
Waqf Property Management Through the Maqasid Al-Shariah Approach

WAN NAZJMI MOHAMED FISOL^{1*}, MARINA ABU BAKAR², AKLI AHMAD³

¹Assoc. Prof Dr., Centre for Islamic Finance Education and Research, Sultan Abdul Halim Mu'adzam Shah International Islamic University (UniSHAMS), 09300, Kuala Ketil, Malaysia.

²Lecturer, Kulliyah of Shariah and Law, Sultan Abdul Halim Mu'adzam Shah International Islamic University (UniSHAMS), 09300, Kuala Ketil, Malaysia.

³Senior Lecturer, Kulliyah of Shariah and Law, Sultan Abdul Halim Mu'adzam Shah International Islamic University (UniSHAMS), 09300, Kuala Ketil, Malaysia.

Email: wannazjmi@unishams.edu.my¹, marinaabubakar@unishams.edu.my², akliahmad@unishams.edu.my³

*Corresponding Author

Abstract: Waqf is an important instrument in a country's economic system as it ensures that the socio-economic development can be achieved more effectively. However, there are several issues that hinder the management and development process of waqf land for the purpose of socio-economic development of ummah. These happened because of the existence of several conditions set by the donor (waqif) of waqf properties. Therefore, this study is conducted to identify the views of Shariah scholars from the aspect of changing the conditions of waqf made by the donor (waqif) through the approach of Maqasid Shariah namely "Tasarruful Imami 'Ala al-Ra'yyati Manuthun bi al-Maslahah". In Malaysia, State Islamic Religious Council (SIRC) is responsible in managing and administering the development of waqf properties in each state. In order to achieve a holistic development, it is vital to look at the broader maslahah (benefits) and needs involved in waqf properties. This study applies qualitative method and the data collection involves library research approach using references from Islamic jurisprudence classical books. The data is analysed using content analysis method. The results of the study found that method of changing the use of waqf property towards a more beneficial purpose is more accurate with the definition and principle of maqasid al-Shariah in obtaining the benefit and avoiding the harm (jalb al-Manfa'ah wa daf' al-Madarrah). The findings are beneficial in helping the management and development of waqf properties and the socio-economic of society in Malaysia as a whole.

Keywords: Waqf Management, Donor (waqif), Socio-economic, Maqasid al-Shariah, Maslahah.

INTRODUCTION

Waqf is one of the religious acts that is encouraged in Islam for a person to approach Allah SWT. It is a religious act under "hablum minallah wa hablum minannas" which states the relationship measures that must be maintained by the Muslims. The act of waqf is practised widely in the Islamic world. Nevertheless, most Arabic countries established a special Ministry to administer and manage waqf properties. Murat Cizakca viewed that Muslim people nowadays are facing deficit and need to minimise the government's spendings by using waqf property which is seen to have the potential to develop the economy of a country especially in this 21st century [1].

In Malaysia, the matters of administration and management of waqf is stipulated clearly under the Administration of Islamic Religion Enactment or State Waqf Enactment. Under this provision, SIRC acts as the sole trustee of waqf properties. This matter is codified in the Constitution under the ninth table, List of States of the Federal Constitution. The State Islamic Religious Council (SIRC) is in charge as an authoritative body towards the administration and management of waqf for each state. Basically, the management of waqf also involves in the optimal development of waqf properties [2].

Although the governance is under the jurisdiction of the SIRC, the Malaysian government has outlined various phases to develop waqf properties in Malaysia. In 2004, the Prime Minister Office established the Department of Awqaf, Zakat, and Hajj (JAWHAR) and Yayasan Waqaf Malaysia (YWM) in 2008 to implement the development of waqf more effectively [3]. Thus, the Master Plan for National Waqf that will be established as stated by the government year 2021 budget is just nice at this time.

Based on the statements made by YWM and JAWHAR, only 13 percent of waqf properties in this country were developed and the rest 87 percent from a total of 30 000 hectares of waqf property in this country are still undeveloped completely [4]. According to Datuk Anan C Mohd, the former Director-General of Department of Awqaf, Zakat, and Hajj (JAWHAR), the basic size of waqf property is 4,836 hectares while 6,255.32 hectares of special waqf property making the total amount of 11 091.82 hectares of waqf property in Malaysia still deserted

and failed to be developed. Looking at these figures, the large size of waqf property is seen to bring impactful *maslahah* (benefit) to the Muslim people. The proper authorities need to find ways to develop waqf properties that have the potential to be developed in order to completely achieve the waqf objective towards sustaining the people's life in betterment and perfection.

