

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

This chapter includes the essential overview and background on the overall definition of *waqf* and undeveloped *waqf*, *waqf* in Islamic Jurisprudence, *waqf* issues and challenges, and *waqf* institutions and property development in Malaysia. The chapter addresses the definition of *waqf*, followed by the different understandings of the *waqf* concept from the various schools of thought (madhhab), and later the meaning of undeveloped *waqf* land.

The chapter then continues to discuss *waqf* in Islamic jurisprudence and *waqf* development issues and challenges. Only necessary elements for the development of *waqf* land and the comparison of views from the various schools of thought are elaborated. Among Islamic scholars, the most debatable issue is the permanence and perpetuity of *waqf*. There are variations of opinion about whether a *waqf* should have a temporality feature. Such function is significant because it specifies the period of the assets to be consecrated for *waqf* and hence the various categories of assets to be dedicated to a *waqf*. At present, the conventional development of *waqf* is the heritage of permanent land in nature.

Next, the chapter proceeds with looking at the *Al-Tawriq* terminology. There are definitions of *Al-Tawriq* in the Al-Quran, hadiths,

and fiqh discussions. The chapter then discusses the management of the existing *waqf* institutions in Malaysia after considering the *Al-Tawriq* term from the three viewpoints. The different managements of *waqf* system are also discussed here. This includes a crucial overview of developing *waqf* institutions.

In addition to the *waqf* institutions in Malaysia, the chapter explains on the position of the *mutawallis* (administrator) and the different types of property management embraced in Malaysia by the early *waqf* administrators, including *waqf* asset issues.

Lastly, this chapter offers several examples of the *waqf* institutional contributions to the Muslim culture, especially throughout the religious, social, and economic fields. A literature search was conducted to find articles concerning the *Al-Tawriq* instrument concept and the applicable model.

2.2 Waqf in Islamic Jurisprudence (Shariah)

Waqf is a Muslim charitable activity that Prophet Muhammad (PBUH) proposed during earlier Islamic period (Anwar Pitchay et al., 2018). In Islamic history, the mosque of Quba' in Madinah is the first known *waqf* built upon the Prophet PBUH's arrival. The origin of *waqf* has been discussed among the oriental scholars. The scholars agreed to accept the *waqf* as a charity practised in Islam (Ab Rahman, Asmak, 2009). *Waqf* is not mentioned, specifically in the Qur'an. However, the spiritual pleasure attracted by the charity is clear (Elkhatib, 2016; Rashid, 2018).

In all probabilities, Allah granted this honour of initiating *waqf* to His beloved Prophet (pbuh) as *waqf* is not merely a charitable organisation like *sadaqah*, alms, and *fitrah*. *Waqf* is something that continues in perpetuity from generation to generation,

allowing charity eternal, which is otherwise not for certain types of *waqf*. It differs from zakat because zakat is compulsory while *waqf* is optional (Yaacob, 2013). According to Muhammad bin Hasan, Abu Yusuf, al-Syafie, and Ahmad Ibn Hanbal, *waqf* is to consider the 'ayn *mawquf* (treasure) as belonging to Allah SWT or Allah's SWT law and devote its benefits for good from the beginning (Ab Rahman, Asmak, 2009). In the Quranic verse 92, Surat Al-Imran states “no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give, of a truth God knoweth it well”. In tafsir Ibn Kathir, Abu Talhah said, “O Allah’s messenger! Allah says, (By no means shall you attain Al-Birr, unless you spend of that which you love;) No doubt, Bayruha’ garden is the most beloved of all my property to me. So, I want to give it in charity in Allah’s cause, and I expect its reward and compensation from Allah. O Allah’s Messenger! Spend it where Allah makes you think is feasible.

Muslims will never be rewarded of kindness except when the verse says they want to bestow their best upon others. The verses (Surat Al Imran verse 92) inspired Abu Talha, one of the Prophet’s (PBUH) followers, to give a prominent plot of land he possessed as a charity in Allah's cause to receive rewards, and then the Prophet (PBUH) recommended Abu Talha to distribute the land among his relatives in such a simple illustration of property distribution, i.e., to one's relative. In addition, that verse presents a possible context and explanation of the various potential beneficiaries for charitable giving beginning with kins and then all ways to refunding the money to free slaves.

“It is not righteousness that ye turn your faces toward East or West, but it is righteousness to believe in Allah, and the Last Day, and the Angels, and the Book, and the Messengers, to spend of your substance out of love for Him, for your kin, for

orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves, to be steadfast in prayer, and practice regular charity.” (Al-Qur’an. Al-Baqarah 2:177)¹

The second verse from Surat al-Baqarah advises Muslims to just be sincere in the religion, and immediately after that, inspires them (through their direct actions) to support their fellow Muslims from different backgrounds, especially the poor within the community. Explanation on the verse of al-Quran is derived from Kitab al-Tafsir from Ibn Kathir said this verse contains many great pearls of wisdom, encompassing, rulings and correct belief. As for the explanation of this verse, Allah first commanded the believers to face Bayt Al-Maqdis, and then to face the Ka’bah during the prayer. The change was difficult for some of the People of the Book, and even for some Muslims. Then Allah sent a revelation that clarified the wisdom behind this command: obedience to Allah, adhering to His commands, facing wherever He commands facing, and implementing whatever He legislates, that is the objective. This is Birr, Taqwa and complete faith. Facing the east or the west does not necessitate righteousness or obedience unless Allah legislates it. This is why Allah said in this verse: “It is not Birr that you turn your face towards east and (or) west (in prayers): but Birr is the one who believes in Allah and the Last Day’. Therefore, the verse offers a possible structure and explanation of the various benefits of charitable donations beginning with kins up to the payment of a reward for total freedom of slavery (Elkhatib, 2016). The Qur'anic verse refers indirectly to the worship of *waqf* and the great encouragement in its execution.

¹ Abdullah Yusuf Ali. 1989. *The Holy Qur'an, Text, Translation and Commentary*. Maryland: Amana Corporation. Translations from other sources will be cited accordingly.

حدثنا يحيى بن أيوب، وقتيبة، - يعنى ابن سعيد - وابن حجر قالوا حدثنا إسماعيل، - هو ابن جعفر - عن العلاء، عن أبيه، عن أبي هريرة، أن رسول الله صلى الله عليه وسلم قال " إذا مات الإنسان انقطع عنه عمله إلا من ثلاثة إلا من صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له " .

A Prophet Mohammad's hadith narrated by Abu Hurairah (May God be satisfied with him) "when a man dies all his good deeds come to an end except three: Ongoing charity (*Sadaqah Jariyah*), beneficial knowledge, and a righteous son who prays for him. "Considering the two main words repeating and charity, essentially all Muslim scholars understood the word repeating. Imam al-Nawawi mentioned in his book *al-Minhaj fi Syarh Sahih Muslim ibn al-Hajjaj* (2017) that the charity's meaning in the hadith above is the practice of *waqf*. This hadith is also valid proof of recitation practice and its great rewards (See *al-Minhaj fi Syarh Sahih Muslim ibn al-Hajjaj*). The scholars considered charity alms to be interpreted as *waqf* because of constant rewards to those who do it (Al-Bakri, 2019).

The proposition of the hadith *waqf* in the discussion of the book of *fiqh* usually focuses on two popular hadiths, namely the Sayidina 'Umar RA *waqf* land in Khaybar and also the palm orchard and bayruha wells of Abu Talhah RA (Ashrof Zaki Yaakob et al., 2019). In general, all hadiths regarding *waqf* can be considered as proofs of *waqf*. Something that has been practised or approved by the Prophet Muhammad (PBUH) at least gives him the law to allow such acts for it is impossible for the Messenger of Allah to perform or allow any act prohibited in the religion (Usman, 2015).

Hadith regarding the *waqf* of the Al-Sittah Pole (Sahih al-Bukhari, Sahih Season, Sunan Abu Dawud, Sunan al-Tirmidhi, Sunan al-Nasa'i, and Sunan Ibn Majah) reaches 36 hadith texts including two of these hadith (Yaakob et al., 2016).

This shows that the debate over *waqf* through the hadiths' perspective is broad and touches on several aspects (Ashrof Zaki Yaakob et al., 2019). The difficulty faced by the researchers in this study was the use of editors who did not use the word "*waqafa*" and its derivatives, and also the inclusion of *waqf* traditions in books or chapters which do not use the root word (Usman, 2015).

