

DEVELOPMENTS IN HARMONISATION OF SHARĪ'AH AND LAW ON *WAQF*

Nor Asiah Mohamad*

ABSTRACT

Sharī'ah-compliant social finance products are in high demand worldwide. *Waqf* is one of the above instruments based on which can be designed and implemented in line with Sharī'ah. The complexities in Malaysia due to the adoption of the dual legal system, the federal-state background, and the exclusive jurisdiction of the state on Islamic matters have, to a certain extent, produced differences in procedures and laws, as well as in the area of *waqf*. This paper highlights the justification for, the processes related to, and developments in the harmonisation of *waqf* related laws in Malaysia, within the diverse legal background of the country. It adopts the method of doctrinal analysis, looking into various laws, articles, books, and research papers. The paper argues that harmonisation initiatives involving multiple fields, including law, policy, education, and strategic cooperation, are necessary to elevate *waqf* beyond the social philanthropy paradigm. It is found that the position of Islamic laws in Malaysia, to a certain extent, has impacted the development of *waqf*, especially in the jurisdictions of Sharī'ah Court and civil court. The recognition of Islamic finance via specific laws has contributed to designing the framework of laws

* Professor at Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, PO Box 10, 50728 Kuala Lumpur Malaysia. Email: nasiahm@iiu.edu.my (Corresponding Author).

[Received: 25 June 2024, Accepted: 28 October 2024, Published: 31 November 2024]



The IIUM Law Journal is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/).

on *waqf*. History shows that a lack of understanding of the concept of *waqf*, especially related to its difference from the English concept of trust and the division of power between federal and state authorities, has also influenced the slow development of *waqf* in Malaysia. This paper recommends standardisation of state laws and a change of mindset among administrators, which are crucial for the sustainability of *waqf* in Malaysia. It is hoped that this study shall contribute to the preparation of new policies and laws especially in the Malaysian context.

Keywords: Harmonisation, Islamisation, Waqf, Endowment, Islamic Social Finance.

PERKEMBANGAN DALAM HARMONISASI SYARIAH DAN UNDANG-UNDANG MENGENAI WAKAF

ABSTRAK

Produk kewangan sosial patuh Syariah semakin mendapat permintaan tinggi di seluruh dunia. Wakaf adalah salah satu instrumen yang boleh direka dan dilaksanakan selaras dengan Syariah. Walau bagaimanapun, di Malaysia, kompleksiti yang timbul akibat penerapan sistem perundangan dwi, latar belakang persekutuan-negeri, dan bidang kuasa eksklusif negeri dalam hal ehwal Islam telah menghasilkan perbezaan dalam prosedur dan undang-undang, termasuk dalam bidang wakaf. Kertas kerja ini menekankan justifikasi, proses berkaitan, dan perkembangan dalam usaha harmonisasi undang-undang berkaitan wakaf di Malaysia, dalam konteks latar belakang perundangan yang pelbagai di negara ini. Ia menggunakan kaedah analisis doktrinal dengan meneliti pelbagai undang-undang, artikel, buku, dan kertas penyelidikan. Kertas kerja ini berhujah bahawa inisiatif harmonisasi melibatkan pelbagai bidang termasuk undang-undang, dasar, pendidikan, dan kerjasama strategik adalah perlu untuk meningkatkan wakaf melebihi paradigma filantropi sosial. Didapati bahawa kedudukan undang-undang Islam di Malaysia, pada tahap tertentu, telah memberi kesan kepada perkembangan wakaf, terutamanya dalam bidang kuasa Mahkamah Syariah dan mahkamah sivil. Pengiktirafan kewangan Islam melalui undang-undang khusus telah menyumbang kepada pembentukan rangka

kerja undang-undang wakaf. Sejarah menunjukkan bahawa kekurangan pemahaman mengenai konsep wakaf, terutamanya perbezaannya dengan konsep amanah (trust) dalam sistem Inggeris dan pembahagian kuasa antara pihak berkuasa persekutuan dan negeri, turut mempengaruhi perkembangan wakaf yang perlahan di Malaysia. Kertas kerja ini mencadangkan penyeragaman undang-undang negeri dan perubahan pemikiran dalam kalangan pentadbir sebagai langkah penting untuk memastikan kelestarian wakaf di Malaysia. Kajian ini diharapkan dapat menyumbang kepada penyediaan dasar dan undang-undang baharu, khususnya dalam konteks Malaysia.

Kata Kunci: Harmonisasi, Islamisasi, Wakaf, Endowmen, Kewangan Sosial Islam.

INTRODUCTION

The word 'harmonisation' in the perspective of civil law and Shari'ah has many connotations. Some of the literature shows that the discussion on Shari'ah and civil law revolves around the initiatives to Islamise the two principles rather than to harmonise.¹ Hence, to a certain extent, it is not an exaggeration to say that 'harmonisation' is coined to liberalise the term Islamisation. In the context of Shari'ah and Law, one would agree that the initial process involves a series of actions to ensure that the law in Malaysia is Shari'ah compliant. Under certain contexts, the work for Islamisation or harmonisation is almost the same. It is rationalisation of the civil law so that it falls in line with Islamic principles, or it allows for more flexible or liberal adoption of Islamic rules so that it comes in line with the Shari'ah according to *Hukum Syarak*.

Ironically, the result of the process of Islamisation or harmonisation is similar and serves almost the same purpose i.e. to ensure the laws in Malaysia are in line with Islamic teachings, thus making Islam a way of life. This is true as far as *waqf* and land laws

¹ For example, Nor Asiah Mohamad (2012), "Dealing with Environmental Issues: Preparing A Framework For Environmental Education, Policy And Laws In Malaysia", *IJUM Law Journal*, 15(1). <https://doi.org/10.31436/iiumlj.v15i1.57>

are concerned. The results show that various efforts are being made to make *waqf* and land laws in line with the teachings of Islam. The wave of Islamisation which initially took place in the 1980s has resulted in the establishment of the Islamisation committee at the federal and national levels, dealing especially with matters such as laws related to family, land, banking, and finance as well as contract law.

