

# AN OVERVIEW OF THE EFFECTIVENESS OF THE ADMINISTRATION OF WAQF LAND IN MALAYSIA

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## ABSTRACT

*In Muslim countries all over the world, wealth is not only in the hands of individual or corporate entities but also in the form of endowment known as Waqf. In the context of Malaysia with a population of close to 24 million people with GDP per capita of USD 4707, it is reported that there are over 32,000 acres of waqf land in which may be utilized to benefit the Muslims society. In Malaysia, the waqf property is regulated and managed under different laws and regulations within the purview of the States Islamic Religious Council consisting of thirteen states and federal territories. As waqf institutions are governed by different laws and regulations, the nature of the administration of these institutions may differ from one state to another and may lead to administrative problems. Hence, on the 27th March 2004, the honorable Prime Minister of Malaysia announced the formation of the Department of Awaqf, Zakat and Hajj with the aim of making their administration systematic and effective throughout the country. The roles of this department specifically in the area of waqf inter alia are to plan, coordinate, observe the waqf administration system and to develop a systematical waqf institution in order to upgrade the social-economy of Muslims community in Malaysia. Therefore, this paper is intended to provide an overview on the management of waqf land and to what extent the effectiveness of waqf administration in Malaysia.*

## 1.0 Introduction

Generally there are two basic forms of endowment or *waqf* namely public and family or private. In the family endowment or *waqf ahli*, the waqf property is held for the family of its founder, until the distinction of his or her descendants, whereupon it is diverted to a charitable purpose. The charitable or public endowment or *waqf khairi* involves the permanent dedication of property to charitable purposes. The majority of endowments are land, where the permanence and security of the act of 'continuous charity', which is central to *waqf* is easily evidenced.

At the moment, it is estimated that over 35,727 hectares of *waqf* land all over Malaysia and a research done by JAKIM in 2000 recorded that there are 20,735.61 acres of

identified *waqf* lands<sup>1</sup>. Below is the statistic of the identified *waqf* lands for the whole states in Malaysia<sup>2</sup>.

No.	State	Specific Waqf (Acres)	General Waqf (Acres)	Total (Acres)
1	Kelantan	171.54	133.12	304.66
2	Federal Territories	5.47	22.07	27.54
3	Terengganu	204.43	43.01	247.44
4	Sarawak	236.929	-	236.929
5	Pahang	3985	-	3985
6	Sabah	4.178	25.42	29.598
7	Johor	1951	3976	5928
8	Perlis	218.69	8.75	227.44
9	Melaka	773.39	69.97	843.34
10	Kedah	420	423.34	843.34
11	Negeri Sembilan	1727.35	61.25	1788.60
12	Selangor	621.10	442.15	1063.25
13	Perak	4474	647	5122
14	Pulau Pinang	22.21	67.05	89.26
	TOTAL	14,815.787	5919.83	20,735.61

The figures show that state of Johor represents the widest registered *waqf* lands of 5928 acres while Federal Territories only cover a small portion of 27.54 acres. In term of value, it is found that *waqf* lands in Pulau Pinang, Federal Territory and certain part of Johor particularly within the area of Johor Bahru considered as the most strategic and valuable property in comparison with other areas.

As regard to the aspect of jurisdiction, the courts recognized shariah as the governing law of property for Muslims including *waqf*. Section 25 of the Civil Law Act 1956 stated that

<sup>1</sup> n.a. *Entiti Waqf Kebangsaan Cari Jalan Bangun Tanah Waqf*. 26 March 2006. Berita Minggu.

