

New framework for the management of *waqf* land registration system in Malaysia

Waqf land registration system

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Abstract

Purpose – This paper aims to propose a new framework for the management of a *waqf* land registration system in Malaysia that is compliant with Islamic law and the Malaysian legal system. The study sought to answer the following two research questions: what are the issues of the *waqf* land registration system and how to solve the issues of *waqf* land registration in Malaysia.

Design/methodology/approach – This study used a qualitative research method by using content analysis, legal investigation and doctrinal research. Data were collected through semi-structured interviews with lawyers, academicians and executive officers from the Department of Land and Mines, the State Islamic Religious Council and reviewed documents mainly from the Department of *Waqf*, Zakat and Hajj Malaysia.

Findings – A new framework for the management of *waqf* land registration in Malaysia was identified, which was developed based on current *waqf* issues such as problematic registration methods, lengthy and complicated procedures, interference in the jurisdiction of the civil court and idle *waqf* land. The framework overcame the flaw of the previous *waqf* land registration system in Malaysia.

Originality/value – The new framework will provide solutions to the current registration system within the National Land Code, 1965, which will secure property in the future.

Keywords Malaysia, Framework, Registration, Legislation, *Waqf* land

Paper type Research paper

1. Introduction

Waqf refers to a property donated by the Muslim community for charity. *Waqf* is unique because its characteristics are permanent, inalienable and irrevocable (Hasan and Sulaiman, 2016; Ghazali *et al.*, 2019). The owner's intention to donate is to obtain rewards from God in the hereafter (Kahf, 2003; Shabbir, 2018; Faturohman *et al.*, 2020; Hasan *et al.*, 2018). The



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components of *waqf* could be moveable assets (books, computers, vehicles, shares, stocks and cash) or immovable assets (Mahamood, 2007; Tekdogan, 2020). Globally, including Malaysia, *waqf* consists of immovable assets such as land and buildings.

Amongst the many assets, the land is highly valuable. The land holds a unique and essential place in social, political, environmental and economic theories (Ibrahim, 2020; Hasan *et al.*, 2019; Brodmann *et al.*, 2018). It includes natural resources, materials, airways and essentials supporting all life and stands at the centre of human culture and institutions (Gwartney and Assessor, 1999). People need land for daily activities (Gwartney and Assessor, 1999). Therefore, the land is valuable in every state. With high demands, needs and scarcity of land, it is crucial for land to be registered and managed properly (Ashraf *et al.*, 2018; Selim *et al.*, 2019).

In Malaysia, Article 76(4), in the Federal Constitution (the prime legislation of Malaysia) provides for matters of land under the state list, which gives exclusive power to the state government to administer and regulate matters pertaining to land. Therefore, each state in Malaysia has an enactment to administer *waqf* lands such as Negeri Sembilan *Waqf* Enactment, Selangor *Waqf* Enactment and Melaka *Waqf* Enactment. However, to establish a uniform system of land tenure and dealings throughout the 11 states of Peninsular Malaysia, the Federal Constitution enacted the National Land Code 1965 (NLC) based on the Torrens system, which emphasises principle registration (Hanstad, 1998; Haneef, 2015; Alaro and Alalubosa, 2019). Therefore, all lands including *waqf* land must be registered according to NLC to provide indefeasible and recognised information of land ownership, which is constituted under Section 340, NLC. The necessary information regarding ownership resides in the land title (Ruoff, 1957).

According to a majority of Islamic jurists (the four leading *imamis* from the four schools of Islamic law: Hanafi, Maliki, Syafie and Hanbali, *waqf* is valid and indefeasible if there is a clear declaration of intention by the *waqif* to create a *waqf* constituting the following five elements/pillars/*arkan*: declaration (*sighah*), a qualified donor (*waqif*), qualified beneficiaries (*mawqufalaih*), permissible subject matter (*mawquf*) and manager (*nazir/mutawalli*) (Osman, 2012; Mohammad, 2006; Hamid and Tahir, 2014; Ghazali *et al.*, 2019). However, in Malaysia, *waqf* land requires registration before it can be used or developed under several procedures. In the process of registration at the land office, the land has the potential to be transferred and may be revoked by the heirs[1] or other parties[2]. Consequently, the *waqf* land is lost by transferring it to a third party. In the worst-case scenario, the owner of a *waqf* land may have passed away and subsequently, the land has been developed for charity purposes. The loss of the building and authority on the land makes it challenging for the property to be developed. Furthermore, investors are no longer interested in developing the property. Thus, the property was left idle and undeveloped in this situation (Osman *et al.*, 2018; Ambrose, 2018). Therefore, the *waqif* and the State Islamic Religious Council (SIRC) bear the burden of maintaining and paying the annual land taxation for the idle property.

