



INTERNATIONAL CONFERENCE ON  
**INTELLECTUAL ADVANCEMENT**

مؤتمر دولي للتقدم العلمي  
المؤتمر الدولي حول التقدم العلمي

بناء المجتمعات المثقفة  
من خلال تبادل المعرفة

Building learning communities  
through exchange of knowledge

مؤتمر دولي للتقدم العلمي  
مؤتمر دولي حول التقدم العلمي

# Waqf Real Estate Development Disputes in Malaysia: In Search for Solutions

**Zati Ilham Abdul Manaf**  
*Ahmad Ibrahim Kulliyah of Laws  
International Islamic University Malaysia*



Centre for Research and Publication

17<sup>th</sup>-18<sup>th</sup> September 2022

# OVERVIEW

**1** BACKGROUND OF RESEARCH

**2** METHODOLOGY

**3** LITERATURE REVIEW

**4** FINDINGS

**5** CONCLUSION

TYPES OF DISPUTES

PARTIES TO DISPUTE

RECOMMENDATIONS

# BACKGROUND OF RESEARCH

- Waqf: Holding and preservation of certain philanthropy, *sadaqah*, with the intention of prohibiting any use or disposition of property outside the specific purposes to which the property is dedicated, in a way that it **cannot** be bequeathed or sold (Mohsin, 2019)
- Based on the statistics provided by the Department of Awqaf, Zakat and Hajj, of the 30,000 hectares of Waqf lands in Malaysia, **only 13% of the lands have been developed**. The remainder (26,100 hectares) are left idle
- To realize the potential of these idle lands, the Malaysian government in 2006 has allocated RM 256.4 million for purposes of Waqf real estate development. Since then, Waqf lands have been identified by developers as one of the **prime areas for commercial and residential developments**
- However, with these real estate developments, a new set of **never-before-seen disputes** have arisen.

# TRENDS OF WAQF DISPUTE

Historically, Waqf disputes in Malaysia revolved around:

Determination of  
status of Waqf

Disputes among  
beneficiaries  
(management,  
distribution of  
proceeds)

*Wakif* unsatisfied  
with management  
of Waqf by  
*Mutawwali*

Acquisition of Waqf  
land by the state

Trespass/illegal  
occupation of  
Waqf property

Failure to pay rent

Manaf, Z. I. A. (2020). *Management of waqf disputes in Malaysia : issues and recommendations*. International Islamic University Malaysia.

# METHODOLOGY

- Determine the types of dispute encountered during Waqf real estate development and parties involved
  - Interview with real estate developers and *Mutawwali (Wakaf Setee Aisah Project)*
- Propose recommendations to manage the disputes (dispute avoidance and dispute resolution)
  - Review of literatures
  - Best practices of other jurisdictions (Singapore & India)

# LITERATURE REVIEW

LITERATURE	REVIEW
Mohsin, M. I. A., & Muneeza, A. (2020). <i>The Institution of Waqf: An Innovative Financial Tool for Socio-Economic Development</i> . Pearson.	The authors in this book made references to the categories of Waqf disputes as cited by other literatures. While discussing the role of the courts as well as the issues associated with it, the authors posit Shariah based ADR mechanisms which could adopted to resolve the disputes. The discussion however centered around disputes which are general in nature such as the determination of Waqf status, mismanagement of Waqf as well as determination of beneficiaries. Disputes distinct to development projects were not identified and discussed.
Manaf, Z. I. A. (2020). <i>Management of waqf disputes in Malaysia : issues and recommendations</i> . International Islamic University Malaysia.	The thesis had identified that the nature of Waqf disputes in Malaysia have evolved due to the introduction of various Waqf schemes as well as the participation of various stakeholders. Author warned that if not managed effectively, these disputes can impede the development of Waqf properties and incur loss to the Waqf as well as the beneficiaries.
Mohamad, N. A. (2018). <i>Waqf Law and Administration in Malaysia</i> . Pustaka Salam Sdn. Bhd.	Nor Asiah had also discussed on the issues associated with Waqf disputes and had brought forward recommendations to establish a Waqf Tribunal as adopted in India. The cursory recommendation however did not take into account the feasibility aspect of the Waqf dispute resolution framework in Malaysia. As such, further analysis must be conducted to determine the feasibility of recommendations.

