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### RESEARCH ARTICLE

#### MOHAMED HAJI HASHIM WAQF: LESSONS LEARNT FROM ITS LAND DEVELOPMENT

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#### Abstract

In Penang, all waqf properties are under the sole trusteeship of the Penang Islamic Religious Council (MAINPP). To date, Mohamed Hashim Waqf Land has already been productively developed in accordance with the waqf giver's wishes. However, there are significant issues and challenges remain in the waqf property development process of Mohamed Haji Hashim Waqf Land. Hence, this study was conducted to analyze lessons learnt from Mohamed Haji Hashim Waqf Land development. This study uses qualitative research methodology. The data was collected via library research method and semi-structured interview. Later, the data was analyzed using thematic and content analysis method. The findings prove that there are several issues and challenges that arise and need to be addressed by MAINPP to ensure the development of waqf lands in Penang can be proceeded without hitches. The results of the study consist of valuable lessons that can be proposed to MAINPP and the developer in improving the process of waqf land development so that waqf properties can be developed optimally and provide profitable returns to the Muslim community in Penang.

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#### Introduction:-

Islam places a high value on the act of worship known as waqf. Waqf can be categorized under *sadaqah al-Jariah*, which guarantees eternal benefits to the waqf giver. Allah SWT has specifically mentioned about waqf in the Holy

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Qur'an, "You will never achieve good (perfect) until you donate some of what you love, and whatever you donate, then indeed Allah is All-Knowing" (Ali Imran, 92: 3).

Waqf originally came from Arabic terms which means "to withhold" or "to retain" (Ibn Manzur, 1990). While technically, waqf is to withhold property that can be used without physical depreciation by giving the property to a consumer for the appropriate use (al-Bugha, 2012). Al-Zuhaily (2002) explains waqf as to withhold property that still has its substance and can be utilized for charity causes as an act of *taqarrub* to Allah SWT, where the waqf property is given to specific parties and these parties aren't allowed to use it at their discretion (al-Zuhaily, 2002). Next, Yayasan Waqaf Malaysia defines a waqf as any asset that the waqf giver retains ownership of through any transaction, inheritance, hibah, or will in addition to maintaining its material resources, for the benefit of the waqf's welfare and the intention for advancement of its spiritual relationship with Allah SWT (YWM, 2022).

Waqf in Penang is governed by Penang Islamic Religious Council (MAINPP) and was divided into two primary divisions by MAINPP, namely Seberang Perai and Penang Island. The Northeast, Southwest, North Seberang Perai, Central Seberang Perai and South Seberang Perai are the several districts located in each of these divisions. Figure 1 represents the divisions of each waqf property according to lots and acres. By 2020, it was reported that Penang has 1210 lots or 1260.61 acres waqf properties.

**Figure 1: Penang Waqf Properties by 2020**



**Source: MAINPP (2021)**

Waqf land development in Penang has undergone a lengthy process and at different times has been impacted by environmental factors like social and political situations. This is demonstrated by the formation and expansion of MAINPP as the sole trustee that is in charge of overseeing the development of waqf land in Penang. On 11 November 2019, UDA won the 1st Global Waqf Conference Recognition Awards. This award was obtained by UDA through UDA Land North which has successfully developed one of the waqf lands, namely Mohamed Haji Hashim in collaboration with MAINPP. The development, which covers an area of 1.14 acres and contains 68 units of apartments, has cost a gross development value of RM15.34 million. The development of Mohamed Haji Hashim Waqf Land in Central Seberang Perai was fully completed in the fourth quarter of 2017 and is the first waqf land development to receive strata in Malaysia (Prebiu, 2019). However, MAINPP has occasionally run into a number of issues and challenges while fulfilling the trust to develop waqf properties including Mohamed Haji Hashim Waqf Land. Therefore, it is necessary to analyze lessons learnt from Mohamed Haji Hashim Waqf Land development. Besides, the lessons learnt can assist in the future development and implementation processes to become more efficient and in line with Islamic waqf regulations.

