

## Seetee Aisah II Waqf Land Deelopment: A Way Forward of Tackling its Challenges

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### Abstract

The Penang Islamic Religious Council (MAINPP) is the sole trustee for all waqf properties in the state of Penang. Previously, Seetee Aisah I Waqf Land has been successfully developed according to the wishes of the waqf giver. Thus, the success of the development of waqf land has been the trigger for MAINPP’s efforts to continue the development of waqf land in the future. Continuing from this success, MAINPP and the developer intend to continue its legacy through a more dynamic and innovative development, namely the Seetee Aisah II Waqf Land. However, there are significant issues and challenges remain in the waqf property development process of Seetee Aisah II Waqf Land. Therefore, this study was conducted to analyze the issues and challenges of Seetee Aisah II Waqf Land development and subsequently suggest some possible solutions towards it. This study uses qualitative research methodology and the data was analyzed by adapting 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 Seetee Aisah II Waqf Land in Penang can run smoothly. The results of the study consist of several potential solutions that can be proposed to MAINPP and the developer in improving the process of Seetee Aisah II Waqf Land development so that waqf properties can be developed optimally and provide lucrative returns to the Muslim community in Penang.

**Keywords:** *Seetee Aisah II Waqf Land, Penang waqf land development, Penang Islamic Religious Council (MAINPP)*

### 1.0 Introduction

Waqf is an act of worship that is highly demanded in Islam, in the form of *sadaqah al-Jariah* which promises lasting rewards and flows directly to the waqf giver forever. Allah SWT has clearly mentioned in Holy Quran:

*“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)

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Etymologically, waqf is an Arabic term that means to withhold (*al-Man'u*) and retain (*al-Habs*) (Ibn Manzur, 1990). While in terminology, waqf is to withhold a property that can be used without physical depreciation by handing over the property to a consumer towards the proper use (al-Bugha, 2012). While Al-Zuhaily (2002) states that waqf is to withhold property that remains in its substance, which can be used for charitable purposes as an effort of *taqarrub* to Allah SWT, the waqf property is handed over to certain parties, and they can't use the property arbitrarily (al-Zuhaily, 2002). Further, Yayasan Waqaf Malaysia defines waqf as any property that the waqf giver retains the right to the property from any transaction, inheritance, hibah and will in addition to maintaining its physical resources, for welfare with the intention of bringing the waqf closer to Allah SWT (YWM, 2022).

In Penang, waqf is under the jurisdiction of the Penang Islamic Religious Council (MAINPP). MAINPP administers waqf land in Penang according to two main divisions, namely areas in Penang Island and Seberang Perai. Each of these parts can be divided into several districts, namely the Northeast, Southwest, North Seberang Perai, Central Seberang Perai and South Seberang Perai. Until 2021, there are 1303 lots of waqf land throughout the state of Penang, namely 430 lots in North Seberang Perai district, 290 lots in Central Seberang Perai, 205 lots in South Seberang Perai, 214 lots in the Northeast and 164 lots in the Southwest. Based on this number, only 45 lots of waqf land have been successfully developed, while 19 lots are in the process of development, while the remaining lots have not been developed. Among the waqf land lots that have been successfully developed by MAINPP include Seetee Aisah I Waqf Land. In total, until 2021, only 45.34 acres of waqf land have been successfully developed and 57.58 acres are being developed compared to the total waqf land in the state of Penang which is 1269.22 acres. Table 1, 2 and 3 are the inventory of the total waqf land in Penang until 2021.

Table 1. Penang Waqf Land Until 2021

No.	Districts	Total Lots	Area (Acres)
1.	North Seberang Perai	430	494.54
2.	Central Seberang Perai	290	237.83
3.	South Seberang Perai	205	224.03
4.	Northeast	214	149.34
5.	Southwest	164	163.48
Total		1303	1269.22

Table 2. Penang Waqf Land That Has Been Developed Until 2021

No.	Waqf	Total Lots	Area (Acres)
1.	Masjid Kapitan Keling Waqf	27 lots	4.94
2.	Masjid Lebu Acheh Waqf	1 lot	1.47
3.	Masjid Nagore Waqf	3 lots	0.02
4.	Masjid Langgar Waqf	2 lots	0.25
5.	Alimsah Waley Waqf	1 lot	0.61
6.	Khan Mohamed Waqf	1 lot	0.39
7.	Majoodsaw Waqf	2 lots	0.49
8.	Maahad Al-Mashoor Al-Islami	1 lot	20
9.	Darul Hidayah	1 lot	2.64
10.	Seetee Aisah 1 <sup>st</sup> Phase Waqf	1 lot	9.28
11.	Mohamed Hashim Waqf	1 lot	1.14
12.	Siti and Hajah Norijah Waqf	2 lots	1.57
13.	Teluk Air Tawar Waqf	2 lots	2.54
Total		45 lots	45.34

Table 3. Penang Waqf Land Under Development Until 2021

No.	Waqf	Total Lots	Area (Acres)
1.	Seetee Aisah II Waqf	3 Lots	7.32
2.	Hashim Yahya Waqf	8 Lots	13.82
3.	Shaik Eusoff Waqf	2 Lots	14.96
4.	PT 32 Waqf	2 Lots	1.43
5.	Bagan Lalang SPU Waqf	1 Lot	1.93
6.	Lot 60 Bayan Lepas	1 Lot	2.85
7.	Abdul Cauder Waqf	1 Lot	2.74
8.	Masriyah Waqf	1 Lot	12.53
Total		19 Lots	57.58

The waqf land development in Penang has gone through a long process and has also been influenced by environmental aspects such as social and political in certain periods. This can be seen through the establishment and development of MAINPP as the sole trustee who manages the development of waqf land in Penang. Various issues and challenges have been experienced by MAINPP in carrying out the trust to develop waqf properties from time to time. Therefore, Penang waqf property development projects need to be analyzed to re-evaluate the issues and challenges that arise during the development process so that the development implemented becomes smoother and more appropriate in accordance with the provisions of waqf in Islam.

