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## **Kapitan Keling Waqf Land Development: Issues and Challenges**

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**Abstract**--Kapitan Keling waqf land, which was endowed in 1801, is located in the heart of Georgetown, Penang. The Kapitan Keling Mosque has been the focus of this development. At the initial stage, this waqf land was in the form of land assets then developed with several row units of shop houses that suited the concept and environment at the time. Furthermore, the management of this waqf land has been taken over by the Penang Islamic Religious Council (MAINPP) with its creation, a more planned development concept and strategy has been implemented. Throughout the development of Kapitan Keling waqf land, many challenges have been overcome. The permanence of Kapitan Keling waqf until today is a manifestation of his success in overcoming various challenges. However, current developments and development efforts undertaken at present lead to various new challenges. Therefore, this study aims to study and analyze the issues and challenges of Kapitan Keling waqf land development. This study uses a qualitative design. Data were collected through documents and interviews with informants at MAINPP. These data were then analyzed using a content analysis approach.

**Keywords**---analysis, approach, challenges, land development, management, Waqf land.

## **Introduction**

Kapitan Keling waqf land, which was endowed in 1801, is located in the heart of Georgetown, Penang and was acquired through Abdul Cauder Mohiddin or better known as Kapitan Keling. The total area of this waqf land is 8.5 acres (374,000 square feet). The Kapitan Keling Mosque is the focus of this development. In the early stages, this waqf land was in the form of land assets then developed with several row units of shop houses that suited the concept and environment at the time. In 1959, the management of this waqf land was taken over by MAINPP with its creation, a more planned development concept and strategy was implemented. At its initial stage, there were only 46 units of wartime shops and once developed, it became 116 commercial units and 62 residential units.

Throughout the development of Kapitan Keling waqf land, many challenges have been overcome. The permanence of Kapitan Keling waqf until today is a manifestation of his success in overcoming various challenges (Malterud, 2001; Cooper, 1993). However, current developments and development efforts undertaken at present lead to various new challenges. Kapitan Keling waqf land is now managed by MAINPP which represents the interests of Muslims in Penang. MAINPP is an authoritative body with legal provisions, administrative rules and a more transparent control system (Dale & Beyeler, 2001).

Currently, the development of Kapitan Keling waqf land is based on current developments, legal provisions and local authority guidelines as well as financial funds that influence the success of the planned development. Because of that, the development of Kapitan Keling waqf land at this time and in the future will be more challenging and demand an effective development strategy.

The long history and information of the Kapitan Keling waqf land development process has made this waqf study more important to continue to develop in order to re-elaborate on these processes (Firman, 2004). In order to develop Kapitan Keling waqf land, it needs to be implemented with a more strategic innovative method of thinking during the planning process.

### **Waqf Kapitan Keling Deed**

The deed stipulated that all proceeds obtained shall be for the maintenance and management and to cover activities at the Kapitan Keling Mosque and to manage and maintain the Jalan Perak Islamic cemetery in Georgetown, Penang.

### **National heritage act 2005 (Act 645)**

At the January 2005 Parliamentary session, the Ninth Schedule of the Federal Constitution was amended by including the preservation of heritage in the Concurrent List and making heritage under joint legislative jurisdiction between the State and Federal Governments (Federal Constitution, Ninth Schedule, List 3). as well as giving obligations to both this government and its people to preserve, protect, develop and preserve the national heritage. This implementation is also in line with the establishment of the Ministry of Culture, Arts and Heritage Malaysia (Now known as the Ministry of Information, Communication & Culture) on 27

March 2004. Thus, the National Heritage Act 2005 (AWK) was gazetted on 31 December 2005 and came into force on 1 March 2006 (National Heritage Act 2005) which applies to the protection and preservation of the National heritage related to antiquities, monuments and cultural relics.

It is an act that covers the areas of conservation and preservation related to national heritage, natural heritage (cultural heritage), tangible cultural heritage (tangible heritage), intangible cultural heritage (intangible heritage), underwater cultural heritage (underwater cultural heritage) and other matters relating to inheritance. To date, a total of eleven heritage items including buildings, monuments, stones and tombs in the State of Penang have been gazetted under this act (Briefing on the National Heritage Act 2005). The provisions of this law have involved and also affected the development involving several buildings and waqf land in the location. Declaration of National Heritage Section 67, National Heritage Act states (National Heritage Act 2005):

- (1) The Minister may, by order published in the Gazette, declare any heritage site, heritage object, underwater cultural heritage listed in the Register or any living person as a National Heritage.

