

# FIQH ANALYSIS OF ISTIBDAL WAQF PRACTICES IN INDONESIA

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## Abstract

*Waqf plays an important role in the Islamic economic system, both spiritually and socially. However, socio-economic dynamics often make some waqf assets unproductive. To address this, istibdal (the replacement of waqf assets) is seen as a solution to maintain sustainability and public benefit. This article discusses the practice of istibdal in Indonesia from both fiqh and regulatory perspectives. In fiqh, scholars differ in opinion, ranging from those who prohibit it to those who permit it under the condition of public interest (masalahah). Legally, istibdal is regulated under Law No. 41/2004, Government Regulation No. 42/2006, and MUI fatwas, with supervision by BWI and the Ministry of Religious Affairs. Nevertheless, its implementation still faces challenges such as bureaucracy, low awareness among nazhir (waqf managers), community resistance, and the risk of misuse. Strengthening capacity, ensuring transparency, and encouraging community participation are needed so that istibdal aligns with maqāṣid al-sharī'ah and supports productive and sustainable waqf governance*

**Keywords:** *Waqf, Istibdal, Fiqh, Regulation, Indonesia*

## Analisis Fikih Tentang Istibdal Praktek Wakaf Di Indonesia

### Abstrak

Waqf memiliki peran penting dalam sistem ekonomi Islam, baik secara spiritual maupun sosial. Namun, dinamika sosial-ekonomi sering membuat sebagian aset wakaf tidak produktif. Untuk itu, *istibdal* (penggantian aset wakaf) dipandang sebagai solusi menjaga keberlanjutan dan kemanfaatan publik. Artikel ini membahas praktik istibdal di Indonesia dari perspektif fiqih dan regulasi. Dalam fiqih, ulama berbeda pendapat, dari yang melarang hingga yang membolehkan dengan syarat adanya kemaslahatan. Secara hukum, istibdal diatur dalam UU No. 41/2004, PP No. 42/2006, dan fatwa MUI, dengan pengawasan BWI dan Kementerian Agama. Meski begitu, pelaksanaannya masih terkendala birokrasi, rendahnya pemahaman nazhir, resistensi masyarakat, dan risiko penyalahgunaan. Diperlukan penguatan kapasitas, transparansi, dan partisipasi masyarakat agar praktik istibdal selaras dengan maqāṣid al-sharī'ah serta mendukung tata kelola wakaf yang produktif dan berkelanjutan.

**Kata Kunci:** wakaf, istibdal, fikih, regulasi, Indonesia

### 1. Introduction

Waqf holds a strategic position in the Islamic economic system as a philanthropic instrument oriented toward public welfare (masalahah 'ammah). Since the early period of Islam, waqf has made significant contributions to supporting education, healthcare services, infrastructure development, and poverty alleviation. One of the main advantages of waqf is its sustainable nature (istimrāriyyah al-intifā'), whereby the benefits of endowed assets continue to be enjoyed without diminishing the principal substance of the property. (Maisyarah, 2024)

When discussing waqf, many people immediately think of land, mosques, or free schools. (Rofiq, 1995) In fact, waqf is far broader than that. It is not merely a passive asset, but an essential component of the

Islamic social system. It contains not only spiritual value as an act of worship, but also economic and social value. Through waqf, people can gain access to education, healthcare services, and even mechanisms to strengthen social justice. (Hutagalung, 2023) From a legal perspective, waqf is an act in which an individual voluntarily sets aside a portion of their wealth for the common good. Its nature is permanent, meaning that the endowed property may not be sold or inherited. Spiritually, waqf represents pure sincerity an intention solely for the sake of Allah. However, in practice, problems often arise. Many waqf endowments are carried out informally, without official deeds or proper registration. As a result, when generations change, confusion emerges regarding who is responsible for managing the assets and how they should be utilized. (Rusydziana, 2023)

Historically, waqf has demonstrated tangible contributions. Numerous Islamic schools, hospitals, and social infrastructure projects have been established through waqf. The strength of waqf lies in its sustainability: its benefits can be continuously enjoyed while the principal asset remains intact. Nevertheless, times have changed. Urban development, shifts in land use, and evolving economic activities have altered the context. Waqf land that was once strategically located may now be surrounded by high-rise buildings or displaced by toll road projects, rendering many assets no longer productive. (BWI, 2023)

