

CHAPTER 1

RESEARCH BACKGROUND

1.1 Introduction

Chapter one will discuss the research background. This chapter explains *waqf*, its practices, and issue. Moreover, this chapter provides details on the problem statement of this study. In this topic, the detailed issue and problems of the study are explained. Another subtopic in this chapter is the scope of study that explains the limitation and range of this study. This study was carried out to identify the challenges of the *Al-Tawriq* application. Thus, this study will focus on the development of undeveloped and unproductive *waqf* assets. Other subtopics include research questions concerning the concept of *Al-Tawriq*, potential and challenges. The study objective of this thesis is under another subtopic that reviews the three purposes of this study. Finally, there is a subtopic on the significance of the study, explaining the impact of the *Al-Tawriq* instrument for *waqf* asset development and the structure of research writing at the end of the chapter.

1.2 Background of Study

In Muslim countries throughout the world, resources become available in the form of an endowment known as *waqf*, not only in the hands of individuals or large corporations. *Waqf* is known as one of the charitable social acts that can be a source of funding for economic and social growth by the Sharia (Anwar Pitchay,2018). *Waqf* is common in Malaysia. The practice of *Waqf* in Malaysia can be traced to the 14th century after the embrace of Islam through the Malacca Sultanate (Aun, 1975). Several *Waqf* lands have existed since the Malaya era, which resembles Malaysia's independence (Mohd Thas Thaker,2018).

The *waqf* organisation must retain sufficient revenue-generating assets to be autonomous and self-reliant. However, *waqf*'s negligence over the past two centuries has culminated in many undeveloped and abandoned *waqf* properties in distinct Muslim countries. A thousand acres of *waqf* lands and properties in Malaysia were abandoned, undeveloped, or outperformed. Because of the difficulty in the *waqf* definition, or the narrow spaces of legal and financial institutions, a solution to the *waqf* growth problem remains futile. The current statistics of *waqf* land in Malaysia where the total area of *waqf* land was 30,888.89 hectares representing 14,356 lots (Yayasan Waqaf Malaysia, 2016: revised to 15th November 2013). For example, in Pulau Pinang (MAINPP), the statistics showed that in 2013, there were 507.50 hectares of undeveloped and abandoned *waqf* land in Pulau Pinang involving general and special *waqf* (MAINPP, 2013).

Based on these purposes, a further study must be performed on the original roles and functions of the *waqf* property in order to enhance the *waqf* structure in the context of Muslim guidance and solutions. Moreover, this study extended studies from previous research where *Al-Tawriq* is allowable to be implemented to develop

unproductive and idle *waqf* land (Fuadah,2019). *Al-Tawriq* was implemented in the execution of *Waqf* Abdul Kader in Pulau Pinang even it was not identified terminology; in other words, being executed unconsciously. However, this study raised concern as a research problem on challenges the *waqf* managers face in implementing *Al-Tawriq*. So, this study raised a huge gap on how these *Al-Tawriq* can be implemented, the challenges and how to overcome the challenges. Therefore, this study concentrated on the *waqf* land's growth, administration, and development must be handled positively.

The term of *Al-Tawriq* was revived as a solution to unproductive *waqf* assets during a special session of Round Table Discussion *Tawriq Waqf* 2020 held on 18th February 2020 at the Universiti Sains Islam Malaysia. Mohd Daud Bakar is the one who mooted the term *Al-Tawriq* as the solution to the current problem, the idea of *Al-Tawriq* for *waqf* assets will be implemented to solve the problems of abandonment cited (Fuadah et al., 2019) in a research paper. In other words, the development of *waqf* properties is an issue due to the lack of cash for developing *waqf* assets when too many *waqf* assets are being contributed.

