, it raises questions about decision-making processes, accountability, and the potential for disputes. Investors may hesitate to commit resources to *waqf* land development if they perceive that their investments could be jeopardized by unclear governance structures or potential conflicts with *mutawalli*s who may not have well-defined powers.

The impact on collaboration ensure that effective collaboration between SIRCs, developers, and investors is essential for successful *waqf* land development projects. However, when the role of *mutawalli* is poorly defined, it can lead to misunderstandings and miscommunications among parties involved. This can result in delays or failures in project execution, as stakeholders may be unsure about who holds ultimate authority over the *waqf* property and its development.

In the legal and administrative challenges shows the absence of a standardized framework for appointing and managing *mutawalli*s contributes to legal complexities in *waqf* administration. In cases where disputes arise regarding the management of *waqf* properties, the lack of clear guidelines can complicate resolution efforts, further discouraging investor participation. Moreover, without a robust legal structure, there is a risk that *mutawalli*s may act outside their intended scope or fail to fulfill their

fiduciary duties effectively.

Therefore, the recommendations for improvement is needed to address these issues, it is crucial for state authorities to establish clear definitions and guidelines regarding the role of *mutawalli* in *waqf* management. This could include developing comprehensive regulations that outline the appointment process, responsibilities, powers, and accountability mechanisms for *mutawalli*s. By providing a transparent framework, state authorities can enhance investor confidence and encourage greater participation in *waqf* land development initiatives.

The lack of a clearly defined concept of *mutawalli* within *waqf* enactments presents significant challenges to the effective management and development of *waqf* lands in Malaysia. By addressing these ambiguities through regulatory reforms and establishing clear guidelines, stakeholders can foster a more secure and conducive environment for investment and collaboration in *waqf* projects.

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5.5.2 SIRCs' Authority to Secure *Waqf* Land for Religious Purposes in All Development Schemes

The research also highlights the significant role of the State Islamic Religious Councils (SIRCs) in securing *waqf* land for religious purposes, such as mosques, graveyards, and Islamic schools. SIRCs have the authority to request that specific plots of land designated for religious purposes be vested under their administration as *waqf* land. This process not only formalizes the religious use of the land but also ensures its

protection under the *waqf* legal framework, safeguarding it from future encroachments or alternative uses that could compromise its intended religious function.

This finding illustrates the capacity of SIRCs to actively engage in the administration of *waqf* land, particularly in advocating for the vesting of public land for religious purposes. By securing such land under *waqf*, SIRCs play a critical role in ensuring that essential community facilities such as mosques and graveyards remain dedicated to their intended religious purposes, reflecting the long-term charitable intent of *waqf*.

5.5.3 Tendency of Unregulated States to Develop *Waqf* Land for Commercial Purposes

A final key finding is that in unregulated states and states without a sultan, *waqf* land tends to be developed primarily for commercial purposes. In such states, *waqf* land development is typically governed by the SIRC and decisions are often made in consultation with the *fatwa* committee. Unlike states with stronger regulatory frameworks, where *waqf* land development is carefully managed to balance religious, charitable, and commercial interests, unregulated states tend to prioritize commercial development.

This trend is driven in part by the autonomy of the SIRCs in these states, which allows them to make decisions without the additional oversight that exists in regulated states. While commercial development can increase the financial returns on *waqf* land, this focus on profit-making raises concerns about whether the charitable objectives of *waqf* are being fully upheld. The findings suggest that more robust oversight mechanisms and clearer regulations may be needed in unregulated states to ensure that *waqf* land

development aligns with its intended religious and charitable purposes, rather than being driven solely by commercial considerations.

5.5.4 Insufficient Understanding and Motivation at the State Religious Council Level

As a significant asset for socioeconomic growth, *waqf* land in Malaysia holds substantial potential for advancing public welfare, healthcare, and education, among other sectors. However, despite these promising prospects, the development and management of *waqf* land have frequently fallen short of their potential. The State Islamic Religious Councils (SIRCs), which are tasked with overseeing *waqf* properties, often lack sufficient expertise, awareness, and motivation. These limitations have impeded the efficient use of *waqf* land, thereby restricting its potential to contribute meaningfully to broader societal needs.

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In Malaysia, *waqf* land administration falls primarily under the responsibility of SIRCs, with each SIRC tasked with managing *waqf* properties within its state, given that *waqf* matters are state-governed. This responsibility includes registering *waqf* land, ensuring compliance with Islamic principles, developing *waqf* assets, and safeguarding beneficiary rights. Ideally, SIRCs should act as proactive custodians of *waqf* assets, optimizing them for societal benefit.

However, many SIRCs lack the requisite knowledge in property management and land development. Their primary focus tends to be on religious and charitable functions, often leaving them unprepared for the complex legal, financial, and economic aspects

involved in *waqf* land development. This gap in expertise hinders their capacity to make informed decisions regarding the optimal use of *waqf* land, leading to ineffective management practices and missed development opportunities.

The absence of technical knowledge in land development presents a significant challenge for SIRCs. Like other real estate, *waqf* land requires strategic planning, investment, and skilled management to maximize its potential. Developing *waqf* properties often involves navigating urban planning, construction, financing, and legal regulations, areas in which SIRC personnel may lack experience. This lack of expertise restricts their capacity to engage effectively with government agencies, financial institutions, and private developers, frequently resulting in *waqf* land that is either underdeveloped or poorly managed.

Effective *waqf* land management also demands a thorough understanding of both Islamic and modern legal systems. While SIRCs may have considerable religious knowledge, they often lack familiarity with property law, land tenure, and commercial practices essential for effective *waqf* administration. This dual knowledge gap creates obstacles for the development of *waqf* land in ways that comply with *Shariah* and align with contemporary legal standards.

Beyond technical skills, many SIRCs struggle with limited vision and strategic foresight regarding *waqf* land development. Some SIRCs adopt a conservative approach, viewing *waqf* land as static and unchanging rather than as a dynamic asset that can be actively developed to serve the community. This perspective can lead to a reluctance to explore innovative development models, such as public-private

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partnerships, joint ventures, or modern financial instruments like Islamic finance tools. The lack of a forward-looking approach restricts the SIRCs' ability to capitalize on opportunities for *waqf* development. Consequently, *waqf* land often remains idle or underutilized due to the absence of well- defined usage plans, thereby hindering its potential to satisfy its philanthropic objectives and contribute to economic development.

Furthermore, a lack of motivation within some SIRCs compounds the challenges of *waqf* land development. The bureaucratic nature of SIRCs, combined with a lack of performance-based incentives, often results in inefficiency and inertia. Unlike private sector entities driven by profit and performance metrics, SIRCs may lack the same level of urgency or ambition in developing *waqf* land. This can lead to delays in decision-making, missed development opportunities, and a general lack of proactivity in *waqf* management.

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Moreover, the lack of accountability within some SIRCs aggravates the issues associated with ineffective *waqf* management. Without clear benchmarks or performance indicators to evaluate success, SIRC staff may lack the motivation to improve management practices or seek new development opportunities for *waqf* land. This absence of accountability diminishes the potential of *waqf* land to meet community needs and contributes to its stagnation.

The development of *waqf* land in Malaysia is significantly hindered by the knowledge, awareness, and motivation gaps within SIRCs. These limitations have led to a situation in which substantial areas of *waqf* land remain underutilized, thereby limiting their

potential as assets for community development. This not only represents a lost opportunity for economic growth but also undermines the fundamental values of *waqf*, which are intended to serve the public good and support disadvantaged populations.

Improper management of *waqf* land also risks creating legal disputes, revenue losses, and even the possibility of land encroachment. In some cases, *waqf* properties have been neglected to the extent that their legal status becomes uncertain, complicating future development. The lack of consistent policies for *waqf* land registration and management further exacerbates these issues, resulting in ambiguity and ineffective stewardship of *waqf* assets.

Several measures can be implemented to address these challenges and enhance SIRCs' capacity to develop *waqf* land. First, capacity-building initiatives could be introduced to strengthen SIRC staff expertise in Islamic finance, real estate development, and property management. Partnerships with professional organizations, academic institutions, and industry experts could facilitate training and provide SIRCs with the support needed for effective *waqf* management. Second, SIRCs should be encouraged to adopt a strategic and proactive approach to *waqf* land development. This may involve establishing clear plans and objectives for *waqf* land use and exploring innovative financing and development models that align with Islamic principles and modern business practices. By adopting a more entrepreneurial approach, SIRCs can unlock *waqf* land's potential as a valuable resource for community development. Third, greater accountability and performance monitoring within SIRCs are essential. Regular audits of *waqf* management practices and the implementation of performance metrics can help ensure that SIRCs remain answerable for their stewardship of *waqf*

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assets. Rewarding exemplary performance could also motivate SIRC personnel to adopt more effective management practices.

5.5.5 Lack of Experts in SIRCs for Administering *Waqf* Land Development

Waqf, an Islamic endowment supporting religious, educational, and philanthropic causes, holds significant potential for Malaysia's socioeconomic growth. However, many State Islamic Religious Councils (SIRCs), which manage *waqf* properties, face knowledge and motivation shortfalls, hindering effective *waqf* land development. These councils often lack expertise in land management, finance, and real estate, resulting in underutilized properties that fail to contribute to social welfare.

Addressing this challenge requires targeted educational interventions to equip SIRCs with the necessary skills. Training programs in *waqf* land management, real estate, and Islamic financing could enhance SIRCs' capacity, while workshops and seminars on the socioeconomic benefits of *waqf* development would foster a more forward-thinking approach. Additionally, fostering collaboration between SIRCs, government agencies, and private entities would open new opportunities for *waqf* projects.

To further encourage proactive *waqf* development, motivational strategies are needed. Setting clear objectives, recognizing SIRC achievements, and establishing incentive systems could inspire councils to take bolder initiatives. Strengthening ties between SIRCs and the community would also instilled a sense of responsibility and pride in *waqf* development.

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In conclusion, improving both the knowledge and motivation of SIRCs is key to unlocking the full potential of *waqf* land for Malaysia's socioeconomic benefit.

5.5.6 Limited Integration of Modern Technology by SIRC

The research reveals a notable gap in the capacity of State Islamic Religious Councils (SIRCs) to integrate modern technology into the management and development of *waqf* land. Despite the growing potential of technology to enhance land administration and streamline development processes, many SIRCs lack the knowledge and technical expertise necessary to adopt these innovations. Technologies such as Geographic Information Systems (GIS) for land mapping, blockchain for secure and transparent transactions, and digital platforms for *waqf* crowdfunding are underutilized. This limited adoption of modern technology hinders the efficiency of *waqf* land management and the transparency of development projects.

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The absence of a comprehensive digital infrastructure for *waqf* management restricts SIRCs' ability to track *waqf* properties, manage leases, and monitor the financial performance of *waqf* assets in real time. In an increasingly digital economy, the integration of technology could provide significant advantages in improving *waqf* asset management, enhancing transparency, and fostering public trust. Therefore, it is crucial for SIRCs to build capacity in modern technology to support more effective governance of *waqf* properties.

5.6 Analysis on Stakeholder Engagement and Community Impact

5.6.1 Stakeholder Collaboration

By analysing interview data, it has been revealed that effective collaboration between government bodies, *waqf* boards and communities are crucial for the successful management of *waqf* land.

Government bodies play a key role in establishing and enforcing regulations, providing oversight, and supporting *waqf* administration. They work closely with *waqf* boards and the management of *waqf* projects to ensure compliance with legal frameworks and also to assist in financial support. As experienced by respondents:

> *"The rebuilding of Palu Village received extraordinary approval from the Indonesian government, especially the local government, which consistently provided support in terms of the coordination and development of houses, schools, and mosques." R4*

> *"...the Madrasah achieved the status of a fully government-funded school, meaning that all salaries for teachers and school administrators are covered by the Ministry of Education Malaysia." R3*

Besides, non-governmental organisation (NGO) and *waqf* boards are responsible for managing *waqf* properties, ensuring they are used according to their charitable objectives, and reporting on their financial and operational status. They coordinate with government bodies on legal matters and seek feedback from community members to enhance project effectiveness and gain support. Commented by respondents,

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"Religious Council (MAINPP) and Waqf Penang (WPP) play a crucial role in the administration and development of waqf assets."- R5

"MAPIM was the coordinator for the Palu project, as the development funds were provided by MAPIM through donations from the public to the Palu fund. MAPIM acted by ensuring that all waqf land was properly documented with agreements, and MAPIM monitored the development on those lands" -R4

Respondents also share that community members also participate in the development of *waqf* land whether as beneficiaries or as the donors.

"The villagers who wanted to donate their land handed it over to the Village Chief, and MAPIM then signed a waqf agreement with the Village Chief."- R4

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Despite these collaborative roles, the data collected during the interviews has suggested that communication gaps, regulatory constraints and limited sources can hinder effective cooperation. In other words, will contribute to barriers to effective collaboration.

Communication gaps between stakeholders can create misunderstandings and inefficiencies, leading to fragmented efforts and misalignment of objectives. According to respondent himself explained that conflicts on difference of opinion on development would result in delays on progress of the project. Besides, interview data also explained that communication gaps would arise between stakeholder and the heirs. Describing on communication gaps, respondents in their own words stated that,

"*Conflicts may arise between various stakeholders, including religious authorities, local communities, and developers, resulting in delays or disputes regarding land use and development goals. Even though the ownership of the land has been finalized, there are also differences of opinion regarding development (the existence of Team A and Team B of Beneficiaries who have opposing opinions*)" -R5

"Mainly the concern always comes from the Heirs whereby they always voice out their dissatisfaction on the inconsistency in the amount that they received. This cannot be helped as the rental and lease was made to the small business entrepreneur and sometimes, they cannot pay the rent and another thing is the premise itself is in dire state and in need of renovation and it takes time with no rental during that renovation period." R5

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Apart from that, respondents also believed that regulatory constraints, such as overly complex regulations and gaps in the legislative framework, can obstruct progress by slowing down decision-making processes and complicating the implementation of necessary reforms. These regulatory hurdles often create bureaucratic delays and increase the complexity of managing *waqf* assets. As an example, among the regulatory constraint shared by respondents includes,

"The legal and regulatory environment governing waqf properties can be complex and inconsistent, leading to difficulties in understanding and navigating the procedures required for development." -R3

"There are no specific laws or procedures that state that waqf land does not need to be handed back to the State Government" -R5

To overcome these barriers, respondents have shared some ways to enhance the cooperation between different stakeholders. According to the data collected from the interviews, respondents agreed that having collaboration among stakeholders would be convenient. In respondent own word,

"Tackling these challenges requires a multi-faceted approach, involving legal expertise, stakeholder engagement, social impact assessment, community involvement, and a comprehensive understanding of both religious principles and modern development practices." - R5

"We propose to collaborate with the private sector to advance KITAB." - R5

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To add on, a respondent also shared that though the management are proposing to self-managed the *waqf* properties, however, this intention would still require collaboration and help from other stakeholder including MAINPP. As said by the respondents,

"this new Waqf Committee under the MKI Management Board discussed with MAINPP to work on the intention of self-managing the waqf properties donated to MKI" -R3

All in all, stakeholder collaboration plays a vital part and by improving communication, streamlining regulations, and involving all stakeholders in decision-making processes

can enhance collaboration, leading to better management and development of *waqf* land and maximizing its benefits for charitable purposes.

5.6.2 Awareness and Knowledge

The level of awareness and knowledge about *waqf* laws varies significantly among different stakeholders. Generally, those directly involved in the management and oversight of *waqf* properties, such as *waqf* administrators and government officials, demonstrate a higher level of familiarity with the core principles and regulations. They often possess a thorough understanding of the legal framework governing *waqf* properties, which enables them to manage these assets effectively.

In contrast, the general public and some community leaders may exhibit a more superficial understanding. While they may be aware of the concept of *waqf* and its religious significance, their knowledge of specific legal and regulatory aspects tends to be limited. This disparity highlights a need for more comprehensive education and outreach.

Based on the interview conducted, a respondent which is a *waqf* administrator and manager possesses in-depth knowledge relevant to their day-to-day responsibilities. Their training focuses on practical applications of *waqf* laws, which aids in the effective management and development of *waqf* properties. One of the respondents shared that:

> *"The current substantive that Penang SIRC have to adapt is Akta Pemajuan Perumahan 2018 (Housing Developers Act 2018) together*

with National Land Code 1965, The Town and Country Planning Act 1976 and The Street, Drainage, And Building Act 1974. All these laws are the same law as other commercial land development. Under these laws there is no leverage for Waqf land such as a high deposit for Developer's License and Advertising Permits. Waqf Projects cannot be sold at a higher price because the nature of waqf itself is to help the Muslims by owning a house and building the business to sustain their livelihood." - R5

Besides, one of the respondents who is an advocate and solicitor also possesses higher awareness and knowledge about the *waqf* law especially advocates and solicitors who deal with *waqf*-related matters are expected to have a detailed understanding of *waqf* laws, given their role in providing legal advice, representation, and ensuring compliance with regulations.

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"The Islamic Council has taken the approach that, as a Trustee under Sections 89 and 90 of the Penang State Islamic Administration Enactment, the Council has the right to appoint any individual or institution as a Special Trustee." - R3

However, compared to the general public and community leaders, they may understand the religious significance of *waqf* and the general law, but they may lack detailed knowledge about the legal and administrative aspects. As shared by the respondent:

"Many potential beneficiaries and community members may not fully understand their rights regarding waqf land due to inadequate legal literacy". - R5

"In my view, here in Malaysia, society needs to be better educated about waqf because I see that the waqf process here is very minimal compared to Indonesia. Although we are financially and infrastructurally advanced, the public's knowledge about waqf is still lacking." - R4

Hence, significant knowledge gaps exist among the different stakeholders. These gaps are often due to limited access to relevant information and inadequate educational programs. Challenges include the complexity of *waqf* laws, which can be difficult for non-specialists to fully understand, and the lack of targeted outreach efforts to educate less-informed stakeholders.

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Hence, to bridge the gap between stakeholders from various backgrounds, strategies must be implemented to help address the knowledge gaps in *waqf* law among the stakeholders. One of the strategies is to develop comprehensive educational materials. This can include creating simplified guides and brochures that explain *waqf* laws and rights in layman's terms for the general public. These should include visual aids and real-life examples. Besides, the online resources are also important which is developing an accessible online portal with interactive tools, FAQs, and video tutorials that explain *waqf* laws and procedures.

In addition, public awareness campaigns also can be done such as in the form of media campaigns through television, radio, and social media to raise awareness about *waqf* laws and their implications. The use of the media usually can engage a broad audience. Besides, Community Outreach also can be done by conducting community-based events, such as town halls or informational booths at local events, to educate the public about *waqf* laws and their impact on daily life.

Thus, by focusing on specialized training, continuing education, resource development, public awareness campaigns, and continuous improvement, stakeholders can gain a more comprehensive understanding of *waqf* law. This will enhance their ability to manage, advise on, and navigate *waqf*-related issues effectively.

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5.6.3 Impact on Communities

Based on the insights gathered from the respondents, they consistently recognized that *waqf* development has a substantial and multifaceted impact on communities. Respondents highlight several key areas where *waqf* initiatives have made a significant difference. One of the impacts is to enhance community services. The establishment of essential facilities such as hospitals, clinics, and educational institutions has been particularly transformative. These services are credited with elevating overall community well-being by providing better healthcare, educational opportunities, and social infrastructure. The respondent shared that:

> *"Social Welfare and Community Development: Waqf land can be used to establish schools, hospitals, and community centers, thereby addressing social needs and enhancing the quality of life for residents.*

This aligns with Malaysia's goals of improving education, healthcare, and community well-being." - R5

"Community Development: Waqf land is often intended for public benefit, such as building schools, hospitals, or mosques. The legal provisions that encourage such developments can lead to improved social infrastructure, benefiting the community." -R5

"In addition to providing immediate necessities such as food packs, hygiene packs, prayer packs, and packs for pregnant women, MAPIM also undertakes infrastructure projects, such as the construction of wells to supply clean water to the victims. These wells benefit 5,000 people daily, with two large water tanks providing sufficient water for the daily needs of the local population." - R4

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This improvement is multifaceted and touches various aspects of daily life, addressing critical needs and contributing to overall community well-being. Many *waqf* projects include services such as food distribution, housing assistance, and welfare programs, addressing various social needs and fostering a supportive community environment. This impact manifests in several key areas, each contributing to the overall well-being and quality of life of local communities.

