

**THE FACTORS INFLUENCES TOWARD ISTIBDAL IMPLIMENTATION FOR  
WAQF DEVELOPMENT: THE WAY FORWARD**

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<b>Abstract</b>	<p><i>Waqf or religious endowments are vital towards Islamic economic growth. It is also considered as a development medium for establishing various public institutions such as schools, hospitals and mosque for the communities. Some of the Muslim scholars have taken a rejuvenate interest in waqf management by istibdal implementation. It become one of the instrument to sustain and utilize the waqf institutions management. This paper aims to identify the role of waqf and istibdal in Muslim society as evidenced from the Quran, Hadith and Ijmak Ulama as well as current fatwa. In a bid to examine these issues, the paper analyzes further in istibdal concept and their benefits that ensure the waqf property is functioning as intended and benefit for the interest of all Muslims. The main issue also focuses on the factors that influenced istibdal such as acquisition by state authority, geographical factor, economic factor, education purpose and management complexity. All of these factors will contributed for the istibdal management process in other states. However, the cases of istibdal needs to be approved by the state fatwa committees. In conclusion, the waqf problem of idle assets and under utilization can be solve through istibdal implimentation. Hence, through systematic Istibdal management will also increase the level of trust among the Muslim communities to contribute for the future waqf development projects.</i></p> <p>Keywords: <i>Waqf, Endowments, Istibdal, Economic, Fatwa.</i></p>
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**INTRODUCTION**

Muslims recognizes that all wealth endowed upon them in the world are in fact blessings from God. Although this wealth may be the result of hard work by Muslim, it is still God who holds the power to increase or decrease this blessing. Accepting this, Muslim feel that all wealth endowed on them does not belong solely to them.

This should inspire them to share the wealth among others, both Muslims and non-Muslims in the hope of achieving Al-Falah. Creating an economic atmosphere towards optimizing waqf properties is very important. Despite the poor interactions among waqf institutions there are absence of definite economy that can be stimulated by enhancing new invention of waqf product.

**WAQF CONCEPT FROM ISLAMIC VIEW**

Principally, the contract of waqf is a vital instrument for Islamic economic development. It has a significant impact on the spiritual and physical domains. From another perspective, it opens a door for the rich to use their assets in a correct way along the path of righteousness and kindness. In general, the process of Waqf is a simple one, it is when a person or organization owns a valuable asset, and he/she/they simply declare verbally or

orally that he/she/they intend to offer this asset as waqf. The asset is automatically treated as a mauquf under syariah law, and no longer belongs to waqif. In the declaration, waqif must state the beneficiaries, timing and classification.

### Definition From Syariah Scholar

Syariah scholars give a different meaning of waqf. These different views also contribute to a specific implication for endowment. In general, waqf is a permanent dedication by a Muslim of any Muslim of any moveable or immovable property for any purpose recognized by the Muslim law as pious religious or charitable.

According to Imam Muhammad al-Khatib Al-Sharbini (1994) definition of waqf is holding something that could be used to perpetuate the form (*ayn*). Therefore, all transactions are subject to the laws of Islamic.

The definition of waqf by imam al-Asqalani (1325H) said the property holding something that can be used on condition yet produce an income or benefit required. According to Imam Abu Hanifah RA, waqf is "holding the property rather than ownership by endower and provide benefits in the way of Allah. The Islamic legal standing of waqf by imam Abu Hanifah based on hadith Muhammad s.a.w. as follow:-

{ ما روي عن القاضي شريح أنه قال: جاء محمد (ص) ببيع الحبس }

Narrated by Qadi Shurayh, "The Prophet Muhammad comes with bay' al-habs (waqf)".

Based on the above hadith, the Messenger of Allah has implemented the contract *bay' al-habs* in his transaction. In principal, the legitimating of waqf concept depends on revelation of God and Prophet Muhammad PHUB. Therefore, it cannot be mixed with any human regulation and compliance with Islamic philosophy.

