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(IJLGC)**www.ijlgc.com**AN ANALYSIS OF THEMATIC LITERATURE REVIEW ON
ISTIBDAL WAQF IN MALAYSIA**

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Abstract:

The implementation of *istibdal* on waqf property is certainly prevalent in Malaysia due to the presence of a significant contributing factors to the practice. In line with that, most scholars in academic circles had previously been writing and discussing the issues and implementation of waqf properties in Malaysia. Therefore, this study is an attempt to identify the relevance of the writings of the scholars concerning the development of *istibdal* waqf, including the practice and scope of discussion, as well as to explore the issue and practical recommendations suggested by the scholars, particularly in Malaysia. The researchers applied a qualitative method in which the data collection was based on different sources of literature, such as research, books, articles, and other related documents. The analyses are followed by content analysis methods to formulate thematic framework in the writing of *istibdal* waqf in Malaysia. The analysis discovered that these are relatively five different themes associated with the *istibdal* waqf that have been reviewed and published in the form of academic writings intended to provide guidelines for waqf administrators and management as well as academic experts as to enhance the effectiveness and delivery of waqf institutions as an economic empowerment of the *ummah* in Malaysia.

This work is licensed under [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)**Keywords:**Waqf, Waqf Assets, *Istibdal*, State Islamic Religious Councils (SIRCs)

Introduction

The discussion among Islamic jurists concerning the concept of *istibdal waqf* paved the way for the existing waqf property to be protected from destruction, damage, and loss. The discussion has contributed to the dynamic development of existing waqf assets for systematic management. This implies that, in certain circumstances, Malaysia and other countries ought to incorporate the *istibdal* method to develop and intensify the use of waqf assets. In Malaysia, the *istibdal* waqf has been widely practiced in several states, including Kedah, Penang, Perak, Selangor, the Federal Territory of Kuala Lumpur, Melaka, Johor, and Kelantan. As a result of the implementation, a comparably large number of predicaments have been identified involving issues from the legal perspective, such as *fatwas*, the acquisition of waqf land by the State Authority (PBN), the replacement of waqf assets, administration and management disputes, and so forth. In Malaysia, there have been multiple occasions with the implementation of *istibdal* waqf, and therefore, it has opened the door for academic discussion by the experts to conduct research on its implementation and publish their findings in journal articles. Thus, this article will emphasise the development and scope of the writing of *istibdal* waqf in Malaysia that has been written by scholars and describe it in accordance with the scope and theme of the discussion. This study is significant as a referral to understand the implementation of *istibdal* in Malaysia and accurately identify the issues and obstacles as well as settlements that may be practiced in the future.

Literature Review

The Concept of Istibdal Waqf

The word *istibdal* is taken from an Arabic word, *badal*, which signifies change or substitution. *Ibdal* and *istibdal* also carry the same meaning, which is to change something by taking something else instead. In short, *istibdal* waqf means to exchange a waqf property and replace it with another property by selling the original waqf property and buying a new property instead (Abu Zahrah, 1971). Highlighting the views of scholars on the *istibdal* of waqf property, there are differences of opinion among the Islamic scholars of the sect about it (Asni et al., 2020). According to the Hanafi school, the *istibdal* method is allowed to solve problems related to the affected waqf property from the point of view of its utilisation. If the waqf property can no longer be utilised until it cannot achieve the original purpose for which it was endowed, then the *istibdal* method must be implemented to achieve its objective. However, before implementing *istibdal*, the first thing it needs to do is get the consent of the Islamic judge so that *maslahah* (*well-being*) can be achieved effectively and not abused by certain parties ('Ikrimah 2008; Asni et al., 2021). Thus, the implementation of *istibdal* is intended to obtain more benefits and *maslahah* while not setting aside the objective of a waqf property (al-Zuhaili, 2005; Ishak & Asni, 2020). Meanwhile, the Maliki school allows *istibdal* on waqf property; it is implemented in circumstances for public needs or interests such as expanding mosques, cemeteries, roads, or other facilities (Malik, 2019). In the Shafi'i school, the scholars are very strict about allowing the implementation of *istibdal*. This school stated that, when a property has been made waqf, it is the property of Allah and cannot be exchanged in any way, even if

the property has been destroyed or asked to be returned to its original owner (al-Zuhaili, 2005). They argued based on the opinion of Sayidina Umar, who stated that waqf property could not be sold, gifted, or inherited. The scholars also put forward the proposition of *qiyas* (analogy) by stating that a waqf property cannot be sold in any of these two situations, whether there is a benefit to be gained or no benefit at all. However, some Shafi'i scholars allow the implementation of *istibdal* if there is a benefit element provided, which must be obtained through the judge's consent (al-Ramli, 1967). According to the Hanbali school, *istibdal* can be applied absolutely to all categories of waqf property. The school argues that waqf property cannot be sold, given away, or inherited as long as it can be leveraged. However, when the waqf property is damaged and no longer useful, it must be replaced with another property to maintain the original purpose of the waqf, which is to remain useful forever (Ibn Taimiyyah, 2005). Summarising this discussion, the majority of schools have adopted the concept of *istibdal*. This requirement significantly impacts waqf property management by making it more economical, competitive, and meeting current needs.

Legal Provision of Istibdal Waqf in Malaysia

The implementation of *istibdal* waqf in Malaysia depends on demand and circumstances. This is specifically mentioned in the state enactments related to waqf administration and management, which are regulated under the authority of the State Islamic Religious Councils (SIRC). As the sole trustees, the SIRC are responsible for implementing *istibdal* in a systematic and efficient manner for the benefit of the public.