<sup>2</sup> See [http://www.islam.gov.my/ppi/fatwa\\_jumlah\\_keluasan\\_tanah\\_wakaf\\_neg.htm](http://www.islam.gov.my/ppi/fatwa_jumlah_keluasan_tanah_wakaf_neg.htm) in Md. Nurdin Ngadimon. *Pengembangan Harta Wakaf Menggunakan Instrumen Sukuk*. Konvensyen Wakaf Kebangsaan organized by the Department of Awqaf, Zakat and Hajj. Kuala Lumpur. 12-14 September 2006.

the administration of Muslim's property shall in accordance with the Islamic law. With this provision, *waqf* is put under the purview of the States Islamic Religious Council consisting of thirteen states and federal territories and its legal provisions are therefore governed by these 14 different states laws. This article aims to provide a brief overview on the efficiency of managing *waqf* land in Malaysia. The discussion hence consists of Malaysia's approach in developing *waqf* land, to what extent it works, legal and non-legal issues and a few recommendations to improve the *waqf* framework.

### **3.0 Malaysia's Approach in Developing Waqf Land**

This year, Malaysia will celebrate its 50 years of independence and we could witness a lot of developments in various sectors as well as *waqf* administration. In term of *waqf* lands, there are several approaches taken by the authorities to improve its implementation and administration. For instance, the government recently has allocated RM250 million to develop *waqf* land all over Malaysia for purpose of building mosques and surau, utilizing wakaf land, or land donated for religious or charitable purposes and using for commercial projects<sup>3</sup>. This article will only highlight a few of them and they can be summarized as follow:-

#### **2.1 Non-Legal Approach**

##### **(a) The Department of Awqaf, Zakat and Hajj.**

On the inception of the new Malaysian Cabinet on the 27th March 2004, the Prime Minister announced the formation of a department for *zakat*, *waqf* and *hajj* with the aim of making their administration systematic and effective throughout the country. The department plays a role as a planning coordinator and observes the *waqf* matter as well as the *zakat* administration system and the implementation of regulations of *hajj* administration<sup>4</sup>.

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<sup>3</sup> Anis Ibrahim. 9<sup>th</sup> June 2007. *RM250m Shot In The Arm For Wakaf Land Projects*. New Straits Times.

<sup>4</sup> n.a. *Speech by Abdullah B. Md Zin during Majlis Pelancaran Jabatan Waqf, Zakat dan Haji*. Putrajaya. 8<sup>th</sup> October 2004.

The current development initiated by the department is the issuance of *Manual Pengurusan Tanah Wakaf* or Manual for Management of *Waqf* Land (hereinafter referred to as the Manual) in 2006. The objectives of the Manual are to provide standard guidelines, precise and transparent data of *waqf* lands and to inculcate professionalism in the management of *waqf* lands. The Manual comprises of three chapters. Chapter one consists of introduction, background, scope, justification, procedures, definition, concept and principles and syariah aspects of *waqf* lands. This chapter states the advantageous and benefits of *waqf* and also provides explanation on conditions, pillars, *istibdal* including provisions of *waqf* under the National Land Code 1965. Chapter two presents the procedures for registration of *waqf* land and these involve of application either from individual or the States Islamic Religious Council, caveat, cancellation and etc. Chapter three imparts the administration of *waqf* lands and it consists of procedures for payment of *waqf* duty, leasing, monitoring and enforcement, insurance and *istibdal*.

In general, the Manual provides very comprehensive guidelines to the wholes states in Malaysia almost in all aspects of the administration of *waqf* lands. This initiative taken by the Department of *Awqaf, Zakat* and *Haji* may solve a lot of administrative problems such as procedures and substantives provisions on *waqf*. The effectiveness of this Manual however has not been proven yet since it still in the early period of its implementation.

#### **(b) Strengthening the *Waqf* Administration**

The State Islamic Religious council or the Majlis is a sole trustee for any *waqf* land. For instance, section 89 of the Administration of the Religion of Islam (State of Johor) Enactment 2003 states that notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting it, the Majlis shall be the sole trustee of all *waqf*. It is a statutory requirement for every *waqf* to be registered in the name of the Majlis as proprietor in accordance with the National Land Code 1965.

