



Navigating Constitutional Boundaries in Waqf Land Development: A Legal Analysis of Articles 75 and 76 of the Federal Constitution

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Abstract. Due to conflicting federal and state jurisdiction, the development of waqf land in Malaysia is frequently a contentious legal issue. Despite the fact that waqf is governed at the state level by the State Islamic Religious Councils (SIRC) in accordance with the Federal Constitution's State List, all land dealing and registration regimes are governed by the National Land Code 1965, a federal statute. The relationship between Articles 75 and 76 of the Constitution and its implications for legal authority, harmonization, and the handling of conflicting legal authorities over waqf will be covered in this paper. While Article 76 allows Parliament to promote commonality among states through model legislation, Article 75 establishes the supremacy of federal law in cases where laws passed by Parliament are inconsistent. It became clear from doctrinal analysis and statutory interpretation that there were onerous duplications of laws supervised by various states with overlapping jurisdictions, which led to uncertainty and delays in waqf land development projects. Here, we propose a fresh and more understandable cooperative federalism model that respects State religious authority over waqf while appropriately addressing the meaning of Article 76 for the strategy of integrating pertinent waqf laws into a logical framework. Specifically, our recommendations include a Model Waqf Development Act, improved understanding of the dual courts, and a body to oversee coordination nationally. In sum, this study provides a constitutional path forward to better governance of waqf land development in Malaysia in accordance with Malaysia's socio-economic development goals.

Keywords: Waqf Development, Federal Constitution, Article 75, Article 76, Cooperative Federalism, SIRC, Legal Harmonization.

1 Introduction

Waqf (Islamic endowment) is an institution existing in Islamic law that historically has been important for social good, economic empowerment, and religious matters in Muslim communities. In Malaysia, waqf land development is governed by a complex legal system with overlapping state and civil jurisdictions amongst Islamic law, land law, financial law and land administration law. Examples exist where the framework has complex provisions and nuance, but it is evident in Malaysia due to the constitutional division of legislative power between the Federation and the States in a federal structure. In addition to the existing dual nature in the legal framework, waqf is state-administered while land and finance are federal matters, there is confusion and uncertainty in guiding regulation and practice. In this paper, we focus on two clauses, Articles 75 and 76, in the Federal Constitution to explore the legal limits of waqf development in Malaysia and identify a pathway to align waqf development law amongst the states. This paper intends to analyze Articles 75 and 76 of the Federal Constitution, particularly in respect of the scope of legislative powers and constitutional limits of federal and state legislative powers, especially in the context of waqf development. The objective is to ascertain the extent to which State Legislatures can legislate with respect to waqf without interfering with matters assigned to Parliament and without risking their laws to be declared *ultra vires* as in *Nik Elin Zurina v. Kerajaan Negeri Kelantan* [2024] 2 MLJ 140 [1].

By analyzing key judicial decisions and the operation of the preclusion clause, the paper seeks to identify legally permissible avenues for either the creation of a harmonized national waqf development law through Article 76(1) or the formulation of constitutionally sound state-specific frameworks that align with federal law. The ultimate objective is to propose a legal and policy model that ensures waqf development initiatives can proceed effectively without facing invalidation on constitutional grounds. This study follows a qualitative legal research methodology based on doctrinal analysis, specifically focused on analyzing and interpreting Articles 75 and 76 of the Federal Constitution and the judicial applications of those provisions. The methodology is descriptive, and it critically analyzes constitutional provisions, applicable jurisprudence, including *Ah Thian v Government of Malaysia*, *Iki Putra bin Mubarak v Kerajaan Negeri Selangor*, and *Nik Elin Zurina v Kerajaan Negeri Kelantan*, and pertinent legislative instruments governing waqf and land development [2], [3], [1]. Secondary legal sources, such as legal commentaries, legal journal articles, and constitutional law textbooks, are utilized as valid forms of support for legal reasoning and context.

Furthermore, a comparative constitutional analysis was employed to elucidate the management of overlapping jurisdiction concerning religion and land use in alternative federal systems. The paper employs a mixed methods approach to illustrate a nuanced analysis of the constitutional limitations and opportunities associated with the harmonization of waqf development laws within a federal system, emphasizing the provision of actionable recommendations for the State Islamic Religious Councils (SIRCs) as they formulate effective waqf frameworks. This paper is important for the

legal field because it helps us understand how Articles 75 and 76 of the Federal Constitution work together, especially when there are conflicts over jurisdiction between federal and state legislative powers. The study examines the constraints of state legislative authority and the possibilities for lawful harmonization via Article 76, providing essential insights into the structuring of legal frameworks that preserve constitutional integrity while addressing varied legislative requirements. The research offers State Islamic Religious Councils (SIRCs) a pragmatic legal framework for implementing waqf development laws that effectively promote socio-economic goals while being protected from invalidation due to inconsistencies with federal law. It empowers SIRCs to assert their role as mutawalli with greater legal clarity and confidence, ensuring their initiatives in waqf land development remain constitutionally sustainable [4].

