THE ROLE OF THE STATE ISLAMIC RELIGIOUS COUNCIL (SIRC) IN STRENGTHENING THE WAQF MANAGEMENT IN MALAYSIA: AN OVERVIEW AND RECOMMENDATIONS

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ABSTRACT

Lately, waqf has become a high concern in the Malaysian society and has also been widely covered in the print electronic and new media. Among the things that are widely disseminated in the mass media are the long-lasting benefits of waqf for the world and the hereafter. Waqf is recognized through history, as an instrument that plays an important role in the socio-economic development of the Muslims. Nevertheless, the issue of development and sustainability of waqf assets remains a concern and doubt of many parties. Past studies have also shown that there is a crisis of management, governance and legal factors. There are many waqf properties that are mismanaged and neglected where corruption, abuse of power and negligence have been to occur. This review study was conducted to provide an overview of the management of waqf property and to delve into the role of the State Islamic Religious Council (SIRC) in the management of waqf property. The results of the review have presented suggestions to improve the management of waqf property for the benefit of all.

KEYWORDS: state islamic religious council, waqf management, governance, socio-economic development of the ummah

I. INTRODUCTION

The party that manages waqf is generally called a mutawalli. Mutawalli is a party appointed under a waqf deed to manage the affairs of waqf property. Mutawalli has no interest and right to the property but manages it as a trust whose title is Allah (S.W.T). Where the practice in Malaysia concerned, waqf is under the auspices of the Sultan of each state. The State Islamic Religious Council (SIRC) gets the mandate from the power delegated from the Sultan. The management of waqf’s property by the SIRC refers to the Enactment of each state. There are fourteen (14) states in Malaysia and there are fourteen (14) enactments referred to for each state. The SIRC is the sole trustee for all types of waqf properties (Nurdin Ngadimon, 2014). This appointment is intended to ensure the occurrence of mismanagement of waqf property by anyone without legal control is minimized or avoided as well as to facilitate the control and development of the waqf property (Baharudin Ashak & Salahudin 2006).

Nevertheless, all of these management need to be handled well through effective leadership and management in an organization (Abdul Jalil et al., 2021; Mohd Noh et al., 2021; Mustaфа et al., 2021; Roszi et al., 2021; Tumisah et al., 2021). Efficient management and leadership can create a good atmosphere as well as be able to address this issue (Irma et al., 2021; Suzana et al., 2021; Rohanida et al., 2021; Nazrah et al., 2021; Shahrulliza et al., 2021). All available facilities such as infrastructure and facilities should be utilized as much as possible in assisting good management (Mohd Arafat et al., 2021; Sumaiyah et al., 2021; Hifzan et al., 2021; Shahrul et al., 2021; Helme et al., 2021).

The need to implement good management and leadership in organizations and the use of materials is expressed in many studies across various fields (Mohd Ali et al., 2021; Parimala et al., 2021; Siti
Jamilah et al., 2021; Nor Fauziyana et al., 2021; Nor Fauziyana et al., 2021; Noel et al., 2021). Many researchers have stated that facility management and application of certain materials can facilitate human daily work (Ahmad Shafarin et al., 2021; Junaidah et al., 2021; Farah Adibah et al., 2021; Ahmad Shakani et al., 2021; Muhamad Amin et al., 2021; Muhamad Amin et al., 2021). Therefore, every thing that is to be carried out, must be accompanied by efficient management of resources and facilities to meet the needs of its effectiveness (Santibuanua et al., 2021; Nor Diana et al., 2021; Zarina et al., 2021 Khairul et al., 2021; Rohani et al., 2021).

The role of the SIRC is to register and administer waqf properties, distribute waqf properties according to the wishes of the waqf contributor, maintain and develop waqf properties that have the potential to be progressed and expanded, coordinate and resolve waqf land issues and non-inherited property matters. The SIRC also plays a role in increasing the appreciativeship of waqf among the community as prescribed by Islamic teachings. Its jurisdiction includes the determination of rules for the implementation of waqf and appoint a party as a representative in the management of waqf assets. Each state has almost the same roles for the SIRC but there are also differences. Among the differences are that of the organizational structure and their respective committees. Thus the scope of jurisdiction and roles can differ from one state to another. The management and leadership of an organization are very important in ensuring the sustainability of governance (Aminah et al., 2021; Azlisham et al., 2021; Saadiah et al., 2021; Firkhan et al., 2021; Ishak et al., 2021; Ashari et al., 2021).

