

## An Analysis Of Legal Frameworks And Fatwas Governing Istibdal Waqf In Malaysia

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### ABSTRACT

*Waqf, a charitable endowment under Islamic law, plays a significant role in socio-economic development. In Malaysia, istibdal waqf, which means the exchange or substitution of waqf property, is a mechanism allowed for enhancing the utility of waqf assets. However, the legal frameworks and fatwas governing istibdal waqf differ across various states, leading to challenges in its implementation and management. Therefore, this study analyzes the legal structures and fatwas pertaining to istibdal waqf in Malaysia, and examines their effects on the management and sustainability of waqf assets. The problem stems from the inconsistent legal provisions across different states and varying fatwas issued by respective Islamic religious councils. These inconsistencies create barriers to the efficient use of waqf property, ultimately limiting the potential of waqf as a tool for economic development. The study employs a qualitative research methodology, including a review of statutory laws, fatwas, and guidelines from state Islamic authorities. The findings reveal that discrepancies in legal interpretation and fatwas significantly hinder the effective management of waqf assets, leading to delays in decision-making and underutilization of property. To address these issues, the study recommends the standardization of istibdal waqf regulations across states and a more unified fatwa issuance process to streamline the management and revitalization of waqf properties. This research contributes to a better understanding of the governance of waqf in Malaysia and offers practical solutions to improve its administration for greater socio-economic impact.*

**Keywords:** Legal framework, fatwas, Istibdal waqf, Malaysia

## **INTRODUCTION**

In Malaysia, the concept of istibdal waqf is accepted for implementation on waqf properties, especially in cases of necessity. It is one of the methods in development of waqf properties (Syazuwan, 2020). Istibdal has been provided for in several state waqf enactments, which are separate from the state Islamic administration enactments (Noor, M.A., 2019). With the existence of these waqf enactments, SIRC are empowered to implement istibdal waqf on waqf properties based on specific public needs. Apart from that, The Fatwa Committee of the National Council for Islamic Religious Affairs has also issued some fatwa related to istibdal waqf for implementation in Malaysia. During its 4th meeting on 13 April 1982, they made the decision that replacement of waqf (waqf ibdal) is permitted according to the taqlid of Imam Abu Hanifah's opinion. In addition, the Fatwa Committee of the National Council for Islamic Religious Affairs during its 41st meeting on 3 to 4 November 1996 also decided that waqf istibdal is a very good practice and should be implemented considering the huge development while waqf lands, old mosque sites are left neglected and causing difficulties for the authorities (JAWHAR, 2010).

The study discusses the concept and implementation of Istibdal Waqf in Malaysia, a method of substituting or replacing waqf properties to meet current needs and maintain the benefits intended by the waqif (donor). Istibdal is particularly important when waqf properties no longer serve their original purpose or are subject to public authority requisition. The legal framework for Istibdal is established in various state waqf enactments, separate from state Islamic administration laws, empowering the State Islamic Religious Councils (SIRCs) to implement Istibdal based on public needs. Fatwas issued by both the National Council for Islamic Religious Affairs and individual state Muftis provide additional guidance on Istibdal's implementation, often following the taqlid of Imam Abu Hanifah.

The primary aim of the study is to analyze the legal and religious provisions for Istibdal Waqf across different Malaysian states, exploring how these provisions facilitate the development of waqf properties while preserving the waqif's original intent. The scope includes a review of state enactments, fatwas, and the conditions under which Istibdal is permitted, as well as a comparison of practices across various states in Malaysia.

The practice of istibdal waqf (substitution of waqf assets) plays a significant role in the dynamic management of waqf properties in Malaysia. While istibdal offers a flexible mechanism to ensure the productive use of waqf assets, its implementation is not without challenges. The legal frameworks and fatwas governing istibdal waqf vary across different states, leading to

inconsistencies in application and interpretation. Despite existing laws, many waqf institutions face difficulties in implementing istibdal projects, often resulting in delays or mismanagement of waqf assets.

Furthermore, there is a lack of clear, standardized guidelines on how legal frameworks and fatwas should be operationalized, leading to confusion among waqf administrators and trustees. The absence of uniformity in istibdal waqf practices may hinder the maximization of waqf asset utility and affect the overall sustainability of these assets. Additionally, the differing interpretations of Shariah principles related to istibdal in various fatwas have not been thoroughly examined for their practical implications.

This research aims to address the gap in understanding how the current legal frameworks and fatwas governing istibdal waqf affect the effective implementation and management of waqf assets in Malaysia. It will explore the challenges posed by the lack of consistency in legal and religious guidance and assess their impact on waqf institutions' ability to manage and substitute assets in a way that aligns with both Shariah principles and practical needs.