Issues Involving Waqf Property

Among the issues related to the management of waqf properties are when the use upon the waqf property is abolished and at the same time it is tied to the terms of the donor (*waqif*) whenever waqf deed was pronounced. This situation needs a more effective solution towards the waqf that has been given until its use was abolished when it is still tied to the original terms that was set by the donor (*waqif*) and abolished its waqf purpose and *maslahah* characteristics.

This matter must be dealt with haste and efficiency; thus, this study tries to explore the aforesaid problems by using the “*Tasarruf al-Imami ‘Ala al-Ra’iyyati Manuthun bi al-Maṣlaḥah*” principle. This principle stated that “Every action and implementation of the ruler must be based on *maslahah*”, where the government has the power in deciding the waqf property development that has been given by the donor (*waqif*). In determining the development of waqf property, the purpose of waqf intended by the donor (*waqif*) must be followed.

Through the *maqasid al-Shariah* principal approach, Al-Ghazali defined *maslahah* as “providing benefit and avoiding harm”. Thus, any form of the matter that gives benefit and use to humans and at the same time, it avoids harm or misuse is defined as *maslahah* [5].

Therefore, this study uses the principle of “*Tasarruf al-Imami ‘Ala al-Ra’iyyati Manuthun bi al-Maṣlaḥah*” through the *maqasid al-Shariah* approach as a parameter in solving arising issues involving the development of waqf property.

Waqf Property Management Through the Maqasid al-Shariah Approach

When it comes to the implementation, the government's action towards people must be tied up with *maslahah* which is through the “*Tasarruf al-Imami Manuthun bi al-Maṣlaḥah*” approach or procedure. It is the responsible of the government through the SIRC to always monitor and coordinate all waqf properties in order to be used completely. If the waqf property is no longer useful or less useful, then it is the government's duty to perform any actions that related to the maintenance of this property in order to preserve its sustainability of usage to the beneficiaries. Accordingly, if the waqf property is unable to give any benefits due to various reasons, the government is accountable to initiate in changing the property condition to be more useful so that the interest and *maslahah* can be achieved to all levels of society in a country.

This is in line with the basic principle in *maqasid al-Shariah* which states “Finding or Bringing Good and Obstructing or Avoiding from Harm” (*Jalbu al-Masalih wa Dar-u al-Mafasid*). This is the main basis in the context of property management especially involving waqf property in order for it to gain the upmost beneficial (*maslahah*) according to *Shariah*. This principle is accurate with the Islamic Jurisprudence method of “*La Dharara wa La Dhirara*” (there is no harm and do not harm yourself and others). *Maṣlaḥah* can be expanded using two ways in which the improvement towards the property from the aspect of its source and uses. Both of these aspects aim to avoid damaged or lose in the usage and value of waqf property. With this principle, based on the views of majority Islamic jurists and part of *Shafie* jurists, the government must avoid waqf property from being abandoned without any efforts to recover or improve its form of use or change of function to a more useful matter.

Ibn Taimiyyah stated that the waqf object can be sold or replaced if it doesn't have any appropriate uses based on the waqf purpose. This occur when there is a more useful matter and *maslahah* from the previous waqf object. The explanation for his view is as follow:

“In order to replace something that was vowed or waqf with something better such as the replacement of the gift, it must consist of two requirements: First, the replacement is for an urgent need, such as a horse was waqf for war and when it cannot be used for war, then it can be sold. Its selling price can be used to buy anything that can replace it. Besides that, the damaged mosque that was moved its uses to another place or sold or bought with its selling price or anything that can replace its use or cannot be used anymore for the purpose of waqf upon it, then it can be sold and its selling price can be used to buy anything that can replace its use. Therefore, when the mosque is damaged and no longer usable or visited, then the property can be sold, and its selling price can be used to buy anything that can replace it. All of the situation is a must because the main purpose of waqf was not achieved, then the action needed to replace with something that is more useful. Besides that, replacement due to its stronger importance and *maslahah*. The replacement of gift to something better and for the replacement of a damaged mosque to something better for the locals' usage, then it can be sold and to develop a new mosque until Muslims can use and prosper it. This matter is an example case that enables the replacement of waqf based on imam Ahmad and other ulama. Imam Ahmad also said regarding the need for the matter to be based on the acts by *Saidina Umar bin Al Khattab* which moved the *Kufah* mosque which is old to a new place and the old place is changed to a marketplace for date merchants.” [6].

