

ISTIBDAL IMPLEMENTATION: A CASE STUDY OF WAQF LAND ACQUISITION BY THE STATE AUTHORITIES IN KEDAH^{i,*}Ahmad Danial Haikal Mohamad Rudaini & ⁱ Hussein 'Azeemi Abdullah Thaidiⁱ Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan, Malaysia*(Corresponding author) e-mail: dnialhikal@gmail.com**Article history:**

Submission date: 9 September 2022

Received in revised form: 10 October 2022

Acceptance date: 22 November 2022

Available online: 31 December 2022

Keywords:

Istibdal, implementation, acquisition, waqf, Kedah

Funding:

This research did not receive any specific grant from funding agencies in the public, commercial, or non-profit sectors.

Competing interest:

The author(s) have declared that no competing interests exist.

Cite as:Mohamad Rudaini, A. D. H., & Abdullah Thaidi, H. 'A. (2022) Istibdal implementation: a case study of waqf land acquisition by the state authorities in Kedah. *INSLA E-Proceedings*, 5(1), 15-28.

© The authors (2022). This is an Open Access article distributed under the terms of the Creative Commons Attribution (CC BY NC) (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited. For commercial re-use, please contact penerbit@usim.edu.my.

ABSTRACT

This article explores the application of *istibdal*, a method of managing and preserving waqf (Islamic endowment) lands, particularly in the context of land acquisitions by state authorities in Kedah, Malaysia. It focuses on understanding *istibdal* from an Islamic perspective and investigating its practical use in the region. This research evaluates several instances of waqf land acquisition by state bodies, seen as permissible for public purposes, and how *istibdal* serves as a strategic approach to safeguard the continuous benefit of the waqf. Employing a qualitative methodology, data were sourced from an array of Islamic texts, legal documents, fatwas, and academic articles. A case study conducted at Majlis Agama Islam Negeri Kedah (MAIK) provided in-depth, specific insights. The findings underscore the significance of *istibdal* as an effective tool in managing waqf assets amidst state-level land development, contributing valuable knowledge to the field of Islamic asset management.

Introduction

The role of waqf in the Islamic economy holds immense significance, particularly in the advancement of the socioeconomic well-being of the ummah. One of the main innovations in the waqf development is the implementation of waqf *Istibdal*. This term refers to the exchange of waqf properties, such as land for land, involving transactions that encompass both selling and buying waqf properties in their original form. Additionally, it includes the process of selling a waqf property and subsequently replacing it with a newly purchased waqf property, all while preserving the original donor's intention without any alterations (Bahari & Abdul Aziz, 2019).

Considering the country's ongoing rapid development and various projects, it's clear that waqf lands are also affected when authorities acquire them for economic and public development. In this context, the concept of *istibdal* becomes crucial as a mechanism to maintain the continuity of waqf lands without undermining their core principles. Also referred to as waqf exchange, *istibdal* offers a solution that allows for the sustainable use of waqf lands while preserving their original principles (Mat Rani & Mohd Sha'ary, 2014). In comparison to other states, Kedah leads in the implementation of *istibdal* processes, accounting for a total of 18 lots out of 69 lots. Moreover, the study identified six *istibdal* cases directly associated with the acquisition of waqf land by Pihak Berkuasa Negeri (PBN). Majlis Agama Islam Kedah (MAIK) plays a pivotal role in facilitating the implementation of *istibdal*, particularly in cases of waqf land acquisition by state authorities. MAIK is responsible for safeguarding the original intent of the waqf while promoting sustainable development and use of the involved properties (Mohammed Noor *et al.*, 2023). However, the state authority, or Pihak Berkuasa Negeri (PBN) has the power to acquire any land under the legislation for the purpose of development and is considered to be in the public interest (Kader and Ismail, 2017). This is stated in the Land Acquisition Act 1960, specifically Section 3 (1) (a), (b), and (c);

(1) The State Authority may acquire any land which is needed—

(a) for any public purpose;

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

(c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

In relation to *istibdal* implementation, the role of this act and its connection should be considered. Any waqf land that is taken by the government under this act must be replaced. In terms of fatwas, *istibdal* was decided both by National Fatwa Council and State Fatwa Council. On 13th April 1982, Muzakarah by National Fatwas Council, 4th Islamic Affairs decided that a replacement waqf is to change the *mawquf* with other property by way of sales or purchases with the purpose to maintain the *mawquf*, is permissible according to taqlid from Imam Abu Hanifah. In Muzakarah by National Fatwas Council, 41st Islamic Affairs which was held on 3rd - 4th November 1996, it was decided that *istibdal* is a good act and should be practiced, in view of rapid development throughout the country, while waqf properties, such as unattended and abandoned mosque site may caused problems to the authorities. States in Malaysia also agreed with the fatwas decided by National Fatwas Council (Hamat, 2014).

To comply with the provisions of the Act, once again Muzakarah Fatwa Committee of the 46th National Council for Islamic Affairs on 22 April 1999 has decided to hand over part of the law of waqf land to the authorities. Muzakarah decided that any waqf land is taken or transferred to the government, the party must pay compensation according to the value of the land taken or replaced by another land of equal or better value. In addition, the waqf land to be developed can be used to exchange of land for the construction of public facilities such as roads, drainage, electricity substation sites, and others. Similarly, a waqf land for specific purposes such as mosques and schools, those who took the land shall be allocated certain parts as a substitute taken by the waqf to maintain the current status of the endowment (Ismail *et al.*, 2023).

In Kedah, the State Fatwa Committee has decided that the acquisition of land affecting the site, compound, and structure of the mosque and prayer house should be avoided. It should be preserved and maintained

as a site for the construction of the mosque and prayer house. If the project to be carried out is for road construction or other public emmities which cannot be avoided, then the acquisition of land can be made provided it is far away from the mosque or the prayer house. The land affected should be replaced with another which has an equal coverage area. The mosque and the prayer house must then be rebuilt at another site. In any case, the site for the mosque should never be disturbed, encroached, or smeared.

