REVITALISING THE DEVELOPMENT OF WAQF PROPERTIES: A WAY FORWARD

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Abstract

The paper proposes the conceptual criteria of a special purpose vehicle (SPV) for the development of waqf properties, but with a new identity known as the Special Property Development Entity (SPDE). It intends to help the State Islamic Religious Councils (SIRC) who consistently dealing with various types of waqf institutional problems and unfavourable governmental regulations or procedures. The aim of this study is to establish a versatile organization set up for SPDE in helping the SIRC to improve the waqf institution. The objectives of this study are to propose the concept and to determine the key criteria for the establishment of SPDE. Since this study is still at the preliminary stage, this paper is presenting only the underlying theory that become the concept and proposing the criteria for the SPDE based from various literature. The eight identified criteria in this paper have significantly become as the basis for data collection stage and refinement later on.

Keywords: Waqf Development, Agency Model, Special Property Development Entity (SPDE)

1.0 INTRODUCTION

The centralized administration of waqf land under the State Islamic Religious Councils (SIRCs) have made waqf institution in Malaysia become structurally organized, thus would give the exclusive administration power to the SIRCs. SIRCs have the control to determine the development of waqf properties, which simply not to be conducted by any party without prior permission. The centralization of waqf administration has taken place in stages since 1950’s that prolonged until after the independent of the country. Although waqf had first been centrally managed in the Straits Settlements in 1905 by the British, but after the establishment of SIRCs in the Malay states and the introduction of the Administration of Islamic Law Enactment by every state, the process became rapid which saw all the waqf assets such as mosques, graveyards, and waqf lands managed by individuals were mandatorily transferred to the SIRCs as the sole trustee. In that post-World War I and II period, waqf in many Muslim countries like Egypt, Turkey, and Iran had experienced such reform due to the process of nationalization (Stibbard et al., 2012). In some countries, waqf has been abolished, but for other Muslim countries, waqf is put under a highly regulated framework, which including the transfer administration power from individual management into the custodianship of an appointed organization (Sait and Lim, 2006).

There were reasons why waqf had been placed under the centralized government purview. The biggest reasons were due to mismanagement by the trustees who did not give full attention to protect waqf property (Mohsin, 2010), nepotism (Sait and Lim, 2006), colonial intervention and the need for lands by the government (Stibbard et al., 2012). In Malaysia, the issue of mismanagement and incompetency of the trustees also happened, which causes waqf properties to become the subject cases in the court trials (Nasution, 2002; Tunku Alina Alias, 2013), but the initiative was originally to protect waqf and Muslim assets from the British rulings which
were clearly had intervened in the Muslim affairs (Siti Mashitoh Mahamood, 2006).

In the context of management, centralization has its advantages such as simple, inexpensive, encourage specialization and efficiency of managerial and technical sources and most importantly allows rapid decision making (David, 2011). However, after more than fifty years the SIRCs hold the status of the sole trustee and centrally managed the waqf, the involvement of the public in administrating the waqf has become very low except for a small group of people who involve directly in managing the religious schools, orphanages, mosques and a few others. It turns out to produce the generation who do not know much about the waqf. Waqf has been neglected by the public for such a long period, thus has been sidelined in the country’s mainstream agenda (Nik Hassan, 2014).

Much efforts have been taken by the SIRCs, the Department of Awqaf, Zakat & Hajj (JAWHAR) and Malaysian Awqaf Foundation (Yayasan Waqaf Malaysia - YWM) to educate and create awareness among the public through various initiatives including the campaign, developing more waqf lands, launching new waqf products, strategic co-operation with the government and non-government agencies, increasing the reading materials on waqf, research collaborations with academics community and many more. However, it still requires a lot more efforts to revitalize the waqf institution in fully.

