

# **Towards Institutional *Mutawallis* for the Management of *Waqf* Properties**

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## **Abstract**

This paper examines the management of *waqf* properties in Malaysia. *Waqf* comes under states' jurisdiction and state laws are applicable to the creation, management and development of *waqf* properties. The institution of the Islamic Religious Council (Majlis Agama Islam) in the various states deal with the issues related to *waqf* including its management and act as the sole trustee (*mutawalli*) of all the *waqf* properties in the states. This paper argues that *waqf* as an institution is not as productive and beneficial as it was during the Islamic history. It contends that the practice of appointing government institutions as a *mutawalli* has not contributed to the productivity and efficient management of the *waqf* properties. The paper argues that in order to make *waqf* contribute to the socio-economic development of the Muslim communities it is essential that some changes be brought to the management of the *waqf* properties. The paper concludes that non-governmental institutions should be allowed to act as a trustee (*mutawalli/nazir*) and to manage the *waqf* properties for the benefit of the beneficiaries.

## **Introduction**

Historically, *waqf* tremendously contributed to the welfare and educational development of the Muslim societies. It was a successful model for supporting Islamic charitable and educational institutions. It financed and sustained mosques, schools, universities, hospitals and other public utility charitable institutions in the fields of education, healthcare, and even

infrastructural works such as road, water canals and bridges. However, today the institution of *waqf* does not play its historical role to support and finance religious, charitable and educational institutions in the Muslim world. This paper argues that the methods for the administration and management of *waqf* properties are in urgent need of radical changes. The traditional way of appointing a *mutawalli* to manage *waqf* properties and the modern way of leaving the management of *waqf* properties in the hands of the state institutions need to be revised. This paper examines the impact of appointing government institutions as a *mutawalli* on the creation and management of *waqf* properties. It concludes that specific non-governmental institutions should be created to act as *mutawallis* for the *waqf* properties. It also argues that existing institutions such as universities, schools and other NGOs dedicated to the socio-economic development of the Muslims should be allowed to act as *mutawallis* for the *awqaf* that are created in their favour.

### **The Administration of *Waqf***

When a person wants to create a *waqf* he would declare a certain property perpetually as *waqf* and dedicate its usufruct or benefit for a religious cause to a certain beneficiary or a group of beneficiaries. Historically the administration of *waqf*, depended on the terms of the *waqf* deed which usually included a provision for the appointment of an administrator or a trustee (*mutawalli* or a *nazer*) to administer and manage the *waqf* property for the benefit of the beneficiaries. Traditionally the founder of the *waqf* would himself act as a *mutawalli* or he would choose an individual known for his piety, honesty and dignity as a *mutawalli* to manage the *waqf* property for the benefit of the beneficiaries.

Classical *fiqh* rules state that the power to appoint the *mutawalli* primarily rests with the *waqif* himself who may also choose to become the first *mutawalli* to manage the *waqf*

property. After the *waqif's* death the office of the manager would go to a person appointed by him. In the absence of such an appointment the *Shariah* court will appoint a *mutawalli* for the *waqf*. The *waqif* can also lay down the rules and conditions for the appointment of subsequent *mutawallis* or stipulate that the subsequent *mutawallis* should be appointed from a certain group of persons. A *mutawalli* can also appoint a successor who would take over from him after his death. This could be the *mutawalli's* son or another person who in his opinion is best suited to manage the *waqf* property. In cases where the office of the *mutawalli* falls vacant and no successor is appointed to take over, the power to appoint the *mutawalli* rests with the *Shari'ah* court. The court has an absolute discretion to appoint as a *mutawalli* any person who in the opinion of the court is capable to manage the *waqf* property. It is also possible to leave the management of the *waqf* property to the institution to which the *waqf* was dedicated.

A *mutawalli* appointed as such has to manage the *waqf* property in accordance with the terms and conditions laid down by the founder of the *waqf*. The *mutawalli* is under obligation to carry out the instructions of the *waqif* and to safeguard and protect the *waqf* property and its revenue. He is responsible to maintain the *waqf* property in good conditions, collect its revenues and distribute them to the beneficiaries. He also has the power to do all the acts which are necessary for the maintenance, management and development of the *waqf* property. He has no right to sell, exchange, or mortgage *waqf* property or borrow money in order to spend on *waqf* without the permission of the court. A *mutawalli* is entitled to receive a fixed salary deducted from the income of the *waqf* property. The amount of salary receivable by the *mutawalli* could be decided by the *waqif* himself or by the *Shari'ah* court, upon the application by the *mutawalli*, in case where the *waqif* has not specified any amount. The amount of salary is decided with reference and in proportion to the *waqf* income.