The excellent development of waqf property requires facilities from the government and private sectors. The government should provide appropriate treatment in terms of legal and administrative provisions while the private sector provides funding to any property development projects undertaken. The main challenge for the development of waqf land is to obtain financing (securing end-financing) on properties that have been built on waqf land because the waqf property cannot be mortgaged to the lender as security for the loan. There are three characteristics of restrictions on waqf property as outlined by the Islamic law, namely; irrevocability, inalienability and perpetuity. These three limitations affect the production of the securitization of waqf property. Buildings that have been built on waqf land will be sold to buyers with a long lease period. The buyer only has ownership of the building and not the land.

Today, various forms of waqf property development have been implemented. The Penang Islamic Religious Council (MAINPP) is also no exception in implementing the development of this waqf property. Despite that, MAINPP had to face various challenges in developing waqf properties in Penang. Therefore, this study was conducted to explore the issues and challenges of selected waqf land development in the state of Penang with special reference to Seetee Aisah II Waqf Land and further suggest some improvements for its property development by MAINPP.

## 2.0 Problem Statement

Seetee Aisah Waqf Land was endowed by a girl named Seetee Aisah binti Haji Mahmood on 30 September 1901 for agricultural purposes with a rent of RM 400. Originally, the waqf land of 9.86 acres (426, 888 square feet) was a paddy cultivation area. With the passage of time, MAINPP which is responsible as the trustee for this waqf land faces the challenge of fulfilling the wishes of the waqf giver. In fact, this waqf land area, which used to be just a paddy area, is sinking due to the current development around it. Since, the development around this waqf land is accelerating every day through the development of commercial centers, highways, residences and institutions of higher learning in the surrounding areas. Therefore, MAINPP has strived to develop this waqf land so that it can preserve the waqf land, generate revenue continuously and at the same time the wishes of the waqf giver are also fulfilled. The development of Seetee Aisah Waqf Land has gone through a very long process since year 2006. In June 2006, approval for the proposed development of Seetee Aishah Waqf Land was issued through the Penang State Fatwa. Based on this fatwa, in August 2007, a joint venture agreement was signed between UDA Land North Sdn. Bhd with MAINPP. Planning permission approvals were obtained in

December 2008. Subsequently, several approvals were also obtained during 2009, namely pre - calculation plan approval in May 2009, building plan approval in July 2009 and developer license approval in October 2009. Sales permit approvals were successfully obtained. in October 2010 after the contractor started entering the development site in July 2010. Then, the Penang State Fatwa approved the concept of end-financing using *al-Ijarah* in August 2011 and starting February 2012, an Exclusive Council was held to offer financing by Bank Al-Rajhi to the buyer. The Seetee Aisah Waqf Business Center Handover Ceremony took place in October 2012.

On top of that, Seetee Aisah Waqf Land has been endowed by the owner through a Deed of Trust which has been registered at the Penang State Deed Registrar's Office for the purpose of public benefit (General Waqf). Among the waqf wishes as stipulated in the Waqf Deed include holding a funeral feast for her, her parents and brother in the month of Ramadan every year, paying RM3 for *ratib* prayers at her grave 3 times a year, paying and supplying 1 can of kerosene for Permatang Pauh Mosque in the month of Ramadan, send RM3 to Mecca every year and onwards for the purpose of *umrah* and half of the remaining rent and income earned shall be used to repair the Permatang Pauh Mosque and if no repairs are made, the money shall be sent to Mecca for waqf or the other for charitable purposes and the other half for the use of Saedah as well as her descendants. As the Seetee Aisah Waqf Land was originally vacant and uninhabited, MAINPP did not face any squatter problems or offers to residents. Another advantage is that MAINPP can save costs related to relocation and settlement plans.

In short, the expenditure for the entire development of the Seetee Aisah I Waqf project worth RM 24 million has been done in stages since 25 February 2010 through cooperation with the developer, UDA. For reference, UDA Holdings Berhad (UDA) has established UDA Waqf Sdn. Bhd which is a Special Purpose Vehicle (SPV), with 100% ownership by UDA and was established in 2014 to develop waqf land commercially in Malaysia based on several goals that have been planned. Among the goals of its establishment is to assist in developing and implementing the development of waqf land that has the potential as a housing and commercial project. With this housing and commercial project, then it will be able to provide added value to the land. Indirectly, MAINPP can generate maximum revenue or funds for the benefit and development of the waqf land. At the same time, MAINPP can also fulfill the trust and wishes of the waqf giver as well as their social responsibilities towards Muslims communities in Penang. In addition, it can also help in improving the economy of Muslims by giving a positive return to MAINPP.

The development cost expenditure that is estimated at RM 24 million, comes up with a land value of RM 10.9 million in the early stages of development. The land area involved in the early stages of development was 9.86 acres (429, 501 square feet). Through this joint venture, MAINPP received a business building of 9 three-storey office shop units worth RM 14.70 million and an additional return in cash amounting to RM 650, 000 and a shop rental value of RM 15, 000 per month. Along with, MAINPP also receives 30% of the profit from the sale of home benefits in addition to the joint profit by MAINPP and UDA. Apart from that, the development of Seetee Aisah I Waqf Land has also remarkably gives six other major impacts. First, it provides affordable housing prices that are 20% to 30% lower than the market price in order to help in increasing home ownership among the community. Second, it increases the ownership of affordable housing in the community on lease. Third, it increases the ownership of affordable homes to the B40 and M40 groups, especially in strategic locations. Fourth, it assists in giving profit return to MAINPP and waqf according to Islamic law. Fifth, it provides investment opportunities to the community and in turn can improve the economy of the ummah. Sixth, it creates various entrepreneurial opportunities through the existence of various sub- sectors such as construction, services, finance and suppliers of building materials that contribute to the economic empowerment of the ummah.

