

'Waqf in Malaysia and the Indian Connections'

By

**Ahmad Rodzi Pawanteh, Sudin Haron &
Finorita Fauzi**

ABSTRACT

One of the legacies left by the British when granting independence to Malaysia (then, Malaya) was the authority on certain matters between the Federal and States. The responsibility in managing Islamic matters was given to the States including waqf. Thus, laws and regulations on waqf were promulgated by each State through the establishment of the State Islamic Religious Council (SIRC). It is the duty of the Council to manage and develop waqf assets within their territory. SIRC Penang is the most outstanding Council in managing and developing waqf assets. They managed to develop vacant lands into commercial centres and high-rise residential complexes. These developments were made possible because of the legacy waqf created by the early Muslim migrants from India. This paper examines the migration and contribution of these groups from a historical perspective and the clans that had come to Malaya. We also highlight the intervention by the British on waqf administration during the colonisation period. The development process undertaken by SIRC Penang is also discussed in this paper.

Key words: Waqf, Penang, Indian Connection, Malaysia, endowment

**This Article was appeared in Journal of Islamic Banking
and Finance, Oct – Dec 2023 Vol 40 No 4 issue**

1.0 INTRODUCTION

The Islamic resurgence which took place at the end of the 1960s and in the early 1970s had awakened many Muslim thinkers and scholars. They started to believe that the capitalist system does not conform to the Islamic foundations. This is because the backbone of this system is 'riba'; and 'riba' or interest is prohibited by Al-Quran and Hadith. Therefore, the Islamization of the economy can only be initiated when interest is abolished. Thus, it is natural that the discussions on the establishment of interest-free banks were given more attention (Khan and Mirakhor, 1987). Mit Ghamr Local Savings Bank in Egypt which was established in 1963 is considered as a pioneer in the Islamic banking system. In 2019, the number of commercial banks worldwide amounted to 428 banks with a total asset of USD1.99 trillion (Mirza A.P, 2021).

We are really grateful and very much indebted to many great classical scholars such as Sami Hassan Homoud (1985) for his '*Islamic Banking: The Adaptation of Banking Practice to Conform with Islamic Law.*' Muhammad Nejatullah Siddiqi (1983) who wrote the eye-opening book entitled '*Banking Without Interest*', and the first book in accordance with the academic requirement of higher institutions that was written by Sudin Haron and Bala Shanmugham (1997) titled '*Islamic Banking System: Concepts & Applications*'. Since then, there has been numerous publications published by young researchers. Today, almost every frontier of Islamic banking knowledge has been explored and the Islamic banking industry is considered to be at a maturity stage.

Of late, many scholars have started to discuss other instruments within the parameter of Islamic economics which were considered more superior than instruments in the Islamic banking system. This instrument is called 'waqf' (plural, 'awqaf' – in this article we use 'waqf' interchangeably for singular and plural) and regarded by many that this instrument is more suitable not only in mobilising wealth of the

Muslims but at the same time is a powerful mechanism in poverty alleviation (Sadeq, 2002).

There are three notable contemporary scholars who have produced a new insight of knowledge pertaining to waqf. Khaf (1992) produced a rudimentary work which highlighted the impact of waqf on socio-politic. Murat Cizakca (2000) made a great contribution to knowledge by publishing a comprehensive book on cash waqf. Murat's book also covers the practices of waqf in various Muslim countries. Kuran (2001) made a rigorous effort in analysing the mechanism of waqf and its role toward providing public goods and utilities. It is also worthy to mention that the book by Siti Masitoh Mahamood (2006) is very beneficial to those who wanted to know the regulatory aspects of waqf in Malaysia.

The publications on waqf were mushrooming during the decade of 2000s and onward. Atan, N.A and Faudah, Johari (2017) made a review of waqf literature from 2006 to 2016. There were 289 articles under review. They found that the most popular topics were cash waqf, followed by property waqf, and the concept on waqf. Interestingly, 71.3% writers were from the South-East Asia countries including Malaysia, Indonesia, Brunei, Singapore, and Thailand. Yusuf A.O. et al (2021) used a bibliometric technique in reviewing 476 articles on waqf between 1914 and 2020. They found that 2017 and 2018 were the most productive years. Similar to Atan, they too found that most works were done by Malaysian researchers.

We made an extensive review on waqf literature produced by Malaysian researchers and found no in-depth discussions from a historical perspective. We are of the opinion that Muslims community which migrated from India to Malaysia (i.e., those days known as Malaya) made significant contribution to the waqf creation in Malaysia, especially in Penang. Their contributions can be traced back during the early years of 1800s. To date, some of these waqf properties can still

be seen and used for the purpose intended for by the original owner ('waqif'). We do believe that the actions by these waqf pioneers served as an impetus for others to follow.