Therefore, it is clear that *waqf* has a great significance and advantages in Islam (Al-Bakri, 2019). It is a very important part of the economic life of Muslims. This concept of *waqf* has been around since the Prophet Muhammad PBUH, and it has been followed by friends and continues to this day. Such property is the right of Allah SWT that cannot be owned, sold, inherited, or distributed to anyone (Al-Bakri, 2019).

2.2.1 Waqf

The term *waqf* originated from the Arabic word holding, possessing, or prohibiting (Al-Zuhayli, 2009). In the al-Quran or al-hadith, the word *waqf* is not mentioned directly. It is *Fuqaha*'s explanation of the significance of *Jariah* that is known to give him everything in his life and use forever.

Waqf is a Muslim charitable donation advocated during the early Islamic period by Prophet Muhammad (PBUH). The following are some al-Quran verses which urge Muslims to allocate any of their properties through charitable acts:

لَنْ تَنَالُوا الْبِرَّ حَتَّىٰ مِنْ شَيْءٍ تُنْفِقُوا مِمَّا حُبَبْتُمْ ۖ وَمَا يُنْفِقُوا فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

(Al-Quran. Ali 'Imran 3:92)

By no means shall ye attain righteousness unless ye give (freely) of that which ye love; and whatever ye give of a truth God knoweth it well. (Al-Quran. Ali 'Imran 3:92)²

آمِنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَحْلِفِينَ فِيهِ ۖ فَالَّذِينَ آمَنُوا مِنْكُمْ وَأَنْفَقُوا هُمْ أَجْرٌ كَبِيرٌ
(Al-Quran. Al-Hadid 57:7)

Believe in God and His Apostle And spend (in charity) Out of the (substance) Whereof He has made you Heirs. For, those of you Who believe and spend (In charity), for them Is a great Reward.³

In the third year of Hijrah, the prophet Muhammad (PBUH) had endowed seven palm trees or gardens in Medina, A'raf Shafiyah, Dalal and Barqah (Ab.Aziz, 2018).

In addition, many hadiths inspire *waqf* activities, for instance, endowment by Umar:

حدثنا مسددٌ ، حَدَّثَنَا يَزِيدُ بْنُ زُرَيْعٍ ، حَدَّثَنَا ابْنُ عَوْنٍ ، عَنْ نَافِعٍ ، عَنِ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا ، قَالَ :
أَصَابَ عُمَرُ بِحَيْبَرَ أَرْضًا ، فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ ، فَقَالَ : أَصَبْتُ أَرْضًا لَمْ أُصِبْ مَالًا قَطُّ
أَنْفَسَ مِنْهُ ، فَكَيْفَ تَأْمُرُنِي بِهِ ؟ قَالَ : إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا ، فَتَصَدَّقَ عُمَرُ أَنَّهُ لَا يُبَاعُ
أَصْلُهَا وَلَا يُوهَبُ وَلَا يُورَثُ فِي الْفُقَرَاءِ ، وَالْقُرْبَى وَالرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَالضَّيْفِ وَابْنِ السَّبِيلِ ، لَا جُنَاحَ
عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ ، أَوْ يُطْعِمَ صَدِيقًا غَيْرَ مُتَمَوِّلٍ فِيهِ

Narrated Ibn `Umar: When `Umar got a piece of land in Khaibar, he came to the Prophet saying, "I have got a piece of land, better than which I have never got. So, what do you advise me regarding it?" The Prophet said, "If you wish you can keep it as an endowment to be used for charitable purposes." So, `Umar gave the land in charity (i.e., as an endowment on the condition that the land would neither be sold nor given as a present, nor bequeathed, (and its yield) would be used for the poor, the kinsmen, the emancipation of slaves, Jihad, and for guests and travellers; and its

² Abdullah Yusuf Ali. 1989. *The Holy Qur'an, Text, Translation and Commentary*. Maryland: Amana Corporation. Translations from other sources will be cited accordingly.

³ Abdullah Yusuf Ali. 1989. *The Holy Qur'an, Text, Translation and Commentary*. Maryland: Amana Corporation. Translations from other sources will be cited accordingly.

administrator could eat in a reasonable just manner, and he also could feed his friends without intending to be wealthy by its means."

According to al-Shawkani this event marked the beginning of the history of *waqf* in Islam (Al-Shawkani, 1384H/1964). According to Ibn Hajar, this hadith of Umar is the basis of the law of *waqf* (Ibn Hajar al-Asqalani, undated). Wahbah al-Zuhayli reacted on this hadith, indicating that *waqf* assets can no longer be utilised through *waqif* because *waqf* denotes the withholding of assets from issues of ownership and possession (Wahbah al-Zuhayli (1405H/1985). While the recipient only takes its benefits and takes good care of it (Wahbah al-Zuhayli, 1405H/1985).

Waqf has always been a tradition rooted in Islamic history. *Waqf* is an important institution in developing Muslims not only from a religious and social point of view, but it also involves the development of economic resources (Hishamuddin, 2006). Economics is one of Islam's important aspects in the field of human sustenance growth. There are many such issues like *infaq*, welfare, succession, and *waqf* from the economic aspects. *Waqf* is a significant Islamic economic institution. Therefore, it must be built in the best possible way and be vigilant in optimising its gains for Muslims, in particular, and for the whole of humanity, in general.

The *waqf* instrument plays a crucial role in the Muslim communities, such as feeding the poor, the needy, and the children by providing education, learning, and economic activities (Razak, 2020).

2.2.2 Waqf Classification

This subsection introduces the *waqf* classification as to the *waqif* purpose and the principle of *waqf*. According to Syed Othman (1986), *waqf* is classified into three

types. The first type is *waqf khayri*, often known as general *waqf* (for public purposes). This *waqf* is dedicated to promoting the general good and welfare of the poor and needy, and public utilities such as schools, colleges for education, scientific research, orphanages and wayfarers' shelters, and hospitals that give free medical care to the ill and needy. In other words, if the beneficiaries are the public, it will be categorised as *waqf khayri* (general *waqf*) (Baharuddin, 1998).

The second type is the *waqf fi ahli* (family *waqf*) or *waqf zurri* (*dhuriyyah*-offspring). Kahf (1999) terms it as private *waqf*. In other words, the beneficiaries are either a specific individual or group of people defined by the founder or any other specific people. This kind of *waqf* is given to oneself, one's offspring, and relatives at first (Hassan, 1984). It is permissible under the Sharia because it comes from the Holy Prophet (PBUH) and his companions. It indicates that most of the usufruct (*manfaa'*) of the *waqf* assets goes to the owner, his family, or his descendants (Hasanuddin, 1998). However, a portion of the usufruct is set aside for general or general usage (Hassan, 1984). When the *waqif's* descendants pass away, the *waqf* usufructs will be passed down to distant cousins or changed to *waqf khayri* by the authorities (Kahf, 1999).

According to Kahf (1999), this type of *waqf* serves an essential societal goal. The property left to posterity keeps them off the social welfare and zakat recipient lists while the property develops and expands through capital accumulation. He underlined that it is known as a family trust in the West, particularly in the United States, and that these trusts enjoy many tax benefits. On the contrary, most Islamic nations, such as Egypt and Syria, prohibit this type of *waqf*. Meanwhile, it is only allowed in Lebanon for two generations; afterwards, it will be extinguished (Kahf, 1999).

Furthermore, *Waqf Mushtarak* (Combination) is the third type, which is a mix of *waqf khayri* (general *waqf*) and *waqf zurri* (*waqf fi ahli/waqf al awlad*). Normally, the endower (*waqif*) will identify the target beneficiary (normally the descendants) and then allocate the benefit for broader welfare objectives under this sort of *waqf* (Hassan, 1984). *Waqf mushtarak* will consider the legal conditions from *waqf khayri* (general *waqf*) and *waqf zurri* in this situation. Only *waqf khayri*, pure religious *waqf* (termed *waqf khas*), and cash/share *waqf* are available in Malaysia. The existence of *waqf zurri* (*waqf fi ahli, waqf al awlad*) and *waqf mushtarak* is difficult to trace in Malaysia (Abdul Rahim, Mohamad Daud and Yusuf, 1999).

According to most scholars and in Islamic Jurisprudence, there are four pillars of Rukun *Waqf* and elements, an endower (*waqif*), an asset to be endowed (*mawquf*), a beneficiary (*mawquf alaihi*), and a declaration (*sighah*) (Mahdi 2003). *Waqif* is the owner of the asset and is capable of managing it alone (Hassan, 1986). In addition, he must be of good character (Al-Sharbini, 1997), of mature age (Al-Kubaysi, 1997), and have committed the *waqf*/endowment willingly, rather than through force or fraud (Al-Kubaysi, 1997).