Giving focus on the property development, this paper is trying to explore the concept of Special Property Development Entity (SPDE) in expediting the development of waqf properties. SPDE is worth to be explored because it adds another alternative for SIRCs to consider in developing the waqf properties, as well as to become a game changer in waqf development. It suits with a view that the government is corporatizing many functions in its civil service while maintaining its high degree of centralization. Further explanation on SPDE will be provided in the next section.

2.0 PROBLEM STATEMENTS

2.1 Facing up to structural and agency challenges

The processes of developing the waqf properties require SIRCs to abide by the available regulations and dealing with various agencies. Development is not a static process, but rather involves with complexities and dynamism (Jowsey, 2011). The integration between the legislation structure and agencies is vital in putting the development control in place. Regardless of any development project, normally the owner, the developer, the consultants or the contractors would seek for advantages by looking for any supporting regulations as well as the loopholes or shortage of regulations. Manipulating the available advantages is perceived as a skill that only owned by seasoned development actors who have vast experience in property development. SIRCs, on the other hand, are not a developer per se. In the waqf development context, this is the shortage that the SIRCs have due to lack of development exposure and competent technical staff (Mohsin et al., 2016; Siti Mashitoh Mahamood, 2006). SIRCs also have a lack of funds or limited access to the development funding, which contribute to slow waqf development (Mar Iman and Mohammad, 2014). Furthermore, every state is imposing different regulatory and management framework for waqf, thus contributing to significant differences between states (Baharuddin Sayin, 2010). So, regarding the interaction between the structure (set up/legislation) and agency (development actor), it can be said that SIRCs need for the greater capability to handle this matter and face all the incoming challenges.

2.2 Governmental procedural and bureaucracy issues

The fact that many waqf lands are undeveloped and left idle is considered as tragic because land is a scarce resource that should be optimized its usage. It is undeniable that there are issues such as scattered, small size, unsuitable land geology, lack of development potential and located in the unpreferable community area or deep in a rural area which hinder the development efforts (Abdul
Majid and Said, 2014; Sulaiman, 2008). However, a bunch of underperformance factors such as the financial issue, management and administration, unqualified staffs, procedure, law, bureaucracy, procrastination and delay are also identified as significant impediments to the development (Abdul Majid and Said, 2014; Chowdhury et al., 2012; Hassan and Abdullah, 2008; Mar Iman and Mohamad, 2014; Siti Mashitoh Mahamood, 2006). The public would pinpoint SIRCs as not doing enough in promulgating and maintaining the waqf agenda in the country. SIRCs that operate like a government entity have to oblige to many governmental regulations, rules, and procedures that subject to hierarchical and superior orders. Apart from that, the procedures will become tighten, and lengthier when comes to the budget application with a high possibility of rejection (Abd Majid, 2015). Other than that, the government style of set up in SIRCs is hindering them from entering the capital market, unless if they can have a subsidiary company or special vehicle as a medium. The issue of not having enough development fund and lack of financing sources are always put SIRCs in a deep difficulty and require them to seek and launch various capital pooling initiatives (Ismail et al., 2014; Mar Iman and Mohamad, 2014; Mohammad et al., 2005; Mohd Hanefah et al., 2009). Multiple financing models using the capital market have been explored and studied by the Security Commission to help waqf institution (Securities Commission, 2014), but those models have yet to be implemented because SIRCs are so restricted with the governmental set up and governance limitation. It is difficult for SIRCs to initiate more waqf development projects if they do not have an independent vehicle that can free up themselves from following certain constraining governmental procedures and restrictions.