## **LITERATURE REVIEW**

The concept of istibdal or known as substitution or exchange of waqf properties plays a crucial role in the development and management of waqf assets, particularly in cases where the original waqf property becomes unusable or less profitable. While the practice of istibdal offers a flexible approach to improving the economic potential of waqf assets, its implementation is highly contingent on legal, religious, and administrative frameworks that vary significantly across different jurisdictions in Malaysia. This literature review examines the scholarly discourse on istibdal, focusing on its legal and religious dimensions, the fatwas that govern its practice, and the implications for waqf management in Malaysia.

### **Understanding Waqf and Istibdal in the Islamic Context**

Waqf, as an Islamic charitable endowment, is a perpetual and irrevocable dedication of property for religious or philanthropic purposes. Traditional waqf principles dictate that waqf properties cannot be sold, transferred, or altered once dedicated, in line with the principle of perpetuity (ta'bid). However, istibdal provides an exception, allowing the substitution or sale of waqf properties under specific conditions, such as if the original waqf property is damaged, unproductive, or no longer serves its intended purpose. Istibdal allows for the sale of waqf

property or the exchange of mosque land with another property to support development purposes (Laluddin et.al., 2021). Majority of Muslim scholars permit istibdal for a specific reason to ensure that the waqf property is functioning as intended (Jasni, 2013). The permissibility of istibdal is derived from Islamic jurisprudence, but its application has been subject to various interpretations by different schools of thought, resulting in differing legal and administrative practices.

Waqf scholars argue that istibdal is an essential tool for maximizing the potential of waqf assets, especially in contemporary settings where urbanization and economic changes necessitate the redevelopment of waqf properties. This is also supported by Kamil et.al. (2024) that mentioned istibdal waqf stands as a powerful tool in tackling underdevelopment issues by enabling the exchange of waqf properties with another property to become more productive asset. However, the permissibility of istibdal hinges on specific conditions set by Islamic legal rulings, and any form of substitution must preserve or enhance the value and purpose of the original waqf. Islamic legal texts, including the classical fiqh of the Hanafi, Shafi'i, Maliki, and Hanbali schools, differ on the exact circumstances under which istibdal can be applied. In Malaysia, where the Shafi'i school of thought predominates, the practice of istibdal is more cautiously approached compared to other jurisdictions (Asni et.al., 2023).

### **Legal Frameworks Governing Istibdal Waqf in Malaysia**

Malaysia's legal framework concerning waqf is unique, as waqf matters fall under state jurisdiction due to the federal structure of the country. Each state in Malaysia has its own Islamic Religious Council (Majlis Agama Islam Negeri, or MAIN), which is responsible for managing waqf properties. The administration of waqf, including the practice of istibdal, is therefore subject to state-level regulations and fatwas, resulting in diverse approaches and interpretations across the country.

Several scholars, including Abd. Jalil (2020) has highlighted the conflicts in the legal frameworks governing waqf in Malaysia. According to the author, data indicates that the management of funds or assets entrusted to the waqf institution, Zakat, and Baitulmal is governed by the specific enactments and legislation relevant to each body. However, issues have intensified due to conflicts arising between the Syariah Court and the civil court.

Some states adopt a more flexible approach, permitting istibdal in cases where waqf properties are no longer viable. For example, in Fatwa Perlis, it is permissible to sell the waqf

property to replace it with another property that is better to fulfill the original purpose of the waqf (Fatwa Perlis, 2021). Meanwhile, some states impose stricter conditions, making it difficult to implement the practice. This fragmentation creates challenges in the efficient management of waqf assets, as there is no uniform standard for determining when istibdal is permissible.

Furthermore, Malaysia's legal system, which integrates Islamic law and civil law, adds another layer of complexity to the governance of waqf. The Administration of Islamic Law Enactments in each state provides legal provisions for istibdal, but these provisions vary, and in many cases, there is no clear procedural guidance on how waqf authorities should navigate the legal and religious requirements for exchanging or substituting waqf assets. This legal ambiguity can lead to delays in decision-making and hinder the potential for waqf redevelopment projects.

### **The Role of Fatwas in Governing Istibdal**

Fatwas, or Islamic legal rulings issued by state Muftis, play a pivotal role in guiding the practice of istibdal waqf. Since waqf is closely tied to Islamic jurisprudence, fatwas serve as critical references for determining the permissibility and conditions of istibdal in each state. However, fatwas on istibdal are not standardized across Malaysia, resulting in varying interpretations and applications of the practice. This is also supported by Syazuwan (2020) that mentioned any regulations and laws on waqf are supported by different states of laws and it becomes varied with different interpretations of fatwa or legal rulings

For example, in certain states like Kelantan and Wilayah Persekutuan, fatwas have explicitly allowed for istibdal under specific conditions, emphasizing the need to ensure that the substitution only implemented in necessary situations and for the general benefits and welfare of beneficiaries. In contrast, states like Terengganu, Penang and Kedah have been more conservative in issuing fatwas on istibdal, with some limiting its application to cases of land acquisition by the State Authority. The absence of a unified fatwa system complicates the management of waqf assets at a national level, as waqf administrators must navigate between differing religious opinions and legal requirements.