2 Discussion And Analysis

This part gives a short summary of the main results of this study's doctrinal and comparative constitutional analysis. It concentrates on the relationship between the Federal Constitution, specifically Articles 75 and 76, and the judicial interpretations of these articles that govern the allocation of legislative powers between the Federation and the States. The analysis examines the constitutional constraints imposed on State Islamic Religious Councils (SIRCs) in their law-making for waqf, utilizing successful judicial rulings and legal principles, and explores how these constraints can be legally circumvented to attain harmonization within the framework of federal supremacy. The findings will also look at how important these interpretations are for future laws and policies about how the waqf is run. Article 75 of the Federal Constitution provides that: "If any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void." This provision operates as a supremacy clause, resolving conflicts between federal and state laws in favour of federal legislation (Federal Constitution, 2020). Article 76, meanwhile, outlines the circumstances under which Parliament may legislate on matters within the State List. Article 76(1)(b) allows Parliament to make laws for the purpose of promoting uniformity of the laws of two or more states. Article 76(2) enables Parliament to extend the effect of such laws to any other state that adopts them.

2.1 Legal Supremacy and Its Implications

Article 75 plays a critical role in delineating the supremacy of federal law in the event of conflict with state legislation. Its application, however, is not straightforward in the context of waqf, which is fundamentally a religious institution governed by state law. The operationalization of Article 75 raises constitutional questions about the extent to which federal law should intrude into religious domains, especially when land-related matters under the National Land Code (NLC) come into play. While the NLC mandates procedural compliance in property registration, it lacks recognition of waqf-specific

terminologies such as 'mutawalli' or 'nazir', which are central to waqf jurisprudence [4],[5]. This legal gap results in administrative practices that compromise the religious integrity of waqf assets. Furthermore, the invocation of Article 75 has, in certain instances, overridden state Islamic enactments, leading to judicial decisions that reaffirm civil jurisdiction even where religious interests are at stake. This raises the issue of whether a blanket application of Article 75 is appropriate in matters where the State List, particularly Islamic law, is expressly protected under the Ninth Schedule.

2.2 Prospects and Limitations for Harmonization

Article 76, particularly clause 1(b), offers an avenue for Parliament to legislate for the purpose of promoting legal uniformity across states. In theory, this provision is ideal for addressing the inconsistent development of waqf laws nationwide. However, in practice, its implementation is constrained by political, administrative, and jurisdictional factors. For instance, while Article 76 enables the formulation of model laws, it does not compel states to adopt them. This creates a scenario where states may resist harmonization due to concerns over religious autonomy. Moreover, legal uniformity cannot be pursued at the expense of undermining the theological diversity and historical development of waqf doctrines in each state. This necessitates a nuanced approach, one that recognizes the constitutional limitations of federal power while leveraging Article 76 as a facilitative mechanism. Recent federal initiatives, such as the establishment of Yayasan Waqf Malaysia (YWM), reflect soft harmonization methods, but without a statutory basis, these efforts lack enforceability. Thus, a more robust strategy may involve federal-state negotiations, joint drafting committees, and phased adoption plans to achieve meaningful alignment.

2.3 Relevance of Key Constitutional Cases to Articles 75 and 76 of the Federal Constitution in Waqf Development

This analysis presents a comparative review of three significant Federal Court decisions in *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112, *Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 323, and *Nik Elin Zurina v Kerajaan Negeri Kelantan* [2024] 2 MLJ 140, which clarify the constitutional limits on legislative powers between Federal and State governments [2],[3],[1]. The table below highlights the legal principles established in these cases and their implications for *waqf* land development under Articles 75 and 76 of the Federal Constitution.

Table 1. Author’s own Comparative Analysis Table.

