

# **WAQF LAW AND ADMINISTRATION IN MALAYSIA**

**NOR ASIAH MOHAMAD**

# **WAQF LAW AND ADMINISTRATION IN MALAYSIA**

NOR ASIAH MOHAMAD

2018

*Published by;*

**PUSTAKA SALAM SDN. BHD.**

No 83 & 83A, Jalan KPK 1/8

Kawasan Perindustrian Kundang

48020 Kundang Jaya, Selangor

Tel: 03-60343532 Faks: 03-60344436

Emel: pustakasalam1984@yahoo.com

Website: www.pustakasalam.my

© **ALL RIGHTS RESERVED**

No part of this book may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopying, recording or any information storage and retrieval system without permission in writing from Pustaka Salam Sdn. Bhd.

ISBN: 978-967-975-618-0

*Printed by;*

**PERCETAKAN SALAM SDN. BHD.**

No 81 & 81A, Jalan KPK 1/8

Kawasan Perindustrian Kundang

48020 Kundang Jaya, Selangor

Tel: 03-60343532 Faks: 03-60344436

Emel: salamcetak97@yahoo.com.my

# CONTENTS

Special Dedication And Acknowledgement	iii
List Of Cases	xiii
List Of Diagram	xv
List Of Chart	xvi
List Of Table	xvii
List Of Abbreviation	xviii
Preface	xix
<b>CHAPTER 1: CONCEPT OF WAQF</b>	<b>1</b>
1.0 Understanding The Concept And Jurisprudential Nature Of Important Terms Related To Waqf	1
1.1 Waqf	1
1.2 Waqf And Sadaqah	2
1.3 Differences Between Sadaqah And Sadaqah Jariah	2
1.4 Waqf And Infaq	3
1.5 Differences Between Waqf And Trust	4
1.6 Waqf And Foundations	7
1.7 Waqf And Charity Under Civil Law	10
1.8 The Meaning Of Waqf	15
1.8.2 Legal Definition Either From The Statute Or Case Law	16
1.9 Validity Of Waqf	17
1.10 Components Of Waqf	18
1.10.1 Conditions For Formation Of Wakaf	18
1.11 Subject Matter Of Waqf (Mawquf)	20
1.12 Can A Manfaah (Usufruct) Be A Mawquf?	21
1.12.1 Mawquf Must Be 'Perpetual'	23
1.12.2 The Mawquf 'Alaih (The Beneficiary)	24
1.13 Effect Of Perpetuity Of Waqf Property	24
1.14 The Ten Conditions Or 10 Waqf Stipulation	26
1.15 Ownership Of Waqf	28

1.16 Waqf Deed ( <i>Waqfiyya</i> )	29
1.16.1 Waqf Sighah (Form)	30
1.17 Charity	30
1.17.1 What Is Charity?	30
1.18 Authority From Quran	30
1.19 Authority From The Hadith	35
1.20 Examples Of Charity	40
1.21 Forms Of Charity	40
1.22 Benefits Of Charity	41
1.23 Effects Of Charity	42
1.24 Charity To Other God's Creation	44
1.24.1 Charity Or Waqf Of Care For Animals	44
1.25 Charity Law In Malaysia	45
1.25.1 Waqf As A Form Of Charitable Act	47
<b>CHAPTER 2: HISTORY OF WAQF</b>	<b>48</b>
2.1 History Of Waqf	48
2.1.1 History Of Waqf In Malaysia	49
2.1.1.1 Before Independence/Colonialism	49
2.1.1.2 Waqf Administration Post-Independence	54
<b>CHAPTER 3: LAWS RELATING TO WAQF IN MALAYSIA</b>	<b>56</b>
3.1 Waqf In The Federal And States Laws	56
3.1.1 Waqf In The Federal Constitution	56
3.1.2 Waqf (States) Enactments	57
3.4 Waqf Organisational Structure And Waqf Procedures	59
3.5 Procedures For Waqf Land At The Islamic Religious Council And Land Office	60
3.6 Waqf Legal Framework	61
3.7 Procedures For Application To Collect Fund Under Saham Wakaf Selangor	63
3.8 Challenges In The Management Of Waqf Lands In Malaysia	64

