

The Status of Waqf Properties in the Malay-Muslim¹ majority areas of Thailand: A Legal Survey

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Abstract

This paper explores the status of the institution of waqf and relevant laws concerning waqf in the Malay-Muslim majority areas in Thailand. There are some provisions in the Royal Act concerning Muslim mosque, 1947 which speaks about mosque property in general. However, this Act does not reflect the status of waqf property in Islamic law. Of course, other laws, for example, Thai Civil and Commercial Law Code 1934, the Royal Act concerning the Administration of Islamic organization, 1997, the Patronage of Islam Act of 1945, and Thai National Land Code, 1951 speak about the property and trust. The crucial issues as to whether those laws are complete to accommodate the waqf property for Muslims in those four provinces and other Muslims in the country. The study is deemed necessary to highlight some of the weaknesses which should be solved in order to improve and review the existing provisions and other related issues pertaining to waqf properties in those four provinces.

Keywords: *Waqf, Al-Muhammadi waqf committee members, Thai civil laws.*

Introduction

The term waqf literally means “to hold” or “to confine”. This term is used in Islam in the sense of endowing and preserving something for the benefit of the needy among Muslims. It relates primarily to land and buildings and secondly to books, cattle, shares, stocks and cash.

¹ The word “ Malay” reflects the major ethnic traits and characteristics of the people as a distinctive ethnic group while the word “Muslim” used as an adjective emphasizes their religion is inseparable from their ethnicity. Thus, one never hears the expression “Malay-Buddhist” or Malay-Christians” used, for they would be self-contradictory. The term Muslim and Malay always complement each other. See Seni Mudmarn , Social Science Research in Thailand: The Case of the Muslim minority”, in Omar Farouk Bajunid(eds), *Muslim Social Science in ASEAN*, Kuala Lumpur: Yayasan Penataran Ilmu, 1994, p.32. In the context of the Malaysian social fabric, religions are identifiable with races. The Malays profess Islam to the extent that the constitution declares them as Muslims (Art. 160 of the Federal Constitution), Indian usually adhere to Hinduism and the Chinese communities largely profess Buddhism.

Traditionally, the Muslims in those four provinces are deeply religious in sentiment having great attachment to the Islamic institutions and culture. Though there are no official figures of the number of Muslims in Thailand, estimates indicate it to about 6 million, forming 4 percent of the 65 million (in 2001) of the population.² The Muslim communities are concentrated in the four major provinces like Patani, Narathiwat (Menara), Yala (Jala) and Satul (Sentul). They are living primarily in the area near the Northern part of the Malay Peninsula. Moreover, the Muslims in those four provinces in the South are not an immigrant community, but indigenous to the area. They are categorized as Malay-Muslim communities. Being a non-Muslim country, Thailand does not have any law governing specifically to the needs of waqf institution³. Currently, Waqf in those four provinces is run under supervision of the Provincial Islamic committee and Mosque committee.⁴ The main objective of this paper is to examine the availability of Thai laws concerning waqf properties and the practices of waqf committee in the Malay-Muslim majority areas by focusing on the practices of Al-Muhammadi mosque waqf committee. To achieve that aim, the writer organizes this paper as follows: the next section will discuss the method of collecting waqf property, followed by examining the available Thai laws concerning Muslim affairs in Thailand viz., the Royal Act concerning Muslim mosque 1947, the Royal Act concerning Islamic Patronage Act 1945, Thai Civil and Commercial Law Code 1934 and Thai National Land Code 1951. Later the writer will propose some suggestions and recommendations. This article was done via a combination of methods. The preliminary study was through library research. Analysis of the contents of waqf legislation in Thai law. Insights were obtained through interviews and discussions with the *imam*, *khatib* and Muslim Religious Committee Council in Narathiwat.

Method of collecting waqf property

The common practice in collecting waqf property in those areas is that the contributor will donate or dispose his land to the mosque. The recipient will be *imam*. In most cases, the trustee for waqf property is the mosque committee itself. The waqf properties in the Malay-Muslim areas comprise of open land, apartments and rubber or coconut plantations. All these properties were donated to mosques. Incomes from these properties go to the maintenance of mosques and religious schools. The balance will be deposited in the name of waqf committee's account. The objective of collecting waqf property is to bring waqf property towards sustainable development and poverty alleviation.