3.0 DEVELOPING THE WAQF PROPERTIES

The development of waqf has received vast attention from many parties after realizing that waqf properties contain huge development potential worth at estimate of RM1.2 billion (Islamic Finance News, 2014). With the intention to unlock the value of these waqf properties, SIRCs have explored various development approaches. JAWHAR also plays its roles to expedite the effort by facilitating the communication between SIRCs and the Federal government. Apart from that, JAWHAR and YWM have helped to channel funding from the Federal government to develop the waqf land or initiating the development projects. For instance, the Federal government has allocated RM256.4 million in the 9th Malaysia Plan and RM72.76 million in the 10th Malaysia Plan through JAWHAR for the development of waqf properties in states (C. Mohd, 2014). Also, the Federal government was channeling RM20 million in 2010, RM10 million in 2012, RM5 million in 2013 and RM50 million (in stages) for corporate waqf in 2015 to YWM for the development of small scale and high impact projects and to strengthen Muslim Bumiputra economy opportunities (C. Mohd, 2015a). The development through the Federal funding would normally be conducted through the central contract and appointment of the Public Works Department as the implementing body.

At the state level, the developments of waqf properties were conducted in various approaches according to strategy and capability of the particular SIRC. Among the approaches are:

1. Initiate the development through internal funding (Hydzulkifli Hashim Omar and Asmak Ab Rahman, 2015; Mohd Syahiran Abdul Latif and Hasan Bahrom, 2008).
2. Getting the development funding from the State government such as for the construction of mosque (Mohamad Khaerul Izwan Riffin et al., 2014)
3. Joint-funding between the SIRC and waqf donors (Mohamad Khaerul Izwan Riffin et al., 2014)
4. Joint-venture between the SIRC and corporate bodies or Government-link Companies (GLCs) such as the Waqaf An-Nur Corporation and Tabung Haji (C. Mohd, 2015b; Mohamad Khaerul Izwan Riffin et al., 2014)
5. Joint-venture between the SIRC and property developers such as UDA Waqf Sdn. Bhd. and Nada Sepakat Corporation (C. Mohd, 2015b).
6. Public-private partnership (PPP) procurement approach (Hydzulkifli Hashim Omar and Asmak Ab Rahman, 2015; Mohd Syahiran Abdul Latif and Hasan Bahrom, 2008). There are many models under PPP such as Built-Operate-Transfer (BOT). Built-Lease-Operate-Transfer (BLOT) and others.

7. Lease the land and give the lessee permission to develop (Afiffudin Mohammed Noor et al., 2014).

8. *Istibdal* of the land (Hydzulkifli Hashim Omar and Asmak Ab Rahman, 2015) as a way to liquidate the capital for the development.

The above development approaches have been adopted by SIRCs in regular according to the suitability and scale of the development project. Another development approach that is workable, but has yet to be covered in the literature within the Malaysian context is the establishment of a development arm that become the subsidiary of SIRC that is focusing on developing the waqf properties. Currently, there is only one company in Malaysia that has been established to carry that development arm function, which known as the Urus Maju Ehsan (M) Sdn. Bhd. (UME) under the Selangor Waqf Corporation (Perbadanan Wakaf Selangor - PWS). It has been established in late 2014 and has been regarded as ‘special vehicle’ to PWS (UME Company Profile, 2016).

The establishment of UME is replicating the concept of Warees Investment Pte Ltd., a subsidiary of the Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura – MUIS) that has been established in 2002 to become a development arm for MUIS. Warees is professionally managed and mostly driven by the market itself, thus allowing the company to take advantage of the market (Osman, 2014). The approach has been recognised as successful and workable to unlock the value of the waqf land (Md Saad et al., 2013; Mohd Hanefah et al., 2009).

Waqf institution in Malaysia is still finding the mechanism to overcome the bureaucracy issue in their administration set up and at the same time can pool the property development resources. Hence, this study is interested in exploring the concept of a dedicated waqf property development arm or vehicle under the SIRCs to be implemented in other states. This kind of private-oriented development vehicle owned by SIRCs is not widely discussed at the moment, giving a chance for this study to fill up this gap. This study is also preferred to rename this development arm or vehicle as the Special Property Development Entity (SPDE), mainly to differentiate it with normally referred special purpose vehicle (SPV) in other development projects. Next section will discuss some important features about property developer that perceived as suitable for the establishment of SPDE for waqf.