Istibdal waqf is defined in Selangor's Section 7 Waqf Enactment (No. 15) 2015, which says that the Council has the power to implement *istibdal* waqf on any related waqf assets in accordance with Section 41(1). This suggests that the council is capable of performing *istibdal waqf* in the following circumstances:

1. If any of the terms of the waqf are not compatible with any written law,
2. If any authorized party purchases the waqf assets in accordance with any written law,
3. If the use of waqf assets is not as beneficial or significant as intended by the donor,
4. If the use of waqf assets is not fulfilling the purpose of waqf,
5. If a donor-specified condition is impossible to carry out because of passing time or a change in circumstances,
6. If the council wants to convert a mosque or mosque site that is already waqf property,
7. If the donor's requirements are not feasible and the council is interested in carrying out the waqf in accordance with the donor's instructions, or
8. In other circumstances that the council may consider appropriate.

Additionally, Section 41 (2) also stipulates that the value of waqf assets acquired through the method of *istibdal* should not be less than the current value of the original properties. Meanwhile, Section 41 (3) also provides that it is the responsibility of the council to execute the method of *istibdal* waqf in whole or in part within a reasonable period of time.

In Malacca, Section 19 of the Enactment of Waqf Malacca (No. 5) of 2005 talks about *istibdal* waqf and says that the Council can carry out the process of *istibdal* in the following situations:

1. Any public authority has taken the waqf assets in accordance with any written law's provisions;

2. The use of waqf assets is no longer beneficial or supportive as the donor intended.
3. The use of waqf assets does not meet the objectives of waqf.

While, in Negeri Sembilan, the allocation of *istibdal* waqf can be observed in Section 12 (1) of the State Waqf Enactment (No. 5) of 2005, The provision mentions as follows: subject to sub-section (2), the Council may perform *istibdal* waqf in any waqf assets in the following circumstances:

1. If any condition of the waqf is not in conformity with any written law,
2. If the waqf assets are taken by any authorised party in accordance with any written law,
3. If the use of the waqf assets does not bring benefits or profits as intended by the donor,
4. If the use of the waqf assets is unable to keep the aims of the waqf, or
5. If, due to the expiration of time or change of circumstances, any condition determined by the donor cannot be fulfilled,

However, the enactment in Subsection (2) also states that the Council is required to have a recommendation from the Committee of *Fatwa* if they intend to perform *istibdal* in the following circumstances:

1. A mosque or mosque site that is donated; or
2. In the case of circumstances other than those stated in sub-section (1)

Similarly, in Perak, *istibdal* is also provided for in Section 22 (1), Perak Waqf Enactment (No. 9) of 2015, which mentions that the Council may perform *istibdal* waqf if:

1. The use of the waqf assets no longer yields the donor's intended benefits;
2. The use of waqf assets does not fulfil the purpose of waqf;
3. Any condition of the waqf is not in agreement with any written law;
4. The Council wants to replace the mosque or mosque site that has been donated.
5. There is a change in circumstances or a delay in the implementation of any of the conditions specified by the donor;
6. Any condition that has been set by the donor cannot be implemented, and the Council would like to *istibdal* any other way of implementing the waqf in order to optimise the use of the waqf assets as close as possible to the condition set by the donor;

Whereas, the provision of *istibdal* waqf in Terengganu has been declared in Section 7 of the Terengganu State Waqf Enactment 2016, which stipulates that the Council may legalise any waqf assets in accordance with Section 42. Section 42 (1) mentions that the process of *istibdal* waqf depends on the decree of the *Fatwa* Committees in the following circumstances:

1. If any requirement of waqf is not in line with any written law,
2. If the waqf assets are taken by any authorised party in accordance with any written law,
3. If using the waqf assets does not result in the benefits or interests that the donor intended,
4. If the use of waqf assets does not serve the purpose of waqf,
5. If any requirement imposed by the donor cannot be fulfilled due to the expiration of time or a change in circumstances,

6. If the Council wants to execute *istibdal* waqf on the mosque or mosque site that has become waqf assets,
7. If any condition stipulated by the donor cannot be implemented and the Council aims to implement the waqf in a similar manner as nearly as possible to the condition as specified by the donor; or
8. In the event of any other circumstances that the Council considers appropriate.

But other states that don't use the word '*istibdal*' in their waqf laws can still use it the same way when referring to *fatwas* from both the National *Fatwa* Committee and their own State *Fatwa* Committees.

Research Methodology

Research Design

The study employed a qualitative technique on the review of existing literature. In this approach, the study seeks to examine the extent and scholarly discourse related to the topic of *istibdal* waqf in the context of Malaysia. The findings of the study will be arranged and presented according to the thematic discussion of the discourse.

Data Collection

The data collection method was conducted through the collection of narrative literature and written documents. The collection of documents includes various forms of scholarly writing, including research reports, book publications, and articles.

Data Analysis

Subsequently, the content analysis method is performed to identify the thematic framework in the analysis of the *istibdal* waqf in Malaysia. The data that was collected will undergo a process of filtration, be narratively described, and later align with the objective of the study.

