

# **ANALYSING THE NEED TO REGULATE NON-PROFIT FOUNDATIONS UNDER THE TRUSTEES(INCORPORATION) ACT 1952: TOWARDS TRANSPARENCY AND GOOD GOVERNANCE**

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## **ABSTRACT**

The establishment of any non-profit organisations in Malaysia under the Trustees(Incorporation) Act 1952 empowers the Legal Affairs Division at the Prime Minister's Department to issue a licence to enable a charitable trust fund to be created as a foundation. The foundation is authorize to collect funds from the public and obtain tax exemption from the Inland Revenue Board. The main problem is the Legal Affairs Division is not given the full authority to act as the main regulator in order to ensure that all activities and funds collected and donated are used solely for charitable purposes. What more in the modern advancement of digital technology, the lack in the method of monitoring should not be an issue. Through doctrinal and legal study and content analysis, this paper analyses the important provisions under the Trustees(Incorporation) Act 1952, by highlighting the present practices involving the establishment of a foundation under this Act and the need for further improvement in order to enhance the integrity and public confidence in donating for charitable purposes. There is also a need to explore and analyse to what extent the State Islamic Religious Authority have a role in regulating waqf foundations in Malaysia. Simultaneously, some comparative analysis on the practices of regulating charitable organizations in England and Wales are highlighted. This article is aimsto highlight the importance of having a single regulator in Malaysia, in form of a commission, in order to regulate all matters relating charity in Malaysia.

**Keywords:** Charity; Foundation; Waqf; Regulator; Integrity

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## 1. INTRODUCTION

Businesses involving charity may sometimes appear to be a complex relationship. It revolves around matters relating to donors, recipients, funds, charitable organisations and the State. As far as Malaysia is concerned, there is no single statute that deals specifically with charity law. The law on charity follows the English law where the basic tenets of the Preamble to the Statute of Charitable Uses 1601 and the four headings in *Pemsel's* case are mostly followed in defining charity under civil law. The four headings which form the objectives of charity are first, relief of poverty, secondly, advancement of education, thirdly, the advancement of religion and lastly 'other purposes beneficial to the community', which could not be accommodated within the first three. The essential indicia of charitable status depends to the legal obligation to carry out charitable purposes and this is considered as important element because any institution which lacks one or more of the essential indicia of charitable status from its inception cannot be a charity under the law and mistakenly registered (Meakin, 2008, p.12).

There are many advantages for businesses for charitable purposes. One of the many exclusive treatments is tax exemption and in some charity structures, such organisation will be given permission to collect funds from the public. Any cause for the purpose of charity has always been considered as noble and good due to the existence of public benefit elements. That is why charity has always been considered as having different characteristics from others purposes which are commercial, political, or those relating to private individuals.

As far as the Shariah is concerned, the concept of charity is very wide indeed and comes within the concept of '*sadaqah*' which encompasses obligatory alms-giving (*zakat*) by Muslims, general donations and the non-obligatory, but much encouraged Muslim endowment, called 'waqf.' Waqf or 'habs' is a concept where a donor declares his property as belonging to Allah to be used for charitable, pious or other purposes for the general benefit of certain persons or the society at large. After the property becomes a waqf property, it can no longer be transferred or transmitted upon death of the donor and according to the majority of Muslim jurists, should be preserved in perpetuity and only the benefits arising from the property is distributed to the waqf beneficiaries. Waqf properties are managed by a waqf manager (trustee), also called a 'nazir' or 'mutawalli'. The institution of waqfis as old as Islam itself and in Malaysia, waqf governance comes within the purview of each state through the various state enactments.

Despite being colonised by the British for more than 100 years, the law on charity in Malaysia has never been placed under a single statute. The structure of charitable organisations in Malaysia comes in different forms and is governed by different laws. One such form is a foundation. Charitable or non profit organisations in the form of a foundation is governed by the Trustees(Incorporation) Act 1952. The Act provides for the incorporation of trustees of certain bodies and association of persons and this covers a few purposes and activities namely, religion, education, art, scietific research, social or charitable.