This paper is divided into five sections. Section Two highlights the development and regulatory aspects of waqf in Malaysia. Information provided in this section is sufficient for those who want to know the background of waqf in Malaysia. Section Three discusses the beginning of the history where Indian Muslims came to Malaya and started to create waqf for the specific purpose in Malaya, especially in Penang. Section Four highlights the current conditions and interventions made by the regulatory bodies in preserving and managing the waqf asset. Finally, we summarise our hopes and expectations in the last section. The origin, concept, and Sharia aspects on waqf will not be discussed in this paper. There is an abundance of literature on these elsewhere (Cizaka, 2000; Siddiqi, 1971; Khaf, 1992, 2003; Othman, 1982; Kuran, 2001; Mahmood, 2006).

2.0 THE DEVELOPMENT OF WAQF IN MALAYSIA

Malaysia, previously known as 'Malaya' is one of the countries located within the area called 'Malay Archipelago'. Historically, Malaya either fully or partly, has been colonized by the Portuguese, Dutch, British, and Japan. Every invader has left their own legacy. While colonization by the Portuguese, Dutch, and Japan had no significant impact on many facets of life to the people of Malaya, politically and culturally, however, it was the British who had successfully exerted their influence that changed the economic patterns of the country as well as the thought process of the people in the country. It is not our intention to discuss the damage done by British to Malaya during the colonization period. However, there were policies of which outcomes had created the positive results to our beloved nation.

The 'Anglo-Dutch Treaty of 1824' signed by the British and the Dutch was the beginning of the structured colonization in Malaya and Indonesia. While Dutch was given the right to the whole of Indonesia, Malaya was under full control of the British. This Treaty also confirmed the rights of the British on four settlements i.e., Penang, Dinding, Malacca, and Singapore. Since then, many activities had been undertaken by the British to ensure that they will control the administration of every state within Malaya. Beside governing the Straits Settlement Territories (Dinding was later transferred back to Perak in 1935), they started to persuade five other states i.e., Perak, Selangor, Pahang, Negeri Sembilan to accept a British advisor (called 'Resident'). These states conceded to British demand and in 1896, these four states were later known as the Federated Malay States.

Another milestone towards the establishment of Malaya was the 'Bangkok Treaty of 1909', in which Siam transferred its rights over for the Malay states (Perlis, Kedah, Kelantan, and Terengganu) to the British. This states then become British Protected States and also known as the Unfederated Malay States. As for Johor, The Sultan of Johor has signed a 'Friendship Agreement 1885' with the British. Again in 1914 another agreement was signed between the two parties. The Agreement stated that Johor will accept British's General Advisor, and the Johor sovereignty remains independent from British interference. Since then, Johor was categorized as an unfederated Malay State.

In 1946, an attempt was made by the British to amalgamate the three components of states within Malaya into a single nation called 'Malayan

Union'. However, this attempt was perceived by Malays as a step toward diminishing the powers of the Sultans and Rulers. Thus, the Malays all over Malaya started to demonstrate their rejection towards the intention of the British to establish the Union. Finally, after two years of trying and seeing the huge objections from Malay communities, the plan to establish 'Malayan Union' was put to an end. On 1 February 1948, the 'Federation of Malaya' was inaugurated and in this new agreement, Singapore was excluded and remained a separate colony of the British. The victory against the establishment of a Union was an impetus for the flight towards gaining independence from the British. Instead of using direct bloody confrontation, the diplomacy and negotiation approach were used by leaders in seeking independence from the British. On 31 August 1957, Malaya gained its independence from the British and included as one of the countries within the Commonwealth Nations. Another milestone of Malayan history was the birth of a new nation called 'Malaysia' in September 1965. This new nation consists of states within the Federation of Malaya, Sabah and Sarawak.

We purposely highlighted the time tunnel with regards to the history of Malaya for a very important reason i.e., the British choose not to interfere with the Malay customs and matters pertaining to religion. The powers on matters related to customs and religions remained in the hands of the Malay Rulers. Therefore, during the promulgation of the Malaya constitution (later for Malaysia Constitution), there was a clause clearly stated on this matter.

As stated in Part 1, Article 3(2) and Article 3(3) of the Federal Constitution of Malaysia, for states that have Rulers, these Rulers will also become the head of religion of Islam in their respective states, whereas the Yang di-Pertuan Agung becomes the head of religion in a territory that has no Rulers. Also in Part 6, Chapter 1, Article 74 (1) and 74 (2) mentioned the subject matters of Federal and State laws. A State may make laws on matters enumerated in the State List i.e., the Second List set out in the Second List or the Concurrent List set out in the 9th Schedule. As clearly stated in Article 1, List II (State List) of the 9th Schedule, waqf falls within the jurisdiction of the State i.e., State matter. Since then, all states including territories within the Federal jurisdiction had promulgated laws related to waqf. Simultaneously, every state had established an institution called 'State Islamic Religious Council' or SIRC. This body is responsible to manage the Islamic affairs within its respective states.

Although the step towards institutionalized waqf started after Malaya gained independence from the British, it is worthy to note that the creation of waqf had started when Islam gained its first footing in Malaya in the 1400s. Mahamood, S.M (2006, p.27) believes that the Kg Hulu Mosque in Malacca, the Sultan Abu Bakar Mosque in Johore, and the Kg Laut Mosque in Kelantan were amongst the early waqf in Malaya.