Works of literature show that there are various initiatives to define what “Islamisation” is. As there are views that call for a more subtle word instead of Islamisation, the word “harmonisation” was introduced to reflect a more friendly way of approaching the policy initiatives in the context of a multi-racial country.²

Kamali explains that harmonisation usually involves two different types of things or ideas. If two things are identical, there is no necessity to make them harmonious because they are already in harmony. Since then, there have been ongoing works on harmonisation or even Islamisation.³ The efforts were not only confined to laws alone but also in the aspect of government policies and education. The government has also established various committees at the higher education level where certain universities have been entrusted with some niche areas on Islamisation, for example, University Sains Islam Malaysia and International Islamic University Malaysia. The efforts for Islamisation in Malaysia have taken place for various reasons such as to meet the new expectations of the industry or even achieving political goals. The rapid development on matters relating to land transactions, Islamic banking, and finance including *waqf*, as well as land acquisition, underground land, and condominium laws require a review of the existing laws. Harmonisation may be categorised as one

² Suhailah Hussin, Ariffin Mamat ., and Siraje S Abdallah S.S., "The Perceptions, Practices and Challenges of the Integration of Knowledge amongst the Academics of International Islamic University Malaysia (IIUM)," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* (2018): 117-130

³ Muhammad Hashim Kamali, “Sharīah and Civil Law: Towards a Methodology of Harmonization. *Islamic Law and Society*”. Vol. 14. No. 3. (2007): 391-420. See also, Sharifah Zubaidah Syed Abdul Kader, , Nor Asiah Mohamad and Zuraidah Ali, ., *Whether Waqf and Endowment can ride the same legal Vehicle in Malaysia?*, Najibah Md Zin, Azizah Mohd,Nor Jihan Abd Aziz, Nasimah Hussin (eds.),(2023) 259-299.

of the processes of Islamisation. When Islamisation may cover a bigger process, harmonisation focuses on rationalisation of two different principles and changing or combining them so that they appear to be acceptable for all. The changes may require a legal process of deleting, incorporating, or editing the original one to bring a new provision.

Waqf is an act of dedicating one's property where the benefits are indicated to be enjoyed by others, be they among the family members or the public. The nature of properties can be immovable or movable, which are entrusted to a trustee known as *mutawalli* or *nazir* who will manage it to generate *manfa'ah* (benefits), enjoyed by the intended beneficiaries or the public. The intentions of the donors can be diverse, not limited to religious purposes, thus making *waqf*'s potential for a bigger economic investment or income generation transcending centuries. Proof exists that it was the main economic mover and the mode of preservation of the assets of the Muslims during the Ottoman period in Turkiye, especially in the application of cash *waqf*.⁴ The existence of *waqf* properties in the areas formerly ruled by the Ottoman Empire, such as the Balkans and some parts of Europe, e.g. Greece, is proof of the fact that practicing *waqf* was for the *ummah*.⁵ The Muslim warriors who understood about *waqf* chose to leave behind the war booty to be benefitted by the Muslim converts, and even the original non-Muslim inhabitants.

The practice of *waqf* that takes place beyond mere charity has broadened the understanding of the stakeholders and practitioners that *waqf* is not like *zakāh*. *waqf* requires continuous effort to produce a sustainable product or *manfa'ah*. As such, the appointment of the *nazir* and *mutawalli* is crucial. The duty revolves around an asset that stays longer than the owner-*wāqif* or the trustee. The distinguishment of the

⁴ Nur Shuhada Ishak Yelkenci, Mehmet Bulut, (2024). Ottoman Cash Waqf Contracts and the Transactions from the Fifteenth to Nineteenth Centuries: A Source for the New Cash Waqf Fintech Contract Model and SDGs. In: Mehmet Bulut, ., Bora Altay, ., Cem Korkut, C. (eds) Islamic Financial Institutions from the Early Modern Period to the 20th Century. Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-031-51318-3_2

⁵ Mahmud Bulut, (2017). Waqf, Economy And Finance In The Ottoman Civilization Of The Balkans. Adam Academy Journal of Social Sciences, 7(2), 129-148. <https://doi.org/10.31679/adamakademi.378746>

term for *waqf* continues with the differentiation of the term *waqf* with trust, endowment, donation, or *infāq*. Using a correct term is important as the impact is crucial. When the Federal Constitution declares under its Ninth Schedule and Art 121(1A) that “Islam” is under the Shari’ah Court jurisdiction, the use of the term will simply determine which court it will be heard when there is a dispute. Such an issue is seen as crucial in the context of a multi-religious state like Malaysia where any judge with a different background may sit in the court. History of *waqf* shows that lack of understanding of ‘Islam’ in particular “*waqf*” has caused the Muslims to struggle to bring back the correct concept of *waqf*. In general, it can be said that harmonisation of *waqf* is always about making people understand that it is not a trust as perceived under English law, and it is also not an endowment as it is widely practiced in Western countries. As such, it needs its legal framework, with a clear jurisdiction given to the right court and a process of governance that firmly holds to Shari’ah principles. Even in the current practice, some opine that substance is more important than form, we argue that accommodating to replace the word ‘*waqf*’ with other forms such as foundation or endowment is a missed opportunity.

CONCEPTUAL FRAMEWORK OF HARMONISATION

The English word “harmonisation” is equivalent to the Arabic word “*talfiq*”. In English, this word means “to bring one thing in harmony or in agreement with another or to make one thing harmonious with another. Hence, the process of harmonisation usually involves two different things or two different ideas which are put or designed to make them harmonious. In this exercise, differences that exist are reduced or removed.

The connotation “harmonisation” in law is always associated with the harmonisation between Islamic law or Shari’ah with civil laws or common laws. While common law refers mostly to judges-made law and codified law, under civil law, the judges play a role in establishing the facts of the case and applying the provisions of the codified law. Though the judge often brings the formal charges, investigates the matter, and decides on the case, he or she works within a framework established by a comprehensive, codified set of laws. Both legal systems, owe their origin to canon law, natural law or the common

practices or customs. Civil law is normally associated with the European legal system while common law is associated with Commonwealth countries. The process of harmonisation or Islamisation of laws is taking place with the effort to either adopt the principles of common law or civil law which are not against Islamic principles or to make clear the laws that are Islamic and not Islamic. For example, provisions relating to '*ribā*' in any sector have been declared un-Islamic and have been replaced with 'penalty' in some transactions such as Islamic banking and finance, contracts, or land. In complementing the need to preserve the sanctity of Islamic law comprehensively, specific jurisdiction is given to the Sharī'ah court.⁶ For example, as the land transactions facilitate Islamic finance for their products, a more Islamic dispute resolution is introduced, one of them is to provide the jurisdiction in hearing Islamic finance, Islamic social finance or *mu'āmalah* to Sharī'ah court.

Unlike some aspects of the laws, the term 'harmonisation' for *waqf* seems to be a suitable word to reflect the process that occurs in the field. Being Islamic, *waqf* requires a better concept to fit into the Malaysian legal system. With the legal background of the Malaysian legal system, being colonised for a more than hundred years, the impacts are obvious even for *waqf*.⁷ There are misunderstandings taking place in learning about '*waqf*' especially among the legal experts including the lawyers and judges.⁸ Some view it as like trust; hence, the application creates misconception and results in the true concept of *waqf* doom to fail. For example, *waqf* as determined by the Muslim jurists must be perpetual, irrevocable, and inalienable. By equating *waqf* with trust, the element of the perpetuity of *waqf* cannot be materialised and in its practice, *waqf* assets have been sacrificed,

⁶ Article 121A, Federal Constitution 1957

⁷ Salehuddin Md Dahlan, Nor Asiah Mohamad, and Nuarulhilar Md. Dahlan ., "Influence of the British Colonialist on Waqf Practice in Penang, Malaysia: Reflections on its legal history," UUM Journal of Legal Studies Vol. 13. No. 2. (2022): 295-316.

