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Risk Management in Waqf Administration in Malaysia

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ABSTRACT

Waqf governance and management faced many challenges nowadays. Various developments have emerged in Islamic fintech sector and have created new battlefield in economy including Islamic finance. This, to a certain extent, contributed to the new game changers in the Waqf sector. This paper aims to investigate the existing as well as the potential risk in Waqf governance and management in view of the developments taking place in Islamic finance as well as the Islamic social finances. Specifically, the study identifies legal risk and threats in Waqf management. It is acknowledged that global development creates borderless phenomenon in all aspects of life, socially, economically, and politically where Waqf must be ready to resist and overcome the challenges. The findings show that legal framework contributes a considerable degree of risks in Waqf management in Malaysia while Islamic fintech has directly and indirectly contributed to the new expectation in Waqf governance and management. Waqf is no more seen as a commodity that may be managed or dealt with in isolation but with synergy and innovation with other social finance products taking all opportunities available in Islamic fintech. Contemporary waqf tapping on Islamic finance is unavoidable and necessary for waqf to remain relevant, sustainable, and functionable beyond providing religious duties and preferences. Having a global standard of practice is necessary in addressing the potential risk in Waqf management.

KEYWORDS

Waqf, Waqf Administration, Risk Management, Majlis, Waqf Core Principles, Mutawalli, Technology

ACADEMIC PAPER



1. INTRODUCTION

For a Muslim, *waqf* is an act of doing charity satisfying the social and religious needs as well as duties for the sake of Allah SWT. This can be done through dedication of valuable property, moveable or immovable, in perpetuity where the benefit shall be enjoyed by persons or societies as identified by the *Waqif* (Kahf,2011). *Waqf* properties are referred to as ‘mawquf’ and shall be managed by a person or body called as *nazir* or *mutawalli* or a trustee. As management is crucial in ensuring the workability and sustainability of *Waqf*, many countries have enacted specific laws to govern *Waqf* matters. The laws provides for the authorities, procedures, dispute resolutions and the effect of failure to manage the properties effectively.

As *Waqf* involves management of trust properties, in which it relates to one’s faith in God and sense of responsibility towards the societal needs, the trustee or the manager owes a certain degree of trust and accountability. In Islam, the creation of *Waqf* is guided by various primary sources that go back to the practices of the Prophet (SAW) and his companions. From these sources, certain Syariah principles are determined by the Muslim jurists where *Waqf* must be perpetual, irrevocable, and inalienable. In addition, the property must be managed by trustees as identified by the *waqif* or the authority. There is no clear verse in the Quran providing for ‘*waqf*’ but there are many verses mentioning *sadaqah* and *infaq*. These verses laid down the ethics and rules in managing *Waqf*. The Prophet (SAW) himself, has provided various guidelines in his teaching and practices. The hadith mentioning about ‘*sadaqah jariah*’ has been associated with ‘*Waqf*’ since the benefit of *Waqf* as emphasized by the jurists has to be perpetual, hence, *Waqf* is regarded as an act on *sadaqah jariah* (continuous charity). The most notable example is the hadith regarding the question posed by Saydina Umar al Khattab about how to best utilize his precious land in Khaybar (al-Qohtain 2012). This hadith provides the rules and ethics about *Waqf*.

As there is no clear provision in the *Quran*, *Waqf* principles are developed by the jurists and regarded as ‘*ijtihadi*’ matters. This principle allows *Waqf* to be flexible, dynamic, and contemporary. It depends on the creativity and innovation of the players if it falls within the Shariah principles. The management of *Waqf* requires a good chemistry of various experts, the professionals, and the jurist. In the past, the combination efforts of these groups create innovation of cash *waqf*, combined *Waqf* (*waqf mushtarak*), temporary *Waqf* (*Waqf Muaqqat*), corporate *Waqf* and promotes more synergy of *Waqf* with other social finances products such as *zakah* and Islamic finances.

