

WAQF SYSTEM DURING SOUTHEAST ASIA'S DECOLONIZATION PERIOD

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Abstract: *The purpose of this research is to contrast the Waqf systems in Southeast Asian nations with Muslim majorities. This study employs a qualitative literature review methodology. The most frequently cited works listed in trustworthy journals indexed by scopus were used for this study. The analysis of the waqf system in this paper takes place in the years following these nations' independence from colonial rule. The Waqf legal structure and the governing bodies that oversee it are the subject of the study. We selected a number of Southeast Asian nations, including Indonesia, Malaysia, Brunei Darussalam, and Singapore, as our sample of Muslim-majority nations. According to the data, the majority of waqf institutions in Southeast Asia are legitimate.*

Keywords: *Waqf System, Decolonization, Southeast Asia*

1. Introduction

Waqf is a way for a Muslim to transfer ownership based on trust while continuing to follow the laws and regulations of Islamic law. It is meant to be used for ongoing public social service. Funds donated to charity are used to support Waqf operations. Waqf was originally thought of as an immovable object at the dawn of Islam, but as the religion developed, waqf came to be recognized by Islamic law as movable property (Kuran 2016).

According to Sukmana's research from 2020, which used the most widely referenced articles from recognized publications, financial subjects account for 35% of the waqf literature. The lowest amount, being roughly 6% of the whole body of literature, is found in topics related to waqf history. Another fascinating subject is the relationship between waqf and economic development, which accounts about 25% of the literature referenced. It may be deduced that among the other themes covered in waqf literature, historical analysis has the least interest (Sukmana 2020). Working in the area with the fewest references in it is difficult. Basically, terminology used in waqf study and literature includes words like waqf, wakf, vakf, vakif, waqf, evkaf, awqaf, aukaf, and auqaf. These terms—Islamic-based waqf, Islamic foundations, and Muslim social foundations—are nearly frequently used interchangeably. The terms piety, religion, generosity, trust, and agency with reference to Islamic law or fiqh are what are meant by religious charitable institutions (Islahi 2003). Abdul and Islahi claim that research on waqf

has been documented in terms of sharia factors as well as implementation aspects connected to socio-economics, waqf institutions, and their management in their research from 2003. It was also highlighted that there is still room for improvement in the historical literature and sources of comparison.

Waqf implementations across the globe, particularly in Muslim nations, encounter challenges to its long-term viability. According to Cizakca, "A History of Philanthropic Foundations" demonstrates how the waqf's lengthy history has been marked by widespread upheaval. The condition first surfaced in the nineteenth and twentieth centuries, according to historical evidence. According to his writings, western imperialism was one of the reasons contributing to the chaos, and other institutional issues including the stability of the political system and the waqf administration system also had a significant impact (Cizakca 1997). Waqf can be seen as a reflection of one's charitable deeds and piety. Since 750 AD or even before, waqf has been used to provide public goods. Waqf, Islamic trusts, and pious foundations are all treated equally in Timur Kuran. Waqf is governed in Islamic law, and its usage activities are what make it different. Waqf has advantages that are not just for Muslims (Kuran 2001). Evidence demonstrates that the west, including countries like South Africa, Britain, and Spain, as well as the Muslim world, recognize waqf (Cizakca 1997). The majority of academics feel that the roots of English ideas can be found in Roman or German law under the Christian Church because of the philanthropic endowments that Rome and medieval Europe provided to western civilisation. The following is how Cizakca emphasizes the distinction between waqf and trust in Christianity:

Table 1. Difference between Waqf and Trust in Christianity

WAQF	TRUST
Generally charitable and has religious motive	No religious motive needed
Founder may be the beneficiary (only under Hanafi law).	Founder may be the beneficiary
Ultimate objective must be the benefit of mankind.	Any lawful objective will do
Property vests in Allah	Property vests in the trustee
Mutawalli only a manager	Trustee has larger power
Perpetual, cannot be terminated under any circumstances	Need not be permanent. Can be terminated as stipulated in the trust deed.
Irrevocable	Revocable
Corpus is immobilized	Corpus is immobilized
Usufruct is used for the benefit of mankind	Usufruct is used for the objective stated in the deed

The fact that the ownership and benefit of waqf assets are separated is not a recent legal idea distinguishes waqf from mandate. The assignment of usufructuary rights to waqf property from generation to generation for charitable purposes was encouraged by traditional Muslim thinkers from the first three centuries of Islamic teachings. There is no proof that a sophisticated scheme for reaping successive and multiple gains existed before Islam. Additionally, the waqf idea of eternity holds that a trust need not be perpetual and may be terminated in accordance with the terms of the deed of trust (Cizakca 1997).

