

The Challenges In Implementing Cash Waqf In Malaysia

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ABSTRACT

Cash waqf is one of the contemporary instrument for Islamic Social Finance (ISF). It has the potential to address social issues in promoting and enhancing the economic, educational, health, religious, and social development of the Muslim communities. Recently, the use of cash waqf is continually evolving and improving in many Muslim countries due to its flexibility and accuracy. However, the implementation of cash waqf in Malaysia faces a few issues and challenges such as inadequacy of comprehensive legislation and regulatory framework, lack of management skills among related entities, lack of a regulatory mechanism to ensure the collections of cash waqf are transparent and complete as well as lack of transparency in channelling the funds to the specified beneficiaries. The study analyzed the meaning and concept of cash waqf by identifying its characteristics and development in Malaysia. Besides, the study explores challenges in implementing cash waqf within the system. This study utilized the doctrinal research method with content analysis. The systematic review on the topic will be undertaken with emphasis on understanding issues, challenges, laws, policy and methods for waqf. The gap of current practices and issues facing by State Islamic Religious Council (SIRC) and other related entities will also be identified. The content analysis aids



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learning from past research and documented evidence on different issues and challenges within the cash waqf institution. Data collection from the library consisting of primary and secondary sources such as statutes, books, and articles. Findings of the study showed that there is a need for proper waqf legislation, sound management policies, sustainable governance framework well as technological innovation to enhance cash waqf collection and development in Malaysia.

Keywords: *Cash Waqf, Inadequate, Legislation, Regulatory, Management Skill, Social Finance.*

INTRODUCTION

Historically, there is apparent evidence that waqf had played a significant role throughout Islamic history. It is a well-established concept practised during Prophet Muhammad S.A.W. time. Over the years the tradition has continued, and waqf has significantly contributed to the development of Islamic society. Apart from religious purposes as building the mosque, cemeteries, or Islamic schools, waqf has become one of the instruments accepted by the Muslims to fulfil crucial needs in various sector namely education, health care, agriculture, and infrastructure. There is no doubt that waqf remains pertinent today, and it can play an important role to develop a more dynamic, progressive, and inclusive economy, while at the same time fulfilling its socio-economic objectives. Besides, in addition to the conventional type of waqf, cash waqf also played an important role during the times of the Prophet Muhammad S.A.W, his companions and during the Ottoman Empire (1299-1922). The concept of cash waqf is often related to the Ottoman Empire where the Ottoman court gave its approval of cash endowments between the 15th and 16th centuries, and cash waqf is seen as being channelled to microfinance initiatives. During that time, some generous resource surplus people establish charitable cash endowments which were lent to various borrowers. After a specified time, generally one year, the waqf principle will be a return to the fund with certain extra amount, known as *istiqlal* (Mohd Mokhtar et. al, 2015). Thus, cash waqf has succeeded in deflecting government's spending in providing public service facilities such as education, health, infrastructure, public welfare and so on (Md Nurdin, 2015). In recent times, it is evidenced in Selangor

and Johor where cash waqf increases the access to quality of education and healthcare (Norizan et.al, 2018). Cash waqf as a contemporary measure is a waqf of a liquid asset that yields returns that can be used to meet the intended objectives under the waqf charter (Bank Negara Malaysia, 2018). It is evident in several Muslim countries; cash waqf is widely used as an effective tool for social finance and welfare programs, such as for the educational scholarships and health care facilities. A study showed that in Malaysia it was estimated that cash waqf collection might hit a total of RM4.3 billion per year if each Malaysian Muslim (full-grown) contributed at least RM1 per day or RM30 per month to waqf fund cash. (B Saiti et. al., 2019).

