

Proposing Waqf New Form (W_{NF}) In Waqf Land Registration System In Malaysia

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Abstract

This paper highlights and discusses the various forms and procedures involved in the registration process of waqf land and suggest the Waqf New Form (W_{NF}) as a solution to the issues that arise in the registration of waqf land in Malaysia. The study sought to answer the following two research questions: What issues arise in the method of waqf land registration in Malaysia? In what ways can such issues be resolved? Design/methodology/approach: This study employed a qualitative research approach and used content analysis to analyse data. Data were collected through semi-structured interviews with lawyers, academicians, and executive officers from the Department of Land and Mines (DLM) and the State Islamic Religious Council (SIRC), and reviewed documents were collected mainly from the Department of Waqf, Zakat and Hajj Malaysia (JAWHAR). The study found the W_{NF} to be a solution to the issues that arise in waqf land registration. It was developed to address the current waqf issues such as problematic registration methods, lengthy and complicated procedures, interference in the civil court jurisdiction, and idle waqf land. The W_{NF} resolved the flaws of the previous waqf land registration system in Malaysia. The W_{NF} will provide solutions to the current registration system within the National Land Code, 1965 (NLC), which will secure property rights in the future.

Keywords: waqf, land, registration, legal, amendment.

1.0 INTRODUCTION

The land is a valuable asset for every state. Due to the high demand and land scarcity, it is crucial for land to be registered and appropriately managed. In Malaysia, land titling is crucial for all land, including waqf land, must be registered for the Land Title to ensure land indefeasible ownership as stipulated under the Malaysian Federal Law in Section 340 of the National Land Code (NLC). There are three methods to register waqf in Malaysia: Statutory Vesting, Surrender and Re-alienation and Transferred Title. Several issues arise from these methods. They can cause confuse and applicants can also face difficulties in submitting different forms for different procedures. The procedures are quite lengthy and may result in insecure transfer to the extent that heirs can revoke the *waqf* in the future (Ghazali & Raji., 2019; Hamid & Tahir, 2014; Mohammad, 2013).

This paper highlights and discusses the various forms and procedures involved in the registration process of waqf land and suggests the Waqf New Form (W_{NF}) to solve the issues that arise in the registration of waqf land in Malaysia. The study sought to answer the following two research questions: What issues arise in the method of waqf land registration in Malaysia? In what ways can such issues be resolved?

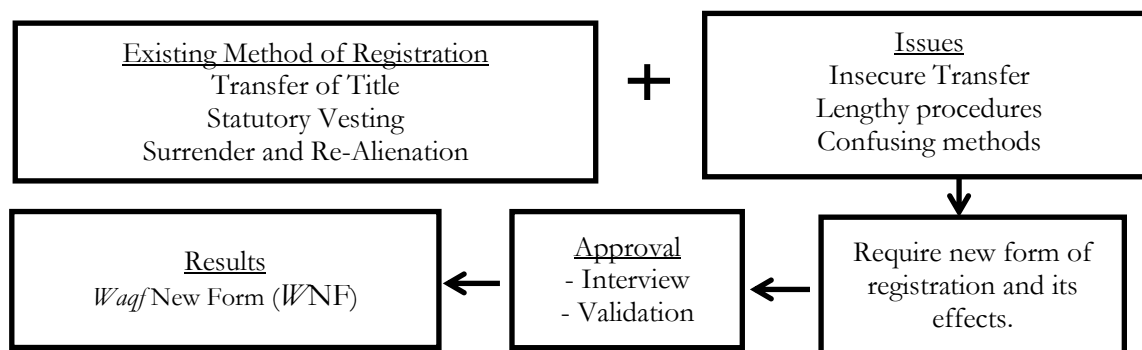


Figure 1 The process of formulating a New Form in Waqf Land Registration System in Malaysia
Source: Author, (2020)

As presented in Figure 1, this paper highlights the issues in waqf land registration and suggests the WNF as a solution to the issues that arise in the waqf land registration system in Malaysia. Semi-structured interviews were used for empirical data collection. This method allowed the interviewer to validate the issue and the WNF within the waqf land registration system. During data collection, the method of waqf land registration suggested most commonly was Statutory Vesting. Therefore, the Statutory Vesting method with the WNF should be used in waqf land registration in Malaysia.

