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The Paradox of Perpetuity: When Wakaf Khas (Specific Waqf) Becomes Frozen Assets in Malaysia: A Critical Analysis

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ABSTRACT

The institution of *waqf* (Islamic endowment) is a cornerstone of Islamic social finance, intended to provide perpetual socioeconomic benefits to the Muslim community. However, in Malaysia, an estimated 87% of the 30,000 hectares of *waqf* land remains underdeveloped, resulting in billions of ringgits in "frozen" assets. A significant yet underexplored contributor to this phenomenon is the over proliferation of *wakaf khas* (specific waqf), in which donors strictly limit the use of their endowments to highly specific purposes that may become obsolete, unviable, or redundant over time. This article provides a comprehensive and analytical examination of the *wakaf khas* dilemma in Malaysia. It critically analyses the Islamic jurisprudential maxim "the condition of the *waqif* is like the text of the Lawgiver" (شَرْطُ الوَاقِفِ كَنَصِّ الشَّارِعِ) against the higher objectives of Shariah (*maqasid al-shariah*) and the principle of public interest (*maslahah*). The article evaluates the legislative frameworks across all 14 Malaysian states, focusing on the provisions for *istibdal* (substitution) as a remedy for frozen assets. By integrating contemporary fatwas and assessing the governance structures of State Islamic Religious Councils (SIRCs), this paper argues for a paradigm shift from rigid legal formalism to a welfare-oriented, *maqasid*-driven approach to unlock the economic potential of *wakaf khas* in Malaysia. The study employs a qualitative doctrinal legal methodology, combining content analysis of primary Islamic legal texts (*turath*), statutory instruments, and fatwa resolutions with critical comparative analysis across the four Sunni schools of thought and beyond.

Keywords: Wakaf khas*; Frozen assets*; *Istibdal; Maqasid al-Shariah*

ABSTRAK

Institusi wakaf merupakan salah satu pilar utama keuangan sosial Islam yang bertujuan memberikan manfaat sosial-ekonomi secara berkelanjutan bagi masyarakat Muslim. Namun demikian, di Malaysia, diperkirakan sekitar 87% dari 30.000 hektare tanah wakaf masih belum dikembangkan, sehingga mengakibatkan aset bernilai miliaran ringgit menjadi "beku". Salah satu faktor penting yang berkontribusi terhadap fenomena ini, tetapi masih belum banyak dikaji, adalah proliferasi wakaf khas yang berlebihan. Dalam wakaf khas, pewakaf membatasi penggunaan harta wakaf secara ketat untuk tujuan-tujuan yang sangat spesifik, yang seiring berjalannya waktu dapat menjadi tidak relevan, tidak layak dilaksanakan, atau menjadi redundan. Artikel ini menyajikan kajian yang komprehensif dan analitis mengenai dilema wakaf khas di Malaysia. Artikel ini menganalisis secara kritis kaidah fikih "syarat pewakaf adalah seperti ketentuan Pembuat Syariat" (شَرْطُ الوَاقِفِ كَنَصِّ الشَّارِعِ) dengan mempertimbangkan tujuan-tujuan utama syariat (maqasid al-shariah) serta prinsip kemaslahatan *umum (maslahah). Artikel ini juga mengevaluasi kerangka perundang-undangan di seluruh 14 negara bagian di Malaysia, dengan memberikan perhatian khusus pada ketentuan mengenai istibdal atau penggantian harta wakaf sebagai solusi atas persoalan aset wakaf yang beku. Dengan mengintegrasikan fatwa-fatwa kontemporer dan menilai struktur tata kelola Majelis Agama Islam Negeri (State Islamic Religious Councils atau SIRCs), artikel ini mengusulkan perlunya perubahan paradigma dari formalisme hukum yang kaku menuju pendekatan yang berorientasi pada kesejahteraan serta berlandaskan maqasid al-shariah, guna mengoptimalkan potensi ekonomi wakaf khas di Malaysia. Penelitian ini menggunakan metodologi penelitian hukum doktrinal yang bersifat kualitatif, dengan menggabungkan analisis isi terhadap sumber-sumber primer hukum Islam klasik (turath), instrumen perundang-undangan, dan putusan fatwa, serta analisis perbandingan kritis terhadap pandangan empat mazhab Sunni dan mazhab-mazhab lainnya.*

***Kata Kunci**: Wakaf khas; Aset beku; Istibdal; Maqasid al-Shariah*

INTRODUCTION

The Islamic endowment (*waqf*) system is fundamentally designed to eradicate poverty, support education, and provide public amenities through the mechanism of withholding the principal asset (*'ayn*) and channelling its usufruct (*manfa'ah*) for charitable purposes in perpetuity. (Baharudin, 2022; Kader et al., 2024). The Quran provides the overarching ethical framework for charitable giving, as Allah states, "You will never attain righteousness until you spend from that which you love. Moreover, whatever you spend – indeed, Allah is Knowing of it." (Quran, Surah Ali Imran (3), 92)

