



Waqf in Penang from the Historical Perspective

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ABSTRACT

The Waqf is a crucial instrument in Islamic economics that is gaining increasing attention in contemporary academic studies. Researchers' attention is no longer limited to the Islamic banking and finance sector, but has shifted to the sustainable management of Islamic wealth through waqf instruments. Malaysia, as a pioneer in the development of global Islamic finance, plays a significant role in modernizing waqf management. The country consists of 14 states, each with the authority to manage waqf assets within its territory. Among these states, Penang Island is known as a successful example of effective and innovative waqf management. This study aims to examine the development of waqf in Penang from its early days to modern practice using a descriptive normative approach and a "time tunnel" analytical framework. Data were obtained through systematic forensic methods utilizing colonial archives in Singapore and London as well as a literature review of historical books, monographs, and scientific journals. The results indicate that the development of waqf in Penang was pioneered by the Indian Muslim diaspora and reinforced by the British colonial government's policy of providing land for religious purposes, which was then donated. After Malaysia's independence, waqf management was under the State Islamic Religious Council of Pulau Pinang (MAINPP), which then developed the concept of productive waqf to support sustainable community welfare.

Keywords: *History of waqf; waqf on Penang; Productive waqf; Waqf in Malaysia*

INTRODUCTION

Waqf is among the most highly recommended voluntary charitable acts in Islam. While the concept of endowments existed in ancient Mesopotamia, Greece, and Rome, as well as among pre-Islamic Arabs (Cizakca, 2000), Muslims believe the Islamic framework of waqf originated directly from the prophetic tradition (Sunnah).

The Prophet (pbuh) personally guided his companions in establishing the first endowments. For instance, Umar bin al-Khattab (the second Caliph) sought guidance regarding his productive land in Khaibar; the Prophet (pbuh) advised him to retain the corpus of the land while dedicating its usufruct (fruits and profits) to charity. Similarly, Uthman bin Affan (the third Caliph) purchased the "Bir Arrahmah" (Well of Mercy) to provide free water to the community. While many scholars consider Umar's endowment the first formal waqf, others argue that the Quba Mosque, established upon the Prophet's arrival in Medina in 622 C.E., holds that distinction (Kahf, 1992).

As Islam spread across the African continent, the Balkans, the Indian subcontinent, and Southeast Asia, newly converted communities established numerous waqf properties, many of which remain functional today. The sophistication of the Islamic waqf model even influenced Western institutions; for example, it is argued that the collegiate structure of Oxford University was modelled after the endowment system of Al-Azhar University (Cizakca, 2000).

In the Malay Archipelago (Nusantara), the exact origins of waqf remain a subject of academic debate due to a lack of early records. Scholars also differ on the primary catalysts for Islamization in the region, with theories attributing the spread to Arab, Indian, Persian, and Chinese traders (Amin & Ananda, 2018).

Orientalists such as R.O. Winstedt (1917) suggest that Islam reached Kedah as early as 915 A.D. via Arab merchants. However, the Malacca Sultanate served as the true focal point for regional Islamization. Following the conversion of Parameswara (Sultan Iskandar Shah) in the early 15th century, Malacca became a preferred port for Muslim merchants. Early evidence of waqf in Malaya is found in historical mosques such as Kampung Hulu (Malacca), Sultan Abu Bakar (Johor), and Kampung Laut (Kelantan) (Mahamood, 2006). Legal digests like the Hukum Kanun Melaka (1523 C.E.) and the Kedah Legal Digest (1605 C.E.) further prove that waqf was legally recognized in the peninsula by the 16th century.

The systematic recording of waqf in the Malay Peninsula began in 1786, following Francis Light's arrival in Penang. Light facilitated the creation of waqf by alienating land to Muslim settlers, who subsequently dedicated these gifts as endowments.

Over time, mismanagement led to the intervention of colonial authorities, resulting in the establishment of the Mohammedan and Hindu Endowment Board (MHEB). This body served as the sole regulatory authority until 1967, when a royal decree transferred all waqf matters to the State Islamic Religious Council of Penang (SIRC-P).

This article highlights the historical development of waqf in Penang, addressing a gap in the literature regarding its evolution from the colonial era to the present. We explore; the socio-economic factors that established Penang as a trading hub, the role of the Chulia (Indian Muslim) diaspora in pioneering waqf creation, the long-term positive impacts of colonial regulatory intervention, and innovative strategies currently employed by SIRC-P to enhance the economic value of waqf assets.

