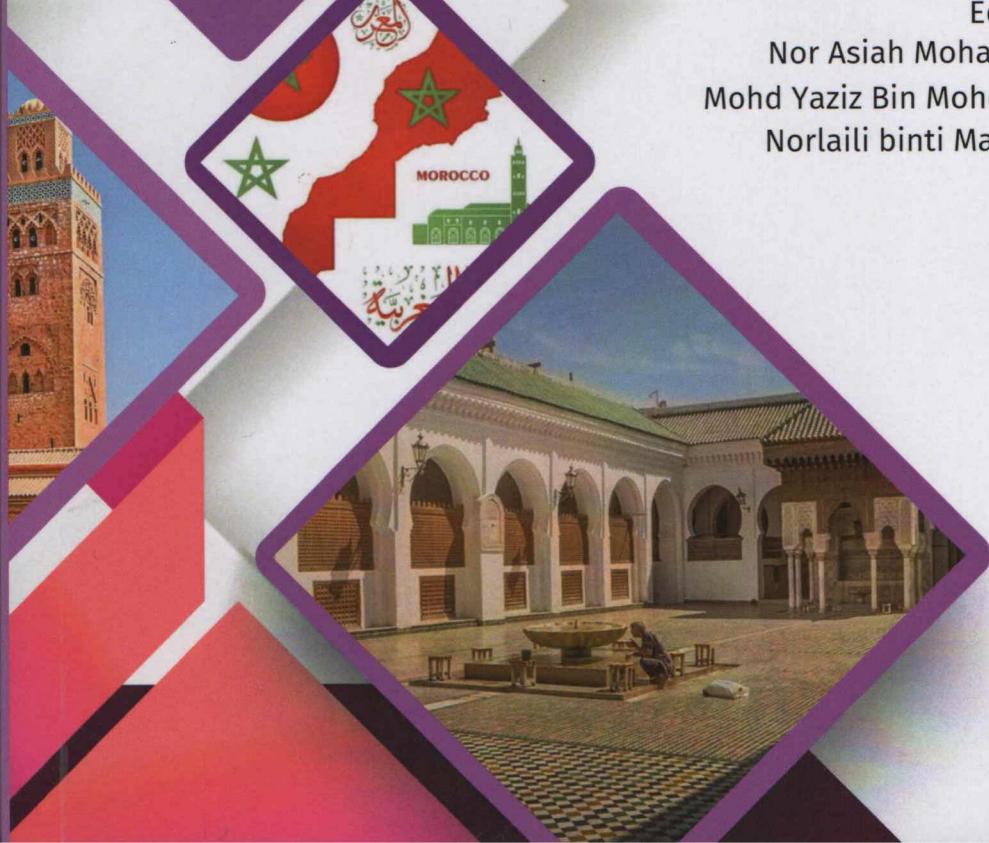




REENGINEERING THE WAQF ECOSYSTEM: GOVERNANCE INNOVATIONS FOR INSTITUTIONAL RESILIENCE AND ADAPTABILITY

2025

Editor
Nor Asiah Mohamad
Mohd Yaziz Bin Mohd Isa
Norlaili binti Mat Isa





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JUDICIAL INFLUENCE ON THE DEVELOPMENT OF WAQF POLICY IN MALAYSIA AND ITS LEGAL IMPLICATIONS

Tajul Aris Ahmad Bustami¹ and Akmal Hidayah Halim²

INTRODUCTION

Waqf, or Islamic endowment, has been an enduring institution in the socio-economic and spiritual life of the Muslim community in Malaysia. Rooted in the principle of perpetuity, waqf assets are intended to be preserved and utilised for charitable or religious purposes as stipulated by the waqif (founder). In Malaysia, the administration of waqf is entrusted to the State Islamic Religious Councils (Majlis Agama Islam Negeri, MAIN) as mutawalli (trustee), pursuant to respective State Islamic enactments. Despite this structured framework, the governance of waqf has often been complicated by disputes over ownership, validity, and the competing claims of heirs under Islamic inheritance (*faraid*) law.

In this context, judicial interpretation becomes pivotal. The courts, both Syariah and civil, are regularly called upon to determine whether a property has been validly dedicated as waqf, to adjudicate the rights of heirs, and to uphold the fiduciary duties of the mutawalli. The recent case of *Syed Idross Nom Syed Hassan Al-Mashoor Ors (As Trustee to Shaik Eusoff Bin Shaik Latiff Trust) v Majlis Agama Islam Negeri Pulau Pinang* which was decided in 2024 by Penang Syariah High Court, is emblematic of these tensions. The decision not only resolved the specific dispute between the parties but also signalled important legal and policy directions for waqf governance in Malaysia.

Statement of the Problem

The central issue in many waqf-related disputes is reconciling the competing interests of:

- a) The waqif's intent to establish a waqf in perpetuity.
- b) The heirs' rights under Islamic inheritance (*faraid*) law.
- c) The *mutawalli's* duty to administer waqf assets for public benefit.

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In Malaysia, the legal framework governing waqf is primarily state-specific, leading to inconsistencies in the application of waqf principles. This fragmentation often results in disputes over the validity of waqf dedications and the rights of heirs.

For instance, in *Tegas Sepakat Sdn Bhd v. Mohamad Faizal Tan bin Abdullah*,³ the heirs contested the validity of a waqf dedication, arguing that the property should revert to the deceased's estate. The court's decision underscored the complexities surrounding the determination of waqf validity, the competing rights of heirs, and questions of judicial jurisdiction.