On the other hand, in Indonesia, it is estimated that cash waqf collection is expected to reach IDR 188 trillion (around USD 13 billion) per year with the participation of 15 Islamic banks registered as official Islamic Financial Institution Recipients of Cash Waqf (IFI-RCW). (Report of World Bank, INCEIF and ISRA, 2019). Accordingly, cash waqf has potential as a platform for Islamic Social Finance and has generating income for the benefit of society. Nevertheless, there were difficulties and challenges in its implementation. Critical issues affecting cash waqf implementation such as inadequacy of comprehensive legislation and regulatory framework, lack of management skills among related entities, no regulatory mechanism to ensure the collections of cash waqf are transparent and complete as well as lack of transparency in channelling the funds to the specified beneficiaries must be addressed if cash waqf is to completely take on its meaningful role in meeting the socio-economic needs of Muslim societies. The objectives of this paper are to define cash waqf by identifying its characteristics and development. Then it explores the issues and challenges in implementing cash waqf in Malaysia. Doctrinal research method with content analysis is applied in understanding issues; challenges, laws Data collection involves library research from primary and secondary data consisting of statutes, articles, books, and internet sources.

LITERATURE REVIEW

The Meaning and Concept of Cash Waqf

The word waqf connotes detention, derived from the Arabic word Waqafa which means ‘causing a thing to stop and stand still’ (Wizarah al Awqaf, 2006). It is a form of transfer of property where the property is held in trust, and only the proceeds (product or income) from the property are used for general or specific charitable purposes. (Ismail et. al., 2014). Waqf can also be described as holding property of an individual for the benefit (manfa’ah) of others and is recognized as an inalienable charitable endowment under Islamic law, typically involving the donation of buildings, land plots or other properties for religious or charitable purposes without the intention of reclaiming the assets (Abdul Rahman & Awang, 2018). The asset (awqaf) that used to establish a waqf must be valid objects to a contract and must be not unlawful objects and should not already be in the public domain.

The four eminent Islamic scholars i.e. Imam al-Hanafi, Imam al-Maliki, Imam al-Shafie and Imam al-Hanbali, have given the different meaning of waqf or Islamic endowment. However, they accept that a waqf will maintain the origin of wealth and uses its profit from the charity to support the needy and the poor. (Abbasi, M., 2012). In Malaysia, according to Section 2 of Selangor Waqf Enactment 2015 (Interpretation) waqf means (a) to surrender the title of any property from which its benefit and interest may be enjoyed; (b) to surrender the benefit or interest which may be enjoyed from any property, or (c) to contribute the expertise and services from which its benefit or interest may be enjoyed; whether as general waqf or specific waqf under Hukum Syarak, but does not include a trust defined under the Trustee Act 1949 [Act 208]. Malaysian law separates the concept of waqf and trust especially in relation to immoveable property. Under Section 5 of National Land Code for example, gives a general definition of ‘trust’ which emphasises that the word ‘trust’ does not include a waqf created in accordance with the principles of Muslim law. The corresponding assumptions is that both the public and the waqf managers and the administrators must recognize that waqf does not come into existence by branding and claiming that it is the act of making waqf, but its existence must be based on the principles of Islam. (Sharifah Zubaidah & Nor Asiah, 2014). Therefore, if a building

is used for activities contrary to the principles of Islam and is subsequently provided in waqf, it can not be taken as property of waqf but may fall under the scope of trust under the Trustee Act 1949 [Act 208]. In brief, waqf is a kind of social finance for the development of ummah.

The waqf asset evolves from landed property to cash following the need of the society. According to Section 2 of Selangor Waqf Enactment 2015, the definition of cash waqf means any cash contribution, gold value or those like that from any person for any purpose of waqf. It was also defined as the donation of some money from one's possessions and the creation of a waqf based on that sum of money, and the distribution of it to the public or the use of it by other segments of the community (Saifuddin et. al., 2014). It is a form of endowment that is limited to cash and contains the usufruct or benefits of certain forms of waqf, such as cash as rental benefits. (Abdul Rahman & Awang, 2018). It appears in the form of pooling funds (Norzilan et.al, 2018). It mobilizes donor funds on a perpetual basis and invests them in productive assets that provide individuals or groups either with usufruct (manfa'ah) or possible revenue/profit usage conforming with the donor policies and guidelines (Mohd Mokhtar et. al, 2015). Nowadays, cash waqf appears to be one of the most favoured instruments of waqf because it is liquid, manageable, practical, flexible, accurate and remains viable to generate more funds as well as the method is possible for the development of a community. (Fauzi et. al., 2019). Hence, cash waqf is a genuine Islamic formula that reflects the relationship between the values of faith and the values of development in Islam.