Possibly, waqf land is often referred to as an important asset for Muslims. Being as how, land has its own value and uniqueness compared to other properties. In Penang, MAINPP is responsible for the development of waqf properties. In realizing these efforts, there are three main constraints that need to be faced by MAINPP, namely the problem of management and administration of waqf lands by MAINPP, legal constraints related to waqf lands and lack of funds to develop waqf lands. Provisions on matters related to waqf properties in Penang are clearly codified in the Penang Islamic Administration Enactment (State of Penang) 2004. However, there are several other statutes that are also involved in the development of waqf properties such as the National Land Code 1965 (NCL 1965), Land Acquisition Act 1960, Local Government Act 1976, Strata Titles Act 1985 and National Heritage Act 2005. In cases involving the development of waqf properties by MAINPP, the provisions contained in some of these statutes were found to raise issues and challenges in the waqf property development

processes in Penang.

### 3.0 Literature Review

#### 3.1 Prior Studies on Waqf Land

There are various studies from previous researchers related to waqf land that have been conducted before hand. For example, the study of Zakaria and Md. Sani (2015) who focuses on the development of waqf land in Penang. The researchers have developed an integrated framework for waqf land development in Penang using the AMOS application. Johari, Hashim and Atan (2019) have explored the practice of implementing *al-Tawriq* in Malaysia. According to them, the waqf assets that have been developed into low-cost housing projects are able to generate cash to develop other waqf projects. The study highlights the concept of *al-Tawriq* as an alternative solution to the problem of waqf property development funds. Mokhtar (2018) has studied the implementation of cash waqf in Penang. This study found that the amount of cash waqf funds collected by MAINPP showed inconsistent amounts throughout the year, namely high and low figures according to different years. To overcome this problem, MAINPP has undertaken several reforms such as cash waqf through salary deductions and providing online payment facilities. However, these efforts failed to show positive effects. Therefore, the study tries to identify the factors that influence the intentions of Muslims in Penang in implementing cash waqf in order to strengthen the collection of cash waqf in Penang.

Syed Abdul Kader and Mohamad (2019) have examined the Malaysian legal framework related to waqf land. According to the findings of this study, it is observed that the administration of waqf in Malaysia has grown and its contribution covers almost all aspects of economic, social, welfare, Islamic finance, takaful and tax law. Meanwhile, Abdullah and Meera (2018) proposed an Islamic social finance solution by providing affordable public housing to the bottom 40% of households (B40) according to the median income in Malaysia. This study attempts to examine a new national public housing initiative for Malaysia that involves the delivery of affordable low-cost housing under the *al-Hikr* lease structure in the long run. Concurrently, Mat Daud and Mubarak (2019) explored the development of waqf properties by MAINPP through socio- economic aspects. Waqf is one of the agents of wealth distribution that has been prescribed by Islam on its people. The results of this study show that MAINPP shows good performance in performing the functions of organization and control.

Next, Mat Hassan (2018) has studied sustainability in the development of waqf property. The researcher argues that the permanent element in waqf property involves efforts to maintain and increase waqf property and produce continuous waqf benefits. However, until now there are still many waqf properties in Malaysia, especially land that is not developed productively. This situation has resulted in unsustainability in the development of waqf property. The researcher also found that housing waqf is one of the developments on waqf land that is getting the attention of *mutawalli* or waqf managers to produce income for waqf land. This is clearly seen when MAINPP is actively developing housing waqf on waqf land in Penang nowadays. Hashim and Ab. Rahman (2012) argues that there are five basic methods of waqf property development that have been done by MAINPP in an effort to produce income. However, this study only touches on one method of the five methods that have been mentioned above, namely the use of joint venture methods with Government Linked Companies (GLCs). The success of MAINPP in developing waqf land is driven by two key factors; the strategic location and high value of the waqf land. With the expertise available on the part of MAINPP as well as the support and cooperation that has been highlighted from the developers, MAINPP is able to develop large- scale waqf properties.

Mat Rani (2014) in his study stressed that waqf land is a great potential found in religious institutions in a particular state. Thus, it not only has high economic benefits but needs to be explored and developed. One of the methods and strategies to improve general well-being is through its role as a mechanism focused not only on worship and social, but also economic. In addition, it also needs to be developed based on Shariah principles. As a matter fact, many issues mainly related to population, administrative problems, development funds and final financing were discovered through this study. Yusof, Hassan, Zainal Abidin, Mohamed Noh and Habidin (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 study also found that MAINPP has waqf assets in excess of RM 800 million and most of them are lands located in strategic places such as

Georgetown. The results of the study are translated in the form of improvements of management by using the model proposed and valuable suggestions on the implementation and process of waqf property in Penang.

It is worth mentioning that an earlier study conducted by Nasution (2002) noted that in the 19th century, most of the Muslim communities residing in Penang at that time had endowed lands in the hope that its management would be continued by their descendants or close relatives. However, constraints such as the absence of an Islamic government in urban and colonial settlements as well as the discrepancy between Islamic law on waqf and British law have resulted in many legal disputes between waqf trustees. At the end of the 19th century, the Local Authority (PBT) took over waqf land which was considered to cultivate squatter conditions in the middle of the city's settlement as a result of the urbanization process. With the consent of some Muslim leaders at the time, the British had succeeded in interfering in the affairs of religious affairs and the practice of Muslim land management. Besides, Hashim, Ab. Rahman, Mazlan, Abu Bakar and Abd. Kadir (2013) have found several methods that can be used to increase the productivity of waqf assets. Waqf assets can be leased to interested parties or used for various economic activities such as agriculture and livestock. In cases where aforementioned method is considered inappropriate, then the waqf managers should try to find other alternatives to make the waqf land productive. Waqf trustees should also explore other avenues to optimize the use of waqf land under their care. Thus, real estate investment can be used as an alternative to develop the waqf land. This study has examined the methods used to commercially develop waqf land located in Seberang Jaya, Penang managed by MAINPP with the expertise and cooperation of the management of UDA Holding Berhad, namely Seetee Aisah I Waqf Land. The findings of this study prove that the waqf land has been optimized and successfully developed into a residential estate known as Seetee Aisah Waqf Residential Estate.