Melaka and Georgetown were listed on the World Heritage list by UNESCO on 7 July 2008. The George Town World Heritage Office was established to monitor the implementation and operation of the George Town World Heritage Site Management Plan as well as matters related to domestic heritage in general (Department of Heritage State, Ministry of Information, Communication and Culture, 2011). Article 166, the Federal Constitution has a provision on inheritance of property and it is elaborated by sub-section 3, namely:

Any land vested in the State of Melaka or the State of Penang which immediately before Merdeka Day was occupied or used by the Federal Government or Her Majesty the Queen's Government or by any public authority for purposes which, in accordance with the provisions of this Constitution, constitute federal purposes shall on and after Merdeka day be occupied, used, controlled and managed by the Federal Government or, as the case may be by such public authority, as long as the land is required for federal purposes, and –

- a) shall not be released or used for any purpose, other than federal purposes, without the consent of the Federal Government, and
- b) shall not be used for federal purposes other than for which the land was used immediately before Merdeka Day without the consent of the State Government.

Section 8, mentions:

Any property which, immediately before Merdeka Day, is to be returned to Her Majesty the Queen in respect of the Government of Melaka or the Government of Penang shall on Merdeka Day be returned to the State of Melaka or the State of Penang, as the case may be.

Several waqf buildings found around the Kapitan Keling Mosque, Lebu Acheh Malay Mosque and Alimshah Mosque are buildings of historical significance. The

redevelopment (or conservation) of these buildings is subject to the 'Design Guidelines for Indoor Conservation Areas of Georgetown City' which apply to certain areas within the city (Rahman, 2015).

In 1995, a total of RM 2.2 million was allocated by the government for the conservation work of the Lebuah Aceh Malay Mosque which is a waqf land under the supervision of MAINPP. This mosque conservation project has taken 2 years starting in June 1995 and ending in June 1997. This project has been placed under the coordination of a Project Steering Committee consisting of various parties including the Implementation Coordination Unit in the Prime Minister's Department, Penang, Council Penang Islamic Religion (MAINPP), Penang State Development Office, Penang Development Corporation, Department of Museums and Antiquities, Universiti Sains Malaysia, Penang Public Works Department and Lebuah Aceh Malay Mosque Heritage Body (Jabatan Warisan Negara, Kementerian Penerangan, Komunikasi Dan Kebudayaan, 2021).

The conservation work of the Lebuah Aceh Malay Mosque village was carried out in 2 phases. Phase I involves the replacement of the roof of the mosque and the tomb while Phase II covers the conservation work of the mosque building including the ceiling, walls, pillars, doors, windows, bathrooms, ablution pool, tower and pulpit. Conservation work involves certain methods and techniques that require a high level of expertise, experience and diligence. As such, a series of technical discussions and skills training are often held in the site area between French conservation experts and the project work team including project managers, architects, engineers and contractors. Apart from that, several meetings between the project team and locals, the Lebuah Aceh Malay Mosque Heritage Board and the Penang Islamic Religious Council are regularly held to discuss developments and issues involving the interests of the local community such as mosque management, social and economic impact (McGill et al., 1992; Atkinson, 1999).

Buildings and waqf land in this conservation area can actually still be renovated and developed according to existing guidelines (Azha et al., 2013). The main goal of development in this area is not only aimed at conserving the existing environment but also aimed at increasing the value of the land and the building itself. In accordance with the correct methods of development and conservation, waqf properties in these areas can be increased in value based on the reforms made (Ismail, 2012).

### **Waqf land issues in Penang**

The area of waqf land in Penang has about 779.26 hectares which is mostly concentrated in Georgetown City Center (Hussain, 2021). The waqf lands estimated to be worth about RM 850 million are not fully developed for the benefit of the Muslims of Penang. While some waqf properties in the state have the potential to be developed for community development purposes and will provide a large profit return to the government. UNESCO has set several terms in conjunction with Georgetown as a heritage city, including waqf land under the jurisdiction of the world body complicates the redevelopment of endowment land (Bakar, 2021).

There are also cases of waqf lands in Penang having rental rates that do not match the current rental price (Ambrose et al., 2015). Based on MAINPP records, the lowest rental rate is RM2.00 for a house site, while the highest rental rate is RM352.90 per month for a shop building site. While the rental agreement document clearly states that the rental rate can be revised based on the current value. However, it is not implemented conducive due to several factors such as the ability of tenants and the real desire of individuals who endow the land.