² Thanet Aphornnsuvan, *History and Politics of the Muslims in Thailand*, Thaamasat University, p.5.

³ Including *zakat* institution.

⁴ Praertchob, Preeda, " Mobilization of Resources through Waqf in Thailand, in Ariff M.(ed.), *The Islamic Voluntary Sector in Southeast Asia*, Pasir Panjang Singapore, Institute of Southeast Asian Studies, 1991, pp.233-58.

Laws Concerning Muslim Affairs in Thailand

In Thailand, all religious matters including waqf, collecting zakat and fitrah were administered jointly by Chularajmontri, Provincial Committee for Islamic Affairs and Mosque Committee. As for the position of waqf land in Thailand is out the ambit of the Thai civil law. Fortunately, there has been decided case by the Provincial court in Narathiwat, southern Thailand as to acceptance of the concept of waqf under Islamic law. Before I discuss that case, it is necessary to study the provisions of two laws concerning the Muslim affairs in Thailand in general. Those two laws are as follows:

The Royal Act concerning Muslim mosque, 1947

In Thailand, Masjid committees have been given the power to manage the mosque and its property according to Islamic law and state law. And secondly, to ensure the proper observance of Islam according to Malay culture. These provisions are in fact very general. By virtue of this Act the mosque committees are formed to administer the affairs of the mosque. Before the committees are appointed, the mosque must be first registered at the Muslim Religious Committee Council (MRCC) in the province. The details of the mosque as to its location, mosque committee members, the letter of the appointment of *imam*, *khatib* and *bilal* must be approved by MRCC and submitted to the governor. The appointment and dismissal of a imam, khtib and bilal is usually made by the MRCC, subjected to the consent by the community in that area. As for the job scope the mosque committees are governed by the Royal Act concerning Muslim mosque, 1947.

