



Journal of Hunan University (Natural Sciences)

Vol. 52 No. 9
September 2025

Available online at
<https://joununs.com>



Open Access Article

 <https://doi.org/10.55463/issn.1674-2974.52.9.18>

Comparative Analysis of Waqf Istibdal Fatwas and Their Implementation

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Article History:

Received: August 14, 2025

Revised: September 27, 2025

Accepted: October 12, 2025

Published: October 30, 2025

Abstract: This study presents a comparative analysis of *istibdal* (the substitution or exchange of waqf property) in Islamic legal fatwas and its practical implementation across Malaysia and Indonesia. Employing a normative legal research methodology within a conceptual framework, data were collected through extensive literature review and analyzed using the method of legal interpretation. The findings reveal that prominent Islamic jurists (*fuqoha*) from the four major Sunni schools of law Shafi'i, Maliki, Hanafi, and Hanbali generally permit *istibdal* under certain conditions: necessity, public benefit (*maslahah*), judicial authorization, or in instances where the waqf property has been damaged. This doctrinal position is echoed in contemporary legal opinions, such as the fatwa issued by the Majelis Agama Islam Negeri (MAIN) of Malaysia, as well as those by the Bahtsul Masail Institute of Nahdlatul Ulama (1996), the Komisi Fatwa of the Majelis Ulama Indonesia (MUI) in 2009, and additional fatwas No. 54 (2014) and No. 34 (2013) by MUI. Furthermore, the Tarjih and Tajdid Councils of Muhammadiyah support *istibdal*, with the condition that it receives consent from the original donor (*wakif*) or their heirs. From an implementation perspective, Malaysia has institutionalized *istibdal* following the decision of the National Fatwa Committee (Jawatankuasa Fatwa Majelis Kebangsaan) dated April 13, 1982. In Indonesia, the practice varies by region: Aceh relies on community deliberation with *nadzhir* and local leaders, whereas other regions follow the legal procedures outlined in Law No. 41 of 2004 and Government Regulation No. 42 of 2006.

Keywords: *Waqf*, *Istibdal*, Islamic Jurisprudence (*Fuqoha*), Fatwa, Implementation.



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瓦克夫“伊斯提卜达尔” (Istibdal) 教法判决及其实践实施的比较分析

摘要 : 本研究旨在对“伊斯提卜达尔” (即瓦克夫财产的替换或交换) 在伊斯兰教法判决 (Fatwa) 中的法律依据及其在马来西亚和印度尼西亚的实际实施情况进行比较分析。研究采用概念性框架下的规范性法律研究方法, 通过广泛的文献资料收集数据, 并运用法律解释法进行分析。研究结果显示, 逊尼派四大法学派 沙菲仪派、马利基派、哈乃斐派与罕百里派的著名伊斯兰法学家 (Fuqoha) 普遍认为, 在特定条件下可以允许进行伊斯提卜达尔, 如: 出于紧急需要、公共利益 (Maslahah)、司法批准, 或瓦克夫财产遭受损坏的情形。当代的若干教法判决也支持此观点, 包括马来西亚州宗教理事会 (Majlis Agama Islam Negeri, MAIN) 发布的教令, 印尼努祖图尔·乌拉玛 (Nahdlatul Ulama) 旗下的教法研究机构Bahtsul Masail在1996年发布的教令, 印尼乌理玛理事会 (Majelis Ulama Indonesia, MUI) 于2009年颁布的教令, 以及MUI于2013年和2014年发布的第34号与第54号教令。此外, 穆罕默迪亚中央领导层的Tarjih与Tajdid理事会也支持伊斯提卜达尔, 但要求获得原瓦克夫捐赠人 (Wakif) 或其继承人的同意。在实施方面, 马来西亚已依据1982年4月13日全国教法委员会 (Jawatankuasa Fatwa Majlis Kebangsaan) 第4次会议的决议, 将伊斯提卜达尔制度化。而在印度尼西亚, 实施方式因地区而异: 亚齐地区依赖纳志尔 (Nadzhir) 与地方社区领袖协商决定, 而其他地区则依据《2004年第41号瓦克夫法》及《2006年第42号政府条例》所规定的法律程序执行。

关键词 : 瓦克夫 (Waqf)、伊斯提卜达尔 (Istibdal)、伊斯兰法学 (Fuqoha)、教法判决 (Fatwa)、实施

1. Introduction

In Islamic jurisprudence, waqf (charitable endowment) is regarded as one of the most enduring and spiritually significant forms of philanthropy. Rooted in the principle of *sadaqah jāriyah* (ongoing charity), waqf plays a multidimensional role legal, social, and economic in Muslim societies [4], [34]. Historically, waqf institutions (*nadzhir*) have supported the development of education, health, religious facilities, and public infrastructure across the Islamic world [4].