In terms of management, there are also problems that exist when 10 percent of business premises on waqf land are rented to non-Muslim individuals and have even passed for a long time. It is even sadder when some waqf land in Kapitan Keling, Jalan Masjid Pulau Pinang (Area around Masjid Makam Maulana Miskin Waliallah) and in Lebuah Acheh has transferred ownership to non-Muslim owners (Observation by researchers every year starting from 2012-2016).

In Kapitan Keling, there is a supermarket set up on waqf land, the form/ product of sale on waqf land must respect the sanctity of Islam such as not selling things that are forbidden by sharia. Renting or permanent ownership of non-Muslim individuals is difficult to control because MAINPP's jurisdiction is limited on the matter of waqf property management (Stambouli, 2020; Anantadjaya et al., 2021). At the end of 2015, the physical development mechanism organized by MAINPP was not holistic in nature. While travel and construction of modules that are less suitable for the development of waqf land for the purpose of physical and spiritual development. This is because the development aspect of waqf land should cover spiritual and external (physical) issues while the need for complete guidelines and in accordance with Islamic law (Darus et al., 2017).

Due to the lack of effectiveness in the management aspect as well as the construction of physical and spiritual development modules, resulting in an imbalance of racial polarization, especially in the city of Georgetown (Liao, 2010; Caeiro et al., 2005). The development of land whether private land, company land, *ceti* land, toll land or developer land caused the migration of the Malay population from settling on the island. The areas involved are Kampung Jalan Pokok Asam and Kampung Tengah in Jelutong, Kampung Genting in Balik Pulau, Kampung Permatang Tepi Laut in Batu Maung and Kampung Teluk Kumbar.

A total of 60 Malay villages in Penang are *ceti* land or surrogate land with about 7,000 inhabitants. All the land has now and will belong to the developer. In the case of Kampung Jalan Pokok Asam, it will be developed with a multi-storey residential project priced at RM800,000 per unit by a developer from Kuala Lumpur. The price of land in Georgetown in 2010 reached RM400 per square meter. This causes the majority of low-income residents who are mostly of Malay descent cannot afford to buy a house. Meanwhile, the disproportionate average per capita income between ethnic groups has led to other social problems. In 2004 in Penang, the bumiputeras earned RM2,856 compared to the Chinese RM4,268 and the Indians RM2,687 (Utusan Malaysia Online, 2021).

The waqf land of the Kapitan Keling Mosque, for example, has displayed a form of socio-economic development of the local community that is interesting to study in detail. Kapitan Keling waqf land, waqf land in Kampung Dodol faces critical

settlement problems. The disorganized settlement took place in the area behind the Wan Chik Ariffin Mosque. Residents here mostly build illegal settlements (Hussain, 2021). These two waqf lands have a fairly high value because they are located in the middle of the city center and are the focus of the Penang community.

### **Kapitan Keling Mosque Waqf land**

In Lembuh Pitt, Penang is where the Kapitan Keling Mosque is located, the oldest mosque built by the British East India Company in the 18th century AD. As the Indian community here is increasing in Kapitan Keling, a leader from the Muslim Indians, Caudee Mohudeen, appeared who applied for a piece of land to build a mosque for the convenience of the Muslim community to perform worship at that time. 20 acres of land was acquired by him in November 1801.

In 1905, the government allocated RM 5 million for the process of repairing the existing mosque and declared the land as waqf land. In line with the funds entrusted, the mosque was completed in 1916. The endowment land of the Kapitan Keling mosque has a total area of more than 20 acres. It is the largest waqf land in downtown, Georgetown.

Most of the waqf land is concentrated in Jalan Perak, Lorong Tampin, Kg. Dodol, Marican Street, Campbell Street, Pitt Street, Buckingham Street, Ah Quee Street, Carnavon Street and Chulia Street. Most of the lots are small in size, less than 5000 square feet. Based on the study, a total of 35 lots out of the total, there are only four lots that exceed one acre, namely lots of 48 PB. 6 GT (10 acres), lots 561 and 563 PB 9W GT (over 2 acres) and lot 1221 PB. 18 GT (over one acre). The vast lots are mostly settlement areas for locals.

The relationship between physical development and waqf land is very important because the aspect of human development is increasing day by day. Therefore, development should be thought of so that it can benefit the population as much as possible. Waqf land is not developed with development or left without benefit then it is considered not affective (Yusroni & Chadhiq, 2021). While residents need it to make a place to live or a place to do business. The different positions of the society then have different needs in perfecting their lives. Therefore, this chapter outlines certain physical development mechanisms to fulfil local needs on waqf land in Penang.