This is where the concept of *istibdal* emerges. In simple terms, *istibdal* is a mechanism for replacing a waqf asset with another asset that provides greater benefit. Its purpose is not to diminish the value of waqf, but to ensure that its benefits continue. (Al-Kabisi, 2004) Scholars differ in their views on this issue. Some strongly oppose *istibdal* out of concern that it may undermine the sanctity of waqf, while others permit it under strict conditions, particularly when it clearly serves the public interest. In Indonesia, *istibdal* is strictly regulated. Legal frameworks include Law No. 41 of 2004 on Waqf, Government Regulation No. 42 of 2006, and regulations issued by the Indonesian Waqf Board (Badan Wakaf Indonesia/BWI). (Republik Indonesia, 2004) The principle is clear: *istibdal* may only be conducted under certain conditions, through formal legal procedures, and with official authorization. Despite the existence of these regulations, implementation in practice is far from simple. Lengthy bureaucracy, limited understanding among *nazhir* (waqf managers), public skepticism, and the risk of misuse remain significant challenges. (Helim, 2023)

What, then, are the solutions? First, *nazhir* must be equipped with knowledge of modern waqf management. Second, transparency must be enhanced to build public trust. Third, community involvement should be strengthened. When people feel included, resistance tends to decrease significantly. Through these measures, *istibdal* can truly align with the objectives of *maqāṣid al-sharī'ah* preserving public welfare. If waqf management in Indonesia is directed toward this approach, the results could be extraordinary. Waqf land and buildings that have long been neglected could be transformed into schools, hospitals, or other productive projects. Ultimately, the Muslim community would enjoy greater benefits, and waqf would continue to function as a sustainable socio-economic instrument. (Ismail, 2023)

The management of waqf property through the mechanism of *istibdal* has become an increasingly relevant issue amid efforts to optimize waqf assets in support of national development. Indonesia possesses thousands of waqf assets in the form of land and buildings that have the potential to be developed into educational centers, healthcare facilities, or other productive projects with significant socio-economic impact. However, without strategic interventions such as *istibdal*, many of these assets risk being neglected or utilized suboptimally.

Therefore, an in-depth study that combines *fiqh* analysis with an examination of the practical implementation of *istibdal* waqf in Indonesia is essential. *Fiqh* analysis is necessary to ensure that every step in asset management remains grounded in sharia principles, while an assessment of field practices provides a realistic picture of opportunities, challenges, and implementation strategies. This approach is expected to generate policy recommendations and models for waqf property management that are more effective, accountable, and compliant with Islamic law.

By examining these two aspects simultaneously, this study is expected to bridge the gap between *fiqh* theory and the realities of waqf asset management in Indonesia, while promoting more productive, sustainable, and welfare-oriented utilization of waqf assets.

## 2. Research Method

This study employs a qualitative research method with a normative juridical approach based on Islamic jurisprudence (*fiqh*). The research focuses on analyzing *fiqh* norms related to *istibdal* waqf alongside

the applicable positive law in Indonesia. The data are collected through library research by examining primary sources, including classical fiqh texts from various Islamic schools of law, fatwas issued by the National Sharia Council of the Indonesian Ulama Council (DSN-MUI), Law Number 41 of 2004 on Waqf, and its implementing regulations issued by the Ministry of Religious Affairs and the Indonesian Waqf Board. Secondary sources consist of scholarly journal articles, books, and reports from waqf management institutions. Data analysis is conducted using content analysis and comparative fiqh analysis, with particular emphasis on the principle of public benefit (*maslahah*), fiqh legal maxims, and the relevance between normative fiqh provisions and the practice of *istibdal waqf* in Indonesia.