To overcome these issues, this paper proposes a new framework for managing *waqf* land registration in Malaysia, which will be compliant with Islamic law and the Malaysian legal system. The study answers the following two research questions: what are the issues of the *waqf* land registration system and how to solve the issues of *waqf* land registration in Malaysia. As presented in Figure 1, this paper highlights the scenario and issues of the existing registration system. Semi-structured interviews will be used for empirical data collection. This method allows the interviewer to validate the issue and solutions within the *waqf* land registration system. During data collection, if the findings indicate that the *waqf* land (*mawquf*) is free from encumbrance before it is donated as *waqf*, the *waqif* declaration can be indefeasible and binding. Statutory Vesting with a few amendments will be used as

the method of registration and to analyse the collected data framed in a structured form as the new framework.

The *waqf* land registration system in Malaysia risks the conservation of the property. Therefore, the methodology assists this study in investigating the root cause of the problem. Purposive sampling is the qualitative methodology adopted, which selects the most appropriate and relevant respondents involved in the *waqf* land registration system. The study is subcategorised into five main sections that consist of the introduction, literature review, methodology, analysis and findings and the final section consist of a brief of the new framework framed in a structured form a solution for the *waqf* land registration issues.

2. Literature review

2.1 The current waqf land registration system

Currently, *waqf* property research focusses on problems solutions and strategies for productive *waqf* in Indonesia, which is in accordance with the respective regulators *nazir* and *wakif* (Huda, 2017). Kasri and Wibowo (2015) investigated the determinants of private involvement in public infrastructure provision in developing Muslim countries. This issue is considered important due to the persistent gap between the demand for and supply of public infrastructure in most developing Muslim countries. The findings suggest that market conditions, institutional qualities and risks are the most crucial factors in determining the involvement of the private sector in infrastructure financing in Muslim countries. Hasan *et al.* (2017) studied the determining ability of *waqf* institutions to influence the *waqif's* trust and commitment and to propose a stakeholder trust model for *waqf* institutions. Mohsin (2013) and Thaker (2018) offer a sustainable model to source the financing for *waqf* institutions to meet their liquidity constraints in developing *waqf* land.

Pertaining to *waqf* land registration in Malaysia, local researchers such as Hasan (2010) studied the comprehensive and reliable data on *waqf* land, which has caused many unregistered *waqf* lands to be undeveloped and even unidentified. Without the land title, it is difficult for the SIRC to develop *waqf* land. Besides that, Harun (2012) mentioned that there is an absence of clear and consistent procedures for land registration, land management and *waqf* properties. The study also claimed that almost all the states' *waqf* departments have documentation and some had taken the initiative to use the computerised coding system. Nevertheless, many constraints and shortcomings continue to exist. Furthermore, Kader (2009) mentioned that in the process of Surrender, Section 195, NLC causes the status of *waqf* land to disappear and the land could be taken for public use (e.g. road, passage, etc.) by the state without compensating the owner of the property (SIRC/*waqif*).

Stating the examples of foreign countries, Wamsi (2016) mentioned that India requires the State Authority to approve the application[3] similar to the *waqf* declaration and

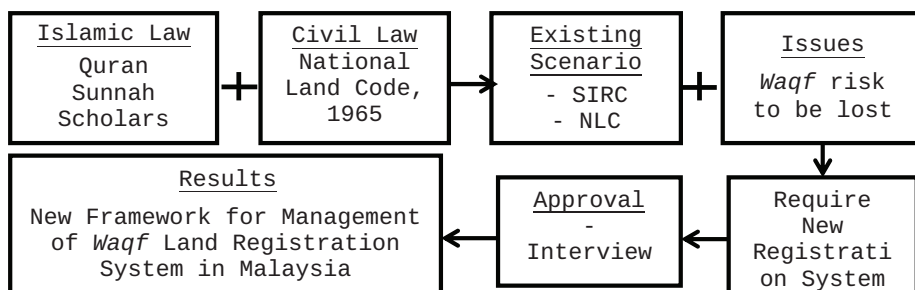


Figure 1.
The process of formulating a new framework for management of *waqf* land registration system in Malaysia

registration system in Malaysia, which involves various forms and procedures and consumes a lot of time. Kahf (2012) mentioned that Egypt had authorised a special registration organisation to record and control *waqf* assets. This has established the power of attorney, given by the supreme judge to the appointed organisation for the registration and supervision of *waqf* assets. In the early eras of Islamic law, a *waqf* was created for people to go to the local judge (*Qadi*) and declare his intention to create a *waqf*. Then, the *Qadi* would record the declaration against the value of the properties donated with the condition stated by *waqif*, as the capital would be the private property of the *waqif*. Thus, according to the conventional traditions, there are two conditions for creating a *waqf*: firstly, the property should belong to the *waqif* and secondly the property must be registered to the local court after the declaration (e.g. Sharia Court). The Kuwait Islamic Research and Training Institute-Kuwait Public Foundation has formed a law. This refers to item 72, which requires that a person who intends to create a *waqf* should inform the local court, who will register the property as *waqf*. They must then inform their decision to the Association of *waqf* as a trustee to manage the *waqf* property. Cizacka (2013) also mentioned that it is essential that only the local court and *waqf* association alone handle the registration and management of *waqf* assets. From the experience, without the interference of the state authority, will secure *waqf* assets and ease the management and distribution, *which will directly benefit the ummah*.