## Literature Review:-

### Past Researches on Waqf Lands

There have been numerous prior research studies on waqf land undertaken by other researchers. Early study conducted by Zakaria & Md. Sani (2015), was focusing on the development of waqf land in Penang. Using the AMOS application, the researchers have created a comprehensive framework for the development of waqf land in Penang. Later, Johari et al (2019), looked at the usage of *al-Tawriq* in Malaysia. They contend that the waqf assets that have been transformed into low-cost housing developments can produce money to fund the creation of other waqf projects. The term of *al-Tawriq* is highlighted in the study as an alternate approach to the issue of waqf property development fund. Furthermore, Mokhtar (2018) has conducted research on Penang's cash waqf implementation. The results of this study revealed that the quantity of cash waqf funds collected by MAINPP varied significantly from year to year, with high and low values corresponding to various years. MAINPP has implemented numerous reforms, such as cash waqf through salary deductions and offering online payment options, to address this issue. These efforts, meanwhile, did not yield any fruitful results. In order to strengthen the collection of cash waqf in Penang, the study seeks to uncover the variables that affect Muslims' intentions with regard to adopting cash waqf.

Waqf land-related laws in Malaysia have been studied by Syed Abdul Kader & Mohamad (2019). The results of this study show that waqf administration in Malaysia has increased, and it now contributes to nearly every area of economic, social, welfare, Islamic finance, takaful and tax law. By offering inexpensive public housing to Malaysia's B40 households; the bottom 40 percent of household can afford to buy a house according to the median income in Malaysia. In addition, Abdullah & Meera (2018) have presented an Islamic approach to social finance research. This study seeks to investigate a new national public housing plan for Malaysia that entails providing long-term *al-Hikr* leases for inexpensive, low-cost housing. In parallel, Mat Daud & Mubarak (2019) examined how socio-economic factors affected the development of waqf assets using MAINPP as their case study. Waqf is one of the wealth distributions' tools that Islam recommends to its people. The findings of this study demonstrate that MAINPP performs its organization and control functions well.

Meanwhile, the sustainability of waqf property has also been the subject of research by Mat Hassan (2018). The researcher contends that maintaining and enhancing waqf property as well as creating ongoing waqf advantages constitute the permanent part of waqf property. In Malaysia, there are still a lot of waqf lands, particularly unproductive lands, as of right now. The development of waqf property has become unsustainable as a result of this predicament. The researcher also discovered that waqf managers, or *mutawallis*, are paying attention to housing waqf as one of the projects on waqf land that might provide income for waqf lands. This is evident in Penang today, where MAINPP is aggressively creating housing waqf on waqf property. According to Hashim & Ab Rahman (2012), MAINPP has used five fundamental techniques to develop waqf properties in an effort to generate income. However, the utilization of joint venture methods with Government Linked Companies (GLCs) is the only one of the five approaches stated above that is discussed in this study. The strategic positions and high value of the waqf lands are two important characteristics that contribute to MAINPP's success in developing waqf lands. It is worth mentioning that large-scale waqf assets can be developed by MAINPP due to its expertise, as well as the developers' assistance and cooperation.

Next, Mat Rani (2014) in his study emphasized that waqf land is a significant potential found in religious institutions in certain state. As such, in addition to having significant economic advantages, it also merits investigation and development. Its function as a mechanism centered on not only worship and social well-being but also economic well-being is one of the methods and strategies to enhance general well-being as a whole. Additionally, it must be created using Shariah principles. In reality, a number of concerns, primarily relating to population, logistical issues, development fund and end-financing, were found through this research. Yusof et al (2016) have explored new ideas regarding waqf management based on the model introduced by J.R Galbraith to improve services in MAINPP waqf management in Penang. This study found that MAINPP is one of the successful organizations for waqf management

in Malaysia. The analysis also revealed that MAINPP possesses waqf assets worth more over RM 800 million, the most of which are lands situated in key locations like Georgetown. The study's findings are translated into management improvements using the suggested model and helpful recommendations on how to establish and maintain waqf properties in Penang.

It is important to note that a previous study by Nasution (2002) found that the majority of the Muslim groups living in Penang had endowed waqf lands in the hope that their descendants or close relatives would continue to manage them. However, there have been numerous legal disputes between waqf trustees as a result of restrictions such as the absence of an Islamic administration in urban and colonial areas as well as the conflict between Islamic law on waqf and British law. Waqf land, which was seen to be cultivating squatter circumstances in the center of the city's settlement as a result of the urbanization process, was taken over by the Local Authority (PBT) at the end of the 19th century. The British had succeeded in meddling in religious matters and Muslim land management practices with the cooperation of some Muslim authorities at that time. Additionally, Hashim et al (2013) discovered a number of techniques that can be applied to boost the production of waqf assets. Assets owned by the waqf can be leased to interested parties or utilized for a variety of commercial endeavors, including farming and raising cattle. The waqf management should look for other options to make the waqf land profitable in circumstances where the aforementioned strategy is deemed ineffective. In order to maximize the utilization of the waqf land under their management, waqf trustees should also look into other options. Thus, investing in real estate can be a substitute for developing waqf land.