Other proofs to support the existence of waqf long before the institutionalization of waqf is the promulgation of laws in various states in Malaya. Regulations pertaining to waqf were included in Hukum Kanun Melaka (1523 C.E.), Pahang Laws (1596 C.E.), Kedah Legal

Digest (1605 C.E.), Laws of Perak (1765 C.E.), and Johore Legal Digest (1789 C.E.). Interestingly, the laws related to waqf were not only being promulgated in states governed by Islamic Rules, but Penang of which was administered by the British and had its own regulation called 'Mohammedan and Hindu Endowment Board.' This Board was established in 1905 for the purpose of administering waqf matters in Penang.

Due the unavailability of regulations on waqf, and lack of knowledge pertaining to the proper ways in creating waqf, this has resulted in many issues on waqf assets. It was a normal practice at that time, where the waqf assets were surrendered to *Imams* (religious leaders) to manage the assets and in most cases the title of assets was transferred to the Imam's name. Interestingly, some of these issues are still unresolved and can be considered as legacy issues. Sabran, O (1991 – cited from Mahamood SM (2006) p. 40) believes that the reasons for problems pertaining to waqf are as stated below:

1. No parties were available to manage the awqaf concerned at the time they were created;
2. The imam had no idea as to what should be done;
3. The founders (*wakif*) died before the alienation was being made to the SIRC;
4. There were difficulties in arranging the ownership transfer processes as the District Officers were far away; and
5. The founders migrated to other places, after the awqaf concerned had been completed.

The above issues were detected in 1991 and based on the findings by latest researchers, the legacy issues are still in existence. Chowdhury and Chowdhury (2012) made a study on the administration in Malaysia and found that the main problem is that the administrators at the SIRC's are not qualified, and lack knowledge and professionalism. They are also not well versed in Islamic and country laws. Budget constraint is also another factor that was considered an issue for SIRC's.

Ismail, C.Z. et.al. (2015) found the dominant issues faced by SIRC's in managing waqf land as listed below:

- 1) Ownership and registration of waqf land problems
- 2) Financial problems
- 3) Physical barriers: Size, type and geographical location of waqf land
- 4) Shortage of competent manpower
- 5) Incomplete databases
- 6) Illegal occupation and encroachment of waqf land

There are also many suggestions made by the scholars to improve the management of waqf in Malaysia. Unfortunately, we will not give our comments because it is beyond the scope of this paper.

3.0 THE MIGRATIONS AND THE BEGINNING OF THE WAQF HISTORY

It is uncertain as to when the Indians Hindu first arrived to the shores of Malaya. However, there are scholars who believed that the Indians Hindu (will be referred as Hindus after this) came to Malaya during the Pre-Christian period (Arassrathnam, S, 1980, p.1; Sandhu, K.S., 2008, p.151.). During the early years of relationship, the Hindus were barter traders from South India supplying basic goods to locals for the exchange of spices and precious metals. These traders were basically the followers of Buddhism and Jainism. The archaeologists found the artifacts and ruins at Bujang Valley (one of the oldest archaeological

sites in Malaysia) that showed Buddhist polity in Sanskrit dated more than 2,500 years old (https://en.wikipedia.org/wiki/Bujang_Valley: accessed 1 April 2022). This supports the views that Hindus had arrived in Malaya during the Pre-Christian era.

The Hindu traders continued to have dominance in the trades and managed to take advantage of the north-east monsoon that facilitates the maritime schedule between the eastern coast of India and Malaya; and at that time, Kedah was the popular destination amongst them. The dependence on seasonal monsoons produced another characteristic of Indo-Malayan contact, settlement and colonization. As a logical sequel, the first sign of Hindus settlement is to be seen in places which were used as entre-port of trades (Arasarathnam, S, p.3). Thus, it is inevitable and makes sense to say that Kedah Kingdom (also known as Kedah Tua) which was established in the second century and located at Sungai Muda, professed Hinduism and became the first Malay's Hindu Kingdom in Malaya (Ramli Z, 2020).

The Hindus influence in the Malay's society and kingdom becoming more prevalent during the Sri Vijaya era (7th – 14th century). This is because Sri Vijaya was also Malay's Hindu Kingdom. When Sri Vijaya became a mighty empire that rules the whole Malay Archipelago, Hindus merchants started to change their trading methods and started to man the ports and deal with well-established trading systems and traders in Southeast Asia (Arasarathnam, S, p.5). During this time, These Hindus started to assimilate with the local people and Indian culture started to influence the life of Malays especially in rituals and the way ceremonies were performed.

The trade activities by Hindu merchants started to decline when almost the entire India was ruled by Muslim rulers, especially during the beginning of the 10th century. During this time, India started to

become an industrial nation and the products from the new industries were brought to various parts of the world especially to Southeast Asia by more powerful and better equipped Muslim merchants (Arasaratnam, S. p.6). These Indian Muslim traders were from Coromandel, Bengal, Golconda, and Gujerat and had better vessels. They managed to take over the businesses that were once dominated by Hindu merchants.