From an economic perspective, waqf assets hold immense potential for generating sustainable income aimed at poverty alleviation, job creation, and community development [22]. Contemporary Islamic finance scholars view waqf as a redistributive mechanism that fosters social equity and economic justice, especially in Muslim-majority countries undergoing structural transformation [26].

The long-term success of waqf depends on strong governance, transparent stakeholder collaboration, and innovative asset management. While some waqf properties remain under direct use, others are managed productively through *tijārī* (commercial) Islamic contracts such as *ijārah*, *mudārabah*, and *mushārah* [22].

Traditionally, donors endowed agricultural or residential land, believing that the perpetual utility of

these assets would secure ongoing spiritual rewards [16]. In recent decades, however, the concept of waqf has expanded to include movable and financial instruments, such as shares, sukuk, Islamic banks, and digital waqf systems [13], [29]. These innovations have been supported by fatwas and regulatory reforms legalizing cash waqf and enabling waqf-related tax exemptions [12], [17].

Despite these developments, waqf institutions continue to face challenges, particularly when endowed properties become economically unviable due to changing land value, lack of infrastructure, or state acquisition [22]. In Malaysia, for example, large areas of waqf land remain idle especially in rural zones—because of their low commercial utility and the absence of initial capital investment or proper valuation by experts [11], [33].

To address such challenges, many Islamic legal scholars and waqf institutions have advocated for the application of *istibdāl* the substitution of underperforming waqf assets with more beneficial properties. *Istibdāl* is viewed as a strategic tool to preserve or enhance the value and function of waqf properties, especially in cases of asset degradation, misalignment with current needs, or lack of development feasibility [9], [22], [26]. However, community resistance remains significant, particularly

among adherents of the Shāfi‘ī school, which historically restricts *istibdāl* to exceptional cases [20].

Concerns also persist about the potential misuse of *istibdāl*. Several documented cases report abuse of the process through falsified court approvals and manipulated witness testimonies, resulting in asset loss or unlawful transfer [22], [10]. To counter these risks, councils such as the Majlis Agama Islam Kedah (MAIK) have implemented formal mechanisms to ensure lawful and transparent waqf substitution, including public oversight and legal review [5], [23].

Notwithstanding theological conservatism, Malaysia has increasingly adopted *istibdāl* to meet practical governance needs such as land consolidation, redevelopment, and mitigation of forced state acquisitions [30]. However, the academic literature remains disproportionately focused on related areas like cash waqf, Islamic social finance, and waqf governance, while *istibdāl* itself remains underexplored [25].

Indonesia presents a more structured legal approach, with *istibdāl* clearly sanctioned by several national regulations most notably Government Regulation No. 28 of 1977, the 1991 Compilation of Islamic Law, and the 2004 Waqf Law [31]. These statutes outline the legal mechanisms for altering the status of waqf land in the public interest, subject to judicial approval.

Existing studies on *istibdāl* can be grouped into several categories:

- Theoretical studies based on Sunni schools of law [3], [4], [20],
- Legal and policy analyses of waqf regulation [19], [20],
- Applied case studies from Malaysia and Indonesia [7], [27],
- Ethical and theological assessments rooted in *maṣlaḥa* and *maqāṣid al-sharī‘ah* [3], [4], [9],
- Customary law and local practices in Aceh [7],
- Institutional fatwas from major bodies such as Majelis Ulama Indonesia (MUI) and Muhammadiyah [14], [15], [21], [32].

Nevertheless, few studies offer a comparative analysis of how *istibdāl* is understood, regulated, and implemented across Malaysia and Indonesia particularly in relation to fatwas issued by MUI, Muhammadiyah, and Malaysian State Religious Councils. This study addresses this gap by examining the similarities and divergences in *istibdāl* practice, drawing on doctrinal sources, legal frameworks, and institutional mechanisms in both jurisdictions.