For conclusion, a more harmonized approach to fatwas on istibdal, suggesting that a national fatwa council could play a more active role in providing consistent guidelines for all states. This would help reduce the fragmentation and uncertainty that currently affect the administration of waqf assets, thereby enabling more efficient implementation of istibdal across Malaysia.

## **Impact of Legal and Religious Frameworks on Waqf Management**

The fragmentation of legal frameworks and fatwas governing istibdal has significant implications for waqf management in Malaysia. The lack of uniformity in state-level regulations and fatwas leads to delays in the approval of istibdal projects, which can result in waqf properties being left idle or underutilized. Moreover, the uncertainty surrounding the conditions for istibdal makes it difficult for waqf administrators to plan long-term redevelopment projects, as they must navigate a complex web of legal and religious requirements.

The inconsistent application of istibdal across states also affects the ability of waqf institutions to maximize the economic potential of waqf assets. For instance, in urban areas where land is scarce and waqf properties have high redevelopment potential, the strict application of istibdal can prevent waqf authorities from unlocking the value of these assets. Conversely, in rural areas where waqf properties may be underutilized, a more flexible approach to istibdal could enhance the productivity of waqf assets, but legal and religious barriers often stand in the way.

## **METHODOLOGY**

The study utilizes a qualitative research approach, analyzing legal texts, state enactments, fatwas, and official documents from various State Islamic Religious Councils (SIRC). The methodology includes a comparative analysis of the Istibdal provisions in different states, focusing on the conditions under which Istibdal is allowed, the role of SIRCs, and the fatwas issued by the respective authorities. The study also examines the historical context and development of Istibdal Waqf in Malaysia.

## **FINDINGS**

The study reveals that Istibdal waqf is widely accepted and practiced in Malaysia, with specific legal and religious frameworks established in eight states which implement istibdal such as in Kelantan, Terengganu, Perak, Pulau Pinang, Kedah, Selangor, Wilayah Persekutuan and Johor (Afiffudin et.al., 2023). Each state has its own enactments detailing the circumstances under which Istibdal can be carried out, often involving situations where waqf properties no longer fulfill their intended purpose, are subject to public acquisition, or have become burdensome to maintain.

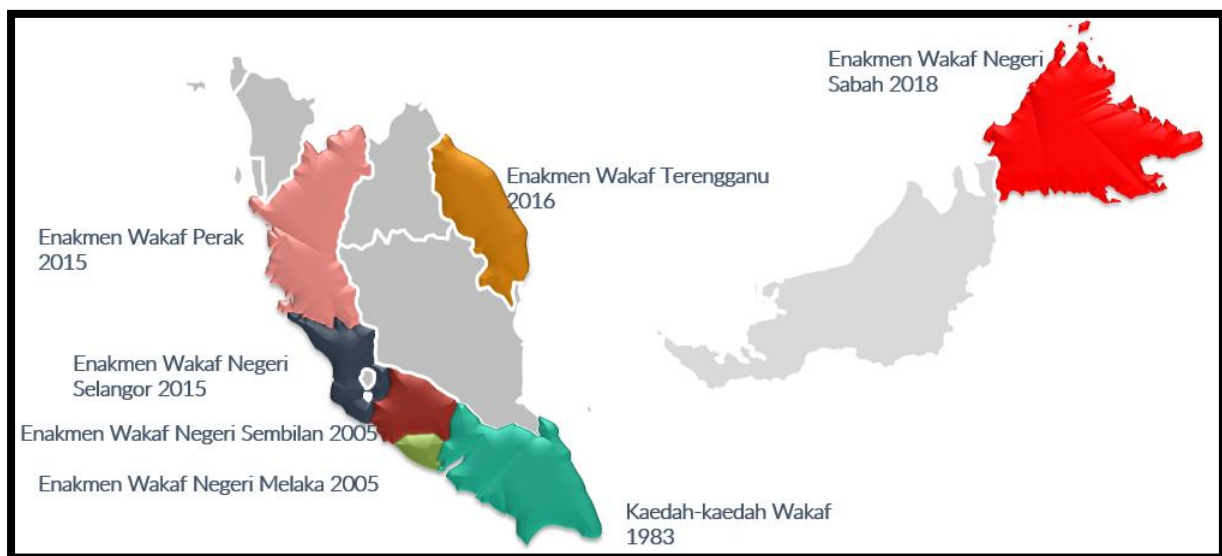
The fatwas issued at both national and state levels emphasize the importance of maintaining the original intent of the waqif, even when replacing waqf properties. For instance,

the fatwa from the Special Muzakarah of the Fatwa Committee of the 41<sup>st</sup> National Council for Islamic Religious Affairs Malaysia on 3-4 November 1996 has decided that waqf istibdal should be practiced especially on the idle waqf land. The permissibility of Istibdal is not focused on Syafie school only, but it is based on the taqlid of Imam Abu Hanifah. Therefore, the scholars of fiqh allow istibdal with certain conditions and Shariah guideline, taking into account the masalah (JAWHAR, 2021).