Ibrahim (2005) has highlighted the negative effects of the migration process of Malay communities in Penang. He claims that lower-class Malay groups in Malaysia's main cities who don't own permanent homes frequently experience relocation as a result of temporary changes in development. The typical urban residential area, which was once a village, has been destroyed and replaced, or has evolved into a squatter settlement area that is so unsightly and awkward in its location within a bustling city. Ibrahim (2005) believed that the removal of the village status in the city needed to be handled carefully to prevent the squatter settlement issue from spreading throughout the neighborhood. A current study by Abdullah et al (2020) looked at how waqf property development was implemented in Penang, particularly in the commercial sector. Waqf properties in Penang that are centrally located have a higher potential for cash generation than those that are out in the countryside due to their higher valuations. Compared to leasing land, commercial development can result in a significant return on investment. However, carrying out this development is not a simple task. They contend that MAINPP must overcome a number of obstacles and issues in order to accomplish a successful development.

Moreover, a compilation of waqf legislation pertaining to the decisions of the Penang State Fatwa Committee has been put up by the Penang State Mufti Department in 2019. The management of waqf property by the MAINPP as the sole trustee of waqf faces numerous challenges, according to the Penang State Mufti Department (2019), which must be taken into consideration before any development proposal on the property is carried out. This is to make sure that the development will be carried out properly and achieve the waqf's objectives. In addition, Abdullah (2016) also examined the development of waqf property that MAINPP had carried out in its capacity as trustee for Seetee Aishah Waqf Land. The two types of approaches used in this study are field research and library research. The study's findings revealed that this land had been successfully developed despite the MAINPP encountering numerous difficult obstacles.

### **The Challenges of Developing Waqf Lands in Penang**

Waqf property development has taken many different shapes today. Other than, waqf land development often falls into one of three categories; agricultural, livestock, or building construction (Hashim & Abd Rahman, 2015). In fact, waqf property developments that employ commercial strategies like housing (terrace homes, apartments), lodging

(hotels, boarding houses), stores (bazaars), and so forth, are the best examples (Hashim & Abd Rahman, 2015). These methods of implementation have given Muslims' economies new vitality and made them more viable. As a matter of fact, Abdullah & Bahari (2019) study, which showed that non-productive waqf land may be developed utilizing the *istibdal* approach via special waqf land, further supported the Hashim & Abd Rahman (2015) study findings. Both of them are on the view that *istibdal* method can ease the burden of waqf managers, who require substantial funding to oversee and maintain the maintenances of waqf lands. Additionally, research by Mohamed Noor & Ismail (2016) examined the idea of development in the context of *istibdal* waqf. According to the study's findings, Selangor's local populace has benefited greatly from the idea of waqf development via the *istibdal* method.

Likewise, Mat Hassan (2019) has conducted a thorough analysis of the sustainability of Penang's waqf housing development. There are three essential components regarding the concept of sustainable development of waqf property. The five guiding principles of the idea of sustainable development of waqf property are just, dependable, Shariah-compliant, economically sound, and environmental preservation. Adding, commercial waqf property development that cultivates effectively on waqf land alters the waqf benefits and has the potential to raise the value of the waqf land itself (Mat Hassan, 2019). The three components must also meet the techniques used to maintain the development of waqf property; First, the retention of 'ayn waqf property. Second, grows productively. Third, produces ongoing benefits (Bahari & Mat Hassan, 2017). Besides, the focus of Abdullah and Bahari (2019) study is on the proper approach to development on waqf land from an Islamic standpoint. According to the results of their research, special waqf land can be utilizing using *istibdal* method. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has designated several locations, including various waqf lands in Penang, as World Heritage Sites. Kapitan Keling Waqf Land is one of the examples of a property that can be developed in line with modernization.

