

WAQF Implementation in Malaysian Universities: Overview and Way Forward

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Abstract: Ministry of Higher Education (MoHE) has executed Waqf as one of the ten shifts in Malaysia Education Blueprint 2015-2025 or MEB (HE) in a way to reduce the reliance of universities on the government resources. In fact, several universities have already implemented Waqf in their institutions before the government announcing the new MEB (HE). Though several universities already implemented Waqf beforehand nonetheless, the approaches are not standard besides different management are practiced. The implementation of Waqf in Malaysian universities is perceived in various approaches. Therefore, this study seeks to focus on the overview of Waqf in Malaysian universities besides discussing ways forward toward the sustainability of Waqf in future. This study adopts a qualitative approach by collecting data from primary sources as well as secondary sources. The data collected in this study are analyzed based on content analysis.

Key words: Education, governance, law, purple book, university and Waqf, collected

INTRODUCTION

There are plentiful examples that Waqf has contributed in education sector in the past centuries. Al-Azhar University is a proof of prominent university that used Waqf to finance their education. Another example can be seen from the famous University of Al-Qurewwiyin in Fez and the Shrine College of Abu Hanifah in Baghdad (Romli and Mohamad, 2013). In Malaysia context, up to 2015, only several universities adopt Waqf for funding their education. They are National University of Malaysia (UKM), Putra University of Malaysia (UPM), University of Science Malaysia (USM) and Islamic Science University of Malaysia (USIM). However, in 2017 Waqf is widely adopted by many universities.

Definition of Waqf: In Islamic terminology, Waqf means “a dedication of property either in express terms or by implication for any charitable or religious object or to secure any benefit to human beings”. The Department of Awqaf, Zakat and Hajj, Malaysia (JAWHAR) exemplifies Waqf as a private possession or asset in any form that has been put under injunction from any transaction including sale, inheritance, hibah and wasiyyah while its physical source remains intact and unchanged. Waqf connotes philanthropic dedication of property or benefits in perpetuity for general and specific purposes (Hussin *et al.*, 2016a, b). It is a voluntary act that shares similar nature with charitable acts such as donation, sadaqah, zakat or any other charitable acts (Mohamad, 2015). Through Waqf concept it could equalize

inequalities, improving quality life of individual and also collectively ease the financial burden of country (Zakaria *et al.*, 2012).

Waqf laws in Malaysia: Malaysia is a federation country which consists of 13 smaller regions known as states. Each state has their own local governments that possess certain administrative autonomy (Ahmad *et al.*, 2012). Federal Constitution of Malaysia is supreme law of Federation as explained under Article 4 which binds all the 13 States. Additionally, under Article 3 of Federal Constitution, Islam is recognized as the official religion but other religions may be practiced in peace and harmony in any part of Federation. Based on federal constitution, Islamic matters (except federal territories) are positioned in the ninth schedule list 2 (state list) which a ruler (king) is the head of the religion (Islam) while in the case of a state without a ruler; the Yang Di Pertuan Agong is the head of the religion (Islam). In each state, State Islamic Religious Council (SIRC) or Majlis Agama Islam Negeri (MAIN) is formed to advise the Rulers on all Islamic matters and each state has enacted its own Islamic legislation. Statues or legislations governing Waqf have been introduced under Article 74, read together with the state list of the 9th schedule. The Islamic state department will enforce all the legislations accordingly. Different states will have a different set of legislations (Yaacob, 2013). The detail illustration of Waqf can be seen in Article 74(2) of Federal Constitutions which mentions that.

Wakafs and the definition and regulation of charitable and religious trusts, the appointment of

trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the state”.

Currently, 5 States have constituted their Waqf legislations with a number of administrative and substantive provisions namely; Wakaf (state of Terengganu) Enactment 2016, Wakaf (State of Selangor) Enactment 2015, Wakaf (State of Malacca) Enactment 2005, Wakaf (Negeri Sembilan) Enactment 2005 and Wakaf (Perak) Enactment 2015. These legislations demonstrate the diverse legal stipulations governing Waqf in different states in Malaysia (Hussin and Rashid, 2017). In the effort to provide a more concerted effort in the development and utilization of Waqf assets in Malaysia, the Federal Government has set up Department of Waqf, Zakat and Hajj or Jabatan Waqf, Zakat dan Haji (JAWHAR) under the Department of the Prime Minister. JAWHAR has thus far been able to provide a platform which helps synchronizing SIRC's of different states in Malaysia on matters relating to Waqf (Hussin and Rashid, 2017).