Besides, the respondents also agreed that *waqf* development can promote social stability among the communities by providing affordable housing solutions. *Waqf* land projects that include the construction of residential properties help address housing shortages. Affordable housing units provide stable living conditions for low- and

middle-income families, contributing to improved quality of life. As said by the respondent:

> *"Affordable Housing: With the ongoing housing shortage in Malaysia, waqf land can be leveraged to develop affordable housing projects. By providing lowcost housing options, the government can meet the needs of lower-income populations while promoting social equity." - R5*

Providing affordable housing through *waqf* development has a profound impact on communities by providing many families with access to quality living spaces, which has contributed to more stable and sustainable living conditions. This positive impact on housing is seen as a significant improvement in the community's overall quality of life.

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The respondent also agreed that *waqf* development can impact the community by preserving the culture and religious heritage. By funding and supporting the restoration and maintenance of important cultural and religious landmarks, *waqf* development helps to ensure that these sites remain accessible and meaningful to current and future Muslim generations.

> *"Cultural and Religious Preservation: Waqf land is integral to the cultural and religious identity of the Muslim community. Laws that protect these lands from commercial exploitation can ensure that they continue to serve their intended social and cultural purposes"-R5*

While *waqf* development projects often bring significant benefits to communities, there are several areas where improvements can be made to maximize their effectiveness and impact. Addressing these areas can help ensure that *waqf* projects better meet community needs and contribute to more sustainable and equitable development. Firstly is the management and oversight. Some interviewees highlighted issues with the management of *waqf* properties, including delays in project implementation and inefficiencies in resource allocation. Improved oversight and transparent administration are needed to enhance the effectiveness of *waqf* projects. Besides, proper maintenance of *waqf*-funded facilities can be inconsistent, leading to deteriorating conditions over time. So, ensuring regular upkeep and effective management is crucial for sustaining the benefits of these projects.

Next, regarding community engagement whereby greater efforts should be made to involve a diverse range of community members in the planning and decision-making processes of *waqf* projects. This includes conducting public consultations, workshops, and surveys to gather input from all segments of the population. Special attention should be given to including marginalized and underrepresented groups, such as low-income families, disabled individuals, and ethnic minorities, to ensure their needs are addressed.

Thus, addressing these areas for improvement can significantly enhance the impact and effectiveness of *waqf* development projects. By implementing these improvements helps ensure that *waqf* development not only provides immediate benefits but also fosters sustainable and inclusive community growth.

5.7 Findings on Stakeholder Engagement and Community Impact

5.7.1 Limited Federal Government Involvement in *Waqf* Land Development

A significant finding of this study is the limited involvement of the federal government in the development of *waqf* land, despite its substantial potential to contribute to Malaysia's social, religious, and economic needs. *Waqf* land offers promising opportunities for addressing crucial issues such as affordable housing, healthcare, and education. However, the responsibility for *waqf* land development falls primarily on state administrations and State Islamic Religious Councils (SIRCs), which often lack the resources and capacity needed to maximize these assets.

In Malaysia's federal system, the management of land, including *waqf* land, is constitutionally delegated to state authorities. As trustees of *waqf* properties, SIRCs oversee the development and management of these lands within the framework of Islamic principles. However, while states hold jurisdiction, the effective development of *waqf* assets often requires additional technical expertise, financial resources, and strategic coordination, which are beyond the reach of individual states. This limitation underscores the need for greater federal government support to ensure the effective and consistent development of *waqf* assets across the country.

Federal involvement could play a transformative role by providing technical support, policy direction, and financial assistance to facilitate *waqf* land development. By establishing unified legal frameworks, offering financial incentives, and promoting cross-state cooperation, the federal government could significantly enhance the capacity of SIRCs and state governments to manage *waqf* land effectively.

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Unfortunately, federal engagement has been sporadic and limited, with insufficient long-term commitment or strategic coordination, which leaves many development opportunities unrealized. Consequently, the lack of federal participation not only impedes the growth of *waqf* assets but also constrains *waqf*'s potential to address critical social needs at the national level.

In response to this issue, the federal government had in recent years introduced the *Waqf* Madani initiative which a landmark programme launched with an allocation of RM1 billion aimed at revitalising the waqf sector. This initiative is part of the broader Madani economic framework and represents an important step toward strengthening federal-level commitment in waqf development. *Waqf* Madani seeks to promote the strategic utilisation of waqf land for socioeconomic development, including in sectors such as education, healthcare, and housing. It also intends to encourage greater private sector involvement through attractive financing mechanisms and clearer development frameworks.

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Under *Waqf* Madani, the federal government has also intensified its collaboration with Yayasan Waqaf Malaysia (YWM), a federal-level waqf institution under the purview of JAKIM. Several waqf development projects have been initiated in partnership between the federal government and YWM, including the development of waqf dialysis centres, healthcare facilities, education hubs, and cash waqf instruments. These projects, although promising, remain limited in scope and require scaling up through broader, systematic national policy integration.

The federal government can provide technical support, policy direction, and financial resources that would greatly help *waqf* land to be developed all throughout the nation. By means of incentives and rules that make *waqf* land development more appealing to private sector players, it can also help cooperation across states, promote consistent legal frameworks, and encourage investment in *waqf* holdings.

Regretfully, the federal government's participation in *waqf* land development has been mostly restricted and erratic. Although federal authorities have occasionally tried to support *waqf* growth, their projects sometimes lack the required long-term commitment and coordination to have a significant influence. Furthermore, lacking a thorough national policy or strategy addressing *waqf* land development holistically leaves individual governments to manage *waqf* assets with different degrees of success.

Lack of federal programs has various unfavourable effects. First of all, several state governments lack the means required to properly develop *waqf* land. Particularly those involving major infrastructure or commercial development, *waqf* development projects often call for enormous capital outlays. Although the federal government has the financial capacity to assist such initiatives, its limited participation has meant that many *waqf* sites remain undeveloped because of inadequate funding.

Second, the disengagement of the central government results in a scattered strategy to *waqf* land development across many states. Every state runs under its own set of laws, rules, and policies, which greatly affects the way *waqf* property is used and developed. While some nations might be able to pursue *waqf* development with ability and knowledge, others might suffer from lack of resources and technical know-how. This

erratic approach not only stunts the general progress of *waqf* land in Malaysia but also keeps the *waqf* institution from fulfilling its full capacity as an instrument for national development.

The lack of coordination between federal and state agencies is a main result of the federal government's little engagement in *waqf* land development. Though state sovereignty governs land matters constitutionally, there are certain areas where federal support and coordination would help *waqf* land to grow. The federal government might, for example, assist to unify *waqf* laws and rules among states, therefore offering a more united framework for land development. This would lower legal uncertainty and support private sector *waqf* project investment.

Moreover, the federal government should help states to cooperate on *waqf* land development initiatives involving several jurisdictions. Certain *waqf* features, for instance, might be placed strategically close to state borders where cooperation among surrounding states would help to promote development. But without federal participation, chances for cross-state cooperation are sometimes lost, therefore restricting the extent of possible *waqf* development projects.

Providing incentives for private sector investment is another area where federal participation could greatly influence *waqf* land growth. Because of its special status as inalienable property, *waqf* land might provide difficulties for developers and investors. For *waqf* projects, for instance, developers find it challenging as *waqf* land cannot be sold or mortgaged. By providing tax incentives, subsidies, or finance programs catered to *waqf* land development, the federal government could assist to solve this problem.

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Reducing the financial risks connected with *waqf* projects will help the federal government promote more private sector involvement in the transformation of *waqf* land.

Furthermore, government participation might enable public-private cooperation (PPPs) for *waqf* land development to be established. Such alliances could combine public interest goals of *waqf* institutions with the resources and knowledge of the business sector. By means of its policy-making and regulatory power, the federal government is positioned to assist in the establishment of PPPs for *waqf* development. But without government programs in this field, the possibility to use private sector investment in *waqf* land stays mostly unrealized.

The underdevelopment of *waqf* land resulting from the federal government's absence marks a lost chance for national progress. From poverty reduction to education to healthcare to affordable housing, *waqf* characteristics could help to support a broad spectrum of social and economic goals. Appropriate development could make *waqf* land a useful tool for some of Malaysia's most urgent socioeconomic problems.

Waqf land, for instance, could be utilized to create low-income families' benefit affordable home developments, so helping to solve the nation's housing shortfall. Likewise, *waqf* land could be developed for hospitals, schools, and other social facilities meeting the demands of poor areas. Still, without enough governmental participation, these prospects remain mostly unmet. The detachment of the federal government from *waqf* development not only reduces the influence of *waqf* on national

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development but also compromises the possibilities of *waqf* to be an effective instrument for social welfare.

The federal government must intervene more actively in *waqf* land development if we are to fully utilize *waqf* land in Malaysia. There can be various important phases involved here. First, the federal government should create a thorough national strategy for *waqf* land development offering both federal and state authority unambiguous policies, standards, and objectives. This approach should give the development of *waqf* land top priority in order to meet national development objectives including social infrastructure building, affordable housing, and reduction of poverty.

Second, the federal government ought to create financing systems to assist initiatives on *waqf* land development. Grants, low-interest loans, or other finance instruments that help states to carry out *waqf* development projects could all be included here. Furthermore, the federal government might provide tax incentives or subsidies for private sector investment in *waqf* projects, therefore drawing more money and knowledge to support *waqf* development.

Third, the federal government should endeavour to unify *waqf* laws and rules among states so fostering a more uniform legal system that promotes development. Working with state governments, this might entail harmonizing *waqf* laws, lowering of regulatory obstacles, and encouragement of best practices in *waqf* management. Clear legal rules will enable the federal government lower the doubts and risks related to *waqf* development, hence increasing the appeal to developers and investors.

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The complicated problem of underdevelopment of state *waqf* land in Malaysia calls for further federal government intervention to be properly resolved. Although the federal government has the tools, power, and capacity to be a major player in *waqf* property development, its present disengagement has left states trying to manage and grow *waqf* lands on their own. The federal government might help to realize the potential of *waqf* land as a valued asset for national development by assuming more active participation in providing financial support, policy direction, and regulatory coordination. By doing this, the federal government will not only improve the welfare of Malaysians but also support the philanthropic and social goals *waqf* was first meant to accomplish.

5.7.2 Lack of Stakeholders Confidence in *Waqf* Land Development

Waqf land, a form of Islamic charity endowment, holds significant potential for fostering socio-economic development, particularly in Muslim majority countries like Malaysia. Despite this potential, its development remains underutilized due to low levels of confidence and participation from key stakeholders such as financial institutions, private investors, and the community. Various factors, including a lack of transparency, legal complexities, and management inefficiencies, contribute to stakeholders' reluctance to engage in *waqf* land projects.

Legal inconsistencies, particularly in Malaysia where each state manages *waqf* land through State Islamic Religious Councils (SIRCs) with different regulations, create uncertainty for investors. Additionally, inefficiencies in *waqf* management, delays caused by bureaucracy, and a lack of accountability discourage stakeholder

participation. Furthermore, many stakeholders perceive *waqf* land projects as primarily charitable, with fewer opportunities for financial gain compared to commercial real estate ventures, limiting private sector involvement.

To address these challenges, several strategies are proposed to enhance stakeholder confidence and encourage participation in *waqf* land development. These include standardizing legal frameworks across regions to reduce ambiguities, investing in the professionalization and capacity building of *waqf* institutions like SIRCs, and promoting public-private partnerships (PPPs) to leverage private sector expertise and resources. Additionally, introducing innovative financial products such as *waqf* bonds (sukuk) and *waqf*-based investment funds could provide clear financial returns while adhering to *Shariah* principles, attracting more investors. Finally, community engagement and awareness campaigns are crucial for reshaping public perceptions and fostering a sense of ownership and trust in *waqf* projects.

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Unlocking the full potential of *waqf* land requires addressing these legal, managerial, and financial challenges. Further research is needed to explore the most effective methods for building stakeholder confidence and promoting greater collaboration in *waqf* land development, ultimately benefiting both the Muslim community and society at large.

5.7.3 Limited Federal Government's Role in Waqf Development.

The federal government's involvement in the development of *waqf* land has been limited and lacks a comprehensive strategy to support state-level initiatives. Although *waqf* land is managed at the state level, its potential to contribute to local economies

and address social inequalities requires stronger federal coordination, policy support, and funding. Currently, federal involvement is largely restricted to the establishment of the Department of *Awqaf, Zakat* and *Hajj* (JAWHAR*)*, and the Yayasan Wakaf Malaysia, which provide some assistance to State Islamic Religious Councils (SIRCs). However, significant financial constraints, evidenced by recent reductions in budget allocations, have limited the effectiveness of these efforts.

To unlock the full socio-economic potential of *waqf* land, a federal strategy is needed to align state *waqf* development with national objectives. Such a strategy would facilitate coordination across states, promote innovative funding models, and encourage greater community engagement. Moreover, the federal government's narrow view of *waqf* as solely a religious institution has hindered its broader application in sectors like healthcare and education, further limiting its economic contributions.

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A redefined federal role in *waqf* development should include increased collaboration with state authorities, reforms in SIRC management practices, and investment in capacity-building initiatives. By improving coordination and creating a unified policy framework, the federal government can transform *waqf* land into sustainable assets that benefit local communities and contribute to national development. Further research is needed to explore effective federal-state collaboration mechanisms and to define the specific roles of federal and state entities in *waqf* land development.

5.8 Analysis on Financial Sustainability and Innovative Financing

Another notable issue suggested by respondent is that while the projects themselves may be successful in terms of construction and utility, there are concerns about how funds are managed and how decisions are made. In respondent own words,

> *"Waqf projects in Selangor are progressing well, but there are issues regarding accountability and transparency from the developers." - R9*

5.8.1 Financial Constraint

Another major challenge faced by the respondent is financial challenges, both on difficulty to generate revenue and in lack of funding. Effective revenue generation is crucial for supporting the ongoing management and development of *waqf* assets. However, stakeholders often face difficulties in optimizing the financial potential of *waqf* properties due to economic fluctuations and market conditions. One of the respondents shared that even when *waqf* properties are being rented to the communities at low prices, tenants are still having difficulties paying rent.,

> *"There is also a problem in rental for Wakaf Siti Jainul Rijah. Most tenant are under Waqf List and unable to pay rent. We rent the apartment at RM300 per month but most of them cannot even pay RM100."* -R5

Despite the various proposals aimed at generating revenue from *waqf* land, such as replanting oil palms, leasing vacant land, and constructing rental houses, many of these projects face significant challenges in execution. The primary difficulty lies in the requirement for substantial initial funding to kickstart these initiatives. Without the

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necessary capital, it becomes challenging to initiate or sustain these revenue-generating development projects. As experienced by one of the respondents,

> "*The committee is working on a plan to generate revenue for MKI from these waqf properties. Several proposals have been suggested by the committee to generate income, such as replanting oil palms, leasing vacant land, and constructing rental houses. However, all these plans require capital from MKI, and therefore, they can only be implemented on a gradual basis and will take time."* - R3

However, the most frequently addressed issue in the interviews was the challenge of developing *waqf* lands due to a lack of sufficient funding. Respondents consistently highlighted that the primary obstacle to advancing *waqf* land projects is the financial constraint, which impedes their ability to initiate and complete development plans. This shortage of funds limits the capacity to implement various proposed revenue-generating strategies and delays the progress of essential projects. Consequently, the lack of adequate capital stands out as a critical barrier, significantly affecting the successful development and management of *waqf* lands. Among the comments given by the respondents are,

> *" The main challenge is the very limited development funds, which rely heavily on public cash donations…"-R2*

> "*The cost of hiring engineers and architects is also quite high, and without funds, it is not possible to appoint an architect*."- R2

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"MKI faces financial challenges, including limited access to funding, difficulties in obtaining loans, or a lack of sustainable revenue streams. These financial constraints can prevent the initiation or completion of development projects, leading to underutilization or deterioration of waqf properties." -R3

5.9 Findings on Financial Sustainability and Innovative Financing

5.9.1 Underutilization of Monetary Tools and Stakeholder Challenges to *Waqf* Land Development

Undoubtedly, *waqf* land holds substantial potential to contribute to social and economic growth in Malaysia. However, several critical factors continue to hinder its development despite well-established substantive and procedural guidelines within the financial sector for development schemes. Key challenges include the State Religious Councils' (SIRCs) underutilization of financial instruments and a general lack of stakeholder confidence in manoeuvring such financial availability to suit *waqf* development schemes. These issues pose significant barriers to the growth and investment needed for *waqf* properties to achieve their full potential.

Malaysia's financial sector has changed dramatically in recent years to offer a spectrum of goods and services meant to support different kinds of land development, including *waqf*. Particularly Islamic financial goods are in line with the *waqf* values and provide financing options compliant with *Shariah*, therefore promoting economic development. *Waqf* land development is theoretically appropriate for instruments such sukuk

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(Islamic bonds), *mudarabah* (profit-sharing agreements), and *musharakah* (joint ventures).

SIRCs have failed to make good use of these financial products in the framework of *waqf* development notwithstanding their availability. Poor awareness of various financial products, lack of professional skills, and inadequate incentives to find creative finance solutions are a few of the several causes of this underutilization. Although the financial sector may follow substantive and procedural guidelines supporting *waqf* land development, the SIRCs' inadequate knowledge of these laws limits their ability to fully seize the possibilities they bring.

The lack of knowledge and experience among SIRCs is among the most major obstacles to the efficient use of financial instruments in *waqf* land development. Although the SIRCs are mostly in charge of the management and development of *waqf* land, many of these organizations lack the technical competence required to interact with the several financial instruments at hand.

Beyond a lack of acquaintance with particular items, this knowledge gap spans a more general lack of knowledge of modern financial and commercial procedures, which are vital for successful land development. Furthermore, aggravating this situation is the dearth of trained experts inside SIRCs. A specialist discipline, *waqf* development calls for a thorough awareness of Islamic law, finance, property administration, and land development.

Many SIRCs, meantime, lack staff members with the required knowledge in these fields. They thus find it difficult to negotiate the convoluted financial and regulatory

terrain, which results in lost chances for expansion and improvement. SIRCs cannot properly use the financial tools at their disposal without the appropriate professionals guiding them, thereby leading to underdevelopment of *waqf* land and stagnation.

Apart from the knowledge and experience limitations, the absence of incentives inside SIRCs hinders their capacity to seek creative finance ideas for *waqf* land development. Unlike private sector companies motivated by profit margins and performance criteria, SIRCs sometimes lack clear incentives to maximize the value of *waqf* assets. Lack of performance-based incentives combined with the bureaucratic character of SIRCs imply that staff members have no incentive to investigate fresh directions for *waqf* development or interact with the financial instruments accessible to them.

Lack of incentives also influences SIRCs' inclination to work with other partners including private developers and financial institutions. SIRCs are more likely to adopt a conservative approach to *waqf* land management, stressing preservation rather than expansion, without a clear mandate or incentive to aggressively explore development prospects. This conservative approach reduces the possibilities of *waqf* land to support social and economic growth.