The Waqf land registration system in Malaysia compromises the conservation of the property. Therefore, the interview will assist in investigating the root cause of the problem. Purposive sampling was adopted to select the most appropriate and relevant respondents involved in the waqf land registration system. This paper is organised as follows: it provides a review of existing literature on the Waqf land registration system in Malaysia and describes the methodology used to collect data. The paper then presents and analyses the findings of the study. Finally, it provides a brief description of the WNF as a solution for the waqf land registration issues.

2.0 LITERATURE REVIEW

Few studies have been conducted on *waqf* properties. Some scholars have focused on financial issues and funds generation (Khan et al., 2020; Sukmana, 2020; Zauro et al., 2020), and others on the demographic groups experiencing economic problems that can be targeted for donations by cash *waqf* institutions for their marketing campaigns (Hariyanto et al., 2020; Razak, 2020). Artha et al., (2020), Hossain (2019) and Tajudin et al. (2020) designed a conceptual model of Islamic microfinance and rehabilitation by using *waqf* funds for the slum and floating population. Zain and Sori (2020) designed a potential sustainable and responsible investment (SRI) Sukuk model and sought the opinion of subject-matter experts and industry practitioners on the model, its attractiveness to investors, and its feasibility of its implementation in Malaysia. Osman and Agyemang (2020) argued for the involvement of beneficiaries in matters that impact them.

2.1 The Current Waqf Land Registration System

Some scholars have also conducted fundamental theoretical research on the scope of jurisprudential flexibility in modern *waqf* (Abdullah, 2020). Bazzi et al. (2020) explore the religious foundations influence in politics and society. Shabbir (2018) and Tumirin et al. (2020) investigated the waqf assets and business asset's philosophy to reconstruct assets and waqf assets' definitions and concepts.

Some studies on *waqf* relate to technology. For example, Komalasari, (2020) studied a web-based system whose purpose was to create a complete and accurate database describing the actual conditions of the *Waqf* cemetery land in the Karees, Cibeunying, Bojonegara, and Tegallega areas. Asni et al. (2020) studied the *istibdal waqf* concept using a geographical information system (GIS) to benefit socio-economics and Muslim cemetery *waqf* management to establish whether it fulfils the criteria set for *istibdal*. Iman et al. (2020) focused on an online-based *waqf* management system in Indonesia as a new model for the management of *waqf* administration.

Few studies focus on *waqf* land registration. These include Ghazali & Sipan. (2019) who highlighted nine issues from the organisation and the donors involved in the *waqf* land registration process and suggested nine improvement proposals by the State Islamic Religious Council (SIRC) Johor. Osman et al. (2018) examined the procedure in the registration of *waqf* land from a legal perspective regarding provisions in the NLC of 1965 and the state law under the Administration of the Religion of Islam (State of Penang) Enactment 2004. Abu Talib et al. (2020) studied the effects of institutional pressures that shape the intention to adopt *waqf* accounting and reporting. Ismail et al. (2015) concluded that SIRC in all states must be professionally restructured to improve the administration, management, and development of *waqf* land in Malaysia. Akhtar (2013) showed that a *waqf* created in another country could be regulated as a charitable institution whereby the settler disposes of his property for charitable purposes.

These studies have highlighted *waqf* land registration and have proposed some suggestions, such as improving reporting and providing training services. Some of the studies suggest giving a power of attorney to non-governmental organisations or private associations to act as trustees to register the land as *waqf*. While this seems to be a great solution, it does not fully cover *waqf* properties' security because the registration method is lengthy and revocable. Therefore, this study sought to highlight the issues *waqf* land registration and suggested the *WNF* for the *waqf* land registration system in Malaysia.

2.2 Waqf Land Registration Under The Malaysia Legal System

To make *waqf* indefeasible, binding, valid, and recognised under the Malaysian legal system, the *waqf* must be declared at SIRC in front of a *waqf* officer. The provision of the NLC is applies to the Torrens system, which holds that the principle of registration is everything. Therefore, *waqf* needs to be registered under Section 215 of the NLC (Transfer of Title, form 14A), Section 195 of the NLC (State Surrender and Re-alienation, form 12A and form 12B), or Section 416 of the NLC (Statutory Vesting, form 30A, and form 30B). The steps for *waqf* land registration include applying and preparing the Layout Plan, Ground Report, Land Reports, Admission Form and Letter, Registration and Vesting, Submitting Notices, Stamp Duties Exemption, Periodic Surveys and Gazetting Land (Ghazali et. al, 2021). The Department should approve the registration of Survey and Mapping, Land Administrator, Department of Lands and Mines, State Authority, and Local Authority (Rani & Ghani, 2012). Finally, after approval, the certificate of the title is transferred to the SIRC. After that, the *waqf* land becomes indefeasible, binding, and valid under Civil Law, NLC, States Enactments, and the Court. The registration process is assisted by the Department of Lands and Mines and the Department of Survey and Mapping (Rani & Ghani, 2012).