The study also highlights that in states without specific Istibdal provisions in their waqf enactments, the practice is guided by fatwas issued by the state or national Fatwa Committees. For example, in Perlis, the 2021 fatwa committee outlines specific conditions for Istibdal, focusing on preventing waqf properties from being abandoned or underutilized (Jabatan Mufti Negeri Perlis, 2023).

### Waqf Enactments for Implementing Istibdal Waqf

In state level, several waqf enactments have also been issued for the purpose of implementing istibdal waqf. Figure below shows some states that have waqf enactment in Malaysia, which is in Perak, Terengganu, Negeri Sembilan, Selangor, Melaka, Johor and Sabah.



Source: Website JAWHAR (2024)

Figure 2.1: States That Have Waqf Enactment in Malaysia

Firstly, the early waqf enactment provided start in **Melaka**, Waqf Enactment No. 5 of 2005, Section 19 mentioned about istibdal and development of waqf properties, which states that MAIN may substitute any mawquf in the following circumstances, for example the mawquf has been taken by any public authority under the provisions of any written law, the use of the mawquf

no longer brings the benefit or advantage as intended by the waqif, the use of the mawquf does not fulfill the purpose of the waqf (Enactment Waqf Negeri Melaka, 2005).

In the same year, the Waqf Enactment **Negeri Sembilan**, no.5 2005, in section 12 (1) mentioned that MAIN can implement istibdal in some conditions, for example if the conditions of the waqf are not addressed by any written law, if an authority acquires the waqf property in accordance with written law, if the utilization of the waqf property fails to provide the benefits or interests intended by the waqf giver, if the use of the waqf property does not align with its intended purpose and if conditions set by the waqif cannot be met due to the passage of time or changes in circumstances. Furthermore, based on section (2) MAIN have to get some approval from Fatwa Committee if they want to implement istibdal mosque or any waqf land of mosque, or in any situation other than those stated.

In addition, for Waqf Enactment **Selangor**, basically they have two waqf enactment. The first enactment is based on Waqf Enactment 7/1999, SIRC can implement istibdal in the situation of firstly, the waqf property has been acquired by any public authority under the provisions of any written law and secondly the use of the mawquf no longer brings the benefit or advantage as intended by the waqif, and the mawquf does not fulfil the purpose of waqf. Furthermore, there are some additional section, which is section 7 of the Selangor State Waqf Enactment 2015 states that MAIN is empowered under Section 41 of the Waqf (State of Selangor) Enactment 2015 to carry out istibdal on any waqf property. Under Section 41(1), MAIN may carry out istibdal subject to the following conditions, subject to the decision of the Fatwa Committee. There are eight conditions as mentioned below:

1. If the conditions of the waqf are not covered by any written law;
2. If the waqf property was acquired by an authority in accordance with the written law;
3. If the use of the waqf property does not provide the benefits or interests intended by the waqf giver;
4. If the use of the waqf property is not consistent with the intended purpose;
5. If the conditions set by the waqf donor cannot be met due to the passage of time or changed circumstances;
6. If MAIN attempts to perform Istibdal in a mosque or mosque compound that has become waqf property;
7. If the conditions set by the waqf giver cannot be implemented, and MAIN attempts to perform Istibdal in a manner that is as close as possible to the original conditions;



8. In other circumstances deemed necessary by MAIN.

Besides that, in Section 41 (2) also state that the value of the mawquf obtained through istibdal must not be less than the current value of the original mawquf. Furthermore, MAIN also can istibdal any waqf properties either all parts of waqf properties or part of it in a reasonable time (Enakmen Waqf Selangor, 2015).

Next, for Waqf Enactment **Perak**, it is mentioned in no.9 (2015), in section 22(1), states that the council can istibdal any mawquf if the use of mawquf no longer brings benefits and benefits as required by the waqif, the use of mawquf does not meet the purpose of waqf, any waqf conditions are inconsistent with any written law, the council wants to istibdal a mosque or mosque site that has been waqf, due to the time constraint or a change in circumstances, any of the conditions set by the waqif cannot be implemented, any conditions that have been set by the waqif cannot be implemented and the MAIN intends to determine any other way to implement the waqf, so that the mawquf is used in a way that is as close as possible to the conditions set by the waqif, or in the case of other circumstances which are necessary by the Council. Furthermore, according to section 22 (2), any mawquf taken by any public authority in accordance with the provisions of any written law, shall be referred to the Council by the relevant authority.