Acquisition affecting the Muslim burial ground should be replaced with the land of the same size or area and the affected graves should be transferred to the area within the vicinity. In relation to this, the Kedah Mufti Department decides to differentiate between burial grounds that can be transferred and those which cannot be transferred based on their tenor. The Committee provides flexibility for the burial ground exceeding 100 years. They need not be transferred and excavated for the purpose of road expansion. This stance is taken on the pretext that human remains of 100 years old would have been perished. However, for those less than 60 years, they must be dug up and moved to another burial ground. This ruling explains that *Shariah* permits the acquisition of the burial land for the purpose of expanding the village embankment because it would benefit the general community. Soil can be piled up on the cemetery that is 100-years-old without having to excavate or dig it out because the remains of human bodies are believed to have been destroyed whereas for a burial ground below 60 years, the graves must be carefully excavated or dug out and the remains of human bodies are found, they must be assembled and reburied at any another Muslim Cemetery (Rani et al., 2022).

However, in Malaysia, only five states have created a waqf enactment and have specifically provided for *istibdal* in the waqf enactment. Provisions for implementing the waqf *istibdal* can be seen in the Selangor State Waqf Enactment, the Melaka State Waqf Enactment, the Negeri Sembilan State Waqf Enactment, the Perak State Waqf Enactment, and the Terengganu State Waqf Enactment (Jawhar, 2010). While for other states including Kedah that have not created their respective waqf enactments, all matters related to waqf are referred to the State Islamic Religious Administration Enactment, while matters relating to the *istibdal* of waqf property will be referred to the respective state fatwa committees. Thus, the management of waqf in the state of Kedah is based on the provisions of the Administration of Islamic Law (Kedah) Enactment No. 5 of 2008 (Asni et al., 2023).

Literature Review

Jabatan Wakaf, Zakat dan Haji (2010) in “*Manual Pengurusan Istibdal Wakaf*” stated that the implementation of *istibdal* in the development of waqf assets in Malaysia has been a subject of interest for various stakeholders, particularly the state Islamic religious councils (MAIN) as the sole trustee of waqf assets, beneficiaries, heirs, and legal entities involved in the field. According to the Selangor Waqf Enactment (1999), *istibdal* is defined as the replacement of a waqf asset with another asset or equal or higher value in the form of exchange, purchase, sale, or any other means according to Islamic law. Based on the opinions of the four major schools of thought (*mazhab*), *istibdal* is considered as one of the solutions to address waqf-related issues, aiming to preserve the continuity of the waqf. The implementation of *istibdal* can be carried out through various methods, including sale or purchase, exchanging one waqf location for another, swapping waqf assets with other assets, or modifying any premises or waqf buildings.

Jamari (2019) conducted a study titled “*Kajian Istibdal Wakaf Di Malaysia: Analisis Terhadap Sorotan Karya*”. This study conducted a qualitative method, reviewing previous studies on waqf *istibdal*, involving content analysis were conducted to examine previous studies and determine the necessary steps to empower waqf *istibdal* in Malaysia. The researcher found out that in various situations, there are challenges preventing the development of waqf assets, such as unfavorable strategic locations, legal enforcement issues, and more. However, a proposed solution to address these challenges is through *istibdal*. *Istibdal* refers to the exchange or replacement of waqf assets with others through sale or purchase, aiming to overcome obstacles and sustain the waqf. This method provides a mechanism for the preservation and enhancement of waqf properties.

Hisham et al., (2013) conducted a study titled “*Substitution of waqf properties (istibdal) in Malaysia: Statutory provisions and implementations*”. The study used a qualitative research approach, analyzing documents and conducting interviews with significant parties involved in the management of waqf holdings. Waqf property is a crucial instrument in Muslims' economic progress. An effective management

of waqf properties should be able to generate positive returns to beneficiaries. However, there are various problems currently faced by administrators in managing waqf properties. These include the issue of the land value and its location, damages to waqf properties, public interest, and government development planning among others. However, these problems can be solved with the implementation of waqf substitution (*istibdal*). The State Islamic Religious Councils (SIRC) plays an essential role in the administration of waqf assets. They have the right to manage the waqf properties under Islamic and Shariah law provisions. As a result, the state's legislation also regulates the practice of *istibdal*. The decision to invest in waqf lands under *istibdal* may be made by state Islamic religious councils.

Ibrahim and Ibrahim (2018) conducted a study “*Pelaksanaan Istibdal Dan Pembangunan Tanah Wakaf di Perak*”. To gather data and information about the implementation of *istibdal* in Perak, this study used qualitative research methods, interviewing officers at Majlis Agama Islam Perak. The researcher highlighted that *istibdal* of waqf is among the popular practices in Islamic countries, whereby it involves replacing a waqf property by selling it and acquiring another property of equal or better value and benefits. Furthermore, *istibdal* can be defined as replacing the yield or income from a waqf property that is insufficient or lost by selling the said property and acquiring something better in return.

Noor and Awang (2013) conducted the study “*The Implementation of Istibdal Endowment in the State of Kedah Darul Aman*”. Surveys and interviews with the parties concerned, as well as data and information on the implementation of *istibdal* endowment in the Islamic Religious Council, were conducted as part of the field research. The researcher mentioned that the concept of *istibdal* is a suitable and efficient method for developing waqf assets. It allows the utilization of waqf properties and prevents them from being left unused without any progress. However, it is important to note that *istibdal* of waqf properties cannot be implemented arbitrarily. It must adhere to all the principles and conditions set by the jurists to ensure that the implementation of *istibdal* on a particular waqf property is valid and follows the guidelines stipulated by Islamic law. It should align with the true purpose of waqf, which is to seek closeness to Allah SWT and attain His pleasure.