Classical *fiqh* rules also states that the responsibility to supervise the efficient administration of *waqf* property primarily lies on the *Shari'ah* court. Thus, the *mutawalli* could be removed if the court, upon complaints lodged by the beneficiaries, is satisfied that he is unsuitable for the job or is guilty of mismanagement or neglect of his duties. For instance, if the *mutawalli* neglected to repair the *waqf* premises and allowed them to fall into ruins.<sup>1</sup>

### **The Problems with the Individual *Mutawalli***

Most of the time the right to administer the *waqf* property was kept within the founder's or *mutawalli*'s family. The right of the *mutawalliship* would be transferred along with other properties to the legal heirs and subsequently would devolve on their descendants. This effectively granted the family members the right to a perpetual lease and had the potential to convert a *waqf* property into a private property of the descendants. This not only led to the mismanagement of *waqf* property but also denied the beneficiaries their due right assigned to them in the original *waqf* declaration.

Furthermore, the *mutawalli* chosen for his piety, honesty and character often lacked managerial and developmental skills that are necessary for the proper and efficient management and development of the *waqf* properties. This particularly was the case with regard to general *waqf* made for the benefit of the poor and the needy as *waqf* made for the benefit of the institutions were often managed by the institutions themselves. Subsequently this had a discouraging effect on the creation of *waqf* made for the general welfare of the poor and the needy.

### **The Administration of *Waqf* in Malaysia**

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<sup>1</sup> For a detailed discussion on these rules see Syed Ameer Ali, *Mahommedan Law*, (Lahore: Law Publishing Company, 1976), pp. 441-492, see also Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, (Karachi: Islamic Publishers, 1980) pp. 150-173.

In the 20<sup>th</sup> century centralized government institutions such as the ministry of *awqaf* and religious affairs in other Muslim countries and in Malaysia the various State Islamic Religious Councils (*Majlis Agama Islam*) were established. Subsequently, all *waqf* properties and their administration were transferred to these institutions which in some cases replaced the traditional *mutawallis* and other cases assumed supervisory role over the existing *mutawallis*.

In Malaysia the Constitution assigns the power over *waqf* to the states which have jurisdiction to make laws on *waqf* and its administration.<sup>2</sup> State enactments on the Administration of the Religion of Islam have provisions that govern the creation and management of *waqf* properties in the state. The three states of Selangor, Malacca and Negere Sembilan have *waqf* enactments that exclusively deal with *waqf* and its related issues. There are 14 State Islamic Religious Councils, one for each of the 13 states and one for the Federal Territories. Every *waqf* shall be registered in the name of the Islamic Religious Council which enables the Council to record and possess a complete database of all *waqf* properties in the state.

State enactments authorize the Islamic Religious Council (*Majlis Agama Islam*) of each state to act as a *mutawalli* to administer and manage all *waqf* properties in their respective states. For instance section 89 of Administration of the Religion of Islam (State of Selangor) Enactment 2003 states that 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

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<sup>2</sup> See *Federal Constitution*, Ninth Schedule, State List, item (1).

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

Section 96 states that the *Majlis* shall be the sole trustee of all mosques and related lands in the State of Selangor. Section 90 declares that all *waqf, nazr* and trust properties should vest in the *Majlis*. Section 32 of the *Wakaf (State of Malacca) Enactment 2005* states that “the *Majlis* shall be the sole trustee of all *wakaf*, whether *wakaf am* or *khas*, situated in and outside the State of Malacca”. Section 5 of the *Wakaf (Negeri Sembilan) Enactment 2005*<sup>3</sup> states that “the *Majlis* shall be the sole trustee of any *mawquf*, situated in the State of Negeri Sembilan.”

These provisions in Selangor, Malacca and Negeri Sembilan Enactments are as representatives as other states also have similar provisions. It is clear from these provisions that the *Majlis* in the various Malaysian States are acting as *mutawallis* for the *waqf* properties in their respective states. In Malacca and Negeri Sembilan the Enactments also empower the *Majlis* to establish a *Wakaf* Management Committee and Advisory Panel on Management of *Waqf* in these states respectively.<sup>4</sup> In Malacca the state Enactment stipulates that “The *Majlis* shall establish a *Wakaf* Management Committee to administer and manage all matters relating to *wakaf* in the State of Malacca”. Section 24 of the Enactment spells out the functions of the *Wakaf* Management Committee as follows:

- (a) to carry out any direction, policy and decision made by the *Majlis* in relation to any *mawquf*;
- (b) to supervise, arrange, manage and administer the *mawquf*;
- (c) to develop, improve and upgrade the *mawquf*;
- (d) to administer the *Wakaf* fund; and

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<sup>3</sup> Enactment No. 5 of 2005.