Al-Tawriq is derived from the word *wariq*, which is in the dictionary of Lisan al-Arab explains the origin of the word *wariq* is *waraq* which means leaves from a tree, while the meaning of the term is *Darahim al-Madrubah*. *Al-Tawriq* has been discussed among fiqh and scholars in *kitab thurats*. *Al-Tawriq* is the root word for *al-Wariq*, which intends to convert assets into liquidity. Cash liquidity means selling any asset converted to cash or cash equivalent in a timely and cost-effective manner. In the case of a *waqf* asset, *Al-Tawriq* sells part of the *waqf* property to cover expenses of administration, repairing, or construction. Thus, *Al-Tawriq* can be interpreted in two situations. The first is to liquidate assets to obtain cash. The second is the liquidation

of immovable (real property) assets through the creation of new debts/financial instruments (certificates) in transferring financial assets from the original lender to another, largely through financial institutions, and stock exchanges (Fuadah, 2019)

The *Al-Tawriq Istibdaliah* approach through *waqf* is not meant to eradicate the original purpose of *waqf*. However, in addition, it is also the principle from which the initial endowment property is traded for liquidity and is substituted willingly. Besides, sales and selling rates are consistent with much more sustainable property and optimum utilisations.

According to Al-Nasyami (2009), *Al-Tawriq* also means cash liquidity in the form of (securities), i.e., an instrument that mobilises a variety of secured debt assets by converting them from debts to acquire deposits and instead, directly offer them to the public for subscriptions in the form of securities necessary to reduce risks and ensure continuous liquidity of cash flows. The process of issuing such securities is known as *taškik*. The word *tawriq* (securitization) is frequently used as synonymous to *taškik*. The OIC's International Islamic Fiqh Academy (hereafter referred to as IIFA) defines it as "the issuance of negotiable securities based on a profitable investment project" (Magazine of the IIFA, 2004, vol. 2, p. 309).

Apart from that, *Al-Tawriq* is a new instrument in the *waqf* industry. It is a good instrument to expand against undeveloped *waqf* land, which helps the social economics of the underprivileged among Muslims. The *Al-Tawriq* root verb from الورق (money) simply means the ability to get liquidity of undeveloped *waqf* land. In other words, this study is a solution to the problem of lack of financial resources that lead to *waqf* lands cannot be developed and abandoned without providing lucrative returns for maximum benefit to the Muslim community in general, and some *waqf* projects also could not be continued due to lack of capital (Fuadah, 2019).

One of the challenges of *Al-Tawriq* instrument application for *waqf* assets includes an issue from the *waqf* managers themselves as they do not correctly understand the term. Thus, this research provides a better understanding of what *Al-Tawriq* means for *waqf* betterment.

Besides having a lot of *al-waqif* (donors) in Malaysia, there are some issues from the managerial perspective of *waqf* properties, especially on *waqf* land. Lack of financial aspect to develop a *waqf* asset will restrain the beneficiary from getting the benefits from the *waqf*. Furthermore, the charitable purpose of *al-waqif* will be stranded. As a sole trust for *waqf* properties, SIRC faces difficulties to develop *waqf* land due to financial shortage impact.

A larger amount of *waqf* land requires good management for the development of *waqf* land itself. These lands are indeed beneficial and provide great contribution if they were developed optimally. However, as in Selangor at Mukim Panchang Bedena, Sabak Bernam, there are 25 acres of idle *waqf* land due to a lack of financial resources (Fuadah et al., 2018; Othman, 2015).

Besides having a good *waqf* administration in Malaysia, it could not be denied that there are some issues, especially on the *waqf* land in Malaysia, which have become unattended and idle *waqf* lands. The lack of financial resources is also a hindrance investing in *waqf* land. This is the main issue and challenges faced by the *waqf* administration. Moreover, the government has allocated RM 250 million for the development of *waqf* lands throughout Malaysia to construct mosques, surau, and charitable activities for the benefit of the people (Kamarubahrin & Ahmed Ayedh, 2018). However, there are still undeveloped *waqf* lands in Malaysia due to fund shortages.

