

EXAMINING THE EVOLUTION OF *Waqf* REGULATIONS IN SELANGOR: AN ANALYSIS OF THE GOVERNANCE FRAMEWORK AND TRANSFORMATIVE APPROACH

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ABSTRACT

The inadequacy of comprehensive laws for *Waqf* administration is one of the main issues that has limited the development of *Waqf* in Malaysia. Whilst most states in Malaysia rely on their Administration of Islamic Law enactments, in 1999 Selangor pioneered a *Waqf* enactment which specifically oversees *Waqf* administration and management. With the promulgation of the Selangor *Waqf* Enactment 1999, the administration of *Waqf* in Selangor became more regulated and structured. However, as matters pertaining to *Waqf* practices became more complex, Selangor repealed its 1999 *Waqf* Enactment and replaced it with the 2015 *Waqf* Enactment. This research therefore analyses the evolution of *Waqf* in Selangor through the two respective enactments, by identifying the changes in practices and scrutinising the rationales for the development of the laws. It also analyses how the laws have impacted the *Waqf* governance framework in the state. By assessing the position of the 2015 *Waqf* Enactment, it determines whether the current legislative demand posed by *Waqf* development in the state is met and whether the change in approach should be followed by other states in Malaysia. Doctrinal legal research is utilised to examine the two enactments respectively. Legislative Assembly Proceedings related to the promulgation of the respective enactments were also examined to further understand the reasoning behind the repeal and the introduction of certain provisions. It is found that although the 2015 *Waqf* Enactment is more comprehensive

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than the 1999 *Waqf* Enactment, further improvements can be made to better achieve transparency and accountability on the part of the *Waqf* administrators.

Keywords: *Waqf*, Selangor, legislation, evolution

MENELITI EVOLUSI UNDANG-UNDANG WAKAF DI SELANGOR: SUATU ANALISA KE ATAS KERANGKA PENTADBIRAN DAN PENGGUNAAN PENDEKATAN TRANSFORMASI

ABSTRAK

Salah satu isu utama yang membataskan pembangunan Wakaf di Malaysia adalah kekurangan dari segi undang-undang yang komprehensif dalam mentadbir hal ehwal pengurusan Wakaf. Walaupun kebanyakan negeri-negeri di Malaysia bergantung kepada Enakmen Pentadbiran Agama Islam masing-masing bagi tujuan pentadbiran Wakaf, Selangor telah mengambil langkah awal dengan menggubal satu enakmen yang khusus untuk mentadbir dan mengurus Wakaf pada tahun 1999. Dengan adanya Enakmen Wakaf Selangor 1999 ini, pentadbiran Wakaf di Selangor telah menjadi lebih teratur dan berstruktur. Walau bagaimanapun, dengan peredaran masa, amalan Wakaf di Selangor telah menjadi lebih kompleks. Oleh itu, Selangor telah memutuskan untuk memansuhkan Enakmen Wakaf Selangor 1999 dan telah menggantikannya dengan Enakmen Wakaf Selangor 2015. Justeru, kajian ini dijalankan untuk menganalisa evolusi institusi Wakaf di Selangor khususnya dengan mengenal pasti perubahan dalam amalan dan meneliti rasional terhadap perubahan undang-undang wakaf di Selangor. Selain itu, kajian ini juga mengkaji kesannya terhadap kerangka tadbir urus wakaf di negeri itu. Kajian ini turut mengenal pasti kedudukan Enakmen Wakaf 2015 dan samaada ia dapat memenuhi keperluan pentadbiran wakaf di negeri itu. Untuk mengenalpasti perubahan yang telah diperkenalkan, Enakmen Wakaf 1999 dan Enakmen Wakaf 2015 telah dianalisa. Menggunakan pendekatan metod analisis data utama dan sekunder, Prosiding Dewan Undangan yang berkaitan dengan penggubalan Enakmen Wakaf 2015 juga telah dirujuk secara terperinci untuk memahami tujuan peruntukan tersebut diperkenalkan atau dimansuhkan. Dapatan kajian menunjukkan bahawa walaupun Enakmen Wakaf 2015 dilihat sebagai lebih komprehensif, namun penambahbaikan dalam aspek ketelusan dan akauntabiliti oleh

pentadbir wakaf boleh diperkenalkan untuk menjadikan enakmen wakaf ini lebih berkesan.

Kata Kunci: Wakaf, Selangor, perundangan, evolusi

INTRODUCTION

Waqf is a product of *ijtihad*¹ during the time of the Prophet (SAW) as there is no direct provision on this perpetual charitable institution in the Quran. The practice of *Waqf* is based on the *hadeeth*, *sunnah* and practices of the *sahabah* (Prophet's companions). It has been recorded that in the early practices of *Waqf*, it was up to the *waqif* to set up administrative guidelines, criteria for beneficiaries and principles for revenue distribution.² However, with the complexity of the present economy, it is no longer feasible for *Waqf* to be exclusively self-regulated. With the centralization of *Waqf* management, there is a demand for *Waqf* institutions to be regulated and monitored.³

The benevolent practice of *Waqf* was adopted in the states of Malaya with the introduction of Islam in the states since the 9th century AD.⁴ In Malaysia, the practice of *Waqf* has undergone several stages; pre-colonial period, colonization period and post-colonization. Evolving along societal practices, *Waqf* continued to develop further and therefore various phases in terms of its policies, practices and reception has been recorded. It is not the intention of this paper to delve into the history of *Waqf* in Malaysia, however a brief mention of the

¹ Decision made based solely on one's own judgment. See: Ahmed Akgunduz, *Introduction to Islamic Law* (Rotterdam: IUR Press, 2010), 116.

² Mohammad Abdullah, "A New Framework for Corporate Governance for Waqf: A Preliminary Proposal," *Islam and Civilisational Renewal* 6, no. 3 (2015): 356.

³ Abdullah, 353.

⁴ Although there are many theories on when Islam came to the Malay States, a recent research paper has concluded that it is in the 9th century in the state of Kedah. See: Salehuddin Md. Dahlan, Zulkifli Yunos, and Nor Asiah Mohamad, "The Earliest Waqfs in Malaysia," (paper presented at International Conference on History and Governance of Awqaf in South and Southeast Asia, 2018).

historical events in Selangor is included to fully understand the reasoning behind the evolution of its *Waqf* legislations.

We perceive that discussions on the evolution of *Waqf* regulations is important as it affects the effectiveness of the governance of a *Waqf* administration. A good *Waqf* governance framework will improve the overall credibility of the *Waqf* administrators and enhance the confidence of the stakeholders. According to Mohammad Abdullah, this will bring greater accountability and transparency in the *Waqf* operations and will enhance the viability of *Waqf* in the state.⁵

The reason why the *Waqf* (State of Selangor) Enactment 2015 (2015 *Waqf* Enactment) was chosen as the subject of this study is due to the fact that Selangor is the only state in Malaysia which had repealed its previous *Waqf* law and had substituted it with a new *Waqf* Enactment which is deemed to be more comprehensive. With this, it is hoped that we can see the evolution of *Waqf* regulation which had taken place.