Sabri and Mahamood (2020) conducted a study titled “*Significance of Istibdal Concept in Waqf Management Systems: An Analysis from Fiqh and Law Perspectives*”. The purpose of this study is to evaluate the value of the *istibdal* idea in waqf management. To address concerns resulting from waqf assets, the content analysis approach is used to discuss the requirements for *istibdal* implementation from various *mazhab* and legal experts. The researcher highlighted that *istibdal* involves the exchange of the original waqf property with a new property of equal or better value. This transaction can take various forms, including houses, buildings, land, and more. The aim is to replace the waqf asset while ensuring that the new property holds the same or improved value.

Acquisition of waqf land by the State Authority

In the study conducted by Asni et al., (2023) titled “*Management of Fatwa Approach and Factors on the Implementation of Istibdal Waqf in Selangor*”. The authors aim to provide insights into the various factors that influence the execution of *istibdal* waqf practices in this region. The methodology of this study was qualitative, where data were collected through library research and field study. The study results found that the Perbadanan Wakaf Selangor (PWS) implemented the concept of *istibdal* on six waqf lots due to various factors and needs. One of the factors is the acquisition of waqf land by the state authorities for the purpose of road construction projects.

The study conducted by Asni et al., (2020) titled “*Socioeconomics and Management of Muslim Cemetery Waqf Using Istibdal and GIS Method in Penang State*”, The purpose of this paper is to implement the *istibdal* waqf concept using a geographical information system (GIS) for the benefit of socioeconomics and Muslim cemetery waqf management. It provides clearer, more precise, and faster access to a location based on actual space data. This research was conducted qualitatively using the unstructured interviewing method. The results showed that normally, *istibdal* has been practiced on waqf land that involves city development, land acquisition, and for non-productive waqf land.

The study conducted by Sabri and Mahamood (2019) titled “*The Factors Influences Toward Istibdal Implementation for Waqf Development: The Way Forward*”. The primary objective of the research is to identify and understand the various factors that play a crucial role in shaping the implementation of *Istibdal* in the context of waqf. To explore these concerns, the article delves deeper into the concept of *Istibdal* and its advantages, ensuring that waqf properties operate as intended for the collective benefit and welfare of the Muslim community. The findings of the study, however, stated the factors that influenced *istibdal* applications. Many of the cases that happen are all the lands that were acquired by state authority for public interest. Thus, any waqf lands that are involved by the state authority need to be done through the *istibdal* concept.

Siti Arifah (2018) conducted a study titled “*Pelaksanaan Istibdal Dalam Kes Pengambilan Tanah Wakaf*”. This study uses a qualitative approach with a design form of research using the case study method. The authorities need to play a role in land acquisition involving waqf lands. The concept of *Istibdal* needs to be carried out by the responsible parties to ensure the preservation of waqf assets.

Istibdal application

Hamat (2014), in the article titled “*Substitution of Special Waqf (Istibdal): Case Study at the Religious and Malay Custom Council of Kelantan (MAIK)*”, The objective of the research is to explore the substitution process of special waqf, particularly through the case study conducted at MAIK. The study aims to contribute to the understanding of how *istibdal* is managed in the context of special waqf, shedding light on its processes and outcomes. Methodologically, the research adopts a case study approach, providing an in-depth analysis of *istibdal* within the practical context of MAIK, offering valuable insights into the administration of waqf properties. The findings of the research shed light on *istibdal* and its application. *Istibdal* occurs in two forms. First, change or replace the property with the same value as the new property. Secondly, buying new waqf property from the land acquisition’s compensation.

The article by Mat Rani and Mohd Sha’ary (2014) titled “*Pelaksanaan Istibdal Di Majlis Agama Islam Negeri: Kajian Kes Terhadap Pengambilan Tanah Wakaf Oleh Pihak Berkuasa Negeri Di Majlis Agama Islam Terengganu*”. The objective of the study is to understand the process and challenges associated with *istibdal*. The study employed a qualitative research method, utilizing interviews and document analysis to explore the legal and procedural aspects of *istibdal*. The findings of the study shed light on the method employed when carrying out the process of *istibdal*, which involves the replacement or substitution of a waqf (endowment) asset. For land that is acquired involving all or a significant portion of it, it should be replaced with land whether it is “waqf Am” or “waqf Khas”. The acquired land should be replaced with another piece of land that is equal to or better than the original one. Whereas, acquiring a small portion of waqf land makes it difficult to replace it with land. Therefore, it is deemed sufficient to compensate for the acquisition with monetary compensation, and it is suggested that the compensation values for these waqf lands be consolidated. Through this approach, all compensation amounts paid by the government are combined and consolidated into a larger sum according to waqf categories. With a substantial amount, the State Islamic Council can purchase other lands with commercial value as a replacement for the acquired land.

Meanwhile, waqf lands specifically designated as graveyards and affected by land acquisition, will be relocated to nearby areas, and the cost of relocation will be borne by the agency acquiring the land. As for waqf lands designated as mosque and surau sites, the views of the mosque committee members are also taken into consideration in relevant matters for the benefit of the congregation. In determining whether compensation is given in cash or in the form of renovating the affected mosque or surau buildings, the matter is first referred to the mosque committee members for their approval, with the final decision made by SIC. Usually, mosque sites are compensated in monetary terms, but the renovation of the affected mosque or surau buildings, whether partially or entirely, is carried out by the agency acquiring the land, depending on mutual agreement between both parties.

The article by Amin and Muda (2019) titled “*Konsep Istibdal Harta Wakaf menurut Perspektif Islam*”, explores the concept of *Istibdal* (replacement) of waqf assets from an Islamic perspective. The objective of the study is to provide insights into the principles governing the replacement of endowed properties in Islamic law. The authors employ a qualitative approach, utilizing Islamic jurisprudential analysis to examine the relevant concepts and principles. The findings of the study contribute to a deeper

understanding of the Islamic perspective on *istibdal* of waqf assets. In matters related to mosque endowments (*wakaf masjid*), only scholars of the Hanbali school permit the replacement (*istibdal*) of one mosque with another. Moreover, a mosque can be sold or replaced with something else if it experiences damage or collapse. Similarly, if only a portion of the mosque is damaged, that specific part can be sold, and the proceeds used for the mosque's needs. However, most other scholars argue against *istibdal* for mosques, asserting that even if a mosque collapses, prayers can still be performed on its floor, and it remains a mosque.