In addition, there are three types of *waqf* in Malaysia, i.e., general *waqf*, specific *waqf*, and a *waqf* with unrecognised status (Othman, 2015). Specific *waqf* is the most established *waqf*, which is 372 acres (71.6 per cent), general *waqf* 134 acres (25.7 per cent), and the last one is 14 acres (2.7 per cent), which is *waqf* with unrecognised status. In terms of area, the *waqf* land for the three types of *waqf* recorded throughout the state of Selangor has amounted to 1,708.77 acres, which specific *waqf* recorded the largest land area of 1,371.38 acres (80.2 per cent) (Othman, 2015; Ahmad Hafiz. 2021, "Statistik Wakaf". Interview. 5 August). The research of master plan transformation of *waqf* property development in Malaysia (2016) has estimated around 30,888,89 hectares undeveloped *waqf* land in Malaysia throughout 2016.

The *Al-Tawriq* concept is one of the most appropriate and efficient ways for *waqf* property development processes. The key issue here is whether selling idle assets for liquidity is appropriate. Thus, some scholars' have opinions on the permission to sell idle *waqf* properties to get liquidity (*Al-Tawriq*).

1.3 Problem Statement

Waqf property is among the most important economic development instruments, especially to generate positive returns to the beneficiaries. Various methods could be utilised in developing *waqf* properties, either movable or immovable assets. *Waqf* managers are the person responsible for administering the *waqf* property to the beneficiaries' best interests. Besides having positive development of *waqf* land, some issues and challenges arise in managing *waqf* property. Lack of financial resources in generating maximum revenue to provide more benefits to the beneficiaries is one of the issues.

A lot of undeveloped and unproductive *waqf* land become idle due to a lack of financial resources. Located in rural areas, scattered, and lack of potential to be developed are the reasons for undeveloped *waqf* land. Therefore, according to Shatzmiller (2001) is also of the view that misconduct and abuse of power in *waqf* management, lack of experience in large-scale organisational management, uncertain political environment and unrecognised *waqf* status as a corporate body in court proceedings are challenges to effective endowment development efforts. Therefore, this is a crucial issue that needs to be resolved immediately to ensure that *waqf* assets are beneficial to societies.

Statistics reported by the Malaysian Department of *Waqf*, Zakat, and Hajj (JAWHAR) in 2015 indicates that Malaysia's *waqf* land has been estimated at 3,300.78 hectares or 29.75% of the 11,091.82 hectares that have been developed. This area includes 23,771 hectares or 0.21% developed under the JAWHAR *Waqf* Property Development program. However, there are 7,791.04 hectares or 70.25% of undeveloped *waqf* land (JAWHAR, 2015; Ahmad Hafiz. 2021, "Statistik Wakaf". Interview. 5 August). However, to develop all the undeveloped *waqf* land need impactful source of fund or financing. The real reality, to collect the *waqf* fund for huge project need time and impactful donors. Therefore, the *waqf* manager need to utilise the existing *waqf* assets to liquidate and develop the idle *waqf* land.

Another study mentioned that the underlying factors for undeveloped land are due to these four issues: unclear current status of *waqf* land development, *waqf* land type and location, lack of financing of the *awqaf* and inefficient management. (Khalidah Dahlan et al., 2014). Therefore, Fuadah (2018) stated that *Al-Tawriq* that liquidates and sells *waqf* assets is one of the latest solutions mooted by Mohd Daud Bakar (Global Sharia Leader) to address the problem of unproductive, idle,

commercial value and scarce resources, aimed at financing maintenance or development costs.

This study examines *waqf* managers' understanding and acceptance of the concept of the *Al-Tawriq* instrument as one approach in resolving the problem of unproductive and idle *waqf* land (in reflecting to the previous view of the mismanagement, lack of experience either internal or external issues as challenges to the effective *waqf* development for public goods (Shatzmiller, 2001). A *waqf* manager need to have a strong understanding of the concept of *Al-Tawriq* for this instrument to be effectively utilised and one of the attempts to develop *waqf* assets further while increasing benefits to *waqf* beneficiaries.