Based on earlier research works or writings of earlier scholars, there is no evidence to support the opinions to say that the India Muslim traders are religious missionaries. Islam was introduced to the Malay Hindus by traders from Arab (especially Yamen), Persia, and Turkey during the 8th-11th centuries (Putra, B.A, 2016). Among the earliest kingdoms that converted to Islam were Pasai and Aceh. Both kingdoms were located in Sumatera. Though it was claimed that Islam has arrived to the Malay Peninsula during the 7th century i.e., the early days of Islam, there was no concrete evidence to support this opinion. On the other hand, Islam started to gain footing in the Malay Peninsula beginning in the 9th century. It was started in Kedah (829 AD), Pahang (11th century), Terengganu (14th century), Melaka (15th century) and followed by Johor and Perak during the 16th century (Asni, F., 2019).

By the 17th century, almost the entire population of the Malay Peninsula became Malay Muslims. Although the credit should be given to Arabs and Malay Muslims from Sumatera that made the Islam spreading faster and easier in this country, the contributions made by Indian Muslim merchants were significant too. Not only did they play an important role in spreading Islam, they also managed to become the trusted advisors to the Rulers of Sultans of certain states. For example, Indian Muslims were appointed to hold important positions during the era of Melaka's sultanate. They even married the daughters and sons of the Sultan and Bendahara in Melaka (Winstedt, 1935). The

fall of Melaka to the Portuguese in 1511 caused some difficulties to both Indian Muslim traders and those who had assimilated with the locals via inter-marriage. Some traders continue to trade in Melaka but some shifted to other ports. Many of those who had assimilated and married the local people, moved to the different states, especially to Perak and Kedah (Mujani, 2012).

While Indian Muslims were actively involved in trades, and married to the locals, but nowhere can we find evidence that they propagated waqf activities. There were no documents to show that waqf assets were created by them. Even the Kg Hulu Mosque, in Melaka i.e., the third oldest mosque in the Malay Peninsula, was built in 1728 by the local people headed by Datuk Samsudin Arom, a converted Muslim from China. (https://ms.wikipedia.org/wiki/Masjid_Kampung_Hulu: accessed 15 April 2022). It is worth mentioning here that the cost to finance this project is from the Dutch. Thus, it is appropriate to conclude that waqf was not created during the first wave of Indian Muslims that came to the Malay Peninsula before the 18th century. The history of waqf in the Malay Peninsula based on documented evidences was that it had started in Penang. These waqf were initiated by the second wave of Indian Muslims diaspora that made Penang their homeland.

In the 1770s, the British East India Company instructed Francis Light to establish trade relations in the Malay Peninsula. Light subsequently landed in Kedah, which at that point was threatened by both Siam and Burma, as well as an internal Bugis rebellion. However, nothing transpired until 1786, because the British was busy fighting at American frontiers. However, seeing the growing threat from the Dutch and French, Light, again was ordered by the British East India Company to acquire Penang from Kedah. This is because Penang

needed to be developed as a navy base as well as trading post between India and China.

After both Light and the Sultan of Kedah had agreed on the terms regarding the surrendering of Penang, Light and his entourage sailed to Penang Island and landed on 17 July 1786 at a place that was later known as Fort Cornwallis, and the township built by Light was known as George Town.

Gradually, Light managed to develop George Town as a free port. Merchants conduct trades without having to pay any form of taxes. This strategy was able to entice merchants within the region to come to Penang. As a result, the number of incoming vessels increased exponentially from 85 in 1786 to 3,569 in 1802; George Town's population had also risen to 10,000 by 1792. Immigrants came from various parts of Asia, and, most of the immigrants were from India. The British was given a power to tighten their grip on Malay Peninsula with 'The Anglo-Dutch Treaty of 1824, also known as the 'Treaty of London', where the Netherlands ceded the city and fort of Malacca and agreed not to open any office on the Malay Peninsula or to make any treaty with its rulers. Therefore, the entire peninsula was under the control of the British via East India Company. This Agreement has generated a positive impact to the Indian Muslim merchants. They were now free to conduct business at the various ports in both Malaya and Indonesia.

The initial arrival of Indian Muslim merchants in Penang was for the purpose of conducting trades. However, seeing the opportunities and conditions of Penang that were very conducive for them to stay, many of these merchants decided to make Penang their homeland. The Indian Muslim merchants who came to trade in Southeast Asia were mainly from Coromandel Coast (on the east cost of India). They were

also known as Chulians. These Chulians are divided into four main groups, i.e., Marakayars, Rawther, Labbai, and Kayalar. Marakayars group was mainly maritime people such as sailors and merchants and they were the majority who migrated to Malaya during the 17th and 18th centuries (Eusoff, page 30).

