

SELECTED LEGAL ISSUES IN ISLAMIC FAMILY LAW, WAQF, INHERITANCE, HALAL AND ISLAMIC FINANCE

**EXTENDED ABSTRACTS & COMPIRATION
OF SLIDES**

**IN CONJUNCTION WITH THE INTERNATIONAL CONFERENCE ON
ISLAMIC LAW: MALAYSIA & ALGERIA & ROUND TABLE
DISCUSSION ON ISLAMIC SOCIAL FINANCE, HALAL & WAQF**

17th-19th. February 2025

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**MOSQUE OF ALGIERS
UNIVERSITY OF ALGIERS 1
INTERNATIONAL ISLAMIC
UNIVERSITY MALAYSIA
INTERNATIONAL WAQF ACTION COUNCIL
(iWAQF)**

Editor: Nor Asiah Mohamad

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MALAYSIA & ALGERIA & ROUND TABLE DISCUSSION (RTD) ON
ISLAMIC SOCIAL FINANCE & WAQF**

EDITED BY: NOR ASIAH MOHAMAD

2025

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HALAL AND ISLAMIC FINANCE

Extended Abstracts & Compilation of Slides

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Bismillahirrahmanirrahim

In the name of Allah SWT, the Most Gracious & the Most Merciful

In memory of an educational visit to the largest country in Africa, ALGERIA, home to the Sahara desert, the largest desert in the world. Algeria is rich in Islamic cultural heritage, with influences from Arab, Berber, and French cultures.

In this land, we build connections, strengthen *the ukhuwwah*, as well as exchange knowledge and expertise

Special Acknowledgement

Dean, Ahmad Ibrahim Kulliyyah of Laws, IIUM
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PREFACE

In the name of Allah, the Most Gracious the Most Merciful
Assalamu'alaikum warahmatullahi wabarakatuh. Greetings to all.

The International Conference on Islamic Law: Malaysia and Algeria, which takes place from the 17th to the 19th of February 2025, marks the beginning of a strategic collaboration between two law institutions from Southeast Asia and North Africa. By the grace of Allah SWT, the flight journey, which takes no less than 12 hours, is a clear testament to the commitment that knowledge transcends ocean borders and land limitations. This commitment reflects the desire to learn from each other and to appreciate the blessings in both the similarities and diversities of legal systems. Above all, justice and humanity prevail.

Our theme, “Issues and Challenges in Managing Family Economy and the Laws,” was chosen based on common challenges faced by both jurisdictions. Thus, there are many opportunities for mutual learning, insha Allah.

The Round Table Discussion on Islamic Finance and Waqf is the first collaborative effort between the Mosque of Algiers, IIUM, and iWAQF, serving as a platform to stimulate discussions on Islamic Social Finance, particularly Waqf. It seeks to connect academics, researchers, and practitioners to provide a framework for managing Waqf. The initiative also aims to establish a global platform, exploring and sharing information on how Waqf can be created, managed, and developed to achieve its sustainability goals.

This event marks the beginning of a strategic initiative between the two countries. Through bilingual approaches, we hope this event will inspire more informative and effective resolutions, paving the way for strategic programs in the future. While IIUM will offer its expertise, the Great Mosque will lead practical approaches to creating and managing Waqf, and iWAQF will play its role in connecting Waqf institutions, practitioners, and authorities with society by promoting impactful and innovative Waqf projects or products. This event will also share the legal frameworks surrounding various modes of wealth and property management in Islam. The initiative, involving two jurisdictions, is significant from both legal and Shariah perspectives.

As the event explores ways, areas and medium to share knowledge and expertise on other aspects of wealth management, the foundation may be strengthened through planning for future cooperation, while Memorandums of Understanding (MOU) may be signed as legal documents to be witnessed by the successors of the three institutions. Furthermore, to stamp the collaboration, this book is published to commemorate the beautiful memories in achieving the goals. In this book, we record our appreciations, thanks, memories, thoughts and prayers.

Alhamdulillah.