Lastly, for Waqf Enactment **Terengganu**, istibdal has been mentioned in Section 7 enactment waqf Terengganu (2016). It is mentioned that MAIN can implement istibdal on waqf properties based on the section 42. In section 42 (1), based on Fatwa Committee, MAIN can implement istibdal on waqf properties in following situation: if any waqf conditions are not inconsistent with any law written law; if mawquf is taken by any authority based on any written law; if the use of mawquf does not bring any benefit or interest as required by the waqif; if the use of mawquf does not meet the purpose of waqf; if any of the conditions set by the waqif are not possible implemented due to the passage of time or a change in circumstances; if the Council wants to entitle a mosque or a mosque site which has become mawquf; if any of the conditions set by the waqif cannot be implemented and the Council intends to implement the waqf in a way that is as close as possible to the conditions that set by waqif; or in the case of other circumstances necessary by the Council. In section 42(2), it has been mentioned that the value of mawquf obtained through istibdal should not be less than the current value of the original mawquf.

For states who have not allocated the concept of istibdal in Waqf Enactment or State Islamic Religious Administration Enactment respectively, the concept is implemented based on the fatwas that have been decided by Muzakarah of the National Fatwa Committee for Islamic

Religious Affairs at Malaysia and also by their respective State Fatwa Committees (Afiffudin, 2016). Additionally, not all states implement istibdal. There are some states that have not implemented istibdal even they have the fatwa regarding istibdal, for example in Perlis. It is due to the situation or problem that do not require to istibdal implementation.

### **Permissibility of Istibdal Waqf Based on Fatwa**

The permissibility of Istibdal waqf also discussed in fatwa in each state. In Malaysia, the main school used as a reference especially in matters of religious affairs such as waqf is the Shafi'i school. However, if the Fatwa Committee finds that the opinion of Shafi'i school is contradict to the maslahah or public interest, then the Fatwa Committee may follow the opinion issued by Hanafi, Maliki, or Hanbali school (Asni et.al., 2023). The function of fatwa committee in each state is to give some view and opinions regarding to the implementation of istibdal by waqf institution.

Among the fatwa istibdal, for example, in **Kelantan**, a fatwa regarding istibdal had been issued on 5 August 1995 by the the Ulama Assembly of the Kelantan Islamic Religious Council. They decided that the replacement or sale of waqf asset can be carried out on waqf lands in necessary situations and for public interest, including mawquf properties that do not generate sufficient income to cover maintenance and repair costs. According to Fiqh contemporary, the sale and replacement of mawquf is permissible, giving full authority to the Qadi. Furthermore, if it involves specific waqf asset, then the permission of the waqf recipient must be obtained (JAWHAR, 2010). Fatwa also agreed with the view of Ibn Taymiyyah that requires the conversion of waqf assets based on these main aspects:

- (a) urgent change is necessary as damage waqf property can be sold and the profit from the sale may purchase another asset for the replacement of waqf asset
- (b) in order for maslahah, such as conversion of an old mosque to better mosque, while the old building is sold.

However, before the implementation of istibdal, there are several conditions that must be complied, whether related to the original waqf properties to be istibdal or the waqf property that will be replaced.

In **Terengganu**, istibdal waqf occurred due to land acquisition by the State Authority (Afandi Mat Rani, 2015). So, the Terengganu State Fatwa Committee has set several conditions related to waqf land taken by the government as follows:

- i. Waqf land that is taken back should be replaced with the same land and then must be pronounced with Sighah Waqf;
- ii. Land from the type of rice that is taken back should be replaced with land of the same type;
- iii. As long as there is land of the same type in the surrounding area, then it is not permissible to search for the replacement land in another area;
- iv. Istibdal is implemented with the value of the land that has been taken and the trustee must defend the value that is paid as the real value.
- v. The surplus from the money which is used to buy replacement of waqf land must be purchased as much as possible from the part of replacement.

Furthermore, in **Kedah**, the decision of Fatwa for the waqf properties which involved with istibdal, the fatwa decision agrees with the proposed land acquisition and agrees with the amendment of the land acquisition area, the land compensation money must be replaced with land of the same or better value. The waqf land must be utilised by following the original intention and purpose of the waqf. If the developer proposes to replace the building structure involved must be built with a new structure of the same standard or better, and it is used for the original purpose of waqf.

In **Perak**, according to Perak Islamic Religious Administration Enactment 2004, the fatwa committee issued a fatwa related to istibdal. In the fatwa mentioned, MAIN may replace the special waqf land of the mosque that is not used for the purpose of mosque and replace with another land with the condition that the land has the same or greater value based on the istibdal method. The purpose of the transfer should be based on benefits that are in line with Shariah law and maslahah. Any form of istibdal purpose (substitution) must get approval from the Perak State Fatwa Committee.

In **Penang**, Penang State Fatwa Committee Meeting No. 5/2018 which held on October 16, 2018 has decided that istibdal (exchange land) and waqf property is permissible with certain conditions. The waqf property is categorized into two parts which is immovable property and movable property. Immovable property cannot be Istibdal at all, while movable property is allowed for istibdal. Among the conditions that have to follow for istibdal cases is if istibdal does not fulfill the intention of waqif and the needs of waqf, then the Fatwa Committee may refer to the view and opinion of another scholars and the land that is owned by the government for the benefit of Muslims should be gazetted as waqf irsod.