By the 18th century the Chulians outnumbered their Hindu compatriots in trade. When the British founded Fort Cornwallis, in Penang in 1786, they cooperated with the British in commerce and became wealthy-class people. Amongst the wealthiest Chulians were Cauder Mohuddeen or better known as 'Kapitan Kling', Mohamed Noordin, Shaik Eusoff, Dalbadalsah Merican, and Yahya Merican. These people were the pioneers in creating waqf in Penang. Most of the waqf created by them and other Chulias are in the form of mosques, burial grounds and other public amenities.

As mentioned by Yusoff A.K., et al (1974), "there were 70 mosques from the 19th and early 20th centuries, on the island of less than 300 square kilometres. Men of Tamil Muslims origin played a founding or co-founding role in about 20 of the mosques studied. In addition to mosques, Tamil Muslim benefactors also sponsored a number of Sufi saint-shrines (*dargah*), these tended to be important places of resort for marginal and non-main stream groups, and also served as integrative transcultural space accommodating both Muslims and Hindus."

It is hard to confirm whether these 'philanthropist Chulians' created their own waqf because of religious belief, self-esteem, or trying to emulate the practices of their forefathers in their homeland. However, the process of creating waqf in Penang became more popular amongst Muslims especially when the British administrator themselves granted

a piece of land to the Kapitan Keling Mosque and the said land automatically became a waqf asset of the mosque.

It is interesting to note here that, there is no authority to manage Muslim affairs in Penang, more so to govern and manage the waqf properties. The intention to create waqf were done by way of creating a will and this will was either written by the testators themselves or appointed solicitors. Amongst those who had written a will of their properties were Kapitan Kling dated 1834, Mohamed Noordin dated 1866, and Shaik Eusoof dated 1890. One of the common terms which every testator had inserted in their will is that the assets in question will be managed by the trustees and in most cases the trustees are their legal heirs.

While the state of the dedicated waqf assets were properly managed and maintained in a good condition by the testators' lifetime, things started to deteriorate upon their death. For example, Waqf of Kapitan Kling started to deviate from the original objective during his grandsons' era due to rivalries and self-interest. There were also disputes which were brought to court for settlements by the trustees, unplanned development, poor conditions of the houses built on the waqf land, and no proper records of the waqf properties. All these weaknesses prompted the authority to intervene and take proper actions so that the management of the land was in line with the development of the town. Another main reason for the authority to intervene was the public perception that the houses on the waqf land can be easily distinguished by the poor condition of the houses and disgrace to the town (Nasution, K.S., 2002).

In 1890, the colonial government set up a commission to look into the management of waqf properties that were subject to cases lodged in the Supreme Court. Unfortunately, due to some reasons, this

commission was unable to produce a concrete solution. Again, because there many other civil suits related to waqf, this had prompted the government to appoint in 1903 another Commission of Enquiry to investigate the cases of alleged mismanagement of endowment estates. This Commission found many malpractices among the trustees and that waqf properties were not properly maintained. In fact, the Commission also reported that half of the land within the compound of the Kapitan Kling Mosque was ceased to be recognised as waqf property.

All these negative findings had prompted the Commission to recommend the establishment of, 'a standing committee of Mohammedan gentlemen' as well as an authority whose duties should be to keep a register of all awqaf and the names of their trustees or managers, and to manage the accounts pertaining to the expenditure of the awqaf (Nasution, K.S., 2002).

Since Hindu temples also received donations and endowments from their communities, the authority believed that the operations of these activities needed to be investigated. Therefore, the draft bill to the Legislative Council included recommendations to both endowments for Mohammedan and Hindus. Finally, in 1905, after debating and published many times in the Straits Settlements Government Gazette, the law was passed and known as 'Mohammedan and Hindu Endowments Ordinance 1905'. The establishment of the Board had revolutionised the way waqf was being managed in Penang. For the first time all waqf properties were centrally managed by an authority appointed 'Board'. Thus, trustees or agents appointed by way of will by respective testators had become powerless.

At the beginning of the 'Board' era, the properties of waqf can be categorised into mosque buildings, shop premises, residential

premises, and vacant lands. For the next 53 years (1906 to 1959) the Board was the sole authority in managing endowments in Penang. There were instances that the Board was sued by the trustees of testators. Similarly, there were actions taken by Board to protect the interest of the waqf properties. When Malaya gained independence from the British in 1957, every state started to establish a State Islamic Religious Authority (SIRC). In Penang the SIRC was established in 1959 and known as the State Religious Authority of Penang (SIRCP). Thus, all matters pertaining to waqf were taken over by SIRCP.

4.0 RESHAPING FUTURE

As stated in Section 2, the Constitution of Federation of Malaya clearly mentions that matters pertaining to Islamic religion is within the states' jurisdiction. Therefore, every state started to promulgate rules and regulations on this matter. In Penang, the first law on this subject was entitled 'Administration of Muslim Law Enactment, 1959'. Since then, many amendments were made to suit the new changing environments. Currently the enforcing law is named as 'Administration of the Religion of Islam (State of Penang) Enactment 2004' and the last amendment was in the year 2008.