### PROOF OF LEGISLATION FOR WAQF CONCEPT

In Islam, the waqf concepts have its own proof of legislation with several arguments. The sources of Islamic law was taken from the Quran, Sunnah, Ijmak and Qiyas. However, there are different sources of syariah that are allowed to be referred to judge the source's level of authenticity such as Maslahah, 'Urf, Istishab and Istihsan. Thus, the authors focus on the perspective of the sources which is from the Quran, Hadith and Ijmak Ulama.

### Verse From Al-Quran

The Holy Quran strongly advocates to implementing the charity activities. Giving charity is synonymous with spending in the way of Allah as in the following verse:

﴿لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ﴾

Meaning, "By no means shall you attain to righteousness until you spend (benevolently) out of what you love; and whatever thing you spend, Allah surely knows it".

The interpretation of mufassirin, as well as Ibn Arabi states that the word nafqah is not a gift or financial right to his wife and family, but it was concerned about the charity born from a sincere heart for Allah. Therefore, the condition of waqf contract is volunteerism without coercion from any other parties.

In addition, imam al-Qurtubi (n.d) voiced his views that the verse of (حتى تنفقوا) means to giving alms in the path of righteousness whether as a gift and hibah for the purpose of worship. As a result, the waqf concept also be equated in the verse:

﴿وَمَا يَفْعَلُوا مِنْ خَيْرٍ فَلَنْ يُكْفَرُوهُ وَاللَّهُ عَلِيمٌ بِالْمُتَّقِينَ﴾

Meaning, "And whatever good they do, they shall not be denied it, and Allah knows those who guard (against evil)".

Based on several verses of al-Quran, shows that Islam highly encourages every Muslim to bequeath the property for the purpose of virtue. In view of that, Allah has promised the infinite rewards to Muslims to stimulate the development of waqf contract. From the other perspective, the wisdom of waqf contract is to reform a gap between the less income family and rich group. Nevertheless, the contribution of waqf contract from economic perspective can reduce the inflation levels through increasing income per family among the poor people.

### Hadith

Some of example related to any narrated hadith on waqf concept as follow:

عن أبي هريرة أن رسول الله صلى الله عليه وسلم قال { إذا مات ابن الإنسان انقطع عنه عمله إلا من ثلاثة : إلا من صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له } .

Meaning, "Narrated by Abu Hurairah, the Prophet of Muhammad (pbuh) said "When a man dies, all his acts cease but three: recurring charity, beneficial knowledge, and pious offspring who pray for him" (Hadith. Muslim).

According to Islamic jurist, the meaning of the hadith is that all of the above deeds committed by the deceased during his lifetime would be cut off, except three aspect; - recurring charity, beneficial knowledge, and pious offspring who pray for him". All three cases will be led to reward merit even though a person has died specifically charity contract in the way for Allah.

Al-Shawkaniyy (1961) in his most popular book on *Hadith al-Ahkam*, acknowledge the waqf contract as follow:

{ أن عمر أصاب أرضا من أرض خيبر، فقال يا رسول الله، أصبت أرضا بخير، لم أصب مالا قط أنفس عندي منه، فما تأمرني؟ فقال: إن شئت حبست أصلها وتصدق بها. فتصدق بها عمر، على ألا تباع ولا توهب ولا تورث في الفقراء وذوي القربى والرقاب والضيف وابن السبيل، لا جناح على من وليها أن يأكل منها بالمعروف، ويطعم غير متمول } .

Ibn Umar reported, "Umar acquired a land at Khaibar. He came to Allah's Apostle (May peace be upon him) and sought his advice about it. He said; Allah's Messenger, I have acquired land in Khaibar. I have never acquired property more valuable for me than this, so what do you command me to do with it? Thereupon he (Allah's Apostle) said: If you like, you may keep the corpus intact and give its produce as Sadaqa" Therefore, 'Umar gave it as Sadaqa declaring that property must not be sold or inherited or given away as gift. Moreover, Umar devoted it to the poor, to the nearest kin, and to the emancipation of slaves, aired in the way of Allah and guests. There is no sin for one, who administers it if he eats something from it in a reasonable manner or if he feeds his friends and does not hoard up goods (for himself)" (Hadith. Muslim).