Concurrently, Abd Rahman (2015) has investigated the re-evaluation of the Kapitan Keling Waqf Land development using the idea of Islamic-Based Development (PBI) and discovered that this land development didn't adhere to the development model advised by Islam. Thus, in order to ensure that the management and administration of Kapitan Keling Waqf Land are on track with Islam, its development needs to be reexamined in terms of philosophy, worldview, and epistemology. Apart from, a number of researchers such as Hashim et al (2014), have explored the use of the BOT (Built, Operate, Transfer) approach by MAINPP in developing the waqf land in Majoodsaw in their research. By using this BOT method, a 21-storey office structure has been successfully constructed. This building, commonly known as the Penang UMNO Tower, is situated in Georgetown, Penang. MAINPP has earned income from Majoodsaw Waqf Land and achieved double profits using the same development methodology. On other housing waqf lands, MAINPP has been putting the redevelopment and conservation into practice. The waqf land of the Kadershah Apartments, Kapitan Keling, Alimsah Waley and Lebu Acheh were included in this development and conservation.

According to recent research by Ismail et al (2021), MAINPP encountered a number of difficulties when developing Seetee Aisah Waqf Land. The Local Authority (PBT), end-financing, governance and land status were among the major issues. The inability to find strategic partners for waqf partnerships, the difficulty of regaining the trust and confidence of the Muslim community in Penang, and future challenges, such as end-financing issues caused by lease issues on the waqf properties, are also highlighted as side challenges. The researchers emphasized that in order to accomplish large-scale development in the future, all governmental entities, whether at the state or federal level, strategic smart partnerships, and financial institutions must work together with MAINPP to mobilize energy. As Penang's real estate market is expanding annually, large-scale development can be carried out positively.

## Methodology:-

### Research Design

Research design consists of research inquiry strategies that help researchers find answers to research questions. As for this, the researchers can achieve the research objectives that have been designed before (David & Sutton, 2004; Denzin & Lincoln, 2011). There are four factors that influence the selection of a study design, namely study objective, research problem, researcher's experience and the targeted group (Neuman, 2015; Creswell & Creswell 2018). This study uses a qualitative approach via library methods and in-depth semi-structured interviews which involves data from primary and secondary sources. Qualitative design was chosen because the study was intended to analyze lessons learnt from Mohamed Haji Hashim Waqf Land development. A case study of waqf land that has been selected is Mohamed Haji Hashim Waqf Land. After various data were obtained from the interviews and library researches, all of these data were analyzed in more depth to generalize the findings. Next, the datum that have been analyzed, were included in the researchers' study, as the research findings.

### Data Collection Method

The data collection process in this study involves two sources, namely primary sources and secondary sources. Qualitative data obtained from primary and secondary sources exist in large numbers and are complex in nature (Lebar, 2009). Primary data is data collected by the researchers directly from primary sources. Lim (2007) suggested that the collection of primary data is done by using the interview method. Primary data in this study was collected through in-depth semi-structured interviews with five informants. According to Yin (2018), the interview method is the best technique in collecting data for studies that use a case study design. Therefore, a semi-structured interview was conducted with five informants as in Table 1 to obtain information related to the case study involving Mohamed Haji Hashim Waqf Land.

**Table 1:** List of Informants

No.	List of Informants	Positions	Date
1.	Informant 1	Head of Property Development & Waqf Unit, MAINPP	24 May 2021
2.	Informant 2	Chief Executive Officer, Wakaf Pulau Pinang Sdn. Bhd (WPPSB)	27 May 2021
3.	Informant 3	Vice President II, UDA Holdings Berhad	2 June 2021
4.	Informant 4	Officer, Property Development & Waqf, MAINPP	7 June 2021
5.	Informant 5	Legal Officer, MAINPP	14 June 2021

**Source: Researchers' Own (2021)**

All of the informants were selected using a purposive sampling approach as suggested by Patton (2002). Besides, this approach is suitable to be applied in this study when the informants involved came from various backgrounds and suitable work fields and have extensive experiences with the phenomenon being studied by the researchers. Meanwhile, secondary data involves existing data that has been collected through primary sources and processed by past researchers (David & Sutton, 2004). In this study, the researchers collected data from published materials and internet access through databases. The data involved is via books, theses, dissertations, research reports, papers, proceedings and articles through workshops, seminars, conferences and others.