Hence, *Waqf* is not only charitable and religious but a sector of economy. The Ottoman government in Turkey has proven that in addition to providing for the fulfilment of religious duty and philanthropic calls, *Waqf* is also an institution providing for economic sector. During the period, *Waqf* has been used as the main institution providing capital for infrastructure such as road, hospital, Rest area (*caravan sarray*), kitchen, bath (*hammad*), water supply (*serdivan*) etc.

Most important, as *Waqf* deals with trust in management and governance, the laws alone are inadequate and is found as incomprehensive, especially in the Malaysian context. There are issues related to mismanagement of the fund, abandoned *waqf* land, idle land, lack of capital in developing the land, and lack of manpower etc. These problems continue and persist, thus delaying the development as well as progress of *Waqf* properties.

This paper discusses and recommends risk management systems in *Waqf* management. The room allowing for flexibility of management and promoting innovation in *Waqf* has the tendency to expose *Waqf* to unexpected results or mismanagement and losses. This shall expose the trustee or *waqf* manager in a difficult position and at the end, tarnish the image of *Waqf* institution. Previous literature also reveals various problems and challenges in *Waqf* management hence justify for the discussion of the subject matter of this paper.



2. WHAT IS ‘RISK’ IN WAQF ADMINISTRATION AND MANAGEMENT

A general guide on Risk management is according to the International Risk Management Principles and Guidelines standard (AS/NZS) ISO 31000:2018, is defined as “coordinated activities to direct and control an organisation with regard to risk”. In the context of this paper, risk is confined to the potential negative impact or consequences in managing Waqf. (Mustaffha, Yusuf, & Kasim, 2020) . Hence, risks management refers to the initiative or efforts in protection and preservation of Waqf assets so that the benefits can be enjoyed by the beneficiaries as intended by the Waqif (donor).

Thus, risks management will result in not only the increase in value of the assets but guarantee that the *mawquf* shall remain benefitting the *mawquf alaihi* and fulfilling the intention of the *waqif*. (Hussin et al. (2021) suggested that universities need to fully understand the risks of all aspects, especially concerning investment in Islamic capital market as such investment is not risk-free. To effectively manage the risks, a strong framework needs to be established.

In this paper, the discussion focuses on legal and administrative risk in Waqf management, the challenges, and potential consequences within the context. The developments taking place in relation to economic sector, Islamic banking and finance, information technology, artificial intelligence, climate change, or even the requirement for Shariah compliance, have to a certain extent provide new game changers in the Waqf sector. There are new expectations, values, requirements and demands which require the industry to adapt and adopt. This demands for review of legal framework, policies, *ijtihad*, as well as new classification of assets and benefits in addition to the human capital development and training. Above all, the *changers* also demand for capital and assets for security and sustainability.

Hence, risk management is necessary to reduce costs, increase activities, provide, or support innovation. Risk management also helps to promote transparency and build trust since Waqf is a trust sector. Waqf sector has been tempered with various accusations including mismanagement, fraud, inefficient etc. These are the reasons for risk management in Waqf management. In history, Waqf institution has been accused of a practice associated with tax evasion, or avoiding inheritance law, or family centered wealth management. New challenges could be seen in cyber securities issues, money laundering issues as well as exposure to the challenge of crypto currency etc. In the past, the need for risk management in Waqf sector may not be so obvious as the main activities of waqf was basically traditional or mere promoting religious duties. The parties only concerned with perpetual giving and creativity in management is less needed. New paradigms shift in global development made traditional Waqf activities less competitive, less attractive, generate less income and sometimes stagnant in value. The traditional Waqf management as religious assets could not meet the current expectation of the industry where the *Mutawalli* appears to be less qualified, and many a times, has been blamed for the slow development of Waqf in Malaysia. New approaches are necessary. Review of past mistakes and looking for possible threats are crucial.