Moreover, Ibn Aqil and Ibn Qudamah in his book, *Al-Mughni wa Syarh al-Kabir* viewed that if the waqf can't be used as its previous use, then it can be exchanged with a use that is similar to it. Their views are based on *Mughni al-Mughtaj*.

Ibn Aqil stated: "The waqf is endless and if it is not protected continuously in its specific description, then its purpose or maqasid of the waqf. Therefore, it must be maintained with preservation is defined as continued use eventhough in other forms. However, the replacement must be of same use with the waqf object. If it cannot be used on the waqf object, it must mean that the original purpose of the waqf. This matter is similar with the problem of sacrificial livestock which is near death during the journey, then it must be slaughtered immediately, eventhough it is meant to be slaughtered at a specific place. Thus, if the original purpose was not able to be implemented, it must be done at other places and there is no need to be preserve the specific place in the situation where the purpose to slaughter the sacrificial livestock at the specific place cannot be achieved. This is because the preservation of the specific sacrificial slaughter place in the situation where the livestock will not survive when the sacrificial destination is reached and this will make the use for the sacrificial livestock to be abolished as a whole. It is also similar to the case of waqf property that has not produced any use anymore." [7]. Ibn Qudamah [8] viewed that if the waqf properties haven't produced any use overall, while others have more use than it, one must return the properties to the donor (waqif), as it would enable the waqf that didn't have any uses to be sold. Originally, it is not a must for it to be sold because based on its original law, it is haram for it to be sold. However, it can be sold in a dharurat situation for the purpose of waqf to avoid it become harmful or has no uses. It is like arriving from a less useful situation until it does not bring any use, then the situation is like it has no uses [9].

Beside the purpose of benefit, it is enabled to exchange the waqf for the purpose of better use (*Istimrar Baqai al-Manfa'ah*). It is Imam Ramli's view in *Nihayat Al-Muhtaj*, he has taken the view that has flourished among Islamic scholars for the upholders of Syafie jurists. His view states that if a waqf animal is halal (permissible) and can be eaten, if it is near death and its death can be certain, then the animal can be slaughtered based on *maslahah dharurat*. The question is can the ruler act based on what is viewed as *maslahah* on its meat? Or does the sold meat and its revenue is used to buy a similar animal to it and later acts as a replacement for the slaughtered waqf animal? The first view is supported by Ibnu Al-Maqri while the author, *Al-Anwar* enables to choose between both these views and it cannot be decided that a judge can decide on what is clear to him [10].

Imam Al-Ramli stated: "The first view is more prominent because the ruler's choice is not based on desire but it is based on what is seen as *maslahah*. If the death of livestock is not certain, it cannot be slaughtered eventhough it has lost its use such as the problem which a slave that has been waqf cannot be freed." Based on the explanation in *Ar-Raudhah*, the livestock cannot be sold while it is still alive. This view is also supported by Al-Mahamili and Jurjani. Imam Mawardi has a different view which the livestock must be sold alive. He collected this view with the appropriate coordination based on *maslahah*." [11]

Waqf properties can be exchanged based on the views of previous Islamic scholars but with the permission from the Qadi (judge) because the waqf property should not be frozen in an unchanged form eventhough the situation and time has changed and this based on Abu Zahrah's view in his book, *Muhadhrot fi Al waqf* [12].

CONCLUSION

Overall, the method of changing the use of waqf property towards a more beneficial purpose is more accurate with the definition of maqasid al-Shariah and this is based on the views of majority Islamic jurists. In fact, it is also appropriate with the principle of maqasid al-Shariah in obtaining the benefit and avoiding the harm (*jalb al-Manfa'ah wa daf' al-Madarrah*). This is to ensure that the justice and welfare of the people are attained thoroughly by the effective management and maximum utilisation of the waqf properties which includes the preservation of religion (*hifz al-Din*), preservation of life (*hifz al-Nafs*), preservation of intellect (*hifz al-'aql*), preservation of descendant (*hifz al-Nasl*) and preservation of property (*hifz al-Mal*). All of these preservations fall under the main categories of maqasid al-Shariah. In terms of hierarchy, maqasid al-Shariah can be classified into three categories, namely; necessity (*daruriyyah*), desire (*hajiyyah*) and comfort (*tahsiniyyah*) [13]. By applying this method, the government can monitor and re-evaluate the undeveloped and abandoned waqf properties and consider its values using larger, more impactful and burgeoning scale of development. However, this method must receive the approval and consent from Mufti of each respective state, as it serves as a basic guideline so that it won't be misused by others and most importantly in line with Shariah laws.

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