As the first developed state in Malaysia, Selangor has established Lembaga *Waqf* or *Waqf* Board with objective to manage, administer *waqf* property<sup>5</sup>. It is recorded that Selangor

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<sup>5</sup> n.a. *Selangor tubuh Lembaga Waqf*. 15 September 2006. Berita Harian.

income on estate *waqf* in 2000 amounted to RM349, 507<sup>6</sup>. This practice is expected to be adopted by other states since it shows a lot of positive development especially in term of its administration.

In Johor, government has allocated RM60 millions in Ninth Malaysian Plans (RMK-9) to build five hotels based on Islamic concept on a few identified *waqf* land. It is recorded also that Johor owned the largest *wafq* land amounted to approximately 28,000 hectares<sup>7</sup>. The administration of *waqf* is under the purview of Waqf Property Division which its committee consists of *Waqf* State Organizer, *Waqf* State Nazir, *Waqf* State Officer, *Waqf* District Nazir and *Waqf* District Examiners.

### (c) **Innovative Modes of Commercialization of the *Waqzf* Land**

It is expected that Malaysia will introduce an Islamic capital market product of securitization of *waqf* property through *sukuk* instrument as stated in the Capital Market Master Plan issued by the Securities Commission. Additionally, some states have initiated a scheme of *waqf* shares. *Waqf* share is a scheme where individual or organization purchase a few units of shares with the minimum value for example of RM10.00 per unite offered by the Majlis. *Waqf* shares in form of certificate with the necessary value will be offered to the general public. The purchased *waqf* shares will be dedicated in perpetuity for the purpose of charity and hence the purchaser will not be given any dividend or profit.

Several states such as Johor, Melaka and Selangor have already issued *waqf* shares. This is in line with the resolution of *Majma' Fiqh Islami* on 24<sup>th</sup> november 2005. The successful of this scheme can be evidenced by referring to Johor *Waqf* Shares Scheme which has been launched in 2005. It is reported that the scheme has contributed to several economic and educational developments in Johor such as Building of Johor *Waqf* Shares at cost of RM4 million, plantation project of 3800 acres land and purchase of six storey hostels at Cairo, Egypt for students' accommodation.

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<sup>6</sup> Jabatan Audit Negara. Financial Statement of the Islamic Religious Council of Selangor for Year 2000

<sup>7</sup> n.a. *Johor Paling Banyak Tanah Wakf*. 27 October 2006. Utusan Malaysia

#### (d) Implementation of the ICT System

Penang, Selangor and Federal Territories are the states that implemented the information communication technology system in their *waqf* administration<sup>8</sup>. Information system of *Waqf* land of the Islamic Religious Council of Pulau Pinang for example consists of four main applications namely *waqf* information management system, comprehensive building information system, information system based on geographic information system (GIS) and Penang Geographic Information System. The implementation of ICT in *waqf* administration provides an effective management and planning. Such information system offers various benefits in term of data, record, figures and enables efficient *waqf* property's management and administration.

#### 2.2 Legal Approach

Jurisdiction over *waqf* lies within the jurisdiction of the syariah court as provided in List II (1) of the Ninth Schedule of the Federal Constitution which provides that except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic Law and personal ... *waqf* ... the determination of matters of Islamic Law. Thus, *waqf* is one of the subject matters which are under the states jurisdiction<sup>9</sup>. For example, in Penang, the jurisdiction for the Syariah High Court to hear and determine *waqf* is founded in the Administration of Islamic Religious Affairs (State of Penang) Enactment 1993 and in Federal Territories it is provided under the Administration of Islamic Law (Federal Territories) Act 1993.