The overall lack of confidence among stakeholders to engage in the development process is a main challenge to *waqf* land development. Among these participants are developers, financial institutions, individual investors, and even the public. These groups' resistance to interact with *waqf* land is sometimes based on worries about the management and governance of *waqf* assets as well as the supposed difficulty of handling religious organizations and legal systems.

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The lack of openness and professionalism in SIRCs can be a major turnoff to private investors and financial institutions. Due of questions regarding the legal status of *waqf* land, the governance of SIRCs, and the possibility of bureaucratic delays, investors are generally unwilling to contribute funds to *waqf* projects. Moreover, questions over the validity of contracts and the defence of investor rights can make *waqf* land less appealing as a place of investment.

Similar hesitation among developers to participate in *waqf* land projects could result from the complexity of Islamic law and the special qualities of *waqf* lands. Usually inalienable, *waqf* land is not sold, transferred, or mortgaged unlike privately owned land. Developers used to work with more flexible land ownership structures find this difficult. Further complicating these issues is the absence of clear policies for the development and use of *waqf* land; this makes it difficult for developers to evaluate the viability and profitability of *waqf* land projects.

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The possibility to raise investment in *waqf* assets is directly influenced by the absence of stakeholder confidence and involvement in *waqf* land development. *Waqf* land stays underused and underdeveloped without the participation of developers, investors, and financial institutions, therefore depriving the community of the social and economic advantages that could be obtained by appropriate development.

Increasing *Waqf* Holdings' investment calls for stakeholders to develop confidence and trust. Several steps can help to do this: bettering the governance and openness of SIRCs, raising the professionalism of *waqf* land management, and offering unambiguous legal and regulatory systems safeguarding investor and developer rights. Furthermore,

helping to remove some of the obstacles to involvement is an attempt to inform stakeholders about the possible advantages of *waqf* land development and the availability of *Shariah*-compliant financial solutions in line with *Bank Negara Shariah's* Advisory requirements.

Dealing with the underlying reasons of underutilization and lack of confidence will help one overcome these obstacles. This covers, increasing the ability of SIRCs through education and training, enhancing the governance and openness of *waqf* land management, and so fostering stakeholder involvement and investment environment. With the correct reforms and incentives in place, *waqf* land has the potential to become a major driver of economic and social growth in Malaysia, therefore enhancing the welfare of the society in line with its original altruistic aim.

5.9.2 Maximizing the Use of Financial Products for *Waqf* Land Development

Waqf land holds great potential for socioeconomic growth in Malaysia, but State Islamic Religious Councils (SIRCs) are not fully utilizing available financial products to support *waqf* land development. Islamic financial instruments such as sukuk (Islamic bonds), musharakah (partnership financing), and ijarah (leasing) are designed to help fund *waqf* projects, yet SIRCs face significant obstacles in accessing these tools.

Key barriers include a lack of financial literacy among SIRC members, legal complexities across different states, and risk aversion due to concerns about mismanaging *waqf* assets. Furthermore, inadequate institutional support and insufficient cooperation between SIRCs and financial institutions limit their ability to explore innovative financial solutions.

To overcome these challenges, improving the financial knowledge of SIRC members through targeted training is essential. Simplifying the regulatory environment, fostering partnerships with Islamic banks and government agencies, and creating incentive systems for successful *waqf* projects would further enhance SIRC engagement with financial products. Addressing these obstacles would unlock the potential of *waqf* land as a tool for social welfare and economic development in Malaysia.

5.10 Analysis on Best Practices and Recommendations for Reform

5.10.1 Success Stories

During the interviews, respondents shared compelling stories about how various initiatives undertaken by management of the *waqf* projects led to significant success. One notable aspect that emerged was the strategic approach taken to gain support from local authorities. Management didn't just present their ideas in isolation; they actively sought to involve local authorities by aligning their concepts with the community's needs and interests. As example, respondent in sharing about *Projek Perkampungan Ummah* mentioned that,

> *"The rebuilding of Palu Village received extraordinary approval from the Indonesian government, especially the local government,..."* -R4

Apart from engaging local authorities, the successful development of *waqf* land significantly benefits from having strategic partners, particularly for large-scale projects involving extensive community impact and complex planning. When

undertaking ambitious ventures such as constructing hotels, universities, or commercial centres, strategic partners bring essential expertise and resources to the table. These partners can provide financial backing, innovative development strategies, and specialized knowledge in real estate and infrastructure. Their involvement ensures that projects are not only efficiently managed but also align with market demands and community needs. This was shared by one of the respondents that mention,

> *"Currently we have various kinds of development on Waqf land in this state. We planned to have a Hospital, Hotels, College University as well as commercial development. We have our strategic partners from the private sector to assist us in this development."* R5

The success stories shared by another respondent during the interviews highlighted how well-crafted strategic plans by management led to notable achievements, particularly in the development of *waqf* properties. A key component of this success was the implementation of a leasehold concept, which proved instrumental in both generating revenue and advancing community development. Shared by the respondent,

> *"Our success stories are: Wakaf Sittee Aisha in Seberang Jaya and Wakaf Norijah in Sg Nibong. Wakaf Hj Hashim in Seberang Jaya and Wakaf Annur in Teluk Air Tawar. We have developed these projects by using a Leasehold Concept whereby Penang SIRC has lease out the usufruct or benefit of the house to the buyer and the buyer lease the property to the Bank for end financing. And so far, we managed to fulfilled the wish of the donor in the Waqf Statutory."* -R5

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"Successful projects include the construction of mosques throughout the state of Selangor, the Waqf Centre where the state government leased land to MAIS for 21 years, the Maahad Integrasi Tahfiz Selangor Sains (MITSS), as well as petrol stations at ILIM and Jalan Reko Bangi." - R9

All the success of *waqf* projects shared above, driven by innovative ideas, strategic partnerships, and community engagement offer such valuable lessons for other contexts. To replicate this success into other *waqf* land development projects, it's crucial to adopt unique concepts that address local needs and market gaps, form strategic alliances with stakeholders who provide complementary resources and expertise, and ensure active community involvement to tailor projects and build support. By applying these principles, other *waqf* projects can achieve similar successful outcomes and effectively serve their target communities.

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5.10.2 Recommendations for Reform

Improving the administration and management of *waqf* land can significantly enhance its effectiveness in fulfilling charitable purposes and preventing misuse. Based on interviews with respondents, several recommendations for reform have been categorized into different perspectives, focusing on improving feasibility, impact, and priority.

Prioritizing reforms in the development of *waqf* land ensures that immediate issues are addressed effectively, builds trust and confidence, and sets a strong foundation for

future, more complex changes. This strategic focus helps to maximize the impact of *waqf* lands and ensures they are managed in a way that best serves their charitable purposes.

Among the potential reform that should be prioritised for future use according to respondents, includes to have a tax exemption and loan funds to develop the *waqf* land. This recommendation was put under priority because as discussed above, the main concern on *waqf* land is mainly on financial issues. Respondents in their own word mentioned,

> "*We also need a tax exempted approached to boost the development of waqf land. But so far this approach has yet to be discussed and have a long way to be established."* -R5

> *"In my opinion, the Kedah State Islamic Council should provide loan funds for the development of religious schools like this Madrasah. We do not seek financial aid in the form of grants but only as repayable loans to facilitate the development work and ensure that the buildings constructed are strong and safe for the students."* -R2

> *",,,the government should provide opportunities and support to help religious schools that receive wakaf to develop this land, potentially through financial aid from the Ministry of Education and the Ministry of Finance, as the value of wakaf property will undoubtedly increase with development*."-R3

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There are also respodemt that suggest for a reform on policy specifically to curb the issues of transparency and accountability in managing development of *waqf* assets. Shared by respondents,

> *"Reform measures regarding policies for development should be tightened to address issues of accountability and transparency."- R9*

Besides, recommendations that are categorized for its impact would evaluate the potential effectiveness of the reforms. These reforms are expected to bring substantial improvements in oversight and benefit maximization whether in long or short term impact. Among the recommendations given by the respondents for reform that would increase impact towards *waqf* land development includes promoting awareness of *waqf* lands' significance, engaging with third party and eventually planning more strategic plans to develop the properties. As suggested by the respondents,

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> "*In my view, here in Malaysia, society needs to be better educated about waqf because I see that the waqf process here is very minimal compared to Indonesia."* -R4

> *"Furthermore, engaging stakeholders, including legal experts, wakaf administrators, and education authorities, could provide deeper insights into the adequacy of the current legal framework and potential areas for reform."* -R3

Other than that, another potential reform is needed in terms of feasibility of the *waqf* development project. Focusing on feasible reforms ensures that practical, cost-effective solutions are implemented efficiently, providing immediate benefits and

laying a foundation for future improvements. This approach helps optimize resource use, minimizes disruption, and builds the necessary momentum for more ambitious changes in the development of *waqf* land. To ensure feasibility, respondents have recommended reform to be made by appointing more professionals, venturing more into *ibdal* and *istibdal* concept and having a more specific legislation all with the purpose to research feasibility in future. As said by respondents,

> *"We need to venture more in the ibdal and istibdal concept of exchanging and substitution of waqf land to increase the waqf asset program." -R5*

> *"I would suggest an establishment of Royal Commissioner of Waqf at Federal Government level because parties and players in waqf industry need to address the issue of funding maybe through Islamic Capital Market or Sukuk."-R5*

> *"SIRC needs to be able to adapt to have a professional who can give input and educate SIRC in terms of land development." -R5*

> *"We need to have a Wakaf Housing Developer's Act to overcome the issue with State Local Authority and the High Deposit insisted on the Developer's License and Permits."-R5*

All in all, by focusing on these categorized recommendations, stakeholders can strategically enhance the administration and management of *waqf* land, ensuring that these valuable assets are used effectively to achieve their charitable objectives.

5.11 Findings on Best Practices and Recommendations for Reform

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5.11.1 The Need for Educational and Motivational Approaches

A key finding of this research is the necessity for educational and motivational approaches to enhance the understanding and commitment of State Islamic Religious Councils (SIRCs) in managing and developing *waqf* land. This approach to human resource development emphasizes the importance of capacity building and institutional strengthening within SIRCs to ensure effective *waqf* governance. By implementing targeted educational initiatives, SIRCs can improve their knowledge of *waqf* law, modern financing methods, and land management strategies, enabling them to make more informed decisions regarding *waqf* assets.

Moreover, motivational tactics aimed at fostering a sense of purpose and commitment within SIRCs are equally crucial. Such initiatives could include professional development programs, leadership training, and workshops on the religious significance and social impact of *waqf*. This emphasis on the human aspect in *waqf* management highlights the need for a holistic approach to *waqf* administration that values both technical expertise and personal dedication to *waqf*'s charitable objectives.

Incorporating educational and motivational tactics within SIRCs would not only build institutional capacity but also strengthen the overall effectiveness of *waqf* law implementation. By enhancing the knowledge base and commitment of *waqf* administrators, this approach has the potential to improve the sustainability and impact of *waqf* development projects across Malaysia.

5.11.2 The Need for Innovative Financing Methods

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Another critical finding is the need for SIRCs to adopt innovative financing methods to support *waqf* land development. Traditional financing mechanisms, such as rental income or donations, are often insufficient to meet the capital demands of large-scale *waqf* projects. This financial limitation has slowed the development of *waqf* land and, in some cases, prevented the effective utilization of *waqf* assets for community benefit. The research highlights the potential for SIRCs to explore alternative financing models, including Islamic crowdfunding, sukuk (Islamic bonds), and partnerships with private sector investors through joint ventures that comply with *Shariah* principles.

Innovative financing methods not only provide the necessary capital for *waqf* land development but also open opportunities for broader community engagement. Crowdfunding, for instance, enables individuals to contribute to the development of *waqf* properties, thus promoting a sense of ownership and involvement in charitable projects. By adopting such innovative financing mechanisms, SIRCs could significantly enhance the capacity to develop *Waqf* land while preserving the religious and charitable purposes of *waqf*. This would also align with global trends in Islamic finance, which are increasingly focused on ethical and socially responsible investment.

5.12 Chapter Summary

In conclusion, the findings of this study reveal a fragmented landscape of *waqf* governance across Malaysia, with significant variations in regulatory approaches and operational challenges between states. To address these gaps, this research emphasizes the need for a comprehensive, standardized *waqf* development model that integrates Islamic and civil legal principles, incorporates modern technology, adopts innovative

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financing strategies, and builds human resource capacity. Such a model would not only streamline *waqf* governance across Malaysia but also enhance the long-term sustainability and social impact of *waqf* assets, ensuring they fulfill their intended religious and charitable purposes in the modern context.

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CHAPTER SIX

RECOMMENDATIONS, CONTRIBUTION TO STUDY AND CONCLUSION

Recommendations

6.1 Introduction

This chapter presents a set of strategic recommendations aimed at establishing a comprehensive framework for *waqf* development in Malaysia. Recognizing the limitations posed by the existing legal and procedural frameworks, these recommendations advocate for a *waqf* development model that operates within an independent legal structure. This independent framework would enable the *waqf* sector to advance efficiently, free from the constraints and ambiguities currently impacting *waqf* land development. This effectively answers the fourth research question and objective.

A key proposal is the creation of a central or specialized bank dedicated to *waqf* development products, ensuring accessible and *Shariah*-compliant financing tailored to *waqf*'s unique requirements. Additionally, integrating *Baitul mal* funds to support sustainable, interconnected *waqf* financing mechanisms would enhance both the economic viability and social impact of *waqf* assets. By actively engaging stakeholders and educating them on *waqf* land's developmental potential, this model aims to promote *waqf* as a dynamic vehicle for socio-economic growth.

Legal reforms, institutional strengthening, and the adoption of modern technology are also essential to this model, addressing existing challenges and enhancing operational efficiency. Finally, fostering public awareness and understanding of *waqf* will drive broader support and engagement, creating a foundation for sustainable growth. Together, these recommendations provide a holistic approach to enhancing the role of *waqf* in Malaysia's socio-economic landscape, setting the stage for a resilient and impactful *waqf* development model.

6.2 The Need for a *Waqf* Development Model with its Own Independent Legal and Procedural Framework

One of the significant findings of this research is the necessity to establish a *waqf* development model uniquely designed to cater to the distinct nature of *waqf* land. Currently, *waqf* land development in Malaysia is governed by a patchwork of existing laws and procedures, many of which are borrowed from civil law, with little consideration of the unique Islamic principles that underpin *waqf*. The research reveals a lack of a comprehensive and independent legal framework dedicated to *waqf* development, resulting in inconsistencies and legal ambiguities hindering progress.

To address this, the study emphasizes the importance of formulating a bespoke *waqf* law and procedural system that governs every stage of the *waqf* development process. This system should encapsulate both substantive and procedural aspects that are compliant with *Shariah* principles while ensuring legal certainty and efficiency. Such a framework would provide clarity for *mutawalli* (*waqf* administrators), developers, and financiers, facilitating a more streamlined process for the development of *waqf*

land. This would also resolve the current jurisdictional conflicts between civil and *Shariah* courts, by defining clear legal pathways and avoiding reliance on non-*waqf*-specific civil laws, such as the Contract Act.

6.2.1 The Need for *Shariah*-Compliant Joint Venture and Lease Agreements

Another key finding highlights the urgent need for *Shariah*-compliant Joint Venture Agreement (JV) and Lease Agreements in developing *waqf* land. At present, many agreements between SIRCs, developers, and tenants still rely on contracts rooted in the Contract Act 1950 and other civil law frameworks. This creates legal inconsistencies, as *waqf*, being a religious and perpetual charitable trust, should be governed under Islamic law, which has its principles and conditions.

This research found that the lack of *Shariah*-compliant legal instruments specifically tailored for *waqf* projects can lead to disputes and contractual uncertainties, particularly in matters such as perpetuity and *istibdal* (substitution of *waqf* properties). Therefore, it is imperative to develop joint venture and lease agreements that fully align with Islamic principles, while being practical and applicable in the modern development context. These agreements must reflect the perpetual nature of *waqf*, ensuring that the *waqf* land is not compromised or misused during the development process. Furthermore, such agreements should be standardized across different states to ensure consistency in *waqf* land management nationwide.

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6.2.2 The Need for Financing Models Tailored to *Waqf* Development

Financing especially in bridging loans has emerged as one of the most challenging aspects in the development of *waqf* land. The study reveals the critical need for a financing model that is specifically designed to accommodate the unique characteristics of *waqf* properties. Current financing mechanisms, such as traditional loans or end-financing product requirements, often fail to meet the needs of *Waqf* development projects due to the non-transferable and non-saleable nature of *waqf* land. This has resulted in a lack of access to sufficient funds, particularly in the early stages of development.

The study proposes the development of a *Shariah*-compliant financing model that can offer bridging loans and other financing facilities tailored to *waqf* projects. Unlike conventional loans, these financial products would need to align with Islamic principles, ensuring that no *waqf* land is used as collateral or sold to meet financial obligations. Instead, a system that leverages cash *waqf* or other innovative Islamic finance instruments, such as Sukuk, can be developed to raise capital for the development phase and ensure that projects are not stalled due to funding gaps.

Moreover, the financing model should include mechanisms for end-financing that allow developers and stakeholders to recover costs in a *Shariah*-compliant manner, without infringing upon the principles of *waqf*. This model must be flexible enough to support different types of *waqf* land development, such as housing, commercial projects, and public facilities, ensuring that each project's social and religious objectives are fully realized. Currently the used of Islamic loan document like

"*Tawarruq*" for end-financing seem to be in line with the current development of *waqf* projects in Penang State.

6.2.3 The Need for an Observatory Body to Regulate *Waqf* Land Development

An essential finding of this study is the need for an observatory body, similar to *Ministry of Housing and Local Government (KPKT),* that would regulate developers involved in *waqf* land development. Currently, there is no centralized or dedicated authority to ensure that regulations for *waqf* land development align with Islamic law and principles. As a result, many developers face difficulties adhering to both civil law requirements and *Shariah* principles.

This observatory body would ensure that regulations like e-SPA (which is used for property sales and purchase agreements) do not apply to assets rented in *waqf* developments, where perpetuity and religious principles often conflict with conventional property laws. The body would play a crucial role in overseeing compliance with *Shariah*-compliant development standards and ensuring that developers do not violate the inviolability of *waqf* assets. It would also ensure that joint venture agreements, leasing arrangements, and financial instruments remain consistent with both Islamic law and modern development practices, promoting a more structured and regulated approach to *waqf* land development across Malaysia.

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6.3 Establishing a Central or Specialized Bank for *Waqf* Development Products

6.3.1 Introduction

Creating a specialized financial institution for *waqf* development is essential for meeting the distinct financial requirements of *waqf* estates. Conventional banking institutions may not possess the requisite comprehension of the intricacies and religious sensitivities linked to *waqf*, resulting in insufficient financial products and services [354]. A specialized bank can offer customized financial solutions, promote sustainable growth, and assure adherence to Islamic principles.

Waqf's potential in the 21st century has gained global recognition as a social sector institution capable of achieving social and economic goals. Several Muslim-majority nations encounter difficulties in the areas of tax collection, efficient governance, and the capacity to spend on development. Additionally, there is a scarcity of private sector financial institutions that primarily serve individuals who meet income-based lending requirements[355] . In economies like these, it is necessary to streamline the legal and operational structures related to charitable giving and welfare spending.

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[354] Shaikh, S. A., Ismail, A. G., & Shafiai, M. H. M. (2017). Application of Waqf for Social and Development Finance. ISRA International Journal of Islamic Finance, 9(1), 5-14. DOI: 10.1108/IJIF-07-2017-002.

[355] M., Ayub. "Promoting the Institution of Waqf for Socio-economic Development in Islamic Societies." *Journal of Islamic Business and Management* 12, no. 2 (December 31, 2022): 139-141. https://doi.org/10.26501/jibm/2022.1202-001.

This will allow individuals and corporations to easily contribute to funding welfare programs[356]. A dedicated *waqf* bank can serve as a middleman, efficiently leveraging everlasting communal funds to offer a diverse array of social benefits.