II. BACKGROUND STUDY

In Malaysia, the legal system related to waqf is administered by the state government and is under the jurisdiction of Islamic Religious Council (SIRC) is the sole holder of waqf property in Malaysia. This appointment is among others to prevent irregularities initiates management apart from controlling and developing the property (Baharudin Asak & Salahudin, 2006) as well as to ensure the wishes of the waqf are realized (Aidi Ahmi, Mohd Herry Mohd Nasir and Mohd Hisham Mohd Sharif, 2005). The SIRC's responsibilities include registering and administering waqf property, developing waqf property to increase its value and return, including making annual account reports (Aidi Ahmi, Mohd Herry Mohd Nasir and Mohd Hisham Mohd Sharif, 2005) as well as making decisions on the collection and use of the result of waqf.

The SIRC also has the power to set rules and procedures for the implementation of waqf and it has the right to appoint any individual or organization as a representative in the management of waqf assets to generate waqf property for revenue in the form of rentals and dividends (Asharaf Mohd Ramli & Abdullah Jalil, 2012). The management and administration of waqf property is managed by the SIRC in each state in Malaysia. As such, inefficient management practices lead to management problems in an organization (Norazmi et al., 2019; Fauziyana et al., 2020; Norazmi, 2020; Zaid et al., 2021; Mustafa et al., 2021). Such management challenges will create conflicts inan effective governance (Mohd Norazmi et al., 2021; Rosnee et al., 2021; Roszi et al., 2021; Nik Nurhalida et al., 2021; Een et al., 2021; Yusaini et al., 2021). The problem of waqf property management adds to the turmoil in the implementation of waqf in Malaysia. In Malaysia, the State Islamic Religious Council (SIRC) is the sole holder of waqf property in Malaysia. This appointment is among others to prevent irregularities initiates management apart from controlling and developing the property (Baharudin Asak & Salahudin, 2006) as well as to ensure the wishes of the waqf are realized (Aidi Ahmi, Mohd Herry Mohd Nasir and Mohd Hisham Mohd Sharif, 2005). The SIRC's responsibilities include registering and administering waqf property, developing waqf property for revenue in the form of rentals and dividends (Asharaf Mohd Ramli & Abdullah Jalil, 2012). The management and administration of waqf property is managed by the SIRC in each state in Malaysia.
each state has its own organizational structure and committees that are apparently different for each state which clearly indicates the scope of jurisdiction independent on the respective states. However, there are problems in the implementation of waqf property by the SIRC. Problems in the governance of the SIRC include lack of staff, lack of job specialization and expertise. Sohaimi Mohd Salleh and Syarkawi Muhammad (2008) found that the issue of human resource management is the most critical glitch faced by the SIRC other than the problem of lack of human resources in various areas of expertise to manage the Waqf Institutions. At the same time, the SIRC staff who are involved in waqf management are also burdened with various other tasks. While the division that manages the waqf usually consists of three or four staff supervised by an officer (Abu Bakar Manat, 2007). This results in no specialization and less attention is given to the development of waqf. Referring to the party that manages waqf as discussed above, even though the SIRC is the sole trustee to manage and administer the affairs of waqf assets, the SIRC still needs assistance to ensure more efficient and effective governance and management of waqf. The establishment of JAWHAR and YWM is seen as a measure to improve the governance of the state loyal waqf with each having a specific role focus; however, problems remain.

From a legal point of view, waqf in the Malaysian Constitution is in table 9, list II, State List which refers to article 74 (1) (4). Since waqf is listed in the State List, each state has its own laws. Each state does not have a uniform Enactment. Not all states have comprehensive provisions and define waqf in detail. Only the states of Johor, Selangor, Negeri Sembilan, Melaka and Perak have a more detailed waqf Enactment. The issue of inconsistency also occurs through existing legal provisions. The problem of non-uniformity will be discussed later.

There are three (3) forms of law that are practised in the Islamic legal system in Malaysia, namely the basic Islamic laws provided by the al-Quran and as-Sunnah, the State Islamic Religious Administration Enactment and the State Waqf Enactment. The substantive law of waqf is contained in the Islamic law. What is contained in this Islamic law is defined in the Administration Enactment of each state which refers to the Shafie School and/or according to any one of the Hanafi, Maliki and Hambali schools of thoughts. The SIRC is empowered through the Enactment to refer to the State Fatwa Committee for views when there is ambiguity and confusion in the waqf instrument. The State Fatwa Committee will refer to the Islamic law to decide the fatwa on the issues raised. If there is a conflict between the provisions of the law and the Islamic law, the latter will prevail according to what is provided by section 46 of the Waqaf (Selangor) Enactment 1999.

