

Management of Waqf Rental by SRCs in Malaysia

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ABSTRACT

Previous studies revealed several issues relating to the leasing of waqf properties in the aspects of the concepts and rulings, lease assessment rate, leasing contract and agreement. The overall management and administration of waqf property by State Religious Councils (SRC) are not yet discussed satisfactorily. This study therefore explored the practice of leasing of waqf properties by SRCs in Malaysia. Data and information for this study were collected through interviews and documented reports. Data were analysed based on inductive and deductive method. The study focused mainly on problems in the implementation and practice of waqf rental in Malaysia. The study found that there are still many shortcomings that the SRCs need to investigate seriously. It is proposed that a detailed study on waqf property management should be conducted for the sake of the ummah.

Keywords: Al-Mutawalli; Waqf Properties; Waqf Property Rental; Waqf Property Management

1. Introduction

Islamic law stipulates that waqf property shall be managed and administered by the party responsible for regulating and maintaining the interest of waqf property so that it can be benefited by the other party who really deserve it (Badran, 1986). In Islam a person appointed to administer the waqf or trustee is known as mutawalli (Al-Baghdadi, 1999). Mutawalli could be a person or institution that has the ability, trust and capability to implement what the founder wished for ('Ala' al-Din Muhammad, n.d). The primary duties of mutawalli is maintaining,

preserving and developing waqf property; collect the revenues and distribute them to the beneficiaries and keep it in the best possible from any loss and damage, as defined by the founder.

Management of waqf institution is essential as it deals with the ummah's property and trust (Azman et al., 2012). In Malaysia, the mutawalli is mainly the State Islamic Religious Council (SRC) (Ahmad Faizul et al., 2015). The management is under the jurisdiction of 14 states in the country instead of the federal government (Zunaidah et al., 2015). The procedure for leasing of waqf property has been adjusted by the SRC with reference to the Manual on Waqf Land Management issued by the Department of Awqaf, Zakat and Hajj (JAWHAR). Anyone who would like to apply for leasing of waqf property or premises should fill out the rental application form provided by the institution. The officers in charged would check the fulfilment of all the required information before the application is registered in the system for rental of premises and/or land endowment. An offer letter will be issued to the successful applicants upon approval by the management of SRC. Agreement will be issued to the tenant that contains the description of the tenants and the leased property; complete with the lease period, the date of the agreement, the rental rates, and the types of property, address and some other the conditions stipulated by the SRC. Having the agreement returned to SRC, within 14 days, endowment manager will hand over the key of the premise and record it in the registration book (Manual Pengurusan Tanah Wakaf, Jabatan Wakaf, Zakat dan Haji, Jabatan Perdana Menteri, p.36-37).

Previous studies (such as Hamat, 1996; Osman, 1990; Abdullah, 2002; Mohd Saharudin et al. 2003; Mohd Shahiran, 2006; Fakhrudin, 2012; Anan, 2012 & Anuar, 2012) have indicated several shortcomings in the management of waqf land rental by SRCs mainly in the concepts and rulings, lease assessment rate, leasing contract and agreement. Therefore, this research is conducted as an extension to examine the overall problems encountered in the management of waqf land rental.

2. Methods and Data

Qualitative studies depend mainly on interviews to obtain the required data. In this study, interview is used as the main instrument to obtain clearer data from the primary source, in the form of the common practice of those who are directly involved in waqf rental. The method was employed in a systematic, academic and orderly manner. The interviews

were conducted with the relevant respondents, specifically those who are directly or indirectly involved with the parties that manage waqf property. Through the interviews, common issues or recurrent problems in the management of leased waqf property could be easily identified. Secondary data were also gathered in support of the primary data obtained. Minutes of meetings and some other relevant documents were examined to get the required data. The study was conducted mainly in the state of Kelantan, Penang and Malacca. All the primary and secondary data obtained through the above-mentioned methods are analysed inductively and deductively in an orderly academic manner.