The flexibility inherent in the regulations governing *waqf* allows it to directly benefit beneficiaries or be channelled through financial institutions, making it an essential instrument for promoting socio-economic development and fostering sustainable growth [357]. The government should support and encourage the establishment of cash *waqf*s by people, corporations, banks, non-banking institutions, and business groups. This will enable Islamic banking and finance institutions to achieve their goal of fostering socio-economic fairness in society.

The use of monetary *waqf* in the early fifteenth century created new opportunities for the growth of *waqf*, promoting the philanthropic actions of Muslims[358] . Several *waqf* organizations in nations like Syria, Egypt, India, Singapore, and Malaysia have adopted the concept of cash *waqf*, which holds significant potential and advantages.

The introduction of novel tools in the Islamic economic domain, particularly in the *waqf* sector, has the potential to enhance the realization of *maslahah* (public interest) in a more efficient manner. Cash-*waqf* financing can be utilized to offer a diverse range

[356] Ibid.
[357] Ibid, 227.
[358] Siska Lis, Sulistiani, Yunus, M., and Bayuni, E. M. "Micro *Waqf* Bank: New Sharia Financial Instruments in Indonesia." (January 1, 2020). https://doi.org/10.2991/assehr.k.200225.001.

of goods and services, extending beyond religious domains, including education, health, and other sectors, without relying on government assistance[359] .

The establishment of a central *waqf* bank offers a promising chance to tackle the administrative and operational difficulties encountered by *waqf* institutions in the modern world. This specialized financial institution will utilize the knowledge and skills of professionals in Islamic finance and *waqf* law to guarantee that all goods and services are created in accordance with Islamic principles and the specific needs of *waqf* holdings. The bank's centralized structure would facilitate the consolidation of *waqf* money from all over the country, enabling more substantial and influential investment in large-scale development initiatives. Implementing this strategy would enhance the long-term viability and scope of *waqf*, resulting in amplified socio-economic advantages for the specific populations being targeted.

In addition, a centralized *waqf* bank might provide customized financial offerings, including *waqf*-based Sukuk, investment accounts with profit-sharing, and specialized loans for the development of *waqf* properties[360].

[359] Ismail Abdel, Mohsin, M. "Financing through Cash-*Waqf*: A Revitalization to Finance Different Needs." *International Journal of Islamic and Middle Eastern Finance and Management* 6, no. 4 (2013): 304–321. https://doi.org/10.1108/imefm-08-2013-009.

[360] S.H.M., Jani, Misbahrudin, N. T., and Salleh, N. "Waqf as an Alternative to Government Expenditure in Financing Autism Spectrum Disorder Children's Cost: Experience from Malaysia." *International Journal of Academic Research in Business and Social Sciences 12*, no. 2 (February 24, 2022). https://doi.org/10.6007/ijarbss/v12-i2/12891.

These specialized services would specifically address the distinct requirements of *waqf* endowments, giving the essential financial instruments to improve their long-term sustainability and influence[361] .

Although the promise of *waqf* as a conduit for social and development funding has been widely acknowledged [362] its full realization has been impeded by the absence of a centralized and coordinated strategy. An establishment of a central *waqf* bank will resolve this matter by combining resources, specialized knowledge, and financial offerings, so enabling *waqf* organizations to have a greater impact on the socio-economic progress of Muslim communities.

6.3.2 Implementing and establishing an Ethical Islamic Bank: Overcoming Obstacles and Promoting Cooperation.

The creation of an ethical Islamic bank has great potential in advancing socially responsible finance and fostering fair economic development. In order to fully use this potential, it is necessary to address several crucial factors[363].

Primarily, the government and pertinent Islamic authorities should offer regulatory assistance to guarantee that the bank's activities conform to legal frameworks and national financial regulations[364] . This will foster assurance among stakeholders and streamline the bank's assimilation into the wider financial ecosystem.

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[361] Ibid, 227.
[362] Manzoor, Alam, M. "Potent Potential of Awqāf in Social and Economic Development." *Islamic Law and Society* 31, no. 2 (July 8, 2018): 101-108. https://doi.org/10.4197/islec.31-2.8.
[363] S.L., Reinman. "Open Knowledge Repository." Resource Review 29, no. 5 (July 6, 2015): 21-22. https://doi.org/10.1108/rr-05-2015-0113.
[364] Anas, Elmalki, and Mounira, B. A. "Ethical Investment and the Social Responsibilities of the Islamic Banks." International Business Research 2, no. 2 (March 18, 2009).

Equally important is the bank's cooperation with established *waqf* boards and Islamic financial institutions[365] . Through utilizing their specialized knowledge and extensive connections, the newly established bank can improve its abilities and expand its influence, ultimately leading to a more efficient provision of services to the community.

In addition to these structural factors, the establishment of public awareness and education will play a crucial role in gaining the trust and involvement of stakeholders[366] . Emphasizing the bank's dedication to ethical principles and its ability to promote social justice and welfare will be crucial in gaining broad support.

To successfully build an ethical Islamic bank, a comprehensive strategy is needed to tackle regulatory, institutional, and societal aspects [367]. By addressing these difficulties using a thoughtful and cooperative approach, the new bank can create a path towards a fair and comprehensive financial environment.

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6.3.3 The Function of Specialized Islamic Financial Institutions

The institution of *waqf* in the Muslim world has significant potential for fostering social and economic growth[368] . *Waqf*, a type of donation, has historically been utilized to finance religious and philanthropic endeavours, but its potential can be broadened

https://doi.org/10.5539/ibr.v2n2p123.

[365] P., Pebri, and Bakti, S. "Maximizing Mudharabah Savings and Mudharabah Deposits Against Mudharabah Financing Sharia of Commercial Bank." BIRCI: Borneo International Research Conference on Business and Economics 4, no. 2 (May 4, 2021): 2217-2226. https://doi.org/10.33258/birci.v4i2.1914.

[366] S. N. S., Ibrahim, Omar, N. Y. M., and Arshad, Y. "External and Internal Determinants of Islamic Bank's Financial Performance in Malaysia." International Journal of Accounting Research and Financial Management Studies 13, no. 2 (May 21, 2023). https://doi.org/10.6007/ijarafms/v13-i2/17402.

[367] E. L.,Widarni and Bawono, S. "The Role of Human Capital on the Performance of Islamic Banks in Indonesia, Malaysia, and Thailand." January 1, 2022. Atlantis Press. https://doi.org/10.2991/aebmr.k.220128.023.

[368] Ibid, 227.

to promote sustainable and inclusive development[369]. The full potential of *waqf* properties can be realized by creating dedicated Islamic financial organizations.

These financial institutions have the potential to offer customized goods and services in order to promote increased investment in *waqf* land development. This would result in a higher level of investment in *waqf* assets, as the presence of suitable financial instruments would make it more appealing for individuals and organizations to donate to *waqf*[370]. Moreover, these establishments have the potential to guarantee the sustainable management and development of *waqf* properties, hence creating continuous advantages for the society[371].

Crucially, the creation of these financial organizations would also enhance financial inclusion for *waqf* institutions[372]. Historically, *waqf* entities have encountered difficulties in obtaining cash and financial services, which has restricted their capacity to preserve and expand their holdings. By enabling *waqf* entities to access a variety of financial goods and services, these specialized institutions would empower them to become more self-reliant and efficient in their operations[373].

It is imperative to also tackle the administrative and operational difficulties encountered by *waqf* institutions in the modern world[374]. It is imperative for governments and policymakers to streamline the legal and regulatory frameworks that

[369] Ibid, 230.
[370] Ibid,228.
[371] Ibid, 227.
[372] Ibid, 227.
[373] Ibid, 228.
[374] W., Yuspin, and Fauzie, A. "Administrative Challenges of *Waqf* Institutions in the Contemporary World: Future Prospects." *The Journal of Social Sciences Research* 6 (2018): 294–299. https://doi.org/10.32861/jssr.spi6.294.299.

govern *waqf*. This would facilitate the participation of individuals and organizations in the establishment and administration of *waqf* properties.

To summarize, the creation of dedicated Islamic financial institutions that prioritize *waqf* properties have the potential to significantly boost investment, promote sustainability, and enhance financial access for *waqf* companies. This novel strategy has the potential to unleash the substantial social and economic benefits of the *waqf* system, helping communities throughout the Muslim world.

6.4 Utilizing *Baitul Mal* Funds to Promote Sustainable Development through interlinked *Waqf* Financing.

The Islamic financial system provides a distinct chance to tackle socioeconomic difficulties by using several instruments, such as *Baitul mal* and *waqf*. *Baitul mal*, the financial institution of the Islamic community, has conventionally overseen monies allocated for the well-being of the Muslim community[375]. By combining these monies with *waqf* development initiatives, the financial capability of *waqf* institutions might be greatly strengthened, allowing them to carry out more extensive and influential development projects[376] .

Waqf, a perpetual charity endowment, has a significant historical presence in the Islamic world, however its complete capacity has not been fully utilized in recent years[377] . Although *waqf* properties were originally utilized to fund public goods and

[375] P., Putra, and Isfandayani, I. "Challenges in Management of Baitul Maal wa Tamwil Based on *Waqf*." In *2nd Social and Humaniora Research Symposium (SoRes 2019)*, 562-565. Atlantis Press, 2020.
[376]Ibid, 282.
[377] Ibid, 294.

services, their scope has frequently been restricted to the construction of mosques, madrassas, orphanages, and graveyards[378] . The diversion has caused a mismatch between *waqf* and socioeconomic progress in the perception of many individuals[379].

Nevertheless, the *waqf* instrument has significant potential for tackling diverse socioeconomic difficulties, especially in countries with a Muslim majority. These nations generally encounter limitations in government expenditure for development and have limited access to financial institutions in the private sector.

The implementation of monetary *waqf* during the 15th century has created opportunities for the advancement of *waqf*, as it has the capacity to stimulate more philanthropic behavior among Muslims[380]. *Baitul mal*, which is entrusted with the responsibility of overseeing public monies for the betterment of the Muslim community, plays a vital role in connecting *waqf* and socioeconomic progress [381]. By utilizing *Baitul mal* monies to bolster *waqf* initiatives, the financial capability of *waqf* institutions can be substantially strengthened, empowering them to conduct more extensive and influential development projects that cater to the urgent requirements of the community[382] .

The integration of *Baitul mal* finances with *waqf* development has the potential to generate a strong synergy that can contribute to sustainable development and the reduction of poverty in countries with a Muslim majority[383] .

[378] Ibid, 3.
[379] Ibid, 3.
[380] Ibid, 282.
[381] Ibid, 3.
[382] Ibid, 282.
[383] Ibid, 282.

This strategy is in line with the increasing focus on using Islamic social finance tools, such as *Waqf* and Zakat, to tackle socioeconomic issues[384].

By utilizing the resources of *Baitul mal* and directing them towards development efforts based on *waqf*, the Islamic financial system can create opportunities for social impact and inclusive growth[385] .

Waqf, a charitable organization, has been widely acknowledged as a successful method of financing diverse social, educational, and religious projects that serve the requirements of local communities[386] . *Baitul mal* is an Islamic institution that has the responsibility of overseeing and allocating *Waqf*, *sadaqah,* and other charity funds. [387][388].The potential for synergy between these two institutions is substantial, as they both have a shared goal of fostering social welfare and community development[389]. By carefully connecting the financial assets of *Baitul mal* with *waqf* development initiatives, the combined influence of both institutions can be maximized, resulting in improved and streamlined distribution of resources[390].

An important benefit of this synergy is the increased financial capability it can offer [391] . The money provided by *Baitul mal* can significantly enhance the financial

[384] Ibid, 230.
[385] Ibid, 282.
[386] Ibid, 282
[387] Farahdina, Fazial, Hassan, S. H. M., Abdullah, S. R., Hamid, C. K., and Yahaya, S. "Financing Pondok Institution Development through Cash *Waqf*." *International Journal of Academic Research in Business and Social Sciences* 11, no. 7 (2021). https://doi.org/10.6007/ijarbss/v11-i7/10519.
[388] Ibid, 282.
[389] Ibid, 282.
[390] Ibid, 194.
[391] Khairil, Khairi, F., Aziz, M., Laili, N., Nooh, M., Sabri, H., and Basah, M. Y. A. "Share *Waqf* (Corporate *Waqf*) as an Alternative Financial Instrument in Improving the Communities and Nation

resources of *waqf* projects, facilitating the implementation of larger-scale initiatives that would otherwise be impractical [392](Rashid, 2012). Furthermore, the mutually supportive character of their goals can result in a more synchronized and comprehensive strategy for meeting the requirements of local communities[393].

Developing *waqf* properties has the capacity to generate significant cash that can be used towards social welfare programs.[394] By utilizing the resources of *Baitul mal*, managers of *waqf* can utilize this financial capability to enhance the scope and influence of their programs, thereby benefiting a broader portion of the people.

Ultimately, the collaboration between *Baitul mal* and *waqf* holds great potential for amplifying the influence of these two organizations in advancing social well-being and fostering communal growth. By effectively coordinating their financial resources and capitalizing on their complimentary goals, they can establish a more sustainable and efficient framework for meeting the urgent need of local communities.

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6.4.1 Utilizing the combined benefits of *Baitul mal* and *Waqf*: An effective Strategic Framework

The combination of *Baitul mal* with *waqf* offers a promising opportunity to improve socioeconomic development in Muslim communities[395]. This research presents a strategic framework that aims to efficiently utilize the potential of this collaboration,

Welfare." *Social Science Research Network.* (2014). https://doi.org/10.2139/ssrn.2448122.
[392] Rashid, S. K. "Siti Mashitoh Mahamood, (2006), Waqf in Malaysia: Legal and Administrative Perspective." IIUM Law Journal 16, no. 2 (2012). https://doi.org/10.31436/iiumlj.v16i2.56.
[393] Ibid.
[394] Ibid, 227.
[395] Ibid, 227.

focusing on important factors such as the legal and regulatory framework, governance structure, and strategic planning.

6.4.2 The Legal and Regulatory Framework

In order to promote the connection between *Baitul mal* money and *waqf* development projects, it is crucial to establish a well-defined and inclusive legislative framework[396] . This framework aims to guarantee adherence to Islamic principles and national legislation, while simultaneously facilitating the required adaptability for cooperation between the two institutions[397].

Regulatory authorities must to collaborate closely with specialists and scholars in Islamic finance to develop standards that protect the sacredness of *waqf* and ensure the effective application of *Baitul mal* resources[398] .

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6.4.3 The Arrangement of Authority and Decision-making inside an Organization.

Efficient governance is essential for the successful execution of this collaboration. An effective governance framework should be established, including participation from both *Baitul mal* and *waqf* institutions.[399] The proposed regulatory body would have the authority to distribute and oversee the use of money, with a focus on promoting openness, accountability, and alignment with the goals of both organizations[400] .

[396] Azrai, Ambrose, A. H. A., Hassan, M. a. G., and Hanafi, H. "A Proposed Model for *Waqf* Financing Public Goods and Mixed Public Goods in Malaysia." *International Journal of Islamic and Middle Eastern Finance and Management* 11, no. 3 (2018): 395–415.
[397] Ibid, 194.
[398] Ibid, 282.
[399] Ibid, 194.
[400] Ibid, 139.

6.4.4 Strategic Planning

In order to optimize the effectiveness of the *Baitul mal-waqf* integration, it is necessary to develop a strategic strategy[401]. The objective of this plan is to determine key locations for *waqf* development where the utilization of *Baitul mal* money can yield the most substantial and long-lasting impact. The strategic planning process should include comprehensive involvement of stakeholders, meticulous evaluations of needs, and the identification of investment possibilities that have a significant impact.

6.4.5 Utilizing the Combined Power of *Baitul mal* and *Waqf* for Sustainable Community Development

Utilizing the combined potential of *Baitul mal* and *waqf* can result in substantial enhancements in the magnitude, influence, and durability of community development endeavours. The combination of these two significant Islamic financial instruments has the potential to stimulate a positive cycle of improved community well-being and long-lasting progress.Firstly, the extra financial resources provided by *Baitul mal* can empower *waqf* institutions to pursue more ambitious and influential development projects[402] . By pooling together, the resources from *Baitul mal* and *waqf* assets, *waqf* organizations can expand their initiatives to tackle important community needs, such

[401] Abdullah, N. H., and H. Abdul-Rahman. 2018. "Innovative *Waqf* Projects in Malaysia: A Case Study Approach." *Journal of Islamic Finance and Business*.
[402] Ibid, 227.

as education, healthcare, and social services[403] [404]. This increased capability can result in measurable enhancements in the overall welfare of the community.

In addition, effectively using *Baitul mal* money for *waqf* development can help ensure the long-term viability of these projects[405] . By allocating *Baitul mal* resources towards the growth and upkeep of *waqf* holdings, the community may guarantee the long-term fulfilment of the people's requirements for future generations.[406] This strategy is in accordance with the primary principles of *waqf*, which prioritize perpetuity and the conservation of the original gift.

Nevertheless, the successful amalgamation of *Baitul mal* and *waqf* encounters several obstacles. To fully realize the potential of this synergistic interaction, it is necessary to overcome these obstacles by implementing good governance, management, and coordination among the relevant parties.

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The literature has emphasized that factors such as inadequate funding, ineffective management, and inadequate planning have impeded the development and long-term viability of *waqf* holdings in previous instances[407]. To develop a strong and durable socio-economic welfare system that benefits the entire community, Muslim communities can overcome these problems and make use of the advantages of both *Baitul mal* and *waqf*.

[403] Ibid, 194.
[404] Ibid, 282.
[405] Ibid, 227.
[406] Ibid, 227
[407] Hassan, R., N. A. M. Murat, S. A. Salman, and A. Yusoff. "Towards Developing a Shariah Governance Framework for Waqf Institutions: A Case of Majlis Agama Islam Melaka." Deleted Journal 14, no. 2 (2022): 1. https://doi.org/10.35609/gcbssproceeding.2022.2.

Overall, the *Baitul mal-waqf* synergy has significant potential to drive socioeconomic growth in Muslim communities. Through the implementation of a strong legal and regulatory framework, a clear governance structure, and a strategic plan that corresponds with the goals of both institutions, this integration can facilitate significant change and the achievement of the Sustainable Development Goals.

6.5 Exploiting the Potential of *Waqf* Land: Promotion to Stakeholders on the Opportunities for Developing *Waqf* Land

The notion of *waqf*, which is a type of charity endowment profoundly ingrained in Islamic history, has great potential for promoting sustainable development and empowering communities. Nevertheless, a major obstacle to achieving this potential is the limited awareness and comprehension among crucial stakeholders, such as *waqf* administrators, potential investors, and the general public. Providing these stakeholders with information about the various opportunities for developing *waqf* land can open up new paths for social and economic advancement.

Waqf institutions have historically been crucial in shaping the religious, social, and economic aspects of Muslim communities, especially in nations such as India. The intrinsic flexibility of *waqf* rules enables it to directly benefit recipients or indirectly through financial institutions, hence offering a diverse array of social benefits. However, the Muslim society frequently overlooks the genuine significance of *waqf* in terms of economic advancement since there is a lack of promotion of knowledge, there is a common misconception among many people that *waqf* instruments are only used for constructing mosques, schools, and other religious institutions. However, it is

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important to recognize that *waqf* instruments have a wider range of possible applications for socially-oriented goals.

The diversion has resulted in *waqf* properties being primarily dedicated to religious activities, while neglecting their economic and social aspects[408] (Aziz & Noh, 2019). To fully harness the powerful potential of *waqf*, it is essential to educate stakeholders on its various applications, including but not limited to poverty alleviation, capacity building, and economic empowerment.

