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RESEARCH ARTICLE

ANALYSING THE ELEMENTS OF AN ISLAMIC NGO'S CONSTITUTION IN MALAYSIA

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Abstract

Islamic non-governmental organizations (NGOs) in Malaysia are social organizations that play a vital role in various social activities, either domestically or internationally. These organizations are registered under agencies entrusted to register organizations and are subject to the laws and legislation that govern them. Based on the diversity of registration agencies and the legal control over these organizations or NGOs, there are various types of constitutions presented by these organizations or NGOs. Hence, this study analysed the various types of constitutions drawn up by Islamic organizations or NGOs in Malaysia. This qualitative research used a case study design and data were collected from two sources, namely interviews and document analysis involving the organization's constitution. Findings indicated that the organization or NGO's constitution was based on a sample template provided by the registrar of societies. However, the template did not distinguish between an Islamic NGO and a non-Islamic NGO. The study also found six important elements that should be adopted by Islamic NGOs and utilise them as a guide in their daily operations.

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Introduction:-

A Non-Government Organization (NGO) in Malaysia is generally defined as a social or business organization that is not affiliated in any way with the government (Lewis, 2009). According to the Department of Social Welfare, an NGO refers to a Voluntary Welfare Organization (VWO) basically involved with welfare-related activities, conducts programs and provides services for target groups. NGOs are also non-governmental bodies or private organizations that act voluntarily and are not motivated by profit or political purposes. They are established to preserve or advocate a cause that has some significance to society or more specifically, carry out community development activities (Azyati, 2014). Demirovic (2003) defined an NGO as an independent organization with the purpose of expressing certain interests as well as organizing and advocating certain issues related to various fields, such as education, women's rights, food and water supply, environmental protection, health, transportation etc. This definition provides a broader perspective and highlights NGOs as an organization or movement that specifically focuses on the role of a grassroots organization that advocates specific interests and activities.

Based on the various definitions of an NGO, it basically indicates that it possesses non-profit characteristics, thus, it can also be summarized or categorized as a NPO (non-profit organization). In Malaysia, NGOs and NPOs are two abbreviations that reflect similar connotations but are not clearly differentiated. However, NGOs are non-governmental organizations that are non-profit oriented, hence, synonymous with the name of a 'non-profit

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organization' (NPO). In the Malaysian context, NGOs and NPOs are almost similar in meaning, but categorised differently depending on their registration status.

In terms of the role, NGOs play a pivotal role in humanitarian issues, which is one of the objectives advocated by a large number of NGOs in Malaysia. Hemamalani (2020) described NGOs as the backbone of refugees based on the quantum of support the organisation provides them. The role of NGOs in fighting for the fate of refugees is irrefutable. Asmady Idris (2012) also praised the seriousness and cooperation exhibited by NGOs in helping the people of Gaza in Palestine. In fact, NGOs neither compete nor disagree amongst themselves or the government regarding humanitarian issues in Gaza, in which parties help to extend aid and assistance.

Islamic NGOs also play an active role in the development of dakwah in Malaysia (Najihah, 2017; Norsaleha, 2016; Farahwahida, n.d.). Various religious activities and programs are implemented with the aim of providing a true understanding of Islam, regardless of Muslims or non-Muslims. Moreover, Islamic NGOs also deal with feminist issues highlighted by the West by intensifying campaigns and scholarly discourses.

In addition, several previous studies have examined the history of NGO development in Malaysia as well as the challenges faced (Makmor, 2017; Maszlee, 2017; Laila, 2016; Khoo, 2013). Meanwhile, Khadijah (2021) had proposed a Syariah-based guideline regarding the limits on the permissible allocation of commissions.

However, there is no guideline for drafting an organization's constitution that can be used as a reference, especially for those who want to establish an NGO. Hence, this present study intended to identify and analyse the needs of Malaysian Islamic NGOs for forming a guideline for drafting their constitution and policies. The research issues and problems are divided into several points, as follows.

