



WAQF NEW FORM (WNF): AN ELUCIDATION FOR SYSTEMATIC *WĀQF* LAND REGISTRATION IN MALAYSIA

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ABSTRACT

This paper proposes the Waqf New Form (WNF), adapted from Ghazali, (2021), as a solution to the issues in registering *wāqf* land in Malaysia. These include problematic registration methods and procedures, conflicts with the civil court jurisdiction, and idle *wāqf* land. The form is developed based on findings synthesized from a qualitative content analysis involving semi-structured interviews with legal practitioners, lecturers, and executive officers in charge of *wāqf* land matters, as well as a review of official documents from *wāqf* authority such as the Department of Waqf, Zakat, and Hajj Malaysia (JAWHAR). Results of qualitative analysis have indicated the need for a new registration procedure for *wāqf* land in Malaysia. The procedure is guided by a new application form consisting of three segments, namely, i) the application details (background of applicant, property, *wāqf* purpose, and authorized signatures), ii) statutory declaration, and iii) checklist declaration. The WNF has been validated by experts and promoted to be enacted under the National Land Code (NLC) in the near future. Consequently, it will secure the rights of the property with the effects of being perpetual, inalienable, and irrevocable.

JEL Classification: R1, R2, R3, R5

Keywords: *Wāqf* land, Land registration and titling, Land document

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1. INTRODUCTION

Land is an asset that is valued anytime and everywhere. For business organizations, land is considered as a tangible fixed asset acquired for profit making over a long time (Ambuli, Surendher, Praveen, and Pavithr, 2019). Government usually acquires the land for public purposes. Therefore, a systematic system or procedure for land registration and titling is crucial by the land authorities to protect the rights of ownership of an individual, business organization, or government. Access, use, development, and transfer are examples of rights that exist alongside ownership (Payne, 2001). The landholders are legitimately protected (Yubaidi, 2020; Jones, 2010) by clarifying the ownership or tenurial interest and ensuring the security of tenure (Jones, 2010) so that individuals can enjoy their land rights without interference (Abdulai and Ochieng, 2017).

Additionally, a comprehensive registration of land title and administration system is a key component of good governance as that information facilitates the authority to conduct valuation for tax purposes, and execute land use rules besides enabling decisions on enforced acquisition and compensation for dispossessed landholders (Jones, 2010). Besides, the land data is beneficial for the authorities to limit individual land-use decisions to minimize environmentally or socially detrimental results and internalize externalities through planning legislation or zoning restrictions (Deininger and Feder, 2009). Competent land management would explain the responsibilities and procedures for such actions, and establish transparent and agile processes for appeal, subsequently can increase tenure security, land-related investment, and market transactions (Deininger and Feder, 2009), that is considerably important information from the real estate management perspective.

Land registration in developing countries is an emerging yet challenging issue. Although it is considered to be high priority in their quest for economic development (Feder and Nishio, 1999), however, government capability to exercise their functions effectively is hampered by a lack of clear property rights, land information, and institutional or political obstacles (Deininger and Feder, 2009). For example, the land registration and titling proposals and policies have been troublesome in many African countries (Boone, 2019). African

countries that were colonized have two primary types of land ownership systems namely formal or state land ownership based on the colonial rulers' property law, and traditional (customary) land ownership systems (Abdulai and Ochieng, 2017). The traditional land ownership is generally understood as not documented, recorded, or registered legally in a central system controlled by the state and this has led to a perception that the traditional systems are insecure and discouraging investment in land-based activities (Abdulai and Ochieng, 2017). Indeed, the need for land registration policies and programs is justified due to the absence of land registration in the traditional land ownership systems (Abdulai and Ochieng, 2017).

Similarly with the registration of *wāqf* land, that can be described as a parcel of land given voluntarily by a Muslim to the authority for the benefit of Muslim community such as mosque, school, hospital, cemetery and others. In Malaysia, the land with *wāqf* status are growing from time to time. Nonetheless, it is difficult for the *wāqf* administrator to develop *wāqf* land without a land title (Hasan, 2008). Therefore, an orderly registration system for *wāqf* purposes is essential too.

Nowadays, the *wāqf* properties have gone beyond land and buildings. They also incorporate cash *wāqf* institutions for marketing campaign (Hariyanto, 2020; Razak, 2020), cash *wāqf* for financing different goods and services such as education, health and basic infrastructure (Ismail Abdel Mohsin, 2013), *wāqf* fund for microfinancing rehabilitation of slum and floating population (Artha, 2020; Tajudin, 2020; Hossain, 2019) and others.

Registration procedure for *wāqf* land is debatable until today including in Malaysia. This issue motivates the researcher to identify the root causes of the problems and propose a solution to the present registration procedures of *wāqf* land in Malaysia.

2. LITERATURE REVIEW

Document of title is crucial in the Malaysian legal system, as a proof of land ownership as provided under the National Land Code 1965¹. This is in line with the Torrens system, which holds the principle of registration is everything (Alaro and Alalubosa, 2019; Haneef, 2015; Hanstad, 1998). Moreover, the Torrens system aims at facilitating land transfer; the introduction of title registration emphasizes five qualities namely reliability, simplicity, low cost, speed and suitability (Abdulai and Ochieng, 2017).