2. Methods

This study adopts a normative legal research design grounded in a conceptual approach, which relies

on the analysis of legal doctrines, principles, and scholarly perspectives that have developed within the discipline of Islamic jurisprudence and positive law [8]. The primary objective is to critically examine the legal and jurisprudential justifications for the permissibility of *istibdāl al-waqf* by exploring the interpretive positions of classical and contemporary *fuqahā’* (Islamic jurists), national legislative frameworks, and institutional fatwas. Furthermore, the study investigates the implementation of *istibdāl* in practice, using comparative doctrinal analysis to assess its alignment with established concepts in Islamic legal theory.

Data for this research were obtained through an extensive literature review, focusing on primary sources such as fatwas, statutory laws, classical *fiqh* texts, and contemporary academic publications related to waqf governance. The legal materials were then analyzed using the legal interpretation method, which enables systematic exegesis of texts through contextual, historical, and doctrinal lenses [6].

The data analysis process followed the three-stage model of qualitative research methodology as proposed by Miles, Huberman, and Saldaña [18]. These stages are as follows:

1. **Data Reduction:** This initial stage involved organizing and simplifying the collected materials by identifying and selecting only the most relevant information aligned with the study’s research objectives.

2. **Data Display:** The selected data were then structured and synthesized into coherent narrative forms, allowing thematic presentation and facilitating the identification of patterns in legal reasoning.

3. **Conclusion Drawing and Verification:** In the final stage, the study sought to derive analytical insights, causal relationships, and legal propositions from the data. These were subsequently validated through comparative cross-checking with established jurisprudential doctrines and statutory frameworks [18], [22].

Through this methodology, the research aims to reveal not only the textual and doctrinal basis for *istibdāl*, but also its practical implications within the regulatory ecosystems of Malaysia and Indonesia. The combination of doctrinal interpretation and comparative legal analysis provides a robust framework for evaluating the dynamic interplay between Islamic normative principles and statutory innovations in waqf management.

3. Result and Discussion

A. Istibdal from the Perspective of Classical Jurists

The concept of *istibdal* (substitution) derives from the Arabic root *badal*, meaning “to replace” or “to

exchange". In the context of waqf, *istibdal al-waqf* refers to the replacement of waqf assets with other assets of equivalent or higher value, typically by selling a waqf property that can no longer serve its intended purpose and acquiring a new asset that better preserves or enhances its benefits [2,34]. In classical jurisprudence, this mechanism is discussed as an exception to the general principle of the permanence and inalienability of waqf property.

Although the four major Sunni schools agree that waqf assets should, as far as possible, remain intact and dedicated to the purpose set by the *wāqif*, they differ on the scope and conditions under which substitution or sale is lawful. Across the schools, *istibdal* is generally linked to conditions of necessity (*darūrah*), clear public interest (*maṣlahah*), loss of utility, and the involvement of judicial or public authority to prevent abuse [2,9,10,22,25,31].

In contemporary positive law, the same logic appears in statutory provisions and fatwas that regulate the substitution of waqf assets in order to maintain or increase their economic and social benefits, while formally preserving the perpetual character of waqf [11,20,25,27,33].

Shāfi'ī School

The Shāfi'ī school adopts one of the most restrictive approaches to the substitution or sale of waqf assets. The default position is that waqf property becomes inalienable once validly dedicated, and may not be sold, exchanged, or reclaimed by the *wāqif* as long as it continues to yield benefits [28,34]. This strict stance is grounded in the general principle of waqf irrevocability in Shāfi'ī fiqh and in reliance on canonical reports on early waqf practice [1,2,28].

Nevertheless, Shāfi'ī jurists recognize limited exceptions. *Istibdal* may be considered in situations of clear necessity, notably when a mosque or other waqf property is severely damaged, cannot be repaired, or must be moved due to overriding public interest, for example road construction or urban redevelopment [10,25,31]. In such cases, some Shāfi'ī authorities allow the sale of the unusable asset and the purchase of a replacement asset, subject to the approval of a qualified judge, with the condition that the proceeds are fully reinvested into a functionally equivalent or superior waqf [25,28].

With respect to movables donated for mosques (such as carpets or furnishings), Shāfi'ī jurists generally allow their sale when they are worn out or no longer adequate for use, provided that the proceeds are used to acquire substitutes that continue to serve the same public function [10,22,28]. By contrast, the sale of mosque land is normally prohibited, even when the building has collapsed or the surrounding population has relocated, reflecting the strong presumption that mosque sites retain their waqf status and symbolic value [10,28].