List of Registered Mosques in Patani, Narathiwat, Yala and Satul

No	Province	No of Mosque
1	Patani	544
2	Narathiwat	477
3	Yala	308
4	Satul	147

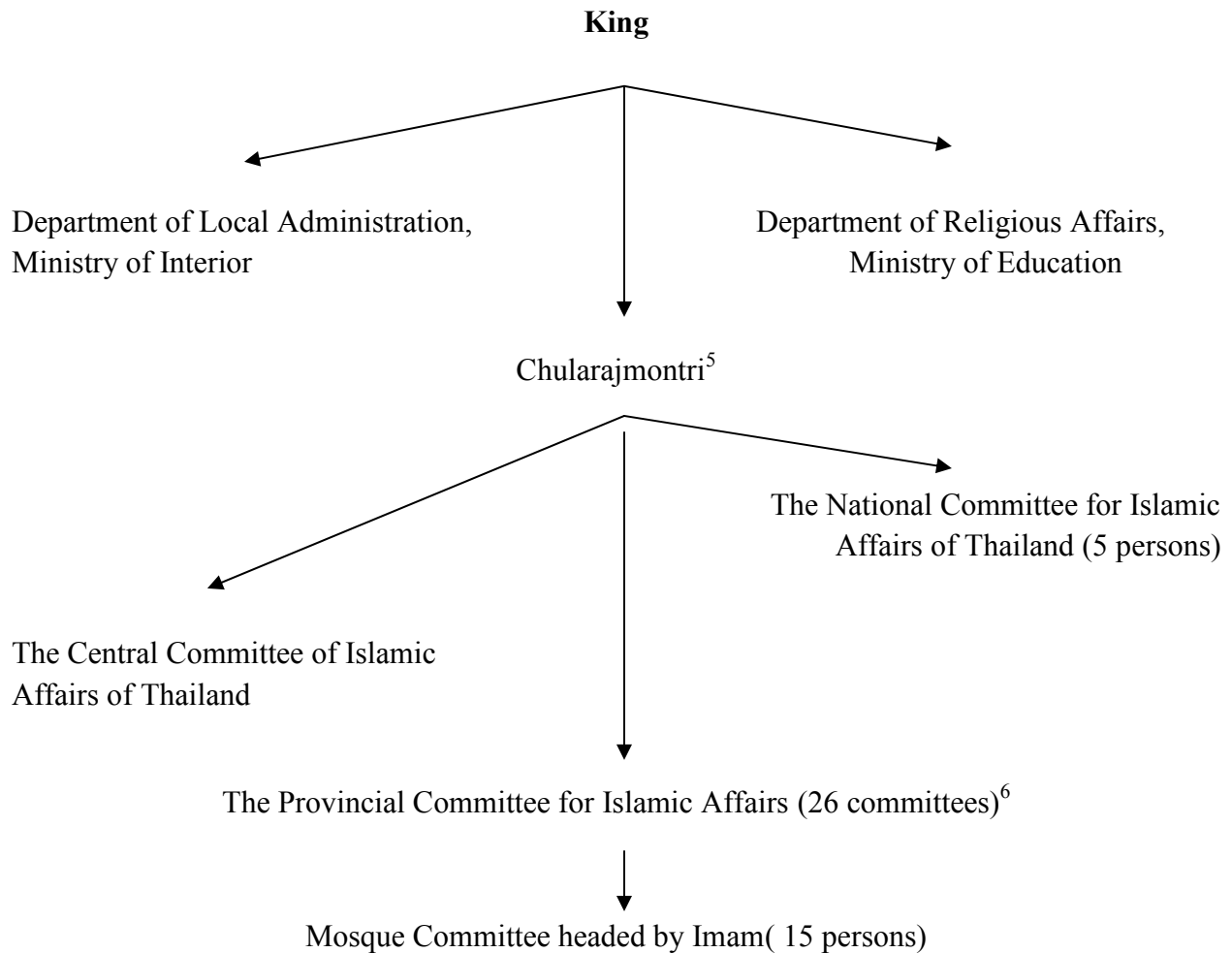
Source: Omar Farouk Bajunid, Muslims in Thailand: A Review, 1999

Composition of the Committee

According to the Patronage of Islam Act of 1945, it provides the composition of the Committee, which consists of Chularajmontri and Provincial Islamic Religious Committee as permanent committee members. Whereas Mosque committees are elected from the communities. Below is the organizational structure of the Muslim affairs in the Kingdom of Thailand.

Figure 1

The flow of the organizational structure of the Muslims affairs in the Kingdom of Thailand



Source: Omar Farouk, “The Muslims of Thailand: A Survey” (1988).

⁵ Chularajmontri is the title of the office given to the Supreme Head of Islam (Shaikul Islam) by the Thai government. The Chularajmontri is appointed by the Thai king and is head of a nation-wide Islamic religions bureaucracy which links up all the registered mosques in Thailand at all level. The Chularajmontri is elected for life by the Central Committee, who is in turn elected by the Provincial Committees. The present Chularajmontri is Shaikh Sawad Sumalayaksak, a Sunni teacher and politician from Bangkok. See Omar Farouk, “The Muslims of Southeast Asia: An overview”, in *Islam and the Economic Development of Southeast Asia*. M.Ariff ed., Institute of Southeast Asia Studies, p.33.

⁶ According to section 7(2) of the Patronage of Islam Act of 1945 any province that does not have the Provincial Islamic committee affairs, the National committee will monitor those Muslim affairs. The provinces which have the Provincial Islamic Committee Affairs are as follows: 1. Patani, 2. Narathiwat, 3. Yala, 4. Satul, 5. Songkhla, 6. Krabi, 7. Surat Thani, 8. Nakorn Si Thammarat, 9. Phattalung, 10. Phuket, 11. Trang, 12. Krabi, 13. Surat Thani, 14. Ranong, 15. Chonburi, 16. Prachuab Khiri Khan, 17. Samut Prakarn, 18. Nakorn Nayok, 19. Nonthaburi, 20. Bangkok, 21. Chachoengsao, 22. Ang Thon, 23. Ayutthaya, 24. Chiangmai, 25. Phetburi and 26. Phanga.