2.1 LAND REGISTRATION AND TITLING IN MALAYSIA

Registration of land titles can be done at the Land Office to conclude the ownership transfer process and allow the new landowner to have full ownership and rights. Moreover, as land is a state matter, the state government has exclusive power for land administration and regulation, as provided in Article 76 (4) in the Federal Constitution.

In the case of *wāqf* land, it is administered by a specific enactment in each state with State Islamic Religious Council (SIRC) as the sole trustee of *wāqf* properties (Ismail, Salim, and Hanafiah, 2015).

TABLE 1
Procedural Law and State Religious Councils

No.	States	Enactments/Rules
1.	Selangor	- Administration of the Religion of Islam Selangor Enactment 2003 (ARSE) - Selangor Waqf Enactment 1999 (SWE)
2.	Melaka	- Administration of the Religion of Islam Melaka Enactment 2002 (ARME) - Melaka Waqf Enactment 2005 (MWE):
3.	Negeri Sembilan	- Administration of the Religion of Islam Negeri Sembilan Enactment 2003 (ARNSE) - Negeri Sembilan Waqf Enactment 2005 (NSWE)
4.	Johor	- Administration of the Religion of Islam Johor Enactment 2003 (ARJE) - Johor Waqf Rules 1983 (JWR) to be enacted
5.	Perlis	- Administration of the Religion of Islam Perlis Enactment 2006 (ARP)
6.	Kedah	- Administration of Islamic Law Kedah Enactment 2008 (AIKE)
7.	Penang	- Administration of the Religion of Islam Penang Enactment 2004 (ARPEN)
8.	Perak	- Administration of the Religion of Islam Perak Enactment 2004 (ARPER)
9.	Federal Territories	- Administration of Islamic Law Federal Territories Act 1993 (Act 505),
10.	Kelantan	- Council of the Religion of Islam and Malay Custom Kelantan Enactment 1994 (CRKE)

TABLE 1 (continued)

No.	States	Enactments/Rules
11.	Terengganu	- Administration of Islamic Religious Affairs Terengganu Enactment 1422 H (ARTE)
12.	Pahang	- Administration of Islamic Law Enactment Pahang 1991 (AIEP)
13.	Sabah	- Majlis Ugama Islam Negeri Sabah Enactment 2004 (MUISE)
14.	Sarawak	- Majlis Islam Sarawak Ordinance 2001 (Chap. 41) (MISO)

Source: Persekutuan Waqaf Malaysia, (2015)

The registration process begins by a declaration of *wāqf* purposes in front of a *wāqf* officer at the SIRC to make *wāqf* indefeasible binding valid and recognized by the Law of Malaysia. Moreover, the NLC has no provision on *wāqf* land registration. Hence, in order to register the land as *wāqf*, JAWHAR as the federal organisation of *zakh*, *hajj* and *waqf* department, has prepare a manual to register the land to SIRC. However, this is not binding and can be interpreted to many ways such as: guidelines under Section 215 (Transfer of Title, form 14A), Section 195 (State Surrender and Re-Alienation, form 12 A and form 12B) or Section 416 of the NLC (Statutory Vesting, form 30A and form 30B) (See Table 3). In addition, several documents including the layout plan, ground report, land reports, admission form and letter, registration and vesting, submitting notices, stamp duties exemption, periodic surveys and gazetting land are required for attachment during the registration (Ghazali and Sipan, 2019; Raji and Abas, 2019). Then, several aprovals from government agencies are obligatory. It includes the Department of Survey and Mapping, Land Administrator, Department of Lands and Mines, State Authority and Local Authority (Osman, 2018; Mat Rani and Ghani, 2012).

According to Kumar (2019), relevant characteristics of the respondents and the suitability of location should be considered for the purposive sampling technique. As for this study, the State Islamic Religious Council (SIRC) from four states, namely Melaka (MKE), Negeri Sembilan (NSWE), Johor (JWR) and Selangor (SWE) were selected because their regulations and *wāqf* enactments, registration and declaration are enhanced compared to other states in Malaysia. MWE and SWE specifically have regulated *wāqf* and various sections emphasize the effects of *wāqf* after the *wāqif*'s declaration (*sighah*) is

made and all elements of *wāqf* are fulfilled as in Section 3, Section 4 and section 15 of MWE and 4 SWE:

Section 3: Creation of *Wāqf*

- 1) Someone who has reached the age of eighteen, perfectly sense/wise, and rasyid may devote their property as *wāqf* for any purpose according to Sharia Law.
- 2) *Wāqf* could be created as *wāqf* am or *wāqf* khas
- 3) The *wāqf* must declared (*sighah*) in front of two witnesses according to Sharia Law.

Section 4: *Wāqf* begin Enforced

- 1) The *wāqf* must be enforced when all the elements and conditions of *wāqf* are fulfilled unless if it declared to be enforced when the *wāqif* has die.
- 2) Once the *wāqf* is enforced, it cannot any longer be transferred in any transaction, *hibah* or be inherited by the descendance.