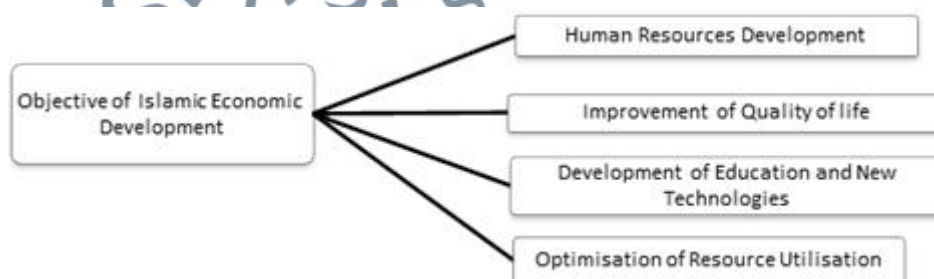
Furthermore, assets are divided into two, movable and immovable properties. As for immovable property, scholars have agreed it is valid as it fulfils the main principle of *waqf* is permanent property (Al-Nawawi, undated: 378) (Mustafa al-Khin et al., 2009). This is based on the practice of *waqf* performed by the Prophet s.a.w. and the companions who make permanent property of their *mawquf* (Al-Syawkani, undated). Furthermore, there is a statement stating that at that time, no property was endowed except from land and buildings (Al-Syawkani, undated; Ibn Qudamah, 1972).

Meanwhile, scholars determined that endowed moveable assets, such as animals, cars, and carpets, must be original, permitted, stay put, and not perish due to

usage (Zayani, 2014). In this aspect, the Syafi'e School of thought believes that the permanence of moveable assets is determined by whether they may still be used and are not destroyed but can be replaced with another asset (Al-Sharbini, 1997). Therefore, a *waqif* would usually prefer to apply immovable property such as land and buildings because it fulfils the *waqf* characteristics. However, scholars' opinions on this issue are that movable property such as cash and shares can also be categorised as *waqf* (Seman,2017). Cash *waqf* characteristics like irrevocability, permanence, and perpetuity differentiate *waqf* from the other forms of donations (Abdullah & Ismail, 2017). This opinion was issued to maximise the impact of *waqf* on the economy of Muslims.

2.2.3 Issues and Challenges of Waqf Development

This section presents issues and challenges of *waqf* development. Research provides a data gathering of the *waqf* development challenges in Malaysia. This issue has been faced by *waqf* institutions for a long time and should be resolved to continue benefiting *waqf* property. Since the issue has existed for a long time, it is easy to find information and data in the current literature.



Source: Borhan, J.T. et al. (2008)

Figure 2.1: Objective of Islamic Economic Development

Figure 2.1 illustrates the objective of Islamic economics includes four elements. The first is human resources development, followed by improvement of quality of life. The development of education, new technologies, and optimisation of resource utilisation are also included in the objective. In Islam, its growth of human resources focuses on the physical aspects accomplished by enhancing professional skills, job performance, training, education, and well-being, and changes throughout faith and morals (Suhaimi et al., 2014).

From the figure, it could be concluded that The State Islamic Religious Council (SIRC), which is trusted with the security of *waqf* and zakat properties in Malaysia, will implement steps to prevent the phenomenon of inefficient and idle *waqf* land. There are 7,791.04 hectares or 70.25% of *waqf* land left undeveloped (Siti Nadiyah, 2018).

2.2.4 Waqf and Undeveloped Waqf Land

Waqf is being recognised as a tool of benevolence, which its benefit is used to boost the protection of a disadvantaged community. *Waqf* emerged as among the socioeconomic connections of Islam since the time of Prophet Muhammad (PBUH). The role of *waqf* in the context of Islamic redistribution regards *waqf* as an important institution in the Islamic social framework (Shaikh et al., 2017).

Waqf is a form of donation from a laymen's perspective, mostly land and property. When an individual declares their possessions as a *waqf*, it will be expected that someone entrusted with the *waqf* will distribute the benefits according to the Sharia principles to the intended beneficiaries as specified by the beneficiary. *Waqf*

can be established in the contemporary application of *waqf* by donating movable or immovable objects (Shaikh et al., 2017).

Following these definitions, benefactors contribute to the social-economic development of the Islamic community and earn from Allah SWT an everlasting and constant blessing. In addition, these would enable the properties to be used continuously, further than informal charities, and provide guaranteed approval of social assistance operations (Abdullah & Ismail, 2017).

Furthermore, undeveloped or abandoned land can be described as a land or farmland area of 0.4 hectares that is either continuous or fragmented, which for three consecutive years has been an unincorporated land (Portal Rasmi Jabatan Pertanian, 2021). The tremendous percentage of undeveloped *waqf* land seems to be a barrier to the economic development of Muslim society in Malaysia, especially in 2015, when the total value of *waqf* land was estimated at RM 4 billion (Mohd Ali et al., 2015). Therefore, efficient and effective growth of the undeveloped *waqf* property of Malaysia should fulfil the *waqf* beneficiaries, lead to the growth of Islamic countries economy, preserve the *waqf* land, and fund other *waqf* property developments.

Undeveloped *waqf* land also can be defined as *waqf* land that has not been utilised for many years due to certain factors. However, the lack of allocation is the most important consideration impacting Malaysia's capacity to build *waqf* land. As a result, almost *waqf* land remain idle, and the *waqf* organisations face the challenges of achieving their liquidity for utilising the said land.

On the other hand, challenges of obtaining funds for *waqf* land development will delay its priorities of the *waqf*, and incompetence and abuse related to *waqf* land administration. *Waqf* resources are commonly not handled in compliance with the *waqf*'s initial purpose. Moreover, the individuals responsible for managing *waqf*

property are not trained, competent, nor skilled in Islamic values and the laws governing them, leading to difficulties in achieving the success and goals of the *waqf* process (Mohd Thas Thaker & Anwar Pitchay, 2018).

A further challenge includes the impression of the society that the worth of the donation lands is weak. For instance, abandoned *waqf* land can be built-in agriculture yet leased at such an incredibly low price. This confusion causes the society to be uninterested in contributing to any land. On the other hand, there are parties taking part in *waqf* development. Trustees (*nazir* or *mutawalli*) also play crucial roles in identifying a mechanism for developing *waqf* property to safeguard and meet stakeholders' requirements and needs. They are made up of their *mutawalli*, the donors, the *waqf* board members, the government, and the society (beneficiaries) (Sulaiman, 2012).

2.2.5 Development of Waqf Land

Mohd Thas Thaker, M.A.B. (2018) described the concept of *waqf* land before independence. According to this concept, in Malaysia, *waqf* matters were once regulated and governed by persons, including *Penghulu* (individual *Mutawalli*) and *Imams* (Head). Several *waqf* lands existed. After Malaysia gained independence, the management and administration of the *waqf* situation were handled by the State Islamic Religious Councils (SIRC). Ismail C.Z. (2015) stated that *waqf* managers consist of religious officials, religious teachers, imams, village leaders, and mosque committee members assigned for *waqf* administration before any law existed.

Waqf property when managed and developed wisely and in line with the current needs to generate economic strength in the region, in particular Muslims. Therefore,

waqf lands are seen as the government's biggest strength to build in line with current requirements as long as they do not deviate from the existing concept of *waqf* and are in line with its status as a permanent and productive asset of welfare. However, ineffective administration underlined that most of the *waqf* lands were undeveloped as the *mutawalli* were not properly maintained or treated (Mohd Ali et al., 2015). Therefore, Malaysia still needs additional initiatives, efficient and successful solutions to increase the future investment in *waqf* lands.

Through efficient management or development of *waqf* assets, the investors' profits or dividends are used to achieve *waqif* and society's expectations. *Waqf* properties must be developed and used to preserve its original function according to the concept of *waqf*. Properties are to be protected or preserved in their "physical form," whereas growth is used to support needy people (Daud, 2019).

Malaysia is the richest in *waqf* resources. Therefore, it is more important to have real estate investment concerning *waqf* land to realise how it is a piece of property that works under market conditions that need development. Compared to traditional *waqf* construction, such as cemeteries, schools, and mosques, various methods offer the option of developing *waqf* properties through commercial projects. An overall project return that can profit the beneficiaries will improve Muslim welfare throughout the nation. To illustrate this, the Islamic Religious Council of Wilayah Persekutuan (MAIWP) has successfully developed a piece of *waqf* land into a commercial property known as the Bank Islam Tower and generated RM56.6 million from the project (R. Hassan et al., 2012).