## Data Analysis Method

Primary data analysis in this study involves data obtained from in-depth semi-structured interviews with informants. These data were analyzed using thematic approach. The thematic analysis process involves the following processes and phases as in Table 2:

**Table 2: The Thematic Analysis Process**

Process	Phase	Description
Transcription	Identify and familiarize with data	<ul style="list-style-type: none"> <li>• Read the details and familiarize with the type of data and its content.</li> <li>• Check any errors in the recording of data or</li> <li>• Test data credibility</li> </ul>
Coding	Identify codes	<ul style="list-style-type: none"> <li>• Identify appropriate elements in the data</li> <li>• Record all potential related details</li> <li>• Maintain a history map of every move</li> <li>• Report key codes that can be found</li> </ul>
Categorizing	Find the themes in data	<ul style="list-style-type: none"> <li>• Finalize domain and themes</li> <li>• Categorization of data</li> <li>• Check that each theme has a particular domain.</li> </ul>
Theme	Review each theme	<ul style="list-style-type: none"> <li>• Analyzing the appropriate theme for its authenticity</li> <li>• Search for missing data</li> </ul>
Document Analysis	Document analysis	<ul style="list-style-type: none"> <li>• Analyze and draw inferences from the related data</li> <li>• Electronically/manually, paper details</li> <li>• Make sure that the relevant information is significant/answer research question</li> </ul>

**Source: Researchers' Own (2021)**

Therewithal, secondary data analysis in this study involves data in the form of writing or documentation and was obtained through library methods and database studies. These secondary data were analyzed using content analysis method. This process involves researchers examining materials related to research issues, namely the issues, challenges and lessons learnt from Mohamed Haji Hashim Waqf Land development by MAINPP and UDA Holdings Berhad. All these processes are carried out systematically and repeatedly by focusing on several aspects such as concepts, themes, items and others related to the study phenomenon (Berelsen, 1952).

## Results & Discussion:-

### Background of Mohamed Haji Hashim Waqf Land

In 1904, this waqf land was endowed by a waqf giver named Mohamed Haji Hashim. This waqf land covers an area of 1,148 acres (50,000 square feet) and is currently located in a strategic area in the city center of Seberang Jaya next to Seberang Jaya Hospital and AEON Big Business Complex. Originally, this waqf land was an agricultural land, bushy and only filled with coconut trees. As the yield of coconut trees on the waqf land is less lucrative, the waqf yield failed to be distributed for the purpose of Muslims as intended by the waqf giver, Mohamed Haji Hashim. Apart from that, the crop of coconut trees also bites the dust to cover the annual land tax payment. However, MAINPP is of the view that this waqf land has great potential and can generate remunerative revenue if it's developed based on its value of RM2.9 million. Therefore, in order to ensure the waqf continuity, MAINPP strives to develop this waqf land so that the waqf returns obtained can continue to grow and provide a continuous contribution to Muslims. Thus, this matter also coincides with what is written in the deed of waqf Mohamed Haji Hashim. It was stated that the waqf



proceeds should be used for purposes that benefit Muslims. Hence, there are no specific conditions specified by the waqf giver through this deed.

MAINPP has collaborated with developer, UDA Holdings Berhad to develop this land. This development is also known as Seberang Jaya Legacy or SJ Legacy in conjunction with the name of the housing projects developed in collaboration with developer UDA. With assets worth RM 22 million for the development process, the rental income on this waqf land can generate an income of RM15,000 per month. The total cost of the development of this waqf land is RM17 million, consists of 2 blocks of 68 units of medium cost apartments that have been developed with several public facilities for each residential unit such as 2 units of parking, multipurpose hall, swimming pool, *surau* and many others. This apartment is located at Lot 192 Mukim 1, Seberang Perai Tengah (Seberang Jaya). Aside from, this development project has given a return of RM 4 million to the developer, UDA Holdings Berhad. Meanwhile, MAINPP received a return of RM 3.3 million, which consists of 9 residential units. The project was completed on 26 September 2018, while the apartment was first occupied in October 2018. Figure 2 is the architect's sketch illustration of Mohamed Haji Hashim's Waqf Land development and Figure 3, represents the illustration of Mohamed Haji Hashim's Waqf Land development. While, Figure 4 is a summary of Mohamed Haji Hashim's Waqf Land development project.

**Figure 2: Architect's Sketch Illustration of Mohamed Haji Hashim Waqf Land Development**



Source: UDA Holdings Berhad (2021)

**Figure 3: Architect's Illustration of Mohamed Haji Hashim Waqf Land Development**



Source: UDA Holdings Berhad (2021)