Section 15: Condition of *Mawquf*

- 1) *Mawquf* must be a property that-
 - a) owned by *wāqif*
 - b) not restricted; and
 - c) beneficial and advantageous
- 2) Subject to subsection (1) *wāqf* is valid even though in the meantime,
 - a) *Mawquf* does not give any advantage or benefits or
 - b) *Mawquf* under rented.

Similar to fatwa gazetted on 9th June, 1994, Wilayah Persekutuan, Kuala Lumpur; *wāqf* immediately comes into effect when all the elements of *wāqf* are fulfilled. The elements of *wāqf* are according to Sharia Law as the four Muslim Scholars state parallel with MWE and SWE. As mentioned in Chapter 2, the elements of *wāqf* could conclude to be as:

- i. Declaration (*Sighah*),
- ii. Donor/Founder (*wāqif*),
- iii. Object (*mawquf alaihi*) - Purpose/ Person benefiting,
- iv. Property/ Subject matter (*mawquf*) and
- v. Manager (*Nazir/mutawalli*)

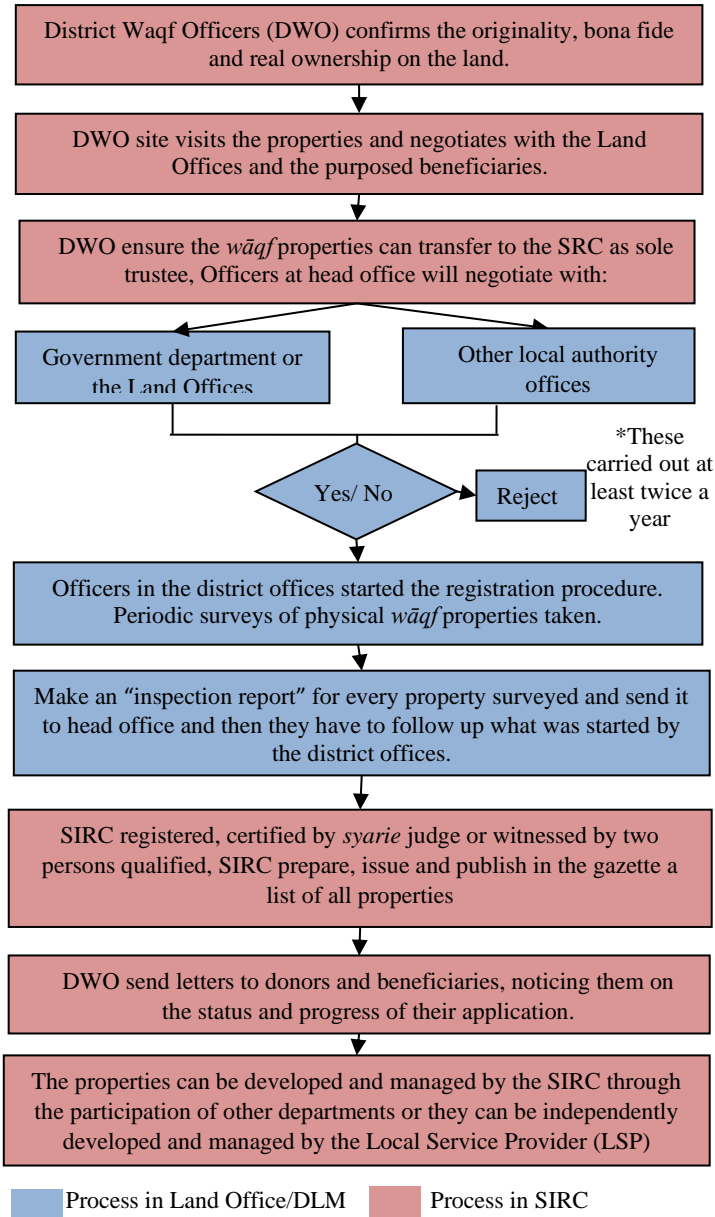
Besides, MWE and SWE have also mentioned in Section 46 by recognizing the Sharia Law in the enactment:

Section 46: Sharia Law

- i. Any section of this enactment against the Sharia Law shall be cancelled according to which it is.
- ii. If any item not regulated within this enactment, thus, it must be referring to Sharia Law.

Furthermore, these four states have also recognized *wāqf khas, am, irsod/ muabbad/ musyak/ musytarak and saham wāqf*. The Department of Waqf, Zakat and Hajj (JAWHAR) is a subsidiary body established under the Prime Minister's Department in 2004. JAWHAR role is in overseeing the management of *wāqf* property in Malaysia. JAWHAR has published a manual that discusses the *wāqf* lands registration procedures, management and administration, maintenance, *wāqf* for public interest (*irsod*), replacement of *wāqf* land (*istibdal*), insurance of *wāqf* property, conversion from leasehold to freehold title and court actions on *wāqf* lands. Besides JAWHAR, some states are also regulating rules also included as the subsidiary law such as Johor Waqf Rules 1983. Just like SWE, MWE, NSW and JWR, JAWHAR have also regulated better rules of *wāqf* declaration and registration. The process of *wāqf* registration is shown in Figure 1.