2.2.6 Waqf and the Well-being of the Ummah

Waqf can improve the well-being of the ummah, as *waqf* is one of the instruments to improve the country's economy (Ibrahim, 2013). *Waqf* plays a big role in maintaining a sustainable and multi-capitalist income inequality system that keeps wealthy individuals from becoming wealthier and middle-class people from becoming poorer because *waqf* has been unable to perform the desired function. *Waqf* is closely associated with philanthropic activities from another perspective and can reduce economic problems. The *waqf* managers (*mutawalli* and *nazir*) are supposed to improve such valuable properties to benefit the recipients and the Muslims' social well-being (Muhammad Tajuddin Engku Ali et al., 2018).

In order to ensure that *waqf* can be used at its maximum capacity, it is necessary to extend the exposure of *waqf* items from land and property to many other mobile properties. When a healthy economy can recognise the procedure and regulation for *waqf* as in the days of the Ottomans, the macroeconomic goal will be accomplished to ensure an equal distribution of income, reduce tax as the main income for the government, and reduce the tax burden on society. The *waqf* institutions' potential highly relies on Muslims' understanding of *waqf* or allocation of government efficiency.

Initiatives will acquire legitimate assets to be regarded throughout religious teachings as a kind of religion, a method to eradicate poverty and to distribute wealth, such as giving zakat, listening to the needy of both the people and children, *Ehsan* and well-being to the disadvantaged structures, and perhaps even more essential pleasant *waqf* practice. *Waqf* is a basis of Islamic charity to achieve goals through the property and finance allocated to a constitutional basis. *Waqf*'s performance could be reflected

for social projects, financial, environmental, health, education, training, and many other social well-being initiatives (Salarzahi et al., 2010).

Waqf can be one of the main social and economic instruments in Muslim societies that will support communities in terms of education, health care, national security, transportation services, basic infrastructure, food, and employment prospects. Examples would be the establishment of *Waqf* Brigade, provisions of emergency relief operations, such as earthquakes and tsunamis. However, this should not be sold just for the sake of selfishness as well as an unrestricted desire for money (Khairi et al., 2015).

Over the last decades, the development of the *waqf* has had a massive positive effect on Muslims and non-Muslims because the program offered is unique and distinct. The purpose of the *waqf* is to provide several social and welfare programs for the benefit of individual beneficiaries and to obtain God's reward in heaven (thawab) by employing philanthropic actions. However, the actions of *waqf* donors in Islamic tradition have shown their desire to follow the guiding philosophy by providing *awqaf* comprehensively covering all aspects of community life, including its social well-being (Muhammad, 2017).

The most important purpose of *waqf* is to improve the well-being of the ummah by assisting to the public sector through the coverage of public services and expenses. Its perpetuity concept prevents the object of *waqf* from falling into the hands of unauthorised persons. Generally, the income from *waqf* is used to maintain the object of *waqf* and that the excess from its income goes to the rightful beneficiaries as stipulated in the *waqf* deed (Senkaya, 2012).

2.3 Al Tawriq Terminology

Al-Tawriq in literal by Ali Mahyudin (undated) rooted from the word *waraqah al-syajar*, silver: multiplied or not multiplied, but in the economic term, *Al-Tawriq* is securitisation, which means a modern legal and economic instrument for the development of financial markets in the economy. *Mu'jam al-Mustalahat al-Iqtisadi wa al-Mal wa Idarah al-Mal* (2000) stated *Al-Tawriq* with *Waraqah Maliyah*, which meant security.

Generally, there is no specific word for the meaning of *Al-Tawriq* in Arabic dictionaries until the 90s, but there is only the basic word *waraqah* (Fuadah et al., 2018). *Al-Tawriq* is a securitisation that converts non-liquid financial assets such as loans and other illiquid assets into cash (*Majallah Majma 'al-Fiqh al-Islamiy al-Dawli*, 2009).

Al-Tawriq, in the operational definition, is a security for an abandoned *waqf* land that occurred prior to the *Istibdal* process (Fuadah et al., 2018). Mohd Daud Bakar moots *Al-Tawriq* to address the issue of unproductive, idle, commercial value and natural resources aimed at sustaining maintenance or development cost (Fuadah et al., 2018). The definition and meaning of *tawriq* in the dictionary of al-Ghani, Arabic-Arabic dictionary ensure the safety of the abandoned *waqf* lands; these assets are converted into liquidity (Fuadah et al., 2018). *Al-Tawriq* instrument is a new thing in the Islamic economy used either in banking institutions or non-banking institutions to get liquidity in anxious institutions (Asmak, 2016).

Al-Tawriq also means liquidity in the form of (securities) which is an instrument that moves various secured debt assets by converting them from debt to developed credit, and then offered to the public through special means for subscription in the form of suitable securities to minimize risk and to ensure a continuous flow of

liquidity (Ajil Jasim al-Nasyami, (2009). Securitisation is a process of transforming an illiquid asset into tradable security that renders the illiquid asset of the liquidity features by deployment or creation of some market mechanism. The *waqf* institution may liquidate its asset, i.e. *waqf* land, through securitisation in the form of Islamic debt securities or asset-backed securities to finance its investment projects (Hasan & Abdullah, 2008).

Based on the current *waqf* situation, it is noticed that the utilisation and development of *waqf* are not being optimised. However, many undeveloped *waqf* lands can be established using different instruments (Mohd Ali et al., 2015; Zulhibri, 2012). For instance, cash *waqf* liquidity provides a chance to generate more funds that could be used to grow assets, including undeveloped *waqf* land or other abandoned land of farmland and industry (Rizal & Amin, 2017).

2.3.1 Al Tawriq

The word *Al-Tawriq* is derived from the Arabic word (الورق) which means cash (Fuadah et al., 2018). This definition is taken from the surah al-Kahfi verse 19 and Ibn Kathir (2002) in his book explains the word *wariq* carries the meaning "They had brought with them some Dirhams (silver coins) from their homes, to buy whatever they might need, and they had given some in charity and kept some".

وَكَذَلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ ۚ قَالَ قَائِلٌ مِّنْهُمْ كَمْ لَبِئْتُمْ ۗ قَالُوا لَبِئْنَا يَوْمًا أَوْ بَعْضَ يَوْمٍ ۗ قَالُوا رَبُّكُمْ أَعْلَمُ
بِمَا لَبِئْتُمْ فَأَبْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هُدًى إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِّنْهُ وَلْيَتَلَطَّفْ
وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا

(Al-Quran.Al-Kahf 18:19)

Likewise, we woke them that they might question one another. A speaker among them said: "How long have you stayed (here)" They said: "We have stayed a day or part of a day." They said: "Your Lord knows best how long you have stayed (here). So, send one of you with this silver coin of yours to the town, and let him find out which is the Azka food, and bring some of that to you. And let him be careful and let no man know of you."

With the keyword *waraqah*, many interpretations have translated it as money from dirham by *al-mu'jam al-wasit* dictionary Arabic-Arabic, which could be understood as cash concentration.

This is further supported by the traditional Arabic-Arabic *al-Muhit* dictionary related to the context of *waraqah al-mal*, meaning acceptable paper or papers such as letters of credit, trade bills, and loan acceptances that the central banks allow for loans to be discounted or considered collateral.

The definition of *Al-Tawriq* by Ali Mahyudin (undated) was rooted in the word *waraqah al-syajar*, silver: multiplied or not multiplied (Fuadah et al., 2018) . However, in terms of economics, *Al-Tawriq* is securitisation, which means modern legal and economic instruments for developing financial markets in the economy.

Securitisation in contemporary Arabic means *tawriq*, *tasnid*, and *taskik* (A. Hassan & Mollah, 2013). Nevertheless, securitisation is based on the sale of the financial debt institution, which has a third party in the form of a right transfer to a company that secures the bonds of the value of the debt and put it to the public subscription.

2.3.2 Al Tawriq in Al Quran

It has been mentioned earlier that the word of *Al-Tawriq* is not mentioned directly in the Qur'an and there is no specific verse that mentions the word *Al-Tawriq*

directly. The word *Al-Tawriq* is derived from the word *waraqah* which, means cash. In the Arabic dictionary, *Lisan al-Arab* by Ibn Manzur (2003) explains the origin of the word *wariq* is *waraqah*, which means leaves from a tree, while the term's meaning is *al-Darahim al-Madrubah* or beaten dirham. *Al-Tawriq* is a new instrument to solve the problem of undeveloped and abandoned land and convert the land to money and its depositors to replace it with productive land.