In Malaysia, the potential of *waqf* is staggering. The Securities Commission Malaysia reported in July 2023 that *waqf* assets in the country are estimated to exceed RM1.3 trillion. (Securities Commission Malaysia, 2023). However, the stark reality is that only about 13% of the estimated 30,000 hectares of *waqf* land has been developed, leaving approximately 26,100 hectares idle or underutilised. (Jalil, 2020; Kamarudin, 2019). More recent data from the Department of Awqaf, Zakat and Hajj (JAWHAR) confirmed that, out of 18,402 registered waqf lots nationwide, 3,018 lots covering 2,415 hectares remain unproductive or underdeveloped. (Department of Awqaf, Zakat dan Hajj (JAWHAR), 2023). Broader academic estimates place the proportion of undeveloped *waqf* land area at up to 92.8% of the total. (Mohamad et al., 2017).

A critical, yet underexplored, factor contributing to this massive accumulation of frozen assets is the structural rigidity of *wakaf khas* (specific *waqf*). Unlike *wakaf am* (general *waqf*), which provides administrators the flexibility to utilise the assets for any charitable purpose recognised by Islamic law, *wakaf khas* binds the administrator to the exact stipulations of the donor (*shart al-waqif*) (Abdul-Karim, 2010). According to JAWHAR's own data, *wakaf khas* accounts for 4,543.27 hectares of *waqf* land in Malaysia, representing a significant proportion of the total portfolio. (Ismail et al., 2015). As time passes, demographic shifts occur, and urban landscapes transform, many of these specific conditions become impossible or impractical to fulfil. A piece of land designated specifically for a traditional religious school may find itself in a rapidly commercialising area with no students, rendering it legally untouchable and economically dead (Noor et al., 2023). The Pahang State Islamic Religious Council has even begun restricting the acceptance of new *wakaf khas* due to administrative difficulties in managing such endowments. (Baharudin, 2026; Mohamad et al., 2017).

This article analytically explores the trajectory of *wakaf khas* from a pious intention to a frozen asset. It navigates classical Islamic jurisprudence (*fiqh*), scrutinises statutory provisions across Malaysian states, examines responsive fatwas issued by national and state authorities, and critiques the governance challenges faced by the State Islamic Religious Councils (SIRCs) (Himmawan et al., 2025; Kamaruzaman & Ishak, 2023). The central thesis is that the over-proliferation of *wakaf khas*, when combined with rigid legal formalism and weak institutional governance, transforms what should be a productive charitable instrument into a category of permanently frozen wealth. This phenomenon contradicts the very *maqasid* (objectives) of Shariah that the institution of *waqf* was designed to serve.

METHODOLOGY

This study employs a qualitative doctrinal legal methodology, which is fundamentally appropriate for research analysing legal concepts, jurisprudential maxims, and statutory frameworks. (Chynoweth, 2008; Theil, 2025). The study's central objective drives the selection of this approach: to critically examine the phenomenon of *wakaf khas* (specific *waqf*) as frozen assets in Malaysia through the lens of classical Islamic jurisprudence (*fiqh*) and contemporary legal structures. The research design facilitates a comprehensive analysis of primary Islamic legal texts (turath), statutory instruments governing Islamic endowments in Malaysia, and responsive fatwas issued by relevant religious authorities. This framework bridges the gap between classical legal theory and contemporary administrative challenges, proposing a paradigm shift towards a *maqasid*-driven approach.

The research design is inherently qualitative and doctrinal, relying heavily on library research and content analysis. A doctrinal legal approach provides a systematic exposition of the rules governing a legal category, analyses rule relationships, explains difficulties, and predicts future development. Here, the doctrinal approach involves rigorous examination of the Islamic jurisprudential maxim "the condition of the *waqif* is like the text of the Lawgiver" (شَرْطُ الوَاقِفِ كَنَصِّ الشَّارِعِ) and its application in Malaysia. The qualitative nature allows for an in-depth, interpretive analysis of complex legal and theological texts, enabling researchers to uncover underlying principles (*maqasid*) and assess their relevance to modern socio-economic realities. The research does not rely on empirical data collection such as surveys or interviews, but rather on the systematic analysis of authoritative texts to construct a robust legal and theoretical argument. This structured approach ensures a rigorous evaluation of the subject matter, leading to well-founded conclusions that contribute significantly to the existing body of academic legal knowledge. (Briscoe et al., 2025; Snyder, 2019).