Case	Legal Principle Established	Relevance to Articles 75 & 76 in <i>Waqf</i> Context
Ah Thian v Government of Malaysia [1976] 2 MLJ 112	Confirmed that the Federal Constitution is supreme and that courts may declare laws invalid if they are inconsistent with the Constitution (Art. 4(1)) or if a State law conflicts with Federal law (Art. 75). Distinguished between inconsistency and legislative incompetence.	Affirms that State <i>waqf</i> enactments cannot conflict with federal laws on land or finance. Illustrates how Article 75 operates to invalidate conflicting State laws, while Article 76 offers a route for Parliament to legislate for uniformity where needed.
Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 323	Applied the ‘preclusion clause’ in the State List, holding that State laws framed under Islamic principles are still subject to Federal jurisdiction if they fall under matters in the Federal List. Invalidated a State Syariah provision for overlapping with Federal criminal law.	Demonstrates that Islamic law legislation, including <i>waqf</i> , must respect Federal competencies. Provides a precedent for challenging <i>waqf</i> -related State provisions that intrude on Federal areas like contracts, securities, or land development.
Nik Elin Zurina v Kerajaan Negeri	Held that the Kelantan State Legislature lacked power to	Strengthens the application of Article 75

Kelantan [2024] 2 MLJ 140	enact provisions of the Syariah Criminal Code that fell under the Federal List, even if framed as religious offences. Reinforced the supremacy of Federal law and strict constitutional boundaries.	against State overreach. Supports the call for a harmonized <i>waqf</i> legal framework via Article 76, especially in cases involving land use, financial transactions, or public funding mechanisms.
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The recent sensational Federal Court case of Nik Elin Zurina, by an 8–1 majority, invalidated 16 provisions of the Kelantan Syariah Criminal Code (I) Enactment 2019, holding that the Kelantan State Legislative Assembly lacked constitutional authority to legislate on criminal matters already within the Federal List. This decision reinforces the doctrine of constitutional supremacy and the preclusion clause in Article 4(1) and the Ninth Schedule, List II, item 1. The Court emphasized that even if laws are framed as Islamic offences, they may be void if they intrude into federal jurisdiction. This echoes the reasoning in *Iki Putra* and reaffirms the structural division between Federal and State powers.

2.4 Comparative Analysis of Malaysia, India and Nigeria

A comparative constitutional perspective illustrates how federated states manage overlapping jurisdiction in religious and land matters. In India, for instance, the Wakf Act 1995 is a central statute that applies uniformly across states, though waqf remains a state subject under the Indian Constitution [6]. This model demonstrates the viability of centrally coordinated waqf management while allowing room for state-specific administration. Similarly, in Nigeria, Islamic law applies in certain states under a federal constitution, yet intergovernmental mechanisms ensure harmonization of overlapping legal frameworks [7]. These examples suggest that Malaysia, too, could adopt a hybrid model that combines federal oversight with state-driven doctrinal compliance. The challenge lies not in constitutional limitations per se, but in political will and institutional cooperation to realize a balanced governance framework for waqf.

The selection of India and Nigeria as comparative jurisdictions in analysing Malaysia’s constitutional challenges in waqf land development is grounded in both

structural and substantive parallels. These countries exhibit distinctive yet instructive approaches in reconciling federalism, religious autonomy, and land governance within plural legal systems. Their experiences offer relevant insights into the feasibility of harmonising waqf laws at the national level while preserving the doctrinal integrity of Islamic endowment institutions.

Firstly, India and Nigeria share with Malaysia a federal constitutional structure, where legislative competence is divided between the central and state governments. This division creates inherent jurisdictional overlaps, particularly in areas such as land administration and religious affairs, domains that are similarly fragmented within the Malaysian legal system [8], [9]. The Federal Constitution of Malaysia, through its Ninth Schedule, allocates Islamic law to the State List, while land matters and property dealings are largely governed by federal legislation such as the National Land Code 1965. This dichotomy closely mirrors the Indian and Nigerian contexts, where central statutes often intersect with religious or customary state laws, thus offering a relevant framework for comparative inquiry.

Secondly, both India and Nigeria exemplify legal pluralism and the coexistence of civil and religious legal systems. In India, the Wakf Act 1995 stands as a central statute with nationwide applicability, despite waqf remaining a state subject under the Indian Constitution [10]. This legal architecture enables the Central Waqf Council to coordinate waqf administration across different states, ensuring procedural uniformity while respecting the cultural and religious particularities of each region [6]. Nigeria, on the other hand, operates under a unique model whereby Islamic law is formally recognised in several northern states, particularly in matters of personal law and waqf administration [6]. Despite this religious decentralisation, Nigeria maintains federal oversight mechanisms to ensure compatibility between state-enforced Shariah laws and the national legal order. Both countries demonstrate how constitutional mechanisms and institutional coordination can effectively manage overlapping legal domains, which is a persistent challenge in Malaysia's waqf governance.

