

ที่ดินวะกะฟในประเทศไทยที่มุสลิมเป็นประชากรส่วนน้อย: เรื่องความขัดแย้งในการเข้ายึดครองที่ดิน ในอำเภอจะนะ จังหวัดสงขลา ประเทศไทย

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บทคัดย่อ

ที่ดินวะกะฟคือที่ดินที่มุสลิมบริจาคเพื่ออัลลอฮ์ และสามารถนำไปใช้ประโยชน์ที่ไม่ขัดต่อหลักศาสนา ตามหลักการอิสลามที่ดินวะกะฟไม่สามารถนำไปขายต่อหรือให้ผู้อื่นเช่าได้ แต่ทว่ารัฐบาลไทยในสมัยนั้นต้องการที่ดินผืนนั้นให้กับบริษัทเอกชนยึดครอง มุสลิมในพื้นที่จะทำอย่างไร และผู้นำมุสลิมสูงสุดในประเทศไทย (ท่านจุฬาราชมนตรี) จะแก้ไขปัญหาดังกล่าวให้กับคนมุสลิมในพื้นที่ได้อย่างไร บทความนี้จะกล่าวถึงปัญหาที่ดินวะกะฟในอำเภอจะนะ จังหวัดสงขลา เหตุการณ์นี้เกิดขึ้นในสมัยรัฐบาลทักษิณ ปีพ.ศ. 2545 โดยรัฐบาลได้เพิกถอนสิทธิ์ของประชาชนบนที่ดินดังกล่าวแล้วมอบให้กับบริษัทเอกชนเป็นผู้ถือสิทธิ์แทน เพื่อใช้ประโยชน์จากที่ดินดังกล่าวในการสร้างโรงงานแยกก๊าซที่มาจาก

อ่าวไทย ซึ่งเป็นโครงการร่วมระหว่างรัฐบาลไทยกับมาเลเซีย เนื้อหาในบทความจะกล่าวถึง ที่มาของปัญหาและผลกระทบจากอดีตจนถึงปัจจุบันว่าเป็นอย่างไร นอกจากนี้ในช่วงต้นของบทความจะกล่าวถึงการจัดการที่ดินวะกัฟในประเทศไทยโดยรวมเพื่อให้เกิดความเข้าใจถึงปัญหามากขึ้น และในช่วงสุดท้ายของบทความได้ทำการสรุปปัญหาหลักๆไว้เพื่อนำไปสู่การหาวิธีการแก้ไขปัญหานี้ได้อย่างถูกต้องต่อไป ข้อมูลในบทความนี้ถูกนำมาจากหนังสือพิมพ์ออนไลน์ บทความจากวารสารต่างๆ หนังสือ เป็นต้น

คำสำคัญ: ท่อก๊าซ, ทักษิณ, ประเทศไทย, มุสลิมไทย, วะกัฟ

Waqf in Muslim Minority Country: A Story of an Ownership Conflict in Chana, Songkhla, Thailand

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Abstract

“Waqf Land” is a land which is donated for Allah by Muslim people. It can be used for any legitimate purpose recognized by Islam. According to Islamic jurisprudence this land could not be sold or lent to any individuals. However, when a Thai government would like to take the land and give it to a private company, what will happen? What is the attitude of the Muslims in the area? And what is the highest Islamic organisation’s effort to assist Muslims? This article will focus on the problem with the waqf land in Chana district, Songkhla province, Thailand. This problem occurred during Taksin government in 2002. Nowadays, this problem remains unsolved by the Thai government. At that time, the Thai government revoked the possession of the waqf land and gave it to a private company. The company uses this land to build a gas factory which is a big project with cooperation from the Thai government and Malaysia government. This paper will discuss the background and the current situation of this problem. Moreover, a general waqf management in Thailand will be mentioned as well. In conclusion, the main problem will be acknowledged and the solution to deal with the problem will be sought. This information will be gathered from many sources such as online newspapers, journals, and so on.

Keywords: Muslim minority, pipeline, Thaksin, Thailand, waqf

Introduction

“If the highest Islamic organisation of Thailand does not help the Muslims, what would be the effect to them?”

This question which was raised at Chana district, Songkhla province, Thailand has been unanswered since 2002 until now. This is a painful scar which Muslims in Chana have never forgotten and they have never ceased their effort to cure it. Since Trans Thai Malay project (TTM) had initially laid gas pipeline and waqf land is used for this project, the local people attempted to resist the project due to many reasons such as destruction of livelihood, despoliation of local land, and threats to the community and religion (Lohman, 2008, 90).