Ibn Umar said: I narrated this hadith to Muhammad, but as I reached the (words) "without hoarding (for himself) out of it". He (Muhammad) said; "without storing the property with a view to becoming rich". Ibn 'Aun said; He who read this book (pertaining to Waqf) informed me that in it (the words are) "without storing the property with a view to becoming rich".

### Ijmak Ulama

The scholars agreed that the contract of endowment is permissible. The companion has done many endowment transactions. It is a good thing and brings benefits to all people. It should be develop in a many ways to safeguard the welfare of the community.

### **ISTIBDAL CONCEPT**

Istibdal can be defined as to purchase other lands that will be endowed to be a replacement, made by waqf administrator by using the income received from the sales of original waqf property (Abu Zahrah, 1971). Meanwhile, other scholar defined istibdal as an action of replacing the existing mawquf with a new mawquf (Al-Sharbini, 1994).

It also can be understood as an action of implementing modification from original form of waqf into new form of property (Jasni, S., 2013). Istibdal intends to sell what is lacking or loss of revenue and income from the property of waqf and buy what is better and make it as a replacement instead. Therefore, istibdal is a process of acquiring new mawquf as a replacement of original mawquf that has been sold or taken. This opens the door for wealthier Muslims to utilize their assets accordance with Islamic teachings of righteousness and kindness (Sabri, H., Jasiran, H. A., & Jusoff, K., 2013).

The concept of istibdal is utilized in several forms is such as selling part of the waqf property to develop the remaining of the same property, selling bundle of waqf properties and buying new one in exchange to be used for the same purposes of the sold properties. Another way is by selling one waqf and buying another that have the common purpose, selling a handful properties belonging to various waqf and buying a new property which has higher income and the same revenue.

### **Dalil Related To Istibdal Application**

There are no specific dalil directed to the application of istibdal for waqf properties. Thus, in Malaysia it is permissible following (taqlid) the opinion of Imam Abu Hanifah. According to the 4<sup>th</sup> Fatwa Committee Conference held from April 13<sup>th</sup> until 14<sup>th</sup>, 1982, Malaysia Department of Islamic Development (JAKIM), the committee stated the approval of istibdal. The fatwa committee also agreed on istibdal implementation through buying or purchasing or other means for the purpose of keeping the waqf property (<http://infad.usim.edu.my/modules.php?op=modload&name=News&file=article&sid=236>).

It also stated that the element of maslahat is an important point that should be achieved in determining the permissibility of istibdal, which followed the Hanafi and Hanbali's views. Among maslahat that has to be considered in permitting istibdal is waqf of a land which obstructs the access of the public, land become uneconomic and graveyard as well as prayer space which increasingly narrows. Thus, without a convincing maslahat, the Government will not consider any application to do istibdal.