⁸ Abdul Hamid Mohamad, Harmonisation Of Common Law And Shari'ah In Malaysia: A Practical Approach lecture delivered at ABD AL-RAZZAQ AL-SANHURI LECTURE, ISLAMIC LEGAL STUDIES PROGRAM, Harvard Law School, 6 November 2008, accessible at <https://www.malaysianbar.org.my/article/news/speeches/speeches/harmonisation-of-common-law-and-shari-ah-in-malaysia-a-practical-approach>

degazetted or changed, or even deleted for the sake of development or better projects to serve the society.

One of the most important legacies of the English law of trust to *waqf* is the abolishment or restrictive treatment for the creation of family *waqf*.⁹ While Islam teaches its followers that charity begins from home where your close family should not be left in poverty, the English principle of charitable trust prescribes that it is not a charity if the beneficiaries are your family.¹⁰ Another contradicting principle of trust and *waqf* is, that Common law trust does not recognise perpetuity principles in charitable deeds.¹¹ *Waqf* according to the majority of Muslim jurists must uphold the perpetual nature of the charitable act as the assets are no longer belong to the owner but transferred to Allah SWT.

The influence of the English rules can be seen in the *waqf* enactment where any dedication for a specific *waqf* (*Waqf Khās*) must get permission from the Sulṭān or the State Islamic Religious Council. This fact is very much in contrast to the position of family *waqf* in some of the Middle East countries and as practiced by the companions of the Prophet SAW. Most of the *waqf* are categorised as family *waqf*¹² or at least *Waqf Mushtarak* (combined *waqf*), a dedication that combines benefits for the family members and the public. Many wealthy people who wish to dedicate as *waqf* their assets believe that their family members know better how to manage their assets or business especially, if the dedication relates to their existing nature of business. If applied to the law in Malaysia, the assets dedicated as *waqf* will be transferred to the management and control of the State Islamic Religious Council (Majlis),¹³ while their ability and capability to

⁹ In most of the state jurisdiction on family *waqf* in Malaysia, the laws impose approval from the State Islamic Religious Council headed by the Sultan, as a requirement to create family *Waqf* (*Waqf Ahli*).

¹⁰ *Abdul Fata Mohamed Ishak v. Russorrioy Dhur Chowdry* (1894) L.R 22 I.A. 76

¹¹ *Ibid*

¹² Muhammad Abdurrahman Sadique, Ahaseeb Ansari, Mohsin Hingun, & Ahmad Hasan (2016). Socio-Legal Significance of Family *Waqf* in Islamic Law: Its Degeneration and Revival. *IIUM Law Journal*, 24(2). <https://doi.org/10.31436/iiumlj.v24i2.275>

¹³ List 2, Ninth Schedule of the Federal Constitution provides that Islam falls under the jurisdiction of the State, hence, the highest authority dealing

handle the assets are questionable. As a result, many of the high-net-worth people opt to create other charitable acts such as endowment or foundation instead of *waqf* where more powers are given to their involvement in the management of the entrusted assets.

Another important setback of or lack of recognition of family *waqf* relates to tax entitlement. There is no tax relief given to family. One of the reasons is due to colonial influence on the charitable principle of no charity to be focused only on one's descendants hence, denied the right of the donors to any tax concession.¹⁴ Sadique A.R argued that the elements of public benefits exist in the practice of family *waqf* as once the family member is extinct or the terms of the *Ṣīghah* have been fulfilled, the benefit of the *waqf* shall go to *Baitul Māl*, hence, serving the public entities. Here, harmonisation of *waqf* between the civil provision of the tax with the principles of *waqf* is necessary.

Under the Income Tax Act 1967 (ITA), it was generally understood and fought by some *waqf* managers or donors that they are entitled to tax relief or some had obtained permission under Section 44(6) and whomever put their cash as *waqf* will get a tax relief of 10% for individuals and 10% for corporations.¹⁵ While, from the perspective of the Inland Revenue Board, they are not entitled to such taxes. Even the Inland Revenue Department has made an amendment to the law by allowing for tax rebates by introducing Section 44 (11D) ITA but still, it is not extended to family *waqf*. There is a need for harmonisation of tax law and *waqf* by proper drafting and reading of the draft of the *sīghah* (pronunciation) to the effect that their interpretation can be in line with the civil law objective of the law and achieving justice as aimed by the Sharī'ah. It is suggested that a solution to this is to define the beneficiaries of family *waqf* so that they may fall under the categories of education, poverty, religion, and other avenues including

with matters pertaining to Islam, including *waqf* is the Majlis, headed by the Sultan.

¹⁴ Nur Yuhani Ismon & Mohsin Hingun, (2020). Fiscal Advantage Of Waqf And The Rule Of Tax Exemption For Charitable Purposes Under The Income Tax Act 1967. *IIUM Law Journal*, 28(1), 253–276. <https://doi.org/10.31436/iiumlj.v28i1.501>

¹⁵ Income Tax Act 1967.

healthcare. Sadique suggested that the *sīghah* (terms) for the *waqf* may be worded as ‘dedication for the poor among my family members’.

The issue is, how such damage can be minimised when adapting to the current law. While amendment of the law, is certainly not easy, harmonisation can be achieved through having a more focused and clearer provision of the law that gives more room for the Majlis to exercise the power as prescribed by the law.

WHY HARMONISATION OF WAQF LAW?

No Comprehensive *Waqf* Law

At present, *waqf* law and institutions face challenges in promoting *waqf* as a third-sector economy. Unfortunately, the main factor is always associated with the restrictive legal provision on *waqf*. The provisions that declare all *waqf* properties as a trust under the Majlis and the requirement for any *Waqf Khās* to get permission from the Sultān or Majlis as the obstacle to the dynamic development of *waqf* in Malaysia. Moreover, some states are still referring to the several provisions of *waqf* under the Administration of Islamic Law Enactment applicable to their states and are yet to introduce a comprehensive *waqf* law. In practice, as *waqf* is not mentioned and explained in the Quran, Muslim jurists have to exert their intellect in producing rules or *ijtihad* on *waqf*. This has caused to having several opinions or rules on *waqf*.