Table 1 Method of *Waqf* Land Registration in Land Office at Malaysia
Source: NLC, (1965)

Method of <i>Waqf</i> Land Registration.	Provision of NLC	Forms
Transfer of Title	Section 215	form 14A and form 14B
State Surrender and Re-alienation	section 195	form 12A and form 12B
Statutory Vesting	Section 416	form 30A and form 30B

Initially, it seems that the process of *waqf* declaration in Malaysia is compliant with Islamic law, whereby the existence of the five elements/pillars of *waqf* shall make the *waqf* valid and binding. However, under the process of *waqf* registration in Malaysia, several problems have been discovered. Currently, there is no specific legislation on *waqf*. There are many forms and procedures involved, as shown in Table 1. This diversity can confuse, and the applicants can also face difficulties submitting different forms for different procedures. Besides, each method is problematic, as described below:

- i. **Statutory Vesting:** The endorsement on statutory vesting under Section 416C is only made on the title's certificate. The name of SIRC is only endorsed as the manager of the land. Provisions are referred to as rights in whole or partial of alienated land are vested in the transferee. Statutory vesting is not considered registered ownership. It limits the scope of ownership of SIRC by just giving rights to occupation, use, control, or management. Therefore, it does not secure the status of *waqf* to be indefeasible in the future, and SIRC may have problems transferring the land within the procedure of *istبدال*. Therefore, Muslims or the *waqf* land beneficiaries may lose the rights to receive compensation for land acquisition since SIRC is not the registered owner of the land (Ghazali & Raji, 2019; Rani & Ghani, 2012).
- ii. **Surrender and Re-alienation:** This method requires the land to be transferred to the state and re-alienated to SIRC. However, its status is unclear under Section 195. The NLC mentions that either the land or *waqf* land is alienated as state reserve land (Ghazali & Sipan, 2019; Kader et al., 2009). State reserve land causes the status of *waqf* land to be removed and the land can be taken at any time by the state without compensation. Besides, some of the lands are taken for public use (e.g., road and passage under the process of surrendering the land to the government without compensating the property owner (SIRC/*waqif*).
- iii. **Transferred Title:** In recent times, the method of transferring the title is long and complex. It is also contradictory to the *waqf* property's nature because fit is transferred to SIRC without the *waqf* clause. It shall only be owned by Allah and cannot be transferred to anyone (Ghazali & Sipan, 2019; Kader et al., 2009).

The methods mentioned above have many weaknesses: lack of standardised practices and detailed laws, procedures, and clear rules to declare and register the land under the SIRC and NLC.

3.0 METHODOLOGY

This study adopted a qualitative approach understanding the underlying reasons for the *waqf* issues of by obtaining expert opinions and developing ideas or hypotheses so that changes could be suggested (Crossman, 2017). This research adopted a content analysis, which included reasoning by inducting the law related to *waqf* land registration and deducting it to the scope of this study (Pacific, 2014). Twelve interviews were conducted to gather the expert's opinions on

waqf land registration system in Malaysia. By content analysis in literature review and interviewing respondents, the *waqf* land declaration and registration system are improved by suggesting new *waqf* registration forms in Malaysia. Finally, the proposed new forms, and proposed method were validated by the same experts

A purposive sampling method was used to select respondents based on specific characteristics or criteria concerning the study's needs, as shown in Table 2. The sample was selected by looking at respondents' relevant characteristics of respondents and the suitability of locations (Kumar, 2019). Data were collected from four states, namely Melaka (MKE), Negeri Sembilan (NSWE), Johor (JWR), and Selangor (SWE), including the Department of Land and Mines and several experts in the relevant area. These four states were selected because their enactments were better than that of the other states in terms of *waqf* registration and declaration.