This paper analyses the working of a non-profit foundation under this Act by examining its existing requirements, proceduresand to see whether the existing practices will need further improvement, especially relating to proper monitoring of public funds and their utilisation. Besides that, some observations will be made on the position of the Charity Commission in England and Walesin

order to see, not only the effectiveness of having such Commission, but also how the current usage of online procedures contribute to instill, not only trust and confidence in the Charity Commission. The smooth running of this important regulatory body in England and Wales will be a good move for the charitable structures in Malaysia to emulate in order to overcome the lack of single regulatory body in monitoring charitable activities in Malaysia.

## 2. THE TRUSTEES INCORPORATION ACT 1952.

The *Trustees (Incorporation) Act*, Act 258, was revised up to 1981, with effect from 24 December 1981. The Act was first enacted in 1951 as Ordinance No 73 of 1952. It came into operation on 30 December 1952 and it shall only apply to Peninsular Malaysia. (section 1(2) of the *Trustee (Incorporation) Act 1952*). The *Trustees (Incorporation) (Amendment) Act 2004* came into force on 14 February 2005 to amend the *Trustees (Incorporation) Act 1952/Laws of Malaysia Act 258*. This Act has been amended four times, under the Revision of Laws Act 1968; so far of which Amending Act A 1219 titled “*Trustees (Incorporation) Amendment Act 2004*” ( Bahagian Hal Ehwal Undang - Undang, 2015).

Trustees of any body of association or of person may make an application to be incorporated as a Board under the Trustee Incorporation Act 1952. The body here refers to either societies or company limited by guarantee. Applicants must complete the application forms together with supporting documents to the Legal Department (BHEUU) at the Prime Minister’s Department. The BHEUU does not act as a charitable trustee but they grant a Certificate of Incorporation to trustees who make an application for the same under the Act. (Bahagian Hal Ehwal Undang - Undang, 2012). In many cases, the grant of such application will render a non-profit organisation to become a foundation with certain exemptions and privileges, namely, the ability to collect donations from the public and certain tax exemptions.

The Trustee Incorporation Act 1952 has not detailed out few elements relating to charity law and these will be discussed as follows;

- a) The concept of Charities Under the Trustee Incorporation Act 1952
  - b) The Concept Of *Charitable Foundation* Under The Trustees (Incorporation) Act 1952
  - c) The Element of Founder
  - d) The scope of trusteeship under the Trustee Incorporation Act 1952
  - e) Regulating Authority Under The Trustee Incorporation Act 1952
  - f) Regulating Waqf Foundation
- a) The Concept of Charities Under the Trustee Incorporation Act 1952

The concept of charities is not clearly defined under any of the provisions of the *Trustees (Incorporation) Act 1952*. However, it is observed that the six purposes under which the certificate for incorporation may be granted falls within the purview of charity. Section 2(1) of this Act provides that trustees may be appointed by anybody or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, and such trustees may apply, in the manner hereinafter provided, to the Minister for a certificate of registration of the trustees of such body or association of persons as a body corporate.

Religion and education are the two important tenets of charitable purposes under the *Pemsel's* heading ( *Income Tax Special Purposes Commissioners v Pemsel*, 1891), whilst literary, scientific and social purposes may either fall under the heading of advancement of education or any other beneficial purposes for the public other than the first three of the *Pemsel's* heading. Under the Preamble to the Statute of Elizabeth 1601, the heading of education is referred to as “the maintenance of schools of learning, free school and scholars in universities and the education and preferment of orphans.” It is not limited to classroom teaching for the poor and infact, looking at its broader meaning; it covers the teaching of ethics, research, arts and others. It is also extended to any improvement of a useful branch of human knowledge and public dissemination(*Incorporated Council of Law Reporting From England and Wales v AG*, 1972). A gift to the Francis Bacon Society, for example, has been held to be charitable as its purpose was to be earmarked and applied towards finding the Bacon Shakespeare manuscripts (*Re Hopkins*, 1965).