Result and Discussion

The Concept of Istibdal Waqf and Its Development

In discussing the concept and implementation, Hailani and Sanep Ahmad (2009) provide a brief explanation by introducing the concept of *istibdal* and focusing on the financing products in the Islamic financial system as well as highlighting the waqf share scheme. Additionally, Luqman Abdullah's (2010) explanation of the concept of *istibdal* waqf included the views of Islamic jurists, the categories of *istibdal* waqf, and the requirements needed in the process. However, he only discussed the concept of *istibdal* waqf from the perspective of the Shafi'ie school of thought without adequately reviewing the views of other schools of thought. Meanwhile, Aisyah Yasmin and Mohd Zamro (2019) expanded the concept of *istibdal* of waqf property from an Islamic perspective by providing a comprehensive analysis of four major schools of thought, namely the Hanafi, Maliki, Shafi'ie, and Hanbali, and additionally describing the requirements for *istibdal* implementation for each of them.

The discussion regarding the concept of *istibdal* can also be seen in the work of Ahmad Dahlan and Nik Abd Ghani (2006), where they explain the concept of *istibdal* according to the views of the four schools of thought. As a result, he suggested that the concept of *istibdal* should be expanded by replacing problematic waqf lands with other lands or business premises.

Similarly, Mohd Ridzuan (2010), in "*Istibdal Concept: The Extent of Its Practise in Malaysia*," has explained in detail the concept of *istibdal* and its relationship with waqf. The definition of *istibdal* is also presented, as are the views of fuqaha from the four *mazhab*, namely Hanafi, Maliki, Syafie, and Hanbali, as well as the requirements for the *istibdal* waqf. However, in terms of its implementation in Malaysia, he only briefly mentioned three states, namely Selangor, Kedah, and Perak.

Azreen Hamiza (2012) further examined the concept of *istibdal* in the development of waqf property. He went into details on the following subjects: the meaning of *istibdal* and its objective, and the importance of *istibdal* in the development of waqf land. In addition, the need for *istibdal* in the development of waqf property is only explained as contained in the waqf enactment. He also argued that the concept of *istibdal* is significant and crucial for solving the problems of waqf assets today, as addressed in the waqf enactments.

The Implementation of Istibdal Waqf in Malaysia

The development of *istibdal* waqf in Malaysia is specifically addressed in several studies. As suggested by Siti Mashitoh's (2000) with regard to the administration and management of waqf in the Federal Territory Islamic Council (MAIWP), there was only one case of waqf land involved with the implementation of *istibdal* in the region namely at Lot 107 in Jalan Raja Muda, Kampung Baru. The waqf land was sold because it was too small for development. Instead, the waqf land has been replaced in the form of the new purchase of three residential buildings in Taman Pelangi Jaya, Sentul, at the following addresses: 151, 153, and 155. Thus, the properties have been rented out and the profits is optimised as intended by the waqf donor.

Whereas Yusmawati (2003) reported there were currently four documented cases regarding the implementation of *istibdal* waqf in Malacca, whereby they were executed in different procedures. The first case involved exchanging assets of equivalent type and value as waqf assets with the consent of the waqf owner. Second, the purchase of beneficial assets in exchange for unprofitable assets. Third, the purchase of new assets from cash waqf; and fourth, the purchase of replacement assets using compensation money by the state authority (PBN). She also discusses the concept of *istibdal* in Islam by analysing the views of four Islamic schools of thought. Additionally, Nor Alhana (2007), in his study, has focused on three states, namely Selangor, Perak, and Kedah. This study only touches on some cases of *istibdal* implementation in these states. The results of this study found that the implementation of *istibdal* carried out only involved land factors, which is in accordance with the purpose of the waqf. This suggests that the waqf land was unprofitable, and therefore it was returned to the state authority (PBN) for public use.

The study conducted by Che Zuina (2010) on the implementation of the *istibdal* method focused on three states, including Selangor, Perak, and Terengganu. The researcher begins with an explanation of the concept of waqf, types of waqf, and methods of implementing the *istibdal* waqf in line with the views of the Islamic jurists. Concerning this, Afiffudin (2011) has specifically studied the implementation of *istibdal* waqf in the development of waqf property in Kedah. He further explained in detail the procedures for the implementation of *istibdal* waqf in Kedah and analysed the cases of *istibdal* that had been implemented by the Kedah State Religious Council (MAIK) in maintaining waqf assets as the sole trustee. Essentially, the implementation of *istibdal* waqf that was imposed was due to infrastructure development by the Kedah State Authority (PBN). The development involves the enlargement of the airport,

the construction of a water reservoir, the construction of twin runways for electric trains, and the upgrading of roads. This study shows that the waqf land taken by the state authorities has been replaced with a commercial building.

Besides, Zahri Hamat (2012), in his writing, has touched on the issue of *istibdal* involving the construction of a typical *waqf* asset. One of the concerns placed is the capability of the State Islamic Religious Councils (SIRKs) in assessing the price of the original *waqf* asset and the new asset that will replace it. As a result, he suggested that State Islamic Religious Councils (SIRC) *istibdal* a smart partnership with several parties who have expertise, such as the Valuation and Property Management Department (JPPH), Department of Awqaf, Zakat dan Hajj (JAWHAR), Land and Mines Offices (PTD), and Malaysian Waqf Foundation (YWM), to ensure the returns of the *istibdal* waqf. On the other hand, Zahri Hamat (2014) has reported a case study of *istibdal* waqf in Kelantan that involves an old cemetery located at Lot 146, Seksyen 12, Kota Bharu, which no longer serves its purpose because it is located in a rapidly developing area.