Table 2 List of Respondents
Source: Author, (2020)

Respondents	Code
State Islamic Religious Council	S1, S2, S3, S4
Department of Land and Mines	D1, D2, D3, D4
Academia in Land Law and <i>Waqf</i> Regulation	E1, E2
Lawyers in Land Law and <i>Waqf</i> Regulation	E3
Department of <i>Wakaf, Zakat</i> and <i>Hajj</i> (JAWHAR), 2004	E4

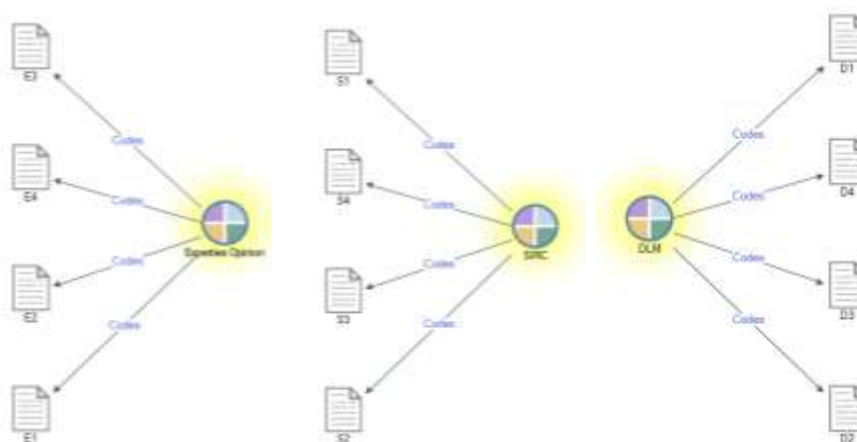


Figure 2 Group of respondents
Source: Author, (2020)

All respondents requested their names to be anonymised for confidentiality. They are classified as D1, D2, D3, and D4 for the Department of Land and Mines, S1, S2, S3, and S4 for SIRC and E1, E2, E3, and E4 for Expert Opinion in the NVIVO 12 software (refer Figure 2). The interviews were transcribed, validated and coded.

4.0 RESULTS AND DISCUSSION

The data were visualised in a graph and scheduled based on the experts' opinions. As Figure 3 shows, the most referenced law by the respondents is the NLC of 1965. However, the NLC does not cover any part of the *waqf* provision. The NLC declares in Section 4(2) the unique position of *waqf* lands and that nothing in the NLC provision shall affect *waqf*. "By Section 4(2) which states to the effect that nothing in the NLC shall affect the provisions of (e) any law for the time being relating to *waqf* or *baitul mal*."

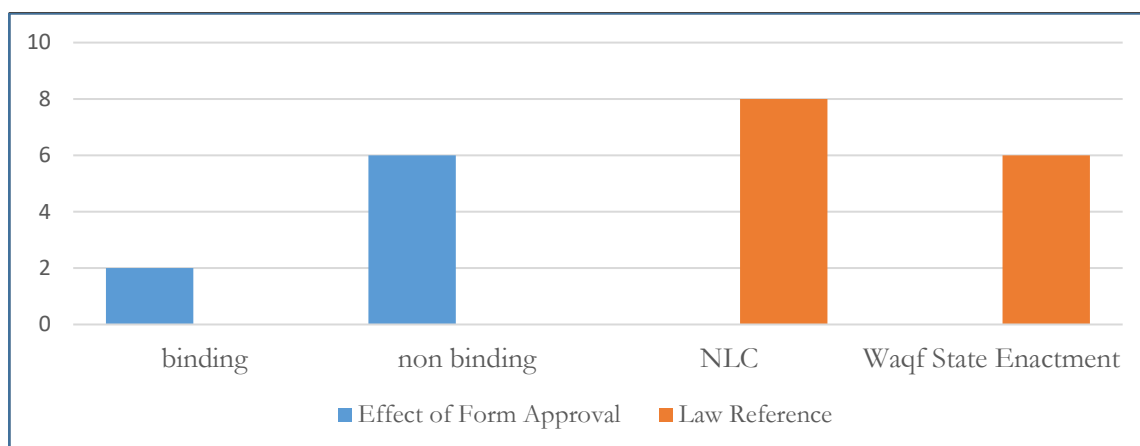


Figure 3 Effect of Decalation In NLC Form Approval and Law Reference to Register the Land At NLC
Source: DLM, SIRC and Experts, (2019)

Therefore, to improve *the waqf* land registration system, there is a need for *waqf* provision under the NLC. Besides, the NLC applies the Torrens system of land registration that emphasises that all the land, including *waqf* land, must be registered for the Land Title to ensure land's indefeasible ownership as stipulated under the Malaysian federal law in Section 340 of the NLC. As mentioned earlier, there are three methods of *waqf* land registration under the NLC of 1965, and these are: Section 215 of the NLC (Transfer Title); Section 195 of the NLC (State Surrender and Re-alienation); and Section 416 of the NLC (Statutory Vesting. Empirically).