The first part of this paper will cover the legal history of *Waqf* in Selangor during both the pre- and post-independence era. This will include the applicable rules and practices as well as the appointed managers and administrators of *Waqf* in the state in those periods.

The second part of the paper will open with a cursory examination of the *Waqf* (State of Selangor) Enactment 1999 (1999 *Waqf* Enactment). This review will be followed by a comparative analysis between the 2015 *Waqf* Enactment and the 1999 *Waqf* Enactment to understand the changes introduced. The abovementioned analysis will cover various aspects including the scope and new powers introduced by the 2015 Enactment such as power to delegate its duties and the power to issue *Waqf* shares. An earlier analysis of the 2015 *Waqf* Enactment has been conducted by Siti Mashitoh whereby changes introduced by the enactment were analysed through the Shariah perspective.⁶ This article aims to provide further analysis from the legal viewpoint and to deduce the reasoning behind the introduction of the new provisions and the problems it aims to tackle. Legislative

⁵ Mohammad Abdullah, "A New Framework for Corporate Governance for Waqf: A Preliminary Proposal," 355.

⁶ Siti Mashitoh Mahamood, "Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif Syariah Dan Undang-Undang," *Jurnal Kanun* 29, no. 2 (2017): 177.

Assembly Proceedings were referred to identify the reasoning behind the promulgation of the 2015 *Waqf* Enactment. Information on *Waqf* development projects in Selangor were obtained from interviews conducted with officers from Perbadanan Wakaf Selangor. Secondary data from the websites and annual reports and bulletins of Majlis Agama Islam Selangor and Perbadanan Wakaf Selangor were also analysed to determine the activities and achievements of the *Waqf* administration in Selangor.

The discussion will be concluded with an analysis on whether the 2015 *Waqf* Enactment is sufficiently comprehensive or whether a transformative approach is needed to better suit the current needs of *Waqf* in Selangor.

LEGAL HISTORY OF WAQF IN SELANGOR

Mohammad Tahir Sabit had divided the Malaysian law on *Waqf* into 2 categories; the old and the new. He categorizes the old *Waqf* laws as laws passed prior to the 1980s and the new laws as *Waqf* laws which had been passed from the 1980s onwards beginning with the Kaedah-Kaedah Wakaf (Johor) in 1983.⁷

Pre-Independence Era

The spread of Islam in South East Asia has been recorded as early as the 7th Century and is believed to be due to the preaching and propagation by Arab traders from the Middle East.⁸ *Waqf* was also

⁷ Mohammad Tahir Sabit, "A Proposal for a New Comprehensive Waqf Law in Malaysia," in *Waqf Laws and Management*, ed. Syed Khalid Rashid, (Gombak: IIUM Press, 2017), 132.

⁸ Hisham Yaacob, "Waqf History and Legislation in Malaysia: A Contemporary Perspective," *Journal of Islamic and Human Advanced Research (JIHAR)*, 3, no. 6 (2013): 395. In the paper Salehuddin Md. Dahlan, Zulkifli Yunos, and Nor Asiah Mohamad, "The Earliest Waqfs in Malaysia," it was recorded that Islam may have even been introduced in the Malay archipelago since the 7th Century through the establishment of a Muslim Arab village in west coast Sumatera.

amongst the principles which had been introduced with the advent of Islam and was integrated into the local fabric of life as Islam became a major religion in the region. It has also been influenced by the mindset and practices of the locals. For example, *Waqf* in other regions have historically been used for family *Waqf*, maintenance of educational institutions, aid for the poor, orphans and animals. In Malaysia, however, it has been noted that *Waqf*, even from the past, has mainly been created for religious purposes such as for the creation of mosques, *suraus* and burial sites.⁹ As these *Waqfs* were mostly administered and managed by the *Penghulu* or *Imams*, the number of recorded historical *Waqf* transactions from this period cannot be conclusively ascertained as there was no systematic method documentation before the period of colonization. Even if there was, priority was not given to maintain its upkeep. It was only upon the colonization by the British that a more systematic method of documentation and system of registration was introduced.¹⁰

Nuarrual Hilal states that during this period, there were no records of specific laws applicable to *Waqf* or its administration in any Malay States in Peninsular Malaysia and Borneo.¹¹ However, he notes that there were general applications of Islamic principles based on Islamic legal codes. He therefore presumes that since Islamic law was the inherent law at that time, the applicable principles to matters and disputes pertaining to *Waqf* would have been Islamic principles. He further asserts that since *Waqf* had mainly been administered by the

⁹ Sharifah Zubaidah Syed Abdul Kader, "The Legal Position of Waqf Lands in Malaysia," in *Waqf Laws and Management*, ed. Syed Khalid Rashid, (Kuala Lumpur, Malaysia: IIUM Press, 2017), 85.

¹⁰ Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspective* (Kuala Lumpur, Malaysia: University of Malaya Press, 2012), 28.

¹¹ Nuarrual Hilal Md Dahlan and Abdul Rani Kamarudin, "Wakaf in Malaysia: Its Legal Evolution and Development," *Shariah Law Reports Articles* 1 (2006): 2.

Qadhis, Imams and Mosque Committees, Islamic legal texts¹² would have been referred to had there been any disputes involving *Waqf*.¹³

During British Colonization

Different from the period of colonization by the Portuguese and the Dutch, the British had heavily influenced the practice of *Waqf* in Malaysia, Selangor included. They had periodically set aside principles derived from Islamic legal texts and customary practices and had replaced them with English Laws and legal principles through the Charters of Justice. The effect of colonization has also been said to have usurped *Waqf* lands from the Muslim societies and had disrupted its management.¹⁴

Waqf however, at that time was not a concept alien to the British. Having much experience with *Waqf* in India, the British had also participated in *Waqf* through the creation of *awqaf irsād*, both in the Straits Settlements and in the Federated Malay States. The British Resident in Selangor at that time had also approved and granted funds to maintain and establish mosques in the state.¹⁵ Although the British had greatly interfered with the administration of *Waqf* in certain states such as Penang and Johor, Abdul Fattah in his thesis mentioned that the British in Selangor at this time had no interest in administering *Waqf*.¹⁶

The British introduced the Torrens System of land titles registration which in effect had allowed for a more systematic manner in recording land holdings. Through the Torrens system, a cadastral survey was

¹² Among the Islamic legal texts which has been referred to are; Fath al Qarib (Melaccan Empire), the Mejelle (Johor), Bughyat al Mustarshidin and Mu'in al-Hukkam (Kelantan). Nuarrual Hilal Md Dahlan and Abdul Rani Kamarudin, "Wakaf in Malaysia: Its Legal Evolution and Development," 3.

¹³ Ibid, 2.

¹⁴ Murat Cizakca, *A History of Philanthropic Foundations: The Islamic World from the 7th Century to the Present* (Boğaziçi University Press, 2002), 117.

¹⁵ Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspective*, 34.