Powers and Duties of the Waqf committee

The committee is vested with the powers and charged with the duties to administer, control and manage waqf properties. It is provided in the Royal Act concerning Muslim mosque 1947. Their responsibilities and duties are as follows:

1. Investing and determining the nature and extent of waqf properties
2. Ensuing that waqf property and incomes arising there from
3. Giving instructions for the proper administration of waqf properties⁷
4. Monitoring the affairs of the mosque⁸
5. Introducing creative and innovative modes of waqf development.

Those duties as provided in the Royal Act suggested that the waqf committee could function as waqf property protectors. However, in practice the waqf committee in those for provinces are facing various problems, for example the problem of staffing, less of creativity and innovative thinking in developing and promoting awqaf. More importantly, most of the committee are lacking of professional expertise in awqaf development.

Analysis the provisions of the Royal Act concerning Muslim mosque1947

According to what has been mentioned above, it found that section 7 of the Royal Act concerning Muslim mosque 1947 speaks about the mosque property by giving the authority to the mosque committee to manage and control over mosque property. Thus according to this law, the waqf committee is the one that has total supervision over all the waqf properties. The waqf committee has the right to freely distribute the endowed money to any direction without being confined to the areas that the original endowers have decided to allocate their money to. This act is too general and vague, it might be abuse of power by waqf committee and therefore, independent body should be appointed.

From what we can see above, it is proven that there is no proper waqf institution which initiated by the government in the four southern border provinces of Thailand. Though there is law speaks about it.

The Royal Act concerning Islamic Patronage Act, 1945

The Act of 1945 was similar with the above Act and was enacted to regulate and monitor the Muslim affairs in Thailand. Though it was similar with the Royal Act, it is important to discuss its provisions. There are two sections which speak about mosque property viz., section 7 and section 8.

Section 7 of the Islamic Patronage Act, 1945 provides to the effect that:

⁷ The interview was made on 29th August 2009.

⁸ See section 26(1)(2) the Royal Act concerning the Administration of Islamic Organization 1997.

“The Provincial Islamic Religious Committee⁹ has the power to monitor and take care the properties owned by mosques”

Section 8 of the Islamic Patronage Act, 1945 also provides

“The procedural regulating concerning appointments and removal and management of the mosque property shall be determined by the National Committee for Islamic affairs with the consent of the Ministry of Interior”.

Analysis the provisions of the Royal Act concerning Islamic Patronage Act 1945

By virtue of section 7 and 8 of the Patronage of Islam Act of 1945 several persons could be appointed as committee to look after mosque property. Secondly, the definition of mosque property includes waqf properties as understood by Muslims. There is also no detailed provision on the qualifications of trustee or *mutawalli*. It is observed that this provision is silent about the appointment of trustee, its procedures of handling the dispute as to the waqf property. This two Acts viz., the Royal Act, 1945 and the Muslim mosque Act, 1947 seem to overlook the importance of waqf property, for example the issue of the registration of waqf property and the appointment and responsibilities of *mutawalis*. Therefore, those two laws as mentioned above should be reviewed and amended. As a result, the MRCC has to adopt a conventional approach wherever the two Acts are silent. In Narathiwat, for example, the normal practice is that when complaint was lodged as to waqf property, the MRCC will call *imam*, *khatib* and *bilal* to give statement. If MRCC is unable to settle the case, the imam with the consultation of the mosque committee members will bring the case to the provincial court. The provincial court will refer to the Thai Civil and Commercial Law Code 1934.

Form the discussion above, it is suggested in such a way because those two laws are very important in the administration of waqf property in Thailand. Besides that there are certain laws which dealt with property and trust.

Certain Other Laws Relevant to the Property Administration in Thailand

After making a study of the Royal Act concerning Muslim mosque, 1947 and the Royal Act concerning Islamic Patronage Act, 1945, it would be pertinent to refer to certain other laws, some of whose provisions are relevant to the waqf property and waqf administration in Thailand in general. They are as follows:

Thai Civil and Commercial Law Code 1934

The core law in Thailand for business is the TCCC. It has been enforced since 1st October 1934 and was amended on 16th October, 1976. This code is considered as final Thai Civil and

⁹ Hereinafter abbreviated, as the PIRC.