III. METHODOLOGY OF STUDY

This study adopts qualitative research method and employs descriptive analysis and data collection through review using a doctrinal research approach which involved collection of secondary data in the form of description from online published journals, online reported law cases and books. The statutes and provisions in various laws relating to governance and law focusing on waqf. This method was chosen because it is the most efficient way to obtain works of literature and data from various books, published journal articles and research proceedings. The findings of previous studies and the legal statutes and policies including the Federal Constitution, Act of Parliament, State Enactments, Malaysia National Plan, and case law were examined to develop the concept and theme of the analysis.

IV. LITERATURE REVIEW

SIRC, JAWHAR AND YWM are involved in managing waqf property. According to Hassan and Shahid (2010), although waqf has great potential in the socio-economic development of the Muslims, reality shows that the management of Waqf Institutions is unsatisfactory. In most countries, Waqf Institutions are not given significant attention. This results in a large number of waqf assets not being managed properly even though the waqf assets have great potential to be developed. The effect is that such assets are not able to provide optimal profits and great benefits to society and the country. Among the factors identified are weaknesses or legal lacunae, management crisis and the attitude of those who manage waqf property who do not seem to have high interest and responsibility to care for such a property.

Through previous studies, it was found that the most critical human resource management issues were the one faced by the SIRC (Sohaimi Mohd Salleh & Syarkawi Muhammad 2008). The SIRC faces the problem of lack of human resources in various areas of expertise to manage Waqf Institutions. At the same time, its staff who are involved in waqf management are also burdened with various other tasks. In some states, the division that manages this waqf usually consists of three or four staff members supervised by an officer (Abu Bakar Manat, 2007). This results in no specialization and less attention is given to the development of waqf. Meanwhile,
according to Abdul Rahim, Mohammad and Ismail (1999), among the problems that arise is to show that there is evidence of poor documentation and recordingsystem, irregular accounting system and some have no accounting system at all. This is supported by the study of Maliah Sulaiman, Muntaka Alhaji Zakari (2013) where they found that there are problems of incomplete reporting (inadequate disclosure), very poor accounting systems (poor accounting practices), misleading and inaccurate accounting classification (improper classification of classes of accounts) even if they have been audited by a certified accountant. Next there are no up-to-date financial statements for reference. This clearly stipulates a chronic issue of accountability. To add, the issue of governance is a fundamental concern in ensuring the efficiency and effectiveness of the implementation of waqf asset management.

Other problems that hinder the development of waqf include the issue of constraints on waqf property conditions, marketing, understanding and readiness of the government in supporting waqf redevelopment efforts. In a related study, it was concluded that the three basic elements of the establishment of waqf; namely final, permanent and non-transferability that have a direct impact in terms of lack of liquidity and cash and the emergence of legal conflicts especially involving waqf terms. All the issues stated above resulted in the cash flow being stagnant and at the same time, hampers efforts to develop waqf property accordingly. Eventually waqf property will continue to be challenging and difficult to develop (Mohammad Tahir Sabit Haji Mohammad and Abdul Hamid Haji Mat Imran, 2006). One acute worrying problem identified is the efforts to realize a waqf institution of higher learning. Hence at present, there is no specific policy nor law regarding the establishment of waqf in Higher Education Institutions (HEIs) (Husna Mohd. Sa’adan et al., 2019), because the existing provisions of waqf, are not in parallel with the current needs in implementing sustainable waqf in HEIs. If this problem is not attended to, it is likely that the future of these students is going to be bleak and unpromising as the lack of financial support to the students to fulfill the requirement of their academic programmes which could be relatively high compared to the pocket money given by their families could give significant impact to them. They may face problems being dismissed, being ordered to relocate and having no future direction. This failure was not the fault of the students, but because of the problem of waqf-based university stated above, university operations had to be stopped. Therefore, the need to create a comprehensive, appropriate and dynamic legislation and governance is crucial when it comes to the Institution where graduates and scholars are born.