¹⁶ Abdul Fatah bin Haji Khalid, "Islamic Law and Land in the State of Selangor, Malaysia: Problems of Administration and Islamisation" (PhD diss., University of Edinburgh, 1988), 247.

conducted which properly recorded the measurement and other details relating to land ownership. Although the status of *Waqf* lands were not recorded on the register at that time, implementation of the Torrens system facilitated the identification of lands that were later to be identified as *Waqf* lands. Selangor adopted the Torrens System in 1882 through the General Land Regulations 1882.¹⁷

Post- Independence

Before independence, the British had centralized the management of *Waqf* in Selangor. Powers to manage *Waqf* were granted to the Majlis Agama Islam Selangor ('MAIS') as the State Religious Council (SIRC) through the Laws for Administration of the Religion of Islam 1952.¹⁸ This position continued even after independence.

Provisions on *Waqf* contained in the above enactment however were not comprehensive. Among the provisions were on the appointment of the SIRC as the sole trustee of all types of *Waqf* and any kind of charitable trust made according to Islamic law. However, the provisions did not outline the duties, responsibilities and scope of power of the SIRC as trustees, and the interpretation of *Waqf* was also not thoroughly covered. This had inadvertently cast doubts on the scope and limits of *Waqf*.

The Laws for the Administration of the Religion of Islam 1952 however was repealed¹⁹ and was replaced by the Administration of Islamic Law Enactment 1989.²⁰ It was only in 1999 that the Selangor

¹⁷ Richard Wu, "Implementation of Land Title Registration System in Malaysia: Lessons for Hong Kong," *Malayan Law Journal Articles* 1 (2011): 68.

¹⁸ Section 95 to 100 and Section 103 of the Laws for Administration of the Religion of Islam 1952 governed matters relating to *Waqf*.

¹⁹ Section 87 of the Administration of Islamic Law Enactment 1989 states that Part I, II, III, V, VI, VII, VIII, IX of the Laws of the Religion of Islam 1952 has been repealed.

²⁰ The Administration of Islamic Law Enactment 1989 has since been repealed and replaced with the Administration of Law Enactment (State of Selangor) 2003 through Section 123 of Enactment 2003.

Waqf Enactment 1999 was promulgated specifically for the administration and management of *Waqf* in Selangor.

***Waqf* Enactment (State of Selangor) 1999**

The 1999 *Waqf* Enactment, although introduced in 1999, was only enforced on 1st July 2004. Repealing the provisions relating to *Waqf* in the Laws for the Administration of the Religion of Islam 1952, the 1999 *Waqf* Enactment contained both substantive and administrative clauses on *Waqf*.²¹

Among the main features of the 1999 *Waqf* Enactment were:

- i. Conditions for the creation of *Waqf* and restrictions on its creation;²²
- ii. The power and responsibility of MAIS as the sole trustee of *Waqf* in Selangor;²³
- iii. Conditions for *istibdal*;²⁴
- iv. Handling of *mawquf* and its proceeds;²⁵
- v. The appointment, power and responsibility of the *Waqf* Management Committee in managing *Waqf* in Selangor.²⁶

It can be seen from the above that the provisions in the 1999 Enactment were much more comprehensive than the piecemeal provisions on *Waqf* in the Administration of the Religion of Islam Enactment 1952.

²¹ Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspective*, 58.

²² Part II of the *Waqf* Enactment 1999.

²³ Part VIII of the *Waqf* Enactment 1999.

²⁴ Part VI of the *Waqf* Enactment 1999.

²⁵ Part V of the *Waqf* Enactment 1999.

²⁶ Part VII of the *Waqf* Enactment 1999.

EVOLUTION OF *Waqf* LAWS AND PRACTICES IN SELANGOR

A call for a more comprehensive *Waqf* legislation was made by scholars to further accommodate the growing needs for effective *Waqf* management and to resolve issues which have been identified in the management of *Waqf* in the state.²⁷

In a bid towards increasing the number of productive *Waqf* properties in Malaysia through the 9th Malaysia Plan, it is observed that Cash *Waqf* and *Waqf* Shares have become a well-accepted means to raise money to fund *Waqf* properties investment by the SIRC.²⁸ With this shift from endowing real properties to cash, shares, stocks, bonds and services as *Waqf*, legislation is needed to better recognize their validity and to regulate its handling by the managers of *Waqf*. Although the 1999 *Waqf* Enactment contain provisions on share *Waqf*, new provisions are also needed in the Enactment to regulate other types of *mawquf*.

Shift in *Waqf* Management

As mentioned above, by virtue of Section 21 of 1999 *Waqf* Enactment, the management of *Waqf* in Selangor rests on the *Waqf* Management Committee. The Committee would develop policies which in turn would be executed by the Wakaf Unit under MAIS. The Wakaf Unit consisted of the Registrar of *Waqf*, the Assistant Registrar and three

²⁷ Tunku Alina Alias and Murat Cizakca, "Should Malaysian States Have A Fresh Approach to Waqfs? A Proposal for A Model Waqf Enactment," *ISRA International Journal of Islamic Finance* 6, no. 2 (2014): 133–40; Hisham Yaacob, "Waqf History and Legislation in Malaysia: A Contemporary Perspective"; Rohayu Abdul Majid and Rosli Said, "Permasalahan Pengurusan Hartanah Wakaf Di Malaysia," *International Surveying Research Journal* 4, no. 1; Mohammad Tahir Sabit, "A Proposal for a New Comprehensive Waqf Law in Malaysia."

²⁸ Mustafa Omar Mohammed and Norhaliza Mohd Nor, "Categorization of Waqf Lands and Their Management: The Case of the State of Selangor," in *Waqf Laws and Management*, ed. Syed Khalid Rashid, (Selangor: IIUM Press, 2017), 230.

staffs.²⁹ This unit however is insufficient in catering to the growing needs of *Waqf* in the state. Limited human resources, heavy workload and incomplete *Waqf* data was cited as the problems which had affected *Waqf* management at that time.³⁰

Singapore on the other hand, having realized the great potential which *Waqf* carries as a tool of poverty alleviation, has formed a separate company which specializes in managing its *Waqf* properties. By contracting a specialized company to manage *Waqf* assets, *Waqf* in Singapore is seen to be handled more efficiently and effectively.

To further develop and optimize the *Waqf* properties in Selangor, the above practice was emulated in Selangor through the incorporation of Perbadanan Wakaf Selangor (PWS) through the Wakaf Corporation of Selangor Order 2011. As the Wakaf Corporation of Selangor Order 2011 is to be read together with the 1999 Enactment³¹, it was identified however that certain jurisdictional conflicts arose between the *Waqf* Management Committee and PWS in terms of powers to manage *Waqf*. As the *Waqf* Management Committee was recognized as the *Waqf* managers in the 1999 Enactment, there was an overlapping responsibility between the Committee and PWS in managing *Waqf* in the state.³² A new *Waqf* Enactment is therefore needed to recognize the duties and responsibilities of PWS as the new *Waqf* managers in the state to replac the *Waqf* Management Committee.