Thus, this study proposes challenges of implementing *Al-Tawriq* instrument from the perspective of the *waqf* manager as reality to be discovered. The study outlines the research questions as follow:

1.4 Research Question

1. What are the opinions of *waqf* managers about the *Al-Tawriq* instrument for solving the undeveloped *waqf* asset?
2. How can *Al-Tawriq* be implemented for *waqf* assets in Malaysia?
3. What are the challenges to implement the *Al-Tawriq* instrument to resolve the *waqf* issue?

1.5 Research Objectives

In conjunction with the research questions, three specific research objectives were established as follows:

1. To describe opinions of the concept of *Al-Tawriq waqf* among *waqf* managers.
2. To assess the potential implementation of *Al-Tawriq* for *waqf* assets in Malaysia.
3. To identify the challenges of implementing the *Al-Tawriq* instrument to solve the *waqf* problem.

1.6 Significance of the Study

This research enables the recognition and application of *Al-Tawriq* by the State Religious Islamic Council to develop unproductive *waqf* resources. *Al-Tawriq* is a method for liquidating unproductive or idle *waqf* assets and is then used to support the maintenance costs of other *waqf* assets and the development of *waqf* assets, thus increasing the quality of *waqf* assets. It is important to divide the significance of this research into two categories: 1) Knowledge contribution. This research proposes *Al-Tawriq* as an instrument for undeveloped *waqf* assets in Malaysia. In addition, to answer the study's first objective, the knowledge of *waqf* managers on implementing *Al-Tawriq* is very important. The concept and practice of implementation need to be well understood to ensure the instrument of *Al-Tawriq Istibdal* is used properly. Furthermore, the new terminology and implications of *Al-Tawriq* also lead to society's new knowledge among Muslims. 2) Policy implementation. This study recommends

several solutions for better governance in the Islamic Council because the second objective of these study is to assess potential implementation of *Al-Tawriq* for the solution of unproductive and idle *waqf* land in Malaysia and these recommendations can be given to the Council for improvement, in particular, for the *waqf* institutions. In addition, the third objective of this study is to find out the challenges that exist in implementing *Al-Tawriq*. This will facilitate policy implementation to reduce further the risks faced by *waqf* managers when implementing *Al-Tawriq*.

The State Islamic Religious Council (SIRC) is the sole trustee for the administrator of *waqf* assets and is responsible for mandatory registration, uses, possessions of properties, and all the requirements set out in the Federal Gazette concerning *waqf* asset activities (Md.Dahlan & Abdul Rani, 2006). It can help the State Islamic Religious Council solve undeveloped *waqf* assets through the *Al-Tawriq* instrument. Since *waqf* is part of the community assets that is also part of the economic structure, the outcome of this project allows the growth of *waqf* in Malaysia and saves the *waqf* land from remain idle, hence, the use of *Al-Tawriq*'s liquidity instrument. Hence, SIRC will be very successful in controlling *waqf* properties using the *Al-Tawriq* method to gain *waqf* land liquidity.

This research is significant as a main reference to the SIRC. The SIRC is the sole trusty and stakeholders of *waqf* land that will benefit in managing the *waqf* land more smoothly through the proposed solution to the challenges identified in this study. Furthermore, students, researchers, and academics are expected to benefit from this study as a supporting resource in further *waqf* real estate research. At the same time, it can educate the public about *waqf* real estate and optimise the growth of awareness between the hereafter and the world by combining the domain of real estate with the Islamic *waqf* framework.

Al-Tawriq instrument has a huge potential in social-economic development, especially in the *waqf* properties development and in Muslim society's economic growth. This instrument will relieve the State Islamic Religious Councils' responsibility to deal with the *waqf* property issue. If *Al-Tawriq* instruments are used to liquidate *waqf* resources, *waqf* management will be more effective. Additionally, this research focuses only on the production in Malaysia of *waqf* instruments for undeveloped *waqf* assets.