RESEARCH METHOD

The development of this paper is underpinned by a "time tunnel" framework and a normative-descriptive approach. Data for this study was meticulously gathered using a systematic forensic method, drawing upon authentic records published by colonial authorities and housed in the national archives of Singapore and London. To ensure a comprehensive and seamless chronological narrative, the study also synthesizes literature from early scholars and orientalists. This includes an extensive review of historical books, monographs, and reputable peer-reviewed journals, ensuring that every segment of the historical timeline is rigorously documented and validated.

RESULTS AND DISCUSSION

There are many misconceptions regarding the first inhabitants of Penang. A common myth suggests that Captain Francis Light was the first person to occupy the island. However, Mohamed, Noriah et al. (2006) published a comprehensive treatise detailing Penang's history from archaeological and chronological perspectives, proving that settlements existed well before 1786.

Numerous historical accounts support the existence of Malay settlements prior to the British era (Vaughan, 1857; Macalister, 1802; Leith, 1804; Stevens, 1929; Abdullah Husain, 1984; Zulkifli & Badrol Hisham, 1994). These early inhabitants, primarily from Aceh, West Sumatra, and East Sumatra, settled in coastal areas now known as: Sungai Pinang, Perak Road, Jalan Dato Keramat, and Jelutong. These early settlers established a self-sustaining economy based on fishing, paddy farming, and coconut cultivation.

The British presence in Penang began with Francis Light (1740–1794). A former British naval officer, Light spent the years between 1765 and 1785 as a "country trader" in Southeast Asian ports. Based in Thalang (now Phuket), he cultivated a relationship with the Sultan of Kedah. Recognizing the island's strategic value, Light proposed in 1771 that the British establish a trading post there. However, the Governor of Fort William in Madras did not take up the suggestion until 1786, following the conclusion of wars with France and Spain.

Light, who was fluent in Malay, leveraged the vulnerabilities of Sultan Abdullah of Kedah. At the time, Kedah faced military threats from Burma and the Bugis (who held significant influence in Selangor and Perak). Acting as a middleman between the Sultan and the East India Company (EIC), Light promised British protection against Burmese attacks in exchange for the

island. Using what have been described as unscrupulous tactics, Light secured temporary permission to occupy Penang (Ahmad Murad Merican & Abd Ur-Rahman Mohamed Amin, 2021). On July 17, 1786, Light landed at the site now known as Fort Cornwallis, claiming the island for King George III and the East India Company. He served as the ‘Superintendent’ of Penang until his death in 1794.

For the first two decades of British rule, Penang existed in a state of "legal chaos." There was no formal legal system; justice was administered at the sole discretion of the Superintendent or local headmen. This changed on May 31, 1808, when the British court system officially began operations—an event widely regarded as the birth of the modern Malaysian judiciary. To stimulate growth, Light established George Town as a free port, allowing merchants to trade tax-free. This strategy was highly successful. For example, vessel traffic has increased from 85 in 1786 to 3,569 in 1802. In terms of population, the number rose to 10,000 by 1792, with the majority of immigrants arriving from India.

The British further consolidated their power via the Anglo-Dutch Treaty of 1824 (the Treaty of London). By ceding Malacca to the British and agreeing not to form treaties with Malay rulers, the Netherlands effectively left the entire peninsula under British East India Company control. This geopolitical shift benefited Indian Muslim merchants, particularly those from the Coromandel Coast (known as Chulias). While many originally came to trade, they eventually settled permanently. The Chulian community consisted of four main groups, namely, Marakayars, mostly maritime sailors and merchants (the majority of 17th and 18th-century migrants), Rawther, Labbai and Kayalar.

By the 18th century, Chulian merchants had become a dominant economic force. Prominent figures such as Cauder Mohuddeen (Kapitan Kling), Mohamed Noordin, Shaik Eusoff, Dalbadalsah Merican, and Yahya Merican were pioneers of the Waqf system in Penang. Their legacies remain visible today through the many mosques, burial grounds, and public amenities they established for the community.

For the early Muslim settlers of Penang, the first priority in establishing a community was the construction of a prayer house, or Surau. These structures served as both spiritual hubs and centers for community activities. As noted by Yusoff A.K. et al. (1974), there were approximately 70 mosques established on the island—an area of less than 300 square kilometers—between the 19th and early 20th centuries. Tamil Muslim settlers played a pivotal role, founding or co-founding

at least 20 of these mosques. Beyond mosques, Tamil Muslim benefactors also sponsored several Sufi saint-shrines (*dargahs*). These served as "integrative transcultural spaces," accommodating both Muslim and Hindu devotees.