In addition, previous researcher such as Ibrahim (2005) has disclosed about the adverse effects of the migration process of Malay communities in Penang. According to him, the lower-class Malay communities in major cities in Malaysia who do not have permanent houses are often victims of displacement due to development shifts from time to time. The average urban residential area that previously started as a village has now been wiped out and replaced or changed its status into a squatter settlement area that is so ugly and awkward its position in a thriving city. Ibrahim (2005) was of the view that the abolition of village status in the city should be handled wisely so that the problem of squatter settlement would not become an epidemic among the community. Such settlement areas not only cause socio-economic problems, but now is becoming a socio-cultural phenomenon among the community. This matter is seen to be more pronounced in Penang, because the process of progress that took place, the average Malay populations in Penang have migrated to Sungai Petani, Kedah.

A recent study by Abdullah, Aziz and Bahari (2020) was conducted to examine the implementation of waqf property development in Penang, especially in the commercial sector. Seeing that there are waqf properties in Penang located in the center of the city are having greater potential to obtain greater revenue compared to waqf properties located in rural areas because of high values. Substantial turnover can be obtained through development in commercial form as compared to in the form of land lease. Yet, to execute this development is not an easy thing. According to them, MAINPP as *mutawalli* needs to face several challenges and problems to realize a triumphant development. Yaakob, Ismail, Aziz and Jusoh (2017) were of the view that MAINPP is undeniably an important institution since it has extensive waqf lands located in an urban area with high value and potential for development. According to them, in the Georgetown area alone, Penang has 74 lots of waqf lands with a total area of 97.97 hectares and are estimated to be worth about RM60 million. Until 2014, these waqf lands were not developed as much as possible despite being located in strategic locations and potential for various development projects. Their study indeed found that the management and planning to develop waqf lands faced by MAINPP did not run smoothly due to several factors. Among them are the reluctance of the original residents to relocate, high compensation claims, title claims by the heirs, problems with the concept of development outlined, as well as settlement problems.

Further, the Penang State Mufti Department (2019) has compiled a collection of waqf laws related to the collection of decisions of the Penang State Fatwa Committee. According to the Penang State Mufti Department (2019), the management of waqf property by the MAINPP as the sole trustee of waqf faces numerous challenges that need to be identified before any development proposal on the property is carried out so that the development can be completed properly and achieve the purpose of waqf. Into the bargain, Abdullah (2016) in his study has reviewed the development of waqf property that has been implemented by MAINPP as the trustee for Setee Aishah I Waqf Land. Setee Aishah I Waqf Land's development location is

located in Seberang Jaya, Penang. This study uses two types of methods, namely library research and field research. The results of the study also discovered that his land has been successfully developed despite the MAINPP facing various daunting challenges.

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

Today, various forms of waqf property development have been implemented. In general, the form of waqf land development can be divided into three categories, namely agriculture, livestock and building construction (Hashim & Abd Rahman, 2015). For example, waqf property developments using commercial methods such as housing (terrace houses, apartments), accommodation (hotels, boarding houses), supermarkets (bazaars) and so on (Hashim & Abd Rahman, 2015). These forms of implementation have breathed new life into the economy of Muslims to be more viable. This idea is also hold up by Abdullah and Bahari (2019) in their study that indicated non-productive waqf land can be developed by using *istibdal* method via special waqf land (mosques and graves). Apart from that, it can also reduce the burden of waqf managers who need large funds to manage and maintain the benefits of waqf land. Besides, Mohamed Noor and Ismail (2016) have conducted a study that analyzes the concept of development in the context of *istibdal* waqf. The results of the study found that the concept of waqf development via *istibdal* method has provided great benefits to the local population in Selangor.

Therewithal, Mat Hassan (2019) has thoroughly examined the sustainability of waqf housing development in Penang. The concept of sustainable development of waqf property includes three main things, namely definitions, principles and elements. The principles of the concept of sustainable development of waqf property include five things, namely fair, trustworthy, Shariah-compliant, economic in nature and preserving the environment. Aside from, the development of waqf property commercially that grows productively on waqf land causes a change in waqf benefits and this form of development is able to increase the value of waqf land itself (Mat Hassan, 2019). Furthermore, the methods of sustaining the development of waqf property must meet the three elements of its conditions. First, the retention of 'ayn waqf property. Second, grows productively. Third, produces ongoing benefits (Bahari & Mat Hassan, 2017). When all of the three conditions of this element meet the sustainability methods, then the commercial method will be able to be implemented in line with current developments. The study of Abdullah and Bahari (2019) focuses on the correct method of development on waqf land according to the Islamic perspective. Based on the findings of their study, special waqf land in nature can be developed by using appropriate method like *istibdal*. In fact, many waqf lands in Penang are located in strategic places including places that have been declared as World Heritage Sites by The United Nations Educational, Scientific and Cultural Organization (UNESCO). For example, Kapitan Keling Waqf Land which can be developed in line with the modernization.

Meanwhile, Abd Rahman (2015) has explored on the re-evaluation of Kapitan Keling Waqf Land development based on the concept of Islamic-Based development (PBI) and found that this land development does not follow the development concept recommended in Islam. As a result, the development of Kapitan Keling Waqf Land needs to be re-examined in terms of philosophy, worldview and epistemology to ensure that its management and administration are based on Islam. Aside from, several researchers identified the implementation of the BOT (Built, Operate, Transfer) method by MAINPP in developing the waqf land of Majoodsaw, Penang in their study, namely Hashim, Abu Bakar, Shuib and Jusoh (2014). As a result of this BOT method, a 21-storey tower has been successfully built to be used as an office. This tower which is also known as Penang UMNO Tower is located in the downtown Georgetown, Penang. Using the same development method also, MAINPP has successfully produced income from Majoodsaw Waqf Land and generated double profits. MAINPP has been implementing the re- development and conservation on other housing waqf lands. This development and conservation involved the waqf land of Kadershah Apartments, Kapitan Keling, Alimsah Waley and Lebuh Acheh. The existing waqf building improvement project has been in use for a long time. These improvements are to ensure that this commercial development remains relevant in the eyes of society at large. Owing to the fact that, commercial buildings used in bad condition will affect MAINPP as *mutawalli* who are entrusted to take care of this waqf land. Therefore, this method of conservation is important to preserve the waqf housing park and subsequently produce benefits of the waqf property (Mat Hassan, 2019).