By increasing understanding and spreading information about the potential for developing *waqf* land, individuals and groups involved can be empowered to explore creative solutions that utilize this distinct Islamic institution for the improvement of their communities.

In the aftermath of economic and financial liberalization in the Islamic world, it is crucial for scholars and economists to focus more on the economic aspects of the *waqf* institution. The implementation of cash *waqf* in the early fifteenth century marked a significant milestone in the advancement of *waqf*, showcasing its capacity to stimulate philanthropic behavior among Muslims and expand its range of uses[409].

To utilize the potential of *waqf* for socio-economic progress, it is essential to undertake a comprehensive initiative that involves educating and involving all parties involved, including *waqf* administrators, potential investors, and the general public.

[408] Aziz, N. a. A., and Noh, M. K. A. "Factors Influencing Willingness to Contribute for *Waqf* Education." *International Journal of Modern Education* 1, no. 2 (2019): 41–47. https://doi.org/10.35631/ijmoe.12004.
[409] Ibid, 228.

6.5.1 The Significance of Educating Stakeholders in the Development of *Waqf* Land

Waqf, a donation of property or land for religious or charity reasons, is a fundamental component of the Islamic social and economic structure, with a long history of promoting community development and assisting the disadvantaged. Nevertheless, in the present context, the *waqf* system has encountered numerous administrative obstacles, such as a deficiency in awareness and comprehension among crucial stakeholders[410] .

Providing education to these stakeholders, including community members, investors, and policymakers, is crucial in fully realizing the potential of *waqf* land development. An important advantage of stakeholder education is its influence on well-informed decision-making. When stakeholders possess comprehensive knowledge about the opportunities and problems linked to *waqf* land development, they are more inclined to make astute and influential judgments concerning the administration and exploitation of these assets. This can result in the execution of development initiatives that are more closely aligned with the needs of the community and the long-term viability of the *waqf* system.

Moreover, by promoting knowledge about the possible advantages of *waqf* land development, community engagement in these endeavours might be enhanced. Public awareness of the beneficial effects of *waqf* projects on local communities is crucial for

[410] Ibid, 282.

garnering support and active participation, hence guaranteeing the sustainability and prosperity of such initiatives. The active participation of the community is crucial for the efficient management of *waqf* land and the achievement of its socio-economic benefits.

Another vital component of stakeholder education is its capacity to promote investment in the development of *waqf* land. By providing potential investors with information about the opportunities and benefits of investing in *waqf* land, including the religious and social virtues of these projects, the amount of funds available for development initiatives can be greatly increased. This surge of investment has the potential to play a crucial role in stimulating the expansion and long-term viability of the *waqf* industry [411] [412].

Ultimately, there are multiple reasons for training stakeholders in the development of *waqf* property. Providing education to stakeholders can promote well-informed decision-making, enhance community involvement, and attract investment. These factors are crucial for realizing the transformative capabilities of *waqf* assets.

6.5.2 Enhancing Stakeholder Education for Effective *Waqf* Land Development

Developing effective educational programs and public awareness campaigns is crucial for the successful implementation of *waqf* land development initiatives. *Waqf* administrators, community leaders, and potential investors must be well-informed

[411] Ibid, 3.
[412] Ibid, 227.

about the legal, financial, and social aspects of *waqf* land development to make informed decisions and actively participate in the process.

One key aspect is the implementation of educational programs and workshops tailored to the specific needs of *waqf* stakeholders. These programs should cover a wide range of topics, from the legal framework governing *waqf* land to the financial mechanisms and investment opportunities available. Engaging with stakeholders through forums, seminars, and conferences can also serve as a platform for sharing best practices and success stories, fostering a collaborative environment for *waqf* land development[413].

Alongside targeted educational initiatives, public awareness campaigns can play a crucial role in reaching the broader community. These campaigns can utilize various media channels, including social media, to disseminate information about the importance of *waqf* land and its potential benefits to the community[414]. By raising public awareness, these efforts can generate interest, build trust, and encourage more individuals and organizations to participate in *waqf* land development initiatives.

The establishment of a socio-economic welfare system in any society depends on the desire to eradicate poverty and ensure that the "haves" recognize their responsibility to the "have-nots." *Waqf* land development can serve as a powerful tool in achieving this goal, providing opportunities for income generation, community development,

[413] S., Sugianto, Soemitra, A., Yafiz, M., Dalimunthe, A. A., and Ichsan, R. N. "The Implementation of *Waqf* Planning and Development through Islamic Financial Institutions in Indonesia." *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 8, no. 2 (2022): 275–288.
[414] Ibid, 227.

and social welfare. However, the lack of awareness and knowledge about the potential of *waqf* has been identified as a significant barrier to harnessing its full potential. [415]

Comprehensive educational programs and public awareness campaigns are essential for overcoming these challenges and empowering *waqf* stakeholders to become active participants in the development process. As *waqf* properties need to be "developed" and cannot be left idle, proper identification and management of *waqf* lands is a crucial first step in any *waqf* development plan. By fostering a well-informed and engaged *waqf* community, the true potential of *waqf* land can be unlocked, contributing to the overall socio-economic well-being of the society.

6.5.3 Impact on Educating the Stakeholder is to maximize the Potential of *Waqf* Land: Strategies for Effective Utilization and Community Engagement

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Waqf, the Islamic endowment system, holds immense potential to drive socioeconomic development and community welfare. However, the full realization of this potential has been hindered by various challenges, including a lack of awareness, inefficient management, and limited investment. This research aims to explore strategies for enhancing the utilization of *waqf* land and fostering stronger community support, thereby attracting investment and unlocking the transformative power of this invaluable resource.

[415] Ibid, 227.

The current reappraisal of the role of *waqf* institutions in many countries presents a unique opportunity to learn from past mistakes and move towards a more professional and modern administrative framework[416]. Existing *waqf* properties must be better managed and utilized to enhance the security of tenure and serve the interests of the beneficiaries. Furthermore, incoming *waqf* properties should be leveraged to facilitate resource redistribution and strengthen civil society.

The potential of *waqf* in the contemporary world remains largely untapped, with many problems facing the institution, from issues inherent in *waqf* laws and management techniques to the neglect of existing *waqf* assets. A reform of the *waqf* system in the Islamic world is crucial, particularly in the post-economic and financial liberalization environment, to utilize *waqf* for poverty reduction, capacity building, and economic empowerment of Muslim communities [417].

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By increasing awareness and understanding of the *waqf* system, communities are more likely to support *waqf* development projects, leading to smoother implementation and greater long-term success[418]. Additionally, highlighting the opportunities and benefits of *waqf* land development is likely to attract more investment, further enhancing the capacity for sustainable development.

The low level of awareness and knowledge about the versatility of *waqf* instruments has been a significant barrier to harnessing their full potential. It is imperative to

[416] Ibid, 282.
[417] Ibid, 230.
[418] Shulthoni, M., Saad, N. M., Kayadibi, S., and Ariffin, M. I. "*Waqf* Fundraising Management: A Proposal for a Sustainable Finance of the *Waqf* Institutions." *Journal of Islamic Monetary Economics and Finance* 3 (2018): 201–234. https://doi.org/10.21098/jimf.v3i0.776.

promote the understanding that *waqf* is not limited to building mosques, schools, and other religious facilities, but can be utilized for a broader range of socially-based purposes[419] .

By addressing the administrative challenges, improving awareness, and fostering community engagement, the *waqf* system can be revitalized to serve as a powerful tool for socioeconomic development and community welfare. The establishment of a socio-economic welfare system in any society depends on the desire for the eradication of poverty and the realization that a share of the wealth of the 'haves' is also for the 'have nots' who are in need.

6.6 Legal Reforms

6.6.1 Introduction

The existing legislative structure regulating *waqf* land in Malaysia, although extensive, necessitates change in several aspects to enhance the efficient administration and exploitation of *waqf* lands. Legal reforms are important to resolve uncertainties, improve clarity, and optimize bureaucratic procedures. This section will suggest precise modifications to current laws and the implementation of new legislation with the goal of addressing ongoing difficulties in the *waqf* sector. The proposals will be based on legal theory and practical factors. They will also use comparative analysis with other jurisdictions to identify viable strategies to bring about reform.

[419] Ibid, 3.

6.6.2 Resolving Uncertainties in *Waqf* Legislation

The legal structure governing *waqf* land in Malaysia is intricate, characterized by uncertainties in crucial terminology and overlapping jurisdictions between federal and state authorities. An important problem is the absence of precise and uniform definitions for terms like "*waqf*," "*mutawalli*" (trustee), and "beneficiary" in different state-level legislations. The absence of a clear definition has led to many interpretations and discrepancies in the management of *waqf* properties, which has hindered their effective application and administration.

Adding to the complexity is the intersection between federal and state authorities in the management of *waqf* lands. Although the Federal Territories fall under the jurisdiction of the federal government, the other states have their own *waqf* legislation and administrative organizations, resulting in inefficiencies and confusion. In order to tackle these difficulties, it is imperative to implement legislative changes that will standardize the legal framework and simplify the administration of *waqf* properties in Malaysia.

First and foremost, it is necessary to revise the current legislation in order to establish unambiguous and explicit explanations for essential terminology associated with *waqf*. Implementing this measure would facilitate the uniform interpretation and implementation of *waqf* principles nationwide, so guaranteeing a more uniform and efficient management of *waqf* assets. Furthermore, legislative modifications should be implemented to clearly define the specific roles and responsibilities of federal and state authorities in the administration of *waqf*.

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To enhance the legal framework controlling *waqf* land in Malaysia, it is necessary to resolve uncertainties and conflicts in jurisdiction. This would empower the institution of *waqf* to fully realize its potential in promoting the social and economic welfare of the Muslim community.

6.6.3 Improving the clarity and responsibility

The *waqf* system, an essential component of Islamic generosity, plays a vital role in providing funding for many social, educational, and religious endeavours. Nevertheless, the existing system that regulates *waqf* organizations frequently lacks adequate transparency and accountability mechanisms, impeding their complete potential.

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A major obstacle is the absence of compulsory disclosure regulations. *Waqf* institutions are not obligated to publicly disclose their financial accounts, audit reports, and other pertinent information, which hinders stakeholders from evaluating their performance and ensuring the appropriate application of *waqf* funds. In order to tackle this issue, legislators should revise current legislation to require frequent public publication of this information, promoting increased transparency and allowing stakeholders to hold *waqf* administrators responsible.

Furthermore, it is imperative to enhance the supervisory processes for *waqf* institutions. Creating autonomous regulatory agencies with the power to conduct audits and inquiries on *waqf* institutions will guarantee adherence to legal and ethical norms, reducing the likelihood of mishandling or improper use of *waqf* assets. These

regulatory authorities should also actively include *waqf* beneficiaries in order to gain a deeper understanding of their requirements and concerns, which would help enhance the management and provision of *waqf* services.

By implementing obligatory disclosure standards and implementing strong oversight measures, the *waqf* system may rebuild the trust of the community and effectively carry out its function as a catalyst for social and economic development.

6.6.4 Enhancing Efficiency of Administrative Procedures

Efficient management of *waqf* properties, which are charity endowments, is a pivotal component of Islamic socioeconomic systems. These endowments are essential for providing significant assistance to a wide range of community projects and welfare programs. Nevertheless, the administrative procedures associated with the registration, transfer, and administration of *waqf* holdings are frequently burdensome and resulting in bureaucratic delays. Moreover, the utilization of obsolete protocols impedes the effective administration and advancement of these characteristics, hence constraining their capacity to make a significant influence on the community.

In order to tackle these difficulties, it is necessary to adopt a holistic strategy that simplifies the administrative procedures and improves the overall effectiveness of managing *waqf* properties.

An important suggestion is to streamline the administrative processes related to the registration and governance of *waqf* properties. This can be accomplished by

modifying the current procedures to minimize superfluous bureaucracy and optimize the processes, enhancing their user-friendliness and efficiency to encourage transparency and accountability in the management of *waqf* assets.

Moreover, the utilization of digital tools and platforms can greatly aid in the conversion of *waqf* property administration. Through the adoption of digital technology, administrative operations can be automated, resulting in a decrease in the time and resources needed for duties such as property registration, transfer, and record-keeping. Implementing these ideas can result in substantial enhancements in the administration of *waqf* properties, guaranteeing that these valuable assets are employed more effectively to meet the community's demands.

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6.6.5 Legal Safeguards for *Waqf* Assets

The w*aqf* system, a longstanding Islamic practice, has greatly contributed to the socioeconomic progress of Muslim societies throughout the years. It has effectively provided crucial services and protected valuable resources for the benefit of the general population. Nevertheless, the legal safeguarding of *waqf* properties continues to be a pressing concern, as they frequently face invasion and exploitation due to inadequate legal frameworks.

A major issue of concern is property encroachment, whereby *waqf* properties are occasionally unlawfully seized or asserted by individuals or collectives, thereby undermining their original intended function. The absence of strong legal protections

has left *waqf* administrators and custodians with few options to redress these abuses, resulting in the gradual decline of these valuable assets.

The limited availability of legal recourse to safeguard *waqf* properties from misuse and misappropriation intensifies existing challenges. In the absence of comprehensive legal mechanisms to address infractions effectively and enforce appropriate sanctions, *waqf* properties remain vulnerable to exploitation and unauthorized use.

To address these challenges, this research recommends enhancing the legal protections afforded to *waqf* properties. This approach entails amending current legislation to provide comprehensive safeguards against encroachment and unauthorized utilization while reinforcing the legal recourse available to *waqf* administrators and beneficiaries.

To ensure the integrity and sustainability of *waqf* properties, it is essential to implement more stringent legal frameworks and enforcement mechanisms. Such measures will enable *waqf* properties to continue fulfilling the social, religious, and economic purposes for which they were originally established.

Given the pivotal role of the *waqf* system in Muslim communities, safeguarding these endowments through robust legal protections is essential for community welfare and the preservation of a valuable Islamic heritage. An approach made by Terengganu *Waqf* Enactment 2016 in imposing penalties and criminal law element on squatters is helping and encouraging the SIRC in developing *waqf* land in Malaysia.

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6.6.6 Promoting the growth and utilization of *waqf* properties.

Numerous *waqf* lands in the present day continue to be underutilized as a result of stringent regulatory constraints and a dearth of development incentives. In order to tackle these difficulties and unleash the full potential of *waqf* assets, governments should contemplate adopting a variety of policies to promote investment, innovation, and efficient utilization of these holdings.

An important obstacle that impedes the progress of *waqf* assets is the insufficient utilization of current properties. According to experts, *waqf* institutions should adopt more professional and modern management procedures in order to improve the security of tenure and better serve the beneficiaries' interests. Policymakers should consider revising regulatory frameworks to offer strong incentives for the development and effective utilization of *waqf* properties, such as by providing tax advantages and subsidies. In addition, it is necessary to adopt legal procedures that enable and regulate the involvement of the private sector in the development of *waqf* assets. The fundamental concept and essence of *waqf*, serving as a method to construct a robust and fair society, should be the primary focus of any reform initiative.

Cash *waqf* has evolved as a creative method that can improve the well-being of Muslims and act as a means to reduce poverty and redistribute wealth. By incorporating modern technologies such as blockchain and smart contracts, *waqf* institutions can improve the transparency, efficiency, and accessibility of *waqf* management in the present-day context. To rejuvenate *waqf* assets and harness their

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capacity to promote community development, social welfare, and fair economic growth, authorities might adopt a comprehensive approach that integrates legal reforms, investment incentives, and technological innovation.

6.6.7 Establishing a *Waqf* Court in *Shariah* Court Jurisdiction

Legal experts and policymakers have been discussing the creation of a specialized court specifically for resolving disputes relating to *waqf* for a considerable amount of time. The rationale behind establishing such a court is based on the notion that the intricacies and subtleties of *waqf* law, construction law, and land law necessitate a high level of specialized knowledge that is sometimes absent in the ordinary judicial system. By providing targeted training to judges in these specific areas, the specialized *waqf* court would be more proficient in making knowledgeable and logically sound judgments, resulting in a more streamlined and successful resolution of disputes.

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The necessity for such specialized expertise is emphasized by the criticisms directed at the w*aqf* institution by several Western researchers, who have labelled it as a "outmoded" and "ineffective" system that hinders economic progress. Although this viewpoint may seem too dismissive, it emphasizes the significance of adjusting the w*aqf* framework to fit the contemporary economic and legal environment. The process of adaptation has been accelerated by the increasing participation of national and international organizations of Islamic scholars, who have emphasized the reassessment of *waqf* jurisprudence in response to current demands and concerns [420]

[420] Ibid, 227.

Providing judges with specific knowledge in *waqf* law, building law, and land law will enable them to better handle the intricacies of *waqf* disputes, resulting in more knowledgeable and logical rulings. Consequently, this would enhance the entire credibility and significance of the *waqf* institution, guaranteeing its ongoing sustainability as a means for social welfare and economic advancement in the Islamic world.

6.6.8 Enforcing the Role of Arbitration in Resolving *Waqf* Disputes: Islamic Principles and Contemporary Applications

Resolving conflicts surrounding *waqf*, or Islamic endowments, is a difficult and diverse problem requiring a careful balance between ethical considerations and legal doctrines. In this framework, the procedures of *Sulh* (amicable settlement) and *Tahkim* (arbitration) reflect Islamic values and embody Islamic principles while addressing contemporary challenges in *waqf* administration and dispute resolution of *waqf* in the modern era have evolved significantly and calls for creative solutions to management and conflict resolution that fit both traditional Islamic values and modern legal systems, so supporting the need of efficient management of *waqf* properties to guarantee they serve their intended charitable purposes for the benefit of the society.

By allowing the parties involved in alternative dispute resolution to present their facts to the arbitrator free from the implications of conflicting laws, the arbitrator can render a decision based just on the merits of the case, so surpassing legal technicalities or jurisdictional arguments. This method not only helps to resolve problems more smoothly but also conforms to Islamic values that stress justice and fairness in conflict

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resolution, so supporting the validity of the results generated by means of such systems in the framework of *waqf* conflicts.

As acknowledged in historical and modern settings, the practice of *Sulh* and *Tahkim* emphasizes the compatibility of Islamic jurisprudence with creative dispute resolution techniques, so ensuring that the resolution process remains accessible and effective for all parties involved, so promoting a more fair and harmonic resolution of *waqf*-related problems[421]. Reflecting the fundamental ethical values inherent in Islamic governance, the integration of these practices shows the adaptive character of Islamic legal tradition, which not only fits modern management techniques but also seeks to improve the efficacy and transparency of *waqf* institutions in the modern world [422].

The case of the *Shariah* High Court in Terengganu, Malaysia, where the court ordered the matter of Tengku Zainal Akmal Tengku Besar and Tengku Hidayadh Tengku Habib v. Majlis Agama Islam and *Adat* Melayu Terengganu[423] to proceed to majlis al-*Sulh*, exemplifies the judiciary's recognition of the significance of amicable resolutions and serves as a testament to the effectiveness of *Sulh* in mitigating conflict surrounding *waqf*[424].

The experience of this case has led the Terengganu State Religious Council to propose the establishment of a dedicated body comprising representatives from both the beneficiaries and the council to facilitate the settlement of disputes involving Islamic

[421] Ibid, 3.
[422] Ibid, 3.
[423] (2012) 3 SHLR 39.
[424] Roshidah, Osman, M.Z. Mohd Noor, M.A.Husin. "Addressing Waqf Dispute in Malaysian Court:Towards a New Arbitration Model". BiLD, 2022, page 255-258. ISSN-L2518-6523.

issues, further solidifying the institutional commitment to the principles of *Sulh* and *Tahkim* in the context of *waqf* administration[425] . Moreover, the ongoing application of *Sulh* within the *Shariah* Courts throughout Malaysia reflects a broader societal preference for negotiation over litigation, highlighting the inherent respect and tolerance that underpin such dispute resolution practices, reminiscent of the early Islamic period when mediators would be elected to resolve conflicts among the people[426] .