# RESEARCH FINDINGS



# ADMINISTRATION OF WAQF IN MALAYSIA

- Malaysia is a federation of 13 states and 3 federal territories
- Legislative and executive powers are divided between the central and federal government
- Waqf: matter of individual state
- Waqf is under the administration of the Sultan of the State (delegated to the State Islamic Religious Authorities)
- All Waqf properties are deemed to be vested in the name of the SIRC as they are the sole trustee of all Waqf in the state
- The SIRC is responsible in overseeing and resolving any disputes which occur over Waqf in the state

# NATURE OF WAQF REAL ESTATE DEVELOPMENT IN MALAYSIA

- The SIRC is responsible in developing all Waqf properties in Malaysia and ensuring it is not left idle
- In recent years, with financial aid from the central government, Waqf lands have been developed into commercial and residential buildings (hotels, business centres, housing etc)
- Various Islamic based financial models which comply with the restrictions of Waqf were adopted to finance the development
- Scope of research: Housing and mixed development projects using the JV business model (JV between SIRC and developer)
- Applicable law: Housing Development Act 1966

Provides Waqf land

SIRC  
*(Trustee of land)*

\*Waqf cannot be transferred, sold, inherited, gifted

Funds and develops the Waqf land

DEVELOPER

1

SIRC and developer enters into JV agreement

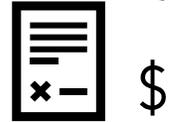
2

Developer appoints contractors to execute project as per JV

CONTRACTOR

3

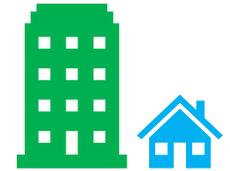
SIRC, developer and lessee enters into a tripartite lease agreement (99 years)