In addition, for **Johor**, under the law **Kaedah-kaedah Wakaf Johor 1983** istibdal is mentioned as: replacing waqf property with a better property by exchange or purchase or sale or etc according to Sharia law. In **Wilayah Persekutuan**, the Syariah Law Consultation Committee during its 35th meeting on 19 November 1993 agreed to permit waqf istibdal, which means transferring waqf land from one place to another that is more beneficial, but the value of the land must be equal or greater (JAWHAR, 2010). Fatwa issued by the Mufti of Wilayah Persekutuan on 5 February 1994 that the implementation of istibdal can be made in necessary cases including masalah for public with conditions that it is made with the land that have the same value as the first land or can provide a better investment to the waqf that have been made.

In **Selangor**, MAIN may carry out istibdal subject to the following conditions, subject to the decision of the Fatwa Committee:

1. If the conditions of the waqf are not covered by any written law;
2. If the waqf property was acquired by an authority in accordance with the written law;
3. If the use of the waqf property does not provide the benefits or interests intended by the waqf giver;
4. If the use of the waqf property is not consistent with the intended purpose;
5. If the conditions set by the waqf donor cannot be met due to the passage of time or changed circumstances;
6. If MAIN attempts to perform Istibdal in a mosque or mosque compound that has become waqf property;
7. If the conditions set by the waqf giver cannot be implemented, and MAIN attempts to perform Istibdal in a manner that is as close as possible to the original conditions;
8. In other circumstances deemed necessary by MAIN.

The value of the mawquf obtained through istibdal must not be less than the current value of the original mawquf. Furthermore, MAIN also can istibdal any waqf properties either all parts of waqf properties or part of it in a reasonable time (Enakmen Waqf Selangor, 2015).

In **Melaka**, The State Mufti of **Melaka** also issued the following fatwa about istibdal waqf. According to state mufti, if waqf land is repossessed by the State Authority for any reason, compensation must be paid for it, and the compensation money must be given to the Islamic

Religious Council to replace it with other land to maintain the waqf and fulfill the intention of the waqif.” (JAWHAR, 2010).

Lastly, in **Perlis**, fatwa committee of the state of Perlis for the 55th/2021, on 22-23 november 2021, the fatwa decision mention that istibdal is the process of exchanging abandoned or non-productive waqf property by selling the waqf property to replace it with another property that is better to fulfill the original purpose of the waqf. The purpose of istibdal is to prevent waqf property from being abandoned or losing the benefits intended by the waqif. According to the fatwa, the istibdal process of waqf property can be done based on value. However, it must be implemented with the following conditions:.

- a. The original waqf property is destroyed or cannot be used according to the original purpose of the waqf or requires unreasonable costs to be used or due to the inappropriate location of the property for development,
- b. The sale of waqf property must meet the market price according to the value of the authority,
- c. Get permission from the government or legal trustees,
- d. Replacement waqf property can better fulfill the original purpose of waqf.

Besides that, the money obtained from the sale of waqf property (istibdal money) is allowed to be used for the purchase of new waqf property that can be better to fulfill the original purpose of the waqf, or can be used to develop other existing waqf property with an equivalent or higher original benefit rate. Therefore, the profit of istibdal have to be separated according to the purpose of the waqf. In addition, the waqf manager needs to maintain the waqf's original intention by using istibdal money for the same purpose. For example, the mosque's istibdal money is used only for the development of the mosque, while the cemetery is only used for the development of the cemetery. However, if it is not possible to implement istibdal in accordance with the original purpose of the waqf due to factors that prevent it and at the same time there are other requirements which have more benefits, the waqf manager is allowed to use the waqf istibdal money for other than the original purpose waqf, in order to preserve benefits to the community (Fatwa Perlis, 2022).

State	Fatwa Istibdal	Alignment* (Key condition to Implement Istibdal)
Kelantan	Fatwa 1995 decided that istibdal can be implement on any waqf land for	The implementation of istibdal on part of special waqf land by Al-