However, there are many challenges that need to be faced by MAINPP. MAINPP is the sole trustee of the waqf property development and will need to face the challenges that arise in developing waqf property commercially. Nevertheless, with existing experience the challenges faced can be addressed with existing

expertise. Assistance from the Federal Government, private parties and GLCs can ease the burden of MAINPP as a *mutawalli* in realizing productive waqf property. For that reason, the forms of commercial waqf property development and the potential revenue of this development should be given due attention by MAINPP (Abdullah, Aziz & Bahari, 2020). Moreover, the development of waqf property in Penang can be said to be on the right track. As a *mutawalli*, MAINPP plays a big role in developing this waqf property according to the current development, namely through the commercial sector. The strategic waqf land potential gives an advantage to waqf land in Penang by obtaining high acquisition potential (Abdullah, Aziz & Bahari, 2020). With the expertise owned by the private sector and developers, waqf land in Penang with the efforts of MAINPP as *mutawalli* is expected to help in upgrading the economy of the Muslim community in Penang. MAINPP is jointly expanding its energy with developers and Federal Government bodies to be able to implement large-scale development in the future. This large-scale development can be implemented as the real estate economy in Penang is growing every year.

Current research by Ismail, Abu Bakar, Ismail & Ramli (2021) revealed that MAINPP faces several challenges in developing Seetee Aisah I Waqf Land. Among the main challenges came from the Local Authority (PBT), end-financing, governance and land status. Other side challenges listed are the difficulty to get strategic partners for waqf collaborations, obstacle of restoring and building the trust and confidence of the Muslim communities in Penang and future challenges i.e end-financing problems due to lease issues on the waqf properties. The researchers stressed out that all government bodies whether at the state or federal level, strategic smart partnership, financial institutions need to jointly mobilize energy with MAINPP in order to implement large-scale development in the future. Large-scale development can be implemented as the property economy in Penang is growing every year.

#### **4.0 Methodology**

This study adapts a qualitative research design. The data were collected through documents and semi-structured interviews with the informants involved throughout the development phases of waqf properties at MAINPP and UDA Waqf Holding Berhad. The main reference material was obtained from MAINPP as the sole trustee of waqf property in Penang. Records and documents on waqf property development in MAINPP are data which is important to aid the writing of this study. This record consists of a list of waqf land, location, ownership, current status and history of the waqf land. Highlights of past research from recent journal articles and selected documents help researchers in understanding the concept of waqf property development in MAINPP with special attention to Seetee Aisah II Waqf Land more clearly.

#### **5.0 Result**

##### **5.1 Seetee Aisah II Waqf Land Development**

The development of Seetee Aisah II Waqf Land is still in the planning. It has been targeted to start in 2021 and is expected to be completed in 2025. To date, earthworks are being carried out at the proposed development site. The type of development planned is a mixed development consisting of apartments and shop houses. The total value of the development is RM216.48 million on 7.32 acres of land located in Lot 3117, 252. 200 and Mukim 4, Seberang Perai Tengah, Penang. A joint venture agreement has been entered into between MAINPP and UDA Land North Sdn. Bhd on 9 January 2017. The value of the building based on cost is RM 23.43 million, while the value of the building based on sales value is RM 20 million. Figure 1 is a summary of the Seetee Aisah II Waqf Land development project.





Figure 1. Summary of Seetee Aisah Waqf Land Development Project II

To date, UDA President which is also UDA Chief Executive Officer, Sr Mohd Salem Kailany, said his party was optimistic to complete the Seetee Aisah II Waqf project within 36 months once it was launched starting July 2022 (Berita Harian, 2022):

*“This project will start in the near future and we are confident of completing this project within 36 months as planned”* (Sr Mohd Salem Kailany)

Apart from that, for now, the project work worth RM187 million has entered the substructure phase which includes the construction of the lower structure or the foundation structure of the building (Kosmo, 2022):

*“Superstructure work or installing other basic structures such as columns and beams of the building is expected to begin in the near future, before the launch of the project next month”* (Sr Mohd Salem Kailany)

Interestingly, the Seetee Aisah II Waqf Land didn't experience any problem of encroachment or squatters on the waqf land site. However, MAINPP is still facing various issues and challenges in developing Seetee Aisah II Waqf Land. The planned development on this land involves prepared houses and commercial buildings consisting of low, medium cost apartments and other commercial units, which in total involving 5 phases of development for 5 multi-storey building blocks. The Special Meeting of the MAINPP Land and Asset Development Committee which took place in August 2014 has decided that the return to MAINPP will be given in-kind in the form of a building worth RM 24.3 million. In the meeting decided in January 2016, MAINPP also agreed with the proposed return and will enter into a venture agreement with the developer, UDA Land North Sdn. Bhd. at the end of 2016. Among other things that were agreed were such as the additional profit return that will be provided by UDA Land North Sdn. Bhd to MAINPP with a ratio of 50:50 if the rental price of the lease exceeds the market price that has been mutually agreed.

Meanwhile, to finance the development on the Seetee Aisah II Waqf Land, MAINPP has used the concept of joint venture with the developer (UDA Land North Sdn. Bhd). MAINPP will provide the waqf land site, while the developer will develop the waqf land through activities such as managing the project, appointing consultants, financing all the development costs, promoting the project, engaging in sales activities and other parties involved in development such as Local Authority (PBT), parties involved with the law and the bank (Bank Muamalat Berhad). Through the financing method as shown in Figure 2, MAINPP will receive a return in the form of a building based on the latest value of the land and will be leased to generate appropriate profits according to the wishes of the waqf. Zakat Management Center (PUZ) is a subsidiary of

MAINPP which is responsible for managing the distribution of zakat to *asnaf*. Through this method of financing, 7 floors of the building will be purchased by PUZ using zakat funds for the purpose of making PUZ administrative office, dialysis center and *asnaf* training center. Therefore, the return earned by MAINPP also exists in the form of office purchases by PUZ.