Commercial law applicable to the Thai-Buddhist people.¹⁰ The TCCC, 1934 sets forth general principles and specific rules for the gamut of civil law issues affecting businesses and individuals. Some of the topics of special interest to businesses include sales, obligations, contracts - general and specific, wrongful acts (torts, such as liability for negligence or intentional harm), property, mortgage and other forms of loan security, company and partnership law and agency. For individuals, the TCCC, 1934 covers marriage, divorce, wills and estate administration, and parental rights and duties.

The relevant sections of the TCCC, 1934 are sections 522,523, 524, 525, 526, 527 and section 537 which specifically refers to the gifts. However, those sections did not successfully apply to Muslim waqfs. The rationale behind highlighting this law is because the court will normally to refer to it despite the fact that the case is involving the issue of waqf property.

Gift under Thai Civil and Commercial Law Code 1934 as example

The concept of transfer of property without any consideration is recognized under the TCCC. Section 521 of TCCC provides, a gift is a contract whereby a person called the donor, transfers gratuitously a property of his own to another person, called the donee, and the donee accepts such property.

Thai National Land Code 1951¹¹

Section 84 of the Thai National Land Code, 1951 provides that wats¹², Roman Catholic Churches, Christian Foundations or Moslem may acquire land with the permission of the Minister and may acquire not more than fifty acres. In appropriate cases the minister may allow the acquisition of more land than that prescribed in the preceding paragraph. The provisions of this Section shall not affect the acquisition of land prior to the effective date of this Code or acquisition of land of the Moslems¹³ Masjid under the provisions of Moslem Law in a Changwat (province) having an Islamic magistrate (Dato Yuthitham)¹⁴.

Section 86 further provides aliens may acquire land by virtue of the provisions of a treaty giving the right to own immovable properties and subject to the provisions of this Code. Subject to the section 84 the aforesaid aliens may acquire land for residence, commerce, industry, agriculture,

¹⁰ Rongruj Reung Watwong, *Krub Khrua(Family)*,(Bangkok: Winyuchun, n.d.,) at 12-13.

¹¹ It has been enforced since 1 st December 1951. This code is considered as final Thai National Land Code applicable to the Thai people.

¹² It is a Thai word which means Thai Buddhist temples.

¹³ The correct spelling is Muslims.

¹⁴ The word “ Yuthitham” is a Thai word which means justice whereas the word “Dato” is a Malay word which is referring to a venerable person. However, the Malay Muslims in the south of Thailand usually call the Muslim judges as “ tok Kadi”. According to the rule of administration in the seven principalities of 1902, the title of the Muslim judge was called “ tok kali”. This title was first employed by the Thai government to refer to a Muslim judge. In 1917 the Ministry of Justice has changed the title of the to *kali* to *Dato’ Yuthitham*. See a letter issued by the Ministry of Justice No: 30/4353 dated on 24th September 1917. For further reading on the roles and qualifications of the Dato’ Yuthitham in the Provincial court, see Sulaiman Dorloh, *The Position of Islamic Law in the Four Southern Border Provinces of Thailand*, Journal Shariah, vol: 14, Jul-Dec 2006, at. 6-7.

burial, public charity or religion under the conditions and procedures prescribed in Ministerial Regulations and with the permission of the Minister.

Section 87 also provides, the amount of land which may be permitted under the preceding section is as follows:

- (1) For residence, per family, not more than 1 rai¹⁵
- (2) For commerce, not more than 1 rai
- (3) For industry, not more than 10 rais
- (4) For agriculture, not more than 10 rais
- (5) For religion, not more than 1 rai
- (6) For public charity, not more than 5 rai
- (7) For burial, per family, not more than ½ rai

Section 86 of the Act speaks about the acquisition of the government land by foreigners for religious purposes. The amount of land which will be disposed by the government is 1 acre.