Varrious Types of Islaimc NGO Constitutions and Policies

The dissimilitude in the constitution and policies of Malaysian Islamic NGOs directly manifests in their constitution. All NGOs only use a sample of the constitution that has been prepared by the Registrar of Societies (ROS) or the agency that registers the organization. No new elements can be inserted into the document even though it is an important element that must be present in an Islamic NGO's constitution. For example, the encouragement to form cooperation amongst Islamic NGOs is not clearly outlined even though is the basis for an organization to launch further initiatives and avoid duplication of activities that can result in a waste of human resources and money.

Absence of a local information centre for assiting the formation of an NGO

There is a need to obtain accurate information regarding the registration of NGOs by the authorities. Those who wish to establish an NGO are looking for detailed and accurate information. Currently, organizations can be registered by various agencies that are not inter-connected due to different legal jurisdictions and registration systems. In addition, there is no coordination amongst the registrars of the agencies responsible for registering NGOs.

Guideline for Forming a User-Friendly Constitution

Guidelines provided by the ROS or the agency responsible for registering an NGO do not provide complete information, which leads to difficulties for those who want to register an Islamic NGO. The sample framework provided by the ROS on its website is a simplified version and there are no specific instructions given. Moreover, it becomes more complicated as it is difficult to contact the ROS and the customer service is ineffective. For example, staff rarely answer the phone and emails seldom receive prompt attention.

Methodology:-

This qualitative study employed a case study design and data were collected using the document analysis and interview methods. Firstly, the content analysis method was used to analyse the legal provisions that govern the registration of an NGO. The aim was to examine the provisions related to creating or writing a NGO's constitution and the mandatory clauses that must be present in a constitution. The constitution of various NGOs was also analysed to determine the similarities and differences in their characteristics. In addition, books, journal articles and reports related to Malaysian NGOs were also examined. Secondly, the semi-structured interview method was chosen because it is more open and flexible. The interview protocol was distributed in advance to the respondents as

a guide. A total of 11 NGO/NPO representatives, 5 NGO registration agencies and 2 NGO coordinators in Malaysia were interviewed to obtain comprehensive data.

Data obtained from these documents and interviews were then descriptively and thematically analysed. Codes (coding) were built based on the themes derived from the research objectives with the help of the Atlas.ti software.

Findings and Discussions:-

The term ‘NGO’, or non-governmental organization, has been used since the establishment of the United Nations in 1945, or more precisely in the UN Charter Clause 71 Chapter 10, in regard to the consultative role of non-governmental organizations. It is used to distinguish between the participating rights of governmental bodies (intergovernmental agencies) and international private organizations. The term ‘NGO’ helps the United Nations distinguish intergovernmental agencies from private organizations in its charter and their respective participation rights (Omar, 2007).

The World Bank defines NGOs as private organizations that conduct activities to alleviate suffering among the world’s people, reduce the poverty gap, preserve the environment, provide social services or carry out community development activities (Azyati, 2014). According to the Political Science and Public Administration Dictionary, (2009), an NGO is defined as an organization established to preserve or fight for a goal or advocate an issue that is significant to society.

In principle, an NGO acts voluntarily, without coercion from any party and is not motivated by profit or political purpose (Ahmed & Potter, 2006). Therefore, this type of organization (NGOs) is called a civil society organization (<http://Encyclopedia of Social Work, 2010>).

Hence, the six major principles adopted by NGOs are non-governmental, non-profit making, voluntary, strong and resilient, as well as altruistic and philanthropic (Shinichi, Kasian&Apichart, 2004). The principles are detailed as follows:

1. The NGO must implement its decisions independently and freely, without any governmental interference or pressure.
2. Not profit orientated means that its activities cannot be driven by profit-making motives, and any profit accruing from its activities cannot be distributed to its members for personal gain.
3. Voluntary means that the only qualification for membership must be the individual's desire to participate voluntarily. Participation must not be conditional or exclusive to the organization.
4. A strong and resilient type means that, unlike various forms of voluntary activities carried out on an ad hoc basis, NGOs must be resilient entities with strong organizational qualities.
5. ‘Altruistic’ refers to the immediate purpose of an NGO, which is to act for the benefit of others.
6. ‘Philanthropy’ refers to the likely nature of NGOs receiving sufficient funds from beneficiaries