	<p>masalah ‘ammah. The replacement or sale of waqf asset can be carried out on waqf lands in necessary situations and for public interest, including mawquf properties that do not generate sufficient income to cover maintenance and repair costs. According to Fiqh contemporary, the sale and replacement of mawquf is permissible, giving full authority to the Qadi.</p>	<p>Marhum Tengku Kaya Pahlawan in lot 359 to Sentosa Jaya Sdn. Bhd. As a replacement, two lot three-storey shop units has been proposed in this project and it should be passed to the Islamic Religious Council of Kelantan as a trustee to the waqf land.</p>
Terengganu	<p>The Terengganu State Mufti has approved istibdal for the waqf lands taken back by State Authority (PBN). The new replacement of waqf lands should then be pronounced with a waqf sighah.</p>	<p>Some of implementation istibdal waqf in Terengganu involving the acquisition land by State Authority. According to fatwa, the government has to pay compensation money to MAIDAM as a replacement for waqf land that have been taken.</p>
Kedah	<p>The decision of Fatwa for the waqf properties which involved with istibdal, the fatwa decision agrees with the proposed land acquisition and agrees with the amendment of the land acquisition area, the land compensation money must be replaced with land of the same or better value.</p> <p>The status of waqf land involved in land acquisition is divided into 2 categories, waqf land registered with a title deed in the name of the Islamic Religious Council (MAIK) and waqf land registered as a Reserve Certificate (RC) for religious use such as mosque sites, Islamic cemeteries and others.</p>	<p>At MAIK, an istibdal has been made involving the implementation of the electric double track project from Ipoh to Padang Besar at the Kedah State level which involves the relocation of Islamic cemeteries, built structures in the mosque area that need to be collapsed and replaced. In this regard, the Kedah State Fatwa Committee decided that:</p> <ol style="list-style-type: none"> <li>a. The committee allow developers to collapsed prayer buildings, gates, parking lots, roads and Islamic cemeteries Kampung Tok Serun for the purpose of implementing the electric double track project from Ipoh to Padang Besar</li> <li>b. The committee allow to move the Chinese temple located on the cemetery Islam Village Officer to another place.</li> <li>c. The committee allow the developer to take the cemetery land at Kolej Sultan Abdul Halim for the purpose of the project.</li> </ol>
Perak	<p>The fatwa committee issued a fatwa related to istibdal. In the fatwa mentioned, MAIN may replace the</p>	<p>In the same situation in Perak, istibdal was implemented on Lot 3758 and 3659, Kg. Kacu, Tapah because taken</p>

	<p>special waqf land of the mosque that is not used for the purpose of mosque and replace with another land with the condition that the land has the same or greater value based on the istibdal method. The purpose of the transfer should be based on benefits that are in line with Shariah law and masalah. Any form of istibdal purpose (substitution) must getting approval from the Perak State Fatwa Committee.</p>	<p>by State Authority (PBN) for public interest. PBN Perak has allocated a certain amount of compensation which is used by MAIAMP to buy other land lots that will replace the waqf land taken. The Istibdal was approved by the Syariah Committee which was chaired by the Mufti of Perak at that time.</p>
<p>Penang</p>	<p>Penang State Fatwa Committee Meeting No. 5/2018 which held on October 16, 2018 has decided that istibdal (exchange land) and waqf property is permissible with certain conditions. Among the conditions that have to follow for istibdal cases is if istibdal does not fulfill the intention of waqif and the needs of waqf, then the Fatwa Committee may refer to the view and opinion of another scholars and the land that is owned by the government for the benefit of Muslims should be gazetted as waqf irsod.</p>	<p>In MAINPP, the status of current site of the Tun Abdul Razak Complex (KOMTAR) is waqf land, where there is Al-Mashoor Al-Islami Religious School on it. The intention of the Penang State Government to make the location as the state's main administrative and business center has caused the school to be exchanged to Balik Pulau, Penang. The original location of religious school in which located in the middle of the city center of Georgetown is suitable to meet the intention of the State Government at that time. An agreement has been written between MAINPP and the State Government for the purpose of taking back the waqf land where the State Government has allocated compensation money RM6 million and 30 acres of land in Balik Pulau, to MAINPP as replacement land (istibdal).</p>
<p>Johor</p>	<p>Under the law Kaedah-kaedah Wakaf Johor 1983 istibdal is mentioned as: replacing waqf property with a better property by exchange or purchase or sale or etc according to Sharia law.</p>	<p>There are four cases of istibdal waqf in Johor, a case of istibdal related to the development of village Kampung Tersusun, located in Kampung Paya, Kluang, second case related to the duplication of land approval by Majlis Mesyuarat Kerajaan (MMK), third case related to the project of highway construction Eastern Pisperseal Link (EPL) in Johor Bharu and implementation of the project oil and gas at Kota Tinggi. The implementation of the above istibdal</p>

