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Issues and Challenges in Wakaf Seetee Aishah Property Development, Penang State Islamic Religious Council (MAINPP)

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Abstract---The Penang Islamic Religious Council (MAINPP) is a major leader in the development of waqf properties, especially through its inaugural product Wakaf Seetee Aisah. In managing the assets of the ummah, of course, MAINPP goes through various twists and challenges in order to implement the dreams of waqf givers and develop the socio -economy of the community. This study focuses on the issues and challenges of Seetee Aisah Wakaf Development and further suggests some improvements for the development of waqf land by MAINPP. Qualitative study using the method of interviews with parties involved in the development of endowment properties in MAINPP. The results of the study found that MAINPP faces several challenges in developing waqf properties. Therefore, to address the challenges faced, it is proposed that MAINPP improve the development mechanism for waqf properties to be in line with the vision and mission of MAINPP. Thoroughly, this study provides added value to MAINPP and the parties involved in facing the challenge of developing waqf properties in Malaysia.

Keywords---challenges, development, MAINPP, Wakaf Seetee Aisah, Waqf property.

Introduction

Waqf is an act of worship that is highly demanded in Islam, in the form of sedakah jariyah which promises lasting rewards and flows directly to the waqf forever (Sahil, 2010). Allah SWT said (Ali Imran, 92:3), which means: “You will never attain good (perfect) until you give of what you love, and whatever you give, then surely Allah is All-Knowing”

Etymologically, waqf is an Arabic term that means to withhold (*al-man'u*) and withhold (*al-habs*) (Ibn Manzur, 1990). While in terminology, waqf is to withhold a property that can be used without its physical depreciation by handing over its ownership to a consumer towards the proper use (al-Buqha, al-Khin, 2012). While al-Zuhaily states that waqf is to withhold property that remains in its substance, which can be used for charitable purposes as an effort to get closer to Allah SWT (*taqarrub*), the endowed property is handed over to certain parties, and they cannot use the property arbitrarily (al-Zuhaily, 2002). Yayasan Wakaf Malaysia defines, wakaf is any property that the waqf retains the right to the property from any transaction, inheritance, hibah and will in addition to maintaining its physical resources, for welfare with the intention of bringing the waqf giver closer to Allah SWT (<https://www.ywm.gov.my>).

Waqf is a very significant instrument in the socio-economic generation of the ummah. The State Islamic Religious Council (MAIN) is the sole trustee for waqf properties in each state in Malaysia. The trustee of the waqf property is responsible in producing the waqf property so that the concept of waqf worship; *Tasbīl al-Thamarah* which is to channel the distribution of benefits to *mawqūf* 'alayh can be realized. The Penang Islamic Religious Council (MAINPP) is a role model for all MAINs in the country, especially on its outstanding success in producing Setee Aishah Phase 1 waqf properties and also a bank (Azha et al., 2013; Ambrose et al., 2015). Other waqf property development in Penang also uses the Setee Aishah Phase 1 waqf property development model as a model (Monzer, 1998; Sukmana, 2020).

Literature review

A study on Wakaf Seetee Aishah has been done by several researchers, among them are:

- Hashim & Rahman (2012), wrote “*Pengurusan Pembangunan Harta Wakaf: Pengalaman Majlis Agama Islam Negeri Pulau Pinang (MAINPP) Terhadap Wakaf Seetee Aishah*” (Waqf Property Development Management: The Experience of the Penang Islamic Religious Council (MAINPP) Towards Wakaf Seetee Aishah). This study discusses the commercial development methods that have been done by MAINPP on Wakaf Seetee Aishah properties but does not discuss the enforcement issues in the development of the waqf properties (Darus et al., 2017; Mahat et al., 2015).
- Roslan (2017), wrote “*Pembangunan Tanah Wakaf di Pulau Pinang*” *Masalah dan Penilaian Strategi*” (Development of Waqf Land in Penang” Problems and Strategic Evaluation). The author describes six problems faced by MAINPP

and the developer in developing Wakaf Seetee Aishah properties but she did not submit a proposal for the solution of these problems.