Mālikī School

Mālikī jurists accept *istibdal* under clearly defined conditions and differentiate carefully between types of waqf assets. In their view, substitution is permissible if: (1) the *wāqif* explicitly authorized sale or exchange in the waqf deed; (2) the waqf object is movable and no longer serves its original function; or (3) substitution is required to meet a demonstrable public need, such as the construction or expansion of mosques, roads, cemeteries, or similar facilities [9,22,31].

At the same time, Mālikī jurists categorically prohibit *istibdal* in two central cases: (1) mosques, which are generally considered non-substitutable due to their specific religious and communal status; and (2) income-generating land that remains productive, where substitution is only contemplated in exceptional emergencies (such as necessary mosque expansion, new public roads, or burial grounds) clearly linked to public interest [9,10,22].

For immovable property that has lost its usefulness, Mālikī jurists distinguish three scenarios: (1) where the asset no longer yields any benefit and its continued existence is harmful, *istibdal* is permitted; (2) where there is a realistic prospect of restoring its benefits and no serious harm from its current condition, *istibdal* is not permitted; and (3) where there is no prospect of renewed benefit, but its mere existence is not harmful, leading opinions differ, though the dominant view remains cautious about permitting sale or exchange [9,22].

Ḥanafī School

The Ḥanafī school is comparatively more flexible in allowing the substitution of waqf assets, while still emphasizing judicial oversight. Substitution is considered permissible in several situations: (1) when the *wāqif* explicitly stipulates that *istibdal* is allowed; (2) when the waqf asset can no longer be preserved or maintained; (3) when a proposed replacement asset offers demonstrably greater utility or economic return; and (4) in situations of *darūrah* or clear *maṣlahah*, such as saline land that cannot be cultivated or non-productive plots whose returns are insufficient to cover maintenance and management costs [2,10,21,22,31].

In these cases, Ḥanafī jurists allow the competent authority (typically a judge or government body) to authorize the sale of non-functional or sub-optimal waqf assets and their replacement with more productive property, even in the absence of an explicit *wāqif* stipulation, provided that the entire value is preserved within the waqf [2,10,22,25].

As a result, the Ḥanafī school has often been invoked in modern legislation and fatwas to justify *istibdal* as an instrument for active waqf asset management, particularly in urban development and

the redevelopment of non-productive waqf land [4,11,19,20,25,29].

Ḥanbalī School

Ḥanbalī jurists generally endorse the permissibility of *istibdal* across a broad range of waqf assets, including mosques, on the condition that the original property is no longer capable of serving its intended function or that relocation and replacement clearly enhance its benefits [2,22,25]. Where a mosque is structurally unsafe, too small for the congregation, or located in an area that has lost its population, Ḥanbalī authorities justify the sale or exchange of the site and the construction of a replacement mosque on more suitable land [22,25].

Authoritative Ḥanbalī works explain that if waqf assets are damaged, decayed, or otherwise unable to generate any meaningful benefit, they may be sold and replaced with new assets so that the waqf's social function is preserved [2,22]. Based on this reasoning, Ḥanbalī jurists permit *istibdal* for both immovable and movable waqf assets, provided that the replacement asset maintains or increases the benefit originally envisaged by the *wāqif* [22,25].

Some Shāfi'ī and Mālikī authorities reject the permissibility of selling or replacing non-functional waqf objects even in such cases. However, Ḥanbalī and many Ḥanafī jurists, followed by several contemporary fatwa bodies, adopt a more pragmatic position: where the original waqf no longer serves its purpose, substitution is considered a means of safeguarding, rather than undermining, the underlying intent of waqf [2,9,22,26].

Comparative Synthesis of the Four Schools

From a comparative perspective, Mālikī and Shāfi'ī jurists adopt a more restrictive and preservation-oriented approach, limiting *istibdal* to narrow situations of necessity and treating mosques in particular as non-substitutable in almost all circumstances [9,22,28,31]. Ḥanafī and Ḥanbalī jurists, by contrast, are more open to substitution where it is demonstrably required to prevent deterioration or to enhance public benefit, subject to judicial or public oversight [2,10,22,25].

Across the schools, four core conditions for *istibdal* emerge: (1) a situation of necessity or serious difficulty; (2) loss or substantial reduction of the waqf asset's utility; (3) explicit *wāqif* stipulations authorizing substitution; and (4) clear evidence of benefit and public interest in the replacement asset. These conditions are closely linked to whether the asset is movable or immovable and whether it continues to produce benefits [2,9,10,22,25].