Section 2 of the Administration of Islamic Law (State of Selangor) Enactment 2003 (hereinafter referred as the Enactment) defined *waqf* as any property from which its benefits or interest may be enjoyed for any charitable purpose whether as *waqf am* or *waqf khas* in accordance with syariah principles, but does not include a trust which is defined under the Trustee Act 1949<sup>10</sup>. Under the administration of the Majlis, *waqf* is

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<sup>8</sup> Abdul Hamid Mariman et al. 2006. *Perlaksanaan Sistem Teknologi Maklumat Dalam Pengurusan Harta Waqf*. Konvensyen Wakaf Kebangsaan organized by the Department of Awqaf, Zakat and Hajj. Kuala Lumpur. 12-14 September 2006.

<sup>9</sup> See *Md. Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan, Kuala Lumpur* [1997] 4 CLJ Supp 419, *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5 and *Tan Sung Mooi v. Too Miew Kim* [1994] 3 CLJ 708.

<sup>10</sup> Similar definition can be found in other states administration of Islamic law.

divided into Public *Waqf* and Private *Waqf* and the income of *waqf am* goes to *baitul mal* while for *waqf khas* is applied to objects specified by the dedicator.

Public *Waqf* is statutorily defined as a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognized by Islamic Law<sup>11</sup>. Private *Waqf* in other words refer to a dedication in perpetuity of the capital of property for religious or charitable purposes recognized by Islamic law and the property so dedicated, the income of the property being paid to persons or for purposes prescribed in the *waqf*<sup>12</sup>. Specifically it means the dedication that has benefit and profit to someone or certain person.

Every *waqf khas* must be declared and validated by Sultan<sup>13</sup>. Majlis is the sole trustee of the *waqf* property<sup>14</sup>. Section 8 (a) of the Enactment provides that notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting it, the Majlis shall be the sole trustee of all *waqf*, whether *waqf am* or *waqf khas*<sup>15</sup>. Section 91 (2) (b) of the Enactment states that private *waqf* made by certain person during death illness must be in writing before a witness. Any *waqf* more than one third shall be invalid<sup>16</sup>. When someone wants to create a *waqf*, he is required to transfer his land to the Majlis. The Majlis then become the administrator of all *waqf* property.

Every *waqf* then shall be registered in the name of the Majlis as proprietor in accordance with the National Land Code 1965<sup>17</sup>. Section 95 of the Enactment provides the Majlis shall prepare, issue and publish in the gazette a list of all properties, investments and assets and not forming part of the *baitulmal*. All of the *mawquf* and *waqf* property must

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<sup>11</sup> (1980) 1 MLJ 286, per Salleh Abas F.J in *Haji Embong v Tengku Nik Maimunah*.

<sup>12</sup> *Ibid*.

<sup>13</sup> Section 91 (2) (a) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.

<sup>14</sup> "Majlis" refer to the states Islamic Religious Council.

<sup>15</sup> Similar provision in section 61 of the Administration of the Religion of Islam (Federal Territories) Act 1993.

<sup>16</sup> Section 91 (1) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003. Pahang, Malacca, Pulau Pinang, Kedah and Perlis have the same application except Kelantan and Terengganu where ruler can validate it and the beneficiaries expressly sanction it.

<sup>17</sup> Section 90 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003.

be declared in the gazette under the administration of the Majlis<sup>18</sup>. Section 47 further states that *waqf* to be certified by syarie judge or witnessed by two persons qualified by syariah principles to be such witnesses".

### **Substitution of Waqf Land or Istibdal**

Where *waqf* land is not economical, *istibdal* can be used<sup>19</sup>. That is the *waqf* land can be sold, the proceeds of which can be used to purchase another piece of land which is more beneficial. Section 2 of the the Enactment of *Waqf* (State of Selangor) 1999 defined *istibdal* as a substitution of *waqf* property with another property or cash either through substitution, purchase, sale or any other way that approved by syariah principles. Substitution can be divided into two forms ie substitution of one *waqf* with a similar and the substitution of land with its cash value.