3. Results and Discussion

The study found that there are still many shortcomings faced by the State Islamic Religious Council or SRC, particularly regarding the management of the leased waqf property. In overall, findings of this study are summarised as follow.

3.1. Rental Rates Valuation

Problem related to the rate of rental for waqf property is prevailing especially on renting of residential land sites. This study found that the rental price of waqf land is significantly below the current rental rate, although waqf lands and buildings are not under Controlled Premises Act 1966. This implementation is also contrary to Islamic law which says that the lease rate cannot be less than the norm (Ibn Abidin, 1966). Scholars in the Hanafi school of thought viewed that it is the responsibility of the tenant to pay the rental based on the valuation of current rates (Al-Tarabulsi, 1981). Determination of rental price is fully dependent on the jurisdiction of SRC. This problem is closely related to the level of understanding and appreciation of the society that is too low on waqf property.

Issues related to low rental rates and valuations of waqf premises has been discussed for quite a long time. Problem associated with very low rental of waqf premises as compared to the current valuation of other property is substantial, particularly for rented residential land site. For instance, in Bandar Melaka the rent for waqf land is between RM1.00 to RM14.00 per month. The rental rate of shop houses is between RM17.75 to RM430.00 per month. In Perak, almost all rentals at the end of 19th century is charged at RM1.00 per month for 99 years. The rental rate for

land rented between 1964 and 1965 with a 66-year lease period is RM10.00 per month. In general, the rental rates are very low compared to the current rental rate even though the property is in the prime area of city centre. This would affect the income of the SRC thereby affecting the beneficiary. Policy for land rental has been practiced since time immemorial. While SRC is guarding the waqf property, until now there has been no systematic procedure being implemented to overcome this problem. There has been proposal being put forward to increase the rent of waqf property. Nevertheless, it had caused a sense of dissatisfaction among tenants even though the proposed rate is still much lower than the current valuation.

In the state of Melaka for instance, the Malacca State Religious Council or Majlis Agama Islam Melaka (MAIM) is facing problem with tenants who refuse to accept the new rental scheme for the land and premises that they are occupying. The reluctance of the tenants in accepting new rental has caused difficulty for MAIM to restructure the rental for waqf land and premises that belong to MAIM. It is even more difficult when the land and premises are rented before independence of the country with a cheap rental rate. For example, shop house at Lot 2 Jalan Hang Kasturi is rented at RM108.00 per month or RM1,296.00 per annum and another shop in Lot 331 Jalan Kampung Kuli is rented at RM30.00 per month or RM360.00 per annum. In Kelantan, for waqf property rental, the council has set rental rates for each area of 1600 square feet to be valued at RM80.00 per annum (RM6.66 per month). The rate is applicable to all waqf property irrespective of whether they are in the city or rural areas. The rental rate for most residential sites in Kota Bharu for instance, is between RM1.00 to RM10.00 per month. Similar property located at Lot 12, Mukim Kedai Buluh is rented at RM 2.08 per month. The area, encompassing more than an acre, is occupied by 18 tenants. Similarly, residential areas such as Lot 174 Section 1, Lot 32 Section 4, Lot 145 Section 4 and Lot 266 Section 28 are leased with an average rental rate of RM5.00 per month. The lots are rather spacious, covering more than 13 acres and occupied by 86 tenants. There are also several other lots in the city of Kota Bharu which are rented with low rates. Among them is Lot 112 Section 3 where the rate is between RM5.00 to RM10.00 per month. The rental rates of residential areas in other districts are the same as in Kota Bharu. Residential area in Lot 922, Mukim Kasar Pasir Mas for instance is rented as low as RM1.00 per month though the land occupies more than one acre with 12 residents.