Redeveloping the existing waqf land is one of the ways to solve the issue of poverty among the Muslim population of Penang (Kholid, 2018). The wakaf land redevelopment mechanism presented can reduce the problems faced by the residents of wakaf land in Penang itself. However, this mechanism is closely related to cooperation with the federal government and NGOs to ensure the interests of all parties, especially among the Muslim population in Penang. Meanwhile, the involvement of all parties can develop the socio -economy of the Muslim community in Penang comprehensively. In accordance with the role of MAINPP to produce a Muslim community that is faithful, pious and dynamic by making Islam a way of life. Spiritual development can uphold justice according to Islamic laws as well as control and eradicate the issue of apostasy, heresy,

wickedness, immorality, superstition and thoughts that affect the sanctity of Islam.

The socio-economic aspect of MAINPP is to develop, encourage, facilitate and undertake economic and social development to ensure the well-being of Muslims in Penang based on Islamic Law (MAINPP, 2021). Therefore, MAINPP must not squander the hopes and visions that have been expressed in order to develop the ummah, especially in Penang.

### **Development and legislation of Kapitan Keling Waqf land**

The development of Kapitan Keling waqf is currently undergoing changes. The current development period is from 2000 to 2011. This period is due to previous obstacles related to the Control Act which has been repealed. MAINPP itself has taken more active steps to redevelop this waqf land area. Therefore, this research is more focused on the development implemented in a specified time period. The focus is on the development of strategies and methods of Wakaf Kapitan Keling.

MAINPP notes indicate that the implementations implemented in waqf expansion include the need to maximize the use of available land space to increase the total quantity of premises. This plan was also made due to limited waqf land. This strategy will also provide an opportunity to increase the number of Muslims living in urban areas (Rinartha & Suryasa, 2017). At the same time, MAINPP also plans to develop to increase the number of business premises units. The plan aims to provide opportunities for the Muslim community to conduct business activities in urban areas and directly provide employment opportunities for residents in the Kapitan Keling waqf land. (Hussain, 2021).

In the context of non-Muslim monopolized occupation of waqf land, MAINPP has laid down a policy to give priority to only Muslims who can be considered for renting waqf premises. At the same time, to help the Muslim community living and working in urban areas, MAINPP has also set a policy of reducing rent by 30% compared to the market price. All the proposals that have been planned are intended to meet the 3 main objectives, namely, first to provide opportunities for the Muslim community to live in urban areas. Secondly, it aims to provide opportunities for the Muslim community to do business in urban areas and thirdly, to increase waqf revenue to ensure the sustainability of its development.



Figure 1. Development of Kapitan Walk at Kapitan Keling Waqf land

The initial steps taken to succeed in the strategy, vacant ownership and termination of rental contracts on all premises leased to non-Muslim tenants have been done by MAINPP. Efforts to obtain vacant possession are carried out with several approaches by providing information to the occupants, sending eviction notices, legal notices and until the last step reaches the court to obtain a judgment of vacant possession of the premises. This process took between 1999 to 2004. During that period, MAINPP has managed to obtain vacant ownership of the premises involved. With the acquisition of the vacant property, MAINPP is able to plan the development of the waqf property more smoothly. At the initial stage, the main problem of Kapitan Keling waqf development was from the aspect of funds. To solve this problem, MAINPP has applied for allocation under the 8MP through the urban community restructuring program through the Central Government and continued under the 9MP through the heritage building retention and conservation program (Hussain, 2021).





Figure 2. Development of Kapitan Square on Kapitan Keling Waqf Land

The Kapitan Keling waqf land development consists of 172 units of 2 -storey shophouses, a 3 -storey dialysis center, 4 -storey office buildings and 64 residential units (Figure 1 and Figure 2).

### **Analysis of issues and challenges of Kapitan Keling Waqf Land development and legislation**

There are various challenges and problems had to be faced to succeed in the Kapitan Keling waqf land development project (Rahman, 2015). Among the challenges and constraints are as follows:

- Local authority guidelines

MAINPP intends to increase the number of Kapitan Keling waqf premises through the development of projects implemented by using as much space as possible. However, development for Kapitan Keling waqf land is included in the guidelines for heritage buildings, *Penang Island Structure Plan*, MPPP (1984).

The guidelines have divided the heritage buildings into 3 categories. The first is the type of building that can be renovated but is located in a heritage development zone. The second category is buildings that need to maintain their original appearance, namely the front facade of the building and can only be renovated at the back of the building. The third category is the type of building

that cannot be modified regardless of the shape of the building. As a conservation should maintain the originality of the appearance of the original building.