In Malaysia, the practice of *istibdal* is regulated under the states enactment and the Majlis has an authority to deal with the matter. For instance section 20 of the Enactment of *Waqf* (State of Selangor) 1999 provides that the Majlis may substitute any *waqf* property, when it is no longer beneficial as intended by the dedicator and in the event that the usage of *waqf* property does not meet the actual purpose of *waqf*. In practice, the concept of *istibdal* is utilized in several forms such as selling part of the *waqf* property to develop the remaining of the same property, selling bundle of *waqf* properties and buying new one in exchange to be used for the same purposes of the sold properties, selling one *waqf* and buying another having common purpose and selling a handful properties belonging to various *waqf* and buying a new property which has higher income and the same revenue

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<sup>18</sup> Section 43

<sup>19</sup> See Monzer Kahf. 1998. *Financing the Development of Awqaf Property*. Seminar on Development of Awqaf. IRTI. Kuala Lumpur. 2-4 March 1998. Kahf defined *Istibdal* as the sale of all or part of a waqf land and to purchase with its proceeds another piece of land dedicated as waqf for similar purposes. This practice is acceptable by majority of muslims jurists such as some of Shafi'is, Malikies, and Hanbalis provided that it fulfils certain requirements. See further Al-Zarqa'. Mustafa Ahmad. 1997. *Ahkam al-Awqaf*. Amman: Dar `Ammar . p. 74.

is distributed on all sold *waqf* according to their value or dividing the purchased property on original *waqf* according to their value<sup>20</sup>.

### 3.0 To What Extent the Approach Works?

Based on the foregoing discussion, we may conclude that the existing approaches taken by the authority positively contributed to the development of *waqf* lands. To illustrate this point, we could refer to several latest development of *waqf* land initiated by the Federal Territories' Islamic Religious Council and the Islamic Religious Council of Pulau Pinang. The Federal Territories' Islamic Religious Council together with Tabung Haji, TH Technologies Sdn Bhd and Bank Islam recently launched a project for the construction of a 34-storey building at a 0.484-ha site on Lot 168/169, Jalan Perak, Kuala Lumpur. This RM151 million project is considered as the first large-scale commercial development on *waqf* land in Malaysia<sup>21</sup>.

The Islamic Religious Council of Pulau Pinang has planned a very systematic development by focusing its development in various areas such as Lebuah Acheh, Lebuah Buckingham, Lebuah Carnovan and Jalan Masjid Kapitan Keling. The development plan which is supported by the Federal Government with RM40 million advanced consists of a construction of 165 low-cost houses, shops, Islamic medical centre, conversion of Lebuah Acheh into a new centre for designing and printing holy Quran, including an educational centre in the cost of RM70 million as well as RM5 million's cost integrated training centre<sup>22</sup>.

Besides having positive development of *waqf* land, it could not be denied that there are various obstacles and challenges in developing *waqf* land either in term of administration, implementation and enforcement. In order to preserve *waqf* property in accordance with

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<sup>20</sup> Mohamad Tahir Sabit Mohammad. *Innovative Modes of Financing: The Development of Waqf Property*. Konvensyen Wakaf Kebangsaan organized by the Department of Awqaf, Zakat and Hajj. Kuala Lumpur. 12-14 September 2006.

<sup>21</sup> Fauzi Jaafar and Nizam Yatim. 9th June 2007. *Bangunan Tanah Wakaf – PM*. Utusan Malaysia. See also Saifulizam Mohamad. 29<sup>th</sup> May 2007. *Tabung Haji bina Menara RM151j*. Utusan Malaysia.

<sup>22</sup> Salleh Buang. *Managing Wakaf Land* in <http://www.nst.com.my/Weekly/PropertyTimes/>

the law, all *waqf* lands should be identified and registered in the name of the Majlis. From general observation, some of *waqf* lands in Malaysia are not being utilized effectively. It is strongly urged that this property should be utilized to the utmost for the benefit of Muslims community and the Majlis should play its role effectively as the sole authority in managing *waqf* property.