This paper is divided into four parts. The first part discusses the waqf management situation in Thailand for a general understanding. The second part presents the background of the problem – how it happened. The third part deals with the movement of local people to solve the problem and protect the land – what are their effort. The fourth part is the conclusion and lessons to be learnt.

General waqf management in Thailand

In Thailand, Muslims are minority in most parts of the country except the four southernmost provinces¹. Most of the Muslims live together in a community. So it becomes a Muslim village. In general, there is a mosque at the centre of the village. Nearby the mosque site, the land for mosque and *kubur* is usually donated or waqf by Muslim villagers

in that area and outside. For this reason, sometimes a *kubur* has to be located outside a village.

In addition, some Muslims also donated productive land to the mosque and the mosque might earn some income which will help meet the cost of administration and maintenance. Under the Mosque Act of 1947, the mosque affairs are administered by the mosque committee, consisting of not less than seven persons and the management of the mosque property was included (Article 7). In 1949, Rules for Mosque Committee Appointment and Dismissal and Regulation for Mosque Administration stated that the committee is responsible for management and making sure that the maintenance of the mosque and its waqf is in good order. The committee must submit a financial report as well as a list of waqf properties to the Provincial Islamic Committee in January every year. The Provincial Islamic Committee (PIC) and the Central Islamic Committee (CIC) had the authority over waqf property on the same rules to inspect and control or give any advice to the mosque committee on matters related to waqf property (Preeda, 1991, 236-237). Therefore, the structure of waqf management in Thailand is in the same structure as shown in figure 1

Moreover, under the Land Code of 1954, mosques (including Buddhist temples and Christian churches) are not permitted to hold land of more than 50 rai (about 8 hectares or 20 acres) but this rules does not apply to land holdings before 1 December 1954 or to the mosque in four southern provinces namely, Pattani, Satul, Yala, Narathivat (Article 84).

¹Four Southernmost provinces of Thailand are Songkhla, Pattani, Yala, and Narathaiwat

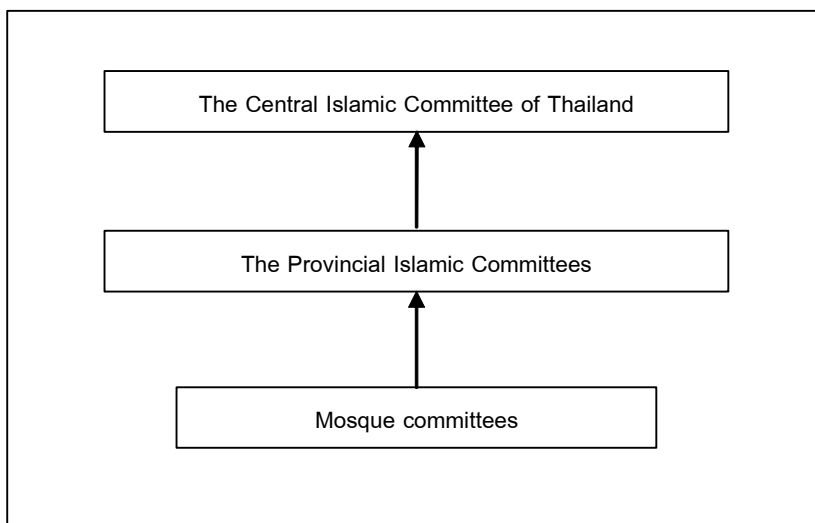


Figure 1: The structure of waqf management in Thailand

In fact, there is no mosque in Thailand abided by the law neither was it required it to submit the complete list of waqf properties and expenditure report to the PIC and CIC every year. In addition, the mosques established foundations (non-profit organisations) which are entitled to hold land and other waqf properties according to the Civil and Commercial Code (Article 81 to 97). There are three types of foundation in the Thai Muslim society. The first one consists of foundations attached to the mosques, which enable them to cover a wider range of activities than what the mosques themselves can do. This kind of foundation is involved in the renting of waqf properties and gain more profits. The second type comprises foundations associated with educational institutes, mainly the Islamic school or the pondok schools, Islamic information centres, and libraries. The third type consists of foundations for the general welfare and service of the society. Some of them can build playground for sports or all propose building (Preeda, 1991, 236-237).