Similarly, in cases relating to artistic and aesthetic education, a society to form and maintain a choir in order to promote the practice and performance of choral works by way of concert or choral pageant in the Royal Albert Hall was considered to be charitable. Research also comes within the purview of knowledge as it requires more than mere accumulation of knowledge. What is important is for the founder of the foundation or the non -profitable organisation to show that the element of sharing in teaching, learning and research must benefit the public as a whole. The use of the terms ‘education’, ‘art’, and ‘scientific research’, ‘social or charitable purposes’ under the Trustees (Incorporation) Act 1952 isa clear indication that all the scopes are within the range of charity and probably the main emphasis that is lacking in the existing provision is the element of public benefit.

Public benefit is the main ingredient distinguishing private and charitable trust. The burden of proving the benefit requirement varies across the four *Pemsel's* headings and in most of the cases, in determining whether or not a gift satisfies the public benefit test, the objective test will be used by the court (O Halloran, 2007) Under the Trustees Incorporation Act, there is no clear and express provision referring to the public benefit element albeit, most of purposes under this Act focuses on elements of charities.

Religious purposes on the other hand, are another important purpose under the *Pemsel's* heading. There is no absolute definition of religion under English common-law and it basically refers to the higher unseen power, and monotheistic belief is an essential qualification. Thus, to advance religion means ‘to promote it, to spread its message ever wider among mankind; as well as to take positive steps to sustain and increase religious belief’”. (*United Grand Lodge of Ancient Free and Accepted Masons of England And Wales v Holborn Borough Council*, 1957). There is no priority among various religions and as between different religions, the law stands neutral as it assumes that any religion is at least likely better than none (*Neville Estates Ltd v Maddn*, 1962). Under the English Charities Act 2011, the atheist or any belief in no God or any unseen power is considered as religion. What is important is the element of public benefit. It can be fulfilled by two ways, namely, by providing activities which are available to the public and by ensuring that presence among the public at a place of worship has improved (*Re Hetherington Gibbs v Mc Donnell*, 1989 and *Gilmour Coats*, 1949).

#### b) The Concept Of Charitable Foundation Under The Trustees (Incorporation) Act 1952

'Foundation' commonly refers to a body established by an initial endowment, which may or may not be dedicated, and acquires legal personality on incorporation, although the charitable purpose to which it is addressed will remain as stated by the founder. (O Halloran, 2011, p.28) It can be divided into a few types but the most common ones are an endowed foundation and a community foundation. Endowed foundation is usually established by a single individual or a family. It receives more than two thirds of its support from its founder and traditionally, it is established by a successful business. Normally the allocation of financial assistance by way of a grant will be awarded to projects within its designated area. Among the famous and well known international foundations are the Ford Foundation, Rockefeller Foundation and the Bill & Melinda Gates Foundation. These types of endowed foundations can either be a private foundation or a public charitable foundation.

Community foundation on the other hand is used to support community causes. These foundations emphasise on building local community and are governed locally. They encourage citizen local involvement by enabling smaller donors to create their own mini foundations within an established infrastructure. A community foundation provides grants and other services to assist other charitable organisations in meeting local needs and offers services to help donors endowed for specific charitable purposes (O Halloran, 2011, p.28).

The Trustees (Incorporation) Act 1952 has no definition of 'foundation' and there are no clear boundaries on whether such foundation should be a private or public foundation. The procedures begin with the application for the incorporation by the trustees who have been appointed by anybody or association of persons established for the mentioned purpose. Such trustees may apply to the Minister for a certificate of registration of the trustees of such body or association of persons as a body corporate (Section 2(1) of the Trustees (Incorporation) Act 1952).

The discretion to grant such certificate lies solely with the Minister in charge. Section 2(2) of this Act states that the Minister needs to look at the extent, nature and objects and other circumstances of such body or association of persons before granting such certificate and such application must be expedient. More consideration will be given to certain conditions, namely, the qualifications and number of the trustees, their tenure and avoidance of office, the mode of appointing new trustees, the custody and use of the common seal, the amount of the land which such trustees may hold, and the purposes for which such land may be applied. (section 2(2) of the Trustees (Incorporation) Act 1952).