Legitimacy of Cash Waqf

The legitimacy of waqf is not directly mentioned in the al Quran. However, Allah SWT encouraged charitable donation (Sadaqa), expenditure for good causes (Infaq), and other charitable acts such as in Surah al-Baqarah: 261; Surah al-Baqarah: 215, Surah al-Baqarah: 267, Surah al-Imran: 92; and Surah al-Hadid: 18. (Farhana& Asmak, 2017). The act of waqf was implemented by the Prophet Muhammad (PBUH). Narrated by Abu Hurairah, the Prophet Muhammad (PBUH) said:

“When the son of Adam dies, no further reward is recorded for his actions, with three exceptions: a charity whose benefit

is continuous, knowledge from which benefit continues to be reaped or the supplication of a righteous son (for him or her)". (Sahih Muslim, Hadith No. 1631)

This hadith highlighted that this act would continue to reward until the judgment day, which is one of the reasons for creating this Sadaqah Jariah i.e. the cash waqf. Another evidence is the report of Ibn Umar as follows:

Umar acquired a land at Khaibar. He came to Allah's Apostle (ﷺ) and sought his advice concerning it. He said: Allah's Messenger, I have acquired land in Khaibar. I have never acquired property more valuable for me than this, so what do you command me to do with it? Thereupon he (Allah's Apostle) said: If you like, you may keep the corpus intact and give its produce as Sadaqa. So 'Umar gave it as Sadaqa declaring that property must not be sold or inherited or given away as a gift. And Umar devoted it to the poor, to the nearest kin, and to the emancipation of slaves, aired in the way of Allah and guests. There is no sin for one, who administers it if he eats something from it in a reasonable manner, or if he feeds his friends and does not hoard up goods (for himself). He (the narrator) said: I narrated this hadith to Muhammad, but as I reached the (words)" without hoarding (for himself) out of it." he (Muhammad' said:" without storing the property to become rich." Ibn 'Aun said: He who read this book (about Waqf) informed me that in it (the words are)" without storing the property to become rich." (Sahih Muslim No. 1632)

In Malaysia, the 77th Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia which convened on 10-12 April 2007 in Kuala Terengganu decided that waqf in cash is permissible in Islam. Accordingly, the 5th Selangor State Fatwa Committee Meeting / 2017 which convened on the 17 October 2017 equivalent to 26 Muharram 1439H decided that cash waqf as waqf asset must conform with the following conditions:

1. The original value of the endowed money should always be expanded and increased;

2. Any purchase of assets must comply with Islamic law; and
3. Other conditions set from time to time by Wakaf Selangor Corporation.

The above discussions revealed that cash waqf is acceptable and legitimate to be implemented in Malaysia.

Development of Cash Waqf in Malaysia

In 2004, the Malaysian government established the Department of Awqaf, Zakat, and Hajj (known as JAWHAR) as a national institution to standardize cash waqf management. Among the role of JAWHAR are to recommend standard practices and initiatives to be adopted by the State Islamic Religious Council (after this known named as SIRC), monitoring waqf projects in Malaysia and establish a relationship between the SIRC and the Federal Government (Mohd Mokhtar et. al., 2015). In July 2008, a waqf foundation was established known as Yayasan Waqaf Malaysia (after this named as YWM) under the Trustees Incorporation Act 1952. The functions of YWM include collecting waqf funds, developing existing and new waqf properties, implementing welfare and social programs in respect of waqf donors' intentions, conducting investment projects to support waqf beneficiaries' disbursements and promoting the activities of YWM. (Report of World Bank, INCEIF and ISRA, 2019). In continuance with these developments, many cash waqf schemes and projects were initiated by YWM, local banks, SIRC as well as public higher education institutions. For example, the Waqf Fund initiative was introduced by the Association of Islamic Banks in Malaysia (AIBIM), in which six Islamic banks collaborated with the State Islamic Religious Council of ten states to provide more structured and systematic channels for cash waqf collection and management. Besides that, in 2012, Bank Muamalat Malaysia Berhad (BMMB), in collaboration with Selangor Waqf Corporation, introduced a cash waqf system.