NGOs are also non-governmental bodies or private organizations that act voluntarily and are not motivated by profit or political purposes. They are established to advocate or fight for a goal or belief that has importance to a society or more specifically, they carry out activities related to community development (Azyati, 2014). Demirovic (2003) defined an NGO as a type of independent organization with the purpose of expressing or advocating certain interests and or issues in various fields, such as education, women's rights, food and water supply, environmental protection, health, transport etc. This definition provides a broader perspective by highlighting NGOs as an organization or movement that specifically focuses on the role of NGOs as grassroot organizations that advocate specific interests and implement related activities.

Based on the definition of an NGO that possess non-profit characteristics, thus, these NGOs can also be summarized or categorized as a NPO (non-profit organization). In Malaysia, NGOs and NPOs are two names that are synonymous, interchangeably used and are not clearly differentiated. However, NGOs are non-governmental organizations that are not profit orientated and are also known as a non-profit organization (NPO). Therefore, in the Malaysian context, NGOs and NPOs are almost similar in terms of meaning, but are named differently depending on the registration status of the NGO or NPO.

This present study found that a Malaysian NGO’s constitution is based on a template or sample constitution provided by the ROS or the agency responsible for registering an NGO. NGO registration in Malaysia is open and

an NGO can choose to be registered under one of the 4 main agencies and is bound by certain legislation that have been set by each NGO registration agency, as elaborated below.

Registrar of Societies (ROS)

The vast majority of NGOs are registered under the ROS. This is because the ROS approach is more open and does not impose strict conditions in order to encourage the growth of NGOs in Malaysia. Any movement, organization or association comprising a minimum of 7 individuals or ad hoc organizing committee members, regardless of its type or purpose, whether temporary or permanent, can register its entity. NGOs registered under the ROS are subject to the Societies Act 1966, which came into force on 1 February 1966. This Act amends and unifies the laws relating to the registration of an organisation. The Societies Act 1966 also determines the operation of a registered society according to the law by dictating what the society 'can do' or 'cannot do'. The organization's requirement for a constitution is also provided for in this Act as mentioned under Section 7 (3) (e), which mentions that the registrar has the right to reject the registration of an organization if the organisation's constitution or rules do not list the items mentioned in Schedule 1 of the Societies Act 1966. Schedule 1 lists 15 items that must be mentioned in the organization's constitution, among which are the name, address, symbol or logo, goals, method of appointing members, membership, committees, criteria for office holders, financial income and expenses, auditors, quorum for a meeting, criteria for amending the constitution, criteria for politically-orientated organizations and criteria for organizations with branches. Therefore, based on Schedule 1, it is clear that organizations registered under the ROS need to draft their constitution based on the items mentioned in the schedule. According to the schedule, it is obvious that organizations are free to draft their own constitution as long as it does not contradict the law. This applies to all organizations, including Islamic organizations or Islamic NGOs.

Legal Affairs Division (LAD) in the Prime Minister's Department

An organization can also choose to be registered at the Legal Affairs Division (LAD) in the Prime Minister's Department. Organizations registered under the LAD are known as Trustee Corporations (TC) that have specific goals, such as welfare, religious, educational, literary, scientific, or social goals. Establishment of a TC is subject to the approval and permission from the Minister in the Prime Minister's Department. A minimum of 3 trustees is required, apart from a single or a group of founders to complete the establishment process. TCs registered under LAD are subject to the Trustees (Incorporation) Act 1952 [Act 258] when dealing with registration, appointment, monitoring, dissolution and also its constitution. The constitution in this case is called the Deed of Trust and it must be attached when registering a TC. The LAD also has a Trust Deed template that can be used by TCs for the purpose of drafting their constitution.

Companies Commission of Malaysia (CCM)

An organization can also be registered with the Companies Commission of Malaysia (CCM). Organizations registered under the SSM are known as a Company Limited by Guarantee (CLG) and they are solely for welfare purposes that do not involve profit-oriented activities. An initial fund of RM1 million must be provided as the main condition for creating this company. A minimum of 2 trustees with a residential address in Malaysia is required. In addition, a minimum of 2 founding members are also required to complete the establishment process. In order for this foundation to be established, the approval of the Minister at the Ministry of Domestic Trade must be firstly obtained.