The current research on *waqf* is predominantly related to other subjects of finance and development. Only a few local studies are related to *waqf* land registration. However, these studies have contributed to highlight this issue. There are few suggestions proposed by foreign research, such as giving the attorney the power to non-government or private associations to act as a trustee to register the land as *waqf*. These seem to be good solutions to be implemented. However, it is not adaptable to the Malaysian legal system. This is because the system did not give the attorney full power to the SIRC as a trustee to register the property as *waqf*. Furthermore, the Malaysian legal system only recognises land offices as the authority to register the land according to Section 340, NLC. Therefore, this research was conducted to study the issues arising and to propose a new framework for the management of the *waqf* land registration system as a solution to these issues, which will be in compliance with Islamic law and the Malaysian legal system.

2.2 Valid *waqf* under the Malaysian legal system

In Malaysia, *waqf* land requires registration before it can be used or developed based on several procedures. Based on the content analysis of the NLC, States Enactment, Court Cases and Academies, the following two steps make the *waqf* land valid and binding in the Malaysian legal system: firstly, a *waqf* declaration at the SIRC and secondly, registration at the land office for land title, as depicted in Figure 2. Currently, there are three methods of *waqf* land registration in the land office.

To make *waqf* indefeasible, binding, valid and recognised under the Malaysian legal system, the *waqf* must be declared at the SIRC in front of a *waqf* officer. The provision of the NLC is applicable to the Torrens system, which holds that the principle of registration is everything. Therefore, a *waqf* needs to be registered under Section 215 NLC, Transfer of Title, form 14A, Section 195 NLC, State Surrender and Re-alienation, form 12A and form 12B or Section 416 NLC, Statutory Vesting, form 30A and form 30B. The steps involved for *waqf* land registration are the application and preparation of the Layout Plan, Ground Report, Land Reports, Admission Form and Letter, Registration and Vesting, Submitting Notices, Stamp Duties Exemption, Periodic Surveys and Gazetting Land (Fazle, 2016). Later, the registration shall gain approvals from the Department of Survey and Mapping, Land

Administrator, Department of Lands and Mines, State Authority and Local Authority (Rani and Ghani, 2012). Finally, after the approval by the parties, the certificate of *the title is transferred to the SIRC. Subsequently, the waqf* land will become indefeasible, binding and valid under Civil Law, the NLC, States Enactments and the Court. The registration process is assisted by the Department of Lands and Mines and the Department of Survey and Mapping (Rani and Ghani, 2012). Therefore, in each state, the regulation is mostly related to the NLC.

That being the case, there are weaknesses in the aforementioned methods, such as having no standardised practises and lack of detailed laws, procedures and clear rules to declare and register the land under the SIRC and NLC.

- *Procedures to create waqf are lengthy and complicated.* The steps involved for *waqf* land registration are the application and preparation of the Layout Plan, Ground Report, Land Reports, Admission Form and Letter, Registration and Vesting, Submitting Notices, Stamp Duties Exemption, Periodic Surveys and Gazetting Land (Fazle, 2016). Generally, these steps are important in ensuring a systematic process for land registration. However, the steps require time, thus expanding the period of the land to become indefeasible. The procedures to create *waqf* are lengthy and complicated for individuals, organisations/companies/developers and the SIRC (Jamil, 2012). In the meantime, heirs and other parties will try to revoke and challenge the status of *waqf*.
- *Interference in the jurisdiction of the civil court* in the State Islamic Religious Council of Selangor versus Bong Boon Chuen and Ors [2008] 6 MLJ 488. There is no mention in the law about the power of the interested holder (SIRC) to declare *waqfirsod* for the needs of the Muslim community (burial ground, school and mosque), which is not being addressed. In addition, the SIRC is not considered a trustee (direct interest holder) for the Muslim representative by the civil court (Table 1).