### c) The Element of Founder

A foundation is a creature of a founder. The founder is the person who provided the first gift or endowment and he has the power to make directions for its use and provide for the control of it and its income in perpetuity. In the ordinary law of trust, the founder of a trust, especially a charitable trust, must ensure he does not have any engagement with the property that he wants to give away as trust property. There is a need to show that trust property is constituted in the hands of a trustee and not the founder, namely the testator or settlor. This can be done by providing the existence of either of the two elements, namely the transfer of property to the trustee or effectual declaration and self appointment as trustee.

Although the Trustee Incorporation Act 1952 does not specifically mention the element of founder, in practice, the founder is still very much significant especially in the context of an endowed charitable foundation established by a wealthy private individual, dedicated to pursue its own programme of intervention in specific care of social need. There is a need to have some clarity relating to this as it is a fact that control over the gift is retained by the founder cum donor and subsequently, by his or her family and chosen associates. Clarification is also needed relating to legal responsibilities and liability of founder in case where there is a breach or misused of funds.

#### d) Trusteeship Under The Trustees (Incorporation) Act 1952

Trustees are the legal owner of trust powers and they have all the legal rights as the absolute owner of trust properties. The appointment as trustees entails many other responsibilities of managing the property based on the terms of the trust instrument as trustees do not have the freedom as absolute owner as they have to exercise the powers for the exclusive interest and benefit of the beneficiaries or purposes set out in the trust deed. In the event where the trustees have failed to observe and fulfill all duties imposed on them, they will be personally liable for breach of trust. Nonetheless breach of trust does not always lead to liability unless the breach produced an unauthorised gain for the trustee or caused loss to the trust (Watt, 2010).

Under the Trustees (Incorporation) Act 1952, the trustees shall, upon become a body corporate by the name described in the certificate, have perpetual succession and a common seal and power to sue and be sued in such corporate name. They are also entitled to acquire, purchase, take, hold and enjoy movable and immovable property and by instruments under such common seal to sell, convey, assign, surrender and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of movable and immovable property now or hereafter belonging to, or held for the benefit of, such body or association of persons, in such and the like manner, and subject to such restrictions and provisions, as such trustees might do, without such incorporation, for the purposes of such body or association of persons (section 2(3) of the Trustee Incorporation Act 1952).

The trustee must have been effectually appointed to the satisfaction of the Minister, before any certificate of incorporation shall be granted. There is no limitation to the number of trustees under the Act but the Act does recognise the need to fill vacancies from time to time in the case where the certificate of incorporation has been granted and the number of the said trustees are based on the available requirement by the constitution or settlement of the said body or association of persons. In a case where no certificate of incorporation had been granted, such appointment of new trustees shall be certified by the trustee to the Minister upon the completion of such appointment (Section 5(1) of the Trustee Incorporation Act 1952) Detailed information on the name of the trustees including their residences, description and the expiration of each period must be given to the Minister within one month after the expiration of each period of one year after the grant of a certificate of incorporation or whenever required by the Minister.

All of the trustees under this Act shall be chargeable for such property as shall come into their hands after a certificate of incorporation has been granted. They shall be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of the body or association of persons and its property, in the same manner and to the same extent as

if no such incorporation had been effected. They will not be excused from any control or authority exercisable by the Attorney General under section 9 of the Government Proceedings Act 1956 and shall remain subject jointly and separately to such control and authority as if they were not incorporated (Section 6 of the Trustee Incorporation Act 1952).