As a subsidiary to MAIS, among the responsibilities of PWS is to promote, stimulate, facilitate, undertake and develop properties and products of *Waqf* owned by MAIS. To undertake this responsibility, PWS is comprised of five (5) departments, as illustrated in Figure 2 below, consisting of officers from different fields and backgrounds

²⁹ Sharifah Zubaidah Syed Abdul Kader, "Kerangka Undang-Undang Pengurusan Wakaf Di Malaysia: Ke Arah Keseragaman Undang-Undang: Legal Framework for Waqf Management in Malaysia: Towards Uniformity of Laws," *Kanun- Jurnal Undang-Undang Malaysia*, (2016): 111.

³⁰ Nurul Azma Abu Bakar, Muhammad Nasri Md. Hussain, and Abu Bakar Hamed, "Scrutinizing the Effects of Restructuring in Perbadanan Wakaf Selangor," *International Journal of Accounting*, (2017): 17.

³¹ Order 2 of the Establishment of Wakaf Corporation of Selangor Order 2011.

³² Discussed further under heading "Power and Responsibility of PWS and Majlis Agama Islam Selangor".

such as Islamic studies, finance, urban planning and development, and engineering.

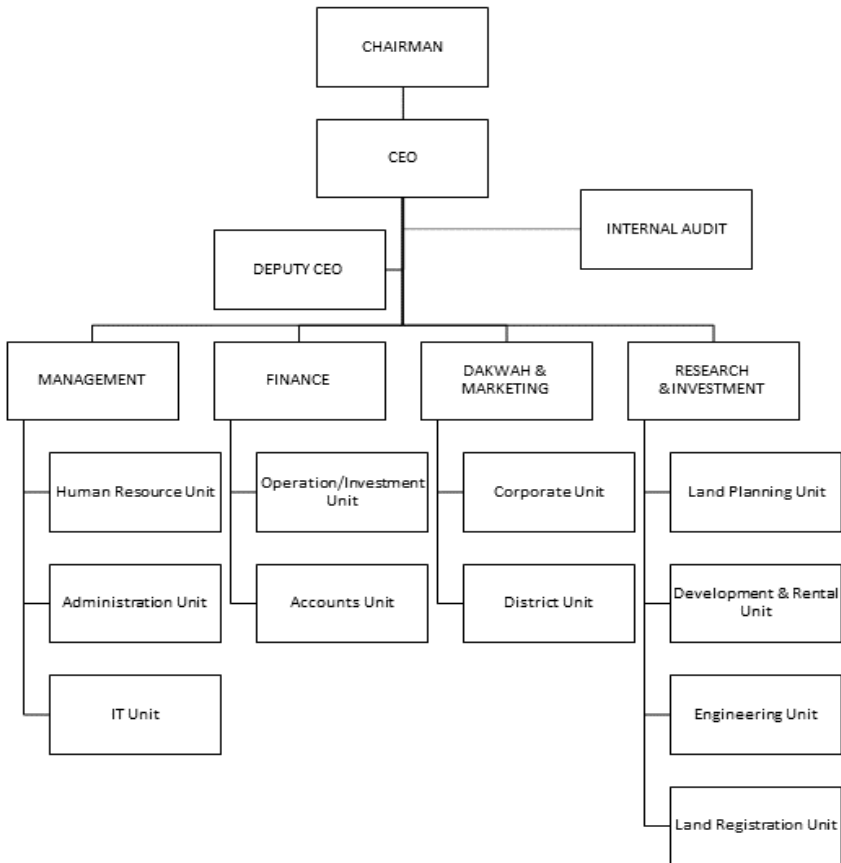


Figure 2: Organizational Chart of PWS³³

³³ Derived from information obtained from Perbadanan Wakaf Selangor, Majlis Agama Islam Selangor, accessed September 10, 2019, <http://www.wakafselangor.gov.my/>.

Through the incorporation of PWS, it can be seen that the development of the *Waqf* institution in Selangor is heading towards a positive direction. Since its incorporation, PWS has introduced various *Waqf* schemes such as *Wakaf Emas*,³⁴ *Wakaf Seni*,³⁵ and *Wakaf Wasiat*³⁶. Through PWS's promotional activities, the Selangor Share *Waqf* scheme contributions has also experienced significant increase.³⁷ As seen in Table 1 below, the contributions through the Share *Waqf* Scheme in both *Waqf Am* and *Waqf Khas* in the state of Selangor have steadily increased from the year 2012 to 2016.

³⁴ Through a research conducted by PWS, it was found that 80% of *Wakaf* contributors in Selangor are female. Taking this into consideration, PWS has introduced the *Wakaf Emas* scheme which allows women to contribute their gold as *Waqf* in Selangor. Further information on this scheme is available at Perbadanan Wakaf Selangor, "Pembangunan Hartanah Wakaf," *Buletin Perbadanan Wakaf Selangor MAIS*, vol. 1, September 29, 2013, http://www.wakafselangor.gov.my/images/PWS/buletin/Buletin_PWS_Bil.1_2013.pdf.

³⁵ The *Wakaf Seni* scheme was introduced by PWS in efforts to establish relationships with artists and members of the creative art industry who are interested in contributing to *Waqf* through promotions in the form of arts. Further information on this scheme is available at Selangor.

³⁶ *Wakaf Wasiat* is a scheme introduced by PWS and MAIS which allows the public to contribute to *Waqf* after their demise. Further information on this scheme is available at Perbadanan Wakaf Selangor, "Usahasama Projek Komersil Hartanah Wakaf Selangor," *Buletin Perbadanan Wakaf Selangor MAIS*, vol. 1, September 29, 2014, http://www.wakafselangor.gov.my/images/PWS/buletin/Buletin_PWS_Bil.1_2014.pdf.

³⁷ The share *Waqf* scheme was introduced by MAIS in Selangor since 2005. From the period of 2005 to 2011, it was recorded that the total *Waqf* share contribution stood at RM 7,216,206.00. See Perbadanan Wakaf Selangor, *Buletin Perbadanan Wakaf Selangor MAIS*, vol. 1, 2012, 10.

Table 1 : Total Contribution Through Selangor Share Waqf Scheme from 2012 - 2016³⁸

Year	Waqf Am	Waqf Khas
2012	RM 4,004,452.00	RM 7,648,764.00
2013	RM 6,251,011.00	RM 11,815,482.00
2014	RM 8,030,089.00	RM 18,350,268.00
2015	RM 7,061,854.00	RM 25,325,048.00
2016	RM 7,869,136.39	RM 35,136,362.85
Total	RM 33,216,542.39	RM 98,275,924.85

Apart from *Waqf* fund projects, PWS has also ventured into a *Waqf* estate development project through a Joint-Venture Agreement with Nada Sepakat Corporation (M) Sdn. Bhd. to develop two adjacent parcels of *Waqf* land measuring 2.3ha in Shah Alam. The commercial housing project is expected to significantly increase the investment of the *Waqf* property and is projected to have a gross development value of RM40 million.³⁹

Another ongoing PWS land development project involves a commercial housing project with Urus Maju Ehsan (M) Sdn. Bhd. called UME- Orked in Kampung Lombong, Shah Alam. Apart from commercial housing projects, PWS and Urus Maju Ehsan (M) Sdn. Bhd. are also embarking into other projects such as maintenance work for existing *Waqf* assets in Bukit Jelutong and Kolej Sultan Alam Shah in Klang.⁴⁰

³⁸“Terimaan Sumbangan SWS,” Perbadanan Wakaf Selangor, Majlis Agama Islam Selangor, accessed September 17, 2018, http://www.wakafselangor.gov.my/index.php?option=com_content&view=article&id=215&Itemid=591&lang=en.

