

AN OVERVIEW OF THE REGULATORY FRAMEWORK FOR WAQF IMPLEMENTATION IN HIGHER EDUCATIONAL INSTITUTIONS IN MALAYSIA

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ABSTRACT

In Malaysia, any party intending to create waqf requires the permission of the State Islamic Religious Councils (SIRCs) including implementing waqf in higher educational institutions (HEIs). The SIRC's permission required depending on the location of the HEIs and the general regulatory framework provided in their state enactments. Different states applying different approaches in granting permission to HEIs due to the different enactments that they have. However, in the efforts to standardize the implementation of waqf in the HEIs, the government of Malaysia has produced the University Transformation Programme (UniTP) Purple Book as well as the Guidelines for Management of Waqf in Education Institutions Book. These two books provide the guidelines for waqf implementation in educational institutions in Malaysia not only for a university but also for schools and other institutions. Henceforth, the main objective of this study is to examine the guidelines for waqf implementation in HEIs as provided in these two books. This study adopted a qualitative research methodology involving the doctrinal approach in scrutinizing state enactments and past studies as well as a semi-structured interview with several respondents to have a clear understanding of the topic studied. Then, the data obtained were analyzed by using content analysis. It is hoped that this study provides a clear understanding to those who intends to implement waqf in their institutions.

Keywords: Laws, Purple Book, Regulatory Framework, State Islamic Religious Council (SIRC), Guidelines

INTRODUCTION

Higher educational institutions (HEIs) require enough funds to play their significant role and stay relevant in the society. Without adequate and consistent funding, it would be difficult for an educational institution to survive. Therefore, the Higher Education Ministry has come up with a policy that public universities should be self-supporting and the route to achieve it through waqf by looking into the well-known university model of Al-Azhar University in Egypt (Salleh Buang, 2017). Mohamad Abdul Hamid, Ishak Abdul Rahman & Suaibatul Aslamiah Abdul Halim (2017) added that the successful creation of Al-Azhar University was based on cash waqf fund and the profit from the investment of building the storage warehouse at the Suez Canal. In the same way, the Egyptian government also borrowed the waqf fund from Al-Azhar University money for government consumption.

Looking into the Malaysian scenario, even though, waqf implementation in HEIs is still at the infant stage (Suziana Mohamed Nor & Romzie Rosman, 2017) as some universities are at the level of establishment of waqf fund and some others are at the level of operationalization, however, RM1.85 billion had been collected by the public universities (Salleh Buang, 2017). In attaining the financial sustainability to spur continued excellence in Malaysia's higher education, Minister of Higher Education (MOHE) has collaborated with universities in unveiling the University Transformation Programme (UniTP) known as UniTP Purple Book to assist public universities in creating and implementing their own tailored transformation plans. This Purple Book has been

released specifically focusing on enhancing university income generation through endowment and waqf. It also contains a set of guidelines for the top management in public universities on how to go forward for waqf fund establishment (Azlan Ab Rahman, 2017).

In addition, Purple Book crystallizes all vital structures that are currently operating in public universities in Malaysia (UniTP Purple Book's Committee-MoHE Representative, personal communication, 13 November 2016). Moreover, Purple Book provides practical approaches and framework to help universities address a significant challenge in diversifying and enhancing income (Ministry of Higher Education, 2016). The objectives of purple book as follows:

1. Enhance and further diversify sources of funding for universities *via* income-generating activities;
2. Position universities for long-term financial stability through the establishment of endowment; and
3. Promote and enhance the implementation of waqf model as a viable and sustainable source of funding.

To further supplement the Purple Book, the Guidelines for Management of Waqf in Education Institutions Book has been released in 2018 (JAWHAR, 2018). This is the first book in Malaysia to discuss the management of waqf for adoption in all educational institutions at various levels including schools, colleges, polytechnics and universities. Therefore, reference to this book provide a better understanding for the researcher to proceed with the study. Generally, this manual book provides steps before and after waqf establishment in education institutions which could be adopted by the researcher in the present study as explained in the following sections.