According to Rumasukun (2019), *wariq* money is mentioned explicitly in the story of the youth of the faithful inhabitants of the cave as written in the Qur'an Surat al-Kahf verse 19. Therefore, this study aims to get a comprehensive picture of the *wariq* money concept and reveal the relevance of *wariq* money to sharia economics.

Therefore, Mahyudin and Seman (2018) stated that *wariq* is silver money. In al-Quran Surat al-Kahf verse 19, Allah SWT uses the word *wariq*, which means, according to the majority of scholars from among the four schools of jurisprudence, are namely leaf sheets or strands, even though to deliver currency made from precious metals, namely silver (Rumasukun, 2019). Moreover, only dinar and dirham (*wariq*) currencies are mentioned in the al-Quran and as-Sunnah (Subaidi, 2018). Furthermore, in Quran, al-Imran verse 75 and Yusuf verse 20 mentioned dinar and dirham. Before being recognised as paper money now, people once used the currency of gold and silver, known as dinar and dirham. Currencies like gold and silver, also known as dinars and dirhams, were used in ancient times before today's paper money.

In addition to the word *wariq*, in Surat al-Kahfi, there is also the word *waraqah* mentioned in Surat al-An'am verse 59, which means "[a]nd with Him are the keys of the unseen; none knows them except Him. Moreover, He knows what is on the land and in the sea. Not a leaf falls but that He knows it. Furthermore, no grain is there within the darkness of the earth and no moist or dry [thing] but that it is [written] in a

clear record". This verse tells us that Allah SWT knows everything that is taking place in this world. He knows all the movements of creatures, both animals, spirits, and humans, including a leaf falling to the ground.

The results show that the education values contained in Surat al-Kahfi verses 9-21 are intellectual education, patient education, spiritual experiences, faith education, storytelling methods, courage education, faith retention education, physical endurance education, and social education (Anang, 2016). However, Surat al-Kahfi contains various events in the Qur'an to strengthen faith (Fauzan, 2018). The story of Ashab al-Kahf above, it shows that silver had been used before they slept for 309 years (Hilaluddin, 2018).

2.3.3 Al Tawriq in Hadith

The word *Al-Tawriq* is not directly mentioned in the hadith but uses the root word of *Al-Tawriq*, which is *waraqah*. In this subtopic, the researcher cites some examples of hadith regarding *al-waraqah*.

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ، أَحْبَبَنَا مَالِكُ، عَنْ نَافِعٍ، عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ . رَضِيَ اللَّهُ عَنْهُ . أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " لَا تَبِيعُوا الذَّهَبَ بِالذَّهَبِ إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشِفُّوا بَعْضَهَا عَلَى بَعْضٍ، وَلَا تَبِيعُوا الْوَرِقَ بِالْوَرِقِ إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشِفُّوا بَعْضَهَا عَلَى بَعْضٍ، وَلَا تَبِيعُوا مِنْهَا غَائِبًا بِنَاجِزٍ "

Hadith narrated by Abu Sa`id Al-Khudri: "Allah's Messenger (ﷺ) said, "Do not sell gold for gold unless equivalent in weight, and do not sell less amount for the greater amount or vice versa; and do not sell silver for silver unless equivalent in weight, and do not sell less amount for the greater amount or vice versa and do not sell gold or silver that is not present at the moment of exchange for gold or silver that is present".

The above hadith explains that selling with similar items, such as gold to gold, silver to silver, wheat to wheat, dates to dates must be made in the same size, range, and scale (Setyawati, 2017). Moreover, in another hadith,

سَأَلَ رَافِعُ بْنُ حَدَّانَةَ فُتَيْبَةُ بْنُ سَعِيدٍ، عَنْ مَالِكٍ، عَنْ رَبِيعَةَ بْنِ أَبِي عَبْدِ الرَّحْمَنِ، عَنْ حَنْظَلَةَ بْنِ قَيْسٍ، أَنَّهُ حَدَّثَهُ عَنْ كِرَاءِ الْأَرْضِ، فَقَالَ نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ كِرَاءِ الْأَرْضِ فَقُلْتُ أِبَالذَّهَبِ وَالْوَرِقِ فَقَالَ أَمَّا بِالذَّهَبِ وَالْوَرِقِ فَلَا بَأْسَ بِهِ .

Hanzalah ibn Qays said that he asked Rafi' ibn Khadij about the lease of land. He replied: "The Messenger of Allah (ﷺ) forbade the leasing of land. I asked: (Did he forbid) for gold and silver (i.e., dinars and dirhams)? He replied: If it is against gold and silver, then there is no harm in it"⁴. This hadith is related to the Messenger of Allah, who forbade the lease of land related to gold and silver.

Therefore, the hadith narrated that Zuhri heard Malik bin Aws bin Hadathan say:

حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا سُفْيَانُ بْنُ عُيَيْنَةَ، عَنِ الزُّهْرِيِّ، سَمِعَ مَالِكَ بْنَ أَوْسِ بْنِ الْحَدَثَانِ، يَقُولُ سَمِعْتُ عُمَرَ، يَقُولُ قَالَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - " الذَّهَبُ بِالْوَرِقِ رَبًّا إِلَّا هَاءَ وَهَاءَ " . قَالَ أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ سَمِعْتُ سُفْيَانَ يَقُولُ الذَّهَبُ بِالْوَرِقِ أَحْفَظُوا .

"I heard 'Umar say: "The Messenger of Allah (ﷺ), said: 'Gold for silver is usury, unless it is exchanged on the spot.'" (Sahih) Abu Bakr bin Abu-Shaibah said: "I heard Sufyan saying: 'Gold for silver.'" Memorise (this)⁵. The *waraq* carries the meaning of silver used in the days of the Prophet Muhammad and most of the hadiths related to silver are related to the hadith narrated about usury.

According to Rumasukun (2019), Wariq Money Analysis in Sociology of Science, the testing and interpretation are achieved through gathering numerous primary references relevant to a *wariq* topic, so that the word money *wariq* can be

⁴ Sunan Abi Daud 3393, English Translation: book 22 Hadith 3387

⁵ Sunan Ibn Majah, Book 12, Hadith 2259

thoroughly represented. Therefore, the word *tawarruq* is adapted from *wariq* (silver coins) (Hamour et al., 2019). Subaidi (2018) stated that only dinar and dirham (*wariq*) currencies are mentioned in the al-Quran and as-Sunnah. Before accepting paper money, people used the gold and silver currency, known as dirham and dinar. Therefore, it is clear that the word *wariq* mentioned in the Qur'an and as-Sunnah brought in silver money.

Moreover, previously Prophet Muhammad (pbuh) used dinar (gold money) and dirham (silver money) for practising cash *waqf* (Siswantoro et al., 2018). However, the function of pure gold and silver dinars and dirhams as currency is very important and can never be substituted by many other commodities as dirhams and dinars provide advantages such as favour, durability, and scarcity (Subaidi, 2018). Therefore, according to Rumasukun (2019), if the discussion on *wariq* is examined more deeply, there is still very much room for discussion for the development of scientific treasures.

In conclusion, the word *tawriq* is taken from the word *waraq* which is money during the time of the Prophet Muhammad (pbuh), silver money was used as a tool for their business trading. Hadiths on Prophet Muhammad PBUH mentioned that *wariq* is mostly related to buying and selling, usury, and heirlooms.

2.3.4 Al Tawriq in Fiqh Discussion

The development of the *fiqh* should be developed in line with the development of the Islamic Economy (Hidayat, 2016). According to Fuadah (2018), There is no specific verse in the Quran about the allowance of selling *waqf* assets and it was discussed and decided on at the level of the strictly religious Imam (*imam muktabar*).

The discussion is based on responses to issues that occur from time to time and hadiths are responses and answers to the present issues and concerns.

The issue of the *waqf* mosque falls within the category specific to the law on its sale (Fuadah et al., 2018). As for non-mosque *waqf* assets, the fiqh scholars have various opinions and explanations to justify their arguments (Mughniyah, 2004) . All scholars other than the Syafi'e are permitted to sell the non-mosque property of *waqf* property. The Hanbal opinion believes that can sell the *waqf* asset including the mosque. However, even though Imam Syafi'e did not agree to sell the *waqf* asset, he agreed to change the function of the *waqf* asset in the form of other uses if the original function is out of use (Fuadah et al., 2018). In the case of *Al-Tawriq* as Syafi'e also agreed to liquidate the future debt sales liquidating as the term of *Al-Tawriq* (Al-Nasyami, 2009).