3.2. Management and Administration of SRC

There are two problems faced by SRC in the management of waqf property rental. One of them is the renting of waqf property without proper binding agreement. This had caused difficulty for SRC to take any action against the tenant in the event of mischief or breach of contract. In Kelantan, the Kelantan State Religious Council or Majlis Agama Islam Kelantan (MAIK) has stated that tenants should be those who are low income and they cannot construct any permanent building. Nevertheless, practically 70 per cent of the tenants had constructed permanent buildings. There are also cases of tenants who built luxury residential buildings like bungalows at Lot 284, No. 256 and 125 of the Kampung Bunga Emas Bangol Badang. Similar case happened at Lot 2080 Pengkalan Chepa Kota Bharu Kelantan. This is clearly a breach of the condition stipulated by MAIK and the council could not take any appropriate action due to the absence of proper binding agreement. There are also cases of heirs who take advantage of the rented waqf property by collecting rental for the benefit of their families.

Other similar case is the breach of rental agreement by expanding waqf land without permission from SRC. In this regard however, MAIK has made a step forward by appointing an officer to specifically measure the waqf area and charge a rental rate of RM80.00 for 1600 square feet. Before the appointment of the officer, cases of tenants purposely extend the area they occupy at will were rampant. In fact, the actual waqf area could not be identified accurately, causing for the fixing of rental rate being made based on estimation.

Although the rental rate is already low, the SRC encounters problem of high rental arrears. Consequently, SRC until now had not plan to increase the rents dramatically. Instead, the council took a gradual measure to increase the rent. The initial step taken is to ensure that all current rental arrears can be paid by tenants before the new rental rates could be applied. Problem arises when there is no monitoring and regular schedule to trace the arrears. Some rental files are not updated in terms of the date of the lease, the date of expiry, letter of agreement, collection system, census and many more. The list of tenants checking in and out is not recorded in detail. Furthermore, the losses of documented lease files are not uncommon. It seems that the SRC in many states particularly Kelantan, is not so serious in addressing the issue and they seem to be quite lenient to the tenants under the impression that the main objective of SRC is to assist and give charity to these people.

Perhaps, part of the blame for the high rental arrears is on the SRC itself. With no adequate staffing, the council could not collect the rent properly. The council also have no specific officer in charge of monitoring and enforcement of rental payment. On the other hand, some tenants intentionally delay the payment of their rent and some even forget to pay. There are also those who defaulting their rental payment due to financial problems, particularly the dwellers of residential buildings. The issue of high rental arrears in the leased waqf property could persist without proper action by the council. If shortage of staffing is the premier reason, new recruitment should be done to overcome the matter. Otherwise, the problem with rental arrears will magnify from time to time if it is not contained.

3.3. Community and Social Problems

The study found that residents living on waqf land have little knowledge and understanding on the rights and responsibilities of waqf property dwellers. They are worried if their placement and interest are taken away with any proposed development projects on the land. They do not realize that the development of waqf property could help the Muslims as a whole. Similarly, the increase in the rental rate of land by SRC also brings them a sense of dissatisfaction. Worse is when there are some heirs of the waqf property who take advantage on SRC waqf lands by collecting rents for their own family benefits. To overcome this problem, proper knowledge and understanding should be delivered to the public about the importance of waqf property development for the benefit of all Muslims especially to those who have the rights to receive it. Public interest needs to be prioritised more than personal interest. SRC needs to work closely with the residents on waqf lands. Discussion and exposure from time to time need to be given through meetings, forum, mass media, sermons, flyers or better still Islamic missionaries (dakwah) bodies.

In addition, awareness about the importance of waqf property for the use of entire ummah needs to be enhanced. Perhaps, moral consciousness by way of inculcating prophetic values among the people needs to be seriously considered to enhance their awareness (Siti Akmar et al., 2011). Surrounding community also needs to act and concern about the responsibility to preserve the trust of waqf property by reporting to SRC on any intrusion of waqf lands. Selfishness alone will not achieve the concept of community justice and development planning for waqf property may not be realized so long as this negative attitude persists.