Afiffudin (2019) added the implementation of *istibdal* on waqf land for development purposes in Johor. The objective of the study was to find out the number of waqf land lots involved, the location, the type of replacement of waqf land, and the type of development performed. The analysis discovered the Eastern Pisperseal Link (EPL), Kampung Tersusun development project in Kluang, the road upgrade project in the Johor Bahru region, and the oil and gas project in Kota Tinggi all played a role in the *istibdal* waqf in Johor. The study of *istibdal* in Pulau Pinang was also conducted by Afiffudin et. al. (2017), where they examined the factors that caused *istibdal*, such as flood defence projects and road construction projects.

Moreover, Afiffudin (2016) further studies the factors of *istibdal* waqf in Perak. Thus, the process of *istibdal* waqf are as an attempt to develop the agricultural sector, education, floodplain design, housing area development, the physical problems of waqf land, and also placement for FELDA residents. Ashlah and Adnin (2018) also studied the implementation of *istibdal* in Perak. The study focuses on the implementation of *istibdal* and the development of waqf land in Perak. The researchers analysed the steps in the implementation of *istibdal* of waqf land as well as the construction of waqf land lots under Majlis Agama Islam Negeri Perak.

Istibdal Waqf from Legal Provision

Shariah Perspective

Mohd Afandi et al. (2015) reviewed the Shariah requirements of *istibdal* waqf in accordance with the concept of public interest (*Maslahah*). For example, the implementation of *istibdal* waqf in Surau Salihiah with the construction of a shopping complex in Kedah has brought economic advantages to the Kedah State Religious Council (MAIK) and the community at large in comparison to earlier circumstances.

Civil Perspective

Exploring the implementation of *istibdal* from a legal perspective, Siti Mashitoh (2020) has addressed several aspects related to the practices of *istibdal* in a proactive manner. She argued that numerous concerns in the development of waqf assets in Malaysia are related to restrictions, which explain that waqf assets are not subject to any selling, gifting, or inheritance in all situations. Therefore, it is possible to analyse the circumstances that apply to the

implementation of *istibdal* waqf by means of *fiqh* principles. For instance, the Land Acquisition Ordinance of 1960 gives the State Authority the right to reclaim any land for the benefit of the public welfare and the economic growth of the country, including waqf land. Although the ordinance has been modified by the Land and Acquisition Ordinance of 1997, there is no guarantee that the waqf lands are safe from being taken if the negotiations between the two parties fail. Thus, *istibdal* can maintain the continuity of waqf, where the confiscated property will be used to replace the original Waqf property.

Mohd Afandi's (2008) study addressed whether the acquisition of waqf land by the State Authorities (PBN) in Malaysia based on the 1960 Land Acquisition Ordinance and the National Land Code (1965) is fulfilling and complies with Shariah law. This study also discusses the idea of *istibdal* as an alternative to discovering a solution to the problem of waqf land for the purpose of sustaining waqf assets. Similarly, Rohayati Hussain (2015) has also made an initial study regarding the issue of whether the 1960 Land Acquisition Ordinance is used in Malaysia when it comes to the acquisition of land by the PBN, including waqf land. The designation of power for SIRC's as a trustee to execute the concept of *istibdal* waqf in several circumstances that have been allocated in waqf Enactment (Selangor State) and waqf Enactment (Negeri Sembilan). Those enactments suggest waqf property is taken by any authorized party following any written law. The highlighted issue also includes compensation for the lands involved in the taking, including waqf lands.

Additionally, Mohd Zaidi (2009) explored the drawbacks associated with Malaysian waqf regulations. One of the concerns is the decision-making process by the court in relation to waqf cases since the judges are unfortunately not specialised in the *istibdal* waqf procedure. In most cases, it involves the views of various Islamic schools of thought and *fatwas* from the *muftis*. Alternatively, Siti Mashitoh (2012) has focused on two aspects in her study on the problem of law in the administration of waqf trust assets in Malaysia, namely the classification of waqf in Malaysian Islamic law and the challenges encountered in the administration of waqf assets in Malaysia. As indicated by the findings of the study, Section 136(1)(f)(i) of the 1965 National Land Code, which expressly forbids the division of agricultural land less than two-fifths of a hectare, is one of the legal barriers to the administration of waqf assets in Malaysia. Considering this, it is impossible to develop the waqf property without issuing a separate document. The recommended solution for this concern is executing *istibdal*, which involves trading the waqf land and replacing it with land from other places.

The legality of *istibdal* waqf was addressed holistically in the study by Che Zuina (2012) by analysing the issues of waqf land development according to legislation and its practises in Malaysia. She argued that the original "no transaction" principle of waqf legislation has prevented and limited the process of developing waqf land. In order to overcome the current challenges dealing with the development of waqf land in Malaysia, she has proposed adapting the views of Islamic jurists. She has also proposed using the concept of *istibdal* as a mechanism for preserving the resources of waqf land and its advantages. In addition, the study of Jasni Sulong (2020) managed to clearly describe the designations of *istibdal* waqf in legislation in each country in Malaysia. The result of his study found that Malaysia has two forms of legal references in relation to the administration of *istibdal* waqf: Selangor, Melaka, and Negeri Sembilan are specifically based on waqf enactment, whereas the other states rely on the general designation of Islamic Religious Administration Enactment, which is supported by the decision of the *Fatwa* Committee. The designation can be seen in Waqf Enactment (State of Selangor)

1999 (No. 7), Waqf Enactment (State of Melaka) 2005 (No. 5), and Waqf Enactment (State of Negeri Sembilan) 2005 (No. 5). Each of these regulations contains a section that explicitly mentions *istibdal* waqf.