Overall, based on the Auditor General’s Report, 40.2% of the total *waqf* properties in Johor do not have a land title. It could be summarised that the declaration at the SIRC is not considered binding and valid until it is registered at the land office. However, the procedure to register the *waqf* land at the land office is time-consuming and risky, as the taxation procedure may result in the *waqf* land to be lost and challenged in court. Additionally, more than 11,000 hectares of *waqf* land in Malaysia have the potential to be developed. However, only eight projects have been successfully completed to date, due to issues concerning the

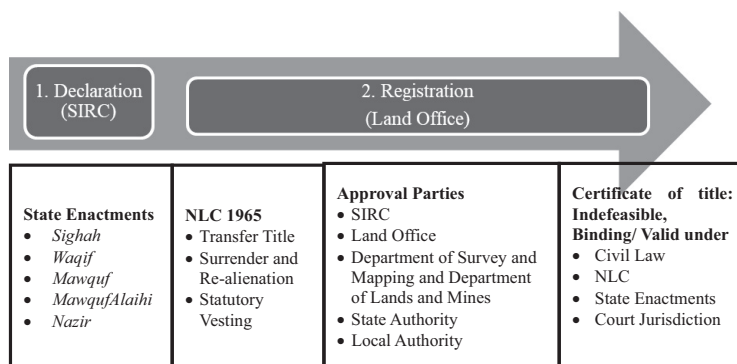


Figure 2.
Current *waqf* registration system structure in Malaysia

development of *waqf* land and the major obstacle is the issue of ownership and the law relating to it. In practice, as there is no specific guideline on the registration of *waqf* land, all *waqf* lands have been registered with the SIRC as the registered owner and this has opened a floodgate of arguments amongst scholars and the public at large, in which the requirement under the Enactment is for the State SIRC to be a sole trustee and a guardian of *waqf* land instead of a registered owner, as this would create confusion under the jurisdiction of a registered owner (Osman *et al.*, 2018; Ambrose, 2018).

3. Methodology

This study adopted a qualitative approach to gain an understanding of the underlying reasons for the issues on *waqf* by obtaining expert opinions and developing ideas or hypotheses so that changes can be made. This research aims to study both the communication and interaction between Islamic law and the Malaysian legal system and generate solutions in the form of an improvement in the current registration method. The next driving factor in this research is to deduce the communication of the local source of Islamic law and the Malaysian legal system.

This research adopted content analyses, such as reasoning (inductive, deductive), syllogism, historical, legal investigation and doctrinal research. Subsequently, a few interviews were conducted to gather the experts' opinions using quota sampling, instrument preparation, pilot study and data validations. Both methods were developed to improve the *waqf* land declaration and registration system by proposing new *waqf* registration forms in Malaysia. Finally, the new framework, forms and method proposed are validated by the same experts interviewed in this research.

When the Quran is silent, the *hadith* is sought. However, when the *hadith* is silent, one shall refer to the *Ijma'* of *Ulama* (consensus), followed by the *Ijtihad* outlines of *Shari'ah*. Within this research, most of the sources referred to in this study were the Quran, *Sunnah* and *Hadith*. In addition, only a few *Ijma*, *Qias*, *Urf* and other sources were used in this research. Meanwhile, the Malaysian legal system sources are divided into two categories: statutes and judicial decision hierarchy. Overall, the research design of this study involved the Malaysian legal system and Islamic law.

Next, the researcher scrutinised each law, determined the regularities and formulated a theory on *the abidingness and validity of waqf* related to the concept of the law based on academic writing, journals, articles, government support documents and books. This inductive method, which is based on a broader generalisation and theories of law, begins to detect patterns and regularities, formulates some tentative hypotheses (major and minor

No.	Reason	Total <i>waqf</i> property		<i>Waqf</i> property which does not have land title		
		Total	Area (Acre)	Total	Area (Acre)	(%)
1	Mosque	754	1,075.78	386	516.86	51.2
2	Small mosque	1,429	699.71	498	273.35	34.8
3	Religious school	693	1,159.20	198	442.21	28.6
4	Grave	614	2,667.64	364	1,510.38	59.3
5	Public	364	6,456.00	95	2,976.39	26.1
6	Mosque and grave	14	33.47	13	37.85	92.9
Total		3,868	12,091.80	1,554	5,757.04	40.2

Source: Auditor General Report of Johor (2014)

Table 1.
Total *waqf* property under SIRC which does not registered under NLC

premises) and finally explores and develops some general conclusions or theories (Crossman, 2011).

The instrument used for obtaining the primary data was a semi-structured interview. The interviews were conducted amongst the respondents of the SIRC, Department of Land and Mines (DLM) and experts, as presented in Table 2. A pilot study was conducted by interviewing experts well-versed in land law and Islamic law. The questions were prepared in English and Malay. At the end of the interview, the participants were requested to verify and suggest amendments to the items in the questionnaire. Some of the amendments suggested were for questions which were vague and the use of inappropriate choice of words. Several questions were also deleted due to redundancy and were deemed unnecessary.

Quota sampling and judgemental sampling or purposive samples are appropriate for choosing respondents. Quota sampling is a method in which respondents are chosen based on certain characteristics or criteria based on the needs of the study, as depicted in Table 2. The sample was selected by examining the relevant characteristics of respondents and the suitability of the locations (Kumar, 2019). Data were collected in four states, namely, Melaka (MKE), Negeri Sembilan (NSWE), Johor (JWR) and Selangor (SWE), including the DLM and several experts in the relevant area. These four states were selected because their enactments were complete and precise compared to the other states in terms of *waqf* registration and declaration. All respondents requested their names to be confidential.