Thirdly, India and Nigeria provide valuable illustrations of intergovernmental harmonisation strategies in federated settings. India's establishment of the Central Waqf Council under the Ministry of Minority Affairs and its ongoing efforts to digitise waqf properties reflect a centralised yet cooperative model of waqf management [11]. Nigeria's practice of maintaining intergovernmental legal consistency through federal judicial review and administrative oversight, despite Shariah implementation in specific states, presents another viable model of cooperative federalism [6]. These mechanisms are instructive for Malaysia's contemplation of a Model Waqf Development Act under Article 76(1)(b) of the Federal Constitution, which would aim to standardise development procedures and land dealings without infringing upon the religious prerogatives of State Islamic Religious Councils (SIRCS).

Moreover, the socio-religious composition of these countries further supports their relevance as comparative models. India, while officially secular, accommodates a substantial Muslim minority, whose religious rights are safeguarded through both personal laws and institutional frameworks. Nigeria's constitution accommodates Islamic law explicitly within its federated structure, particularly in states with Muslim majorities. These variations provide Malaysia with two distinct but complementary models; India's demonstrates the potential for federal coordination in a secular yet multi-religious context, while Nigeria's shows the operationalisation of Islamic legal principles within a federal structure. Malaysia, with its Muslim-majority population and dual legal system, lies somewhere between these two extremes, thereby making both cases contextually and constitutionally relevant.

Lastly, both jurisdictions underscore the role of political will and institutional cooperation in overcoming legal fragmentation. While constitutional provisions provide the legal basis for harmonisation, the success of such efforts in India and Nigeria has depended significantly on intergovernmental dialogue, institutional capacity-building, and the cultivation of mutual respect between religious authorities and federal institutions. These factors are equally critical in Malaysia, where the successful implementation of a harmonised waqf development framework hinges not merely on constitutional interpretation but on sustained engagement between the federal government, SIRC, and other stakeholders.

Hence, the inclusion of India and Nigeria as comparative models is not arbitrary but is based on their demonstrable success in navigating federal-religious legal tensions. Their respective experiences provide Malaysia with actionable frameworks for constitutional alignment, administrative harmonisation, and sustainable waqf governance that is both legally coherent and theologically sound.

2.5 Legal Tensions: Duality and Disjunction

Under the Ninth Schedule of the Federal Constitution, Islamic law, including waqf, is a matter within the State List (List II). State Legislative Assemblies have the power to enact laws related to the administration of Muslim affairs, including waqf [7], [9]. Despite this decentralized structure, waqf land often falls under the purview of the National Land Code (NLC) 1965, a federal law [12]. Matters such as land registration, titles, and dealings in property are governed by the NLC, resulting in a jurisdictional overlap that is fertile ground for legal inconsistencies.

Although waqf land is religious in nature, it must still be registered under the NLC. However, the term *mutawalli* (waqf manager) is not recognised in the NLC, leading to the use of the term 'trustee,' which dilutes the religious character of waqf. In the case of *Latifah Mat Zin v Rosmawati Sharibun & Anor* The Federal Court held that civil courts had jurisdiction to determine land-related matters even if a waqf was involved [13]. This

judgment highlights how federal law can override the effect of state Islamic laws, invoking Article 75 when a contradiction arises [14].

3 Suggestion And Conclusion

Article 76(1)(b) offers a constitutional avenue for legislative harmonisation by enabling Parliament to legislate on waqf-related matters to promote uniformity. Although Islamic law is a state matter, Parliament may pass a model law for adoption by states. This approach was evident in initiatives such as the Wakaf (State Legislative Competency) Bill and the establishment of Yayasan Waqaf Malaysia (YWM), which acts as a federal coordinating body [15].

A cooperative federalism framework may facilitate integrated waqf governance through the development of a model Waqf Development Act, a proposed concept under Article 76(1)(b), a constitutional mechanism for Parliament to promote uniformity across state waqf laws. This model would clarify roles, streamline procedures, and encourage synergy among SIRCs, civil courts, and land authorities. Enhancing judicial literacy on constitutional dualism and establishing a National Waqf Development Council would support these reforms [8].

Waqf land development in Malaysia reflects both the promise and pitfalls of federalism. The decentralised nature of Islamic law must coexist with the overarching structure of federal property and financial regulations. Articles 75 and 76 of the Federal Constitution provide both a safeguard against conflict and a roadmap toward harmonization [16]. A cooperative federalism model, grounded in constitutional fidelity and intergovernmental collaboration, is necessary to unlock the full potential of waqf land in advancing national development.

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