Most contemporary scholars and institutions now accept *istibdal* as a legitimate mechanism in waqf management, provided that these substantive and procedural safeguards are satisfied and that the

proceeds are fully reinvested into replacement waqf assets of equal or greater value [4,11,20,25,27,33].

B. Istibdal in Contemporary Fatwas

Fatwas of the State Islamic Religious Councils (MAIN) in Malaysia

In Malaysia, the implementation of *istibdal* is closely linked to the authority of the State Islamic Religious Councils (*Majlis Agama Islam Negeri*, MAIN) and guided by decisions of national and state fatwa committees. Two principal categories are recognized in practice: (1) land-for-land substitution; and (2) land-for-building substitution, where compensation received for waqf land is used to construct buildings on other waqf land [12,19,20].

State fatwa decisions illustrate how these principles are operationalized. For example, the Fatwa Committee of Terengganu approved the use of compensation for acquired mosque waqf land to construct buildings on alternative waqf land, treating this as a valid form of *istibdal* [12,19]. A subsequent decision of the National Fatwa Committee emphasized that the development of special waqf land particularly mosque waqf through additional projects or improvement works is required when it ensures the long-term preservation of waqf assets, provided that such development is based on demonstrable needs and is not contrary to Islamic legal principles [12,17,20].

At the same time, national fatwa resolutions stress that waqf land cannot generally be transferred or alienated, except in cases of emergency and under strict conditions. When waqf land is compulsorily acquired, it must be compensated at full value, and, where possible, replaced with land of equal or higher value. Waqf land earmarked for development should, as far as possible, be exempted from mandatory surrender for public facilities in order to protect the integrity of waqf [12,17,20,25].

Fatwa of the Nahdlatul Ulama Bahtsul Masail Institute (LBM-NU)

The 1996 fatwa of the *Lajnah Bahtsul Masail* (LBM-NU) responded to a concrete case in Simpang Wetan Village, Indonesia, where a historic mosque situated next to a main road had to be partially reconfigured due to road widening and functional needs (creation of a courtyard and parking area). The front portion of the mosque land was converted into a yard and parking area and replaced with newly endowed land behind the mosque, where a larger two-storey mosque was built [26].

LBM-NU's analysis systematically compared the positions of the Shāfi'ī, Ḥanafī, and Ḥanbalī schools, relying on recognized doctrinal sources. It noted that Shāfi'ī jurists generally prohibit the sale or exchange of mosque waqf land, even when damaged, whereas Ḥanafī and Ḥanbalī jurists permit substitution when it yields greater benefits and is endorsed by competent religious authorities [2,22,26].

On this basis, LBM-NU concluded that substitution of mosque waqf land is permissible when it demonstrably increases the mosque's capacity and functionality and when the decision is collectively agreed by the mosque management and local scholars. The fatwa framed *istibdal* not as an erosion of waqf, but as an instrument to maintain and enhance its benefits in a changing spatial and infrastructural context [22,26].

Fatwas of the Indonesian Ulema Council (MUI)

The Indonesian Ulema Council (MUI) has issued several key fatwas governing *istibdal*, including Fatwa No. 34/2013 on the utilization of mosque areas and Fatwa No. 54/2014 on the status of land on which a mosque is built [14,15].

Fatwa No. 34/2013 allows mosque waqf land to be used for social and economically productive activities, provided that such use serves the interests of the mosque and the wider community, complies with Islamic legal principles, and preserves the physical integrity and primary function of mosque waqf [14]. Economic empowerment of mosque waqf is thus explicitly encouraged, but must be balanced with safeguards ensuring that the core religious function of the mosque is not undermined.

Fatwa No. 54/2014 clarifies that land on which a mosque stands should be treated as waqf and, where this status has not yet been formalized, steps must be taken to certify it as such. It reiterates that waqf land may not be exchanged, reallocated, or sold except under specific conditions, which include: (1) preserving the continuity of waqf benefits; (2) ensuring that any replacement asset has equal or higher value; (3) maintaining the *wāqif's* original intentions as far as possible; and (4) obtaining the approval of the Minister of Religious Affairs, the Indonesian Waqf Board (BWI), and the MUI Fatwa Commission [14,15,22].

These fatwas situate *istibdal* within a broader regulatory framework that combines classical fiqh principles with modern administrative requirements, emphasizing transparency, documentation, and multi-level oversight.