4. Results and discussion

After the formulation of the interview questions, the answers of the respondents were transcribed and analysed thoroughly. The data were visualised in a graph and scheduled based on the experts' opinions. The answers of the respondents were divided into a few categories for each question.

Code Description	
S1-S4	<ul style="list-style-type: none"> • <i>Waqf</i> Officer of <i>Waqf</i> Committee of Johor, 1978 assisting Chief Director of State Islamic Religious Council (SIRC)
D1-D4	<ul style="list-style-type: none"> • Officer in Title Registration Unit, Department of Land and Mines Person who approves the name-change in the Land Title • Person who is in-charge of <i>waqf</i> land registration application process • Person who keeps the information on registered land
E1-E2	<ul style="list-style-type: none"> • Academia in Malaysia who are experts in Land Law and <i>Waqf</i> Regulation in Islamic Law (<i>Fiqh</i> of <i>Waqf</i>)
E3	<ul style="list-style-type: none"> • Lawyers in Malaysia who experts in Land Law and <i>Waqf</i> Regulation in Islamic Law (<i>Fiqh</i> of <i>Waqf</i>)
E4	<ul style="list-style-type: none"> • Executive Officer of Department of <i>Wakaf, Zakat</i> and <i>Haji</i> (JAWHAR), 2004

Table 2.
List and code of
respondents and
background
description

4.1 The act or legal law reference in the waqf land registration and administration

Figure 3 reveals that the law most referenced by the respondents in the waqf land registration and administration is the NLC. The Waqf State Enactments, which contain Islamic law, were only used as a reference by the SIRC. In addition to the NLC 1965 and State Enactments, a few circular rules made by the four states were also referred. The NLC does not cover any part on the waqf provision.

As mentioned in Section 4(2), NLC declares the special position of waqf lands and that nothing in the NLC provision shall affect waqf: "Section 4(2), which states that nothing in the NLC shall affect the provisions of (e) any law for the time being relating to waqf or baitul mal". However, the NLC applies the Torrens system of land registration that emphasises the principle that registration is "everything"; thus, all information that appears in the registration should be reflected in the land title at the land office. Therefore, the provision of waqf in Waqf State Enactment is not well-known at DLM and is only known and recognised by the SIRC.

4.2 Method of registration used to register waqf property

The interview question is on the administration and management of the waqf land registration. As mentioned earlier, there are three methods of waqf land registration under the NLC, which are Section 215 NLC: Transfer Title, Section 195 NLC: State Surrender and Re-alienation and Section 416 NLC: Statutory Vesting. Empirically, respondents gave the following response:

- S1 S2, S3, S4: At the SIRC, the waqif will fill up a Waqf Declaration Certificate (*Sijil Hujah Wakaf*) or Waqf Creation Form (*Borang Mewujud kan Wakaf*).
- S4, D4: This state and authority use the method of Statutory Vesting.
- D1, D2, D3: The method of registration used is Surrender and Re-alienation.
- E1, E2, E4: The experts have suggested the method of Statutory Vesting as the best method to register waqf land in the Malaysian legal system. Statutory Vesting is to make the method of waqf land registration faster and more convenient because it only endorses the SIRC on the title and does not involve any transfer of name on the land title.
- D2: Statutory Vesting endorsement is insufficient for the SIRC because only the registered name on the land title has full indefeasible ownership on the land for dealing and development on the said land.
- S2: Surrender and re-alienation would reduce the original size of the waqif land, as the state would take some parts of it for road and public uses without compensation.

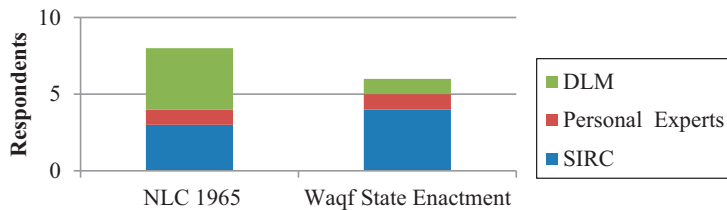


Figure 3. Law reference on waqf land registration

Source: SIRC and DLM (2016)

Based on respondents' opinions, the best method used is statutory vesting. This method, which is fast and easy, only requires the endorsement stamp on the title as *the waqf* property. However, the endorsement on the title is insufficient as long as the name on the title is not on the name of the SIRC, as mentioned by [Rani and Ghani \(2012\)](#). Therefore, the SIRC process of dealing with and developing the land in the future will be difficult. Consequently, it would be beneficial to apply statutory vesting with several amendments, namely, recognising indefeasible rights to the SIRC by changing the name on the title to the SIRC.