Data collection involves systematically retrieving and compiling primary and secondary sources. Primary sources constitute foundational Islamic law texts, specifically the Quran, Sunnah, and classical jurisprudential texts (*turath*) across the four Sunni schools (Hanafi, Maliki, Shafi'i, and Hanbali), and the Zahiri school. Including multiple schools is crucial for a comprehensive comparative analysis. Furthermore, primary legal sources in the Malaysian context include State Islamic Religious Administration Enactments and specific Waqf Enactments across 14 states, governing *waqf* administration by State Islamic Religious Councils (SIRCs). Additionally, fatwas issued by the National Fatwa Council and State Fatwa Committees serve as primary sources of contemporary legal interpretation. Secondary sources include academic journals, books, government reports (such as JAWHAR), working papers, and statistical data regarding Malaysia's current *waqf* assets. These sources provide context, background information, and contemporary analysis to situate doctrinal research within the current socio-economic landscape. The data collection process is purposive, focusing specifically on materials addressing *wakaf khas*, the principle of *istibdal* (substitution), and the application of *maqasid al-shariah* in endowment management. This dual-source approach guarantees a comprehensive understanding of the topic from both historical and modern perspectives (Stratton, 2024).

The analysis of the collected data employs two primary techniques: content analysis and critical comparative analysis. Content analysis systematically examines primary Islamic legal texts and statutory instruments. This involves a close reading of classical texts, such as al-Nawawi's *Minhaj al-Talibin* and Ibn Qudamah's *al-Mughni*, to extract specific rulings, conditions, and the underlying rationale regarding *wakaf khas* and *istibdal*. The analysis focuses on deconstructing the maxim "شَرْطُ الوَاقِفِ كَنَصِّ الشَّارِعِ" to understand its historical application and the nuances of interpretation, drawing on critical perspectives from scholars such as Ibn Taymiyyah. Similarly, content analysis is applied to Malaysian state enactments to identify legal provisions that either facilitate or hinder the substitution or redevelopment of frozen *wakaf khas* assets. This systematic examination identifies legal bottlenecks contributing to *waqf* underdevelopment. Moreover, critical comparative analysis is essential for evaluating diverse jurisprudential perspectives on *waqf* perpetuity and *istibdal* permissibility. The study compares the dominant position of the Shafi'i school, the official *madhhab* in Malaysia, which is generally restrictive regarding *istibdal*, with the more flexible approaches of the Hanafi, Maliki, and Hanbali schools. This comparative approach evaluates the strengths and weaknesses of each position while accounting for contemporary challenges. Furthermore, the analysis incorporates unique perspectives of the Zahiri school to challenge the fundamental assumption of absolute perpetuity. By juxtaposing these different legal traditions, the study aims to identify jurisprudential alternatives providing a legal basis for unfreezing *wakaf khas* assets. Comparative analysis also extends to legislative frameworks of different Malaysian states, highlighting best practices and identifying areas for legal reform. (Ebere, 2025; Schneijderberg et al., 2026). A distinctive feature of the methodology is the integration of the maqasid al-shariah (objectives of Islamic law) framework as an analytical tool. The study employs the frameworks articulated by classical scholars such as Imam al-Shatibi and contemporary thinkers such as Ibn Ashur to evaluate current *wakaf khas* management. The analysis assesses whether rigid adherence to the *waqif's* specific conditions, resulting in frozen assets, aligns with Shariah's higher objectives, specifically protecting and promoting public interest (*maslahah*) and wealth (*mal*). This *maqasid*-driven approach serves as the theoretical lens through which classical rulings and contemporary statutes are critiqued. It justifies proposing a paradigm shift from rigid legal formalism to a welfare-oriented approach, arguing that the ultimate purpose of *waqf*, providing perpetual socio-economic benefits, must take precedence over literal enforcement of obsolete conditions.

The study's scope is specifically focused on legal and administrative challenges associated with *wakaf khas* (specific *waqf*) in Malaysia. It concentrates on frozen or underdeveloped *waqf* assets and evaluates the legal mechanism of *istibdal* (substitution) as a potential solution. The geographical scope encompasses all 14 states of Malaysia, with an analysis of their respective Islamic administrative enactments. The study is limited to a doctrinal and qualitative analysis; it does not involve empirical field research or quantitative surveys of waqf administrators. While drawing on classical jurisprudence from various schools, its primary focus is on proposing solutions applicable within the Malaysian legal context, predominantly influenced by the Shafi'i school. Findings and recommendations are tailored to Malaysia's specific regulatory environment. This highly focused approach ensures deep, highly relevant insights for improving national policy.

RESULT

Islamic Jurisprudence on *Wakaf Khas* and the Perpetuity Dilemma

In Islamic jurisprudence, *waqf* is broadly divided into *waqf khayri* (public/philanthropic) and *waqf ahli/dhurri* (family/private). Within the public domain, it is further categorised based on the specificity of the beneficiaries into *wakaf 'am* (general) and *wakaf khas* (specific) (Abid & Miakhil, 2024; Al-Zuḥaylī, n.d.). The legal foundation of *waqf* is rooted in the Sunnah of the Prophet Muhammad (PBUH). The most prominent evidence is the hadith concerning Umar ibn al-Khattab (RA), who acquired land in Khaybar and sought the Prophet's advice. The Prophet (PBUH) instructed, "If you wish, you can keep its corpus and give its fruits as charity, on the condition that it shall not be sold, gifted, or inherited." (Al-Bukhārī, 1311H, Hadith 2737)