According to Abu Zahrah (1971), Imam Maliki also agrees that *waqf* (other than mosques) assets can be sold but must be sold under three circumstances. Firstly, is the *waqif* requiring the sale of the *mauquf alaih* and it must be followed up to the stipulation. Secondly, the *mauquf alaih* falls under movable property and no longer fulfils the *waqif* purpose. The selling price may be used for comparable items or the like. Third, the immovable property can be sold for the mosque, street, and cemetery expansion purposes. Other than that, it cannot be sold even if the item is damaged and does not work.

Imam Hanbal offers a compassionate view about the need to sell *waqf* assets. He agreed with the views of the other three scholars that if the *waqf* still functions, it would not be sold, but he had the *waqf* asset regardless of the asset mosque or non-mosque, both of which can be sold for reasons and reasons to support it example A mosque does not function as a place of prayer (Mughniyah,2004). Imam Syafi'e was

strict in the matter of selling *waqf* assets. In essence, he did not allow the sale of *waqf* assets even though they did not function as intended. According to him, if it does not function as the original function, the asset can be used instead of sold. Although Imam Shaykh adhered to the Prophet's hadith not to sell, inherit and possess, he did not prevent the use of alternatives until he could dispose of the *waqf* assets (Mughniyah, 2004).

Based on the above discussion, there are some major differences between the four schools regarding the sale of *waqf* assets. Hanafi and Hanbal schools are very practical and are not tied to the original *waqf* principles. However, Syafi'e and Maliki seem to be very cautious in selling *waqf* assets and non-liberal as the other two schools think. They prioritise the principle ahead of the practical.

In this subtopic, *Al-Tawriq* terminology in fiqh discussion and their opinion relating to the words of *Al-Tawriq* are discussed. The word of *Al-Tawriq* is often used in the Islamic banking sector as an instrument for getting liquidity. The word *Al-Tawriq* only appeared around 2000 and above and, in particular, *Al-Tawriq* was mentioned in the Arabic dictionary as money or cash in 2007 in line with the recent growth in Islamic Finance (Fuadah et al., 2018).

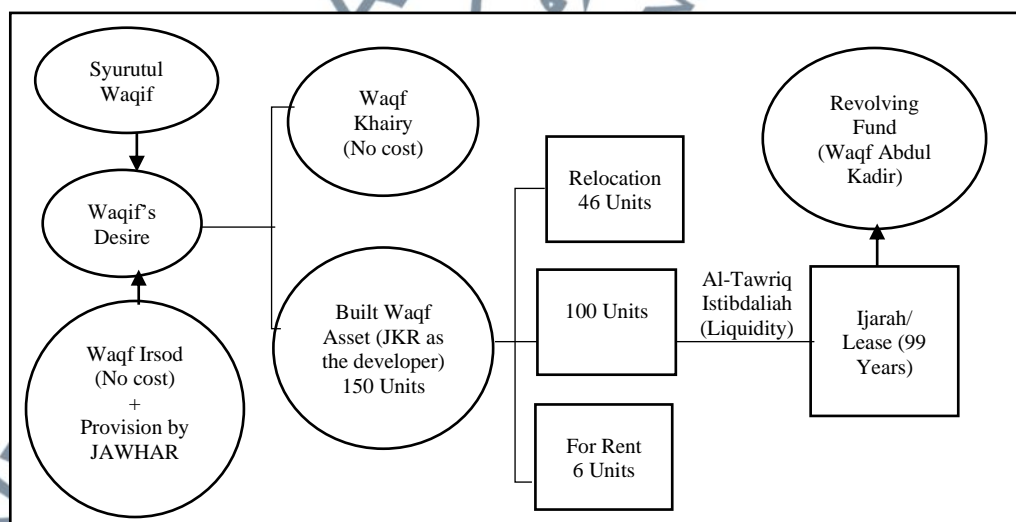
Moreover, in modern Arabic dictionaries that specialise in Economics and Authority, the word *Al-Tawriq* has been mentioned extensively (Fuadah et al., 2018). For example, *Mu'jam al-Mustalahat al-Iqtisadi wa al-Mal wa Idarah al-Mal* (2000) stated *Al-Tawriq* with *Waraqah Maliyah*, which meant security. Mohd Daud Bakar (2017) explained that the definition of the term and application of *Al-Tawriq* in *waqf* assets is the origin of the word *al-Wariq*, exchanging assets for cash disbursements.

However, *tawarruq* definition is the etymology of the *bay 'al-tawarruq* derived from the Arabic word طلب الورق asked for *wariq*. In addition, (al-Nasyami, 2009) in his

study entitled Terms and the requirements of *Al-Tawriq* and *al-Taskik*, emphasise the importance of securitisation and the criteria in comparison and difference between them as an innovation in the field of Islamic finance.

2.3.5 Al Tawriq Istibdaliah

Al-Tawriq is a new product for the Islamic securitisation model (Fuadah Johari, 2018). According to Jalil, A. (2008), *waqf* instruments that have the potential of solving the lack of funds should not be ignored. This is because all moveable properties that can be sold can receive benefits in return as well as retain their physical conditions (Ibrahim Haslindar, 2013). However, the study name it as *Al-Tawriq Istibdaliah* as the early process before the *istibdal* taking place. In real reality, *Al-Tawriq* was implemented in the *waqf* institution as shown in figure 2.2 below.



Source: Fuadah Johari (2019)

Figure 2.2: Al Tawriq *Waqf* Model in Pulau Pinang

Figure 2.2 indicates that there is an *Al-Tawriq Istibdaliah* instrument application at MAINPP. There is a revolving fund (Wakaf Abdul Kadir) allocated in Pulau Pinang state. Permission to perform the *Al-Tawriq Istibdaliah* application depends on the *syurut wakif*. From the point of view of MAINPP representatives (Fuadah,2019), the definition of *waqf* land liquidation is based on the gain of *waqf*, whereas for the concept of non-productive *waqf* assets, the informants not only look at the priority of the assets to be developed, but also the willingness of MAINPP to develop the assets in terms of capacity, importance, and *syurutul wakif*.

Moreover, figure 2.2 also illustrates the willingness of *waqif* to allocate that *waqf* land for *waqf* khairi, which MAINPP handed over the land to the JKR for *waqf* land development. There were 150 units placements with 46 relocation units, 100 units for a lease of 99 years (*Al-Tawriq Istibdaliah* application) and six units for rental. Some 46 units of the house were used as resettlement of the displaced population for the redevelopment of the land. Secondly, six units were rented out while thirdly, i.e., 100 units of houses were sold to the Muslim public (lease).

Additionally, the implementation of this *Al-Tawriq Istibdaliah* model was successful as MAINPP received free land from the federal government (wakaf Irshad) and project development from JKR. There was allocation from JAWHAR which joined the federal government to realize the intention of *waqif*.

The implementation of the *Al-Tawriq Istibdaliah* concept in Pulau Pinang has already taken place by MAINPP and this was based on a hybrid model involving several agencies, i.e., the cooperation between JAWHAR and MAINPP (Fuadah et al., 2018).

The success of the idle *waqf* land situation of getting out of trouble has increased the wealth of Muslim countries and indirectly developed economic growth

and sustainability (Ibrahim Haslindar, 2013). *Al-Tawriq Istibdaliah* instrument provides a good intention for *waqf* land development in Malaysia. The essential element for economic growth and financial development is liquidity (Mohd Daud Bakar et al., 2008). Even at the social level, they needed liquidity.

Al-Tawriq Istibdaliah is a new solution to solve undeveloped *waqf* assets. This study, however, indicates that *Al-Tawriq Istibdaliah* could be used as one of the alternatives for the development of *waqf* assets in Malaysia designed to improve the efficiency of *waqf* assets by creating cash liquidity as a new source of maintenance or improvement spending funding. It is important to ensure that the *waqf* funds are more productive; therefore, beneficiaries will gain and that the welfare benefits can continue, keep going, and positively impact the development and economies of Muslims and society around the world (Fuadah et al., 2018).

2.3.6 Al Tawriq Istibdaliah in the Enactment under the Terminology of Istibdal

This section presents an enactment of *Istibdal* and the existence of Al-Tawriq *Istibdaliah* in *Istibdal* terminology. *Istibdal* is an Arabic term derived from *badal*, which meaning to change or exchange. While *ibdal* and *Istibdal* indicate to substitute something with something else (Al-Shuwayri, 1995). In terms of terminology, *Istibdal* means to sell what is lacking or has lost the entry or revenue of the *waqf* property and purchase what is better than that (Qal'aji, M.R, 1985). In a nutshell, *Istibdal waqf* refers to the process of converting a *waqf* property and substituting it with another property, such as selling the old *waqf* property and purchasing a new one (Abu Zahrah, 1971).