Methodology

This study adopts qualitatively through library research to gather comprehensive insights into *istibdal* practices. Library research is a method of academic inquiry that involves the systematic exploration and analysis of existing sources of information available in libraries or other repositories. It is a valuable approach for gathering data, synthesizing knowledge, and developing a comprehensive understanding of a particular topic or research question. In this study, data collection involved an extensive review of waqf-related books, articles, laws, fatwa, and pertinent circulars. Additionally, a case study at Majlis Agama Islam Negeri Kedah (MAIK) was conducted to acquire specific data and firsthand information. Several cases were referred to gain a closer understanding of the implementation of *istibdal* in Kedah. The qualitative approach allowed for an in-depth exploration of the literature on waqf, legal frameworks, and circulars governing the subject.

Results and Discussion

Istibdal in Islamic Perspective

The concept of *istibdal* which is from an arabic word that comes from the word “*badal*” means change or replace, while “*ibdal*” and “*istibdal*” has the same meaning that is changing something by taking something the other as a replacement. In short, *istibdal* waqf means exchanging a waqf property and replacing it with another property by selling the original waqf property and buying a new property instead (Mohammed Noor & Awang, 2013).

Istibdal Under the Views of Islamic Jurists

Research on the scholarly perspectives on *istibdal* reveals significant variations in opinions among scholars. According to the Hanafi school of thought, *istibdal* is considered permissible for addressing issues related to non-expandable waqf properties. If a property becomes unusable or unable to serve its original purpose, *istibdal* becomes a viable method to restore the intended purpose. In the Maliki school of thought, *istibdal* is permissible as long as it is executed for public purposes or public interests, such as expanding a mosque, cemetery, road, or similar endeavors. Within the Shafi'i school of thought, scholars adopt a stringent stance on permitting *istibdal* due to the unique nature of waqf property ownership. Once a property is dedicated to Allah SWT, it is deemed immutable and cannot undergo alterations or transformations, even in cases where the property has been damaged and no longer serves a beneficial purpose. The Hanbali scholars, adhering to the Hanbali school of thought, argue that waqf property should not be sold, awarded, or inherited as long as it remains functional. However, when the property is damaged or no longer usable, the concept of *istibdal* becomes applicable. As a result, when the property is destroyed and no longer functional, *istibdal* should be applied to safeguard waqf assets and ensure the ongoing fulfillment of the waqf's intended purpose (Asni et al., 2023).

Relocation of Muslim cemeteries

The Muslim cemetery is a sacred site that demands reverence. Typically, graves are established on waqf land to accommodate the burial of all individuals. Various Islamic scholars hold divergent opinions on the matter of relocating a Muslim cemetery. According to the Maliki school of thought, relocation is permissible under three conditions; it must not harm the body, disrespect the deceased, and must be driven by public interest. This could include situations where the current site is unsuitable or when there is an urgent need to construct something of greater importance in that area. In essence, Islam prohibits the relocation of a Muslim cemetery without a valid purpose, deeming it futile, intrusive, and disrespectful to the deceased. However, if there is a recognized need (*maslahah*), such relocation is permitted, for instance, for the expansion of mosques, construction of schools, hospitals, or roads (Asni et.al, 2020).

Istibdal Implementation in The State of Kedah

In Kedah, the process of *istibdal* of waqf land is carried out when waqf lands are involved in land acquisition by the Government or Agencies through the Land Acquisition Act for the purpose of implementing development projects or public interest or the welfare of the community (Jawhar, 2010).

The waqf land status involved in land acquisition is divided into two categories:

- a. Waqf land registered under the ownership title in the name of the Islamic Religious Council (MAIK).
- b. Waqf land registered as a Reserve Certificate (RC) for religious purposes, such as mosque sites, burial grounds, and others.

Generally, the outlined processes by MAIK prove effective in ensuring the continuity of waqf properties in Kedah, encompassing all essential elements for *istibdal* implementation. MAIK consistently seeks the opinion of the mufti before initiating the *istibdal* process for any waqf asset, ensuring compliance with Shariah requirements. Furthermore, MAIK proactively identifies potential strategic lands for purchase as replacements, using the compensation funds from the acquired land. This approach ensures that the replacement property aligns with *Shariah* guidelines in terms of value, if not higher, than the previous property. Similarly, for waqf lands designated for religious purposes like mosques and cemeteries, MAIK ensures maintenance, and any improvements in the new location are taken care of by the State Authority (PBN) (Asni et al., 2023).

Waqf land registered under the ownership title in the name of the Religious Islamic Council (MAIK)

Information on land acquisition obtained by MAIK through:

MAIK receives a notice of hearing for land acquisition (Form E, Section 10, Land Acquisition Act 1960)

MAIK receives a notice of proposed land acquisition and reviews its status and background through land files, official ownership searches, and reviewing the type of waqf and its purpose. This process ensures the land's legality and compliance with regulations. MAIK reviews the project implementation plan, obtains plans from relevant agencies, and provides a land report. They attend the land acquisition trial, where compensation for land is paid to MAIK and compensation for building structures or developers is sought to replace the construction. MAIK prepares land acquisition paperwork for the State Mufti Department of Kedah to seek a fatwa (Islamic legal opinion) regarding land compensation or replacement of structures involved (Jawhar, 2010).