The interviews also revealed that some forms were used for *waqf* land registration at the Land Office and SIRC, as shown in Table 1. Currently, *waqif* signature on the NLC forms and declaration at SIRC's form is not indefeasible. Therefore, the respondents suggested that the *WTF* should replace all the forms and should be indefeasible, as shown in Figure 4. The *waqif* is required to fill in the form and submit it to the Land Office as proof of donation to declare the property. The form is proof that the *waqif* declaration is binding and valid. Islamic law emphasises that the *waqf* shall be indefeasible after the *waqif* declaration to donate the property as *waqf* (Hamid & Tahir, 2014).

Table 3: Current method in *Waqf* Land Registration System
Source: DLM, SIRC and Experts, (2019)

Respondents	Opinion
S4, D4:	The method used to register waqf land at the land office is statutory vesting
S1, S2, S3, D1, D2, D3:	The method of registration used is surrender and re-alienation
E1, E2, E4:	The experts have suggested the method of statutory vesting as the best method to register waqf land in the Malaysian legal system. Statutory vesting makes waqf land registration faster and convenient since it only endorses SIRC on the title and does not involve any transfer of name on the land title.
D2:	Statutory vesting endorsement is insufficient for SIRC because only the registered name on the land title has full indefeasible ownership on the land for dealing and development on the said land.
S2:	Surrender and re-alienation would reduce the <i>waqf</i> land's original size, since the state would take some parts of it for road and public uses without compensation.

Table 3 shown the respondents opinion on the method used by the stakeholder to register the land as waqf in the land office. The most common method to register waqf land is through surrender and re-alienation based on respondents' opinions. However, the respondents suggested that the best method to be used is statutory vesting. This method, which is fast and easy, only requires the endorsement stamp on the waqf property title. However, the statutory vesting on the title is insufficient because it is only an endorsement, as has been mentioned by Rani and Ghani (2012). Therefore, the SIRC process of dealing with and developing land in the future will be complicated. For this reason, it would be beneficial to apply statutory vesting with several amendments, namely recognising indefeasible rights to SIRC by changing the name on the title to SIRC.

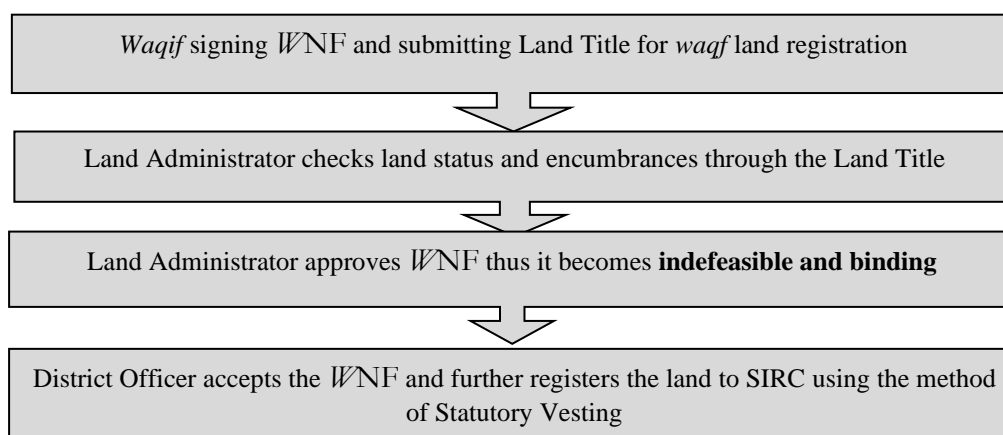


Figure 4 The Proposal of *Waqf* New Form (*WNF*) in *Waqf* Land Registration in Malaysia
Source: DLM, SIRC and Experts, (2019)