Under the rule, waqf land in Thailand is subjected to taxation and the donors have to pay a tax equivalent to 2 percent of the value of the land. As a result, this makes the donors feel reluctant to donate land. They have to pay in cash to the authority in order to give away their land. However, most of the beneficiaries or the community has to raise funds to pay for the tax on behalf of the donors.

According to Preeda Prapertchob's survey (1991) which was conducted involving 175 mosques throughout the country; it was found that the major waqf properties in Thailand are in the form of land donated to mosque. The land size varies from a few square metres just big enough to accommodate the mosque to some hectares of land, including paddy land and rubber holding. In the Central Plain, the Muslims in many locations are large land holders, because they are farmers and their lands were largely inherited. Many of the pious Muslims have donated a part of their lands for the construction of new mosques or as asset assigned to a mosque (See Table 1).

Table 1 Total Land Holding per Mosque (In rai²)

Region	Town	Rural
North	13.4	3.0
Central Plain	19.3	25.0
Northeast	6.4	-
Upper South	6.9	3.8
Lower South	16.5	3.7

From the land used as sites for mosque and kubur, it definitely cannot produce income but many mosques earn from other pieces of land which generate income for the mosques. Unfortunately, in most cases these waqf properties have not been efficiently managed. This point is in accordance to what Preeda Prapertchob (1991) had found. For example, most pieces of waqf land are simply rented out, generating no more than minimal rental incomes. It has been rented out for the purpose of putting up private houses from which the mosques can earn rental income of about 14,000 bahts annually, while a similar piece of private land can earn four or five times more.

In Preeda Prapertchob's survey (1991) in waqf property management, most mosques have rules and regulations for the borrowing of movable and other assets. Although, mosque has to submit yearly a financial report to the PIC or the CIC, there are no mosques which practice this regularly.

However, some waqf lands have not been formally transferred to mosque because the donors have already passed away and the heirs are not willing to donate the land. In general, Thai Muslims do not make any documentary evidence when they

donate (waqf) property, especially land, to mosque or Islamic scholar to build a pondok or Islamic school but they trust each other. Afterward, in some cases the heir of the donor needs to get it back and sell it to other land owners who are not in communities. Mosque finally cannot do anything if the case goes to a court. In other case such as waqf land in Chana, a donor did produce any documentary evidence when the government wanted to use that area to do some project. As a result until now the local people in the area still have to fight to get the land back.

In the case where the waqf property does not belong to the mosque, sometimes people donate a property for public, no one possess it and; there is no actual organisation on behalf of it. This kind of waqf property does not have to be informed to the PIC (Provincial Islamic committee) and the CIC (Central Islamic committee).

Background of the problem

The area of Chana district in Songkhla province is about 194.2 square miles. In Chana district, there are many Muslims and 63 mosques which were officially registered with the Islamic committee of Songkhla province. The duty of Islamic committee of

²1 rai is equivalent to 0.395 acre or 0.16 hectare

Songkhla province is supervising of mosque committee and verification of waqf land.

The waqf structure in Chana, Songkhla is not different from other districts and provinces. According to the Mosque Act in 1949, every Mosque in Chana has to report the financial state of the mosque including waqf property to the Provincial Islamic committee of Songkhla.

A property is normally donated or waqf in the form of land by local people or others. It is similar with other parts of Thailand according to Preeda Prapertchob's survey. The mosque committees have to manage waqf properties by themselves and then every year they have to inform Islamic committee of Songkhla province of their mosque properties. However, in the Chana case, the waqf land was not donated to a mosque but it had been given to God over fifty years previously for the use of community in perpetuity (Lohman, 2008). Thus, this waqf land does not belong to any mosques so it does not have to inform to Islamic committee of Songkhla province too. It has been widely known in the community.

For the problem, in 1994 the Petroleum Authority of Thailand (PTTEP) and Petronas of Malaysia signed Production Sharing Contracts (PSC) to exploit natural gas from the Malaysia-Thailand Joint Development Area (JDA) in the Gulf of Thailand. A decade later, in September 2004, the companies signed a further PSC indicating that the project was continuing unabated. In addition, Chana was selected as a site to construct

gas separation plants (GSPs) and to lay a gas pipeline from the GSPs on the coast to the border of Malaysia.

The construction of the gas pipeline and gas separation plants was under supervision of the Trans Thai-Malaysian (TTM) (Simpson, 2005). The website ThaiNGO³ mentioned that before the construction started, Thai government had not done any survey about the opinion of local people on the project. As a result, there is a protest of local people against this project after it started.