³⁹ Perbadanan Wakaf Selangor, “Usahasama Projek Komersil Hartanah Wakaf Selangor.”

⁴⁰ Mohd Azli Bin Md Yusof, “Development of Waqf Land: Challenges and Opportunities from a Developer’s Perspective,” (paper presented at 7th National Seminar on Best Practices in Construction Industry 2017).

However, even with the increase in participation from the public through various *Waqf* schemes in Selangor and various development projects, there were still several issues which were seen to have limited the potential of *Waqf* in Selangor. Among the issues which have been identified are as follows:

i. Lack of *Waqf* Managers due to MAIS being the sole trustee of *Waqf*

A major disadvantage of having a single body holding sole trusteeship and management of a *Waqf* property is that in cases of mismanagement or oversight, no other body or individuals could take over the management of the *Waqf* property. An example was brought to light by Dr. Yaakob Bin Sapari, Selangor State Assemblyman of Kota Anggerik, Selangor during the 13th Selangor State Assembly, of a case where an orphanage was endowed as *Waqf*. He has been recorded to have said that due to alleged mismanagement on the part of the *Waqf* managers, the orphanage was left in a dilapidated state. As *Waqf* is irrevocable and the SIRC's are the sole trustees and managers of the *Waqf* in the state, the *waqif* was unable to reclaim the property.⁴¹ Although this allegation has not been proven, such possibility is a concern.

Cizakca warns against the excessive degree of centralisation of Waqf management in Malaysia.⁴² It is opined that with the appointment of other parties as *Waqf* managers and with the added support of the SIRC's, the welfare of the property will be better protected. Such support could be in the form of providing periodic training⁴³ to the managers and providing free legal advice and representation in events of legal dispute.

⁴¹ "Mesyuarat Kedua Penggal Ketiga Dewan Negeri Selangor Darul Ehsan Ketiga Belas Tahun 2015, 17-20 Ogos" (Shah Alam: Dewan Negeri Selangor Darul Ehsan, 2015), <http://dewan.selangor.gov.my/hansard1502>.

⁴² Cizakca, *A History of Philanthropic Foundations: The Islamic World from the 7th Century to the Present*, 123.

⁴³ Curriculums could include training in the area of property management and development, on the applicable land and Waqf laws and on the Fiqh of Waqf itself.

ii. Registration of Waqf Properties

Registration of *Waqf* properties has been attributed as one of the main issues beleaguering the development of *Waqf* in Malaysia.⁴⁴ This issue is no different in Selangor.

One of the problems which has been highlighted is concerning land that had been endowed through *Waqf* to mosques or *suraus*. It was pointed out that some of the administrators of mosques had failed to declare the land as *Waqf* which therefore lead to confusion on its status.⁴⁵ Therefore, it was proposed that MAIS should make it compulsory for every mosque to declare and ensure that every land which had been made as *Waqf* for its benefit be registered as *Waqf*. This is to ensure that the benefits derived from the *Waqf* property is accounted for and is managed effectively.⁴⁶

The 2015 *Waqf* Enactment therefore was promulgated to remedy the abovementioned issues.

Waqf Enactment (State of Selangor) 2015

The 2015 *Waqf* Enactment came into effect on 19th October 2015.⁴⁷ It comprises of 49 sections which are divided into 10 parts and it aims to address loopholes in the 1999 *Waqf* Enactment. Among the reasons for its promulgation, as discussed during the meeting of the Selangor State Assembly, was to improve the execution of *Waqf*. Reportedly, it was observed that a number of *Waqf* properties in Selangor are being left idle or that its usage has not been maximised to its fullest potential.⁴⁸

Based on comparison between the two *Waqf* enactments, it is observed that the 2015 *Waqf* Enactments contains:

⁴⁴ This is extensively discussed in Sharifah Zubaidah Syed Abdul Kader and Nor Asiah Mohamad, "Legal Framework for Management of Waqf Land in Malaysia," *Shariah Law Report Articles* 4 (2014): xii.

⁴⁵ "13th Selangor State Assembly, Third Term, Second Meeting," 64.

⁴⁶ *Ibid*, 63.

⁴⁷ Siti Mashitoh Mahamood, "Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif Syariah Dan Undang-Undang," 145.

⁴⁸ "13th Selangor State Assembly, Third Term, Second Meeting," 63.

- i. Introduction of new provisions which regulate new *Waqf* management practices;
- ii. Removal of certain provisions; and
- iii. Paraphrasing of previous provisions contained in 1999 *Waqf* Enactment for purposes of clarity and greater understanding.

In general, the basic tenets of *Waqf* remain unchanged and is still maintained in the 2015 *Waqf* Enactment. New provisions on the management aspect of *Waqf* however has since been added. The features of the 2015 Enactment are further explained as follows:

Expansion on Interpretation

A notable change brought about by the 2015 *Waqf* Enactment is the expansion of the term '*Waqf*'. Under the 1999 *Waqf* Enactment, *Waqf* was interpreted as dedication of "any property". Property was further interpreted as either movable or immovable property or interest therein.

Under the 2015 *Waqf* Enactment however, *Waqf* or Wakaf (as referred to in the enactment) is expanded to include properties, expertise and services. The interpretation of property has also been further widened to include;

- i. ...intellectual property;
- ii. Any benefit or interest in any movable property, immovable property or intellectual property;
- iii. Any right, interest, title or otherwise in connection with movable property, immovable property or intellectual property; and
- iv. Expertise and services having value in accordance with *Hukum Syarak*;

Scholars agree that this expansion is beneficial as the Islamic legal system recognises services and expertise as property.⁴⁹ Siti Mashitoh

⁴⁹ Siti Mashitoh Mahamood, "Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif Syariah Dan Undang-Undang," 147; Mohd Daud Bakar, "Waqf: Financial Instrument Vis-a Viz Religious Instrument," (paper presented at Muktamar Waqf Iqlimi IV 2017).

gave an example as to how this could be utilized in *Waqf* universities where the lecturers could be examiners for masters and PhD students for free (and regard it as their *Waqf*). She further mentions that this recognition in the *Waqf* enactment is important to validate this practice and is in line with the awareness on *Waqf* which is expanding in time.⁵⁰

The 1999 *Waqf* Enactment interpreted *Waqf* to only include properties, and this could be due to a *fiqh* opinion that *Waqf* should be perpetual and indefeasible.⁵¹ If services and expertise were to be included in the interpretation of *Waqf*, it would raise questions relating to the perpetuity of the *mawquf*. Standards, formulated by MAIS, which are in line with the requirements of *Waqf*, would have to be placed to identify whether a service could be appropriately considered as *Waqf*.