This hadith establishes the fundamental pillars (*arkan*) of *waqf*: the founder (*waqif*), the endowed asset (*mawquf*), the beneficiary (*mawquf 'alayh*), and the declaration (*sighah*). The majority of scholars (*jumhur*) from the Shafi'i, Maliki, and Hanbali schools hold that *waqf* is irrevocable and perpetual once validly constituted (Al-Nawawī, 1412H/1991M; Yusoff et al., 2021). In the context of *waqf khas*, the *waqif* explicitly defines the *mawquf 'alayh* in the *sighah*, restricting the usufruct to a highly specific demographic, location, or institution. For example, a donor may stipulate, "I endow this land for the building of a mosque for the residents of *Kampung* X" or "This property is endowed for the education of orphans from the family of Y." Additionally, the conditions (*shurut*) for a valid *waqf* include: (i) the *waqif* must be legally competent (*ahliyyah*); (ii) the *mawquf* must be a specific, identifiable property; (iii) the *mawquf 'alayh* must be a legitimate charitable purpose; and (iv) the *sighah* must be unambiguous. (Ibn Qudāmah, 1968). The Shafi'i school additionally requires that the *waqf* be perpetual (*mu'abbad*) and that the beneficiary be clearly defined. (Al-Shīrāzī, n.d.).

The Maxim: "The Condition of the *Waqif* is Like the Text of the Lawgiver": A Critical Deconstruction

The primary jurisprudential driver of the frozen asset phenomenon is the strict adherence to the maxim, "شَرْطُ الوَاقِفِ كَنَصِّ الشَّارِعِ", which means "The condition of the *waqif* is like the text of the Lawgiver." This maxim is attributed to various scholars and is widely cited in the Shafi'i, Hanbali, and Hanafi schools (Al-Suyūṭī, 1990). However, a critical analytical deconstruction of this maxim reveals that it has been widely misunderstood and over-applied. As the contemporary Saudi jurist al-Sudays (2023) explains, the comparison to "the text of the Lawgiver" (*nass al-shari'*) is not in terms of the obligation to obey (*wujub al-'amal*) as one would obey divine revelation, but rather in terms of interpretation methodology (*dalalah*). That is, the intent of the *waqif* is to be understood from the explicit wording of his declaration, just as the intent of the Lawgiver is understood from the explicit wording of the Quran and Sunnah. (Al-Sudays, 2023). Ibn Taymiyyah explicitly warned against the absolutist interpretation by saying that "Whoever treats the condition of the waqif as equivalent to the text of the Lawgiver in terms of absolute obligation to act upon it has committed disbelief by the consensus of Muslims." (Ibn Taymiyyah, 2004).

This is a powerful statement that fundamentally challenges the rigid formalism that has led to frozen *waqf* assets. In particular, Ibn Taymiyyah's position is that the conditions of the *waqif* are divisible into three categories. (Al-Sudays, 2023):

Table 1: Legal Effects of Waqf Conditions

Category	Description	Ruling
Conditions aligned with Shariah commands	Conditions directing the *waqf* to obligatory or recommended acts (e.g., building a mosque, feeding the poor)	Must be followed; violation is a major sin.
Conditions contradicting Shariah	Conditions directing the *waqf* to prohibited acts (e.g., funding sinful activities)	Must be abandoned; the condition is void.
Conditions for permissible matters not constituting acts of piety	Conditions for neutral acts not recognised as charitable (e.g., waqf exclusively for the wealthy)	Need not be followed; the *waqf* should be redirected to genuine charitable purposes

Source: Report on the Management and Implementation of the Distribution of Waqf 'Ayn, Specific Waqf, and Waqf Benefits Across All States In Malaysia, Baharudin, M. H. (2026).

This tripartite classification demonstrates that the maxim is not an absolute rule but a qualified principle. Its application in the context of *wakaf khas* that has become frozen requires careful jurisprudential reasoning (*ijtihad*), not blind adherence.

Comparative Analysis Across the Four Sunni Schools and Beyond

The issue of altering or substituting *wakaf khas* conditions is treated differently across the Sunni schools of thought:

1. The Hanafi School: The Hanafi school is the most permissive regarding *istibdal*. Imam Muhammad ibn al-Hasan al-Shaybani permitted the sale and substitution of *waqf* property when it ceases to be productive or when a greater benefit can be achieved. Abu Yusuf allowed *istibdal* with the judge's (*qadi's*) permission (Al-Sarakhsī, n.d.). This position is based on the principle that the purpose of the *waqf* (generating *manfa'ah*) takes precedence over the physical preservation of the *'ayn* (corpus).
2. The Maliki School: The Maliki school permits *istibdal* for movable *waqf* properties that have deteriorated, but is generally restrictive regarding immovable property (land). However, Imam Malik himself is reported to have permitted the sale of a mosque that has become too small for the congregation, so that it can purchase a larger one (Ibn Rushd al-Ḥafīd, 2004). The principle of *maslahah mursalah* (unrestricted public interest), which is a hallmark of Maliki jurisprudence, provides a strong theoretical basis for unfreezing *wakaf khas* assets.
3. The Shafi'i School: The Shafi'i school, which is the official *madhhab* of Malaysia, is the most restrictive. The dominant position (*al-mu'tamad*) is that *istibdal* of immovable *waqf* is absolutely prohibited, even if the property has become completely unproductive (Al-Nawawī, 1412H/1991M). This strict position is the primary jurisprudential obstacle to unfreezing *wakaf khas* in Malaysia. However, a minority opinion (*wajh*) within the Shafi'i school, attributed to Imam al-Haramayn al-Juwayni, permits *istibdal* in cases of absolute necessity (*darurah*) where the *waqf* property has become completely useless. (Al-Juwaynī, 2007).
4. The Hanbali School: It occupies a middle position. Imam Ahmad ibn Hanbal permitted *istibdal* of mosques and other *waqf* properties when they can no longer serve their designated purpose. Ibn Qudamah elaborated that if a *waqf* property becomes incapable of fulfilling its purpose, it may be

sold and the proceeds used to purchase a substitute that serves the same or a similar purpose (Ibn Qudāmah, 1968).

5. The Zahiri School: Ibn Hazm al-Zahiri held a unique position. He rejected the concept of *waqf* perpetuity altogether, arguing that the hadith of Umar only establishes a recommendation rather than an irrevocable legal obligation. While no modern legal system adopts this view, it provides an important jurisprudential counterpoint that challenges the assumption of absolute perpetuity (Ibn Ḥazm, 1988).

The *Maqasid al-Shariah* Framework and the Purpose of *Waqf*

The higher objectives of Islamic law (*maqasid al-shariah*), as articulated by Imam al-Shatibi and later refined by Ibn Ashur, provide the most compelling framework for resolving the frozen *wakaf khas* crisis. Al-Shatibi established that the Shariah aims to protect five essential interests (*al-daruriyyat al-khams*): religion (*din*), life (*nafs*), intellect (*'aql*), lineage (*nasl*), and property (*mal*) (Al-Shāṭibī, 1997). The institution of *waqf* serves multiple *maqasid* simultaneously: it protects religion (through the construction of mosques and schools), life (through hospitals and welfare), intellect (through educational endowments), and property (through wealth redistribution). When a *wakaf khas* becomes frozen, it ceases to serve any of these objectives. The land sits idle, generating no religious, educational, or economic benefit. In *maqasid* terms, the rigid adherence to the *shart al-waqif* in such circumstances constitutes a violation of the *maqasid* rather than their protection. As Ibn Ashur (2006) argued, the *maqasid* of any legal institution must be evaluated by its actual outcomes (*ma'alat al-af'al*), not merely by formal compliance with textual stipulations. (Ibn Ashur, 2006).

Comprehensive Analysis of Malaysian State Waqf Enactments

In Malaysia, the administration of Islamic law, including *waqf*, falls under the exclusive jurisdiction of the individual states as per the Ninth Schedule (State List) of the Federal Constitution (Federal Constitution of Malaysia, Ninth Schedule, List II). Consequently, the State Islamic Religious Councils (SIRCs) are constitutionally designated as the sole trustees of all *waqf* properties within their respective states. This jurisdictional arrangement has resulted in a highly fragmented legislative landscape, with 14 different legal regimes governing *waqf* across the country. (Arif et al., 2023).

Only five states have enacted specific, standalone *waqf* enactments through their respective State Legislative Assemblies, while the remaining states embed *waqf* provisions within their general Administration of Islamic Law Enactments:

Table 2. Waqf Enactments

State	Legislation	Year	Specific Enactment	*Istibdal* Provision
Selangor	Waqf (State of Selangor) Enactment 2015	2015	Yes	Section 41
Melaka	Waqf (State of Melaka) Enactment 2005	2005	Yes	Section 24
Negeri Sembilan	Waqf (Negeri Sembilan) Enactment 2005	2005	Yes	Section 25
Perak	Waqf (Perak) Enactment 2015	2015	Yes	Section 27
Terengganu	Waqf (Terengganu) Enactment 2016	2016	Yes	Section 30
Johor	Waqf (Johor) Rules 1983	1983	No (Rules only)	Limited
Pahang	Administration of Islamic Law (Pahang) Enactment 1991	1991	No	General provisions
Kedah	Administration of Islamic Law (Kedah) Enactment 2008	2008	No	General provisions
Kelantan	Council of Religion and Malay Custom (Kelantan) Enactment 1994	1994	No	General provisions

State	Legislation	Year	Specific Enactment	*Istibdal* Provision
Perlis	Administration of Islamic Law (Perlis) Enactment 2006	2006	No	General provisions
Penang	Administration of Islamic Law (Penang) Enactment 2004	2004	No	General provisions
Sabah	Sabah Islamic Religious Council Enactment 2004	2004	No	General provisions
Sarawak	Majlis Islam Sarawak Ordinance 2001	2001	No	General provisions
Federal Territories	Administration of Islamic Law (Federal Territories) Act 1993	1993	No	Section 61 (limited)

Source: Report on the Management and Implementation of the Distribution of Waqf 'Ayn, Specific Waqf, and Waqf Benefits Across All States In Malaysia, Baharudin, M. H. (2026).