The main objective of harmonisation of the law is to create consistency in the law, provide clarity, and reduce legal risks in transactions in Malaysia. Tracing the efforts in *waqf*, is more to make *waqf* remain relevant in the contemporary context. This is important to provide a good reputation for the *waqf* institution, hence, bringing the trust of the public to contribute to *waqf* products and activities. It is crucial to make *waqf* fully Shari‘ah-compliant, not only in principles but also in practice. *Waqf* is not only a religious concept but also accepted as an economic and social philanthropy. In the realisation of these roles of *waqf*, the transactions go beyond the Shari‘ah values but are commercial as well. These activities will expose *waqf* to various non-Islamic or any uncertainties in its transaction. Hence, the concept of harmonisation in this aspect must ensure that the reference and emulation or imitation of the products and processes must be Shari‘ah

compliant. In the law, the sanctity of Sharī'ah is made clear. For example, in Selangor, there is a clear provision declaring the sanctity of *waqf* once the creation fulfils the provisions of *Hukm Syara'*.

The Unharmonised Law on *Waqf* –Lack Standardisation on *Waqf* Law

The unharmonised law of *waqf* owes a lot to the influence of the colonisation on the laws in Malaysia. The traces of English laws are indeed beneficial in making the local laws comprehensive and with clear procedures, while some others, leave a gap and confusion to the local laws. To the worst, some are found in contradiction to the religion and faith of the locals. The mismatch can be seen in the legal structure of *waqf* law in Malaysia, which gives the sole jurisdiction to the State in making any decision on *waqf*. In this case, the State Fatwa Committee will be involved in making new rules on unsettled or unclear issues. This state of affairs has been alleged to create delays in *waqf* assets development. Moreover, the wide discretion of the Majlis or Islamic Religious Council, creates inconsistency and uncertainty in practices between states in Malaysia. Thus, there are risk management issues that require good governance practices by the *waqf* authority. Hence, there is a need for harmonisation of the practices and laws so that it inconsistency of practices may be minimised.

Harmonisation is also crucial in ensuring the procedure of *waqf* is Sharī'ah-compliant, people-friendly, sustainable, and transparent. In addition to the law, these objectives require harmonisation initiative for good governance and standard of practices built in the *waqf* institution itself. In the process, there should be a mechanism for checks and balances, to ensure the provisions of the law, regulations, and by-laws (*Kaedah-Kaedah Wakaf*) are fully complied with. The case laws in *MAIS v Bong Boon Chuen and Ors* [2009] 6 MLJ 307 (FC) and the case of *Tengku Zainul Akmal bin Tengku Besar Mahmud & Anor v. Majlis Agama Islam dan Adat Melayu Terengganu & Anor*. [2012] 3

SHLR 3 are two examples of failure to apply good governance in interpreting the working of the laws.¹⁶

Harmonisation is also an important mechanism to avoid differences or disparities in rules and practices. In the context of *waqf*, this is crucial. The legal structure gives each state powers to determine their laws for *waqf*. For practitioners, this is cumbersome. For *Wāqif*-donor, it may create confusion, to a certain extent. The differences may relate to the differing jurists' views on *waqf*. From a macro perspective, even the principles of *waqf* differ between the four major schools of Muslim jurists. No doubt, harmonisation is crucial in providing guidelines to the people on which schools to be adopted. If the school has lacunae in the law, then which principles from which schools are to be followed? Interestingly, the jurisprudence of *Fiqh* and *Sharī'ah* in Islam has a clear guideline on this matter. The last resort is always opened to the recognised and eligible jurists to determine the law through *Ijtihād* which in the context of Malaysia, is formalised through the process of a *fatwā*.

Tax treatment for *waqf* is one of the examples of how harmonisation has been practiced providing friendly and *Sharī'ah*-compliant tax practices for *waqf*. Before the amendment of the law through the incorporation of new provisions for *waqf*, the practices vary. For example, analysis of the previous provision of the law shows that there is a lack of a specific provision governing tax exemption or tax relief for *waqf*. The tax treatment varies based on each application because the Inland Revenue Board treats this issue on a case basis. There is no standard tax treatment. Hence, the Inland Revenue Board developed a more comprehensive *waqf* guideline for tax purposes to ensure consistency of *waqf* contribution by individuals and corporations, while at the same time fostering public confidence in *waqf* among Malaysians.¹⁷

¹⁶ In these cases, there were unnecessary delay such as when there were simultaneous application at the civil and Shariah court or due to too many parties involved in the proceedings.

¹⁷ Under the Income Tax Act 1967 (Amendment 2020), a *waqf* management corporation established under the State Government Enactment eligible to apply for approval under the subsection 44(11D) ITA 1967

As such, the result shows *waqf* which has been initially perceived as a religious duty has become a social philanthropy and a third economic sector.

Conflict of Jurisdiction

In Malaysia, the unique legal structure left by the British colonial has impacted the governance of matters about Islam including *waqf*. In general, and to a certain extent, this legacy has created some misunderstanding on the position of Islamic law in Malaysia.¹⁸ The federal and state relationship as designated in the Federal Constitution put *waqf* into the state power but left with no clear provisions or laws except for the Administration of Islamic Laws in which, each state has its own. As such, the administration and procedures vary. In practice, the different laws and procedures are not helping the practitioners and the legal experts. As such, some of them resorted to associating *waqf* with the English concept of trust, hence, providing conflict as to the position of *waqf*. The problem can be seen in *Ashabee & Ors v Mahomed Hashim & Ors* (1887) 4 Ky 213. In this case, the court regarded *waqf* as a trust, hence ruled that it falls under the civil court jurisdiction. Nevertheless, in other cases, even the English judges agreed and upheld that the English rule against perpetuities is not part of the law of Johore, hence, *waqf* was upheld. The conflict of the laws relating to *waqf* continues even after the independence or even after the amendment of Article 121 (1A) of the Federal Constitution. Many are aware of the objective of the amendment; to put matters to Islam under the jurisdiction of the Sharī'ah Court hence the decision will come from the rightful experts. Unfortunately, the stigma of the subordinate position of the Sharī'ah Court, the limited jurisdiction of its power provided by the Constitution and the law, and the multi-racial background of our Malaysian society have contributed to the dilemma where some sectors still want their case to be heard by the civil court.