Moreover, some of the area that TTM would like to construct a gas pipeline is on public land which was officially registered by law that was allowed only for mutual usage of people. This also includes waqf land because owners donated the land for Allah to the public. TTM actually asked for swapping other land with the public land because it had been in constant use, for example as a livestock drove and right of way to rice and watermelon fields (Lohman, 2008, 92). However, the local people did not agree with TTM and they submitted the name list of people who oppose this project to the government. They also complain to Human Right Commission of Thailand that TTM violates the law because the company invaded the public land, blocked the area, and changed the environment (Tang and Udomittpong, 2003, 1-3). Subsequently, on the websites⁴ stated that after Human Right Commission of Thailand verified the story and realized that it is true, they asked TTM to stop blocking the area,

³Source: <http://www.thaingo.org/cgi-bin/content/content3/show.pl?0157>

⁴Source: <http://www.manager.co.th/Local/ViewNews.aspx?NewsID=9500000101168>,
<http://www.ftawatch.org/news/view.php?id=11870>
<http://www.midnightuniv.org/midfrontpage/newpage89.html>

improve the land as before. In addition, Human Right Commission of Thailand requested government authority to check evidence together with the people.

However, on 22 March 2004, Chularajmontri office (Chief of the Muslim in the Thailand office) announced a judgment about waqf land in Chana that there was no waqf land evidence and waqf land can be exchanged by the government if it provides more benefit. Two years later, on 13 August 2006, Thai government issued a royal decree to invoke the land's public status using the typically colonialist justification that the land was 'not being used' by the public. As a result, TTM is a legal ownership on the land (Lohman, 2008, 92). Afterwards, Human Right Commission of Thailand reviewed the reason that the government issued the royal decree and they found some illogical issues that the local people had still used the area until the project started. In fact the government could not issue the royal decree to invoke the status of public land. Moreover, the local government body and the sheriff of the area showed the opinions that land of public benefit and waqf land were still being used by local people. So they did not allow TTM to do anything on the land. In addition, the processing of the royal decree is unlawful because they did not make a survey about the opinion of people before urgently summarised.

The local people notified a public prosecutor office to sue TTM because it invaded the land in 2004 before the royal decree was issued in 2006. Unfortunately, the public prosecutor office did not accept the petition. It meant that TTM was being

unlawful in the acquisition of land. Thus, the royal decree was issued because the government would like to protect this company from being guilty and facilitate the project whether it is right or wrong.

Some Islamic scholar commented that the fatwa of Chularajmontri office (Chief of the Muslim in Thailand office), which was mentioned previously, was suspicious. Some questions were raised on the issue. Why did Chularajmontri office announce that there was no proof of waqf land eventhough there was? In fact Chularajmontri office announced that it provides more benefit than before, the land can be exchanged by comparing with the waqf issue in Umar companion who was the ruler at that time. The question is who is the Islamic ruler in Thailand?

People movement

As for the local people movement, many websites and articles, for example, website Thaigo, website Ftawatch⁵, and the article "*Thaksin: The Business of Politics in Thailand*" is written by Pasuk Phongpaichit and Baker (2004) had reported about the Chana people movement through gas pipeline Thai- Malay project since 2002 - 2008 which are as follows:

On 20 December 2002, 1,000 protectors went to Hat Yai to send a letter to Prime Minister Thaksin. The letter stated that local people would like him to stop the construction of gas separation plants (GSPs) and gas pipeline. Finally, the police cracked down on protesters in a repressive and military manner (Supara Janchitfah, 2003, 1).

⁵Source: http://www.thaingo.org/story/info_023.htm,
<http://www.ftawatch.org/news/view.php?id=11870>

As a result, 38 demonstrators and 15 policemen were injured. In fact, the government should have shown some kind of responsibility but there was none. Moreover, the government blamed the protestors that they were rioters. Then, the public prosecutor sued 12 protesters for causing disturbance and violence but appeal court dismissed the case. Thus, police has to compensate 12 protesters.

On 14 July 2004, the gas pipeline protesters went to Chana district office to oppose the way of selecting verification committee on waqf land which did not have a local people to be a member of the committee. Before this, the local people asked Chana district office to check the waqf land again.

On 13 December 2007, the local people in Chana submitted a letter to Islamic committee of Songkhla province for urgent verification on waqf land again. At that time, they gave the letter to Mr. Masae Mamah, vice-chairman of Islamic committee of Songkhla province and he said that he would bring this issue to the committee in order to urgently solve the problem.