Fatwa of the Muhammadiyah Tarjih and Tajdid Council

The Muhammadiyah Tarjih and Tajdid Council has also addressed the substitution and sale of waqf property in cases where original waqf land proves sub-optimal for educational or religious purposes. One prominent fatwa relates to the sale of waqf land initially acquired for a school, which was later replaced by more strategically located waqf land donated by another benefactor. The Council allowed the original waqf land to be sold, with the proceeds used to complete the construction of the school on the better-located waqf land [32].

In its reasoning, the Council distinguished between *istibdal* arising from necessity (for instance, where the original site is unsuitable for the intended institution) and *istibdal* motivated by a stronger public interest (such as relocating a mosque or school to a more accessible area). In both scenarios, substitution was deemed permissible when it clearly furthered the *wāqif's* educational or religious purposes and when the entire proceeds of sale were reinvested in waqf assets that improved institutional effectiveness [22,31,32].

C. Implementation of Istibdal in Malaysia, Indonesia, and Singapore

Malaysia: Statutory Framework and Administrative Practice

In Malaysia, waqf matters fall under state jurisdiction pursuant to the Ninth Schedule (State List) of the Federal Constitution. Several states—such as Selangor, Negeri Sembilan, and Melaka—have enacted specific waqf legislation that includes detailed provisions on *istibdal*, typically stipulating that the replacement waqf asset must have equal or higher value and can be realized through exchange, sale, or purchase [17,19,20,23].

The *Enakmen Wakaf* of Terengganu, Perak, Selangor, Melaka, and Negeri Sembilan provide a relatively uniform interpretation of *istibdal*: substitution is permitted when waqf assets can no longer be beneficially utilized, conflict with written law, or need to be reconfigured to better fulfill the *wāqif's* intentions. The enactments specify conditions such as: conflict between waqf conditions and statutory provisions, compulsory acquisition of waqf land, persistent lack of benefit, impossibility of fulfilling *wāqif* conditions due to changed circumstances, or other substantial reasons determined by the State Council [17,19,20].

Fatwa committees play a central role in authorizing *istibdal* and ensuring conformity with Islamic legal standards. At the federal level, the National Fatwa Committee has endorsed the use of Ḥanafī doctrine to justify waqf substitution, particularly for urban development, land acquisition, and non-productive waqf land. The Committee has emphasized that *istibdal* must always seek to preserve or enhance the waqf's beneficial impact and that replacement assets should be carefully selected to match or exceed the economic and social value of the original waqf [12,16,19,20,25,29].

Given the complexity of finding equivalent replacement properties especially in urban contexts with rapidly changing land values recent research has explored the use of geographic information systems (GIS) to support decision-making in *istibdal* by mapping waqf assets, land values, and potential replacement sites [4,19,30].

Indonesia: Waqf Law and Administrative Challenges

In Indonesia, the legal framework for waqf is set out in Law No. 41 of 2004 and its implementing regulations. Article 40 affirms the principle that endowed waqf assets cannot be used as collateral, confiscated, given, sold, inherited, exchanged, or transferred into other rights. However, subsequent provisions and implementing regulations introduce a controlled space for *istibdal* where exchange is necessary to preserve or improve waqf benefits, subject to written approval from the Minister of Religious Affairs and the Indonesian Waqf Board (BWI) [7,20,21,22].

Studies of local practice, such as in Central Aceh, reveal gaps between the statutory framework and actual implementation. While many communities do formally register waqf land with the relevant authorities, a significant number of changes in waqf land use still occur informally, without proper documentation or registration. This leads to a lack of transparency regarding alterations in waqf land use and undermines administrative control over *istibdal* processes [7,21].

Legal analysis of such cases underscores the importance of formal waqf pledge deeds, timely registration, and adherence to statutory procedures for any subsequent change in waqf land designation. Without these steps, changes in use or informal “exchange” of waqf land may not be recognized under Indonesian law and can potentially harm the interests of beneficiaries and the integrity of the waqf system [7,20,21,22].

A detailed case from Banyumas (Central Java) shows how *istibdal* can be implemented in accordance with law and public interest. A waqf plot originally donated for a kindergarten was located at the edge of a village and proved unsuitable for long-term educational development. The Nazir, together with other stakeholders, proposed an exchange with a larger, more centrally located certified plot. The substitution was justified on the basis of: (1) higher land value; (2) better accessibility and safety for students; and (3) a demonstrably greater potential for sustainable educational activity. After the necessary feasibility assessment and administrative approvals, the exchange was carried out to support the continuity and development of the educational institution [31].