### 4.0 DEVELOPERS AS CATALYST FOR DEVELOPMENT

The developer is referred to the key person in a development project, and the developer must work together with many other professionals as a formal development team to assist in a project, particularly when the development is large and involves a huge amount of money (Mohammad and Mar Iman, 2006). The developer is responsible to assembles the inputs for production, organizes the production process and to put the product on the market, for the purpose of enjoying the yield resulted from the development activities (Healey, 1991). It is important to mention that property developers are the responsible agency to supply the real estate products into the market and orchestrate the components of development, thus shaping the urbanisation growth (Adams *et al.*, 2012).

Studies on development process have been carried out since in the middle of 1950s and mainly influenced by the Neo-Classical Economic Theory and Marxist theoretical assumptions (Guy and Henneberry, 2000). Many development models have been established to depict the important development concepts such as Drewett’s Model (1973), Kaiser and Weiss’s (1970) model of the residential land conversion process, Land development model by Goodchild and Munton (1985), the development process model by Barrett *et al.* (1978), Circuit of Capital Model by Harvey (1985) and many more. Analyzing all those models, Healey (1991) had
identified a few development models based on her critical observations on the available studies and theories at that time; the Agency Model was one of the identified models focussing on actors in the development process specifically on their roles and interests. It emphasized the roles, behaviour and decisions of different actors, their interrelationships and the impact they have on development (Guy and Henneberry, 2002). The model linked the actors with the broader context of development event sequence (Zöllig and Axhausen, 2011) and highlighted the relationship of bargaining and the consultation in the development (Ismail, 1995). Agency Model is important to emphasize the availability of the development actors and recognise their roles in influencing the overall development initiatives.

On a different note, everybody agrees that property development is a risky activity (Millington, 2000; Wilkinson et al., 2008) that exposes to various external and internal consequences either the controllable or uncontrollable factors. Furthermore, in the economic context, there are market failure symptoms such as monopolies, oligopolies, upward only rent reviews, subsidies, immobility, externalities, trade unions, high transaction costs and other market imperfections that will distort the situation and further expose the development activities into risk (Mar Iman, 2012). Although the risks remain, the situation can be cushioned through having a proper market study before the development is carried out and conducting consistent monitoring with proper risk management plan.

Having a model to support this study would strengthen the idea of incorporating the development arm in waqf development. Although waqf is a religion matter, this study believes that waqf should incorporate the knowledge from the various studies area as well. Concisely, this study is borrowing the idea from the Agency Model, which emphasize the important roles of developer and their interest as agent for the development.

5.0 METHODOLOGY

The aim of this study is to establish a versatile organization set up for SPDE that would function as a private-oriented development vehicle in helping the SIRC to improve the waqf institution. The objectives of this study are to propose the concept and to determine the key criteria for the establishment of SPDE. In the process to achieve the objectives, this study was firstly had to review the development models from the literature to find the concept. Overall, this study has examined five main models from Healey and five more models from other scholars. The concept is intentional to support the proposed idea of SPDE establishment and justify the strategy. Secondly, the process to determine the key criteria for SPDE has been conducted through the content analysis, mainly to search the possible criteria to make the organization fundamentally strong and versatile in the long run. The inexhaustive list of criteria then has been grouped into eight criteria to confine the focus as will be explained in next section.

6.0 RESULTS AND DISCUSSIONS

The searching finally satisfied with the Agency Model as proposed by Healey (1991). The Agency Model has become the preferred model because it entails the concept that suitable with the proposed SPDE because the agency is referring to the development actors. As intended, the roles of development actors become significant in shaping up the development processes considering that they are all professionals. Furthermore, they are more dynamic towards the imposed system and could drive their strategy well in the volatile market environment. The action and reaction to the available opportunity and threat would make the development actors become sensible, practical and realistic in making decisions and changing their routes. Development actors have some flexibility to maneuver their organization in the market better than the SIRCs if the SIRCs get involved in the development activities. SPDE as a development actor would become a complementary to the SIRCs that usually not so adaptive towards change due to their governmental alike set up, which drown with various policies, procedures, and bureaucracies.