AN OVERVIEW OF Waqf IN MALAYSIAN UNIVERSITIES

Scattered legal framework for reference: The implementation of Waqf in Malaysian universities must be in line with the national laws. Practically, though Waqf is under the state jurisdiction as listed in Federal Constitution under list 2 (the ninth schedule), nonetheless, the implementation of Waqf in the universities need to comply with federal laws as education is listed under federal list in the ninth schedule. Among the federal laws that need to be taken in account before implementing Waqf in the universities are Universities and University Colleges Act 1971 (UUCA 1971, amended 2009), Private Higher Educational Institutions Act 1996 (Act 555), Income Tax Act 1967 (Act 53), Contract Act 1950 (Act 136), Societies Act 1966 (Act 335) and Trustee Act 1949 (Act 208). Even though, Waqf term does not appear in the legislations mentioned before, nonetheless, reference to these laws are needed as Waqf application also relates to other matters. In the same way, at present no precise framework to be referred by the universities for Waqf implementation in their institutions. The only legal requirement that need to be fulfilled is to acquire permission from SIRC before implement Waqf in their institutions. A few existing literature indicates that special regulations or rules are vital to govern the overall system of universities based on Waqf. This is due to Waqf has some exclusive features and some strict Shari'ah principles need to be followed (Mahamood and Rahman,

2015). Additionally, Omar (2017) opines the scattered Waqf laws should be harmonised toward the betterment of Waqf in the universities.

Various approaches of Waqf implementation in Malaysian Universities: At the moment, the operation of Waqf in Malaysian Universities either public or private are initiated in various approaches as a result of no standard framework to be referred. USIM, for instance, established Waqf center to collect Waqf fund known as Al-Abrar Waqf Fund in March 2013. The establishment of the center was endorsed by the University's Board of Directors in the meeting of in May 2013. UPM on the other hand, initiated Waqf program known as Dana Wakaf Ilmu (DWI). This Waqf Fund set up since 2011, offering Waqf opportunities through Several Schemes: namely general Waqf, Kitab Waqf, Facility Waqf and Special Needs Waqf. Funds gathered through Waqf counter, collection boxes placed at various offices in UPM, CIMB clicks, monthly salary deduction, staff claims facility (e-Claim). Likewise, Waqf fund in UKM has been established under the Chancellery Foundation in 2010 which provides two schemes for Waqf donations. First is UKM Cash Waqf Scheme and second is UKM Waqf Takaful Scheme. The implementation of Waqf in USM on the other hand is managed by Yayasan University Sains Malaysia. Funds gathered from public through cash coupons or bank transfer, then converted (badal) into fixed assets once total fund allows for the conversion. On the contrary, Waqf implementation in private university such as UCB was started by a Non-Governmental Organizations known as Pertubuhan Kebajikan Anak Yatim Malaysia (PEYATIM). A piece of land belong to PEYATIM has been divided into small lot of one square foot each to be sold to potential contributors (Waqif) at a price of RM 30,00 per lot. Those lots that are acquired would then be donated back to PEYATIM as the recipient. The funds collected after the sale of plots will be considered as Waqf fund (Hussin *et al.*, 2016a, b). Another essential point, PEYATIM has collaborated with several bodies in Malaysia such as Pos Malaysia, Bank Simpanan Nasional Berhad (BSN), etc., to help PEYATIM in promoting the sale of land. Till today, there are 13 million MYR fund which Yayasan Wakaf Pendidikan Anak Yatim atau Miskin Malaysia (YAWATIM) has received from almost 2000 dedicators or waqifs all over the states in Malaysia (Hussin *et al.*, 2016a, b). In addition, Waqf funds collected will be used to develop various infrastructure projects and also to be invested to have high economic returns in future (Sayin and Hamid, 2015a, b).

Waqf governance guideline for universities: There are three possible Waqf governance models that can be adopted in public universities as presented in the University Transformation Programme (UniTP) Purple Book (Ministry of Higher Education, 2016). However, this UniTP Purple Book only serves as a general guide for public universities and effective implementation would depend very much on their level of readiness as well as the collaboration by the State Islamic Religious Council. Commonly, in public universities Waqf will be positioned under University Board of Directors (UniBoD) as Waqf Management Committee. The Waqf Management Committee will deal with SIRC to acquire authorisation as Waqf agent or mutawalli status for the university. Furthermore, some of Waqf fund in universities are managed by Trustee Committee under University Board of Directors (UniBoD). In contrast there is no specific guideline for the governance of Waqf in private universities. Practically, it is placed under the power Board of Trustee or Foundation (Yayasan). The administration and management of UIM, for instance is governed under Lembaga Kolej Islam Malaysia (LAKIM) (Hussin *et al.*, 2016a, b). A Board of Trustee for private university based on Waqf can be formed under any of these legislations namely Societies Act 1966 (Act 335) or Trustee Incorporation Act 1952 (Act 258). In comparison, UCB is a private university based Waqf is initiated by Non-Governmental Organizations (NGO) known as Pertubuhan Kebajikan Anak Yatim Malaysia (PEYATIM). This NGO was established pursuant to Societies Act 1966 (Act 335). Hence, PEYATIM become the trustee of UCB which the board of trustee is accountable in the administration and management of that institution. Being a NGO, PEYATIM is ruled by its constitution with the registered number 861/90 (Terengganu). As far as the law in Malaysia is concerned, PEYATIM as a NGO is prohibited to collect deposit from public. Therefore, they have formed Yayasan Wakaf Pendidikan Anak Yatim atau Miskin Malaysia (YAWATIM) on 2 November 2011 as a company limited by guarantee pursuant to Section 16(4) of Companies Act 1965. The purpose of establishing YAWATIM is to ensure that the fund collected complying and satisfying the requirement of law in Malaysia. Any entities established based on the acts mentioned above undeniably are governed under Trustee Act 1949 (Hussin *et al.*, 2016a, b). However, this act is too general and does not provide sufficient regulation to discuss the trust property for the Muslim (Harun *et al.*, 2014).