3. LEGAL AND ADMINISTRATIVE RISK

The federation of Malaysia consists of fourteen states with substantial power assign to the states in dealings with matters fall under the definition of Islam, land and custom. Although the lists are not voluminous, the three matters mentioned are crucial; they mark the foundation of a state, socially, politically or economically. Any nation will firmly hold to these three matters. Having stated that, Waqf is a matter falls under Islam hence, the jurisdiction will be on the

Table 1. Waqf Law in different States

States	Laws
Selangor	Selangor Waqf Enactment 2015
Melaka	Melaka Waqf Enactment 2003
Negeri Sembilan	Negeri Sembilan Waqf Enactment 2005
Perak	Perak Waqf Enactment 2016
Terengganu	Terengganu Waqf Enactment 2016
Sabah	Sabah Waqf Enactment 2018
Johor	Johor Wakaf Rules 1983



state. Thus, all the fourteen states have their own power on Waqf. As such, now of writing this paper, there are already 7 states that having enacted their own Waqf Enactment.

The fact that there are only 7 states having their own Waqf enactment triggers a question of the position of Waqf in other states. These states must rely on several general provisions pertaining to Waqf in their administration of Islamic law enactment applicable in the states. These provisions remain relevant even for the states having the Waqf Enactment. The next question is whether the presence of a few provisions on waqf is sufficient to administer, regulate and manage Waqf in the respective states? In this respect, an understanding on the management of 'Islam' matters in Malaysia may give a clue for the answer. The first references in matters concerning Islam are Hukm Syarak, where the priority is given to the opinions from the Shafie school of thought. Other schools' opinion will be given due consideration if there is lacunae or in preference on the basis of Maslahah. If there is a statute, hence the law applies, and any loopholes or issues will be decided based on *fatwa* (jurist edicts). Nonetheless, there are still cases in which matters decided based on *fatwa* are challenged in the civil court. Fatwa on Waqf were not given due respect in the past by the court. The amendment to the Article 121A of the Federal Constitution providing clearly for the position of 'Islam' matters have reduced the number of debates on the position of *fatwa* on Waqf.

At present, the position of *fatwa* in Malaysia is not certain, not binding and always been challenged and sometimes been accepted by the civil court. This has happened a few times in the past involving the matters of determination of *hukm syarak*, family issues such as conversion to Islam, *hadhanah*. This development is worrisome and put *fatwa* on Waqf in a very fragile position as Malaysia is a multi-ethnic and multi religions where the judges may happen to be people who do not really understand or do not sympathize with Islam or Muslim. There are still many people from the legal fraternity who believe that civil court has right to hear cases related to Islam as the matters do not stand alone but may be related to contract, company, remedies etc., where these matters are under the jurisdiction of the civil court. Conflict of jurisdiction has been raised in various cases where the High Court has on many occasions put aside the decision or opinion of *Fatwa* Committee in recognizing Waqf or other matters pertaining to Islam such as *hadhanah*, matrimonial property, conversion etc.

Another hurdle in Waqf management and development in the context of law is the Waqf Enactment and the Administration of Islamic law enactment for all states have a provision declaring the State Islamic Religious Council in the respective states as the sole trustee for Waqf. Administratively, it appears viable but lacks practicality. It creates a centralized and concentration of power on an Islamic authority, but it provides centralized authority in its implementation. Some religious bodies lack qualified manpower in Waqf management. As a result, there is always a mismatch as to what is expected on how Waqf should play a role and the ability of the authority that manages it. Add to a worse scenario is too much legal centric has made waqf to be slowly developed and data shows a high number of idle or under-developed waqf land in Malaysia. It is reported that there are about 11,091.82 hectares of idle Waqf land in Malaysia (My Metro, 2016).

One of the important issues relating to Waqf is no proper record for waqf administration. This is due to no proper system of registration. These weaknesses led to problems in the development of waqf assets. This threat is serious and causes millions of losses of potential profits and decrease of value in assets. Magda reports that only 2 percent of Waqf lands being developed in the Muslim countries. In Malaysia for example, some lots have not been properly transferred to the legal trustee i.e. the Islamic Council as required by the law. Similarly, some countries, especially the minority Muslim countries may choose not to disclose the total acreage of Waqf land for security purposes. Some lands are not registered as there are practices against the planning law or land law practices hence exposing the land to forfeiture or acquisition by the government. Many waqf lands are not properly registered as there are many owners and nobody wishes to initiate the process as it involves administrative cost.