Section 7 (1) of the Enactment 2004 states, *'It shall be the duty of the Majlis to promote, stimulate, facilitate and undertake the economic and social development of the Muslim community in the State of Penang consistent with Hukum Syarak (Sharia Law).'* Therefore, SIRCP is duty bound to undertake social-economic activities including waqf for Muslims in Penang.

With regard to waqf, the Section 89 of Part VI – Finance (Waqf, Nazr and Trusts), the Enactment clearly mentioned that the SIRCP is the

sole trustee for waqf, nazr and trusts. Section 89 further states as below:

‘Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting it, the Majlis shall be the sole Trustee of:

(a) all *wakaf*, whether *wakaf am* or *wakaf khas*;

(b) all *nazr am*; and

(c) all trusts of every description creating any charitable trust for the support and promotion of the religion of Islam or for the benefit of Muslims in accordance with *Hukum Syarak*,

to the extent of any property affected by the *wakaf*, *nazr am* or trust and situated in the State of Penang.’

Although Malaya became an independent state on 31 August 1957 and the SIRCP was established in 1959, the official handing over of responsibility in managing waqf in Penang was taken place on 1 January 1967. The order was made by the King of Malaysia that any previous law pertaining to waqf and the Mohammedan and Hindu Endowment Board was no longer in operative. Since then, SIRCP is the sole authority in managing waqf affairs in Penang.

At a point of transferring the responsibility to SIRCP, the waqf assets that were previously managed by MHEB can be classified as mosques, burial grounds, commercial and residential units, agricultural lands, and vacant lands. In terms of quantity, 12 mosques, 9 burial grounds, 303 units of commercial and residential blocks, 5 agricultural lands, 4 vacant lands, and 6 lots were acquired by the municipality for public purposes (MHEB, 1932).

SIRCP not only inherit assets but also problems that come together with those assets. Some of the notable issues related to these legacy waqf are listed below:

- I. Poor conditions of the asset, not well maintained and the need to be refurbished.
- II. Infrastructure surrounding the assets are not well planned and need to be redeveloped in line with the current environment.
- III. SIRCP did not have sufficient funds to solve the issues related to the poor condition of the assets. Thus, many of the assets remain unattended to and took a longer period to do the rectification agenda.
- IV. Some of these assets were managed by trustees. Therefore, they were very adamant to comply with the instructions and they even refused to cooperate with SIRCP.
- V. Many discrepancies pertaining to terms spelled out in the tenancy agreements between tenants and the trustees of the assets. Some of these terms were no longer justifiable in the modern days and to the disadvantage of SIRCP.

Over the years, SIRCP, with limited and inexperienced staff, started to manage these legacy issues and many of these issues were beyond their control and remain unresolved. There are also other new emerging issues related to these assets that need to be addressed and all these issues made SIRCP's job more challenging.

The Introduction of The Control of Rent (Repeal) Act 1997 has brought much relief to SIRCP. The recalcitrant tenants no longer had any reason to refuse paying the new rental rates imposed by SIRCP. Therefore, more income generated from these legacy assets and problems related to unpaid rental no longer exist.

While The Control of Rent (Repeal) Act 1997 has created positive results to SIRCP, the recognition of George Town, Penang, along with

Malacca, as a UNESCO World Heritage Site (WHS) on 7 July 2008 had created some issues to SIRCP. This is because many of the legacy assets were located within this locality. Therefore, SIRCP needs to comply with the National Heritage Act, 2005 (Act No. 645). This Act provides rules and matters pertaining to the conservation and preservation of National Heritage, natural heritage, tangible and intangible cultural heritage, underwater cultural heritage, treasure trove and for related matters. In order to comply with all the requirements as stipulated by the Heritage Act, substantial funds are required and it is beyond SIRCP's capability.

Another issue pertaining to this legacy waqf is the legal action taken by the trustee of this asset. SIRCP was sued by the trustee of Shaik Eusoff's asset. They claimed that the 15 acres of land was not a waqf asset but Shaik Eusoff intended to give land on 'trust' basis for a period 99 years. Since the will was written in 1892, now the trustee is asking SIRCP to return back the said land to them. The case is still pending decision at the Shariah High Court, Penang.

Despite all the issues, SIRCP is considered an exemplary religious institution amongst other SIRC's in Malaysia. They managed to transform unproductive waqf assets to assets that generate economic benefits for the society. The development of waqf land which was given by Seetee Aisah for commercial and residential complex is a success story of waqf in Malaysia. This project also served as a new business model between SIRC and a private party. While SIRCP is the trustee for the land, UDA Holdings Berhad is the funder and developer for the project. This project was divided into 2 phases; the 1st phase consists of 9 units of 3-storey commercial shops and 76 residential units, whereas the 2nd phase comprises of low-cost flats, a condominium and an office block.