4.3 Form of binding declaration in waqf land registration system

To declare the property, the *waqif* is required to fill in the form and submit it to the land office as proof of donation. The form is considered to be an intermediate form between the *waqif*, SIRC and Land Office. The form is proof that the *waqif* declaration is binding and valid. Islamic law emphasises that the *waqf* shall be indefeasible after the declaration of the *waqif* to donate the property as *waqf* ([Hamid and Tahir, 2014](#)). From the interview, the respondent opined:

- S4 and D3: The declaration of the *waqif* in the SIRC form is indefeasible once the SIRC has confirmed *that the land from the waqif* is free from any encumbrances. Therefore, the *waqif* declaration at the SIRC is accepted as soon as the *waqif* signs the declaration form from the SIRC and the relevant NLC form. The form shall prove the declaration valid and could be used at court as evidence of indefeasible declaration of *waqf* land.
- S1, S2, S3 and
- D1, D2 and D4: The *waqif* declaration at SIRC is not considered binding in court or by law because the land is not yet registered in the name of the SIRC. Some issues mention that the land is divided share, has a caveat, other encumbrances *and incomplete documentation*. *The waqf* can be revoked by the *waqif* any time before the land title id is registered in the name of *the SIRC, despite all the elements of waqf* being fulfilled.

According to Question 3, there was a form between the SIRC and DLM as proof that the *waqif* declaration is binding and valid. Based on the interviews, there were a few forms used for *waqf* land declaration and registration at the Land Office and SIRC, namely:

- Statutory Vesting: Form 30, NLC.
- Transferring: Form 14A, NLC.
- Surrender and Re-alienation: Form 12A (part of the land), NLC Form 12B (whole land), NLC.
- SIRC form: *Waqf* Creation Form.

Currently, the approval of NLC forms does not fully make the declaration indefeasible. Similarly, *the SIRC form did not make the waqf* declaration indefeasible (*waqf* declaration form). Therefore, it was suggested that the “intermediate form” between the land office and SIRC should be indefeasible, as presented in [Figure 4](#). Overall, most of the respondents suggested that the NLC form should be the intermediate form for the land to be indefeasible rather than the SIRC form because the NLC form would be recognised under the NLC and referred by every party involved. However, all the respondents also suggested that every *waqif* needs to clear the encumbrance on the land before creating a *waqf* at the SIRC and

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make the intermediate form indefeasible. The title of the land must be free from any encumbrances as defined in Section 340 NLC. Encumbrances can render the *waqf* declaration indefeasible, which includes:

- Equity, Caveat (Part Ninetieth, Chapter 1, NLC 1965) and restrictions interest (mortgage/lease).
- Taxation.
- Sole proprietorships.
- Inheritance right (Akta Pusaka Kecil 1955).
- Shall also be decided further by the State Authority based on the criteria of land to be accepted as *waqf*.

Therefore, as discussed in Question 1, most of the respondents referred to the NLC rather than the state enactments. However, a new form of *waqf* land registration in the NLC has been suggested under the Statutory Vesting method, whereby the form is indefeasible because there is no specific procedure or form in the NLC to register the *waqf* (Mohamood, 2005). Therefore, a new form of *waqf* declaration under the NLC was suggested in this paper and validated by experts.

4.4 New framework for management of *waqf* land registration system in Malaysia

After the data from the interviews were analysed, a new framework was developed. Based on the theoretical and empirical stages, a framework for the *waqf* land declaration and registration system in Malaysia was developed, as presented in Figure 5.

The first step in creating a *waqf* is through the declaration of the intention in oral presentation or in writing. In the Malaysian context, the SIRC is authorised by the state governments to administer the *waqf* property as the manager/*nazir/mutawalli*. In the Torrens System, the land title reflects the ownership of the title and in the Curtain principle, all information of the land is available in the land title (Hanstad, 1998; Haneef, 2015; Alaro and Alalubosa, 2019). Therefore, there is no need to have any other document to clarify the status of the land because the title is clear and transparent. On that account, the status of the land in the land title must be checked first, whereby it must be free from any encumbrances, as defined in Section 340, NLC. Otherwise, the property is considered void (*batal*) or invalid (*fasid*) until it is free to be transferred.

Besides, the *mawquf* and the other four elements (i.e. *sighah*, *waqif*, *mawqufalaih*, *nazir*) must be compliant with the Islamic Law and Malaysian Law before being enforced. The State Authority shall establish the power of attorney to the SIRC to check the status of the land (encumbrances) and consider it to be registered as *waqf* land and provide approval on

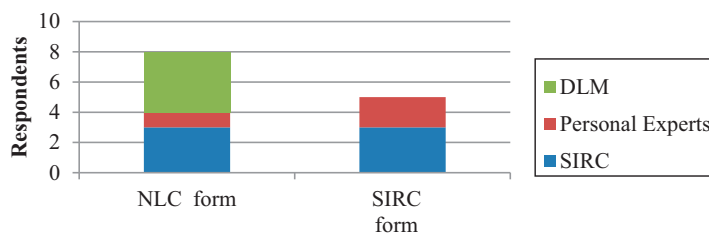


Figure 4.
Intermediate form suggested as indefeasible

Source: SIRC, DLM and Experts View (2016)