3.9	Challenges In Waqf Development Globally	69
3.9.1	Kuwait	69
3.9.2	New Zealand	70
3.9.3	Indonesia	71
3.9.4	Singapore	74
<b>CHAPTER 4:</b>	<b>TYPES OF WAQF</b>	<b>75</b>
4.1	Types Of Waqf	75
4.1.1	Waqf Am (Khayri)	75
4.1.2	Waqf Khas Or Waqf Ahli (Family Waqf) Or Waqf Dzurri (Dhuriyyah-Offspring) (Waqf Al Awlad)	76
4.1.3	Waqf Musytarak (Combined Waqf)	76
4.1.4	Waqf Irsod	76
4.1.5	Waqf Al Muabbad	77
4.1.6	Waqf Al Mu'aqqat	77
4.1.7	Corporate Waqf	77
4.1.7.1	Cash Waqf (Waqf An Nuqud)	78
4.1.8	Waqf Ala Nafs (Self Dedicated Waqf)	79
4.1.9	Infaq Lil Waqf	81
4.1.9.1	Definiton Of Infaq Lil Waqf	82
4.1.9.2	The Objective Of Infaq Lil- Waqf Scheme	82
4.1.9.3	Angkasa As Mutawalli	83
<b>CHAPTER 5:</b>	<b>ESSENTIAL PROCEDURES IN WAQF MANAGEMENT</b>	<b>85</b>
5.1	The Sources Of Waqf Law In Malaysia	85
	Section 15. Registration Of Mawquf	86
5.2	Creation Of Waqf Under The National Land Code 1965	86
5.2.1	Process Of Creation Of Waqf At The SIRC	86
5.3	Creation Of Waqf Land According To The Manual (JAWHAR)	89
5.4	Creation Of Waqf Under Labuan International Waqf Foundation (LIWF)	90
5.4.1	LIWF Can Be Established For Different Types Of Waqf For Example	90
5.4.2	LIWF Can Be Established By A Founder (Waqif) By	91