A recent study by Ridzuan Mohamad et al. (2021) evaluates whether Shariah law and civil law are distinct in their approaches to the regulatory implementation of *istibdal* for waqf lands in Malaysia. His research revealed that the *istibdal* status is not in accordance with civil law, specifically Section 3(1) of the 1960 Land Acquisition Act (Act 486) and Section 115(4)(a) of the 1965 National Land Code. Furthermore, Mohd Ridzuan (2020), in his study of waqf land under the 1965 Acquisition of Land Act (Act 486), concluded that the additional compensation for the taking of waqf land is not specifically mentioned. This suggests that the land compensation was in compliance with the *istibdal* law as mentioned in Section 3 (1) of Act 485. In contrast, Jasni Sulong (2013) examines the reality concept of *istibdal* waqf in Islamic legislation and its implementation in Malaysia by focusing on the classical discussion of Islamic jurists regarding transferable and non-transferable property involving mosques, and the permissibility of *istibdal* waqf stated by the donor. Subsequently, he explained the requirements for the implementation of *istibdal* waqf, which are reflected in the waqf Enactment for Selangor, Melaka, and Negeri Sembilan, as well as the consensus of *fatwa* committees in several states in Malaysia.

Issue and Challenges in Developing Istibdal Waqf

Limited Resources

Despite the above studies, there is a research paper that addresses the issues and challenges in the implementation of sustainable *istibdal* waqf. The author has stated that the issues in sustaining *istibdal* waqf are due to the limited financial resources encountered by the waqf trustee, namely State Islamic Religious Councils (SIRKs). Subsequently, it is suggested that financial resources are a crucial determinant in the development activities of waqf, and therefore sufficient waqf funding is required to ensure the successful implementation of *istibdal* waqf by the State Islamic Religious Council (Zakaria Bahari, 2016). As an attempt to address this issue, Haziq Faris (2016) examined the concept of *istibdal* waqf as a platform for resolving the issue of trespassing on waqf land. His study was exclusively in Perak on the issue of unjustifiable intrusion for residential purposes. He mentioned various cases of intrusion into waqf land for agricultural, residential, and commercial purposes. Furthermore, the study examined a few cases of illegal intrusion of waqf land prevailing in Perak and assessed the use of the concept of *istibdal* for the resolution for that matter. Afiffudin et al. (2023) additionally conducted a recent study on the difficulties and solutions relevant to the implementation of *istibdal* of waqf assets. This study has examined various issues pertaining to waqf land in Peninsular Malaysia, including the matter of restricted waqf land, the problem of state authorities taking over waqf land, the difficulty of replacing waqf property, and the need of *fatwas* related to waqf.

Permissibility of Istibdal waqf in Fatwa Provisions

Amir Izzudin's (2006) study addresses the prevailing issue of a *musolla* on Syed Saggof's special waqf land in Jalan Tok Lam Kuala Terengganu. According to him, the *musolla* had become completely old and no longer served its purpose. Therefore, a proposal had been put forward for rebuilding the *musolla* with some upgrades. However, this proposal was forced to be cancelled following a decision by a *fatwa* that disapproved of the project. Accordingly, the

analysis found that the *fatwa* was issued based on the opinion of the Syafie school of thought, which is generally known to be strict on the implementation of *istibdal* on specific waqf land, especially in respect of *musolla* or mosques. In accordance with the *fatwa*, the *musolla* has been replaced with a new one without any additional purpose. Mohd Suhail's (2009) book additionally includes an overview of *fatwa* regarding the management and development of waqf land in Kedah. He discovered a waqf land located on Lot 1236, at Pokok Sena, was incapable of being utilised appropriately simply because the waqf land is surrounded by Chinese residences, in which Muslims would not get any benefit if any development is attempted on the land.

Concerning the transformative strategies of the waqf institution, Aznan and Syahnaz (2015) have presented several strategies in the aspect of waqf *fatwa* adoption and uniformity across the country in Malaysia as an effort to support the development of waqf assets. He proposes an alternative approach that stipulates a specific *fatwa* decision endorsed at the level of the *Fatwa* Committee of the National Council is by default adopted as a standard *fatwa* by all states in Malaysia. This is necessary for synchronising the law regarding the implementation of *istibdal* in across Malaysia. Mohd Ridzuan (2020) has previously examined the differences in state *fatwa* declarations on the implementation of *istibdal* on waqf lands. The analysis discovered that variation in *fatwa* decisions on the implementation of *istibdal* waqf for lands is a reflection of various distinguished opinions and arguments. The result suggested that one perspective is oriented towards the fundamental principle of waqf, while the second perspective is aligned with the principle of *maslahah* and also incorporates the community benefit principle. Also, the most recent study on *fatwa* of *istibdal* waqf was conducted by Fathullah Asni et. al (2023). In this study, the researcher analyzes the *fatwas* that were issued in conducting *istibdal* of waqf assets in Selangor.

Land Acquisition by the State Authority

Paiz Hassan's (2008) study responds to the specific issue of the Kapitan Keling Mosque's waqf land in Pulau Pinang. He claims that the waqf land originally measured eighteen acres in size. However, adhering to compulsory acquisition by the state authorities, the waqf land was reduced to only eight acres. Significantly, the problem that emerged occurred when the compensation given by the state authority (PBN) did not correspond to an equivalent compared to the total value of the waqf land that was taken, causing the Islamic Religious Council of Pulau Pinang to struggle with challenges in replacing the waqf land. Thus, it is suggested to propose two alternatives: either permanently prohibiting the taking of waqf lands or implementing an alternative *istibdal* waqf approach with appropriate compensation so that the MAIPP can successfully replace the waqf lands as a preventative measure to avoid the problem from recurring in the future. The subsequent study of Mohd Afandi (2010) discusses the issues arising from the implementation of the taking of waqf land by the PBN in Malaysia. The results of the analysis found that the waqf lands that taken by PBN are still not being replaced, although the takings have been carried out for quite a while and compensation charges have also been made.