Presentation of Proposal Paper to the State Fatwa Committee

MAIK invites and organizes site visits with the involved agencies, particularly the Department of Mufti, presenting the project implementation plan to the State Fatwa Committee during the site visit. This process involves physically visiting the location to discuss and present the project's details and plans to the State Fatwa Committee, ensuring transparency and clarity in the decision-making process (Jawhar, 2010).

Fatwa Decision

MAIK receives the State Fatwa Committee's decision and informs relevant agencies about the project's implementation. If the Fatwa decision supports the proposed land acquisition or amendments, the compensation for land must be replaced with equal or better value land used for the original waqf purpose. If a developer proposes replacing a building structure, it must be built to the same standard or better (Jawhar, 2010).

Acquisition of a New Mawquf (Istibdal)

MAIK identifies land for purchase or proposed acquisition using compensation funds. It presents a proposal to acquire new land for *istibdal* within the Investment and Development Committee for Waqf Land and *Baitulmal*. The purpose of this proposal is to use the compensation funds from the land acquisition to purchase new land for *istibdal*. The payment process for the purchase is initiated through the land acquisition process.

MAIK diligently registers and incorporates new *istibdal* land files into the waqf land information system, meticulously documenting essential details like land information, lot specifics, purchase price, waqf purpose, percentage of waqf share, and compensation from various lots with distinct waqf objectives. This inclusive record-keeping facilitates comprehensive management. The acquired land is then utilized in alignment with the original waqf purpose, whether through leasing for rental income or transferring it to the pertinent mosque as a replacement plot, ensuring the fulfillment of the waqf's intended goals (Jawhar, 2010).

Waqf land that is registered as a Reserve Certificate (RC) for religious purposes, such as mosque sites, burial grounds, and others

MAIK receives an attendance notice for the land development proposal alignment meeting from the relevant department or a written notification or a development proposal document from the respective agency. MAIK plays a crucial role in the land development proposal alignment and acquisition process. They attend meetings, receive minutes or requests, review waqf-related information in the Reserve Certificate (RC) registration, provide a general land report, and prepare land acquisition paperwork for submission to the State Mufti Department of Kedah for a fatwa's opinion. The MAIK also provides a general land report on the land's position, area of acquisition, structures involved, and other relevant details (Jawhar, 2010).

Next, the process will proceed through:

Presentation of the Proposal Document to the State Fatwa Committee

The State Mufti Department requests a joint site visit with relevant agencies to provide briefings, including representatives from the District Religious Office and mosque or surau committees. MAIK arranges visits and presents the project implementation plan to the State Fatwa Committee during the visit (Jawhar, 2010)

Fatwa Decision

MAIK receives a Fatwa Committee decision and informs relevant agencies about the project's implementation. If the Fatwa decision supports the proposed land acquisition or amendments, the RC land must be replaced with land of equal value or better and the structures must be replaced with similar or better-quality structures for the original waqf purpose (Jawhar, 2010).

Reconstruction of the Involved Structure (Istibdal)

In the process of land replacement and reconstruction, MAIK follows a systematic approach. The management committee is initially informed of the proposal, and any recommended changes are discussed and coordinated with the developer. Following committee approval, MAIK communicates the endorsement to the developer, who assumes the responsibility for land acquisition and construction. Upon completion and registration of the acquisition as government land, MAIK proceeds to apply for ownership, gaining approval and registering the new *istibdal* land file in the waqf land information system. This diligent approach ensures that MAIK adheres to the original waqf purpose while effectively managing the replacement and utilization of the *istibdal* land (Jawhar, 2010).

Issues and Istibdal Cases of Waqf Assets in The State of Kedah

This research delves into the issues and *istibdal* cases involving waqf assets in Kedah, with a specific focus on land acquisition by the State Authority (PBN). The study aims to uncover issues affecting waqf assets, particularly those arising from PBN's land acquisitions and investigates specific cases to understand the reasons, processes, and *istibdal* implications in the region.

Issues

This study chose the state of Kedah as the case study because based on the record of the *istibdal* process in the states in Malaysia, Kedah is the state that implements the most *istibdal* process compared to other states, which is 18 lots of *istibdal* (Table 1). Thus, on that basis, Kedah was selected to be the case study. Generally, in Kedah, the implementation of *istibdal* involves three key factors: the acquisition of waqf

land by PBN, the submission of *istibdal* applications by the State Education Department (JPN), and the submission of *istibdal* applications by mosque committees. From that, the research identified six instances of *istibdal* implementation related to the acquisition of waqf land by PBN, one case of *istibdal* application submitted by the State Education Department (JPN), and one case involving an *istibdal* application submitted by the mosque committee (Asni *et al.*, 2023).

Table 1. Total Waqf Land Lots Involved in *Istibdal* Implementation by States in Malaysia

No.	State	Lot Number
1.	Kedah	18
2.	Penang	5
3.	Perak	7
4.	Kelantan	3
5.	Terengganu	13
6.	Selangor	6
7.	Federal Territory of Kuala Lumpur	2
8.	Johor	16
Total		69

(Official state *istibdal* file)

Out of the 69 waqf land lots engaged in *istibdal* implementation in Malaysia, a total of 39 cases comprising 59 lots, resulting from the acquisition of waqf land by PBN. This acquisition was driven by various factors, including considerations for the public's welfare and benefit. According to the Land Acquisition Act (APT) 1960, if the State Authority (PBN) deems it necessary to acquire any land for purposes outlined in Section 3 of the APT 1960, the landowner is legally obligated to surrender the land to the PBN. This procedure entails compliance with the regulations stipulated in civil law. Likewise, in the context of acquiring waqf land, it is allowable as long as it closely adheres to the objectives of general welfare or public interest (Mohammed Noor *et al.*, 2023).