### **The Benefit Of Istibdal Application**

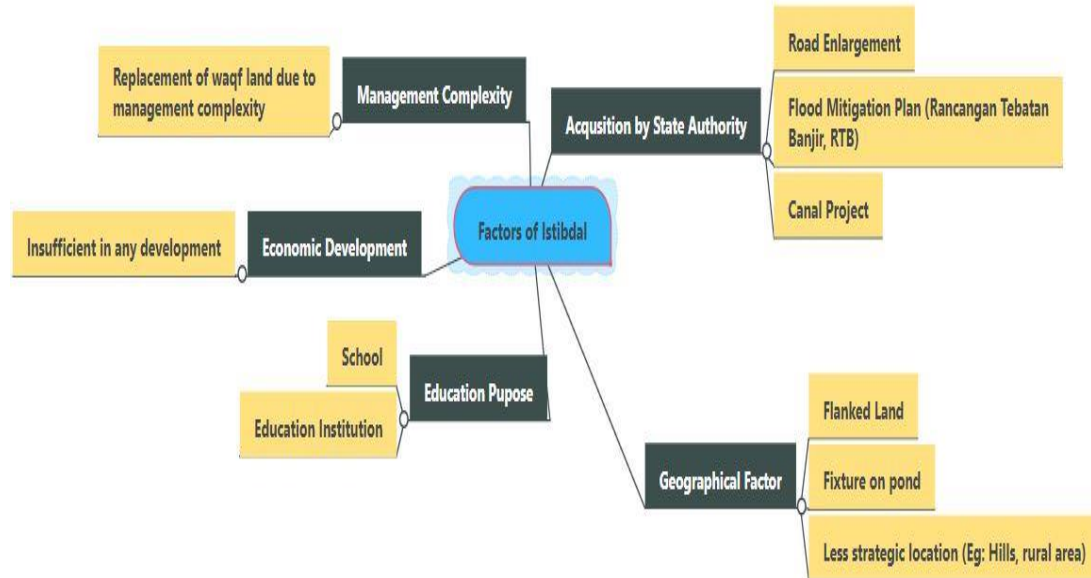
Waqf concept aims at managing a religious and conscious responsibility among individuals and in society at large. Using istibdal application in waqf, the properties would be recognized their commercial potentials for the good of Muslims economic growth through the proposal of specific waqf enactment. The waqf lands will finally can give benefit to the Muslims comprehensively and thoroughly. Plus, applying istibdal in waqf property can guarantee a great reward to endower as it brings continuous benefit until the After Life. Therefore, istibdal should be carefully and cautiously implemented.

It also aims to ensure the benefit for the survival of waqf property. Expanding the development of waqf lands are in accordance with the growth of the national's economy. Therefore management of waqf assets through istibdal method also can help the socio-economic development of Muslims communities in Malaysia. Istibdal was an improvement of waqf properties in many aspects especially in facilitating the management of waqf assets by increasing the revenue and avoid from being in the state of idle. In fact, the waqf assets are nourished by doing istibdal to be more productive and generate high income in line with current needs towards becoming an empowered, influential, and benevolent Muslim community.

Moreover, the istibdal application helps to enrich the economic sector through high impact agriculture and livestock waqf project in the rural area. There are smaller waqf lands in the rural area that cannot be used by waqf beneficiaries. This situation will

cause the development of waqf in the area could not be realized. In this regard, these waqf lands can undergo the istibdal process that helps to evolve into high impact agriculture and livestock projects.

**THE FACTORS INFLUENCED TOWARDS ISTIBDAL APPLICATIONS**



The factors of istibdal implementation can be factorized into five categories which are Acquisition by State Authority, Geographic Factors, Economic Development, Education and Management Complexity.

**Acquisition By State Authority**

Waqf serves a lot of contribution for the development of the infrastructure. With a more connectivity among the cities in the state will embark towards business relationship and economic activities. Many of the cases that happen are all of the lands that were acquired by state authority are for the purpose of road enlargement. For that purpose, the concept of connectivity can be achieved by having a road infrastructure.

Due to that, some of the roads need to be upgraded by enlargement and number of sizing. The situation that occurs is one of the waqf assets are involved with the road enlargement activity. Somehow in this situation, the waqf trustee needs to have a good cooperation with the state authority to manage the waqf land and road enlargement efficiently. In this case, the proposal and intention from the authority toward the waqf trustee may have to be very realistic. It also have involved with the road enlargement especially if the waqf asset located in the city center.

In other cases of istibdal, the state authority and a transportation company have taken over some waqf properties for the purpose of infrastructure development. From the four acquisitions made, it was done for the purpose of public interest. Generally in Malaysia there are 3 types of flooding which are flooding due to river bank overflow, high tides and flash floods. Flood mitigation will include any project that can prevent from flood disaster and enlargement of water circuit.