Twenty years after the amendment, the conflict of jurisdiction, as it is commonly referred to, is still taking place. In *G Rethinasamy v Majlis Agama Islam Negeri Pulau Pinang* [1993] 2 MLJ 166. The

¹⁸Wan Ramizah Muhammad, What Makes A Law “Islamic”? A Preliminary Study on the Islamicity of Laws in Malaysia”, 27(1) IIUMLJ 209-232 DOI 10.31436/iiumlj.v27i1.4 20

seriousness of having a dual legal system can be seen in this case where there is a clear conflict of jurisdiction between the civil court and Shari'ah court. The issue relates to *waqf* land but as the parties asked for remedy, hence the case was heard in the civil court. The question is, if the issue involved in the case is a combination of Shari'ah and civil, does the Shari'ah court still have the jurisdiction? From one perspective, this shows that each state has its jurisdiction and, hence, at a better position to determine its laws and procedures. In practice, this does not happen. There are still many states without *waqf* enactments. This lacuna opens *waqf* matters to be challenged in civil court. The Malaysian courts are not filled up by Muslim judges alone but by many non-Muslim judges. In *Muhamad Amin bin Abdul Rahman v MAINPP & Others*, [2019] MLJU 809, Justice Amarjeet Singh (JC) has rejected to hear the plea as he believed that his court has no jurisdiction to hear *waqf* cases although the plaintiff sought to get a declaration that it is not *waqf*. It was argued that there should be a provision that declares that all *waqf* either appears as trust, endowment, or foundation must be brought to Shari'ah court even if the claim or dispute relates to remedies or others. So long as it is related to *Amanah Khairat*, Islamic trust, Islamic endowment, or Islamic foundation, such issues must be brought to the Shari'ah court irrespective of whether the remedies are within or outside the jurisdiction of the Shari'ah court.

No civil judge can hear cases of 'trust' in which the subject or product is approved by a Shari'ah panel. It is now a trend for many parties to create what has been referred to as a foundation, endowment, or trust, but with the spirit of *waqf* merely to avoid the management of the Majlis or being subject to the requirement to get approval from the Majlis. For example, there are no rules or regulations devised to minimise conflict or provide certainty to the procedures. Many aspects of the laws and procedures are left at the discretion of the authority in charge, subject to their discretion and desire. Despite having provisions stating the power of the Majlis to appoint a private trustee, or approve a suitable trustee of the *wāqif's* choice, the common complaints about the difficulty in getting approval for managing *waqf* are rampant. The different approach which is restrictive is not healthy or positive for *waqf* development. In most occasions, many property or assets managers opt for managing trust money as an endowment or foundation, instead of *waqf*. How the situations can be reconciled or harmonised within the current legal framework?

On many occasions, the lack of knowledge about the true concept of *waqf* based on Shari'ah, created conflict, and cases of overruling of Shari'ah principles on *waqf* by the civil courts happened many times.

Different Understandings of the Concept of Waqf

Among the main misunderstandings about *waqf* that lead to different policies and judgments is the misconception of *waqf* with trust, under English law as well as equating *waqf* with endowment as practiced by many Western organisation. The familiar terms related to *waqf* are *Ṣadaqah*, *Ṣadaqah Jāriah* and *Habs*, '*amanah Khairāt*', *Inḥāq* and '*derma*'. Sometimes, *waqf* is written as '*Wakaf*' or '*Wakap*' in Southeast Asia. In Northern Africa, the jurists still use *Habs*, *Ḥabous* or *Tasbīl* for the same concept. In English, it is commonly translated as Islamic endowment, pious endowment, Islamic trust, religious endowment, religious foundation, etc. Under the Administration of Islamic Law Enactment in some states in Malaysia, the term "*Amanah khairat*" may trigger a question of whether this is also part of *waqf*. These queries require a close look and deep thought of the concept of '*waqf*'. Its special feature is that it comes with identified pillars and conditions or prerequisites. Act of *waqf* must fulfill all the requirements, hence harmonisation process must also distinguish *waqf* from other charitable acts so that *waqf* can be clearly separated from other charitable deeds. Nonetheless, it is acknowledged that the influence of colonialism has, to a certain extent, impacted the practice of *waqf*. In the past, *waqf* was always associated with the concept of 'trust' under the English charitable act. While the spirit of 'charity' in trust and *waqf* may be similar, the spirit, origin, and practices vary. When both, trust and *waqf* are claimed to be based on 'religion', yet the foundation of religion differs, as such, the practices vary. While trust approves any legal act *waqf* has put the condition that it must be Shari'ah compliant, as such excluding any elements that involve '*ribā*' (interest), *gharar* (uncertainty), etc. This value differentiates the means. While the trustee for trust may exert to accumulate as much profit as possible to fulfill their duties, the manager for *waqf* has to be very careful to choose a mode of investment that is considered Shari'ah compliant. In the context of a Muslim country or country providing a Shari'ah system for its people, the practice of *waqf* or endowment or trust model must facilitate this core principle in practising *waqf*. The

harmonisation must be engaged more comprehensively, addressing the source of laws, the policies as well as the human resource with a more inclusive ecosystem. The harmonisation of *waqf* with other Islamic social finances such as *zakāh*, providing a more inclusive Islamic finance system, supported by a clear court system or any dispute resolution is considered vital.

Different Principles Due to Different Views of *Mazhab*

There is no clear word of '*waqf*' found in the Quran. The Muslim jurists believe that the practice of *waqf* is based on the various verses in the Quran encouraging Muslims to do *sadaqah* or charity. Hence, rules on *waqf* are mostly developed based on *ijtihad* either individual or collective *ijtihad*. By saying that *waqf* is *ijtihadī* subject or matter where it allows for room to interpret the rules of *waqf* flexibly but within Shari'ah provisions. Judicial *ijtihad* has been used as a tool for legal reform on many other occasions such as family law. Following this, the Muslim jurists apply *waqf* in different practices and rules. Some believe that since *waqf* must be perpetual, hence, movable property is not allowed. Nonetheless, the government through the exercise of *ijtihad* and *fatwa*, has made the initiative to declare *waqf* of intangible and movable *waqf* permissible. In addition, there are also various verses on '*infāq*', another general form of fulfilling one duty to others either as an obligation or as a charity. The word '*waqf*' comes from the practices of the Prophet SAW and their companions. It is mentioned as voluntary, especially in the Ḥadīth regarding Saydina Umar RA and his land in Khaybar, which has formed a standard element of doing charity that is more perpetual and beneficial.¹⁹ There

¹⁹ It was reported by Ibn Umar that Umar bin Khattab (RA) got some land in Khaibar and he went to the Prophet (ﷺ) to consult him about it saying, "O Allah's Messenger (ﷺ) I got some land in Khaibar better than which I have never had, what do you suggest that I do with it?" The Prophet (ﷺ) said, "If you like you can give the land as endowment and give its fruits in charity." So `Umar gave it in charity as an endowment on the condition that would not be sold nor given to anybody as a present and not to be inherited, but its yield would be given in charity to the poor people, to the Kith and kin, for freeing slaves, for Allah's Cause, to the travelers and guests; and that there would be no harm if the guardian of the endowment ate from it according to his need with good intention, and fed others

are differences of opinion especially on the three main conditions mentioned in the hadith i.e. the *waqf* cannot be alienated, it has to be perpetual, and it cannot be revoked. In addition, the importance of *waqf* has subjected it to continuous scrutiny and developments in terms of practices. The element of perpetual *waqf* has in some cases required a revision especially when the *mawqūf* is no longer benefitting the 'ummah or the beneficiaries or the intention of the donor is not possible or economical to be practiced. The change over time needs for the intention of the donor of the donor to be revised. Hence, the principle of *istibdāl* has been introduced. Similarly, development like property requires a new dimension of *mawqūf*, this has also been resolved with *ijtihad* which is based on the '*maṣlahah*' or the public interest.