1.7 Scope and Limitation of the Study

This research focusses on the development of the *Al-Tawriq* instrument for *waqf* assets through a comprehensive analysis to define and evaluate the frameworks of *Al-Tawriq* instrument by the State Islamic Religious Council in Malaysia. The population size of the *waqf* institutions gathered from the State Islamic Religious Council website are four. *Waqf* managers from Johor State Islamic Religious Council (MAIJ), Pulau Pinang State Islamic Religious Council (MAINPP), Terengganu State Islamic Religious Council (MAIDAM), and Kedah State Islamic Religious Council (MAIK) were interviewed. The State Islamic Religious Council was appointed on two requirements later explained in this chapter's segment on research methods.

The purpose of the research was to explore the challenges to implementing of the *Al-Tawriq* instrument through a deeper understanding of the institution's undeveloped *waqf* asset concept and process. To achieve validity of the research purpose, this research did not allow distinctions between the *waqf* and many other types of endowments/charitable organisations in achieving similar views. Therefore, all SIRC was proposed for *waqf* interview session, however only four SIRC were

available to be interviewed. Nevertheless, there is also a need for potential work incorporating other factors and extending the study to other Malaysian states.

Furthermore, the discussion on the *Al-Tawriq* instrument will only concentrate on the *Al-Tawriq* challenges and the feasibility of the *Al-Tawriq* in the SIRC. It will not confer on the legal aspects of the SIRC practice, the enactment or the *Waqf* ordinance itself. In addition, this study only focuses on *Al-Tawriq* instrument for *waqf* institution in Malaysia.

1.8 Operational Definition

These are several keywords used to clarify the aims and meaning of this conducted study. Such keywords are described as operational definitions as follows:

Challenge: According to the Cambridge Dictionary, the word of the challenge is “(the situation of being faced it) something that needs great mental or physical effort in order to be done successfully and therefore tests a person ability”: In this research, the phrase means what are the hedges or stumbling block in order to implement *Al-Tawriq* to develop unproductive *waqf* assets.

Al-Tawriq: To liquidate or sell the *waqf* asset.

Waqf Managers: The definition of this term is drawn from Kahf.M’s (1992) description, i.e., “the *waqf* manager is usually called *mutawalli* and his/her responsibility to administer the *waqf* property to the best benefit of the beneficiaries.”

State Religious Islamic Council: This term is defined in the interpretation of Ismail et al. (2015) as “[i]n Malaysia, every state manages its *waqf* department under the governance of State Islamic Religion Councils (SIRCs). As sole trustees of *waqf* funds, SIRCs are responsible for managing all the activities and transactions done for the development and collection of funds as well as to invest and distribute the revenues from the funds.”

1.9 Structure of Research Writing

The study is divided into five chapters containing an introduction, literature review, research methodology, data analysis and findings, and conclusions and recommendations. Details are explained in the following paragraphs for each chapter.

Chapter One consists of the introduction which discusses the research background, problem statement, research questions and objectives, the scope of the research, the significance of the research method, and operational definitions.

Chapter Two discusses reviews of previous literature: *Al-Tawriq* terminologies, the implementation of *Al-Tawriq*, and the challenges of implementing *Al-Tawriq*, *waqf* institutions in Malaysia, and *waqf* property development around the world.

Subsequently, *Chapter Three* discusses how the research was carried out. The qualitative approach was used in this research. The *waqf* managers from SRIC were interviewed to collect the evidence about undeveloped *waqf* assets and the feasibility of *Al-Tawriq* implementation.

Next, *Chapter Four* then analyses the data gathered from separate interview sessions with *waqf* managers from MAINJ, MAINPP, MAINK, and MAIDAM.

Finally, *Chapter Five* presents the conclusions of this study and the recommendations for future research related to the *Al-Tawriq* instrument.