- [Daud & Mubarak \(2019\)](#), wrote “*Amalan Pengurusan Wakaf di Majlis Agama Islam Negeri Pulau Pinang (MAINPP)*” (Waqf Management Practices in the Penang Islamic Religious Council (MAINPP)). The author only focuses on aspects of waqf management through the application of basic management functions and suggests other aspects that can be improved without submitting suggestions for the solution of the problem.

MAINPP property development concept

MAINPP Waqf Management has existed in conjunction with the establishment of MAINPP by virtue of Section 4, Islamic Religious Administration Law of 1959. MAINPP only created the Waqf Division specifically to regulate waqf administration affairs in the late 80s. Meanwhile, the Penang Islamic Religious Administration Enactment 2004 Section 89 states that the Majlis shall be the sole trustee of all waqf, whether general waqf or special waqf ([Rahman, 2021](#)). The Property Development and Waqf Property Unit established under MAINPP has the role of conducting research and planning the development of MAINPP properties based on Islamic law. (<https://www.mainpp.gov.my/>). MAINPP Meeting on No. 2/2015 dated 07 April 2015 agreed to establish a subsidiary of MAINPP, namely Wakaf Pulau Pinang Sdn. Bhd. (WPP). Waqf property management by WPP is effective from 01 April 2018. The basic legal principle of the implementation of waqf worship performed by MAINPP is based on the hadith of Ibn Umar narrated by Imam Muslim which means:

From Ibn Umar r.a he said: Umar had got a piece of land in Khaibar then he came to the Prophet S.A.W to ask for his opinion on how to manage it, he said: O Messenger of Allah! I have got a piece of land in Khaibar. I have never acquired a better property than this. He said: If you like, hold on to the land (endow the land) and you donate its benefits. Then Umar gave alms from the land on the condition that his land could not be sold and bought and inherited or gifted. Umar gave alms of the proceeds to the poor, the relatives and to free the slaves also for those who fought in the way of Allah (jihad) as well as to supply those who were on the way and be a meal for the guests. The person who manages it can eat some of the produce in a good way and can feed his friend simply (al-Nisaburi: 2000).

Principles of Waqf Land Development:

- Permanent Land owned by MAIN as Trustee
- Form 15A applies to Land Lease
- Land cannot be sold, mortgaged or mortgaged
- MAIN may lease for a 99 -year lease period to the lessee
- Upon expiration of the lease, the land is returned to MAIN
- The Leaseholder can apply from MAIN to extend the lease term after it expires

MAINPP practices property development based on three concepts:

- Continuing and restoring the glory of the social and economic way of life on waqf lands to obtain maximum revenue benefits in line with the trust of the waqf and uplifting Islamic teachings.
- Adding the value of existing wakaf properties with the wakafs acquires assets through monthly income from the rental of premises that can expand the waqf.
- Building and improving the living standards of the community.

Meanwhile, the concept of waqf property development in a joint venture is as follows:

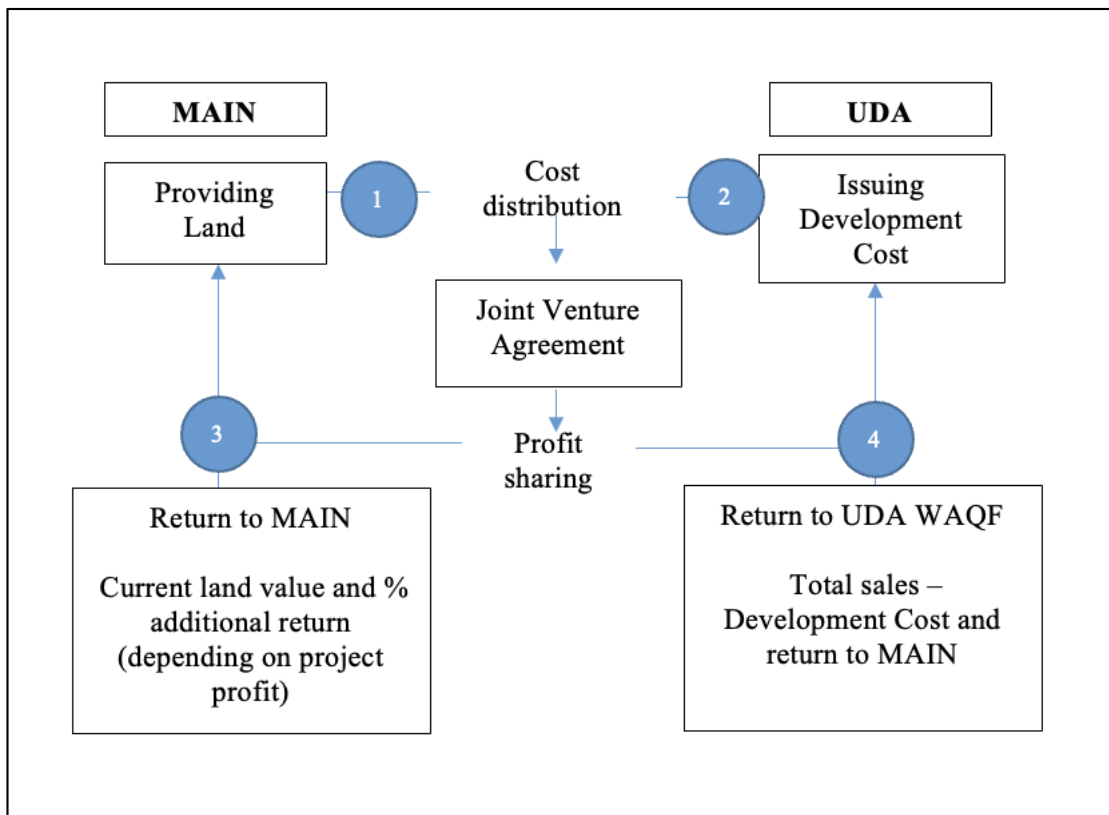


Figure 1. Joint venture business model (Source: UDA)

MAINPP is responsible for providing waqf land to be developed and assists in speeding up the procurement of development approvals through liaison between government agencies. UDA as the developer has to pay the entire development cost of the waqf property (Ismail et al., 2021). MAINPP will get a return equal to the current value of the land plus an additional percentage of the return either in kind or in cash. UDA, on the other hand, will get a return after the total sales revenue collection is deducted from the total development costs and the return to MAINPP (Interview with Dr. Noor Ropiah).

Wakaf Seetee Aisah property development phase 1

MAINPP has proven that development projects that have been undertaken to prosper waqf land through joint venture-JV methods with Government Link Companies (GLCs) have resulted in outstanding success ([Sergeieva et al., 2021](#)). The commercial development of residential units is done on the Wakaf Seetee Aisah site between MAINPP and UDA Land North Sdn. Bhd. The waqf land is located in a very strategic location at the intersection of two major highways, namely the North-South Highway and the Butterworth-Kulim Highway. In the vicinity, there are several large supermarkets nearby such as Carrefour, Tesco Extra, Sunway Carnival, Billion and Giant. Nearby, there are also public facilities such as Seberang Jaya Hospital and government complexes such as the Customs Department and others.