There are initiatives for the unification of laws and practices for *waqf* through the introduction of government policy. The Department of Wakaf (JAWHAR) under the Prime Minister's Office has made several guidelines on *waqf* but they remain a document for reference with no obligation to follow or mere non-binding guidelines.

RESEARCH METHODOLOGY

This paper adopts a doctrinal analysis based on the kinds of literature gathered from the library, physical and online. The most important documents are the statutes including the Federal Constitution, the Waqf Enactment especially the Selangor Waqf Enactment, and the recent enactments on *waqf* including the Terengganu and Sabah *waqf* enactments. In addition, analysing the related laws on waqf, especially the National Land Code (rev.2020), the Trustee Act 1949, the Local Government Act, and the Income Tax Act 1967, are vital to see the development of harmonisation of laws on *waqf*, especially towards achieving the objectives to ensure the practices of *waqf* served justice to the people. In doing this, the law of *waqf* must be designed towards this as well as works towards ensuring other related laws are also in line with Sharī'ah.

without storing it for the future." *Sahih al-Bukhari* 2737, Book 54, Hadith No. 24, <https://sunnah.com/bukhari:2737>

The process will involve identifying certain themes such as Islamisation, harmonisation, amendment, deletion, Sharī'ah compliance in determining the efforts carried out. The most works analysed come from articles published in journals. Similar sets of keywords or themes are used. In addition, several cases from the lexis and Nexis websites are analysed based on the keyword '*waqf* or *wakaf*' as well as an endowment, trust, and Islamic charity to determine the court's view about '*wakaf*' and to determine the extent the English principles of charitable trusts have influenced decisions on *waqf*. The findings are discussed based on the subtopics identified in this paper.

METHODOLOGY OF HARMONISATION OF LAW ON WAQF

The main objective of harmonisation process is to uphold justice, seek legal clarity, make laws acceptable and recognisable by the followers, and make *waqf* relevant to benefit its people. It may be achieved through various ways and this paper investigates some of these methodologies which include among others creation of new laws, rules, and guidelines. It also involves legal codification, repeal, and incorporation of new provisions if the needs arise. The courts also play a role in making an impact through case law, and some rules are created or resolved through the issuance of *fatwā* or *ijtihad*. In the context of Malaysia, which is prescribed to federalism, there are times when the legislation of Federal laws will provide uniformity of the laws.

The traditional process of *talfiq* (harmonisation) takes place with several methods such as *takhayyur* and *talfiq*. This process is also carried out in harmonisation of *waqf*. It could be seen in several efforts as below:

a. Establishing a Special Committee to Investigate any Principles and Practices that are not Islamic or not Sharī'ah Compliant.

While some areas of law such as family or land law have a long series of discussions and establishment of a specific committee to look at the Islamisation matters, *waqf* is an exception. Its nature and principles are seen as Islamic. The needs for harmonisation of *waqf* take place when the implementation of *waqf* which is purely based on Sharī'ah has been seen by the colonial administrator and legal person as similar to trust

and there were efforts to use trust law as a basis to determine rules and procedures on *waqf*. In addition, as there is no clear principle on *waqf* in the Quran, such perception and action could not be ruled out as 'un-Islamic' or wrong. The problem only arose when the use of 'trust' has devoid of the very objective of *waqf*, that it has to be perpetual; it cannot be revoked or alienated or transferred to others in whatever means, as it belongs to Allah SWT. In *waqf*, the discussion about the harmony of *waqf* and trust and others appears in the effort to Islamise Islamic banking and finance. As *waqf* later is seen as an Islamic social finance, any rules relating to finance and Islamic banking must be given due consideration.

b. Introducing New Law, Amending, Deletion and Insertion of the Existing Law

History shows that *waqf* has been modified if not abolished completely by the colonial. The shreds of evidence can be seen in some of the Commonwealth countries like India and the Malay States where the British imposed their concept of trust to *waqf* through several actions, namely by (1) replacing Muslim *qadis* with colonial judges; (2) abandoning the role of Muslim experts in helping the colonial judges; (3) training the judiciary with British law; (4) integrating British legal notions with indigenous traditions, rather than applying Islamic law and (5) applying British civil law in legal dispute cases on *waqf*. Kamila T wrote that the law of *waqf* in India has differed far more materially from the original rules of Muhammadan law than that of *hibah* or usufructuary bequest. This was due to the misapprehension of the law itself. The obvious impact on the Malay states is always related to the centred power of the State Islamic Religious Council (Majlis) and the Sultān in *waqf* decision-making making and the law which declares *waqf* asset automatically becomes under the purview of the Majlis.

With many states and each has its authority on matters about Islam, Islamic laws and *waqf* laws vary. Some states such as Kelantan, Kedah, Perlis, Sabah, Johor, Wilayah Persekutuan are still comfortable referring *waqf* matters to the Administration of Islamic Law Enactments which are available in every state. Unfortunately, this enactment only provides for the general provisions of the administration of *waqf* while the details are left to the *ijtihad* of the

Muslim jurists and later endorsed via *fatwā* (edict). Although the procedures for *fatwā* are clear, the position of *fatwā* as a source of laws in Malaysia is always being challenged.

The amendment to Article 121(1A) of the Federal Constitution 1957 does not give a conclusive position of *fatwā*. Currently, there are eight states with *waqf* laws, including Selangor, Malacca, Negeri Sembilan, Perak, Terengganu, Sabah, and Pahang while Johor has its own Wakaf Rules.²⁰

Another important act of harmonisation of law relating to *waqf* is the act to make *waqf* qualify for tax exemptions. Under the law of the Income Tax Act 1967, both Section 44(6) and Section 44(11C) were incorporated to provide for tax rebates or exemptions acknowledging the charitable act of the people. Recognition of acts of charity has been addressed since a long time ago by the court in *Pemsel's* case.²¹ The case has provided clear guidelines as to what was considered to be charitable in law and also provided the basis for charities to be exempt from the payment of income tax.

c. Declaration of Certain laws as Irrelevant or in Conflict to Sharī'ah

Another important process of Islamisation of principles of law on *waqf* is the declaration of the non-application of the Trustee Act 1949 to *waqf*. Although it is acknowledged that the concept of trust is the backbone of the principles and practices of *waqf*, the Trustee Act 1949, which is a civil law based on the English concept of trust is in contradiction to the principles of *waqf*. Zati, Khadijah, and Amrullah looked at the power of a *Mutawallī* and trustee and observed that based on the comparative analysis between the *waqf* enactments and the Trustee Act 1949, it is observed that the statutory provisions on the duties of trustees under the Act cannot be completely emulated due to the differences of administrative structure as well as nature of *waqf* and trust.²²

²⁰ Kaedah-Kaedah Wakaf 1983.