The writer admitted that it is difficult to find a data on the performance or contribution of *waqf* land for the whole states in Malaysia. Considering to this factor, we may refer to the statistic in Johor as an example to evaluate the utilization of *waqf* land.

**Table 1: Utilisation of Waqf Land in Johor until March 2004**

District	Mosque	Musolla	School	Cemetery	General	Total
Johor Bahru	109	240	129	40	38	556
Muar	75	244	76	77	37	509
Batu Pahat	85	185	91	88	50	499
Kluang	34	61	43	31	14	183
Segamat	56	51	38	63	14	222
Kota Tinggi	36	33	40	39	12	160
Pontian	52	95	58	51	12	268
Mersing	15	10	23	16	16	80
Total	462	919	498	405	193	2,477

The figure provides that there are 2,477 *waqf* lands being utilized which majority consist of *waqf* for religious activities namely mosque and *musolla*. It shows that even Johor owned the largest *wafq* land in Malaysia, the above figures only represent small percentage of 2,477 out of 5928 acres, the total registered *waqf* land. This figure further proves that the utilization of *waqf* land in Johor is not being optimized and there are a lot of other areas of *waqf* lands have potential to be developed for the benefits of community at large. In case of state of Perak, there are 1,233 lots of *waqf* land totaling of approximately 5122 acres but only 56 shop houses and residential units have been built on them and the rest has been left undeveloped<sup>23</sup>.

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<sup>23</sup> *Ibid*

As regard to *waqf* shares scheme as practiced by Johor, Melaka and Selangor, it contributes a lot to the development of *waqf* property. As an illustration, we may refer to a few projects inter alia Johor Building of *Waqf* shares and joint venture project with Oil Palm Estate to develop 3,900 acres land for purpose of cultivating oil palm trees. These two projects involved more than RM5 million capitals and it creates many employment opportunities.

From legal perspective, *waqf* administration is regulated through states law or enactment as *waqf* matter falls under the purview of Islamic law as embedded in Schedule 9 List II of the Federal Constitution. The states authorities have taken several measures in improving the law on *waqf* by introducing few provisions in the administration of Islamic law enactment and specific enactment of *waqf* such as the Enactment of *Waqf* (State of Selangor) 1999. These legislations provide both substantive provisions and procedural aspects of *waqf* and grant power to the Majlis as a sole trustee to administer and manage *waqf* property.

As law on *waqf* is governed by different states law due to the Schedule 9 List II of the Federal Constitution, such position may cause different interpretation, procedural of promulgating fatwa or legal rulings. In fact, there is no specific statute on management and administration of *waqf* except the Enactment of *Waqf* (State of Selangor) 1999. This enactment provides comprehensive and systematic legislative powers to Majlis in managing *waqf* land and absence of such enactment may lead to ambiguity of the states *waqf* administration.

It is observed that a lot of *waqf* lands are located at rural area, scattered and lack of potential to be developed. These features cause *waqf* land undeveloped and under utilized. In addition, there were cases where *waqf* land which has been trespassed due to weak monitoring and enforcement by the authorities<sup>24</sup>.

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<sup>24</sup> Nik Mohd Zin Nik Mohd Yusof and Azimuddin Bahari. *Kedudukan dan Potensi Pembangunan Harta Waqf di Malaysia: Satu Penilaian*. In Nik Mustapha Nik Hassan (ed.). *Konsep dan Perlaksanaan Harta Waqf di Malaysia*. Kuala Lumpur: Institut Kefahaman Islam Malaysia.

Another observation is that the Majlis as *waqf* administrator faced problem on the registration of *waqf* land title and therefore it could not be identified and registered. Without the land title, it is hard to the Majlis to develop *waqf* land. In fact, regardless of information system that implemented by some states, it is found that the Majlis does not have comprehensive and reliable data on *waqf* land which cause a lot of unregistered *waqf* lands undeveloped and even unidentified.