Statutory Definitions and the Legal Construction of *Wakaf Khas*

In states with specific enactments, *wakaf khas* is explicitly defined. Section 2(1) of the Waqf (State of Selangor) Enactment 2015 defines it as "any *mawquf* created for a benevolent or specific party pursuant to Hukum Syarak" (Enakmen Wakaf (Negeri Selangor) 2015, 2015). Section 12 of the same enactment classifies *waqf* into two categories: (a) *wakaf am*, and (b) *wakaf khas*. Similarly, Section 2 of the Waqf (State of Melaka) Enactment 2005 provides that *wakaf khas* means "waqf for a specific purpose or for the benefit of specific persons or groups" (Enakmen Waqf (Negeri Melaka) 2005, 2005). The critical analytical point is that these statutory definitions do not impose any qualification or limitation on the specificity of the donor's conditions. A donor may endow land for purposes as narrow as "maintaining a specific grave" or "providing oil for the lamp of a particular *surau*." When such hyper-specific conditions become obsolete, as they inevitably do over decades or centuries, the statutory framework provides no automatic mechanism for reclassification or reallocation. The asset becomes frozen within its legal designation.

The Mechanism of *Istibdal* as a Statutory Remedy: A Comparative State Analysis

To address the issue of frozen *wakaf khas* assets, state enactments have increasingly codified the *istibdal* mechanism. The most comprehensive provision is found in Section 41 of the Selangor Waqf Enactment 2015, which provides eight circumstances under which the Majlis (SIRC) may perform *istibdal* on a *mawquf* (Enakmen Waqf (Negeri Selangor) 2015, 2015):

a) If the conditions of the *waqf* are inconsistent with any written law;
b) If the *mawquf* is taken or acquired by any authority under any written law;
c) If the usage of the *mawquf* fails to provide the benefit as required by the *waqif*;
d) If the usage of the *mawquf* fails to fulfil the purpose of the *waqf*;
e) If the condition of the *waqf* cannot be executed due to the lapse of time or changes in circumstances;
f) If the mosque is a mosque and needs to be replaced;
g) If the conditions cannot be executed, the Majlis shall execute the *waqf* as close as possible to the *waqif's conditions*; and
h) Other circumstances as the Majlis deems necessary.

Crucially, Section 41(1)(e) directly addresses the frozen *wakaf khas* problem by permitting *istibdal* when conditions "cannot be executed due to the lapse of time or changes in circumstances." This provision is a direct legislative adoption of the *cy-près* doctrine from English trust law, as well as the Hanafi/Hanbali jurisprudential flexibility regarding *shart al-waqif*. However, the implementation of *istibdal* remains sluggish across states due to several factors: (i) bureaucratic inertia within the SIRCs; (ii) fear of public backlash for appearing to "sell" endowed land; (iii) lack of clear procedural guidelines; and (iv) the absence of a dedicated *waqf* court or tribunal to adjudicate disputes. (Azizan et al., 2021). In contrast, states without *wakaf khas* enactments (such as Pahang, Kedah, and the Federal Territories) have only general provisions that do not explicitly address the frozen *wakaf khas* scenario. Section 61 of the Administration of Islamic Law (Federal Territories) Act 1993, for instance, merely provides that the Majlis is the sole trustee of all *waqf* properties without elaborating on *istibdal* procedures. (Arif et al., 2023). This legislative lacuna means that in nine out of fourteen Malaysian states, there is no clear statutory pathway to unfreeze *wakaf khas* assets.

The Structural Problem: Ownership Without Bankability

Beyond the *istibdal* mechanism, a fundamental structural problem renders *wakaf khas* assets frozen, even when their specific purpose remains theoretically achievable. As analysed in a recent study published in *The Edge Malaysia* (2026), the financing constraint is straightforward. When *waqf* land cannot be sold or transferred, banks will not accept it as collateral for development financing. Without bank financing, developers cannot build. Without development, the land generates no return. This creates what may be termed the "bankability paradox" of *wakaf khas*: the very legal characteristic that gives *waqf* its enduring value (inalienability) is simultaneously what prevents its economic activation. The solution proposed by legal scholars involves separating perpetual ownership from transferable economic rights through long-term lease structures (e.g., 99-year leases), thereby allowing the SIRC to retain ownership while enabling commercial development. (Baharudin, 2022; The Edge Malaysia, 2026). However, for *wakaf khas*, this solution is further complicated by the requirement that any development must conform to the donor's specific stipulations.