This case illustrates how *istibdal* can be aligned with both statutory standards and classical fiqh principles: the core waqf capital is preserved (and even increased), the beneficiaries’ interests are better served, and the original intention of supporting education is more effectively realized [20,22,31].

Singapore and Other Contexts

In Singapore, where waqf land is scarce and subject to intense urban pressures, the Islamic Religious Council of Singapore (MUIS) has actively used *istibdal* to redevelop non-productive waqf land

into commercially viable properties, thereby generating sustainable income for religious, educational, and social programs. Through such mechanisms, multiple waqf plots have been consolidated and transformed into modern building assets while maintaining their waqf status [19,20].

These experiences highlight that, in contexts with limited land and high urbanization, *istibdal* is not merely an optional legal device but a critical instrument for preserving waqf relevance and financial viability in contemporary conditions [11,16,19,29,33].

D. Overall Assessment

Across classical jurisprudence, contemporary fatwas, and positive law in Malaysia, Indonesia, and Singapore, *istibdal* emerges as a central instrument for the adaptive management of waqf assets. While the four Sunni schools differ in their degree of permissiveness, there is broad convergence on several key principles:

1. Preservation of waqf: The primary objective is to preserve and, where possible, enhance the benefits of waqf assets for beneficiaries and the wider community [2,9,10,22,25].

2. Exceptional nature of substitution: *Istibdal* is conceptualized as an exception to the general rule of waqf permanence and must be justified by necessity, loss of utility, or clear public interest, especially regarding mosques and other high-symbolic assets [9,22,28,31].

3. Requirement of equivalent or higher value: Replacement assets must have at least equal, and ideally greater, economic and functional value than the original waqf property [12,15,19,20,25].

4. Judicial and administrative oversight: Decisions on *istibdal* are subject to the approval of judges, religious councils, or designated waqf authorities, and increasingly embedded in statutory procedures to minimize misuse and ensure accountability [11,17,20,22,25,29].

5. Alignment with the *wāqif*’s intention: Substitution must remain as close as possible to the original purpose set by the *wāqif*, whether religious, educational, or socio-economic, thereby preserving the normative core of the waqf dedication [3,13,22,26,32].

From a policy perspective, the acceptance of *istibdal* has significant implications for waqf-based economic and social development. It enables the rationalization of scattered or non-productive waqf holdings, supports urban renewal and institutional expansion, and underpins innovative instruments such as waqf-linked sukuk that rely on active asset management [11,13,27,29,33-34]. At the same time, the jurisprudential and regulatory tradition places clear constraints on substitution in order to prevent the erosion of waqf capital and to safeguard long-term communal interests.

4. Conclusion

Istibdāl constitutes a critical instrument within the contemporary governance of waqf, functioning as a legally regulated exception to the general principle of waqf permanence. From the perspective of positive law, Malaysia and Indonesia have both institutionalized istibdāl through detailed statutory and regulatory frameworks. In Malaysia, the possibility of substituting waqf assets is embedded in the broader land and heritage regime—such as the Land Acquisition Act 1960, the National Land Code 1965, and state waqf enactments—and operationalized through state religious authorities and fatwa institutions, which require that any substituted asset be of equal or higher value and remain compliant with Islamic legal principles [11,17,19,20,23,27,29]. In Indonesia, istibdāl is accommodated within the Basic Agrarian Law No. 5 of 1960, Government Regulation No. 28 of 1977, Law No. 41 of 2004 on Waqf, and Government Regulation No. 42 of 2006, which collectively permit exchange in narrowly defined circumstances and subject to the approval of the Ministry of Religious Affairs and the Indonesian Waqf Board (BWI) [7,20,21,22].