Analysis of the Thai National Land Code 1951

A closer study of the code reveals that the government has authority to dispose the land for religious purposes. The amount of land permitted is 50 acres. However, pursuant to article 84 of the Thai National Land Code the mosques which are situated in the four provinces for example, Patani, Narathiwat, Yala and Satul may acquire more than 50 acres subject the approval of the Ministry of Home Affairs. Those provisions are silent about waqf property as understood by the Muslims. Secondly, the Thai National Land Code, 1951 seem to overlook the importance of the Royal Act concerning Islamic Patronage Act, 1945 and the Royal Act concerning Muslim mosque 1947.

¹⁵ It is a Thai word which mean acre.

Waqf property of Al-Muhammadi Mosque, Banthon village, Narathiwat province: An Example

In almost every village in the Malay-Muslim majority areas there was a mosque, however, in the village of Banthon, Narathiwat province, there are three mosques. Al-Muhammadi mosque is among the oldest mosque.¹⁶

It was registered in the year of 2496 B.E.¹⁷ The awqaf properties of this mosque are under the purview of Al-Muhammadi waqf committee. The secretary of the Al-Muhammadi waqf committee is also a *khatib* of the Al-Muhammadi mosque. The total number of waqf properties managed by Al-Muhammadi mosque is 3 arcs of coconut land. The total monetary value of immovable properties of Al-Muhammadi mosque has been estimated 80,000 Thai Baht.¹⁸ Below is the registered Al-Muhammadi waqf property.

Al-Muhammadi Waqf Property

No	Items	Location	Remark
1.	Coconut land for 3 arcs	Ban Thon Beach	Center for Pre-school was built
2	Farming land for 4 arcs	Adjacent to Kubang Tiga Kub carnal on main road to Pek Bon	Currently is Ma'had al-Nahdhah al-Hadithah
3	Grave yard for 3 arcs	Main Road to Ban Thon Beach	
4	Tents, Tables, chairs	Al-Muhammadi's Store house	Rentable

Source: File report on Al-Muhammadi waqf property

As for expenditure on monthly electricity charges is deducted from weekly and monthly donation. The local government administration sanctioned a sum of 50,000 Thai Baht during the year 1990-1991 to Al-Muhammadi mosque as subsidy for reconstruction of Al-Muhammadi meeting room.

¹⁶ Or its alternate name, the Ban Thon mosque, located about 15 kilometers from the provincial capital of Narathiwat. It is said to have been built in 1874, complete in the year 1999. A well-known religious scholar such as Baba Haji Ashaari Bin Haji Mohd. Carried out his teaching here. One of Baba Haji Ashaari's student, Ustaz Abd. Samad Bin Haji Che Dir, took over Baba Haji Ashaari's place.

¹⁷ Registration No: 93/2496.

¹⁸ The interview was made on 30th April 2009.

Encroachment

A serious problem faced by the waqf properties relates to the encroachment by unauthorized person on open lands. It found that they constructed wooden houses on waqf land for their dwellings. Currently there are four houses were constructing on waqf property¹⁹ despite the fact that the encroachers have been warned by the Mosque committees. So far there is no action has been taken by the Mosque committee to remove the encroachment.

Litigation: A case study of Al-Muhammadi waqf property endowment

The suit was firstly filed at the Naratiwat Muslim Religious Committee Council. The committee was unable to settle the dispute. In February 1999, the suit was filed at the Narathiwat provincial court Waqf Committee of Muhammadi mosque. It was filed against individual trustees. In this case the Waqf Committee of Muhammadi mosque demanded a piece of land which was registered in the name of individual trustees given to the Al-Muhammadi mosque. According to Waqf Muhammadi committee, such property must be transferred and registered under the Al-Muhammadi mosque to avoid from converting a donated into private property by the trustees.

The plaintiff argued that the said land was donated by the villagers to Ma'had al-Nahdhah al-Hadithat but not to the Al-Muhammadi mosque. The witnesses were called. After hearing the witnesses from both sides, the court allows to transfer the disputed land to the Al-Muhammadi waqf property under the supervision of Al-Muhammadi mosque committee.