The introduction of Islam to Southeast Asia is where the history of waqf in the region began, either in the 11th or 13th centuries (Lombard and Salmon 1993; Islam 2018a). Muslim traders from South India, Indonesia, and the Arabian Peninsula donated the first few waqfs. In

Indonesia, Singapore, and Penang, these endowments take the form of mosques (Budi 2005; Islam 2018b; Lombard and Salmon 1993). The waqf must adhere to some sort of idea in order to endure forever. Study of the differences in the waqf laws followed in Indonesia, Malaysia, Singapore, Brunei Darussalam, Thailand, and the Philippines in Southeast Asia. This essay compares the issue of the traditional idea of Islamic charitable organizations (Waqf) in nations with Muslim majorities and minorities. Muslim-majority nations, including Indonesia, Malaysia, and Brunei Darussalam. Singapore, Thailand, and the Philippines serve as ambassadors for nations where Muslims make up a minority population.

2. Literature Review

2.1 Waqf

Waqf assets have historically been utilized to fund public facilities for health, education, and other purposes. The waqf monies are used to pay teacher wages. Scholarships are offered to students so they can advance in their studies. This fund also covers medical and healthcare expenses (Nahar and Yaacob, 2011).

A hadith that says: "Ab Hurairah (may Allah be pleased with him) reported the apostle of Allah (SAW) saying: When a man dies, his deeds are interrupted, but three; repeated alms (adaqah al-jriyah), or knowledge (which is beneficial to humans), or pious children who pray for it." is where waqf gets its name.¹⁹ As a result, Muslim minds are always thinking about waqf organizations. In order to seek eternal rewards in this world and the hereafter, they are accustomed to offering alms in the form of both moveable and immovable goods, and they will attempt to carry out acts of devotion (Nawawi 1428).

One of the most significant socioeconomic organizations in Islam is the waqf (Islamic waqf). repeatedly falling under the heading of alms (charity). The Holy Quran and the Prophet (pbuh)'s Sunnah serve as the foundation for waqf law (shariah). Waqf can be classified into a number of different categories, including khayri (general) waqf, expert (family), mushtarak (mixed), istibdal (exchange), and cash waqf or part of waqf. All immovable property, including cash waqf or waqf funds that have been contributed in part. The job, the state, or a regulating body acknowledged by the government are typically in charge of waqf implementation. Islamic law is the only law that is recognized by one type of government; nevertheless, common law and sharia law are both used by another type of government. It is only natural that civil law concerns clash with sharia law when talking about how to apply waqf in the realm of government authority.

Waqf implementation requires the fulfillment of at least four requirements or components (Alabij, 1989):

1. Waqif, who is the originator of the waqf and who must be responsible and mature; the waqf must also be voluntary;
2. Mauquf - property or capital - must be wholly possessed by the wakif and unencumbered by any debts. According to Yediildiz (1996), property must be completely owned by the wakif in order to be dedicated to waqf; in Islam, obtaining and owning property is connected to human effort and work;
3. Mauquf 'alaih - beneficiaries - whether family members, ancestors, or needy people and society (ummah), the beneficiary may not be, for example, an adversary of Islam; and
4. Sighah-ijab and Qabul Waqf (Offer and acceptance)

Additionally, a mutawalli (i.e., the person regarded as the manager of the waqf) chosen by the waqif records and administers the waqf. The requirements for a muwalli are as follows: (1) a sound mind; (2) baligh; (3) trust; and (4) the capacity to arrange and administer waqf assets. To have better control over the waqf property, all three requirements must be completed; otherwise, a new mutawalli must be chosen (Syed Othman, 1986).

Founders were permitted to name themselves as waqf trustees and/or heirs in the early phases of the establishment of waqf legislation, as well as members of their families and direct descendants. Income won't be allotted for specific pious objectives until after the lineage has died out (Cizakca, 1998; Hoexter, 1998; Kahf, 1999; Van Leeuwen, 1999).

There are three different types of waqf, according to Kahfi (1998). One of these is strictly religious waqf, which includes things like mosques or prayer rooms that are used for worship. Second, charitable waqf, such as those for hospitals or schools, and third, family or hereditary waqf (waqaf al awlad) or expert waqf. Third, it is asserted that waqf is a wholly Islamic invention that was developed by the Companions of the Prophet Muhammad (saw) and flourished under the rule of Umar Al Khattab, the Second Caliph (Kahfi, 1999).