This is useful for states in Malaysia that deal with high flood phenomena especially at the end of the year. Thus, the flood mitigation project by the state authority that involves waqf assets needs to be done through the istibdal concept. It aims to maintain the public safety and avoid from any natural disaster. The measures taken are in conformity

with the Maqasid Syariah which related to Hifz Nafs and Al-Mal because it can save many lives and prevent any property destruction.

Waqf lands that involve in the development of Flood Mitigation Plan (Rancangan Tebatan Banjir-RTB) involving a number of rivers that will potentially alleviate the flood situation in the state particularly during high tide and continuous rain. RTB prevent from natural disaster in Malaysia that caused from seasonal factor of heavy rain. This is an initiative from the government itself to build proper drainage, canal and dam which are vital for the flow of water in the state, as a water supply and avoiding float. Meanwhile, some cases that involve the waqf land is for the project of train railway which are needed for travel access. This public transport is crucial to the livability of all city and states. It provides accessible transport for all people regardless of demographics which only required less land use than road infrastructure.

### **Geographical Factor**

There are a lot of cases where the waqf lands essentially undergo istibdal process because of their geographic conditions that are complex to be handled. For example, a land has a pool which half of the land (including the pool) is owned by other person. This can be categorized as waqf assets that has other fixture on it.

The fact that there is a pool which is also belonged to other individual will cause conflict in terms of administration and development of the land. The situation that occurs is when waqf contribute only for half of the pool. Thus, the waqf asset involved cannot be utilized fully and is not practical. One of the solutions is to have a negotiation with the owner of the other half of the pool to buy the waqf land. The waqf land also can be sold to the co-owner of the pool. However, if the co-owner of the pool cannot afford to buy the waqf assets because of financial problems, then the SIRC may counter offer by buying the other half of the pool in the waqf land from the owner.

The money used to buy the asset can be taken from istibdal fund that has the same waqf intention (istibdal fund involving cases occur in land acquisition by state authority). For instance, the endower performs waqf on part of the pool for the benefit of orphans. Therefore, another waqf land that has undergone istibdal process such as enlargement of the road that is required for the benefit of orphans can be used as the purchase price to buy part of the ponds. As a result, the entire pool can eventually be registered as a waqf asset.

The second category of geographic factor is waqf lands being flanked by other properties. There are several cases which flanked waqf lands are replaced by way of istibdal. Some of the waqf assets are too small for any development and there is no road access while it is flanked by other properties. It is even more problematic when the waqf assets being flanked by other houses that belonged to different people and the land itself does not have a specific location. In other words, an accurate location of this waqf land cannot be identified as it is in front of other people's home. Therefore, it is permissible to do istibdal implementation for this type of land.

The third category of geographic factor is the position of waqf lands that is situated up on the hill which has the waqf intention for the building of mosque. Hence, the location is not suitable because there is no settlement of people there and there is also no guaranteed protection for the mosque's qariah committee.

### **Economic Factor**

It is known that waqf effectively contribute towards the ultimate goal of every country policymaker which is a massive reduction in government expenditure (Cizakca, M., 1998). The crucial intention of endowment is for the development of ummah in many areas such as economy, education and infrastructures. This suggests that istibdal process helps to optimise waqf sector dynamically especially when the particular waqf lands have very low economic value.

Normally, waqf lands with small area are acceptable for istibdal process as it will be insufficient for any development. For instance, a waqf land that is too small for any development with inexistence of road access will make it impossible to perform waqf according to the waqif intention and also to provide benefit to other people. Plus, projects and buildings that do not have the necessary facilities such as car parking, sewage treatment plant or infrastructure such as access roads, drainage and water supply to support it.

Other cases are the waqf assets that are too small for any development with no road access. In addition, there are various obstacles and challenges in the investment of waqf land and these include lack of financial resources, undeveloped and unproductive waqf land. Hence, with istibdal implementation, the main purpose to ensure the orderly and rational development of land that create sustainable human settlements that accommodate a variety of land uses to meet the needs of the people who live in these settlements. It also fulfills the waqif's intentions that bring benefits to the public.