LESSEE

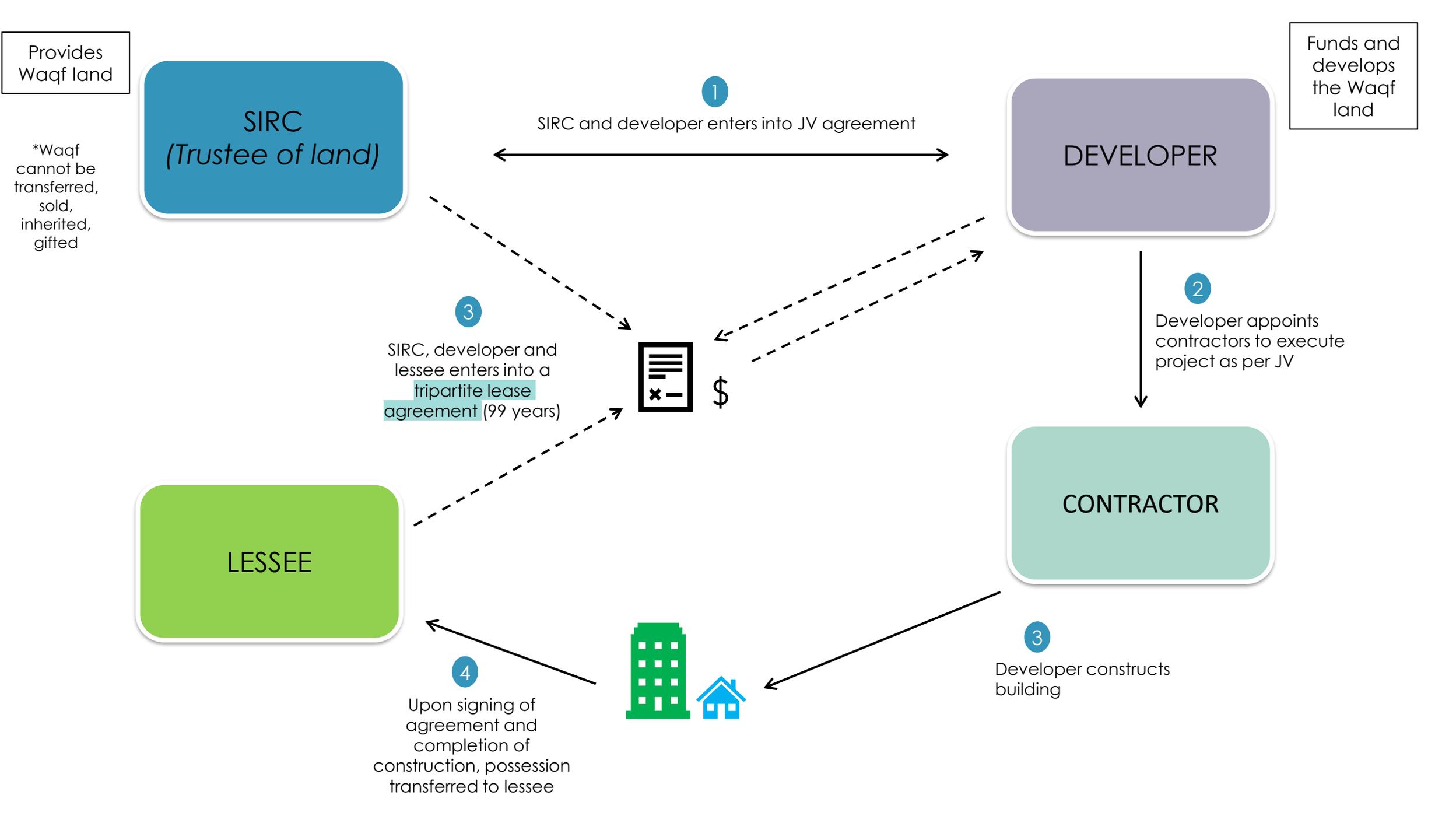
3

Developer constructs building



4

Upon signing of agreement and completion of construction, possession transferred to lessee





# FINDINGS

## CATEGORY OF DISPUTE & PARTIES INVOLVED (INTERVIEW)

Stage	Dispute	Parties
Pre-construction	Opposition by stakeholders of development project	Between SIRC and beneficiaries, wakif, surrounding communities, occupier of Waqf land
	Resistance to surrender part of Waqf land for utilities purposes (Planning Permission)	Between SIRC and local state authority, utility company
Construction	Unsatisfied with quality of construction (eg. Error in design)	Between SIRC and developer or developer and contractor/architect
	Delay in progress baseline schedule (phases)	Between SIRC and developer
	Delay in surrendering vacant possession of property /abandoned project	Between Developer, SIRC and lessee
Post-Construction	Defect after surrendering vacant possession	Between developer and lessee and SIRC
	Lessee refutes terms in tripartite lease agreement	Between Lessee and SIRC
	Lessee passes away. Inheritance claims	Between beneficiaries of lessee and SIRC
	Lessee fails to make payment to financial provider	Between lessee, financial institution and SIRC

# RECOMMENDATIONS

Dispute	Parties	Recommendations
Opposition by stakeholders of development project	Between SIRC and beneficiaries, wakif, surrounding communities, occupier of Waqf land	Planning stage: Public consultation session with community Consultation with beneficiaries and wakif
Resistance to surrender part of Waqf land for utilities purposes (Planning Permission)	Between SIRC and local state authority, utility company	<ul style="list-style-type: none"> <li>• Consult state planning committee on development plans</li> <li>• Obtain decision from Fatwa Committee</li> <li>• Meeting with state authority and utility company (restrictions of Waqf)</li> </ul>
Unsatisfied with quality of construction (eg. Error in design)	Between SIRC and developer or developer and contractor/architect	<ul style="list-style-type: none"> <li>• Clear terms in JV agreement on responsibility and liability</li> <li>• Establish a dispute resolution committee</li> </ul>
Delay in progress baseline schedule (phases)	Between SIRC and developer	
Delay in surrendering vacant possession of property	Between Developer, SIRC and lessee	Claim by lessee to be heard in Tribunal of Homebuyers claim (legal reform)

# RECOMMENDATIONS

Dispute	Parties	Recommendations
Abandoned development project	Between developer and lessee and SIRC	<p>Dispute avoidance strategy: Only choose developer with strong financial standing and reputation</p> <p>Liability of developer clearly outlined in the JV agreement</p>
Lessee refutes terms in tripartite lease agreement	Between Lessee and SIRC	<p>Dispute avoidance strategy:</p> <ol style="list-style-type: none"> <li>i. Clear drafting of lease agreement (waqf)</li> <li>ii. Proper consultation by SIRC to explain implications of terms of agreement</li> </ol> <p>Dispute resolution: Legal reform- Tribunal of Homebuyers claim</p>
Lessee passes away. Inheritance claims	Between beneficiaries of lessee and SIRC	<ul style="list-style-type: none"> <li>• Clear stipulation in the lease agreement</li> </ul>
Lessee fails to make payment to financial provider	Between lessee, financial institution and SIRC	<ul style="list-style-type: none"> <li>• Clear agreement between lessee and financial provider (default of payment)</li> <li>• Auction to be done with the consent of SIRC</li> </ul>

# CONCLUSION

- Disputes have been recorded at every stage of development
- These disputes are sometimes inevitable. As such, proactive steps must be taken to ensure the effects on the development project are minimized
- Generally, the types of disputes faced by the parties can be avoided or resolved through public consultation (mutual understanding) and proper drafting of agreements between the parties. However, certain legal reforms are still needed for effective access to justice.
- Disputes must be avoided and managed effectively to ensure the attainment of the philanthropic ends of Waqf as well as maintaining the sustainability of the Waqf property.



*thank you*