Editor

Professor To' Puan Dr Nor Asiah binti Mohamad

Ahmad Ibrahim Kulliyyah of Laws , IIUM,

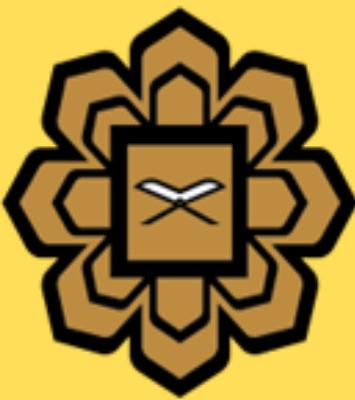
Vice President

International Waqf Action Council 2022- 2026 (iWAQF)

“Indeed, in so far as man is concerned, justice begins and ends with the self ”

(Royal Laureate Professor)

Syed Muhammad Naquib al-Attas



جامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
يُونِيْسْتِيْنِيْ إِسْلَامِ رَابِعْتَارِ بِعَسْيَا مِلِيْسِيَا
Garden of Knowledge and Virtue



ROUND TABLE DISCUSSION ON ISLAMIC SOCIAL FINANCE

ORGANISED BY: **GRAND MOSQUE OF ALGIERS AND
AHMAD IBRAHIM KULLIYYAH OF LAWS (AIKOL), IIUM
MALAYSIA IN COLLABORATION WITH IWAQF**

**THEME: OPPORTUNITIES AND CHALLENGES IN WAQF
DEVELOPMENT IN THE MUSLIMS COUNTRIES**

DATE: 19TH FEBRUARY 2025



**VENUE: Great MOSQUE
ALGIERS**

**Organised by: Great
Mosque, Algiers**



**Co organiser:
AIKOL, IIUM,
MALAYSIA**

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LIST OF EXTENDED ABSTRACTS

Waqf Legal Framework under the Malaysian Legal System

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Abstract

The Malaysian legal system is unique as it presents a special authority of its fourteen states within its jurisdiction, especially on matters relating to Islam as the religion of the Federation. Waqf is one of the matters that falls under the state jurisdiction. This state of governance has resulted in Malaysia, having several enactments dealing with waqf and each state has its challenges in managing waqf.

This paper highlights the position of waqf law and its administration within this unique structure. Having the background of various statutes, this study seeks to analyse the justification and the significance of having comprehensive laws for each state in dealing with waqf. Although there are many proposals for having one standard law on waqf, the legal predicament and issues on state sovereignty are always perceived as the main hurdle to having one law on waqf. To a certain extent, this state of affairs has contributed to the slow development of waqf assets in Malaysia.

By employing a doctrinal approach through analysis of the legal documents and case laws, this paper presents the legal framework of waqf mainly on how the statutes have resolved some specific problems concerning the concept, scope, and sources of authorities, emphasizing the sanctity of Hukm Syarak as the main law in determining any uncertainties or disputes on waqf. In addition, while some states still lack a comprehensive law, reference to the Administration of Islamic law and fatwa is necessary.

The analysis reveals that the background of the legal system is also influenced by the colonial, especially the British. At the beginning of the Malay states, the traces of Islamic law and custom are obvious in providing the legal basis for land matters, family matters, criminal law, and Islamic social finance including Waqf.

While waqf was mainly dealt with as part of the sources of Islamic finance, the practice was so traditional. It revolved around providing financial support for Islamic education, schools, madrasahs, cemeteries, and hospitals. Currently, there are six main sources of laws for waqf i.e. the Hukm Syarak which are mainly based on Quran and Hadith with reference to the four school of thought. Some Waqf enactments have clearly emphasised the preference and prevalence of Waqf in conflict with civil law. (Section 45 of Wakaf (Perak) Enactment 2016.