²¹ HL 20 Jul 1891

²² Zati, Ilham Abdul Kadir, Khadijah Najid, Muhammad Amrullah Najhan Ibrahim, Optimising Waqf Law for Effective Administration: A

d. Declaration of the Correct Principles of Law by the Court

Harmonisation of *waqf* law has gone through various processes and initiatives, and is not limited to introducing new laws. It sometimes takes place through a clear and firm declaration that the laws of *waqf* prevail against other laws. For example, the National Land Code 1965 has a clear provision under section 4(2)(e) declaring that the provisions of the National Land Code are not applicable or have a binding effect on *waqf*. The *waqf* authority has its own liberty to introduce new laws to govern *waqf*. Unfortunately, there is a very slow progress towards having a comprehensive law on *waqf*. Yet, there is no law providing for *waqf* land as such, in many areas, the development of *waqf* land follows various other laws including land laws, planning laws, tax laws, etc. The effort to minimise the conflict and ambiguity in its application is the effort to have a provision that states that the creation of *waqf* is complete once it fulfills the requirements of *Hukum Syarak*.

Section 13 (1) of the Wakaf (Selangor) Enactment 2015 provides that a *waqf* shall commence when all pillars and conditions for the creation of a *waqf* are fulfilled. This provision which has been incorporated into the Selangor Waqf Enactment 2015 has a great impact on upholding the sanctity of the law. Previously, section 13(e) under the Selangor Wakaf enactment 1999 which was repealed, states that a *waqf* is not valid if it is not in compliance with the *Hukum Syarak* or any other written law. This provision has made the sanctity of *waqf* subservient to any other laws which includes any civil law. The implication can be seen in the case of *MAIS v Bong Boon Chuen*.

Earlier, an important process of harmonisation of the law on *waqf* with the principles of English charitable trust was deliberated clearly by the late Salleh Abbas FCJ in *Haji Yahya bin Haji Yusof and Another v Hasan bin Othman* [1982] 2 MLJ 352. The vagueness of the position of the *waqf*, as the specific law for it did not exist at that time, was reconciled by a clear reference to s. 25 of the Civil Law Act 1956, as provided under PART VII. The provision provides that "Nothing in this Part shall affect the disposal of any property according to Muslim Law.". According to his Lordship, the rule against perpetuities was introduced into the Federated Malay States by the Civil Law

Enactment, 1937. (No.3 of 1937). Although Sections 7 and 7A of the said law allow for the rules against perpetuities, Section 7B of the Enactment made a clear reservation that the provision of sections 7 and 7A shall not affect the disposal of any property according to Muhammadan law. This explanation is an effort to harmonise the confusion on the impact of civil law to a local law which is based on Islam, hence stands as an effort to reconcile the Islamic law of *waqf* and the civil law of trust.

Lessons learned from this is the importance of having a qualified judge or lawyer to hear a dispute relating to *waqf* or other Islamic matters. Failure which, the implication like *Fatuma* or *Fata*'s case may not only leave severe but long effect on any legal system. The repercussion is obvious in Malaysia, impacting the slow recognition or the abolishment of family *waqf*, which is a sunnah widely practiced by the companions of the Prophet SAW.

e. Upholding the *Maslahah* in Achieving the *Maqasid al Sharī'ah* on *Ijtihād* Relating to *Waqf*

The principles of Sharī'ah developed along with the development of the principles of *fiqh*. *Waqf* is not mentioned in a clear form or verse. The Muslim jurists interpret and widen the concept of *sadaqah* in the Quran in making it consistent with the meaning of *sadaqah jāriyah* in a Ḥadīth of the Prophet SAW. As *waqf* is managed beyond religious duties, it brings out a role as the third sector economy, assisting the government in providing infrastructure and public utility to the government. Starting with building mosques and madrasahs, *waqf*-built bazaars and hospitals, bridges and universities, etc. This was made possible with the invention and creation of rules that went beyond religious ritual duties. The basis for the development of *waqf* rules is centred on 'maslahah' or public interests.

This development, in the history of *fiqh*, was not easily embraced by all. Some opinions stick hold to the traditionalists of *waqf*, especially the view that *waqf* must be perpetual and irrevocable. While Malaysia declares upholding the views of the Shāfi'ī, some circumstances require flexible rules, hence, *ijtihad* via *fatwā* always harmonises these differences based on 'maslahah'. As such, cash *waqf*, *istibdāl*, temporary *waqf* or *waqf*, or services or movable properties have formed part of the laws on *waqf*. In other words, rules developed

based on the *Maqāṣid al-Sharī'ah* move in tandem with the needs of a society.

f. Court Interpretation and Determination of the Appropriate Rules

There are many cases where the harmonisation of laws between the Sharī'ah principles of *waqf* and civil law of trust are reconciled by the court or in fact, by the declaration of the sovereignty of Islamic law. When the colonials ruled in Penang and Malacca known as the Straits Settlements, many decisions were either made by the Colonial judges or the local but English-trained judges and lawyers with certainly different views about *waqf*. Most importantly, the declaration of which laws apply to *waqf* is important and contributes to the position of *waqf*. Similarly, in either English or local law, the judges must exert themselves in understanding the case in their chamber, rather than limiting it to their knowledge. Again, the recognition of the local experts such as the religious experts is important so that decisions equating *waqf* with English trust, a *kendoori* (religious feast with the prayers for the deceased) for the deceased party, a family charity is not a real charity etc shall not arise.

g. The Decision of the Shariah Advisory Council (SAC)

The recent Federal Court decision in *JRI Resources Sdn Bhd v Kuwait Finance House* [2019] MLJU 275 affirming the binding nature of Sharī'ah rulings and the court held that the Civil Courts is bound by Bank Negara Malaysia's Sharī'ah Advisory Council's findings about disputes and/or matters regarding Islamic finance and its businesses. It was further held in this case that Sections 56 and 57 of the Central Bank of Malaysia Act 2009 are constitutional as the provisions require the courts to refer any Sharī'ah matters that may arise in any proceedings concerning Islamic finance to the SAC for its rulings and said rulings shall be binding on the court. Justice Zawawi further added that the rulings passed by the SAC constitute a form of expert opinion in the matter of Islamic finance as the members are highly qualified in the fields of Sharī'ah, economics, banking, law, and finance which ultimately can be regarded as a collective *ijtihad* to provide consistency and conformity.