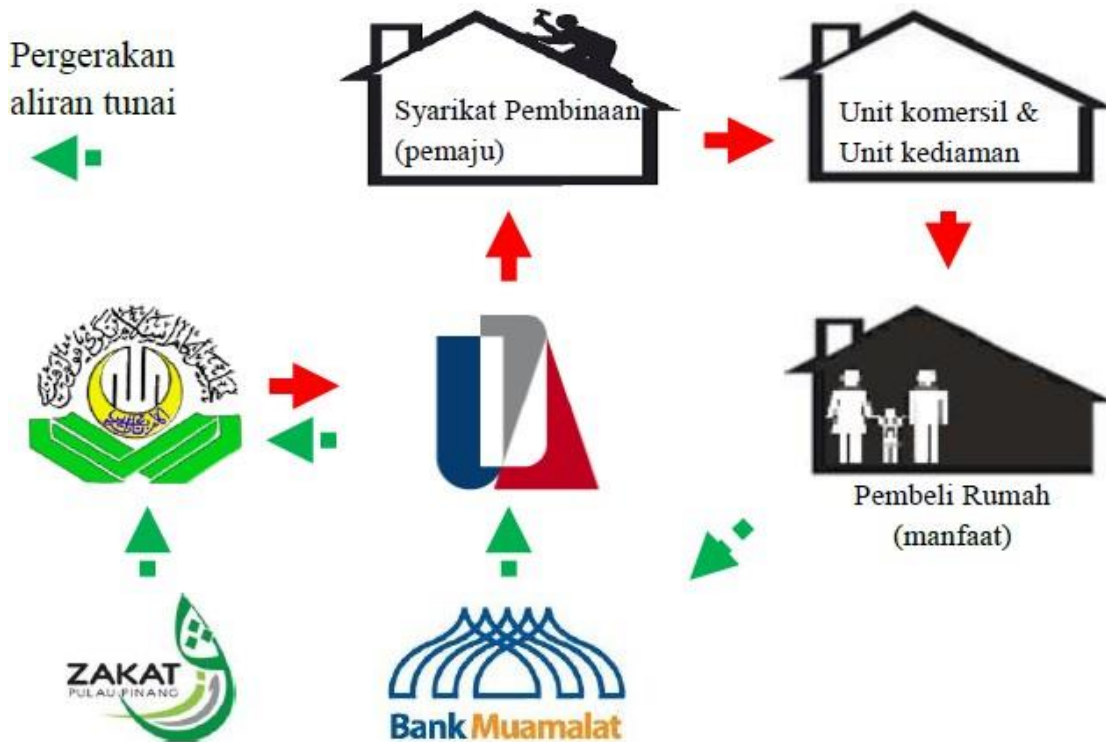


Figure 2. Seetee Aisah II Waqf Land Development Financing Method

## 5.2 Issues and Challenges of Seetee Aisah II Waqf Land Development

Waqf land has no value in the Malaysian land market as it is not included in the main infrastructure of the Malaysian Land Administration System. In other word, there are no cohesive laws and financial system for waqf land. Indeed, it raises a question of whether this waqf land is able to enter the land market or not, because waqf land isn't explained clearly in the National Land Code 1965 (NLC). Since it is under the state law and jurisdiction, waqf land can be used for lease, rental and crops only. The marketability of waqf property can be achieved if the land administration system is able to fully protect the rights of landowners and they are free to do business. This is mainly because the law in Malaysia doesn't give freedom to waqf landowners and protect any transactions conducted by them.

In terms of the marketability of waqf land, freehold waqf land has better marketability in terms of value compared to leasehold titles with low market value. Malaysian banks don't offer loan facilities as collateral for waqf land, which results in waqf lands lacking investment and development facilities and even remaining neglected or unused. Although the trustee intends to mortgage waqf land, the bank will not accept it as Malaysian banking law prohibits unsecured loans and waqf land is not a valid guarantee. This is stipulated in Section 60 of Banking and Financial Institutions Act 1989, as well as Section 241 (3)(a) and Section 301(c) of National Land Code 1965. In addition, in the land market, the registrar must provide information on the latest land prices to give a good estimation of the market value of the land made. Banks, wishing to provide informal loan facilities for the development of waqf land can't assess the amount of

loans they wish to give to waqf institutions because they don't know the method to find the value of the land. (Federal Constitution & Land Acquisition Act 1960)

Perhaps, it is to be noted that Seetee Aisah II Waqf Land didn't faces barriers of any encroachment and squatter problems. Hence, MAINPP didn't have to deal with such challenges in the effort to develop this waqf land. However, MAINPP is still striving with some challenges that arise in terms of development and legislation as follows:

i. Local Authority (PBT) Guidelines

As in the case of the development of Seetee Aisah I Waqf Land, the development of Seetee Aisah II Waqf Land is also subject to the guidelines issued by the Local Authority (PBT). However, the guidelines issued by the PBT are not in line with the conditions that have been approved by the Penang State Fatwa Committee. Whereas, according to the fatwa approved, waqf and can't be transferred and this matter is in line with the National Land Code 1965 (NLC) through Form 14A. In fact, to meet these PBT guidelines, several aspects related to project planning approval must be complied with by certain departments such as the Municipal Council involved in the management of public halls, open spaces, drains, landscaping and playgrounds, Indah Water Consortium (IWK) which involved in the management of sewage plant maintenance, Public Works Department (JKR) which involved with roads and Tenaga Nasional Berhad (TNB) which involved with electricity supply. All the involvement of these departments is through change of ownership to be maintained as stipulated in the NLC 1965 through Form 14A.

ii. Waqf Land Status

The challenges of the land status are similar to the challenges that existed during the development of Seetee Aisah I Waqf Land. The status of Seetee Aisah II Waqf Land which was originally a paddy area, also faces challenges to be converted to industrial land status. For the reason that the Seetee Aisah II Waqf Land is located within the institutional zone and the agricultural zone. On that account, this land is only allowed to be used for the purpose of building institutions and agricultural activities only. No development or commercial activities are allowed to be carried out on this waqf land. MAINPP needs to change the status of this land to a development zone that will allow this waqf land to be used for residential and commercial purposes. Figure 3 is an illustration of the Seetee Aisah II Waqf Land development plan by UDA Land North Sdn. Bhd.