FIGURE 1
General Procedure of *Wāqf* Registration in Malaysia



Source: Author rewrite (from Osman, 2018)

2.2 ISSUES AND CHALLENGES OF *WĀQF* LAND REGISTRATION IN MALAYSIA

As mentioned earlier, in Malaysia land is a state matter. However, the Parliament had used its power under Article 76(1)(b) of the Constitution, for uniformity, to interfere in land matters (Abdullah, Ramly, and Ikhsan, 2017). Moreover, from the legal perspective, several conflicts² exist between the provisions in the National Land Code (NLC) and the state law under the Administration of the Religion of Islam Enactment and in other states as well (Osman, 2020).

The absence of legal provisions for administering *wāqf* in the past had resulted in inefficient and unsystematic administration of *wāqf* land. One court case is mentioned as reference to the issues. Besides, incomplete record and ambiguity of information, the next of kin will perhaps win the case against SIRC³. Then, the SIRC have to bear the loss and repay all the revenues collected since the past few years (Abdullah, 2017). Also, the unregistered and unadministrated *wāqf* land by SIRC is not only vulnerable to land acquisition and reclaiming of rights by the heirs, but, it is also vulnerable to land invasion.

Moreover, Ghazali and Sipan (2021) have highlighted issues about organizations and donors involved in the registration process. The issues are; bureaucracy; no adjustment among agencies; late approval by state authority; objection by heirs; ineffective implementation; the lengthy of duration registration process; lack of staff; no land expertise and no special task force. The paper mostly highlights administrative and technical issues.

According to Ismail (2015), improving administration, management and development of *wāqf* land in Malaysia can be done by restructuring the SIRC in all states professionally. However, it requires a strategic plan and implementation strategies and entail longer time to see improvement. Consequently this study aims at evaluating the existing registration methods and procedures of *wāqf* land in Malaysia. This study then proposes the WNF as an appropriate solution.

3. METHODOLOGY

Development of Waqf New Form (WNF) consists of five phases. It begins with a review of the existing registration procedures in Malaysia that encompasses the Transfer of Title, Statutory Vesting and Surrender and Re-Alienation. All of the communication in law and legislation were analyzed using the literature collection by using

content analysis method. In the content, the analysis contains reasoning (inductive, deductive),

- a. Inductive: Based on broader generalizations and theories of law, begins to then detect patterns and regularities, formulate some tentative hypotheses (major and minor premises) to explore, and finally ends up developing some general conclusions or theories (Crossman, 2011)
- b. Deductive: Based on specific hypotheses (major and minor premises) of law that can be tested by specific data (i.e interpretation rules) leading to a confirmation (or not) of the original theory and arriving at a conclusion (Crossman, 2011)

Second, issues pertaining to registration are studied. Expert input was obtained to understand the underlying reasons for the identified issues of *wāqf* land registration. Moreover, the experts' view is significant in developing ideas, hypotheses and solutions strategy (Crossman, 2017). Twelve interview sessions with experts selected using purposive sampling were conducted to seek their opinion on the *wāqf* registration system in Malaysia..

Melaka (MKE), Negeri Sembilan (NSWE), Johor (JWR) and Selangor were selected because their regulations and *wāqf* enactments, registration and declaration are enhanced compared to *wāqf* regulations in other states in Malaysia. Besides, representatives from the Department of Land and Mines (DLM), Department of Wakaf *Zakāt* and Hajj (JAWHAR), lecturers and a lawyer in the field of land and *wāqf* regulation were selected as the respondents (See Table 2).

TABLE 2
List of Respondents

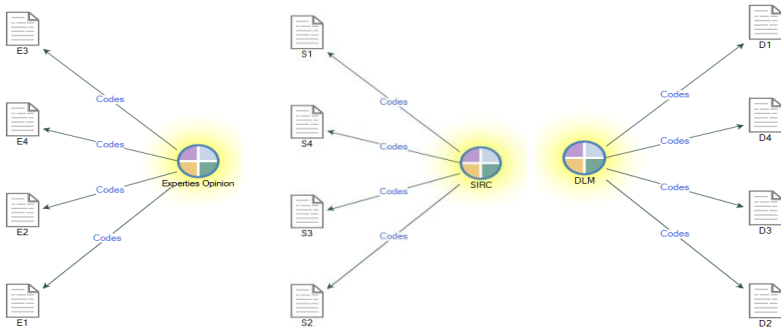
Respondents	Code
State Islamic Religious Council	S1, S2, S3, S4
Department of Land and Mines	D1, D2, D3, D4
Lecturers in Land Law and Waqf Regulation	E1, E2
Lawyer in Land Law and Waqf Regulation	E3
Department of Wakaf Zakat and Hajj (JAWHAR)	E4

Source: Author (2021)

The NVIVO 12 software had classified the respondents with code S1~S4 for SIRC, D1~D4 for DLM, E1 and E2 for lecturers, E3 for a lawyer and E4 for JAWHAR (See Figure 2). Then, the interviews were transcribed, validated and coded according to the following themes:

- i. The act or legal law reference for *wāqf* land registration and administration.
- ii. Registration method for *wāqf* property
- iii. Effect of form approval in *wāqf* land registration system

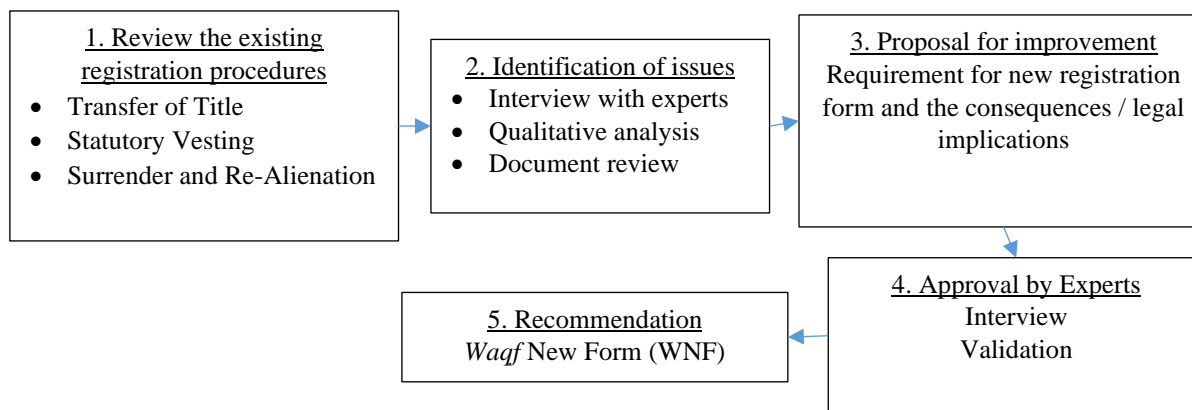
FIGURE 2
Group of Respondents



Source: Author (2021)

Third, the proposal of a new registration form took place. It highlights the requirement for a new registration form and the legal implications. Then, approval by experts is required to validate the proposed form. Again, interview sessions with the same respondents were conducted to validate the proposed *wāqf* form and procedures. Lastly, the Waqf New Form is presented (See Figure 3).

FIGURE 3
The Development Process of Waqf New Form for *Wāqf* Land Registration in Malaysia



Source: Author (2021)

4. ANALYSIS AND FINDINGS

The analysis is divided into three phases according to the finding and result as in:

4.1 PHASE 1: REVIEW THE REGISTRATION PROCEDURES

Specifically for *wāqf* purposes, the registration of land consist of three procedures namely Statutory Listing, Surrender and Re-alienation and Transferred Title.

TABLE 3
Methods of *Wāqf* Land Registration in Malaysia

Procedures	Provision of NLC	Forms
Transfer of Title	Section 215	14 A and 14B
State Surrender and Re-alienation	Section 195	12A and 12B
Statutory Vesting	Section 416	30A and 30 B

Source: National Land Code (1965)

4.2 PHASE 2: IDENTIFICATION OF ISSUES ON *WĀQF* LAND REGISTRATION PROCEDURES

Two reviews are analyzed based on documents and expert opinions.

4.2.1 DOCUMENT REVIEW

Generally, the existing *wāqf* registration procedures aim at protecting the *wāqf* property. Nonetheless, the aforesaid procedures seemed to be lengthy (Rashid, 2011; Shafii, 2015; Osman, 2018, Ghazali, 2021). and have resulted in confusion and difficulties for the applicant. Moreover, there are no regulations under SIRC. However, there is a guideline for *wāqf* land registration in the JAWHAR Manual. Therefore, the registration procedures are revocable by heirs in the future (Ghazali and Rai, 2019; Hamid and Tahir, 2014; Mohammad, 2013) and it will jeopardize the sanctity of *wāqf* lands due to identified difficulties at each procedure, as explained later:

Transferred Title:

The present application process for transferring the title is complicated and requires a lengthy time. Moreover, the clause of *wāqf* during the

transfer of the property to SIRC is negligent. This is contradictory to the nature of *wāqf* property, which it shall only be owned by Allah and cannot be transferred to anyone (Ghazali and Sipan, 2019; Kader, 2009).

State Surrender and Re-alienation:

This procedure involves the transfer of land to the state and re-alienation to SIRC. Nonetheless, the requirement under Section 195 is uncertain. As stated in the NLC, either the land or *wāqf* land is alienated as state reserve land (Ghazali and Sipan, 2019; Kader, 2009). Moreover, the state reserve land could remove the *wāqf* land status, and the state has the right to take the land at any time without compensation. Another risk, the *wāqf* land could be reserved for public use (such as road and passage) during the process of surrendering the land to the government without compensating the SIRC/*wāqif*, as the property owner.

Statutory Vesting:

The statutory vesting endorsement under Section 416C is only made on the title certificate. It is endorsed by the SIRC as the land manager, thus it cannot be considered as registered ownership. Moreover, it restricts the SIRC's ownership scope by only granting rights to occupation, use control or management. The real issue is that the SIRC is only the trustee and not a real registered owner with a registered right having an indefeasible title over the '*wāqf*' land. Therefore, the status of *wāqf* is defeasible, which could be challenged in the future and SIRC may have problems transferring the land within the procedure of *istibdal*. As a consequence, the SIRC is not the registered owner of the land; the beneficiaries (Muslims) of *wāqf* land may lose the rights to receive compensation for land acquisition (Ghazali and Raji, 2019; Mat Rani and Ghani, 2012).