Figure 4: Project Summary of Mohamed Haji Hashim Waqf Land Development

PROJEK WAKAF TELAH SIAP

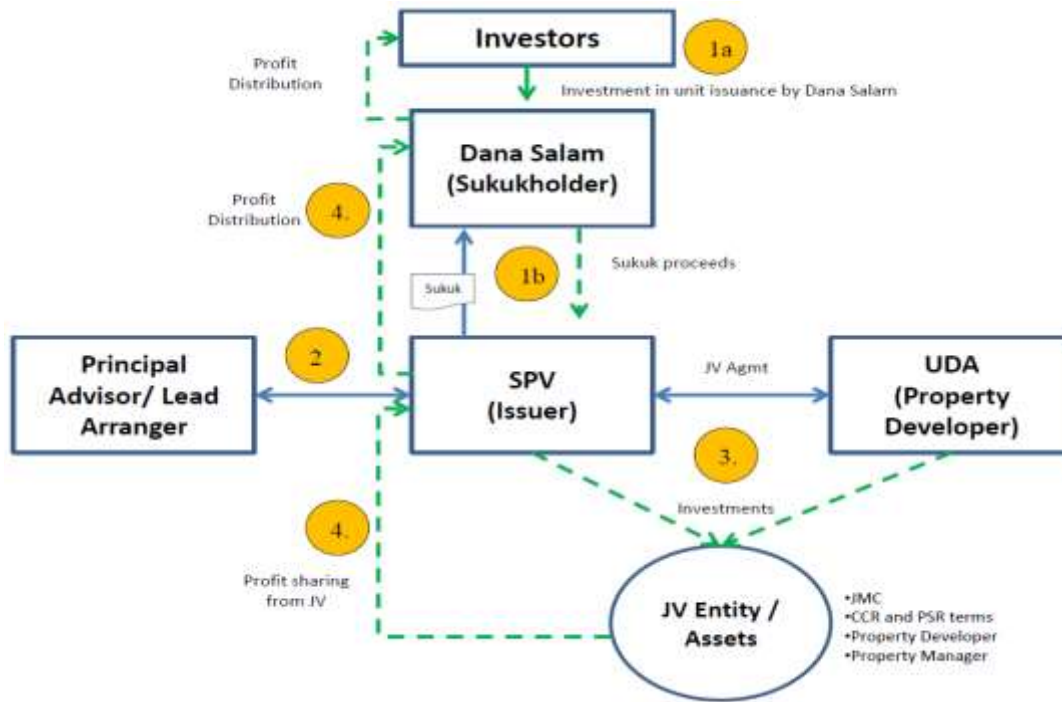



NAMA PROJEK :	Legasi Seberang Jaya (Wakaf Mohammad Hashim)
NO. LOT :	Lot 192, Mukim 4, Seberang Perai Tengah, Pulau Pinang
LUAS TANAH :	1.142 ekar
PEMILIK TANAH :	Majlis Agama Islam Negeri Pulau Pinang
PEMAJU :	UDA Land (North) Sdn Bhd
PERJANJIAN USAHASAMA :	18 April 2013
JENIS PEMBANGUNAN :	68 unit Apartmen 10 Tingkat
KONSEP :	Ketumpatan Rendah Komuniti Berpagar
APARTMEN 10 TINGKAT :	Luas Lantai 1,000 kps 3 Bilik Tidur 1 Tempat Letak Kereta seunit Apartmen Harga jualan bermula daripada RM320,000 dan ke atas
NILAI PEMBANGUNAN :	RM19.10 Juta
TAHUN MULA PROJEK :	2015
TAHUN SIAP PROJEK :	2017

Source: UDA Holdings Berhad (2021)

The financing method of Mohamed Haji Hashim Waqf Land development involves *sukuk al-Wakalah* through *musharakah* contract as shown in Figure 5. *Sukuk al-Wakalah* is a power distribution contract by one party to another for a specific project or activity to be managed by an agent (representative) in the interest of the *sukuk* holder. Through this method of financing, Bank Muamalat is involved as a fund manager who will manage the investment. Bank Muamalat will accept investments from public investors who invest in the bank. These investors invest for the purpose of making profits and the bank will invest through the development of this waqf property. In addition, the bank will also finance the entire cost of waqf land development. MAINPP is the owner of this waqf land, while the developer, UDA, is the implementing agent. UDA is responsible for appointing and negotiating with the contractor who developed the waqf land. MAINPP as the landlord will receive a return from the development that is not less than the current value of the land. Meanwhile, the profit of the project will be divided according to ratio of 60:40, i.e., 60% will belong to Bank Muamalat and given as distribution to investors, while the remaining 40% will belong to the developer, UDA. MAINPP received returns in the form of apartment units, namely 9 residential units worth RM 3.3 million, which is also equivalent to the value of the land. These 9 residential units will be rented by MAINPP to generate revenue and fulfill the wishes of the waqf giver as stated in the waqf deed.