Fatwas and the Evolution of *Waqf* Governance in Malaysia

Recognising the impending crisis of frozen *waqf* assets, the Fatwa Committee of the National Council for Islamic Religious Affairs Malaysia has issued several progressive rulings designed to inject flexibility into *waqf* management. These fatwas represent a significant departure from the strict Shafi'i formalism that historically dominated Malaysian Islamic jurisprudence.

1. The 4th Muzakarah (April 13-14, 1982): This early resolution addressed the fundamental question of whether *waqf* property can be developed. The committee ruled that *waqf* land may be developed for purposes other than the original intention if the original purpose is no longer achievable, provided the development serves a charitable purpose recognised by Shariah (JAWHAR, 2021).

2. The 41st Muzakarah (November 3-4, 1996): This landmark decision explicitly addressed the issue of idle *waqf* lands and the need for cross-madhhab eclecticism (*talfiq*). The committee stated that, "*Waqf* lands, old mosque sites are left idle and complicate the authorities. It is time for all practices and matters regarding *waqf* as a whole to be modified without being tied only to the Syafie School, while at the same time, the management method is based on the Hanafi school." (JAWHAR, 2021). This fatwa is analytically significant because it officially sanctions the departure from the strict Shafi'i prohibition on *istibdal* of immovable *waqf* and permits adopting the more flexible Hanafi approach. It represents a conscious policy choice to prioritise the *maslahah* of the Muslim community over doctrinal consistency within a single *madhhab*.
3. The 80th Muzakarah (February 1-3, 2008): This resolution directly addressed the specific issue of *waqf khas*. The committee ruled that developing special *waqf* land with projects that differ from the *waqf's* original intention is permissible, provided the development is based on current needs determined by the government and does not conflict with broad Shariah principles (JAWHAR, 2021). This fatwa effectively overrides the strict literalism of *shart al-waqif* in favour of *maslahah mursalah* (unrestricted public interest).

Beyond the national level, individual state fatwa committees have issued their own rulings on *wakaf khas*, sometimes creating conflicts and inconsistencies. As documented by Asni & Sulong (2019), conflicting fatwas on *waqf* across Malaysian states have created legal uncertainty and administrative paralysis. For instance, some states permit the conversion of *wakaf khas* revenue to fund purposes similar (but not identical) to the original stipulation, while others insist on strict compliance. (Asni & Sulong, 2019). This inconsistency is a direct consequence of the constitutional arrangement that places Islamic law under state jurisdiction without a binding federal harmonisation mechanism. The analytical implication is clear: the fatwa infrastructure in Malaysia has evolved significantly toward greater flexibility and *maslahah*-based reasoning. However, translating these progressive fatwas into concrete administrative action remains hampered by institutional inertia, legal uncertainty, and the absence of enforcement mechanisms.

Governance and Accountability Challenges

Despite progressive fatwas and statutory provisions for *istibdal*, the actual development of *wakaf khas* properties remains critically low. The governance framework of SIRCs faces significant challenges regarding accountability, transparency, and professional capacity. (Ismail et al., 2015).

1. Structural Governance Deficiencies: The Department of Awqaf, Zakat and Hajj (JAWHAR), established in 2004 at the federal level to coordinate *waqf* development, lacks executive authority over the SIRCs due to constitutional constraints. JAWHAR functions merely as a coordinating and advisory body, unable to compel states to develop their *waqf* assets or implement *istibdal* (Ali & Markom, 2020). Consequently, there is no uniform standard for *waqf* reporting, accounting, or asset valuation across the 14 states.
2. Lack of Professional Capacity: The traditional administration of *waqf* by religious scholars must be augmented with corporate governance structures that integrate real estate professionals, financial analysts, and project managers into the SIRC *waqf* divisions (Mahadi et al., 2018). Many SIRCs lack the technical expertise to conduct feasibility studies, negotiate joint ventures with developers, or structure Islamic financing instruments for *waqf* development.
3. Absence of Centralised Data: The lack of a centralised, transparent database of *waqf* assets prevents potential developers and Islamic financial institutions from engaging in joint ventures to develop these lands. Many *waqf* properties are not properly registered, and their boundaries, valuations, and legal status remain unclear (Ismail et al., 2015).
4. Political Interference: As noted by Mohd Arif et al. (2023), the federal government's policy on the allocation of waqf land for development has been criticised for prioritising political considerations over genuine *waqf* development objectives (Arif et al., 2023). This politicisation further discourages SIRCs from taking proactive steps to unfreeze *wakaf khas* assets.