The application of *Istibdal* will ensure the perpetuity of the *waqf* benefit by transferring *waqf* assets to a more sustainable location. However, the procedure should be completed thoroughly by obtaining authorization from the Fatwa Committee of the State Islamic Religious Council as the country's sole trustee for *waqf* (JAWHAR, 2010).

Every state in Malaysia has jurisdiction over the issue of *waqf*. *Istibdal* is usually used on *waqf* property for city development, land acquisition, and non-productive *waqf* land (JAWHAR, 2010). At the federal level, the Fatwa Committee of the National Council of Islamic Affairs accepted the application of *Istibdal waqf* at its 4th meeting on the 13th and 14th of April 1982. However, to retain the concept of *waqf*, the Committee chose Abu Hanifah's opinion that it is allowed to replace a *waqf* property by converting the asset directly or indirectly through sale or purchase (JAKIM, 2009).

Moreover, the provision of *Istibdal waqf* was also provided in the enactment. Section 2 of the Enactment of *Waqf* (State of Selangor) 1999, *Istibdal* means “to substitute a *waqf* property with another property or with money of similar or higher value than it, either by replacing, *purchasing*, *selling*, or *any other methods* in accordance with Sharia law.” Meanwhile, the *Istibdal* definition of the Negeri Sembilan *Waqf* Enactment replaces a *mawquf* with other property or money, or in the form of money, equivalent to or greater in value than the *mawquf*, whether through substitution, purchasing, sale, or any other sharia-compliant means. While Section 19 of the Selangor *Waqf* Enactment of 1999 and the Malacca *Waqf* Enactment of 2005 clearly state the presence of *maslahat* and its need to implement *Istibdal*.

Furthermore, *Istibdal waqf* means converting a *waqf* property with a property of the same kind and value or substituting it with another property by selling the original

waqf property and buying a new one instead. Therefore, the word selling can be confirmed that *Al-Tawriq Istibdaliah* is a process before *Istibdal* (conversion of assets to other *waqf* assets). Kahf (1998) defines *Istibdal* as the selling of all or part of *waqf* land to acquire another piece of *waqf* land for similar purposes.

The majority of Muslim jurists, including the Shafi'i, Maliki, and Hanbali scholars, agree with this practice after fulfilling certain requirements. For example, according to Ibn Taymiyyah (2000), *waqf* property should be sold to maximise a definite benefit. As a result, an exchange of *waqf* is permitted as long as it ensures advantages to the beneficiaries. In this situation, more money might be added to the value of *waqf* property to provide comfort and satisfaction (Ibn Qudamah, 1999).

Some *waqf* assets that do not provide any profits should be permitted to only be replaced by the *Istibdal* mechanism for improved assets through social gains as long as they are still for the *maslahah* of the citizens. The scholars have different views of implementing *Istibdal*. Mazhab Maliki allows the application of *al-Istibdal* which permits immovable *waqf* property such as land, which does not benefit the recipients and requires the same type of *waqf* property. Moreover, *Istibdal* application is allowed only for mosques according to Hanafi scholars. Shafie however said that *Istibdal* application is limited and *Istibdal* of the mosques is prohibited. However, *Istibdal* is implemented freely according to Hanbali scholars compared to the others (Hamat, 2014).

The scholars' opinion strongly said that such *waqf* assets could be sold and that using the money of another *waqf* property could be built according to the endower's original goals (*waqif*). Thus, the concept of *Istibdal* is an exchange of any undeveloped *waqf* properties to another *waqf* properties to ensure the *manfa'ah* for the *ummah* is sustained. The case for application, *Istibdal* is being used in Kelantan,

Kuala Lumpur, Melaka, Terengganu, Federal Territory of Kuala Lumpur, and Perak (Jabatan Wakaf, Zakat dan Haji (JAWHAR), 2010)

However, there are three procedures of *Istibdal*. These include determining idle *waqf* assets, the revival of *waqf* assets, and opening up *Istibdal* recommendations for *waqf* growth from individuals, organisations, or developers. However, implementing *Istibdal* on all undeveloped *waqf* land is not easy (Mohd Ali et al., 2015).

The *Istibdal* implementation of the *waqf* properties can be divided into several types of development (Hisham et al., 2013). Firstly, *waqf* assets are used as accommodation for beneficiaries of aid. Beneficiaries may stay on the *waqf* land at a reasonable and cheap rental price, and it should be determined that the residents of the land are temporary. It aims to provide opportunities for other recipients in need of cheap accommodation. Consequently, everybody would be able to enjoy the facilities offered by the *waqf*. The second is that *waqf* properties are also used as commercial assets that can generate income. Monitoring must be carried out and the SIRC appoints an individual to manage these commercial assets and ensure that they operate smoothly and successfully. Strategic use of these endowment assets can be created, especially where (new *waqf* property) *istibdal* is located in the town centre and the business area.

The obligation has been seen as a trust that the mutawalli must fulfil with honesty and fairness. Implementing *Istibdal* is a necessary specific instrument for undeveloped *waqf* properties and for ensuring Muslims' economic development. The legal scholars' interpretation of *Istibdal* consists of maintaining the perpetuity and consistency of the *waqf* principle for the good of the beneficiaries (Jasni Sulong, 2013).

2.4 Waqf Institution in Malaysia

Strengthening the position of the *awqaf*, Zakat and Hajj Department, the federal government has established the JAWHAR to coordinate the operations for all *waqf* entities throughout Malaysia. Furthermore, the coordination is not in centralising the *waqf* management but to adhere to a quality captured was certainly not for the *waqf* institutions but rather to acknowledge different qualities, including economic and social (Mohd Ali et al., 2015); Ahmad, 2010; Rizal & Amin, 2017). However, given the position as a welfare system, it has been argued that *waqf* institutions, being immune to market forces, have created structural bottlenecks that funnel vast resources into unproductive social services organisations (Ahmad, 2010). Therefore, the study examines the present scenario in the *awqaf* institution of *waqf* properties utilizing secondary sources.

Furthermore, regarding the perception of *waqf* institutions as the social mechanism to promote fair economic growth and progress for just the ummah, this remains a challenge to get its definition embraced and adopted by business organisations. The organisations' roles, specifically throughout the *waqf* region, include preparing, coordinating, controlling the *waqf* management structure, and establishing the comprehensive *waqf* institution to improve the Muslim world's social economy in Malaysia (Hasan, 2008; Aliza et al., 2018). Therefore, based on a review from Malaysia's past approaches in *waqf* land development, the level to which it works, legal and non-legal issues, and a few recommendations for improving the *waqf* system, it is concluded that the current approaches adopted by the Malaysian authorities have contributed positively to the growth of *waqf* land management (Hasan, 2008; Anwar Pitchay et al., 2018). Therefore, this study aims to give an

overview of *waqf* land management and to what extent *waqf* management of Malaysia is successful.

Malaysia is one of the notorious Muslim countries in the world. There is no exception for Malaysians to manage *waqf* institutions (Ibrahim & Ibrahim, 2013). State Islamic Religious Council (SIRCs) are sole trustee institutions of *waqf* properties, including *waqf* land (Hussin & Rashid, 2015). This is too certified by 14 countries in Malaysia via enactments and ordinances which stated that SIRCs are sole trustees for *waqf* assets (Sulaiman, M., & Zakari, M. A. 2015). Registered *waqf* lands are also under SIRCs' authority (Rani, M.A.M., & Aziz, A.A. 2010).

Although SIRCs are sole trustees to administrate *waqf* properties, there is also another special committee that conducts the management of *waqf* properties (Mohd Daud et al., 1999; Rani, M.A.M. & Aziz, A.A., 2010). According to the federal government, the Waqf, Zakat, and Pilgrimage Department (JWZH), as announced by the former prime minister of Malaysia, YAB Dato' Seri Hj Abdullah Ahmad Badawi on the 27th of March 2004, is to upgrade the administrative machinery of the *waqf* assets.

Even though *waqf* activities are for spiritual development or religion, they are also for the economic development of Muslims, politics, education, and others (Chowdhury, M.S.R., Chowdhury, I. A., 2012). Therefore, a human being's responsibility is to ensure that the *waqf* activities and management are on the right path and going smoothly.