There are a few grounds on which a trustee or trustees shall be disqualified from being and shall not become or remain as one. First, he has been convicted of any offence under any law and sentenced to a fine of not less than one thousand ringgit or to imprisonment for a term of not less than one year or to both. Secondly, if there has been made and is in force against him any order of detention, supervision, restricted residence, banishment or deportation, or if there has been imposed on him any form of restriction or supervision, by bond or otherwise, under any law relating to the security of Malaysia or any part thereof, the prevention of crime, preventive detention, restricted residence, banishment or Immigration. Thirdly, if he is an undischarged bankrupt or lastly he is, or has been found or declared to be, of unsound mind (Section 6A of the Trustee Incorporation Act 1952).

Nonetheless, there is nothing in the provision that specifies who will be relevant parties that will be forwarding the complaints for the purpose of discharging the concerned trustee. Under the general law of trust, in cases where there is a need to disqualify an appointed trustee/ trustee, the beneficiary has *locus standi* to bring an action against the trustee for breach of trust. The existence of the Trustee Act 1949 as the main statute governing matters relating to trustee in Malaysia should not be neglected and nothing in any of the provision if the Trustee Incorporation Act

e) Regulating Authority Under The Trustees (Incorporation) Act 1952

The issue that needs to be examined is whether there is any regulatory authority that regulates the way this foundation or non-profitable organisation is being administered once the certificate of incorporation has been granted by the Minister. Under the Act, any reporting on all activities concerning collection of money needs to be made to the Minister. Trustees of the foundation are required to regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such body or association. The said trustees shall prepare and make out the following accounts in relation to the said body or association—

- (a) an account of the gross income arising from any endowment or which ought to have arisen there from during the year ending on the 31st day of December, immediately preceding, or upon such other day as may have been appointed for this purpose by the Minister;
- (b) an account of all balances in hand at the commencement of the year and of all moneys received during the same year on account of the said body or association;
- (c) an account for the same period of all payments; and
- (d) an account of all moneys owing to or from the said body or association, so far as conveniently may be.

The above report is required to be certified by the trustee and to be given to their appointed auditors and a copy is submitted to the Minister. In other words, the only regulatory authority here is the Minister. In theory, it is crucial that any charitable organisation retains its independence, as leaving

the regulatory role to a sole party may open the doors to abuse or non- transparency in the management, be it in the collection or distribution of funds.

The frameworks of regulatory authority in all common-law jurisdictions consist of the traditional oversight bodies of the High Court, the Attorney General, together with the tax-driven supervision by the Revenue (O Halloran, 2011, p.37). Under the Trustees(Incorporation) 1952, the three bodies above play important roles in terms of regulating these charitable foundations although there is no clear coordination reflected in any of the provisions. The setting up of the foundation lies solely with the Minister and he will decide as to whether or not such organisation or body of persons should be granted with the certificate of incorporation. The same applies in cases relating to appointment and the discharge on the trustee, the submission of financial reporting and also the power of revoking such certificate. (Section 17 of the Trustees(Incorporation) Act 1952)

As far as the High Court is concerned, this Act provides that when any question arises as to know whether any person is a member of such body corporate, the person interested in such question may apply by petition to the High Court for its opinion on such question ( Section 16(1) of the Trustee (Incorporation) Act 1952). All conditions and directions inserted in any certificate of incorporation shall also be enforceable by the Attorney General or other persons interested under section 9 of the Government Proceedings Act 1956. Section 9 of the Trustee (Incorporation) Act 1952). The official role of the Attorney General is to initiate a suit on behalf of the charity as individuals who may benefit from a charitable trust have no standing to enforce them. The power given to the Attorney General can be found under section 9 of the Government Proceedings Act 1956. This may be exercised if there is a report relating to specific mismanagement of public funds that are put in trust. The Attorney General, however, is not given the continuous task of monitoring a charitable foundation.