<sup>4</sup> See Section 21 of the *Wakaf (State of Malacca) Enactment 2005*, and Section 21 of the *Wakaf (Negeri Sembilan) Enactment 2005 (Enactment No. 5 of 2005)*.

- (e) to carry out any other powers of function as provided under this Enactment or as directed by the *Majlis* from time to time.

Section 25 states that “the *Wakaf* Management Committee may, with the consent of the *Majlis* and subject to the terms of such consent *istibdal* any *mawquf*; or develop or invest the *mawquf*.”

Section 35 affirms the power of the *Majlis* to “from time to time give any general direction to the *Wakaf* Management Committee in the execution of its powers and functions” and section 36 empowers the *Majlis* to:

- (a) supervise the activity and the management of the *Wakaf* Management Committee;
- (b) inspect any account and records which are kept and maintained by the *Wakaf* Management Committee;
- (c) direct the *Wakaf* Management Committee to furnish it with any report or statement it deems fit.

In Negeri Sembilan the *Majlis* is empowered to establish an Advisory Panel on Management of *Waqf*.<sup>5</sup> The Advisory Panel has the following functions<sup>6</sup>:

- (a) to draft policies on *wakaf* for the approval of the *Majlis*;
- (b) to monitor the development of the affairs of *wakaf*;
- (c) to advice and make recommendations to the *Majlis* relating to the affairs of *wakaf*;
- (d) to control the management and development of any *mawquf*;
- (e) to advice the *Majlis* on investment of *mawquf*;

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<sup>5</sup> See section 21 Wakaf (Negeri Sembilan) Enactment 2005.

<sup>6</sup> *Ibid*, section 22.

- (f) to monitor the management and development of any *mawquf* situated elsewhere than in the State of Negeri Sembilan of which the *Majlis* is its *mawquf-alaih*; and
- (g) to carry out any functions provided under this Enactment or as may be directed by the *Majlis* from time to time.

Section 33(1) states that The *Majlis*, on the advice of the Advisory Panel, may “appoint any person whom the *Majlis* reasonably considers competent and qualified to manage and develop any *mawquf*, including to manage investments of the *mawquf*”.

These and other similar provisions in other state enactments clearly indicate the followings:

1. These state enactments abolished the position and functions of the private *waqf* administrators.
2. Some state enactments allow the *Majlis* Agama Islam to outsource the management of *waqf* properties to other bodies established by the enactments.
3. These state enactments do not provide for the *Shar'iah* court to supervise and adjudicate on issues related to *waqf*.

In 2004 the Malaysia government has formed a department for *zakat*, *waqf* and hajj under the Prime Minister's Department with the aim to make the administration of *waqf* more systematic. However it does not have an authority to administer the *waqf* properties but rather plays a role as a planning coordinator and observe the *waqf* matters.

### **Government Institutions as a *Mutawalli***

It is however, arguable whether the *Majlis* or for that matter any government-run institution in other Muslim countries is a suitable body to perform the functions of the *mutawalli*.



Besides the administration of *waqf* properties, the *Majlis* also has to manage bait al-mal, the *zakat* fund and deal with many other religious issues such as mosques and the appointment of imams. The shortage of qualified human resources is always a relevant issue in this context and the *Majlis* in the states may not be able to pay individual attention to the hundreds of *waqf* properties in each state. It has to be carefully examined whether the appointment of the *Majlis* as a *mutawalli* has made the *waqf* institutions and in particular their management more efficient?

Another pertinent question that could be asked here is whether government institutions should interfere in the provision of charities and *waqf*.<sup>7</sup> Among other issues this may have discouraging effects on efforts to promote *waqf* in favour of institutions such as schools, universities, and other Muslim *Da'wah* institutions and NGOs. These institutions will have greater incentive to promote the creation of *waqf* in their favour if they also become the *mutawallis* for these *waqf* properties. This will enable these institutions to make their own efforts to attract and promote the creation of *waqf* in their favour, to manage the *waqf* properties created in their favour and to be self-reliant and self-financed. This is in line with the concept of self-effort, self-management and self-financing.