2.5 Waqf Properties Development in Malaysia

This section presents the significance of *waqf* development concerning social and economic growth (Kahf, 2003). First, the priority is to preserve the property and, second, to maximise the revenues of the beneficiaries (Mohd Puad et al., 2014). *Waqf* is an Islamic public finance instrument that can be seen as a great potential mechanism that plays a significant role in generating a prominent source of financing for the state and for the needs of the Muslim ummah who are complex and growing (Mohd Puad et al., 2014).

According to Jalil and Ramli (2008), *waqf* can be classified into several categories based on three diverse aspects: timing, purpose, and the object of *waqf*. The pious Az Zuhri, who is well-known for his Islamic knowledge, ruled that *waqf* in the form of the dinar (money) is allowed for the sake of Islamic purposes, the welfare of society, and the development of the ummah (people) (Ibrahim & Ibrahim, 2013). Securitisation is a process that involves the pooling, packaging, and transformation of financial assets into securities.

Waqf is an act of holding certain properties and preserving them for the confined benefits of certain philanthropies, prohibiting any use or disposition of them outside that specificity for any charitable purpose, whether as public *waqf* or specific *waqf* following Sharia principles. *Waqf* also means any property from which its benefit can be used under the Trustee Act 1949 [Act 208] (Administration of the Religion of Islam (State of Selangor) Enactment 2003). Compared to for-profit or commercial entities that are obliged to produce financial reports compliant with international financial reporting standards, non-profits are exposed to ‘minimal’ regulations and ‘under-developed’ financial reporting requirements (Cordery & Baskerville, 2007).

According to Anwar Pitchay et al. (2016), many Muslim and Muslim minorities countries are currently moving towards promoting cash as a form of *waqf*. His observations from interviews with researchers and *waqf* officers in Malaysia agree that cash *waqf* might be the capital for idle *waqf* land development. Haji Mohammad et al. (2005) mentioned that many *Waqf* trustees (*Mutawalis*) had not been well trained in financial and property management. It requires the help of experts in the Islamic financial sector especially *waqf* to help manage innovative financial instruments such as *Al-Tawriq Istibdaliah* instruments (Zain & Muhamad Sori, 2020).

Waqf may also be used as an efficient instrument for managing wealth. According to Zain & Muhamad Sori (2020), the more financial instruments are, the greater the chances of *waqf* development. The financing approaches used in Malaysia are joint ventures such as *waqf* share, *musharakah*(leasing), *wakalah* (agency), *musharakah* (partnership), corporate *waqf*, donations, state and federal funds and internal funds. None of them has ever used the *Al-Tawriq Istibdaliah* instrument. One of the closest *Al-Tawriq Istibdaliah* models to be used for *waqf* development in Pulau Pinang, also known as the Abdul Kadir *Waqf* project. This is done over *waqf* under the *Istibdal* project. Fuadah et al. (2018) explore the potential of *Al-Tawriq Istibdaliah* instruments related to *waqf* assets to develop large-scale local *waqf* assets that have not yet been developed or resolved the issue of idle *waqf* land assets. *Al-Tawriq Istibdaliah waqf* instruments are targeted at the real economic development market, such as the *Al-Tawriq Istibdaliah* project. Depending on the skill of *waqf* administrators, *Al-Tawriq Istibdaliah* can be adapted for commercial and social purposes.

2.6 Literature Review Gap Analysis

There are several solutions and instruments focused on funding and financing for *waqf* asset development. Adapted from Syahirah Zain, 2020, it explored a sustainable and responsible investment (SRI) sukuk model based on *Musharakah* that could be implemented to develop *waqf* properties and assets under the SRI sukuk framework in Malaysia. Adapted from Ambrose, 2018 explored a model for *waqf* financing of public goods and mixed public goods in Malaysia which constitute the country's federal government expenditures. Moreover, the study from Anwar Pitchay, 2018 aims to offer an alternative mode of financing for developing idle *waqf* lands using the concepts of cooperatives and *waqf*.

Adapted from Monaya (2017) explored the development model of built operate and transfer (BOT) over *waqf* land productivity. Build, Operate, Transfer (BOT) is an agreement that provides solutions between parties that have common interests. However, with their respective limitations that require the ability or ability of others to realize mutual benefits, for example one party has a plot of land that can be optimised for the benefit of the business to take advantage of the assets owned but due to limited funds or expertise in the field of asset management owned by inviting third parties to optimize the land to be utilised.

However, those solution instruments (SRI Sukuk Model, *waqf* financing of public goods and mixed public goods, concept of cooperative and BOT) depend on the funding source. If there is no funding source, another solution needs to be addressed such as liquidating the *waqf* asset itself and there is a gap for this study. Other than that, mostly those instruments like SRI Sukuk and BOT need to involve third parties to develop *waqf* assets.

Therefore, *istibdal* is one of the instruments for *waqf* asset development. Any *waqf* property that does not provide any benefits will be allowed to be substituted by the process of *istibdal* with better property in terms of economic benefits as long as it is still in *maslahah* for people (Hamat,2014). *Istibdal* can be defined by buying any other new property with sales revenue as *mawquf* to replace the old property under substitution method with the same values or with better benefits (JAWHAR, 2010). Both instruments (*Istibdal* and *Al-Tawriq Istibdal*) focus on developing unproductive and idle *waqf* land, but there is a gap between these two, *Al-Tawriq Istibdaliah*, a process that occurs before the *Istibdal* process. Before substituting the process, the *waqf* asset must be liquidated into cash (*Al-Tawriq Istibdaliah*) and transferred into a new, more beneficial *waqf* asset.

2.7 Theoretical Background and Early Assumptions Framework

Several previous studies explained various outputs, however, this study found new early assumptions to be examined for the challenges of the *Al-Tawriq Istibdaliah* instrument.



Figure 2.3: Theoretical Background of Early Assumptions Framework

Figure 2.3 illustrates the early assumptions of challenges in implementing *Al-Tawriq Istibdaliah*. However, the early assumptions can be diversified into knowledge and readiness. Thus, it is important to have an expert in *waqf* asset to confirm the challenges in implementing *Al-Tawriq Istibdaliah*.

Furthermore, this study attempts to outline an assumption of why knowledge and readiness are the Challenges of Implementing the *Al-Tawriq Istibdaliah* instrument as follows:

Table 2.1: The Early Assumptions of Challenges in Implementing of *Al-Tawriq Istibdaliah*

Key point of Early Assumptions	References
LACK OF KNOWLEDGE	
<ul style="list-style-type: none"> The concept of <i>Al-Tawriq Istibdaliah</i> is a new solution to solve undeveloped and unproductive <i>waqf</i> assets. However, there is another factor that needs to be reviewed before <i>Al-Tawriq Istibdaliah</i> can be implemented. 	(Fuadah et al., 2018)
<ul style="list-style-type: none"> The educational process of <i>Waqf</i> can be implemented by determining the level of knowledge. 	(Maulana Alifiandy Raditya Sukmana, 2020)
<ul style="list-style-type: none"> Extensive knowledge and understanding of <i>waqf</i>, is believed to motivate <i>Waqif</i> to participate. 	
THE READINESS	
<ul style="list-style-type: none"> The factors affecting the readiness of <i>waqf</i> for a potential <i>waqf</i> focused on the highest order are the level of religious belief, humility, awareness of cash <i>waqf</i>, economic condition, subjective standard, and services recommendations. 	(Nuraini et al., 2018),
<ul style="list-style-type: none"> The intention is the behaviour that shows a high readiness and motivation of <i>waqif</i> for giving cash <i>waqf</i>. 	(Faiz Osman et al., 2016)

2.8 Conclusion

This chapter concludes that the *Al-Tawriq Istibdaliah* instrument is the best solution for undeveloped and unproductive *waqf* assets. Furthermore, the challenges of the *Al-Tawriq Istibdaliah* instrument are essential to be discovered in the *Al-Tawriq Istibdaliah* instrument. The literature review analysis explanation about *Al-Tawriq Istibdaliah* as a solution was to gather the information from previous research from the year 2010 till the year 2019. The literature review gap from this study finds the early assumption of challenges in implementing *Al-Tawriq Istibdaliah* for the best two reasons as an initial assumption. Those assumptions are the knowledge of *Al-Tawriq Istibdaliah* and the readiness of *waqf* managers in implementing *Al-Tawriq Istibdaliah*. Therefore, it shows that *Al-Tawriq Istibdaliah* can develop unproductive *waqf* assets for sustainable economic development.