An NPO registered as a Company Limited by Guarantee (CLG) under the Companies Commission of Malaysia (SSM) is subject to the Companies Act 2016. Sections 31 and 38 of the Companies Act 2016 mention that the CLG must have a constitution. Based on section 38(3), the CLG's constitution must mention that the company is a CLG, the purpose of the company, specify its capabilities, rights, powers and privileges, the number of members who proposed that the company be incorporated and other matters that the company intends to include in the constitution. Apart from the Companies Act 2016, a CLG must also comply with the guidelines issued by the SSM. The latest guidelines were approved on September 27, 2021. Among the rules that must be followed by a CLG is that the organization must attach its constitution during registration based on the provided template.

Labuan Financial Services Authority

A NPO can also choose to either register with the Labuan Financial Services Authority, or also known as Labuan FSA or the Labuan Financial Services Board. The Labuan Financial Services Authority (Labuan FSA), formerly known as the Labuan Offshore Financial Services Authority (LOFSA), is a one-stop agency established on 15 February 1996 as a single regulatory body to promote and develop Labuan as an International Business & Financial

Centre (IBFC). Its establishment draws attention to the government's commitment to make Labuan a premier and highly reputable IBFC. The Labuan FSA was established to focus on business development and promotion, process applications and supervise business and financial activities, as well as develop national objectives, policies and set priorities, administer and enforce legislation, and incorporate/register Labuan offshore companies. Therefore, an organization has the option of either registering as an organization or NPO under Labuan FSA and is subject to several acts and guidelines that have been set by Labuan FSA. However, there are not many NPOs registered under the Labuan FSA. Referring to the official Labuan FSA portal, there were only 15 registered organizations as of 2 September 2022, and all NPOs registered under Labuan FSA must name the organization beginning with 'Yayasan' or 'Foundation'. Organizations registered under Labuan FSA also need to have a constitution that is drafted based on the template provided Labuan FSA.

Registrar of Youth (ROY)

A youth-related NPO has the option of registering with the Registrar of Youth's office, which was established to ensure that youth organizations registered under the Youth Societies and Youth Development Act 2007 move more efficiently and effectively consistent with the goals of youth development and provisions in the Act. The constitution of an NPO registered with ROY is subject to the Second Schedule of the Youth Societies and Youth Development Act 2007. Thus, if the organization does not fulfil the conditions stipulated in the schedule, then the registrar reserves the right to cancel or reject the registration of the organization, as provided in Section 9 (3) (e) of the Act.

Based on the sample constitution template prepared by each registration agency, there are some elements that need to be incorporated into an organization's constitution, but at the same time still afford the organization the liberty to draft its own constitution based on the guidelines. Therefore, each NGO is bound by the law that is affiliated with the registration agency handling the NGO. The difference in registration and license results in differences in the organization's objectives, type of operation, membership and auditing. Choosing the type of registration is greatly influenced by financial resources, the NGO's activities and its objectives.

However, analytical findings indicate that there is no single act or guideline that differentiates between Islamic NGOs and non-Islamic NGOs based on the registration agency, either in terms of definition, operation or constitution. Therefore, this study provides recommendations on the definition of an Islamic NGO, namely;

'Non-governmental organizations or societies that place Islamic principles as their objective or agenda for their establishment or carry out non-profit oriented activities and are Shariah-compliant or the majority of the membership consist of Muslims or require board members and trustees to be Muslims'.

Basically an Islamic NGO Islam should possess these following characteristics:

First: Adhere to Islamic teachings.

Second: Top positions in the organisation is only open to Muslims, but the membership is open to non-Muslims with certain conditions.

Third: Not involved in activities that contradict Islamic syariat.

Whereas, findings of the interview session with Islamic NGOs yielded 6 elements that should be present in an Islamic NGO's constitution, as mentioned below.