***Istibdal* Cases in The State of Kedah**

The research identified six instances of *istibdal* implementation related to the acquisition of waqf land by PBN. The outcomes revealed that PBN acquired waqf land for purposes serving the public interest, such as the development of water dams, airports, railways, roads, business complexes, and flood mitigation projects. (Table 2) illustrates the number of cases and waqf land lots subjected to replacement (*istibdal*) and the corresponding replacement types after PBN acquired waqf lands (Mohammed Noor *et al.*, 2023). The study findings indicate that despite having the legal authority under the Land Acquisition Act 1960 to acquire any land, PBN has not exercised this authority arbitrarily, particularly in cases involving waqf lands. This is attributed to the fact that PBN only appropriates waqf land when it is deemed to be in the public interest. This approach aligns with the *Shariah-approved* parameters for *istibdal*, wherein the government is permitted to carry out *istibdal* on waqf properties solely for the benefit of the public. Furthermore, the implementation of *istibdal* by PBN adheres to *Shariah* law requirements, ensuring that all acquired lands are replaced with fixed assets and compensated at an equal value (Mohammed Noor *et al.*, 2023).

Table 2. Cases Of *Istibdal* Implementation Due to The Acquisition of Waqf Lands by The State Authority

No.	Waqf Land Acquisition Factors	Number Of Lots Involved
1	Construction Of Water Dam	2
2	Airport Construction	4
3	Railway Construction	4
4	Road Project	4
5	Construction Of Business Complex	1
6	Flood Mitigation Project	1

(File Waqf of Kedah State Islamic Religious Council 2015)

As mentioned above, there are six *istibdal* cases related to acquisitions of waqf land by state authorities (PBN), which are:

Construction of Water Dam (Beris Dam)

The Beris Dam is located in the Sik district. Its primary purpose is to supply clean water to the residents in the southern part of Kedah and Penang and to provide water for agricultural use, particularly in paddy fields. At the same time, the dam serves to reduce the impact of floods in the downstream areas of the Sungai Muda basin. During the construction of this dam, there were many lands from several villages that were involved in the land acquisition process, including two lots of waqf land, which are as follows:

1. Lot 12613, HS (M) 88/85, is located in Kampung Besar Sungai Batang. On this waqf land, there is a mosque and an Islamic cemetery.
2. Lot 2402, HS (M) 71/86, is located in Kampung Charuk Bakong. This waqf land has been designated as an Islamic cemetery.

As a result of the land acquisition from the waqf land and the involved villages, the authorities have provided a new settlement for all the residents of these villages by implementing a development project in an area called Bandar Baru Beris Jaya. This development project has been carried out with a total cost of RM 67,000,000.00 for the construction of houses, schools, a mosque, a police station, and roads. Additionally, the authorities have also compensated the land and properties, including waqf land, with a total amount of RM 80,000,000.00. All the cemeteries that were affected have been relocated to the new town, and the mosque that was submerged by the Beris Dam has been replaced with the construction of a new, larger mosque (Asni at *et.*, 2023).

Expansion of the Airport (Sultan Abdul Halim Airport)

Sultan Abdul Halim Airport is located in a place called Kepala Batas, Titi Gajah subdistrict, Kota Setar district, which is approximately 13 km from the city of Alor Setar. This airport needed to be expanded because of its terminal's small size and restricted capacity, which prevented it from handling a lot of people. The objective of this enlargement was to enhance user comfort and convenience while streamlining and optimizing the internal terminal system. Several steps were taken, such as designating a specific parking space and constructing larger, cozier user-waiting facilities. Furthermore, the arrival and departure halls which had previously been connected by a single-user pathway were divided and enlarged. Additionally, the runway at the airport was expanded from 1963 meters to 2745 meters so that Airbus 330 aircraft could operate there.

The expansion activities of the airport involved the acquisition of three lots of waqf land. These three lots of waqf land were paddy fields where the profits earned from the proceeds were endowed to three different parties. The three waqf land lots that are being acquired are as follows:

1. Lot 35, GM 1002, Mukim Titi Gajah, Kota Setar District The proceeds from this lot are designated as a special waqf and are channeled to the Tuan Hussin Titi Gajah Mosque.
2. Lot 783 H.S. (M) 600/87, Mukim Titi Gajah, Kota Setar District The yields from the agricultural activities on this land are dedicated as a special waqf for the use of the Maktab Mahmud Religious Secondary School.
3. Lot 121 SP 8907, Mukim Titi Gajah, Kota Setar District This lot is also dedicated as a special waqf, and its proceeds are allocated for the benefit of the Bukit Pinang Mosque.

The three waqf land lots were acquired in exchange for compensation provided by the authorities, amounting to RM315,000. With the compensation received, MAIK purchased a commercial building lot, Plot 16-H.S(M) 1634 PT 584, in Taman Angsana, Bandar Pokok Sena subdistrict, Pokok Sena district, as a replacement for the original waqf land involved in the acquisition. This commercial building is leased by MAIK, and the monthly proceeds collected are distributed to the same three parties as specified by the waqf arrangement (Mohammed Noor & Awang, 2013).

Construction of an electrified double-tracked railway (Ipoh-Padang Besar)

This railway line's construction was carried out from Ipoh, Perak, to Padang Besar, Perlis. The route also passed through other districts in the state of Kedah, one of which was Kota Setar district. The purpose of building this railway line was to provide transportation convenience to the Malaysian population. Additionally, its functionality also minimized travel times and saved miles. However, four waqf land lots from two villages were acquired by the authorities to build the railway line. The following four waqf land lots are:

1. Lot 3, with an area of 650 square meters, and lot 1219, with an area of 556 square meters, are located in Kampung Tok Seron, Kota Setar district, where a surau (prayer hall) and an Islamic cemetery were built.
2. Lot 4, with an area of 831 square meters, and Lot 5, with an area of 821 square meters, are located in Kampung Pegawai, Kota Setar district. These lands were used as an Islamic cemetery.