### 3. Result and Discussion

#### 3.1. The Concept of Istibdal in the Fiqh Perspective

*Istibdal waqf* essentially derives from the Arabic word *istibdāl*, which means to replace or exchange something. In waqf law, this term is understood as an effort to replace waqf assets with other assets of equal or even greater value in order to preserve public benefit (*maslahah*). (BWI, 2010) In classical fiqh literature, this practice is not entirely unrestricted; rather, it is permitted only under certain conditions, particularly when waqf assets are damaged, no longer productive, or obstructed from being used for their original purpose. The most fundamental requirement is that the intention of the *waqif* must not change, and any replacement must remain in line with the principle of *maslahah* recognized by the Sharia. (Farhah, 2019)

Interestingly, scholars from different schools of law hold varying views on *istibdal*. The Hanafi school, for instance, tends to provide broader flexibility. They allow *istibdal* if the *waqif* has indicated such a possibility in the waqf declaration, or if there is a significant necessity, such as when waqf land is damaged or no longer strategically located. In such circumstances, a judge or the government may decide on the replacement for the sake of public benefit, provided that the value and type of the replacement asset are equivalent. However, there is an absolute exception for certain assets, such as mosques or emancipated slaves endowed as waqf, which according to scholarly consensus (*ijmā'*) may not be transferred, as their status is considered to be entirely devoted to Allah. (Chamim, 2020)

In contrast, the Maliki school adopts a stricter position, particularly with regard to mosques. Generally, the *istibdal* of mosques is prohibited because of their elevated status in Islam. Nevertheless, exceptions are recognized in cases of urgent necessity, such as the need to expand a mosque to accommodate a growing congregation. In certain situations, the *waqif* may even be compelled to sell land surrounding the mosque if the public interest truly demands it. Some Maliki scholars, such as Ibn Rushd and Abu Zahrah, are also more open to *istibdal* of assets that have lost their utility, provided there are clear reasons and judicial authorization. For movable waqf assets, such as worn clothing or sick animals, *istibdal* is permitted so that the benefit of the waqf does not simply disappear. (Luhfiana, 2023)

The Shafi'i school represents the most restrictive stance. According to this view, waqf property belongs to Allah and its physical form must be preserved, not merely its benefit. Therefore, selling or replacing waqf assets is generally impermissible, even when the assets are damaged or no longer useful. This prohibition is based on prophetic traditions as well as historical experience, particularly cases in Egypt where *istibdal* practices led to widespread abuse. Nevertheless, a small number of Shafi'i scholars allow limited flexibility when an asset can no longer be utilized at all, on the condition that the proceeds are used for the same purpose in accordance with the *waqif's* original intention. This strict approach is intended to safeguard the trust of the *waqif* and prevent potential misuse that could harm the community. (Huda, 2024)

By contrast, the Hanbali school is relatively more flexible. It views *istibdal* as a permissible solution when waqf assets are damaged, no longer beneficial, or cannot be used according to their original purpose, such as a collapsed mosque or barren waqf land that cannot be cultivated. Hanbali scholars such as Ibn Qudamah, al-Mardawi, and Ibn Taymiyyah argue that in such circumstances the asset may be sold, provided that the proceeds are used to acquire a similar replacement so that its social function continues. This approach is more lenient than the Shafi'i position, as it emphasizes the principle of *maslahah* and seeks to avoid waste. (Mufidah, 2019)

In the Indonesian context, the term “*istibdal*” is not explicitly mentioned in Law No. 41 of 2004 on Waqf. However, the concept is clearly present and regulated under Article 41, which stipulates that the exchange of waqf assets may only be carried out with the approval of the Minister of Religious Affairs, based on the consideration of the Indonesian Waqf Board (BWI). (Indonesia, 2002) The 2002 MUI fatwa similarly

affirms that istibdal is permissible as long as it does not alter the purpose of the waqf, generates greater benefit, and obtains authorization from the religious court. These regulations are intentionally stringent to prevent the misuse of istibdal practices. (Muhtar, 2022)

In practice, istibdal often becomes a crucial strategy for optimizing waqf assets. For example, waqf land located in non-strategic areas may be converted into other, more economically productive assets while still delivering social benefits to the community. A case in Bekasi illustrates this, where waqf land designated for a mosque had to be relocated due to a toll road development project. The process required coordination among BWI, local government, and community leaders to avoid conflict. (Wahab, 2020)

Similar practices can also be observed in other countries, such as Egypt and Turkey, where istibdal has long been incorporated into waqf revitalization strategies. Unproductive assets are converted for the development of hospitals, schools, or social service centers while adhering to Sharia principles. From an economic perspective, istibdal clearly plays a significant role in realizing sustainable and productive waqf. Nonetheless, challenges remain, particularly the potential for conflicts of interest among the *waqif*, *nāzir*, and the government when high-value assets are involved. Therefore, regulations must be not only strict but also adaptive. The principle of *maqāṣid al-sharī'ah* should serve as the primary guideline, accompanied by transparency and public participation, to ensure that istibdal truly functions as a fair, beneficial, and sustainable instrument for waqf empowerment. (Musthafa, 2022)