Subsequently, on 17 January 2008, a waqf land protection group, including heir, witness of waqf land in Chana and local people, went to Chularajmontri office in Bangkok to request for new fatwa about waqf land in Chana but there was nobody at the office. However, there was a seminar in Bangkok which discussed the problem of waqf land in Chana against a big government project. There were 300 participants, including Islamic scholars, NGO members, representative of Islamic committee of Songkhla province, and

representative of Chularajmontri office. In the seminar, Kareem Abdullah, a representative of Chularajmontri, said that he was appointed to verify the waqf land issue and he already went to the land with a local police and assistant district office. He had contacted the Islamic committee of Songkhla province before he went to the area. However, he could not see the local people in the area on that day. Moreover, he realized that he went to a wrong area after he got more information from many people. Lastly, he said the fatwa could change but a new request has to be done.

However, Saran Rangkasiri, the director of public relation of Petroleum Authority of Thailand (PTTEP), stated that the area, where the gas pipeline was laid, is a public steam. There is no owner on that land and they were already allowed to use the land by Thai government. In addition, he said that there was no actual local people who protested against the project because the gas pipeline was not laid nearby community, religious place and water source area. The company did a survey before laying gas pipeline and they called for offshore drilling that did not dig into the land. Lastly, he said that they always give information about the project to local people and use a peaceful method when there was a conflict between local people and the company.

Lessons to be learnt

This story could be a case study for every country especially in a Muslim minority country to be learnt. There are times when Muslims have to fight with the government, either Muslim or non-Muslim

government. For this issue, because of many reasons, which can be leant, the conflict had arisen as follows:

1. Thailand is lacking of waqf administration that is systematic and capable. For the reason, in Thailand, there is no neutral organisation to administer officially the waqf property. The highest Islamic organisation of Thailand (Chularajmontri office) should provide a waqf institution of Thailand which specialises on waqf and this institution should have a sub-committee for each province such as the CIC and PIC. Usually, when the Thai Muslims donate a land or something else to mosque or public, they do not make a documentary contract because they trust each other. It sometimes causes a problem later on. If a Muslim would like to waqf their property to another, that property should be registered with this institution as evidence.

2. The highest Islamic organisation of Thailand (Chularajmontri office) is not clear in gathering evidences. Although there is a witness and ex-owner's heir of land who can insist on the donation of the land, they can still conclude that it is not a waqf land. This organisation is a representation of Thai Muslim, so it should be a respectable organisation. Moreover, since it is an Islamic organisation; it has to be honourable. Chularajmontri office has to tangibly respond to this problem.

3. Due to the above reason, the government can easily act unfairly or dishonestly to the people. The government uses the judgment of Chularajmontri office on waqf land to fight against Muslims in the area. Subsequently, the government can possess this land legitimately. If the judgment of Chularajmontri is the opposite - it is a waqf land- the government could not do anything on the land. This is because it is in the religiously sensitive area. There will be a lot

of protest from all Thai Muslim against the government directly.

4. Lastly, Muslim people and the highest Islamic organisation of Thailand (Chularajmontri office) have to be strong and united. They have to help each other. In fact there are a lot of Islamic scholars who work in Chularajmontri office and most Thai Muslims respect them. They are expected to be a representation to the government. Muslims hope that whenever there is a misunderstanding by the government about Islam, where the general people are unable to resolve, this Islamic organisation (Chularajmontri office) will be able to do so. However, in this case the highest Islamic organisation does not help people. Instead, the organisation makes the problem worse than before and finally the problem is hardly solved.

Conclusion

In 2002, the Trans Thai Malay project started but there were many local people in Chana who resisted the project due to many reasons, mainly a threat to the community and religion through illegal possession of waqf land and public land according to the state law. The owner of this land gave it to God for public usage. The government asked the highest Islamic organisation of Thailand, the Chularajmontri office to verify waqf land situation for this land because the government would like to use it. Finally Chularajmontri declared there was no waqf land even though there were personal evidences that are the waqf land owner's heir and local people. Besides although the people were still using the land, the government alleged the land had not been used for a long time. Thus, the government issued a royal

decree to invoke the land's public status using the typically colonialist justification that the land was 'not being used' by the public. However, the local Muslims have been fighting peacefully and lawfully for seven years until now.

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