However, it would be of great benefit if services were identified as an appropriate *mawquf* for *Waqf*, as many forms of dissemination of knowledge and help could be offered for free. With the expansion on the interpretation of ‘property’ to also include intellectual property, experts can also contribute in offering books or educational videos free of charge. Furthermore, this would invite more people to offer their time and expertise in developing *Waqf* properties.

Another term which was present in the 1999 Enactment but has been further explained and expanded in the 2015 *Waqf* Enactment is on the concept of *Marad Al-Maut* and the practice of making *Waqf* through wills. The change in requirement on what constituted *Marad Al-Maut* was noted by Siti Mashitoh due to the decision in the case of *Mahdi bin*

⁵⁰ Siti Mashitoh Mahamood, “Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif Syariah Dan Undang-Undang,” 147.

⁵¹ Majority of Hanafi scholars believe that the subject matter of *Waqf* should exist in perpetuity. See Mohd Tahir Sabit, “The Concept and Objective of *Waqf*,” *Shariah Law Report Articles* 1 (2004): x; Shirbaini, Al Imam Shams Al Muhammad Ibn Al Khatib. *The Book of Endowment (Kitab Al- Waqf) from Mughni Al- Muhtaj Ila Ma’rifat Ma’ani Alfaz Al-Minhaj. Translated with an Introduction, Appendices and Notes by Nicholas Mahdi Lock*. Kuala Lumpur, Malaysia: IBFIM, 2015, 10.

Ab. Hamid v. Mohamad Iqwan bin Yahaya.⁵² The concept of *Marad al-Maut* was further expanded in the 2015 *Waqf* Enactment as it can also be related to the practice of making *Waqf* through wills. Siti Mashitoh opines that the 1999 Enactment is inadequate and does not properly address the concept of *al- Waqf bi-al Wasiyyah*.⁵³ Therefore, through Part VII of the 2015 *Waqf* Enactment, the practice of making *Waqf* through wills is further addressed.

Power and Responsibility of PWS and Majlis Agama Islam Selangor

Certain jurisdictional conflicts have arisen between the *Waqf* Management Committee and PWS in terms of power to manage *Waqf*. It was further mentioned that the 1999 *Waqf* Enactment was insufficient in recognizing the duties and responsibilities of PWS. It was therefore the task of the 2015 *Waqf* Enactment to remedy this conflict and properly recognize PWS as the managers of *Waqf* in Selangor.

i. Recognition of PWS as *Waqf* Managers

To formally recognize PWS as *Waqf* managers in Selangor, the 2015 *Waqf* Enactment has accorded power to MAIS to appoint third parties to manage *Waqf* on its behalf. This position, prior to 2015, has not been undertaken by any other states in Malaysia since the promulgation of the Islamic administrative laws of the states. Since 2015, states such as Perak and Terengganu have also accorded the same power to their respective SIRC's through their *Waqf* Enactments.⁵⁴

This delegation of power is seen as a solution in lightening the burden carried by MAIS in managing *Waqf* and handing over the task to individuals who are more skilfully equipped in property

⁵² Siti Mashitoh Mahamood, "Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif Syariah Dan Undang-Undang," 148.

⁵³ Mahamood, 148.

⁵⁴ Section 27 of Wakaf (Perak) Enactment 2015 and Section 4 of the Wakaf (Terengganu) Enactment 2016.

development. Although PWS was established as the *Waqf* manager for Selangor, the 2015 *Waqf* Enactment reiterates the position of MAIS as the sole *Waqf* trustee in Selangor.⁵⁵ This reiteration is important as it solidifies the position of MAIS as the highest body for administering *Waqf* in Selangor. As MAIS also holds the power to formulate *Waqf* related policies which binds the *Waqf* managers such as PWS, it is therefore appropriate that authority to administer *Waqf* should preside in them. The full powers and responsibility of MAIS in administering *Waqf* is listed down under Part II of the 2015 *Waqf* Enactment.

ii. Powers and Responsibility of PWS

Under Section 2 of the 2015 *Waqf* Enactment, PWS is defined as the Wakaf Corporation of Selangor which was established by the Establishment of Wakaf Corporation of Selangor Order 2011. Reading together the above Order and the 2015 *Waqf* Enactment, among PWS's responsibilities are; to execute, facilitate, undertake and develop properties and products of *Waqf* owned by MAIS. They are also tasked with registration and maintenance of information on *Waqf* properties in the state. Apart from the powers which had been bestowed under the Order, by virtue of the 2015 *Waqf* Enactment, PWS now holds the power to issue *Waqf* shares, accept shares, bonds, sukuk or other instruments for valuable guarantee.

However, the powers of PWS is not absolute. Under Section 8 of the 2015 *Waqf* Enactment, in executing its duties and powers, PWS is still subject to the control and direction of MAIS. Furthermore, PWS has the duty to report to MAIS on its activities and performance. This arrangement retains MAIS as sole trustee but allows it to delegate the management overhead which would otherwise consume its manpower resources.

As shown in Figure 2 above, PWS as a corporation comprises of individuals from different backgrounds and expertise relevant to property development. This range of expertise from the private sector allows MAIS to utilize professionals that may not exist in their current staff and increases the effectivity and efficiency of the decision-making process. A degree of supervision however is still needed from MAIS to

⁵⁵ Section 4 (c) and Section 8 of the *Waqf* Enactment 2015.

ensure that everything done by PWS is according to the Shariah and in the spirit of *Waqf*.

There is however a concern by the authors as to whether such degree of control by MAIS is needed as this adds layers of bureaucracy and thus reduces management efficacy in the institution of *Waqf* in the state. Among the disadvantages which this arrangement could possibly pose are:

- *Slow decision making*

A considerable amount of time would be needed to obtain a decision from MAIS on whether a particular project or *istibdal* can take place. This will impede the development of *Waqf* properties in Selangor, especially with the large number of *Waqf* lands in the state.

- *Communication problems*

Layers of bureaucracy may lead to loss of information. In other words, the decisions made by the upper levels (MAIS) may be lost in translation when conveyed to the executives in PWS and then further conveyed to the officers in PWS who will be executing the directions. Directions passed through written communications or short orders may also be misunderstood where certain nuances that were internally discussed in MAIS may not be passed along.

- *Inflexible and rigid*

An organization with many layers of bureaucracy is deemed to be inflexible in the execution of duties by the officers. It is a standard concept in management theory where a flat organization with less layers allows it to be more flexible and responsive to changing circumstances.

A balance has to be struck which will allow PWS to manage the *Waqf* properties with flexibility and freedom without giving away the status of MAIS as the sole trustee and the highest authority over *Waqf* in Selangor. Although the Establishment of Wakaf Corporation of Selangor Order 2011 has outlined the rights and powers of PWS, it is felt that another rule or by-law could be drafted, by virtue of Section 43 of the 2015 *Waqf* Enactment, to further regulate the relationship between PWS and MAIS and one that would reflect the changes in position which has been made in the 2015 *Waqf* Enactment.