		is based on the approval from Fatwa Committee and follow the conditions stated (Afiffudin et.al., 2023).
Wilayah Persekutuan	Fatwa issued by the Mufti of Wilayah Persekutuan on 5 February 1994 that the implementation of istibdal can be made in necessary cases including masalah for public with conditions that it is made with the land that have the same value as the first land or can provide a better investment to the waqf that have been made.	<p>There have been 3 istibdal conducted at MAIWP involving waqf locations as follows:</p> <ol style="list-style-type: none"> <li>a. Lot 168, Jalan Perak;</li> <li>b. Lot 169, Jalan Perak; and</li> <li>c. Lot 107, Jalan Raja Muda.</li> </ol> <p>The implementation of the above istibdal is based on the approval issued by the 35th Federal Territories Sharia Law Consultation Committee Meeting which was held on 9 November 1993.</p>
Selangor	<p>MAIN may carry out istibdal subject to the following conditions, subject to the decision of the Fatwa Committee:</p> <ol style="list-style-type: none"> <li>1. If the conditions of the waqf are not covered by any written law;</li> <li>2. If the waqf property was acquired by an authority in accordance with the written law;</li> <li>3. If the use of the waqf property does not provide the benefits or interests intended by the waqf giver;</li> <li>4. If the use of the waqf property is not consistent with the intended purpose;</li> <li>5. If the conditions set by the waqf donor cannot be met due to the passage of time or changed circumstances;</li> <li>6. If MAIN attempts to perform Istibdal in a mosque or mosque compound that has become waqf property;</li> <li>7. If the conditions set by the waqf giver cannot be implemented, and MAIN attempts to perform Istibdal in a manner that is as close as possible to the original conditions;</li> <li>8. In other circumstances deemed necessary by MAIN.</li> </ol>	<p>A total of six lots of waqf land involved with the implementation of istibdal (Asni et.al., 2023). Out of the six lots, five lots are general waqf lands and only one lot involves special waqf land. There is only one lot of waqf land in the state of Selangor that has been implemented istibdal due to acquisition by the state authorities, while the other five lots are posited under the initiatives of PWS in addressing the problem of waqf land. The implementation of istibdal waqf got the approval from Selangor State Fatwa Committee.</p>



Melaka	<p>According to state mufti, if waqf land is repossessed by the State Authority for any reason, compensation must be paid for it, and the compensation money must be given to the Islamic Religious Council to replace it with other land to maintain the waqf and fulfill the intention of the waqif.” (JAWHAR, 2010).</p> <p>MAIN may substitute any mawquf in the following circumstances:</p> <ol style="list-style-type: none"> <li>1. The mawquf has been taken by any public authority under the provisions of any written law.</li> <li>2. The use of the mawquf no longer brings the benefit or advantage as intended by the waqif.</li> <li>3. The use of the mawquf does not fulfill the purpose of the waqf.</li> </ol>	<p>At MAIM, istibdal was made involving the land and 3 floors of shophouse located at Lot 233, Kawasan Bandar 20, Jalan Bendahara, Off Jalan Temenggung. Istibdal is implement due to some economic factors. The situation of the existing building on the waqf land requires high repair costs and the non-strategic location of the land creates problems for MAIM.</p> <p>MAIM has agreed to sell this entire land to the rental and the sale profit will be used to purchase another land and buildings in Lot 8166 and 8167 in Taman Tasik Utama, Air Keroh.</p> <p>Apart from that, istibdal has been made on the site of the Tanah Merah Mosque, Kundur Beach, Melaka after the acquisition of the land by the State Authority (PBN). The mosque was destroyed and replaced by the Kundur Beach Mosque on another land.</p>
Perlis	<p>The fatwa decision mention that istibdal is the process of exchanging abandoned or non-productive waqf property by selling the waqf property to replace it with another property that is better to fulfill the original purpose of the waqf. The purpose of istibdal is to prevent waqf property from being abandoned or losing the benefits intended by the waqif. According to the fatwa, the istibdal process of waqf property can be done based on value.</p>	<p>There is no implementation of waqf istibdal in Perlis.</p>

Note: \*alignment means: the essential need for harmony between legal frameworks, fatwas, and practical applications in *istibdal* waqf management. *Alignment* suggests that for successful implementation, policies, religious rulings, and operational practices must work cohesively.

## DISCUSSION

Based on the result of the study on the analysis legal structures and fatwas pertaining to istibdal waqf in Malaysia and examines their effects on the management and sustainability of waqf assets,

it reveals that discrepancies in legal interpretation and fatwas significantly hinder the effective management of waqf assets. The legal interpretation seems to be more general than the fatwa which mentioned several conditions of *istibdal* before implementation of *istibdal*. However, the implementation of *istibdal* in all states seems to be synchronize with the fatwa stated. The finding also found that most of the states implement *istibdal* because of the land acquisition by the State Authority, for example in Terengganu. Therefore, fatwa committee discussed to replace the waqf land that have been taken by using *istibdal* method.

The study recommends the standardization of *istibdal* waqf regulations across states and a more unified fatwa issuance process to streamline the management and revitalization of waqf properties. This research contributes to a better understanding of the governance of waqf in Malaysia and offers practical solutions to improve its administration for greater socio-economic impact.

## CONCLUSION

The study concludes that *Istibdal Waqf* is a crucial mechanism for the effective management and development of waqf properties in Malaysia. By allowing the substitution of waqf properties that no longer serve their intended purpose, *Istibdal* ensures that the benefits of waqf are preserved and enhanced, aligning with the waqif's original intent. The legal and religious frameworks across different states provide a robust foundation for the implementation of *Istibdal*, though the study suggests that continuous consultation with the state's Fatwa Committees is essential to ensure compliance with Shariah principles. The work underscores the importance of *Istibdal* in the broader context of waqf management and development in Malaysia, contributing to the sustainable utilization of waqf assets for public benefit.

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