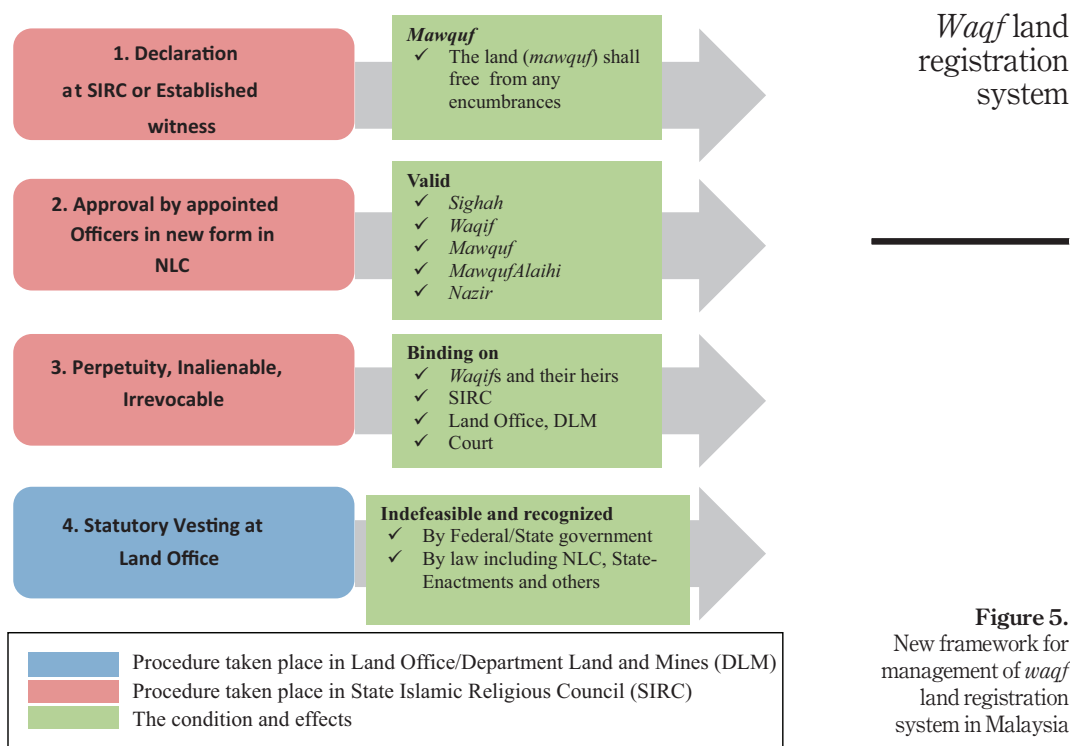


Figure 5.
New framework for management of *waqf* land registration system in Malaysia

the land as *waqf*. Therefore, the approval of the *waqf* declaration at the SIRC shall make the land indefeasible and unchallenged in court. This provision is to be included in Section 42 (NLC). Accordingly, to execute the task, there is a need to appoint these criteria of experts:

- The officer appointed shall be an expert of *waqf* (Islamic Properties) and land matters (NLC) and authorised by the State Authority and the SIRC.
- A new position/SIRC/DLM officer is appointed to approve the *waqf* land declaration form located at the SIRC/DLM department permanently or once per week/month.
- There shall be a counter for Islamic Property Registration at the DLM because the computer system of land registration is only available at the DLM.
- There is also a need for a counter for *waqf* land registration at the SIRC handled by the appointed officer to approve the form of declaration.
- There shall be a *waqf* land database linked between the DLM and SIRC that could be accessed by the appointed officers to increase the efficiency of the registration.

Therefore, the appointed officers as suggested in this research shall check and ensure that the land is free from any encumbrance before approving the declaration in the form (*a new form for waqf* in the NLC). Approval of the new form of NLC is recognised as an indefeasible declaration.

The approval of the appointed officer on the new NLC form shall bind the *waqf* land as indefeasible with the effect of perpetuity and as inheritable and irrevocable to donors and

their heirs, the SIRC, Land Office, DLM and the court. The form is validated by experts and shall be included as a *Waqf* Declaration Form in the NLC. At this stage, the rest of the mechanical procedure shall be carried out for the application and preparation of technical progressions, such as the Layout Plan, Ground Report, Land Reports, Admission Form and Letter, Registration and Vesting, Submitting Notices, Stamp Duties Exemption, Periodic Surveys and Gazette Land (Fazle, 2016). Overall, every step in the procedure is very important for the systematic processing of land registration. However, the steps concerning technical progression can be completed after the land ownership is secured as a *waqf* property.