4.2.2 EXPERTS' REVIEW

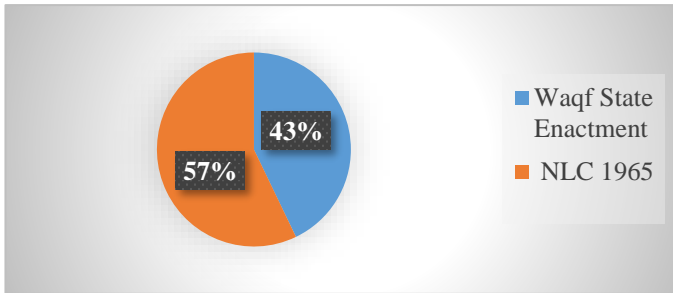
i) The act or legal law reference for *wāqf* land registration and administration.

Figure 4 shows the result of law reference for *wāqf* land registration by the respondent. Some 57% of the respondents decided on the NLC 1965 as the most referenced law compared to Waqf State Enactment. On the other hand, the other respondents preferred the Waqf State Enactment instead of the NLC. Meanwhile, both the

individual legal experts and academicians referred to the NLC and Waqf Enactment respectively.

As a matter of fact, the NLC is not inclusive on *wāqf* matters. “By Section 4(2) which state to the effect that nothing in the NLC shall affect the provision of any law for the time being relating to *wāqf* or *baitul mal*.”

FIGURE 4
The book of regulation referred to Register Waqf Land



Source: Interview with respondents.

ii) Registration method for *wāqf* property

As in Table 4, the majority of the respondents have mentioned Statutory vesting as the most relevant method to register the *wāqf* land. Nonetheless, they have suggested Statutory Vesting as the best procedure, as it is faster and easier; it simply requires the endorsement stamp on the title as the *wāqf* property. On the other hand, the endorsement of Statutory Vesting is insufficient (Mat Rani and Ghani, 2012). As a result, it will be difficult for SIRC to deal with and develop the land in the future. For this reason, the Statutory Vesting application would be useful with several amendments, which include changing the name on the title to SIRC for recognizing the indefeasible rights rather than just endorsement.

iii) Effect of form approval in *wāqf* land registration system

The declaration of *wāqf* property requires the *wāqif* to fill in the form and submit it to the Land Office as proof of donation. Following the declaration of *wāqif* to donate the property as *wāqf*, the *wāqf* shall be indefeasible, and this has been emphasized by Islamic law (Hamid and Tahir, 2014). As a result, the replacement of the existing registration forms with the new form is recommended by the respondents to ensure the *wāqf* declaration is indefeasible namely in this research asn Waqf New Form (WNF). It begins with the

application and submission of land title for *wāqf* registration by *wāqif*. Next, the status of the land and encumbrances will be checked by the land administrator through the Land Title. After that, approval of WNF by the Land Administrator will make the land indefeasible and binding. Lastly, before the declaration of land for *wāqf* takes place, the land must be free from any encumbrances. Thus, the statutory vesting method should be used to register the name of SIRC at the Land Office. The following Figure 5 illustrates the workflow of WNF.

TABLE 4
Respondents Opinion on Current Registration Method

Source: Interview from Respondents

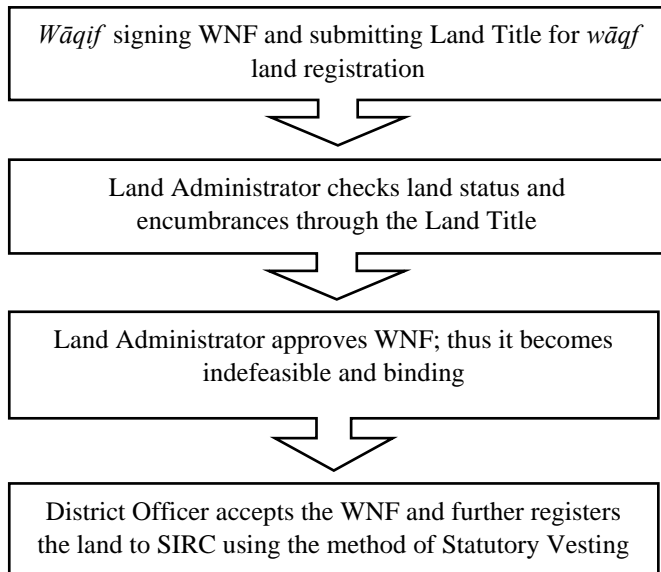
Respondents	Opinion
S2, S4, D2 and D4,	The method used to register <i>wāqf</i> land at Land Office is Statutory Vesting. However, the method of is insufficient for SIRC because only the registered name on the land title has full indefeasible ownership on the land for dealing and development on the said land. But still the method of statutory vesting is the fastest way to register the land as <i>wāqf</i> . Thus, need few amendments in practice.
E1, E2 and E3	The method shall be used to register <i>wāqf</i> land at Land Office is Statutory Vesting as the method has not change the ownership on the land. The land ownership shall only belonged to God Almighty. (Allah)
S1, S3, D1, D3	The method of registration used is Surrender and Re-alienation. However, they are not prefer this method as it would reduce the original size of the <i>wāqf</i> land, since the state would take some parts of it for road and public uses without compensation.