Similarly, in *G Rethinasamy v. Majlis Agama Islam, Pulau Pinang & Anor*,⁴ the plaintiff sought vacant possession of a parcel of land he had purchased, part of which the defendants claimed as waqf property comprising a mosque and Muslim cemetery. The court considered the procedural requirements for the creation of waqf and their implications for inheritance rights.

Whereas the court in the former case ruled in favour of the heirs, the latter case was decided in favour of the *mutawalli* of the waqf. Collectively, these cases highlight the pressing need for a harmonized legal framework governing waqf administration in Malaysia, so as to prevent inconsistent judicial interpretations and to safeguard both the intentions of the waqif and the rights of heirs.

Research Methodology

This study employs a qualitative doctrinal legal research methodology. The analysis draws on:

- Primary sources: The relevant provisions of the Administration of the Religion of Islam Enactment of Penang, court pleadings and judgment in *Syed Idross*, and other reported Malaysian cases involving similar disputes.
- Secondary sources: Scholarly commentary, legislative histories, and doctrinal writings on waqf law in both the Malaysian and broader Islamic contexts.

A case study approach is applied, using the case *Syed Idross* as the focal point for examining how judicial reasoning shapes waqf policy which includes the State Enactments and Regulations as well as guidelines published by the Department of Wakaf, Zakat and Hajj (JAWHAR) and Fatwa. The judgment is dissected to identify the court's interpretative

³ [1992] 4 CLJ 2297.

⁴ [1993] 2 MLJ 166.

strategies, the weight given to evidentiary elements, and the balancing of private versus public interests.

Case Study: Syed Idross Nom Syed Hassan Al-Mashoor & Ors v. Majlis Agama Islam Negeri Pulau Pinang

In *Syed Idross*, the dispute centred on competing claims over several parcels of land purportedly dedicated as waqf. The plaintiff heirs argued that the waqf instruments relating to these lands were not properly executed in accordance with statutory and procedural requirements, and more critically that certain clauses in the instruments were inconsistent with Islamic law. They contended that because of these defects, the dedication was void and the property must revert to the deceased's estate for distribution under *faraid*.

Conversely, the Majlis Agama Islam Negeri Pulau Pinang (MAIN) maintained that the waqf instruments had been properly executed, fully compliant with both the Penang enactment and the principles of Islamic jurisprudence. MAIN asserted that the founder's intention was unambiguous, the dedication fulfilled all substantive requirements of waqf under Shariah, and the assets should therefore remain as waqf property to serve the public interest in perpetuity. The court examined three main issues:

- a) Validity of Waqf Declaration – Whether the combination of the executed instruments, oral statements, public use, and supporting witness testimony met the legal and Shariah thresholds for a binding waqf.
- b) Interaction with Inheritance Rights – Whether, if the waqf was valid, heirs could nonetheless claim the property under *faraid*.
- c) Role of MAIN as *Mutawalli* – The extent of MAIN's responsibility to defend waqf assets from private claims in order to preserve public benefit.

Ultimately, the court upheld the waqf, placing significant weight on the founder's charitable intention, the formal execution of the instruments, and the longstanding public use of the property, concluding that these factors satisfied the requirements under both statutory and Islamic law.

This research focuses on judicially emphasized waqf policies and corresponding government initiatives, assessing their role in strengthening the waqf institution within Malaysia.

Issues and Challenges

The Syed Idross case brings several challenges into sharper relief:

a) Ambiguity in Waqf Intention vs Heirs' Expectations

In many cases, when the waqif's intention is not clearly documented, heirs may challenge the waqf's validity or misconstrue the waqif's intended charitable objectives. Courts must carefully interpret intention, which can conflict with heirs' perceptions of inheritance rights.

b) Inadequate Protection of Waqif's Autonomy

Without clear statutory safeguards, heirs may challenge waqf dedications even if the waqif clearly intended charitable endowment, undermining the principle of perpetuity.

c) Mutawalli Accountability and Conflicting Duties

Mutawallis (like MAIN) are tasked with safeguarding public interest, but must also navigate claims from heirs. This dual responsibility can create operational and legal dilemmas.

d) Procedural and Evidentiary Gaps

Disputes arise from lack of uniform standards for executing waqf instruments or verifying waqif intention, making judicial resolution unpredictable.

CONCLUSION

The Syed Idross decision illustrates the judiciary's crucial role in shaping waqf policy in Malaysia. By upholding the validity of a waqf despite procedural imperfections, the court affirmed the primacy of founder intention and the protection of charitable assets. This approach reinforces the perpetuity principle of waqf while signalling a purposive interpretative trend in judicial reasoning.

However, the case also underscores the urgent need for legislative harmonisation, clearer procedural safeguards, and enhanced judicial consistency. Without these reforms, similar disputes will continue to produce fragmented outcomes, undermining public trust in waqf as a stable institution.

Ultimately, Syed Idross serves as both a decisive legal precedent and a policy touchstone. It demonstrates how courts, through individual decisions, actively shape the operational landscape of waqf in Malaysia thus, balancing private inheritance rights against the enduring public benefits of charitable dedication.

Keywords: Waqf; judicial interpretation; inheritance law (faraid); State Islamic Religious Council (MAIN); mutawalli; waqf policy.

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