(i) Syariah-compliant activities

"the constitution must reflect the NGO's activities as being Islamic orienteered. Thus, if it is presumably an Islamic NGO but its activities are not Islamic in nature, then, I think it is inappropriate to name it as an Islamic NGO". (NGO 1).

(ii) Financial transparency in terms of internal audit, systematic operations, administrative costs, external influence, money laundering and internal policies.

"In order to avoid money laundering, we should obtain the advice of Bank Negara. For example, if or when we want to send big amounts of money or funds to a particular place" (NGO 2).

"The NGO's financial resources must be audited by a Qualified Auditor" (NGO 3).

"The constitution must contain provisions pertaining to aspects of reporting, especially involving the flow of money, and who has the ultimate power to approve. For example, even though I am the CEO of NGO 6 but I do not have the absolute power to release even RM1. It has a system of financial transfer, how these parties have to approve and the objectives must be stated and everything we do at NGO 6 is digital so all claim processes or whatever the movement of money is digital. So, we can know that transparency is there. It's a matter of how the system is designed

"There is a financial transfer system. How these parties approve and the objectives must be stated and everything carried out by NGO 6 is in digital form, thus, all claim processes or any movement of funds is digital. Hence, we can monitor the transparency is there. That relates to how the system is designed" (NGO 6).

(iii) Assimilation of Islamic values in terms of implementing Syura, Islamic values and elements of integrity

As for this Islamic NGO, I think there are several important elements that should be included even if we do not use the name Syura and so on... but, those things are all there, it is just that elements like meetings need to be improved. The monthly meeting refers to a Syura". (NGO 4).

"For us (Syria Care), perhaps it is similar to Love Gaza Malaysia...we did not mention that our NGO is an Islamic NGO.....but consider ourselves as an Islamic NGO... we move based on Islamic principles and values" (NGO 2).

(iv) Believing in the aqidah of the people of the Sunnah

"From the significance of an element aspect, firstly is our belief...because we will be guided by the al-Qur'an and Sunnah...that is all..when we are guided by the al-Qur'an and Sunnah we will not deviate". (NGO 5).

(v) Good governance in terms of membership, finances, administration, choosing the leader, systematic and internal procedures.

"Among the core principles or thrusts of NGO 6 are technology and data. We ensure that all projects or any intervention by NGO 6 must be based on data and must utilise the technology infrastructure". (NGO 6)

"Thus, aspects of good governance should be a priority when determining important aspects that are included in the constitution. I think that the constitution does not differ much from one organization to another, considering the adherence to the same fundamental elements, such as the goals of the organization, membership, leadership, annual general meeting (AGM), committee selection, finance, and other governance components". (NGO 7).

"Second, when we form a NGO and so on, it is important to have a list of trustees who are capable and trustworthy. The trustees must have an admirable character, trustworthy and possess vast experience"(NGO 8).

(vi) The intention of forming an NGO should be to prioritise the significance of Islam as the primary goal

"From the mission and vision perspective....why is a NGO formed in the first place? It must clearly advocate Islam". (NGO 1).

Based on these elements, this study believes that these elements should be mentioned in an Islamic organization or NGO's constitution so that the objectives, operations and governance of the NGO are distinctly outlined and does not conflict with the principles of Islamic law.

Conclusion:-

Based on the discussion above, it is clear that the governance of NGOs in Malaysia is regulated by various registration agencies that rely on different Acts or legislation that regulate the registration, operation and governance of an NGO, including the sample constitution template. In general, there are four registration agencies for NGOs in Malaysia and they differ slightly in terms of determining the objectives or goals of an NGO. Moreover, the four agencies do not distinguish between Islamic NGOs or non-Islamic NGOs. Similarly, when forming a NGO's constitution, each agency has its own sample template that can be used as an example or outrightly adopted by each organization. Most registered NGOs only used the sample template provided by the registration agency. Therefore, this study suggests that there should be a definition of an Islamic NGO so that the Islamic NGO category in Malaysia is clearly defined. In addition, this study also suggests that Islamic NGOs should elaborate on the 6 elements proposed in this study.

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