The *WNF* is proposed to be registered using the statutory vesting method because there is no specific procedure or form in the NLC to register *waqf* (Mohamood, 2005; Persekutuan, 2019). The researchers suggest that the Land Administrator's approval on the *WNF* shall bind the *waqf* land as indefeasible with the effect of being perpetual, inheritable, and irrevocable to donors and their heirs, SIRC, Land Office, DLM, and the Court. After the approval of the *WNF*, the rest of the procedure for the application and preparation of technical progression such as the Layout Plan,

Ground Report, Land Reports, Admission Form and Letter, Registration and Vesting, Submitting Notices, Stamp Duties Exemption, Periodic Surveys and Gazetting Land shall be carried out as usual. Overall, every step in the procedure is significant for a systematic process of land registration. However, the steps concerning technical progression can be done after the land ownership is secured as a *waqf* property.

4.1 Waqf New Form (WNF)

As mentioned earlier, the WNF has been promoted by the respondents and validated by the experts. Accordingly, the WNF is suggested to be indefeasible with the effects of being perpetual, inheritable, and irrevocable.

National Land Code <i>Waqf New Form (WNF)</i> (Sections xxx)	
F1	<p>APPLICANT DETAILS (DONOR/WAQIF) Name: Address: Identity Card No: Contact No:</p> <p>Property Details (<i>mawquf</i>) Property Types: Address: Ownership No: Town/Village: Land Address: Size of the land: _____ (acre/ hectare/metre per square) Size of the land donated: _____ (acre/ hectare/metre per square/part)</p>
F2	<p>WAQF PURPOSE (<i>sighah</i>) I hereby admit:</p> <ol style="list-style-type: none"> 1. I am the rightful owner of the land mentioned above 2. I am willing without any force from any person to declare the land as <i>waqf</i> for the purpose (<i>marque alaihi</i>) of: _____ 3. The land is free from any encumbrances such as a mortgage, taxation debt, lease, and caveat 4. Attached with this form are copies of Identity Card, Certificate of land title, and latest tax receipt 5. All details mentioned above are true and I accept any decision made by State Islamic Religious Council if the land is unacceptable to be donated.
F3	<p>Date: _____ Signature of Donor/<i>Waqif</i>: _____</p> <p>Made in front of Qadi, Signature of witness: _____ Signature of Qadi: _____ Name _____ Name: _____ I/C No: _____ District: _____ Relationship: _____ (QADI STAMP) Address: _____</p>

Figure 5 *Waqf* New Form (WNF, page 1)
Source: DLM, SIRC and Experts, (2019)

F4

**APPLICATION FOR REGISTRATION OF A
STATUTORY VESTING OF A REGISTERED
INTEREST INLAND**

Whereas of is the *proprietor/holder of the registered interest in land described in the Schedule below: [Here insert name of proprietor/ holder.]

And whereas under section.....of the said registered interest in land described in the Schedule below was vested in me: [Here insert appropriate law]

Now, therefore, I, of [Here inserts name of applicant] hereby apply for the said registered interest in the land to be registered in my name under the above-mentioned statutory vesting in me.

*2. I annex hereto the issue document of title in respect of the land wherein the above-mentioned registered interest is vested in me.

F5

*3. The issue document of title in respect of the said land is held by [Here inserts a name.] of because of his being.....and he has failed to deliver it to me although required by me in writing to do so. Copies of the correspondence concerning such requests are annexed hereto. [Here insert whether the issue document of title is held as proprietor/chargee/lienholder/trustee/holder of the power of attorney or any other circumstance.]

*4. I have made inquiries from the proprietor of the land described in the Schedule below and have been informed that the whereabouts of the issue document of the title is not known, and I have been unable to locate the same.

Dated thisday of.....19

.....
Signature of (another form of execution by)
*applicant/person lawfully
authorized to act on
behalf of applicant

Note: Where the signature or other form of execution is of a person lawfully authorized to act on behalf of the applicant, the nature of his authority and how it is derived should be stated below the

Figure 6 *Waqf* New Form (*WNF*, page 2)
Source: DLM, SIRC and Experts, (2019)

F6 Where the address of the person, claiming under this statutory vesting is outside the Federation, an address within the Federation for the service of notices is to be added in this space.
.....