As for the legacy waqf, SIRCP has prepared a plan that generates optimum returns socially and economically. For example, there will be a mixed development on Shaik Eusoff's waqf land consisting of 391 units of low-cost flats, 1,350 units of medium-cost apartments, 14 units of shops, 56 units of shop-office, and 66 units of hawker stalls. There are also orphanage homes, and other public amenities. Similarly, SIRCP intends to develop 350 affordable housing units on land belonging to the waqf of Kapitan Kling.

5.0 CONCLUDING REMARKS

It is an undisputable fact that Muslims in Malaysia, especially those in Penang had truly benefited socially and economically from the noble acts rendered by the Muslims that came from India during the 1800s and early 1900s. We are really unsure of why they had created these waqf. There is a great possibility that they were being influenced by the waqf practices in their motherland, or they were stimulated by the feeling that they need to become good Muslims and will be placed in heaven or '*jannah*' later. For whatever reason may be, these properties will be there in perpetuity and serve as landmark gifts by pioneering generations of Indian Muslims to the current and future generations of Muslims in Penang.

SIRCP being a custodian of these assets, needs to be more professional and dynamic in handling these assets. The cardinal rule is that the usage of these assets must be to the optimum level and generate maximum returns both socially and economically so that society will benefit to the fullest. There are many negative findings from the previous research papers which claimed that a majority of SIRC's need to improve the governance pertaining to waqf administration and data should be kept using the AI mechanism (Kamaruddin, M.I.H and Mustafa M.H., 2021; Rashid, Syed Khalid, 2012). More importantly,

the human capital that handles waqf matters must be knowledgeable especially in the area of Islamic economic and finance.

There are other important dimensions that need to be carefully addressed by the SIRCP and these dimensions also apply to other SIRC's. Firstly, we do believe that seeking Allah's Blessing is the main purpose of people establishing their own waqf. In the case of building a mosque for example, the more people use that mosque for prayers, the more unseen returns we receive from Allah. Therefore, SIRC should try to find ways and means of how these unseen returns can be quantifiable. For example, a certain portion of the monthly rental income from the waqf assets must be donated back to charity on behalf of the person who has created that waqf.

Secondly, in the case of legacy waqf, it was created long time ago and the family tree of the waqf originators are getting bigger and bigger. Therefore, we are of the opinion that preference or privilege should be given to the descendants of those originators. For example, if a high-rise building is built on the waqf land, preference must be given to the offspring with a discounted price. By doing so, people tend to believe that waqf mechanism not only brings benefit for the life hereafter but also to our progeny and they also will appreciate their ancestors. Thus, this could lead to the new dimension and perception on waqf among the younger generation and they will definitely create their own waqf for their heirs.

Reference

Arasaratnam, Sinnappah, *Indians in Malaysia and Singapore*, Revised Edition, Oxford University Press, Kuala Lumpur, 1980.

Asni, Fathullah, 'The Development of Islam and Mazhab Al-Syafi'i during the Post-Arrival of Islam in the Malay Archipelago,' *International Journal of Academic Research in Business & Social Sciences*, 9(3) (2019): 1196-1209, doi: <http://dx.doi.org/10.6007/IJARBS/v9-i3/5789>

Chowdhury, M.S.R. and Chowdhury, I.A., 'Problems of Waqf Administration and Proposal for Improvement: A Study in Malaysia.' *JIBC*, Vol 17, No 1, April, (2012): 1-8. doi: <http://www.arraydev.com/commerce/jibc/>

Cizakca, Murat, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*. Istanbul, Bogazici University Press, 2000.

Eusoff, Ragayah, *The Merican Clan: A Survey of Courage and Destiny*, Kuala Lumpur, Times Book International, 1997.

Haron, S and Bala Shanmugam, *Islamic Banking System: Concepts & Applications*, Kuala Lumpur, Pelanduk Publications, 1997.

Homoud, Sami Hassan, *Islamic Banking: The Adaptation of Banking Practice to Conform with Islamic Law*, London, Arabian Information, 1985.

Ismail, C.Z, Salim, N.J., and Ahmad Hanafiah, N.J, 'Administration and Management of Waqf Land in Malaysia: Issues and Solutions.' *Mediterranean Journal of Social Sciences*, Vol 6 No 4 S2, July, (2015):613-620,
doi:10.5901/mjss.2015.v6n4s2p613

Kamaruddin, M.I.H and Mustafa M.H, 'An empirical investigation on waqf governance practices in waqf institutions in Malaysia.' *Journal of Financial Reporting and Accounting*, Vol. 19 No. 3, (2021): 455-473.
doi: <https://doi.org/10.1108/JFRA-03-2020-0055>

Khaf, Monzer, '*Waqf and its sociopolitical aspects*', Jeddah, IRTI, 1992.