4. MANAGEMENT RISK IN WAQF

Waqf is distinguished from the normal act of charity (*sadaqah*) as it has its pillars which are the donor (Waqif), the subject matter for Waqf (mawquf), the beneficiaries (*mawquf alaih*) and the terms for the Waqf (*sighah*). The terms (*sighah*) of the Waqf as determined by the *waqif* is crucial in Waqf management as it creates an obligation on the trustee to fulfill the intention. The main different of Waqf institution initiated by the Prophet Muhammad (SAW) and his companions from the earlier Waqf or charitable practices of the earlier Prophets is the nature of Waqf that is practiced beyond religious duties and the determination of rules and principles which make waqf perpetual and sustainable act.

Waqf is an institution based on trust where the management is done either by the government (public mutawalli) or by private Mutawalli appointed by the Waqif himself. There are regulators known as Nazir waqf with the jurisdiction to monitor, regulate and reprimand any Mutawalli who fails to uphold the trust. Nonetheless, literatures on Waqf have repeatedly report that Waqf management has been affected by various irresponsible acts such as fraud, mismanagement of trust, lack of transparency, and have been badly affected due to lack of human professionals or suitable manpower to effectively manage the assets. Some of the lands have been left idle due to lack of capital, and most worrisome is the approach on development is traditional and family centered in nature. While some others are basically land with low value and lack capital for development.

The vast aspect of management demands for a more focused risk such as depreciation in value, maintaining the perpetuality of Waqf while considering for the best development of the assets. Thus, identification of the risks and the causes, as well as analysing and preparation for the solution of the risks is critical.

Table 2. Types of Potential Risks for Waqf Management in Malaysia

Types of Risks (potential risk)
Approval from the Majlis for Private Mutawalli
Collection management.
Counterparty risk.
Disbursement management.
Problem waqf assets, provisions, and reserves.
Transactions with related part.
Country and transfer risks.
Market risk.
Reputation and Waqf Asset Loss Risk.
Revenue/profit-loss sharing risk.
Generating Income Activities and Sustainability Management

Source: Self Analysis Based on WCP

The identified risks as stated above show there is a need for an immediate strategy for risk management.

RISK MANAGEMENT PROCESS



FIGURE 1. Risk Management Process

Source: Corporate finance institute (CFITeam,2022)



Risk management structure can be developed after a deep study and analysis of the above. In a Waqf management in which its main business involves income generating investment, the strategy should involve planning, organizing, budgeting and cost control. Waqf activities focusing on charity or philanthropy might differ slightly from religious Waqf especially related to human resources, experts, and logistics. In religious waqf, utilization of assets and expertise can be channeled to the existing manpower such as the mosque management committee or the religious institution while the corporate waqf or philanthropic Waqf may need to provide training and hire the professionals as the objectives of the Waqf is to generate as much benefit to ensure a good flow of benefits for the beneficiaries. Waqf is to be seen not only as profitable but also as a competitive industry. In this aspect, Waqf fulfills the pre-requisite that it must be perpetual.

5. POTENTIAL RISKS MANAGEMENT IN WAQF

Another potential risk in Waqf management is the possibility of not having a qualified trustee to manage the assets. While many Muslim countries have allowed for management by the private Mutawalli, Malaysia allows only the State Islamic Religious Council to manage as the sole trustee while other parties must get the permission from the Majlis and managing without the authority is made an offence. Nevertheless, the law does not restrict the appointment of the Mutawalli or *nazir* by the Muslim but it must be carefully done, and benefits much be enjoyed by the *ummah*.

5.1 Risk of Not Getting the Support and Approval to Manage Waqf Assets

The requirement to get permission to manage Waqf assets in Malaysia may lead to managing Waqf without the approval. In Indonesia, the Waqf Core Principles (WCP) which is an initiative of Indonesian Wakaf Board and Islamic Development Bank, has been initiated to identify the risks in Waqf management. This awareness is important for members countries who choose to ratify the WCP to develop their own working and implementation procedures to ensure the risks are properly addressed. In the context of Malaysia, the long and overdue complaint of the difficulty in getting to approval as private Mutawalli post as the most difficult risk to be addressed. It involves concentration of authority owed to the Malaysian legal system. In overcoming this, there is a need for an open-minded and moving forward strategies among the leaders in the Majlis or (SIRC). Being the main regulator and not the player, SIRC is still exercising their power as enshrined by the law. The identified risks in Malaysia has, to a certain extent devalue Waqf properties.