Consequently, the earliest waqf (endowments) in Penang were primarily Religious Waqf, created specifically for the blessing of Allah SWT. The land for these mosques and suraus was typically donated by benefactors on a permanent waqf basis.

The historical record suggests that the first waqf in Penang was established in 1734 at Batu Uban by Nakhoda Intan (Haji Mohamad Salleh). Originally from Kampung Buadi, Paya Kumbuh, in West Sumatra, Nakhoda Intan and his brother, Nakhoda Kecil, migrated to Penang and established a settlement in the Batu Uban area (Mohamed, Noriah, et al., 2006). The surau he built was eventually expanded and is known today as Masjid Batu Uban.

The colonial authorities later recognized these existing settlements. Francis Light awarded a piece of land in Jelutong to Nakhoda Kecil, who subsequently converted it into a waqf asset. This land supported both a mosque and agricultural activities, such as paddy and coconut cultivation.

On November 2, 1801, Lieutenant Governor Sir George Leith, acting for the East India Company, granted approximately 18 acres (5,468 jumbas) of land to Kapitan Keling. A crucial clause in the grant stated (Nasution K.S. 2014:

"...which having been originally given for the purposes is not to be sold or transferred but to revert to the Honourable Company should it cease to be used for the purposes intended."

This specific language likely inspired Kapitan Keling to formalize the property as a waqf asset. He constructed a grand mosque and several productive buildings on the site. Following this precedent, the East India Company began granting more land to Muslim communities for "Muhammedan Churches" (mosques), a practice viewed as Public or Imperial Waqf—a tradition borrowed from India's Mughal administration.

According to Nasution (2014), waqf in Penang is classified by its intended purpose:

Category	Purpose/Examples
Pious/Religious	Mosques, <i>dargahs</i> , burial grounds, <i>ashurkhanahs</i> , and <i>kenduries</i> .
Philanthropic	Hospitals, orphanages, and schools.
Beneficiary	Family <i>waqf</i> (provision for kin) or non-family charity (scholarships, aid for pilgrims, and alms for the needy).

While many wealthy Chulian merchants—such as Mohammad Nordin (deed signed 1866) and Shaikh Yusuff (deed signed 1892)—established waqf assets, management often faltered after the founder's death. A prime example is the Waqf of Kapitan Keling. During the era of his grandsons, the original objectives of the endowment began to deviate due to internal rivalries and self-interest. Several factors eventually prompted British colonial intervention:

Urban Decay: Public perception held that houses on waqf land were poorly maintained and a "disgrace to the town" (Nasution, K.S., 2002).

- Legal Disputes: Trustees frequently took internal conflicts to court.
- Lack of Oversight: There were no proper records of properties and many developments were unplanned.

Ironically, while waqf is a matter of Islamic law, these disputes were settled in British courts. As Dahlan, S. M. D., et al. (2022) observed, British courts often dismissed the original intentions stated in the waqf deeds, leading to a significant shift in how these religious endowments were governed in the modern era.

By the late 19th century, the management of waqf properties had become a recurring issue in the Supreme Court. In 1890, the colonial government established a commission to investigate waqf management; however, this initial effort failed to produce a concrete solution. As civil suits related to waqf continued to mount, the government appointed a second Commission of Enquiry in 1903. This commission was tasked with investigating widespread allegations of mismanagement of endowment estates. The findings were revealing which include the following areas:

- Malpractice: Widespread corruption and negligence among trustees were uncovered.
- Neglect: Properties were found to be in a state of physical decay.
- Loss of Status: Notably, the Commission reported that half of the land within the compound of the Kapitan Keling Mosque had ceased to be recognized as waqf property due to poor documentation and encroachment.

To rectify these systemic failures, the Commission recommended the formation of a "standing committee of Mohammedan gentlemen." This proposed authority was envisioned to maintain a formal register of all awqaf (plural of waqf), record the names of trustees, and strictly audit expenditure accounts (Nasution, K.S., 2002). During this period, the colonial authorities observed that Hindu temples similarly received significant communal endowments. Consequently,

the government decided to include both religious groups under a single legislative framework. After extensive debate and multiple publications in the Straits Settlements Government Gazette, the Mohammedan and Hindu Endowments Ordinance of 1905 was passed.