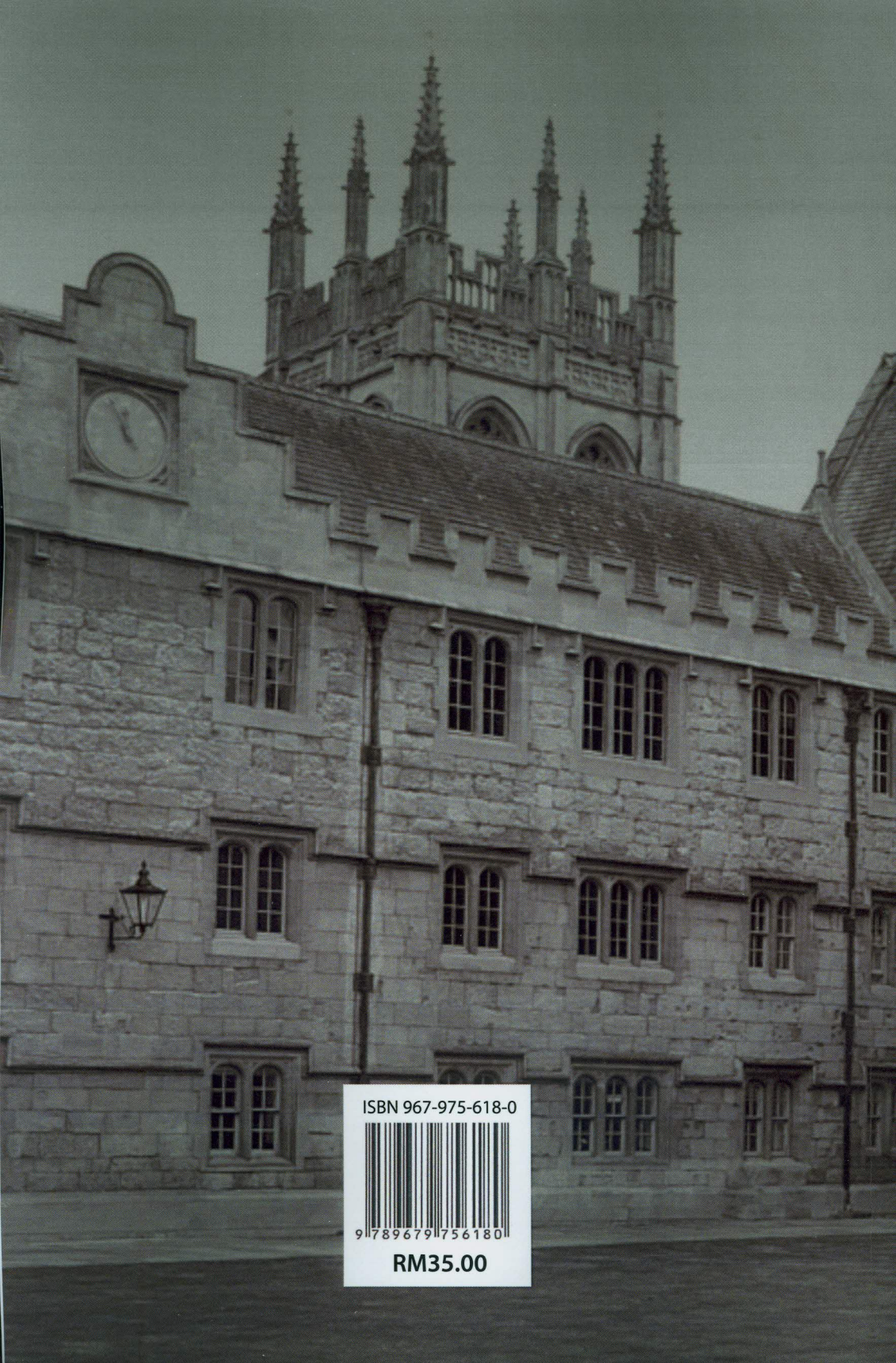
5.5	Application For Registration Of The Waqf Foundation Can Be Submitted To The Registrar Of Company Unit Of Labuan Fsa Using The Following Forms	91
5.6	The Registration Of The Waqf Foundation Must Be Made By The Secretary Of The Waqf Foundation By Submitting The Following Documents As Required Under Section 14 Of LFA	91
5.7	Charter Of LIWF (Waqfiyyah)	92
5.8	Istibdal Of Waqf	93
5.8.1	There Are Three Main Steps For Istibdal Of Waqf Land	94
5.9	Definition Of Istibdal According To The Law And Jurists	95
5.10	Examples Of Flexibility Ijtihad Or Views On Waqf	97
5.11	Provisions Relating To Istibdal In The Waqf Enactment And The Administration Of Islamic Law In Malaysia	99
5.12	Istibdal Or Substitution (In Exchange For Other Land)	105
5.13	Selected Cases On Istibdal	107
<b>CHAPTER 6:</b>	<b>ADMINISTRATION AND GOVERNANCE OF ISLAMIC ENDOWMENT IN MALAYSIA AND IN SELECTED OTHER COUNTRIES</b>	<b>108</b>
6.1	Waqf Under Federal Constitution	108
6.2	Waqf Under State Jurisdiction	109
6.3	The Department Of Waqf, Zakat And Haj (JAWHAR)	111
6.3.1	Vision	111
6.3.2	Mission	111
6.3.3	Objective	112
6.4	The Waqf Foundation Malaysia (Yayasan Wakaf Malaysia)	113
6.5	State Islamic Religious Council (SIRC) As Sole <i>Mutawalli</i> ;	114
6.6	Responsibilities And Roles Of The Selangor Waqf Corpration (PWS)	115

6.7	Mutawalli	115
6.8	Other Waqf Officers Such As Nazir, Qadim And Waqf Manager And Etc;	117
6.9	Waqf Management In Non-Muslim Countries	117
6.9.1	Waqf In Singapore	120
	The Administration Of Waqf In Singapore	122
	History Of Waqf In Singapore	122
6.9.2	Waqf Administration In Indonesia	125
	Waqf Legal Framework	125
	Waqf Law	126
	Indonesian Waqf Board (Badan Wakaf Indonesia)	126
6.9.3	Waqf In The Contemporary Turkey	129
	The Role Of Waqf In Ottoman Society	130
	Success Stories Of Waqf In Turkey.	131
	Sabanci Vakfi	131
	Vehbi Koç Vakfi	132
6.9.4	Merton College UK	132
<b>CHAPTER 7: CORPORATE WAQF: CONCEPT AND PRACTICES</b>		<b>136</b>
7.1	Corporate Waqf	136
7.1.1	Cash Waqf	137
7.2	Waqf Financing	139
7.2.1	Wakaf (Waqf) Of Shares	139
7.2.2	Waqf Shares (Return)	140
7.2.3	Second Type Of Sources Of Waqf Fund Are From	142
7.2.4	Third Types Of Sources Of Waqf Income Are External Financing Instruments/Islamic Financial Contracts Financial Institution	142
7.3	Obstacles Issues	143
7.4	Among The Solutions To Get The Bank's Approval Are	143
7.5	Equity Financing: Islamic Financial Contract.	144