Furthermore, Noraida et al. (2015) have explored the issue of the compulsory acquisition of waqf land by the state authorities belonging to waqf institutions in Terengganu, which until now has neither been replaced nor compensated. The author suggested that the method needs to be reevaluated from the perspective of Syariah legality and the Land Acquisition Acts because theoretically, it is not achieving the purpose of the waqf until the assets are permanently

istibdal. This matter is exclusively drawn by Noor 'Ashikin et al. (2015) on the issue of compensation and substitution by analysing the terms of compensation and substitution through the method of *istibdal*. She further explained that the current valuation should be considered in determining the compensatory value in compulsory acquisitions governed by the state authority. Meanwhile, Siti Arifah (2018) has also conducted a study on the implementation of *istibdal* in the same manner, focusing on the implementation of *istibdal* involving three states, namely Kedah, Pulau Pinang, and Negeri Kelantan.

The Roles of Istibdal Waqf in Economic Empowerment of the Muslim

Istibdal Waqf to Intensifying Waqf Assets

The principle of *istibdal* waqf plays a significant role in the development of waqf assets. Furthermore, there are a number of studies on the management as well as development of waqf land with an emphasis on the implementation of *istibdal* to overcome difficulties, limitations, and constraints in waqf land development in Malaysia. The study conducted by Hisham Sabri et al. (2006) on the economic and financial support of Muslims through the method of *istibdal* in the development of waqf property discovered several cases where waqf property could not be developed due to issues such as non-strategic location, regulatory restrictions, and so on. The concept of *istibdal*, he explained, serves as a resolution to redevelop the waqf property with the goal of presenting some examples of possible activities that can be applied to special waqf and general waqf. Mohd. Syahiran (2006) added Melaka Islamic Religious Council (MAIM) has also encountered a number of issues in developing waqf land due to its small size and poor condition. In fact, the location is in a remote area that is located far from the city, resulting in challenges to develop for commercial purposes. Therefore, it is suggested that the concept of *istibdal* should take place on these categories of waqf lands as an initiative to properly cater the issues.

The study of Megat Mohd et al. (2006) regarding the development of waqf land in Johor has systematically analysed the major problems that act as hindrances in the running of waqf land development activities in Malaysia, including matters of legislation, locality factors, the nature of physical characteristics, trespassing problems, ownership registration, and documentation issues. Thus, it is recommended to consider the method of *istibdal* as an innovative mechanism so that the development of waqf property can be carried out. While in Terengganu, Siti Salwa (2007) found that Majlis Agama Islam Dan Adat Melayu Terengganu (MAIDAM) is dealing with the physical structure of waqf land as the size of waqf land is limited and scattered, with 80% of the existing waqf land being less than half a hectare in size. Consequently, it has affected the efforts to develop those waqf lands, and he proposed to use the approach of *istibdal* waqf to develop these waqf lands. The recommendation included selling small land, and the revenue from the transaction could be used to purchase bigger land or to invest in buildings that could provide a sustainable return.

In contrast, Nur Adzila's (2010) study is more focused on the procedures for the management and administration of waqf land in Perak by examining the process of disposal of *istibdal* waqf for other uses by the Majlis Agama Islam Negeri Perak. The issue of administration and development of *istibdal* waqf was further explored by Abdul Rahim in the Federal Territory of Kuala Lumpur by presenting the constraints in the development of waqf assets in that territory. The challenges, including financial constraints, the National Land Code, agricultural-based land, collective agreement issues, and excessive values in the territory, have made it more

challenging to find a replacement for the land. Therefore, to overcome this matter, he suggested that the replacement land should not necessarily be in the same territory but instead be *istibdal* in cooperation with the nearby State Islamic Religious Councils so that the process of replacement land, or *istibdal* waqf can be fulfilled.

This issue is agreed upon by Mohd Zawawi (2012) regarding the management and development of waqf land in Pahang as happened in other states in Malaysia, especially physical constraints such as small saiz, non-strategic locations, and specific waqf land. This study is intended to evaluate the significant development initiatives that have been undertaken or designed for future practice. He also recognised the problems faced by Majlis Agama Islam and Adat Resam Melayu Pahang (MUIP) in managing and developing waqf assets in the region. However, the analysis found that there is still practically no development through the method of *istibdal* waqf in the state. Nevertheless, MUIP has already acquired consensus from the Pahang State Mufti Department regarding the development of waqf assets through the method of *istibdal* waqf in the state.

The study of waqf management was extended by Mohd Shukri's (2012), whereby the researcher carried out a comparative analysis of the development of waqf assets in Malaysia and Singapore. He, however, only selected three states, namely Johor, Selangor, and Terengganu, as representatives of Malaysia. He does not mention the development of waqf through the concept of *istibdal*. On the contrary, it is found that the method of *istibdal* used by the Islamic Religious Council of Singapore (MUIS) in waqf development has substantially raised the gross income of waqf to nearly 4% compared to the previous gross income of waqf of merely 1.8 percent in a one-year term. In response to the successful achievements of MUIS, he affirmed that the states in Malaysia that have extended *istibdal* waqf in their respective enactments should intensify their efforts in mobilising the development of waqf by using the concept of *istibdal* for extensive purposes.