Historical roots and modern uses of *Sulh* and *Tahkim* as means of conflict resolution in Islamic law clearly show their permissibility and appropriateness. Moreover, the ongoing advocacy for reconciliation and amicable settlements emphasizes the need for these ideas in modern legal practices, so supporting the idea that peace and cooperation are basic values in Islamic teachings that seek to avoid needless conflicts and uphold social harmony in the community, which can finally lead to a more effective management of *waqf* properties and the preservation of their intended charitable purposes, resonating with the core Islamic values of justice and community welfare[427] .

The strategic alliances and interests of political and religious leaders inside the majority community, who aim to maintain a dominant government and predominant rule based on communal identity, might help one understand the slow administrative burdens of *Shariah* courts in Malaysia: This emphasizes the need for efficient institutional frameworks that can adjust to the evolving socio-legal environment while

[425] Ibid, 3.
[426] Syasya, N. "The Significance of *Sulh* in the *Shariah* Court." YUDISIA Jurnal Pemikiran Hukum Dan Hukum Islam 11, no. 1 (2020): 141. https://doi.org/10.21043/yudisia.v11i1.7543.
[427] Mohammad, Nor, Anwar Mohd Sabri, and Nor 'Adha Ab Hamid. "*Sulh* and Peace: Its Application According to Islamic Perspective." *International Journal of Law, Government and Communication* 6, no. 24 (2021): 76-83. https://doi.org/10.35631/IJLGC.624005.

preserving fundamental Islamic values related to justice and community welfare, so improving public confidence in the resolution mechanisms set for *waqf* conflicts[428].

This development emphasizes the need for a sophisticated approach to Islamic dispute resolution techniques that not only recognize the historical precedents set during the time of the Prophet Muhammad (SAW) but also allow the complexity of modern legal environments, so ensuring that *waqf* resources are managed in a manner that corresponds with the *Shariah* principles and serves the best interests of the community.

In this sense, the application of *Sulh* and *Tahkim* as means of dispute resolution essentially embodies the Islamic commitment to promote peace and reconciliation, so fostering a more harmonic society reflecting the core values of Islam while also addressing the legal and administrative complexity inherent in the modern management of *waqf*. As shown by the teachings of Islam that support conflict resolution strategies that uphold justice, compassion, and the greater good of society, it is imperative to make sure that the processes of *Sulh* and *Tahkim* are not neglected or undervalued in their potential to create a more peace-oriented society even as operationalizing these values. In this regard, the application of these conventional dispute resolution techniques can greatly help to ensure the sustainable management of *waqf* assets, so supporting the efficiency and integrity of the institutions assigned with their care, so strengthening public confidence and participation with these important community resources[429].

[428] Hamayotsu, K. "The Political Origins of Islamic Courts in Divided Societies: The Case of Malaysia." "Journal of Law and Religion" 33 (2018): 248-270. https://doi.org/10.1017/jlr.2018.24.
[429] Ibid, 194.

Sulh and *Tahkim'*s inclusion into the dispute resolution system not only conforms with Islamic jurisprudential principles but also solves modern issues by offering a quick and easily available means of settling problems that could develop in *waqf* administration, so strengthening the socioeconomic relevance of this institution in the modern era.

Sulh and *Tahkim*'s alignment with the principle of *al-siyasah al-shari'yah*, which stresses the need of maintaining the public interest *(maslahah 'ammah)* in the management of Islamic matters, helps to underline their part in settling *waqf* problems. This principle provides a guiding framework for the adjudication of conflicts, so ensuring that decisions are made in view of both the legal and ethical consequences for the society, so fostering a culture of cooperative problem-solving and mutual respect among the stakeholders engaged in *waqf* management [430]. *Sulh and Tahkim'*s successful application in the *Chendrong*[431] case resolution in Terengganu, Malaysia, offers a concrete illustration of how these age-old dispute resolution techniques can be practically used in modern legal environments, so proving their ongoing relevance and adaptability to modern problems.

The favourable result of this case not only underlined the efficiency of these strategies but also acted as a stimulus for other Islamic institutions to take comparable approaches to conflict resolution, so creating an environment where the values of justice and reconciliation are given top priority inside the *waqf* government [432].

[430] Fauzi, Muhamad & Priatno, Adi & Syarjaya, Syibli & Dahlan, Rahmat. (2023). "Micro Waqf Bank For Empowerment Of Indonesian Women's Microeconomic And Efforts Minimizing The Loansher Trap". I-iECONS e-proceedings. 753-764. 10.33102/iiecons.v10i1.89.
[431] Majlis Agama Islam dan Adat Melayu Terengganu v Tis 'Ata 'Ashar Sdn Bhd [2010] SLHR 181
[432] Ibid, 3.

Furthermore, the inclusion of *Sulh* and *Tahkim* inside the legal system controlling *waqf* emphasizes the need of mediation and arbitration in conflicts as well as reflects the larger Islamic ethos of attaining harmony and communal benefit, which is necessary for revitalizing the function of *waqf* in socioeconomic development.

Finally, the recommendation of *Sulh* and *Tahkim* as models for conflict resolution in the framework of *waqf* management emphasizes the continuous significance of conventional Islamic values in handling the problems of modern legal and administrative surroundings. Moreover, as these techniques become more popular, practitioners and beneficiaries in a dispute-resolution system urgently need ongoing education and training to fully realize the possible advantages of these approaches, so promoting an environment in which conflicts can be settled amicably and the original goals of *waqf* can be sufficiently realized for the benefit of the society.

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The efficient use of *Sulh* and *Tahkim* not only reflects the fundamental ideas of reconciliation inside Islamic teachings but also is very important in making sure that the conflicts resulting from *waqf* management do not turn into protracted conflicts, so preserving the integrity of these institutions and protecting their capacity to serve their intended use of promoting communal welfare and social welfare.

An emphasis on education about *Sulh* and *Tahkim* must also include the incorporation of creative practices, such the application of blockchain and smart contracts, which can improve regulatory transparency and accountability in *waqf* operations, allowing

institutions to better adapt to the dynamic financial and technological landscape while preserving the fundamental Islamic social responsibility values.

6.7 Institutional Strengthening

6.7.1 Introduction

The efficacy of *waqf* land management is greatly impacted by the capability and effectiveness of the entities in charge of its administration. It is essential to enhance these institutions to guarantee the efficient management of *waqf* holdings, with transparency and in a way that maximizes their communal benefits. This section examines tactics to improve the efficiency of *waqf* boards and other associated organizations, including as capacity-building programs, governance reforms, and the creation of a central regulating authority.

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6.7.2 Enhancing the capabilities of *Waqf* institutions

The efficacy of *waqf* land management is greatly impacted by the capability and effectiveness of the entities tasked with its administration. It is essential to enhance these institutions in order to guarantee the efficient and transparent management of *waqf* holdings, and to maximize their societal benefits. SIRCs and numerous *waqf* institutions presently have substantial obstacles that impede their capacity to execute this obligation.

The lack of knowledge and inadequate emphasis on continuing professional development for *waqf* administrators and staff are two crucial challenges that need to

be resolved. In order to augment the capabilities of *waqf* institutions, it is imperative to establish and execute regular training programs that encompass several subjects including property management, financial planning, legal compliance, and governance.

Collaborations with educational institutions and professional organizations can be utilized to offer certification programs and workshops for *waqf* personnel, guaranteeing their access to the most up-to-date resources and expertise. Furthermore, it is essential to devote resources expressly for capacity-building initiatives, which will allow *waqf* institutions to engage in the enhancement of their personnel.

In addition to initiatives to enhance capacity, governance reforms are also vital to bolster the overall performance of *waqf* organizations. This may entail elucidating the duties and obligations of various players, enhancing systems for openness and accountability, and establishing a centralized regulatory entity to supervise the *waqf* sector. By tackling these crucial obstacles, *waqf* institutions can undergo a transformation into more effective, open, and adaptable organizations that are better prepared to oversee *waqf* properties and optimize their societal influence.

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6.7.3 Reforms in Governance

Waqf institutions, which have a substantial impact on the Muslim community, frequently encounter difficulties in their governance frameworks. The absence of transparent accountability systems and inadequate oversight have resulted in inefficiencies and the possibility of misappropriation of *waqf* assets. In order to tackle these problems, it is essential to establish a thorough governance framework that

clearly defines the duties, responsibilities, and methods of accountability for *waqf* institutions.

It is essential to enhance the makeup of the board by ensuring that *waqf* institution boards include of individuals with a wide range of skills, including professionals in the fields of law, finance, and property administration. Introducing strong internal controls and audit procedures can improve openness and accountability in the management of *waqf* assets.

Accountability and openness are essential components for the efficient operation of *waqf* institutions. The management should actively interact with *waqf* beneficiaries, seeking to understand their opinions in order to enhance their service provision. While there are multiple methods to enhance *waqf* management, it is crucial to carefully evaluate the connection between *waqf* management and beneficiaries.

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A well-constructed performance measurement system can also have a significant impact on evaluating the efficiency of *waqf* administration and management, allowing stakeholders to assess the responsible management of *waqf* assets. By tackling these governance obstacles, *waqf* organizations can amplify their influence and more effectively achieve their social and philanthropic goals.

6.7.4 Creation of a Central Regulatory Authority

The management of *waqf* properties, which are crucial assets in the Islamic charitable sector, has been consistently hindered by ongoing difficulties that weaken its ability to

function efficiently and effectively. The inefficient administration of these important endowments is a consequence of fragmented oversight, inconsistent methods, and the absence of a centralized regulatory authority.

An important challenge confronting the *waqf* sector is the decentralized character of its governance. *Waqf* properties are commonly overseen by various institutions, each exhibiting different degrees of effectiveness and compliance with requirements. The lack of cohesiveness and coordination resulting from this dispersed structure has impeded the efficient application of *waqf* assets for the intended beneficiaries' benefit. In addition, the lack of a centralized regulatory authority has led to the widespread existence of inconsistent practices and standards across various *waqf* institutions.

In order to deal with these urgent challenges, it is crucial to create a thorough governance framework that consolidates the supervision and administration of *waqf* properties. It is necessary to establish a central regulatory institution to supervise the management of *waqf* assets across the country, guaranteeing consistent procedures and adherence to legal obligations. It is necessary to establish and implement uniform rules and processes in all *waqf* institutions to ensure openness, accountability, and effective usage of resources.

Furthermore, it is crucial to establish a strong monitoring and evaluation structure to consistently evaluate the effectiveness of *waqf* institutions and pinpoint areas that need enhancement. This will facilitate ongoing improvement of management strategies, guaranteeing that *waqf* properties be efficiently employed to fulfil their intended social, educational, and philanthropic objectives.

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Implementing a centralized governance structure can help the *waqf* sector address the issues of fragmentation and inconsistency. This will lead to a more proficient and sustainable management of these endowments. Consequently, this will improve the societal influence of *waqf* and reinforce its position as a crucial element of the Islamic charitable system.

6.7.5 Improving Transparency and Accountability

Waqf, an enduring Islamic institution, has always played a fundamental role in promoting social welfare and fostering community development throughout the Muslim world. Nevertheless, in recent years, this highly regarded establishment has encountered notable difficulties, specifically with the clarity of its operations and involvement with the public.

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The lack of transparency in numerous *waqf* organizations has resulted in a loss of confidence among stakeholders, who frequently have difficulties in obtaining vital information about the administration and utilization of *waqf* assets. Moreover, it is imperative to promote increased public participation in the decision-making procedures of these organizations, guaranteeing that the opinions and worries of beneficiaries are acknowledged and resolved.

In order to tackle these urgent problems, this study suggests a three-fold strategy: public disclosure, involvement of stakeholders, and utilization of technical resources to improve transparency.

First and foremost, it is crucial to require *waqf* institutions to consistently release their financial accounts, audit reports, and other important performance indicators. This would enhance openness and ensure accountability.

Additionally, it is imperative to establish procedures that involve beneficiaries and the public in the decision-making processes, such as conducting public consultations and implementing feedback mechanisms.

Furthermore, the incorporation of technology, such as online platforms for retrieving information regarding *waqf* properties and their administration, has the potential to greatly improve transparency and ease of access for all parties involved.

By applying these procedures, *waqf* institutions can restore the confidence of the public and ensure that the honourable goals of this esteemed organization are fully achieved.

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6.7.6 Enhancing Best Practices by Utilizing Benchmarking

Within the domain of *waqf* (Islamic endowment) management, the absence of effective knowledge exchange and notable variations in performance benchmarks among organizations have become urgent issues. In order to tackle these difficulties, this research study suggests a thorough strategy focused on the execution of benchmarking activities, the creation of knowledge-sharing platforms, and the formulation of best practice recommendations.

The current situation of *waqf* administration in the Muslim world is marked by a worrisome pattern of *waqf* institutions functioning independently, lacking adequate chances for knowledge exchange and the implementation of effective initiatives. The absence of collaboration and knowledge sharing has resulted in a significant discrepancy in the performance and management criteria of various *waqf* institutions.

Introducing benchmarking activities is a vital step to address this dilemma. Through a comprehensive analysis of performance measures and management techniques of *waqf* institutions at both national and international levels, these initiatives can help identify the most efficient methods and enable their widespread adoption. In addition to benchmarking, the creation of knowledge-sharing platforms, such as conferences, seminars, and online forums, can facilitate the exchange of best practices and promote a culture of ongoing improvement.

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In addition to these measures, the creation and wide distribution of comprehensive best practice guidelines for different aspects of *waqf* management can serve as an essential guide for institutions aiming to improve their operational efficiency and align their practices with the most successful models. By utilizing benchmarking and sharing experiences, these guidelines can be a great resource for *waqf* administrators. They can use them to reproduce and adapt good practices from different contexts.

By adopting this comprehensive strategy, which includes benchmarking, knowledge exchange, and the development of best practice guidelines, the *waqf* sector can open up new opportunities for expansion, enhance the administration of current *waqf*

properties, and reinforce the capacity of these institutions to effectively fulfill their crucial role in supporting civil society and advancing socio-economic progress.

It is crucial to increase the efficacy of *waqf* administration in Malaysia by bolstering the organizations responsible for managing *waqf* land, in order to tackle existing difficulties. To optimize the benefits of *waqf* properties for the community, it is crucial for *waqf* institutions to prioritize capacity building, governance reforms, the creation of a central regulatory authority, increased transparency and accountability, and the promotion of best practices. These endeavours will enhance the sustainability and effectiveness of the *waqf* sector, ultimately bolstering Malaysia's socio-economic development objectives.

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6.8 Integration of Technology

6.8.1 Introduction

The incorporation of technology into the administration of *waqf* holdings in the contemporary era offers a notable chance to improve openness, effectiveness, and responsibility. Through the utilization of digital tools and platforms, *waqf* institutions can enhance their administrative procedures, financial oversight, and involvement of stakeholders. This section examines different technology methods and tactics that can be implemented to update *waqf* administration and tackle current difficulties.

6.8.2 Digital Systems for Recording and Managing Information

Integrating technology into the management of *waqf* properties offers a substantial opportunity to improve transparency, efficiency, and accountability in the

contemporary day. Through the utilization of digital tools and platforms, *waqf* institutions have the ability to enhance their administrative procedures, financial oversight, and interaction with stakeholders.

A significant number of *waqf* organizations continue to depend on manual procedures for record-keeping and property administration, resulting in inefficiencies and inaccuracies. The accessibility of crucial data pertaining to *waqf* properties is frequently limited, posing challenges in efficiently monitoring and administering assets. In order to tackle these problems, it is essential to implement digital record-keeping and management systems. Creating a single database for *waqf* properties would enable authorized workers to conveniently access and manage data. It is crucial to offer training and technical assistance to *waqf* administrators to guarantee the efficient utilization of these digital technologies.

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Integrating technology into the *waqf* sector can yield numerous advantages for both the public and the *waqf* sector. The Malaysian government is collaborating with Information Technology experts to leverage artificial intelligence and blockchain technology in the *waqf* sector. They believe that the integration of IT and digital economy is essential for improving transparency and trust in the implementation of *waqf*. Blockchain technology has been recognized as a viable method to establish smart contracts associated with particular *waqf* projects, facilitating more efficient means of generating cash and managing the transfer of *waqf* donations.

Through the use of digital transformation, *waqf* institutions can optimize their administrative procedures, strengthen financial oversight, and promote transparency,

resulting in a more streamlined and effective management of *waqf* properties. The ongoing reassessment of the role of *waqf* institutions in various nations presents a chance to gain insights from history and transition towards a more proficient and contemporary administrative structure for managing *waqf* assets.

6.8.3 Utilizing Blockchain Technology for Enhanced Transparency and Security

The ongoing issue of opacity in the administration of *waqf* holdings has consistently eroded the community's confidence and raised doubts regarding the responsibility and transparency of those entrusted with the supervision of these precious assets. Moreover, it is imperative to guarantee the security of *waqf* property data in order to deter fraud and unlawful entry, which might exacerbate the erosion of public trust in the system[433].

Blockchain technology offers a hopeful resolution to tackle these difficulties. By incorporating blockchain technology, the administration of *waqf* assets can undergo a significant transformation, resulting in the establishment of unchangeable records of transactions and property ownership. Blockchain technology not only improves transparency but also enhances the overall security of the system by making it nearly impossible to modify or manipulate the recorded data[434]. Furthermore, by providing stakeholders, such as beneficiaries and regulators, with access to these blockchain records, they can readily authenticate the status of *waqf* assets and the corresponding transactions, thereby enhancing the trustworthiness and responsibility of the management process.

[433] Setiawan, A., and Nurzaman, M. S. "Application of Blockchain and Smart-Contract on Waqf Asset Management: Is It Necessary?" El Dinar Jurnal Keuangan Dan Perbankan *Shariah* 10, no. 2 (2022): 85-101. https://doi.org/10.18860/ed.v10i2.15529.
[434] Ibid, 3.

Several research have examined the possibilities of blockchain technology for managing *waqf* properties. These studies emphasize the inherent benefits of blockchain, including its decentralized nature, real-time data synchronization, and the unchangeability of recorded transactions. Moreover, researchers have explored the application of blockchain technology in Islamic philanthropy, specifically in the context of *waqf*. This investigation has shown that using blockchain in Islamic financial and social welfare initiatives, including the administration of *waqf* properties, is both feasible and offers prospective advantages.

Through the utilization of blockchain technology, the management of *waqf* properties can undergo a significant transformation, effectively resolving the persistent problems related to transparency and data security. By implementing blockchain-based systems, the management of *waqf* properties can be greatly enhanced through the creation of unchangeable records, granting access to stakeholders, and increasing accountability. This will restore trust and ensure the efficient management of these valuable assets for the community's benefit.

Incorporating digital technologies, particularly cryptography, can significantly enhance the accountability and transparency of waqf land administration. Cryptographic methods, such as blockchain technology, allow for secure, immutable records of waqf transactions and ownership transfers, ensuring that all activities are verifiable and resistant to tampering. This approach can establish a trusted, decentralized ledger where information about waqf assets, financial flows, and management decisions is accessible to relevant stakeholders without compromising

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data integrity. By using cryptographic security, waqf institutions can safeguard sensitive data, protect the privacy of stakeholders, and increase public confidence in their operations. Moreover, implementing such technology can streamline reporting processes and facilitate real-time audits, making it easier for authorities and the community to monitor waqf activities. Embracing cryptography in waqf management not only modernizes the sector but also aligns it with global standards for transparency and accountability, ultimately fostering a more sustainable and resilient waqf system.

6.8.4 Online platforms for the Management of *Waqf* Real Estate

Administering *waqf* properties poses distinct issues that can greatly affect the efficient management of these valuable assets. An important challenge encountered by *waqf* administrators and stakeholders is the ineffective communication, resulting in frequent delays and misconceptions. Moreover, stakeholders, including as beneficiaries and potential investors, sometimes have restricted access to information on *waqf* properties and their management, which hampers their capacity to actively engage in the process.