Figure 2. Project location

This waqf land was endowed by the waqf giver, Seetee Aisah bt. Haji Mahmood through a Deed of Trust which was registered at the Office of the Registrar of Deeds of the State of Penang on 30 September 1901 for the purpose of waqf for public benefit (General Waqf). This waqf land of lot 1444 (Mukim 4) has an area of 9.274 acres and was originally endowed for agricultural purposes with a rental value of RM400.00 per season. However, due to the rapid development in its surroundings, this land is no longer suitable for agriculture. Therefore, comprehensive and commercial development needs to be done to generate a decent income to implement the wishes of the waqf ([Kaliky et al., 2020](#)). Project information is as in Table 1 below:

Table 1
Project information

Project Name	Taman Warisan Impian Wakaf Seetee Aisah
Lot No.	Lot 1444, Mukim 4, Daerah Seberang Perai Tengah, Pulau Pinang
Land Area	9,274 acres
Land Value (2007)	RM10,833,098.35 (RM26.94 sq ft)
Land Status	Agriculture (paddy fields)
Landlord	Penang Islamic Religious Council
Developer	Uda Land (North) Sdn. Bhd.
Joint Venture Agreement	12 August 2017
Development Components	1) 76 units of 2 Storey Terrace Houses 2) 9 units of 3 Storey Office Shop
2 Storey Terrace House	Floor area 1,5000 sq ft 4 Bedrooms, 3 Bathrooms Sale prices start from RM282,000 and above
Development Value	RM35.00 million
Project Starting Year	Year 2008
Year Of Project Completion	Year 2012

(Source: UDA)

The waqf giver places several conditions on the Waqf Trustee which are stated in the Trust Deed (Waqf Deed) of the waqf giver, namely:

- Hold a funeral feast for him, his parents and brother in the month of Ramadan every year.
- Make a payment of RM3.00 for the ratib prayer at his grave three times a year.
- Pay and supply one can of kerosene for the Permatang Pauh mosque during the month of Ramadan every year.
- Send RM3.00 every year to Mecca and beyond for the purpose of umrah.
- Half of the remaining rent and income earned is used to repair the Permatang Pauh Mosque and if no repairs are made, the money must be sent to Mecca for waqf or other charitable purposes. The other half was used for Saedah Nordin and her descendants for their own benefit.

The goal of waqf property development is to implement the trust of the waqf giver (Yusroni & Chadhiq, 2021). The concept of development implemented by MAINPP is in line with the purpose of waqf. Any waqf property development plan must refer to the *syurutul waqif* as contained in the Sirah Wakaf Seetee Aisah 1901 and in accordance with the requirements of Islamic law and in accordance with the role of MAINPP as Trustee to ensure that the trust can be fulfilled. The waqf land development component consists of 76 units of 2 -storey terrace houses and 9 units of 3 -storey office shops. The sale of this house is done according to the concept of *ijarah*, which is a lease (leasehold) for 99 years. Only Muslim buyers are eligible to buy the residence with a price from as low as RM281,800.00 to RM439,600.00 per unit. Through a joint venture agreement between MAINPP and UDA, MAINPP will receive 9 units of 3 -storey office shops. While 30 percent of the

profit from the sale of residential units is given to MAINPP and the rest belongs to UDA.



Figure 3. Wakaf Seetee Aisah residence park

This development benefits MAINPP through the rental of 27 shop units amounting to RM56,050.00 per month. MAINPP also received 30 percent of the *musyarakah* profit of RM600,000. This amount has exceeded the amount set aside to be distributed to the *mauquf alayh* as intended by the waqf giver in the Trust Deed. This surplus is used for sponsorship of funds whether invested to purchase other waqf buildings. The development of this waqf which has succeeded in achieving the target of MAINPP has approved the second phase development project on this waqf land at a cost of 200 million with UDA Land ([Abdullah et al., 2020](#)).

The development of the Wakaf Seetee Aisah business premises is a proof of MAINPP's success in producing and sustaining the development of waqf properties in Penang. Basically, MAINPP does not sell the premises of this shop to the buyer, but charges a rental rate to the tenant. Therefore, this waqf land remains the property of MAINPP. MAINPP as *mutawalli* takes the responsibility of managing this waqf land and implementing commercialization through business premises.