The authorities compensated the waqf lands with a total of RM 1,920,000.00 to acquire alternative lands to replace the waqf lands involved. These acquired lands include lot 1220 with an area of 0.2429 hectares and lot 1221 with an area of 0.5530 hectares, located in the Pengkalan Kundor subdistrict, Kota Setar district. With this action, the graves that were previously scattered across two different villages were consolidated into a new, more spacious, well-organized location. Additionally, the surau was reconstructed with complete facilities for the comfort of worshippers and to facilitate the activities of the surau (Mohammed Noor and Awang, 2013).

Road upgrading project

In the state of Kedah, the *istibdal* method has also been implemented in road improvement projects. This implementation can be observed when the authorities acquired two lots of general waqf land located in the Kubang Rotan subdistrict, Kota Setar district, to construct the Coastal Highway from Kuala Kedah to Kuala Sanglang, which are:

1. Lot 728 GM161
2. Lot 1509 GM763

Additionally, the authorities took a portion of the general waqf land, which was a rubber plantation known as Lot 3789 SPB63305, located in the Pulau subdistrict, Baling district, for a road improvement project in that area.

The authorities allocated a total compensation of RM250,000.00, which was paid to MAIK. With this amount, MAIK purchased a lot containing a shophouse building, Plot 15-H.S(M) 1663 PT 583, in Taman Angsana, Bandar Pokok Sena subdistrict, Pokok Sena district, as a replacement for the waqf land that had been acquired. MAIK has rented this building, and the general waqf has benefited from the monthly rent payments (Mohammed Noor & Mat Rani, 2015).

Construction of business complex (Plaza Aman Central)

The development of this complex involved the acquisition of Madrasah *Salihiah*, which was situated on Lot 623 GRN 33480 along Jalan Tambang Badak in Alor Setar. This was due to the madrasah's location being adjacent to the abandoned building. The Kedah State Authority decided to enlarge the structure to include the location of the madrasah *Salihiah*.

In compensation for the acquisition of Madrasah *Salihiah*, the State Authority provided a sum of RM 1,437,300.39 to MAIK. With this compensation, MAIK replaced the madrasah's site with PT 1623 HS (D) 8022 and a portion of Lot 2409 GRN 183063, covering a total area of 0.0886 hectares. This was done for the construction of a new surau to benefit and serve the local community (Mohammed Noor & Mat Rani, 2015).

Flood Mitigation Project of Sungai Muda

PBN had to acquire many lots of waqf property, which include a mosque and cemeteries, to construct the flood mitigation project. These lands are located in Lot 322, RC 349, Mukim Pinang Tunggal, Kuala Muda District. The waqf land covers an area of 443 jemba and is a special waqf land for Masjid Pinang Tunggal.

PBN decided to relocate the cemetery situated at Lot 428 RC 350 Kampung Jawa, Mukim Pinang Tunggal, Kuala Muda District, in addition to obtaining the waqf land. The site, which is the former Kampung Jawa cemetery, is 1 acre and 249 jemba in size. The reason for this relocation was because the graves are situated on waqf land, which is where the flood mitigation project is going to be implemented. However, the waqf land is not involved in the acquisition and retains its status as waqf land.

On November 19, 2008, MAIK conducted a site visit at Masjid Pinang Tunggal to authorize the acquisition of waqf land and the transfer of the cemetery. This was done to get more precise information on the application. Considering this, the Fatwa Committee determined:

1. The party concerned must construct a tall wall or barrier beside Masjid Pinang Tunggal's porch or sidewalk next to Sungai Muda.
2. The Committee favored moving 80 burials from the former Kampung Jawa cemetery to the current Kampung Jawa cemetery.
3. The committee approved the relocation of 150 burial plots from the Sidam Kiri Mosque cemetery to the same cemetery as part of the Sungai Muda flood control project.
4. Every cemetery located in Kampung Jawa and Masjid Sidam Kiri that is a part of the Sungai Muda Kedah flood mitigation project needs to be replaced with an identical space in other regions.
5. The Committee asked the party to submit the updated Penang Tunggal Mosque plan to the Fatwa Committee so that it may be confirmed to be in accordance with Islamic law. It is advised that the new mosque have space for 2,000 worshippers due to anticipated population growth.

By the guidelines established by the Fatwa Committee, Lot 1381, Mukim Pinang Tunggal, Kuala Muda District, which has an area of 0.899 hectares, was used to replace the waqf land that PBN had acquired to carry out the flood mitigation project (Asni et al., 2023).

Conclusion

In conclusion, waqf assets are highly valuable and are entrusted assets of the Muslim community that need to be safeguarded and managed to the best of our abilities. The issue of land acquisition by the state authorities for national economic development needs to be carefully examined, especially when it involves waqf land with its specific laws and regulations. (Mat Rani and Mohd Sha'ary, 2014). Based on the cases of waqf land acquisition in the state of Kedah, it is found that the factors contributing to the acquisition by the Kedah State Authorities include the construction of dams, airports, electric train tracks, road expansions, development of business complexes, and flood mitigation project. These endeavors aim to channel benefits to the community based on the general welfare principle (*maslahah ammah*). For each waqf land acquisition, replacements have been made following the conditions set by the fatwa committee and Islamic jurists to ensure the original purpose of the endowment is perpetuated. The concept of *istibdal* should be implemented in cases involving waqf land to ensure the continuity of waqf properties and the continued rewards for the waqf benefactors. (Mohammed Noor and Mat Rani, 2015). Other than that, the recommendation for this study is the implementation of *istibdal* for land acquisition by the state authorities cannot be delayed or missed. It should be done as soon as possible by the trustee (MAIK), to protect the interests of the waqf and to prevent the misuse of compensation money. The State Fatwa Committee also plays a crucial role in issuing fatwas, taking into consideration the current environment and needs, known as contemporary fatwas. The fatwas issued should be clearer and harmonized at both the state and national levels. Every fatwa decision should firmly state that waqf lands should be protected from being taken by the government or any private entity (Mat Rani and Mohd Sha'ary, 2014).