RESEARCH METHODOLOGY

Qualitative methodology research is employed involving the data collection from library-based research and fieldwork. The library-based research was conducted in exploring the secondary data from both primary and secondary sources. The primary sources involved waqf state enactments whereas the secondary sources include articles published in journals, conference proceedings, documents, manual books, guidelines and so on (Anwarul Yakin, 2007). Meanwhile, the second approach involved primary data collection from fieldwork study. The study employed semi-structured interviews to explicitly understand the topic studied. It gives the respondents a degree of freedom to explain their views and experiences as well as allows the researchers more flexibility to control over time, content, and the sequence of the interview (Siti Alawiyah Siraj, 2012). Semi-structured interview involved Waqf State Authorities, Waqf Managers in HEIs, UniTP Purple Book's Committee-MoHE Representative and Waqf Experts. The selection of the respondents for the interview was based on the purposive sampling. The purposive sampling technique was used as the researchers selected the respondents based on their specialization, added knowledge as well as experiences in waqf matters. This is due to waqf is a unique and highly specialized topic, and the people who can be addressed the research questions are highly specialized people, an elite group who is able to give an in-depth opinion on the subject matter (Shamsiah Abdul Karim, 2010). Then, the data collected were analyzed using the content analysis Method. Nevertheless, due to the limitation of time and budget, the researchers able to select only limited numbers of respondents in addressing the topic studied yet, it will be considered in the future study.

RESULTS AND DISCUSSION

The Regulatory Framework for Waqf Establishment in HEIs

The Steps before Establishing Waqf in HEIs

There are several steps to be followed before establishing waqf in HEIs and it may differ slightly from each other. However, in general, HEIs may follow the steps as stipulated in Purple Book and the Guidelines for Management of Waqf in Education Institutions (JAWHAR, 2018; Ministry of Higher Education, 2016). Generally, the proposed establishment must be approved by the Management Committee of HEIs (Deputy Chief Executive Officer of Perbadanan Wakaf Selangor (PWS), personal communication, 16 March 2017). Before considering the aim of setting up waqf in the HEIs, it is vital for the management of the institution to understand the concept of waqf and the importance of its implementation in many aspects including identifying potential waqf projects, types of waqf projects required, and identifying an appropriate waqf governance model. Understanding the concept of waqf is important to ensure the successful implementation of waqf in HEIs (Ismail Omar, 2017). Hence, the next step is to set up the Waqf Special Committee. Waqf Special Committee needs to be formed by the Management Committee of which consists of those who are influential individuals to represent among of them. At this stage, the function of Waqf Special Committee is to represent the educational institution in pioneering the understanding and good relationship with SIRC. This Waqf Special Committee plays importance roles including the arrangement for the regular discussions with SIRC, drafting a proposal paper for setting up waqf in HEIs, preparing a draft agreement and others the mutual understanding Between HEIs and SIRC in all aspects will certainly smooth out the process of waqf implementation in HEIs.

The proposal paper drafted need to be comprehensive including the draft agreement as well as the selected appropriate governance model. Subsequently, the Chairman of Waqf Special Committee will present it to the Management Committee for their consideration before presenting to the Board of Directors of HEIs for their approval.

As soon as the proposed establishment of waqf has been approved by the Management Committee, the proposal must be forwarded to SIRC for further consideration in order to comply with the state enactments as mentioned by (Siti Mashitoh Mahamood & Asmak Ab Rahman, 2014). Application process and method of consideration by SIRC may be slightly different between each SIRC subject to the procedures employed by SIRC in their respective states. Regularly, SIRC will request a representative of the HEIs for presenting the proposal to the State Waqf Management Committee Meeting. There are some SIRC require the proposal to be tabled in the State Fatwa Committee Meeting according to (Shariah Advisory, Selangor Fatwa Committee, personal communication, 11 April 2018).