From the standpoint of classical jurisprudence, our analysis confirms a structured but differentiated approach across the four major Sunni schools. The Shāfi'ī school, adopted by a majority of Southeast Asian Muslims, treats istibdāl as an exceptional measure, permissible only in urgent circumstances and where clear benefit (*maṣlahah*) can be demonstrated, and then only with the authorization of a competent judge [2,9,22,28]. Mālikī jurists permit istibdāl when the *wāqif* has expressly allowed it in the waqf deed, when movable waqf objects no longer serve their original purpose, or when replacement is necessary for recognized public interests, while generally prohibiting substitution of mosques and productive land except in cases of emergency [9,22]. The Ḥanafī school allows istibdāl more broadly where the *wāqif* has indicated its permissibility, where the original asset cannot be preserved, where a replacement asset yields greater benefit, or where there is *darūrah*, provided that judicial approval is obtained to ensure that the process genuinely serves *maṣlahah* and is not open to abuse [2,10,22,25]. The Ḥanbalī school similarly permits the sale or exchange of mosques and other waqf assets when they are no longer functional or urgently need to be relocated, on the condition that the replacement preserves or enhances the benefits intended by the waqf [2,22,25].

These doctrinal positions translate into differentiated treatment of various asset classes. With respect to mosques, the majority of Mālikī, Shāfi'ī, and Ḥanafī jurists prohibit istibdāl, whereas Ḥanbalī jurists allow substitution in cases of clear necessity and loss of function [9,10,22,28]. For immovable, income-generating property, Mālikī, Shāfi'ī, and many Ḥanafī scholars generally prohibit istibdāl as long as the asset

remains beneficial, while accepting substitution where it no longer produces meaningful returns or where public interest clearly demands restructuring [9,22]. Movable waqf assets are treated more flexibly: Mālikī jurists allow substitution once such assets cease to be useful and are replaced with items that better serve the waqf's objectives; Ḥanafī and Ḥanbalī jurists broadly permit istibdāl for movable property that no longer fulfills its intended function; and Shāfi'ī authorities are divided between those who prohibit any substitution and those who allow it when the asset can no longer be used in line with the *wāqif*'s stipulations [2,9,22,28].

The fatwas surveyed in this study further demonstrate how classical doctrines are operationalized in modern legal systems. State Islamic Religious Councils in Malaysia (MAIN) have adopted a Hanafi-oriented framework that allows land-for-land and land-for-building istibdāl, subject to demonstrable need, preservation of value, and compliance with Islamic law [12,19,20,25]. The 1996 fatwa of the Nahdlatul Ulama Bahtsul Masail Institute (LBM-NU), addressing the partial reconfiguration of mosque land due to road widening and the creation of parking space, explicitly combines restrictive Shāfi'ī views with more permissive Ḥanafī and Ḥanbalī positions to allow substitution where it yields greater functional and spatial benefits [22,26]. The 2009 and subsequent fatwas of the Indonesian Ulema Council (MUI), including Fatwas No. 34/2013 and No. 54/2014, endorse istibdāl as permissible when it maintains or enhances waqf benefits, ensures at least equivalent replacement value, respects the *wāqif*'s intention, and is carried out with ministerial and BWI approval [14,15,22]. The Tarjih and Tajdid Council of Muhammadiyah likewise authorizes istibdāl of both movable and immovable waqf assets with the consent of the *wāqif* or their heirs, provided that the proceeds are fully reinvested in waqf property that better supports educational or religious purposes [31,32].

At the implementation level, Malaysia illustrates a highly institutionalized model in which state enactments, fatwa committees, and administrative agencies jointly regulate istibdāl, typically applying it to urban development, land acquisition, and the redevelopment of underutilized waqf land [11,17,19,20,29]. In Indonesia, empirical studies from Aceh and Banyumas reveal both the potential and the challenges of aligning local practice with statutory and fiqh-based standards, showing that formally authorized exchanges can significantly enhance access, safety, and institutional sustainability when guided by Law No. 41 of 2004 and Government Regulation No. 42 of 2006 [7,20,21,22,31].

Taken together, these findings indicate that istibdāl, when subject to clear substantive criteria (necessity, preservation or enhancement of benefit, equivalence or superiority of replacement value) and

robust procedural safeguards (judicial or administrative approval, transparent documentation, and alignment with the *wāqif's* intentions), can serve as a key instrument for modernizing and optimizing waqf asset portfolios without undermining the foundational principle of waqf perpetuity. For legal systems and waqf authorities seeking to harness waqf as a tool for sustainable socio-economic development, the comparative experience of Malaysia and Indonesia suggests that carefully designed *istibdāl* regimes can reconcile classical doctrinal constraints with contemporary needs in land management, urban planning, and institutional finance.

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Word count (excluding references): 8,666 words.

Peer-review record:

Fast-track status: Not fast-tracked

First-round reviews received: 3 reports

Revision cycles completed: 3 rounds

Final version submitted: October 12, 2025

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