References

- Afiffudin, N. M., & Ridzuan, M. A. (2013). Pelaksanaan istibdal wakaf di Negeri Kedah Darul Aman. *Islamiyyat*, 35(1), 49–56.
- Amin, A. Y. C. M., & Muda, M. Z. (2019). Konsep istibdal harta wakaf menurut perspektif Islam. *Bitara International Journal of Civilizational Studies and Human Sciences*, 2(3), 22–33.
- Asni, F., Mahamud, M. A., & Sulong, J. (2020). Socioeconomics and management of Muslim cemetery waqf using istibdal and GIS method in Penang State. *Journal of Islamic Accounting and Business Research*, 11(7), 1343–1362. <https://doi.org/10.1108/JIABR-10-2019-0197>
- Asni, F., Mohammed Noor, A., & Hasbulah, M. H. (2023). Management of cash waqf fund generation through the implementation of istibdal in Kedah. *Qualitative Research in Financial Markets*, 16(3), 517–538. <https://doi.org/10.1108/QRFM-02-2023-0038>
- Asni, F., Noor, A. M., Hasbulah, M. H., & Halim, W. M. A. W. (2023). Management of fatwa approach and factors on the implementation of istibdal waqf in Selangor. *Journal of Namibian Studies: History Politics Culture*, 35, 1565–1582.
- Bahari, Z. (2019). The understanding and awareness of waqf istibdal application in Peninsular Malaysia. Dalam *European Proceedings of Social and Behavioural Sciences* (pp. 142–152). European Publisher. <https://doi.org/10.15405/epsbs.2019.09.14>
- Di, W. O. P. B. N. (n.d.). *Factors and impacts of waqf land acquisition by State Authority of Kedah Darul Aman* [Manuskrip tidak diterbitkan].
- Hamat, Z. (2014). Substitution of special waqf (istibdal): Case study at the Religious and Malay Custom Council of Kelantan (MAIK). *The Macrotheme Review*, 3(4), 64–71.
- Hisham, S., Jasiran, H. A., & Jusoff, K. (2013). Substitution of waqf properties (istibdal) in Malaysia: Statutory provisions and implementations. *Middle-East Journal of Scientific Research*, 13(E-Supplement), 12–18.
- Ibrahim, A., & Ibrahim, A. (2018). Pelaksanaan istibdal dan pembangunan tanah wakaf di Perak. *Asian People Journal (APJ)*, 1(2), 287–297.
- Ismail, C. Z., Daud, D., Shaharuddin, A., & Al-Amin, A. A. M. (2023). Istibdal method for sustainable development: Analyses of jurisprudence and implementation on waqf properties. *Islamiyyat*, 45(1), 81–92. <https://doi.org/10.17576/islamiyyat-2023-4501-08>
- Jabatan Wakaf, Zakat dan Haji (JAWHAR). (2010). *Manual pengurusan istibdal wakaf*. JAWHAR.
- Jamari, J. B. M., & Islam, P. K. P. P. (2019). Kajian istibdal wakaf di Malaysia: Analisis terhadap sorotan karya. *Journal of Islamic, Social, Economics and Development (JISED)*, 4(24), 101–112.
- Kader, S. A. B. A. (2018, November 15). *Pelaksanaan istibdal dalam kes pengambilan tanah wakaf*

- [Kertas kerja]. Seminar Pengurusan dan Pembangunan Tanah Wakaf Kebangsaan, Kuala Lumpur, Malaysia.
- Kader, S. A. B. A., & Ismail, W. I. F. B. W. (2017). Kajian kes pengambilan tanah wakaf di Kedah: Cadangan penambahbaikan. *Fikiran Masyarakat*, 5(1), 21–28.
- Land Acquisition Act 1960 (Malaysia).
- Majlis Agama Islam Kedah. (2015). *File waqf of Kedah State Islamic Religious Council 2015* [Fail tidak diterbitkan].
- Mat Rani, M. A. B., & Mohd Sha'ary, A. R. B. (2014). *Pelaksanaan istibdal di Majlis Agama Islam Negeri: Kajian kes terhadap pengambilan tanah wakaf oleh pihak berkuasa negeri di Majlis Agama Islam Terengganu* [Laporan penyelidikan tidak diterbitkan].
- Mohammed Noor, A., Asni, F., Mat Rani, M. A., & Ramle, M. R. (2023). Analysis of issues and solutions on the implementation of istibdal waqf property in states of Peninsular Malaysia. *Qualitative Research in Financial Markets*, 15(3), 423–444. <https://doi.org/10.1108/QRFM-06-2021-0097>
- Noor, A. M., & Awang, M. R. (2013). The implementation of istibdal endowment in the State of Kedah Darul Aman. *Islamiyyat: The International Journal of Islamic Studies*, 35(1), 49–56.
- Noor, A. M., Ismail, C. Z., & Bakar, M. A. (2017). Fact and implementation analysis of istibdal method on waqf land in the state of Penang. *International Journal of Muamalat*, 1(1), 1–8.
- Rani, M. A. M., Nordin, M. N., Abbas, M. S., Mustapha, R., Said, N., Ismail, M. Z., & Hamzah, N. F. (2022). Innovative istibdal on development of endowed (Waqf) land: A study on issues of acquisition of endowed land by the state authorities. *HIV Nursing*, 22(2), 3872–3882.
- Sabri, H., & Mahamood, S. M. (2019). The factors influences toward istibdal implementation for waqf development: The way forward. *Al-Qanatir: International Journal of Islamic Studies*, 16(2), 28–36.
- Sabri, H., & Mahamood, S. M. (2020). Signifikasi konsep istibdal dalam sistem pengurusan wakaf: Analisis dari perspektif fiqh dan undang-undang [Significance of istibdal concept in waqf management systems: An analysis from Fiqh and law perspectives]. *Journal of Fatwa Management and Research*, 18(1), 15–24. <https://doi.org/10.33102/jfatwa.vol18no1.332>