A potential solution to these concerns could be the creation of online portals specifically designed for managing *waqf* properties. These portals will create a consolidated platform for communication and sharing of information, facilitating smooth coordination between *waqf* managers and stakeholders.

An essential feature of these web portals would be the incorporation of a user-friendly interface, guaranteeing that all users, regardless of their technological aptitude, can effortlessly explore and retrieve the required information. In addition, the integration

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of real-time updates on property status, financial reports, and project advancements would provide stakeholders with the timely information they need, promoting more openness and accountability.

Through the utilization of technology, these internet platforms have the potential to completely transform the management of *waqf* holdings. They can greatly improve communication, provide better access to information, and ultimately contribute to the well-being and success of the Muslim community.

The research emphasizes that digital platforms have been successfully implemented in several situations, including Singapore, Egypt, and Kuwait. These examples offer useful insights and instructions for developing similar systems in other locations.

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6.8.5 Geographic Information Systems (GIS) are used for mapping properties.

The maintenance and development of *waqf* holdings have historically encountered substantial obstacles, particularly in terms of the availability of spatial data and asset management. *Waqf* institutions frequently lack comprehensive spatial data regarding the whereabouts and state of their holdings, which hinders their ability to efficiently strategize and supervise their progress.

The absence of comprehensive data impedes the capacity to make well-informed decisions about the utilization and improvement of *waqf* assets. In order to tackle these urgent problems, the integration of Geographic Information Systems (GIS) technology can provide a revolutionary answer. GIS mapping can offer useful insights by

accurately recording the exact location, dimensions, and state of *waqf* properties, facilitating more effective asset management and strategic planning. By creating intricate property maps, *waqf* managers can acquire a thorough comprehension of their portfolio, which can then be used to make informed decisions regarding upkeep, usage, and possible development prospects.

Moreover, utilizing spatial analysis techniques inside a GIS framework can enable data-based decision-making, empowering *waqf* organizations to efficiently allocate resources and prioritize investments according to the distinct characteristics and requirements of each property.

Incorporating GIS technology into *waqf* asset management techniques is an essential step in fully realizing the potential of these significant endowments. Through the utilization of spatial data and analytical capabilities, *waqf* institutions may optimize their operations, improve their management, and discover new opportunities for sustainable growth. This will ultimately enable them to effectively fulfil their responsibility as protectors of community resources and drivers of social and economic advancement.

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6.8.6 Mobile Applications for Stakeholder Engagement

Engaging stakeholders is crucial for the successful management and supervision of *waqf* properties, since it guarantees that the requirements and worries of different stakeholders, such as beneficiaries, community members, and possible investors, are taken into account and resolved. Nevertheless, the present issues in the management

of *waqf* institutions include insufficient involvement of stakeholders and inadequate systems for receiving valuable feedback.

In order to tackle these problems, the creation of mobile applications might be a useful tool to promote increased interaction with individuals or groups who have an interest or concern in a certain matter. These applications can offer stakeholders convenient access to information regarding *waqf* assets, while also integrating interactive elements like feedback forms, surveys, and discussion forums to collect input and suggestions from stakeholders.

Incorporating a notification system into these mobile applications can effectively educate stakeholders about significant updates and advancements concerning *waqf* assets. This ensures that stakeholders remain involved and can actively participate in the decision-making process. By utilizing the ease and availability of mobile technology, *waqf* institutions can promote a more comprehensive and collaborative method of management, ultimately resulting in enhanced transparency, accountability, and the conservation of these priceless assets for the community's benefit.

Incorporating technology into the management of *waqf* properties is crucial for tackling present difficulties and improving the overall efficiency of *waqf* administration in Malaysia. *Waqf* institutions can enhance transparency, efficiency, and stakeholder involvement by implementing digital record-keeping systems, blockchain technology, web portals, GIS mapping, and mobile applications. These electronic solutions would enhance the efficiency of administrative operations and facilitate the

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sustainable and effective management of *waqf* assets, hence promoting the socio-economic development goals of Malaysia.

6.9 Public Awareness and Education

6.9.1 Introduction

According to study by *Yayasan Wakaf Malaysia,* only 8% of Malaysian have knowledge about w*aqf* whilst the awareness of society in Indonesia and Arab Saudi is less than 12%[435]. This study suggests measures to enhance public knowledge on *waqf* and advocates for the integration of *waqf* studies into educational curriculum, acknowledging its importance.

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6.9.2 Enhancing Public Knowledge about *Waqf*

Public knowledge is essential for effectively utilizing the advantages of *waqf* for the improvement of society. An excellent strategy is to initiate focused awareness campaigns that emphasize the various applications of *waqf*, including its contribution to financing education, healthcare, infrastructure, and social services. These ads should highlight the enduring and environmentally-friendly characteristics of *waqf*, making it an appealing choice for philanthropic initiatives.

[435] Ridwan Bakar, "Fight for Gaza", speaker note, Mardiyyah Hotel, July 7, 2024.

In addition, the inclusion of *waqf*-related material in popular media, religious establishments, and community gatherings can greatly improve public comprehension and involvement. Enlisting prominent people and religious leaders to advocate for the *waqf* cause might also encourage increased public involvement.

6.9.3 Incorporating *Waqf* Studies into Educational Curricular

In order to guarantee long-term viability and wider influence, it is essential to incorporate *waqf* studies into educational curriculum at all levels. Integrating *waqf*-related issues into subjects like as Islamic studies, social sciences, and economics at the basic and secondary levels can cultivate early understanding and appreciation for this significant institution.

At the tertiary level, the implementation of specialized programs that focus on *waqf*, such as undergraduate and postgraduate degrees, can offer comprehensive understanding and hands-on training for aspiring *waqf* administrators and professionals. Moreover, including *waqf* case studies and practical applications into current business, law, and public policy curricula can improve comprehension of *waqf*'s complex role in socio-economic growth.

By implementing these measures, the general public's awareness and appreciation for the importance of *waqf* can be greatly improved, resulting in increased participation and the fulfilment of its complete potential in enhancing the lives of individuals and communities.

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In order to guarantee the enduring viability of *waqf*, it is imperative to incorporate *waqf*-focused curricular at different educational tiers. To do this, *waqf* authorities can integrate *waqf* as a topic in the fields of economics, Islamic finance, and social welfare programs at both the secondary and post-secondary education levels.

The program should encompass the historical progression, legal structures, managerial methodologies, and societal consequences of *waqf*, providing students with the essential expertise and abilities to contribute to the *waqf* ecosystem.

Creating specialized research centres and positions for the study of *waqf* can act as central points for sharing knowledge and fostering cooperation among scholars, policymakers, and professionals. This interdisciplinary approach will improve our comprehension of *waqf*'s capacity to tackle current socioeconomic issues and align with the Sustainable Development Goals (SDGs).

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Through the implementation of these measures, the general public's understanding and recognition of *waqf* and its ability to bring about major change can be greatly improved. This will lead to more involvement and the achievement of *waqf*'s extensive advantages for both communities and nations.

6.9.4 Cooperation and Collaboration

The institution of *waqf*, renowned for its extensive historical background and significant capacity to influence society, has always captivated the attention of both scholars and policymakers. In today's world, when communities face constantly

changing difficulties, it is more important to investigate new ways of using resources and adopting best practices.

An effective strategy for improving the effectiveness of *waqf* institutions is to establish relationships with the private sector. By using the knowledge, assets, and connections of private organizations, *waqf* institutions can access fresh possibilities for expansion and the advancement of the community.

The current reassessment of the role of *waqf* presents an opportunity to "implement a professional approach to managing *waqf* assets within a modern administrative framework." This may entail partnerships to enhance the management of current *waqf* properties, ensuring their efficient utilization for the advantage of interested parties, and directing new *waqf* endowments towards activities that bolster civil society.

Furthermore, the investigation of international collaborations might serve as a potent mechanism for *waqf* institutions to embrace and modify optimal methodologies from different settings. By actively interacting with peers in many countries, *waqf* administrators can acquire valuable knowledge about cutting-edge strategies, regulatory structures, and effective models that can be customized to suit their own local requirements. The paper by Iman and Sabit emphasizes that the potential of using *waqf* as a charity institution for community welfare has not been fully explored in certain areas. This stresses the importance of cross-border learning and exchange.

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In order to enhance the *waqf* sector and make it more influential, it is crucial to establish strategic alliances and develop a global network of expertise and exemplary methods as means to educate the public and created an awareness in private sector. By adopting collaborative methods, *waqf* institutions can fully utilize their capabilities to meet the changing requirements of communities and promote lasting social development.

6.10 Recommendation for Establishing Cooperative Structures to Facilitate Mosque Acquisition of Waqf Assets

6.10.1 Introduction

In light of the restrictions faced by mosques in Malaysia regarding the acquisition of waqf assets, particularly the inability to obtain loans due to their lack of locus standi, the researcher recommends the establishment of a cooperative entity affiliated with mosques. This cooperative would serve as a legal and financial vehicle through which mosques can navigate these limitations.

Under this proposed model, the cooperative would assume responsibility for securing loans on behalf of the mosque, with loan installments being managed directly from the cooperative's account [436]. A designated committee would be formed to oversee financial operations, ensuring accountability and alignment with both Shariah principles and community expectations. The cooperative would manage all cash waqf

[436] Roshidah, Osman, N.A.B. Ramli, and M.Z. Mohd Nor "Model of Crowdfunding Practices for Waqf Property Acquisition: Experience of the Best Practice of Mosques Cooperative Society in Malaysia." Paper presented at the Malaysia-Japan International Dakwah Seminar, Osaka, Japan, 14-15 September 2024, 233-245 at https://drive.google.com/file/d/1sWWLHaJK_uER-WpzV3XYCZhTFhl5xQkY/view

contributions and business ventures initiated by the mosque, fostering a sustainable revenue stream that supports mosque activities and maintenance.

To further enhance community engagement and ensure equitable distribution of benefits, the cooperative could issue waqf shares to community members. These shares would serve as a means for the community to participate financially, thereby enabling them to contribute to the cooperative's sustainability. Profits generated from cooperative activities could be reinvested into the mosque for maintenance and ongoing activities, thereby creating a cyclical model of community-supported waqf development.

6.10.2 Cooperative Model

By implementing this cooperative structure, mosques could effectively overcome legal barriers, foster community investment, and secure sustainable financing to support their operations and growth. This model not only aligns with Shariah principles but also provides an innovative approach to enhancing mosque financial autonomy and community development.

Establishing a cooperative funded by mosque cash waqf can qualify for sukuk in the long run, particularly through a structure known as Cash Waqf-Linked Sukuk (CWLS). This model combines cash waqf with sukuk to mobilize funds for social and economic projects while adhering to Shariah principles. The legal framework in Malaysia supports cash waqf, which is recognized as permissible, thus facilitating the issuance of CWLS to finance waqf projects effectively. However, regulatory reforms may be necessary to optimize its implementation and enhance operational efficiency.

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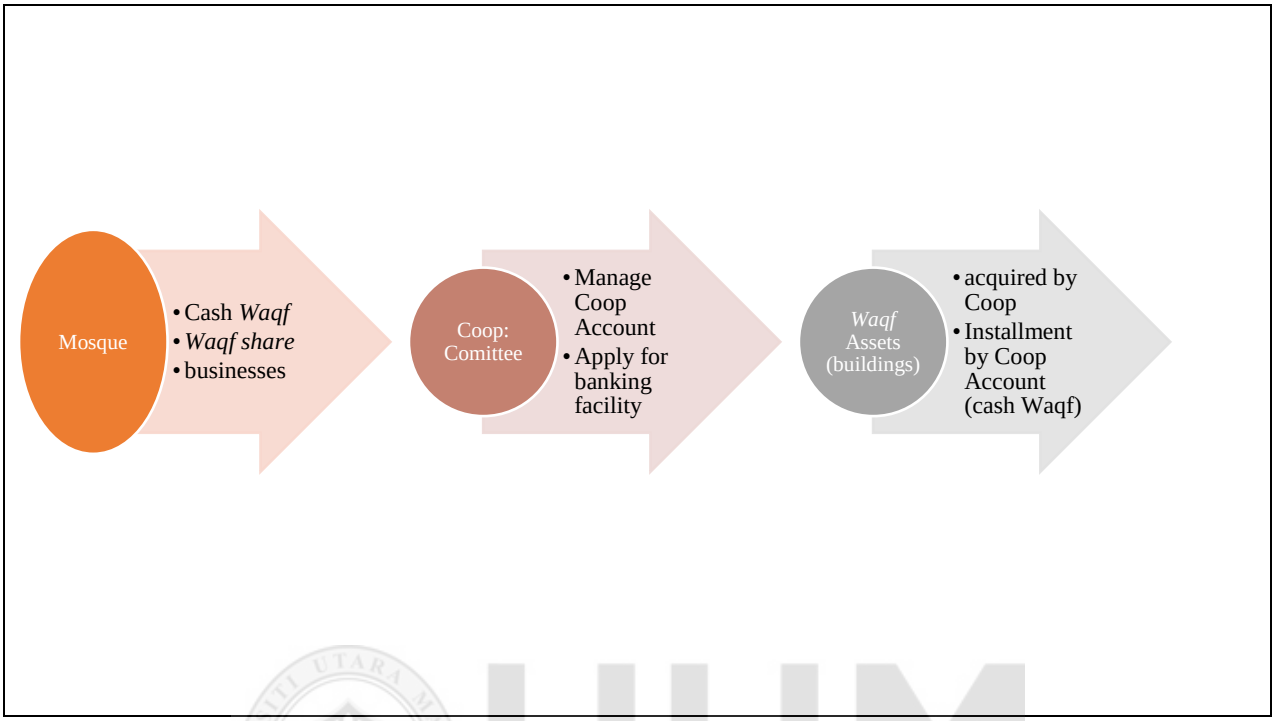

Figure 6.1: Mosque and cooperation Structure
Source: Researcher's own

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6.11 Contributions of the Study

This research makes several significant contributions to the field of *waqf* development and its legal and procedural frameworks, providing insights that address critical gaps in existing literature and practice. By analysing the intersection of substantive and procedural laws governing *waqf* land development in Malaysia, this study not only expands scholarly understanding of the legal challenges faced but also presents actionable recommendations for enhancing the efficacy and sustainability of *waqf* management.

A key contribution of this study lies in its examination of *waqf* management issues through a multi-faceted lens, addressing legal ambiguities, administrative limitations, and financing challenges within the context of *waqf* properties. Through the development of a proposed independent legal and procedural framework, this research aims to facilitate a more resilient model for *waqf* governance, offering practical insights for policymakers, *waqf* administrators, and Islamic finance institutions.

Moreover, this study introduces a framework for integrating modern financial tools, such as *Baitul mal* funds and *waqf*-specific financial institutions, which could provide sustainable financing options for *waqf* development projects. These contributions are designed to promote an efficient, transparent, and socially impactful *waqf* system, ensuring that *waqf* properties can continue to serve their intended social, religious, and economic functions effectively.

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Ultimately, this research contributes to the broader discourse on Islamic finance and legal reform, offering a foundation for further studies in *waqf* development and advocating for the preservation of *waqf* as a valuable Islamic legacy.

6.11.1 Improving *Waqf* Practices in Malaysia: A Comparative Analysis and Innovative Approaches

The *waqf*, an Islamic institution, has traditionally been crucial in the socioeconomic progress of Muslim communities throughout. It involves the dedication of assets indefinitely for charity or religious objectives. A comparative analysis is necessary to examine the varying implementation and effects of *waqf* laws and policies in different

regions of Malaysia. Comparative analysis of *waqf* practices in Penang and Kedah is conducted in this study.

Malaysia exhibits a wide range of regional features, which is seen in the management and implementation of *waqf*. *Waqf* properties in Penang state have been actively developed and utilized for community-based initiatives, including education and healthcare. Selangor tend to adopt to classical type of development and only recently venture into commercial development by developing *waqf* land into Petrol Station, while Johore on the other hand have ventured into a diversified development by introducing a share scheme in the *waqf* system. On the other hand, Kedah state has encountered difficulties in efficiently managing and maximizing its *waqf* assets, underscoring the necessity for more uniform and coordinated *waqf* governance throughout the country.

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6.11.2 Examples of Successful Current *Waqf* Development Project

The research analyses multiple case studies of successful *waqf* initiatives, In Penang State and Kedah State as well as in Palu, Indonesia in order to discover important lessons and potential for duplication. The *waqf* development that comprise of Commercials and Housing as well as systematic Plantation initiative in Penang, Malaysia, has exemplified the capacity of *waqf* to facilitate educational and commercial progress, while the *waqf* in Kedah has showcased the possibilities of creative collaborations between the public and private sectors in managing *waqf* properties especially in building Schools and Quranic *Tahfiz* Centre for school children without any funding assistance from both local and federal government.

The "*Perkampungan Ummah*" that was developed and administered fully by MAPIM in Palu, Indonesia has offer valuable perspectives on alternate approaches to funding and investing in *waqf*. The crowdfunding if ventured upon can create a new dynamic system in developing *waqf* land.

6.11.3 The Socio-Economic Impact and Effectiveness of *Waqf* Management

The study evaluates the socio-economic consequences of *waqf* properties on local communities, analysing aspects such as the delivery of social services, generation of employment opportunities, and enhancement of community empowerment. In addition, the research assesses the efficacy of existing *waqf* management procedures and policies, pinpointing areas that require enhancement in terms of accountability, transparency, and the alignment of *waqf* aims with community needs.

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6.11.4 Novel *Waqf* Models and Financial Instruments

In order to tackle the difficulties encountered in *waqf* management, the research presents novel approaches for the development and management of *waqf* properties. This includes the creation of an autonomous *waqf* business responsible for devising and assessing *waqf* policies. The research also suggests introducing new financial mechanisms for *waqf* funding and investment, such as forming strategic partnerships to jointly develop *waqf* properties using instruments like "*al-Ijarah"*. The study conducts a detailed examination of important legal precedents and their influence on

waqf law, so contributing to the establishment of a comprehensive legal structure for *waqf* through scholarly interpretation.

6.11.5 Accomplished *Waqf* Initiatives and Insights Gained

The effective implementation of "share *waqf*" (sometimes referred to as "corporate *waqf*") has shown considerable promise in enhancing the economic prosperity of communities and the country. Examining successful *waqf* initiatives, both domestically and internationally, through case studies can offer significant insights into the key variables that contribute to their success and the potential for replication.

6.11.6 Evaluating the Influence and Efficacy of *Waqf*

Evaluating the socioeconomic consequences of *waqf* properties on local populations is crucial for comprehending the actual worth and efficiency of *waqf* management techniques and regulations.

6.11.7 Novel Approaches for the Advancement and Administration of *Waqf*

In order to improve the administration and growth of *waqf* holdings, it is advisable to consider creative approaches, such as creating an autonomous *waqf* corporation separate from the state Islamic Religious Council (SIRC), which would be responsible for strategizing and assessing *waqf* policies. In addition, the implementation of new financial tools for *waqf* funding and investment, such as the creation of strategic

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alliances to jointly develop *waqf* properties (e.g., the "*al-ijarah*" instrument), can enhance the expansion and long-term viability of the *waqf* sector.

6.11.8 Legal Precedents and Jurisprudence

By examining important legal precedents and their influence on *waqf* law, as well as by contributing to the establishment of a comprehensive legal framework for *waqf* through scholarly interpretation, we can enhance the basis for efficient *waqf* management and facilitate the achievement of its socioeconomic potential.