#### f) Regulating Waqf Foundations

As far as Malaysia is concerned, although matters relating to charitable trust come under the Federal List of the Federal Constitution, the institution of Waqf or charitable endowments created by Muslims comes within the purview of the State. (List 2, Schedule Ninth) There is no such distinction made under the Trustees(Incorporation) Act 1952 as to whether the important elements of Waqf have been fulfilled especially relating to the concept of *mutawalli* or trusteeship whereby the rights of the *mutawalli* under Waqf solely vests in the State Islamic Religious Council ('SIRC'). An example can be seen in one of the foundations set up under this Act, i.e. Yayasan Waqf Malaysia ('YWM'), which is the Malaysia's federal Waqf agency. It is a leading organisation empowering the agenda of the Muslims through Waqf instruments and among the missions of this foundation is to foster public awareness about the potential of Waqf; and to generate capital resources to develop holistic and integrated Waqf assets. (<https://www.ywm.gov.my/profile/visi>) YWM currently enjoys the reputation of being a recognised federal Waqf agency and thus is able to move its projects within most of the states in Peninsular Malaysia through regular engagement with the SIRCS.

It is uncertain whether any other Waqf foundation set up under the Trustees (Incorporation) Act 1952, other than YWM, is able to operate within the states except with the express consent and some degree of supervision and control from the respective SIRC. Perhaps a test case is the Labuan



Waqf Foundation that operates mid-shore in Labuan. It is said that if such foundation is to buy assets in the states of Peninsular Malaysia or operate Waqf schemes there, the better way is to appoint the SIRC or its representative to sit in the Board of Trustees of the Waqf foundation so that any decision relating to the operation of the foundation in such state will receive some degree of supervision from the SIRC. There is a need to look into the viability of using a foundation to implement Waqf so as to preempt any future dispute relating to fundamental differences that may arise in relation to the governance framework.

### **3. REGULATING CHARITIES IN ENGLAND AND WALES**

One very significant step taken by the English Parliament in order to monitor any negligent and mismanagement of charitable funds was the establishment of the Charity Commission under the Charitable Trust Acts 1853, 1855 and 1860. For the past fifty years, the power of monitoring given to the Commission have been further expanded and strengthened under a few series of amendment of the English Charity Act. Charity Commission is an independent regulator, non-ministerial government department which is accountable to the Home Secretary (D. Hayton and C. Mitchell, 2005, p.427). It's functions are to promote the effective use of charitable resources by encouraging better methods of administration, by giving charity trustees advice and by investigating and checking abuse. It regulates and registers charities in England and Wales.

The Charity Commission has a few objectives set out in the statute, namely, the public confidence, the public benefit, compliance, charitable resources and the accountability objectives (section 14 of Charities Act 2012). All these indicate the importance of having proper monitoring bodies to regulate matters relating to charities. The public confidence objective for instance is to increase public trust and confidence; whilst public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement and under Part 2 of the Charities Act 2011, section 15 lays down the Commission's general duties which includes among other matters, determining whether institutions are or not charities and encouraging and facilitating better administration of charities. The latter can be done by giving advice and guidance to charities, any class of charities or particular charities as the Commission considers appropriate. More importantly, the Commission has duty to identify and investigate apparent or mismanagement in the administration of charity

In order to ensure proper monitoring, any registered charity with a gross annual income exceeding £100,000 must submit annual accounts to the Commission. What is so unique about this Charity Commission is that the power given in the Statute corresponds with those possessed by the Attorney General, whereby in case of enforcing any obligation against a defaulting charitable organisation or its trustee, they are allowed to take the case straight to court. The Commission is also given a restricted concurrent jurisdiction with the High Court to try matters pertaining to charities. This basically covers three matters; first to establish a scheme for the administration of charity; second to appoint, discharge or remove a charity trustee or trustee for charities or to remove an officer or employee and lastly to vest, transfer property to persons entitled to it. Although appointment of Commissioners is made by the Home Secretary, the latter has no power to direct Commissioners about the exercise of their statutory functions or no parliamentary questions can

be addressed to him about their actions in particular cases as the Commission is only responsible to the courts in applying the law of Charity (Hayton, 2003, p.113-114).