<b>CHAPTER 8 : WAQF EDUCATION</b>		<b>146</b>
8.2	Selected Issues On Waqf Education	146
8.3	Types Of Waqf Education	147
8.4	Source Of Income	148
8.5	Concept Of Waqf University	148
8.6	Waqf Curriculum	149
8.7	Management Issues In Waqf Education	150
8.8	The Challenges In Managing The Waqf Education	151
8.8.1	Perception And Awareness About Waqf And Islamic Education	151
8.8.2	Lack Of Fund	152
8.8.3	Property Status	152
8.8.4	Value Of Waqf Property Is Low	152
8.8.5	No Uniformity Of Laws And Practices	153
8.9	Case Study Of Waqf Education	154
8.9.1	Qarawiyyin University In Fez, Morocco	154
<b>CHAPTER 9: WAQF AUDIT AND ACCOUNTING</b>		<b>156</b>
9.2	Authorities On Financial Reporting For Waqf.	156
9.3	Justification For Waqf Accounting And Audit	159
9.4	Access To Financial Statements	161
9.6	Framework For A Public Sector Entity – Waqf Administered By SIRC's	163
9.7	Provision For Accounting Under The Law	163
9.7.1	Statutory Bodies (Accounts And Annual Reports) Act 1980	164
9.8	Best Practice In National Financial Management (Amalan Terbaik Pengurusan Kewangan Negara)	164
9.8.1	Manual Pengurusan Perakaunan Wakaf (MPPW).	165
9.9	The Account Provision Under The Wakaf (State Of Selangor) Enactment 2015	166
9.10	Accounting For Real Property	166
9.11	Real Property Held By An Incorporated Company	167
9.12	Real Property Held By A Public Sector Entity	167
9.13	Recognition Of Waqf Properties As Heritage Asset	168

9.14 Financial Reporting For Non-Profit Entities	170
Selected Issues In Waqf Accounting	171
9.15 Comparison With The Islamic Religious Council Of Singapore (Majlis Ugama Islam Singapura Or MUIS)	171
9.16 Auditing For Waqf	172
<b>CHAPTER 10: SELECTED ISSUES IN WAQF ADMINISTRATION AND GOVERNANCE</b>	<b>173</b>
10.2 Other Issues In Waqf Management	174
10.2.1 Taxes Exemption For Waqf Donations And Accruals	174
10.2.2 Illegal Settlement On Waqf Land	177
10.2.3 Disputes Resolution	177
<b>CHAPTER 11: SELECTED COURT DECISIONS ON WAQF</b>	<b>179</b>
<b>CHAPTER 12: MODEL OF DEVELOPMENT OF AWQAF PROPERTIES</b>	<b>215</b>
12.1 Introduction	215
12.2 Waqf Financing (Source : IRTI)	216
12.3 Classical Mechanisms For Financing Waqf (Source: IRTI)	216
12.4 Market-Based Mechanisms For Financing Waqf	220
12.5 Model For Awqaf Financing	221
12.5.1 Build-Lease-Transfer (Bot) <i>(Ijarah Muntahia Bit Tamleek).</i>	222
12.5.2 Asset-Based Mudarabah.	222
12.5.3 Securitization Of Project (Shares And Sukuk).	222
12.6 Issues In Waqf Development	223
<b>CHAPTER 13 : SELECTED CASE STUDIES ON WAQF</b>	<b>225</b>
Jcorp Johor Under Johor Islamic Religious Council (MAIJ)	225
MAINPP Terms	229
Modus Operandi	230

<b>REFERENCES</b>	<b>232</b>
<b>EXPLANATIONS OF TERMS USED</b>	<b>240</b>
<b>LIST OF FATWA</b>	<b>242</b>
<b>ENACTMENT NO. 15 OF 2015</b>	<b>250</b>
Part I – Preliminary	251
Part II – Powers And Responsibilities Of Majlis	255
Part III – Appointment Of Chief Registrar Of Wakaf And Registrar Of Wakaf	257
Part IV – Formation Of Wakaf	258
Part V – Mawquf	261
Part VI – Mawquf 'Alaih	264
Part VII – Wakaf By Way Of Will	265
<b>STATEMENT OF THE STANDARD</b>	<b>275</b>



ISBN 967-975-618-0



9 789679 756180

**RM35.00**