Additionally, Maybank Islamic also announced the establishment of an RM20 Million waqf fund in collaboration with the Islamic Religious Council of the Federal Territory (SIRC). Among the cash waqf project that using the allocation of cash waqf amounting to RM2.5 million from the 2010 budget is the Terengganu Culinary Academy, which was established

on a land owned by the Majlis Agama Islam dan Adat Melayu Terengganu in collaboration with YWM and GIAT MARA. Similarly, in Johor, the purchase of four units of double storey shophouses in Nusajaya is among the project using cash waqf fund. Other projects funded by cash waqf are the establishment of Hotel Grand Puteri, Kuala Terengganu, Hotel the Regency Seri Wawasan Taiping, Perak, and Hotel Pantai Puteri, Melaka.

Simultaneously, another initiative in developing waqf is waqf Sukuk. Waqf Sukuk (bond) is a modern innovation for raising waqf finance. After the maturity period, the completed projects would be declared a waqf asset, and waqf beneficiaries will enjoy their future benefit in perpetuity. This waqf Sukuk has proved a success in countries like Singapore and Saudi Arabia and these countries issued Sukuk to raise capital for waqf land development, which resulted in the revitalization of an old mosque and the modernization of rundown shop (Report by World Bank, INCEIF & ISRA, 2019). Waqf Sukuk also raises the fund for public sector projects such as roads, hospitals, and schools. For example, a toll highway, require construction funding in a Build-Operate-Transfer (BOT) structure. The project would have paid the initial funding required in full at the time of transfer (usually back to the government) along with an annual or semi-annual return. Though the initial structure is Sukuk, the highway is transformed into a waqf for the benefit of the public at the time handover. Highway income can continue and can be used to help or extend the waqf. This can be considered as an innovative project both from the economic and Shariah perspectives. (Abd Rahman & Awang, 2018). The above discussion revealed the critical role of waqf as social finance instrument in enhancing the development of both public and private projects.

RESULT AND DISCUSSION; ISSUES AND CHALLENGES IN IMPLEMENTING CASH WAQF

Despite the significant progress in waqf management and development, cash waqf still faces a few issues and challenges in its implementation. The previous study showed the issues in cash waqf involves waqf asset, management and SIRC as sole trustee of waqf asset (Ismail et.al., 2014). If these issues adequately managed and utilized, cash waqf's potential can be improved to create sustainable and perpetual benefits for all. These issues and challenges will be discussed in the subtopics, which are as follows:

Inadequacy of Comprehensive Legislation

One of the main issues that hinder the development of waqf in Malaysia is the inadequacy of comprehensive legislation for waqf. In Malaysia, the legality of waqf is under List II, State List, Ninth Schedule, Federal Constitution of Malaysia. Regarding this provision, Section 74 (2) provides power to each state to make law or any regulations regarding matters enumerated in the State List (Second List set out in the Ninth Schedule). In other words, in Malaysia, separate enactments have been allowed to govern waqf in each of the states. Thirteen of the states govern their waqf institutions independently under their respective state enactments. Out of the thirteen states, five have passed specific waqf legislation such as Johor, Selangor, Negeri Sembilan, Terengganu, and Malacca through State Assembly and the remaining states and the federal territories have enacted provisions on waqf in their general administrative legislation.