In addition to the Administration of Islamic law enactments and Wakaf enactments as the main reference, other written laws such as the Federal Constitution also contribute in determining the sources of law for waqf. Article 121 (1A) clearly states that when there is any conflict between Waqf law based on Hukm Syarak and other laws such as the National Land Code Act 828, the Waqf law prevails. Hence, we learn that in Waqf, Islam forms the highest reference source. The challenge is that since the development of waqf involves a diverse aspect which includes land matters, housing development, technology and accounting, waqf managers are expected to equip themselves with various aspects of knowledge. Similarly, the laws involve must also vary.

Fatwas play a very important role as a source of law for waqf because not all states have comprehensive laws or enactments on waqf. In this context, fatwa refers to Islamic legal opinions or rulings issued by qualified Islamic scholars or authorities on matters related to Waqf. These fatwas help clarify how Islamic law (Shariah) applies to Waqf, especially when there are uncertainties, emerging issues, or conflicts with existing laws. Here are some key aspects of fatwas related to Waqf:

1. Providing for a clear definition and scope of Waqf

Fatwas may clarify the criteria for establishing a Waqf, ensuring that it complies with Shariah principles. This includes validating whether a donation or property is suitable for Waqf and ensuring that it is intended for charitable or religious purposes.

b. A platform to Respond to Queries or Issues of Ownership and Control of Waqf Assets

In cases where there is ambiguity about the ownership or control of Waqf property, fatwas can clarify whether the management falls under a religious authority, a trustee, or the local community—Fatwas also addresses who can benefit from Waqf assets and in what manner.

c. Modern Applications of Waqf

Waqf assets have expanded to include various forms of property, such as real estate, businesses, and even intellectual property, fatwas help to adapt traditional rules to modern contexts. This includes issuing fatwas on using Waqf for housing development, social welfare programs, or microfinance.

d. Disputes and Conflicts Resolutions

When disputes arise about the management or administration of Waqf, fatwas offer guidance on how to resolve them with the basis of Islamic law. They may also address conflicts between state laws and Shariah principles related to Waqf. At the moment, many researchers have suggested for the use of Alternative Disputes Resolutions as the preferred mechanism to resolve disputes. Perhaps from providing for a better justice system, ADR is also a risk management tools which are appropriate for waqf which is basically representing the Islamic institution and Islamic system.

e. Addressing New and Contemporary Issues on Islamic social Finance including Waqf

Fatwa is increasingly addressing contemporary issues related to Waqf, such as the use of technology in managing Waqf assets, investment strategies for Waqf properties, and ensuring that Waqf remains relevant in modern societies. These fatwas aim to ensure that Waqf continues to be a viable tool for social development in today's world

Additionally, this study found that the development of rules and principles in Islamic finance is, to some extent, relevant and appropriate as a reference for Waqf. Therefore, any decisions made by the Shariah Advisory Council (SAC) on Islamic finance may serve as a legal source for Waqf, as it is a component of Islamic social finance

Keywords

Waqf, Sources of law, fatwa, Islamic social Finance, dispute resolution

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Azizah Mohd obtained her LLB, LLBs (*Shariah*), MCL and PhD from the International Islamic University Malaysia (IIUM). At present, she is a Professor at the Islamic law Department, Ahmad Ibrahim Kulliyyah of Laws, IIUM. She was the Coordinator of the IIUM Legal Aid Services. She lectures on Islamic jurisprudence and Islamic family law. Her areas of interest are Islamic family law and rights of women and children in Islam. She has presented and published a number of papers in the area of Islamic family law, women and children's rights and child protection which include the issues of wife and children rights to maintenance, mut'ah, legitimacy, filiation and adoption, breastfeeding and fostering, child marriage and guardianship in marriage. Among her recent publications are *Minimum age of marriage under Islamic Law and the Islamic Family Law (Federal Territories) Act 1984: a preliminary study on the ideal age of marriage in Malaysia* and *Filiation and the protection of parentless children (Malaysia)*, *Talaq through electronic medium under Islamic and Malaysian law: The impact on 'iddah and ruju'*, *Protection of adopted children's rights to custody and maintenance: an appraisal of the law governing Muslims in Malaysia.*, *Kedudukan dan perlindungan hak-hak wanita dalam Islam secara sepintas lalu*.



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