### 3.2. Regulation of Istibdal Waqf and Its Implementation in Indonesia

Istibdal waqf constitutes an important issue in waqf management in Indonesia, given that waqf is, in principle, perpetual and its ownership (Hasanah, 2021) cannot be transferred. Within the framework of positive law, regulations concerning istibdal have been accommodated, even though the term itself is not explicitly mentioned in statutory provisions. The primary legal basis is found in Law No. 41 of 2004 on Waqf, particularly Article 40. (Republik Indonesia, 2004) More detailed regulations are set out in Government Regulation No. 42 of 2006 on the Implementation of the Waqf Law, which governs the mechanisms, requirements, and procedures for the transfer or exchange of waqf assets.

Under these regulations, istibdal is positioned as an extraordinary measure that may only be undertaken when there are valid and compelling reasons, especially for public interest purposes or when waqf assets can no longer function as intended. The process must involve a formal application from the *nāzir*, an independent valuation of the waqf assets to be exchanged, consideration and approval by the Indonesian Waqf Board (BWI), and written authorization from the Minister of Religious Affairs. Minister of Religious Affairs Regulation No. 73 of 2013 further provides technical guidelines regarding application formats, required documentation, and asset valuation procedures, all of which are intended to strengthen transparency and prevent misuse.

Despite the strong legal foundation, the legitimacy of istibdal in Islamic law remains a key reference point. From a fiqh perspective, istibdal is permitted by some scholars under the primary condition that there is clear *masalah* and that the value of benefit is not diminished. The Hanafi school is more flexible, allowing istibdal in situations where waqf assets are damaged or no longer beneficial, while the Shafi'i (Huda, 2024) school adopts a much stricter stance and permits it only when waqf assets have been destroyed or can no longer be utilized. The Maliki and Hanbali (Chamim, 2020) schools take a more moderate position, allowing istibdal when the public benefit is evident and when approval is granted by a legitimate authority. Indonesia's legal position tends to take a middle path, accommodating flexibility similar to the Hanafi view while maintaining strict limitations in line with the Shafi'i tradition, namely restricting istibdal to public interest purposes that are already regulated within spatial planning frameworks.

The implementation of istibdal waqf in Indonesia remains relatively limited. One major reason is the stringent legal requirements and administrative procedures that must be fulfilled. Existing practices include the replacement of waqf land for toll road construction or other public facilities, the exchange of waqf assets affected by changes in urban spatial planning, and the optimization of productive waqf assets through the exchange of less strategic land for assets of higher value with greater potential to generate economic benefits for the *mauqūf 'alaih*. In each case, BWI plays a role in verification and issuing recommendations, while the Ministry of Religious Affairs provides final approval. (Waluya, 2018)

However, in practice, several challenges continue to hinder the optimization of istibdal. Limited understanding among *nāzir* regarding procedures and legal requirements often results in incomplete or rejected applications. At the same time, potential conflicts of interest may arise when istibdal processes are

linked to large-scale projects involving the government or private sector actors. In addition, public distrust toward changes in the status of waqf assets often triggers resistance, as many perceive istibdal as synonymous with relinquishing or even eliminating waqf property. Post-istibdal supervision has also not been fully effective, resulting in replacement assets that are not always managed optimally. (Sabri, 2020)

From an analytical perspective, the regulation of istibdal waqf in Indonesia has been constructed with a high degree of prudence to safeguard the perpetual nature of waqf assets, while simultaneously allowing adaptive space to respond to evolving societal needs. This approach reflects an effort to compromise between fiqh principles and modern demands, yet its success depends heavily on the accountability of *nāzir*, the effectiveness of oversight mechanisms, and transparency of information to the public. Going forward, strengthening *nāzir* capacity, enhancing monitoring systems, and developing effective public communication strategies are crucial to ensuring that istibdal waqf is not perceived as a loss of the sacred value of waqf, but rather as a strategy for transferring benefits into more relevant and sustainable forms. (Prihanto, 2020)