The need for comprehensive waqf legislation to address the increasing need for effective waqf management and solve issues found in the state's waqf management is essential. This is because there are different types of the waqf asset, ranging from immovable to movable property such as cash, shares and bonds are well accepted as waqf, legislation is needed to better recognize their validity and regulate their handling by waqf managers. (Zati Ilham A.M. et. al., 2019). In contrast, the Administration of Religion of Islam Enactment Johor 2003 did not define the term cash waqf in specific. This is followed by other states which provide only the definition of general waqf and special waqf. (Sharifah Zubaidah, 2016). State of Negeri Sembilan, Malacca and Terengganu for example, are among the state which did not define the term cash waqf in specific, same as state of Johor and provide only the definition of general waqf and special waqf under their own jurisdiction. The above studies showed a clear definition of cash waqf is vital to be inserted in the statutes for its effective implementation. This is to accommodate the growing needs for effective waqf management and to resolve issues which have been identified in the management of waqf in the state. Also, the inconsistencies of laws related to waqf in every state in Malaysia has caused many interpretations, understanding and procedures (Md Nurdin, 2015). This concern has caused to the number of different set of enactments and to standardize the law of waqf would be difficult due to the power given to each state to make law or any regulations regarding matters enumerated in the State List of Federal Constitution.

Therefore, a specific waqf law must be enacted that deals with all waqf institutions in a country. (Mohd Izzat Amsyar, 2019). The law must be comprehensive, neither ambiguous nor restrictive, and must cover all aspects of waqf governance, from the conditions of establishing waqf to the mode of dispute resolution. The formulation of a particular law is capable of being a comprehensive legal mechanism to regulate and administer all activities related to waqf as opposed to existing legal provisions. A specific provision for every requirement of waqf activities is established in a specific law of waqf. At present, JAKIM's effort to formulate the waqf act to regulate waqf activities especially in the Federal Territory should be welcomed and supported by all parties to ensure that the implementation of waqf is kept up to date in meeting the current needs.

Among the challenge in handling waqf, disputes are the conflict jurisdiction of the courts, either Shariah or civil courts. Although Article 121 (1A) of the Federal Constitution provides the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts, the situation is still debatable. This is because civil courts have continued to pursue waqf proceedings and the claims put forth by these civil courts are that the Shariah courts have no jurisdiction to grant relief, such as damages, injunctions, or estoppels, as these are the powers that the Civil High Court that was granted by law. Previously there were cases found to be within the Shariah court's jurisdiction, yet they were dealt with by the civil court. For example, in the case of *Commissioners for Religious Affairs Terengganu & Ors v, Tengku Mariam* [1970] 1 MLJ 222 where the parties had consulted with the Mufti to decide whether Tengku Chik's waqf was lawful for his family and these waqfs had been approved by the Mufti. Nevertheless, the learned judge declined to recognize such fatwa in that case but followed the decision of the Privy Council in *Abdul Fatah Mohamed Ishak v Rasamaya Dhur Chowdhury* [1894] L.R. 221A 76 and *Fatimah binti Mohamad v Salim Bahshuwen* [1952] A.C. (Syed Abdul Kader & Md Dahlan, 2009).

Lack of Transparent and Accountable Governance

Another issue and challenge in implementing cash waqf is the lack of a transparent and accountable regulatory framework. Among the causes are the diversity of laws, poor management, location of waqf land,

which is less strategic, small size and scattered position, as well as lack of professional human resources in waqf management. (Nor Asiah Mohamed, 2018). Studies on the accountability of waqf institutions showed that there are three fundamental issues arise in the development and sustainability of waqf institutions, to be specific: the authoritative document of waqf which confined the waqf funders' conditions, a method for the board, and speculation. Second is the issue of corruption in waqf institutions, and the third hindrance is government meddling in overseeing waqf among the contributor on the effectiveness in managing the fund. (Kamarubahrin, A. F. et.al, 2019). Issues such as incompetent mutawalli (waqf manager) who has a lack of experience must be tackled to avoid inefficient and unsystematic management of waqf. In Malaysia, all activities related to waqf, including cash waqf shall be under SIRC who acts as a sole trustee. Hence, all waqf assets (movable and immovable) will be registered under the name of the respective SIRC.