Concerning the importance of waqf assets as an instrument in providing economic stability to Muslims, S. Hisham et al. (2013) argue that the efficiency of waqf property is a contributing factor in ensuring the profitable return of waqf assets. He admits that there are some significant impacts and challenges involving the waqf assets, such as the problem of the location and value of the waqf assets, the damaged waqf assets, and the development design by the government. Thus, he acknowledges that the implementation of *istibdal* waqf is a practical and impactful intervention to resolve these matters. Additionally, Hasnol Zam Zam (2007) studied the potential for enhancing the development of waqf lands and found that among the challenges in the efforts to develop waqf lands is the physical problem of the waqf land, which is fairly insignificant in size, non-strategic, and non-economic. Subsequently, without the potential to be developed, it has possibly resulted in the abandonment of those waqf lands. This would certainly impact the practise of waqf in the future, as the potential of waqf land is a result to the level of understanding and practise of waqf among the Islamic community. Thus, he recommended that the method of *istibdal* be implemented in dealing with this kind of problem to restore the development potential of waqf assets.

Afiffudin and Che Zuina (2017) evaluated the significance of *istibdal* as a medium for resolving waqf land development issues in Malaysia. The authors of the study examined the concerns associated with the development of waqf land while also proposing potential solutions. Therefore, the main recommendation was the alternative solution by means of the

istibdal instrument. In fact, there have been a number of waqf land development issues that were dealt with effectively using the *istibdal* instrument. Norajila et al. (2020) conducted a new investigation on the practicality of the concept of *istibdal* waqf in cash waqf on the Baitul Awqaf UiTM Melaka's project. However, considering the number of limits and complications encountered, the project was suspended and could not be implemented even though funds have been collected for the development of this project. As a solution to the issue of freezing resources, this study suggests that the concept of *istibdal* waqf ought to be applied so that the resources remain accessible in the bank account and the contributor's intentions are achieved.

Istibdal Waqf in Generating Funding for Waqf Institutions

Meanwhile, Zakaria Bahari (2012) discussed in his study the different approaches to waqf funding for development and suggested adopting the innovative method of *istibdal* waqf. The adoption of *istibdal* waqf is necessary to address issues concerning the waqf land, such as its non-strategic placement, small size, and uneconomical placement. Therefore, he suggested procedures such as the replacement of the land with another land that is relatively similar in size and cash value, or partially replacing the land by selling part of the land and using the revenue to finance the development of the remaining waqf land. Similarly, Mohd Afandi's (2012) study entitled "Waqf Instruments: An Agent of Economic Transformation for Malays in Malaysia". The focus was on the economic transformation of the Malays through waqf funds. As stated, waqf funds can be operationalized in different ways, such as waqf shares, Waqf *kaki*, Waqf *irsad*, and Waqf *musya*, as well as the concept of *istibdal* waqf.

In reference to Meor Hezbullah (2012), his study on empowering the development of special waqf assets through *istibdal* states that special waqf lands that are underdeveloped, non-strategic, unproductive, and have various other problems should be subject to *istibdal* by being sold to viable and trusted Islamic organisations. Thus, the revenue from the sale of the waqf land is used to accumulate new waqf property in the form of commercial premises, lots, complexes and rent them out. Alternatively, the rental profits are used as specific funding to benefit and optimise for the purpose of new special waqf property. This is supported by Afiffudin and Che Zuina's (2017) study, whereby the implementation of *istibdal* is relatively able to generate positive income for the Federal Territory Islamic Council (MAIWP). Subsequently, Afiffudin and Che Zuina (2016) further examined the application of the concept of *istibdal* waqf to the *istibdal* of waqf funds by Perbadanan waqf Selangor. The results of the discussion revealed that Perbadanan waqf Selangor is currently considering a residential development consisting of business premises and residential units following the application of the *istibdal* principle to generate economic and waqf funds for the organisation. This form of development is capable of generating value for the *ummah*, especially the community in Selangor.

Abdulsoma Thoarlim et al. (2015), in their study entitled *Istismar Amwal al-Waqf wa Tatbiqatuhu fi Lujnah al-Waqf biKalantan* (The Investment of waqf Assets and Its Implementation by the State Waqf Council of Kelantan), have discussed the investment of waqf assets implemented in Kelantan. Most of his writing, however, merely addresses the concept of waqf in its most general context, specifically the requirements, principles, and different forms of waqf. He simply describes the *fatwa* issued by the Kelantan Islamic Council regarding the investment of waqf assets. Additionally, as for the activity of waqf investment in Kelantan, he only explained about one particular area of the Sultan's waqf land that was involved in the implementation of *istibdal*. The waqf land, measuring 10,800 hectares, has been dedicated for

the purpose of building mosques, religious schools, or Islamic cemetery. However, the location of the waqf land was not appropriate for the development as intended by the waqf donor, and eventually, the waqf land was resituated. Nevertheless, the author only mentions that the benefits after the execution of *istibdal* waqf are significantly larger than the previous ones without providing any details with regard to the form of beneficial impact.