Figure 4. Wakaf Seetee Aisah Business Center

Issues and challenges of Wakaf Seetee Aisah land development

• Local Authority (PBT)

Each property development will go through project planning approval by the local authority through the onestop center unit in the local authority. According to common practice, for the development of conventional properties for public use, the land is required to be transferred to the local authority. Submission to the local authority is during the development period and up to the life of the product. In addition, to get project approval also need to comply with the conditions imposed by certain departments. The centralized sewage plant must be transferred to Indah Water Konsortium (IWK) absolutely for maintenance, prayer rooms transferred to the Religious Council, playgrounds, open spaces, kindergartens and multipurpose halls transferred to the Municipal Council. The road was transferred to the Public Works Department, while the electricity supply sub-station had to be transferred to TNB. The transfer of ownership to these agencies will make the land split into small lots. These procedures and processes that have slowed down the process of submission and approval of development (Toya & Skidmore, 2007). Referring to the Penang State Fatwa Decision, the main principle of waqf practice is that waqf property cannot be transferred, cannot be sold, pledged and mortgaged. At an early stage, this is the problem faced by MAINPP. In addition, contribution payments and development charges to the Local Authority for any purpose of approval are still charged to the development of waqf land at the same rate as conventional land development, further increasing the cost of project development (Granger, 1988; Deeds & Hill, 1996).

• Final Financing

One of the challenges in the development of this wakaf Seetee Aisah 1 property is the limited End Financing facilities. When residential construction is 80 percent complete and there are already buyers through the lease method, yet no financial institution is willing to offer final financing (Cooper, 1993; Malterud, 2001). The need to comply with the fatwa decision in the development of waqf properties, i.e., land cannot be transferred using Form 14A of the National Land Code (KTN), so there were only two banks at that time, Ar-Rajhi and Bank Islam Berhad only complied with the fatwa procedure, namely transfer ownership through a lease for 99 years using Form 15A KTN. Then followed by Bank Muamalat and Bank Simpanan Nasional (Interview with Noor Ropiah, 2021). Funding by the Public Sector Housing Financing Authority (LPPSA) is limited to civil servants only.

• Governance

The development of Seetee Aisah wakaf land is MAINPP's first experience in managing waqf properties. There are various constraints that have to be faced, especially the limited number of MAINPP staff, coupled with no experience in economic and technical development.

- **Land Status**

In the early stages of waqf property development, the developer faces the problem of changing the status of the land from an agricultural zone to a development zone and land use for residential and commercial purposes. The cost of changing the status is high and also involves the cost of land reclamation because the physical condition of this land is a paddy field.

Side Challenges

- **Strategic Partners**

Seetee Aisah's waqf development experience is the difficulty to get a Strategic Partner, especially the bank. It is quite difficult for MAINPP and developers to convince banks and investors of waqf property products sold on lease; that there is no problem in providing end financing facilities to buyers of waqf land with leasehold status as these banks can provide end financing facilities to freehold land from other developers.

- **Perceptions of the Muslim Community**

Most MAINs face the challenge of restoring and building the trust and confidence of the Muslim community in the Religious Council itself. When dealing with agencies, especially those related to Islam, various negative perceptions will arise. Among them is the delay in the application process, the Muslim Malays themselves have no confidence in Islamic institutions, do we expect other races and other religions to raise the status of Islamic institutions?

- **Future Challenges**

MAINPP will face end financing problems due to lease issues. So, it is necessary to refinance, for example, death and various other problems that may arise after the expiration of the lease for 99 years.

Solutions

- The main issue in the development of these waqf properties is the constraints in terms of legislation. The waqf property act still depends on the Ministry of Housing and Local Government (KPKT). KPKT has not yet issued complete and clear instructions on the development of waqf properties. Local authorities and agencies involved must comply with the Fatwa Decision on waqf property development.
- Offering end financing facilities for housing loans to government and private employees from financial institutions for the purchase of houses on lease. Bank Negara Malaysia (BNM) is expected to provide flexibility on the criteria for leasehold housing loans. Islamic Banking Institutions need to offer more Housing Financing products for the purchase of waqf properties to customers. This is because this product is less pioneered by financial institutions as waqf properties are only used for shariah-compliant activities, which is a constraint

for financial institutions to make a profit. But it must be believed that the mercy and blessings of Allah SWT are more important than profit alone.