h. Reference to National Council of Islamic Religious Affairs Malaysia (MKI) and Fatwa Council (*Jawatan Kuasa Fatwā*)

In Malaysia, a *fatwā* is officially issued under a specific authority known as the State Fatwā Committee. *Waqf* falls under this authority known as the State Islamic Religious Council (MAIN). In the management of *waqf*, MAIN is the sole trustee of the *waqf* property in the state according to the provision of the State Enactment of the Administration of Islamic Religious Affairs. Because every state in Malaysia has its own state Fatwā Committee, the difference in *fatwā* decisions between the states is possible. This, in the end, can ultimately result in differences in the management of *waqf* property. These differences can lead to adverse effects on the administration of *waqf* even though the *urf* (custom) between the states in Malaysia is negligible. It is observed that there are inconsistencies in achieving *maṣlahah* (benefit based on public interest) as well as complying with *Maqāṣid al-Sharī'ah*.

The 259th Meeting of the Conference of Rulers on June 30, 2023, has consented to upgrade MKI's Technical Committee on Syariah and Civil Laws to National Islamic Legislation Committee. The Sharī'ah Technical Committee was established in 1988 to standardise civil and Sharī'ah law as among the key roles of the MKI.

i. Co-existence – Recognising their Jurisdiction and Independence

One of the methods of harmonisation also is to acknowledge the co-existence of other opinions and recognise the separate jurisdiction of each authority. In a society with different backgrounds of people, the need to recognise the differences is vital within its religion or outside the religious belief. Although Article 3 of the Federal Constitution declares Islam as the religion of the Federation, Article 11 gives the freedom for others to practice other religions as long as it does not propagate others to follow their belief. The working of *waqf* in Malaysia can run smoothly even if it involves non-Muslim parties, or cross-border transactions as the objectives of *waqf* are noble, to promote public charity as well as family obligation in a sustainable manner. Hence, recognising the co-existence of these practices alongside endowment opportunities, Islamic trusts or other charitable deeds is imperative.

For future initiatives, more legal initiatives towards harmonisation can be achieved through the integration of *waqf* and *zakāh*, and the identification of certain impactful policies to be forward as the forefront agenda of the government.

CONCLUSION

It is important to have a comprehensive law of *waqf*. Although being a Federal-state setup, there should be no hindrance to having standardised law. It is also acknowledged that there are many other factors pose a challenge in the effort to harmonise or Islamise the Sharī'ah and civil law. The challenges may be related to the unreadiness of certain quarters or authorities in implementing the dynamic approaches of *waqf* as a third-sector economy for various reasons such as lack of confidence or knowledge about Islam, the legacy of colonialism, etc. The concept of *waqf* must be interpreted beyond a section of Islamic social finance. We must also acknowledge that the slow development of *waqf* is due to a restrictive approach to the empowerment of those who have good intentions and are qualified to manage *waqf*, whether they are from their family members or whoever is qualified to do so. Harmonisation must be looked beyond the repeal and introduction of laws that are Sharī'ah compliant but through the government policy etc. In the past, the Islamisation process which was a top-down approach by having outstanding government policy paths the way for all sectors to apply and support the policies, has left a tremendous impact till today. The harmonisation process should follow through as it shall reveal the real picture of Islam as a way of life.

REFERENCES

- Mohammad Hashim Kamali. (2007) "Sharīah and Civil Law: Towards a Methodology of Harmonization. *Islamic Law and Society*". Vol. 14. No. 3. (2007): 391-420.
- Muhammad Abdurrahman Sadique and Rashid, Sayyed Khalid. Re-assessment of Family Waqf. IUM Press. (2017), 40.
- Muhammad Abdurrahman Sadique. (2015) The socio legal significance of family waqf and its revival under state control. *South East Asia Journal of Contemporary Business, Economics and Law*, 7 (4). pp. 63-69. ISSN 2289-1560
- Muhammad Abdurrahman Sadique., Ansari, A. H., Hingun, M., & Hasan, A. (2016). Socio-Legal Significance of Family Waqf in Islamic Law: Its Degeneration and Revival. *IUMLJ*, 24(2). <https://doi.org/10.31436/iiumlj.v24i2.275>
- Nor Asiah Mohamad, "Islamisation of Law: The Malaysian Experience," (Paper presented at Guest Lecture, The Harmonisation of Malaysian Law and Islam, Sultan Mehmet Fatih Vakif University, Turkey, November, 2019).
- Nor Asiah Mohamad. (2012). Dealing With Environmental Issues: Preparing A Framework for Environmental Education, Policy And Laws In Malaysia. *IUMLJ*, Vol.15(1). <https://doi.org/10.31436/iiumlj.v15i1.57>
- Norshahril Saat and Afra al Attas, "Islamisation in Malaysia Beyond UMNO and PAS", <https://www.iseas.edu.sg/articles-commentaries/iseas-perspective/2022-96-islamisation-in-malaysia-beyond-umno-and-pas-by-norshahril-saat-and-afra-alatas/>
- Nur Yuhanis Ismon, and Mohsin Hingun. (2020) "Fiscal Advantage of Waqf and the Rule of Tax Exemption for Charitable Purposes under the Income Tax Act 1967," *IUMLJ* Vol. 28. (2020): 253.
- Salehuddin Md Dahlan, Nor Asiah Mohamad, and Nuarrual Hilal Md Dahlan. "Influence of the British Colonialist on Waqf Practice in Penang, Malaysia: Reflections on its legal history," *UUM Journal of Legal Studies* Vol. 13. No. 2. (2022): 295-316.

- Ramizah Wan Muhammad. "What Makes a Law "Islamic? A Preliminary Study on the Islamicity of Laws in Malaysia". 27 (1) 2019 IIUMLJ 209, 232. DOI 10.31436/iiumlj. v27i1.420.
- Suhailah Hussin, Arifin Mamat, and Ssekamanye Siraje Abdallah, "The Perceptions, Practices and Challenges of the Integration of Knowledge amongst the Academics of International Islamic University Malaysia (IIUM)," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* (2018): 117-130.
- Zati Ilham Abdul Kadir, Khadijah Najid, Muhammad Amrullah Najhan Ibrahim, "Optimising Waqf Law for Effective Administration: A Comparative Analysis of the Trustee Act 1949 and the State Waqf Enactments", Vol. 31 No.1 (2023) *IIUM Law Journal*, 235-260