The learned judge of the Narathiwat provincial court was of the view that the Al-Muhammadi mosque can own the waqf property provided that Al-Muhammadi mosque must be first registered under the Masjid Act, 1847. The referred to the cases decided by the appeal court. However, this decision according to the writing could not be applied to other cases. This is because under the Thai judicial system, a trial court in Thailand is not bound by prior court rulings when it decides an issue under the TCCC, 1934 or any other Thai law for that matter. Every case brought before a Thai trial court is subject to the trial court judge's personal interpretation of the plain meaning of the applicable laws. Since the laws, by necessity, are often not specific and sometimes not even plain, predicting results on particular issues is sometimes an uncertain science. Still, the language of the TCCC, 1934 is usually clear enough, and previous court rulings - especially those of the Thai Supreme Court - serve as reasonable guidelines for interpreting less certain provisions. Fortunately, the plaintiff did not an appeal on this issue.

From the decided case above we may conclude that the status of waqf property in those Muslim majority areas is unsecured unless Thai Government Issue law concerning waqf property for Muslims in Thailand.

¹⁹ The interview was made on 30th April 2009.

Suggestions and way forwards

Based on the foregoing discussion the followings are suggestions on the improvements of those weaknesses:

1. Accepting Shariah as part of Thai law. The possibility of making Shariah as a source of Thai law is based on the decided cases by the Thai judges in the case of Al-Muhammadi waqf property. There are several articles in the TCCC, 1934 should be reviewed in consultation with Muslim scholars and religious leaders.
2. As none of the Thai National Land Code provision and other laws is devoted to waqf land, the only way lands can be dedicated for waqf by Muslims is through the mechanisms of Islamic law of waqf which are being implemented at the Islamic religious councils in those four areas.
3. Since there is no waqf legislation in Thailand. This will be problematic for the waqfs as some of the regulations could be inappropriate and not in line with Islamic rules and hence, there is a need for a new and complete law for waqf. If the law could not be passed by the parliament. It is suggested that the call for establishment of an independent body or board which is responsible to regulate waqf institutions should be considered by Thai government.

Conclusion

However, despite the deteriorated conditions that face the waqf system in the Malay-Muslim majority areas in Thailand, there are currently lots of voices that are aware of the significance of waqf and call for reviving and re-organizing it. In fact, reviving the waqf could play a vital role in mobilizing our local resources and achieving development. It does not, however, mean that for the effective waqf administration, the Government alone is responsible. In fact the whole society in general and those who connected with the waqf administration in particular have to be more responsible towards Waqf administration. Therefore, it is necessary to unite and empower all possible efforts that aim at revitalizing the culture of waqf in those areas and to emphasize on its potential as a financial institution able to achieve sustainable development.

Reference

Omar Farouk, "The Muslims of Southeast Asia: An overview", in *Islam and the Economic Development of Southeast Asia*. M. Ariff ed., Institute of Southeast Asia Studies.

Praertchob, Preeda,(1991) "Mobilization of Resources through Waqf in Thailand, in Ariff M.(ed.), *The Islamic Voluntary Sector in Southeast Asia*, Pasir Panjang Singapore, Institute of Southeast Asian Studies.

Rongruj Reung Watwong, (n.d.) *Krub Khrua(Family)*,(Bangkok: Winyuchun.

Seni Mudmarn , *Social Science Research in Thailand: The Case of the Muslim minority*", in Omar Farouk Bajunid(eds), (1994) *Muslim Social Science in ASEAN*, Kuala Lumpur: Yayasan Penataran Ilmu.

Sulaiman Dorloh,(2006) *The Position of Islamic Law in the Four Southern Border Provinces of Thailand*, *Journal Shariah*, vol: 14, Jul-Dec.

Thanet Aphornnsuvan (nd), *History and Politics of the Muslims in Thailand*, Thammasat University.

Statute

Thai Civil and Commercial Law Code, 1934

The Royal Act concerning Islamic Patronage Act, 1945

Royal Act concerning Muslim mosque, 1947

Thai National Land Code, 1951

List of Interviewees

Ustaz Marzugi Bin Muhammad Diah, imam Al-Muhammadi mosque

Ustaz Ahmad Bin Omar, khatib Al-Muhammadi mosque