Figure 3. Illustration of Seetee Aisah II Waqf Land Development Plan

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

Among the challenges that need to be faced by MAINPP is to comply with development procedures by the Ministry of Housing and Local Government (KPKT). All commercial housing development in Malaysia is subject to development procedures set by KPKT. The challenge lies in the process of obtaining a Developer License and Advertising Permit (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 NLC 1965 Form 14A and the process of change of ownership through the lease of NLC Form 15A.

iv. Development Fund Issues

This Seetee Aisah II Waqf Land originally didn't generate any revenue for MAINPP. In view of the fact that the waqf land site is filled with bushes before the development process. As a consequence, MAINPP is facing problem of funding to start development on it. Thus, MAINPP is required to seek funds through alternative methods in order to develop this waqf land. Among those undertaken is a joint venture project with the developer, UDA Land North Sdn. Bhd.

v. Constraints in Legal Aspects

The constraint in the legal aspect stems from the issue of changing the ownership of the residential units sold because it is still owned by MAINPP while the buyers are only allowed to own it on lease for 99 years only. This has forced MAINPP to bear all land and gate taxes and maintenance involving facilities such as playgrounds, IWK sewage plants and drains, open spaces, multipurpose halls, roads and TNB for electrical sub-stations during the 99 years. In addition, development involving multi-storey buildings on waqf land must also comply with the Strata Titles Act 1985 where the completed building units will be divided into plots according to the Share Unit Formula Certificate (SIFUS) and owned by the parcel owner (lessee) on lease. The Joint Management Body will be responsible for managing and maintaining the building and facilities available on the multi-storey building. However, the challenge arose when the title could not be transferred to the buyer, instead MAINPP continued to be the owner of the building and the owner of the plots and was responsible for managing and maintaining them all for a period of 99 years. MAINPP becomes the Sole Management Body according to the fatwa issued that the building cannot be transferred and is only owned by the buyer on lease through NLC 1965 Form 15A.

vi. End-Financing

Developers are often faced with the challenge of obtaining end-financing facilities during the development process of Seetee Aisah II Waqf Land as stated in NLC 1965 Form 14A. Therefore, the majority of banks find it difficult to comply with this condition as stated in the fatwa that transfer of ownership is only allowed through the NLC Form 15A procedure, which is a lease for 99 years only. Developers face difficulties in negotiating with the bank. Only a few banks can comply with this, namely Bank Ar-Rajhi, Bank Muamalat Malaysia and Bank Islam Malaysia Berhad (BIMB). The development of Seetee Aisah II Waqf Land has been successfully funded by Bank Muamalat Malaysia.

## 6.0 Discussion

Among the suggestions recommended by researchers for improvements are as follows:

i. Reforms in The Land Administration System

Reforms in the land administration system for the benefit of waqf are much needed to ensure that waqf land ownership is protected. On the grounds that protected property rights are able to increase marketing activities which is regarded as an investment. This form of investment is capable of increasing many more investments and economic development in the future of the country. In addition, the uniformity of the legal framework is able to provide the necessary provisions in the conversion of ownership rights and the methods used in carrying out this process. Once the title is registered and the title is secured, the trustee of the

waqf land can make it as collateral and security for the loan. Perhaps this will able to provide opportunities for land productivity. As a matter fact, property valuations are needed to protect the financial sector as overvaluation will affect a loan portfolio. Valuation is required because the repayment capacity and the amount of loan that can be borrowed are directly related to the net worth of the borrower. Reforms in the land administration system can also prevent the occurrence of current formalization irregularities and lag behind the realities of the modern complex land market.

ii. Improvements in Helping Waqf Land to Be More Marketable

Several improvements can be implemented to make waqf land better more marketable. Among the improvements are to study the laws related to waqf which aims to produce a good legal framework for the marketing of waqf properties; incorporate waqf land ownership into the infrastructure of the Malaysian Land Administration System; minimize the security of title by making some waqf land transferable, safe and protected; expand the available lease market to waqf land; record all waqf land transactions in the main cadasters; enable waqf institutions such as MAINPP to gain access to credit by charging for waqf land; recognize waqf land as security or collateral as this will able to provide opportunities for waqf institutions to access the credit market and treat waqf land as same as the ordinary land for valuation purposes appropriate to the term of ownership i.e. permanent, leasehold, or only leases for a period of 3 years to 99 years.

iii. Improvements in Legal Aspects

The law needs to be reviewed to add some provisions namely recognizing the waqf trustee as a corporate legal person capable of holding land, recognizing the classification of waqf land in primary waqf land, secondary waqf land (land acquired through waqf income, or used as a commercial commodity after transactions required under cash waqf), enabling the registration of all these titles and making transfers. In addition, the provision should also emphasize the enforcement of lease transactions, not only in the short term but long term and can be up to 99 years as well as recognizing title to suitably being used as a guarantee in the market. Furthermore, the provisions also need to recognize the lease in terms of value, transferability and security and evaluate the various types of waqf land not in terms of their use but as potential in the commercial field. In other words, every transaction involving a financing project, the bank must accept the lease as collateral, and evaluate the land in accordance with its potential value and the benefits to be obtained.

To implement the items in i to iii, a uniform and comprehensive waqf law code as well as relevant state and federal legislation such as the National Land Code (NLC), Land Acquisition Act 1960 and state legislation especially the State Islamic Religious Administration Enactment (EPAIN) needs to be amended. Apart from that, the waqf market also needs a cadaster facility which is a pillar of the land market. Via this facility, it is able to provide information on current land prices and assist in complex commodity trading to MAINPP (Mohammad, 2008).

iv. Joint Ventures with Financial Institutions or Developer Companies

MAINPP can enter into joint ventures with financial institutions or developer companies. MAINPP as the waqf trustee will contribute waqf land as capital. Waqf land can also be used as security to obtain a loan as long as it is still within the lease period from the waqf institution to the developer company. There are two methods or concepts that can be practiced namely; *mudharabah* and *musharakah*.