Moreover, the respondents advocated that the WNF should be enforced under the NLC because it can be referred by every stakeholder. Additionally, all of them agreed that every *wāqif* is needed to clear the encumbrances on the land before *wāqf* application at SIRC, as defined in Section 340 of the NLC. The encumbrances can render the *wāqf* declaration indefeasible that comprise the following:

- a) Equity⁴
- b) caveat (Part Ninetieth, Chapter 1, NLC 1965) and restriction interest (mortgage/lease)
- c) Taxation⁵
- d) Sole proprietorships
- e) Inheritance right (*Akta Pusaka Kecil 1955*)

The list of the encumbrances may be further added in future according to the state regulation of land administration. This list is only shortlisted from the respondents in the selected purposive sampling.

FIGURE 5
The Application Process of Waqf New Form (WNF) for *Wāqf* Land Registration in Malaysia



Source: Interview with Respondents

5. RECOMMENDATION

As mentioned earlier, the WNF has been promoted by the respondents and validated by the experts. Accordingly, the WNF is suggested to be indefeasible with the effects of being perpetual, inalienable, and irrevocable. It encompasses the declaration (*sighah*), donor (*wāqif*), property (*mawquf*), beneficiaries (*mawquf alaihi*) and manager (*nazir*) in particular for *waqf* validity according to Muslim jurists (Ghazali and Raji, 2019; Hamid and Tahir, 2018).

The new application form will make the registration binding and valid immediately after it is filled up. Comparing to the old form, the declaration is not considered binding until the form is taken through the long procedure of land registration. The WNF consists of three segments namely, i) the application details ii) statutory

declaration, and iii) checklist declaration. Page 1 of 4 requires information about the applicant as the donor or *wāqif*. It includes the applicant background, details of the property (*mawquf*), *wāqf* purpose (*sighah*), and the signature of the applicant, a witness and authorised signatures by the *Qadi* (See Figure 6).

FIGURE 6
Waqf New Form (Page 1)

National Land Code <i>Waqf</i> New Form (WNF) (Sections x.xx)	
APPLICANT DETAILS (DONOR/WAQIF)	
Name: _____	
Address: _____	
Identity Card No: _____	
Contact No: _____	
Property Details (<i>mawquf</i>)	
Property Types: _____	
Address: _____	
Ownership No: _____	
Town/Village: _____	
Land Address: _____	
Size of the land:	(acre/ hectare/metre per square)
Size of the land donated:	(acre/ hectare/metre per square/part)
WAQF PURPOSE	
I hereby admit:	
1. I am the rightful owner of the land mentioned above	
2. I am willing without any force from any person to declare the land as waqf for the purpose (<i>marque alahi</i>) of: _____	
3. The land is free from any encumbrances such as a mortgage, taxation debt, lease, and caveat	
4. Attached with this form are copies of Identity Card, Certificate of land title, and latest tax receipt	
5. All details mentioned above are true and I accept any decision made by State Islamic Religious Council if the land is unacceptable to be donated.	
Date: _____	Signature of Donor/Waqif: _____
Made in front of Qadi,	
Signature of Qadi: _____	(QADI STAMP)
Name: _____	
District: _____	
Signature of witness: _____	
Name: _____	
I/C No: _____	
Relationship: _____	
Address: _____	

Source: Author (2021)

Meanwhile, page 2 of 4 shows the statutory vesting application for the land under SIRC with the agreement of the *wāqif* (See Figure 6). The absence of a specific procedure or form provided in the NLC for *wāqf* registration (Persekutuan, 2019), has anticipated the WNF to be registered using the method of statutory vesting.

Moreover, the third page shows the schedule of registered interest in land. It consists of the information on the location, lot number, the proprietor or co-proprietor, the registered number of lease or sublease and registered number of charge by state (See Figure 7). It

is suggested that the approval of WNF by the Land Administrator shall bind the *wāqf* land as indefeasible with the effect of being perpetual, inalienable and irrevocable to donors and their heirs, SIRC, Land Office, DLM and the Court.

FIGURE 7
Waqf New Form (Page 2)

**APPLICATION FOR REGISTRATION OF A
STATUTORY VESTING OF A REGISTERED
INTEREST IN LAND**

Whereas of is the *proprietor/holder of the registered interest in land described in the Schedule below : [Here insert name of proprietor/ holder.]

And whereas under section.....of the said registered interest in land described in the Schedule below was vested in me: [Here insert appropriate law]

Now, therefore, I..... of [Here insert name of applicant] hereby apply for the said registered interest in the land to be registered in my name under the above-mentioned statutory vesting in me.

*2. I annex hereto the issue document of title in respect of the land wherein the above-mentioned registered interest is vested in me.