Figure 5: Sukuk al-Wakalah



Source: UDA Holdings Berhad (2021)

While, Figure 6 is a picture of a waqf apartment that has been completed and inhabited. There are several advantages of buying a Mohamed Haji Hashim Waqf apartment house including low payment of deposit, situated in a strategic area as it's located in an urban area, low density where the apartment units built aren't so crowded, the house is readily built and can be occupied during the purchase process.

Figure 6: Outcome Projects of Mohamed Haji Hashim Waqf Land Development



Source: UDA Holdings Berhad (2021)

### Issues and Challenges of Mohamed Haji Hashim Waqf Land Development

Unlike other waqf lands in Penang, the Mohamed Haji Hashim Waqf Land didn't face any encroachment or squatters' problems. Most of the other waqf lands under the supervision of MAINPP have problems with encroachments, illegal settlements, as well as the unregistered occupants under MAINPP. This causes MAINPP to struggle in managing their relocation if development is to be done on waqf land as planned. However, there are several issues and challenges in developing Mohamed Haji Hashim Waqf Land that can be pondered as follow:

#### a. Development Fund Issues

The waqf land site didn't experience any squatting or encroachment problems. Seeing that, this waqf land was originally made up of swamps and couldn't generate income for MAINPP. Nevertheless, the waqf land development process still has to face challenges on the part of MAINPP to obtain funds for development purposes. MAINPP has tried to establish cooperation through a joint venture with the developer, UDA, to overcome the problem of funds in the development of this waqf land. Even so, before the development process was carried out, this waqf land was an agricultural land planted with coconut trees. MAINPP has used the proceeds to pay taxes. Since it is not inhabited, MAINPP didn't face obstacles to develop the waqf land according to the waqf deed. No proposal was offered to the residents and MAINPP has used the revenue to cover the costs related to the land before and after the development process.

#### b. Waqf Land Status

The waqf land is located in the institutional zone. This causes the waqf land to be used only for construction purposes. The developer, UDA, faced several challenges in order to change the zone status and conditions to a development zone that can be used for residential and commercial purposes.

#### c. Legal Constraints

Legal constraints are among the issues synonymous with waqf real estate development. The reason is because a *fatwa* on the part of MAINPP has decided that waqf buildings built on waqf land can't be transferred, but instead are owned on a lease for 99 years through the provision found in the National Land Code 1965 (NLC), Form 15A. From a point of view, this caused MAINPP to become the sole management body responsible for managing and maintaining the buildings during the lease period, for 99 years. MAINPP also remains as the landlord and owner of the building through the parcels of the building. Apart from NLC, MAINPP has to comply with the Strata Title Act 1985 because the development on this waqf land involves high-rise buildings (strata). According to this act, after the completion of the development process, each unit will be divided into lots through the Share Unit Formula Certificate (SiFUS). These plots are owned by MAINPP as a lessee for 99 years.

In actual fact, there is no change of ownership involved in the development of this waqf land. Therefore, the absolute ownership of the residential units is still owned by MAINPP. Whereas, on the other hand, the occupants of the building will be given a lease for 99 years. Therefore, all taxes such as door and land taxes have to be borne by MAINPP during the lease period. Along with, other facilities such as open spaces, multi-purpose halls, roads, TNB sub-stations, Indak Water Konsortium (IWK) sewage plants, playgrounds and drains also need to be maintained by MAINPP throughout the 99-year period.

#### d. End-Financing

As MAINPP has to comply with the *fatwa* issued in relation to waqf land, then the waqf land developed can't be transferred as stated in NLC, Form 14A. Constraints to comply with this *fatwa* have resulted in the majority of banks not being able to offer financing that comply with the conditions except for a few banks such as Ar-Rajhi Bank, Bank

Islam Malaysia Berhad (BIMB) and Bank Muamalat Malaysia. The transfer of ownership is allowed only through a lease for 99 years only, that is through NLC, Form 15A.

e. Local Authority (PBT) Guidelines

The Penang State Fatwa Committee has issued a *fatwa* on the prohibition of transferred land as per NLC, Form 14A. Therefore, the development of Mohamed Haji Hashim Waqf Land isn't exempted from complying with this *fatwa*. However, the challenge arises when there are guidelines issued by the Local Authority (PBT) aren't in line with the *fatwa*. Due to the fact that, all the conditions set by the department must be complied with to obtain Project Planning Approval. Among the conditions include roads that need to be handed over to Jabatan Kerja Raya (JKR), electricity sub-stations to Tenaga Nasional Berhad (TNB), multipurpose halls, open spaces, drains, landscapes and playgrounds to the Municipal Council and sewage plants to Indah Water Konsortium (IWK). Accordingly, all of these affairs must be submitted through the process of exchange of ownership, namely NLC, Form 14A for maintenance purposes.