Based on the guidelines, all buildings on Kapitan Keling waqf land are included in the second category, namely the existing guidelines have required that the front facade of the building must be maintained as it is and allow renovations to be done at the back of the building, *Penang Island Structure Plan*, MPPP (1984). MAINPP has to abide by these guidelines and as a result to ensure that Kapitan Keling waqf land continues to be developed, the development of Kapitan Keling waqf cannot be implemented to the maximum. This situation is due to MAINPP having to cooperate with local authorities and the government in an effort to obtain recognition of UNESCO-recognized Heritage City status.

Based on these guidelines, Kapitan Keling waqf also had to maintain the old structure for the purpose of maintaining its identity and heritage characteristics. Based on the existing guidelines, various methods and regulations have been technically established in implementing heritage building conservation methods. Among the main matters set is the appointment of contractors who have expertise in maintaining heritage buildings as well as the determination of only certain materials that can be used for the purpose of maintenance and development. This situation has resulted in the project implementation process having to be carried out with caution and too much bureaucracy to follow.

For example, the method of implementing this renovation must maintain the original building materials used on a building structure or even the tile roof of a building that is over 200 years old. Although, the material has been ingested over time and is in a dilapidated condition, it is still maintained in such a way with several methods of treatment of the material used ([Rosidi Husaain, 2021](#)).

- Legal action process

Although the occupancy problem and the struggle to get vacant possession of the premises were implemented as early as 2000, there was one person who still did not provide Cooperation because he refused to move. Initially, in order to obtain the vacant ownership of the premises, negotiations were conducted. However, after spending a lot of time to solve this problem, it was not successfully resolved, and court action had to be taken. This process takes 2 years ([Hussain, 2021](#)). Contractors use this as an excuse to apply for additional time to complete the project, even if only one resident is involved in the area.

- MAINPP management capabilities

Under the restrictions and limitations of the existing guidelines, Kapitan Keling has managed to increase the number of building permits from 42 to 172 units of premises. This increase of course refers to the workload in managing the waqf premises. Based on MAINPP's new method to improve monitoring and services in managing its wakaf property, the workload will increase as the number of Kapitan Keling wakaf premises increases. In addition, human resource management, information technology and a more professional management system, of course, is a necessity in measuring the development achievements of Kapitan Keling waqf

(Hussain, 2021).

- Funds, sources of income and methods of financing

A number of funds for the purpose of waqf land development in Malaysia have been allocated through the provisions of the 8th and 9th Malaysia Plans from the Federal Government. It is also one of the sources of waqf land development (Martinuzzi et al., 2007). The allocation is the amount of funds required for the development of waqf property in Malaysia as a whole. However, the allocation given is too small if it is distributed to all states in Malaysia.

Therefore, the allocation obtained is used for the purpose of improvement to waqf lands in Penang and needs to be applied for by MAINPP for certain purposes. Kapitan Keling Waqf, for example, uses part of the allocation which cost RM10.95 million from the Federal Government. Through the fund, the development of Kapitan Keling waqf land was successfully completed in 2005. The development of Kapitan Keling waqf land has been successfully developed with the construction of 172 units of premises through redevelopment which was previously a settlement area for 46 units of 2 -storey shophouses that are too old.

According to Tuan Rosidi, if seen in Penang, the waqf asset that is the main benchmark in Penang is none other than the waqf in Kapitan Keling, which is the waqf of the Kapitan Keling Mosque which has existed for hundreds of years before independence. For example, the waqf of Kapitan Keling Mosque, Alim Shah Waley, Lebuh Aceh Malay Mosque which is located in the heart of Georgetown, the World Heritage area has old buildings, so we deal with the Penang City Council PBT in the care of the conservation of the waqf assets in the World Heritage category. The expenses are very high. The spirit of the struggle is to be completely independent from depending on others in managing assets and property, especially waqf which is not a priority.

## **Conclusion**

Waqf is one of the Islamic institutions that has existed since the time of the Prophet SAW to serve as a catalyst for the economy and development of Muslims. This institution is also the backbone to the success of the Islamic social security system, in addition to the mechanism of zakat, alms and others. It is becoming an urgent need today to ensure that the system can run smoothly in line with current developments. This role is not only limited to being adapted in matters of worship to Allah SWT only, but it is also considered as an economic institution that brings a comprehensive good impact to the Malays in Penang and Muslims in general. There are many obstacles and constraints so that this institution does not function as expected. Therefore, a sustainable development strategy exists in this waqf system, especially involving the Kapitan Keling Waqf Land, it must be planned and implemented systematically so that it can be a catalyst for the social security system of the Malays and Muslims today.

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