The status of Waqf Universities: Lawfully, all universities in Malaysia need to get approval from SIRC before

executing Waqf in their institutions due to the sole trustee power hold by SIRC. Mahamood and Mahamood (2016) assert that the implementation of Waqf in the universities without the approval of SIRC is considered opposing Malaysian laws. The illustration can be seen in Section 4(1), Wakaf (State of Selangor) Enactment 2015 (Enactment 15) stipulates that:

“The Majlis shall be the sole trustee for all Wakaf situated in State of Selangor”. Section 45 of the same enactment mentions that.

“Any person who administers or manages Wakaf am or Wakaf khas without the written permission of Majlis or corporation commits an offense and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding 6 months or to both”.

It depends on the discretion of the SIRC of the state either to grant the status to the universities or not in order to manage their own institutions. As explained by Mahamood and Mahamood (2016) there are three different terms for Waqf manager in respect of Waqf universities namely; an-nazir, al-mutawwali and al-qayyim. An-nazir in the context of Waqf university refers to SIRC as the sole trustee of all Waqf assets. Al-mutawwali on the other hand, manages Waqf assets for university under the supervision of SIRC. With the mutawwali status, a university may have autonomy to manage their own institutions even though they are still being controlled by SIRC. Then, al-qayyim is considered an agent of SIRC which has lesser power to manage Waqf funds autonomously compare to al-mutawwali. Among the Waqf universities that already granted the status as mutawwali are USIM and UCB. UKM on the other hand is granted a status as al-qayyim. The variance status acquired by the universities reflect the power owned by them to manage their Waqf fund. As far as this study is concerned no specific requirements set by SIRC in granting a university a status as al-mutawwali or al-qayyim. Consequently, the efficiency of Waqf implementation in the universities would be affected (Hussin *et al.*, 2016a, b).

A WAY FORWARD FOR Waqf IN MALAYSIAN UNIVERSITIES

Stakeholders in Waqf include donors, waqif, mutawalli, beneficiaries, clients, employees, volunteers and government. Each of these groups consists of individuals of diverse nationality, culture, age, education and socio-economic status. Such groups will have different values, interests, goals and perceptions of acceptable performance. In Waqf universities context, the

ultimate effort of standardising the implementation of Waqf in Malaysian universities requires imperative collaboration among the stakeholders namely State Religious Councils (SIRCs), the Ministry of Higher Education (MoHE), the University Board of Directors (UniBoD) and more essentially the Waqf Board. Besides, JAWHAR under the Department of the Prime Minister could also play an important role in order to provide a platform which helps coordinating SIRCs of different states in Malaysia on this matter. The presence of Purple Book is in a correct time especially in providing guidelines for universities in managing their Waqf funds.

Equally important as central authority for all public universities, MoHE must play active role in facilitating the interaction between universities and SIRCs, particularly in facilitating universities effort to acquire approval for Waqf as well as status to manage their own Waqf funds. SIRCs in each state should provide a uniform guideline for a university to establish Waqf in their institutions and the requirements to grant the status as al-mutawwali should be made clear to university. Also, the good governance of Waqf in public universities require the joint venture efforts of SIRCs and the universities. Despite this, Waqf implementation in private universities should also be governed with standard guidelines provided by MoHE.

It is apparent that a dedicated support by Chief Minister could influence the decision of SIRCs in granting university a status as al-mutawwali. Waqf universities should be given an opportunity to manage their Waqf assets whereas SIRCs are still responsible to monitor the overall operation of Waqf in universities. Equally important, Saleem (2015) opines that universities should act as managers (mutawalli) and beneficiaries of Waqf assets. It would create the right incentives for universities to actively promote and encourage the creation of new Waqf assets for educational purposes, provide professional support for the management of Waqf assets and contribute to the educational and socio-economic development of the society.

CONCLUSION

A way forward for the successful development of Waqf in the universities require efforts from the beginning. Though there are those who hold the negative view that very little could be done toward its sustainability in Malaysian universities due to different practices of each states. But it must be realised that the aim of MoHE to execute Waqf as one of the financial instruments as enshrined in Education

Blueprint 2015-2025 or MEB (HE) could be achieved if all the stakeholders play their roles in turning the aims to be reality.

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