The establishment of the Mohammedan and Hindu Endowments Board (MHEB) revolutionized waqf administration in Penang. For the first time, waqf properties were managed by a centralized, state-appointed authority. This shift marked a significant turning point: private trustees and agents appointed via the original testators' wills were rendered powerless, as legal control moved to the Board. This centralization sought to ensure that religious assets were preserved for their intended public benefit rather than being lost to private interests. Below is the waqf assets listed in the MHEB report in 1932:

List of waqf assets in MHEB Register on 1932

Name of Waqf	Mosque	Burial ground	House & shop lots	Agro land	Vacant land	Change of status
Capitan Kling	1	4	103	1	3	6
Langgar	1		2			
Syed ARahman			3			
Kg Jawa	1		8			
Nagore (shikh Natar Sahib)	1		12			
Jelutung	1			2		
Abdul Kadir	1			1	1	
York Road	1		2			
Khan Mohamed	1	1	7			
Achean Street	1	2	40			
Alimshah	1	1	4			
Shaik Eusoff	1		17	1		
Haji Kassim	1	1	105			
Total	12	9	303	5	4	6

Extracted from ' MHEB, 1932 publication

The Mohammedan and Hindu Endowments Ordinance No. 92 (1905), comprising 21 sections, marked a definitive shift in colonial policy. It empowered the British government to centralize waqf administration under a formal Board. This body was granted extensive powers, including:

- Appointing and dismissing managing committees and officers.
- Mandating the submission of financial accounts.
- Summoning and examining trustees.
- Imposing penalties for non-compliance with administrative regulations.

The colonial authority's most significant contribution was the introduction of a structured regulatory body. As noted by Nasution (2014), the absence of a central religious authority had previously forced Muslims to rely on civil courts for land matters. These legal proceedings were often protracted and frequently failed to reach a resolution. Consequently, surplus income from charitable estates often fell into the hands of "enterprising and unscrupulous persons" who exploited their positions for personal and familial gain.

The road to the 1905 Ordinance was paved by two major investigations:

The Maxwell Commission (1890): Headed by W.E. Maxwell, then Colonial Secretary of the Straits Settlements, this commission was tasked with reporting on Muslim trusts in Penang. However, Maxwell left his post before the work was completed.

The Kynnersley Commission (1899): Resident Councillor C.W.S. Kynnersley appointed a three-member team to finish Maxwell's work. This culminated in the landmark "Paper No. 13 of 1904," a general report on Muslim trusts and foundations in Penang.

The findings of the 1904 report led directly to the passing of Ordinance No. XVII of 1905, which established the Mohammedan and Hindu Endowments Board (MHEB). This was later consolidated into Ordinance No. 92, formally institutionalizing the Board's oversight.

Under Ordinance No. 92, the Board managed the commercial and business aspects of endowments with the assistance of local committees selected from the respective congregations. The Board held the authority to:

- Audit accounts for any Muslim or Hindu endowment, regardless of whether it was officially vested in the Board.

- Provide formal advice on endowment management.

- Be notified of any legal proceedings involving an endowment.

Dahlan et al. (2022) argue that these colonial interventions provided significant benefits to the Muslim community. By granting land for mosques, introducing formal law, centralizing administration, and creating a platform for dispute resolution, the British established a system where waqf revenue could be tracked and monitored effectively. Furthermore, the British introduced a culture of systematic record-keeping. The use of case law, land titles, and detailed written administrative reports practices that were rare in the pre-colonial era created a vital archive for modern scholars and researchers.

Although Malaya gained independence on August 31, 1957, and the State Islamic Religious Council of Penang (SIRCP/MAINPP) was established in 1959, the formal transfer of waqf management did not occur until a decade later. On December 16, 1966, the Yang di-Pertuan Agong (King of Malaysia) issued an order declaring that all previous laws pertaining to the Mohammedan and Hindu Endowments Board were no longer in effect. On January 1, 1967, responsibility was officially handed over to the SIRCP, which remains the sole authority for waqf affairs in Penang today.

Under Section 2 of the Constitution of the Federation of Malaya, matters pertaining to the religion of Islam fall under state jurisdiction. Consequently, each state promulgated its own regulatory framework. In Penang, this began with the Administration of Muslim Law Enactment, 1959. This legislation has evolved over decades to meet changing socio-economic needs, leading to the current Administration of the Religion of Islam (State of Penang) Enactment 2004 (last amended in 2008).

Under Section 7(1) of the 2004 Enactment, the State Islamic Religious Council of Penang (SIRCP/Majlis) is mandated to:

“promote, stimulate, facilitate and undertake the economic and social development of the Muslim community in the State of Penang consistent with Hukum Syarak.”