Waqf is further divided into three categories by Syed Othman (1986). Khayri waqf, often known as general waqf (for the good of society), is the first category. This waqf is committed to advancing the welfare of the underprivileged, the needy, and public institutions such hospitals that offer free healthcare to the ill and the destitute, schools, universities for higher learning, and centers for scientific research. In other terms, it will be categorized as khayri waqf (generic waqf) if the community is the beneficiary (Baharuddin, 1998; Hassan, 1984). The waqf manager will be responsible for allocating the funds because the waqf deed does not name a beneficiary. It advances the goals of the entire community or a significant portion of society (Kahf, 1999). According to Abu Huraira, the Prophet (saw) said, "When a person dies, all of his actions end, except three; multiply alms (sadaqah jarriyah), or knowledge (which is beneficial to humans), or pious children who pray for it. This waqf is said to be in line with the spirit of worship because the waqif will receive rewards for good deeds even after he dies.

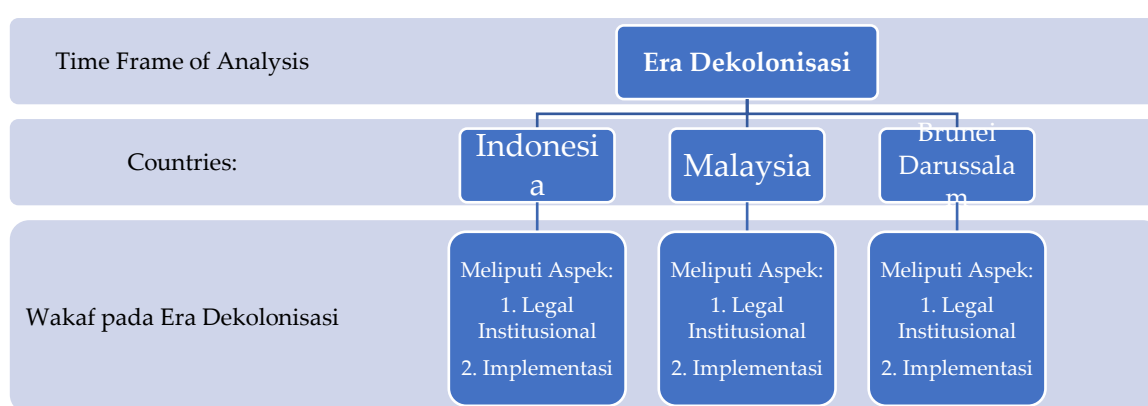
The list of earlier studies that served as references for this investigation is shown below. The research in the table below is distinguished according to the country that is the focus of each study area.

Tabel 2. Previews Researches

Research Area	Researcher & Year
Brunei Darussalam	(Abu Bakar et al. 2020)
Indonesia	(Adijani 1989; Fauzia 2008; Fauzia and Rohayati 2016; Hasanah 2018; Ihsan and Mohamed Ibrahim 2011; Nurdany 2019; Radyati and Hasan 2006; Royyani and Shobaruddin 2020; Rusydiana and Devi n.d.)
Malaysia	(Ambrose, Aslam, and Hanafi 2015; Arshad and Mohd Zain 2017; Azha et al. 2013; Aziz and Ali 2018; Harun et al. 2016; bin Mohd Noor and Bt Mohd Yunus 2014; Muhammad Firdaus Bin Abdul Rahman and Muhammad Amanullah 2017; Muhammad Fakhrrurrazi Ahmad 2020; Pitchay,

	Meera, and Saleem 2014; Rahmany 2019; Tagoranao, Gamon, and Zain 2020; Yaacob 2013)
Singapore	(Abdul Karim 2010; Abdullah and Saiti 2016; Brown 2008a, 2008b; Hamber and Haneef 2017; Hanefah Mohd Mustafa et al. 2011; Listiana and Alhabshi 2020; Mohammed Nasar et al. 2020a, 2020b; Mohiddin 2019; Saad, Kassim, and Hamid 2013; Shabana 2011; Wakaf 2019)

Based on a number of other studies, we prepared the framework for this study as indicated in Figure below:



3. Discussion and Conclusion

3.1. Research Method

This study employs a method for doing literature research and adopts a qualitative methodology. Books must be read, analyzed, and sorted in order to identify the key characteristic of the materials. It is utilized for comparisons between historical and research source data in order to derive results and conclusions from research questions by methodically identifying research data analysis. The literature will be examined in this study to break down the concept of waqf into four parts:

1. The Madzhab upheld in each nation
2. Government policies during the Decolonization era
3. The legal authorities in charge of waqf institutions within the state
4. The government mechanisms in place to control waqf institutions in each nation

The focus of this study is South East Asian nations with a predominately Muslim population, where it is assumed that waqf has been practiced since before independence. The nations with a majority of Muslims that we selected are Indonesia, Malaysia, and Brunei Darussalam.

The focus of this work is limited to information from the study of waqf history in English, Indonesian, and Arabic after 1945. As for the information, this study draws its material from the most cited books and credible publications. Utilizing Nvivo software and publish or perish

is essential for gathering resources. In this study, waqf institutions were examined from the time of colonialism till numerous countries gained their independence.