Typically, once the decision has been made by the relevant committees at the SIRC level, a formal letter of the decision of the application will be given to the HEIs. In addition, if the application is approved, some SIRC will also forward the Joint Venture Agreement Letter and Letter of Acceptance of the Joint Venture to be signed by the HEIs. In the meantime, the draft agreement between the two parties will be finalized by the legal advisors of both parties. The signing a document of understanding or agreement by both parties the SIRC will be done through the appointment of such HEIs by the SIRC either by status as a mutawalli, nazir khas, representative, qayyim or so forth (Rohayati Hussin, Rusnadewi Abdul Rashid & Noor Inayah Yaakub, 2016). The SIRC has the right to impose conditions either by signing a Memorandum of Understanding or a Memorandum of Agreement or Terms which binding on both parties (Siti Mashitoh Mahamood, Asmak Ab. Rahman & Azizi Che Seman, 2018).

The Steps after Establishing Waqf in HEIs

Generally, the management of HEIs have a great accountability as soon as the proposed waqf in HEIs is approved and awarded with the status either by a mutawalli, nazir khas, representative, qayyim or so forth (Rohayati Hussin & Rusnadewi Abdul Rashid, 2017). The authorized power given by SIRC to HEIs include the power to collect and receive donation of

waqf, managing waqf property and distribute the benefits of waqf. Furthermore, HEIs need to create a special bank account in compliance with Shariah for the purpose of collection and managing waqf funds. They should also provide and adhere to a proper financial regulation standard including procedure and guideline for waqf management (Deputy Director of Chancellery Foundation, UKM personal communication, 26 February 2016). They should also provide means to facilitate giving and acquire tax exemption for al-waqif. Other than that, a specific Department should be established either as a Unit, Section, Division, Center or others depending on the appropriateness of the size and capacity of the HEIs. This new department should be placed under the hierarchy of the Top Management Office in HEIs such as Vice-Chancellor's Office, Rector, President, Director General or others. The new department must have clear function and power, in addition to the detailed task and significant achievement target plan (JAWHAR, 2018). With the establishment of this new department, the roles and functions of the Waqf Special Committee established before the establishment of waqf in HEIs will be dissolved. At this stage, a Governing Body named as University Waqf Board or Waqf Committee subject to the model of mutual consent agreed by both parties comprising representatives of SIRC and HEIs will initiate their respective roles and functions.

The Governing Body is a joint venture body between SIRC and HEIs to ensure the administration and management of waqf adherence to Islamic law and the related legislations. The membership of the Governing Body shall be through the formal appointment process by the SIRC. Among the main roles and functions of the Governing Body are as follows:

- a. Responsible for managing and administering all affairs related to waqf.
- b. Has power to establish appropriate policies on waqf management.
- c. Has power to make resolutions and decisions on collection, use of collection and distribution of waqf.
- d. Has the power to control and monitor the joint venture project to be in line with Islamic law.
- e. Accountable for receiving SIRC's instructions in implementing a joint venture project.
- f. Accountable for reporting the performance of waqf projects to SIRC.
- g. Has power to execute any order or fatwa relating to waqf from time to time.
- h. Has power to regulate its own procedure but shall not be contrary to the relevant Act, Enactment or Ordinance.

In addition, to ensure the smooth process of waqf administration and management in HEIs, the University Waqf Board should set up several committees under it depending on the appropriateness and the need from time to time such as the Management Committee, Shariah Committee, Planning and Development Investment Committee, Distribution Committee, Research and Development Committee, Audit Committee, Risk Management Committee and so on (JAWHAR, 2018).

CONCLUSION

In a nutshell, the stages mentioned above display that the government of Malaysia is very much concerned on the legality status of waqf establishment in HEIs. Though the guidelines provided are look general however, it gives the idea for the stakeholders at the initial stage to establish waqf in their institutions. Besides, waqf characteristics and its principles could be protected too. Therefore, for their application to be approved all the steps provided must be followed if not their operations considered illegal according to Malaysian laws (Siti Fatahiyah Mahamood & Siti Mashitoh Mahamood, 2016).

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