f. Development Procedures by the Ministry of Housing and Local Government (KPKT)

Among the other challenges faced by MAINPP is to comply with development procedures by the Ministry of Housing and Local Government (KPKT). The commercial housing development in Malaysia is subjected to development procedures set by KPKT. The challenge lies in the process of obtaining a Advertising Permit and Developer License (APDL). Advertising licenses and permits are required to sell residential units to buyers. However, the problem arises when this residence needs to be converted in the process of sale through NCL, Form 14A and the process of changing the ownership through the lease of NLC, Form 15A.

### **Lesson Learnt from Mohamed Haji Hashim Waqf Land Development**

Some of the lessons that can be learnt to overcome the issues and challenges in the development of Mohamed Haji Hashim Waqf Land include:

a. Improving Land Management and Administration Aspects by MAINPP

It is proposed that MAINPP improve the land management and administration to overcome various challenges that arise related to waqf properties. Expertise in the areas of development management of waqf land organization is highly desirable to be polished. In addition, waqf also involves various other cross-fields that require different joint methods and strategies in order to succeed in a development project. The crucial fields include shariah, economics, accounting, finance, asset and project management, facilities management and maintenance, marketing, law and others.

Due to the insufficient number of officees, MAINPP can polish the knowledge and skills of the existing officers via in-house training with experts in the field or by professional training courses related to property development from time to time according to the departmental needs. Besides, MAINPP can also hold regular consultation sessions with experts involved in the property development phase. This consultation process can help MAINPP to learn innovative methods in developing waqf properties according to the current needs of the market. Moreover, it can also aids MAINPP to build a more dynamic development strategy, while trying to find solutions for existing challenges.

b. Creating a Waqf Land Database

Databases are essential to manage and develop waqf land effectively. As a matter fact, this is also in line with the concept of waqf property itself which waqf should be permanent and sustainable so that it can continues to be enjoyed by the waqf beneficiaries. A Geographic Information System (GIS) needs to be worked on to be established at the MAINPP level. The GIS technology able to process and integrate various information related to waqf properties such

as policy maps, modeling and predicting a situation that will occur at the geographical location of the waqf land as a result of the integration of relevant information.

c. Coordinating Waqf Legislation

Coordination of legislation related to waqf can be done from time to time. Although this matter took a long period, but amendments after amendments in the existing waqf legislation can further smoother the process of managing waqf properties in Penang. In addition, negotiations with the developer regarding rigid procedures can facilitate the development process in the future.

d. Measuring Waqf Property Development Investment

MAINPP is recommended to measure the existing waqf property development investment. Without proper measurement, it is difficult for MAINPP to generate profits from the investments that have been made. Among the traditional investment measurement methods are Total Return Method, Payback Method, Average Profit Method, Peak Profit Method, Rate of Return on Income and Rate of Return on Cost. Meanwhile, modern investment measurement methods include IRR (Internal Rate of Return), NPV (Net Present Value), Profitability Index, Money-Weighted Rate of Return, Time-Weighted Rate of Return and Rate of Return Investment.

## **Conclusion:-**

Consequently, it can be concluded that there are various issues and challenges related to the development of waqf property in Penang, especially those involving Mohamed Haji Hashim Waqf Land. In the effort to develop this waqf land, several issues and challenges have been identified such as meeting the guidelines of the Local Authority (PBT), the status of waqf land, development procedures of the Ministry of Housing and Local Government (KPKT), development fund issues, constraints in the legal aspects and end-financing. Some lessons that can be learnt include improving land management and administration aspects by MAINPP, creating a waqf land database, coordinating waqf legislation and measuring waqf property development investment. It is hoped that these listed lessons can be grasped by the parties involved in the development of waqf land in Penang. For further studies, among the areas that can be explored comprise of studies on waqf property developers, waqf property development financing mechanisms, waqf property legislation in Penang and waqf property investment returns using various traditional and modern investment measurement methods. Future studies may also use larger sample sizes, longitudinal designs or even a multi-method approach to improve findings on this subject.

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