The Commission runs an online register of charities. This online service covers not only all information on the status of each and every charity in England and Wales but also each and every detail from the establishment and registration of charities, as well as reporting and updating of accounts. Among the services offered under the Charity Commission's website are finding a charity, online services and contact form, preparing and sending the annual return, changes of charity details, setting up and registering a charity. Beside that a detail guidelines on the task of Charity Commission such as matters relating to complaints and closure of a charity can also be found in the online service. (<https://www.gov.uk/government/organisations/charity-commission>) The topics covered under this website are very extensive and this is in line with the mission of the Charity Commission of England and Wales to register and regulate charities in order to ensure that the public can support charities with confidence. The need to have a regulatory body in England and Wales has been solved by the existence of the Charity Commission. Nonetheless it is still subject to reform as there is a big call for more transparency and accountability of charities. The Commission received 5,501 serious incidents reported from 1st April 2014 until 20th February 2018 and 95% of those incidents have been analysed.

In a survey commissioned by the Charity Commission for England and Wales to Populus on an independent research of trust and confidence in the Charity Commission, it was shown that there were increasing numbers of awareness on the usage of the online register and the Commission's website. The primary objective of this research was among others, to establish the current attitude of the public towards the Charity Commission in England and Wales and charity regulation. The public awareness of the Charity Commission according to this survey, has increased since 2015 and the majority of stakeholders have used the website in the past year i.e. 2017.

#### **4. RESULT AND DISCUSSION**

The Trustees (Incorporation) Act 1952 provides an avenue for donors and philanthropists to make contributions to society. Nonetheless, it is time for this Act to be revisited as there is a need to show proper administration and monitoring mechanisms so that a non-exploitive contribution can be properly established. Without proper monitoring, it may open the door, not only to issues relating to transparency and integrity, but also to abuse in terms of management of public funds. The misuse of the funds donated by the public and the questions on lack of integrity and loss of confidence should be addressed first in order to encourage public confidence in donating.

In the long run, the need to establish the Charity Commission in Malaysia as practiced in several jurisdictions such as Singapore, New Zealand, England Wales can be followed. The Charity Commission maintains a national register of charities and it monitors, supervises and supports the registered organisations. By using the advancement in digital technologies, a transparent and systematic method that focuses on the whole establishment of charitable organisations, beginning from its registration, reporting and also regulating is able to be sustained in order to demonstrate the authenticity to establish trust. This is also to ensure that donations by the public or other individual donors can be used efficiently and responsibly. The establishment of a Charity

Commission is vital in order to support the existing structure of a charitable system in Malaysia, including the ones that come under the Trustees Incorporation Act 1952.

It is also seen that matters are uncertain in relation to the setting up of an incorporated trustee for the purpose of operating a Waqf in Malaysia. This is a matter that should be addressed either, in the Trustees (Incorporation) Act 1952 or the respective state Waqf enactments. It is suggested that Malaysia should create an enabling legal environment to allow the creation of a Waqf foundation instead of stifling its creation. Nonetheless, a proper monitoring mechanism to ensure good governance and transparency for Waqf foundations must be in place, both under states as well as Federal agencies.

## 5. CONCLUSION.

The move to have a single regulator in monitoring charitable organization is very vital and at the moment this has not been widely campaigned by the ruling authority in Malaysia. The act of giving for more is indeed part and parcel of Malaysian society and issues on governance and integrity need to be observed closely especially in a scenario where charitable organizations are allowed to exist in so many different forms. The suggestion to have a Malaysian Charity Commission will be the biggest task as the first move before this is the need to have our own statute focusing solely on charity law. Malaysia has never had a statute on charity and the move to have one need to be considered as huge and serious step towards reforming the law on charity.

It is important to remember that the establishment of a Charity Commission is paramount as it act as an 'independent regulator for charitable activities' which purposes is to promote public trust and confident in charities. The body, which is registered as a charity's body will automatically receive numbers of financial benefits, particularly tax enhancement for donation, qualifies to apply for grants from foundations and other bodies, and gains greater respect from the public. Besides, this regulator holds responsibilities to ensure that the board of a charity which consists of trustee will enable to complete the task given by the donor. Probably the best practise to be imported will be the English Charity Commission with further modification to suit into the current situation in Malaysia.

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