Recognition of third parties as *Waqf* Managers

Among the problems faced in the maintenance of *Waqf* properties in Selangor is the possibility of inefficiency by the *Waqf* managers in handling *Waqf* properties. As of December 2016, there are 908 *Waqf* properties registered under MAIS.⁵⁶ It is therefore expected that there should be increase in *Waqf* Managers to manage these properties.

As noted by scholars,⁵⁷ one of the issues which has impeded the development of *Waqf* in Malaysia is the lack of resources on the part of the SIRC (either in the form of manpower, expertise or financial resources). The number of properties is much larger than the number of staff available to the SIRC and the number of properties is still growing as time goes on. Therefore, by allowing MAIS and PWS to appoint other entities as third parties to manage *Waqf* properties, it would lessen their burden in overseeing every single *Waqf* property and this in turn will reduce the number of idle *Waqf* lands in the state.

By allowing third parties to manage and maintain the *Waqf* property, it would hopefully attract others to endow their land as *Waqf* without the need to relinquish total control over the land. The *Waqif* can recommend for the appointment of his representative (or even himself) to manage the property and can oversee any development project planned on the land. This delegation of power however is still subject to the authority of and conditions laid down by PWS and MAIS.⁵⁸

⁵⁶ “Statistik Hartanah Wakaf.” Accessed December 7, 2019. http://www.wakafselangor.gov.my/index.php?option=com_content&view=article&id=213&Itemid=583&lang=en.

⁵⁷ See Noor Aimi Bt Mohd Puad, Nurauliani Bt Jamlus Rafdi, and Wan Shahdila Shah Bt Shahar, “Issues and Challenges of *Waqf* Instrument: A Case Study in MAIS,” (paper presented at Conference on Management and Muamalah, 2014); Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspective*, 124 ,Sohaimi Mohd. Salleh and Syarqawi Muhammad, “*Waqaf* Development in Malaysia: Issues and Challenges,” (paper presented at Dubai International Endowments’ Investment, 2008).

⁵⁸ Section 4(2) and (3) of *Waqf* Enactment 2015.

Vesting of *Waqf* Properties

The issue of *Waqf* registration has also been cited as one of the prominent challenges beleaguering the development of *Waqf* in Malaysia. This is related to other problems such as disputes on the status of the *Waqf* by the *Waqif's* descendants, trespass and illegal occupation. To remedy this problem, legislators in the 2015 *Waqf* Enactment had included several provisions with regards to the vesting of *Waqf* properties and the registration process by PWS.

In the 1999 *Waqf* Enactment, section 13(e) invalidates any *Waqf* if it is inconsistent with any written law. Therefore, if any *Waqf* is not registered/vested as per required under the National Land Code 1965, it may invalidate the *Waqf*. This position is not in line with the spirit of *Waqf* in Islam whereby if conditions of *Waqf* are met, the property is deemed as *Waqf* and therefore ownership no longer stands with the *Waqif*. This position was adopted by the Court of Appeal in the case of *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2008] 6 MLJ 488.

To uphold the spirit and principles of *Waqf*, the 2015 *Waqf* Enactment no longer invalidates *Waqf* that is inconsistent with any written law. Section 13 of the 2015 *Waqf* Enactment states that a *Waqf* will take into effect once all the pillars and conditions for its creation has been fulfilled. Once it has taken into effect, it cannot be sold, be given as *hibah* or inherited by any person.

To further strengthen the registration procedure of *Waqf* in the state, the 2015 *Waqf* Enactment necessitates the creation and upkeep of a *Waqf* registry.⁵⁹ The 2015 *Waqf* Enactment also requires the appointment of a Chief Registrar of *Waqf* and Registrars of *Waqf* whose responsibilities involve taking charge of all matters pertaining to registration of all *mawquf*. This includes; keeping and maintaining a *Waqf* registry for all *mawquf*, keeping and holding all instruments, document of titles relating to the *mawquf*, and reporting to MAIS on the status of the *Waqf* registry. MAIS will then in turn be responsible to publish the list of all properties, investments and assets in the State Gazette.⁶⁰

⁵⁹ Section 15 of the *Waqf* Enactment 2015.

⁶⁰ Section 16 of the *Waqf* Enactment 2015.

The above can be seen as an attempt by the legislators to increase transparency and efficiency by MAIS and PWS. It is suggested however, to further increase transparency and efficiency in land administration. This can be done via a provision to allow PWS or its delegates to conduct surveys on *Waqf* properties in their respective state. This is similar to the provision used in India.⁶¹ Although PWS conducts surveys to determine the position, size, value of a *Waqf* property for purposes of *Waqf* development projects and to determine rental rates, the confirmation of express powers is needed to ensure that PWS can proactively protect the interest of the *Waqf* property.

Other forms of *mawquf*

As time progresses, other than immovable properties, other types of *mawqufs* have been accepted as a form of *Waqf*. This includes cash, shares, bonds, sukuk and other instruments for valuable guarantees. Cash however was not expressly mentioned in the 1999 *Waqf* Enactment as an acceptable form of *Waqf*. Due to exigencies, it is discovered that a specific mention of cash is needed in the legislation to facilitate *Waqf* schemes such as cash contributions, salary deductions and *Waqf* Gold schemes.

The shift in practice is reflected in the 2015 *Waqf* enactment whereby cash *Waqf* and *Waqf* of shares has been explicitly mentioned and acknowledged as a form of *mawquf*. Under the 2015 *Waqf* Enactment, cash *Waqf* is interpreted as cash contribution, gold value or those similar thereto from any person for purpose of *Waqf*. Further widening the spectrum of *mawquf*, the 2015 *Waqf* Enactment further allows for *Waqf* to be made in the form of shares, bonds, sukuk and other instruments for valuable guarantees.⁶² *Waqf* of share is to be distinguished from *Waqf* share⁶³, a *mawquf* which has been recognized under the 1999 *Waqf* Enactment.

⁶¹ Section 4(1A) of India's Wakf Act 1995.

⁶² Section 23 of the Waqf Enactment 2015.

⁶³ The Waqf Enactment 1999 interprets Waqf share as creation of a Waqf through the issuance of shares which are subsequently endowed as a Waqf by the purchaser to the Majlis.

Siti Mashitoh distinguishes between *Waqf* shares and *Waqf* of Shares and explains that the former involves the issuance of sale of shares which are divided into small units based on a specific value to any individuals, corporations or institutions.⁶⁴ These shares are of properties which are purchased or to be purchased by MAIS for purpose of share offerings which are later to be made as *Waqf* to MAIS. The latter on the other hand are the *Waqf* of existing properties such as shares, bonds, sukuk or other instruments for valuable guarantee, including benefits accruing from the aforementioned shares with condition that the business and investment are in line with *Hukum Shara'*.

The recognition of the abovementioned *mawquf* is important in terms of improving transparency and efficiency in handling them by the managers of *Waqf*. These *mawqufs* will have to be listed and recorded in the *Waqf* registry and later gazetted.