Khaf, Monzer, '*The Role of Waqf in improving Ummah Welfare*', Paper presented at International Seminar on Waqf as a Private Legal Body, Islamic University Sumatra Utara, Medan, Indonesia, January 6-7, 2003,
Doi:https://www.iiibf.org/papers/english/ROLE_OF_WAQF_IN_THE_WELFARE_OF_THE_UMMAH.pdf

Khan, Mohsin S and Abbas Mirakhor, 'The Framework and Practice of Islamic Banking, in '*Theoretical Studies in Islamic Banking and Finance*'. Edited by Mohsin S. Khan and Abbas Mirakhor, 1-13, Huston (Texas, USA), The Institute for Research and Islamic Studies, 1987.

Khan, Muhammad Muhsin, *The Translation of the Meanings of Sahih Al-Bukhari*, Arab-English, Vol IV, Lahore, Kazi Publication, 1983.

Kuran, Timur, 'The Provision of Public Goods under Islamic Law: Origins, Impact, and Limitations of the Waqf System,' *Law & Society Review*, Vol. 35, No. 4 (2001): 841-898, doi: <https://doi.org/10.2307/3185418>

Mahamood, Siti Mashitoh, *Waqf in Malaysia: Legal and Administrative Perspectives*, Kuala Lumpur, University Malaya Press, 2006.

MHEB, *Hand book of the Mohamedan and Hindu Endowments Board, Penang*, Penang, The Criterion Press, 1932.

Mirza A.P, 'Number of Islamic Banks Worldwide 2019, by Type', 2021.
URL: <https://www.statista.com/statistics/1090895/worldwide-number-of-islamic-banks-by-types/>

Mohammad, Ali, 'The Contribution of Islamic Civilisation on the life of Muslim Society in the Malay Archipelago until the end of 17th Century (in Malay)', *Journal of Al-Tamaddun*, Vol 3, No 1, (2008): 68-84
URL: <http://ajba.um.edu.my/index.php/JAT/article/view/7845/6057>

Mujani, W.K., 'The History of Indian Muslim Community in Malaysia', *Advances in Natural and Applied Sciences*, Vol 6, No 8, (2012): 1348-1353
Doi : http://www.aensiweb.com/old/anas_Oct-dec_2012.html

Nagata, Judith, 'Religion and Ethnicity among the Indian Muslim of Malaysia,' in *Indian Communities in Southeast Asia*, edited by Sandhu, K.S. and A. Mani, 2nd Reprint, 513-540, Singapore, Institute of Southeast Asia Studies, 2006.

Nasution, K.S., 'Colonial Intervention and Transformation of Muslim Waqf Settlements in Urban Penang: The Role of the Endowments Board.' *Journal of Muslim Minority Affairs*, Vol 22, No 2, (2002):299-315
Doi : <https://doi.org/10.1080/1360200022000028112>

Othman, Mohd Zain (1982), *Islamic Law with Special Reference to the Institution of Waqf*, Kuala Lumpur, Prime Minister Department, 1982.

Putra, B.A, 'Malay Historiography: Islam In History and Malay Culture (in Malay)', *Tasaqofah & Tarikh*, Vol 1, No 1, Januari-Juni, (2016): 91-102
Doi: <http://dx.doi.org/10.29300/ttjksi.v1i1.866>

Ramli Z, 'History, economic development and international relations of Kedah Tua from the 2nd to 14th century AD', *International Journal of Interdisciplinary & Strategic Studies*, Vol 1, No 1, (October), (2020): 58-86
Doi: <https://doi.org/10.47548/ijistra.2020.26>

Rashid, Syed Khalid, 'Measures for the Better Management of Awqaf', *IIUM LAW JOURNAL*, Vol. 20 No. 1, (2012):103-137
Doi: <https://doi.org/10.31436/iiumlj.v20i1.77>

Sadeq, A.M., "Waqf, perpetual charity and poverty alleviation", *International Journal of Social Economics*, Vol. 29 No. 1/2, (2002): 135-151.
Doi: <https://doi.org/10.1108/03068290210413038>

Sandhu, K.S., 'The Coming of the Indians to Malaysia', in *Indian Communities in Southeast Asia*, Edited by K.S. Sandhu and A. Mani, 2nd Reprint, 151-189, Singapore, Institute of Southeast Asia Studies, 2008.

Siddiqi, Abdul Hamid, *Sahih Muslim – By Imam Muslim*, Rendered into English by Abdul Hamid Siddiqi, Dar Al Arabia, Beirut, 1971.

Siddiqi, M.N., *Banking Without Interest* [Original version in URDU published in 1960], Leicester, UK, Islamic Foundation, 1983.

UDA launches a Waqf Scheme of Seetee Aisah 2 (in Malay)
doi:<https://www.bharian.com.my/bisnes/hartanah/2022/03/929203/uda-lancar-wakaf-seetee-aisah-2> (sighted 18 April, 2022).

Winstedt, R.O, *History of Malaya*, Singapore, Singapore Printers, 1935.

Yusoff, A.K., Sharif, A.B., Sultan A.R.M., Kasmar A., Fernandes, J.C., Hassan, S., and Williams, W., *Historical Survey of the Mosques and Kramats on Penang Island*, Penang, Malayan Teachers' Training College, 1974.