3.2. Decolonization in Indonesia, Malaysia and Brunei Darussalam

According to Betts, decolonization in 2012 refers to the abolition of colonialism, where colonialism is the process by which governments dominate foreign territories, typically overseas. The discussion of decolonization has primarily centered on the independence movement of the colony area's inhabitants, which was preceded by the end of global colonial rule. The discussion also includes the economic, cultural, and psychological aspects of the colonial experience (Betts, 2012).

The decolonization of Indonesia, Malaysia, and Brunei Darussalam occurred between the 1940s and the 1980s. According to Benda (1965), Indonesia's decolonization from the Dutch East Indies lasted from 1945 to 1949. Malaysia's negotiations with the British government between 1957 and 1963 facilitated the decolonization process (Yacob and White, 2010). Brunei Darussalam, on the other hand, became independent of the Malaysian government between 1966 and 1984 (Leifer 1978).

Table 3. Country, Independence, Colonial Government and Decolonization Period

Country	Independence	Colonizer (Colonial Name)	Decolonization Period
<i>Indonesia</i>	17 August 1945	Netherlands (Dutch East Indies)	1945-1949
<i>Malaysia</i>	31 August 1957	British Empire (Malaya, Colony of North Borneo, Colony of Sarawak)	1957-1963
<i>Brunei Darussalam</i>	1 January 1984	British Empire, Malaysia (Brunei)	1966-1984

Source: Compiled by writer

3.3. Waqf Legal System and Legal Institutions of Waqf Institutions in Indonesia, Malaysia and Brunei Darussalam during the Decolonization Period

On the basis of the publication of waqf institution authorities in each country, it can be concluded that each government has given waqf institutions special consideration. Only Indonesia, out of the three nations, issued official regulations long after the decolonization period. Prior to decolonization, Malaysia and Brunei Darussalam issued official regulations regarding waqf institutions.

The decolonization period concluded in 1949, while Indonesian regulations were issued in 1960. Before Malaysia's independence, in 1950, the kingdoms of Perak, Selangor, Trengganu, Malacca, and Johor reached an agreement on centralized waqf regulations, which Malaysia began issuing in 1951. In 1956, after adhering to the official regulations of the Malaysian state government, Malaysia declared its independence. In 1984, the government of Brunei Darussalam issued official regulations pertaining to waqf institutions, demonstrating its concern for these organizations.

Table 4. Country and Basis for Regulation of Waqf Institutions in Decolonization Periods

Negara	Pondasi Regulasi Lembaga Wakaf
<i>Indonesia</i>	Law No. 05 of 1960 concerning Agrarian Principles precisely in article 49 but still did not specifically mention the waqf regulation
<i>Malaysia</i>	Series of Waqf Law 1950s centralized the waqf system in Malaysia (Perak, Selangor, Trengganu, Malacca, Johor) The legal of waqf in Malaysia were state under Section 25 of the Civil Law Act 1956
<i>Brunei Darussalam</i>	The legal of waqf in Brunei was under Laws of Brunei, 1/1984, Religious Council and Kadi Courts. Everything about waqf was under Akta Majlis Ugama Islam dan Mahkamah-Mahkamah Kadi Penggal 77 dalam bab 98 dan 100 (Rabitah Harun et al., 2012).

Source: Compiled by writer

Government regulations regarding waqf institutions demonstrate concern for the government's implementation of the waqf concept. In this study, the concept of waqf is broken down into four aspects: the adhered Madzhab, government policies during the Decolonization period, legal authorities responsible for waqf institutions within the state, and government mechanisms for regulating waqf institutions in each country.

Based on the publication of each country's waqf institutions, the following conclusions can be drawn:

Table 5. Comparison of the Waqf Concept during the Decolonization Period in 3 Countries

Indikator	Indonesia	Malaysia	Brunei Darussalam
Madzhab	4 Imams	Syafi	Syafi
State policy in decolonization period	The state leaves the management of waqf to private waqf institutions	The state takes over the legal authority of the waqf institution	The state takes over the legal authority of the waqf institution
Legal Authority	Community ulama institution	State islamic religions council (sirc)	The religious council (muib)
Government mechanism	Decentralized	Centralized	Centralized

Source: Compiled by writer

3.4. Conclusion

During decolonization, Indonesia was the only country in Southeast Asia with a Muslim majority that did not have centralized waqf administration, in contrast to Malaysia and Brunei. This is because the geographical area is larger and more dispersed, and because the waqf institution's authority was inherited from a greater number of Islamic kingdoms than the other two countries.

From this research, the following questions can be recommended for further study: Does centralization lead to a state environment that is conducive to the effective management of waqf?

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