Offences relating to *Waqf*

Recent trend has emerged whereby certain individuals or organizations have been organising *Waqf* related activities without approval from MAIS. Although some of the activities could have been conducted by the organizers in good faith and for the benefit of the society, one cannot dispute the possibility of certain individuals collecting funds or properties for their personal gains and not for *Waqf*. The public would then blame MAIS should it be discovered that the funds/properties they have contributed have not been used for purposes of *Waqf*. This would tarnish the reputation of MAIS as well as the reputation of *Waqf* and other Islamic charities and could possibly lead to a reluctance of the society to develop *Waqf* in the future.

A new provision under the 2015 *Waqf* Enactment therefore deems any activities relating to the administration and management of *Waqf* in the state of Selangor without approval from MAIS or PWS as an offence.⁶⁵ Should the individual be convicted, he will be liable to a fine

⁶⁴ Siti Mashitoh Mahamood, "Enakmen Wakaf (Negeri Selangor) 2015 (Enakmen 15): Suatu Ulasan Menurut Perspektif Syariah Dan Undang-Undang," 157.

⁶⁵ Section 45 of the *Waqf* Enactment 2015.

not exceeding one thousand Ringgit or to imprisonment for a term not exceeding six months or both.

The above offence however seems to be referring to individuals who have managed *Waqf* without a written permission from MAIS and PWS and not to individuals who have obtained permission but however have committed misconducts while discharging their duties. Cases have been recorded in other countries whereby these appointed individuals have mishandled the funds and proceeds obtained from the *Waqf*. This kind of offence should also be noted by legislators as to highlight the importance of these *Waqf* managers in upholding the *amanah* bestowed on them.

Another offence which has been addressed in the *Waqf* Enactments is the offence of trespass and illegal occupation. There however seems to be a different approach as to how the offence is addressed in the 2015 *Waqf* Enactment. Under Section 45 of the 1999 *Waqf* Enactment, any act of trespass on *Waqf* land attracts a fine not exceeding five thousand ringgit and imprisonment not exceeding three years or both. A further continuing offender will be fined five hundred Ringgit for each day. The person will also need to demolish or clear the structures or obstructions erected on the *Waqf* property if so required by MAIS.

This stance is no longer followed in the 2015 *Waqf* Enactment. Under Section 44 of the new Enactment, MAIS or PWS is now given the power to take action against the trespasser under any written law.⁶⁶ The prescribed punishment as previously laid down in the 1999 *Waqf* Enactment is no longer applicable. Siti Mashitoh opines that the prescribed punishment in the 1999 *Waqf* Enactment is insufficient and most of the time not proportionate to the damage which has been incurred on the property.⁶⁷ Therefore, by granting flexibility on which law, is to be referred to and not adhering to a specific remedy which may not be favourable, it is hoped that the perpetrator would be appropriately punished according to the damages he had committed on the property.

One might however argue that by giving freedom to MAIS and PWS to take action under any written law, either civil or shariah, it

⁶⁶ Other written laws include civil action under Section 6 & 7 of the Specific Relief Act 1950 and Section 425 of the National Land Code 1965.

⁶⁷ Siti Mashitoh Mahamood, *Waqf in Malaysia: Legal and Administrative Perspective*, 60.

would belittle the role of the Shariah Courts while giving precedence to the civil courts. However, with the limited jurisdiction which the Shariah Courts have in imposing punishment, it would not be fair for the interest of the *Waqf* property to rely on the above prescribed punishment. Developers of *Waqf* lands have often had to deal with the problem of squatters and illegal tenants on *Waqf* lands and this has often times disrupted their projected development time frame and increase costs in *Waqf* development projects. An example was sighted in Ampang where the construction of a *Surau* on a *Waqf* land was disrupted due to the illegal occupation of a construction company which had used the land as a storage site for its construction materials. The problem persisted since 2014 and legal action was only initiated in 2017 to claim for vacant possession.⁶⁸ Therefore, a provision which shows the seriousness of the offence is needed to ensure that these properties are protected and kept safe. However, it is suggested that a provision could be included in the *Waqf* Enactment which in the event of dispute, parties will be required to first attempt to solve the dispute amicably, either through formal or informal ADR processes, before referring the matter to Court. Through this, the number of cases brought to court and the corresponding litigation costs can be reduced.

CONCLUSION

Examination of the evolution of *Waqf* practices in Selangor above indicates that it is the right move for the legislators to replace the 1999 *Waqf* Enactment with the 2015 *Waqf* Enactment as it is better suited to the current practices of *Waqf* in the state. Several much-needed amendments have also been made to address problems which have occurred and have been experienced by MAIS in managing *Waqf* in the state. Being the only state in Malaysia which has repealed its previous *Waqf* Enactment for an improved version shows the state's continuing interest in improving the performance of its *Waqf* administration. It was the hope of the legislators that with an improved legal framework, the *Waqf* institution in the state would attract more parties in contributing

⁶⁸ Perbadanan Wakaf Selangor, Interview on December 27, 2017.

to *Waqf* which in turn would benefit the surrounding Muslim community.

Through the analysis of the 2015 *Waqf* Enactments, it is found that the new enactment is indeed an improvement from the previous *Waqf* Enactment. It is found to be more comprehensive and has addressed several important issues, however several concerns have been put forward in this paper on its construction. It is understood that over-policing could have a negative effect on the growth of the institution as it would lead to rigidity and little room for creativity. It is therefore not the intention of the writers to propose over regulation that would produce such rigidity. However, more could be done to ensure that the management of *Waqf* properties is conducted smoothly and with transparency while still allowing for flexibility to adapt to the various circumstances of each *Waqf* property.

Tunku Alina has promoted a *Waqf* model law which could be adopted by the states in Malaysia.⁶⁹ In terms of improving the transparency of *Waqf*, she proposes among others, to give each *Waqf* a judicial personality and with it, transparency measures in terms of its accounts. By doing so and not consolidating every *Waqf* and its benefits and proceeds into a single *Waqf* fund, it will increase accountability on every single *Waqf* received by the SIRC's and ensure that the proceeds are not mishandled. This factor could perhaps be considered in the promulgation of future *Waqf* enactments in Malaysia. Other factors which could be considered are the revival of Family *Waqf* and perhaps the creation of a *Waqf* dispute resolution framework which would address future possible *Waqf* disputes.

Since the introduction of the 2015 *Waqf* Enactment, states such as Terengganu and Perak have also promulgated their own *Waqf* Enactments which could be seen as being just as comprehensive as the one in Selangor. Selangor has indeed been viewed as one of the states in Malaysia which has spearheaded the progress of *Waqf* through its *Waqf* legislation. Other states which have yet to enact their own *Waqf* Enactment or have yet to update their *Waqf* Enactment should consider following Selangor's footsteps in improving their own *Waqf* Enactments for more transparency and accountability. However, they

⁶⁹ Tunku Alina Alias and Murat Cizakca, "Should Malaysian States Have A Fresh Approach to Waqfs? A Proposal for A Model Waqf Enactment," *ISRA International Journal of Islamic Finance* 6, no. 2 (2014): 138.

are free to promulgate provisions which are felt to be more suitable for the state. As an example, states might still have reservations in allowing third parties to manage its *Waqf* properties as it would lead to other problems such as mismanagement and misappropriation of *Waqf* funds.