This is parallel with the Islamic Law, where the *mawquf* shall be free for transfer. As per the Shafei School of thought, he must not be under any interdiction either the property or himself from any debt; otherwise, *waqf* shall be set aside, but the remaining property will be *waqf* (Osman, 1982, p. 41; Nawawi, 1914). Hanafis opined that the *waqifs* must have a composite capacity on his own property (*nafiz*) (Husain, 2014). Otherwise, the *waqf* is in suspense (if the *waqf* was made before the property was possessed (*ghyirusahih*)) until he pays and possesses the property, however, if he dies before that, the *waqf* is void (*batil*) (Osman, 1982; Baillie, 1965). If the property is subject to lease, the *waqf* is valid (*nafiz*) and shall be reverted to the purpose it has been dedicated to after the expiration of the term. Similarly, if the pledger dies, the *waqf* is obligatory until the time is redeemed (Osman, 1982; Baillie, 1965).

Essentially, the procedure of changing the name of the owner to the SIRC in the land title is taken into consideration. As discussed with a majority of the respondents, the method of registration shall be in accordance with Section 416 NLC, Statutory Vesting at the Land Office because it is convenient, fast and Shari'ah-compliant for the SIRC to administer and develop the land. However, it shall not only be a memorial or an endorsement because it does not secure the property to be a *waqf* in perpetuity and can risk the property to be challenged by heirs in the future. Besides, it will not guarantee that the SIRC will perform land transactions such as *istبدال*. Therefore, it is still necessary to change the name in the land title to the SIRC with the clause of *waqf* so that it will not mix with other SIRC properties (e.g. *baitulmal*, *sadakah*, *zakat*, etc.). Therefore, to make the provision enforceable and effective, there is a need to gain recognition from the federal and state governments, NLC, state enactments, etc., and the SIRC shall make a proposal of this structure to the State Authority. Secondly, the SIRC shall discuss the structure in the State Executive Meeting amongst the SIRC, Land Office and DLM to obtain mutual agreements and conditions to approve the *waqf* land registration at the SIRC level. The agreement achieved in the state executive meeting shall be encoded to the National Land Committee (*Majlis Tanah Negara*) and provided in the NLC and *waqf* state enactments. Finally, it is necessary to include a definition of *waqf* land within the NLC.

5. Conclusion

Forming a new framework for the *waqf* land registration system in Malaysia is an Islamic management innovation, which could bring tremendous benefits to the *waqf* institution in Malaysia and other countries. The novelty of this study lies in the proposed framework for securing *waqf* land that is in compliance with Islamic law and the Malaysian legal system of their application. This framework counters the current issues by suggesting an efficient method of registration, a simple and fast procedure, avoiding interference in the jurisdiction of a civil court and no more *waqf* land should be idle. Therefore, it could improve the delivery system of the *waqf* land registration system in Malaysia. Consequently, it provides more assurance for the *waqif* and promotes the donation and investment in developing *waqf*

property, particularly *waqf* land as the main category of *waqf* assets. Finally, and more importantly, the new framework can be a vehicle towards encouraging more philanthropic and charitable activities within the Muslim society, the private sector and investors to develop a *waqf* property.

Notes

1. From Haji Embong Bin Ibrahim and Ors V Tengku Nik Maimunah Hajjah Binte Almarhum Sultan Zainal Abidin and Anor, [1980] 1 MLJ 286 The respondent or heirs of the property tried to revoke the *waqf* and challenged the status of the *waqf* because there were no regulations yet for *waqf* at the time the *waqif* declared the *waqf*. However, it holds the Islamic *Wakaf* Validating Enactment, 1972, has a retrospective effect and applies to the *wakaf* in the present case; the dispositions to strangers were valid under Islamic Law and were saved by sections 2(3) Administration of Islamic Law Enactment, 1955.
2. In the case of G Rethinasamy Lwn Majlis Ugama Islam, Pulau Pinang Dan Satu Yang Lain, [1993] 2 MLJ 166 within the jurisdiction of the civil court, the plaintiff being a non-Muslim, could not bring the case to the sharia court. Second defendants had been occupying part A for more than 12 years before 1966; they had not taken any action to determine their interest. Section 105 of the Enactment applies whether the land is *wakaf* land or otherwise, provided: there was a mosque or something related to it or used for its purposes on the land, and the land is not state land. The defendants need not prove that the land was *wakaf* land to get the benefit under s 105. Part A, therefore, was vested in the first defendant. The plaintiff's title to part A was defeasible. The defendants were able to prove that part A was *wakaf* land by the user and the land was not subject to the NLC 1965.
3. 22. In section 32 of the principal Act—(I) in sub-section (2)—(a) for clause (j), the following clause, shall be substituted, namely—(III) in sub-section (5), the words ‘with the prior approval of the Government’ shall be omitted. [*The Gazette of India Extraordinary*, The Wakf (Amendment) Act, 2013 New Delhi, Monday, September 23, 2013/ Asvina 1, 1935 (Saka)].

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