6.12 Conclusion

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This thesis has examined the legal framework governing *waqf* land in Malaysia, focusing on both substantive and procedural aspects, and assessing their implementation through selected development case studies. Employing doctrinal, phenomenological, and observatory methods, the study reveals that the administration of *waqf* land remains legally fragmented and procedurally inconsistent across states. These disparities have contributed to underutilization of *waqf* assets and hindered the realization of their full socio-economic potential.

A central contribution of this study lies in its critical analysis of key legal constructs integral to *waqf* governance, namely, the roles and limitations of *fatwa*, the application of *istibdal* (substitution), the principle of *perpetuity*, and the statutory position of the *mutawalli*, particularly where State Islamic Religious Councils (SIRCs) act as sole trustees. It was found that while *fatwa* serves as a guiding instrument, its legal authority

remains limited unless gazetted, *istibdal* practices are inconsistently applied due to procedural gaps, and perpetuity, though foundational in Islamic jurisprudence, often clashes with modern land development frameworks. Moreover, the evolving role of the mutawalli, especially in states with weak legal provisions or administrative capacity, has posed a significant obstacle to innovative and sustainable development of *waqf* land.

This research also highlights the absence of a unified and dynamic legal framework, the need for harmonization between Shariah and civil legal systems, and the potential for leveraging Islamic financial instruments and technology to advance *waqf* development.

In conclusion, unlocking the latent potential of *waqf* land in Malaysia requires not merely procedural refinement but a structural transformation, one that redefines the legal and institutional foundations of *waqf* in line with contemporary development needs while preserving its spiritual essence. This thesis aspires to contribute to that discourse by offering practical, legal, and policyoriented recommendations grounded in empirical analysis and classical Islamic principles.

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APPENDIX

APPENDIX 1

Appointment and Introduction Letter for the Exploratory Interview

GHAZALI SHAFIE GRADUATE SCHOOL OF GOVERNMENT
UUM Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
Universiti Utara Malaysia
06010 UUM SINTOK
KEDAH DARUL AMAN
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Tel: 604-928 7751/7752
Faks (Fax): 604-928 7799
Laman Web (Web): www.gsgsg.uum.edu.my

Ref. No. : UUM/COLGIS/GSGSG/P-30
Date : January 13, 2021

TO WHOM IT MAY CONCERN

Sir/Madam

DATA COLLECTION FOR PHD THESIS

This is to certify that **ROSHIDAH BINTI OSMAN** (Matric Number : **903768)** is a full time PhD student at Universiti Utara Malaysia, Sintok, Kedah.

She needs to collect data for her research paper in order to fulfill the requirements of her PhD programme.

We duly hope that your organization will be able to assist her in getting the necessary information for her research.

Thank you.

"KEDAH AMAN MAKMUR – HARAPAN BERSAMA MAKMURKAN KEDAH"
"KNOWLEDGE, VIRTUE, SERVICE"

Yours faithfully

(MOHD SUKRI BIN OTHMAN)
Senior Assistant Registrar
Ghazali Shafie Graduate School of Government
Tel : 04-9287752 Fax: 04-9287799
Email : md_sukri@uum.edu.my

Scanned with CamScanner

APPENDIX 2

Form of Informed Consent of Interview / *Borang Persetujuan Temuduga*

Form of Informed Consent of Interview / *Borang Persetujuan Temuduga*

RESEARCH TITLE/ *TAJUK KAJIAN*:

LEGAL ANALYSIS ON LAW OF WAQF LAND AND ITS IMPLEMENTATION IN MALAYSIA

Assalamualaikum W.B.T.

Dear Honourable Respondents, / *Para Responden yang Dihormati,*

INFORMED CONSENT / *PERSETUJUAN YANG DIKETAHUI*

Before agreeing to participate in this research, we strongly encourage you to read the following explanation of this study. This statement describes the purpose and procedures of the study. Also described is your right to withdraw from the study at any time.

Sebelum bersetuju untuk mengambil bahagian dalam kajian ini, kami sangat menggalakkan Tuan/Puan untuk membaca penjelasan berikut mengenai kajian ini. Kenyataan ini menerangkan tujuan dan prosedur kajian. Ia juga menerangkan hak Tuan/Puan untuk menarik diri dari kajian pada bila-bila masa.

This study contributes to the existing knowledge of Waqf law focusing on the implementation of substantive law and procedural law on Waqf land development. It provides valuable insights for policymakers, legal practitioners, and stakeholders involved in the management and development of Waqf land in Malaysia.

Kajian ini menyumbang kepada pengetahuan sedia ada mengenai undang-undang Wakaf dengan memberi tumpuan kepada pelaksanaan undang-undang substantif dan undang-undang prosedur dalam pembangunan tanah Wakaf. Ia memberikan pandangan yang berharga untuk penggubal, pengamal undang-undang, dan pihak berkepentingan yang terlibat dalam pengurusan dan pembangunan tanah Wakaf di Malaysia.

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Respondents in the study involve completion of interviews that asks on the focus of this study which includes: examining the existing substantive laws, historical development, current framework, procedural rules on administration and management in developing the waqf land. The study also focuses to gain data to evaluate the practical implementation of both substantive and procedural laws on the development of *Waqf* land, highlighting successes, challenges, and areas of inconsistency; and to propose comprehensive recommendations for the reform and improvement of substantive and procedural laws and ways to implement them to focus on one goals : to enhance the development and management of *Waqf* land in Malaysia.

Responden dalam kajian ini bakal terlibat dalam temu duga penuh yang menfokuskan kajian ini yang merangkumi: mengkaji undang-undang substantif sedia ada, perkembangan sejarah, rangka kerja semasa, dan peraturan prosedur mengenai pentadbiran dan pengurusan dalam pembangunan tanah Wakaf. Kajian ini juga memberi tumpuan untuk mendapatkan data bagi menilai pelaksanaan praktikal kedua-dua undang-undang substantif dan prosedur dalam pembangunan tanah Waqf, menonjolkan kejayaan, cabaran, dan cabang-cabang yang tidak konsisten; serta mencadangkan saranan komprehensif untuk reformasi dan penambahbaikan undang-undang substantif dan prosedur serta cara untuk melaksanakannya dengan fokus kepada satu matlamat: untuk meningkatkan pembangunan dan pengurusan tanah Wakaf di Malaysia.

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The interviews will be conducted by the researcher, audio-taped and later transcribed for the purpose of data analysis.

Temu duga akan dijalankan oleh penyelidik, audio akan dirakam dan kemudiannya ditranskripsikan untuk tujuan analisis data.

The information gathered during this study will remain confidential in secure premises during this project. Only the researchers will have access to the study data and information. There will not be any identifying names on the surveys or interview transcripts. Respondents' names and any other identifying details will never be revealed in any

publication of the results of this study. The tapes will be hidden at the completion of the study. The results of the research will be published in the form of a thesis and research paper.

Maklumat yang dikumpulkan semasa kajian ini akan kekal rahsia dalam premis yang selamat sepanjang projek ini. Hanya penyelidik yang akan mempunyai akses kepada data dan maklumat kajian. Tiada nama pengenalan akan ditulis pada tinjauan atau transkrip temu duga. Nama responden dan sebarang butiran pengenalan lain tidak akan pernah didedahkan dalam mana-mana penerbitan hasil kajian ini. Rakaman akan disimpan setelah kajian selesai. Hasil penyelidikan akan diterbitkan dalam bentuk tesis dan kertas penyelidikan.

The knowledge obtained from this study will be of great value in guiding the policymakers, legal practitioners and stakeholder involved in developing waqf land in Malaysia. Withdrawal without prejudice participation in this study is voluntary; refusal to participate will involve no penalty. Respondents are free to withdraw consent and discontinue participation in this project at any time without prejudice or penalty.

Dapatan yang diperoleh daripada kajian ini akan menjadi amat berharga dalam membimbing penggubal dasar, pengamal undang-undang, dan pihak berkepentingan yang terlibat dalam pembangunan tanah wakaf di Malaysia. Penarikan diri tanpa prejudis dalam penyertaan kajian ini adalah sukarela; menolak untuk mengambil bahagian tidak akan melibatkan sebarang penalti. Responden bebas untuk menarik balik persetujuan dan menghentikan penyertaan dalam projek ini pada bila-bila masa tanpa prejudis atau penalti.

If you require any information about this study or would like to speak to the researcher, please call (Roshidah Binti Osman) at (019-4767550).

Jika Tuan/Puan memerlukan sebarang maklumat mengenai kajian ini atau ingin bercakap dengan penyelidik, sila hubungi (Roshidah Binti Osman) di (019-4767550).

I have read (or have been read) the above information regarding this research study and consent to participate in this study.

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Saya telah membaca (atau telah dibacakan) maklumat di atas mengenai kajian penyelidikan ini dan bersetuju untuk mengambil bahagian dalam kajian ini.

(Name/ *Nama*)

(Signature/ *Tandatangan*)

(Date/ *Tarikh*)

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APPENDIX 3
INTERVIEW QUESTION

INTERVIEW QUESTION

Questions were drafted to suit the designation of each respondent.

PROTOCOL INTERVIEW- BANK ISLAM OFFICER

1. How do you describe your typical financing structure for waqf property in Malaysia?
2. What factors influence the decision between bridging loans and financing for waqf land development?
3. How does *Shariah* compliance financing impact the structure of loans for waqf land property?
4. How do banks assess financial feasibility and risk when structuring loans for waqf projects?
5. Can you discuss the influence of substantive and procedural law on waqf property decision. Because some of the state has the Enactment on waqf and some does not has. So does it influence the financing.
6. What documentation and paperwork typically involve in securing loan for waqf land development?
7. How does the current legal framework affect the procedural of waqf property financing?
8. In your experience what challenges arise in ensuring compliance with regulatory requirement for waqf financing?
9. In the regulatory requirement during the initial signing document, there is no room for the abandoned project?
10. What are the recommendations would you give to enhance the financial aspect of the waqf land development.

PROTOCOL INTERVIEW – MAJLIS AGAMA ISLAM NEGERI JOHOR

1. What types of development have been carried out on waqf land in Johor?
2. Does this development involve collaboration with private entities or other government bodies?
3. How are the laws in the Johor Waqf Enactment and existing procedures implemented in managing the development of waqf land in Johor?
4. What types of agreements are typically entered into with developers for the purpose of waqf development?

5. What types of financing are used for developing waqf land? Is this financing done through specific methods such as sukuk, musharakah, istisna, or bank financing?
6. Are there challenges in complying with the laws and procedures that have been established?
7. Could you share some success stories in the development of waqf land in Johor?
8. What challenges or failures have been encountered in previous waqf land development projects?
9. How does the Johor Islamic Religious Council address the issue of perpetuity in the management of waqf land?
10. What is your perspective on the implementation of istibdal (the exchange of waqf) in the context of Johor? Is it commonly practiced?
11. What reforms do you think are necessary to improve the current laws or procedures in the development of waqf land?
12. What is the role of fatwa in guiding or influencing the development of waqf land in Johor?

PROTOCOL INTERVIEW – STAKEHOLDER (MADRASAH ASHRAFUL AL-MADARIS)

1. Could you explain what type of Madrasah Ashraful Al-Madaris is and the waqf currently held by the Madrasah?
2. The Madrasah has been granted authority by the State Islamic Religious Council of Kedah to independently administer the waqf for the Madrasah. Could you provide further explanation about this matter?
3. Could you explain what are the duties of Mutawalli and Waqf?
4. A Special Document has been formalized between the Madrasah and the State Islamic Religious Council of Kedah to develop the waqf land allocated to the Madrasah. Could you kindly elaborate on the current development initiatives being pursued by the Madrasah?
5. Ustaz, do you give your approval for the waqf documents, the role of Mutawalli, and this development plan to be used for this study?
6. As the Custodian and Mutawalli for this Waqf land, what challenges does the Madrasah need to face in developing this waqf land?
7. Are there any weaknesses and constraints in carrying out the duties of Mutawalli, and what are these weaknesses and constraints?
8. In your opinion, what steps should the State Islamic Religious Council of Kedah take to assist in developing waqf for Madrasahs and Islamic schools in Kedah?

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PROTOCOL INTERVIEW – STAKEHOLDER (MADRASAH AL KHAIRIAH AL ISLAMIYAH) Advocate & Solicitor

1. Could you please explain the history of Madrasah Al Khairiah Al Islamiyah and the type of endowment (waqf) currently held by the madrasah?
2. The madrasah has been authorized by the Penang State Islamic Council to manage the endowments granted to the madrasah independently. Could you please provide more details about this matter?
3. Could you tell us about the written laws or regulations used by the Penang State Islamic Council to appoint the madrasah as a Special Trustee?
4. Could you please explain whether MKI receives any assistance from the State or Federal Government in maintaining these waqf properties?
5. Special Agreement has been made between the madrasah and the Penang State Islamic Council for the purpose of managing the waqf land that has been endowed to the madrasah. Could you please explain what type of development the madrasah is currently pursuing?
6. Do you give your consent for the Special Trustee documents and development plans to be used for the purposes of this study?
7. As the Trustee and Special Trustee for these waqf lands, what challenges does the madrasah face in developing these waqf lands, and what weaknesses exist in the current system for developing waqf properties?
8. Are there any weaknesses and constraints in carrying out the duties of a Special Trustee, and what are these weaknesses and constraints?
9. In your opinion, are the current laws or administrative regulations sufficient to address the issues of wakaf land, particularly for madrasahs and religious schools in the state of Penang?

PROTOCOL INTERVIEW - STAKEHOLDER (MALAYSIAN CONSULTATIVE COUNCIL FOR ISLAMIC ORGANIZATION (MAPIM)

1. In 2019, MAPIM was involved in a waqf project in Palu, Sulawesi, Indonesia. Can you explain the project?
2. Can you explain the financial system used by MAPIM to develop the "Perkampungan Ummah"?
3. Can you explain the involvement of the Indonesian Government in the development of this Perkampungan Ummah?
4. Can you explain MAPIM's role in the development of this Perkampungan?
5. A special agreement was made between MAPIM and the landowners in Palu. Can you explain this agreement?

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6. Do you agree to allow the agreement documents and development plans to be used for the purpose of this study?
7. As a stakeholder and industry player in waqf land development, what challenges does MAPIM face in developing waqf land?

PROTOCOL INTERVIEW - DEVELOPER KG. DODOL PROJECT

1. Could you please explain the first step involved in signing a joint venture (JV) agreement for the development of waqf land in Kampung Dodol?
2. What substantive laws apply to this development?
3. How were civil and *Shariah* legal procedures considered in the planning and implementation of this development project?
4. Does this project comply with *Shariah* law or only civil law?
5. Have squatter issues arisen in the development of this waqf land?
6. How did your team address the squatter issue, legally and operationally?
7. In your experience, what is the most difficult or complex law or regulation to comply with in waqf land development?
8. How do you see the role of interrelated laws, such as land law, waqf law, and *Shariah* law, in the development process?
9. Have there been challenges in marketing waqf land with perpetuity status compared to land with leasehold?
10. How does the waqf land status affect buyer or tenant interest in the development project at Kampung Dodol?
11. Can you explain the type of financing used to support the development of waqf land in Kampung Dodol?
12. Are there specific challenges in obtaining financing for the development of waqf land, either from a legal or *Shariah* perspective?
13. From your perspective, what changes or reforms are needed in substantive laws and procedures to facilitate the development of waqf land?
14. What are your recommendations for improving the legal and financing processes for waqf land development in the future?

PROTOCOL INTERVIEW - ACADEMICIAN/SCHOLAR

1. What are your views on the existing procedural and substantive laws related to waqf in Malaysia?
2. How do these procedural and substantive laws affect the development and management of waqf in Malaysia?

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3. Do they facilitate or hinder the process?
4. Which aspects of procedural and substantive law have the most significant impact on the implementation of waqf development projects?
5. From an academic perspective, how does the concept of perpetuity in waqf impact efforts to develop waqf properties in Malaysia?
6. Has the issue of perpetuity been a barrier to the progress of waqf in the country? If so, how can this challenge be addressed?
7. What are your thoughts on the application of istibdal (substitution of waqf property) in the management of waqf in Malaysia?
8. What are the conditions that must be met for istibdal to be implemented, according to your view?
9. How can istibdal help resolve issues related to unproductive or undevelopable waqf land?
10. What academic recommendations can you offer to help strengthen the development of waqf in Malaysia?
11. What legal or procedural reforms do you think are necessary to ensure more efficient and effective waqf management?
12. How can the roles of religious authorities, educational institutions, and the public be enhanced in promoting the development of waqf?
13. In your view, what role does fatwa play in the development and management of waqf land in Malaysia?
14. How does fatwa issued by state religious authorities influence the legal and procedural aspects of waqf land development?
15. Can you provide examples where fatwa has either facilitated or hindered waqf land development.
16. How can the role of fatwa be optimized to support waqf development?

PROTOCOL INTERVIEW - STATE ISLAMIC RELIGIOUS COUNCIL (PULAU PINANG)

1. Could you describe the current state of waqf land development in your Jurisdiction and what are the key challenges you face in developing waqf land in this state?
2. How do the current substantive laws facilitate or hinder the development of waqf land and can you provide examples of substantive law provisions that have been particularly effective or problematic?
3. What procedural laws govern the development of waqf land in your state and are there any specific procedural requirements that are challenging to meet?

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4. How are substantive and procedural laws being implemented in practice regarding waqf land development and can you share any success stories or notable cases where these laws have been effectively implemented?
5. How does the State Islamic Council coordinate with other governmental and non-governmental bodies in the development of waqf land and what oversight mechanisms are in place to ensure compliance in waqf law?
6. How does the Council engage with stakeholders, including waqf beneficiaries, local communities, and investors, in the development process and are there any notable feedback or concerns from stakeholders regarding the current laws and their implementation?
7. In your view, what are the most critical areas for reform in the substantive and procedural laws governing waqf land and what specific recommendations would you make to improve these laws?
8. Can you share specific case studies where the development of waqf land has either succeeded or failed and what lessons have been learned from these case studies that would inform future law and policy changes?
9. How has the current legal framework impacted the economic and social development of waqf land and are there any significant projects or initiatives that have been enabled or hindered by the existing laws?
10. What are the Council's and wakaf Pulau Pinang's future plans for the development of waqf land in this state and how do you envision the role of waqf land in the broader context of Malaysia's development goal?
11. There are two development projects for the upcoming Penang SIRC's Development Plan; that is Project Kg Dodol and the development of College Technology International (KITAB) in Batu Kawan. Can you state the challenges faced by these 2 projects and any reformation or improvement done in these two projects as compares to Project Sitte Aisha and Amanee Project?

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PROTOCOL INTERVIEW- PERBADANAN WAKAF SELANGOR

1. Aside from the development of mosques and schools, there are other developments mentioned on your website. Could you explain what other types of waqf land developments are being carried out in Selangor?
2. What are the main categories or classifications of waqf land development in this state?
3. In the commercial development of waqf land, what concept or model is used by MAIS?
4. What type of agreements are typically used in joint ventures or collaborations for the commercial development of waqf?

5. Does MAIS receive any form of financial support from banks, the federal government, or the state government for the development of waqf land?
6. How are these financial resources utilized in development projects?
7. What substantive laws do you use in the development of waqf land in Selangor?
8. How are legal procedures implemented in these development projects? For example, in the construction of a petrol station in Bangi. Does MAIS use Islamic law, civil law, or a combination of both?
9. What are the main challenges in complying with these laws and procedures during the development of waqf land?
10. Are fatwas used in the process of waqf land development in Selangor in addition to the State Waqf Enactment?
11. Could you share one or two success stories involving the development of waqf land in Selangor?
12. How do the substantive laws and procedures implemented contribute to the success of those developments?
13. Are there any waqf land development projects that have faced failures or significant challenges in Selangor?
14. What are the causes of those failures, and what measures or reforms should be implemented to address similar challenges in the future?

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- End of interview question -