So, referring to the previous paragraph, this study would like to address that the establishment of SPDE is almost consistent with the Agency
Model. However, the concept must be tailored to the local environment especially the SIRCs needs. In conceptual, this study is proposing that the SPDE in Malaysia must be a private entity that becomes the subsidiary wholly owned by the SIRC. It must have the autonomy to run the property development business for SIRC but must be governed through a good blend of Board Members or any mechanism that the SIRC could determine.

There are a few justifications for having this kind of SPDE that this study can address. Among them are:

1. Most development projects are a success under the control of developers, considering that developers are specialized in the development projects and have the right professional team.
2. SIRCs can focus more on the administration aspects of waqf properties rather than putting the unnecessary effort to involve in the development project, considering that people in SIRCs are not trained to get involved in the development. Furthermore, SIRCs can transfer the risk of managing the development project onto this SPDE.
3. SIRCs can have a proper setting of developing a company that understands the needs of SIRCs in conducting the development project. Unlike appointing other developers who may not necessarily understand the underlying spirit of waqf. SIRCs can instill the right qualities in the SPDE according to the right aspiration.
4. SIRCs are alike the government set up. Acting like a government body, SIRCs do not have clear access to the capital market, unlike the private entity. So, SIRCs may use SPDE as a vehicle to access the capital market. However, the realization of this approach must come with the condition that the corporate governance of SPDE must strictly follow the required governance standard.

Having this kind of SPDE does not mean that SIRCs would lose their control on the development waqf properties, but rather, the SPDE must be regarded as a facilitating vehicle that can ease the burden of SIRCs. Instead of becoming the project manager, SIRCs can shift their roles as a client who has the supreme decision on the project.

On the establishment criteria, this study able to recognize eight criteria that seem significant in the establishment of SPDE. The list of criteria can be referred in Figure 1.

Figure 1: The proposed criteria of Special Property Development Entity (SPDE)

The proposed eight criteria for SPDE are:

1. Establishment strategy (Pearce and Robinson, 2007)
2. Vision, mission, policy & regulation set up (David, 2011; Musa Ali, 2015; Pearce and Robinson, 2007)
3. Core business capabilities (Nor Azzah Kamri, 2015)
4. Income and financial controls (Ang Huat Bin, 2015; Norlida Kamaluddin et al., 2014)
5. Operational and execution strategy (Ahmad Zamri Osman, 2010; Pearce and Robinson, 2007)
6. Human resources and stakeholders (Musa Ali, 2015; Noor Hidayah Samsudin, 2016; Nor Azzah Kamri, 2015; Norlida Kamaluddin et al., 2014)
7. Performance measurement (David, 2011; Musa Ali, 2015; Norlida Kamaluddin et al., 2014)
In order to suit with the Islamic organization, some ‘accommodating modifications’ need to be done because highly important here is how these criteria can become in harmony with the core religious understanding and Shariah laws relating to waqf. The determinant of these eight criteria was based on the comprehensiveness and vigorousness nature of the property development that requires for a dynamic spectrum of criteria and opens for certain adjustment. The main purpose of these criteria is to accommodate the setup of SPDE in achieving the optimal operational aspects in a blend with the Islamic religious principles.

By adopting the earlier mentioned criteria, some interpretations of SPDE criteria are given as follows:

1. Establishment strategy – this part is specifying the relationship of SPDE with SIRCs. It also to dictate the level of independence that the SPDE has in governing its organisation.

2. Vision, Mission, Policy, and Regulation Set Up – is concerned about the internal orientation within the organisation. These will drive the organisation towards specific goal as mutually agreed between SIRCs and SPDE. The corporate governance should also be spelled out within this.

3. Core Business Capabilities – This part is important in determining the core business that SPDE should take. Diversification in business activities should be mutually agreed between SIRCs and SPDE.