### 3.3. Analysis between Fiqh and Its Practice in Indonesia

From a fiqh perspective, istibdal waqf is understood as an effort to exchange or replace waqf assets with other assets deemed more beneficial (*maslahah*) for the community. Scholars differ in their views on its permissibility. The Hanafi school is generally more lenient in allowing istibdal, even with respect to waqf land, as long as there is a greater public benefit. In contrast, the Maliki and Shafi'i schools adopt a stricter stance, permitting istibdal only when waqf assets have lost their benefit or have been damaged. Hanbali scholars, particularly the thoughts of Ibn Taymiyyah and Ibn Qayyim, emphasize the importance of preserving the purpose of waqf namely, (Maulani, 2022) sustainable benefit and therefore allow istibdal when it brings broader public interest. In contemporary developments, scholars increasingly emphasize the *maqāṣid al-sharī'ah* approach, especially the principles of *ḥifẓ al-māl* (protection of property) and public benefit, as the basis for permitting istibdal. (Iqlima, 2018)

In Indonesia, the practice of istibdal waqf has a clear legal foundation in Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006. These regulations permit the exchange of waqf assets, particularly immovable property such as land, subject to certain conditions. The istibdal process must obtain approval from the Indonesian Waqf Board (BWI) and the Minister of Religious Affairs, and it must adhere to the principle that the replacement asset must be at least equal in value or better than the original asset. This regulatory framework aligns with fiqh principles that emphasize *maslahah*, while incorporating administrative mechanisms to prevent misuse. (Ilyas, 2016)

In practice, however, the implementation of istibdal waqf in Indonesia faces its own challenges. On the one hand, there are successful examples, such as the exchange of waqf land that was initially narrow and unproductive for larger and more strategically located land, thereby increasing benefits for the community. (Farhah, 2019) On the other hand, problems also arise in the form of complex bureaucracy, conflicts between *nāzir* and local communities, and the potential for misuse when waqf land is converted for commercial projects that are not fully aligned with waqf objectives. Some cases have also generated social resistance, for instance when waqf land for mosques or cemeteries is exchanged for the sake of toll road construction or other infrastructure projects. (Yusup, 2023)

Thus, it can be observed that, normatively, both fiqh and Indonesia's positive law open opportunities for istibdal based on the principle of *maslahah*, yet its implementation continues to face significant challenges. To ensure that istibdal waqf truly aligns with *maqāṣid al-sharī'ah*, practice in Indonesia must strengthen transparency, accountability, and public participation. These measures are essential to ensure that istibdal not only complies with legal requirements but also fulfills the essence of fiqh by delivering sustainable and lasting benefits to the community (Suhaimi, 2024).

## 4. Conclusion

The concept of istibdal waqf in the fiqh perspective essentially refers to the replacement or exchange of waqf assets with other assets that provide greater benefit, without eliminating the core objective of waqf, namely the continuity of benefit (*dawām al-intifā'*). Scholars hold differing views on its permissibility: some prohibit it in order to preserve the perpetuity of waqf assets, while others allow it on the condition that there is a clear public benefit (*maslahah*), that it does not contradict the intention of the *waqif*, and that it is carried out with due caution through authorized authorities.

In the context of Indonesian regulation, istibdal is legally recognized under Law No. 41 of 2004 on Waqf and Government Regulation No. 42 of 2006, which govern the procedures, requirements, and authorities authorized to grant permission. Its implementation in practice reveals several challenges, such as bureaucratic licensing processes, limited public understanding, and the potential for misuse. Nevertheless, istibdal has proven to be a strategic instrument for optimizing unproductive waqf assets so that they can be utilized more broadly for the social and economic interests of the Muslim community.

An analysis between the fiqh perspective and practice in Indonesia indicates both points of convergence and challenges. The convergence lies in the principle of *maslahah* as a fundamental consideration, while the challenge is how to ensure that the practice of istibdal in Indonesia truly aligns with the objectives of *maqāṣid al-sharī'ah*, rather than merely fulfilling legal formalities. Thus, istibdal can serve as a bridge between classical fiqh values and contemporary needs in waqf management, provided it is implemented with principles of prudence, transparency, and accountability.

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