Al-Zarqa (1994) has proposed asset-based *mudharabah* where the waqf institution provides land while the developer or financier constructs and manages the building. After the building is completed, the building can be leased to a third party. Waqf institutions and financiers will share the rental proceeds. Development costs must be known and the profit-sharing dividend ratio must be fixed according to the costs incurred. Whereas according to Kahf (1999), capital-based *mudharabah* is where the *mutawalli* (waqf manager) as an entrepreneur or fund manager. The financier will be the *rab al-Mal* (investor) and will contribute capital while the *mutawalli* will build and manage the building. Profits from buildings such as rentals will be divided according to a set ratio. The ratio must take into account the role of the waqf

institution that manages and uses the waqf land.

Aside from, *musharakah* can be divided into two, namely contractual joint venture (*shirkah al-Uqud*) and joint ownership (*shirkah al-Milk*). In the *musharakah*, the capital contribution from the waqf institution is taken from; (a) the market price of the waqf land; or (b) waqf land and also the minimum contribution to the cost of the building to be constructed. In case (a), the revenue from the building must be divided into two, namely one part to pay the cost of the building to the financier, and one part to be divided between the waqf institution and the financier. While for case (b), a portion of the income has to be paid to the waqf institution as land rent and the rest is divided to the waqf institution and the financier according to the amount of equity in the project. Al-Zarqa (1994) once proposed joint ownership of land and buildings but was not supported by most Islamic scholars on the basis that waqf land can't be owned by others. Meanwhile, Hammad (1997) once proposed that the building should be owned by the financier and the land owned by the waqf institution. In terms of income distribution, a portion will be given to the financier to pay the cost until the cost of the building can be settled and the building will be transferred to the waqf institution.

#### v. Self-Financing

Apart from *mudharabah* and *musharakah*, self-financing methods can be also considered in the development of waqf land. This method means cash or land donated to obtain costs for development by the waqf institution. There are 5 ways that can be done to reduce the cost of financing as follows:

- a. Land is used as capital: Land can be used as capital to contribute partial funds (partial financing) for the cost of a project so that the waqf can contribute in the cost of the project and achieve a larger share of equity.
- b. Rental payments as a result of the lease: The *mutawalli* can sell the waqf property with a longer lease period to the buyer to get more rent. The buyer who owns this long lease term can develop the land using his own resources and must pay a term lease to the *mutawalli*.
- c. *Istibdal*: The majority of Islamic scholars agree to allow *ibdal* and *istibdal* if there is an urgent need and it is able to provide benefits. There are two forms of exchange; *ibdal* and *istibdal*. *Ibdal* is removing or exchanging a *mawquf* (waqf property) from its original concept which can't be sold, bestowed or inherited by selling the waqf property. Whereas *istibdal* is buying another property through the proceeds of sale to be used as *mawquf* to replace the property sold by covering any property acquired through substitution with the same property or property with better value and benefits. This property is known as *badal* property or *amwal al-Badal*.
- d. Waqf Shares: Waqf Shares occurs when the waqf giver endows the shares to accredited bodies that act as trustees. Money will be collected to be converted into permanent property. Its use is limited to the development or purchase of a new asset. This method requires the *sighah* of waqf (forms of waqf. i.e offer and acceptance) to be channeled to waqf institution when performing the waqf.
- e. Cash Waqf: Waqf by using cash collected in a trust fund under the management of *mutawalli* who are entrusted to manage this waqf for the welfare and benefit of the ummah. This method was introduced later on as contemporary waqf requires cash just as it requires fixed assets. The acceptance of the waqf method in cash enables the waqf institution to obtain a source of cash flow (cash or assets that can be converted into cash or vice-versa) that can cover the cost of waqf development projects.

With this, waqf institutions are not only able to generate income but also able to create their own investment funds that can actively participate in the Malaysian Islamic capital market. All methods as mentioned before except for self-financing must be handled by affiliated bodies with MAINPP. MAINPP will lease the land to the developer for 99 years. The company will be indebted to MAINPP for the land market revenue and annual rent. Thus, the developer can develop the land using one of the methods proposed by researchers. In addition, through this diversification, developers can develop more land for development,

and in turn can form new limited liability companies with one asset and one project to avoid the risk of losing another property. The developer company can also raise funds by making the leased asset as collateral. If accepted by the financier, the rights of the financier will be guaranteed by a lease for 99 years. Throughout the lease term, MAINPP will be a shareholder and thus entitled to a share in the proceeds of the project according to the amount invested. The developer company will be the lessee and be able to sub-lease the property without legal restrictions.

Besides, MAINPP can also invest a certain amount of money credited to the company for the development of the same land by becoming a partner in this project. According to Islamic law, once the land is leased, the building belongs to the lessee and the land remains the property of the lessee. Therefore, MAINPP and the other parties will be partners who will share equity as well as dividend rights. Apart from that, another alternative is through self-financing which is also one of the ideal ways to develop waqf land by using funds from other parties because MAINPP is a waqf institution that has a limited source of funds.

Thus, taking into account current market trends, only part of the financing can be obtained from financial institutions which is only 60-90%. Some Islamic institutions offer 100% financing, but because Islamic banks also use conventional benchmarking in terms of charges and fees, this situation will inevitably result in high charges imposed on MAINPP especially in the long term. The implication is that it will not benefit the waqf recipient (beneficiary) (Mohammad, 2006).

## 7.0 Conclusion

In conclusion, based on the results of the analysis that has been done, it can be concluded that there are various issues and challenges related to the development of waqf properties in Penang, especially those involving Seetee Aisah II Waqf. In an effort to develop this waqf land, several issues and challenges have been identified such as meeting the Local Authority (PBT) guidelines, waqf land status, development procedures by the Ministry of Housing and Local Government (KPKT), development fund issues, constraints in legal aspects and end-financing. Some proposed solutions have been suggested by researchers to overcome these challenges including reforms in the Land Administration System, improvements in helping waqf land to be more marketable, improvements in legal aspects, joint ventures with financial institutions or developer companies and self-financing. As a continuation to this study, further studies can be done by future researchers. Among the areas that can be explored include the studies on waqf property developers, waqf property development financing mechanism, waqf property legislation in Penang and waqf property investment returns using a variety of traditional and modern investment measurement methods. Future studies may also use a larger sample size, a longitudinal design or even a multi-method approach to enhance the findings on these subjects.

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