*3. The issue document of title in respect of the said land is held by [Here insert a name.] of because of his being and he has failed to deliver it to me although required by me in writing to do so. Copies of the correspondence concerning such requests are annexed hereto. [Here insert whether the issue document of title is held as proprietor/chargee/lienholder/trustee/holder of the power of attorney or any other circumstance.]

*4. I have made inquiries from the proprietor of the land described in the Schedule below and have been informed that the whereabouts of the issue document of the title is not known, and I have been unable to locate the same.

Dated thisday of.....19

.....
Signature of (another form of execution by)
*applicant/person lawfully
authorized to act on
behalf of applicant

Note: Where the signature or other form of execution is of a person lawfully authorized to act on behalf of the applicant, the nature of his authority and how it is derived should be stated below the

Source: Author (2021)

Then, provided on the last page is the checklist of the *wāqf* declaration application. The supporting documents are essential as evidence that the land is free from encumbrances (See Figure 8). The processes for technical progression, on the other hand, can be

completed after the land ownership is secured as a *wāqf* property. This includes the application and preparation of the layout plan, ground report, land reports, admission form and letter, registration and vesting, submitting notices, stamp duties exemption, periodic surveys and gazetting land.

FIGURE 8
Waqf New Form (Page 3)

Where the address of the person, claiming under this statutory vesting is outside the Federation, an address within the Federation for the service of notices is to be added in this space

*Town/ Village/ Mukim	*Lot/ Parcel/ L.O. No.	Description and No. of Title	*Proprietor or coproprietor (if co- proprietor state the undivided share)	*Lessee or sublessee (state registered number of lease/ sublease)	*Chargee (state registered number of charge)
(1)	(2)	(3)	(4)	(5)	(6)

***SCHEDULE OF REGISTERED INTEREST IN LAND**

For Official Use Only

I am *satisfied/not satisfied that statutory vesting of the registered interest in the land in respect of which this application is made has been effected in favour of the applicant-
 *(a) and direct that registration of the said registered interest in the name of the applicant be made;
 *(b) for the following reasons and, accordingly, the application is rejected.

L.S.
***intermediate officer as suggested**

.....
 *Delete as appropriate.

Source: Author (2021)

FIGURE 9
 Waqf New Form (Page 4)

4		
Checklist of Waqf Declaration Application		
No	Item	Checked (/)
1	Form XX of NLC	
2	Original Copy of Land Title	
3	Title Search Copy	
4	Taxation Receipt Copy	
5	Identity Card Copy	
6	Others related Documents	

***intermediate officer as suggested**
 -is an officer suggested to be appointed within Structure of *Waqf* Land Declaration and Registration System in Malaysia

Source: Author (2021)

6. CONCLUSION

In conclusion, the *wāqf* property is essential for the benefit of the *ummah*. The procedure to make it valid and binding, however, requires several submissions of forms and approvals resulting in several issues. This research has identified a comprehensive solution to register *wāqf* land and proposes the Waqf New Form (WNF) for the *wāqif* in Malaysia. The limitation of this research is that the form is not been reviewed by the National Land Council who has authority to amend and create provision under NLC. It is hoped that this form is taken to the council for verification and to be included in the NLC. Overall, these forms indicate a systematic process for *wāqf* land registration in the country and will secure the *wāqf* properties in the future and eliminate the risk of unregistered *wāqf* land.

ENDNOTES

1. National Land Code, 1965: section 340. Registration to confer indefeasible title or interest, except in certain circumstances. (1) The title

or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

2. *G Rethinasamy vs State Islamic Religious Council (SIRC) of Pulau Pinang and others* [1993] MLJ 166 decided in civil court because plaintiff is a non-Muslim, which could not bring an action in the Sharia Court. There had been a mosque on part A for more than 12 years before (1966) but second defendant (SIRC) did not take any action to determine their interest/ registration in Land Office for Land Title. Section 105 of the State Religious Enactment provided; there was a mosque or something related to it or used for its purposes on the land, and the land is not a state land. The judge held; the defendants do not need to prove that the land was waqf land in order to get the benefit under sec. 105. Therefore, Part A vested in the first defendant (SIRC). The plaintiff's title to part A was defeasible. The defendants manage to prove part A of the land was a valid waqf because there is a mosque used in generations even though it was not according to NLC.
3. In the case of *Haji Embong Bin Ibrahim and Ors V Tengku Nik Maimunah Hajjah Binte Almarhum Sultan Zainal Abidin and Anor*, [1980] 1 MLJ 286. The respondent or heirs of the property try to revoke the waqf and challenge the status of waqf because there was no regulation of waqf at the time *wāqif* declares the waqf. However, it was held the Islamic Waqf Validating Enactment, 1972, has retrospective effect and applies to the waqf in the present case; the dispositions to strangers were valid under Islamic Law and were saved by sections 2(3) Administration of Islamic Law Enactment, 1955
4. Land equity is the value of your land minus the balance of your land loan. If you have built up equity, you may want to tap into it to build a home on the land or for other purposes like paying down high-interest debt or unexpected bills.
5. Such as land taxation or property taxation.

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