*Town/ Village/ Mukim	*Lot/ Parcel/ L.O. No.	Description and No. of Title	*Proprietor or coproprietor (if co- proprietor states the undivided share)	*Lessee or sublessee (state registered number of lease/ sublease)	*Chargee (state registered number of charge)
(1)	(2)	(3)	(4)	(5)	(6)

***SCHEDULE OF REGISTERED INTEREST IN LAND**

F7 **For Official Use Only**
I am *satisfied/not satisfied that statutory vesting of the registered interest in the land in respect of which this application is made has been affected in favour of the applicant-
*(a) and direct that registration of the said registered interest in the name of the applicant be made;
*(b) for the following reasons and, accordingly, the application is rejected.

L.S
***intermediate officer as suggested**

F8

No.	Item	Checked
1.	Form XX of NLC	
2.	Original Copy of Land Title	
3.	Title Search Copy	
4.	Taxation Receipt Copy	
5.	Identity Card Copy	
6.	Others related Documents	

***Delete as appropriate.**

Figure 7 *Waqf* New Form (W/NF, page 3)
Source: DLM, SIRC and Experts, (2019)

Figures 5, Figure 6 and Figure 7 shows the W/NF as suggested to be enacted under the NLC. The details of the forms are summarised as below:

- i. F1, F4, and F5, shows the details of donor (*waqif*)
- ii. F2 shows the declaration of donor (*sigbah*), and the purpose of property or beneficiaries (*mawquf alaihi*).
- iii. F6- shows the details property (*mawquf*)
- iv. F3, F5, and F7 shows the details manager (*naẓir*) on Statutory Vesting with *Qadi*/Land Administrator's approval.
- v. F8 shows the checklist of documents that the donor must attach to prove that the land is free from encumbrances

With the approval of this form, the registration of the *waqf* land shall be binding and valid as the compliance of valid *waqf* elements according to Muslim jurists (Ghazali & Raji, 2019; Hamid & Tahir, 2018).

Overall, most of the respondents suggested that the *WNF* be enforced under the NLC because it can be referred to by every party involved. However, all the respondents also suggested that every *waqif* needs to clear the land encumbrances before creating *waqf* at SIRC, as defined in Section 340 of the NLC. Encumbrances can render the *waqf* declaration indefeasible, which includes:

- a) Equity, Caveat (Part Ninetieth, Chapter 1, National Land Code 1965), and restrictions interest (mortgage/lease)
- b) Taxation
- c) Sole proprietorships
- d) Inheritance right (Akta Pusaka Kecil 1955)

This declaration is parallel to Islamic Law, where subject property (*mawquf*) shall be free to be transferred. In Shafie School, the *waqif* must not be under any interdiction from either the property or himself from any debt; otherwise, the *waqf* shall be set aside, but the remaining property will be *waqf* (Ghazali & Sipan, 2019, Mohd, 1982). The Hanafi School has a similar opinion; the *waqif* must have a composite capacity on *waqif* property (Husain, 2014). Otherwise, *waqf* is suspended if the *waqf* were made before the property was possessed until the *waqif* pays and possesses the property, but if he dies before it, the *waqf* is void (*batil*) (Baillie, 1965; Mohd, 1982). If the property is subject to a lease, the *waqf* shall revert to the purpose for which it has been dedicated after the expiration of the lease term. Similarly, if the pledger dies, the *waqf* is obligatory until it shall be redeemed (Baillie, 1965; Mohd, 1982).

5.0 CONCLUSION

In conclusion, *the waqf* property is essential for the benefit of ummah. However, to make it valid and binding requires many procedures and forms. Therefore, this research has highlighted the issues in *waqf* land registration procedures in the Malaysian legal system. The procedures consist of several steps and forms. Thus, this paper proposes a *WNF* for the *waqif* in all states that should be completed to register the *waqf* land. The form shall make the *waqf* declaration valid and binding. It is recommended that before the properties are declared as *waqf*, the land must be free from any encumbrances and the statutory vesting method should be used to register the name of SIRC at the Land Office. This research has limitations to access National Land Council experts. As National Land Council is authority bodies empowered to amend and review NLC, 1965. Thus, the research proposed framework shall be taken further to the National Land Council in order to study the enforcement of *WNF* in NLC, 1965. Hopefully, this *WNF* will secure the *waqf* properties in the future and eliminate the risk of *waqf* land being lost.

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