4. Income and Financial Controls – Ideally, SPDE should not become financially dependent on SIRCs. Instead, SPDE should be able to give dividends to SIRCs. SPDE should be able to generate sustainable income and creative in securing financing for the development similar to any other property developers. Having a good business model is very important for SPDE. At certain extent, SPDE should adopt the concept of Social Entrepreneur.

5. Operational and Execution Strategy – SPDE must be professionally governed, which inculcating the corporate attitude. Its operational strategy should be detached from its parent (SIRCs) governance. To ensure its accountability, SPDE should at least incorporate dual accountability. First, to fulfill its corporate governance that answerable to its stakeholders and secondly, to fulfill the Shariah audit conducted by SIRCs or by Securities Commission’s Shariah Advisory Council to ensure it complies with Shariah principles. Also, SPDE should have its Shariah advisor team.

6. Human Resources and Stake Holders – Functions like a property developer, SPDE should have a variation of professionals in its lineup who responsible for various tasks. The selection of the staffs must also consider their understanding of waqf and spirit to ensure that the organisation is internally driven by people with the right attitude. Regular training is a must to enrich the knowledge.

7. Performance Measurement – It is vital for SPDE to have a dynamic measurement tool in its organisation. SPDE should be driven by strong performance to deliver values to the community and to capture trust from people. The employment of ‘best practice concept’ coupled with any proven performance measurement tool will sustain professionalism and resilient in its operation.

8. Growth and Expansion Strategy – SPDE must equip with a growth strategy. The property market is dynamic, and any property player will find it hard to sustain strong growth in this market. Despite fulfilling its social responsibility and already has its market segment, it does not mean that SPDE should become complacent. It must be commercially driven and competitive like any other property developers. Having a short, medium and long-term planning is crucial for SPDE sustainability.

7.0 CONCLUSION

Many academic studies have raised their concerns on how to develop waqf properties with the aspiration to transform this institution into an independent and sustainable in generating consistent benefits to the community. Numerous ideas and proposals have been tabled to improve the situation by looking at both the fundamental and operational aspects of waqf. These brilliant ideas are so valuable, but it takes time for the
responsible authorities to address, recognise, develop and implement these ideas until they are tested.

In regards to this study, the process to expand the concept of SPDE into the knowledge of SIRC would face some challenges. SIRC now have options on many other development approaches, thus to establish an SPDE like in Selangor would require them to scrutinize on every aspect. Furthermore, the proposed SPDE cannot promise to solve all the development problems because real estate sector is naturally full with complexities. However, looking at the achievements by Warees and UME, it can be regarded as realistic and possible to transform the waqf development sector.

Another point to address here is, although the idea to establish the SPDE by SIRC seem like taking the idea from Warees, it is impossible to copy what the Singaporean has done merely. It never easy to implement other country’s experience because the regulation framework in Malaysia is considered as complicated and varies between states. In reality, the implementation has to deal with non-standardization between states before it can become a success. The proposed SPDE concept should be scrutinized further by considering the different needs of SIRC and the suitability of local set up.

Theoretically, this study could propose an alternative for the SIRC to consider as a new addition to the current waqf development approaches. This study also has to admit that there are so many things that this study needs to detail out and consider further, especially in the execution phase.

REFERENCES


Nik Hassan, N. M. (2014). The Economics of Awqf Institution. Presented at the Seminar "Promoting Waqf as a Mainstream Tool in the National Economic Policy, Intitute of Islamic Understanding Malaysia (IKIM), Kuala Lumpur, Malaysia.


Tunru Alina Alias, (2013). Introduction of Family and Public Waqfs into the Malay States in the 19th and early 20th Centuries and External Influences on the Norms Affecting Waqfs of Malaysia up to 1957. Presented at the Middle East Studies Association 47th Annual Meeting (MESA 2013), Middle East Studies Association (MESA), Sheraton New Orleans Hotel, New Orleans LA.