DISCUSSION

Reinterpreting Perpetuity: From Physical Preservation to Benefit Continuity

The Shafi'i requirement of absolute physical perpetuity of the asset (*'ayn*) must be reinterpreted through the lens of *maqasid al-shariah* as the perpetuity of the benefit (*manfa'ah*). If an asset is frozen, it yields no benefit, thus violating the core *maqsad* of *waqf*. As al-Shatibi (1997) established, the Shariah's objectives are not served by formal compliance with rules that defeat the underlying purpose of those rules. (Al-Shāṭibī, 1997). The perpetuity of *waqf* should be understood as the perpetuity of charitable impact, not the perpetuity of physical stasis.

Proactive *Istibdal* and Asset Consolidation

SIRCs must proactively identify unviable *wakaf khas* lands (e.g., small, landlocked rural plots endowed for purposes that are no longer relevant) and utilise *istibdal* to consolidate them into commercially viable urban assets, ensuring the revenue is channelled back to the original specific purposes or their closest equivalent. The Singapore model, where Warees Investments (the property arm of MUIS) transformed a *waqf* property valued at S$800,000 into one worth over S$71 million through active development, demonstrates the transformative potential of professional *waqf* asset management. (The Edge Malaysia, 2026).

Standardised Federal Legislation

While respecting state jurisdiction over religion, a standardised federal framework or a comprehensive Waqf Act should be drafted as a model law for states to adopt, ensuring uniformity in *istibdal* procedures, corporate governance, and commercial leasing mechanisms. (Rahman et al., 2024). The absence of a dedicated *waqf* act in the Federal Territories, despite the significant *waqf* assets administered by MAIWP, exemplifies the legislative gap that perpetuates the frozen asset problem. (Arif et al., 2023).

Innovative Financing Mechanisms

The Islamic capital market offers several instruments that can be deployed to develop frozen *wakaf khas* assets without violating the *shart al-waqif*. These include (Baharudin, 2022):

Table 3. Waqf Financing Instruments

Instrument	Mechanism	Application to *Wakaf Khas*
Waqf-Linked Sukuk	Islamic bonds backed by *waqf* assets	Raise development capital while maintaining SIRC ownership
Musharakah Mutanaqisah	Diminishing partnership	Joint venture between SIRC and a developer, with a gradual transfer of economic rights
Ijarah (Long-term lease)	99-year lease structure	Separate ownership from economic rights; enable bankability
Cash *Waqf* Funds	Pooled cash endowments	Cross-subsidise the development of frozen *wakaf khas* lands

Source: A Framework for Financial Feasibility Study of Housing Project Development on Waqf Land in Malaysia with reference to Tawzi' al-Manfa'ah, Baharudin, M. H. (2022).

Governance Reform: Toward Professional *Waqf* Management

The transformation of *wakaf khas* from frozen assets into productive endowments requires fundamental governance reforms within the SIRCs. This includes: (i) establishing dedicated *waqf* development subsidiaries with professional management; (ii) implementing transparent reporting standards aligned with international best practices; (iii) creating independent *waqf* oversight boards with representation from legal, financial, and real estate professionals; and (iv) establishing a national *waqf* tribunal to adjudicate disputes related to *istibdal* and *wakaf khas* reallocation. (Mahadi et al., 2018).

CONCLUSION

The proliferation of *wakaf khas* in Malaysia, driven by noble but highly restrictive donor intentions, has inadvertently created a vast portfolio of frozen assets. The findings of this research demonstrate that strict adherence to the classical maxim that the condition of the *waqif* is like the text of the Lawgiver has paralysed administrators, rendering valuable real estate economically inert. However, a critical analysis of Islamic jurisprudence reveals that, when properly understood, the maxim itself does not mandate such rigidity. Ibn Taymiyyah's warning provides a powerful corrective to the legal formalism dominating Malaysian waqf administration. Furthermore, the legislative landscape across Malaysia's 14 states reveals significant disparity: only 5 states have dedicated waqf enactments with explicit *istibdal* provisions, while 9 operate under general provisions that offer no clear statutory pathway to unfreeze assets. Progressive fatwas represent significant jurisprudential advances, yet translating these into administrative action remains hampered by governance deficiencies.

Despite these significant findings, this research acknowledges certain limitations. The study is primarily confined to a qualitative doctrinal analysis of classical jurisprudence and existing statutory frameworks in Malaysia. It lacks empirical data regarding the actual operational challenges faced by State Islamic Religious Councils (SIRCs) and the on-the-ground socioeconomic impacts of frozen *waqf* properties. Additionally, the scope is restricted to the Malaysian context, which may limit the generalisability of the findings to other jurisdictions with different administrative structures.

Therefore, future research should focus on empirical studies to evaluate the practical implementation of *istibdal* by SIRCs. Researchers must investigate the socioeconomic outcomes of successfully redeveloped *wakaf khas* properties. Furthermore, comparative studies involving other Muslim-majority nations could provide valuable insights into alternative governance models, ultimately supporting a *maqasid*-driven approach that prioritises charitable continuity over rigid literalism.

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