## **4.0 Recommendations**

### **4.1 Non-Legal Approach**

#### **(a) Waqf Financing**

It could not be denied that some of *waqf* institutions faced a problem of lack of capital to develop community projects. This problem could be solved through subscribing Islamic financing facilities either in debt or equity financing<sup>25</sup>. Debt-based financing refers to a contract of exchange or *al-Mua'wadhat* such as *murabahah*, *ijarah*, *ijarah wa iqtina*, *salam*, and *istithna'* and its supporting contract such as *hiwalah* and *wakalah*. *Hiwalah* and *wakalah* are considered as a supporting contract because they exist side by side with another contract. On the other hand, equity-based financing refers to *mudharabah*, *musyarakah* and shares of joint stock companies (combination of *musharakah* and *mudharabah* term of financing. Both of these modes are able to provide financial needs to the community especially to the entrepreneur.

In Singapore for example, WARESS Investment Pte Ltd a subsidiary of the Islamic Religious Council of Singapore that responsible to commercialize *waqf* property has successfully issued S\$25 million Islamic bond based on principle of *musyarakah* or partnership. This is to finance purchase of a commercial building as a substitution of twenty *waqf* lands that benefits are less obtainable. The mode of financing involves two principles of partnership and leasing or *ijarah* where the Islamic Religious Council of

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<sup>25</sup> See Mohamad Tahir Sabit Mohammad. *Innovative Modes of Financing: The Development of Waqf Property*. Konvensyen Wakaf Kebangsaan organized by the Department of Awqaf, Zakat and Hajj. Kuala Lumpur. 12-14 September 2006.

Singapore contributed S\$9 million and the investor S\$25 million respectively. This arrangement is proven to be very successful where the Islamic Religious Council of Singapore earns huge profit from this commercial transaction<sup>26</sup>.

**(b) Exchange of Expertise amongst Waqf Institution**

By virtue of globalisation, it is strongly recommended to have mutual co-operation amongst *waqf* institutions around the globe. The co-operation of *waqf* institutions may provide exchange of efficient *waqf* administrative process, technical cooperation and exchange of experience such as with other Islamic countries, academic centres, and international organizations. There are also potential to co-ordinate activities to develop foreign *waqf* investments in collaboration with other partners<sup>27</sup>.

**(c) Revive Unproductive Waqf Land by Optimizing the Concept of *Istibdal***

*Istibdal* is a substitution of *waqf* property with another property and it can be in form of substitution of one *waqf* with a similar and the substitution of land with its cash value. By considering to the statistics of *waqf* lands that only several areas of them such as at Pulau Pinang, Federal Territory and certain part of Johor considered as the most valuable property in comparison with other areas, it is strongly recommended that the authority to optimize the utilization of the concept of *Istibdal*.

Indeed, Malaysia has an advantage in this aspect since the practice of *istibdal* is regulated under the state enactment and the Majlis has an authority to substitute any *waqf* property, when it is no longer beneficial as intended by the dedicator and in the event that the usage of *waqf* property does not meet the actual purpose of *waqf*. Undeniably, there are states that have already invoked the practice of *istibdal* such as Pulau Pinang, Federal Territories, Perak and Melaka, it is observed however that the application of *istibdal* is

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<sup>26</sup> Abdul Halim Ramli and Kamarulzaman Sulaiman. *Pembangunan Harta Wakaf: Pengalaman Negara-negara Islam*. Konvensyen Wakaf Kebangsaan organized by the Department of Awqaf, Zakat and Hajj. Kuala Lumpur. 12-14 September 2006. See also the Islamic Religious Council of Singapore Annual Report 2004 and Monzer Kahf. 1998. *Financing the Development of Awqaf Property*. Seminar on Development of Awqaf. IRTI. Kuala Lumpur. 2-4 March 1998.