### **Education Purpose**

The waqf concept offers initiative to raise fund from the public for relevant institutions especially for education purposes. A sustainable education industry in Malaysia can be achieved by applying waqf concept as the financial sources that also empowering higher education system. As such, the higher education institution in the country, Albukhary International University in Kedah was established under the endowment made from Yayasan Bukhary. This university is a fully residential campus with comprehensive facilities and conducive living and learning environment. It serves the purpose of facilitating high quality education and empowering local and also international students from low income family on condition that satisfy the entrance requirements (Alias, Muhammad, Johari, Fuadah, Abd Rahman, Asma, 2014).

The istibdal practices prove to help the fulfillment of religious requirement through performing various activities and mobilizing resources from rich to poor. The results are socio economic conditions of the poor and whole society will be well developed. There is istibdal application for the purpose of education for a school which provides religious education. A philanthropist had endowed his home in for a new site and a new building for the school. Later on, the school's operation run smoothly and after several years of operation the school needs to be closed as a result from the action of the state government that took over the site.

After that, the state government had handed a piece of land in an intention to replace (istibdal) the original location of the school that has been acquired by the government. The allocation made for this development was done based on the concept of waqf. There are also contributions from the federal government that plays an important role which allow a development of large Islamic schools in the country. It is a systematic development process for the endowment of educational sector that provide a balanced environment and better facilities for learning process.

There are also cases where a school was actually situated at a strategic area in the city that is well known as a prime area. It is a focus area for business and government administration activities. Due to the increasing number of students, the school building in must undergo an expansion as it has already reaches to maximum capacity.

Therefore, relocation has been made that implement the waqf istibdal process for the property. As the school does not have an economical benefit to be placed in a strategic area, the management has decided to sell the original location of the property to relocate the school. The property fetches a higher price thus allows the school to be relocated and redeveloped in new location without needing to seek other financing. A new land has been identified which is actually another waqf property. It was argued that the later land has lower price than the original land. Nevertheless, the istibdal was implemented not for the commercial intention.

### **Management Complexity**

Waqf institution is the driving force and traditional mechanism of urban regeneration in all country. The relation between the ruling authority and the different waqf institutions within city was based on cooperation which created a common field in which the central authority and the different social actors cooperated in adopting initiatives to satisfy the basic public services and needs (Nour, Haysam, 2015).

Istibdal implementations that occur because of management complexity are when most of the waqf properties are situated in a less strategic area, within small land and scattered around the country which results in low income revenue. The idea of making a renewal project have aims to become a high impact project which also has an increased commercial value with efficient management. The istibdal project is believed to ensure the continuity of benefit to the public.

The relocation of waqf properties are hopefully retrieving the benefit from the nett profit and will be distributed based on the original waqf deeds. Thus, the income benefit will need to be calculated using the instrument of percentage based on the initial capital to fund the project. This situation that occurs can be called a hybrid model. This type of high impact project has been proven via istibdal management system in Singapore. Warees Investment Pte. Ltd. develops the property to increase the commercial value.

### **CONCLUSION**

In conclusion, the istibdal on waqf property can be allowed as long as there is maslahah for ummah. Each factor of istibdal need to be understand carefully and should take into account all the views of muslim scholars before actions are taken while the laws might be different from one maslahah to another.

However, the views of Mazhab Syafii should be prioritized in advance and if contrary to the prevailing problems in the current situation, reference may be made to other mazhab. If there is an urgent need to develop any waqf property for the benefits of ummah, thus proceeds from the istibdal can be used to develop new waqf property.

The State Fatwa Committee shall be consulted before any action is undertaken for istibdal. A good and efficient istibdal process management will ensure a lasting benefit to the community and would increase public confidence to the SIRC as a sole trustee of waqf management in Malaysia.

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### **Guidelines**

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