5.2 Risk for Stagnant Value of Waqf Assets

Another important duty of the trustee of Waqf is to ensure Waqf assets have a good increase in value. Thus, it is important for Waqf stakeholders to have a joint-venture, strategic collaboration, and financial partner in managing Waqf assets. In the case of cash Waqf, it must be admitted that by just parking the money in a fixed deposit is not the best way to preserve and protect Waqf assets. Fiat money is fluctuating. The option is possibly with gold reserve. In other words, the money should be preserved in the form of gold. Some might argue that gold is difficult to liquidize but Waqf is for the long term. Hence, a selected Waqf project such as change of roof of a mosque or school which may take place once in every 10 years can be raised and preserved through gold Waqf.

In Waqf management, there are other potential risks such as lack of trust among the public on the ability, professionalism, and economic resources in managing Waqf. It is important for Waqf institution to acquire the trust of the donors to gain continuous support. This could be achieved through social media or going to the field programmes in order to build and sustain the trust. Mismanagement and fraud as well as lack of transparency are the factors that demotivate Waqf management. Good reputation is crucial in Islamic institution failure which may cause reputational risks in Waqf management.

6. RISK ANALYSIS PROCESS

Risk analysis is a qualitative problem-solving approach employing various tools of assessment to work out and rank risks for the purpose of assessing and resolving them (CFI Team, 2022). The risk process involves



a few steps such as identifying the current risks, assessing the risks, and establishing appropriate response based on the identified risks. There are various strategies to carry out risk identification such as observation, brainstorming activities with all stakeholders, focused group discussion, engagement with the stakeholders, engagement or hiring the experts etc. It is important to identify the various sources of risk and the next process is to assess the risks. The long-identified list needs to be arranged in the order of priority as prioritization ensures that those risks that can affect the management of Waqf assets significantly are properly prioritized. This may need funding, manpower and collaborative effort. Later, all stakeholders must design an appropriate response to mitigate and overcome the risks. Identify and plan the appropriate remedies to mitigate the risks and prevent their recurrence. Lastly, the *Waqf* stakeholders especially the Majlis as the Sole Mutawalli of *Waqf* in Malaysia should develop preventive mechanisms for identified risks to ensure no unplanned damage which shall cause the decrease of value or losses of Waqf assets as this is certainly a breach against the *sighah* of *Waqf*. Risk management will help the *Majlis* to make decision pertaining to the reappointment of the Waqf trustee. It helps to minimize losses and build more trust among the donors.

Risk assessment prepares for the long-term and short-term initiative. A good plan and strategic initiative shall save cost and time of the donor, *mutawalli* and build trust of the people to continuously participate in *Waqf* project.

5. CONCLUSIONS

This paper discusses the importance of risks management and highlights the potential risks in Waqf management in Malaysia. Legal framework that setting Waqf under the state's jurisdiction contributes to potential risks. It has great potential to shy away the donors and demotivate the *Waqf* players and stakeholders. The risks portray the administrative hurdles and impact the slow development of *Waqf* in Malaysia. As law sets the foundation, risks management is a challenge. Providing a regulation allowing for private Mutawalli or setting for an easy workflow for the appointment of private Mutawalli is an option to minimise the risk. Administratively, there should be more awareness, education and government as active players of *Waqf*. Waqf Core Principles are documents providing for the details of working of the rules and procedures which may be adopted for better administration of Waqf hence, minimizing the potential risks. Ratification of the document is necessary in setting a global good practice in *Waqf* Management. This paper proposes that the *Waqf* trustee (*Mutawalli*) must adopt risk management system in their administration combating any risks, short or long-term risk management.

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The Research meets all ethical standards.

Conflict of interest

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