Indeed, SRC should also encourage more people to give waqf from their surplus property in order to add up to the existing waqf land. The land to be donated should have commercial value and strategically located as well as viable to be developed.

There is also problem with renting the waqf land to third parties. The issue should be tackled seriously as it is unjust (zalim) to misappropriate other people's right. Investigation need to be done thoroughly and proper punishment should be imposed to the wrongdoer by taking back the land from the original owner and be given to the people who deserve more. Agreement with the tenants needs to be made with all the residents of waqf land and the agreements need to be renewed when it comes to expiration. The lease tenure should be limited to one or two years only so that rental rate appraisal could be exercised. This could overcome the issue of some tenants making the waqf land as their inheritance and some other sell the waqf land. Regular monitoring should be exercised to avoid the recurrence of the old problems. Having a binding agreement between the councils and the tenants would mitigate the risk of default, high rental arrears, misappropriation of waqf property as well as the breach of contract issue.

3.4. Unsystematic and Less Controllable Rent Collection System

Rental agreement that is too long and the problem with rent collection also contribute to the failure of improving SRC waqf assets rental rates. Due to shortage of staffs, the SRCs are either waiting for the tenants to come to pay or very few staffs collect the rental from house to house on a certain infrequent period. Consequently, most of the rental revenues cannot be collected. Sometimes, the officer in charge has to put up with the attitude of the tenants who are ignorant of SRCs directive. Some of the tenants purposely accumulate the rent to be paid in lump sum and sometimes they even forget to pay. Some of them give reasons that they are unable to pay, even though the rent is not burdensome. The excuses given by the tenants are unreasonable. The rental rate of RM60.00 per year is indeed too low relative to the living standard of the community these days.

A visit to few houses at Lot 284 and Lot 174 and the remains of a house that was moved to Lot 806 and interviews with the involved residents shows that they are financially capable and purposely being indifference and selfish. This is because up to now there is no legal actions taken to the tenants who fail to pay their outstanding rental debts.

There are also among the tenants who thought that the charges impose to them are for the payment of land tax. Therefore, in their view the increase of waqf property rental rate was inappropriate.

4. Conclusion

Waqf property rental management needs to be efficiently planned by SRC and the policies need to be in tandem with Islamic Law to generate income to Muslims in general. SRC as a sole trustee (mutawalli) of waqf property in Malaysia need to plan for waqf property development. Certain strategic planning needs to be projected especially for properties that have high commercial potential to be developed. This would enable the SRC to obtain more profit from the waqf and give more benefit to the society and the ummah as a whole. Waqf property is perpetual in nature and they must give benefit to as many beneficiaries as possible. Therefore, they must be managed properly and efficiently. They cannot be sold, pawned or mortgaged. This property can only be rented or leased where the tenants have the rights of benefit for a certain period with certain rate of payment. If someone rent or lease a house or shop therefore, he or she can take advantage from it according to what they aimed at in renting the property. They cannot take advantage of the property by renting it to any third party. They also must be responsible in paying the rents consistently in order to ensure continuous benefit being attained by the right beneficiaries. The SRCs had tried their best to carry out their responsibility to manage and develop waqf land entrusted onto them. However, specific studies need to be heavily emphasised to ensure that more and more waqf land can be developed so that the Muslim community get the benefits from the development. Join-venture development between the SRCs and private sectors can be considered for a better management. The gazetting of waqf land should be taken immediately in order to avoid high land tax or nominal tax rate application from Land and District Office. The Council through Waqf Board needs to work hard to manage waqf land by making more drastic changes to achieve the objective if its establishment. Continuous monitoring of the waqf property should be enhanced to ensure that the property concerned is in control and will indirectly increase the revenue of the Council. Widespread exposure to the public of the role of the Council in the management of waqf property should be continued through seminars, workshops, dialogues, print and electronic media as well as through announcements in mosque.

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