Furthermore, Section 89 of Part VI establishes the SIRCP as the sole trustee for all waqf, nazr, and trusts situated within the State of Penang, notwithstanding any prior instruments or declarations to the contrary. When responsibility was transferred from the MHEB to the SIRCP, the inherited portfolio was extensive but aging. In 1932, the recorded assets included:

- 12 Mosques and 9 Burial Grounds
- 303 Units of commercial and residential blocks
- 5 Agricultural lands and 4 Vacant lots
- 6 Lots previously acquired by the municipality for public works.

However, the SIRCP inherited significant systemic problems alongside these assets:

Physical Decay: Most assets were in poor condition and required urgent refurbishment. Infrastructure Gaps: Surrounding infrastructure was poorly planned and did not meet modern standards. Financial Constraints: The SIRCP lacked the immediate capital to address large-scale rectification and redevelopment. Resistant Private Trustees: Some legacy trustees were recalcitrant, refusing to cooperate or comply with SIRCP directives. Obsolete Agreements:

Existing tenancy agreements often contained terms that were archaic and disadvantageous to the Majlis. Two major pieces of legislation have significantly impacted the SIRCP's management of legacy assets as follows

The Control of Rent (Repeal) Act 1997: This Act provided a major breakthrough for the SIRCP. By repealing old rent control laws, the Majlis was finally able to impose market-justified rental rates. This successfully addressed the issue of "recalcitrant tenants" and generated the necessary income to manage the assets effectively.

UNESCO World Heritage Listing (2008) The recognition of George Town as a UNESCO World Heritage Site introduced new complexities. Many legacy assets fall within this zone, requiring the SIRCP to strictly comply with the National Heritage Act 2005 (Act 645). While this preserves the cultural value of the assets, the high cost of specialized conservation and restoration often exceeds the SIRCP's internal budget.

Management remains a challenge, as evidenced by ongoing litigation. For example, the Shaik Eusoff waqf is currently the subject of a legal suit in the Shariah High Court. The descendants/trustees claim the 15-acre plot was a 99-year trust rather than a permanent waqf, and are seeking the return of the land following the 1892 will.

Despite these hurdles, the SIRCP is recognized as a leader among Malaysia's State Islamic Religious Councils. It has successfully transformed unproductive lands into economic engines through innovative business models:

The Seetee Aisah Project: A landmark collaboration between the SIRCP (Trustee) and UDA Holdings Berhad (Developer). This mixed-development project includes commercial shops, residential units, and low-cost flats, serving as a blueprint for private-public partnerships in Islamic finance.

The Shaik Eusoff Mixed Development: A massive planned project featuring over 1,700 residential units (low and medium cost), shops, hawker stalls, and an orphanage.

Kapitan Keling Land: Plans are underway to develop 350 affordable housing units to support the local community.

CONCLUSIONS

This We have presented a comprehensive timeline of waqf development in Penang, spanning from its historical origins to the contemporary era. As the custodian of these significant

assets, the State Islamic Religious Council of Penang (SIRCP) must adopt a more professional and dynamic approach to asset management. The cardinal rule of waqf is that assets must be utilized to their optimum level to generate maximum social and economic returns. Current literature highlights a critical need for reform:

- Administrative Reform: Previous research indicates that many SIRC's must improve governance and modernize administration (Rashid, 2012; Kamaruddin & Mustafa, 2021).
- Technological Integration: Transitioning to AI-driven mechanisms for data management is essential for transparency and efficiency.
- Human Capital: Personnel must possess specialized expertise in Islamic economics and finance to navigate complex modern markets.

While seeking Allah's blessing is the primary motivation for establishing a waqf, the SIRCP should explore ways to make these spiritual benefits more visible and quantifiable. A designated portion of monthly rental income from waqf assets could be reinvested into charitable causes on behalf of the original waqif (founder). This ensures a continuous cycle of Sadaqah Jariyah (ongoing charity) that is both spiritually rewarding and socially impactful. As the family trees of original waqf founders expand, it is vital to maintain a connection between the assets and the founders' descendants. We propose that preferential privileges be granted to these heirs:

- Right of First Refusal: If a high-rise residential complex is developed on waqf land, descendants should be given priority for units.
- Incentivized Pricing: Offering discounted rates to offspring reinforces the idea that waqf benefits both the life hereafter and the immediate well-being of one's progeny.

By demonstrating that waqf protects and provides for one's own family while serving the Ummah, we can shift the perception of the younger generation. This "progeny-centric" approach encourages young Muslims to establish their own waqf, viewing it as a sophisticated tool for both legacy building and ancestral appreciation

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