Correspondingly, Afiffudin and Che Zuina (2016) have also reviewed the impact of the *istibdal* waqf in generating income for the waqf Institution in Kelantan. The research shows that the implementation of *istibdal* waqf on existing non-economic waqf assets has resulted in more sustainable and profitable revenues. In this development, the Kelantan Religious Islamic Council has collaborated with the developer to carry out commercial construction, where the capital of the development is funded by the developer. The outcome was that some of the building units became the property of the developer, and also the Majlis Agama Islam Negeri Kelantan earned the higher funding of waqf funds through the rental activity of the building units. The result ended up being that some of the building units were owned by the developer, while the Kelantan Religious Islamic Council obtained higher incomes through the rental activity of those particular buildings. Adhering to this, Afiffudin (2019) also thoroughly examined the implementation of *istibdal* waqf in the cash funding of State Islamic Religious Councils in Malaysia. The study has been analysed in detail regarding the implementation of *istibdal* waqf, including the amount of related general and specific waqf land, the amount of waqf land that has been replaced, the waqf land that was *istibdal* as a whole and in part, the prevailing factors that contributed to the execution of *istibdal*, as well as the level of cash funding as a return of the implementation of *istibdal*.

Apart from that, Afiffudin's (2021) most recent study regarding *istibdal* waqf in Johor aims to accumulate cash funding for the waqf institution. The result of the study found that the cash funding of waqf funds is gained through the purchase of commercial buildings that are rented out to generate sustainable monthly income on a continuous basis. A similar recent study on waqf funds was conducted by Fathullah Asni et. al, (2023) mainly in Kedah and also Federal Territory of Kuala Lumpur. This study identified various strategies employed in the practise of *istibdal*, a financial mechanism aimed at generating cash funds. One such method involves the substitution of waqf land with a commercial building. The building is rented in order to generate monthly cash flow for funding purposes.

The results for this study are summarised in the following table for a better understanding of the whole discussion.

Table 1: Thematic Analysis on the Studies of *Istibdal* Waqf in Malaysia

No	Themes	Authors and year of publication
1.	The concept of <i>istibdal</i> waqf and its development	Hailani & Sanep (2009) Luqman (2010) Aisyah Yasmin & Mohd Zamro (2019) Ahmad Dahlah & Nik Abdul (2006) Mohd Ridzuan (2010) Azreen Hamiza (2012)

2. The implementation of *istibdal* waqf in Malaysia
- Siti Mashitoh (2000)
Yusmawati (2003)
Nor Alhana (2007)
Che Zuina (2010)
Afiffudin (2011)
Zahri Hamat (2012)
Zahri Hamat (2014)
Afiffudin (2019)
Afiffudin et. al (2017)
Afiffudin (2016)
Ashlah & Adnin (2018)
3. *Istibdal* waqf from legal provision
- Shariah perspective
- Mohd Afandi et. al (2015)
- Civil perspective
- Siti Mashitoh (2020)
Mohd Afandi (2008)
Rohayati Hussain (2015)
Mohd Zaidi (2009)
Siti Mashitoh (2012)
Che Zuina (2012)
Jasni Sulong (2020)
Ridzuan Mohamad et. Al (2021)
Jasni Sulong (2013)
- Limited resources
- Zakaria Bahari (2016)
Haziq Faris (2016)
Afiffudin et. al (2023)
4. Issue and challenges in developing *istibdal* waqf
- Permissibility of *istibdal* waqf in *fatwa* provisions
- Amir Izzudin (2006)
Mohd Suhail (2009)
Aznan & Syahnaz (2015)
Mohd Ridzuan (2020)
Fathullah Asni et. al (2023)
- Land acquisition from the State Authority
- Paiz Hassan (2008)
Mohd Afandi (2010)
Noraida et. al (2015)
Noor 'Ashikin et. al (2015)
Siti Arifah (2018)

		Hisham Sabri et al. (2006)
		Mohd Syahiran (2006)
		Megat Mohd et. al (2006)
		Siti Salwa (2007)
	Intensifying waqf assets	Nur Adzila (2010)
		Mohd Zawawi (2012)
		Mohd Shukri (2012)
		S.Hisham et. al (2013)
		Hasnol Zam Zam (2007)
		Afiffudin & Che Zuina (2017)
		Norajila et. al (2020)
5. The roles of <i>istibdal</i> waqf in economic empowerment of the Muslim.		Zakaria Bahari (2012)
		Mohd Afandi (2012)
		Meor Hezbullah (2012)
	Generating funding for waqf institutions	Afiffudin & Che Zuina (2017)
		Afiffudin & Che Zuina (2016) (A)
		Abdulsoma Thoarlim et al. (2015)
		Afiffudin & Che Zuina (2016) (B)
		Afiffudin (2019)
		Afiffudin (2021)
		Fathullah Asni et. al (2023)

Note: By Authors

Conclusion

The research discovered that a considerable number of studies have been conducted and documented in academic literature involving the implementation of *istibdal* waqf in Malaysia. Each of the discussed studies adhere to a particular area of interest and research goal. The analysis of the literature review revealed that there are several thematic writings concerning the concept of *istibdal* waqf and its implementation and also *istibdal* waqf from shariah and civil perspectives. Nonetheless, it also pertinent to highlight the issues and challenges in developing *istibdal* waqf in Malaysia as well as the roles of *istibdal* waqf in economic empowerment of the Muslim.

Recommendation

Considering that there are different discussion and recommendations from scholars, the researchers advocate that such information and findings should be gathered in a systematic comprehensive database system for the reference of the respective parties in order to be used in facilitating and provide smooth delivery to the administration of each State Islamic Religious Councils (SIRKs). Alternatively, this research is helpful for the process of re-evaluation from legal stand points and also for the benefits of the community.

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