Civil servants are allowed to apply for Public Sector Housing Financing Authority (LPPSA) funding for homes developed on waqf properties. Legal fees related to the preparation of housing financing agreements are included as part of the scope of LPPSA financing and allow spouses or children to apply for joint housing financing or joint-loan from LPPSA provided all applicants are members of the public service.

- Administrators and waqf managers, the Religious Council and also partners, namely contractors and developers; all these parties need to understand and deepen the fiqh of waqf. In Maqasid Syariah, the management of waqf assets is categorized in the concept of property preservation (*hifz al-mal*), which is considered one of the Daruriyyah matters. It can be concluded that *hifz al-mal* collectively means that it is necessary for the ummah to wake up to fulfill the trust of kifayah to preserve, protect and manage the assets of the Muslims. Therefore, all forms of practices that are contrary to Islamic law must be avoided. The issue of developer appointment, contractor appointment is not selected like appointment in conventional project. Selection must be transparent and free from the elements of corruption.
- From the point of view of human resources (man power), there must be expertise in various fields, because the problems of each waqf asset vary. To unlock the value of frozen and imprisoned waqf land requires waqf land experts to contribute their expertise in developing the land in the best possible way. Managers and developers will be faced with a variety of legal issues. The waqf agencies of each state, especially the Wakaf Pulau Pinang, need to improve their skills, improve all weaknesses and shortcomings so that they do not recur in the further development of waqf properties. Waqf agencies try to create their own housing developers, at the very least initial stage to become Project Management Consultants (PMC). This also includes qualified and professional engineers, sales and marketing teams. With that, the waqf agency will be more authoritative and more convincing and it will be easier to gain the trust from the community that the religious council through its subsidiaries cares and prioritizes development so that it runs smoothly to implement good governance.
- The development of waqf properties needs support from all parties, not only MAINPP but also financial institutions, NGOs and political parties. Doubts on the part of third parties in providing support to waqf developers, may in part be related to legislation. So, support from agencies such as the Director of Lands and Mines (PTG), land administrators in each district, support of civil servants and NGOs. All parties involved in the development of this waqf land must be united in fighting for the right to housing with leasehold status and be tolerant in facilitating the development of the ummah's assets. The Real Estate and Housing Developers Association of Malaysia (REHDA) hopes to include this lease-status housing loan in their agenda and also be listed in the Home Ownership Campaign (HOC) 2.0 program. The house built on waqf land is an affordable house for the B40 and M40 group, all parties including the Federal Government, state governments and local authorities need to provide the best cooperation.

- Marketing of waqf products is one of the most important elements in developing waqf properties, especially networking with strategic smart partnerships. Various parties in the network can help develop new ideas to create new products, production methods and marketing techniques. Dissemination to the general public needs to be more effective involving multiple platforms; print media, electronic media and social media in order to foster public awareness of the potential of waqf as an instrument to drive the ummah's economy in the socio-economic development of the ummah.

Conclusion

The advantage of waqf property development is 100 percent is for Muslims. Local authorities must comply with the conditions of the Penang City Council (MBPP) and Seberang Prai City Council must comply with the fatwa ruling that the buyers of house leases developed by the Penang waqf are only Muslims. This allows Muslims in Penang to own assets in the form of real estate at affordable prices. Penang has no Malay reserve land, therefore Allah SWT's greatest gift to the Muslims of Penang is waqf land. The value of waqf properties in Penang is estimated to be more than 2 (Interview with Tuan Rosidi).

In conclusion, MAINPP as the trustee of the waqf (*mutawalli*) plays the role of developing this waqf property according to the current development, namely through the commercial sector. All government bodies whether at the state or federal level, strategic smart partnership, financial institutions need to jointly mobilize energy with MAINPP in order to implement large-scale development in the future. Large-scale development can be implemented as the property economy in Penang is growing every year.

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