<sup>27</sup> www.unhabitat.org/downloads/docs/3546\_80031\_ILP%207 in UN-HABITAT *Islam, Land and Property Research Series Paper 7: Waqf (endowment) and Islamic Philanthropy 2005*.

not being optimized by the states authority. For this reason, there must be continuous efforts in doing research and identifying potential *waqf* lands to be substituted with another valuable and beneficial piece of lands. In the context of Malaysia, the practice of *istibdal* adheres to the decision or views of the state fatwa committee<sup>28</sup>.

## 4.2 Legal Approach

From legal perspective, there are loopholes and weaknesses of the existing 14 states legislation on *waqf* land which may lead to various administrative problems. Although there were efforts to standardize all these laws, it is found that majority of the states still do not have their own specific enactment on the administration of *waqf*. Therefore, these states need to immediately enact the said law for a purpose of better and clear legal position on *waqf*. It is even better if we could have a single legislation on the administration of *waqf* for the whole states in Malaysia.

Besides, according to Ahmad Ibrahim, apart from having specific legislation on *waqf*, section 2 of the Trustee Act 1949 also must be amended whereby the definition of courts therein should also include the syariah court. It is proposed also *waqf* should be exempted from the definition of trust in the said Act, similar to that of section 4 of the National Land Code 1965 which excludes *waqf* from its purview, allowing it to be governed by Islamic Law<sup>29</sup>.

Another aspect to be taken into consideration is that to enhance and improve the procedural law on *waqf*<sup>30</sup>. There are a lot of administrative problems raised by the existing procedures such as improper forms. Worst case scenario, in the case of unregistered *waqf* land, the Majlis is not able to deal and develop the land. Considering to

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<sup>28</sup> Although there was a fatwa or legal ruling on the permissibility of *istibdal* issued by the National Fatwa Committee in its 46th Meeting, 22 April 1999, the decision to apply any practice of *istibdal* still adhere to the States Fatwa Committee as this matter falls under the state jurisdiction.

<sup>29</sup> Ahmad Ibrahim, *Undang-Undang Islam dan Undang-Undang Barat: Satu Perbandingan*, JH(1410) H Jilid VI Bhg. II p. 213.

<sup>30</sup> Megat Mohd Razali Megat Abd Rahman et al. *Pembangunan Tanah Waqf: Isu, Prospek dan Strategi*. Konvensyen Wakaf Kebangsaan organized by the Department of Awqaf, Zakat and Hajj. Kuala Lumpur. 12-14 September 2006.

this factor, the issuance of the Manual for Management of *Waqf* Land by the Department of *Awqaf, Zakat and Hajj* may be considered as a kick start to have a standard procedure that cover all matters involving *waqf* and these include registration, enforcement, jurisdiction, powers, restrictions and etc. It is now duty of each state to implement and enforce the Manual in its *waqf* administration.

## **5.0 Concluding Remarks**

Based on the preceding discussion of Malaysia's approach in developing *waqf* land, to what extent its works, legal and non-legal issues and a few recommendations to improve the *waqf* framework, it is concluded that the existing approaches taken by Malaysian authorities positively contributed to the development of the administration of *waqf* lands. In addition, Malaysia has established the Department of *Awqaf, Zakat and Hajj* a special body to play a role as a planning coordinator and to observe the *waqf* administration system and the most significant initiative taken by the department is the issuance of Manual for Management of *Waqf* land last year.

Having regard to the positive development of *waqf* administration, it is observed however that some of *waqf* properties are not being utilized effectively. In fact, many *waqf* lands are located at rural area, scattered and lack of potential to be developed. From legal point of view, the position of *waqf* governing by 14 different states laws may lead to the different interpretation; procedural of promulgating fatwa or legal rulings. Due to these obstacles, it is submitted that Malaysia still really need additional measures, more effective and comprehensive approaches in order to ensure its future development on the administration of *waqf* lands. It is hoped that the recommendations laid down in this article although not new may contribute something and could be benefited for the sake of Muslims community's development particularly in the *waqf* sector.

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