### **Non-governmental Institutional *Mutawallis***

Today technical and managerial expertise is needed to manage, maintain and develop *waqf* properties. It is almost impossible for a single individual to offer a combination of these services. Thus, the traditional position of appointing individual *mutawallis* to administer and manage each *waqf* property separately may not be feasible. There is an urgent need to

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<sup>7</sup> For a good discussion see Daniela Pioppi, "From Religious Charity to Welfare State and Back. The Case of Islamic Endowments (waqfs) Revival in Egypt", European University Institute, Florence, Robert Schuman Centre for Advanced Studies, EUI Working Paper RSCAS No. 2004/34. P.3

institutionalise the office of the *mutawalli*. An institution is always better than an individual *mutawalli* as it has the advantage of team expertise and can pull talents in different fields under one roof. The *waqf* properties will benefit greatly from the teamwork, expertise and professional management that an institutional *mutawalli* could offer. Furthermore, unlike a person an institution can last several generations and can also keep proper documentation and records for several generations that could always be inspected. An institutional *mutawalli* can also easily and efficiently manage many *waqf* properties for the benefit of the same beneficiaries at the same time.

Allowing universities, schools, *Da'wah* institutions and other Muslim NGOs dedicated to the alleviation of poverty, the provision of scholarship to the needy students and other welfare activities to act as a *mutawalli* would provide them with the incentive to promote the idea of *waqf*. They will take the initiative to encourage the creation of more new *awqaf*. The good performance of these *mutawalli* institutions will also increase people's trust and confidence that will encourage them to create more *waqf*. With the availability of these institutions as *mutawallis* Muslims will have a variety of choices for the creation and dedication of their *waqf* properties and could appoint an institution of their choice as a *mutawalli* for their *waqf*. The federal government or the states may also allocate a small initial budget with the long-term objective to create awareness and promote the creation of *waqf* in favour of educational and welfare activities where the universities and welfare institutions and NGOs will act as *mutawallis*.

The activities of these *mutawalli* institutions should be coordinated with the government's policies. This will enhance welfare activities and effectively contribute to the government efforts for poverty alleviation and socio-economic development of the society. The

institutional *mutawallis* should manage the *waqf* property with transparency and provide regular financial and performance reports of their welfare activities to the founder of the *waqf* and the public. Furthermore, the power of the *Shari'ah* court should be restored in order to adjudicate on disputes whenever it is necessary. These measures will ensure that the *mutawalli* institutions act with the required independence, transparency and due diligence.

The idea of an institutional *mutawalli* is suitable for income generating *waqf* properties. It is not suitable for *waqf* that do not generate income such as mosques cemeteries, etc. The *Majlis Agama Islam* would still play its role as the *mutawalli* for these *awqaf*.

## **Conclusion**

This paper concludes that the present legal and institutional framework in Malaysia and other Muslim countries is not conducive for the *waqf* to play its rightful and historical role. The appointment of government-run institutions such as the *Majlis Agama Islam* in Malaysia and the ministry of *awqaf* in other countries as the *mutawallis* for all the *waqf* properties has not contributed to the efficient and successful management of the *waqf* properties. This paper concludes that the institutionalization of the office of the *mutawalli* should be the main focus of *waqf* reforms. The law should provide for the establishment of institutional *mutawallis*. These institutional *mutawallis* would be active in areas such as education, *da'wah*, health, poverty alleviation and other welfare activities. In addition, where a *waqf* is dedicated to institutions such as universities, religious schools, hospitals, NGOs and other charitable institutions they should be allowed to assume the job of *mutawallis*. These reforms are needed in order to provide the legal and institutional support for *awqaf* to enable them to function effectively in today's changed circumstances. This will allow *waqf* to effectively support, as it did throughout the Islamic history, educational, health and other welfare activities and once again play its role in socio-economic development.

## References

1. Syed Ameer Ali. 1976. Mahommedan Law. Lahore: Law Publishing Company.
2. Tanzil-ur-Rahman. 1980. *A Code of Muslim Personal Law*. Karachi: Islamic Publishers.
3. Daniela Pioppi, “From Religious Charity to Welfare State and Back. The Case of Islamic Endowments (waqfs) Revival in Egypt”, European University Institute, Florence, Robert Schuman Centre for Advanced Studies, EUI Working Paper RSCAS No. 2004/34. P.3, accessed at <http://cadmus.eui.eu/dspace/handle/1814/2776>.
4. *Wakaf* (Negeri Sembilan) Enactment 2005 (Enactment No. 5 of 2005).
5. *Wakaf* (State of Malacca) Enactment 2005.
6. Administration of the Religion of Islam (State of Selangor) Enactment 2003.