According to Mohd Tahir Sabit and Abdul Hamid Haj Mat Imran (2006) the development of waqf is also stunted due to the constraints of waqf property conditions, marketing, understanding, lack of willingness by the government in supporting waqf redevelopment efforts. In the above study and according to Mohd Izzat Amsyar et. Al (2019), it was concluded that the three basic elements of the establishment of waqf (final, permanent, and non-transferable) have a direct impact in terms of liquidity, lack of cash and the emergence of legal conflicts especially involving waqf terms. The implication is that cash flow is stifled and at the same time, hampers efforts to develop waqf property. Eventually waqf property will continue to be problematic and difficult to develop. Recent developments regarding waqf institutions (Nor Asiah Mohamad, 2018) disclosed that marketing factors and the government's willingness to support the development of waqf are no longer a problem. However, if the issue of governance and lacunae (absence or lack) of law is not resolved, the goal of achieving the objectives of waqf, the sustainability of waqf assets and continuity of benefits is difficult to achieve and this contributes to the crisis of public confidence to continue contributing to waqf.

V. DISCUSSION AND RECOMMENDATION

As is well known, waqf Institutions in each state refer to their respective state's jurisdiction. However, sometimes the waqf assets and beneficiaries are in other states (Hashim Dafterdar, 2013). This situation can cause confusion in the application of the legislation and governance. Sometimes there are conflicts between the judiciary that decides the case, the policy makers and the governing party (Syed Khalid Rashid, 2006). The issue of court jurisdiction also raises a dilemma in the launching of the management of waqf assets specifically involving waqf assets, waqf and beneficiaries in different places and not to mention also when involving non-Muslims. The issue of court’s jurisdiction is also a source of disruption to the development of waqf assets and its benefits (Siti Mashitoh, 2008). Inequality also exists through the definition of waqf in each state enactment and its understanding, the structure of waqf management also varies for each state because there is no specific provision in the realm of waqf governance. So far, the state of Selangor has a better waqf management structure than other states. This we can see in terms of accountability practice, Perbadanan wakaf Selangor (PWS) has disclosed its governance information. The structure of the organization, details of departments including the position of the officers were disclosed. Thus, it will benefit stakeholders and beneficiaries in terms of managing issues with PWS. In addition, PWS was transparent on disclosed waqf projects and the current
progress of those activities; for example, the project on developing real estate in the Klang region. This will inform waqf (donors) about what purpose they contribute which in return will benefit Muslim economics. Besides that, PWS effectively and transparently provides statistical financial information about real estate of waqf viewed from the point of view of the constraints and problems of the development of waqf property (Aimi Fadzirul Kamarubahrin et al., 2019). Other states can follow the element of transparency and accountability as showed by PWS. In addition, we are worried on the desire for sustainability and continuity of assets and benefits of waqf assets where there is no standardization, uniformity and comprehensive law and rules to be referred to.

The researchers believe that waqf could be an alternative for the long-term in strengthening the generation of income in universities. Moreover, the establishment of waqf funding in HEIs in Malaysia is directed towards receiving domestic, foreign, cash, shares and financial assets to fund scholarships, loans and fund expansion activities, such as investment activities (Husna Mohd. Sa’adan et al., 2019). However, without the provision of a complete and appropriate legal framework, the Islamic Religious Council of each state has no jurisdiction to manage waqf property systematically and efficiently; this can result in the existence of various problems in managing and administering waqf property (Abdullah, 2008). The elimination and freezing of waqf assets is a big problem for waqf institutions and unfortunately the problem also stems from the legal and the implementation of waqf problems. Studies have shown that the legal approach related to waqf is often mixed up between the approach of the English law and the local law. As a result, waqf land is now administered according to whatever law is appropriate. Although some states have specific laws related to waqf administration, there are some restrictions by other laws such as the National Land Code 1965.

Misconceptions and misinterpretations about the Federal Constitution's provisions on state jurisdictions and courts cause inefficiency in waqf administration in Malaysia. The law should be the solution to the problem and not a contributor to the problem. This means that a more appropriate, effective, accurate and efficient legal provisions need to be implemented immediately in addressing all waqf issues. For example, if the basis of the case falls within the jurisdiction of the Syariah Court, then the Syariah Court has jurisdiction to hear and decide the case even if it does not have clear provisions relating to the relief sought. The Syariah Court needs to use the existing provisions to give effect to its judgment. For example in section 251 of the Selangor Syariah Civil Procedure Code Enactment No. 7 2003 and section 244 of the Federal Territory Syariah Court Civil Procedure Act (Act 1998) mention the existing powers of the court namely: “Nothing in this Act shall be deemed to limit or affect the existing powers of the Court to make any order necessary to avoid injustice or to prevent abuse of the Court process”. Therefore, the existing provisions can be used by the Syariah Court to issue any necessary orders and reliefs. The State Legislative Assembly also needs to be more proactive in giving due powers to the Syariah Court as made by Parliament in enacting acts such as the Specific Relief Act 1950 and other legislation. Waqf legislation should give exclusive rights to the Syariah Court in line with article 121 (1A) of the Federal Constitution and explicit exceptions to the general principle of waqf provision in other legal sources such as the National Land Code, the Trustee Act 1949, the Specific Relief Act and even when it involves non-Muslims. This due amendment to the law needs to be expedited to ensure the smooth running of the waqf issue in courts. Furthermore, one of the 2011 SIRC Congress resolutions proposed that the SIRC enactment to be updated so that the jurisdiction to function can be rendered effectively. The author hopes this resolution will be realized soon.