Therefore, waqf management must be entrusted to experienced and experts with the highest integrity, people with the right calibre, the right skill, and the right character.

SRIC has taken the effort to corporatize the waqf management such as Selangor Waqf Corporation and Negeri Sembilan Waqf Corporation. These Corporations collaborate with experts from the private sector to market and monetize waqf asset. The success story of cooperation is the successful collaboration between Majlis Agama Islam Wilayah Persekutuan and Lembaga Tabung Haji in developing Kuala Lumpur's RM151 million Menara Bank Islam project (Bank Negara Malaysia, 2018).

Lack of Regulatory or Mechanism to Ensure the Collection and Distribution of the Cash Waqf

Another pertinent issue is there is no regulatory framework or mechanism to ensure transparency and integrity of collections and distribution of the cash waqf. This is because the trustees should make the cash waqf operations more transparent. In Malaysia, there are a few numbers of entities entrusted to collect a cash waqf such as YWM and selected Islamic banks that provide a production facility for the collection of cash waqf through a deposit scheme, for example, Bank Islam Malaysia

Berhad, Bank Muamalat Malaysia Berhad and Maybank Islamic Berhad, which all provide a deposit service for the collection of funds to redevelop old waqf asset (Fauzi et. al., 2019). Such as Wakaf Selangor Corporation collaborate with many other financial institutions to collect cash waqf. In 2012 Bank Muamalat Malaysia Berhad (BMMB) joined Wakaf Selangor Corporation as a cash collector through various method either through the bank's counter, hibah from Wadi'ah account holders, Periodic Payment Instruction (Arahan Pembayaran Berkala), Internet Banking or cheques as well as cash deposit machine and debit cash from savings and current account for account holders through 'Auto Teller Machine (ATM) (Farhanah et. al., 2015). The distribution of cash waqf fund in Selangor mainly is distributed under a new plan called 'Rental Manfaat Distribution Policy'.

However, the issue of the multi-layer decision-making process has limited the effectiveness of cash waqf distribution in Selangor. Even though many entities are considered qualified to manage the fund, significant control is still with SIRC. The limits affecting cash waqf distribution are long documentation process, time-consuming approval process and costly administration fee. The regulatory mechanism to ensure the collection of cash waqf that are transparent and complete is still lacking. In addressing the issue, advanced technology such as blockchain is suggested to resolve the deficit of trust and transparency that affects the waqf system (Gazali, H. M., & Che Ismail, C. M. H., (2019).

Blockchain is a transparent, decentralized ledger that serves as a record of cross-party transactions in a way that is permanent through a peer-to-peer network. In other words, the blockchain concept is distributed in a peer-to-peer network where the untrusted parties can do their business without trustworthy intermediaries to check the transaction, and it provides confidence because the record cannot be altered. It can prove ownership, provide transparency in transactions as well as safeguard the contract. However, blockchain technology is still new and needs multiple deployments before it can become mainstream.

CONCLUSIONS AND RECOMMENDATIONS

Based on the above discussion, it can be concluded that, if cash waqf is to be implemented in a more meaningful way, several issues and challenges need to be re-examined/revisited to unlock the potential of waqf. There are a few suggestions that government could consider which are: a) a need for proper waqf legislation in the form of a specific waqf law; b) adopt a sound regulatory and management policy that benefit from best global practices c) waqf assets managed by highly qualified professional experts by implementing the latest, new, modern and innovative investment strategies. d) creating an environment for technological innovation such as blockchain for waqf management. A success story and good governance of other countries should be followed and used as a benchmark. Therefore, collaboration and cooperation from all relevant stakeholders are vital to making full use of the benefit of cash waqf. It is crucial to be able and willing to change and adapt the best practices and policies for better implementation to drive the development of the waqf sector in the right direction.

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