According to Ahmad Mohsein Azmi (2011), the introduction of the waqf governance code to state committees or any institution that receives waqf fund must be established. This Code of Governance system, widely used by public companies that involve many stakeholders and at the same time does not set aside the objectives of the company as well as the waqf; the committee must consider the interests of stakeholders in decision making without neglecting the SIRC objective of welfare and sustainability. According to him, the concept of a governance code can standardize the management even more so in the process of making the best decisions. Not until there is a specific and comprehensive provision for waqf, it can contribute to the lack of public confidence in the endowed property. This is because through past studies, there are a large number of waqf properties that are not managed efficiently; with corruption and abuse of power issues and total neglect of the responsibilities entrusted to them (Ariif 1991; Hoaxter 1998; Bremer 2004; Abdus Shahid 2010).

The problem of public confidence can beat least minimised if not solved by increasing the accountability of mutawalli and the element of transparency on waqf transactions from the beginning until the beneficiary benefits from waqf. In this way the Waqif (donor) can see how and to what extent the endowed assets are managed. If referring to the neighbouring country of Singapore, the development of waqf is growing very fast. One of the factors is that all waqf transactions are easily accessible to everyone, especially the waqifs themselves. Through
this established database and because it is easily accessible, MUIS (Islamic Religious Council of Singapore) can be seen to be having an easy expansion of income and a steady growing of waqf income generating activities (Lim, 2011; Abdul Karim, 2011).

Something can also be made in improving the governance of waqf institutions so that they do not depend only on one source of income and assets only. It needs to be diversified into various forms such as investment and contemporary methods of generating income in order to ensure the sustainability of waqf assets in accordance with the Ninth Malaysian Plan. They also suggested improving accounting practices by ensuring adequate and transparent information disclosure. They stressed the uniformity of the waqf accounting system for better governance. A uniform accounting system, clearly transparent and systematic, is the basis for the implementation of good and correct accountability (Ihsan and Shahul, 2011).

In Malaysia, the issue of uniformity must refer to two (2) mechanisms; the first is the power of Parliament in approving laws by looking at the existing state jurisdiction. This power refers to article 75 of the Malaysian Federal Constitution and secondly through the federal government using a process of consultation with state governments by creating a model of law that can be followed by other states. The standardization of the law aims to create a clear law (legal certainty) to facilitate policy formulation strategies to improve the management of waqf institutions in each state, national and global (Syarifah Zubaidah Syed Abdul Kader, 2016). Among the efforts to standardize the law and property management of Muslims, waqf is included in the scope of the Department of Islamic Development Malaysia (JAKIM) to coordinate Islamic law throughout Malaysia as the secretariat of the National Council for Islamic Religious Affairs (MKI) which has the power to standardize Islamic law. Furthermore, efforts to standardize Islamic law are still being carried out in achieving effective governance in each state as well as the issue of conflict of jurisdiction of syariah and civil courts which is also a concern to be harmonized so that the objective of waqf is appropriately achieved.

VI. CONCLUSION

Waqf needs to go through a process of transformation and reform of governance and legislation immediately so that the long-term and sustainable benefits of waqf to the development of the ummah and the socio-economy of the country will be more significant and relevant. In order to change, all parties need to beistentigomah (consistent) to continue their efforts to enhance and enrich the waqf institutions, despite facing various inevitable challenges. To ensure that the implementation of this waqf can be executed effectively and successfully, an immediate solution must be sought. However, in order to find a solution to effective governance and provision and a better enforcement of the legislation, the issues that occur in the implementation of waqf must be studied so that the improvements would take into consideration all necessary aspects of the waqf. Examples of governance and national legislation of other countries, both Islamic and non-Muslim matters, should be used as a yardstick and guide in the success of waqf asset development projects in Malaysia.

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